

**The Restructuring (Systemization) of Local Government
under the
Constitution of the Republic of South Africa, 1996**

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Abstract

In recent years South Africans have become accustomed to the fact that the local sphere of government is part and parcel of the new democratic structure of government in the Republic. Today, all local governments are clothed with a new status, a new autonomy and a distinctive character with specifically entrenched constitutional powers and objects. Notwithstanding its newfound importance, all local government institutions had to be transformed and restructured to fit into an entirely new constitutional framework. Such a restructuring process was an often arduous and time consuming process. The restructuring furthermore required an entire overhaul of all municipal authorities since the new Constitution requires mainly parliament to add substance to a simple constitutional framework. Parliament has recently completed its constitutional obligations in respect of the restructuring of local government and a completely new legal order regulating and managing all local government structures in South Africa has been developed and enacted. All municipal role players must now constructively and purposefully implement and enforce the various new legal requirements.

This new research under the title, The restructuring of Local Government under the Constitution of the Republic of South Africa, now seeks to systemize and structure the new local government legal dispensation. Spanning over 22 chapters, this work covers almost all legal aspects of the new local government dispensation and addresses, *inter alia*, aspects such as the new status of local governments, the impact of the Constitution on municipal affairs, the various objectives and challenges facing all municipalities, the new legal nature of local government institutions, a discussion of the principles of co-operative government relevant to the local sphere of governance, a look at the new models of local authorities, the demarcation of municipal boundaries, the composition and functioning of local government structures, the role and importance of traditional leadership in municipal decision making, an overview of the entrenched powers and functions of municipalities, aspects concerning municipal services and sustainable service delivery, as well as the important principles relating to municipal finances and fiscal management.

Key Terms/ Words

- Autonomy
- Agency
- Authority
- Bill of Rights
- Budget
- By-laws
- Capital
- Committee
- Community
- Constitution
- Co-operation
- Debt
- Delegation
- Demarcation
- Election
- Finance
- Government
- Levies
- Mayors
- Municipalities
- Organs of state
- Parliament
- Political
- Rates
- Revenue
- Service
- Ward

Preface

Local government, being the sphere of government that exists the closest to the people of a state, has often been described as the most important sphere of government. Since municipal institutions affect the life's of all people living within the territory of a state, they are rightly regarded as the backbone of a balanced democracy and as essential service provides, from the cradle to the grave. An effective and efficient local government system is therefore of obvious importance. If the local sphere of government does not work properly then the state in general will not work. Furthermore, all municipal authorities are inextricably linked to the people of the state. If a sound and stable local democracy is not ensured, then the state itself is in danger of collapsing.

With the birth of a new constitutional order for South Africa, the entire local government dispensation had to be restructured and transformed. Contrary to the restructuring of the two higher spheres of government, the Constitution of the Republic of South Africa 1996 only incorporated a simple framework for local government and mainly left the completion of new local government dispensation to parliament. Parliament, mandated by the Constitution, was tasked to enact various new laws in order to facilitate the new municipal dispensation. All new laws however had to comply with the new constitutional requirements and supreme constitutional demands. Over the last decade all local government institutions in South Africa were totally restructured and transformed into a single uniformed system of local governance in which all municipalities were afforded a new status, new powers and functions and a new constitutionally entrenched vision of achieving specific municipal objects and to be generally developmental in nature. This new legal and political system essentially requires a re-appraisal of the manner and effectiveness in which local governments fulfil and achieve their constitutional and other related legal duties and responsibilities.

In the new legal dispensation, local government institutions cover the entire territory of the South African state. This phenomenon is generally referred to as a system

of wall-to-wall municipal governance. Since municipalities are mainly tasked with providing essential services to their local residents, they directly affect the lives of all South African inhabitants. If essential services are provided in a sustainable and affordable manner, municipalities will facilitate the creation a sound foundation for economic development, poverty upliftment and the overall creation of a better future for all. Local governments can however not achieve their new goals on their own and the support and assistance of the two higher spheres of government is a *sine qua non* for any successful local government dispensation. All spheres of government must work hand in hand to ensure an overall government which fosters a system of truly cooperative governance, as is constitutionally required. As a whole, local government forms an important link between the people of the state and the highest political decision-makers. In essence, local governments create a nationwide network that not only links the three spheres of government together but also creates a laboratory for truly democratic governance and grassroots democracy.

This research was undertaken in an effort to help explain the new legal dispensation regarding local government in South Africa. The work explains the new legal requirements and also evaluates the extent to which the new system complies with the general constitutional obligations. The work further underpins the new partnership between the three spheres of government and sets out the local sphere's duties and responsibilities. It also aims to systemise and structure the new local government legal dispensation. The work is presented in simple and plain language, which in turn should facilitate a better understanding of the legal rules and participation of all role players in the new legal order.

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Dedication / Acknowledgements

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