

WORKING TOWARDS COLLABORATIVE LOCAL GOVERNMENT IN SOUTH AFRICA

A REFERENCE GUIDE

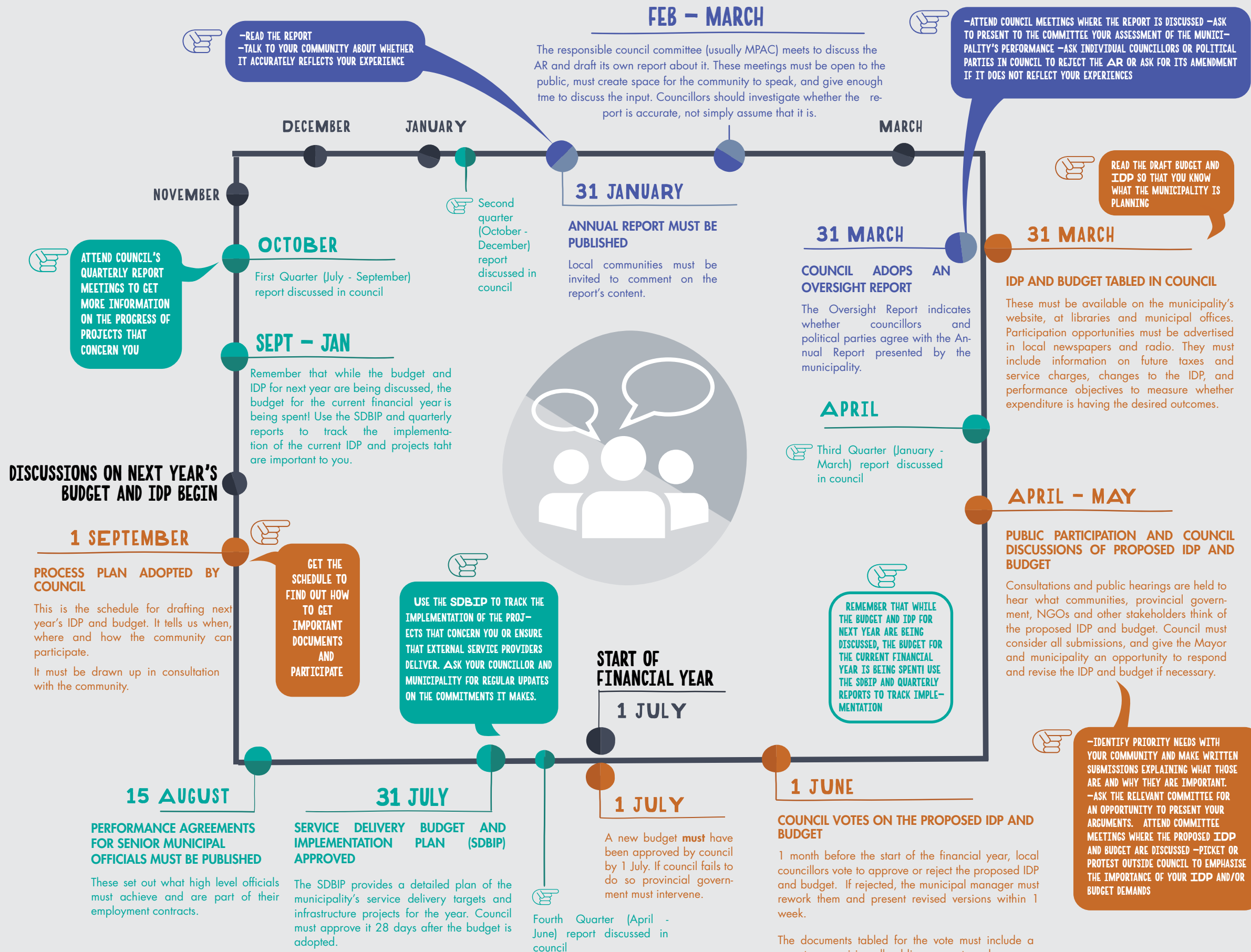


IN ANY ONE YEAR, YOUR COUNCIL IS WORKING WITH THREE BUDGETS AND IDP'S: THE **CURRENT** ONES THAT ARE BEING IMPLEMENTED, THE **FUTURE** ONES THAT ARE BEING NEGOTIATED, AND THE **PREVIOUS YEAR'S** ONES, THAT ARE BEING EVALUATED.

PARTICIPATE IN LOCAL GOVERNMENT'S PLANNING & ACCOUNTABILITY CYCLE

- THE YEAR AHEAD
- CURRENT YEAR
- PAST YEAR
- TAKE ACTION

FOR MORE DETAILED INFORMATION ON THE AR, IDP AND OTHER DOCUMENTS, SEE SECTION III OF THE GUIDE



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LOCAL GOVERNMENT
IN SOUTH AFRICA**

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ACKNOWLEDGEMENTS

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The contents of this publication are the sole responsibility of the COMPACT programme, and do not necessarily reflect the views of the European Union or the Heinrich Boell Foundation.

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About the South African Local Government Association (SALGA)

The South African Local Government Association (SALGA) is a statutory body, established in terms of s.163 of the Constitution, which provides for organised local government to represent municipalities and participate in intergovernmental processes. The Organised Local Government Act (1997) provides its legal framework. SALGA comprises all 257 of South Africa’s municipalities, and acts as the voice of organised local government in the country. It plays a support, advisory and advocacy role to municipalities, promotes best practices and provides training and capacity-building to improve municipal governance. Read more about SALGA and its publications here: <https://www.salga.org.za/>

About COMPACT

The COMPACT programme is partnership between the Public Affairs Research Institute (PARI), the South African Local Government Association (SALGA) and Integrity Action (IA). The programme is a co-funded by the European Union and is implemented in 12 South African partner municipalities across 6 provinces. COMPACT is designed to achieve a more responsive and accountable local government in South Africa by deepening democracy, enhancing the participation of local communities in the integrated development planning (IDP) processes (with particular emphasis on water and sanitation) and improving planning and oversight of service delivery in municipalities through enhanced community participation. Action research was undertaken to feed into a process of co-creation of tools and resources with partner municipalities. See <https://pari.org.za/compact/>

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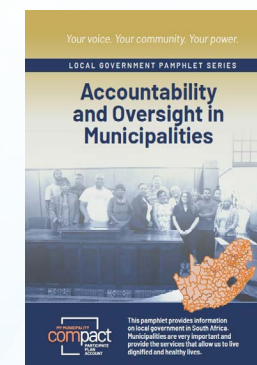
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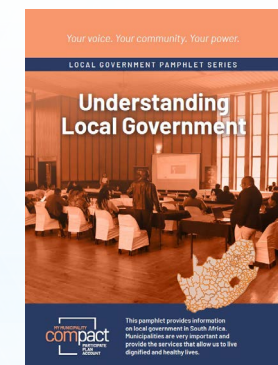
COMPACT has developed a Local Government Pamphlet series based on the contents of this guide. The pamphlets are in English, Afrikaans, isiXhosa, isiZulu, Setswana, and Sesotho. They are available for download at <https://pari.org.za/compact>.



Understanding Local Government



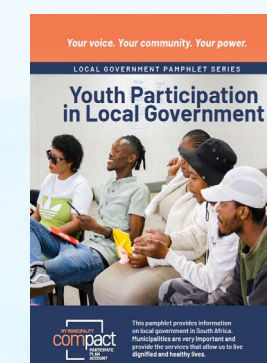
Accountability and Oversight in Municipalities



Municipal Councillors



Ward Committees



Youth Participation in Local Government

ACRONYMS AND ABBREVIATIONS

AFS Annual Financial Statements
AG Auditor-General
AR Annual Report
CBO Community-Based Organisation
CDW Community Development Worker
COCC Code of Conduct for Councillors
COCTL Code of Conduct for Traditional Leaders
COCMS Code of Conduct for Municipal Staff Members
CoGTA Cooperative Governance and Traditional Affairs
DCoG Department of Cooperative Governance
DM District Municipality
DORA Division of Revenue Act
EC Executive Council
ES Equitable Share
FBE Free Basic Electricity
FBS Free Basic Services
FBSan Free Basic Sanitation
FBW Free Basic Water
IDP Integrated Development Plan
IGRFA Intergovernmental Relations Framework Act
LM Local Municipality
LUS Land Use Management
MEC Member of the Executive Council
MFMA Municipal Finance Management Act
MIG Municipal Infrastructure Grant
MM Municipal Manager
MMC Member of the Mayoral Committee
MPAC Municipal Public Accounts Committee
MPRA Municipal Property Rates Act
MPT Municipal Planning Tribunal

MSA Municipal Systems Act
MSCM Municipal Supply Chain Management Regulations
MSDF Municipal Spatial Development Framework
MSTA Municipal Structures Act
NCOP National Council of Provinces
NGO Non-Governmental Organisation
OR Oversight Report
PAIA Promotion of Access to Information Act
PAJA Promotion of Access to Justice Act
PIE Prevention of Illegal Eviction from and Unlawful Occupation of Land Act
PPPFA Preferential Procurement Policy Framework Act
reg. Regulation
SALGA South African Local Government Association
SCM Supply Chain Management
SDA Service Delivery Agreement
SDBIP Service Delivery Budget and Implementation Plan
SDF Spatial Development Framework
SPLUMA Spatial Planning and Land Use Management Act
TC Traditional Council
TL Traditional Leader
TKLA Traditional and Khoi-San Leadership Act
TLGFA Traditional Leadership and Governance Framework Act
USDG Urban Settlements Development Grant
WSA Water Services Act

ABOUT THIS GUIDE

Local government is a very important part of the South African state. As the sphere of government closest to the people, it is tasked with fixing some of the most fundamental challenges we face as a country, in particular the apartheid legacy of unequal access to dignity and basic services. Our Constitution and laws clearly say that local government must be open, responsive, and accountable. Sadly, this is often not the case.

This guide draws on the principles and values set out in the *White Paper on Local Government (1998)* and is informed by the experiences and insights of municipalities, NGOs, communities and other stakeholders across the country. South Africa has a **developmental local government** system that can only be achieved through a collaborative approach that brings together the skills, knowledge, and resources of all involved.

Developmental local government is local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.

A municipality consists of the political structures and administration of the municipality, and the local community of the municipality. Governance is not a one-way street, and ordinary people – whether individual citizens, civil society organisations, or communities – play critical roles in building and protecting a healthy democracy. This guide is intended to **educate citizens about their roles and responsibilities** – as well as opportunities to engage – in local governance processes. It aims to help citizens hold their municipalities to account for the services they should provide, the money they spend, and the decisions they make.

When we refer to “**citizen**” in this guide we are referring in the broad sense to **anyone who lives or works in a particular area or municipality**, and who has the right – and responsibility – to improve how their municipality works.

The guide is also meant to serve as a **resource for members of local government – from ward councillors to municipal officials to ward committee members** – offering quick and accessible reference and overviews of the often complex systems, rules, and processes of local governance.

It’s important to see this guide as a toolbox, and not an exact recipe. For citizens, officials and councillors to work together and ensure accountability, all parties must make place-specific political assessments and engage in creative thinking on the way to finding solutions. That is, what works in one community may not work or may even be dangerous in another. Always discuss the actions you’d like to take and their potential risks with your community and your local government representatives.

Local government is a complex institution, and so some of the information included here also may not be immediately relevant to you. Finally, this guide is a starting point, and is intended to be neither exhaustive nor the final word on the subject matter contained within.



MY NAME IS MANDLA, AND I’M A COMMUNITY MEMBER. I’M INTERESTED IN HELPING MY LOCAL GOVERNMENT WORK BETTER! I’LL BE SHARING MY EXPERIENCE OF ENGAGING WITH MY MUNICIPALITY, AS WELL AS STORIES FROM OTHER COMMUNITIES AND ORGANISATIONS TO LEARN FROM THEIR TACTICS AND STRATEGIES.

MY NAME IS NONDUMISO AND I’M MANDLA’S LOCAL WARD COUNCILLOR! I’LL ALSO BE SHARING MY EXPERIENCES, PROVIDING EXAMPLES AND POINTING OUT IMPORTANT INFORMATION ABOUT LOCAL GOVERNMENT

TO MAKE QUICK REFERENCING EASY WE'VE STRUCTURED INFORMATION IN THE FOLLOWING WAYS:

Underlined words are in the Glossary at the back of the guide.



REALITY CHECK: In these boxes we point out the differences between how things *should* be, and how they often actually *are*.



ENGAGE/TAKE ACTION: In these boxes we point out ways to engage and practical action that can be taken to get involved and hold municipalities accountable.



PARTICIPATE: Participation is a right! These icons identify where participation is *required* by law.



CHECKLIST: Evidence is important for advocacy and lobbying! These boxes provide questions to help in assessing how different municipal role players are doing their job. They can be used to document the facts and strengthen a case to be made.



TACTICS: These boxes highlight real life tactics and strategies that communities facing challenges have used.



RESOURCES: Additional resources that can be used to help hold local government accountable.



GENDER: This indicates where the gender dimensions of an issue are significant.

The content of this guide has been inspired and informed by many other publications, papers and reports. As a general approach, the information and perspectives gathered from these sources have been adapted, combined and altered to suit the narrative and themes of this guide. A full bibliography of quotes and sources appears at the end of this document. In addition, where a particular source has provided core ideas for a chapter, it is acknowledged with a citation within the relevant text.

NOTES

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SECTION I

LOCAL GOVERNMENT IN CONTEXT



“All spheres of government and all organs of state within each sphere must-
[...]

(c) provide effective, transparent, accountable and coherent government for the Republic as a whole”

Section 41, Constitution of the Republic of South Africa

CHAPTER 1:

INSTITUTIONAL AND LEGAL FRAMEWORK

South Africa has a progressive institutional and legal framework for local government. This chapter summarises key aspects of this framework.

1.1 The Constitution and the rule of law¹

It is important to understand how laws are made, and how government is structured (the institutional framework) to execute those laws.

South Africa is a constitutional democracy, which means that the Constitution of the Republic of South Africa is the highest law in the land. It guarantees human rights for all in South Africa, and sets out government's legal duties. Any law inconsistent with the Constitution is invalid.

No government office or individual is above the law. All of government, including local government, must act according to the Constitution and laws passed by government. This is known as the rule of law (s. 1 and s. 2 of the Constitution) and means that government, politicians and officials at all and any levels can be ordered to obey the law.



WHEN CHALLENGING A LOCAL GOVERNMENT ACTION OR REFUSAL TO ACT, THERE ARE TWO QUESTIONS YOU NEED TO ASK:

1. WHAT LAW GIVES THE GOVERNMENT THE AUTHORITY TO ACT?
2. HAS THE GOVERNMENT COMPLIED WITH (OBEYED) THE LAW?

The Bill of Rights in the Constitution requires government to **respect, protect, promote and fulfil** our rights.



Access to any information held by the state



Adequate housing



Health care



Healthy environment



Just and fair government processes



Social assistance



Education



Food and water



Equality

1.2 Cooperative Government

The Constitution divides the government into three spheres – **local**, **provincial** and **national**. All three spheres have legislative and executive powers, allowing them to pass laws and implement programmes. As illustrated below, however, each sphere's powers are different: both in geographical size, as well as in the type of government functions (services) it is responsible for.

OVERVIEW: THE DISTINCT POWERS OF THE LOCAL, PROVINCIAL AND NATIONAL GOVERNMENT SPHERES²

LOCAL GOVERNMENT

Powers relate to:
Provision of basic services; making and enforcing by-laws (laws related to local matters)*

PROVINCIAL GOVERNMENT

Powers relate to:
Provision of social and other services, many with national government; support to local government*

NATIONAL GOVERNMENT

Powers relate to:
Overarching policy frameworks, regulation and supervision of the other two spheres**

*Provincial and municipal powers only apply within their boundaries, and are limited to functions as listed in Schedules 4 and 5 of the Constitution.

See the next section of the guide for more information on each sphere's functions.

**National government has exclusive authority to pass and implement legislation on any matter not listed in Schedules 4 and 5, including exclusive control over taxation.

Because they have different responsibilities and powers, no sphere can fulfil our rights on its own. While the Constitution recognises that each sphere is **independent** – meaning that in general no sphere may interfere in other spheres' decision-making – the spheres are also **interdependent** (depending on each other), and must work together. The Department of Cooperative Governance and Traditional Affairs (CoGTA) is responsible for making sure that the spheres cooperate effectively.

Unfortunately, cooperative governance often does not work very well, and this impacts negatively on service delivery.



THE IMPORTANT TAKE AWAY IS THAT LOCAL GOVERNMENT IS NOT AN 'OFFICE' OF EITHER NATIONAL OR PROVINCIAL GOVERNMENT – IT IS A SEPARATE SPHERE OF GOVERNMENT, WITH ITS OWN ELECTED LEADERSHIP AND RESOURCES. THIS MEANS THAT ALTHOUGH PROVINCIAL GOVERNMENT HAS THE AUTHORITY TO SUPPORT LOCAL GOVERNMENT, IT CAN ONLY INTERFERE IN MUNICIPALITIES' DECISION-MAKING UNDER SPECIAL CIRCUMSTANCES.

1.3 What is local government supposed to do?

Before 1996, local government was fragmented and racially segregated, with municipalities providing unequal services to different communities. In an effort to fix the resulting imbalances, the Constitution of the Republic of South Africa envisioned municipalities that are both democratic and developmental in nature.

Section 152 of the Constitution states that the objects of local government are:

- to provide **democratic and accountable government** for local communities;
- to ensure the **provision of services** to communities in a sustainable manner;
- to promote **social and economic development**;
- to promote a **safe and healthy environment**; and
- to encourage the **involvement of communities and community organisations** in the matters of local government.

Section 153 says that a municipality must structure and manage its administration, budgeting and planning processes to give priority to the basic needs of the community.

 The legal basis for the functions of a municipality are set out in s.156 and in Part B of Schedules 4 and 5 of the Constitution. > [see page 145 of this guide](#)

THERE IS A SERVICE DELIVERY PROBLEM - BUT WHO IS RESPONSIBLE FOR IT?

**TACTICS: ARE THE RIGHT PEOPLE BEING CONTACTED?**



THE COMMUNITY WAS COMPLAINING ABOUT A GOVERNMENT PROJECT IN WHICH THE HOUSES WERE BUILT VERY POORLY, AND WHERE TOO OFTEN SEWERAGE OVERFLOWED AND THERE WAS NO WATER IN THE PIPES. WE WENT TO THE MUNICIPALITY TO ASK FOR THIS TO BE FIXED.

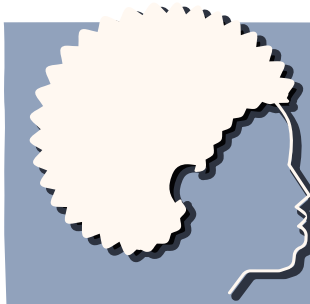
WHILE THE MUNICIPALITY WAS RESPONSIBLE FOR FIXING THE WATER AND SANITATION SERVICES, IT WAS THE PROVINCE WHO WAS RESPONSIBLE FOR RECTIFYING THE HOUSES, AND ONE PROBLEM COULD NOT BE FIXED WITHOUT THE OTHER. BUT IT WAS DIFFICULT TO GET THE MUNICIPALITY AND THE PROVINCE TO WORK TOGETHER – THEY HAD DIFFERENT POLITICAL LEADERSHIP, RULES, PRIORITIES AND FINANCIAL CYCLES. RESIDENTS WERE FRUSTRATED DUE TO POOR SERVICES, MUNICIPAL OFFICIALS WERE FRUSTRATED BECAUSE THEY COULD NOT DO THEIR JOB AND WERE BEING BLAMED FOR PROBLEMS THAT WERE NOT WITHIN THEIR POWER TO FIX, AND WE AT THE MUNICIPAL COUNCIL WERE FRUSTRATED BECAUSE WE COULD NOT DO WHAT WE WERE ELECTED TO DO!



IF YOU ARE USING THIS GUIDE TO SOLVE A SERVICE DELIVERY PROBLEM, BE SURE YOU KNOW WHO IS RESPONSIBLE FOR IT! THIS ISN'T ALWAYS STRAIGHTFORWARD – MANY RESPONSIBILITIES ARE SHARED, AND EXACT ARRANGEMENTS ARE DIFFERENT IN DIFFERENT PLACES!

NOT SURE WHO'S RESPONSIBLE FOR THE SERVICES?

- TALK TO YOUR COUNCILLOR OR WARD COMMITTEE MEMBER
- ASK AT YOUR MUNICIPALITY
- REACH OUT TO A LOCAL NGO OR CBO



WHO IS RESPONSIBLE FOR WHAT SERVICE? AN OVERVIEW

Because local government is the closest to us, people often go to the municipality first when they have any problems. However, sometimes the problem can only be fixed by the provincial or national government.

THE DIFFERENT FUNCTIONS OF THE THREE SPHERES OF GOVERNMENT
NATIONAL
National government has the exclusive responsibility (it is alone responsible) for functions that affect the country as a whole. These include: • Safety, security & courts • Defense • Higher education • Home affairs
National government develops policies which determine the legal framework, including norms and standards, for service delivery in the two other spheres. For example, the National Department of Water Affairs developed the compulsory national standards for water services, which municipalities must implement.
National government regulates, monitors and supports the implementation of its policies in the other two spheres.
PROVINCIAL
The provincial and national government, share responsible for the delivery of most social services. These include: • Health services • Basic education • Housing • Social development
The functions that are <u>exclusive</u> (unique) to the provinces include: • Granting of liquor licenses • Provincial roads • Ambulance services • Provincial planning
Provincial government is responsible for monitoring and supporting municipalities.
LOCAL
Local government is responsible for the delivery of basic services. These include: • Water and sanitation • Electricity • Refuse removal • Land use decisions • Child care facilities • Firefighting services • Public transport • Building regulations • Municipal parks, recreation and sport facilities • Street lighting • Street trading
Municipalities have powers to make and enforce laws (called by-laws) that regulate the above services (as per s.156 of the Constitution).
Local government can also be assigned additional responsibilities by national and provincial legislation.

1.4 Categories of municipalities

There are 257 municipalities in South Africa, but not all of them are the same. The Constitution (s. 155) establishes three different categories of municipalities in South Africa. Often, what your municipality is responsible for depends on which category it belongs to. It's important to know which type of municipality you live in, so you know its exact powers and responsibilities.

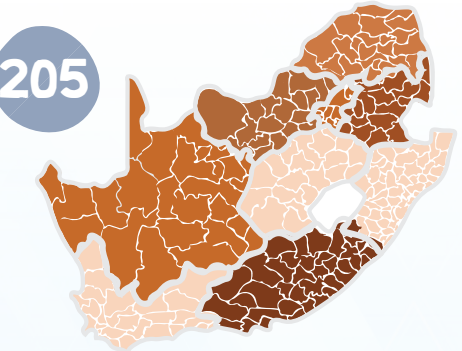
CATEGORY A: Metropolitan municipalities (metros)

- The eight biggest cities in South Africa.
- Extensive powers and responsibilities
- Divided into wards and governed by a council with max. 270 councillors: 50% PR and 50% ward councillors.



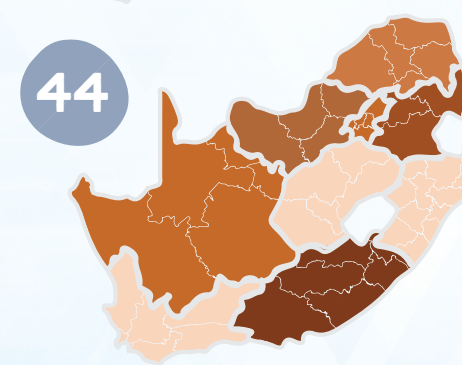
CATEGORY B: Local municipalities (LMs)

- Areas outside the metros, which usually include a town and surrounding rural areas.
- LMs share their authority with the district municipality in which they sit.
- Divided into wards and governed by a council: 50% PR and 50% ward councillors.



CATEGORY C: District municipalities (DMs)

- Areas with between 3-6 adjacent local municipalities.
- DMs coordinate development and delivery across numerous LMs, and enable the sharing of scarce skills and resources between small towns and rural LMs
- Governed by a council with 40% directly elected PR councillors and 60% councillors sent from the LMs that make up the district.



RESOURCE: CIVICS ACADEMY COURSE

The Civics Academy has a free online course on called "What is Local Government?". There are 11 modules and each one focuses on a specific topic, for example municipal structures and services, the role of a municipal councillor, local government budgets and how to participate in municipal processes. Each module starts with a short animated video clip which presents the topic. After watching the video you are invited to complete the multiple choice quiz and test your knowledge. Upon completion of the course you will be sent a certificate. Enrol for the course here: <https://learn-civics-academy.thinkific.com/courses/your-first-course>

1.5 Local Government and the law³

While the Constitution sets out the main principles and rules that govern South Africa, there are many other laws that are relevant for activists in relation to local government.

Statutes or Acts: Also referred to as legislation, these are laws voted on by an elected body (including a municipal council, provincial legislature or national Parliament).

There are several important pieces of national legislation based on the Constitution, but which set out more specific rules governing local government. These include:

- Local Government: Municipal Structures Act (MSTA)
- Municipal Finance Management Act (MFMA)
- Spatial Planning and Land Use Management Act (SPLUMA)
- Local Government: Municipal Systems Act (MSA)
- Promotion of Access to Information Act (PAIA)
- Promotion of Administrative Justice Act (PAJA)

TO KNOW MORE ABOUT EACH OF THESE LAWS, READ CHAPTER 11: LAWS AND POLICIES YOU SHOULD KNOW



Municipal by-laws: These are laws made by local government. They must be passed by a majority vote of a municipal council. Under the Constitution, the public must be given an opportunity to review and comment on by-laws before they are voted on by a municipal council. Each municipality publishes its by-laws in what is called a Municipal Code.

Resolutions: These are decisions of municipal council decided on through a majority vote. Some decisions, such as to dissolve a municipal council, require a two-thirds majority to pass.

Municipal policy: A document that outlines the principles and processes a municipality will follow with regards to a particular issue and the outcomes it hopes to achieve through these. Examples include indigent policy, credit and collections policy, and tariff policies. A municipal policy adopted in a by-law, or resolution of the municipal council, is legally binding. Policies that were only adopted by the executive are not legally binding, which means they are not enforceable as law.

Standing rules and orders: These deal with how a municipal council conducts a meeting, when meetings may be closed to the public, the role of the speaker and how petitions are handled.

Regulations: Some Acts of Parliament give the executive permission to issue regulations – rules that are legally enforceable even if not passed by Parliament. National regulations that are important to local government include those issued in terms of the MFMA by National Treasury regarding Municipal Supply Chain Management (MSCM).

Courts: When the courts decide how laws should be applied, they create case law. Case law can be thought of as law made by judges because most courts must follow previous court decisions made in similar cases, and all lower courts' decisions must follow past decisions of higher courts. There are several levels of courts in South Africa, from Magistrates' Courts, through High Courts to the Supreme Court of Appeal (SCA) and the Constitutional Court.

CHAPTER 2:

ACCOUNTABILITY IN SOUTH AFRICA'S LEGAL FRAMEWORK

This chapter explores three key interrelated aspects of governance: oversight, assurance and accountability.

- **Oversight** monitors activities and performance to ensure they align with rules, goals or standards (e.g. ward committee checks progress of a project).
- **Assurance** verifies that performance meets standards and provides confidence that processes and systems are reliable (e.g. auditor confirms funds were used correctly).
- **Accountability** ensures that those responsible for decisions, actions or outcomes explain or face consequences for them (e.g. municipal officials report back to a community on a project delay).

All councillors and municipal officials – according to their various statutory or delegated roles and responsibilities – have an obligation to ensure that there is accountability, oversight, and assurance provided to citizens, communities and community organisations. These groups have the right to know that the municipality is in good hands, is functioning properly and is capable of providing services.

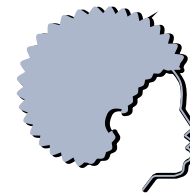
This chapter explores these concepts, and how they work in practice at the local government level, in more detail.

2.1 What is accountability?⁴

The idea of accountability is at the heart of all functioning democracies. If government is to be 'for the people and by the people', then those who hold public office must be answerable (willing to give reasons) for their decisions and actions, and also responsible (willing to face consequences) for them.

To ensure that government and its leaders can be held to account, South Africa's Constitution requires that the exercise of public power (taking decisions and actions) is:

- **Transparent:** We must know how decisions were taken, by whom, where, when and why, and how public office holders have exercised their powers.
- **Participatory:** For public office holders to meet the public's needs and expectations, decision-making processes must include citizens.
- **Subject to the rule of law:** Consequences for poor decisions or the abuse of public power can only be enforced if laws apply to everyone, and if the duties or obligations of office holders are clearly defined in laws, regulations or policies.



FOR ME, ACCOUNTABILITY IS ABOUT ANSWERING FOR THE DECISIONS THAT YOU TAKE AND YOUR ACTIONS. ANY PERSON WHO HOLDS PUBLIC OFFICE – WHETHER ELECTED OR APPOINTED – MUST UNDERSTAND THAT AN IMPORTANT PART OF THEIR JOB IS TO PROVIDE INFORMATION AND REASONING FOR WHAT THEY DO AND HOW THEY DO IT. THIS CAN SOMETIMES BE DIFFICULT, BUT IT HELPS TO BE OPEN AND TRANSPARENT ABOUT WHAT YOU DO AND WHY.

2.2 How is accountability built into the state?

The Constitution establishes various mechanisms to ensure that public office holders do their jobs well and are accountable for their decisions and actions. These formal mechanisms – formal because they are written into the law – include the following:

1. **Elections:** Citizens' ability to vote political representatives out of office every couple of years – essentially to 'fire' them – and the ability to choose new representatives, is democracy's primary accountability mechanism.
2. **Separation of Powers:** The Constitution establishes three 'arms' of government – the legislature, the judiciary and the executive – and gives each its own distinct powers. This means that different government arms can hold one another accountable. This is supposed to ensure that every part of government is always subject to oversight by others, and that none of the arms have too much power.



SEPARATION OF POWERS: THE THREE ARMS OF GOVERNMENT WHO WATCH OVER ONE ANOTHER

- The **legislature** is the law-making and oversight arm of government, and its members are elected by citizens. South Africa's legislatures include National Parliament, the nine Provincial Legislatures, and municipal councils and their councillors at the local government level. Our Constitution also says that, as the forum of elected representatives, our legislatures must also play an oversight role and be a place for debates that reflect citizens' views and concerns.
- The **executive** is the implementing arm of government, usually led by a president or premier and a cabinet, drawn from the legislature. At the municipal level, this is the executive mayor or committee.
- The **judiciary** is the law-enforcing arm of government. It assesses whether laws have been followed or disobeyed, and imposes appropriate punishment when the latter occurs.

AT THE LOCAL LEVEL, THE EXECUTIVE AND LEGISLATIVE FUNCTIONS AREN'T ALWAYS COMPLETELY SEPARATE, ESPECIALLY IN SMALL COUNCILS.



3. **Chapter 9 and other oversight institutions:** The Constitution establishes various institutions specifically to provide oversight and accountability. These include the Chapter Nine Institutions, which are discussed in the next section.
4. **Legislation specific accountability mechanisms:** Councillors and municipal office holders are also subject to internal accountability mechanisms, both in terms of the way roles and responsibilities are defined within a municipality, as well as those established by laws such as the MSA, MFMA and MSTA.

2.3 What are oversight and assurance?

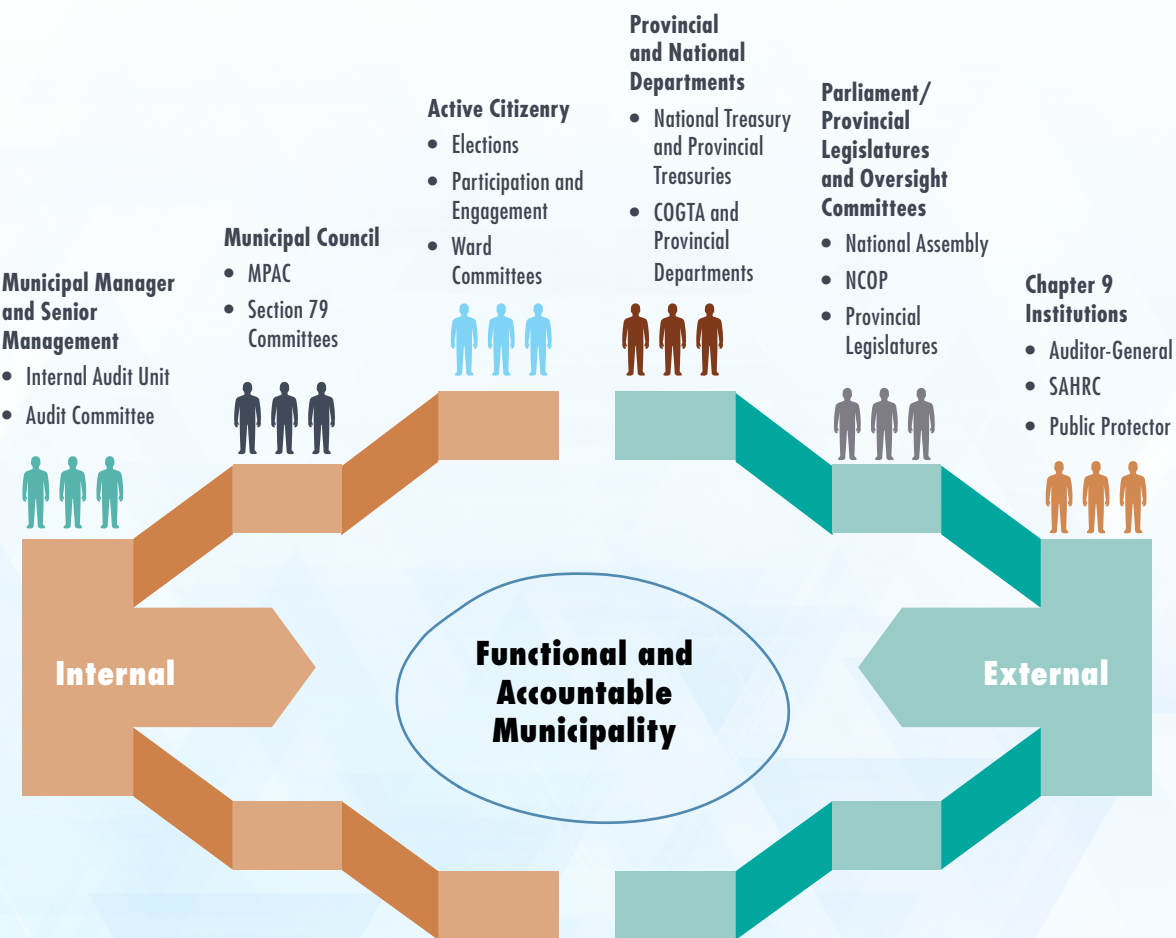
Oversight refers to the process of **monitoring performance and activities to ensure they meet goals and standards**. Accountability relies on oversight to ensure those responsible are held to answer for their decisions and actions. **Assurance** refers to the process of **providing confidence and trust that information or performance is reliable and accurate**. It is often done through mechanisms like audits and evaluations.

Oversight uses assurance to inform monitoring, and assurance also supports accountability by providing evidence that reported actions or outcomes are trustworthy. In the local government context, assurance aims to build confidence and trust among all stakeholders by demonstrating that municipalities are operating transparently and responsibly.

2.4 Oversight and accountability for local government

2.4.1 An overview

The diagram below shows the internal and external oversight and accountability mechanisms that are supposed to ensure well-functioning municipal councils.



2.4.2 Internal mechanisms

Within municipalities there are a number of internal mechanisms which play an oversight and accountability role. These internal oversight mechanisms unfortunately often do not function as they should, however, are very important. They include the following:

- The **Internal Audit Unit** provides independent and objective evaluations of the municipality's financial and operational activities to ensure efficiency, effectiveness, and compliance with legislation and regulations. It helps identify risks, recommends improvements, and verifies the implementation of corrective actions.
- The **Audit Committee** is an independent advisory body that oversees the municipality's financial reporting processes, internal controls, risk management practices, and performance management. It reviews audit reports, monitors the implementation of audit recommendations, and ensures accountability and transparency in financial management.
- The **Municipal Public Accounts Committee (MPAC)** is very important in a municipality and ensures that public funds are used effectively. It holds municipal officials and councillors accountable for financial management and service delivery. Its primary responsibilities include analysing audit and financial reports, tracking the implementation of Auditor-General recommendations, reviewing cases of unauthorised, irregular, fruitless, and wasteful expenditure, and presenting oversight reports to the council.



Section 79 Committees are oversight committees of council while **Section 80 Committees** are portfolio committees that are established to oversee specific functions and sectors within the municipality, such as finance, infrastructure, and community services. >> See section 4.5 for more information on portfolio and oversight committees.

2.4.3 National and provincial government mechanisms

In addition to internal mechanisms in municipalities, there are also external bodies that have the power to monitor and investigate local government, and to help hold it accountable. Especially where municipalities are unresponsive, these institutions could be approached for assistance, and their reports can be important sources of information and channels of advocacy and engagement. Provincial and national departments and legislatures are critical role-players in enhancing oversight and accountability.

NATIONAL DEPARTMENTS

National CoGTA (reporting to the CoGTA minister)

The National Department of Cooperative Governance and Traditional Affairs (CoGTA) **oversees municipal governance in the country**, requiring municipalities to submit performance reports and implementing national policy frameworks. Within CoGTA there is sub-department called the Department of Cooperative Governance (DCoG), which specifically deals with the practical mechanics of government coordination and local administration. The CoGTA minister is required to annually report to Parliament and the provincial MECs on the state of local government performance as well as actions taken to address concerns raised by the Auditor-General (MSA s. 48, MFMA s. 34). The department coordinates provincial interventions, conducts assessments of municipal capacity and service delivery, and advises the minister on issues that require national support or legislative amendments.

National Treasury (reporting to the minister of finance)

National Treasury is responsible for **oversight over municipal finances** in the country. Municipalities submit their monthly budget statements to the department in terms of s. 71 of the MFMA. The department receives the Annual Financial Statements (MFMA s.121) from municipalities each year in terms of the MFMA, and enforces compliance with financial law and regulations. National Treasury can also intervene if a municipality is in financial distress in terms of the MFMA. The department maintains the Database of Restricted Suppliers and Register for Tender Defaulters.

PROVINCIAL DEPARTMENTS

Provincial Departments of Local Government/CoGTAs (reporting to provincial MECs)

Provincial MECs of local government, supported by their departments, have extensive monitoring, reporting and oversight powers in relation to municipalities within their jurisdiction:

- Provincial departments must have mechanisms in place to **monitor and support (provide capacity-building for) municipalities** in managing their affairs (MSA s. 105). If an MEC believes a municipality is not fulfilling a legal obligation - or there is maladministration, fraud, corruption or any other serious malpractice - they must request the council or municipal manager to provide information. The MEC can **assign people to investigate** if they feel this is necessary (MSA s. 106).
- The MEC can **monitor a municipality's IDP process**, and assist with its planning, drafting, adoption and review (MSA s. 31). The MEC can also assist in **resolving disputes or differences** between a municipality and the local community in connection with the IDP process. The municipal manager of a municipality must submit a copy of the adopted IDP (and process plan) to the MEC within 10 days of adoption or amendment. The MEC can **make proposals to adjust the IDP** if the proper process has not been followed or if there are issues with the content of the IDP (MSA s. 32).
- Each year the **MEC must compile and submit to the provincial legislatures and the Minister a consolidated report on the performance of municipalities**, identifying municipalities that under-performed during the year and proposing remedial (corrective) action to be taken (MSA s. 47).

Provincial Treasuries (reporting to provincial MECs)

Provincial treasuries **monitor municipal financial performance within their provinces** (MFMA s. 5(3)), assess municipal budgets, provide technical support and assistance to municipalities (e.g. training on budget preparation, cash flow management, and MFMA compliance), and coordinate together with National Treasury on financial interventions. The departments also report irregularities to provincial CoGTAs for potential Section 139 interventions.

LEGISLATURES

Provincial Legislatures (comprising MPLs)

Provincial legislatures **provide oversight over municipal performance** by reviewing reports submitted by provincial CoGTAs on municipal performance, holding public hearings, conducting inquiries, and

addressing issues related to service delivery and governance in a province. Provincial legislatures have the power to approve or reject provincial interventions in municipalities in terms of Section 139 of the Constitution.

National Council of Provinces (NCOP) (comprising delegates)

The NCOP plays an important role in local government oversight as it represents provincial interests in the national sphere of government (delegates from provincial legislatures serve on the NCOP). The NCOP reviews and approves legislation affecting local government (e.g. amendments to the MSA and MFMA), monitors and assesses municipal performance (through reports submitted by the provincial MECs of local government), conducts oversight visits and hearings, and facilitates debates. The **Select Committee on Cooperative Governance and Traditional Affairs** focuses on oversight of national aspects of provincial and local government, as mandated by the Constitution. This committee complements the National Assembly's portfolio committee by addressing local government issues from a provincial perspective.

National Assembly (comprising MPs)

The National Assembly passes national legislation related to local government and holds the minister of CoGTA and minister of finance accountable for municipal oversight and support. It has oversight of national CoGTA and National Treasury. The **Portfolio Committee on Cooperative Governance and Traditional Affairs** is responsible for overseeing the work of national CoGTA, which includes monitoring and scrutinising the performance, policies, and budgets of local government. The committee ensures that municipalities deliver on their mandates, manage public funds responsibly, and address service delivery issues.

2.4.4 Section 139 interventions⁵

Sometimes a municipality requires urgent assistance from other spheres of government to function properly, in line with the Constitution (s. 139 of the Constitution). Section 139 of the Constitution empowers provinces to step in to ensure effective governance, service delivery and financial management, particularly in cases of serious financial distress, maladministration or failure to meet developmental goals.

The Constitution outlines three such cases (known as "Section 139 interventions"):

- **Section 139(1)** allows the provincial executive to intervene where a municipality cannot or does not fulfil an executive obligation. An example would be a municipality's failure to ensure access to at least minimum levels of basic services. Provinces do not have to wait for a total collapse of municipal services, and s. 139(1) allows intervention even if it is only one function that has failed. The failure could be the result of either financial or governance problems.
- **Section 139(4)** obliges (forces) the province to intervene if a municipality in its jurisdiction has failed to pass a budget in time for the financial year.
- **Section 139(5)** also obliges the province to intervene, in this case, in response to a financial crisis that is either the result or the cause of failure to provide basic services or meet financial commitments. Examples include failures to pay staff, suppliers or creditors on a large scale.

The MFMA (s. 137) also allows the province to intervene in response to financial problems in a municipality. These are similar to the problems that would trigger (cause) a s. 139(5) intervention, but are less serious. They could also include the failure to manage the municipal financial system.

In the event that the failures described above happen, provincial executives can/must take four actions:

1. **Issue a directive:** A directive is a plan of action the municipality is instructed to implement. The directive must outline the steps the municipality must take to correct the failure that triggered (caused) the intervention in the first place.
2. **Impose a recovery plan:** A recovery plan is like a directive, except that it addresses financial problems. The plan must outline the municipality's financial problems, identify a strategy to address them (for example, reducing expenditure, improving revenue collection or imposing higher tariffs) and set out how it will be implemented.
3. **Assume responsibility:** If the municipality refuses to accept the plan, or if it cannot implement it, the provincial government can/must place the municipality under administration. This means that the province appoints an administrator, in place of the executive, to lead the implementation of the steps required to address the failure.
4. **Dissolve the council:** If the actions above fail to address the problem, the province can/must dissolve the council. This means that all councillors are dismissed, and new elections must be held within 3 months. In the interim, the province – through an administrator or other arrangements – takes over both the executive and legislative functions. In the case of s. 139(4), dissolving the council is the only action that can be taken, as a failure to pass a budget is a legislative, not executive function.

If a province has failed to intervene, or if its intervention has been unsuccessful, national government can intervene and implement the same actions as those outlined above.

EXECUTIVE OBLIGATIONS REFER TO MUNICIPALITIES' LEGAL DUTIES THAT ARE UNDERTAKEN BY THE EXECUTIVE. THEY DON'T INCLUDE LEGISLATIVE DUTIES. SEE SECTION 4.4 OF THIS GUIDE FOR MORE INFORMATION.



2.4.5. What to do if a municipality is not being governed properly⁶

If a municipality is being poorly governed, the first step is always to get someone in the municipality to listen. If not the municipal manager or a councillor, then the mayor. If not the mayor, then the speaker. If not the speaker, then the council. Unfortunately, it is possible that the municipality is so badly managed that none of these people will respond or are able to assist.

If that is the case, and if efforts to hold the municipality to account are unsuccessful, provincial and/or national government can be approached. If governance has failed, it is the responsibility of the provincial government to assist it in improving, or intervening. Below we outline some ways to lobby for either provincial or national support and monitoring, or Section 139 interventions. Because the three spheres of government are independent from one another, direct interventions can only happen in very serious situations, and only after other efforts (such as support or capacity-building) have failed.

1. Lobby for the province to investigate, and act on the investigation's findings

Provincial MECs for local government have the power to investigate municipalities in their provinces for the failure to deliver services, fraud, corruption or other serious malpractice (e.g. MFMA s. 137; MSA s. 106). The local government MEC, the premier and/or the regional political leadership, can be approached to initiate an investigation into the matter. This could include the municipality's failure to respond in the first place.

2. Engage with national and provincial legislatures

Both the national and provincial legislatures receive reports from the national minister and provincial MECs on the state of local government and specific municipalities. Local government MECs must annually report to their provincial legislature on the performance of all municipalities in the province, and specifically identify municipalities that have under-performed. They are also expected to propose corrective actions (MSA s. 47). It is the role of members of the provincial legislatures (MPLs) to question these reports and ensure that MECs and the national minister take action and resolve problems. Legislative committees are expected to involve the public in their discussions. This could happen via petitions and public hearings, especially (but not limited to) when considering departments' annual reports and budgets.

Approach the relevant provincial legislature, NCOP or National Assembly committee chairs and/or their other members. Ask them to hold a public hearing on the municipality, ask questions of the relevant ministers, and urge them to take appropriate action. Opposition members may be especially interested in the information.

3. Organise a peaceful gathering

Peaceful protest or picketing serves as a mechanism for holding local government accountable, allowing citizens to voice grievances and demand transparency and responsiveness from their leaders. The *Regulation of Gatherings Act* provides a legal framework for the exercise of this right by regulating public demonstrations and ensuring they are conducted peacefully and lawfully. By organising peaceful protests, communities can highlight issues such as inadequate service delivery or corruption, drawing attention to the issues. This form of civic engagement can be useful in pressuring local government to address public concerns and adhere to principles of good governance and accountability.

4. Use the media

Contacting the media can sometimes assist to bring awareness to the issue and speed up the process of a municipality taking action.

5. Approach the courts

The courts provide a mechanism for ensuring accountability but are often best used as a means of last resort. A recent judgment affirmed the compulsory nature of section 139(5) interventions, and by implication 139(4) interventions as well. Seek the advice of a public interest law firm such as those listed in Chapter 14 of this guide.



AS WITH OTHER LOBBYING EFFORTS, REMEMBER TO INCLUDE AS MUCH EVIDENCE AS POSSIBLE IN COMMUNICATIONS. EVIDENCE CAN BE PHOTOGRAPHS OR WRITTEN STATEMENTS, FOR EXAMPLE DESCRIBING A COMMUNITY'S EXPERIENCE OF THE MUNICIPALITY'S FAILURE TO PROVIDE BASIC SERVICES.

2.5 Chapter 9 Institutions

Chapter 9 institutions are important bodies which also serve to hold municipalities accountable in various ways. Established in terms of Chapter 9 of the Constitution, these independent bodies are tasked with supporting our constitutional democracy, and do not answer to any government department, political party or other interest groups.

The Chapter 9 institutions most relevant to local government oversight are described in more detail below.

2.5.1 The Auditor-General (AG)

The AG's purpose is to provide an independent assessment of whether government spends its money in accordance with the rules, and in a way that is most likely to achieve government's desired outcomes. The AG is required to audit the spending and performance of all government offices, including municipalities.

The AG's report must appear in the municipality's annual report (MFMA s. 122-126). It investigates whether:

- The municipality followed the law when managing its finances and programmes. This is called **compliance**.
- The municipality's financial statements accurately reflect its financial situation and how it used its money. This is called **fairness**.
- The municipality's report on its performance – whether it met the targets it set for itself in the IDP and SDBIP – is accurate. This includes the municipality checking that it received the services it paid for. This is called **reliability**.

The AG report includes its findings as well as any recommendations that the council must implement to improve its governance (MFMA s. 131).

In addition to the specifics, the AG's report says whether a municipality received:

- An **unqualified or 'clean' audit**. This means that the municipality complied with all relevant laws, and its reports are fair and reliable.
- An **unqualified audit with findings** means that while generally the municipality's management is good, it did not do everything as required, and without assistance from the AG its audit outcome would have been worse.
- A **qualified audit** means that in some areas, the municipality did not follow the laws or check that it received the services paid for. The AG is therefore unsure if the financial statements are fair. One common reason for a qualified opinion is missing financial records.

- An **adverse audit** is the same as a qualified audit, except that it means that the municipality did not follow the laws and/or check that it received the services paid for in most areas. As such, it is unlikely that its financial statements are fair.
- A **disclaimer** means that the AG has seen so few of the financial records that it cannot say if the financial statements are fairly presented and whether the municipality's money was spent properly.

The AG can be requested to undertake special audits where there is suspicion of financial mismanagement. The AG can also conduct performance audits to understand whether outsourced services or goods were appropriately priced and managed effectively.



RESOURCE: AG'S WEBSITE

See the AG's website for summary reports of annual audits as well as special and performance audits: www.agsa.co.za

2.5.2 The Public Protector (PP)

The Public Protector (PP) plays an important role in combating and investigating misconduct in the public sector. The Office of the Public Protector has the power to investigate complaints against government departments or officials, including in municipalities. This includes maladministration, improper conduct by officials or persons performing public functions, abuse of power, corruption, misuse of state resources, and unlawful or improper enrichment of officials. Any member of the public can lodge a complaint with the Public Protector. Before doing so, it is recommended to first make a complaint with the speaker's office and/or MEC for local government or the councillor's political party as described in section 4.2.3 of this guide. Importantly, any complaint to the PP must be made within two years of the problem arising.

2.5.3 The South African Human Rights Commission (SAHRC)

The South African Human Rights Commission (SAHRC) receives complaints from members of the public on violations of their human rights. If a municipality is not delivering constitutionally mandated services, a complaint can be lodged online or at one of the SAHRC's provincial offices. The SAHRC can:

- Give legal advice.
- Investigate complaints.
- Use the courts, including the Equality Courts, to seek redress.



RESOURCE: SAHRC WEBSITE

See the SAHRC's website for a list of its publications and information about how to lodge a complaint: <https://www.sahrc.org.za>

2.5.4 The Independent Electoral Commission of South Africa (IEC)

The IEC is the body that manages elections at all levels of government, including local government. Although publicly funded and accountable to Parliament, the IEC is independent of the government. The IEC compiles and maintains a voters' roll, ensures elections are free and fair, and declares results of the elections. The IEC is also responsible for organising, managing and overseeing ward committee elections, and must ensure a fair and transparent process that enables local residents to elect representatives for their ward committees.



TACTICS: CITIZEN-LED ACCOUNTABILITY MECHANISMS

While the accountability mechanisms provided for in the Constitution are important, they do not need to be the only ones. As citizens in a democratic and free country, we can create our own accountability mechanisms to complement the official ones. Examples of such mechanisms include:

- Citizen-based monitoring
- Citizen report cards
- Budget analysis
- Procurement monitoring
- Social audits
- Public hearings or citizen tribunals

In theory, official mechanisms are more powerful because their legal status enables them to draw on the resources of the state and the justice system. In practice, however, official mechanisms also rely on political will — the willingness of political office holders to employ them properly. In cases where there is no or very little political will, citizen-led accountability mechanisms can jumpstart official ones into action.



RESOURCE: CITIZEN-LED ACCOUNTABILITY

For an overview of citizen led accountability mechanisms, see *Using Evidence to Establish Accountability* (Action Aid) and *Our Money, Our Responsibility – A Citizens’ Guide to Monitoring Government Expenditures* (International Budget Partnership).

NOTES

[illegible]

SECTION II

INSIDE LOCAL GOVERNMENT

STRUCTURES AND ROLE PLAYERS



“A municipality consists of the political structures and administration of the municipality; and the community of the municipality”

Section 2(b)(i) and (ii) of the Municipal Systems Act

A COLLABORATIVE APPROACH TO LOCAL GOVERNMENT

When we think about municipalities we often think about **elected representatives (councillors)** and the **municipal staff** employed in the administration. However, section 2 of the Municipal Systems Act (MSA) states that the **local community** is as much a part of a municipality as are its political structures and administration.

Collaboration between these three groups is essential! The diagram below shows the three pillars of local government, and how they relate to one another. Decision-making power flows from the local community to their elected representatives and structures, to the administration who must implement the decisions. The direction of accountability is the opposite, with the administration needing to report to political structures, and elected representatives reporting back to residents and communities.

This section of the guide outlines the **local community, political structures** and the **administration** in more detail, emphasising where there are opportunities for collaboration.



COMPACT LOCAL GOVERNMENT COLLABORATION MODEL

The COMPACT programme has developed a Local Government Collaboration Model to promote better **collaboration** at the local level in South Africa. Collaboration can be understood as the three main municipal stakeholder groups (local community, political structures and municipal administration) *pooling their skills, knowledge and resources to achieve innovative responses and solutions in response to a common challenge that none can address on their own.*

The Local Government Collaboration Model offers an alternative to traditional problem-solving by fostering constructive engagement. The model involves five steps/elements:

- 5. Purpose:** Getting clear about why it makes sense to come together to work on a common goal and identifying the purpose of the collaborative effort.
- 6. Making Sense of the Challenge:** Developing a shared understanding of the challenge, developing a systemic view, unpacking and prioritising its key elements so we can better understand and navigate its complexity.
- 7. Vision and Hope:** Exploring creative responses to the challenge (enhancing awareness of self, others, and systemic dynamics), synthesising insights into a compelling proposition, and establishing a shared agenda for collective action.
- 8. Implementing and Adapting:** Co-creating adaptive leadership principles through real-life scenarios, clarified roles and responsibilities, and exploring strategies for understanding and working with resistance.
- 9. Reflection and Learning:** Synthesising key insights, reflecting across individual, organisational, and systemic levels, confirming ongoing resources, and updating the shared agenda for continued action.



The model encourages a **stakeholder mapping exercise** to be undertaken to identify who should be invited to the engagement, followed up by a **facilitated two-day workshop** in the municipality with the key stakeholders. The tool is catalytic in nature and follow up engagements are required to maintain the energy and momentum created during the preparation and workshop.

You can read more about the Local Government Collaboration Tool on the COMPACT website: <https://pari.org.za/compact/>

CHAPTER 3:

THE LOCAL COMMUNITY

Our laws consider communities to be an important part of local government: both the Municipal Systems Act (MSA) and the Municipal Structures Act (MSTA) emphasise that **community members are key decision-makers about all aspects of local government all the time, not only during elections**. Our Constitution and South Africa’s legal framework envision that municipalities act *with* people – not on their behalf – to realise people-centred development. Decisions made on the basis of local conditions – and with those affected – are more likely to accurately reflect local issues and dynamics and therefore better speak to existing needs, all of which also means they are more likely to be implemented (as those affected by the decisions feel ownership around the decisions).

But what is “the local community”? According to the MSA (s.1), it includes:

- The residents of the municipality.
- The ratepayers of the municipality.
- Any civic organisations and non-governmental, private sector or labour organisations involved in local affairs.
- Visitors and other people residing outside the municipality who make use of services or facilities provided by the municipality.

The definition specifically ensures inclusion of poor people and other disadvantaged groups.

A local community, therefore, is made up of people with many diverse interests and roles.

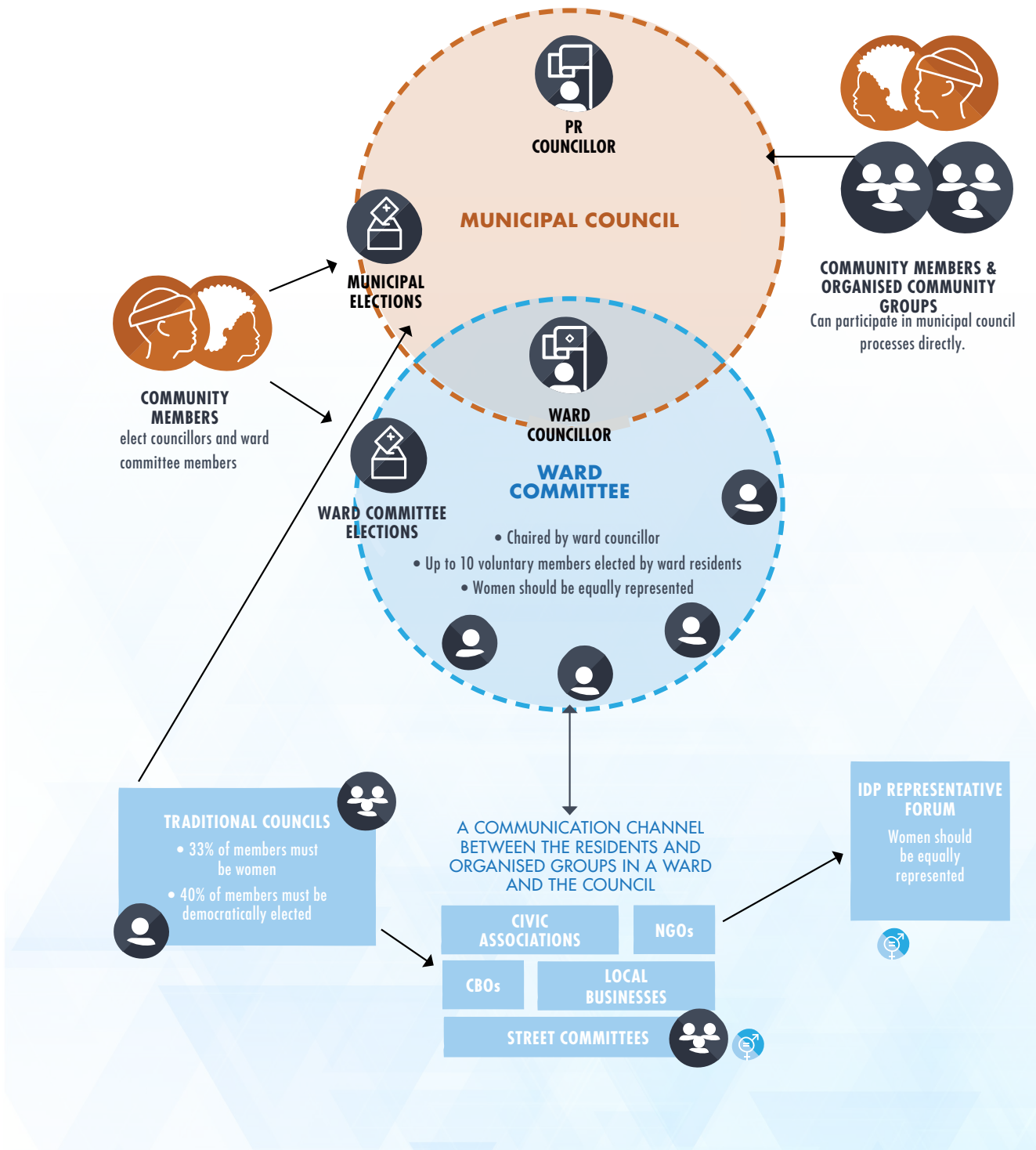
Regardless of their role, the people making up the local community have the right to (MSA s. 5):

- Contribute to the municipality’s decision-making processes.
- Complain or make recommendations to any municipal structure, either in writing or in person, and expect prompt responses to these.
- Be informed of council decisions that may affect them, as well as the municipality’s state of affairs on a regular basis.
- Demand that council and committee proceedings are open, conducted fairly and are not driven by personal interests.

To realise these rights, municipalities must also contribute to building the capacities of communities to participate, which includes setting aside funds for this purpose (MSA s. 16).

This chapter discusses the various structures established specifically to ensure that the local community has a voice in municipal affairs. These include the formal (official) participatory mechanisms that municipal representatives (political and administrative) are obliged to facilitate for community use. However, public participation is not limited to formal channels. **Community members have the right to be heard regardless of how they choose to engage.** As such, this chapter also describes the principles behind the mechanisms that are intended to ensure community members have a say in their municipality’s decision making. Chapter 6 deals with public participation in more detail.

STRUCTURES TO ENABLE COMMUNITY PARTICIPATION



3.1 Ward committees (WCs)

Ward committees are envisioned by the country's laws as important platforms for public participation in local government. The MSTA states that ward committees must be set up in metros and local municipalities (MSTA s.72), where they are recognised by the council as legal structures that must be used to consult with the community. Ward committees should be representative of the different interests of a community, be free of political control, and be non-partisan in nature.

The main purpose of ward committees is to improve public participation in municipalities (MSTA s. 72). This means that they should:

- Facilitate **two-way communication and feedback** between the council and the community – so that communities know about council activities and council is aware of community concerns.
- Proactively **involve residents in council's planning and decision-making processes** including the IDP, the budget and performance management.
- Encourage **constructive (positive) interaction** between the municipality and the community.
- **Assist the ward councillor** in understanding the community's needs and the views.
- Be **included on the IDP representative forum**.

Although ward committees are recognised legal structures, they are advisory bodies. They therefore have no legal powers to make decisions on council's behalf. They can only make recommendations.



WHILE WARD COUNCILLORS WORK CLOSELY WITH THEIR WARD COMMITTEES, THEY MUST ALSO DIRECTLY ENGAGE WITH RESIDENTS, COMMUNITIES, CBOS, NGOS AND OTHER GROUPS ON MUNICIPAL ISSUES.

3.1.1 How do ward committees work?

Ward committees are expected to develop knowledge of their communities' socio-economic conditions, needs and existing organised groups (like safety forums or women's organisations), and ensure that they participate in the matters of the ward. Municipalities should provide ward committees with financial and other support to do this, including publicity for meetings, stipends, and training and capacity-building.

Some features of ward committees are the same in all municipalities:

- The ward committee should consist of **up to ten members** who serve as volunteers to advise the ward councillor.
- Members may **represent certain sectors** (e.g. women's groups or ratepayer's associations) and/or **geographic areas** within the ward.
- The **ward councillor serves as chair** of the ward committee and must call regular meetings.
- Ward committees are **custodians of ward-based planning** in the municipality.
- Ward committee members are **reimbursed for 'out of pocket' expenses** such as travel and airtime/data costs.

- The **council has the power to dissolve (dismiss) a ward committee** if it performs poorly (MSTA s. 78)
- The **speaker oversees the functioning of ward committees** and ensures that they perform their role effectively and in accordance with the MSTA and any applicable municipal regulations.

However, each municipal council has the power to decide the following (MSTA s. 73):

- **How ward committee members are elected:** the council can decide whether ward committee members are elected by secret ballot or the raising of hands. However, the rules established by council must ensure that membership includes women and marginalised groups.
- **How ward committees should function:** for example, how often they should meet. Some municipal councils have detailed policies that outline the ward councillor's responsibilities as ward committee chair, the number of meetings and type of reports, among other information. This should be available on the municipality's website, or officials from the speaker's office can be approached for a copy.
- **The circumstances under which ward committee members can be removed from the ward committee:** each municipality's ward committee policy normally outlines a formal process for removal, which may involve a review by the ward councillor, speaker, or a designated committee.

WARD COMMITTEE MEETINGS SHOULD BE OPEN TO THE PUBLIC. CITIZENS SHOULD INSIST THAT WARD COMMITTEES DISCUSS ISSUES IMPORTANT TO THE COMMUNITY!



RESOURCE: CODE OF CONDUCT FOR WARD COMMITTEE MEMBERS

SALGA has published a Code of Conduct for Ward Committee Members. Although it is not legally binding, it sets out the principles a ward committee must follow. It also provides a pledge which ward committee members can sign: <https://www.salga.org.za/Documents/Municipalities/Guidelines%20for%20Municipalities/Code-Of-Conduct-For-Ward-Committee-Members.pdf>



CHECKLIST: HOW IS YOUR WARD COMMITTEE DOING? [YES / NO]

- | | | |
|--|----------------------------|----------------------------|
| 1. Does it follow the municipality's rules about how often ward committees must meet and how they should work? | ☐ Y | ☐ N |
| 2. Does it keep you informed about what's happening in council? | ☐ Y | ☐ N |
| 3. Do ward committee members act with integrity and try to serve the community? Or do they seek to benefit from municipal contracts? | ☐ Y | ☐ N |
| 4. Do ward committee members act independently or do they seek to advance a political party agenda? | ☐ Y | ☐ N |
| 5. Are your ward committee members willing to answer to community members and be held to account? | ☐ Y | ☐ N |
| 6. Do your ward committee members include under-represented groups such as women? | ☐ Y | ☐ N |



Unfortunately, many ward committees are dysfunctional, operate as part of the councillor's political party or have been 'captured' by individuals interested in self-enrichment. Some are simply ineffective and unaware of their responsibilities, requiring training and support from the municipality.



3.1.2 Holding ward committees to account⁷

If there have been attempts to engage with a ward councillor and ward committee (as set out in section 3.1.1 above) but they remain unresponsive, there are a few things that can be done. Remember to consider safety and think about what is likely to work in a specific community and with a specific municipality.

1. Lodge a complaint or file a petition

- A complaint can be lodged with the speaker's office regarding the conduct of the ward committee and its members. A complaint is stronger if it shows how they haven't followed the rules, so referring to the checklist above to document the concerns can be useful.
- A petition can be filed with the municipal council asking it to take action.
- The municipality's rules regarding dismissing a ward committee member or dissolving a ward committee can be consulted.

2. Ensure that future ward committees are more accountable

How ward committees are elected impacts how accountable they are. It is important to ensure that the municipality adopts ward committee election rules that will serve communities better. For example, it may be easier for people to vote for who they really want if their vote in the elections is secret.

3. Consider nominating a ward member

Communities should discuss and identify suitable candidates in the ward who could be nominated to be ward committee members in future elections.



TACTICS: GETTING ELECTED ONTO THE WARD COMMITTEE⁸

In one community in Johannesburg, the local crisis committee managed to elect a community activist on the ward committee. The activist ignored instructions from the ward councillor not to address public meetings and instead reported the proceedings of the ward committee to the community. The councillor then tried to intimidate him, saying that as his employer she was giving him his first written warning. He refused to accept this, arguing that she was not his employer and that he was elected to represent those who voted for him. After that she left him alone and he continued to report to the community, saying that it was his right under the Constitution. He reported that many ward committee members were contractors who heard from the councillor about tenders. Additionally, as many of them failed to pitch at meetings, many had to be removed from their positions.



TACTICS: CITIZEN-BASED MONITORING (CBM) IN SOUTH AFRICA

The COMPACT programme has introduced the **Citizen-Based Monitoring (CBM)** approach (developed by Integrity Action) in South Africa, and it is being piloted in two local municipalities. Selected **ward committee members are trained as citizen monitors to monitor local water and sanitation infrastructure projects**. The monitors report on the monitoring data and work collaboratively with municipalities to find solutions on identified areas of concern. Citizen monitors also talk to community members to get their feedback on the impact of projects. If problems are identified, monitors facilitate resolution by bringing together the relevant people.

CBM aims to increase the effectiveness and efficiency of public services, improve community trust in municipalities, and create transparent lines of communications between municipalities and citizens. It also strengthens relationships between service providers and citizens. You can read more about CBM at <https://pari.org.za/compact>.

3.2 Community Development Workers (CDWs)

Community Development Workers (CDWs) are public servants employed by the provincial government to connect municipalities to local communities. They are expected to know about the services provided by various departments at different levels of government.⁹

There should be at least one CDW in every ward, where they are expected to:¹⁰

- Assist both communities and officials to identify community needs, service delivery blockages and solutions.
- Inform the municipality of any serious service delivery failures before they happen.
- Facilitate public participation in municipal decision making, including input into the IDP and budgets.
- Assist in the coordination of programmes that involve more than one department or sphere of government.
- Monitor and report significant trends within communities related to health, social development and livelihood security.
- Link communities to resources and government services such as grants, food security programmes and registration processes.

CDWs should work closely together with ward councillors and ward committees, as well as community leaders and CBOs/CSOs.



IDP REPRESENTATIVE FORUM

A municipality's IDP representative forum can be an important space for the local community to be involved in decision-making around service delivery. The IDP representative forum should comprise stakeholders from the community, civil society, traditional leaders, local business etc. See Chapter 7 for more on IDP representative forums in the context of a municipality's planning cycle.

3.3 Petitions and other mechanisms for direct engagement from communities

The municipal council must ensure that it hears *directly* from residents and communities, not only through elected councillors, ward committees or IDP forum representatives. Municipalities must therefore set up formal mechanisms that enable residents to directly communicate with them. Some of these mechanisms are discussed below.

Petitions

 All municipalities must have systems (policies and procedures) to accept, consider and respond to petitions (MSA s. 17). Each municipality will have its own rules as to how petitions will be addressed, but response must be given promptly (MSA s. 5). Timing of a petition is important, and it is often a good idea to submit a petition shortly before a council meeting, and then request a response from the council at that meeting (MSA s. 5(1) and s. 17(2)(a)). A petition might be referred to the relevant department, which will make recommendations to the portfolio committee. Make sure to keep track of the progress of the petition to ensure that it doesn't get ignored!¹¹

Complaints management/ customer care system

A municipality must also have a functional and accessible complaints management system in place to receive, process and respond to complaints and queries (MSA s. 17(2)). There must be clear procedures for complaint submission, acknowledgment and resolution, ensuring fairness and transparency.¹² Prompt response must be given to any complaint (MSA s. 5). While it is up a municipality to decide exactly how to implement a complaints management system, it must meet certain basic requirements:

1. Publicising of contact details (especially a telephone number) for the public to log complaints, on the website, in all municipal offices, and in key documents;
2. A place or places where the public can report complaints in person, and orally if preferred, in their home language; and
3. The development of standing rules of order that deal in detail with managing community complaints (including clear protocols around who responds to what kind of complaint, the time frame for this response, the development of techniques to allow the public to track their complaints, and a basic threshold of information that must be given in response to each kind of complaint).

Where possible, the complaints management system should be centralised in one office. Municipal staff must be trained to handle complaints effectively.¹³

Public meetings and hearings: Municipalities are expected to hold public meetings with residents, as well as hear from them directly in public hearings. Such forums are provided as part of the municipality's planning, implementation and oversight cycle, but are not limited to it.

Advisory committees



Section 17(4) of the MSA allows municipal councils to establish one or more advisory committees whose members **are not councillors**. These may include community members or experts who may advise the council on any matter. When establishing such committees, the council must consider gender representation.



RESIDENTS AND COMMUNITIES ARE NOT LIMITED TO THESE FORMAL MECHANISMS OR "INVITED" SPACES IF THEY'D LIKE TO ENGAGE DIRECTLY! THERE ARE MANY OTHER STRATEGIES AND INTERVENTIONS THAT CAN BE USED. THESE "INVENTED" SPACES ARE AS IMPORTANT AS THE FORMAL CHANNELS, AND MUNICIPAL REPRESENTATIVES MUST TAKE THEM AS SERIOUSLY SEE CHAPTER 6 OF THIS GUIDE.

3.4 Traditional leadership and local government

The Constitution recognises traditional leadership institutions, particularly at the local level (s. 211 and 212). The 2003 *Traditional Leadership and Governance Framework Act* (TLGFA) used to govern traditional leaders' powers and allowed for traditional councils (TCs) to be created. In 2021 the legislation was repealed and replaced by the *Traditional and Khoi-San Leadership Act 3 of 2019* (TKLA). However, in May 2023 the Constitutional Court declared the Act unconstitutional and invalid, primarily due to inadequate public participation during its legislative process. In 2024, CoGTA published the draft Traditional and Khoi-San Leadership Bill for public comment. The TKLA is still the governing legislation until this Bill is enacted.

While not all municipalities or communities have TCs, seven out of nine provinces have a significant amount of land in TC areas. Approximately 15 million (14,447,762) households live in areas under the TCs, which is important for policy and planning.¹⁴ Where they exist, TCs are custodians of communal land. Each province has its own laws to explain the role that traditional leaders and institutions will play, particularly in relation to local government. As a result, traditional leaders have major powers in rural areas, particularly in relation to people living on the land they control. The MSA allows traditional leaders that have been recognised by the provincial government to participate in municipal council proceedings (s. 81).

THE TKLA GIVES TRADITIONAL COUNCILS DUTIES THAT OVERLAP WITH THOSE OF LOCAL GOVERNMENT. THESE INCLUDE:

- Administering the affairs of local communities and advising traditional leaders;
- Supporting provincial and local development programmes;
- Making recommendations on proposed policies, by-laws, and how to improve development and service delivery in the area they oversee;
- Facilitating two-way communication between the municipal council and traditional communities – so that communities know about council activities and council addresses their concerns in policies and plans;
- Accounting to the provincial government by keeping proper financial records, disclosing any gifts received and following a prescribed code of conduct.

THE CONSTITUTIONAL COURT IN **PILANE V PILANE** RULED THAT BECAUSE OFFICIALLY RECOGNISED TRADITIONAL LEADERS AND TRADITIONAL COUNCILS PERFORM PUBLIC FUNCTIONS THEY MUST FUNCTION IN AN OPEN, ACCOUNTABLE AND DEMOCRATIC MANNER.



TRADITIONAL COUNCILS AND LEADERS ARE ALSO GIVEN THE FOLLOWING LEGAL POWERS:

- Traditional leaders recognised by the provincial government may participate in municipal council proceedings (MSTA s. 81);
- TCs may provide services themselves if they have signed an SDA with the municipality (MSA s. 76).

LEGAL POWERS THAT TRADITIONAL COUNCILS AND LEADERS DO NOT HAVE:

Although the MSA (s. 76) allows TCs to provide some municipal services, the Constitution does NOT give traditional leaders or councils powers to exercise governmental functions. This means that TCs are not a fourth sphere of government, and primarily only play a representative and consultative role. This was confirmed in the Certification of the Constitution of the Republic of South Africa, 1996 court case where the Constitutional Court made it clear that if traditional leaders were supposed to have governmental powers and functions, the 1993 Interim Constitution would have specifically said so. The Constitution states that the 'institution, status and role' of traditional leaders should be recognised.¹⁵

While traditional leaders do administer communal land under customary practices, their authority is currently governed by the Interim Protection of Informal Land Rights Act (IPILRA), which says that land rights belong with communities and requires their consent for land use decisions.



IN 2025, THE DRAFT COMMUNAL LAND BILL WAS BEING DEVELOPED TO FILL THE LEGAL VACUUM LEFT AFTER THE COMMUNAL LAND RIGHTS ACT (CLARA) WAS DECLARED UNCONSTITUTIONAL BY THE CONSTITUTIONAL COURT OF SOUTH AFRICA IN 2010. CIVIL SOCIETY CONSULTATIONS ON THE BILL HAVE EMPHASISED THE IMPORTANCE OF COMMUNITY VOICES, ESPECIALLY WOMEN'S VOICES, TO AVOID REPEATING THE TOP-DOWN APPROACH ADOPTED IN THE PAST TO COMMUNITIES LIVING ON COMMUNAL LAND.



HOW SHOULD TRADITIONAL COUNCILS BE ORGANISED IN LINE WITH THE CONSTITUTION?

The same laws that recognise traditional leadership also seek to bring their practices in line with the Constitution, and ensure that they are representative, democratic and accountable. The TKLA therefore says that traditional councils' must include 33% women members and 40% democratically elected members, in addition to persons selected by the chief (27%).



REALITY CHECK: WOMEN'S REPRESENTATION



Although the provision for a third of TCs to be comprised of women has been in effect since 2003, many traditional councils (TCs) do not include women and have failed to hold elections, meaning that they are illegally constituted. CoGTA is often not able to confirm how many TCs in the North West were improperly constituted. This suggests some TCs operate without legal status, yet members likely receive salaries or stipends, as traditional leaders are paid regardless of TC constitution. Financial accountability remains weak, with no evidence of recent audits for North West TCs' financial statements. The TKLA's constitutional uncertainty has deepened many of these issues.¹⁶

This has also meant that, although women comprise over half of people who live under traditional leaders, they are excluded from decision making. This is particularly problematic as some traditional leaders see women as being of lower social status than men, and only allocate land to men. This is a violation of the principle of equality in the Constitution



CHECKLIST: ASSESSING HOW A TRADITIONAL COUNCIL IS DOING? [YES / NO]

According to the law, traditional councils should:	
• Have at least 40% members who were democratically elected	Y N
• Have at least 33% members who are women	Y N
• Involve traditional communities in council's planning and decision-making processes such as the budget and the IDP	Y N
• Promote the ideals of co-operative governance	Y N
• Alert the municipality to dangers the community might be facing	Y N
• Consult with the community before making significant decisions	Y N
• Resolve conflicts between community members	Y N

3.4.1 Institutions guiding traditional leaders' conduct

All traditional leaders and councils must follow the *Code of Conduct for Members of Houses and Councils* that is included in the TKLA as Schedule 1. Their conduct must be consistent with provisions in other governance institutions at the district, provincial and national levels.

Additionally, traditional leaders who participate in municipal councils must follow most rules specified in the *Code of Conduct for Councillors* (COCC).

According to Section 15 of the COCC, the rules that do not apply to traditional leaders are:

- Regulations of council meeting attendance (COCC s. 3 and 4).
- Requirement that councillors declare financial interests and any gifts received to the municipal manager (COCC s. 7).

RULES FROM THE CODE OF CONDUCT FOR MEMBERS OF HOUSES AND COUNCILS:

- Tls must perform their functions in good faith and in an honest, non-discriminatory and transparent manner, and in the best interests of the community they serve.
- Tls must foster nation building and unity among traditional communities.
- Tls may not refuse services to any person on ideological or political basis.
- Tls must disclose gifts received.

A traditional leader can be removed from office on any of the following grounds:

- Convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- Unable to perform the functions of their office due to physical or mental incapacity;
- Where the Commission on Traditional Leadership Disputes and Claims (CTLDC) finds that the traditional leader was wrongly appointed or recognised.



3.4.2 Holding traditional leadership to account

If a traditional leader or council is not responsive or accountable, there are a number of things that can be done. Remember to consider safety issues and think about what is likely to work in a specific community and with a specific municipality.

1. Lodge a complaint with the municipal speaker's office

Council speakers must follow the investigations process described in section 4.2.3 of this guide if they have reason to suspect that a traditional leader who participates in the municipal council has not followed the rules of the COCC (s. 15). If the council finds that the traditional leader failed to follow the COCC, it may:

- Issue a warning.
- Request the MEC to suspend or cancel the traditional leader's right to participate in council proceedings.

2. Lodge a complaint with the MEC for local government

If the council and the speaker do not take a complaint seriously, or fail to come up with a convincing finding, a complaint can be lodged directly with the MEC for local government in the province. The MEC has the power to launch their own investigation into the traditional leader's conduct (COCC s. 15).

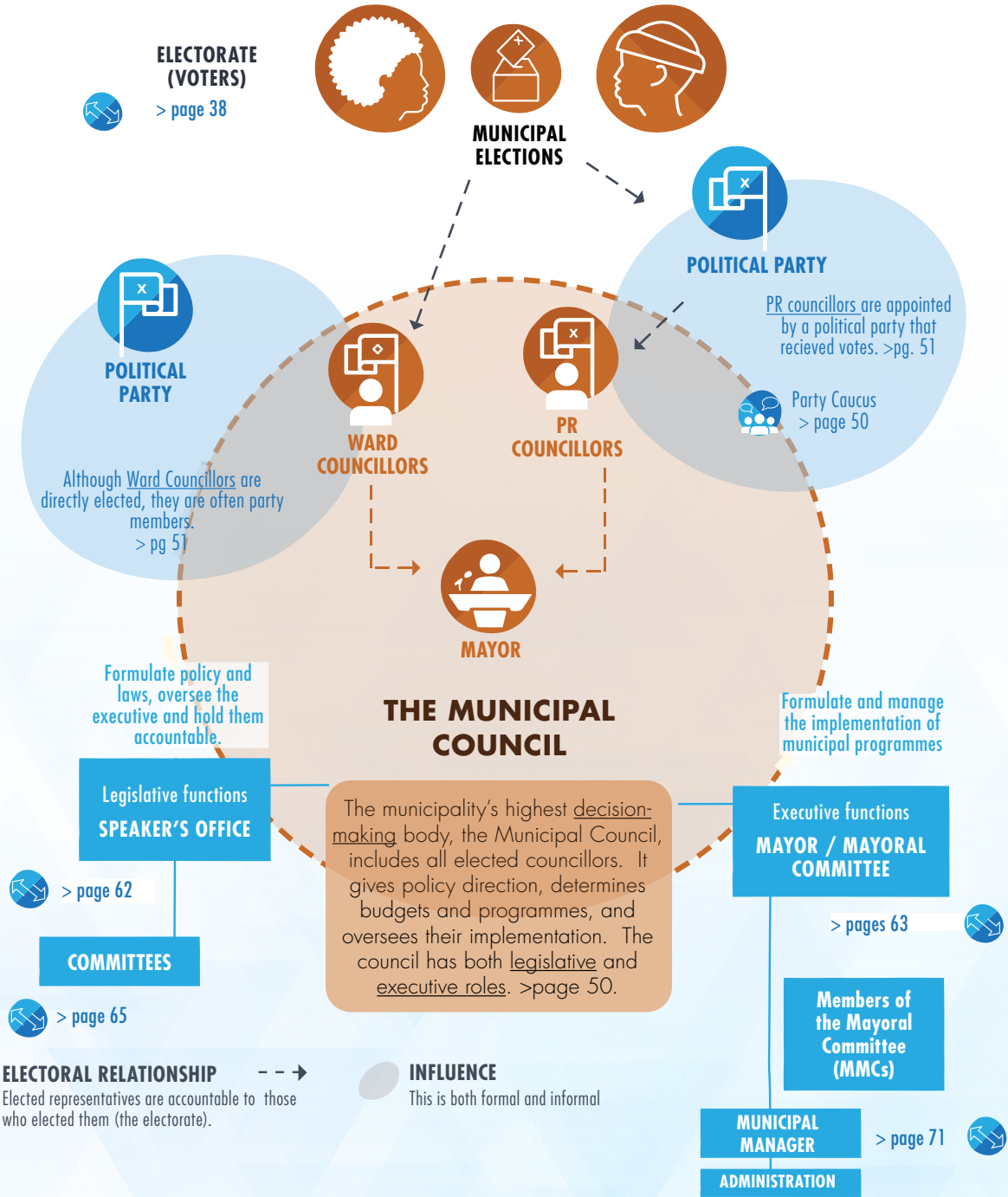
If the MEC finds that a traditional leader failed to follow the COCC, they may suspend or cancel the traditional leader's right to participate in council proceedings (COCC s. 15).

3. Contact a Chapter 9 institution

4. Use the media

Contacting the media, including social media, can sometimes assist to bring awareness to the issue and speed up the process of a traditional council taking action.

CHAPTER 4:
POLITICAL STRUCTURES



4.1 Council

The council is the highest political decision-making structure in the municipality. It has both legislative and executive authority:

Legislative authority refers to the power to pass by-laws, determine the municipality’s policies and budgets, and conduct oversight of the municipality’s work as a whole.

Executive authority refers to the power to lead, oversee and coordinate the work of the administration and the implementation of policies and programmes.

Councils are made up of a number of structures and role-players, all of whom have different legal powers and duties. These include:

- **Councillors:** elected ward councillors and proportional representation (PR) councillors each have a seat in the council and together are responsible for the political leadership of the municipality.
- **Speaker:** the councillor elected by council to convene its meetings, set the agenda for meetings and enforce the *Code of Conduct for Councillors (COCC)*. The speaker is the council chairperson.
- **Executive Mayor or Mayor:** in a mayoral collective system there is an executive mayor with substantial executive power, assisted by a mayoral committee. In an collective executive system the mayor is ceremonial and executive power is shared by an executive committee. > See section 4.4.1 of this guide
- **Mayoral or Executive Committee:** most municipal councils have an executive mayor which appoints a mayoral committee that acts like a local cabinet, assisting politically with leading the formulation and implementation of programmes. Some councils are established as executive committee (often referred to as “Exco”), as determined by the MEC for local government. Council elects councillors to executive positions and power is shared more collectively.
- **Standing or Portfolio Committees:** groups of councillors which focus on specific portfolios and issues in depth. These are advisory committees to the executive committee or mayoral committee. Such committees serve as the link between the administration and the political structure, and parallel key municipal functions and departments e.g. water and sanitation. All councils should have **finances** and **public accounts committees**.
- **Whips:** senior councillors from each political party whose role is to ensure that all party members vote and speak in accordance with that party’s policies. They also set meeting agendas with the speaker and assign councillors to committees.
- **Chief Whip:** the whip of the party with the most votes, also called the ruling party. The municipal council elects the Chief Whip, who must ensure fair representation in council and committees, maintain good relations among parties, update whips on key agenda items, assist the speaker with vote counting, facilitate coordination between executive and oversight structures, and help resolve disputes among senior council leaders.
- **Party caucuses:** where each political party brings its councillors together to discuss their position on budgets, plans, policies or by-laws.
- **The official opposition:** the party which received the second highest number of votes and does not hold an executive function. The councillors of this party are expected to play an especially strong oversight role.

AS THE HIGHEST DECISION-MAKING STRUCTURE, THERE ARE DECISIONS THAT ONLY THE FULL COUNCIL CAN MAKE:

- Elect the mayor and the speaker.
- Pass by-laws.
- Approve the municipal budget
- Raise rates, fees, taxes or loans.
- Appoint or remove senior employees (e.g. the municipal manager).

THE COUNCIL ALSO HAS THE LEGAL POWER TO:

- Delegate some of its executive authority to other structures e.g. to executive committees.
- Review any decision taken by the executive or administration if at least 25% of the councillors request this in writing (MSTA s. 32).
- Determine how portfolio committees do their work, and if they can co-opt non councillors as advisory members (MSTA s. 79).

4.2 Councillors

The duty of municipal councillors is to represent the community’s interests at the municipal council level and monitor the performance of the municipality in relation to those interests. Councillors also serve as the political leadership of the municipality (as mayor, speaker, whip, etc.).

Councillors are elected every five years to represent the residents of a municipality, and to make decisions on their behalf.

There are two kinds of councillors:

Ward councillors are people we elect to represent all who live in the geographical areas known as wards. The candidate who receives the most votes in that ward becomes the councillor. Ward councillors are expected to advance the interests of the ward they were elected to represent, regardless of which political party they belong to. Ward councillors do not have to be affiliated to a political party and can be independent.

Proportional Representative (PR) councillors are elected indirectly. We vote for a political party, which in turn receives a number of seats in the council proportional to their share of all votes counted. This is called Proportional Representation. Political parties select the people who become councillors based on their own rules and priorities. Political parties compile lists of potential representatives, and the number of seats won by the party are allocated to those on the list, starting from the top. For this reason, PR councillors are more directly accountable to their parties’ leaders, members and supporters than to residents. They work to advance their parties’ interests.

ELIGIBILITY TO BE A COUNCILLOR

Anyone who ordinarily lives in a municipality where they are registered to vote can nominate a candidate or stand for election as a councillor. In order to be eligible the candidate must:

- Be a South African citizen with a valid ID;
- Accept the nomination and file the necessary forms with the IEC before the deadline for nominations;

- Obtain the signatures of 50 people eligible to vote in the municipality using the form provided by the IEC;
- Pay a deposit (as set by the IEC, the amount depends on the municipality's population size). The deposit is refunded after the election if the candidate receives 10% or more of the vote.

A person sentenced to more than 12 months in jail without the option of a fine is disqualified from remaining a councillor or becoming a councillor of any municipality for a period of 5 years from the conviction. (MSA s.119)



IF WARD COUNCILLORS ARE ELECTED DIRECTLY BY THE COMMUNITY, WHILE PR COUNCILLORS ARE APPOINTED BY A POLITICAL PARTY, DOES THAT MEAN THAT WARD COUNCILLORS ARE MORE ACCOUNTABLE TO ME?

IN THEORY, YES. IN PRACTICE, NOT REALLY. MOST WARD COUNCILLORS ARE MEMBERS OF POLITICAL PARTIES, WHICH DECIDE WHICH CANDIDATES TO SUPPORT IN THE ELECTIONS. PARTY SUPPORT MEANS MONEY FOR CAMPAIGNS AND SO WARD COUNCILLORS ARE OFTEN MORE ACCOUNTABLE TO THEIR PARTY THAN THE COMMUNITY.



COUNCILLORS' LEGAL DUTIES

The Constitution and our laws expect councillors to:

- **Consult** with the local community on its needs, priorities and how services should be delivered;
- **Represent** constituents' concerns in council discussions and decision making;
- **Inform** the community about council's decisions and work (MSTA s. 19, COCC).

This means that councillors must be accessible, proactively involve residents in council's planning and decision-making processes, and use their vote and voice in the council to advance their constituents' interests.

- **Oversee (monitor)** the performance of the municipality and ensure the municipality's money is used in the best interests of the local community (MSTA s. 19).

Councillors can give feedback to the council and municipality on whether its projects are achieving their goals, advise the public as to how to resolve service delivery problems, and assist the community in making formal complaints or petitions.

Councillors are bound by a nationally established **Code of Conduct for Councillors (COCC)**, as well as rules set out by each municipality and their political parties.

Each municipality must develop its own rules and policies on the roles and responsibilities of councillors, political structures and officials (MSA s. 53). These policies are referred to as '**Terms of Reference' (TOR)**.¹⁷ The Terms of Reference for the council should define the roles and areas of responsibility of councillors. They must give effect to council's internal documents, such as rules, procedures, delegations, standing orders, etc.



RESOURCE: ROLES AND RESPONSIBILITIES OF COUNCILLORS, POLITICAL STRUCTURES AND OFFICIALS

SALGA has published a helpful guideline document on the roles and responsibilities of councillors, political structures and officials in municipalities.

Take a look here: <https://www.salga.org.za/Documents/Knowledge-products-per-theme/Governance%20n%20Intergovernmental%20Relations/Guidelines%20on%20the%20Roles%20and%20responsibilities%20in%20Municipalities.pdf>.

COUNCILLORS' POWERS

Councillors' most important power is their presence, voice and voting rights in the council. This gives them the power to influence the municipality's policies and use of finances, as well as the by-laws that govern it.

Specifically, all councillors can:

- Introduce a draft by-law in the council. No other person may do so (MSA s. 12).
- Vote for or against executive or legislative proposals including the budget, IDP and by-laws.
- Table motions to ensure that council discusses issues that are important to the community.
- Propose that the committees they sit in hold public hearings or conduct community visits.
- Hold the municipality's executive and administration to account by asking questions, tabling motions or refusing to endorse annual reports.
- Ensure that council policies and the municipal programme consider their constituencies' views.
- Importantly, municipal councillors have freedom of speech and **cannot be prosecuted** for anything they say in council meetings
- (MSTA s. 28). This is important because it means that they can reveal information that may expose corruption, even if that information was obtained illegally. It also means that they cannot be sued for defamation.

Councillors who are committee chairpersons, hold executive positions or are the council speakers will have significantly more powers than ordinary council members.

4.2.1 Councillors' conduct: what the laws say

The MSA (which includes the *Code of Conduct for Councillors (COCC)* in Schedule 1), MSTa, MFMA and other laws include rules on what councillors may or may not do, providing the legal basis for holding councillors accountable.

GENERAL CONDUCT	
Councillors must do their job fairly, honestly, transparently, and in the best interests of the municipality (which includes the community).	COCC s. 2
Full-time councillors are not allowed to have any other paid work without the permission of the council.	COCC s. 8
At least 4 times a year, councillors must report to their constituencies on the municipality's performance.	COCC Preamble
A councillor who is absent from 3 or more consecutive meetings of a council or a committee that they were required to attend must be removed from office.	COCC s. 4

REMEMBER THAT THE RULES AND POLICIES AROUND THE SPECIFIC CONDUCT OF COUNCILLORS ARE SET OUT IN A MUNICIPALITY'S TERMS OF REFERENCE!



DECLARING FINANCIAL INTERESTS	
Councillors must declare all of their <u>financial interests</u> in writing to the municipal manager within 60 days of their election. These include: Shares and securities in any company; membership of any close corporation; interest in any trust; directorships; partnerships; other financial interests in any business undertaking; employment and remuneration; interest in property; pension; and subsidies, grants and sponsorships by any organisation. These must be kept as a register and updated every year!	COCC s. 7
Councillors must declare any financial interests that they may have in matters being considered in council or its committees . Unless the council decides that the interest disclosed is very small or irrelevant, that councillor must not participate in any meetings discussing that matter. This also applies to interests held by councillors' spouses or business partners.	COCC s. 5
Councillors must declare the full details of any benefits that they or their families will get from contracts that have been signed or will be signed with the municipality . This must be done at the first council meeting at which this is possible.	COCC s. 5



SECTION 7 OF THE COUNCILLORS' CODE OF CONDUCT GIVES THE MUNICIPAL COUNCIL THE POWER TO DECIDE WHICH PARTS OF THE FINANCIAL INTERESTS REGISTER MUST BE MADE PUBLIC, AND WHICH SHOULD BE KEPT PRIVATE. TAKE A LOOK AT THE TERMS OF REFERENCE, FIND OUT WHAT YOUR COUNCIL'S RULES ARE, AND CAMPAIGN FOR THE FINANCIAL INTERESTS REGISTER TO BE MADE AUTOMATICALLY PUBLIC WITH ALL THE INFORMATION TO HOLD COUNCILLORS ACCOUNTABLE.

BENEFITTING FROM MUNICIPAL TENDERS	
Councillors may not receive gifts or benefits from a company that provides a service to the municipality.	MSA s. 81
Councillors are not allowed to participate or <i>even observe</i> meetings in which decisions on tenders and contracts are made.	MFMA s. 117
Councillors may not benefit from contracts awarded by the state, whether through a company or as consultants.	MSCM regs. 2005, s. 44.

ABUSE OF POSITION	
Councillors may not accept any rewards, gifts, financial benefits or favours for themselves or for any other person for: - Revealing confidential council information. - Voting in a particular way or not voting. - Persuading the council to make certain decisions.	COCC s. 6 and 9
It is a criminal offence for a councillor to: - encourage municipal officials to break or not enforce the law. - attempt to influence any municipal decision relating to financial management or procurement processes.	MFMA s. 173, COCC s. 11



4.2.2 How ward councillors and communities can work together

There are many ways that communities and ward councillors can work together, and collaborate towards the shared goal of service delivery and development in a municipality. While there are legislated forums and processes for engagement, there are also other opportunities that can be created between councillors, ward committees, communities, community leaders and CSOs. Below are some suggestions.

1. Prioritising communication, transparency and accountability

Regular, honest communication channels should be set up between councillors and communities. Communication should be ongoing throughout the year, conducted in languages that people understand, and should encourage transparency and honesty. Councillors have the duty to promote and enhance accountability in the municipality. Involving community members and ward committees in processes is a starting point.

- **Public council meetings:** Open council meetings where ward committees and community members can attend and observe the decision-making process should be encouraged by councillors. Council meetings could be livestreamed and shared in community halls or other venues. Transparency builds trust and accountability.
- **Community meetings or imbizos:** Councillors should hold regular public meetings where they provide updates and feedback on municipal activities and projects, discuss community concerns, and gather feedback from communities. These can be monthly or quarterly (once every three months). This promotes accountability and allows for direct questioning and engagement by residents.

- **Social media and the municipal website:** WhatsApp groups and social media platforms like Facebook can help to keep residents informed about council decisions, upcoming events, and important notices. They can also provide a forum for important feedback and knowledge about challenges facing residents and communities in real time. Councillors should embrace these technologies and ensure that their municipality's website is up to date with relevant and timely information for communities.
- **Newsletters, flyers and pamphlets:** Newsletters can be a good way to relay important information to communities and to update them on events and success stories happening in the municipality. Posters can also be put up in libraries, shops and other public spaces where people can easily access them.
- **Service delivery complaints mechanism:** Councillors must work with the community to ensure that the complaints feedback system in the municipality is working effectively. This requires collaboration between the community, councillor, ward committee and administration.

2. Supporting ward committees

Ward committees are advisory bodies that comprise members of the community and the councillor. They are established to address local issues and provide recommendations to the municipal council. They are an important bridge between the municipality and the community. Ward councillors must take their ward committees seriously and promote their effective functionality (how they do their work). > See section 3.1 on ward committees

- **Support and resources:** Ward committees require support to do their jobs effectively. This includes providing sufficient resourcing and 'tools of the trade' to ward committee members (e.g. stationery, name badges, laptops, clothing etc.)
- **Reporting:** Councillors should ensure that the monthly ward committee reports are actioned in the municipality to ensure that community issues are addressed.
- **Meetings:** In terms of legislation, ward councillors must hold regular ward committee meetings, preferably once a month (and open to the public to attend). Councillors must ensure ward committees have access to information required for them to monitor and hold the municipality accountable for service delivery.
- **Monitoring projects:** Ward committee members can assist in monitoring infrastructure projects in their ward, and ensure communication and updates between the municipality and the community.
- **Training and capacity-building:** Ward committee members require skills and training to do their jobs, including induction training and refresher workshops.

3. Promoting public participation processes

The councillor plays a very important role in encouraging and facilitating participation in various public participation activities that take place in the municipality during the year. > See Chapter 6 on participation

- **Integrated Development Plan (IDP) process:** Councillors must encourage community members to participate in the IDP process, where the municipality outlines its development plans and budget priorities. Community input is crucial in shaping these plans and the councillor must listen to community members and take suggestions and needs seriously. > See section 7.1 on the IDP

- **Budget consultations:** Communities should engage their councillors around the municipal budget and voice their opinions on spending priorities and service delivery needs. The councillor must make sure that the community has the appropriate information to engage in these discussions. > See section 7.2 on the budget

Councillors should address any participation barriers and adopt inclusive approaches like translation services, mobile outreach, and community radio. Initiatives that improve digital literacy among residents should be supported.

4. Implementing ward and community projects

Communities and councillors can work together on ward-level and community projects to benefit those living in a ward. Councillors should be proactively engaging on projects and programmes with community-based and non-profit organisations, community leaders, school bodies, businesses and religious organisations.

- **Joint projects:** Councillors can help to identify and implement community projects that address local needs in their ward, for example park clean-ups, infrastructure improvements and LED projects. Councillors can facilitate access to municipal resources and support.
- **Volunteer programmes:** Councillors and NGOs can create volunteer opportunities for residents to contribute to municipal services, such as assisting at local clinics, libraries, or community centres.
- **Training and capacity-building:** Municipalities can provide training for community leaders and members on municipal processes, governance, and advocacy skills. Empowered citizens can more effectively engage with councillors and the municipality. Training programmes can be developed to enhance skills development, especially for young people in the municipality.
- **Youth engagement:** Councillors and community leaders can work together to involve young people in local governance through school programmes, youth councils, and internships. Engaging the younger generation ensures sustained community involvement.

5. Developing collaborative forums

The formation of collaborative forums in the municipality can create good working relationships between councillors and communities on a range of issues.

- **Stakeholder forums:** The municipality can establish forums that bring together various stakeholders, including community organisations, businesses, and municipal officials, to discuss and address local issues collaboratively.
- **Focus groups:** The municipality can organise focus groups on specific issues, such as housing, water, and sanitation, where residents and councillors can work together to find solutions.

6. Advocating for policy change

Communities and councillors can work together to collectively push for policy change and address issues that they are facing.

- **Policy advocacy:** Communities can work with councillors to advocate for policy changes that benefit the community. This can include changes to by-laws, service delivery standards, or development plans.
- **Petitions and campaigns:** Communities should be encouraged to submit petitions and conduct awareness campaigns to highlight community issues and push for municipal action.

7. Encouraging civic education

Civic education is the process of educating citizens about their rights, responsibilities, and roles in a democratic society. It encompasses a range of topics and activities aimed at promoting understanding and engagement.

- **Workshops and seminars:** Councillors can work with the municipality to facilitate educational workshops and seminars on civic rights, responsibilities, and municipal functions. Informed citizens are better equipped to engage with their councillors and hold them accountable.
- **Resource materials:** Councillors can work with partners to ensure that easily accessible resources - such as pamphlets, guides and online content – are available to communities to explain how the municipality works and how residents can get involved.

8. Strengthening accountability framework

Councillors, ward committees and communities can work together on ways to enhance and strengthen accountability:

- Outlining clear procedures for reporting misconduct, including escalation steps and penalties. Establish accessible channels for whistleblowing and lodging community complaints.
- Introduce performance monitoring tools and creating standardised templates for quarterly performance reports. Defining measurable indicators (KPIs) for councillor effectiveness, such as attendance, community engagement, and responsiveness.
- Enhancing financial oversight by incorporating guidance on fundamental financial governance principles for councillors.

By implementing these strategies in municipalities, communities and councillors can build a strong partnership that enhances local governance, improves service delivery, and fosters a more engaged and active citizenry.



4.2.3 Holding councillors accountable

If a citizen or community has used the established routes of engaging with their councillor but find that they remain unresponsive, are not undertaking their roles and responsibilities, or have failed to follow the rules, there are a few things that can be done. Remember to consider safety issues and think about what is likely to work in a specific community and with a specific municipality.

1. Build public awareness of the rules

In addition to the *Code of Conduct for Councillors (COCC)*, political representatives must also follow the rules set out by the municipality in the Terms of Reference (TOR). A community can find out what these rules are by getting copies of the COCC and the municipality's TOR for political representatives (this policy is required by MSA s. 53). If it's not dangerous to do so, these could be shared on social media or posted in public places. Councillors should be called out if they do not follow the rules.

2. Lodge a complaint with the speaker's office

If the council speaker has reason to suspect that a councillor has not followed the COCC (or other rules in the MSA or MFMA) they must (COCC s. 13):

- Launch an investigation.
- Give the councillor an opportunity to respond to the accusation in writing.
- Table a report with the council explaining whether further investigation or disciplinary processes should take place. This report must be made public (COCC s. 13).

Upon receiving the report, council decides whether to investigate further and whether a special committee should be established to do so.

If the council finds that the councillor has indeed not followed the COCC, the council can:

- Reprimand (give a formal warning to) the councillor.
- Fine the councillor.
- Request the MEC for local government to suspend or remove the councillor from office.

The councillor has the right to appeal council's finding through the MEC for local government

3. Lodge a complaint with the MEC for local government

If the councillor is the speaker, or if the council and the speaker do not take a complaint seriously, or fail to come up with a convincing finding, a complaint can be lodged directly with the MEC for local government in the province. The MEC has the power to launch their own investigation and remove the councillor from office if they are found guilty (COCC s. 14).

REMEMBER THAT ACCORDING TO THE MSA (S. 5) PEOPLE HAVE THE RIGHT TO A QUICK RESPONSE TO ANY PETITION OR COMPLAINT LODGED!



4. Lodge a complaint with the councillor's political party

All political parties should be concerned about their image and the electoral consequences of bad behaviour and negative media coverage. Political parties will generally have their own code of conduct and disciplinary processes. A complaint can be lodged with the party's leadership at the regional, provincial or national levels.

5. Contact institutions providing oversight (including Chapter 9 institutions)

6. Use the media

The media can also be used to get issues that are being ignored onto the agenda of the councillor and municipality and to create public awareness.

7. Open a case with the police

Councillors failing to follow some of the rules mentioned above can face criminal consequences. These can be fines or even jail. If there is evidence that a councillor broke such a rule, a case can be opened with the police. An assessment of how independent the police investigation will be, as well as safety issues, will be important considerations if this route is taken.



4.2.4 Ensuring accountable councillors in the future

Elections and the vote give everyone the power to hold councillors accountable. While this does not always work in practice, there are ways we can use the election process to improve accountability.

1. Put forward candidates¹⁸

Consider whether there are people in the community who could serve as ward councillors. > See section 4.2 of this guide for eligibility criteria

2. Talk to the political parties who are competing for votes¹⁹

Find out how the political parties in a ward nominate their candidates. Do their candidates actually live in the area? Do they know the issues?

- Let political party leaders know what qualities are desired in a candidate.
- Ask political party leaders what they commit to doing to ensure their candidates listen to communities – especially after the elections.
- If you are a political party member, take part in nomination processes.

3. Ask candidates to publicly commit²⁰

Ask candidates to sign a declaration committing to address issues of concern, and to be held to account. The declaration can be publicised by posting it in public spaces or sharing on social media.

Pledges can include the right to recall – a candidate's commitment to step down if they do not perform or deliver on their promises. Other possible commitments include:

- Inviting the IEC to administer a ward election.
- Establishing a municipal notice board at a venue of choice to display hard-copies of key documents within 7 days of their publication.
- Making their financial interest reports automatically available.



For more information on the right to recall, see R2K's Activist Guide to Transparency & Accountability, or contact My Vote Counts. Details are in Chapter 14.



TACTICS: ELECTING YOUR OWN CANDIDATE²¹

One place communities have used elections to improve accountability is in Johannesburg, where Operation Khanyisa Movement (OKM) organised to elect a PR councillor who would represent their interests.

OKM was formed when community organisations in Thembelihle, Soweto and other areas in Johannesburg teamed up to put forward a candidate who, if elected, would meaningfully represent and involve them in municipal decision-making.

How did they do this?

First, unlike other parties who impose their candidates on communities, the OKM involved their constituents in deciding who should be their candidates.

Second, at the heart of OKM's approach is a pledge that candidates must sign before taking up their position. The pledge sets out OKM's councillors' duties, and their conditions of serving. These include:

- **The right to recall** – this means that the community can decide to 'fire' the OKM councillor at any time during their five-year term;
- **The payment of the councillor's salary by the party** – not the council. Instead of the salary being paid into the councillor's account, it is paid into OKM's account. OKM then pay the councillor a living wage. The wage is determined openly in a community meeting. The point is to have a councillor with the same living standards as their constituents. The money that is left over in the OKM account is used for purposes such as transporting members to meetings or crisis situations, such as a poor family unable to bury a loved one..

According to the OKM councillor, "we used to spoil ballot papers as a way of putting our point across because we did not believe in the current electoral system... eventually, we were headed towards establishing OKM and agreed that we'd work towards setting the standard for the type of councillor we want to lead us."



CHECKLIST: HOW WELL IS A COUNCILLOR DOING?

IN TERMS OF BEST PRACTICE AND THE VISION OF THE CONSTITUTION:

Is the councillor easily accessible?	YES	NO
Has the councillor involved the community in discussions on the IDP, budget or any other municipal matter?	YES	NO
Does the councillor help take up concerns with council or the administration?	YES	NO
Does the councillor report to the community about the municipality's work?	YES	NO

IN TERMS OF THE COUNCILLOR'S CODE OF CONDUCT:		
Has the councillor held at least four public meetings over the past year to report on the municipality's work and to hear the community's views?	YES	NO
Did the councillor file a financial interests report with the municipal manager within 60 days of their election?	YES	NO
Has the councillor attended every council meeting for which they did not get leave of absence?	YES	NO
If the councillor, their family or associates have an interest in a matter discussed in council, did they declare it, and if needed, excuse themselves from the discussion?	YES	NO
If the councillor has taken other paid work, did they obtain council's permission first?	YES	NO
Has the councillor attempted to interfere in the municipal administration's work? For example, by telling officials what to do or participating in tender processes? This is NOT allowed.	YES	NO

4.3 The Speaker

The speaker is a councillor elected by the council to act as chairperson. The speaker plays an important role in implementing the Code of Conduct for Councillors (COCC). The speaker's significant legal powers and duties are listed below.

POWERS	DUTIES
Decides when and where council meets at least once every 3 months (MSTA s. 37). Determines the agenda of council meetings in consultation with chief whips. If the speaker has a "reasonable suspicion" that a councillor has breached the COCC, they must investigate and report their findings to the council and the MEC (COCC s. 13).	Chair meetings and maintain their order, assisted by the chief whips (MSTA s. 37). Convene a council meeting if the majority of councillors ask in writing (MSTA s. 29). Ensure that council documents are made public as required by law (MFMA s. 75). Ensure that councillors know and follow the COCC (COCC s. 13). Ensure that all political parties are represented on the various committees, assisted by the chief whips. Ensure the functionality of ward committees.

The speaker is delegated important public participation responsibilities in the municipality. See Chapter 6 of this guide for more on these responsibilities.



THE SPEAKER IS ALSO AN ELECTED COUNCILLOR! SEE SECTION 4.2.3 OF THIS GUIDE FOR HOW TO HOLD THEM ACCOUNTABLE. THE SPEAKER CAN BE REMOVED FROM OFFICE THROUGH A COUNCIL RESOLUTION IF PRIOR NOTICE IS GIVEN (MSTA S.40). THE MOTION SHOULD GIVE REASON WHY THEY SHOULD BE REMOVED.

4.4 The Executive

To work effectively, the council delegates some of its functions to other political sub-structures. The most important of these is the **executive**, which refers to the councillors responsible for leading, overseeing and coordinating the work of the **administration**. The executive's role is to:

- **Consult** the local community to identify its needs, and to ensure that community views and preferences are seriously considered (MSTA s. 44 and 56)
- **Prioritise** which community needs are the most important and urgent, and develop strategies for how they should be addressed. The Constitution (s. 153) says that providing basic services is more important than other needs.
- **Propose** these strategies to council through the IDP, budget, and by-laws.
- **Oversee** the municipal manager and the administration to ensure that policies, budgets and plans are adequately implemented and that the municipality's finances are used in the community's best interests (MSTA s. 44 and 56).

The executive is headed by the executive mayor or mayor, and includes councillors responsible for each administrative department (e.g. economic development or infrastructure).

In most councils, councillors have either executive or legislative authority. This is in line with the separation of powers principle.

BECAUSE THEY INTERACT CLOSELY WITH THE ADMINISTRATION AND DIRECT ITS WORK, EXECUTIVE COUNCILLORS HAVE MUCH MORE POWER THAN OTHER COUNCILLORS. THEY ARE LIKE CABINET MINISTERS OR MECS, BUT AT A LOCAL LEVEL.



4.4.1 How are councillors selected to the executive and how much power does the mayor have?

The answer depends on the executive system the council has chosen. There are three different executive systems which apply to different types of municipalities:

EXECUTIVE MAYOR AND MAYORAL COMMITTEE	EXECUTIVE COMMITTEE (EC)
Most councils in South Africa have a mayoral executive system. The full council elects the executive mayor. Once elected, the executive mayor has the power to appoint a mayoral committee (these members are often referred to as MMCs) to assist in making decisions, proposals and plans.	Some councils have a collective executive system. The full council elects the mayor as well as each member of the executive committee. Although the mayor sets the agenda and chairs the meetings, they are not more powerful than other members.

EXECUTIVE MAYOR AND MAYORAL COMMITTEE	EXECUTIVE COMMITTEE (EC)
The mayoral committee is not obliged to hold meetings in public or include other council members. The executive mayor can choose to include members of other political parties, but it is their choice. A speaker is elected to act as the chairperson of council meetings.	The EC must include councillors from different parties. Seats must be allocated in proportion to parties' share of the vote. The EC may consist of no more than 20% of all councillors or 10 councillors (whichever is the least). Council elects a speaker as its chairperson.



A municipal council can introduce a motion to remove any councillor who holds an executive position, including the mayor (executive or chair or executive committee) (MSTA s. 53 and 58).

All executives, regardless of their type, have the following duties and powers:

EXECUTIVES HAVE THE LEGAL DUTY TO:
• Ensure that public opinions are taken into account in municipal decision-making (MSTA s.44 and 56). • Ensure that the municipality adheres to all laws, including those about transparency and participation. • Report on the implementation of projects and budget to council every 3 months (MFMA s. 52) and ensure that these are publicly available. • Ensure that the IDP and the budget are consistent and credible. • Report annually to council on how communities have been consulted and how their views have influenced council decisions (MSTA s. 44 and 56). These reports are included in the IDP, the Annual Report (AR) and the Oversight Report (OR). • Ensure that the municipality implements the Auditor-General's (AG) recommendations (MFMA s. 131).
EXECUTIVES HAVE THE POWER TO:
• Make recommendations on the IDP, budget and by-laws before a vote can be taken on the matter (MSTA s. 30). • Put forward recommendations for senior municipal positions e.g. the municipal manager and heads of departments (MSTA s. 30). • Invest resources in developing proposals to present to council e.g. the IDP, by-laws, budgets and policies. • Monitor and review the administration's performance (MSTA s. 44 and 56).

EXECUTIVES DO NOT HAVE THE POWERS TO APPROVE:
• By-laws • Appointment of senior officials • IDPs and budgets • Loans or changes to rates, taxes and other charges These can only be approved through a vote of the full council!



THE EXECUTIVE COMMITTEE, OR "EXCO", AS WE OFTEN CALL IT, IS AN IMPORTANT PLACE WHERE POLITICIANS CAN TRY TO RESOLVE ISSUES OR MAKE COMPROMISES IN PRIVATE RATHER THAN HAVING FIGHTS IN PUBLIC VIEW. MOST COUNCIL DECISIONS ARE MADE ON THE BASIS OF EXCO RECOMMENDATIONS.

4.5 Portfolio and Oversight Committees

As noted earlier, councils delegate some of their functions to sub-structures. While executive functions are delegated to executive committees, **legislative functions** are delegated to portfolio and oversight committees. These are important because they enable groups of councillors to exercise oversight over the executive and do in-depth work on different issues. As only the full council can pass by-laws or make policies, these committees can only investigate and make recommendations to the council. The **composition** of each committee reflects the vote share that parties received in elections.

The council appoints a **chairperson** for each committee, who has the power to determine the committee's agenda and what will be discussed (MSTA s.79).

Section 79 or Standing Committees

According to s. 79 of the MSTa, "a municipal council may establish one or more committees necessary for the effective and efficient performance of its functions or the exercise of any of its powers". Section 79 committees provide oversight or investigate specific issues assigned by the council to ensure accountability. A Section 79 committee reports to the council.

Section 80 or Portfolio Committees

If a municipal council has an executive committee or executive mayor, it may appoint (in terms of s. 80 of the MSTa), committees of councillors to assist the executive committee or executive mayor. These committees are chaired by executive councillors and shadow the work of a municipality's departments and their executive leadership e.g. community safety or water services. They review policies, plans and budgets, and consider quarterly and annual reports. Portfolio committees report and are accountable to the executive committee or executive mayor.

Oversight Committees or Municipal Public Accounts Committees (MPACs)

These section 79 committees inspect the municipality's financial and performance management reports, and focus on addressing issues of mismanagement and misuse of resources. These committees are usually responsible for assessing the Annual Report (AR), Annual Financial Statements (AFS) and any in-year reporting. They also produce the Oversight Report (OR). They have the power to engage directly with the public and consider public comments, request documents from the administration, and call on the municipal manager to appear to provide information. To ensure their independence, National Treasury recommends that none of their members are executive councillors.²²

MPACs are very important in a municipality and they ensure that public funds are used effectively. They hold municipal officials and councillors accountable for financial management and service delivery.



Each council determines its own rules, so the best information source on your council's committees and how they work is its **Standing Rules and Orders**. Visit the council's offices or website to get a copy.

THE LEGISLATIVE COMMITTEE SYSTEM IN MUNICIPALITIES IS MADE UP OF SECTION 79 AND SECTION 80 COMMITTEES, NAMED AFTER THE PROVISIONS OF THE MUNICIPAL STRUCTURES ACT THAT REGULATE THEIR ESTABLISHMENT.



Committees have the powers to:

- **Question** the executive and administration on programme details and progress.
- **Receive monthly reports** from the departments they oversee.
- Make **recommendations** on by-laws, policies and budgets.
- Co-opt **advisory members** who are not councillors, with the approval of council. These may be experts or community members (MSTA s. 79).

Portfolio or oversight committees **do not have final decision-making powers** on any matter affecting the municipality. Such matters require the approval of the full council. For the details of the powers of committees in your municipal council, consult its *Standing Rules and Orders*.



REALITY CHECK

COUNCILLORS WHO ARE NOT IN THE EXECUTIVE HAVE THE RESPONSIBILITY TO OVERSEE EXECUTIVE COUNCILLORS AND HOLD THEM ACCOUNTABLE. HOWEVER, BECAUSE EXECUTIVE COUNCILLORS ARE OFTEN MORE POLITICALLY SENIOR, COUNCILLORS WHO CHALLENGE THEM CAN BE DISCIPLINED BY THE PARTY. MOREOVER, BOTH EXECUTIVE AND NON-EXECUTIVE COUNCILLORS ARE LESS SENIOR THAN PROVINCIAL OR REGIONAL PARTY STRUCTURES. SO SOMETIMES IT IS EASIER TO INFLUENCE LOCAL GOVERNMENT DECISIONS BY LOBBYING THE RELEVANT POLITICAL STRUCTURES.

Understanding the different committees in a municipality

Committee Type	Function	Legal Basis	Important information
Section 80 Portfolio Committee	Monitors and advises the executive on specific service areas, ensuring effective policy implementation and service delivery e.g. Housing Portfolio Committee or Finance Committee.	S. 80 of MST A	Established primarily to assist the executive mayor or an executive committee. Section 80 committees are not municipal council committees. They report and are accountable to the executive.
Section 79 Committee	Provides oversight or investigates specific issues assigned by the council to ensure accountability.	S. 79 of MST A	The powers of a Section 79 committee are determined by the municipal council and these committees report to council.
Standing Committee	A Section 79 committee that handles ongoing or recurring governance functions e.g. Audit Committee, Rules Committee, Petitions and Public Participation Committee.	S. 79 of MST A	Standing Committees report to council. A municipality's Audit Committee often includes non-councillors with financial expertise. It is distinct from MPAC but complementary in ensuring financial assurance.
Oversight Committee	A Section 79 committee that monitors executive and administrative (non-financial) performance, ensuring oversight, accountability and compliance with laws and policies.	S. 79 of MST A; s. 129 of the MFMA	In smaller municipalities the Oversight Committee is often combined with other committees.
Municipal Public Accounts Committee (MPAC)	A Section 79 oversight committee that specifically reviews financial performance, budgets, audit reports and annual reports to ensure fiscal accountability. Recommended to be chaired by a non-executive councillor.	S. 79 of MST A; s. 129 of MFMA; National Treasury circulars	MPAC reports to council. The specific role of MPACs is defined in the MFMA. MPACs in metros are generally well-resourced with trained members. In smaller municipalities they are often under-capacitated (and sometimes combined with the Oversight Committee)

4.6 Council's decision-making process²³

Now that we know the main role-players in council, we can examine how they make decisions. Council is responsible for making the following kinds of decisions:

Municipal by-laws are laws made by local government. They must be passed by a majority vote of the council, which means that a majority of all councillors – not only those in the meeting – must approve it. By-laws may only be passed if sufficient notice was given to councillors and if the public was given an opportunity to comment on them (MSA s. 12). Each municipality must publish its by-laws in a Municipal Code.

Resolutions are decisions of municipal council decided on through a majority council vote. Some decisions, such as dissolving a municipal council, require a two-thirds majority to pass.

IT'S IMPORTANT FOR WARD COMMITTEES AND COMMUNITY MEMBERS TO KNOW WHAT RESOLUTIONS ARE BEING MADE BY THE COUNCIL AND HOW THESE RESOLUTIONS AFFECT THEM.



Standing rules and orders explain how council must do its work. These may provide information on the role of the speaker, when meetings may be closed to the public and how petitions are handled.

Municipal policies are documents that outline how a municipality will address a particular issue. Examples include indigent policy, credit and collections policy and tariff policies. Municipal policies adopted in by-laws or council resolutions are legally binding. Policies that were only adopted by the executive are not legally binding, which means they are not enforceable as law.

In making decisions, most councils follow the same steps (set out in their Standing Rules and Orders):

- **Agendas** are prepared before the full council meets and set out the business of council and the proceedings for the meeting. Any **motions** (written proposals for debate), draft resolutions, committee reports or petitions must be on the agenda if they are to be discussed.
- If a committee has discussed a matter in detail it will make proposals or recommendations to the council. The municipality's proposed budget, IDPs and draft by-laws are all proposals put to the council for debate and adoption.
- If a matter on the council agenda requires more careful and detailed consideration, it can be referred to a committee or the executive with a deadline for report back.
- After a debate, all council members vote for or against the matters put forward. Any decision voted for by the majority of the council becomes either a by-law (if proposal was a draft by-law) or a resolution (all other proposals). By-laws and resolutions are legally binding.
- To pass resolutions or by-laws, **the majority of councillors must be present** in the meeting. For exact rules on quorums, consult your council's *Standing Rules and Orders*.



The **municipal manager must inform the public** as to when and where council will meet. All meetings of the council and its committees should be open to the public and the media. Meetings can only exclude the public if the council can show that it is reasonable to do so (MSA s.20). Lack of space should not be an excuse as arrangements can be made. Meetings that consider the IDP, budget, by-laws, appointment of external service providers, performance management system and changes to rates, taxes or loans must be open to the public (MSA s. 20).



4.6.1. Why should citizens and CBOs/CSOs attend council meetings?

Decades of civic engagement with South Africa's democratic parliament have shown that physically attending committee meetings is important. Where civil society organisations tried to ensure that as many of their members attended as many directly relevant parliamentary committee meetings as possible, there were a number of positive outcomes:

- First, ongoing presence helped **build relationships between community members and decision-makers** – both those sympathetic to the interests of the organisations, and those who had different opinions. Engaging with decision-makers informally, but also observing their arguments in formal meetings, helped organisations gain important information and insight.
- Second, because they were physically there, community members could benefit from **multiple opportunities to explain their interests to decision-makers**. These opportunities included moments where they could talk as people - getting tea or while sitting close by.
- Third, civil society members benefitted from being able to **immediately address concerns or questions as they arose**. So, if particular arguments were raised in committee meetings, the organisations were able to correct information over tea, by handing notes to decision-makers they had built relationships with. This was also helpful to decision-makers who were able to resolve questions quickly, and thus save time. Being in the room was also helpful to community members in that they were able to **better understand decision-makers' concerns**, and begin thinking how to integrate those into their proposals.
- Lastly, having many community members in committee rooms could **change the dynamics of meetings**, as elected representatives would be more aware of the feelings of their constituents.

Although these lessons were drawn from engaging with national parliament, they could apply to citizen engagement at the local level.



4.6.2 Challenging an administrative decision taken by council, the executive or a councillor

Even citizens who actively engage with their local government representatives and structures can find that at times council decisions directly and negatively impact them. In cases where an *administrative decision* taken by the municipality affects a person's rights, they have the right to appeal.

In some cases (e.g. land use) there are specific appeal mechanisms. Where this is not the case, an appeal can be submitted in writing to the municipal manager **not more than 21 days after the decision was announced** (MSA s. 62). The appeal must be dealt with as follows:

- The MM must promptly (without delay) submit the complaint to the council.
- The council is then obliged to establish a committee of councillors who were not involved in the decision.
- The appeal must be discussed within 6 weeks.
- A decision must be taken within a reasonable period.

Importantly, this appeal mechanism does not apply to general policy or legislative decisions, or broad service delivery issues better addressed through a municipality's complaints management system or ward committees.

Another way to challenge a decision is through a petition. > [see section 3.3](#).



CHAPTER 5:

THE ADMINISTRATION

The municipal **administration** or **public service** includes the officials, managers and workers who implement policies and plans and deliver services. Appointed rather than elected, these people work for the municipality, regardless of which political party is in power. Officials should have the skills to perform the specialised work required to deliver municipal services e.g. engineering or town planning.

The administration is expected to manage the municipality in a manner consistent with the Constitution and should be governed by democratic values and principles embodied in s. 195(1) of the Constitution. This means that it must be accountable, transparent and responsive (Constitution s. 195 and MSA s. 6).

The MSA clearly sets out the duties of the municipal administration and states that it must:

- be responsive to the needs of the local community;
- facilitate a culture of public service and accountability amongst staff;
- take measures to prevent corruption;
- establish clear relationships, and facilitate co-operation and communication, between it and the local community;
- give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and
- inform the local community how the municipality is managed, of the costs involved and the persons in charge.



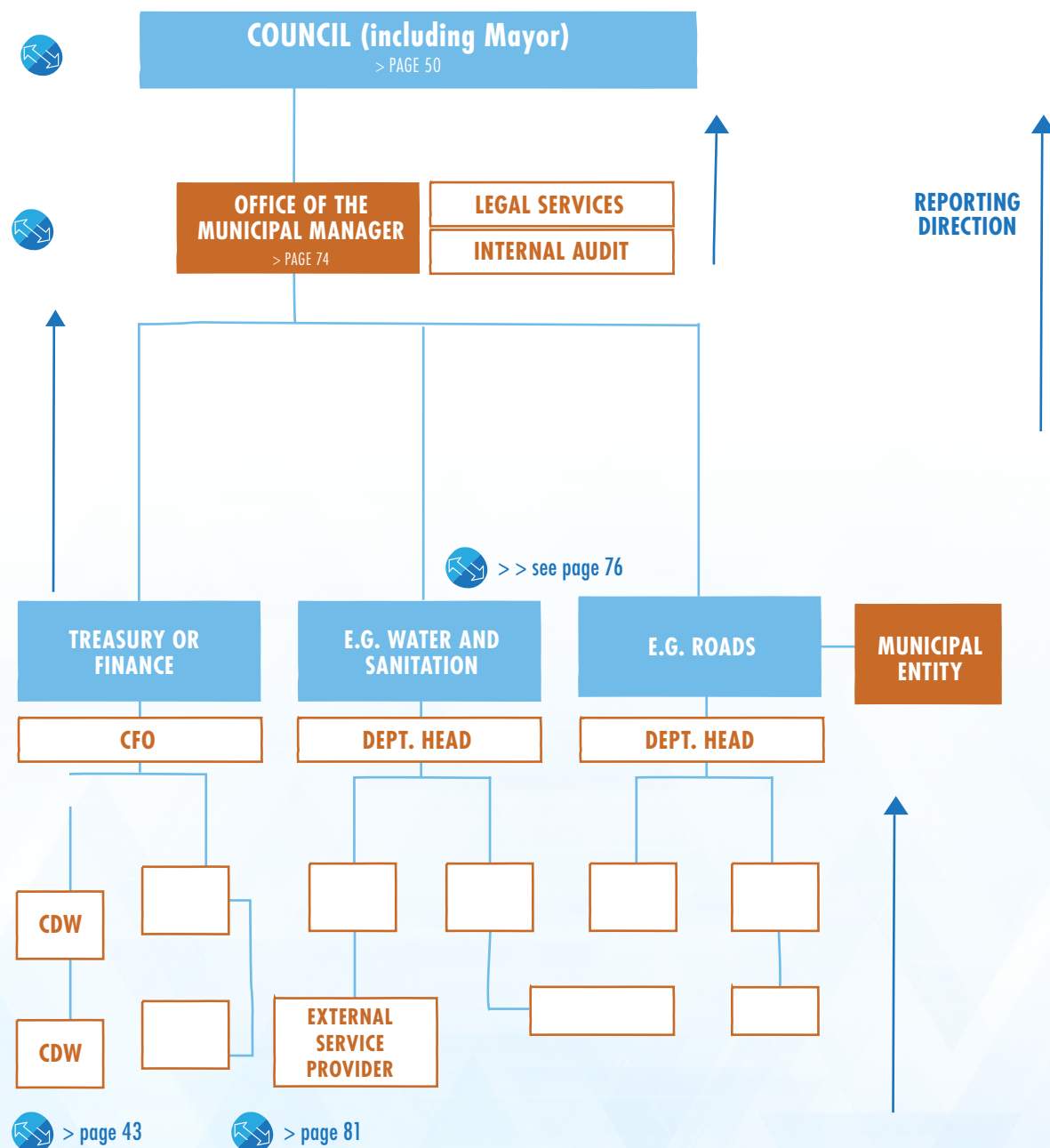
REALITY CHECK

Unfortunately, over the past three decades local government administration has at times been very poor. Some reasons for this include:

- Senior or important posts being given to those with political connections but not the necessary skills.
- Political interference in the administration's work.
- Lack of consequences for mismanagement and corruption.
- Limited access to critical skills such as engineering, accounting and legal services.

In response, significant efforts are being made to professionalise municipal governments by ensuring that officials are equipped to do the work of delivering services to communities.

EXAMPLE: A SNAPSHOT OF A TYPICAL ADMINISTRATION



MUNICIPALITIES ARE DIFFERENT! THEY HAVE DIFFERENT ORGANISATIONAL STRUCTURES AND POSITIONS. KNOWING WHO IS RESPONSIBLE FOR SERVICES YOU'RE CONCERNED ABOUT WILL SAVE YOU TIME!

5.1 The Batho Pele Principles

The Batho Pele ("People First") Principles are a policy framework introduced to translate the Constitution's commitment to service delivery, accountability, and citizen-centred governance into practical guidelines for public officials. All government officials are expected to follow them.

- 1. Consultation:** Citizens should be consulted about the level and quality of the public services they receive and, wherever possible, should be given a choice about the services that are offered.
- 2. Service standards:** Citizens should be told what level and quality of public service they will receive so that they are aware of what to expect.
- 3. Access:** All citizens should have equal access to the services to which they are entitled.
- 4. Courtesy:** Citizens should be treated with courtesy and consideration.
- 5. Information:** Citizens should be given full accurate information about the public services they are entitled to receive.
- 6. Openness and transparency:** Citizens should be told how national and provincial departments are run, how much they cost and who is in charge.
- 7. Redress:** If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made, citizens should receive a sympathetic, positive response.
- 8. Value for money:** Public services should be provided economically and efficiently in order to give citizens the best possible value for money.



UNFORTUNATELY, MANY GOVERNMENT OFFICIALS, INCLUDING THOSE IN MUNICIPALITIES, DO NOT FOLLOW THE BATHO PELE PRINCIPLES. SECTION 5.2.4 OF THIS GUIDE SHOWS WHAT YOU CAN DO IF YOU ENCOUNTER THIS.

5.2 Municipal Officials

The administration is made up of **municipal officials**, the most senior of whom is the municipal manager (MM). While it is the MM and senior managers who are ultimately responsible for how well a municipality works, it is municipal officials, supervisors and workers who do the municipality's daily work. They need to be skilled for their jobs and ensure good working relationships with councillors, ward committees and communities.

SOME DIFFERENCES BETWEEN POLITICAL REPRESENTATIVES AND SENIOR MUNICIPAL OFFICIALS

	POLITICAL REPRESENTATIVES e.g. Mayors and Councillors	SENIOR MUNICIPAL OFFICIALS e.g. MMs and Heads of Departments (HoDs)
How did they get their position?	Elected	MMs recommended by the executive and appointed by council. Council, after consultation with the MM, appoints senior managers (MSA s. 56)
What qualifications must they have for their position?	Don't necessarily need to have technical or specialised skills and often rely on officials' expertise to guide decisions.	The MM must have the qualifications and skills determined by the Minister for CoGTA. Without these their appointments are invalid (MSA s. 54A). Senior managers must have relevant skills and expertise to perform their duties (MSA s. 56).
What are they NOT supposed to do?	Interfere in the municipality's operations e.g. give instructions to municipal employees. Participate in tender selection processes. Do business with council.	Hold leadership positions in political parties, even on a temporary basis (MSA s. 71B). Give council misleading information. Do business with council.
What public documents describe their responsibilities?	Code of Conduct for Councillors (COCC) Terms of Reference (MSA s. 53); Political party's Code of Conduct.	Must sign performance agreements with the MM or the executive. These must be made public. Code of Conduct for Municipal Staff (COCMS)

5.2.1 The Municipal Manager

The **municipal manager (MM)** is most senior public servant and the municipality's accounting officer. They are responsible for ensuring that the municipality does its work in accordance with the law and in an effective, efficient, responsive and accountable manner (MSA s. 55). Section 54A of the MSA sets out the process for appointing an MM, including the role of the provincial MEC for local government and the minister of CoGTA.

A person appointed as an acting MM may not be appointed to act for a period that exceeds three months. Council can apply to the MEC for local government for this to be extended to a further three months (MSA 54A(2A)).

Although the executive makes recommendations as to who should be appointed as municipal manager, it is council that makes the appointment. This means that ultimately the MM is accountable to the council. However, in day-to-day practice, the MM works very closely with the mayor.

LEGAL DUTIES OF MUNICIPAL MANAGERS

AS HEADS OF THE ADMINISTRATION, MUNICIPAL MANAGERS MUST:

- **Account for the municipality's overall performance.** This means they lead the writing of the annual report (AR), must appear before council and face consequences if the municipality fails to deliver.
- **Ensure that the municipality enforces by-laws and has the requisite capacities (finance, staff etc.) to implement the IDP.**
- **Ensure that the municipality is responsive to the community,** includes it in its planning and accountability processes and knows whether communities are happy with municipal services.
- **Advise political office bearers** on financial, technical and legal matters that affect policy decisions.
- **Ensure municipal employees** have the right skills for their jobs and deliver the highest quality of work.
- **Lead the municipality's communication with the public.** This means notifying the community of council meetings (date, time, place) and ensuring access to important documents. The MM is also the municipality's information officer (in terms of PAIA). In practice this responsibility is often delegated.
- **Manage appeals** against council or administration decisions (MSA s62).
- **Ensure that councillors declare their financial interests** within 60 days of their election, and update these annually (COCC s.7).

Unless indicated otherwise, the above duties are specified in s.55 of the MSA

AS ACCOUNTING OFFICERS, MUNICIPAL MANAGERS MUST:

- **Ensure good financial management** that follows the rules of the MFMA and all applicable laws or policies.
- **Ensure that procurement and tender processes are fair and transparent** and that fraud is prevented (MSCM reg. 112).
- **Immediately report any non-compliance** with financial management laws to the AG, the council and the provincial treasury (MFMA s. 73).
- **Report any theft, fraud or criminal cases** of irregular expenditure to the police (MFMA s. 32).

AN ACCOUNTING OFFICER IS THE PERSON RESPONSIBLE FOR ENSURING PROPER FINANCIAL MANAGEMENT PROCEDURES ARE FOLLOWED.





REALITY CHECK

Each year the Auditor-General's (AG) report on the performance of municipalities indicates serious management problems in municipal administrations, suggesting that MMs aren't doing their jobs well. Municipalities are not managing their assets and finances according to the law. Many do not have road maintenance plans and some are not assessing the condition of their road infrastructure at all. Of the municipalities that manage water infrastructure, many have no maintenance plan, suffer significant water losses, and are not assessing the conditions of their water infrastructure. Municipalities admit in their financial statements that they may not be able to continue operating due to cash shortages and other financial problems. > [See section 2.5.1. of this guide for more on the AG](#)

5.2.2 Senior Managers (Section 56 Managers)

Senior managers are appointed in terms of s. 56 of the MSA by the municipal council, after consultation with the MM. They are directly accountable to the MM (MSA s. 56(1)). Often referred to as "Section 56 managers", they head up departments in the municipality (therefore referred to as HODs) and are responsible for ensuring that all managers, officials and workers carry out their work in terms of the municipality's IDP.

Eligibility criteria and rules:

- A senior manager must have the **relevant skills and expertise to** perform the duties associated with the position, taking into account the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination (MSA s. 56).
- Senior managers are **required to sign performance agreements** with the MM (MSA. s. 57), and these must be made public. A municipality must publish the performance agreements of senior managers on their website.

The municipality's organogram will usually show who are the Section 56 managers and will sometimes provide contact details. It is important to know who in the administration is responsible for implementation in terms of service delivery areas. The Information Officer of a municipality should be able to provide this information.



SECTION 56 MANAGERS MAY NOT BE APPOINTED INTO ACTING POSITIONS FOR MORE THAN 3 MONTHS. THIS CAN BE EXTENDED (BY NO MORE THAN 3 MONTHS) IN SPECIAL CIRCUMSTANCES IF THE COUNCIL APPLIES TO THE MEC FOR LOCAL GOVERNMENT. SENIOR MANAGERS SHOULD NOT BE ACTING FOR MORE THAN 6 MONTHS IN TOTAL.



REALITY CHECK: The 'interface' between the political and administrative arms of local government

It is important that the elected political representatives of a municipality work closely with the appointed administrative staff. Councillors should be able to assist their constituents to get through to municipal departments when things go wrong, or evaluate whether the municipal services being offered are compatible with the needs of residents. Coordination, collaboration and communication between political structures and the administration is necessary. Unfortunately, political interference in governance and administration is a serious problem in municipalities. In his 2018 budget vote speech the Minister of CoGTA noted that the "undue political interference in governance and administration" in some areas has seriously affected governance at a local level in South Africa.²⁴

While the administration implements the policy programme set out by the executive, and has oversight from councillors, municipal officials should operate with some independence from political influence in decision making, especially around appointments and tenders. MMs often give examples of mayors interfering with their work, preventing appointments being made that would have helped to address irregular and unlawful expenditure. Municipal officials also often complain of councillors interfering in their day-to-day work.

5.2.3 Municipal officials' conduct: what the laws say

The MFMA and the MSA, which includes the *Code of Conduct for Municipal Staff Members (COCMS)* (Schedule 2), set out rules for what municipal officials may or may not do. In other words, these are the laws that provide the legal basis for holding officials accountable. Select provisions are set out below. You are encouraged to read the full document.

GENERAL CONDUCT

Municipal officials must do their job fairly, honestly, transparently , and in the best interests of the municipality (which includes the community). They must implement council policies in a manner reflecting democratic, responsive and accountable government .	COCMS s. 2 and 3
Municipal officials may not participate in local government elections , except in their official capacity or pursuant to any constitutional right.	COCMS s. 11
Municipal officials are not allowed to take any decisions on matters in which they have financial interests . This applies to interests held by the official's spouse or business partners.	COCMS s.4
A municipal staff member dismissed for misconduct may not be re-employed in any municipality for a set period of time . For those dismissed for financial misconduct the period is 10 years.	MSA s. 57A

GENERAL CONDUCT CONTINUE...

A municipal manager or acting municipal manager must at least have the prescribed skills, expertise, competencies and qualifications . A decision to appoint a person as MM, and any contract concluded with that person, is null and void if the person does not have these.	MSA s. 54A
A senior manager must at least have the prescribed skills, expertise, competencies and qualifications . A decision to appoint a senior manager, and any contract concluded between the municipal council and that person, is null and void if the person does not have these.	MSA s. 56(1)(b); s. 56(2)
A municipal manager and senior managers may not hold political office in a political party , whether in a permanent, temporary or acting capacity. Political office refers to “the position of chairperson, deputy chairperson, secretary, deputy secretary, treasurer of the party nationally or in any province, region or other area in which the party operates.”	MSA s. 71B

DUTY TO PROVIDE INFORMATION

Municipal officials must declare in writing the full details of any benefits that they or their families or business associates will get from contracts with the municipality. The MM must keep these in a register.	COCMS s. 5
Municipal officials must immediately report any attempts to bribe them .	COCMS s. 8
If municipal officials have reason to believe that their colleagues aren’t following COCMS rules, they must report these to a superior officer or the speaker.	COCMS s. 13

THE MUNICIPALITY’S ANNUAL FINANCIAL STATEMENTS (AFS), INCLUDED IN THE ANNUAL REPORT, MUST INCLUDE DETAILS OF ANY CONTRACT MORE THAN R2 000 AWARDED TO A PERSON WHO IS A SPOUSE, CHILD OR PARENT OF A STATE EMPLOYEE, OR WHO WAS A STATE EMPLOYEE IN THE PAST 12 MONTHS (MSCM REG. 2005 S. 45). FOR MORE ON THE AR AND AFS SEE CHAPTER 7 OF THIS GUIDE.



BENEFITTING FROM MUNICIPAL TENDERS

Municipal officials may not share in the profits or improperly benefit from a company contracted to provide a service to the municipality.	MSA s. 81
Unless given prior (earlier) permission by council, officials may not have any business or work other than their work at the municipality .	COCMS s. 4
Municipal officials may not benefit from contracts awarded by the state , whether through a company or as consultants.	MSCM reg. 2005 s. 44

ABUSE OF POSITION

Municipal officials may not use their position or access to confidential information to enrich themselves or any other person.	COCMS s.4
Municipal officials may not request or accept any rewards, gifts, financial benefits or favours for: • Persuading the council or administration to make particular decisions; • Revealing confidential council information; • Taking or not taking action.	COCMS s. 8
It is a criminal offence for officials to: • Prevent an accounting officer from following the law; • Fail to follow Supply Chain Management (SCM) policy; • Interfere in the supply chain management system; • Change the AG’s report after it was submitted to the MM.	MFMA s. 173
It is a criminal offence for senior officials to: • Fail to implement the municipality’s supply chain management (SCM) policy deliberately or due to carelessness; • Not take all reasonable steps to prevent corruption and unauthorised, irregular, fruitless and wasteful expenditure; • Deliberately mislead the AG and other organs of state, and knowingly include false information in public documents.	MFMA s. 173



5.2.4 Holding municipal officials to account

If it is suspected or there is evidence that a municipal official failed to follow the rules, if a problem that has been reported is not resolved, or if an official has taken a decision that affects rights, there are a number of things that can be done. Remember to consider safety issues and think about what is likely to work in a specific community and with a specific municipality. Below we set out some suggestions but remember that there could be others that would be relevant in a specific context.

1. Lodge a complaint/appeal with the municipal manager’s office

If an official has taken a decision that affects a constitutional right, there is the right to appeal. The process of appealing decisions is outlined in section 4.6.2 of this guide.

Complaints against any official other than the MM will be considered by the MM.

If there is reason to suspect that an official has committed financial misconduct, the municipality must investigate. If it finds that the official has a case to answer, disciplinary proceedings must be instituted against them (MFMA s. 171). As the head of the municipal administration, it is the MM's responsibility to ensure this happens.

Any official dismissed for financial misconduct may not be re-employed in any municipality for a 10-year period (MSA s. 57a). To facilitate this, their names are added to a database of restricted suppliers kept by National Treasury and is available on the National Treasury's website.

2. Inform the mayor and/or the speaker

If the MM does not take the complaint seriously, or fails to institute a disciplinary hearing, a complaint can be lodged with the mayor's or speaker's office. If a complaint is against the MM, it must be considered by council.

3. Inform a councillor

It is the role of non-executive councillors to hold the administration and executive accountable. Opposition party councillors may be especially interested in any information about misconduct, as they focus on holding the ruling party accountable (whichever party it is).



REMEMBER THAT COUNCILLORS ARE PROTECTED FROM PROSECUTION FOR ANYTHING THEY SAY IN COUNCIL MEETINGS, MAKING IT POSSIBLE FOR THEM TO EXPOSE ALLEGATIONS OF MISMANAGEMENT (MSTA S. 28).

4. Open a case with the police

Failing to follow some of the rules mentioned above has criminal consequences, and can lead to fines or even jail. If there is evidence that an official broke such a rule, a case can be opened with the police. An assessment of how independent the police investigation will be, as well as safety issues, will be important considerations

IF IT CAN BE SHOWN THAT UNAUTHORISED, IRREGULAR AND FRUITLESS EXPENDITURE TOOK PLACE INTENTIONALLY OR DUE TO NEGLIGENCE, THE RESPONSIBLE ELECTED OR APPOINTED MUNICIPAL OFFICE HOLDERS CAN BE ASKED TO PAY THIS MONEY BACK (MFMA S.32).



5. Contact Chapter 9 institutions

You can ask the AG to assess conflicts of interest regarding specific tenders if you suspect government employees have benefitted.

6. Use the media

7. Use the right to protest



REMEMBER THAT MMS MUST MEET THE MINIMUM SKILLS AND QUALIFICATIONS SET BY NATIONAL GOVERNMENT! ASK THE MEDIA OR OPPOSITION POLITICIANS TO INVESTIGATE IF YOU ARE CONCERNED ABOUT THIS.

5.3 Outsourced services²⁵

The municipal administration is responsible for the delivery of municipal services (e.g., connection of water pipes to houses, collection of refuse, the construction of street lights). Often municipal employees do this work, but increasingly private companies are contracted to do so.²⁶ Municipalities refer to outsourcing with external service providers as 'contracted services' or 'external mechanisms', with the contracts called **Service Delivery Agreements (SDAs)** (MSA s. 76 and 80).

However even when it is a private company delivering municipal services, **the municipality remains responsible for those services and their quality**. If for some reason an external service provider is unable to deliver a service, **the municipality must still ensure uninterrupted delivery of the service** in the best interest of the local community (MSA s. 59 and 81).

Our laws require municipalities to follow specific steps when deciding who will provide services. There are two phases in this process, both outlined in more detail in the following pages:

- **Phase 1:** The municipality must decide whether to outsource a service or deliver it itself.
- **Phase 2:** If it is decided to outsource, a competitive bidding process must be followed to select the company that will deliver services.

5.3.1 Deciding whether to outsource

The steps below are outlined across local government laws. If they aren't followed, the municipality's decisions can be challenged legally.

Before deciding to outsource a service, the municipality must consider:	MSA s.78
1. The direct and indirect costs and benefits of delivering the service internally and externally;	
2. The capacity and potential future capacity of the municipality and of prospective service providers;	
3. The views of the local community;	
4. The likely impact on development and employment patterns in the municipality; and	
5. The views of the labour unions.	

If, after this assessment, the municipality decides to outsource, it must must inform the local community of this intention so that it has time to intervene.	MSA s.78
Before the municipality signs an SDA, it must consult the community. The contents of the SDA must be shared with the community.	MSA s.80
No committee of council may exclude the public or media when considering whether to outsource a service.	MSA s.20 (2)(e)
Contracts may only be amended with the approval of council, and after consultation with the local community.	MFMA s.116

TURN THE POINTS ABOVE INTO A CHECKLIST SO THAT EVIDENCE CAN BE COLLECTED ON WHETHER A MUNICIPALITY FOLLOWED THE LAW!



REALITY CHECK: Unfortunately, many of these requirements are often not followed by municipalities, or are implemented in a way that does not facilitate meaningful engagement.

5.3.2 Choosing a service provider

If the municipality decides it needs to outsource a service, it must run an **open selection or tender (competitive bidding) process** (MSA s.83). This applies to goods/services over R200 000 or long-term contracts (MSCM reg. 2005 s. 12). The process must comply with MSCM regulations and:

- be **competitive, fair, transparent, equitable and cost effective** (Constitution s. 217) and allow all prospective service providers to have equal access to information relevant to the bidding process;
- **minimise the possibility of fraud and corruption** (e.g. ensure that officials are not awarded tenders, which is illegal) (MFMA s. 112; MSCM reg. s. 44);
- make the municipality **accountable to the local community** about progress selecting a service provider and the reason for any decision (MSA s. 83; MSCM reg. s. 21(b));
- take into account the need to **promote the empowerment of small and emerging enterprises** (MSA s. 83(1)(c)); and
- enable the accounting officer to reject any bidders who have been listed on the Register of Tender Defaulters or List of Restricted Suppliers (MFMA Circular No. 43; MSCM reg. s. 38).



ANYONE CONVICTED OF FRAUD OR CORRUPTION OR WHO DID NOT ADEQUATELY FULFIL A GOVERNMENT CONTRACT DURING THE PAST 5 YEARS IS BANNED FROM ENTERING INTO A CONTRACT WITH THE STATE (MFMA s. 112).

Tender selection processes usually have the following steps:

1. Advertising and submitting bids



The municipality advertises that they are looking for a company to do the work, and publishes a tender specifications document which gives the exact details of the service required (timeframes, quality, quantity etc.). Interested companies can submit bids (proposals) by the advertised deadline.

2. Opening the tender box and bid register



Once the deadline has passed the tender box must be opened in public. Observers may ask the official to read the name and cost of each bidder, as well as other information (e.g. BBBEE status) if practical to do so. This information must be available in a bid register on the municipality's website as soon as possible after the bid deadline (MFMA s. 112 and MSCM reg. 2005 s. 23). Some municipalities set a 10-day target for this.

3. Bid evaluation and disqualification

The municipality's procurement department must then check submitted tenders and disqualify (disregard) any that are incomplete or submitted by bidders that have a conflict of interests or are on the List of Restricted Suppliers (MFMA s. 112 and MSCM reg. 2005 s. 38) or tender defaulters.



The remaining bids are then evaluated by a Bid Evaluation Committee. Points are awarded for different criteria, which may include:

- price charged to do the work
- company's experience and qualifications
- proposed approach and work plan
- BBBEE status

Councillors are **NOT** allowed to participate or even observe meetings which discuss or decide which companies get tenders (MFMA s. 117).

4. Bid adjudication and decision

Once all applications have been evaluated, their scores are passed to a Bid Adjudication Committee which decides whether the company that received the most points will be selected.



Some metros allow the public to observe bid adjudication meetings. It is possible and does not undermine the right to privacy or commercially sensitive information.

If the municipality decides to appoint a different company than the one that scored the highest, it must give good reasons for this. The MM must explain the reasons to the AG, provincial and national treasury in writing.



5. Selection and negotiation of Service Delivery Agreement (SDA)

After the prospective service provider has been selected, the municipality must negotiate the final terms and conditions of the SDA with them (MSA s. 84; MFMA s. 116)

REALITY CHECK

REALITY CHECK: Some municipalities have good tender processes with public openings, detailed bid registers and active oversight by MPACs and Section 79 committees. However, many municipalities face capacity constraints leading to less public engagement and weaker oversight, and tender fraud is unfortunately very common.



The **List of Restricted Suppliers** can be found on the National Treasury website. It contains the names of all suppliers who have been restricted from doing business with the government. It also includes:

- the period of restriction;
- the department that placed the supplier under restriction; and
- the reason for the restriction, which could include poor performance, non-performance, the submission of a false declaration of interest, or misrepresentation of facts in a procurement process.²⁷

From Monitoring Public Procurement in South Africa, IBP

5.3.3 Monitoring external service providers: what the laws say

The quality of services provided by private companies depends on how well public servants negotiate, manage and monitor these contracts.

This is what the law says about monitoring the contracts with service providers:

Once an SDA is signed, the municipality must make it available on its website and use the media to tell the community what services will be provided, who will be providing them and where copies of the SDA can be found.	MSAs. 84; MFMA s. 75
The MM must report regularly to council on contract management and the performance of contractors.	MSA s.81; MFMA s.116
The MM and other senior officials must ensure that contracts are monitored on a monthly basis.	MFMA s.116
The municipality's Annual Report must include an assessment of the service provider's performance against the planned targets.	MFMA s.121

Contracts must be reviewed every three years.

MFMA s.116

The municipality must review its decision to outsource if requested to do so by the community.

MSA s.77



THE SDA INCLUDES ALL THE DETAILS ABOUT THE SERVICE TO BE PROVIDED, INCLUDING EXACTLY WHAT NEEDS TO BE DONE, WHO IS MEANT TO DO IT, WHEN THEY MUST DO IT, WHEN THE AGREEMENT COMMENCES AND ENDS, AND HOW COSTS WILL BE DETERMINED. HAVING THE SDA HELPS TO MONITOR THE SERVICE PROVIDER!

TURN THE POINTS ABOVE INTO A CHECKLIST SO THAT YOU CAN COLLECT EVIDENCE ON WHETHER YOUR MUNICIPALITY FOLLOWED THE LAW.



What actions can be taken against fraudulent or non-performing service providers?

The MM of a municipality must take action against a service provider who received a contract due to fraud or corruption, or failed to deliver services as the contract requires (MFMA s. 112). Regulation 15 of the Preferential Procurement Policy Framework Act (PPPFA) says that actions that may be taken include:

- Recover (have paid back) all costs, losses or damages resulting from the contract.
- Cancel the contract and claim damages.
- Give a large fine.
- List the service provider as a restricted supplier. This means that they are not allowed to do business with the state for up to 10 years.



If the municipality decides to take any of these actions, National Treasury says that it must follow a process which gives the service provider an opportunity to correct their service within 14 days. Contractors are also allowed to appeal such decisions in the courts.



5.3.4 Holding external service providers to account

External service providers should be held to account for poor services or for abusing tender processes. If there is unhappiness with the work done by external service providers, or they are suspected of fraud, these are some options for holding them accountable. Remember to consider safety issues and think about what is likely to work in a specific community and with a specific municipality and political leadership.

1. Petition or lobby the municipality to review how the service is delivered

If the local community requests the municipality to review the manner in which a service is provided, the municipality must do so (MSA s. 77(f)). The MM must investigate, and if direct requests to the MM are not taken seriously, the mayor and council can be approached.

Petition or lobby the municipality to have the service provider listed as a Restricted Supplier

Companies that have abused tender processes or delivered bad services in one municipality are not allowed to get contracts with other municipalities (MFMA s. 112). Unfortunately, too often, this is the case. For this reason, National Treasury must keep a national List of Restricted Suppliers in terms of PPPFA regulations.

An accounting officer (such as the MM) must inform National Treasury of their decision to classify a contractor as a restricted supplier (MSCM reg. 2005 s. 38). National Treasury then updates the database. Accounting officers must check this register before awarding new contracts, as they are not allowed to hire any contractor named in the list (MFMA s. 112; MSCM reg. 2005 s. 38).

National Treasury also keeps a Register of Tender Defaulters, which includes information about suppliers who have been found guilty of corruption related to contracts. For a number of reasons, this register has not been useful and remains almost empty.

2. Talk to opposition political parties

Approach opposition parties to let them know about the challenges with an external service provider.

3. Submit a complaint to industry regulators

Some industries are required to ensure that the companies and individuals who work within them meet minimum standards. This may be because the quality of their work will have consequences for safety, health or the public interest. For example, bad engineering work could lead to bridges collapsing, which may lead to deaths.

For this reason, industry bodies such as the Engineering Council of South Africa (ECSA), the Construction Industry Development Board (CIDB) and the National Home Builders Registration Council (NHBR) must ensure that good work standards are maintained. They can de-register individuals or companies from operating commercially if they do not meet standards or follow a code of conduct. Often, government is not allowed to hire companies that are not registered by their industry bodies.

If a private service provider working in one of those industries provided sub-standard services, you can report them to their industry body. Once a complaint is made, such bodies should investigate.

4. Contact Chapter 9 institutions

The AG can be approached to examine specific tenders to make sure that the correct procedures were followed in the selection and management of the service provider.

5. Use the media

Contacting the media can sometimes assist to bring awareness to the issue and speed up the process of a municipality taking action.



RESOURCE: CITIZEN MONITORING OF PROCUREMENT

The International Budget Partnership South Africa (IBPSA) and its civil society partners in South Africa have done extensive citizen monitoring of procurement and services delivered by private companies. Citizens not only monitor or complain after the project is finished, but form part of the monitoring teams that track ongoing work. The **Asivikelane initiative** has focused on the procurement processes for sanitation services in informal settlements. For more on this project, see <https://asivikelane.org/publications/procurement/>.

For information on other examples as well as detailed explanations of the procurement processes in South Africa and the monitoring possibilities they offer, refer to *Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organisations* and other resources.



TACTICS: USING SOCIAL AUDITS AND MONITORING PROCUREMENT

A rural community in a local municipality in the Eastern Cape had a thriving inter-village sporting tournament history. The community sports facility was the heart of community and when in 2016 the municipality announced it would spend over R3 million to upgrade the facility the residents were extremely excited. After a tender process a company was selected as the contractor and, according to the municipality, the contractor had completed their work and full payment was made with a certificate of completion issued.

However, in reality the workmanship was so poor that the facility was closed because it was a danger to public safety. With the help of Afesis-corplan and the Social Audit Network (SAN), the community decided to investigate using the social audit methodology. In order to understand what the contract should have done they obtained the relevant tender documents. According to the scope of work and drawings the sports field was to have a new gate house, new male and female VIP ablution facilities, new change rooms, new netball court, new basketball court, new grandstands, new athletics track, refurbished pitch for soccer and rugby, irrigation systems and water fountains.

Furthermore, the quality of what had been built was so poor and not having have engineering and construction expertise to collect evidence themselves, the community with the assistance of SAN and Afesis-corplan appointed a company of built environment engineers. The engineers undertook a physical verification and found that the work done had some major deviations from the original contract and that the work done most likely cost approximately R1.6-million and not R3 million. The community now had strong evidence not only that the work on the sports field was bad, but also that it had not been delivered to the specified standard.

The community invited the municipal manager and mayor to a public hearing where the results of the engineers' investigation and the community's experiences would be shared. The municipal manager and the mayor did not attend the public hearing. This did not stop the community. They decided to march to the municipality to submit a petition addressed to the municipal manager and the council speaker calling on them to take action. Because this was an important issue, the broader community rallied and marched to the municipality, together with representatives from political parties.

In September 2018, the municipality announced a new tender process to rectify the substandard work done by the contractors on the sports field.

SECTION III

YOUR ROLE IN THE PLANNING & OVERSIGHT CYCLE

“The objects of local government are—
(a) to provide democratic and accountable
government for local communities;
[...]
(e) to encourage the involvement of
communities and community
organisations in the matters of local
government.”

Section 152, Constitution of the Republic of South Africa



CHAPTER 6:

MEANINGFUL PARTICIPATION

As covered in this guide, a key duty of local government is to provide for participation and the ongoing inclusion of the local community in its decision making.

Community participation or public participation can be defined differently depending on the different context, purpose or audience. S. 152(1)(e) of the Constitution states that the objective of local government is to “encourage the involvement of communities and community organisations in the matters of local government.” The National Development Plan (2030) emphasises the importance of citizen participation in bringing about transformation, stating that “South Africans need to use the avenues provided for in the legislation and others to **help shape the development process and hold the government to account for the quality of services it delivers.**”²⁸

Definition of public participation

The National Policy Framework for Public Participation (2007) provides a useful definition of public participation as “an open, accountable process through which **individuals and groups within selected communities** can **exchange views and influence decision-making**. It is a democratic process of engaging people, deciding, planning, and playing an active part in the development and operation of services that affect their lives.”²⁹ Public participation can also be defined as a “**communication and collaborative problem-solving mechanism** with the goal of achieving **representative and more acceptable decisions.**”³⁰

Some participation mechanisms at the local level are ‘**built-into**’ **municipal structures**. They include regular engagement with and report-backs to ward committees, CDWs, traditional councils, and advisory committees.

Importantly, **participation and accountability are also built into the main decision-making processes of municipalities**. The mechanisms included in the **planning, implementation and oversight cycle** enable participation in decisions regarding which municipal projects should be prioritised and how the municipality’s money should be spent. They also provide important mechanisms for holding the executive and the administration to account.

This section of the guide outlines these decision-making processes, how they can be used to mobilise around service delivery problems, and how participation can make the municipality’s planning and accountability mechanisms stronger.

“Invited” and “invented” spaces of participation

Community participation in municipalities is often understood in terms of participation in the IDP process or through ward committees, however it is broader than this. **It is important to recognise both “invited” and “invented” spaces of participation at the local level.**

- **Invited spaces** are formal, structured platforms and processes created by municipalities or other institutions to facilitate community participation in governance e.g. ward committees or public hearings.
- **Invented spaces** are informal, citizen-led initiatives and spaces, such as community protests or civics organisations, where citizens and communities independently organise and voice concerns outside official channels.

These spaces complement each other, with invited spaces ensuring structured engagement around formal legislated processes, and invented spaces empowering communities to address key issues and pressing concerns. Municipalities must ensure that they engage the “invented” spaces of communities with respect and afford them the same principles as the formal participatory processes and spaces they convene.

“Invited” Spaces		“Invented” Spaces	
Ward Committees	Community Development Workers (CDWs)	Community Forums	Crisis Committees
IDP Representative Forums	Public Meetings and Imbizos	Social Movements	Civil Society Organisations (CSOs) and Community Based Organisations (CBOs)
Petitions	Council committees	Service Delivery Protests and Marches	Street Committees and Neighbourhood Associations

6.1 First things first: participation must be meaningful!

Public participation is an important component of effective local governance, but what does it mean and how can all stakeholders help to ensure that it is more than a compliance exercise? Regardless of how community members participate, our legal frameworks set out conditions, which, if not met, render public participation and consultation meaningless.

The Constitutional Court has ruled in a number of cases that the form of participation matters – this means that not just any form of public participation will do. In order to be valid, government’s consultation processes must meet certain criteria for testing whether participation is meaningful. These criteria include things like whether the process was timely and accessible, whether it enabled informed participation by those most affected, and whether it was fair and transparent.³¹ The checklist below expands.



CHECKLIST: WAS A PUBLIC PARTICIPATION OPPORTUNITY MEANINGFUL? DID THE MUNICIPALITY...

Announce the participation opportunity in the local newspaper and on radio (where possible) (MSA s. 20) or using other appropriate methods?	YES	NO
Provide accurate information, in local languages , on where and when engagement would take place?	YES	NO
Provide enough time for the community to prepare for the engagement , as well as give out necessary information and materials beforehand?	YES	NO
Choose venues and times for meetings that are accessible to those who will be affected by decisions?	YES	NO
Clearly and objectively explain the impact the decision will have on people's lives , in understandable language?	YES	NO
Treat everyone at the consultation fairly and equally ?	YES	NO
Listen to all views with an open mind before a decision was made?	YES	NO
Make special provision for people who cannot read or write, people with disabilities, women and other disadvantaged groups? (MSA s. 17 and 20).	YES	NO



MEANINGFUL ENGAGEMENT IN OLIVIA ROAD³²

For many years, the City of Johannesburg was evicting thousands of residents of inner city 'bad buildings' because of health and safety concerns and its broader Inner City Regeneration Strategy. In 2006, residents of two buildings teamed up with the Inner City Resource Centre (ICRC) and human rights lawyers to resist their eviction and request suitable alternative accommodation in the area. Community mobilisation was used to push this case in the media and on the ground.

In 2007 the *Olivia Road* case went to the Constitutional Court, which ordered a process of "meaningful engagement" between the occupiers and the municipality. After the two sides engaged and talked about the situation, the court facilitated a settlement agreement between the occupiers and the City, which provided the occupiers with interim services at the buildings and a plan for them to move to nearby alternative accommodation. They were relocated in 2008 and still live in the accommodation today.

The case is important for two reasons. First, it stopped the City from evicting poor occupiers without providing alternative accommodation. Second, it brought the need for meaningful engagement in eviction cases to the attention of judges throughout the country.

This means that it is now the law that if municipalities want to evict people, they have to discuss alternative solutions with the residents before eviction.

6.2 The municipal speaker: a champion of public participation!

In South African municipalities, the speaker has a crucial role in facilitating public participation. The speaker's office often plays a central role in coordinating public participation initiatives across different departments (including the IDP unit) and committees within the municipality. The speaker oversees mechanisms like public meetings, ward committees, and petitions.

As the custodian of public participation, the speaker has a number of responsibilities, including to:

- Foster a culture of public participation within the municipality;
- Encourage the involvement of communities in the affairs of the municipality;
- Establish a Public Participation Unit (PPU) and develop Public Participation Plans (including all departments);
- Ensure that there are functional Section 79 committees of council like MPACs – with elements of public participation;
- Ensure the establishment of ward committees, provide support and play an oversight role over ward committees;
- Establish a Ward Committee Forum for ward committees to learn and support each other; and
- Ensure that ward councillors involve communities in their daily work and call community meetings as required (at least 4 meetings in a year).

6.3 The right of access to information

Participation can only be meaningful, and government can only be held accountable, if people have **access to the necessary information**. Section 32 of the Constitution states that "everyone has the right of access to any information held by the state".

The *Promotion of Access to Information Act (PAIA)* is South Africa's main access to information law and enables people to gain access to information held by both private and public bodies, including municipalities.

The *Protection of Personal Information Act (POPIA)* promotes the protection of personal information processed by private and public bodies and establishes minimum requirements. Importantly, POPIA shouldn't be used as an excuse not to provide important information to residents or communities, as private information of individuals can be redacted (removed).

The **Information Regulator** is an independent body established in terms of section 39 of POPIA and is empowered to monitor and enforce compliance by public and private bodies with PAIA and POPIA.

6.3.1 Accessing municipal information and PAIA requests

The municipal manager is ultimately responsible for making municipal records available – in other words – ensuring that the community has access to documents about the municipality. In terms of PAIA the municipal manager is also responsible for appointing an **information officer** whose role is to assist members of the public to access municipal information.

According to the MSA and MFMA, many of the municipality's most important documents must be made available **automatically**. These are listed below.

Some documents, however, are not made public automatically. According to s. 14 of PAIA, every municipality must also have a manual to assist the public in accessing information. The manual must include details on what records the municipality has, and how to access them, contact details for the information officer, and any other information that might assist a person in exercising their rights under PAIA.

PAIA can be used to request specific information or records. A PAIA request via a form can be made to any state body for any information, and a request can be made to a private body for any information that you need to uphold your rights.



For more information and guidance on how to do a PAIA request and the relevant forms, see the Information Regulator's website: <https://infoeregulator.org.za/training/wp/paia-guidelines/>

6.3.2 Municipal documents that must be available

The documents below must be available at municipal offices, libraries, and on the municipal website 5 days after their tabling in council (MSA s. 21A).

Unless otherwise stated, publicising the documents below is required by the MFMA (s. 75).

• The IDP, within 14 days of approval (MSA s. 25) • The annual and adjustments budget along with all documents related to them (MFMA s. 22) • The Service Delivery Budget Implementation Plan (SDBIP) (MFMA s. 53) • All by-laws compiled into the Municipal Code (MSA s. 15) • The annual report (MSA s. 46) • All public-private partnership agreements • Code of conduct (MSA s. 70)	• The quarterly reports tabled in council by the mayor • A register of all bids received for tenders, including the name of the bidder, the amount, and the BBBEE status if relevant (MSCM reg. 2005 s. 23) • Notices of council meetings, dates and venues (MSA s. 19) • Performance agreements with senior staff (MFMA s. 53) • Service Delivery Agreements (SDAs) • Contracts for all awarded tenders above R200 000 • A register of all bids received for tenders, including the name of the bidder, the amount, and the BBBEE status if relevant (MSCM reg. 2005 s. 23)
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The municipality must also make any of these documents available in any of the official languages upon request.

6.3.3 No documents on website? Next steps

- Visit the municipality's offices. If the documents aren't available there, the IDP manager, the information officer or the MM can be contacted for assistance.
- Ask a councillor or ward committee members for help.
- Contact the speaker's office for assistance.
- Contact national or provincial treasury – many of the above documents must be submitted to them as well.
- Ask a councillor to get the information by asking a question in council.



TACTICS: CIVIC PARTICIPATION BYLAW³³

As part of its work with local communities, the Development Action Group (DAG) conducted a citywide review of developments opposed by civic organisations in Cape Town. The review highlighted that civic organisations were unable to influence local government decisions through existing mechanisms. In some cases, communities were not heard despite massive efforts. In one community, for example, a development was approved despite the submission of more than 1 000 objections. DAG's review identified three key challenges to participation:

- Limited access to information before and during participatory processes;
- The technical nature of some discussions (e.g. regarding Environmental Impact Assessments) made it difficult for many to engage; and
- The experience of participation mechanisms as 'tick-box' exercises, where decisions have already been made, and consultation only takes place to comply with legislation.

In light of these limitations, DAG, in partnership with 10 civic organisations, created Civic Action for Public Participation (CAPP), an initiative to reshape and reframe participation processes. In 2016, the participating civics collaboratively drafted a manifesto (declaration) on public participation. It outlined both principles and mechanisms to address the issue of 'problematic, unproductive and tokenist (tick-box) engagements'. The mechanisms include those to minimise conflicts of interests and the use of municipal budgets to support participation and citizen capacity-building initiatives. In 2018, CAPP developed the manifesto into a citizen-led by-law on participation, and launched a campaign urging the City of Cape Town to adopt it. In 2019 the proposal for a new regulation for citizen participation, signed by 23 civic organizations, was presented to the mayor. After a lively discussion, the mayor and his officials recognised the need to make improvements to existing participation processes. While a by-law alone is unlikely to solve all these problems, it's a starting point for developing a shared understanding of meaningful participation between residents and the city.

Take a look at proposed draft by-law here: https://peoplesbylaw.wordpress.com/wp-content/uploads/2018/12/Draft_Community_Participation_By-law_19_December_2018.pdf



COMPACT Community Participation Index

The COMPACT Community Participation Index is one of several tools and resources forming part of the COMPACT Toolbox. The purpose of the index is to improve community participation in planning and to deepen participatory democracy in municipalities in South Africa. The index combines conceptual, normative and practical ways to **measure and monitor the performance of municipalities** across six dimensions and 50 indicators. The index can also be viewed as a reference document or checklist. The Index is categorised into six broad dimensions:

1. Shared Vision for Community Participation

This dimension speaks to a municipality fostering a culture of community participation and developing a shared vision for how to include citizens in decision-making. The high-level indicators for this dimension show that the relationships between the municipality and community are strong and planning is aligned to community needs.

2. Budgeting and Resourcing for Participation

This dimension refers to a municipality ensuring that sufficient resources (both financial and non-financial) are reserved to facilitate community participation in a given financial year.

3. Community Participation in Performance Management

This dimension speaks to a municipality involving communities in the development of its performance management system and in the monitoring and review of performance and projects.

4. Participation in the IDP Process

This dimension speaks to participation in the IDP process and encourages a municipality to establish appropriate mechanisms, processes and procedures to facilitate meaningful participation of citizens and other stakeholders.

5. Ward Committee Functionality

This dimension refers to the functionality of ward committee structures and encourages municipalities to ensure ward committees are functioning well and are enhancing participatory democracy.

6. Public Participation, Transparency and Accountability

This dimension refers to the various other ways in which a municipality should be undertaking public participation and fostering transparency and accountability, as a start by providing citizens and communities with timely, accessible and accurate information.

There are 50 indicators in the index, with a more detailed description provided for each indicator. Importantly, there is also space for **qualitative information** to be provided for each indicator, where notes and comments on progress, opportunities and challenges can be recorded. There is also a column for the **municipal custodian** for each indicator, as well as a column where **support needs** can be identified to fully realise each indicator.

A simple measurement system is used. There are **three possible rankings for each indicator (Low, Medium and High)**, each with a different score allocated (0 points, 1 point and 2 points). These are in turn colour coded as red, yellow and green:

- **Low (0):** The indicator has **not been met at all**, or has been **met in very few respects**, and considerable work is still required by the municipality to meet the indicator fully.
- **Medium (1):** The indicator has **been met in some respects**, however more work is required by the municipality to meet the indicator fully.
- **High (2):** The indicator has **been fully met or is close to being met fully** if the municipality stays on the correct path.

There is a drop-down column for scoring each indicator. The scores for each indicator are then automatically added up and a **final score out of 100** for the municipality is reached, which can also be reflected as a **percentage score**. The following provides some indication of performance of a municipality in terms of **percentage score bands**:

- **0-25% - Very poor levels** of community participation in municipal planning
- **25-50% - Poor to average levels** of community participation in municipal planning
- **50-75% - Average to good levels** of community participation in municipal planning
- **75-100% - Very good to excellent levels** of community participation in municipal planning

The total score of each municipality can be tracked over each year, with an aim to improve the score in each municipality over time. The process of completing the index annually should be a **collective exercise of self-assessment and solution-finding within a municipality**. This could be facilitated by the Office of the Speaker and/or the IDP Office, and would happen before the new financial year begins in July. Different dimensions/indicators of the index could be populated by different municipal stakeholders. **Ward councillors and ward committees can be brought in to provide feedback on the index.** Municipalities can also engage key stakeholders, community leaders and CBOs/CSOs, in providing feedback and monitoring the index each year.

Read more about the Community Participation Index at: <https://pari.org.za/compact/>

CHAPTER 7:

PARTICIPATION IN THE PLANNING, IMPLEMENTATION AND OVERSIGHT CYCLE

The complex work of municipalities happens through a constant and simultaneous cycle and flow of municipal planning, implementation and oversight processes:

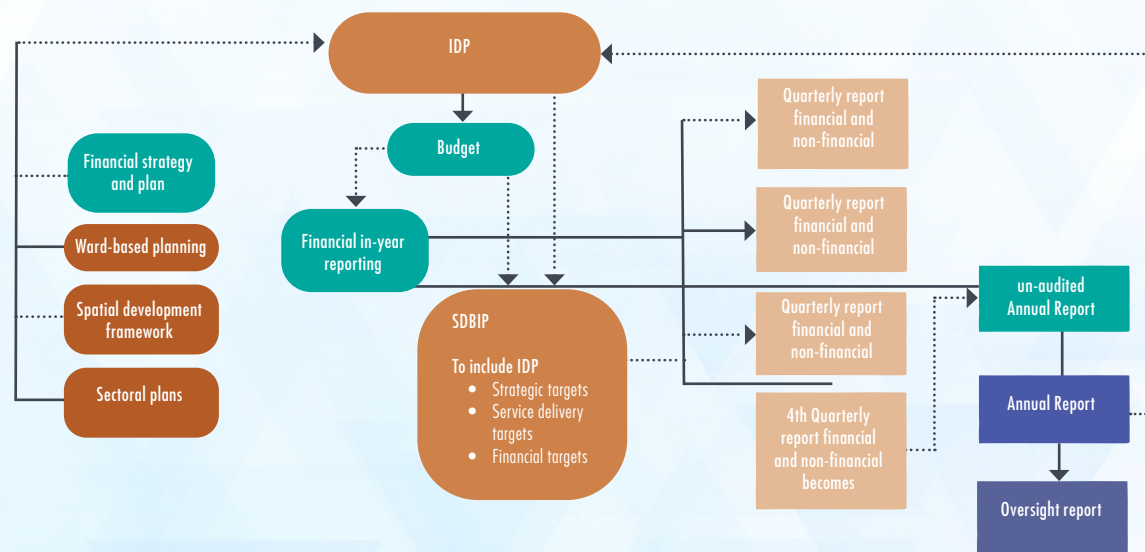
1. **Planning** (making decisions on priorities, developing the IDP and departmental plans, and budgeting for projects);
2. **Implementation** (implementing projects and delivering services); and
3. **Oversight** (monitoring expenditure and performance, developing and checking reports).



At any given time, different stakeholders in a municipality are involved in different actions related to these processes of planning, implementing and oversight. All of a municipality's work is done on behalf of the communities it serves, and as such, the voices of communities should be heard in all of the processes. Laws in South Africa place great emphasis on the rights of civil society and communities to communicate honestly and frankly with their municipalities about planning, implementation and oversight activities.

The diagram below sets out the key processes and documents related to the different stages of the planning, implementation and oversight cycle.

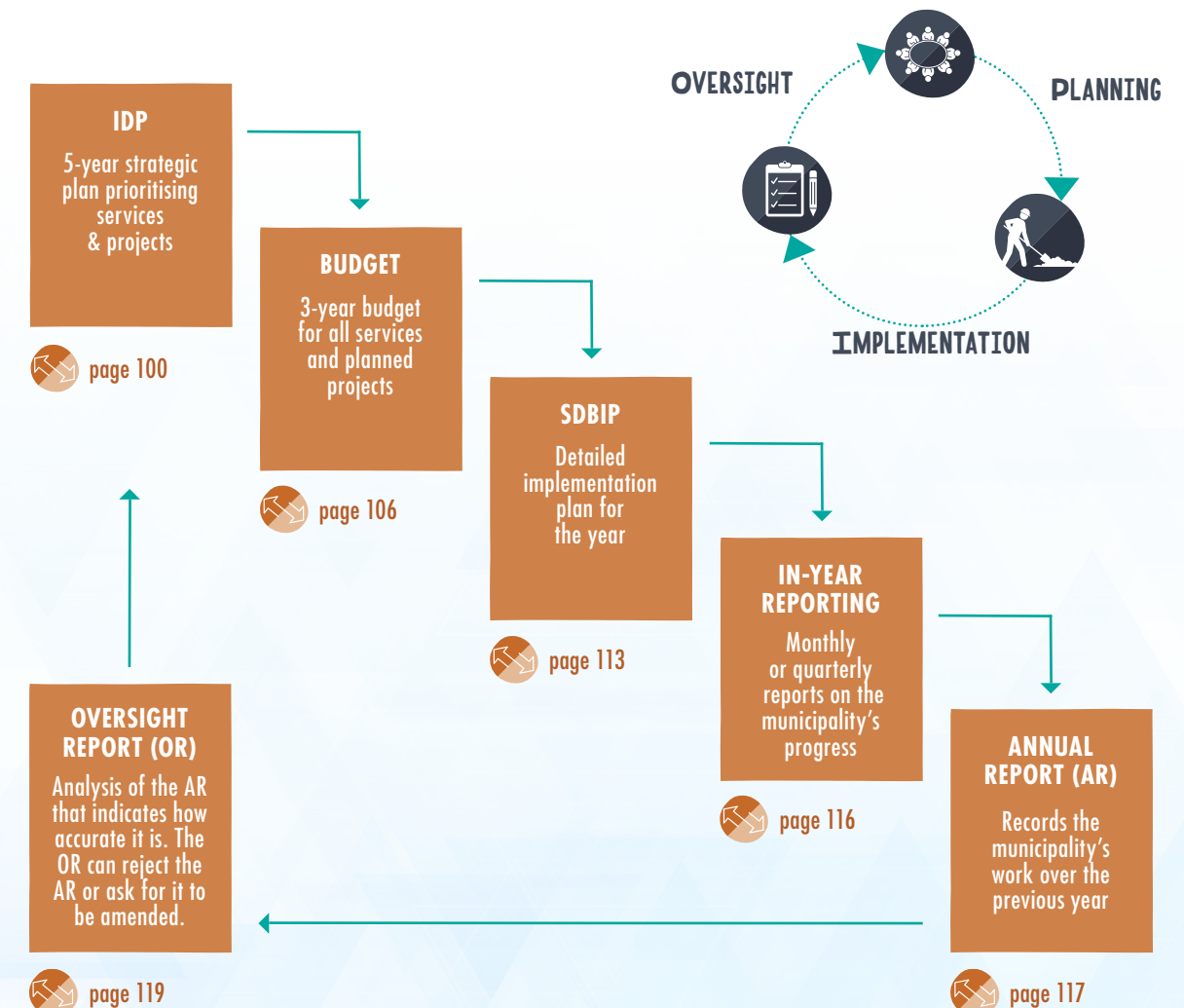
Local Government Accountability Reporting Cycle



THE DRAFTING, DEBATE AND APPROVAL OF THESE DOCUMENTS GIVE CITIZENS THE OPPORTUNITY TO HELP DECIDE WHAT THEIR MUNICIPALITY SHOULD PRIORITISE AND HOW TO FIX WHAT HAS GONE WRONG. (SEE THE FULL CYCLE ON THE INSIDE OF THE FRONT COVER OF THIS GUIDE.)



The six key documents that form the foundation of a municipalities' planning, implementation and oversight processes, and are fundamental to what will or will not happen and how money is spent in a municipality, are explored in this chapter. They are:

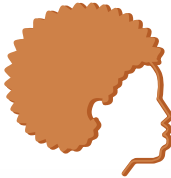


 The GoMuni portal developed by National Treasury is a helpful resource and has documentation for all municipalities, including IDPs, budget documentation, SDBIPs, Annual Reports and annual audits: https://lg.treasury.gov.za/ibi_apps/public



PLANNING

In South African municipalities the key planning documents are the **Integrated Development Plan (IDP) and the budget**, which set the strategic and financial framework for local governance. The IDP outlines a five-year vision for service delivery and development. The budget, aligned with the IDP, allocates resources to achieve these priorities. Community participation is central to the development of these two documents and this requirement is set out in various laws and regulations. Public hearings and consultations must ensure that communities shape these plans, promoting inclusive and transparent governance.



THE BUDGET IS TECHNICALLY BOTH A PLANNING AND IMPLEMENTATION DOCUMENT. ITS ROLE DEPENDS ON THE PHASE OF THE MUNICIPAL CYCLE. SECTION 7.2 OF THIS GUIDE PROVIDES INFORMATION ABOUT THE BUDGET.

7.1 The Integrated Development Plan (IDP)

According to Chapter 5 of the MSA, the IDP is the municipality's most important planning tool. It presents the municipality's five-year development strategy, and guides and informs all planning and development and all decisions about planning and development. A new IDP is drawn up every five years after elections, **but must be reviewed each year**. Once approved, the IDP is legally binding and overrules all other municipal plans.

The IDP document usually includes the following sections:

- Spatial analysis
- Service delivery
- Local economic development (LED)
- Transformation and organisational development
- Financial viability management
- Good governance and public participation

The IDP is intended to coordinate the work of local government with other spheres of government, and is often a juggling act between different community needs and different sectors of a municipality. To help balance and coordinate the IDP's actions and processes to achieve both short-term and long-term objectives, all municipalities should have an IDP manager, IDP coordinator and/or IDP official.



To ensure that communities can participate in the IDP review process, the municipality must develop a Process Plan. S. 28 of the MSA and s. 21 of the MFMA require municipalities to approve a process plan at least 10 months before the new financial year. This sets out the schedule for the planning, drafting, adoption and review of the IDP and annual budget and related policies. The Plan must be tabled in council no later than 1 September (MSA s. 28 and MFMA s. 21).

THE PROCESS PLAN MUST BE DRAFTED WITH THE PARTICIPATION OF COMMUNITIES AND IS A SCHEDULE SETTING OUT HOW THE MUNICIPALITY WILL EVALUATE AND MONITOR THE IMPLEMENTATION OF THE IDP, INCLUDING HOW IT WILL GET VIEWS AND COMMENTS FROM CITIZENS AND COMMUNITIES ON THE IDP.



What information should be in the IDP?

- What are the existing conditions in the municipality? What are the most serious problems?
- Who are the communities in the municipality who do not have access to basic services?
- What improvements does the council want to see overall?
- What improvements can be realistically achieved in five years, and how?
- What are the municipality's priority service delivery and infrastructure projects, and where will they take place? Who is responsible for these?
- What service delivery targets has the municipality committed to? What indicators (measures) will be used to measure whether progress is being made?
- How is the municipality planning to address housing needs?

In addition to the above information, the IDP often provides valuable information about the structure of the municipality.



THE MSA STATES THAT A MUNICIPALITY MUST ENCOURAGE AND CREATE THE CONDITIONS FOR COMMUNITIES TO PARTICIPATE IN THE DEVELOPMENT, IMPLEMENTATION AND REVIEW OF THE IDP. THIS REQUIRES BOTTOM-UP PLANNING FROM THE MUNICIPALITY, WHERE THE VIEWS OF THE COMMUNITY ARE FIRST OBTAINED BEFORE PRODUCING OR REVISING THE PLAN.

UNFORTUNATELY, MUNICIPALITIES OFTEN DO TOP-DOWN PLANNING, WHERE THEY BRING THE REVISED PLAN FOR THE COMMUNITY TO JUST RUBBER-STAMP.



CHECKLIST: SOME QUESTIONS TO ASK ABOUT A MUNICIPALITY'S IDP

Does the IDP accurately describe the needs and challenges of the community?	YES	NO
Does the IDP explain the municipality's vision for the type of services it wants to deliver?	YES	NO
What kind of solutions does the IDP present in relation to the challenges the community faces? Do they seem like solutions that will help or work?	YES	NO
What does the IDP say about the service delivery issues? Does it reflect the experience, needs and ideas of the community?	YES	NO
Does the IDP give plans for different wards?	YES	NO

Does the IDP say who is responsible for implementing different programmes?	YES	NO
What are the major projects the IDP says the municipality will implement, and do they address the most important and urgent problems of the municipality and the community?	YES	NO
Does the IDP (and the Municipal Spatial Development Framework included in it) say where new housing will be built?	YES	NO

IF THERE IS ANY INFORMATION THAT IS NOT UNDERSTANDABLE OR CAN'T BE FOUND, ASK A COUNCILLOR, WARD COMMITTEE MEMBERS, OR A LOCAL NGO. WE HAVE THE RIGHT TO KNOW!



7.1.1 How is a new IDP developed and where can communities get involved?

Every five years, after the winners of local government elections are announced, the municipality begins writing its new development plan or IDP. Importantly, the IDP sets out a list of projects for the upcoming years. These projects can be in a specific ward or area, or can be projects that benefit people across wards in the municipality.

Ideally, ward-based planning should be happening on an ongoing basis in each geographical ward of the municipality. The review of municipal sector plans (e.g., housing plans, transport plans, etc.) should also happen every couple of years, with community participation forming part of this process.

Ward-level plans and sector plans then get prioritised and sequenced and form part of the broader municipal-wide plan at the council level.

We can think of the IDP process as having four steps. Each step must include communities (MSA s. 29), with examples of where communities can input in brackets:

- 1) **Needs analysis** (e.g. surveys by ward committees and CDWs; public meetings with communities and other stakeholders)
 - What are the needs of the municipality's residents?
 - Which needs must be prioritised?
 - What resources does the municipality have?
- 2) **Strategy development** (e.g. IDP representative forum; public meetings on solutions; meetings with affected communities and stakeholders)
 - What are the municipality's long- and medium-term goals?
 - What strategies can meet these goals?
 - What specific projects can meet these goals?
- 3) **Project identification** (e.g. representation of stakeholders on project committees; formation of sub-committees)
 - Who will benefit?

- What will be the cost and how will it be paid for?
- When will it be implemented and who will manage it?
- What indicators will help measure impact?

4) **Integration** (e.g. community engagement with ward councillors and administration on specific projects)

- What will happen when?
- Which projects must happen first?

7.1.2 How is the IDP reviewed each year?

Once an IDP is adopted, it must be reviewed every year, together with the budget. This allows for flexibility and changes to the IDP. The municipality must adjust its IDP taking into consideration changing community needs, priorities, opportunities and projects. Following the tabling of the Process Plan, the municipality must engage with communities on this.

The MSA in s. 34 deals with the review of the IDP and states that a municipal council must review its IDP annually in accordance with an assessment of its performance measurements to the extent that changing circumstances so demand, and may amend its IDP plan with a prescribed process.

Public participation forms an important component on the IDP review. The ward-level needs analysis process usually happens in October and November each year, with municipalities organising community meetings in each ward (or in clustered wards). Municipalities which have IDP representative forums are meant to hold meetings to inform the IDP review. The draft annual IDP review is then normally ready in March and is presented (together with the budget) to communities in April and May for further comment.



CITIZENS AND COMMUNITIES MUST BE GIVEN AN OPPORTUNITY TO PROVIDE FEEDBACK ON THE DRAFT IDP REVIEW.

Municipalities often hold public meetings or other engagements where the draft IDP review and budget is presented. People are also able to email inputs and comments to the municipality. These spaces and platforms provide an important opportunity for community voices to be heard, but this means that some homework needs to happen beforehand. Ward committee meetings and ward public meetings are a good place to discuss issues affecting the ward and the municipality in more detail, prior to the IDP meetings called by the municipality. These inputs by community members and other stakeholders must be consolidated in the IDP review and the final document must be adopted by council before the end of June.



A municipality must give the local community at least 21 days to comment on the final draft of its IDP before the plan is submitted to the council for adoption.



Afesis has developed videos in English and isiXhosa explaining the IDP process. See <https://www.youtube.com/watch?v=XTOrBKEUHUc> (English) and <https://www.youtube.com/watch?v=XTOrBKEUHUc> (isiXhosa)



7.1.3 Participating in the IDP Representative Forum

Every municipality is required by law to provide ways for communities to participate in its decision-making processes (MSA s. 16). If a municipality doesn't have an appropriate municipal wide structure for community participation, it must establish a forum that will enhance community participation in the drafting and implementation of the IDP, as well as in the monitoring of a municipality's performance (Reg. 15 of the 2001 Municipal Planning and Performance Management Regulations). One way a municipality may choose to do this is through the establishment of an **IDP representative forum (often referred to as an IDP RepForum)**.

A municipality must invite the local community to identify people to serve on the forum, including ward committee members, and the forum should be representative of the composition of the local community. The IDP representative forum should comprise stakeholders across the municipality including CDWs, the community, civil society, traditional leaders, local business forums etc. The main responsibilities of the IDP representative forum should be to:

- Provide a mechanism for discussion, negotiation and decision-making between different stakeholders and the municipality regarding the municipality's IDP and budget;
- Ensure communication between all municipal stakeholders; and
- Monitor the IDP planning and implementation process.³⁴

If a municipality chooses to establish an IDP representative forum, then the process plan should provide detailed information about it, including:

- Who will be on it
- Its role and responsibilities
- When and where it will meet
- Its code of conduct and/or terms of reference.³⁵

A municipality must convene regular meetings of the forum to discuss the process to be followed in drafting the IDP, to consult on its content, and to monitor its implementation. The forum must also be a space to discuss the development, implementation and review of the municipality's performance management system and monitor performance in relation to the key performance indicators (KPIs) and performance targets. Members of the forum must be given least 14 days before any meeting of the forum to consult their respective constituencies on the matters that will be discussed.



REALITY CHECK: Unfortunately, in many municipalities, the IDP representative forum meetings are usually poorly advertised and can be expensive to attend. The meetings are often reduced to a tick-box exercise, with municipalities informing communities of what they plan to do, based on plans that have already been developed.

Communities can access a municipality's process plan so that they know the composition, roles and responsibilities of their IDP representative forum. They can attend and participate in forum meetings and call for more meaningful engagement on important issues.



7.1.4 What to do if the IDP does not represent community needs and priorities?

There are a number of steps that can be taken if participation in the IDP process was not possible, or if, despite participation, the final IDP does not represent community needs, concerns or suggestions.

1. Ask for the process plan to be changed

The process plan should have been drafted in consultation with the community and key stakeholders. Councillors, the mayor, the speaker or the municipal manager can be asked to adjust it if it excluded a community. Ward committee members, ward councillors or other councillors (opposition councillors may be especially interested) can be approached for support.

2. Lobby for the municipality to address your concern

It is important to understand the reasons proposals or concerns were not included. These could be political, technical or financial, or a combination. Ask councillors, ward committee members or officials for the reasons proposals or needs were not included to understand what steps to take next. Consider submitting a petition to the council outlining concerns.

3. Submit a complaint to the province

If the IDP process ends without a community having had a chance to give input, a complaint to the MEC for local government can be submitted. If the municipality did not follow its own process plan, the MEC can ask them to do so. If, during additional consultations, it emerges that the IDP requires adjustment, the council may do so (MSA s. 32).

4. Lobby for the MEC to address concerns

Although they have no legal authority to do so, the MEC for local government can influence a municipality's IDP in other ways. Importantly, they can influence municipal plans by deciding how provincial funds will be spent. Lobbying the province to invest in projects that address concerns may change a council's IDP in the long term.

5. Use the media



IMPLEMENTATION

The **annual budget, Service Delivery and Budget Implementation Plan (SDBIP), and performance agreements** are key implementation documents that operationalise (give effect to) the IDP. The budget allocates financial resources to achieve IDP priorities, the SDBIP sets measurable service delivery targets and performance indicators, and performance agreements hold municipal managers and senior managers accountable for delivery.

Community participation through written or oral representations, or facilitated through invited spaces like ward committees and IDP representative forums, allows residents to influence these documents and processes.

7.2 The Budget

The budget is where a municipality financially plans for the coming financial year's activities, and shows how much money will go towards each of the activities identified in the IDP. Importantly, an activity may be included in the IDP, but if it is not budgeted for, it cannot happen.

The municipal budget is technically both a planning and implementation document. Its role depends on the phase of the municipal cycle. During preparation (January–June), the budget is a planning document, aligning financial resources with IDP priorities, setting expenditure frameworks, and incorporating community input through invited spaces. Once approved (by 1 July) the budget becomes an implementation document, guiding expenditure, revenue collection, and service delivery.

The budget also includes information on two additional years to help medium-term planning. In terms of the MFMA, the mayor must establish a Budget Steering Committee which guides the budget process.

What information should be included in the budget?

- How much money the municipality plans to receive and spend over the next three years, and in particular for the next year.
- Where the money will come from – national government, rates, charges or loans. Will the revenue grow or shrink?
- How much the municipality is planning to spend in the next three years. Will expenditure grow or shrink?
- How the municipality will divide its money between the different services and projects it will fund this year.
- The details of Service Delivery Agreements (SDAs), including any changes to existing ones.
- How much the municipality is spending on capital projects and how much it is spending on operating costs.

The information will you NOT find in the budget:

- The total spending that will take place in a ward. Although some projects may be ward based and may be presented as such, others may serve multiple areas or not be directly linked to the ward.
- Project specific spending information.

ALTHOUGH THE BUDGET IS A TECHNICAL DOCUMENT THAT IS NOT EASY TO READ, IT IS EXTREMELY IMPORTANT. WE SAY 'PUT YOUR MONEY WHERE YOUR MOUTH IS' WHEN WE WANT TO KNOW WHETHER SOMEONE IS SERIOUS ABOUT A PROMISE. THE BUDGET SHOWS US EXACTLY THAT: WHERE THE MUNICIPALITY IS PUTTING ITS MONEY AND WHAT PROMISES IT IS KEEPING!



7.2.1 How is the annual budget drafted?

The MFMA (Chapter 4, especially s. 21 – 23) requires municipalities to follow a budget drafting process that includes public participation, a review of the progress made by the municipality, consultation with national and provincial government, and economic analysis and projection. The process is closely linked to that of the drafting and reviewing of the IDP.

The illustration below sets out both the public parts of the budget drafting process, as well as some of the 'behind the scenes' work that can be even more important to know about.

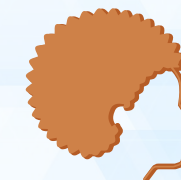
The mayor must draw-up a timetable for the IDP and budget processes, which must be tabled in council 10 months before the start of the new financial year (on 1 July). This process plan is a very important document. The draft budget must then be tabled in council before 1 April. After the community consultation process, the mayor may table changes to the tabled budget. Council must then begin to consider the budget for adoption, before 31 May.



The council must adopt a budget by the start of the financial year (1 July). If it fails to do so, the provincial executive must intervene to ensure that a budget is approved. This requires dissolving the council. (Constitution s. 139(4)).

7.2.2 The adjustment budget

The **budget can be adjusted (changed) during the course of the year**. This may be necessary if it is clear that the municipality will collect less money than it planned, if the municipality received additional funds, or if it needs to shift money saved in one project to others. Adjustment budgets are also used to retrospectively (after the fact) authorise expenses that could not have been anticipated but were unavoidable (MFMA s. 28). This process usually happens in January each year, in terms of the mid-term review.



WHILE THE BUDGET ADJUSTMENT PROCESS DOES NOT REQUIRE PUBLIC CONSULTATION, THE ADJUSTMENT BUDGET TABLED IN COUNCIL CAN BE A GOOD SOURCE OF INFORMATION. IT MUST DETAIL THE CHANGES PROPOSED, EXPLAIN WHY THEY ARE NECESSARY AND HOW THEY WILL IMPACT CURRENT AND FUTURE BUDGETS (MFMA S. 28).

DRAFTING THE ANNUAL BUDGET: WHAT HAPPENS WHEN?³⁶



TACTICS: USING THE BUDGET TO HELP HOUSEHOLDS ACCESS FREE BASIC SERVICES (FBS)

A community within a local municipality in KwaZulu-Natal was concerned about water provision to its members. While many had taps in yards, they could not afford to pay the bills the municipality sent them for water. They were especially concerned because for some, the bills included costs going back a long time, adding up to huge amounts they would never be able to pay. The residents knew that providing water was a local government responsibility and, working with a local NGO called the Built Environment Support Group (BESG), they found out through the IDP that it was the district municipality (DM) that was responsible for supplying water.

After reading the budget and the SDBIP, BESG and the community learnt that the DM received money from national government specifically to provide free basic services (FBS) to those who qualified as indigent. In the space of 2 years the DM increased its allocation for Free Basic Water (FBW) 12-fold to R59 million. The budget activists were sceptical because the municipality did not undertake further registration of 'indigent' households. Furthermore, the Auditor-General in his report on the DM noted that the indigent register was not in order stating that "people who are not eligible for indigent support appear on the list". The DM had advertised an invitation for service providers to quote to compile an indigent register.

In the interim the community decided to undertake its own registration drive and a total of 203 households were successfully registered. The community now has a dedicated box at the councillor assistant's office where the community members submit their completed forms. The activists' credibility resulted in the councillor co-opting a community member to represent their interests in a poverty alleviation initiative of the premier's office to improve service delivery coordination.



To find out more about the community's Free Basic Service's advocacy you can watch this short video: <https://vimeo.com/292660007>

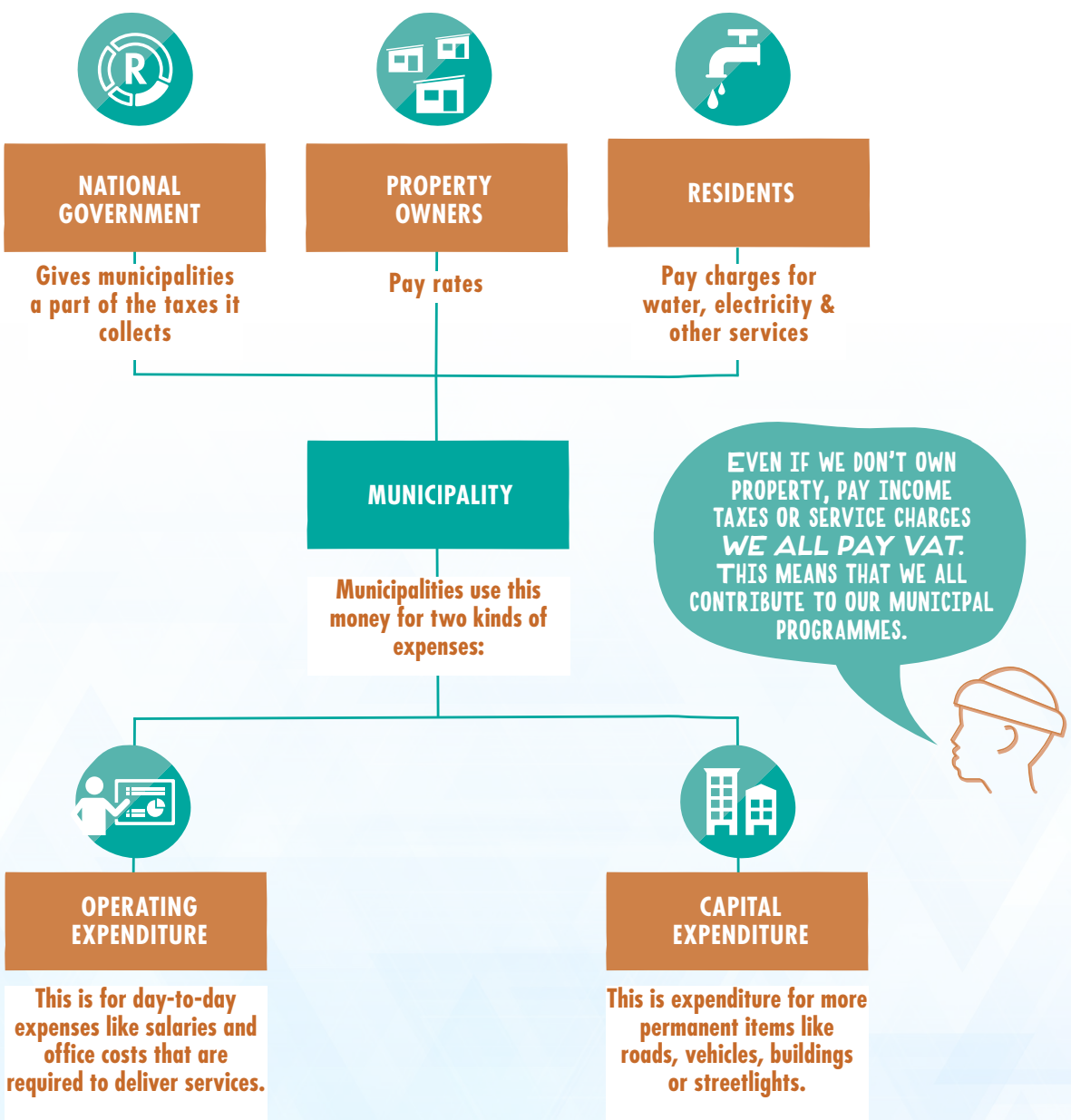
BUDGET ADVOCACY CAN BE VERY POWERFUL, BUT ALSO REQUIRES IN DEPTH ANALYSIS AND EXPERTISE. SEE CHAPTER 14 FOR RESOURCES TO HELP.



7.2.3 Some budget basics

Where do municipalities get their money and what type of expenditure do they have?

Municipalities get their money from three main sources:



For an overview of some of these concepts, and how the budget relates to other municipal documents see <https://municipalmoney.gov.za/> for videos in English, isiXhosa, isiXhosa, isiZulu, Sesotho and Afrikaans.

What is the money from national government for?

National government gives funding to municipalities in two ways:

MONEY FROM NATIONAL GOVERNMENT	
EQUITABLE SHARE (ES)	CONDITIONAL GRANTS
The ES is the share of nationally collected taxes given to municipalities by national government. It is an <u>unconditional grant</u>, which means that the municipality can use it for what it thinks is important. The ES is supposed to ensure that poor municipalities get enough money to operate and deliver services, even to poor households that cannot pay. Every municipality receives a different amount, based on its population size, how many low income households it has and other factors. This means a part of the ES is specifically given to cover poor households' services. Because the ES is unconditional, however, this cannot be legally enforced. Other parts of the ES are meant to ensure that municipalities with few ratepayers have enough money to operate.	National departments give grants to municipalities to achieve specific goals. This money can only be used for services or projects related to these goals. For example: • The Municipal Infrastructure Grant (MIG) from CoGTA is for improving infrastructure for basic services. • The Department of Human Settlements provides the Urban Settlements Development Grant (USDG) to metros for urban planning, land acquisition and infrastructure, with a particular focus on informal settlement upgrading.

Financial management is possibly the greatest challenge faced by local government

Unfunded budgets

Municipalities often spend more money that they have, an issue raised each year by the AG. The MFMA requires councils to adopt credible, or balanced, budgets. This means that planned expenditure is not more than the money realistically expected to be raised. However, councils often adopt unfunded budgets, despite being advised against this. When municipalities' budgets aren't credible, it means they struggle with accurately estimating costs or allocating money.

Underspending of conditional grants

Many municipalities consistently fail to spend conditional grants meant for specific projects, and this issue has been highlighted in reports by National Treasury and the AG. Underspending can be substantial, sometimes reaching billions of rand across various municipalities. The causes of underspending include lack of capacity and skills, poor planning, administrative inefficiencies, bureaucratic red tape, governance issues, and financial management challenges. Underspending of funds is a significant issue affecting service delivery to communities.

Municipalities underfunding free basic services (FBS) for poor households

Despite receiving billions of rands for FBS, the majority of municipalities only spend approximately between 35% to 50% of this on the provision of FBS. Often money received for FBS is instead spent on operational costs, pointing to revenue collection problems and/or wasteful expenditure.

Failure to collect monies owed and pay suppliers

Municipalities in total are owed billions of rands, in many cases by households that did not pay for services. This means that municipalities are failing to collect money from those who can pay. In turn, municipalities are unable to pay suppliers and owe money to state entities like Eskom, as well as small businesses who rely on this to function. Eskom will sometimes cut services to municipalities due to non-payment. This 'debt chain' poses a serious threat to service delivery.



CHECKLIST: SOME QUESTIONS TO ASK ABOUT A MUNICIPALITY'S BUDGET

Is it in line with the revised IDP? (MFMA s. 21)	YES	NO
Were communities consulted on the budget?	YES	NO
Were provincial and national treasury and other relevant departments consulted?	YES	NO
What are the major capital (infrastructure) projects planned? Are they in the best interests of the municipality? Do they prioritise basic services to those who don't have them?	YES	NO
Are there big changes in allocations related to important services?	YES	NO
How will proposed service charges affect women, families or business in the area? Are they affordable? Were communities consulted?	YES	NO



7.2.4 What to do if a budget does not represent community needs and priorities?

There are a number of steps that can be taken if participation in the budget process was not possible or if, despite participation, the final budget does not represent community needs, concerns or proposals.

1. Ask for the process plan to be changed

The process plan should have been drafted in consultation with communities. Councillors, the mayor, the speaker or the municipal manager can be asked to adjust it if it excluded a community. Ward committee members, ward councillor or other councillors (opposition councillors may be especially interested) can be asked for support.

2. Lobby for the municipality to address concerns

Make sure the reasons that proposals or concerns were not included in the budget are understood. These could be political, technical or financial, or a combination. Ask councillors, ward committee members or officials for the reasons proposals or needs were not included to understand what steps to take next. Consider submitting a petition to the council outlining concerns.

3. Submit a complaint to the mayor

A mayor has the duty to inform the provincial MEC if they become aware that the municipality has not or will not comply with the budget process as it is outlined in chapter 4 of the MFMA, including the consultation requirements. The MEC can then extend the timeframe for the process, as long as it does not prevent the municipality from passing the budget before the start of the financial year. MECs do not have powers to intervene in the budget process without invoking s. 139 of the Constitution.

4. Use the media

Contacting the media can sometimes assist to bring awareness to the issue and speed up the process of a municipality taking action.



IF THE BUDGET PROCESS ALLOWED FOR MEANINGFUL PARTICIPATION BUT SOME VOICES WERE NOT HEARD

Budget advocacy requires in-depth analysis and often support is needed to do this. The International Budget Partnership South Africa (IBPSA) guide to local government budget advocacy provides very helpful step-by-step guidance. You can access the guide here:

https://za.boell.org/sites/default/files/guide-to-local-government-budget-advocacy-in-south-africa-2017-lowres_1.pdf

7.3 The Service Delivery Budget and Implementation Plan (SDBIP)³⁷

The SDBIP is similar to the IDP but is a short-term plan covering only one year and is focused on implementation. Flowing from the content of the IDP and the budget, the SDBIP should help us understand what will happen in the current or upcoming financial year.



THE SDBIP IS A KEY INSTRUMENT FOR MANAGING THE PERFORMANCE OF A MUNICIPALITY, AND PROVIDES INFORMATION IMPORTANT TO ENSURING THE MUNICIPALITY DOES WHAT IT SAID IT WOULD! THE SDBIP SETS IN-YEAR TARGETS, SUCH AS QUARTERLY SERVICE DELIVERY AND MONTHLY BUDGET TARGETS.



The SDBIP must be approved by the mayor within 28 days of the budget's approval by council. It must then be made public within 14 days of its approval (MFMA s. 53). The MSA implies that there should be space for communities to be involved in the SDBIP process (MSA s. 42). IDP review and budget processes are an important place to influence what eventually gets into the SDBIP. After the IDP and budget are approved, communities can also engage the municipality on issues related to the SDBIP.

What information should be in the SDBIP?

- **Service delivery targets for the coming year:** what will be delivered, when and where.
- **Indicators (measures):** how the municipality will measure its own progress in achieving the IDP.
- **A list of every capital project** the municipality is planning or already implementing. For each project the SDBIP must provide:
 - Ward number where project is located;
 - Project number and name;
 - Short description of what the project is about;
 - Planned start date and, if relevant, actual start date;
 - Planned completion date, and if relevant, actual completion date;
 - Capital costs per month;
 - Reasons for any changes in the project delivery; and
 - The name of the responsible senior manager.

Although the SDBIP is initially approved by the mayor, it can only be amended with the approval of the council (MFMA s. 54).

7.3.1 Performance Agreements

Performance agreements play an important role in the implementation of projects and programmes in municipalities. These agreements are annual contracts between the municipal manager and head of departments, and between the municipal manager and the council (represented by the mayor) (MSA s. 57). They outline specific performance targets, KPIs and objectives.

The MFMA states that performance agreements of the MM and senior managers must be linked to the measurable performance objectives approved with the budget, IDP and SDBIP (s. 53(1)(c)). This alignment enables municipalities to track progress towards these objectives, and to make adjustments to their plans and programmes as needed. **A performance agreement serves as a tool for ensuring that the municipality's strategic objectives are translated into actionable plans, and that progress towards these objectives is monitored and evaluated.** By setting clear performance targets and indicators, municipalities can ensure that their implementation efforts are focused on achieving specific outcomes, and that resources are allocated effectively to support these efforts.



MUNICIPALITIES MUST PUBLISH THEIR PERFORMANCE AGREEMENTS ANNUALLY ON THEIR WEBSITE, IN LINE WITH THE SDBIP. PERFORMANCE AGREEMENTS ARE NORMALLY PUBLISHED IN JULY OR AUGUST (THE LATEST BY 31 AUGUST) AND COVER THE PERFORMANCE PERIOD FROM 1 JULY TO 30 JUNE OF THE FOLLOWING YEAR.



Communities can indirectly influence the SDBIP and performance agreements by participating in existing processes (ward committees, IDP representative forums, draft IDP and budget feedback public meetings etc.) and shaping IDP and budget priorities. They can monitor performance by reviewing published performance agreements and reports on municipal websites and using ward committees (using CBM as one tool), public meetings or petitions and complaint mechanisms to provide feedback. Other "invented" spaces of participation can also be used to highlight poor performance and unmet targets. Key timelines include IDP/budget consultations (January–May), performance agreement publication (July–August), quarterly reviews (every three months), mid-year assessments (January), and annual reports (August–November).



"Public participation is a cornerstone of effective performance management. By engaging residents in the planning and evaluation process, municipalities can enhance accountability, drive sustainable development and foster more responsive local government."

See COMPACT's Municipal Performance Management Technical Digest for more information about ways to do this: <https://pari.org.za/compact/>



OVERSIGHT

The municipal oversight process is set out in s. 129 of the MFMA and is meant to promote transparency, accountability and participation. The oversight process in a municipality is an important opportunity for communities and other stakeholders to get involved in monitoring performance and service delivery.

A series of reports that feed into one another help keep municipalities accountable for what they said they would do versus what they have done. These include **in-year reports, the annual report, and the oversight report**, discussed below.

7.4. In-Year Reporting



Every three months the mayor (or executive committee) must report to council on budget implementation and service delivery progress (MFMA s. 52). These quarterly reports must be submitted within 30 days after the end of each quarter (e.g. by 30 October for July–September period). These reports are very important because they provide ‘real time’ updates on the municipality’s work, and present opportunities to correct or even prevent problems.

Every month departments must report to MM on their budget expenditure, in line with the SDBIP (MFMA s. 71). The MM must then submit a monthly report (known as a Section 71 report) to the mayor and provincial treasury, by the 10th working day of the following month (e.g. by mid-August for July). These Section 71 reports inform the quarterly report and support accountability for performance agreements and service delivery.



Unfortunately, many municipalities do not submit accurate quarterly performance reports. Auditor-General findings confirm that many municipalities struggle with poor data quality and delays in quarterly reports.

The discussion of these reports in council meetings are opportunities for community members and CBOs/CSOs to have their concerns noted and raised by councillors. Councillors should be holding quarterly meetings reporting on what was done over the past three months, and communities should be engaging on municipal performance in a given quarter. This could be a form of providing more accurate, on-the-ground information to portfolio committees about a certain project or issue.



COMMUNITIES CAN ASK A RELEVANT PORTFOLIO COMMITTEE CHAIR OR MEMBERS TO HOLD A HEARING ON A PROJECT THEY KNOW IS NOT GOING WELL.

Records of quarterly report discussions should be available in the minutes of the council or the portfolio committee to whom this task was delegated. These should be on the council’s website.

7.5 The Annual Report (AR)

The annual report (AR) provides a record of the municipality’s projects and service delivery progress in the previous year. It should assess how well the municipality has done in terms of delivering on its promises and whether it spent its money as its budget said it would. It shows what the municipality did well, what it did badly and what improvements are required (MSA s. 46). This assessment should inform the municipality how the IDP and budget should be changed for the next year.



The AR must be tabled in council no later than 31 January (MFMA s. 127).

What information should be in the annual report?

The AR includes a **performance report**, the **Annual Financial Statements (AFS)**, and the **AG’s report**. Together they provide:

- A description of all the activities of the municipality over the past year.
- Information on whether the municipality (and any of its service providers) achieved its planned targets in comparison to previous years.
- Changes that were or should be made to improve service delivery.
- How much money was collected and from which source, and how much money was spent, and on what. This information is included in the AFS.
- Whether the municipality followed the law in how it managed its money and operations.
- Actions that have been taken to implement the changes recommended in previous AG reports.

Following is more specific information on the pieces that make up the AR:

The Performance Report

This part assesses whether the municipality is making progress in relation to the priorities identified in its IDP. Ideally, each municipal department should report on whether it met the targets identified in the IDP. Where targets were not met, the report must provide reasons, and outline how this will be corrected.

The Annual Financial Statements (AFS)

The municipality’s AFS give an overall picture of how well it is doing financially and whether it managed its money in accordance with the law. While the annual budget tells us what should happen, the AFS tell us what actually happened. The AFS should be used by the council to hold the municipal manager accountable and to make informed decisions on financial management going forward. It is also used by institutions like banks to understand how risky it might be to give the municipality a loan.

The Auditor-General’s Report

The AG’s report is an independent examination of the municipality’s AFS and performance reports. The AG reports on whether these documents are accurate and trustworthy, as well as whether financial mismanagement took place. The AG’s report makes recommendations on how the municipality can improve its financial and operations management. It makes use of the following terms:

- **Irregular expenditure:** refers to money that was spent without following the rules set out in the law.
- **Unauthorised expenditure:** refers to money that was spent that was not budgeted for in the annual or adjustments budgets.
- **Fruitless and wasteful expenditure:** refers to unnecessary spending that could have been avoided had proper management been in place.

None of the above indicate that corruption happened. However, they mean that the rules we have to prevent corruption were not followed, and that therefore there is a risk that corruption took place.

7.5.1 The annual report and community voice

The law says that the community’s voice and opinion are important to evaluating the municipality’s assessment of itself. As such, the municipality must:

- Make the AR publicly available as soon as it is tabled in council (MFMA s. 127).
- Inform the community of the council meetings in which the AR will be discussed (MFMA s. 46).
- Invite the community to present their views on the municipality’s performance (MFMA s. 127).

Council meetings at which the AR is discussed must be open to the public and the media (MFMA s. 130, MSA s. 46)

We rely on municipalities to assess how well they performed – but can they do that?

REALITY CHECK

Every year the AG reports that the majority of municipalities are failing to prepare accurate financial statements, and are producing performance reports that are unreliable. The vast majority of these reports included achievements that could not be confirmed or were contradicted by other sources. Unfortunately, the situation is getting worse every year rather than improving. The AG has urgently called for municipalities to respond to its recommendations, which set out ways they can improve by addressing inadequate skills and capacity, governance failures, and lack of accountability and consequence management.

THE ANNUAL REPORT IS WRITTEN BY THE MUNICIPALITY, ABOUT THE MUNICIPALITY. IT’S THEREFORE POSSIBLE THAT IT DOES NOT REFLECT A COMMUNITY’S VIEWS AND EXPERIENCE. IT’S IMPORTANT THAT RESIDENTS, FOR WHOM THE SERVICES WERE PROVIDED, LET THE COUNCIL KNOW WHAT THEIR EXPERIENCES ARE, AND HOW THEY THINK SERVICES COULD BE IMPROVED. CONSIDERING THIS INFORMATION WILL PROVIDE A MORE ACCURATE PICTURE OF HOW THE MUNICIPALITY IS DOING.

7.5.2 What to do if the annual report is not a proper representation of municipal performance?

In addition to the opportunities mapped on the inside front cover, there are a number of steps that can be taken if the annual report – the assessment of how well a municipality has done in terms of delivering on its promises – does not represent municipal performance.

1. Lobby councillors

Councillors, in particular those councillors who sit on the MPAC, can be lobbied to include community views in the oversight report.

2. Inform other stakeholders

It is also possible to write to the AG, MEC for local government and/or National Treasury. Although they may not be able to take immediate action, they may be able to address concerns through other channels or in their next review.

3. Lobby the provincial legislature to hold hearings or investigate

Both the national and provincial legislatures should ensure that the provincial and national executive provide municipalities with the support and monitoring they need. Local government MECs must annually report to their provincial legislature on the performance of all municipalities in the province, and specifically identify municipalities that have under-performed. They are also expected to propose corrective actions (MSA s. 47).

Legislative committees are expected to involve the public in their discussions. This could happen via petitions and public hearings, especially (but not limited to) when considering departments’ annual reports and budgets. The relevant committee chairs and/or its other members can be approached and a public hearing on a municipality can be requested. Questions of the relevant members can be asked, and they can be urged to take appropriate action. Opposition members may be especially interested in this kind of information.

4. Use the media

Contacting the media can sometimes assist to bring awareness to the issue and speed up the process of a municipality taking action.

7.6 The Oversight Report (OR)

The purpose of the Oversight Report (OR) is to **confirm the accuracy and credibility of the annual report (AR)**. That is, non-executive councillors are expected to interrogate (question) the information given to them by the executive and the administration in the AR. To ensure that the AR is systematically investigated, council’s oversight committee or MPAC are tasked with writing an Oversight Report (OR). This usually happens in March of every year. The OR is an analysis of the municipality’s annual report, based on additional information collected by oversight committee members.

Importantly, the OR must say whether the council has (MFMA s. 130, MSA s. 46):

- Approved the AR as is, indicating that council agrees with what it says.
- Approved the AR but identifying parts with which council does not agree.
- Rejected the AR, indicating council disagreement with what the AR says.
- Sent the AR back to the municipality to be revised.

This makes the OR an important accountability tool. Even if the executive fails to accurately document the municipality’s performance in the AR, non-executive council members can document their concerns in the OR.



The oversight work of council must be done in consultation with communities and project beneficiaries, and **MPAC should take community inputs into consideration when drafting the OR.** Section 130 of the MFMA states that a municipality must hold public hearings to ensure community involvement and transparency in the evaluation of the AR. The council must invite the local community to submit representations and comments in connection with the AR at least 21 days before the council meeting at which the AR will be considered. Council meetings at which the AR is discussed must be open to the public and the media. Community members are given an opportunity to address council on the report, which can be an important way to engage with the municipality on issues arising from the AR.



CHECKLIST: HAS A COUNCIL PROPERLY INVESTIGATED THE ANNUAL REPORT?

Did the MM attend council meetings to answer questions about the annual report? (MFMA s. 129)	YES	NO
Was enough (or any) time given to hear the views of the community on the annual report or the municipality’s performance? (MFMA s. 130)	YES	NO
Were there opportunities for officials from the AG, national or provincial treasury to address council on the annual report? (MFMA s. 130)	YES	NO
Was the council meeting where the AR was discussed open to the public?	YES	NO
Does the oversight report properly document concerns raised by the community?	YES	NO

7.7. Comparison of Key Documents³⁸

	IDP	SDBIP	MUNICIPAL BUDGET	ANNUAL REPORT
What is it?	The municipality’s five-year development plan.	A one-year plan for implementing the IDP.	The municipality’s financial plan for the coming financial year.	A record of the municipality’s projects and service delivery progress in the previous year.
What’s in it?	• The municipality’s long term vision. • The strategies chosen to advance the area’s development. • The main projects the municipality will spend its budget on in the next five years. • An organogram of the municipality and information on its senior managers.	A clear picture of what the municipality will implement in the current financial year. This includes the how, when, what, where and who (is responsible) for each project. The SDBIP also gives us the indicators the municipality will use to check its progress.	• Information on which sectors and projects the municipality will be spending money on. • How much money the municipality will get for the year, and from where. • Usually contains tables, graphs and charts as well as written information.	• A performance report on the municipality’s and any service provider’s delivery of planned targets. • The Annual Financial Statements (AFS). • The AG’s report on financial and performance management • The actions that have been taken to implement previous AG’s recommendations.
How can it help us?	• Helps us understand what the municipality’s priorities are. • Helps us measure the municipality’s progress over the five years. • The process of writing the IDP is an opportunity to address community concerns.	• The SDBIP is a useful document for getting detailed information on projects. • It contains service delivery targets and indicators for the year • Performance agreements for all managers are drawn from the SDBIP and made public.	• The process of writing and reviewing the budget is an opportunity to address community concerns. • If a project isn’t in the budget, we can expect that it will not be implemented. The budget can clear up conflicting messages from government representatives. • Knowing the funding sources of different projects may help us hold the municipality to account. • The budget provides a basis for accountability & monitoring. Comparing quarterly reports against the budget will help us see where things are going wrong.	• If we are concerned about a service, the AR tells us whether anything was done about it in the previous year. • The process of reviewing the AR is a good opportunity to raise concerns in the council. • It tells us whether the municipality has implemented previous AG recommendations

	IDP	SDBIP	MUNICIPAL BUDGET	ANNUAL REPORT
Who writes it?	Municipalities usually have an IDP manager who leads the writing. As the MSA makes clear, however, citizens must be part of the IDP writing process.	This will differ across municipalities, but the municipal manager's office would be ultimately responsible.	The municipality's Chief Financial Officer (CFO) leads the writing. However, according to the MFMA, the municipality must meaningfully engage citizens in the budget writing process.	The administration under the leadership of the executive.
When is it written?	An IDP is developed once every five years, when a newly elected council takes office. However, the document must be reviewed each year.	Must be adopted by council within 28 days of the annual budget adoption.	The budget is formulated every year between August – June.	Within 6 months after the end of the financial year. It must be tabled in council no later than 31 January.
Where can it be found?	Must be publicly available on the municipality's website, offices and libraries within 14 days of council approval.	Must be publicly available on the municipality's website, offices and libraries within 14 days of council approval.	Must be publicly available on the municipality's website, offices and libraries within 14 days of council approval.	The draft version is available on the municipality's website immediately after it is tabled. The finalised report is available within 14 days of its adoption.



7.8 Using the planning, implementation and oversight cycle to monitor local government and improve services

Are the IDP, SDBIP, performance agreements, annual report or budget for a municipality publicly available? Copies are supposed to be available to the public and community members. They can be used to see:

- What are the plans in the IDP/ SDBIP for a community? Have they been/are they being implemented?
- Find out the facts! For example, if a municipality has contracted a company to build roads or toilets, information should be provided about who is the person responsible for the project.
- A copy of the contract or service delivery agreement can provide information on:
 - How much money has been spent on the project?
 - Who has received the money that has been spent?
 - What work has been completed?
 - How many people are without a particular service in a community?
 - How long have certain communities been waiting for this service?
 - What has government done to provide them with alternatives?

This information should be in the IDP, SDBIP, budget and/or the annual report. If it's not, the relevant municipal department should be contacted, or a PAIA request can be submitted.

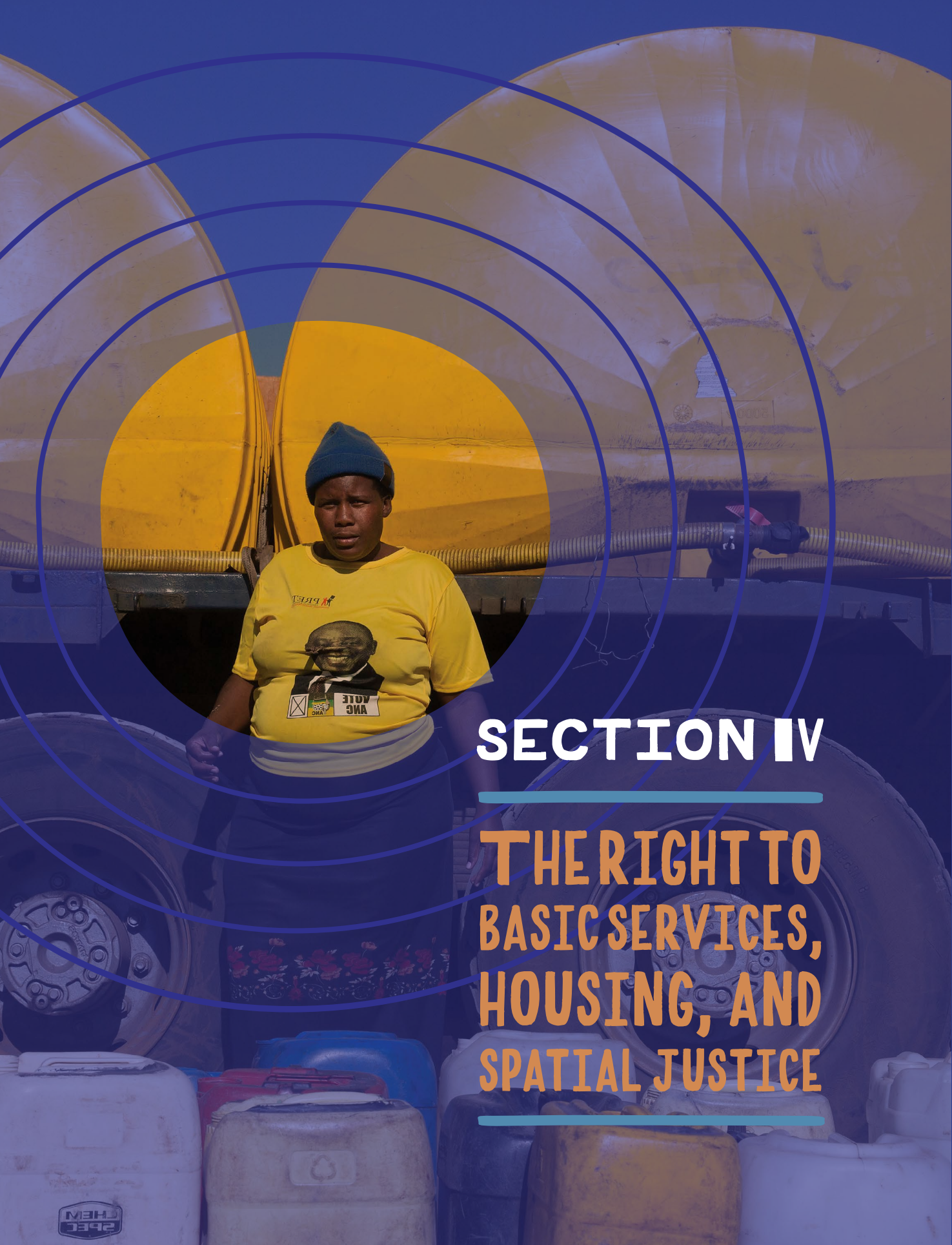
Sometimes it can be useful to compile a document with the answers to the above questions, as well as the impact of not having key services on people from the community. This document can be submitted to the council in response to public participation in the IDP, budget or annual report.



TACTICS: THE IMPORTANCE OF FOLLOWING UP ON PREVIOUS RECOMMENDATIONS

It is often the case that a municipality has well-publicised and well attended IDP public participation forums. Council informs communities about the public participation process through various methods including loud-hailing, posters at the library, community meetings, and social media. However, the municipality always comes under intense criticism from community members who feel that these 'effective processes' do not solve service delivery issues and aren't taken seriously. Members of the community say that they are unsatisfied with the municipality because they are always asked for inputs into the IDP, and yet nothing is ever implemented. The situation is similar in many municipalities, where communities from informal settlements have been attending IDP meetings and making inputs for years, yet even if their suggestions are included in the IDP, they are never implemented.

In one IDP public participation meeting in a municipality, the community decided not to give any new inputs, but rather to get explanation from the municipality on the progress of previous IDP inputs. A municipality should be held accountable by residents and communities for the lack of performance on the implementation of the IDP.



SECTION IV

THE RIGHT TO BASIC SERVICES, HOUSING, AND SPATIAL JUSTICE

73. (1) A municipality must [...]

- (a) give priority to the basic needs of the local community;
- (b) promote the development of the local community; and
- (c) ensure that all members of the local community have access to at least the minimum level of basic municipal services.

Section 73, Municipal Systems Act

CHAPTER 8:

BASIC SERVICES

South Africa’s cities and towns were planned to spatially and racially segregate people during apartheid, with the government only delivering adequate services to the white minority. As a result, many of our towns and cities have sprawling informal settlements and spread out residential areas that pose challenges to service delivery. Millions of people have long travelling distances to work, inadequate housing and poor access to services.

While progressive laws, policies and regulations have been put in place since 1994, these have not been implemented properly. Often this comes down to what municipalities do or don’t do.

Local government has a very important role to play in addressing spatial apartheid and unequal access to basic services, urban land and adequate housing in areas that are close to economic opportunities and public services. This section sets out this role and the laws that govern it.³⁹

8.1 The right of access to basic services

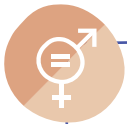
The MSA defines basic services as those that are **required to ensure an acceptable and reasonable quality of life**. If a basic service is not provided, it would endanger public health or safety, or the environment. Examples of basic services are water, sanitation, electricity and waste removal.

Municipalities must ensure that all their residents have **access to at least minimum levels of these services** (MSA s. 73). There are two aspects to this: the physical availability of the service (e.g. connection to electricity), and its affordability. The legal provisions that govern basic services are outlined below.

WATER ⁴⁰	SANITATION ⁴¹
LEGAL BASIS	
Section 27(1)(b) of the Constitution specifically protects the right to access sufficient water. The Water Services Act (WSA) outlines how this right will be provided. Section 3 says that “everyone has a right of access to basic water supply”, and requires water service providers to take reasonable steps to provide all households – including informal households – with reliable and sufficient quality water to support life and personal hygiene.	Section 24 of the Constitution protects the right to an environment that is not harmful to health or wellbeing. This relates to sanitation services. The Water Services Act (WSA) outlines how this right will be provided. Section 3 says that “everyone has a right of access to basic sanitation”, and requires water service providers to take reasonable steps to provide all households – including informal households – with the minimum standard of services required for the safe, hygienic and adequate disposal of sewage.

WATER	SANITATION
LEGALLY ESTABLISHED MINIMUM STANDARDS	
WSA regulation 3(b) says that everyone has the right to a minimum basic water supply, defined as: • a minimum amount of 25 litres per person per day or 6 000 litres (6 kilolitres) per household per month (a household is defined as everyone living on one stand); • within 200 metres of a household; • at a minimum flow rate of not less than 10 litres per minute; and • with an effectiveness such that no consumer is without a supply for more than seven full days in any year.	WSA regulation 2 states that the minimum standard for basic sanitation services is: “a toilet that is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents the entry and exit of flies and other disease-carrying pests”. The Free Basic Sanitation (FBSan) policy recommends waterborne sanitation in urban areas (with an extra monthly allocation of 3-5 kl of Free Basic Water for flushing) or Ventilated Improved Pit latrines (VIPs) in rural areas.

ELECTRICITY ⁴²	REFUSE REMOVAL ⁴³
LEGAL BASIS	
While there is no specific right to electricity in the Constitution, electricity is a basic municipal service which local government must provide (MSA s. 73). The right to electricity is understood as part of the right to adequate housing (Constitution s. 26). In the <i>Grootboom</i> case, the Constitutional Court wrote in its judgment that adequate housing can include “access to services such as water, sewage, electricity and roads”.	Section 24 of the Constitution protects our right to an environment that is not harmful to our health or wellbeing. This relates to refuse removal services.
LEGALLY ESTABLISHED MINIMUM STANDARDS	
There are no legally established minimum standards for electricity, but the Free Basic Electricity (FBE) policy recommends minimum of 50kWh per household per month if connected to the grid. In areas without electricity infrastructure, such as rural regions, municipalities must provide access to alternative energy sources such as solar, ethanol or gas, for example.	There is no legally established minimum standard for refuse removal, but the BRR policy implies regular house to house collections or communal skips.



BASIC SERVICE DELIVERY IS IMPORTANT TO EMPOWERING WOMEN

Access to basic services has a major impact on women's lives. In many societies, women are expected to cook, clean and care for children, the elderly, or the sick. Without easy access to water or electricity, these tasks are far more difficult and time consuming. Instead of spending their time earning income or studying, women must walk long distances or wait in lines to access clean water or collect firewood. In areas without adequate sanitation, women are more vulnerable to both diseases and crime. When inadequate sanitation and refuse removal increase diseases among children or other vulnerable groups, it also has a negative impact on women's quality of life, as they are the ones who will take care of the sick.

8.2 What are local government's duties?

Local government is responsible for the provision of at least a **minimum level of basic municipal services** to all households and communities, and municipalities **must plan for this in their IDP and budget** (MSA s. 73).

Municipalities must provide basic services in a manner which is (MSA s. 73):

- equitable and accessible;
- provided in an economic and efficient manner;
- allows for the improvement of standards of quality over time;
- both environmentally and financially sustainable; and
- regularly reviewed with a view to upgrading, extension and improvement.

Municipalities have the constitutional duty to continually strive to improve access to basic services. This is especially the case with informal settlements, where there is a duty to ensure **everyone has access to an interim level of basic services before being upgraded to permanent services**. This is set out in the national Upgrading of Informal Settlements Programme (UISP).

Municipalities must provide services in a financially sustainable manner, which means they must charge tariffs (fees) that reflect the costs of providing the service, including capital, operating, maintenance and administration costs (MSA s.74). However, poor households must have access to at least basic services through reduced or special tariffs or subsidisation (MSA s. 74).

Municipalities can decide to provide basic services themselves or appoint external service providers to do so on their behalf (MSA s. 76). However, municipalities must consult with communities about what kind of water, electricity and sanitation services are appropriate, and how they should be provided (MSA s. 4).

It is the responsibility of a municipality to make sure that poor households, and especially vulnerable groups, have improved access to adequate water, electricity and sanitation. There should never be unfair discrimination in delivering services based on race, gender, HIV/AIDS status, disability or any other protected ground (Constitution s. 9).



MAKHAZA INFORMAL SETTLEMENT'S STRUGGLE FOR DIGNIFIED TOILETS⁴⁴

After the City of Cape Town installed unenclosed toilets at an informal settlement, the residents took the municipality to court in the *Beja* case. In April 2011, Judge Nathan Erasmus ruled in the High Court that the provision of unenclosed toilets by the municipality was unlawful and had violated the constitutional rights of the residents, including the right to dignity (Constitution s. 10), ordering the City to enclose the toilets.

8.3 Free Basic Services (FBS)

The Constitution, MSA, WSA and other laws and policy say that everyone must have access to a minimum level of free basic services (FBS), regardless of whether they can afford to pay or not. This includes free basic water (FBW), free basic electricity (FBE), free basic sanitation (FBSan) and free basic refuse removal (BRR). The National Framework for Municipal Indigent Policies (NFMIP) specifies the below as the minimum amounts that must be provided:

- **FBW:** the minimum standard is 25 litres per person per day or 6 kilolitres (kl) per household per month.
- **FBE:** The minimum standard is 50 kilowatt hours (kWh) free electricity per household per month.
- **FBSan:** In some municipalities, if you have waterborne sanitation, there is an extra allocation of FBW to cover basic sanitation.
- **BRR:** Levels should be determined by the characteristics of the settlement. In low-density areas it could include on-site waste disposal or transfer to central collection points, while for high-density settlements (more than 40 dwellings per hectare) collection should occur at least once a week. Municipalities must also provide appropriate free receptacles for refuse storage.⁴⁵

Municipalities receive money from national government for providing FBS in the form of the equitable share (ES). Municipalities can choose how they will provide FBS, and should have indigent policies setting this out (MSA s. 97). While the policies must adhere to the guidelines of the National Framework for Municipal Indigent Policies, each municipality decides who it will provide FBS to, and how much they will get.

The way households are identified is a critical choice. According to the National Framework for Municipal Indigent Policies, municipalities must ensure that low-income households are the primary beneficiaries. Municipalities have three major options:⁴⁶

- **Universal targeting:** This is when all households receive a free basic allocation. In this case all households benefit, no matter how much water or electricity they use. Universal targeting is the easiest to administer, but it means that the municipality does not collect all the income it could, and that low-income households are not the primary beneficiaries.
- **Automatic targeting:** In this system, households who meet certain criteria automatically qualify for FBS. An example is providing FBS to households that live on properties below a certain value. Levels of consumption and service are other criteria often used.

- **Indigent registers:** In many municipalities, only households that apply and qualify as ‘indigent’ receive FBS. National policy defines an indigent household as one earning the value of two old age grants or less. Although in this system the municipality does not miss out on potential income, registering as indigent is an added burden on poor households, and excludes those who may earn more but still struggle to survive. The challenges with registering residents as indigent are often highlighted by community members and ward committee members, who are called on to assist residents.

Many municipalities use a combination of the above options. Residents have the right to ask about FBS and whether a household qualifies for benefits. Residents also have the right to challenge a municipality’s FBS policy if it is clear that it does not work. If there is no FBS policy in a municipality, communities should ask for one to be developed and implemented. > See section 11.4.6 for laws and policies that govern the provision of FBS.



8.4 What to do to ensure the right to free basic services (FBS)

If people in a community do not have access to free basic services (FBS) but should be receiving them, the following steps can be taken:

1. Find out what the municipality’s policy is

It is important to know what a municipality’s policy on FBS is. Although all municipalities should have specific policies regarding support to indigent (poor) households, some municipalities include the rules related to households that cannot pay in their tariff and credit policies. Officials, ward committee members, ward councillors or NGOs should be able to assist if it is not available on the municipal website.

2. Lobby the municipality to develop their FBS policy, change it, or simply implement it properly

In the case of the community described in section 7.2 of this guide all three actions could have been argued for. The municipality did not have a specific FBS policy, although it made provision for indigent households in its credit policy. While the municipality had an indigent register, it failed to implement its awareness raising activities, leaving many people unaware of their right to FBS, and with crippling debts. Lastly, it could also be argued that indigent registration was not going well because it was a badly designed policy: perhaps the residents should have automatically qualified for FBS given the socio-economic character of their neighbourhood.

There are ways to lobby for changes to a municipality’s policy. A petition can be submitted to the municipal council, the issue raised at an IDP forum meeting, or the ward committee can be engaged. The municipality’s budget should be checked to see how much it received for FBS, and its annual report and AFS to see how much was spent on FBS. The National Treasury MFMA website is also a good source of information to see how much a municipality has been allocated.

3. Councillors who support the provision of FBS should be nominated and elected

Councillors should be encouraged to be pro-poor and to support the extension of FBS to low-income households.

4. Seek legal advice

The failure to provide FBS may infringe on the constitutional rights of residents. See the list of organisations provided in Chapter 14 of this guide.

8.5 Water and electricity cut-offs⁴⁷

Municipalities sometimes disconnect services to force households to pay outstanding debts and to increase revenue. However, is illegal to cut-off water or electricity without notice (prior warning)! Before disconnecting a service, a municipality must warn of its intention and a resident must be given a chance to respond.

Credit meter

If a resident has a water or electricity connection with a credit meter account (where they receive a bill every month directly from the municipality), the notice is usually at the bottom of the bill. They must be given the chance to explain their circumstances and to make a plan to pay the arrears (debt) (WSA s. 4). If the resident is renting, and does not receive a bill because the landlord pays the municipality, they must still be notified by the municipality (in writing) of its intention to disconnect the supply. This must be posted in a place where it will be seen, such as in the public area of a building. If a resident lives in an informal settlement or rural area, the notice should also be placed somewhere public.

Prepayment meter (PPM)

If a resident has a prepayment meter (PPM) for water and/or electricity, there are often flashing numbers on the meter warning about how little water or electricity is left. If someone fears they’ll run out of water and they do not have money to purchase more credit, they can go and talk to their local municipal service centre before the water runs out. It is against the law – specifically section 4(3)(c) of the WSA - to cut off someone’s water, even if they owe money on their account. It is not against the law to cut off electricity supply, but notice must still be given. Council may also cut electricity supply if someone owes money for other services – such as water or rates.

If a resident is renting a property and their landlord disconnects the water or electricity supply without a court order, this is also against the law. The Rental Housing Act (RHA) governs landlord-tenant relations and includes protections for tenants around their access to services. The tenant can go to their nearest provincial Rental Housing Tribunal to get an order for the landlord to reconnect the water or electricity supply.

IT IS IMPORTANT TO BE FAMILIAR WITH A COUNCIL’S DEBT COLLECTION BY-LAWS! THE MUNICIPALITY MUST FOLLOW THEM. REGARDLESS OF THE SITUATION OR SOMEONE’S ABILITY TO PAY, A MUNICIPALITY MUST ALWAYS ENSURE THAT THEY HAVE ACCESS TO A MINIMUM LEVEL OF WATER PROVISION.





TENANTS WIN CASE ON ELECTRICITY DISCONNECTION⁴⁸

In 2009 a group of low-income residents living in a Johannesburg building went to court after the municipality disconnected their electricity, even though they had been paying their landlord for electricity. The owner of the building hadn't been paying the electricity service provider and so the municipality had disconnected the tenants' electricity supply without notice. The residents won their case – referred to as the *Joseph Case* – in the Constitutional Court, with a judgment that said that they had a right to notice and an opportunity to make representations before their electricity was disconnected.

CHAPTER 9:

HOUSING⁴⁹

9.1 The right to housing

Section 26 of the Constitution includes the right to adequate housing. Adequate housing means more than simply having a roof over one's head and, depending on circumstances, should include the following:

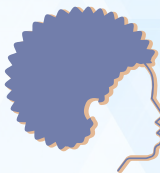
- access to water, sanitation and electricity (or alternative energy)
- a clean and healthy environment
- accessible roads and transportation
- access to health care, schools, jobs and other community services

All three spheres of government have a role to play to ensure the progressive realisation of the right to housing. While provincial and national government have the main responsibility for housing in terms of the Constitution, local government is also a very important role-player.

9.2 What are local government's duties?

Municipalities are very often the owners of land, the planners of housing developments, and the providers of municipal services. Section 9 of the Housing Act says that every municipality must, as part of its IDP process, take steps to:

- ensure that its residents have access to adequate housing on a progressive basis, and remove or prevent any conditions not conducive to their health and safety;
- set housing delivery goals, identify land for housing development, and ensure a public environment conducive to housing development;
- plan, coordinate, facilitate, promote and enable appropriate housing development;
- ensure that water, sanitation, electricity, roads, stormwater drainage and transport are provided in a manner which is economically efficient;
- provide bulk engineering services; and
- plan and manage land use development.



MUNICIPALITIES MUST INCLUDE A HOUSING CHAPTER IN THEIR IDP TO SHOW HOW THEY ARE PLANNING AND RESPONDING TO HOUSING NEEDS IN THEIR AREA (HOUSING ACT S.9)

Under certain conditions, municipalities may expropriate land for the purposes of housing development (Housing Act s. 9).

The metros and some district municipalities have been accredited (officially permitted) to implement housing programmes and administer housing subsidies. This process of accreditation of municipalities is ongoing. It was hoped that shifting those responsibilities from provincial to local levels would lead to better coordinated, integrated and accelerated human settlements delivery.



In 2024 the Department of Human Settlements published the new White Paper for Human Settlements. You can find it at: https://www.gov.za/sites/default/files/gcis_document/202501/52013gon5801.pdf

9.3 Evictions

Section 26(3) of the Constitution states that **no one can be evicted from their home or have their home demolished without a court order**. This means that evictions, lock-outs or demolitions cannot take place without due process.

The *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE)* governs the eviction process for unlawful occupiers and says that **government or private landlords must follow certain processes before they can evict someone**.

The PIE Act and case law made by judges say that municipalities, private owners and landlords must “meaningfully engage” with people affected by an eviction, to discuss their plans and look for ways to resolve the problem so that everyone is satisfied. Before an eviction, efforts must be made to identify alternative solutions. If eviction is unavoidable, there must be engagement about the provision of alternative accommodation, its location and the availability of services such as schools and clinics there, as well as relocation timelines.

If these discussions break down, then the municipality or owner can apply to get a court order. A resident is entitled to written notice of the court hearing and the reasons for the eviction, and a chance to be heard in court. The judge must give them time to find a lawyer if they need one, but they must attend at court to let the judge know. If a resident cannot afford a lawyer, the court can appoint one to represent them. A resident can ask the judge to give them an urgent interdict (order) to stop whoever is evicting them illegally from continuing. They should tell the judge how long they have lived on the property and the impact of the eviction on them and their family. If an eviction will leave someone homeless, a judge may find that the municipality has an obligation to provide alternative accommodation. This applies whether a person lives on private or public land or property, whether they pay rent or not, or whether they live in an informal settlement or an inner city building.

IT IS ILLEGAL TO EVICT ANYONE FROM THEIR HOME WITHOUT A COURT ORDER, AND DOING SO IS A CRIMINAL OFFENCE! THE PIE ACT SAYS THAT ANY PERSON WHO UNLAWFULLY EVICTS SOMEONE IS COMMITTING A CRIME AND MAY HAVE TO PAY A FINE OR GO TO PRISON FOR 2 YEARS IF FOUND GUILTY.



9.3.1. Emergency housing

The National Housing Code is published in terms of the Housing Act and contains all government’s national housing programmes. It contains an important programme called the **Emergency Housing Programme (EHP)** (published following the *Grootboom* judgment) which **applies to people in “emergency circumstances”, including people being evicted or threatened by eviction**, whose houses are to be demolished, being displaced due to conflict or unrest or living in life threatening conditions.

Court cases have established that municipalities are constitutionally and legally responsible for providing temporary alternative accommodation to people who would otherwise be made homeless as a result of an eviction. They must budget for emergency housing situations and can apply to the provincial government for funding in terms of the Emergency Housing Programme.



9.3.2 Resisting an eviction



REALITY CHECK - While there are strong legal protections against unlawful evictions in the PIE Act, owners and landlords often try to bypass (avoid) the court process and evict people illegally, using private security companies and sometimes even the police.

There are things you can do if someone is facing an illegal eviction or have been illegally evicted:

1. Ask to see the court order.
2. Call the police or a lawyer to stop the illegal eviction.
3. If the situation is urgent, they can go to a High Court or Magistrate’s Court and ask to speak to a judge.
4. Mobilise on the ground - ask friends, neighbours and community members to go to court .
5. Contact the media, send a WhatsApp or SMS or tweet to journalists about what is happening.
6. Engage the municipality about providing emergency housing.



For more information on evictions, see SERI’s *Resisting Evictions in South Africa: A Legal and Practical Guide*. It sets out the legal eviction process (including examples of court papers), how to oppose a lawful eviction and how to resist an unlawful eviction. See Chapter 14 for details.



TACTICS: FORCING THE CITY TO PROVIDE EMERGENCY HOUSING⁵⁰

In April 2011, the Johannesburg High Court declared 200 people living next to a waste dump near Roodepoort, to be in an emergency housing situation. The Judge found that the living conditions were terrible, with no access to water and sanitation, and at risk of flooding. He ordered the City of Johannesburg to provide water and sanitation to the informal settlement community, as well as improved shelter.

The decision came after the occupiers had been illegally evicted by the City's refuse collection agency in 2009. The occupiers moved to privately-owned land, next to a dumping site, from which they salvaged waste material to make a living. The property owner then brought an eviction application, subject to the City being compelled to engage the occupiers and provide them with alternative accommodation. The occupiers decided to fight the eviction, and went to public interest lawyers from the Socio-Economic Rights Institute of South Africa (SERI), who helped them to get assistance. The Judge's order provided for the occupiers to remain on the property with access to water, improved shelter and sanitation for a period of 18 months, during which time the City had to consult them and identify suitable land to accommodate them in the longer term.

CHAPTER 10:

SPATIAL PLANNING AND LAND USE MANAGEMENT

Local government plays a central role in deciding how land should be used, who has access to it, what infrastructure and services are needed and how the environment should be protected. Land use management (LUM) and spatial planning are two of the most important responsibilities and powers municipalities hold.

- **Spatial planning** refers to the development of long-term strategies identifying the areas in which housing, industrial or commercial development should be encouraged, and areas where natural or agricultural land should be preserved. Such decisions have a significant impact on where municipalities will invest in infrastructure or plan for service provision.
- **Land use management** relates to decisions of what can or cannot be done on specific pieces of land. Even when land is privately owned, it must follow the rules of the municipality. Some land is only zoned for residential use, and it is not permitted to run businesses from it. When developers buy a property that has a single house, and want to build an apartment block in its place, they must get permission from the municipality before they do so.

Both spatial planning and land use management are fundamental to addressing apartheid's spatial geography and building cities and neighbourhoods that are safe, clean, and close to economic opportunities.

10.1 SPLUMA

Until recently, provincial governments were responsible for spatial planning and land use management and had the final say over how land was used. This was legally challenged, and the Constitutional Court found that spatial planning and land use management was a key function of local government.⁵¹

In 2015, the *Spatial Planning and Land Use Management Act (SPLUMA)* came into effect. SPLUMA is national law that sets out the principles governing spatial planning and land use management. Regulations have also been developed to implement SPLUMA. According to SPLUMA, **municipal planning consists of the following:**

- development of the IDP;
- development of a spatial development framework (SDF) and land use scheme (LUS); and the
- control and regulation of the use of land within the municipality, where this does not affect the provincial planning mandate (SPLUMA s. 5).

SPLUMA says that all spheres of government must develop SDFs, with local government developing a Municipal Spatial Development Framework (MSDF) which provides the medium- and long-term spatial development plan and vision for the municipality (SPLUMA s. 21). **The MSDF must be developed with participation from the public and the IDP must follow the MSDF** (SPLUMA s. 20).



In terms of land use management, municipalities must also develop a land use scheme (LUS), which outlines the rights that are associated with different pieces of land, and says what activities can take place on the land, what types of buildings can be constructed and what other rules must be followed when building on the land. Land use decisions must follow the MSDF. The LUS must include regulations showing detailed information and a map showing land use zones or purposes. Importantly, a LUS can only be adopted once the necessary public consultation has taken place (SPLUMA s. 24).



CHECKLIST: SPLUMA DEVELOPMENT PRINCIPLES

There are a number of development principles that apply to spatial planning, land development and land use management (SPLUMA s. 7).

Good administration: Has your municipality allowed for a transparent process of public participation in the preparation and amendment of spatial plans, policies, land use schemes and procedures for development applications? Intergovernmental coordination at all spheres is important to ensure an integrated approach to spatial planning and land use management.	YES	NO
Spatial justice: Does your municipality’s LUS and MSDF address past spatial and development imbalances? Land use management systems must include all areas of a municipality and must have provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas. Land development procedures must include provisions to accommodate access to secure tenure and incremental upgrading of informal areas.	YES	NO
Spatial sustainability: Do your municipality’s MSDF and LUS give consideration to infrastructure costs, the creation of sustainable settlements, improvements in food security, and consideration for environmental conservation?	YES	NO
Spatial efficiency: Does your municipality’s LUS and MSDF make the best use of existing resources and infrastructure, while minimising the negative financial, social, economic or environmental impacts?	YES	NO
Spatial resilience: Does your municipality’s spatial plan (MSDF) and LUS allow flexibility so that communities can respond to economic and environmental shocks and preserve their livelihoods?	YES	NO

THESE PRINCIPLES CAN BE USED TO MAKE SURE THAT THE CONCERNS OF COMMUNITIES AROUND LAND DEVELOPMENT ARE TAKEN INTO ACCOUNT. FOR EXAMPLE, IF THE MUNICIPALITY CONTINUES TO DEVELOP LOW-INCOME HOUSING ON THE URBAN PERIPHERY, IT CAN BE ARGUED THAT THIS IS AGAINST THE PRINCIPLES OF SPATIAL JUSTICE AND EFFICIENCY.



10.1.1 Municipal Planning Tribunals

SPLUMA requires all municipalities to set up a **Municipal Planning Tribunal (MPT)** to consider and decide on land use and development applications. While simple decisions around land development can be taken by relevant municipal officials, others require the MPT to deliberate.

The MPT must consist of at least five members and be made up of municipal officials and experts that have relevant knowledge and expertise, although technical advisers can also be called on to provide assistance. The members of the MPT are appointed by the municipal council, which must designate a chairperson and a vice-chairperson. **Councillors are not allowed to be members of the MPT** (SPLUMA s. 36).

Importantly, **interested parties can apply to intervene in an existing application before the MPT**, and if granted intervener status can participate in the proceedings (SPLUMA s. 45). When making a decision the tribunal must take SPLUMA development principles, the MSDF and LUS into account. The law also makes provision for an appeal process to question decisions taken by the MPT (SPLUMA s. 51). The appeal is settled by the executive.



THE MUNICIPAL PLANNING TRIBUNAL AS A SITE OF ACTIVISM⁵²

Reclaim the City (RTC) is a movement that advocates for spatial justice and affordable housing in Cape Town. In 2018, RTC used the MPT as a site for participation and activism, and had a big success when the MPT approved an application by the Western Cape provincial government to rezone a well-located area, allowing for social housing units to be built on prime land.

10.1.2 Ensure SPLUMA is implemented

There are a number of opportunities to ensure that the development principles in SPLUMA are implemented by municipalities.

- 1. **Participate in the development of the MSDF and LUS.**
Ensure that a municipality’s IDP is in line with its MSDF. The LUS is important because it gives rights to what can be done on different pieces of land.
- 2. **Obtain intervener status in the Municipal Planning Tribunal regarding specific development applications.**
Proposed changes submitted by others in a community, or that impact affordable housing opportunities, can be supported or challenged. This allows residents and communities to influence and question the decisions of the MPT and the appeal structures set up. It is possible to see what land use change applications are being applied for by looking at the land use change applications that are advertised in the media.
- 3. **Use SPLUMA’s appeal mechanism to challenge decisions that go against SPLUMA principles**

SECTION V

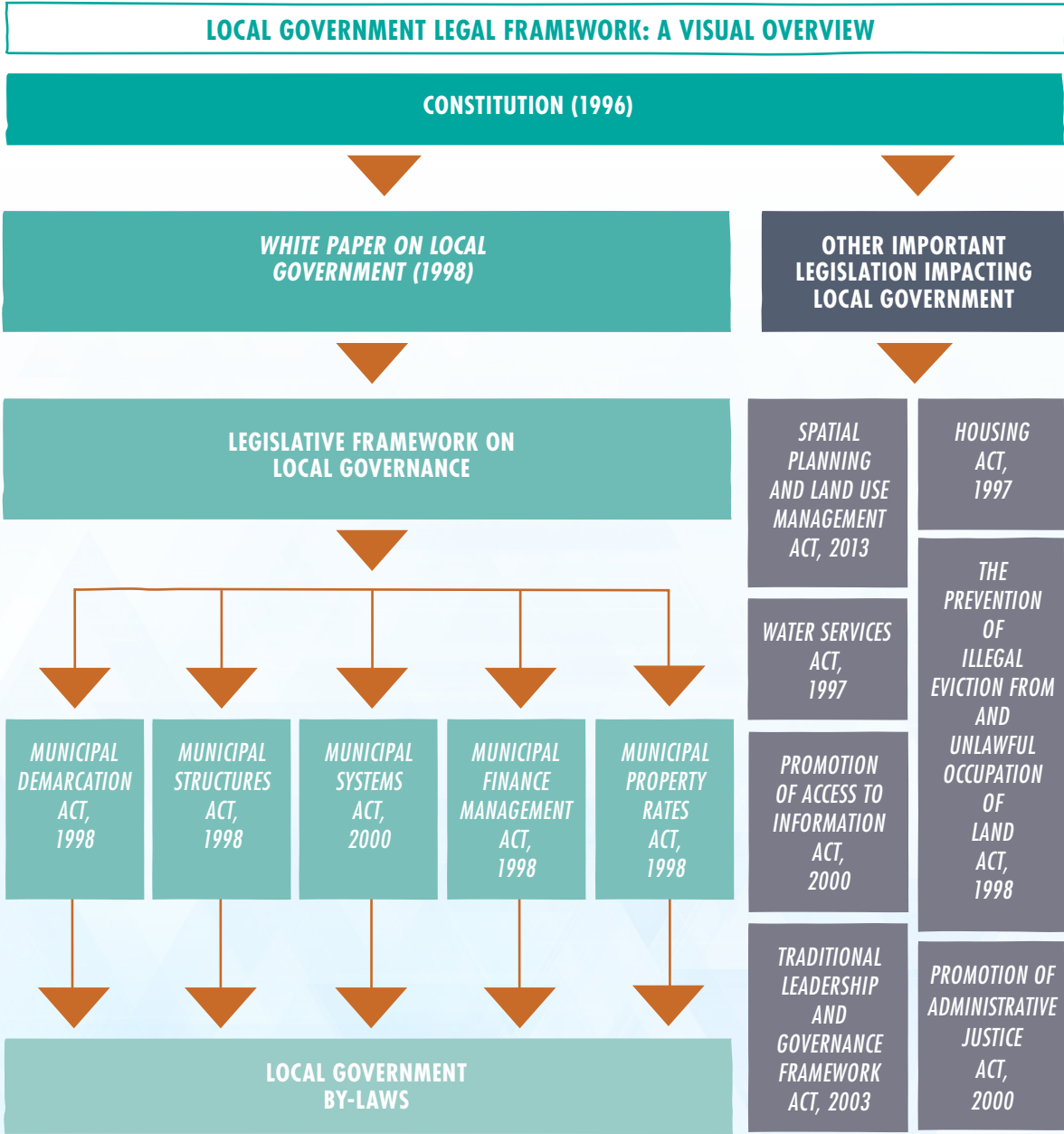
RESOURCES



CHAPTER 11:

LAWS AND POLICIES

Law is the basis on which elected leaders and government officials can be held to account. This section provides an overview of the national laws and policies that outline how municipalities should work, and what is expected of the three main role players: the local community, political structures and the administration.



11.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

The Constitution sets out the founding provisions of the Republic of South Africa, which include the values of the democratic state, the supremacy of the Constitution, citizenship, languages of the country and the Bill of Rights.

The sections of the Constitution that are most critical to holding local government accountable are contained in:

- Chapter 2: Bill of Rights
- Chapter 7: Local Government
- Chapter 6: Provinces (specifically section 139)

CHAPTER 2 OF THE CONSTITUTION: THE BILL OF RIGHTS

This is one of the most important parts of the Constitution. It guarantees the following rights to all who live in South Africa:

Equality (s. 9): All are equal before the law. No person or institution, including the state, may discriminate on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Political rights (s. 16-19): Everyone has the right to express themselves freely and to receive or share information, as long as it does not amount to hate speech. Everyone also has the right to associate with whomever they like, make their own political choices – such as which political party to belong to or support and to peacefully assemble, demonstrate, picket or present petitions. Lastly, everyone has the right to free, fair and regular elections.

Socio-economic rights (s. 26 – 29): Everyone has a right to housing, basic education, health care, social assistance as well as sufficient food and water. The Constitution recognises that government cannot fix all problems overnight and so, with the exception of education – which must be provided immediately – access to these rights must be improved over time. This is called progressive realisation and means that government must have a plan to improve access to these rights within available resources, and implement it step-by-step. Failure to do so is a violation of human rights.

The rights to fair administrative action and information (s. 32 – 34): Everyone has the right to access any information held by the state, as well as information held by private bodies – if it is necessary to protect a human rights. Everyone also have the right to just administrative action. This means that the state must make decisions in a way that is lawful, reasonable and procedurally fair. It also means that if someone has been negatively affected by government decisions, they must be given an explanation in writing, and must be allowed to appeal.

CHAPTER 7 OF THE CONSTITUTION: LOCAL GOVERNMENT

This chapter establishes local government, and specifically municipalities, as having independent decision-making powers. It then outlines municipal structures, categories, as well as their objectives and responsibilities.

Section 152 specifies that the goals of local government are:

- a. to provide democratic and accountable government for local communities;
- b. to ensure the provision of services to communities in a sustainable manner;
- c. to promote social and economic development;
- d. to promote a safe and healthy environment; and
- e. to encourage the involvement of communities and community organisations in the matters of local government.

As much as they can, municipalities must use their abilities and resources to achieve these goals.

Section 153 adds that municipalities also have a **developmental duty**: this means that they must manage their resources in a way that **gives priority to addressing basic needs**; that they must **promote social and economic development**, and that they must support national and provincial development programmes.

Section 158 specifies **which persons qualify to contest elections** as councillors, while **Section 160** describes the **powers, procedures and functions of the council**. This includes information on the kinds of decisions the council is responsible for, and the procedures for voting. It also outlines how councils should be governed, and states that they must conduct their business in an open manner, meaning that meetings cannot be closed unless there are special reasons for doing so.

SCHEDULES 4 AND 5 OF THE CONSTITUTION: LOCAL GOVERNMENT FUNCTIONS

The functions (responsibilities) of local government are outlined in schedules 4 and 5 of the Constitution.

SCHEDULE 4	SCHEDULE 5
FUNCTIONAL AREAS OF CONCURRENT (JOINT) NATIONAL AND PROVINCIAL COMPETENCE	FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE
PART B: LOCAL GOVERNMENT MATTERS Set out in s.155 (6) (a) and (7) Air pollution Building regulations Child care facilities Electricity reticulation Fire-fighting services Local tourism Municipal airports Municipal planning Municipal health services Municipal public transport Municipal public works (as assigned) Pontoons, ferries, jetties, piers & harbours (excluding the regulation of international and national shipping matters) Storm water management in built- up areas Trading regulations Water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems.	PART B: LOCAL GOVERNMENT MATTERS Set out for provinces in s.155 (6) (a) and (7) Beaches and amusement facilities Billboards and the display of adverts in public places Cemeteries, funeral parlours and crematoria Cleansing Control of public nuisances Control of undertakings that sell liquor to the public Facilities for the accommodation, care and burial of animals Fencing and fences Licensing of dogs Licensing and control of undertakings that sell food to the public Local amenities Local sport facilities Markets Municipal abattoirs Municipal parks and recreation Municipal roads Noise pollution Pounds Public places Refuse removal, refuse dumps and solid waste disposal Street trading Street lighting, Traffic & parking



THESE ARE FUNCTIONS OVER WHICH BOTH NATIONAL AND PROVINCIAL GOVERNMENTS HAVE THE POWER TO MAKE LAWS. THIS MEANS THAT WHEN IMPLEMENTING PROGRAMMES RELATED TO THESE RESPONSIBILITIES, LOCAL GOVERNMENT MUST FOLLOW BOTH NATIONAL AND PROVINCIAL POLICIES, AND MUST COORDINATE WITH BOTH PROVINCIAL AND NATIONAL DECISION MAKERS.



THESE ARE MATTERS ABOUT WHICH ONLY PROVINCES CAN MAKE LAWS AND POLICIES. THIS MEANS THAT MUNICIPAL ACTIONS ON THESE MATTERS ONLY NEED TO FOLLOW PROVINCIAL LAWS

11.2 LAWS ESTABLISHING THE INSTITUTIONAL FRAMEWORK

These are laws that set out how municipalities should be structured, how they should exercise their responsibilities, and the roles and responsibilities of different stakeholders. Laws regarding financial matters are outlined under section 11.3 and laws related to municipal basic services are outlined in section 11.4 of this guide.

11.2.1 Municipal Demarcation Act (No. 27 of 1998)⁵³

This *Municipal Demarcation Act* outlines the criteria and procedures for the determination of the municipal boundaries. It establishes the Municipal Demarcation Board (MDB) as an independent authority responsible for **demarcating (drawing) municipal boundaries and dividing local and metro municipalities into wards**. The demarcation process requires that the financial viability of an area, integration of racial divisions and alignment with provincial boundaries be considered, among other factors, before municipal boundaries are decided. The Act was amended in 2000 and again in 2008. The amendments aimed to improve the processes governed by the MDB, ensuring that municipal boundaries are drawn in a way that promote effective governance, equitable service delivery, and community participation.

11.2.2 Local Government: Municipal Structures Act (No. 117 of 1998)⁵⁴

The *Municipal Structures Act* (MSTA) **provides for the establishment of municipalities**, sets out **criteria for determining the category of a municipality** and **defines the types of municipality that may be established within each category**. The Act provides for an appropriate division of powers and functions between categories of municipalities (e.g. local and district), and regulates the internal governance structures of municipalities. It establishes the electoral system for local government and processes for drawing up wards. Importantly, the MSTA **establishes ward committees** and sets out information about their election, structure and functioning.

The MSTA has undergone several amendments since its initial enactment, highlighting the evolving needs around local government.

11.2.3 Local Government: Municipal Systems Act (No. 32 of 2000)⁵⁵

The *Municipal Systems Act* (MSA) sets out procedures that enable municipalities to meet their constitutional and legal obligations. While municipalities are headed by political party representatives, the MSA sets out certain governance mechanisms that must be followed regardless of the political party in office. These include the **development of IDPs** (s. 23 – 37), performance management systems and mechanisms such as the **annual report** (s.46) and the **constitutional requirement for public participation** (s. 16-21 and 42). The Act also specifies the exact processes that a municipality must follow to procure services from external service providers (s. 78).

Schedule 1 and 2 of the MSA are of particular importance as they contain the Code of Conduct for Councillors (COCC), and the Code of Conduct for Municipal Staff Members (COCMS).

The MSA has been amended several times and there have also been regulations published in terms of the Act. For example, the 2001 Local Government: Municipal Planning and Performance Management Regulations relate to integrated development planning and performance management.

11.2.4 Promotion of Access to Information Act 2 of 2000 (PAIA)⁵⁶

The *Promotion of Access to Information Act* (PAIA) explains the **process for people to access any information** held by the state, and certain kinds of information held by private bodies. It explains:

- who is entitled to request information;
- who information can be requested from;
- the type of information that can be requested;
- how a request for information must be made;
- how long the information holder has to respond to a request;
- when the information holder must release the information requested and when they can refuse to release information; and
- the right to appeal a decision of an information holder.

PAIA requires each government entity to have an information officer, a person responsible for responding to PAIA requests.

11.2.5 Promotion of Access to Administrative Justice Act (No. 3 of 2000)⁵⁷

The Constitution (s. 33) guarantees that administrative action – decisions taken (or not taken) by government departments – will be reasonable (carefully considered), lawful and procedurally fair. The Promotion of Administrative Justice Act (PAJA) outlines how this right should be realised. It says that all administrators must:

- allow **relevant parties to voice their opinion before making any decision that might affect their rights**, give them sufficient time to object, and consider all opinions voiced before making a decision;
- **communicate the decision clearly** and provide reasons for it;
- inform people about any **redress mechanisms**, either in the department or in the court system; and
- tell people that they have the **right to appeal the decision**, and ask for the reasons for any decision taken to be given to them in writing.

ANYBODY CAN ASK FOR REASONS FOR A DECISION THAT AFFECTS THEIR RIGHTS MATERIALLY AND NEGATIVELY, AND THEY CAN ASK FOR REASONS TO BE GIVEN TO THEM IN WRITING WITHIN 90 DAYS OF THE DECISION BEING MADE.



11.2.6 Inter-Governmental Relations Framework Act (No. 13 of 2005)

The *Inter-Governmental Relations Framework Act* (IGRFA) outlines how the three spheres of government – local, provincial and national – should work together. It says that the spheres must cooperate to ensure effective service provision and to tackle poverty, underdevelopment and the legacy of apartheid. The Act also provides for mechanisms and procedures to settle disagreements between the spheres.

At the local level, the Act requires mayors of district and local municipalities to establish an intergovernmental forum to promote and facilitate their cooperation.

11.2.7 Traditional Leadership and Governance Framework Act (No. 41 of 2003)

The *Traditional Leadership and Governance Framework Act* (TLGFA) was the main law **recognising and regulating the institution, status and role of traditional leaders**.

 While the TLGFA recognised traditional leadership institutions such as councils, it also required that they transform so that they comply with the Bill of Rights, especially preventing unfair discrimination, promoting equality and advancing gender representation (s. 2). For this reason, the Act required that traditional councils include 40% elected members and that a third of members are women (s. 3). The TLGFA also specified that when organs of state (such as municipalities) have delegated responsibilities to traditional councils, the implementation of that function must be monitored (s. 20).

In 2021 the legislation was repealed and replaced by the Traditional Khoi-San Leadership Act 3 of 2019 (TKLA).

11.2.8 Traditional and Khoi-San Leadership Act (No. 3 of 2019)

The *Traditional and Khoi-San Leadership Act 3 of 2019* (TKLA) replaced the TLGFA and was enacted in 2021. It is a ‘framework legislation’, meaning that it broadly outlined national norms and standards for traditional leadership in democratic governance, with the expectation that provinces will pass their own more detailed laws on this matter. It provides a framework for recognising and regulating traditional and Khoi-San communities, leadership roles, traditional councils, and houses at various levels, establishing a Code of Conduct, setting up a Commission on Khoi-San Matters, and outlining transitional arrangements and legislative amendments, while empowering Ministers and Premiers with regulatory authority.

In May 2023 the Constitutional Court declared the Act unconstitutional and invalid, primarily due to inadequate public participation during its legislative process. In 2024, CoGTA published the draft Traditional and Khoi-San Leadership Bill for public comment. The TKLA is still the governing legislation until this Bill is enacted.

11.3 LAWS ON FINANCIAL MANAGEMENT IN LOCAL GOVERNMENT

We outline laws and regulations specifying the rules and procedures for how municipalities can raise revenue, spend their budgets and run procurement processes.

11.3.1 Municipal Finance Management Act (No. 56 of 2003)

The *Municipal Finance Management Act* (MFMA) sets financial management rules to ensure that municipal finances are spent responsibly.

While the MSA outlines the process for adopting and updating the IDP, the MFMA sets out the other critical aspects of the planning and oversight cycle: the **process for drafting and adopting the annual budget**, including the **public participation requirements** (s. 15 – 24), the **preparation and adoption of annual reports** (s. 121 – 130), the **contents of annual financial statements** (s. 122-126), and **council’s oversight report** (s. 129). The MFMA also outlines the rules for adjusting budgets during the year (s. 28 -31), and what happens if the municipality fails to pass a budget or follow the rules when drafting one (s. 25-27).

The Act specifies how finances must be managed (including debt, revenue and supply chain management) and who is responsible for what. Chapters 7 and 8 of the MFMA clarify and separate the roles and responsibilities of the mayor, executive and non-executive councillors, and officials with regards to financial management.

National Treasury publishes regulations in terms of the MFMA. For example, the 2009 Municipal Budget and Reporting Regulations set out the requirements for the preparation, adoption, and reporting of municipal budgets, including the SDBIP.

11.3.2 Municipal Property Rates Act 2 (No. 6 of 2004)⁵⁸

The *Municipal Property Rates Act* (MPRA) gives local and metro municipalities the power to charge property rates and sets out the process and criteria of deciding what rates property owners should pay. Rates are important to ensuring municipalities have enough money to fulfil their legal obligations, and the MPRA ensures that municipalities across the country set rates in a uniform way.

The Act outlines how a municipal rates policy should be developed, and what it should include. It establishes a property’s market value — the price a willing buyer would pay for a property to a willing seller on the open market on the date of valuation — as the basis for the rate charged. This means that owners of more expensive properties pay higher rates than those with cheaper properties. All owners of immovable property have to pay rates, including the owners of commercial, residential, agricultural and government property. Land tenure rights, such as permission to occupy, are also defined as property.

The MPRA does however permit municipalities to charge different property types different rates. For example, it is common to charge residential properties discounted rates or not charge them at all as a way of assisting low-income families. Certain categories of property owners may also be excused from paying. They include indigent owners, pensioners, owners temporarily without income, owners affected by disasters, or owners experiencing adverse social and economic conditions. Municipalities can also encourage investment and businesses to open in certain areas by offering reduced rates for a defined period. Certain properties are excluded from paying rates altogether. They include land reform beneficiaries for the first ten years (provided the property isn’t sold), places of worship, nature reserves and botanical gardens.

11.3.3 The Division of Revenue Act (DORA)

The *Division of Revenue Act* (DORA) is the annual legislation that **provides for the allocation of funds between the spheres of government**, as required by the Constitution (s. 241). DORA ensures that all three spheres can access and use the tax money collected by the national sphere. DORA specifies what share of government revenue local government will receive over a financial year, and how it will be divided between municipalities. A new DORA is drawn up and adopted before the start of each new financial year (1 April – 31 March is national government's financial year) in terms of Section 214 of the Constitution.

11.3.4 Preferential Procurement Policy Framework Act⁵⁹

The *Preferential Procurement Policy Framework Act* (PPPFA) provides guidance on implementing preferential procurement in line with the Constitution. Preferential procurement refers to the selection of suppliers on the basis of not only the price offered, but also positive discrimination principles – the need to empower previously disadvantaged persons. The PPPFA introduces a preference point system that takes account of these criteria. It also empowers the finance minister to issue regulations to guide departments on how they should meet the goals of preferential procurement. The regulations issued include important provisions such as the requirement that National Treasury keeps a national List of Restricted Suppliers (MFMA s. 112 and MSCM reg. 2005 s. 38) and the actions that accounting officers, including municipal managers, can take against service providers who failed to meet previous contractual obligations or who received a contract due to fraud or corruption.

In 2015, National Treasury announced plans to draft a new law to guide public procurement processes in all three spheres of government. Consistent with the MFMA and intended to streamline all other laws and policies guiding public procurement, the Public Procurement Bill (18-2023) was introduced in Parliament in May 2023. Intended to create a single piece of national legislation regulating public procurement, including preferential procurement, the Bill importantly stands to give effect to the entirety of section 217 of the Constitution. In July 2024 the **Public Procurement Act (Act No. 28 of 2024)** was approved by the President and published. As at July 2025, the provisions of this Act are not yet in force.

11.3.5 Supply Chain Management and other MFMA Regulations

National Treasury regularly issues instructions on how to implement the MFMA and Municipal Supply Chain Management (MSCM) procedures. Instructions take the form of 'circulars' (notices) and regulations. Regulations that are gazetted (adopted by cabinet) are legally binding, whereas circulars are not.

Two important sets of legally binding regulations are the MSCM Regulations of 2005, and the 2014 MFMA Regulations on Financial Misconduct Procedures and Criminal Proceedings. The MSCM regulations require municipalities to develop and adopt their own SCM policies, and describe the minimum standards for those policies. The Financial Misconduct Regulations set out requirements for addressing alleged corruption and fraud in municipalities.

11.4 LAWS RELATED TO BASIC SERVICES

11.4.1 Spatial Planning and Land Use Management Act (No. 16 of 2013)

The *Spatial Planning and Land Use Management Act* (SPLUMA) provides the **framework for spatial planning and land use management** and requires municipalities to develop spatial development plans and land use plans for all the areas they control. SPLUMA says that all spatial planning and land use decisions must be governed by **principles of spatial justice; spatial sustainability; spatial resilience, spatial efficiency and good governance**. This means that municipalities must decide in advance where new housing will be built, where businesses will be allowed to operate, where public transport routes should be – and these decisions must follow the principles above. SPLUMA also establishes municipal planning tribunals (MPTs) where decisions which do not follow the above principles can be challenged. IDPs must align with spatial plans and land use decisions.

11.4.2 The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (No. 19 of 1998)⁶⁰

The *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act* (PIE) gives effect to section 26(3) of the Constitution, which says that "no one may be evicted from their home, or have their home demolished, without a court order made after considering all the relevant circumstances". The PIE Act puts in place **protections for unlawful occupiers against eviction** and sets out the processes and procedures that land or property owners (including the state) must follow if they want to evict. Often unlawful occupiers were previously lawful occupiers, for example tenants renting a flat or owners of bonded houses which have been repossessed by the bank.

In terms of the PIE Act, a court can only order an eviction if it is sure that the eviction will be "just and equitable", which means it must be fair and reasonable taking into account the rights and interests of all involved.

11.4.3 Housing Act (No. 107 of 1997)

The *Housing Act* provides for a sustainable housing development process and sets out **general principles for housing development in all spheres of government**. It defines the responsibilities of national, provincial and local governments, stating that **local government must take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the constitutional right to housing is realised**. It should do this by actively pursuing the development of housing, by addressing issues of land, services and infrastructure provision, and by creating an enabling environment for housing development in its area of jurisdiction. Section 2(1) of the Act states that all spheres of government must **give priority to the needs of the poor in housing development, and consult meaningfully** with individuals and communities affected.

11.4.4 Rental Housing Act (No. 50 of 1999)

The *Rental Housing Act* **regulates the relationship between landlords and tenants in rental housing**. It sets out what should be contained in a lease agreement (sometimes referred to as a rental agreement or a lease), outlines the rights and responsibilities of both parties in a landlord-tenant relationship, and provides information on the cancellation or termination of a lease. The Act also provides for provincial Rental Housing Tribunals, which are a free dispute resolution mechanism established to **resolve disputes between landlords and tenants around unfair practices**. Unfair practices can relate to a number of issues, including the changing of locks, deposits, damage to property, forced entry and obstruction of entry, House Rules, intimidation, issuing of receipts, tenants committees, municipal services, overcrowding and health matters, maintenance etc.

11.4.5 Water Services Act (No. 108 of 1997)⁶¹

The *Water Services Act* (WSA) ensures the rights of access to basic water supply and basic sanitation. It says that government is the custodian (guardian) of the nation's water resources, and has to ensure that **water supply services and sanitation services are provided in an equitable, sustainable and efficient manner**. This means that the provision of water and sanitation services must be consistent both with the socio-economic rights of the Constitution, as well as broader water management goals, such as the need to conserve water. The WSA also allows the Minister of Water and Sanitation to determine norms and standards regarding tariffs (fees) and water quality, and requires that all water service providers adopt water services development plans for areas under their jurisdiction.

11.4.6 FBS and Indigent Policies

There are a number of policies and regulations that provide the framework for the provision of Free Basic Services (FBS) and indigent policies. They include the following.

National Framework for Municipal Indigent Policies (2005) was developed by the Department of Provincial and Local Government (now CoGTA) and is intended to guide municipalities' provision of FBS. The policy recognises the need for intergovernmental cooperation but places a specific emphasis on municipalities' role in effectively addressing the needs of poor households, as this requires local understanding and local initiative, coordinated with support from national and provincial government. Available at: https://d7.westerncape.gov.za/sites/www.westerncape.gov.za/files/documents/2012/11/indigent_policy_framework_dplg_2005.pdf

The **Guidelines for the Implementation of the Municipal Indigent Policies (2005)**, also developed by DPLG, outline the process of how municipal indigent policies should be developed and implemented, including detailed information on the role of different municipal departments. Available at: https://d7.westerncape.gov.za/files/documents/2012/11/indigent_policy_implementation_guidelines_dplg_part_1.pdf

The **Free Basic Electricity Policy (2003)** allocates 50kW/h of free basic electricity per household per month and identifies which government interventions can bring relief to poor electrified households to ensure that they benefit from electricity, even if they cannot afford it. Available at: https://www.gov.za/sites/default/files/gcis_document/201409/250880.pdf

The **Regulations on Compulsory National Standards and Measures to Conserve Water (2001)** set out the rules for the quality of water services. Matters covered include: minimum standards for basic sanitation and basic water supply, interruption in provision of water services and quality of potable water. New proposed regulations were published by the Department of Water and Sanitation in 2024 but have not been adopted as of July 2025. 2001 Regulations available at:

https://www.gov.za/sites/default/files/gcis_document/201409/223550.pdf

The **National Policy for the Provision of Basic Refuse Removal Services to Indigent Households (2010)** defines basic refuse removal service levels, including type and frequency, for different kinds of settlements, and discusses how services should be financed. Available at:

https://www.gov.za/sites/default/files/gcis_document/201409/34385gen413.pdf

CHAPTER 12:

DICTIONARY

A

Accountability: The obligation on the part of both elected and appointed officials to explain and justify their decisions to the public.

Accounting Officer: The civil servant in a government department or institution who is responsible for the financial management of that department or institution and all its programmes. At the national and provincial level, the accounting officer is usually a Director-General or Head of Department. At the local level, the accounting officer is usually the municipal manager.

Adjustments Budget: The budget presented to the council to authorise changes to the annual budget approved before the start of the financial year.

Agenda: An agenda lists the issues that will be discussed in a meeting, in the order that they will be discussed. Agendas for formal meetings such as those of council or council committees must be decided on in advance, and can usually not be changed during the meeting.

Allocation: Money earmarked for a particular purpose in the budget. For example, the allocation for roads in the municipal budget which then has to be spent on roads.

Annual Budget: The municipality's financial plan for the year. It should give detailed information on how the municipality will spend its funds in the coming financial year, as well as less detailed projections for expenditure and revenue for an additional two years.

Annual Report: A comprehensive report about the activities and financial expenditure of a government institution over the previous year. A municipality's annual report must include information on how well it is implementing its IDP, as well as the performance of external service providers.

Assets: Everything an organisation (e.g. a municipality) owns. It includes cash, investments, money owed to it, materials, buildings and machinery.

Assurance: The independent, objective confirmation that financial statements, performance reports, and compliance with laws are fairly presented and reliable, giving citizens and oversight bodies confidence that public resources are properly managed.

B

Balanced budget: A budget in which revenue is equal to expenditure.

Basic Services: The MSA defines basic services as those required to ensure an acceptable and reasonable quality of life. If a basic service is not provided, it would endanger public health, safety, or the environment. Examples of basic services are water, sanitation, electricity and waste removal.

Bid/ Bidding: An offer to provide goods or services at a certain price, presented in response to call for proposals. See also competitive bidding.

Bid adjudication committee: The bid adjudication committee decides whether to accept or reject the recommendation made by the bid evaluation committee. It is appointed by the accounting officer, and must include at least four senior officials from the municipality that called for the bids. It may also include independent experts as advisors. Councillors are not allowed to serve on bid evaluation committees or attend their meetings. The adjudication committee makes the final decision on which supplier receives a tender.

Bid evaluation committee: The committee established by the accounting officer to evaluate all the bids received during a competitive bidding process. Bid evaluation committees have to be made up of at least three members, including a SCM practitioner and officials from the body that called for the bids. Independent experts can be invited to join the committee, but only to provide advice. The composition of the committee can be adapted to suit the specific types of goods or services being procured. After evaluating all the bids, the bid evaluation committee writes a report recommending which supplier should be awarded the contract. The report is sent to the bid adjudication committee.

Bid register: A list of all the procurement (tender) processes underway in a government department or institution, managed by the corresponding department's Supply Chain Management unit.

Body/Bodies: A person or entity (organisation). Bodies can be public or private. An example of a public body is a government department or a municipality; a private body is a person or a company.

Bulk engineering services: Services required to build or maintain infrastructure such as water reservoirs and water distribution networks (pipes), electrical installations and distribution networks (electricity sub stations and lines), sewerage treatment works and mains, roads and storm water.

By-laws: A law which is made by a municipality.

C

Capital Expenditure: Spending on assets that last for more than one year. Examples include equipment, land, buildings and infrastructure like roads.

Capital projects: Projects that help create, maintain or improve long term assets such as buildings, roads and other infrastructure.

Case law: Case law refers to judgments written to decide the outcomes of court cases. It can be thought of as law made by judges because most courts must follow previous court decisions made in similar cases, and all lower courts' decisions must follow past decisions of higher courts.

Circular: A notice. The circulars issued by National Treasury are not legally binding on municipalities unless first adopted by council. Government circulars on the MFMA are viewed as an essential form of communication aimed at facilitating transparency and consistency regarding the implementation of the MFMA.

Citizen report cards: Citizen report cards (CRC) are like client satisfaction surveys, but organised by communities to collect information on residents' experience of government services. CRCs are tools to both collect evidence on government performance, as well as raise awareness and pressure on public service providers.⁶²

Committee: A working group of elected representatives from different parties who meet regularly to focus on a particular area. Committees do not take decisions but make reports and recommendations to the council.

Competitive bidding: A procurement method in which bids are invited from multiple service providers to provide certain goods or services. The scope and conditions of the proposed contract are openly advertised, as well as the criteria (measures) by which the bids will be evaluated. This should ensure that any eligible (qualifying) company is free to compete for the contract. Each bidder offers to deliver the requested goods or services for a particular price.

Conditional Grant: Transfers from national or provincial government departments to local government for a specific purpose determined by the department. Conditional grants usually have detailed reporting requirements. See also unconditional grant.

Conflict of interests: A situation where an individual or organisation stands to benefit unduly (undeservedly) or may be influenced to act unfairly as a result of an existing relationship or alliance.

Constituency/Constituents: Refers to a group of voters (constituents) who elect a councillor to represent them on the council. A constituency can refer to a specified geographical area (e.g. ward) or voters who voted for a particular political party or cause.

D

Damages: Damages are an award, typically of money, to be paid to a person as compensation for loss or injury.

Defamation: A claim that can harm the reputation of another person or institution. To qualify as defamation, the claim must be false.

Delegate/ Delegation: When one person/entity (organisation) gives another person/ entity authority to act on their behalf.

District municipal forums: A district municipal forum consists of the mayors of the district municipality and all local municipalities within it. The forum facilitates coordination between the municipalities. These forums interact with Provincial Intergovernmental Forums, and deal mostly with local issues.

Dissolution/ Dissolve: Formally ending the term of an elected body so that fresh elections can be held.

Disclose/ Disclosure: The act of making information known.

Due process: The requirement that government only takes decisions in a way that respects the legal rights of citizens, and follows the process of the law.

E

Enforce/ Enforcement: Making sure that a law or a rule is followed.

Equitable Share: The share of nationally collected revenue that each sphere of government is constitutionally entitled to (Section 214 of the Constitution).

Executive/ executive authority: The executive refers to a person or group elected by a legislative body and given executive authority – the powers to enforce or carry out the laws and direct the implementation of government programmes.

Executive councillors/executive role/executive power: Councillors to whom executive authority has been delegated. They play an executive role.

Expropriate: To take property for public use and benefit.

F

Financial interests: Anything of financial value. Examples include shares in a company, directorship of any company, any property owned, any employment or income, as well as gifts above a certain value.

Financial misconduct: Financial misconduct includes acts such as fraud, corruption, theft, or dishonesty in financial matters. The MFMA (s. 171) specifies that senior officials commit financial misconduct when they fail to ensure the municipality's finances are managed as the law says, or instruct or permit unauthorised, irregular, fruitless and wasteful expenditure.

Financial year: The 12 months on which budgets are based. In South Africa, local government's financial year – also referred to as the fiscal year – starts on 1 July and ends on 31 June of the next calendar year. National and provincial governments' financial year run from 1 April to 31 March the following year.

Financial viability: In the context of business, this refers to the ability of an entity to generate enough income to cover its operational costs, debts and capital expenditure. In the context of South Africa's local government, in practice, many municipalities are only financially viable on the basis of national government grants, because they do not have enough residents or businesses that can afford to pay rates or charges.

Free Basic Services: South Africa's laws say that everyone must have at least a minimum level of basic services, even if they cannot pay. These include free basic water (FBW), free basic electricity (FBE), free basic sanitation (FBSan) and free basic refuse removal (BRR).

Fruitless or Wasteful Expenditure: Expenditure which is wasteful or unsuccessful and could have been avoided if reasonable care had been exercised.

Function: A responsibility delegated to a government entity.

G

Grants: A contribution, usually money, by one government entity to another. Most often, these contributions are made to municipalities from national and provincial government. Grants are usually given for a specific purpose.

H

Household: A household is defined as everyone living on one stand.

I

Indigent: Indigent means not having enough resources for basic necessities such as food, clothing, shelter, or medical care. As South Africa's laws consider basic services to be necessities, households categorised as indigent can receive free basic services (FBS). All municipalities are expected to have indigent policies that explain who qualifies for FBS.

Indigent register: A list of persons or households categorised as indigent.

Information Officer: The individual at an institution who is responsible for PAIA requests. According to PAIA, the information officer of a municipality is the municipal manager, although in practice this role is often delegated.

Insolvent: An insolvent person is one who is unable to pay their debts.

Irregular Expenditure: Money which is spent without following the laws that govern public sector financial management, procurement or expenditure (also known as corruption).

J

Jurisdiction: The area of a local government's authority. It could also mean the set of functions (responsibilities) over which municipalities have the exclusive (only) authority.

K

L

Land use: The purpose for which land can be legally used. Land is required for many purposes such as growing food, building houses, travelling or manufacturing. Some land uses are not compatible with one another: for example, industry can pollute water and air, meaning that growing food or housing people close to it is not ideal. Land use can also be wasteful: for example, if shopping malls are built on very fertile soil. Land use management is the process by which government decides what purposes land should be used for.

Land use management: Relates to decisions of what can or cannot be done on specific pieces of land. Even when land is privately owned, it must follow the rules of the municipality. Some land is only zoned

for residential use, and it is not permitted to run businesses from it. When developers buy a property that has a single house and want to build an apartment block in its place, they must get permission from the municipality before they do so.

Levy: Levies are sums of money, like a tax, which are added to the price of a service. In local government they are used for upkeep and maintenance of the area or suburb.

Legal framework: Broadly, the set of rules according to which a country is governed. It includes the rights and obligations of all public and private entities as set out in a country's constitution, legislation, policy and regulations.

Legislature/ Legislative body: This is the branch of government that has the power to make laws. In a political system based on the separation of powers, it should have its own powers and be separate from the executive and judicial branches of government. South Africa's legislatures include municipal councils, provincial legislatures and national Parliament, which includes both the National Council of Provinces (NCOP) and the National Assembly.

Legislative role/authority/powers: The powers to pass laws exercised by legislatures and legislators. It often accompanies the power and responsibility to exercise oversight over the executive and hold it to account.

List of restricted suppliers: A list of suppliers, managed by the National Treasury, that government departments and entities are not allowed to enter into contract with due to their failure to meet previous contractual obligations. The restriction is for a designated period (maximum of 10 years), and may be due to poor performance, submitting false information, or non-compliance with aspects of the contract.

M

Mandate: Collective authority or permission given to an individual or group of people to act on behalf of others.

Majority vote: In majority voting, a single proposal is chosen from a number of alternatives by the majority of voters.

Motion: A proposal made by a councillor for an issue to be discussed at a council meeting and for a decision to be made.

Multi-Year Budgeting: Refers to the practice of budgeting for a number of years. In the South African case this means planning for the next three years. This practice allows for expenditure and revenue decisions that are sustainable in the long-term. An example is avoiding starting projects in one year that cannot be afforded in the following years.

Municipal code: A collection of all the municipality's by-laws.

Municipal owned entities: Municipal entities are like state owned enterprises, but at the local level. They are independent organisations that deliver municipal services on behalf of a municipality which is their majority shareholder. Examples include Pikitup and City Power in Johannesburg.

Municipal public accounts committee (MPAC): A committee responsible for overseeing the spending of municipalities and municipal owned entities to ensure they are effective and honest. All municipalities are

expected to have an MPAC to ensure transparency and accountability in government finances. MPACs are also responsible for reviewing the annual report and producing the oversight report.

N

National Council of Provinces (NCOP): The NCOP came into existence with the adoption of the new Constitution in 1996. The NCOP provides provinces with a forum in which to engage with the national government on matters that affect them. It also oversees the programmes and activities of national government relating to provincial and local government matters.

Non-compliance: Not following rules.

Non-executive councillors: Councillors who are not executive mayors, members of the mayoral committee or members of the executive committee. They have the mandate of exercising legislative and oversight powers.

O

Operating Budget: This is the part of the budget that shows how much money is spent on running the administration and delivering the day-to-day services. Operating costs / expenditure mostly include recurring costs such as salaries.

Oversight: In political terms, the practice of monitoring the decisions and performance of the executive branch of government and holding government leaders accountable for their actions or inactions. In South Africa, the national and provincial legislatures have the duty to exercise oversight over the executive in the national and provincial spheres, while municipal councils have the same duty in the local sphere. Additionally, the exercise of oversight over elected leaders in both executive and legislative structures by the public and civil society is a cornerstone of democracy.

P

PAIA request: A request for information made in terms of the Promotion of Access to Information Act (PAIA).

Party caucus: A forum consisting of all the members of a particular party who serve on a political structure such as a local council.

Performance management: The process of identifying desired results, setting performance standards, allocating budgets to achieve desired results, evaluating the actual results of allocated expenditure, and holding public officials accountable for achieving planned results.

Priority: How important a programme or objective of government is as related to its share of the budget. Programmes that are allocated a larger percentage of the budget are more important than those with lesser allocations.

Process plan: A schedule setting out the process of developing the IDP and budget, including public consultation opportunities. The plan must be tabled in council every year no later than 1 September.

Procurement: The purchase of goods and services.

Progressive realisation: This is the fulfilment of people's rights over a period of time. The Constitution recognises that the government cannot fix all problems overnight. But when it comes to unequal access to adequate housing, water, sanitation, food, a clean environment, and health care the government must move forwards, not backwards. This means that government must demonstrate that it is making constant efforts to improve human rights, even when resources are scarce. The failure to do so is a violation of human rights.

Proportional representation: A voting system where parties are given a number of seats on the basis of the share of votes they obtained. Proportional representative (PR) councillors are elected through the party lists and are therefore primarily accountable to the party.

Public hearings: Special meetings held by public office holders where the public is invited to comment on draft policy, legislation or other topics of importance. Public hearings can also be held by communities who want to draw attention to issues in their communities.

Public sector/ Public office: Refers to all institutions owned or controlled by government. These include national, provincial and local government and state or municipal owned enterprises.

Preferential procurement: In the context of South Africa's procurement laws, this is the procurement of goods and services from previously disadvantaged individuals or organisations. It means that bids are evaluated and decided not only on the basis of price, but also on the basis of their contribution to economic transformation.

Q

Quorum: A quorum is the minimum number of a members who must be present before a meeting can proceed and take decisions.

R

Ratepayers: Residents who pay regular rates (fees) to the municipality.

Recall: In politics, this is the withdrawal of an individual from a position. The right to recall refers to a situation where voters can ask an elected representative to step down before their elected term is over. In some countries, this is a legal right.

Referendum: A public vote to decide on an issue, where people vote for or against a proposal.

Register of Tender Defaulters: A list kept by National Treasury that includes information about suppliers who have been found guilty of procurement related corruption. For a number of reasons, this register has not been useful and remains almost empty.

Regulations: See subordinate laws.

Representative democracy: A political system that recognises the need for people to have a voice in their government, and assigns that voice to persons chosen through majority vote.

Represent: To speak in the name of others in an official capacity.

Restricted supplier: See List of restricted suppliers.

Revenue: Government's income collected from taxes on salaries, profits as well as other charges. Most of South Africa's revenue is collected by national government.

Resolutions: These are decisions of municipal council decided on through a majority vote. Some decisions, such as to dissolve a municipal council, require a two-thirds majority to pass.

Rule of law: The principle that no government office or individual is above the law. This is a cornerstone of democracy.

Ruling party: The party who received the most votes in an election and therefore holds the most seats in a legislative body. This is the party that will also be delegated to exercise executive authority.

S

Separation of powers: A governance model in which the powers of the legislative (parliament), executive (cabinet) and judicial (courts) branches are separate and essentially independent from each other, with a system of checks and balances that force the branches to co-operate while preventing any one branch having complete control.

Service delivery agreement (SDA): In South Africa, a form of procurement contract between a government entity, usually a municipality, and a supplier for the provision of services, particularly those services that government is legally obliged to provide. Sometimes called service level agreement.

Simple majority: A majority of more than 50% of councillors present at a meeting, providing that they form a quorum.

Social audit: The Social Audit Network defines social audit as a community-led process of reviewing of crucial documents to determine whether public expenditure and service delivery outcomes reported by government accurately reflect the public money spent and the services received by the community. Community members collectively verify government (or private company) documents by comparing them with the realities on the ground and the experiences of the community.

Sphere: South Africa's government is divided into three spheres: local, provincial and national.

Standing Rules and Orders: The rules that set out how a municipal council conducts a meeting, when meetings may be closed to the public, the role of the speaker and how petitions are handled.

Strategy: A strategy is a plan setting out steps towards the achievement of a defined goal. It identifies the major problems that need to be solved, the opportunities to solve these problems, and the approaches that will be used to solve them.

Submission: Written or oral comment presented by a member of the public or an organisation to decision-makers in response to a call for comment or in a public hearing.

Subordinate laws: Laws that are made by an executive entity, not a legislative body. Subordinate laws can only be made by an executive entity if it has been given powers to do so by an Act of Parliament. These powers are limited to specific matters defined by the Act. Sub-ordinate laws include rules and

regulations that are very technical and detailed, or that may need to respond to rapidly changing or uncertain situations.

Subsidisation/ Subsidies: In the context of FBS, the payment for the costs of a service using money received from sources other than the users. FBS are subsidised through the equitable share, as well as higher fees paid by wealthier users.

Supply chain management (SCM): The system used to manage, coordinate, and monitor the purchasing or selling of assets, goods and services by a government institution.

Surplus: The amount by which total revenue exceeds total expenditure.

Sustainable/ Sustainability: Refers to the use of resources in a manner that meets the needs of the present, while ensuring that there will be resources in the future. In the context of South Africa's local government finances and service delivery, some understand sustainable services and municipalities to be those which will be able to sustain themselves by collecting enough money to cover expenses. However, others point out that some municipalities and services can only be sustainable through national government grants.

T

Targets: Desired results specified in a performance management system.

Tariffs: In the local government context, the price set for electricity, water and other basic services

Tender: In public procurement, an offer to carry out work or provide certain goods or services at a particular price, usually submitted in response to a request from a public office. Used in the same way as "bid".

Tender Specifications: Documents that provide the exact details of services or goods required (timeframes, quality, quantity etc.) by a public office that has invited bids.

Terms of Reference: The policies that define the roles and responsibilities of different municipal role players. Each municipality must develop its own Terms of Reference for different positions or structures such as councillors, officials etc.

U

Unauthorised Expenditure: Spending money for purposes other than what was allocated in the budget approved by council, and/or overspending.

Unconditional grant: Funds transferred from national government to local government that are not allocated for a specific purpose. Also see conditional grants.

V

W

Ward: A smaller unit of a metro or local municipality (like a neighbourhood or suburb) which can elect a councillor to represent it on the municipal council.

Water service providers: Any person/ body who provides water services to consumers or to another water services institution.

X Y Z

CHAPTER 13:

ADDITIONAL RESOURCES

13.1 Tools for citizens and communities

Although accountable government is a cornerstone of our democracy, it has been difficult to achieve, especially at local government level. It is clear that municipal accountability mechanisms, such as those built into the planning and oversight cycle, are not working as they should. Building the culture of accountability envisioned in the Constitution will require us to be creative and persistent.

The publications below provide a general overview of engagement and mobilisation approaches and give examples of how citizens have lobbied for better services and held local government or other entities to account. The publications listed under the headings below also include examples and guidance regarding specific tools such as budget analysis or procurement monitoring.

THE BASICS OF ORGANISING:

SERI. *Community Organisers Guide*. 2015. SERI. This guide draws on the experiences and practices of the South African shackdwellers' movement, Abahlali baseMjondolo (AbM) in order to assist CBOs to organise effectively for change. It draws and examines topics including: what is a community organisation, principles of community organisation, community meetings, protests and gatherings, education programmes, sustaining a CBO, managing and sharing information, and networking and partnerships. Available at: <https://www.seri-sa.org/index.php/research/expanding-political-space/exp-pol-spa-res-gui>

BUILDING POWER AND USING EVIDENCE TO HOLD GOVERNMENT TO ACCOUNT:

Action Aid. *Peoples Action for Just & Democratic Governance: Using Evidence to Establish Accountability*. 2010. Available at: <https://actionaid.org/publications/2010/using-evidence-establish-accountability-sourcebook-democratic-accountability>

ActionAid. *Accountability – Quality and Equity in Public Service Provision*. 2011. Available at: <https://actionaid.org/publications/2011/accountability-quality-and-equity-public-service-provision-hrba-governance>

ActionAid. *Democracy - Justice and Accountability at the Local Level*. 2012. Available at: <https://actionaid.org/publications/2012/democracy-justice-and-accountability-local-level-hrba-governance-resources>

Afesis Corplan. *Citizen-based Monitoring of Frontline Service Delivery Toolkit*. 2017. Freedom House Southern Africa.

See specifically the chapter on active citizenship.

Coulson, D. *Local Government Social Accountability Monitoring: A Guide for Municipal Journalists and Civic Actors*. 2014. MobiSAM. Covers the planning and oversight cycle in detail. Available at: https://mobisam.net/documents/LG_SAM_Guide.pdf

Just Associates. *A New Weave of Power, People & Politics: The Action Guide for Advocacy and Citizen Participation*. 2002. This guide is unique in its emphasis on power and constituency - building discussed through the lens of gender/race/class and based on the concrete experiences of social change in dozens of countries worldwide. Available at: <https://justassociates.org/en/resources/new-weave-power-people-politics-action-guide-advocacy-and-citizen-participation>

USING THE MEDIA

Amnesty International Australia. *Social Media Activism: A Guide to Online Change-Making*. 2014. Available at: <https://www.amnesty.org.au/wp-content/uploads/2016/09/activist-portal-training-social-media-activism-guide-1.pdf>

Monbiot, George. *An Activist Guide to Exploiting the Media*. Year Unknown. Available at: <https://www.worldcarfree.net/resources/freesources/activist.htm>

Tactical Tech. *The Info-Activism How-To Guide: Strategies and tools for digital campaigning*. Year unknown. The *Info-Activism How-To Guide* is structured around three levels of outcomes: to raise awareness about an issue with an audience, to get an audience more deeply engaged in an issue, and to move an audience towards a specific action. The guide also features campaigning basics, a selection of reviewed digital tools that info-citizens find useful in their work and numerous inspirational examples of how other groups have used information and digital technologies in their campaigns. Available at: <https://howto.informationactivism.org/>

WACC. *'Mission Possible': A Gender and Media Advocacy Training Toolkit*. 2014. This toolkit is unique in its emphasis on putting gender on the media's agenda and also discusses how to build gender and media campaigns as it relates to your advocacy work.

13.2 Local Government

This guide drew on the publications related to local government included below. Many provide in-depth information on areas that this guide only touched on.

LOCAL GOVERNMENT OVERVIEW

McNeil, C. *Making Local Government Work: An Activists Guide*. 2011. Local Government Action. This comprehensive guide provides whole sections of relevant legislation and forms the basis for much of this guide. Available at: http://www.seri-sa.org/images/stories/activistguidetolocalgovernment_aug11.pdf

Right to Know Campaign (R2K). *Local Government Transparency and Accountability: Activist Guide*. 2016.

SPECIFIC LOCAL GOVERNMENT PROCESSES AND ROLE PLAYERS

COMPACT. *Public Participation and Municipal Planning in South Africa: A Consolidated Technical Findings Report on Action Research at 12 Local Municipalities*. 2024. This report synthesises the research findings from across 12 municipalities and outlines the institutional environment and limitations around effective public participation, including participation in the IDP process and the functioning of ward committees. Available at: <https://pari.org.za/wp-content/uploads/2024/12/COMPACT-Consolidated-Technical-Findings-Report-FINAL-November-2024.pdf>

De Visser, J and Steytler N. *Electing Councillors: A Guide to Municipal Elections*. 2016. Dullah Omar Institute / Friedrich Ebert Stiftung. In-depth outlines of municipal election processes. Available at: https://www.cogta.gov.za/cgta_2016/wp-content/uploads/2016/07/Electing-Councillors-A-Guide-to-Municipal-Elections.pdf

EISA and Planact. *Handbook for Municipal Councillors*. 2006. SALGA and GTZ South Africa. Comprehensive resource on local government and the role of municipalities. Gives a step-by-step outline of municipal processes and the roles councillors must play. Available at: <https://static.pmg.org.za/docs/CouncillorHandbook.pdf>

Idasa and Afesis Corplan. *Making ward committees function: Ward Committee Resource Book*. 2005. DPLG and GTZ. Available at: http://salga.org.za/nc/docs/Ward_Committee_Establishment_and_Election_Guiding_Framework_2016.pdf

DPLG and GTZ. *Having your Say: A Handbook for Ward Committees*. 2003. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/WardHandbook.pdf>

KZN CoGTA. *Everything You Need to Know About Being a Councillor*. 2016. Comprehensive resource on local government and the role of municipalities. It includes detailed summaries of relevant laws, outlines key municipal processes and provides information on important programmes such as Expanded Public Works Programme (EPWVP), disaster management and local economic development, among others. Available at: <http://www.kzncogta.gov.za/wp-content/uploads/2017/04/Local-Government-Councillor-Handbook.pdf>

Ledger, T and Rampedi, M. *Mind the Gap: Section 139 Interventions in Theory and in Practise*. 2019. Public Affairs Research Institute (PARI). Available at: https://pari.org.za/wp-content/uploads/2019/10/20191002_MindTheGap_Report_Ledger_Rampedi_v8.pdf

Ministry for Public Service and Administration. *A Handbook for Community Development Workers*. 2007. Available at: https://www.dpsa.gov.za/dpsa2g/documents/cdw/SDR_vol_5_no_2_2006.pdf

South African Local Government Association (SALGA). *Guideline Document on the Roles and Responsibilities of Councillors, Political Structures and Officials*. 2011. Available at: [https://www.salga.org.za/Documents/Municipalities/Guidelines%20for%20Municipalities/Guideline-Docment-On-The-Roles-and-Responsibilities-of-Councillors-and-Officials-\(2\)-\(1st-Draft\).pdf](https://www.salga.org.za/Documents/Municipalities/Guidelines%20for%20Municipalities/Guideline-Docment-On-The-Roles-and-Responsibilities-of-Councillors-and-Officials-(2)-(1st-Draft).pdf)

SALGA. *Ward Committee Establishment and Election Guiding Framework*. 2016. Available at: https://salga.org.za/nc/docs/Ward_Committee_Establishment_and_Election_Guiding_Framework_2016.pdf

SALGA. *The Role of the Municipal Manager Before, During and After the 2016 Local Government Election*. 2016. Available at: <https://www.salga.org.za/Documents/NMA%20Documents%202016/The%20role%20of%20the%20Municipal%20Managers%20before.pdf>

13.3 Municipal budgets and government budget analysis

Budget analysis as a basis for advocacy is increasingly being used by civil society to both understand what municipalities are actually prioritising, collect evidence and lobby for different allocations. The guides below are good places to start for those interested in budget advocacy and analysis.

LOCAL GOVERNMENT OVERVIEW

Jooste, F and Hickey Tshangana, A. *Engaging with Government Budgets: An Activist's Guide to South African Government Budgets at Local, Provincial and National Level*. 2012. Ndifuna Ukwazi and Social Justice Coalition (SJC). In-depth guide to analysing municipal budgets, using analysis of the City of Cape Town's budget to illustrate important concepts and trends. Also explains provincial and national budget processes. Available at: <https://nu.org.za/wp-content/uploads/2021/12/Budget-Book-1.pdf>

van der Westhuizen C, Taylor J, van Zyl A and Rubin, M. *A Guide to Local Government Budget Advocacy*. 2017. International Budget Partnership (IBP). An in-depth step-by-step guide to budget related advocacy at the municipal level. Available at: <https://za.boell.org/2017/04/20/guide-local-government-budget-advocacy>

SOURCES OF BUDGET INFORMATION

Municipal Money is a website which provides key financial information on municipal performance from National Treasury: <https://municipalmoney.gov.za>.

Vuleka Mali is a website on which you can find all national and provincial budget related information. This includes budget speeches, budget documents, annual reports and excel files with budget figures. <https://vulekamali.gov.za/>.

13.4 Monitoring government expenditure

Monitoring government expenditure is a particularly powerful form of evidence collection. It includes approaches such as procurement monitoring and social audits which are important in contexts of service delivery failures and financial mismanagement.

Public Affairs Research Institute (PARI). *The Contract State: Outsourcing & Decentralisation in Contemporary South Africa*. 2014. Available at: <https://pari.org.za/contract-state/>

Ramkumar, V. *Our Money, Our Responsibility – A Citizens' Guide to Monitoring Government Expenditures*. 2008. International Budget Partnership (IBP). This guide offers an overview of government budget implementation processes, alongside examples from across the world of civil society monitoring of these processes. It profiles different methods of government expenditure monitoring. Available at: <https://www.internationalbudget.org/publications/our-money-our-responsibility-a-citizens-guide-to-monitoring-government-expenditures/>

Social Audit Network, Social Justice Coalition and IBP. *A Pocket Guide to Conducting Social Audits in South Africa*. 2018. Also available in isiXhosa and isiZulu Available at: <https://internationalbudget.org/publications/guide-to-conducting-social-audits-in-south-africa/>

Social Justice Coalition (SJC), Ndifuna Ukwazi (NU), International Budget Partnership (IBP) and Equal Education (EE). *A Guide to Conducting Social Audits in South Africa*. 2015. A comprehensive guide to conducting social audits in South Africa, profiling social audits conducted by SJC, NU and EE. Available at: <https://internationalbudget.org/publications/guide-to-conducting-social-audits-in-south-africa/>

van der Westhuizen, C. *Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations*. 2015. International Budget Partnership (IBP). In-depth description of the procurement process in South Africa, at both municipal and national levels, with the intention of supporting civil society procurement monitoring. The guide also includes international examples of civil society procurement monitoring. Available at: <https://www.internationalbudget.org/wp-content/uploads/guide-to-monitoring-public-procurement-in-south-africa-2015.pdf>

SOURCES OF PROCUREMENT INFORMATION

eTender website: The first step in creating a web-based procurement system for the South African public sector. In future, all tender information from national, provincial, and local government will be available here: <http://www.etenders.gov.za/>

13.5 Access to information, PAIA and whistleblowing

Information Regulator. *Guide On How To Use The Promotion Of Access To Information Act 2 Of 2000, As Amended*. 2021. This guide provides a step-by-step explanation of how to use the PAIA Act to request records from public and private bodies, including forms, fees, and appeal processes for denied requests. Available at: https://infoeregulator.org.za/wp-content/uploads/2020/07/PAIA-Guide-English_20210905.pdf

Razzano, G. *Empowering our Whistleblowers*. 2014. Open Democracy Advice Centre (ODAC) and R2K. This guide outlines protections for whistleblowers under South African legislation.

Young, C and Watson, P. *PAIA Resource Kit*. South African History Archive (SAHA). The kit includes also PAIA forms, a PAIA workshop guide, video case studies of civil society who have used PAIA, and other resources and links. Available at: https://www.saha.org.za/resources/docs/Publications/FOIP_pub/PAIA_Resource_Kit.pdf

13.6 Housing and basic services

Education and Training Unit (ETU) and Black Sash. *Paralegal Training Manual*. 2015. This manual trains paralegals on key governance issues, with sections on local government (e.g. municipal structures, budgets, IDP) and land/housing rights, explaining how communities can engage with municipal processes like ward committees. Available at: <http://paralegaladvice.org.za/wp-content/uploads/2016/05/PLM-2015-Complete-Book-for-Print.pdf>

HOUSING

Clark, M. and Royston, L. *Relocating to Alternative Accommodation: Legal and Practical Guidelines*. 2017. SERI. This guide outlines the legal and practical steps for communities facing relocation due to evictions or development projects, emphasising their rights under the Constitution and Housing Act to fair process,

consultation, and adequate alternative accommodation. Available at: https://www.seri-sa.org/images/SERI_Relocation_guidelines_FINAL.pdf

SERI. *Resisting Evictions in South Africa: A Legal and Practical Guide*. 2015. This guide details the legal protections against evictions under the Constitution and the PIE Act, outlining steps communities can take to challenge unlawful evictions through courts or advocacy. Available at: https://www.seri-sa.org/images/SERI_Dear_Mandela_Evictions_Guide_FINAL_FOR_WEB2.pdf

SERI and CUBES. *A Tenant's Guide to Rental Housing*. 2013. This guide explains tenants' rights and responsibilities under South African rental housing law, covering issues like lease agreements, maintenance and dispute resolution with landlords. Available at: <https://www.seri-sa.org/images/SERI%20Tenants%20FINAL%20TO%20PRINT%20lo%20res.pdf>

SERI and CUBES. *Rental Housing in South Africa: Legislation, Regulations and Case Law*. 2013. This document compiles key legislation, regulations, and case law governing rental housing, detailing tenant protections, landlord obligations, and municipal roles in ensuring fair housing practices. Available at: <https://www.seri-sa.org/images/SERI%20Rental%20Housing%20FINAL%20TO%20PRINT%20lo%20res.pdf>

Tissington, K. *A Resource Guide to Housing in South Africa 1994 - 2010: Legislation, Policy, Programmes and Practice*. 2011. SERI. This guide reviews South Africa's housing policies, programmes and legislation from 1994 to 2010. Available at: https://www.seri-sa.org/images/stories/SERI_Housing_Resource_Guide_Feb11.pdf

BASIC SERVICES

Adam, F. *Free Basic Electricity: a better life for all*. 2010. Earthlife Africa Johannesburg. This report examines South Africa's Free Basic Electricity (FBE) policy, detailing its implementation, benefits, and challenges in providing 50 kWh of FBE monthly to poor households to enhance access and affordability. Available at: <https://earthlife.org.za/wp-content/uploads/2020/11/Free-Basic-Electricity-Final-Low-res.pdf>

Ledger, T and Mathibela, N. *Affordability of Basic Services for South African Households*. 2025. Public Affairs Research Institute (PARI). This report quantifies what level of services is required to support a higher standard of living and facilitate new livelihood opportunities, and at what cost these services would be affordable for low-income households in South Africa. Available at: https://pari.org.za/wp-content/uploads/2025/06/20250617_affordabilityDIGIsingles.pdf

SERI. *Targeting the Poor? An Analysis of Free Basic Services (FBS) and Municipal Indigent Policies in South Africa*. 2014. This report analyses South Africa's Free Basic Services (FBS) policies, including FBVW and FBE, assessing how municipal indigent policies target poor households and their effectiveness in addressing poverty and service access. Available at: https://seri-sa.org/images/Targeting_the_Poor_Nov13.pdf

Tissington, K. *Basic Sanitation in South Africa: A Guide to Legislation, Policy and Practice*. 2011. SERI. This guide outlines the legal and policy framework for basic sanitation in South Africa. Available at: https://www.seri-sa.org/images/docs/Basic_Sanitation_in_South_Africa_A_Guide.pdf

CHAPTER 14:

ORGANISATIONS THAT CAN HELP

14.1 Local government and development

Afesis www.afesis.org.za Email: info@afesis.org.za Location: East London	Lawyers for Human Rights (LHR) www.lhr.org.za FB: LawyersForHumanRights Twitter: @LHR_SA See locations and telephone under Section 14.4.
Black Sash www.blacksash.org.za Email: help@blacksash.org.za Helpline: 072 66 33 739 Twitter: @black_sash Location: Cape Town, Durban, Port Elizabeth, and Johannesburg (serving North West & Limpopo)	Legal Resources Centre (LRC) www.lrc.org.za FB: LRCSouthAfrica Twitter: @LRC_SouthAfrica See locations and telephone under Section 14.4.
Built Environment Support Group (BESG) www.besg.co.za Email: info@besg.co.za FB: BesgNGO Twitter: @BESG_KZN Location: Pietermaritzburg	Ndifuna Ukwazi www.nu.org.za Email: contact@nu.org.za FB: NdifunaUkwazi Twitter: @NdifunaUkwazi Location: Cape Town

Centre for Applied Legal Studies (CALS)

www.wits.ac.za/cals

Twitter: @CALS_ZA

Location: Johannesburg

(serves Gauteng, Limpopo and other provinces)

Planact

www.planact.org.za

Email: info@planact.org.za

FB: planact.sa

Twitter: @Planact_NG

Location: Johannesburg. Also work in Mpumalanga.

Treatment Action Campaign (TAC)

www.tac.org.za

Email: info@tac.org.za

FB: TreatmentActionCampaign

Twitter: @TAC

Locations: Lusikisiki, Bloemfontein, Johannesburg, Pietermaritzburg, Giyani, Ermelo, Cape Town

Community Organisation Resource Centre (CORC)

www.sasdialliance.org.za

Email: info@corc.co.za

Location: Cape Town

ProBono.Org

www.probono.org.za

Email: info@probono.org.za

FB: ProBono.Org

Twitter: @Probono_Org

See locations and telephone under Section 14.4.

Development Action Group (DAG)

www.dag.org.za

Email: dag@dag.org.za

FB: developmentactiongroup

Twitter: @DAG__activism

Location: Cape Town

Shack Dwellers International (SDI)

<http://sdinet.org.za>

Email: info@sdinet.org

FB: sdinet

Dullah Omar Institute

www.dullahomarinstitute.org.za

FB: CommunityLawCentre

Twitter: @UWC_DOI

Location: Cape Town

Socio-Economic Rights Institute of South Africa (SERI)

www.seri-sa.org

FB: SocioEconomicRightsInstitute

Twitter: @SERI_RightsSA

Location: Johannesburg. Also serve other provinces

14.2 Budget information and analysis

Financial and Fiscal Commission (FFC)

www.ffc.co.za

Email: president@po.gov.za

Tel: Presidential Hotline 17737

Parliamentary Monitoring Group (PMG)

<https://pmg.org.za/>

Email: info@pmg.org.za

Tel: 021 465 8885

Location: Cape Town

IMALI YETHU

www.imaliyethu.org.za

Email: z.kota@ru.ac.za

Twitter: @imali_yethu

Public Service Accountability Monitor (PSAM)

www.psam.org.za

Email: psam-admin@ru.ac.za

Twitter: PSAM_AFRICA

International Budget Partnership SA (IBPSA)

www.internationalbudget.org

FB: internationalbudgetpartnerships

Twitter: @Openbudgets

National Treasury

www.treasury.gov.za

Tel: 012 315 5111

Twitter: @TreasuryRSA

For all local government municipal documentation and budget related information refer to the National Treasury's MFMA website

www.mfma.treasury.gov.za

Email: mfma@treasury.gov.za

Tel: 012 315 5850

14.3 Transparency, access to information, freedom of expression and anti-corruption

Auditor-General (AG)
www.agsa.co.za
Tel: 012 426 8000
FB: AuditorGeneralSA
Twitter: @AuditorGen_SA

The Office of the Public Protector
www.pprotect.org
Tel: 012 366 7000 or 080 011 2040
FB: PublicProtectorSouthAfrica
Twitter: @PublicProtector

Corruption Watch
www.corruptionwatch.org.za
Email: info@corruptionwatch.org.za
FB: CorruptionWatch
Twitter: @Corruption_SA
WhatsApp: 082 579 5220

R2K Campaign
Email: admin@r2k.org.za
FB: r2kcampaign
Twitter: @r2kcampaign

Information Regulator (South Africa)
<https://infoeregulator.org.za/>
Email: enquiries@infoeregulator.org.za
Tel: 010 023 5200

South African Human Rights Commission (SAHRC)
www.sahrc.org.za
Tel: 011 877 3600 (Switchboard)
FB: SAHumanRightsCommission
Twitter: @SAHRCCommission

My Vote Counts
www.myvotecounts.org.za
Email: info@myvotecounts.org.za
FB: myxcounts
Twitter: @MVC_SA



REPORT CORRUPTION

Corruption hotline
0800 023 456
(toll free from landlines)

Report via WhatsApp
082 579 5220

Add this number to your address book as "Corruption Watch" and then start a new chat.

Report online now

www.corruptionwatch.org.za
Report an incident online on the website. The communication is secured and your information will be treated with utmost care and security.

Call-back service

SMS "CALLME" TO 44 666
Send an SMS with "callme" to 44 666 and a Corruption Watch team member will give you a call. The SMS and the call are both for free.

14.4 Public interest legal organisations (providing free legal advice)

Centre for Applied Legal Studies (CALS)
www.wits.ac.za/cals
Twitter: @CALS_ZA
Location: Johannesburg
(serves Gauteng, Limpopo and other provinces)

Legal Resources Centre (LRC)
www.lrc.org.za
Email: info@lrc.org.za
FB: LRCSouthAfrica
Twitter: @LRCSouthAfrica
JHB / National office: 011 038 9709
Durban office: 031 301 7572
Cape Town office: 021 879 2398
Grahamstown office: 046 622 9230

Lawyers for Human Rights (LHR)

www.lhr.org.za

Email: info@lhr.org.za

FB: LawyersForHumanRights

Twitter: @LHR_SA

Johannesburg office: 011 339 1960

WhatsApp text only: 066 076 8845

PTA office: 012 320 2943

WhatsApp text only: 064 647 4719

Durban office: Tel: 031 301 0531

WhatsApp text only: 067 258 6020

Legal Aid SA Johannesburg

www.legal-aid.co.za

Email: LegalAidAdvice@legal-aid.co.za

Tel: 079 835 7179 (Please Call Me)

Legal Aid Toll free Line: 0800 110 110 Legal Aid works in all provinces.

Locations: <https://legal-aid.co.za/find-us/>

14.5. University Legal Clinics

Queenstown Rural Legal Centre

Tel: 045 838 5600

Email: rurallegalcentre@ru.ac.za

Stellenbosch University Law Clinic

www.sulawclinic.co.za

Tel: 021 808 3600

Email: rhkadmin@sun.ac.za

Rhodes University Legal Aid Clinic (Grahamstown)

Email: lawclinic@ru.ac.za

Tel: 046 603 7656

UCT Legal Aid Clinic

<https://law.uct.ac.za/law-clinic>

Email: uctlawclinic@uct.ac.za

Tel: 021 650 3775/ 021 650 4890

WhatsApp: 068 350 5920

ProBono.Org

www.probono.org.za

FB: ProBono.Org

Twitter: @Probono_Org

Johannesburg: 011 339 6080

Email: info@probono.org.za

Durban: (031) 301 6178

Email: dbninfo@probono.org.za

Cape Town: 087 470 0721

Email: infocpt@probono.org.za

SECTION27

www.section27.org.za

Email: info@section27.org.za

Tel: 011 356 4100

FB: SECTION27news

Twitter: @SECTION27news

Location: Johannesburg. Also serve other provinces.

UNISA Legal Aid Clinic

<https://www.unisa.ac.za/sites/corporate/default/Colleges/Law/Schools-departments-centres-&-institute/Unit/Unisa-Law-Clinic>

Email: lawClinic@unisa.ac.za

Tel: 012 481 2954 / 5

Women's Legal Centre (WLC)

www.wlce.co.za

Email: info@wlce.co.za

Tel: 021 424 5660

FB: WLCCTown

Twitter: @WLCCTown

Socio-Economic Rights Institute of South Africa (SERI)

www.seri-sa.org

FB: SocioEconomicRightsInstitute

Twitter: @SERI_RightsSA

Location: Johannesburg. Also serve other provinces

University of Venda Legal Aid Clinic

<https://www.univen.ac.za/faculties/management-commerce-and-law/school-of-law/legal-aid-clinic/>

Email: info@univen.ac.za

Tel: 015 962 8869 / 8706 / 8309

University of KwaZulu Natal Law Clinic

<https://law.ukzn.ac.za/lawclinic/>

Durban: 031 260 2151

Email: clms@ukzn.ac.za

Pietermaritzburg: 033 260 5014 / 6207

Email: pmblaw@ukzn.ac.za

University of Johannesburg Law Clinic

<https://www.uj.ac.za/faculties/law/law-clinic/>

Tel: 011 559 2633

University of Pretoria Law Clinic

<https://www.up.ac.za/up-law-clinic-home-page>

Email: francina.ngidi@up.ac.za

Tel: 012 420 4155

Your voice. Your community. Your power.

LOCAL GOVERNMENT PAMPHLET SERIES

Accountability and Oversight in Municipalities



This pamphlet provides information on local government in South Africa. Municipalities are very important and granting this new powers that, when used to their full potential, can help to improve the lives of the people of South Africa.

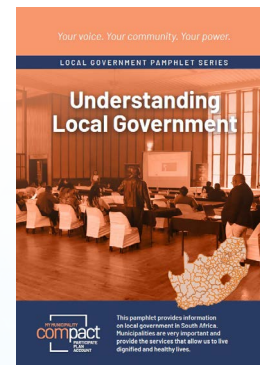
COMPACT
COMMUNITY PARTNERSHIP

This pamphlet provides information on local government in South Africa. Municipalities are very important and granting this new powers that, when used to their full potential, can help to improve the lives of the people of South Africa.

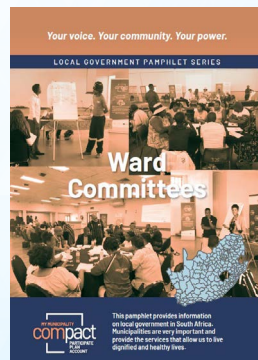
Understanding Local Government



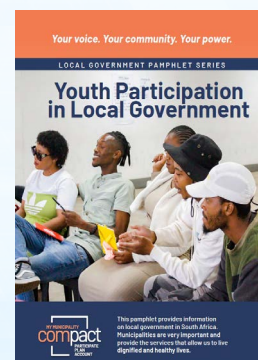
Accountability and Oversight in Municipalities



Municipal Councillors



Ward Committees



Youth Participation in Local Government

NOTES

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Endnotes

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- 6 Based on: Steytler N and De Visser J. Intervening in Provinces & Municipalities: Guidelines for the application of Sections 100 & 139 of the Constitution.
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- 26 Public Affairs Research Institute (PARI). The Contract State: Outsourcing & Decentralisation in Contemporary South Africa. 2014. Available at: <https://pari.org.za/contract-state/>
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- 28 National Planning Commission (2013) Your Guide to the National Development Plan 2030, p. 138.
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- 30 Public Participation Framework for the South African Legislative Sector (2013) p. 7.
- 31 These criteria were developed in numerous court judgements including: Doctors for Life International v. National Assembly & Others (CCT 12/05) [2006] ZACC 11; Matatiele Municipality and Others v President of the Republic of South Africa and Others (CCT 73/05) [2006] ZACC 2; Merafong Demarcation Forum and Others v. President of the Republic of South Africa (CCT 41/07) [2008] ZACC 10. Principles are also set out in the MSA sections 17 and 20.
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- 49 Based on: Making Local Government Work: An Activists Guide.
- 50 From: Making Local Government Work: An Activists Guide.
- 51 City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others (CCT89/09) [2010] ZACC 11
- 52 Adapted from: www.groundup.org.za/article/cape-town-approves-rezoning-prime-property-social-housing-inner-city/
- 53 Adapted from: KZN CoGTA. Everything You Need to Know About Being a Councillor.
- 54 Adapted from EISA and Planact. Handbook for Municipal Councillors.
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- 57 Adapted from: Know Your Service Rights Database.
- 58 Adapted from KZN CoGTA. Everything You Need to Know About Being a Councillor.
- 59 Adapted from: van der Westhuizen C. Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations.
- 60 Adapted from: SERI. Resisting Evictions in South Africa: A Legal and Practical Guide.
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MY MUNICIPALITY compact

PARTICIPATE
PLAN
ACCOUNT



Co-funded by
the European Union

Website: <https://pari.org.za/compact>

Twitter: @Compact_MyMunic

Facebook: Compact – My Municipality

