ACCOUNTING
FOR
BASIC ✓
SERVICES

HOLDING LOCAL GOVERNMENT ACCOUNTABLE

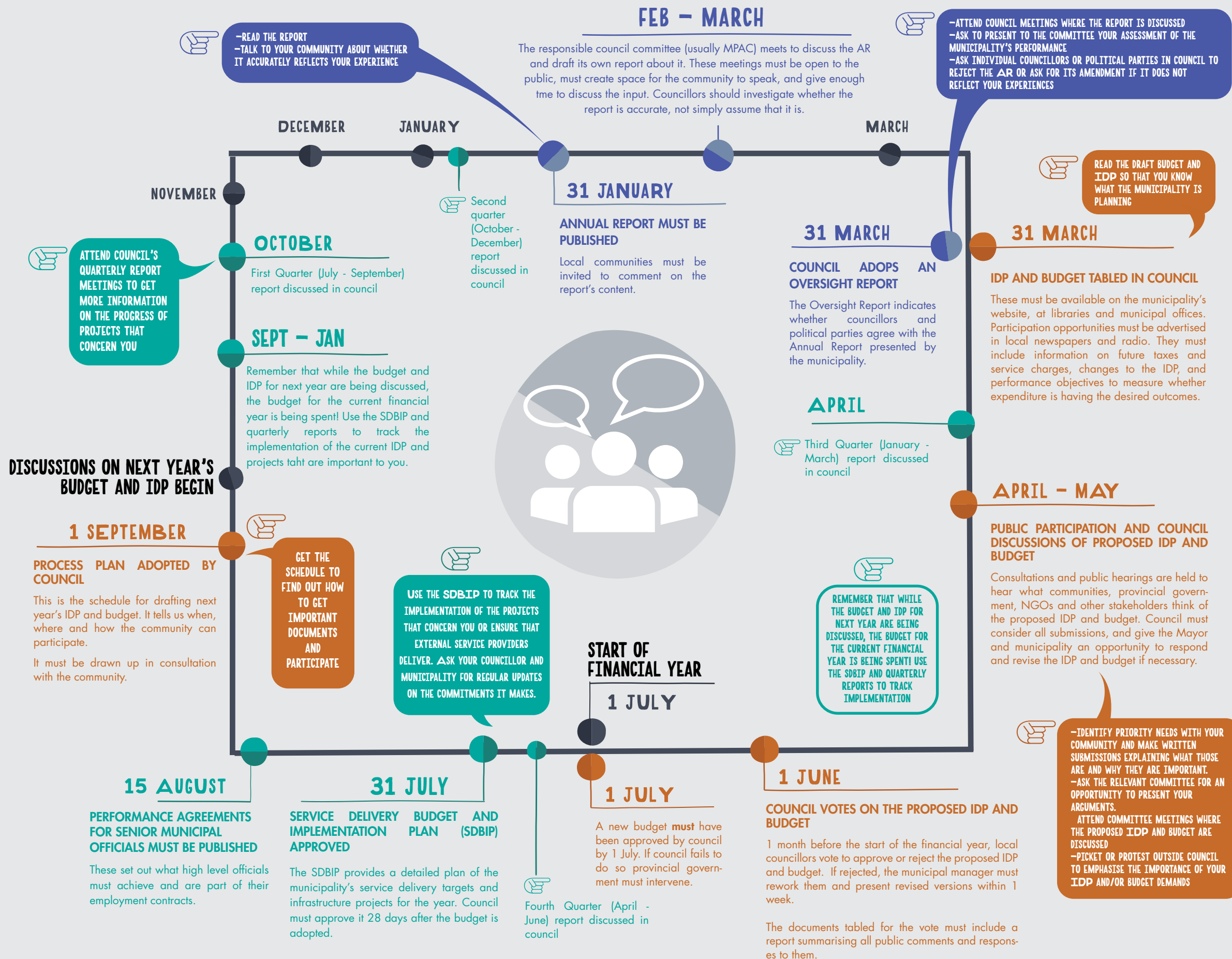## AN ACTIVIST GUIDE

PARTICIPATE IN LOCAL GOVERNMENT'S PLANNING & ACCOUNTABILITY CYCLE

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.

Legend:
- 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

Timeline

NOVEMBER

DECEMBER

JANUARY

FEB – MARCH

The responsible council committee (usually MPAC) meets to discuss the AR and draft its own report about it. These meetings must be open to the public, must create space for the community to speak, and give enough tme to discuss the input. Councillors should investigate whether the report is accurate, not simply assume that it is.

MARCH

—READ THE REPORT
—TALK TO YOUR COMMUNITY ABOUT WHETHER IT ACCURATELY REFLECTS YOUR EXPERIENCE

—ATTEND COUNCIL MEETINGS WHERE THE REPORT IS DISCUSSED
—ASK TO PRESENT TO THE COMMITTEE YOUR ASSESSMENT OF THE MUNICIPALITY'S PERFORMANCE
—ASK INDIVIDUAL COUNCILLORS OR POLITICAL PARTIES IN COUNCIL TO REJECT THE AR OR ASK FOR ITS AMENDMENT IF IT DOES NOT REFLECT YOUR EXPERIENCES

READ THE DRAFT BUDGET AND IDP SO THAT YOU KNOW WHAT THE MUNICIPALITY IS PLANNING

OCTOBER
First Quarter (July - September) report discussed in council

Second quarter (October - December) report discussed in council

31 JANUARY
ANNUAL REPORT MUST BE PUBLISHED
Local communities must be invited to comment on the report's content.

31 MARCH
COUNCIL ADOPS AN OVERSIGHT REPORT
The Oversight Report indicates whether councillors and political parties agree with the Annual Report presented by the municipality.

31 MARCH
IDP AND BUDGET TABLED IN COUNCIL
These must be available on the municipality's website, at libraries and municipal offices. Participation opportunities must be advertised in local newspapers and radio. They must include information on future taxes and service charges, changes to the IDP, and performance objectives to measure whether expenditure is having the desired outcomes.

ATTEND COUNCIL'S QUARTERLY REPORT MEETINGS TO GET MORE INFORMATION ON THE PROGRESS OF PROJECTS THAT CONCERN YOU

SEPT – JAN
Remember that while the budget and IDP for next year are being discussed, the budget for the current financial year is being spent! Use the SDBIP and quarterly reports to track the implementation of the current IDP and projects taht are important to you.

APRIL
Third Quarter (January - March) report discussed in council

APRIL – MAY
PUBLIC PARTICIPATION AND COUNCIL DISCUSSIONS OF PROPOSED IDP AND BUDGET
Consultations and public hearings are held to hear what communities, provincial government, NGOs and other stakeholders think of the proposed IDP and budget. Council must consider all submissions, and give the Mayor and municipality an opportunity to respond and revise the IDP and budget if necessary.

DISCUSSIONS ON NEXT YEAR'S BUDGET AND IDP BEGIN

1 SEPTEMBER
PROCESS PLAN ADOPTED BY COUNCIL
This is the schedule for drafting next year's IDP and budget. It tells us when, where and how the community can participate.

It must be drawn up in consultation with the community.

GET THE SCHEDULE TO FIND OUT HOW TO GET IMPORTANT DOCUMENTS AND PARTICIPATE

USE THE SDBIP TO TRACK THE IMPLEMENTATION OF THE PROJECTS THAT CONCERN YOU OR ENSURE THAT EXTERNAL SERVICE PROVIDERS DELIVER. ASK YOUR COUNCILLOR AND MUNICIPALITY FOR REGULAR UPDATES ON THE COMMITMENTS IT MAKES.

START OF FINANCIAL YEAR
1 JULY

REMEMBER THAT WHILE THE BUDGET AND IDP FOR NEXT YEAR ARE BEING DISCUSSED, THE BUDGET FOR THE CURRENT FINANCIAL YEAR IS BEING SPENT! USE THE SDBIP AND QUARTERLY REPORTS TO TRACK IMPLEMENTATION

—IDENTIFY PRIORITY NEEDS WITH YOUR COMMUNITY AND MAKE WRITTEN SUBMISSIONS EXPLAINING WHAT THOSE ARE AND WHY THEY ARE IMPORTANT.
—ASK THE RELEVANT COMMITTEE FOR AN OPPORTUNITY TO PRESENT YOUR ARGUMENTS.
—ATTEND COMMITTEE MEETINGS WHERE THE PROPOSED IDP AND BUDGET ARE DISCUSSED
—PICKET OR PROTEST OUTSIDE COUNCIL TO EMPHASISE THE IMPORTANCE OF YOUR IDP AND/OR BUDGET DEMANDS

15 AUGUST
PERFORMANCE AGREEMENTS FOR SENIOR MUNICIPAL OFFICIALS MUST BE PUBLISHED
These set out what high level officials must achieve and are part of their employment contracts.

31 JULY
SERVICE DELIVERY BUDGET AND IMPLEMENTATION PLAN (SDBIP) APPROVED
The SDBIP provides a detailed plan of the municipality's service delivery targets and infrastructure projects for the year. Council must approve it 28 days after the budget is adopted.

1 JULY
A new budget **must** have been approved by council by 1 July. If council fails to do so provincial government must intervene.

Fourth Quarter (April - June) report discussed in council

1 JUNE
COUNCIL VOTES ON THE PROPOSED IDP AND BUDGET
1 month before the start of the financial year, local councillors vote to approve or reject the proposed IDP and budget. If rejected, the municipal manager must rework them and present revised versions within 1 week.

The documents tabled for the vote must include a report summarising all public comments and responses to them.

HOLDING LOCAL GOVERNMENT ACCOUNTABLE

AN ACTIVIST GUIDE

ACKNOWLEDGEMENTS

TABLE OF CONTENTS

SECTION IV:
YOUR RIGHT TO WATER, HOUSING AND SANITATION AND SPATIAL JUSTICE 97

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
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
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 <u>sphere</u> 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 <u>basic services</u>. Our Constitution and laws clearly say that local government must be open, responsive, and accountable. Sadly, this is often not the case.

> This guide aims to help you hold your municipality to account for the services it should provide, the money that it spends, and the decisions that it makes.

It's important that you see this guide as a toolbox, and not an exact recipe. <u>Accountability</u> requires place-specific political assessment and creativity. What will work 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.

Local government is a complex institution, and so some of the information included here may not be immediately relevant to you.

THIS GUIDE IS LIKE A TOOLBOX

IT REQUIRES YOUR OWN POLITICAL ASSESSMENT AND CREATIVITY

> MY NAME IS MANDLA FROM MPOLWENI. I'LL BE SHARING MY EXPERIENCE OF ENGAGING WITH THE UMGUNGUNDLOVU MUNICIPALITY, AS WELL AS SHARING STORIES FROM OTHER COMMUNITIES AND ORGANISATIONS TO LEARN FROM THEIR TACTICS AND STRATEGIES.

> MY NAME IS NONDUMISO FROM THE KWAZENZELE COMMUNITY. I'LL POINT OUT IMPORTANT INFORMATION AND HELP ILLUSTRATE SOME OF THE INFORMATION WITH REAL LIFE EXAMPLES.

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 **actually are**.

TAKE ACTION: In these boxes we point out practical action you can take to get involved and hold your municipality accountable.

PARTICIPATE: Participation is a right! These boxes point out entry points for participation.

CHECKLIST: Evidence is important for advocacy and lobbying! These boxes provide questions to help you assess how different people in your municipality are doing their job. Use them to document the facts and strengthen your case.

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

RESOURCES: Additional resources you can use to help hold local government accountable.

CROSS REFERENCE: Indicates where additional information about the subject can be found in this guide.

GENDER: Indicates where 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 book. A full bibliography of quotes and sources appears at the end of this guide. In addition, where a particular source has provided core ideas for a chapter, it is acknowledged with a citation within the relevant text.

PERSONAL NOTES

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

1.1 The Constitution and the rule of law [1]

It is important for activists 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. The Constitution overrides any law that does not agree with it.

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:

WHAT LAW GIVES THE GOVERNMENT THE AUTHORITY TO ACT?

HAS THE GOVERNMENT OBEYED THE LAW?
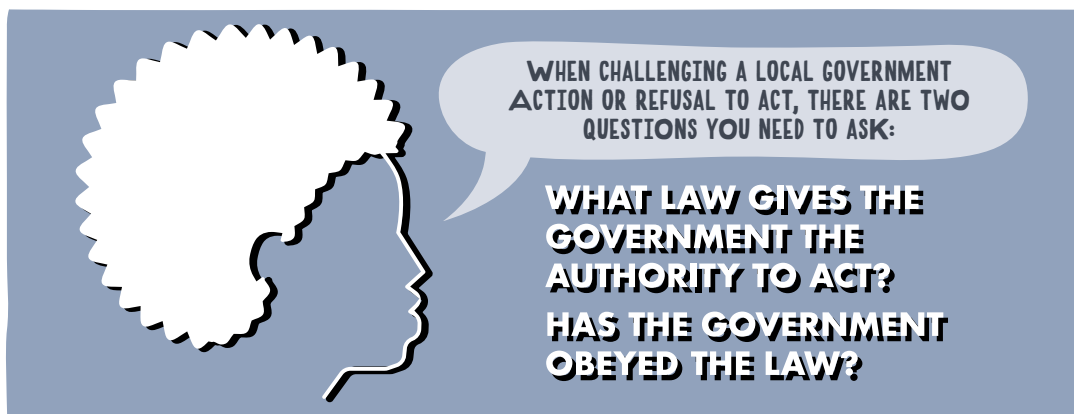
The *Bill of Rights* in the Constitution requires government to **respect, protect, promote and fulfil** our rights. These include the rights to:

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 <u>spheres</u> – local, provincial and national. All three spheres have <u>legislative</u> and <u>executive</u> 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 <u>functions</u> (services) it is responsible for.

OVERVIEW: THE DISTINCT POWERS OF LOCAL, PROVINCIAL AND NATIONAL GOVERNMENTS [2]

LOCAL GOVERNMENT

Powers relate to:

Provision of <u>basic services</u>; making and enforcing <u>by-laws</u> 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
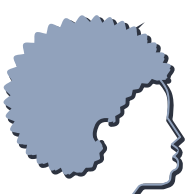
Provincial and municipal powers only apply within their boundaries, and are limited to functions as listed in Schedules 4 and 5 of the Constitution.

More on each sphere's functions on page 14

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 *inter*dependent, and must work together. The Ministry 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.

Sections 152 and 153 of the Constitution state that local government **must**:

- provide **democratic, accountable** and **participatory government** for local communities;
- **prioritise** the **basic needs** of the community and provide the services assigned to it by the Constitution (Schedule 4 and 5); and
- promote **social and economic development**, as well as a **safe and healthy environment**.

TACTICS: ARE YOU TALKING TO THE RIGHT PEOPLE?

IN MPOLWENI WE WERE CONCERNED ABOUT ACCESSING FREE BASIC SERVICES (FBS). WE FOUND OUT THAT ALTHOUGH OUR LOCAL MUNICIPALITY, UMSHWATHI, IS RESPONSIBLE FOR REFUSE REMOVAL, IT WAS THE UMGUNGUNDLOVU DISTRICT MUNICIPALITY THAT WAS RESPONSIBLE FOR THE PROVISION OF WATER AND THE MANAGEMENT OF THE INDIGENT REGISTER.

IN THE CHRIS HANI COMMUNITY, LOCATED IN BUFFALO CITY METROPOLITAN MUNICIPALITY THE COMMUNITY WANTED THEIR HOUSES TO BE RECTIFIED AND HAVE BETTER ACCESS TO WATER AND SANITATION. THEY FOUND OUT THAT THE PROVINCIAL EASTERN CAPE DEPARTMENT OF HUMAN SETTLEMENTS IS RESPONSIBLE FOR RECTIFICATION, WHILE THE METRO WAS RESPONSIBLE FOR INSTALLING WATER METERS AND IMPROVING OUR ACCESS TO WATER AND SANITATION SERVICES.

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 STRAIGHT FORWARD – MANY RESPONSIBILITIES ARE SHARED, AND EXACT ARRANGEMENTS ARE DIFFERENT IN DIFFERENT PLACES!
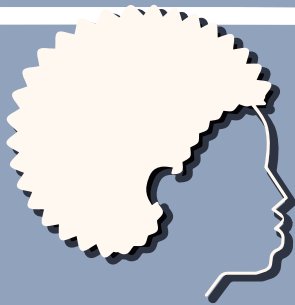
WE HAVE A
SERVICE DELIVERY PROBLEM
BUT WHO IS RESPONSIBLE FOR IT?

Because local government is the closest to us, we often go to them first when we have 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
- Building regulations
- Public transport
- Firefighting services
- Child care facilities
- Municipal parks, recreation and sport facilities
- Street lighting
- Street trading

Municipalities have powers to make and <u>enforce</u> laws (called <u>by-laws)</u> 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

The Constitution (s. 155) establishes three categories of municipalities in South Africa. What your municipality is responsible for depends on which category it belongs to. It is important to know which type of municipality you live in, so you know its exact powers and responsibilities, and what type of municipal system it follows. >page 34)

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. > page 24

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. > page 24
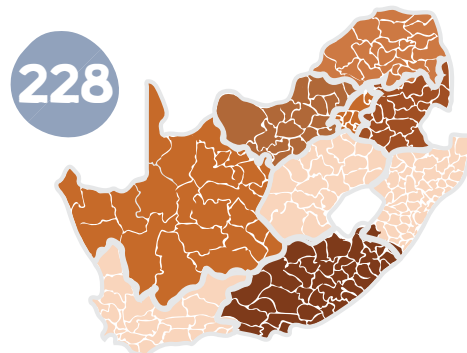
CATEGORY C: District municipalities (DMs)

- 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% PR councillors and 60% councillors **sent from the LMs that make up the district.** > page 24
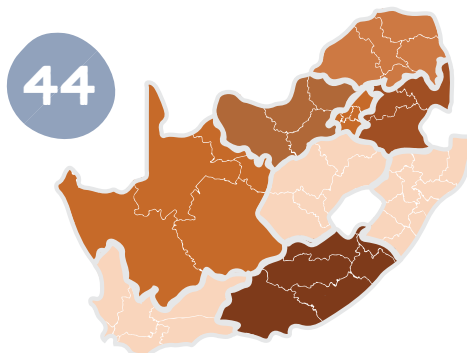
TAKE ACTION: FIND OUT WHO'S RESPONSIBLE FOR THE SERVICES YOU'RE CONCERNED ABOUT!

- Talk to your councillor
- Ask at your municipality
- Reach out to a local NGO

1.5 Local Government and the law [3]

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 <u>body</u> (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:

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

TO KNOW MORE ABOUT EACH OF THESE LAWS,
READ CHAPTER 11: LAWS AND POLICIES YOU SHOULD KNOW >PAGE 109.

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 <u>Municipal Code</u>. > page 37

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 process a municiplaity 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, 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.

<u>Standing rules and orders</u>: 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). > page 116 & 117

The 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 and the Constitutional Court.

CHAPTER 2:

ACCOUNTABILITY IN SOUTH AFRICA'S LEGAL FRAMEWORK

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 **responsible** (willing to face consequences) for those decisions.

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.

ACCOUNTABILITY CAN BE THOUGHT OF AS A SET OF RELATIONSHIPS. IN THE DEMOCRATIC RELATIONSHIP, FOR EXAMPLE, CITIZENS CONSENT (AGREE) TO BE GOVERNED THROUGH ELECTIONS, AND THOSE ELECTED MUST FULFILL THEIR LEGAL DUTIES TOWARDS CITIZENS.

2.2 Accountability mechanisms

The Constitution establishes elections as the primary mechanism to ensure government accountability to citizens. However, government accountability is also built into the structure of the South African state itself, through the creation of oversight bodies and mechanisms.

First, the Constitution establishes three 'arms' of government – the legislature, the judiciary and the executive – and gives each its own distinct powers. This is called the **separation of powers**, and 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 have too much power.

- **The legislature** is the law-making arm of government, and its members are elected by citizens. At the local government level, the municipal council and its councillors are the elected legislators. **> page 23**
- **The executive** is the implementing arm of government, usually led by a president or prime minister and a cabinet, drawn from the legislature. At the municipal level, this is the executive mayor or committee. **> page 34**
- **The judiciary** is the law-enforcing arm of government. It assesses whether laws have been disobeyed, and imposes appropriate punishment.

> **AT THE LOCAL LEVEL, THE EXECUTIVE AND LEGISLATIVE FUNCTIONS AREN'T COMPLETELY SEPARATE, ESPECIALLY IN SMALL COUNCILS. > PAGE 34**

Second, the Constitution establishes <u>Chapter Nine Institutions</u>. These independent <u>bodies</u> tasked with supporting our constitutional democracy do not answer to any government department.. Those discussed below have the powers to investigate local government and to help hold it accountable. Where municipalities are unresponsive, these institutions could be approached for assistance, and their reports can be important sources of information.

Lastly, municipal office holders are also subject to accountability mechanisms established by laws such as the MSA, MFMA and MSTA. See Chapter 4.2.2. for more information.

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 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.

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).

2.3   Chapter Nine Institutions
2.3.1 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 <u>annual report</u> (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 <u>IDP</u> and <u>SDBIP</u> – 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).

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 (van der Westhuizen, 2015).

In addition to the specifics, the AG report will tell you whether your 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.

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

2.3.2 The Public Protector (PP)

The Public Protector 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.

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 on pages 28 and 29.

If these steps are not successful, a member of the public can lodge a complaint by contacting the Public Protector's office by telephone or email, or by completing an online form on its website. The complaint to the PP must be made within two years of the problem arising. Not every allegation results in an investigation. The PP has the legal right to choose when to take action. If the Public Protector investigates and finds that the complaint was justified, it will recommend how it should be addressed.

2.3.3 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 your municipality is not delivering Constitutionally mandated services, you can lodge a complaint online or at one of the SAHRC's provincial offices. They record all complaints and decide which ones to investigate or refer to another body. The SAHRC can:

- Give you legal advice.
- Investigate complaints.
- Use the courts, including the Equality Courts, to seek redress.
- They have a specific mandate set out by PAIA to promote the right to access information and monitor compliance it.

The Commission has an office in every province. You can contact them to find the office that is closest to you.

See the Public Protector's and SAHRC 's websites for their reports:
- Public Protector: www.pprotect.org
- SAHRC: www.sahrc.org.za

See contact details in Chapter 14, page 146.

SECTION ❚❙

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

WHO IS INVOLVED IN LOCAL GOVERNMENT?

A municipality consists of three main role players: the political structures, the administration and the local community (MSA s. 2). *The Municipal Structures Act (MSTA)* and the *Municipal Systems Act (MSA)* set out the legal framework for each. This section of the guide outlines each in more detail.

1.

THE POLITICAL STRUCTURES

The ward and PR councillors who were elected to represent us in the council

>page 22

2.

THE ADMINISTRATION

The public service – the officials, managers and workers who make it all happen

>page 39

3.

THE LOCAL COMMUNITY

the people who live and work in the municipality, and the organisations they belong to, such as civics, unions or business associations

>page 56

CHAPTER 3:

POLITICAL STRUCTURES

ELECTORATE (VOTERS)
> page 56

MUNICIPAL ELECTIONS

POLITICAL PARTY

PR councillors are appointed by a political party that recieved votes. >pg. 24

Party Caucus
> page 23

POLITICAL PARTY

Although Ward Councillors are directly elected, they are often party members.
> pg 24

WARD COUNCILLORS

PR COUNCILLORS

MAYOR

THE MUNICIPAL COUNCIL

Formulate policy and laws, oversee the executive and hold them accountable.

Formulate and manage the implementation of municipal programmes

Legislative functions
SPEAKER'S OFFICE

> page 33

COMMITTEES

> page 36

The municipality's highest decision-making body, the Municipal Council, includes all elected councillors. It gives policy direction, determines budgets and programmes, and oversees their implementation. The council has both legislative and executive roles. >page 23 - 38.

Executive functions
MAYOR / MAYORAL COMMITTEE

> pages 23, 34

Members of the Mayoral Committee (MMCs)

MUNICIPAL MANAGER

> page 41

ADMINISTRATION

ELECTORAL RELATIONSHIP   - - - →
Elected representatives are accountable to those who elected them (the electorate).

INFLUENCE
This is both formal and informal

3.1 Council

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

> Legislative authority refers to the power to pass <u>by-laws</u>, determine the municipality's policies and budgets, and conduct <u>oversight</u> 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. > page 24

- **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. In very small councils, the mayor is also speaker. > page 33

- **Mayor:** the executive mayor is the councillor elected by council to politically lead the administration. The powers of the mayor depend on whether executive power is with an executive committee or a mayoral committee. > page 34

- **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. Alternately, some councils opt for an Executive Committee (rather than mayoral), where the mayor acts as the chairperson. Executive Committees are comprised of councillors elected to executive positions, and act like a cabinet, but at the local level. > page 34

- **Standing or Portfolio Committees:** groups of councillors which focus on specific portfolios and issues in depth. 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**. > page 36

- **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. They assist the speaker in managing the council.

- **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.

3.2 Councillors

Local government councillors are elected every 5 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 <u>wards</u>. 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.

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 <u>Proportional Representation</u>. 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.

REALITY CHECK

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 <u>local community</u> on its needs, priorities and how services should be delivered, represent <u>constituents'</u> concerns in council discussions and decision making, and keep the community informed 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). > page 62

  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.

  Our laws do not set out councillors' legal duties in detail. Instead, the MSA requires that each municipality must develop its own

  policy on the roles and responsibilities of councillors, political Structures and officials (s. 53). These policies are referred to as '<u>Terms of Reference</u>'[5].

COUNCILLORS ARE BOUND BY A CODE OF CONDUCT! > PAGE 26

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 <u>by-laws</u> 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 <u>executive</u> or <u>legislative</u> proposals including the budget, IDP and by-laws.

- Table <u>motions</u> 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. > page 92

- 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 <u>defamation</u>.

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

3.2.1 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

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!** THE COCC (S.7) 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. FIND OUT WHAT YOUR COUNCIL'S RULES ARE, AND CAMPAIGN FOR THE REGISTER TO BE MADE AUTOMATICALLY PUBLIC WITH ALL THE INFORMATION YOU NEED TO HOLD COUNCILLORS ACCOUNTABLE.	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

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 *even observe* meetings in which decisions on tenders and contracts are made. > pages 45 & 49	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

IN ADDITION TO NATIONAL LAWS, EVERY MUNICIPALITY MUST ALSO DEVELOP ITS OWN POLICIES AND RULES ABOUT THE ROLES AND RESPONSIBILITIES OF POLITICAL REPRESENTATIVES AND STAFF (MSA S.53). THESE ARE CALLED TERMS OF REFERENCE. GET AND READ YOUR MUNICIPAL TOR!

3.2.2 TAKE ACTION! Keep your councillor accountable!

If your councillor is not responsive, or you suspect or have evidence that they failed to follow the rules, there are a number of things you can do. Remember to consider your safety and think about what is likely to work in your specific community and with your 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 and their political parties. Make sure that you and your community know what these rules are. Get copies of the COCC and your municipality's Terms of Reference for political representatives (this policy is required by MSA s. 53). If it's not dangerous to do so, share these in your community. Post them in public places. Call out your councillors when 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 about which you'd like to complain is the speaker, or if the council and the speaker do not take your complaint seriously, or fail to come up with a convincing finding, lodge a complaint directly with the MEC for local government in your 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) YOU 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. Lodge a complaint with the party's leadership at the regional, provincial or national levels. Follow up with the media if it is safe to do so.

5. 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 you have evidence that a councillor broke such a rule, a case can be opened with the police. Your assessment of how independent the police investigation will be and your safety will be important considerations.

6. Contact a Chapter 9 institution.

> page 19

7. Organise and let the media know.

> pages 132 & 133

> 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**)

3.2.3 Ensuring more accountable councillors in future

Elections and the vote should give us 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 <u>accountability</u>.

1. Put forward your own candidates [6]

Consider whether there are people in your community who could serve as ward councillors. Anyone who ordinarily lives in a municipality where they are registered to vote can nominate a candidate or stand for election. 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 your 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.

2. Talk to the political parties who are competing for your vote [7]

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

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

3. Ask candidates to publicly commit [8]

Ask candidates to sign a declaration committing to address issues of concern to you, and to be held to account. Publicise the declaration by posting it in public spaces or sharing on your phone and social media.

Pledges can include your right to <u>recall</u> – 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 your ward election. >pg 60
- Establishing a municipal notice board at a venue of your choice to display hard-copies of key documents (> pg 73) within 7 days of their publication.
- Making their financial interest reports automatically available. > pg 26

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.

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 <u>constituents</u> 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.

Simphiwe Zwane, OKM's councillor said, "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 YOUR COUNCILLOR DOING?

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

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

IN TERMS OF THE COUNCILLORS' *CODE OF CONDUCT*:

Has your councillor held at least **four** public meetings over the past year to report on the municipality's work and to hear your views?	YES	NO
Did your councillor file a <u>financial interest</u>s report with the Municipal Manager within **60 days of their election**?	YES	NO
Has your councillor attended every council meeting for which they did not get leave of absence?	YES	NO
If your 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 your councillor has taken other paid work, did they obtain council's permission first?	YES	NO
Has your 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

3.3 The Speaker

The speaker is a councillor who has been elected by the council to act as its chairperson, and has a number of powers and duties. The speaker plays an important role in implementing the *Code of Conduct for Councillors* (COCC). The speaker's 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). > page 28	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). > page 73 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.

TAKE ACTION! 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.

TAKE ACTION! The speaker is also an elected councillor! See page 28 for how to hold them accountable.

3.4 The Executive

To work effectively, the council is allowed to delegate some of its functions to other political sub-structures in the council. The most important of these is the <u>executive</u>, the councillors responsible for leading, overseeing and coordinating the work of the administration. Their 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 mayor, and includes councillors responsible for each administrative department e.g. economic development.

In very small councils, the speaker is also the mayor, and the same councillors play both executive and <u>legislative roles</u>. In most councils, however, councillors have either executive or legislative authority. This is in line with the <u>separation of powers</u> 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, BUT AT A LOCAL LEVEL.

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

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

EXECUTIVE MAYOR AND MAYORAL COMMITTEE	EXECUTIVE COMMITTEE (EC)	SMALL COUNCILS
The full council elects the executive mayor.	The full council elects **each member** of the executive committee.	In councils or 9 or less members each councillor has both executive and legislative authority.
Once elected, the executive mayor has the power to appoint Members of the Mayoral Committee (MMCs).	Although the mayor sets the agenda and chairs the meetings, they are not more powerful than other members.	
The Committee is **not** obliged to hold meetings in public or include other council members.	The EC must include councillors from different parties. Seats must be allocated in proportion to parties' share of the vote.	
The mayor can choose to include members of other political parties, but it is their choice.	The EC may consist of no more than 20% of all councillors or 10 councillors (whichever is the least).	

> A municipal council can introduce a <u>motion</u> 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. > pages 72 & 73
- Report on the implementation of projects and budget to council every 3 months (MFMA s. 52), and ensure that these are publicly available. > page 76
- Ensure that the IDP and the budget are consistent and credible. > pages 79 & 92
- 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). > pages 77 & 92
- 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!

3.5 Portfolio (or Standing) 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 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.

Portfolio, Standing or Section 79 Committees are chaired by non-executive councillors and shadow the work of a municipality's departments and their executive leadership e.g. community safety. They review policies, plans and budgets, and consider quarterly and annual reports.

Oversight Committees or Municipal Public Accounts Committees (MPACs) 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**, **Annual Financial Statements** and any in-year reporting (> pages 89 and 90). They also produce the **Oversight Report** (> page 92). 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.[10]

The **composition** of each committee reflects the vote share that parties received in elections. The council appoints a **chairperson**, who has the power to determine the committee's agenda and what will be discussed (MSTA s.79).

> 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.

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...

3.6 Council's decision-making process [11]

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.

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 is it reasonable to do so (MSA s.20). **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).**

Physically attending the meetings of council and its committees is important. Important lessons were learned from the Right to Know (R2K) campaign against the Secrecy Bill in Parliament.

R2K ensured that as many of its members as possible attended every meeting held to discuss the Bill. This had a number of results:

- First, through their presence R2K activists benefitted from every opportunity – formal and informal – to lobby decision makers. Informal opportunities were created as they met parliamentarians while getting tea or while sitting close by.

- Second, R2K activists were able to immediately address concerns or questions as they arose, and develop an understanding of the main arguments they had to address.

- Third, 'packing' committee rooms with concerned citizens placed political pressure on parliamentarians who knew their decisions were being observed by voters.

- Lastly, ongoing presence helped build relationships with sympathetic parliamentarians who gave the campaign information and insight.

Although these lessons are from national Parliament, they could apply to political action at the local level.

3.6.1 Challenging a decision taken by council, the executive or a councillor

If a political structure or representative have taken a decision which affects your rights, you have the right to appeal.

In the case of some decisions, such as those relating to land use, there are specific appeal mechanisms.

Where the laws have not established specific appeal mechanisms, however, an appeal can be submitted in writing to the municipal manager (MM) 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.

- Your appeal must be discussed within 6 weeks.

- A decision must be taken within a reasonable period.

Another way to challenge a decision is through a petition.

CHAPTER 4:

THE ADMINISTRATION

The 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. This means that it must be accountable, transparent and responsive (Constitution s. 195 and MSA s. 6).

EXAMPLE: A SNAPSHOT OF A TYPICAL ADMINISTRATION

COUNCIL
> PAGE 22

OFFICE OF THE MUNICIPAL MANAGER
> PAGE 41

LEGAL SERVICES

INTERNAL AUDIT

REPORTING DIRECTION

TREASURY OR FINANCE

WATER AND SANITATION

ROADS

MUNICIPAL ENTITY
> page 127

CFO

DEPT. HEAD

DEPT. HEAD

CDW

CDW

EXTERNAL SERVICE PROVIDER

> page 55

> page 51
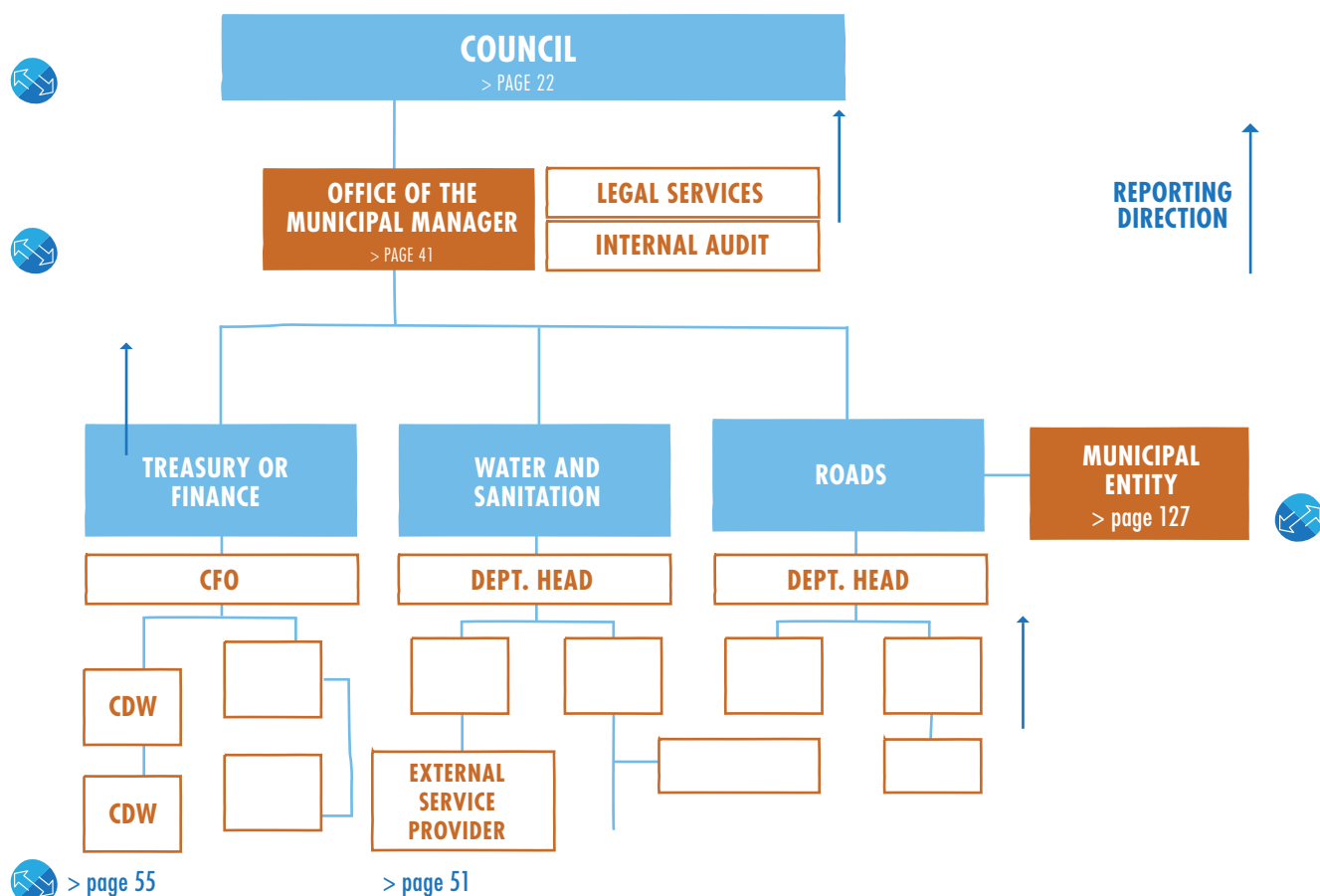
MUNICIPALITIES ARE DIFFERENT! THEY HAVE DIFFERENT ORGANISATIONAL STRUCTURES AND POSITIONS. KNOWING WHO IS RESPONSIBLE FOR SERVICES YOU'RE CONCERNED ABOUT WILL SAVE YOU TIME! SEE PAGES 15 & 34.

4.1 The Batho Pele Principles

The Batho Pele principles translate the Constitution's principles into practice. 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.

REALITY CHECK
Unfortunately, many government officials, including those in municipalities, do not follow the Batho Pele principles. Page 46 discusses what you can do about this.

4.2 The Municipal Manager

The municipal manager (MM) is most senior public servant and the municipality's <u>accounting officer.</u> 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).

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 the 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, must appear before council and face consequences if the municipality fails to deliver. > page 89

- Ensure that the municipality **enforces by-laws, implements the IDP** and has the capacity to do so.

- Ensure that the municipality is **responsive** to the community, includes it in its planning and <u>accountability</u> processes (> page 75) and knows whether communities are happy with municipal services.

- **Advise** <u>political office bearers</u> 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 <u>information officer</u> (PAIA). This responsibility is often delegated. > page 72

- **Manage appeals** against council or administration decisions (MSA s62). > page 38

- Ensure that councillors **declare their <u>financial interests</u>** within 60 days of their election, and update these annually (COCC s.7).

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

AS ACCOUNTING OFFICERS, MUNICIPAL MANAGERS MUST:

- Ensure **good financial management** that follows the rules of the MFMA and all applicable laws or policies. > page 84

- Ensure that <u>procurement</u> and tender processes are fair and transparent and that fraud is prevented (MSCM reg. 112). > page 47

- Immediately **report any <u>non-compliance</u>** 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.**

The AG's report on the performance of municipalities in the 2016/2017 financial year indicates serious management problems in municipal administrations, suggesting that MMs aren't doing their jobs well.

- 87% of municipalities did not manage their assets and finances according to the law.

- 55% did not have a plan for road maintenance, while 27% did not assess the conditions of their road infrastructure at all.

- Of the municipalities that manage water infrastructure, almost half (46%) had no maintenance plan, 40% suffered significant water losses, while 35% did not assess the conditions of their water infrastructure.

- 31% of municipalities admitted in their financial statements that they may not be able to continue operating due to cash shortages and other financial problems.

Why is municipal administration so poor?

There are a number of reasons. They include:

- Giving senior or important posts to those with political connections but not the necessary skills.

- Political interference in the administration's work. (> see 'Reality Check' below)

- Lack of consequences for mismanagement and corruption.

- Limited access to critical skills such as engineering, accounting and legal services.

Improving municipal administration

In an effort to strengthen municipal administrations, amendments (changes) to the MSA made in 2010 state that:

- The Minister of CoGTA has the power to decide what skills and qualifications are necessary for senior municipal positions. If a person without these skills or qualifications is appointed as MM or their immediate subordinates, *their appointment is invalid* (MSA s. 54A).

- MMs aren't allowed to hold political office. This means that they cannot take leadership positions in political parties e.g. as the chairperson, secretary, treasurer or their deputies (MSA s. 56A).

- 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).

Political interference in the administration

In his 2018 budget vote speech the Minister of COGTA noted that the "undue political interference in governance and administration" in some areas was seriously affecting governance at a local level.[12] Indeed this is a serious problem.

For example, in 2018 the former city manager of Nelson Mandela Bay Metropolitan Municipality argued in court that the ANC-appointed executive mayor had interfered with her work, preventing her from making appointments that would have helped to address irregular and unlawful expenditure. Her allegations were confirmed as credible by the Eastern Cape High Court in May 2015, and she was awarded R3.1-million in damages.[13] See ways of holding the MM to account. > page 46

SOME DIFFERENCES BETWEEN:		
	POLITICAL REPRESENTATIVES e.g. Mayors and councillors	**SENIOR MUNICIPAL OFFICIALS** e.g. MMs and heads of department (HoDs)
How did they get their position?	• Elected > page 24	• Recommended by the executive and appointed by council
What qualifications must they have for their position?	• Don't necessarily have technical or specialised skills and often rely on officials' expertise to guide decisions.	• Must have the qualifications and skills determined by the Minister for COGTA. Without these their appointments are invalid.
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. > pages 26 & 44	• Hold leadership positions in political parties, even on a temporary basis. • Give council misleading information. • Do business with council. > page 44
What public documents describe their responsibilities?	• *Code of Conduct for Councillors (COCC)*, councils' Terms of Reference (MSA s.53) and political party's code of conduct. > page 26	• Must sign performance agreements; *Code of Conduct for Municipal Staff* (COCMS). > page 44

4.2.1 Officials' conduct: what the laws say

The MFMA and the MSA, which includes the *Code of Conduct for Municipal Staff* (COCMS) (Schedule 2), set out rules for what officials may or may not do. In other words, these are the laws that provide the legal basis for holding officials accountable.

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
Officials may not participate in local government elections, except in their official capacity.	COCMS s. 11
Officials who have been dismissed due to financial management may not work in another municipality for 10 years.	MSA s. 57(A)
Senior officials (MM, CFO, senior managers) must have the skills and qualifications set by the Minister of CoGTA. If they don't, their appointment is invalid.	MSA s. 54(A)
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

DUTY TO PROVIDE INFORMATION	
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
Officials must immediately report any attempts to bribe them.	COCC s. 8
If officials have reason to believe that their colleauges aren't following COCMS rules, they must report these to a superior or the speaker.	COCC s. 13

THE AFS – THE MUNICIPALITY'S ANNUAL FINANCIAL STATEMENTS, INCLUDED IN THE AR – MUST INCLUDE DETAILS OF ANY CONTRACT ABOVE 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). > PAGE 90

BENEFITTING FROM MUNICIPAL TENDERS

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
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

Officials may not use their position or access to confidential information to enrich themselves or any other person.	COCMS s. 4
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 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

4.2.2 TAKE ACTION! Hold municipal officials to account!

If you suspect or have evidence that an official failed to follow the rules, if a problem you have reported is not resolved, or if an official has taken a decision which affects your rights, there are a number of things you can do. Remember to consider your safety and think about what is likely to work in your specific community and with your specific municipality.

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

If an official has taken a decision that affects your rights, you have the right to appeal. The process of appealing decisions is outlined on

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

If there is reason to suspect that an official has committed <u>financial misconduct</u>, 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 <u>financial misconduct</u> 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's Office

If the MM does not take your complaint seriously, or fails to institute a disciplinary hearing, lodge a complaint with the Mayor's or Speaker's Office.

If your complaint is against the MM, it must be considered by council.

3. Inform a councillor

It is the role of <u>non-executive councillors</u> to hold the administration and executive accountable. Opposition party councillors may be especially interested in your information, 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 (SEE PAGE 25).**

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 you have evidence that an official broke such a rule, a case can be opened with the police. Your assessment of how independent the police investigation will be and your safety will be important considerations.

5. Contact Chapter 9 institutions.

See pages 19 & 20.

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

6. Organise and let the media know.

See pages 132 & 133.

4.3 Outsourced services [14]

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. [15] 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).

Even when it is a private company delivering municipal services, however, **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.

4.3.1 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: 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.	MSA s.78
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 YOU CAN COLLECT EVIDENCE ON WHETHER YOUR MUNICIPALITY FOLLOWED THE LAW!

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

4.3.2 Choosing a service provider

If the municipality decides it needs to outsource a service, it must run an open selection or tender process (MSA s.83). This applies to goods/services over R200 000 or long-term contracts. The process must:

- 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);
- make the municipality accountable to the local community about progress selecting a service provider and the reason for any decision (MSA s. 83);

- take into account the need to promote the empowerment of small and emerging enterprises (MSA s. 83); 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)

> **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:

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.

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 **no later than 10 days after the bid deadline** (MFMA s. 112 and MSCM reg. 2005 s. 23).

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).

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

Nelson Mandela Bay, Ekurhuleni and Cape Town 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.

After the prospective service provider has been selected, the municipality must negotiate the final terms and conditions of the <u>SDA</u> with them (MSA s. 84).

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. [16]

From *Monitoring Public Procurement in South Africa,* IBP

4.3.3 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.	MSA s. 84 and MFMA s.75
The MM and other senior officials must ensure that contracts are monitored on a monthly basis.	MFMA s.116
The MM must report regularly to council on contract management and the performance of contractors.	MSA s.81 and 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 EXPIRES, AND HOW COSTS WILL BE DETERMINED. HAVING THE SDA HELPS US MONITOR THE SERVICE PROVIDER!

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

4.3.4 Hold external service providers to account!

External service providers should be held to account for poor services or for abusing tender processes. If you are unhappy with the work done by external service providers, these are some options for holding them accountable. Remember to consider your safety and think about what is likely to work in your specific community and with your 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)).

2. Talk to the political parties who are competing for your vote

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). *Preferential Procurement Policy Framework Act* (PPPFA), Regulation 15, 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 <u>restricted supplier</u>. This means that they are not allowed to do business with the state for up to 10 years. > see below

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.

If direct requests to the MM to do the above are not taken seriously, remember that they report to the mayor and ultimately, the council.

3. 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 <u>List of Restricted Suppliers</u> 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 and MSCM reg. 2005 s. 38).

National Treasury also keeps a **Register of Tender Defaulters**. It 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.

4. 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* (NHBRC) **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 (*Housing Consumers Protection Measures Act, General Regulations Regarding Housing Consumer Protection Measures* s.3; *Construction Industry Development Board Act,* s.29; *Engineering Profession Act* s. *28*).

5. Contact Chapter 9 institutions.

See pages 19 & 20

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

6. Organise and let the media know.

See pages 132 & 133

MONITORING PROCUREMENT

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

> page 138

The rural community of Glenmore in Ngqushwa local municipality in the Eastern Cape had a thriving inter-village sporting tournament history. The Glenmore 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 Mgunculu Trading 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, the Glenmore 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 Glenmore community with the assistance of SAN and Afesis-corplan appointed Ubuchule consultants, a company of built environment engineers based in East London. The engineers undertook a physical verification and found that the 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 Ngqushwa 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 Glenmore 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 Community of Ngqushwa Municipality rallied with Glenmore 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 Glenmore sports field.

Watch a short video on the Glenmore community struggle:
https://www.youtube.com/watch?v=DYdbRnsUivs

4.4 Community Development Workers (CDWs)

Community Development Workers (CDWs) are public servants employed by government to connect municipalities to communities. There should be at least one CDW in every ward, where they are expected to: [17]

- 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 are expected to work together with ward councillors and ward committees. They are also expected to know about the services provided by various departments at different levels of government.

At the local level, the CDW programme is overseen by the Office of the Mayor (in some provinces it is the Office of the Speaker). The Ministry of Public Service and Administration (DPSA) and Ministry of COGTA are jointly responsible for coordinating and rolling out the CDW programme. [18]

CHECKLIST: HOW WELL IS YOUR CDW DOING?		
Is your CDW easily accessible?	YES	NO
Has your CDW involved you in discussions on the IDP, budget or any other municipal or government matter?	YES	NO
Does your CDW help you take up concerns with your municipality?	YES	NO
Does your CDW give you information about government services that could assist you?	YES	NO
Does your CDW assist you in accessing government services that could assist you?	YES	NO

SOME PROVINCIAL DEPARTMENTS PROVIDE THE CONTACT DETAILS OF **CDW**S ON THEIR WEBSITES.

TAKE ACTION!
Find out who your ward CDWs are and see how they can assist you in resolving problems.

CHAPTER 5:

THE LOCAL COMMUNITY

Our laws consider communities to be an important part of local government. Both the MSA and the MSTA emphasise that community members are key decision-makers about all aspects of local government all the time, **not only** during elections.

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 which are involved in local affairs.
- Visitors and other people residing outside the municipality who make use of services or facilities provided by the municipality.

This definition **specifically includes poor and other disadvantaged people.**

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 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, and **set aside funds** for this purpose (MSA s. 16).

In this chapter we will discuss the various structures established specifically to ensure that the local community has a voice in municipal affairs. These are the **formal** (official) participatory mechanisms you can use. However, you're not limited to these formal channels. You have the right to be heard regardless of how you've chosen to engage! Read up about other communities' experiences and tactics to get ideas for other approaches.

Make sure you also read the section on 'Meaningful Engagement' (page 72) for a full understanding on how these spaces should work.

STRUCTURES TO ENABLE COMMUNITY PARTICIPATION

PR COUNCILLOR

MUNICIPAL COUNCIL

MUNICIPAL ELECTIONS

WARD COUNCILLOR

ELECTORATE

WARD COMMITTEE ELECTIONS

WARD COMMITTEE

WARD COMMITTEE

- Chaired by ward councillor
- Up to 10 voluntary members elected by ward residents
- Women should be equally represented

> page 58

CIVIC ASSOCIATIONS

NGOs

CBOs

LOCAL BUSINESSES

STREET COMMITTEES

IDP REPRESENTATIVE FORUM

Women should be equally represented

> page 61

TRADITIONAL COUNCILS

- 33% of members must be female
- 40% of members must be democratically elected

> page 63

KEY: **ELECTORAL RELATIONSHIP** - - →
Elected representatives are accountable to those who elected them (the electorate).

POLICY RELATIONSHIP ⟶
Policy requires different institutions to coordinate their actions and work together.

5.1 Ward committees (WCs)

The MSTA allows for **ward committees** to be set up in metropolitan and local municipalities (MSTA s.72). If your municipality chooses to establish ward committees, they will be recognised by the council as legal structures that must be used to consult with the community.

This **does not** mean that the council or councillors can ignore individual citizens, CBOs, NGOs or any other organisation of residents. You have the right to be heard r**egardless of how you've chosen to organise**.

> **SECTION 17 OF THE MSA REQUIRES THE MUNICIPALITY TO CONSULT WITH LOCALLY RECOGNISED COMMUNITY ORGANISATIONS AND TRADITIONAL COUNCILS.**

The main purpose of the ward committee is to **improve public participation** in local government (MSTA s. 72). This means that they should:

- Facilitate two-way communication between the council and the community – so that communities know about council activities and council is aware of their concerns;
- Proactively involve residents in council's planning and decision-making processes; and
- Encourage constructive (positive) interaction between the municipality and the community.

To do this well, ward councillors and ward committees are expected to know, research and document their communities' socio-economic conditions, needs and community structures like safety forums or women's groups.

How do ward committees work?

Ward committees work differently in different municipalities. This is because each municipal council has the power to decide the following (MSTA s. 73):

- How ward committee members are elected: the council can choose anything from secret votes to the raising of hands as the election mechanisms for ward committees. However, the rules established by council must consider how to ensure that membership includes women and marginalised groups.
- How ward committee will function: e.g. how often they will meet.
- The circumstances under which ward committee members can no longer be part of the ward committee.

Council also has the power to **dissolve** (dismiss) a ward committee if it performs poorly (MSTA s. 78).

THE POWERS OF WARD COMMITTEES

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.

However, the legal recognition of ward committees means that they have **access to resources**. Municipalities are expected to provide ward committees with financial and other support including:

- publicity for meetings
- financial and administrative support
- reimbursement for 'out of pocket' expenses such as travel costs for ward committee members.

Lastly, ward committee members should be included in **IDP representative forums**.

SALGA has published a *Code of Conduct for Ward Committee Members*. Although it is not legally binding, it sets out the principles ward committee must follow. It also provides a pledge which you can ask your ward committee members to 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?

Does it follow the municipality's rules about how often ward committees must meet and how they should work?	YES	NO
Does it keep you informed about what's happening in council?	YES	NO
Do ward committee members act with integrity and try to serve the community? Or do they seek to benefit from municipal contracts?	YES	NO
Do ward committee members act independently or do they seek to advance a political party agenda?	YES	NO
Are your ward committee members willing to answer to community members and be held to account?	YES	NO
Do your ward committee members include under-represented groups such as women?	YES	NO

5.1.1 TAKE ACTION! Hold your ward committee to account! [19]

> 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. If your ward committee is not responsive, there are a number of things you can do. Remember to consider your safety and think about what is likely to work in your specific community and with your specific municipality.

REALITY CHECK

1. Engage!

- Attend ward committee meetings – it is your right! Insist that your ward committee debates issues important to the community.
- Find out who the members are of your ward committee are.
- Find out what your municipality's policies or rules are for ward committees. Use the following sources to get this information: the internet, your municipality's website, or ask your local municipality.

2. Lodge a complaint or file a petition

- Find out what are your municipality's rules regarding the <u>dissolution</u> of a ward committee.
- Lodge a complaint with the Speaker's Office regarding the conduct of your ward committee and its members. Your complaint is stronger if it shows how they haven't followed the rules. > page 28
- You can also file a petition with the municipal council asking it to take action. > page 62

5.1.2 Ensuring that future ward committees are accountable

How ward committees are elected will impact how accountable they are. See below for actions you can take to improve the ward committee's <u>accountability</u>.

1. Interrogate your ward's election process.

- Ensure that your municipality adopts ward committee election rules that will serve you better. For example, it may be easier for people to vote for who they really want if their vote in the elections is secret.

2. Consider nominating a ward member

- Are there candidates in your community you'd like to nominate to be ward committee members? Work out a plan for them to be elected.

The local Thembelihle Crisis Committee in Johannesburg managed to elect a community activist on the ward committee. The activist ignored instructions from the councillor not to address public meetings and instead reported the proceedings of the ward committee to the Thembelihle 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's 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 cancelled.

5.2   IDP Representative Forums

Every municipality is required by law to provide ways for you to participate in in its decision-making processes. One way your municipality may choose to do this is through the establishment of an IDP representative forum.

Section 28 of the MSA and section 21 of the MFMA require municipalities to approve a <u>process plan</u> 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. If your municipality chooses to establish an IDP representative forum, then the process plan should provide you with 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 <u>terms of reference</u>. [21]

While it is up to each municipality whether and how to establish an IDP representative forum, it should ideally be composed of members of the executive, councillors, ward committee representatives, senior officials, community representatives, CDWs and local business owners. 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 development plan and budget;
• Ensure communication between all municipal stakeholders; and
• Monitor the IDP planning and implementation process. [22]

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.

5.3 Petitions and other mechanisms for direct engagement

The council must ensure that it hears directly from residents, not only through elected councillors, ward committee or IDP forum representatives. Municipalities must therefore set up formal mechanisms that enable residents to do so. Some of these are discussed below.

Petitions and complaints: All municipalities must have systems (policies and procedures) to accept, consider and respond to petitions and complaints (MSA s. 17). Each municipality will have its own rules as to how complaints and 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 your petition shortly before a council meeting, and then demand a response from the council at that meeting (MSA s. 5(1) and s. 17(2)(a)). Your petition might be referred to the relevant department who 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![23]

Public meetings and hearings: Municipalities are expected to hold public meetings with residents, as well as hear from them directly in <u>public hearings</u>. Such forums are provided as part of the municipality's Planning and Oversight cycle (> page 75), 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 representativity.

YOU ARE NOT LIMITED TO THESE FORMAL MECHANISMS IF YOU'D LIKE TO ENGAGE DIRECTLY! THERE ARE MANY OTHER STRATEGIES AND INTERVENTIONS YOU CAN USE. THOSE ARE AS IMPORTANT AS THE FORMAL CHANNELS, AND MUNICIPAL REPRESENTATIVES MUST TAKE THEM AS SERIOUSLY.

5.4 Traditional leadership and local government

The Constitution recognises traditional leadership institutions, particularly at the local level (s. 211 and 212). The *Traditional Leadership and Governance Framework Act* (TLGFA) broadly sets out traditional leaders' powers and allows for traditional council (TCs) to be created. Additionally, 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 MSTA allows traditional leaders that have been recognised by the province to participate in municipal council proceedings (s. 81).

THE TLGFA 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.

TLGFA s.4

> 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);

TLGFA s.4

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* 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. Instead, the Constitution only states that the 'institution, status and role' of traditional leaders should be recognised. [24] Additionally, while traditional leaders do administer communal land, existing laws do not give them the power to do so.

How should traditional councils be organised?

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 TLGFA 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 Although the TLGFA has been law since 2003, many traditional councils (TCs) do not include women and have failed to hold elections, meaning that they are illegally constituted. In 2018, CoGTA was unable to tell Parliament how many TCs are improperly constituted, and how many of their members continue to receive salaries. Many TCs have also failed to account for their finances. For example, the financial statements of TCs in the North West have not been audited since 1994.[25]

This has also meant that, although women comprise 59% of people who live under traditional leaders, they are excluded from decision making. This is particularly probematic as some traditional leaders see women as being of lower social status than men, and only allocate land to men. This is a violaiton of the principle of equality in the Constitution.

CHECKLIST: HOW IS YOUR TRADITIONAL LEADERSHIP DOING?

According to the law, traditional councils should:	HAVE YOURS?	
Have at least 40% members who were democratically elected	YES	NO
Have at least 33% members who are women	YES	NO
Proactively involve traditional communities in council's planning and decision-making processes such as the budget and the IDP	YES	NO
Promote the ideals of co-operative governance	YES	NO
Alert the municipality to dangers the community might be facing	YES	NO
Consult with the community before making significant decisions	YES	NO

5.4.1 Traditional Leaders' conduct: what the laws say

All traditional leaders and councils must follow the **Code of Conduct for Traditional Leaders** (COCTL) that is included in the TLGFA as Schedule 1. They must also follow any code of conduct included in provincial laws that regulate traditional leadership.

Additionally, traditional leaders who participate in local councils must follow most rules specified in the **Code of Conduct for Councillors.** > page 26

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). While the COCTL does require traditional leaders to declare gifts they have received, it does not specify to whom this declaration must be made.

RULES FROM *THE CODE OF CONDUCT FOR TRADITIONAL LEADERS*:

TLs must perform their roles efficiently, honestly, transparently, in accordance with the law, 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:

• Conviction by a criminal court without an option of a fine, on any criminal charge;
• Physical or mental incapacity or age;
• Where the *Commission on Traditional Leadership Disputes and Claims* finds that the traditional leader was wrongly appointed or recognised (TLGFA s. 10 and 12).

5.4.2 TAKE ACTION! Hold traditional leadership to account!

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

1. Lodge a complaint with the Speaker's Office

Council speakers must follow the investigations process described on 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 your complaint seriously, or fail to come up with a convincing finding, lodge a complaint directly with the MEC for local government in your 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. Organise and let the media know.

5.5 TAKE ACTION! Hold unresponsive and unrepresentative councils to account! [26]

In many of the proposed accountability actions above, we assume that someone in the municipality will listen to you: 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 to you.

If that is the case, and if your efforts to hold the municipality to account are unsuccessful, you can turn to the provincial and/or national government. Because the three spheres of government are independent from one another, however, direct interventions can only happen in very serious situations, and only after other efforts, such as support or capacity building have failed.

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

Section 139(1) allows the provincial executive to intervene where a municipality cannot or does not fulfil an <u>executive obligation</u>. An example would be a municipality's failure to ensure access to at least minimum levels of <u>basic services</u>. > page 98 Provinces do not have to wait for a total collapse of municipal services, Section 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 <u>jurisdiction</u> has failed to pass a budget in time for the financial year. > page 80

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.

If the event that the failures described above happen, provincial executives can/must take 4 actions:

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.

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.

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.

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 <u>LEGISLATIVE</u> DUTIES. PAGE 34

5.6 What else you can do [27]

If your municipality is poorly governed, it is the responsibility of the provincial and national governments to assist it in improving, or intervene. Below we outline some ways to lobby for either provincial support and monitoring, or s. 139 interventions.

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

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). Approach the MEC, the Premier, the regional political leadership or the relevant committee in the provincial legislature, and/or even the National Council of Provinces (NCOP) to initiate an investigation into the matter about which you are concerned. This could include the municipality's failure to respond to you in the first place.

2. **Engage with the legislatures**

Both the national and provincial legislatures receive reports from ministers on the state of local government and specific municipalities. 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). Similarly, the national COGTA minister is also required to annually report to national parliament on the state of local government as well as actions taken to address concerns raised by the AG (MSA s. 48, MFMA s. 34).

It is the role of members of the legislatures 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 committee chairs and/or its other members. Ask them to hold a public hearing on your municipality, ask questions of the relevant ministers, and urge them to take appropriate action. Opposition members may be especially interested in your information.

3. **Approach the courts**

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.

> **AS WITH OTHER LOBBYING EFFORTS, REMEMBER TO INCLUDE AS MUCH EVIDENCE AS POSSIBLE IN YOUR COMMUNICATIONS TO THE PROVINCE. EVIDENCE CAN BE PHOTOGRAPHS OR WRITTEN STATEMENTS DESCRIBING YOUR COMMUNITY'S EXPERIENCE OF THE MUNICIPALITY'S FAILURE.**

TACTICS: COURT ORDER COMPELLING PROVINCIAL INTERVENTION IN LOCAL GOVERNMENT

In 2018, a group called **Save Emalahleni** became the first in South Africa to obtain a court order compelling the Mpumalanga provincial executive to comply with their constitutional obligations and intervene in municipal affairs.

After many years of failing to pay Eskom, the Emalahleni Local Municipality's (ELM) debt amounted to almost R2 billion, over 40% of its operating budget. In February 2017, Eskom began cutting the municipality's electricity supply in an effort to force it to pay. Households and businesses, even those who paid their electricity bills, were left without power. Despite it being clear that this was a crisis of the type described in s. 139(5) of the Constitution, the province did not intervene as it was obligated to do.

The court ruled that the province acted unconstitutionally, and ordered it to follow s. 139(5) of the Constitution.

PERSONAL NOTES

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 Section II of this guide, a key duty of local government is to provide for <u>accountability</u> and the ongoing inclusion of the local community in its decision making. Some accountability and participation mechanisms are 'built-into' municipal structures to facilitate this. They include: regular report-backs to communities, ward committees, traditional councils, advisory committees and IDP representative forums. Role-players that are central to accountability and participation include CDWs, councillors and traditional leaders.

But participation and accountability are also built into the main **decision-making processes** of municipalities. The mechanisms included in the **planning and oversight cycle** enable your 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 outlines these processes, how they can be used to mobilise around service delivery problems, and how your participation can make the municipality's planning and accountability mechanisms stronger.

6.1 First things first: participation must be meaningful!

The Constitutional Court has ruled in a number of cases that not any form of public participation will do. In order to be valid, government's consultation processes must be **meaningful**. The criteria for testing how meaningful a consultation process is include: whether the process was timely and accessible, whether it enabled informed participation by those most affected, and whether it was fair and transparent. [28] The checklist below expands.

CHECKLIST: DID THE MUNICIPALITY...		
Provide accurate information, in *local languages*, on where and when engagement would take place?	YES	NO
Choose venues 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
Provide enough time for the community to prepare?	YES	NO
Treat everyone at the consultation the same?	YES	NO
Listen to all views with an open mind *before* a decision had been 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
Announce the participation opportunity in the local newspaper and on radio? (MSA s. 20)	YES	NO

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 in Berea and Hillbrow 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   Your right of access to information

Participation can only be meaningful, and government can only be held accountable, if citizens have access to 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) sets this out in detail.

6.2.1 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 on page 73.

Some documents, however, are not made public automatically. According to 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.

PAIA can also be used to request specific records. A **PAIA request** 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, see:

http://nu.org.za/open-and-participatory-local-government/paia-guide/ and other resources listed in page 146.

6.2.2 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 quarterly reports tabled in council by the mayor
The annual and adjustments budget along with all documents related to them (MFMA s. 22)	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)
The Service Delivery Budget Implementation Plan (SDBIP) (MFMA s. 53)	Notices of council meetings, dates and venues (MSA s. 19)
All by-laws compiled into the Municipal Code (MSA s. 15)	Performance agreements with senior staff (MFMA s. 53)
The annual report (MSA s. 46)	Service Delivery Agreements
All public-private partnership agreements	Contracts for all awarded tenders above R200 000
Code of conduct (MSA s. 70)	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)

The municipality must also make any of these documents available in any of the official languages upon request.

6.2.3 No documents on website? Next steps

- Visit your municipality's offices. If the documents aren't available there, contact the IDP manager, the information officer or the MM.
- Ask your 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: THE PEOPLE'S BYLAW [30]

As part of its work with local communities, the Development Action Group (DAG) conducted a city-wide 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 Bo-Kaap, for example, a development was approved despite the submission of more than 1000 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 effort to reshape and reframe participation processes. In 2016, the participating civics collaboratively drafted a manifesto (declaration) on public participation. It outlines 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 will develop the manifesto into citizen-led by-law on participation, and launch a campaign urging the City of Cape Town to adopt it. 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.
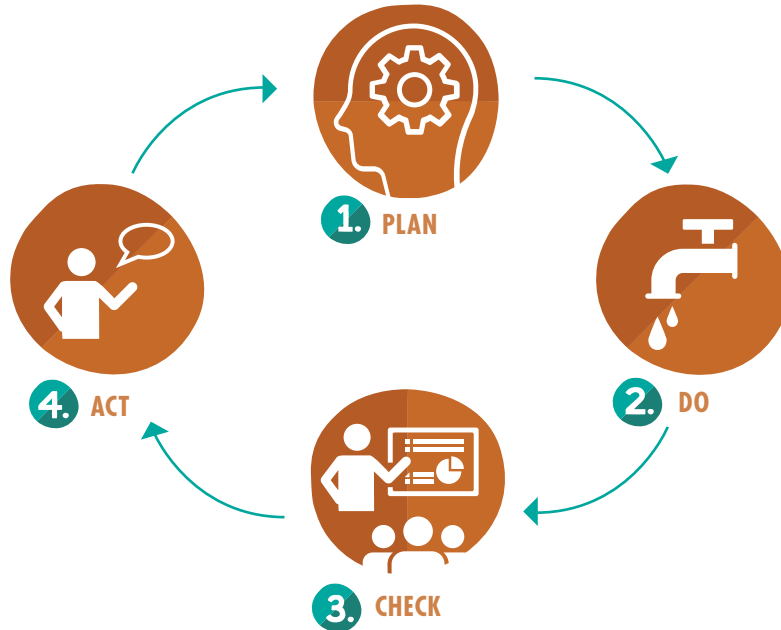
SOMETIMES THE INFORMATION REQUIRED FOR MEANINGFUL PARTICIPATION IS RELATED TO EXPERTISE RATHER THAN GOVERNMENT DOCUMENTS.

CHAPTER 7:

THE MUNICIPAL PLANNING AND OVERSIGHT CYCLE

To ensure that money is not wasted, our laws require all spheres of government to follow four steps as they implement laws and programmes:


1. **PLAN**
2. **DO**
3. **CHECK**
4. **ACT**

1. **PLAN** — Decide what government services are the most urgent and important, how they will be provided, how much they will cost and how they will be paid for.

2. **DO** — Implement the plan using government resources.

3. **CHECK** — Monitor (keep track of) expenditure and whether it is in accordance with the plan, and evaluate whether it is having the intended impact.

4. **ACT** — Take action to correct any problems identified while monitoring, especially if expenditure isn't having the expected impact.

Municipalities undertake these four steps through the council's debate and adoption of the key documents shown below. These discussions are repeated every year, and together, make up local government's planning and oversight cycle. Each of the documents is outlined in more detail in the next pages.

> THE DRAFTING, DEBATE AND APPROVAL OF EACH OF THESE DOCUMENTS GIVES US THE OPPORTUNITY TO HELP DECIDE WHAT OUR MUNICIPALITY SHOULD PRIORITISE AND HOW TO FIX WHAT HAS GONE WRONG. SEE THE FULL CYCLE **ON THE INSIDE FRONT COVER!**
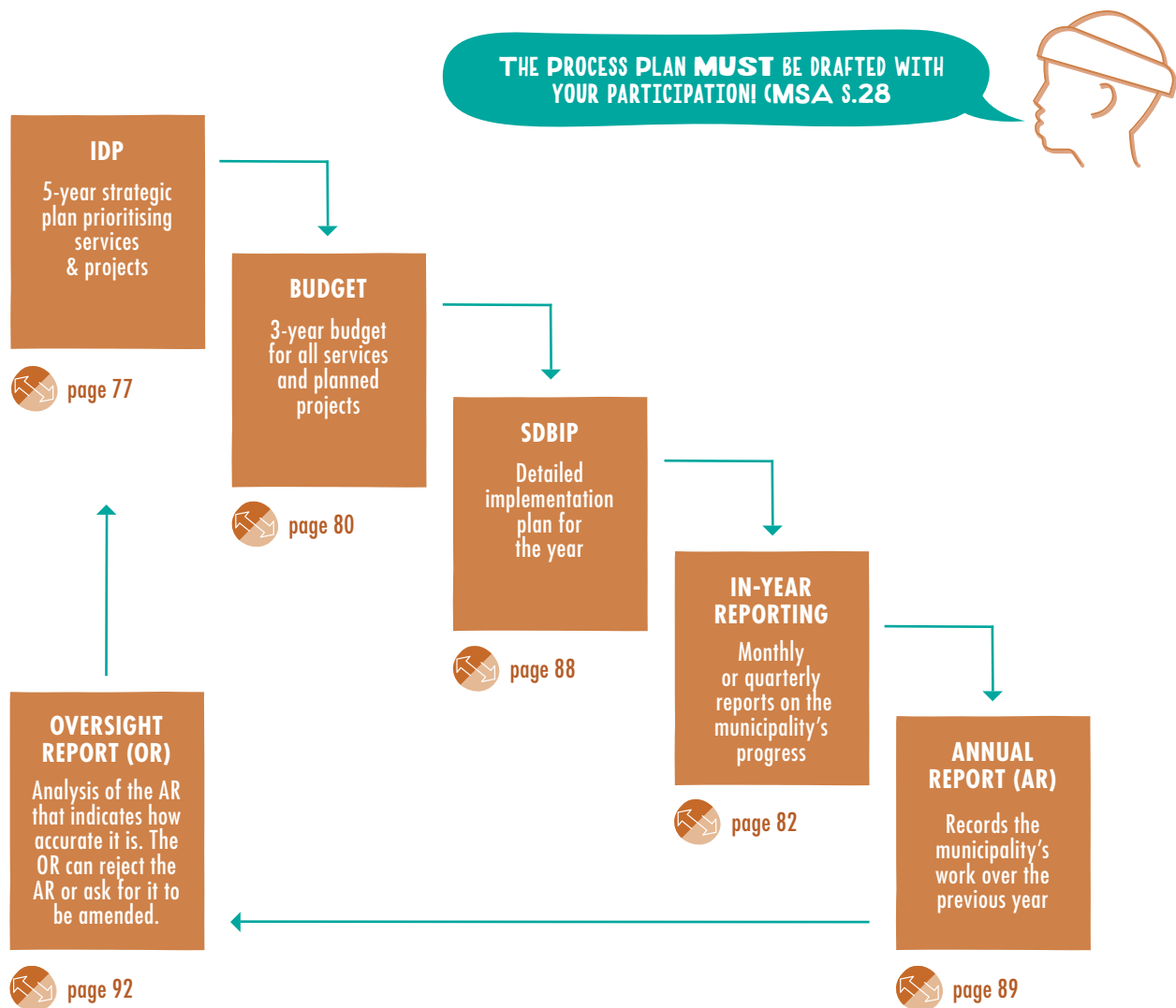
To ensure that residents can participate, this annual cycle 'kicks-off' with the Process Plan, a schedule setting out when and where the IDP and budget will be discussed. The Plan must be tabled in council no later than 1 September (MSA s. 28 and MFMA s. 21).

For videos in English, isiXhosa, isiXhosa, isiZulu, Sesotho and Afrikaans on these documents and how they relate to each other see https://municipalmoney.gov.za/

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 assists in coordinating the work of local government with other spheres. 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.

What information should you be able to find 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.

7.1.1 How is the IDP developed?

Every five years, after the winners of local government elections are announced, the municipality begins writing its new development plan. We can think of this process as having **four steps**, and each must include communities (MSA s. 29).

For videos explaining the IDP process in English and isiXhosa, see
http://afesis.org.za/integrated-development-planning/

THE IDP
INTEGRATED DEVELOPMENT PLANNING
PROCESS

At each step, municipal stakeholders must ask and answer...

4. INTEGRATION
- What will happen when?
- Which projects must happen first?

3. PROJECT IDENTIFICATION
- 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?

2. STRATEGY DEVELOPMENT
- What are the municipality's long and medium term goals?
- What strategies can meet these goals?
- What specific projects can meet these goals?

1. NEEDS ANALYSIS
- What are the needs of the municipality's residents?
- Which needs must be prioritised?
- What resources does the municipality have?
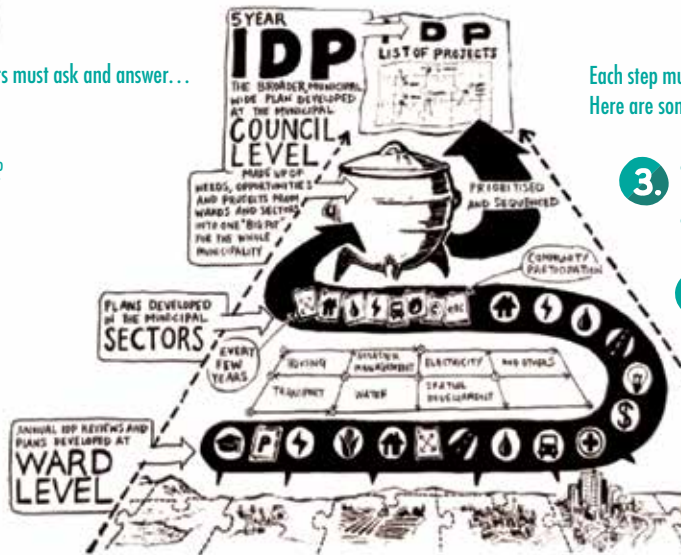
Each step must include the community's voice. Here are some ideas

3.
- Representation of stakeholders on project committees
- Formation of sub-committees

2.
- IDP representative forum
- Public debates on solutions
- Meeting with affected communities and stakeholders

1.
- Surveys by CDWs
- Meetings with communities and other stakeholders

WHAT IS AN IDP REVIEW?
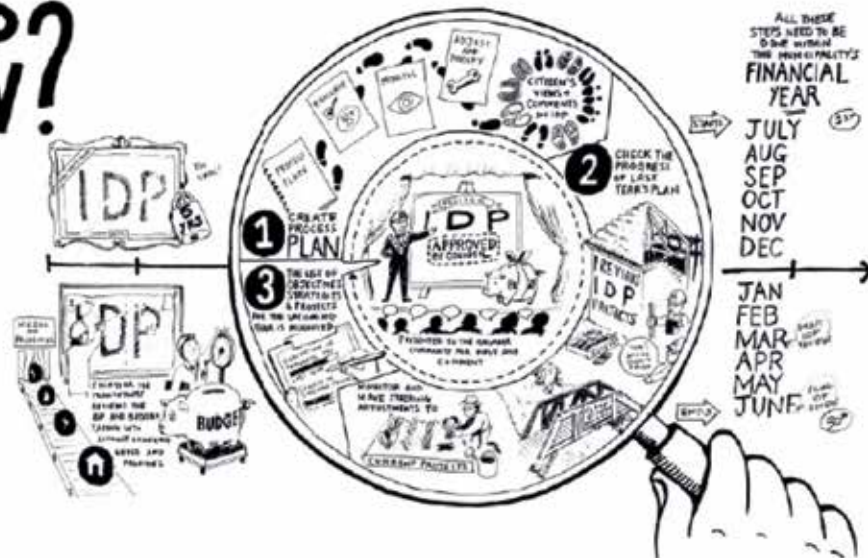
7.1.2 How is the IDP reviewed?

Once an IDP is adopted, it must be reviewed every year together with the budget. This allows for flexibility and changes to the IDP.

CHECKLIST: SOME QUESTIONS TO ASK ABOUT YOUR MUNICIPALITY'S IDP		
Does my IDP accurately describe the needs and challenges of my community?	YES	NO
Does my IDP explain the municipality's vision for the type of services it wants to deliver?	YES	NO
What kind of solutions does my IDP present in relation to the challenges my community faces? Do they seem like solutions that will help or work?	YES	NO
What does the IDP say about the service delivery issue I am concerned about? Does it reflect my experience, needs and ideas?	YES	NO
What does the IDP say about plans for my ward? Is it there?	YES	NO
Does the IDP tell me who is responsible for implementing the programme I am concerned about?	YES	NO
What are the major projects the IDP says the municipality will implement, and do I agree that they address the most important and urgent problems of the municipality and my 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 INFORMATION THAT YOU DON'T UNDERSTAND OR CAN'T FIND, ASK YOUR COUNCILLOR, WARD COMMITTEE MEMBERS, OR A LOCAL NGO. YOU HAVE THE RIGHT TO KNOW!

7.1.3 Not your IDP? Take action!

There are a number of steps you can take if you were unable to participate in the IDP process, or feel that despite your participation the final IDP does not represent your needs, concerns or suggestions.

1. Ask for the process plan to be changed

The process plan should have been drafted in consultation with you. Ask your councillors, the mayor, the speaker or the municipal manager to adjust it if it excluded your community. You could ask your ward committee members, your ward councillor or other councillors (opposition councillors may be especially interested) for support. > page 67, 68

2. Lobby for the municipality to address your concern

Make sure you understand the reasons your proposals or concerns were not included. These could be political, technical, or a combination of the two. Ask your councillors, ward committee members or officials for the reasons your proposals or needs were not included to understand what steps to take next. Consider submitting a petition to the council outlining your concerns. > page 62

3. Submit a complaint to the province

If the IDP process ends without you having had a chance to give input, submit a complaint to the MEC for Local Government. 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 your concern

Although they have no legal authority to do so, the MEC for Local Government in your province can influence your 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 your concerns may change your council's IDP in the long term.

5. Organise and let the media know.

See page 133

7.2   The Budget

The budget is the municipality's financial plan for the coming financial year and shows how much money will go towards each of the activities identified in the IDP. The budget also includes information on two additional years to help medium-term planning.

What information should you be able to find 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 <u>Service Delivery Agreements</u>, including any changes to existing ones.
- How much the municipality is spending on capital projects and how much it is spending on <u>operating costs.</u>

The information will you NOT find in the budget:

- The total spending that will take place in your 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 drafting or reviewing the IDP.

The illustration on page 82 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 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)). > page 67

7.2.2 The adjustments 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. Adjustments budgets are also used to retrospectively (after the fact) authorise expenses that could not have been anticipated but were unavoidable (MFMA s. 28).

While the budget adjustments process does not require public consultation, the adjustments 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? [31]

BEHIND THE SCENES

- Municipality considers the national economy & its finances
- It realistically estimates how much money it can raise for the next year.
- It consults with communities and other government entities on needs & expectations. Their input must be considered by council.

- Municipal departments prepare plans and budgets for the next year. These must reflect how they've performed in the past, community needs and political priorities.
- Departments' budgets are negotiated and if necessary, changed to align with municipal strategies and expected revenues.

Detailed operating and capital budgets are prepared

Review of municipal budget by provincial and national treasury

BECAUSE NATIONAL AND PROVINCIAL TREASURY ARE INVOLVED IN DRAWING UP MUNICIPALITIES' BUDGETS, THEY CAN BE AN ADDITIONAL SOURCE OF INFORMATION AND ENGAGEMENT.

AUGUST
SEPTEMBER
OCTOBER
NOVEMEBER
DECEMBER
JANUARY
FEBRUARY
MARCH
APRIL
MAY
JUNE
JULY

IN THE PUBLIC EYE

In August, the mayor must table the **Process Plan.**

FROM NATIONAL EXPERIENCE WE KNOW THAT INFLUENCING THE BUDGET CAN SOMETIMES BE EASIER *BEFORE* OFFICIAL CONSULTATION BEGINS.

BETWEEN AUGUST – DECEMBER YOU CAN TRY TO SPEAK TO OFFICIALS IN THE MUNICIPAL DEPARTMENT THAT IS RESPONSIBLE FOR THE SERVICE ABOUT WHICH YOU'RE CONCERNED. THAT WAY, BY THE TIME THE BUDGET IS PRESENTED, IT ALREADY DEALS WITH YOUR CONCERN.

1 April: Draft budget tabled in Council

Community consulted on draft budget. Council **must** consider inputs.

The Mayor tables final budget and report summarising all submissions.

30 June: budget must be approved

Mpolweni, a community within the uMshwathi Local Municipality 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. Mpolweni 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 uMgungundlovu District Municipality (DM) that was responsible for supplying water.

After reading the budget and the SDBIP, BESG and Mpolweni residents 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, from 2015/6 to 2017/8, the DM increased its allocation for Free Basic Water 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 2016 report on 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 District advertised an invitation for service providers to quote to compile an Indigent Register on 13 May 2018.

In the interim the Mpolweni community decided to undertake its own registration drive and, by June 2018, 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 Sukuma Sakhe, a poverty alleviation initiative of the Premier's Office to improve service delivery coordination.

BUDGET ADVOCACY CAN BE VERY POWERFUL, BUT ALSO REQUIRES IN-DEPTH ANALYSIS AND EXPERTISE. SEE PAGE 137 FOR RESOURCES TO HELP YOU DO THAT.
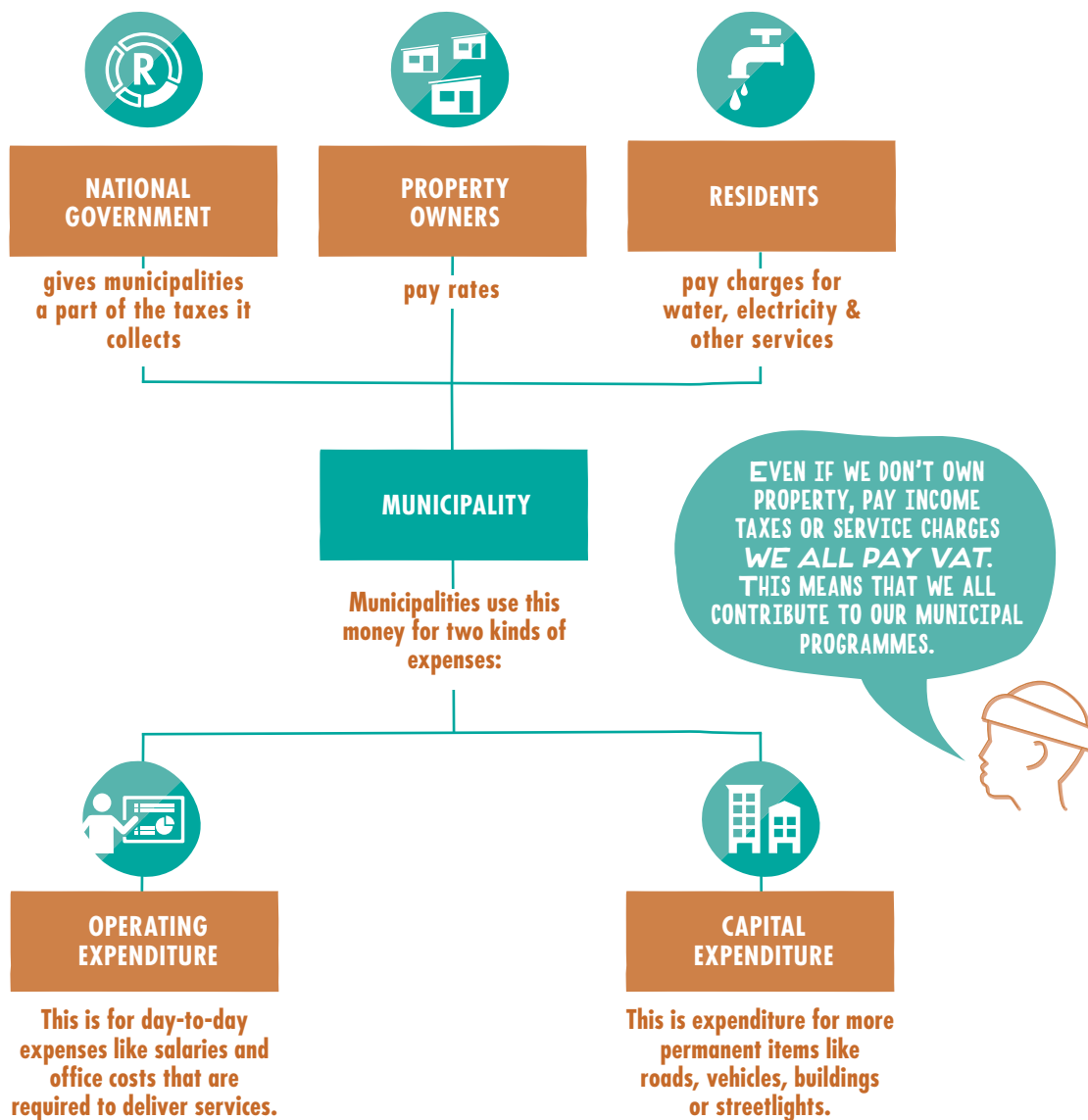
To find out more about Mpolweni community's Free Basic Service's advocacy you can watch this short video https://vimeo.com/292660007

7.2.3 Some budget basics

Where do municipalities get their money?

Municipalities get their money from three main sources:

NATIONAL GOVERNMENT
gives municipalities a part of the taxes it collects

PROPERTY OWNERS
pay rates

RESIDENTS
pay charges for water, electricity & other services

MUNICIPALITY

Municipalities use this money for two kinds of expenses:

> EVEN IF WE DON'T OWN PROPERTY, PAY INCOME TAXES OR SERVICE CHARGES *WE ALL PAY VAT.* THIS MEANS THAT WE ALL CONTRIBUTE TO OUR MUNICIPAL PROGRAMMES.

OPERATING EXPENDITURE
This is for day-to-day expenses like salaries and office costs that are required to deliver services.

CAPITAL EXPENDITURE
This is expenditure for more permanent items like roads, vehicles, buildings or streetlights.

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 **unconditional grant**, 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

REALITY CHECK

(In)credible budgets

In the 2016/2017 financial year, a third of municipalities spent more money that they had (AG 2018). 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. In the 2017/18 financial year, however, 81 councils adopted unfunded budgets, despite being advised of this. When municipalities' budgets aren't credible, it means they struggle with accurately estimating costs or allocating money.

Failure to collect monies owed and pay suppliers

When the 2016/2017 financial year closed, municipalities were owed a total of R128.4 billion, mostly by households that did not pay for services. This means that municipalities are failing to collect money from those who can pay, while failing to provide FBS for those who can't. The amount owed is more than the R111 billion given to local government as a whole in the 2016/2017 year.

In turn, municipalities are unable to pay suppliers and owe R43.8 billion. This includes money owed to state entities like Eskom, as well as small businesses who rely on this to function. In 2017, Eskom cut services to eMalahleni Local Municipality due to non-payment. This 'debt chain' poses a serious threat to service delivery.

Funding free basic services (FBS) for poor households

Despite receiving R57.0 bn for FBS, in the 2016/2017 the majority of municipalities only spent approximately between 35% to 50% of this on the provision of FBS. Most money received for FBS is instead spent on operational costs, pointing to revenue collection problems and/or wasteful expenditure.

CHECKLIST: SOME QUESTIONS TO ASK ABOUT YOUR MUNICIPALITY'S BUDGET		
Is it in line with the revised IDP? (MFMA s. 21)	YES	NO
Were you 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 the services about which you are concerned?	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 Not your budget? Take action!

There are a number of steps you can take if you were unable to participate in the budget process, or feel that despite your participation the final budget does not represent your needs, concerns or proposals.

1. Ask for the process plan to be changed

The process plan should have been drafted in consultation with you. Ask your councillors, the mayor, the speaker or the municipal manager to adjust it if it excluded your community. You could ask your ward committee members, your ward councillor or other councillors (opposition councillors may be especially interested) for support.

2. Submit a complaint to the mayor

Your 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.
Unfortunately, MECs do not have powers to intervene in the budget process without invoking section 139 of the Constitution

3. Lobby for the municipality to address your concern

Make sure you understand the reasons your proposals or concerns were not included. These could be political, technical, or a combination of the two. Ask your councillors, ward committee members or officials for the reasons your proposals or needs were not included to understand what steps to take next. Consider submitting a petition to the council outlining your concerns.

4. Organise and let the media know.

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

Advocacy like that of the Mpolweni community > **page 83** requires in-depth analysis and often you will need support to do so. The International Budget Partnership (IBP) 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) [32]

The SDBIP is similar to the IDP but is a short-term plan covering only one year. It is meant to help us understand what will happen in the current or upcoming financial year. This information is important to ensuring the municipality does what it said it would!

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).

What information should you be able to find 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).

7.4 In-year Reporting

Every three months the executive must report to council on its financial and service delivery progress (MFMA s. 52). These quarterly reports are important because they provide 'real time' updates on the municipality's work, and present opportunities to correct or even prevent problems.

Unfortunately, the AG's 2016/17 report found that only 37% of municipalities submit accurate quarterly performance reports

The discussion of these reports could be opportunities for community members to have their concerns noted and raised by councillors. This could be a form of providing more accurate information to portfolio committees. Lobby the relevant committee chair and members to hold a hearing on a project you 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 <u>delegated</u>. These should be on the council's website. [33]

TACTICS: THE IMPORTANCE OF ACCURATE MINUTES[33]

In 1994 a group of Midrand Municipality workers were retrenched. They thought their struggle for justice was yielding fruit when, after many years of campaigning, in 2010 the then mayor of Johannesburg promised them re-employment and compensation among other things. However, he was replaced soon afterwards, and the new mayor's team claimed no knowledge or record of the promise. The workers even demanded access to the minutes of the meeting with the previous mayor via a PAIA request, but the municipality replied with an affidavit that no such records exist. The workers' struggle continues - they are trying to get the previous mayor to testify about his promises.

USEFUL TIP: To ensure that minutes are captured accurately and that important decisions are taken forward, we can record meetings on our phones, or take our own minutes and notes in the meeting, to compare with (and if necessary challenge) the official minutes.

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 you be able to find 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 Annual Financial Statements.

• 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 us an overall picture of how well it is doing financially and whether it managed its money in accordance to 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.
> page 19

7.5.1 The annual report and your voice

The law says that your 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?

The AG's 2016/2017 report found that 78% of all municipalities failed to prepare accurate financial statements, while 62% produced performance reports that were unreliable. The vast majority of these reports included achievements that could not be confirmed or were contradicted by other sources.

> THE AR IS WRITTEN BY THE MUNICIPALITY, ABOUT THE MUNICIPALITY. IT'S THEREFORE POSSIBLE THAT IT DOES NOT REFLECT YOUR VIEW AND EXPERIENCE.

> IT'S IMPORTANT THAT WE, AS THE PEOPLE FOR WHOM THE SERVICES WERE PROVIDED, LET THE COUNCIL KNOW WHAT OUR EXPERIENCES ARE, AND HOW WE THINK SERVICES COULD BE IMPROVED. CONSIDERING THIS INFORMATION WILL PROVIDE A MORE ACCURATE PICTURE OF HOW THE MUNICIPALITY IS DOING

7.5.2 Not your annual report? Take action!

In addition to the opportunities mapped on the inside front cover, there are a number of steps you can take if you feel that the annual report does not represent your needs, concerns or proposals.

1. Inform other stakeholders

Write to the AG, MEC for local government and national treasury. Although they may not be able to take immediate action, they may be able to address your concern through other channels or in their next review.

2. Lobby councillors, in particular those councillors who sit on on the MPAC, to include your views in the oversight report. > page 36 & 92.

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. 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.

Approach the relevant committee chairs and/or its other members. Ask them to hold a public hearing

on your municipality, ask questions of the relevant ministers, and urge them to take appropriate action. Opposition members may be especially interested in your information.

Organise and let the media know.

4.

> See page 132

7.6   The Oversight Report (OR)

Non-executive councillors are expected to interrogate (question) the information given to them by the executive and the administration. To ensure that the AR is systematically investigated, council's oversight committee or MPAC > page 36 are tasked with writing an Oversight Report (OR). 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.

Council meetings at which the AR is discussed must be open to the public and the media.

CHECKLIST: HAS YOUR 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
Does the oversight report properly document concerns raised by the community?	YES	NO

7.7 Comparison of key documents![34]

	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 <u>financial year</u>.	A record of the municipality's projects and service delivery progress in the previous year.
Whats'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 and reviewing the IDP is an opportunity to address community concerns.	The SDBIP is a useful document for getting detailed information on projects we are concerned about.	• 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. > page 85 • 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. See the front inside cover.	Must be adopted by council within 28 days of the annual budget adoption.	The budget is formulated every year between August – June. See the front inside cover.	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 finalized report is available within 14 days of its adoption.

7.8 TAKE ACTION! Use the planning and oversight cycle to monitor local government and improve services!

Have you seen the IDP, SDBIP, annual report or budget for your municipality? Copies are supposed to be available to community members. Get copies now! Use them to see:

• What are the plans in the IDP/ SDBIP for your community? Have they been/ are they being implemented?

• Find out the facts! For example, if your municipality has contracted a company to build roads or toilets, find out:
    - Who is the person responsible for the project

• Get a copy of the contract or service delivery agreement. Find out:
    - 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 your community?
    - How long have they 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, contact the relevant municipal department or file PAIA requests.

• Document the answers to the above questions. Compile a document with the answers, as well as the impact of not having key services on people from your community. Submit this document to your council in response to public participation in the IDP, budget or annual report.

TACTICS: THE IMPORTANCE OF FOLLOWING UP ON PREVIOUS RECOMMENDATIONS

Lesedi Local Municipality (LLM) has well-publicised and well attended IDP public participation forums. Council informs communities about the public participation process through various methods including loud-hailers, posters at the library, community meetings the municipality's social media pages. However, the Lesedi municipality has come 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. In the IDP public participation meeting of May 2018, the community decided not to give any new inputs, but rather to get explanation from the municipality on the progress of previous IDP inputs.

REALITY CHECK Unfortunately, this is not unique to the LLM. The situation is similar in Emalahleni municipality, 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.

Contributed by Nkululeko Ndlovu, Planact

PERSONAL NOTES

SECTION IV

YOUR RIGHT TO WATER, HOUSING, SANITATION 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 that are close to economic opportunities and public services like health. This section sets out this role and the laws that govern it. [35]

8.1   Your 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. However, the Constitution does not explicitly recognise all of them as rights (> page 100). Additionally, not all have nationally defined 'minimum standards'. The legal provisions that govern basic services are outlined below.

| WATER [36]	SANITATION [37]
LEGAL BASIS	
Section 27(1)(b) of the Constitution specifically protects our 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 <u>water service providers</u> to take <u>reasonable steps</u> 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 our right to an **environment that is not harmful to our 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 <u>service providers</u> to take <u>reasonable steps</u> 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:**	WSA regulation 2 states that the minimum standard for basic sanitation services is:

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 [38]	REFUSE REMOVAL [39]

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 Grootboom 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

The 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.
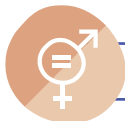
Access to basic services has a major impact on women's lives. In many societies, women are expected to cook, clean and care for children, the elderly, or the sick. Without easy access to water or electricity, these tasks are far more difficult and time consuming. Instead of spending their time earning 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 must plan for this in their IDPs** (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 <u>subsidisation</u> (MSA s. 74). Free Basic Services are covered below.

Municipalities can decide to provide basic services themselves or appoint external service providers to do so on their behalf (MSA s. 76). > page 48 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).

Municipalities must make sure that poor people, and especially vulnerable groups, have improved access to adequate water, electricity and sanitation. They are not entitled to unfairly discriminate in delivering services based on race, gender, HIV/AIDS status, disability or any other protected ground (Constitution s. 9).

After the City of Cape Town installed unenclosed toilets at the Makhaza informal settlement in Khayelitsha, 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.
- **Free 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 [41].

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 NFMIP, each municipality must decide who it will provide free basic services to, and how much they will get.

The way the poor are identified is a critical choice. According to the NFMIP, municipalities must ensure that low-income households are the primary beneficiaries. Municipalities have three major options [42] :

Universal targeting 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 some 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 is an added burden on poor households, and excludes those who may earn more but still struggle to survive.

Many municipalities use a combination of the above options. You have the right to ask about FBS and whether your household qualifies for benefits. You also have the right to challenge your municipality's FBS policy if it is clear that it does not work, as in the case of the Mpolweni community (> page 83). If there is no FBS policy in your municipality, ask for one to be developed and implemented.

> See page 120 for laws and policies that govern the provision of FBS.

8.4   Ensure your right to free basic services!

If people in your community do not have access to **free** basic services, you can take the following steps:

1. Find out what your municipality's policy is

Make sure you know what your 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. Ask officials, your ward committee, your ward councillor or an NGO for help if you need it.

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

In the case of Mpolweni (> page 83), 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 of Mpolweni should have automatically qualified for FBS given the socio-economic character of their neighbourhood.

Submit a petition to your municipal council, raise the issue at your IDP forum, and consult your ward committee. Check your municipality's budget to see how much it received for FBS, and its AR and AFS to see how much was spent on FBS. You can also check the National Treasury MFMA website to see how much they have allocated to your municipality's budget. >page 145

3. Nominate and elect councillors who support the provision of FBS.

>page 30

4. Name and shame your municipality's failure to look after the poor in the media.

>page 133

5. Seek legal advice – the failure to provide FBS may infringe your constitutional rights.

See the list of organisations provided in chapter 14.

8.5 Water and electricity cut-offs [43]

It is illegal to cut-off your water or electricity without notice (prior warning)! Before disconnecting a service, a municipality must warn you of its intention and you must be given a chance to respond.

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

If you have a prepayment meter (PPM) for water and/or electricity, there are often flashing numbers on the meter warning you about how little water or electricity is left. If you fear you'll run out of water and do not have money to purchase more credit, you can go and talk to your 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 your water, even if you owe money on your account.** It is not against the law to cut off your electricity supply, but you must still be given notice. Be aware that council may also cut your electricity supply if you owe money for other services – such as water or rates.

> BE SURE YOU ARE FAMILIAR WITH YOUR COUNCIL'S DEBT COLLECTION BY–LAW!
> THE MUNICIPALITY MUST FOLLOW ITS RULES.

If you rent and your landlord disconnects your 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. You can go to your nearest provincial Rental Housing Tribunal to get an order for your landlord to reconnect the water or electricity supply.
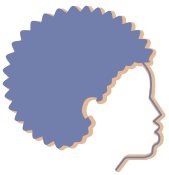
> MAKE SURE YOU ARE FAMILIAR WITH YOUR COUNCIL'S DEBT COLLECTION BY–LAWS! THE MUNICIPALITY MUST FOLLOW THEM. REGARDLESS OF THE SITUATION,
> **IT IS AGAINST THE LAW FOR YOUR WATER TO BE DISCONNECTED IF YOU ARE TOO POOR TO PAY!**

TENANTS WIN CASE ON ELECTRICITY DISCONNECTION [44]

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:

HOUSING [45]

9.1 Your right to housing

Section 26 of the Constitution includes the right to adequate housing. Adequate housing means more than simply having a roof over your head and, depending on your 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 (**HA** 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. However, this is an ongoing process. It was hoped that shifting those responsibilities from provincial to local levels would lead to better coordinated, integrated and accelerated human settlements delivery.

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 <u>due process</u>.

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 you**.

PIE and <u>case law</u> (law made by judges) say that **municipalities, private owners and landlords must "meaningfully engage"** (> page 72) **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. You are 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 you time to find a lawyer if you need one, but you must attend to let them know. If you cannot afford a lawyer, the court can appoint one to represent you. You can ask the judge to give you an urgent interdict (order) to stop whoever is evicting you illegally from continuing. You should tell the judge how long you have lived on the property and the impact of the eviction on you and your family. If an eviction will leave you homeless, a judge may find that the municipality has an obligation to provide you with accommodation. This applies whether you live on private or public land or property, whether you pay rent or not, or whether you live in an informal settlement or an inner city building.
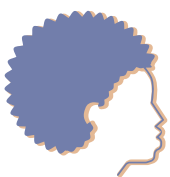
> **IT IS ILLEGAL TO EVICT YOU FROM YOUR HOME WITHOUT A COURT ORDER, AND DOING SO IS A CRIMINAL OFFENCE!** PIE SAYS THAT ANY PERSON WHO UNLAWFULLY EVICTS SOMEONE IS COMMITTING A CRIME AND MAY HAVE TO PAY A FINE OR GO TO PRISON FOR **2** YEARS IF FOUND GUILTY.

9.4 Your right to 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* (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.

9.4.1 TAKE ACTION: Resisting an eviction

REALITY CHECK

While there are strong legal protections against unlawful evictions in PIE, 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 some things you can do if you are facing an illegal eviction or have been illegally evicted:

1. Demand to see the court order.

2. Call the police or a lawyer to stop the illegal eviction.

3. If the situation is urgent, you can go to a High Court or Magistrate's Court and ask to speak to a judge yourself.

4. Mobilise on the ground - ask your friends, neighbours and community members to come to court with you.

5. Contact the media, send an sms or tweet to journalists with your story.

6. Demand that the municipality provide you with 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 HOUSING [46]

On 19 April 2011, the Johannesburg High Court declared 200 people living next to a Pikitup 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 Marie Louise informal settlement community by 13 May 2011, and improved shelter by 15 July 2011.

The decision came after the occupiers had been illegally evicted by Pikitup, the City's refuse collection agency, in 2009. The occupiers moved to land owned by Rand Leases Properties, next to a dumping site, from which they salvaged waste material to make a living. Rand Leases 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 lawyers from the Socio-Economic Rights Institute of South Africa (SERI), which helped them to get justice. Judge Victor's order provides for the occupiers to remain on the Rand Lease's property with access to water, improved shelter and sanitation for a period of 18 months, during which the City must 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. [47]

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 an respond to economic and environmental shocks and preserve their livelihoods?	YES	NO

YOU CAN USE THESE PRINCIPLES TO MAKE SURE THAT THE CONCERNS OF THE COMMUNITY ARE TAKEN INTO ACCOUNT. FOR EXAMPLE, IF THE MUNICIPALITY CONTINUES TO DEVELOP LOW-INCOME HOUSING ON THE URBAN PERIPHERY YOU CAN ARGUE 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 ACTIVISM [48]

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 the Somerset Precinct, 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 your 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.**

   Support or challenge any proposed changes submitted by others in your community or that impact affordable housing opportunities. This allows you to influence and question the decisions of the MPT and the appeal structures set up. You can 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.**
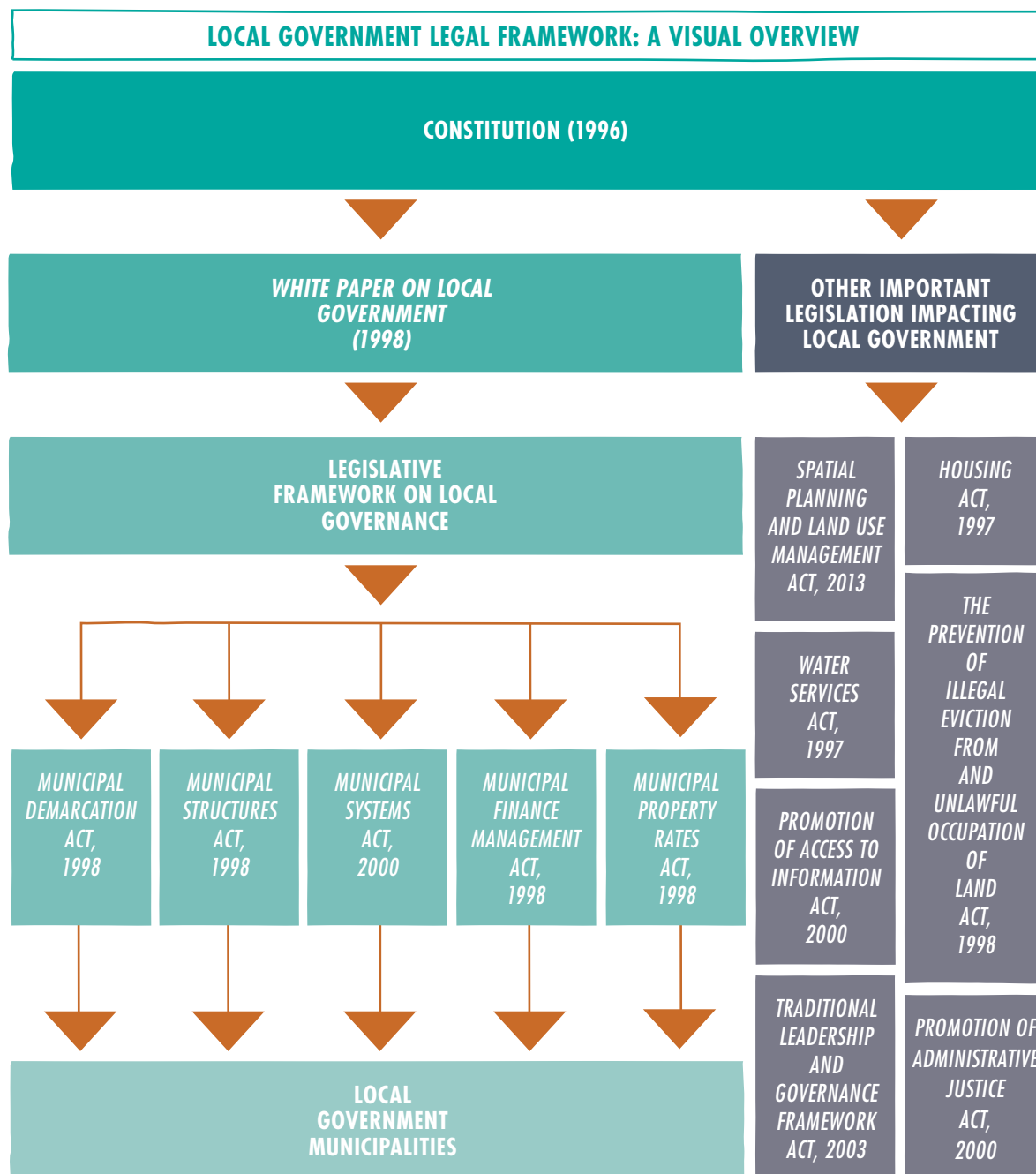
SECTION V

RESOURCES

CHAPTER 11:

LAWS AND POLICIES YOU SHOULD KNOW

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 that outline how municipalities should work, and what you can expect of them.

LOCAL GOVERNMENT LEGAL FRAMEWORK: A VISUAL OVERVIEW

CONSTITUTION (1996)

WHITE PAPER ON LOCAL GOVERNMENT (1998)

OTHER IMPORTANT LEGISLATION IMPACTING LOCAL GOVERNMENT

LEGISLATIVE FRAMEWORK ON LOCAL GOVERNANCE

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013

HOUSING ACT, 1997

WATER SERVICES ACT, 1997

THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT, 1998

MUNICIPAL DEMARCATION ACT, 1998

MUNICIPAL STRUCTURES ACT, 1998

MUNICIPAL SYSTEMS ACT, 2000

MUNICIPAL FINANCE MANAGEMENT ACT, 1998

MUNICIPAL PROPERTY RATES ACT, 1998

PROMOTION OF ACCESS TO INFORMATION ACT, 2000

TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK ACT, 2003

PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 2000

LOCAL GOVERNMENT MUNICIPALITIES

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): We are all 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): We all have the right to express ourselves freely and to receive or share information, as long as it does not amount to hate speech. We also have the right to associate with whomever we like, make our own political choices – such as which political party to belong to or support – and to peacefully assemble, demonstrate, picket or present petitions. Lastly, we all have the right to free, fair and regular elections.

Socio-economic rights (s. 26 – 29): We have 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): We have the right to access any information held by the state, as well as information held by private bodies – if it is necessary to protect our rights. We 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 we have been negatively affected by government decisions, we must be given an explanation in writing, and we 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

SCHEDULE 4 — FUNCTIONAL AREAS OF CONCURRENT (JOINT) NATIONAL AND PROVINCIAL 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.

SCHEDULE 5 — FUNCTIONAL AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE

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 11.3.

11.2.1 *Municipal Demarcation Act (No. 27 of 1998)*[49]

This Act outlines the criteria and procedures for the determination of the municipal boundaries. It establishes the Municipal Demarcation Board 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.

11.2.2 *Municipal Structures Act (No. 117 of 1998)*[50]

The *Municipal Structures Act* (MSTA) **sets out criteria for determining the category of a municipality** (> page 15) and **defines the types of municipality that may be established within each category** (> page 34). 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 also establishes the **electoral system for local government** and processes for drawing up wards.

11.2.3 *Municipal Systems Act (No. 32 of 2000)*[51]

The 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) > page 75

Finally, the Act also specifies the exact processes that a municipality must follow to procure services from external service providers (s. 78). > page 48

Schedule 1 and 2 of the MSA are of particular importance as they contain the *Code of Conduct for Councillors,* and the *Code of Conduct for Municipal Staff Members*. > page 26

11.2.4 *Promotion of Access to Information Act 2 of 2000 (PAIA)*[52]

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. > page 72.

11.2.5 *Promotion of Access to Administrative Justice Act (No. 3 of 2000)*[53]

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 THEM 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 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 TLGFA is the main law r**ecognising and regulating the institution, status and role of traditional leaders**. It is a 'framework legislation', meaning that it **broadly outlines 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.

While the TLGFA recognises traditional leadership institutions such as councils, it also requires 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 requires that traditional councils include 40% elected members and that a third of members are women (s. 3). The TLGFA also specifies that when organs of state (such as municipalities) have delegated responsibilities to traditional councils, the **implementation of that function must be monitored (s. 20)**.

Lastly, schedule 1of the TLGFA provides the *Code of Conduct for Traditional Leaders*.

11.3 LAWS ON FINANCIAL MANAGEMENT IN LOCAL GOVERNMENT

Below we outline both laws and regulations specifying the rules 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). > page 92. 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) > page 80.

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.

11.3.2 *The Municipal Property Rates Act 2 (No. 6 of 2004)*[54]

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, (> page 80), 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 <u>indigent</u> 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*

The annual legislation that provides for the allocation of funds between the spheres of government, as required by the Constitution (s. 241). *The Division of Revenue Act* (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 (April 1 – March 31 is national government's financial year) in terms of Section 214 of the Constitution.

11.3.4 *The Preferential Procurement Policy Framework Act* [55]

The PPPFA provides guidance on implementing <u>preferential procurement</u> 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 obligation**s or who received a contract due to fraud or corruption. > pages 47 - 50

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 entirely of section 217 of the Constitution. As of late 2023, it is still being finalised, with anti-corruption groups having issued a statement in September highlighting flaws and critical changes they believe must be addressed to give the Bill its intended strength.

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 '<u>circulars</u>' (notices) and regulations. Regulations that are <u>gazetted</u> (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 *MFMA Regulations on Financial Misconduct Procedures and Criminal Proceedings of 2014.* The MSCM regulations require municipalities to develop and adopt their own SCM policies, and describe the minimum standards for those policies (> page 48). *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)*

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** 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)*[56]

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". PIE 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.** > page 103

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. > page 102

11.4.5 *Water Services Act (No. 108 of 1997)*[57]

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. > page 100

11.4.6 Indigent policies

There are a number of policies that provide the framework for Free Basic Services (FBS). They include the following.

National Framework for Municipal Indigent Policies (2005) 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://www.westerncape.gov.za/text/2012/11/national_framework_for_municipal_indigent_policies.pdf

The *Guidelines for the Implementation of the Municipal Indigent Policies (2005)* outlines 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://www.westerncape.gov.za/text/2012/11/indigent_policy_implementation_guidelines_dplg_part_2.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.energy.gov.za/files/policies/Free%20Basic%20Electricity%20Policy%202003.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.
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. > page 17

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 programs. 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. > page 41

Adjustments Budget: The budget presented to the council to authorise changes to the annual budget approved before the start of the financial year. > page 81

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. > page 80

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. > pages 89 & 51

Assets: Everything an organisation (e.g. a municipality) owns. It includes cash, investments, money owed to it, materials, buildings and machinery.

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. > page 97

Bid/ Bidding: An offer to provide goods or services at a certain price, presented in response to call for proposals. See also competitive bidding. > page 47

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. > page 49

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 (like your doctor) or a company (like MTN).

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. > page 16

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. [58]

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. > page 36

Competitive bidding: A procurement method in which <u>bids</u> 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. > page 47

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 <u>unconditional grant</u>. > page 85

Conflict of interests: A situation where an individual or organization 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 <u>body</u> 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 <u>revenue</u> that each sphere of government is constitutionally entitled to (Section 214 of the Constitution). > page 85

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 April 1 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. Joining a municipality with wealthier residents to a municipality with poorer residents can contribute to the financial viability of the new municipality formed. > page 85

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). > page 97

Fruitless or Wasteful Expenditure: Expenditure which is wasteful or unsuccessful and could have been avoided if reasonable care had been exercised. > page 19 & 90

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. All municipalities are expected to have indigent policies that explain who qualifies for free basic services. > page 97

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). > page 19

J

Jurisdiction: The area of a local government's authority, e.g. Durban or KwaMashu. 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. > page 106

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, similar to a tax, which are added to the price of a service. In local government they are used for up keep 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 of 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. > page 18

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. See non-executive councillors.

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. > page 47 & 49

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. > page 37

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 of a 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.

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. > pages 89 & 91

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). > page 72

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 forward, not backward. 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. > page 30

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. > page 52

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. > page 84

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 (> page 144) 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. > page 12

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. Sub-ordinate 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 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. > page 48

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". > page 49

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 kinds positions or structures such as councillors, councillor officials.

U

Unauthorised Expenditure: Spending money for purposes other than what was allocated in the budget approved by council, and/or overspending. > page 19

Unconditional grant: Funds transferred from national government to local government that are not allocated for a specific purpose. Also see conditional grants. > page 85

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 TO CONSULT

13.1 Organise! Tools and inspiration for activists

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 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 activist tools such as budget analysis or procurement monitoring.

THE BASICS OF ORGANISING:

SERI. *Community Organisers Guide*. 2015. SERI. Available at:

https://www.seri-sa.org/index.php/research/expanding-political-space/exp-pol-spa-res-gui

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.

Afesis Corplan. *Citizen-based Monitoring of Frontline Service Delivery Toolkit*. 2017. Afesis-corplan. Freedom House Southern Africa. Available at:

http://afesis.org.za/tag/citizen-based-monitoring-of-frontline-service-delivery-toolkit/

See specifically the chapter on active citizenship.

BUILDING POWER AND USING EVIDENCE TO HOLD GOVERNMENT TO ACCOUNT:

A New Weave of Power, People & Politics: The Action Guide for Advocacy and Citizen Participation. 2002. Just Associates. Available at:

https://justassociates.org/en/resources/new-weave-power-people-politics-action-guide-advocacy-and-citizen-participation

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.

Peoples Action for Just & Democratic Governance: Using Evidence to Establish Accountability. 2010. Action Aid International. Available at:

https://actionaid.org/publications/2010/using-evidence-establish-accountability-sourcebook-democratic-accountability

Accountability – Quality and Equity in Public Service Provision. 2011. ActionAid. Available at:

https://actionaid.org/publications/2011/accountability-quality-and-equity-public-service-provision-hrba-governance

Democracy - Justice and Accountability at the Local Level. 2012. ActionAid. Available at: https://actionaid.org/publications/2012/democracy-justice-and-accountability-local-level-hrba-governance-resources

USING THE MEDIA:

The Info-Activism How-To Guide: Strategies and tools for digital campaigning. Year unknown. Tactical Tech. Available at:

https://howto.informationactivism.org/.

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-activists find useful in their work and numerous inspirational examples of how other groups have used information and digital technologies in their campaigns.

George Monbiot. *An activist guide to exploiting the Media.* Year Unknown.
Available at:

https://www.worldcarfree.net/resources/freesources/activist.htm

Social media activism: A Guide to Online Change-Makings. 2014. Amnesty International Australia. Available at:

https://www.amnesty.org.au/wp-content/uploads/2016/09/activist-portal-training-social-media-activism-guide-1.pdf

'Mission Possible': A Gender and Media Advocacy Training Toolkit. 2014. WACC
Available at:

https://www.mediareform.org.uk/wp-content/uploads/2015/11/Mission_Possible-A_Gender_and_Media_Advocacy_Toolkit.pdf

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 included below. Many provide in-depth information on areas that this guide only touched on.

LOCAL GOVERNMENT OVERVIEW:

Everything You Need to Know About Being a Councillor. 2016. KZN COGTA. Available at:

http://www.kzncogta.gov.za/wp-content/uploads/2017/04/Local-Government-Councillor-Handbook.pdf

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 (EPWP), disaster management and local economic development, among others.

Coulson, D. *Local Government Social Accountability Monitoring: A Guide for Municipal Journalists and Civic Actors.* 2014. MobiSAM. Available at:

https://mobisam.net/documents/LG_SAM_Guide.pdf

Covers the planning and oversight cycle in detail.

EISA and Planact. *Handbook for Municipal Councillors.* 2006. SALGA and GTZ South Africa. Available at:

https://www.westerncape.gov.za/text/2006/4/handbook_for_municipal_councillors.pdf

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.

BUILDING POWER AND USING EVIDENCE TO HOLD GOVERNMENT TO ACCOUNT:

A New Weave of Power, People & Politics: The Action Guide for Advocacy and Citizen Participation. 2002. Just Associates. Available at:

https://justassociates.org/en/resources/new-weave-power-people-politics-action-guide-advocacy-and-citizen-participation

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.

McNeil, C. *Making Local Government Work: An Activists Guide. 2011. Local Government Action.* Available at:

http://www.seri-sa.org/images/stories/activistguidetolocalgovernment_aug11.pdf

Provides whole sections of relevant legislation and forms that basis for much of this guide.

Right to Know Campaign (R2K). *Local Government Transparency and Accountability: Activist Guide.* 2016. R2K. Available at:

http://www.r2k.org.za/wp-content/uploads/r2k_local-govt-guide-july2016.pdf

ON SPECIFIC LOCAL GOVERNMENT PROCESSES AND ROLE PLAYERS:

De Visser, J and Steytler N. Electing Councillors: A Guide to Municipal Elections. 2016. Dullah Omar Institute / Friedrich Ebert Stiftung. Available at: http://repository.uwc.ac.za/xmlui/handle/10566/2333.

In-depth outlines of municipal election processes.

South African Local Government Association (SALGA). *Guideline Document on the Roles and Responsibilities of Councillors, Political Structures and Officials.* 2011. SALGA. Available at:

https://www.salga.org.za/Documents/Municipalities/Guidelines%20for%20Municipalities/Guideline-Document--On-The-Roles-and-Responsibilities-of-Councillors-and-Officials-(2)-(1st-Draft)_.pdf

Ward Committee Establishment and Election Guiding Framework. 2016. SALGA. Available at: http://salga.org.za/nc/docs/Ward_Committee_Establishment_and_Election_Guiding_Framework_2016.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

Having your Say: A Handbook for Ward Committees. 2003. DPLG and GTZ. Available at:

http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/WardHandbook.pdf

The Role of the Municipal Manager before, during and after the 2016 Local Government Election. 2016. SALGA. Available at:

https://www.salga.org.za/Documents/NMA%20Documents%202016/The%20role%20of%20the%20Municipal%20Managers%20before.pdf

A Handbook for Community Development Workers. 2007. Ministry for Public Service and Administration. Available at:

https://www.iacdglobal.org/wp-content/uploads/2017/07/CDW-Handbook.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 your own analysis and budget advocacy.

LOCAL GOVERNMENT OVERVIEW:

van der Westhuizen, C., Taylor, J., van Zyl, A., and Rubin, M., *A Guide to Local Government Budget Advocacy.* 2017. International Budget Partnership (IBP). Available at:

https://za.boell.org/2017/04/20/guide-local-government-budget-advocacy

An in-depth step-by-step guide to budget related advocacy at the municipal level.

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). Available at:

https://nu.org.za/wp-content/uploads/2021/12/Budget-Book-1.pdf

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.

SOURCES OF BUDGET INFORMATION:

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/.
Although it does not include municipal data at the moment, it may be included in future.

Municipal Money is a website which provides key financial information on municipal performance from National Treasury. https://municipalmoney.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.

Ramkumar, V. *Our Money, Our Responsibility – A Citizens' Guide to Monitoring Government Expenditures.* 2008. International Budget Partnership (IBP). Available at:

https://www.internationalbudget.org/publications/our-money-our-responsibility-a-citizens-guide-to-monitoring-government-expenditures/

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.

van der Westhuizen, C. *Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations.* 2015. International Budget Partnership (IBP). Available at:

https://www.internationalbudget.org/wp-content/uploads/guide-to-monitoring-public-procurement-in-south-africa-2015.pdf

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.

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. Available at:

https://internationalbudget.org/publications/guide-to-conducting-social-audits-in-south-africa/

A comprehensive guide to conducting social audits in South Africa, profiling social audits conducted by SJC, NU and EE.

Social Audit Network, Social Justice Coalition and IBP. *A Pocket Guide to Conducting Social Audits in South Africa.* 2018. Available at:

https://internationalbudget.org/publications/guide-to-conducting-social-audits-in-south-africa/

Also available in isiXhosa and isiZulu.

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 informationfrom national, provincial, and local government will be available here:

http://www.etenders.gov.za/

13.5 Access to information, whistleblowing and PAIA

Young, C. and Watson, P. *PAIA Resource Kit.* South African History Archive (SAHA). Available at: http://foip.saha.org.za/static/paia-resource-kit1.

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.

Razzano, G. *Empowering our Whistleblowers.* 2014. Open Democracy Advice Centre (ODAC) and R2K. Available at:
http://www.r2k.org.za/wp-content/uploads/WhistleblowingBook.pdf.

13.6 Basic services

Paralegal Training Manual. 2015. Education and Training Unit (ETU) and Black Sash (2015). Available at:
http://paralegaladvice.org.za/wp-content/uploads/2016/05/PLM-2015-Complete-Book-for-Print.pdf

(sections on local government, land and housing)

Adam, F. *Free Basic Electricity: a better life for all.* 2010. Earthlife Africa Johannesburg. Available at:
https://earthlife.org.za/wp-content/uploads/2020/11/Free-Basic-Electricity-Final-Low-res.pdf

Targeting the Poor? An Analysis of Free Basic Services (FBS) and Municipal Indigent Policies in South Africa. 2014. SERI. Available at:
http://www.seri-sa.org/index.php/more-news/250-seri-launches-research-report-on-fbs-and-municipal-indigent-policies-22-may-2014

Resisting Evictions in South Africa: A Legal and Practical Guide. 2015. SERI. Available at:
https://www.seri-sa.org/index.php/research/all-publications/resource-guides

Clark, M. and Royston, L. *Relocating to Alternative Accommodation: Legal and Practical Guidelines.* 2017. SERI. Available at:
https://www.seri-sa.org/index.php/research/all-publications/resource-guides

Tissington, K. *Basic Sanitation in South Africa: A Guide to Legislation, Policy and Practice.* 2011. SERI. Available at:

https://www.seri-sa.org/index.php/research/all-publications/resource-guides

Tissington, K. *A Resource Guide to Housing in South Africa 1994 - 2010: Legislation, Policy, Programmes and Practice.* 2011. SERI. Available at:

https://www.seri-sa.org/index.php/research/all-publications/resource-guides

SERI and CUBES. *A Tenant's Guide to Rental Housing.* 2013. SERI. Available at:

https://www.seri-sa.org/index.php/research/all-publications/resource-guides

CHAPTER 14:

ORGANISATIONS THAT CAN HELP YOU

14.1 Local government and social justice issues

Afesis Corplan
www.afesis.org.za
e: info@afesis.org.za
FB: afesis.corplan
Location: East London

Community Organisation Resource Centre (CORC)
www.sasdialliance.org.za
e: info@corc.co.za
Location: Cape Town

Black Sash
www.blacksash.org.za
e: help@blacksash.org.za
Helpline: 072 66 33 739
FB: BlackSashSouthAfrica
Twitter: @black_sash
Location: Cape Town, Durban, Port Elizabeth, and Johannesburg (serving North West & Limpopo)

Development Action Group
www.dag.org.za
e: dag@dag.org.za
FB: developmentactiongroup
Twitter: @DAG__activism
Location: Cape Town

Built Environment Support Group
www.besg.co.za
e: info@besg.co.za
FB: BesgNGO
@BESG_KZN
Location: Pietermaritzburg

Dullah Omar Institute
www.dullahomarinstitute.org.za
FB: CommunityLawCentre
Twitter: @UWC_DOI
Location: Cape Town

Centre for Applied Legal Studies
www.wits.ac.za/cals/
Twitter: @CALS_ZA
Location: Johannesburg
(serves Gauteng, Limpopo and other provinces)

Equal Education
www.equaleducation.org.za
e: info@equaleducation.org.za
FB: equal.education
Twitter: @equal_education
Location: Cape Town, Johannesburg, King William's Town. Also work in KZN
Whatsapp: 021 361 0127

Lawyers for Human Rights (LHR)
www.lhr.org.za
FB: LawyersForHumanRights
Twitter: @LHR_SA
See locations and telephone under 14.4

Legal Resources Centre (LRC)
www.lrc.org.za
FB: LRCSouthAfrica
Twitter: @LRC_SouthAfrica
See locations and telephone
under 14.4

Ndifuna Ukwazi
www.nu.org.za
e: contact@nu.org.za
FB: NdifunaUkwazi
Twitter: @NdifunaUkwazi
Location: Cape Town

Planact
www.planact.org.za
e: info@planact.org.za
FB: planact.sa
Twitter:@Planact_NGO
Location: Johannesburg.
Also work in Mpumalanga.

ProBono.Org
www.probono.org.za
e: info@probono.org.za
FB: ProBono.Org
Twitter: @Probono_Org
See locations and telephone under 14.4

Shack Dwellers international
http://sdinet.org/
e: info@sdinet.org
FB: sdinet

SECTION27
section27.org.za
e: info@section27.org.za
FB: SECTION27news
Twitter: @SECTION27news
Location: Johannesburg. Also serve other provinces.

Socio-Economic Rights Institute of South Africa (SERI)
www.seri-sa.org
FB: SocioEconomicRightsInstitute
Twitter: @SERI_RightsSA
Location: Johannesburg. Also serve other provinces. Also work in Mpumalanga.

Social Justice Coalition
www.sjc.org.za
e: info@sjc.org.za
FB: sjcoalition
Twitter: @sjcoalition
Location: Cape Town

Treatment Action Campaign
www.tac.org.za
e: info@tac.org.za
FB: TreatmentActionCampaign
Twitter: @TAC
Locations: Lusikisiki, Bloemfontein, Johannesburg, Pietermaritzburg, Giyani, Ermelo, Cape Town

14.2 Budget information and analysis

Financial and Fiscal Commission
www.ffc.co.za
Tel: Presidential Hotline 17737
e: president@po.gov.za

Public Service Authority Monitor
www.psam.org.za
e: psam-admin@ru.ac.za
Twitter: PSAM_AFRICA

IMALI YETHU
www.imaliyethu.org.za
e: z.kota@ru.ac.za
twitter: @imali_yethu

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
mfma.treasury.gov.za
e: mfma@treasury.gov.za
Tel:012 315 5850

International Budget Partnership SA
www.internationalbudget.org
FB: internationalbudgetpartnershipsa
Twitter:@Openbudgets

The Public Service Accountability Monitor (PSAM) offers comprehensive training to equip southern African civil society with evidence-based monitoring and advocacy tools. The *Fundamentals of Social Accountability Monitoring* course runs a number of times a year.

PSAM also coordinates IMALI YETHU, a coalition of civil society organisations working with the South African National Treasury to make budget information more accessible, user-friendly and empowering. The partnership has led to the development of *vuleka mali* (vulekamali.gov.za), an online database including national and provincial budget data in different formats.

14.3 Transparency, access to information, freedom of expression and anti-corruption

Auditor-General
Tel: 012 426 8000
www.agsa.co.za
FB: AuditorGeneralSA
Twitter: @AuditorGen_SA

R2K Campaign
www.r2k.org.za
e: admin@r2k.org.za
FB: r2kcampaign
Twitter: @r2kcampaign

Corruption Watch
www.corruptionwatch.org.za
e: info@corruptionwatch.org.za
FB: CorruptionWatch
Twitter: @ Corruption_SA
Whatsapp: 082 579 5220

South African History Archive (SAHA)
Access to Information Programme
www.saha.org.za
e: info@saha.org.za
FB: SAHistoryArchive
Twitter: @SAHAnews

FXI (Freedom of Expression Institute)
https://fxinstitute.org.za/
Tel: 010 023 1241
e: fxi@fxi.org.za
FB: FREEDOMOFEXPRESSIONINSTITUTE
Twitter: @FXISouthAfrica

South African Human Rights Commission (SAHRC)
www.sahrc.org.za
FB: SAHumanRightsCommission
Twitter: @SAHRCommission

My Vote Counts
www.myvotecounts.org.za
FB: myxcounts
Twitter: @MVC_SA

The Office of the Public Protector
Tel: 012 366 7000 or 0800 11 2040
www.pprotect.org
FB: PublicProtectorSouthAfrica
Twitter: @PublicProtector

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 and 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 Free legal advice

Lawyers for Human Rights
www.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 Resources Centre
www.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

Legal Aid SA Johannesburg
079 835 7179 (Please Call Me)
www.legal-aid.co.za
e: LegalAidAdvice@legal-aid.co.za
Legal Aid toll free Line: 0800 110 110
Legal Aid works in all provinces.
Locations:
https://legal-aid.co.za/find-us/

ProBono.Org
www.probono.org.za
FB: ProBono.Org
Twitter: @Probono_Org
Johannesburg: 011 339 6080
e: info@probono.org.za
Durban: (031) 301 6178
e: dbninfo@probono.org.za
Cape Town: 087 470 0721
e: infocpt@probono.org.za

Women's Legal Centre
www.wlce.co.za
Tel: 021 424 5660
e: info@wlce.co.za
FB: WLCCapeTown
Twitter: @WLCCapeTown

UNIVERSITY LEGAL CLINICS

Queenstown Rural Legal Centre
Tel: 045 838 5600
e: rurallegalcentre@ru.ac.za

UNIVEN Legal Aid Clinic
Tel: 015 962 8869 / 8706 / 8309
Email: info@univen.ac.za

Rhodes University Legal Aid Clinic (Grahamstown)
Tel: 046 603 7656
e: lawclinic@ru.ac.za

University of KwaZulu Natal Law Clinic
https://law.ukzn.ac.za/lawclinic/
Durban: 031 260 2151
e: clms@ukzn.ac.za
Pietermaritzburg: 033 260 5014/6207
e: pmblaw@ukzn.ac.za

Stellenbosch University Law Clinic
Tel: 021 808 3600
e: rhkadmin@sun.ac.za
www.sulawclinic.co.za

University of Johannesburg Law Clinic
Tel: 011 559 2633
https://www.uj.ac.za/faculties/law/law-clinic/

UCT Legal Aid Clinic
Tel: 021 650 3775/ 021 650 4890
e: uctlawclinic@uct.ac.za
https://law.uct.ac.za/law-clinic

University of Pretoria Law Clinic
Tel: 012 420 4155
e: francina.ngidi@up.ac.za
https://www.up.ac.za/up-law-clinic-home-page

UNISA Legal Aid Clinic
Tel: 012 481 2954/5
e: LawClinic@unisa.ac.za
https://www.unisa.ac.za/sites/corporate/default/Colleges/Law/Schools,-departments,-centres-&-institute/Unit/Unisa-Law-Clinic

UWC Legal Aid Clinic
Tel: 021 959 3291
e: amrhoda@uwc.ac.za

END NOTES

1 Based on: McNeil, C. Making Local Government Work: An Activists Guide. 2011. Local Government Action. See page 135 for where to find it.

2 Source: South African Cities Network (SACN). State of South African Cities Report 2016: The People's Guide. SACN: Johannesburg.

3 Based on: Making Local Government Work: An Activists Guide. See page 135 for where to find it.

4 Based on: MS-ActionAid-Denmark. Peoples Action for Just & Democratic Governance: Using Evidence to Establish Accountability. 2010. Action Aid International. See page 133 for where to find it.

5 See Guideline Document on the Roles and Responsibilities of Councillors, Political Structures and Officials. 2011. SALGA. See page 135 for where to find it.

6 Source: Making Local Government Work: An Activists Guide. See page 135 for where to find it.

7 As above.

8 See Right to Know Campaign (R2K). Local Government Transparency and Accountability: Activist Guide. See page 135 for where to find it.

9 Adapted from http://www.corruptionwatch.org.za/local-government-in-south-africa-part-3-the-councillor/

10 See National Treasury. MFMA Circular No 32: The Oversight Report. 2006. Available at: http://mfma.treasury.gov.za/Circulars/Pages/default.aspx

11 Based on: Making Local Government Work: An Activists Guide. See page 135 for where to find it.

12 Source: Address by Minister of Cooperative Governance and Traditional Affairs, to the National Council of Provinces (21/06/2018). Available at: http://www.polity.org.za/article/sa-zweli-mkhize-address-by-minister-of-cooperative-governance-and-traditional-affairs-to-the-national-council-of-provinces-21062018-2018-06-21

13 https://www.businesslive.co.za/rdm/politics/2016-03-03-why-sas-municipalities-are-failing-and-how-to-fix-them/

14 Adapted from: Jooste, F. and Hickey Tshangana, A. Budget Factsheet 3: Municipalities and Outsourcing; Ndifuna Ukwazi, Outsourced Services: Know Your Rights and; van der Westhuizen, C. Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations. See page 137 for where to find it.

15 Public Affairs Research Institute. The Contract State: Outsourcing & Decentralisation in Contemporary South Africa. 2014. PARI. Available at: https://pari.org.za/contract-state/

16 van der Westhuizen, C. Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations. See page 137.

17 DPSA. Annual Report 2017. Available at https://nationalgovernment.co.za/department_annual/196/2017-department:-public-service-and-administration-(dpsa)-annual-report.pdf

18 A Handbook For Community Development Workers. 2007. Ministry for Public Service and Administration. Available at http://unpan1.un.org/intradoc/groups/public/documents/cpsi/unpan032269.pdf

19 Based on: Making Local Government Work: An Activists Guide. See page 135 for where to find it.

20 Source: Making Local Government Work: An Activists Guide. See page 135 for where to find it.

21 For example see: http://www.drakenstein.gov.za/docs/Documents/20170320%20Draft%20Terms%20of%20Reference%20IDP%20Representative%20%20Forum.pdf

22 http://www.ggln.org.za/media/k2/attachments/SoLG.2015-Afesis-corplan.pdf

23 Based on: Making Local Government Work: An Activists Guide. See page 135 for where to find it.

24 https://www.dailymaverick.co.za/article/2017-06-25-op-ed-a-veneer-of-legality-to-disguise-total-system-failure-of-traditional-councils/

25 As above

26 Based on Steytler, N and De Visser J. Intervening in Provinces & Municipalities: Guidelines for the application of Sections 100 & 139 of the Constitution.

27 Based on Steytler, N and De Visser J. Intervening in Provinces & Municipalities: Guidelines for the application of Sections 100 & 139 of the Constitution.

28 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.

29 From Making Local Government Work: An Activists Guide. See page 135 for where to find it.

30 Adapted from Good Governance Learning Network (GGLN). Developmental Local Government: Dream Deferred? Perspectives from civil society on Local Governance in South Africa. 2018. GGLN. Available at: www.ggln.org.za/media/attachments/2018/08/31/solg-2018-complete.pdf

31 Based on van der Westhuizen, C. et al. A Guide to Local Government Budget Advocacy. See page 137 for where to find it.

32 Based on van der Westhuizen, C. et al. A Guide to Local Government Budget Advocacy. See page 137 for where to find it.

33 See Right to Know Campaign (R2K). Local Government Transparency and Accountability: Activist Guide. See page 135 for where to find it.

34 Based on Afesis Corplan, Citizen-based Monitoring of Frontline Service Delivery Toolkit. See page 135 for where to find it.

35 Thank you to Kate Tissington for the first version of this chapter, which is based on Making Local Government Work: An Activists Guide.

36 See Regulations on Compulsory National Standards & Measures to Conserve Water, 2001

37 National Framework for Municipal Indigent Policies, 2005.

38 The Free Basic Electricity Policy 2003

39 National Framework for Municipal Indigent Policies, 2005

40 From Making Local Government Work: An Activists Guide. See page 135 for where to find it.

41 National Policy for the Provision of Basic Refuse Removal Services to Indigent Households, 2011.

42 Adapted from SALGA. Access to Energy. 2017. SALGA. Available at http://www.sagen.org.za/publications/56-councillor-induction-programme-energy-access

43 Adapted from Making Local Government Work: An Activists Guide. See page 135 for where to find it.

44 From Making Local Government Work: An Activists Guide. See page 135 for where to find it.

45 Based on Making Local Government Work: An Activists Guide. See page 135 for where to find it.

46 From Making Local Government Work: An Activists Guide. See page 135 for where to find it.

47 City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others (CCT89/09) [2010] ZACC 11

48 Adapted from www.groundup.org.za/article/cape-town-approves-rezoning-prime-property-social-housing-inner-city/

49 Adapted from Everything You Need to Know About Being a Councillor. See page 134 for where to find it.

50 Adapted from EISA and Planact. Handbook for Municipal Councillors. See page 134 for where to find it.

51 As above.

52 Adapted from www.saha.org.za

53 Adapted from Know Your Service Rights Database, available at https://ossafrica.com/esst/index.php?title=Summary_of_the_Promotion_of_Administrative_Justice_Act%2C_no._3_of_2000.

54 Adapted from Everything You Need to Know About Being a Councillor. See page 134 for where to find it.

55 Adapted from van der Westhuizen, C. Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations. See page 137 for where to find it.

56 Adapted from SERI, Resisting Evictions in South Africa: A Legal and Practical Guide. See page 138 for where to find it.

57 Adapted from http://www.waternet.co.za/policy/le_wsa.html

58 See Ramkumar, Our Money, Our Responsibility – A Citizens' Guide to Monitoring Government Expenditures. See page 137.

This guide was produced by Accounting For Basic Services Project.

PERSONAL NOTES