



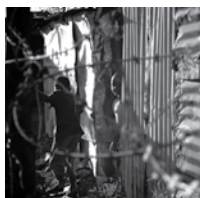
Making local government work an activist's guide

First edition 2011

www.localgovernmentaction.org

*In memory of all those killed in
protest action*

Making local government work an activist's guide



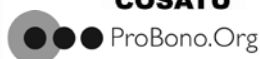
2011
First edition

Acknowledgments

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The Black Sash, Built Environment Support Group (BESG), Children's Right Centre, Congress of South African Trade Unions (COSATU), Council for the Advancement of the South African Constitution (CASAC), Equal Education, Planact, Probono.org, Rural Doctors Association of Southern Africa (RUDASA), Rural Health Advocacy Project, the Social Justice Coalition, Sonke Gender Justice Network, Soul City, Students for Law and Social Justice and the Treatment Action Campaign (TAC).

BLACK SASH
MAKING HUMAN RIGHTS REAL



This guide is a joint project by SECTION27, the Treatment Action Campaign (TAC), the Socio-Economic Rights Institute of South Africa (SERI) and Read Hope Phillips.

The first draft was researched and written by Claire McNeil while she was a volunteer at SECTION27. The editorial team comprised Mark Heywood (SECTION27), Jackie Dugard (SERI) and PJ Hope (Read Hope Phillips). Metumo Shilongo from SECTION27 and Mamello Mosikili from SERI assisted with logistical coordination.

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Foreword

The South African Human Rights Commission welcomes this guide. Government at all levels must be held to account by organised and informed communities for policy, budget and delivery priorities. Our Constitution says that local government must promote a safe and healthy environment and uphold basic services as human rights.

In 2010 the United Nations explicitly recognized the right to water and sanitation. But in a world that puts profits before people, the poor seldom enjoy these rights. For example, globally, personal and household water usage accounts for less than 10%, paid for by user fees. On the other hand private agriculture and industry usage accounts for most of the remaining 90%. Not only is this unequal but, as we have seen with acidmine drainage, they often do not pay for its abuse.

Unequal access to essential rights such as water and electricity means that the poor are often criminalised as electricity thieves. Yet research has shown that the greatest abuse results from unfair subsidisation of and distribution to business of services like water and electricity.

Often poor municipalities, with many demands, limited resources and little capacity sometimes cannot monitor companies awarded tenders. For these reasons national and local government must build their capacity and monitor all tenders to ensure the provision of quality services free from corruption. It must actively encourage community participation by, for example, establishing a single electronic repository for all local bylaws.

The challenge to end economic, geographic, gendered Apartheid is huge. Much of this challenge exists at a local level. But, as this guide shows, the Constitution empowers communities to claim their rights. Activists must connect the dots and ensure that Government prioritises the rights of people. We encourage you to use this guide to do that!



Pregis Govender
Deputy Chairperson
South African Human Rights Commission

Acronyms

AG	Auditor General
CBOs	Community based organisations
ICD	Independent Complaints Directorate
IDP	Integrated Development Plan
IEC	Independent Electoral Commission
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act, 56 of 2003
MIG	Municipal Infrastructure Grant
NEPA	National Education Policy Act, 27 of 1996
NGO	Non-governmental organisation
PAIA	Promotion of Access to Information Act, 2 of 2000
PDA	Protected Disclosures Act, 26 of 2000
PPO	Public Protector's Office
PR	Proportional representation
SASA	South African Schools Act, 84 of 1996
SGB	School Governing Body
VIP	Ventilated Improved Pit latrines

This is a guide containing general advice on current law and rights related to local government for activists. For advice on specific situations or problems, contact one or more of the organisations at the back of this guide.

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Before you start this book

Start by finding out who the role-players in your local municipality are. This will help you engage more successfully with those in power once you know your rights. Make sure you know the following details:

<i>Name of municipality:</i>	
<i>Municipal website:</i>	
<i>Name of mayor:</i>	<i>Mayor's phone number:</i>
<i>Name of speaker:</i>	<i>Speaker's phone number:</i>
<i>Ward Number:</i>	
<i>Name of councillor:</i>	<i>Councillor's phone number:</i>
<i>Ward committee members:</i>	
<i>Name of municipal manager:</i>	<i>Municipal phone number:</i>

Where to get this information:

Some municipalities publish a list of municipal government names and phone numbers, as well as their standing orders and rules that tell you how a municipal council is run. Make sure you have a copy of these documents!



500 000 PEOPLE IN CAPE
TOWN DO NOT HAVE ACCESS
TO BASIC SANITATION



THIS FREEDOM DAY

QUEUE FOR CLEAN & SAFE
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THEN MARCH TO
THE MAYOR'S
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1 USE YOUR POWER



We have a right under the Constitution to a local government that works, which provides basic services and which promotes social and economic development.

We have a right under the Constitution to democratic and accountable local government. But local government is in crisis and is failing to deliver the services we have a right to receive.

People across the country are angry, and **tired of politicians failing** to deliver on their promises

We've got the power to make local government work!

“The fault-line in our democracy is the failure of the electorate to hold the leaders to account. Our failure to punish the arrogant, greedy, incompetent crooks, and the culture of deference to the leader, are the greatest dangers to this country. Our failure to exploit the power of our vote has resulted in mediocre leadership in government and party structures. The municipality fails to provide services, overcharges you for the very same mediocre services and the councillor is corrupt, but you still feel you cannot betray your party. As long as South African voters tolerate the stench, the same scoundrels will be voted into office to run down municipalities.”

Moshoeshoe Monare

The Sunday Independent, 15 May 2011

‘The danger of staying loyal to ideology’



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The government accepts there are major problems including:

- huge service delivery and backlog challenges, particularly of housing, water, sanitation and health
- poor communication with, and accountability to, communities
- corruption and fraud
- poor financial management
- weak civil society formations
- political in-fighting
- lack of skills.

In his 2011 State of the Nation speech, President Jacob Zuma recognised people's anger at the failings of local government and promised "a responsive, accountable, effective and efficient local government system".

We, the voters,
have **the power**
to make change
happen in our
communities. We
have **the right to**
accountable and
responsive local
government

Deputy President Kgalema Motlanthe told Parliament in March 2011 that service delivery in many municipalities was failing because communities and civil society are not involved enough in local government.

This guide was written to empower activists and communities with the knowledge and tools to make local government work for us all.

It shows how to engage government from inside, by participating in formal processes like budgeting, Integrated Development Planning (IDP) and elections. It also explains how to influence government from outside by going public through complaints, petitions, protest action, the media and the courts.

The guide will help you:

1. **understand** local government and what it should be doing for every community
2. **monitor** (or keep track of) what local government is doing
3. **find out** what to do when local government ignores the community or breaks the rules
4. **take action** to enforce our rights to water, sanitation, electricity, housing, and health
5. **find organisations** that can help you.

Use the contents pages in the front of the book to direct you through the guide and to find the information you are looking for.

2 THE RESPONSIBILITIES AND POWERS OF LOCAL GOVERNMENT



2.1 The legal framework

It is important for activists to understand how laws are made and enforced in South Africa. This will help you better understand your rights in dealing with local government.

2.1.1 What is the rule of law?

In South Africa, no government 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(c) and s. 2 of the Constitution) and means that government, politicians and officials at any level 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?

Throughout this guide legislation used is underlined, full references can be found at the back in Section 10

2.1.2 Different kinds of laws

In South Africa there are three spheres of government – local, provincial and national – and each get its power from the Constitution. Each sphere must pass its own laws in the areas under its control.

Here are some of the different types of laws that are relevant for activists in relation to local government.

The Constitution: this is the supreme law in South Africa and overrides all other laws that are not in agreement with it. It includes the Bill of Rights which guarantees human rights for everyone in South Africa.





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Statutes or Acts: these are laws voted on by an elected body including a municipal council, provincial legislature or national Parliament and are also referred to as legislation. One of the most important Acts governing local government is the Municipal Systems Act.

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

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

Standing orders and rules: 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.

Municipal policy: a municipal policy, adopted by resolution of the municipal council and a by-law, is legally binding. Examples of this are the indigent policy, credit and collections policy, tariff policy, etc. Policies that are not approved by a resolution or by-law of municipal council are not necessarily legally binding which means they are not enforceable as law.

Regulations, frameworks and guidelines: these are subordinate laws approved by the executive. In the case of local government, this means the municipal council, mayor and/or the executive committee. To be valid as law, regulations must be authorised or approved by legislation or by-laws.

According to s. 32 and s. 162(3) of the Constitution and s. 15(3), s. 25(4)(a), s. 46(4)(a) and s. 84(3)(b) of the Municipal Systems Act, by-laws, policies, rules and standing orders must be accessible to the public. Ask your municipal office to give you a copy of the municipal by-law, policy, rule or standing order you are looking for.

The courts: Sometimes the courts decide how these laws should be applied. This is called judicial or legal interpretation and that is what makes the Constitution a living document. 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. The



Constitutional Court is the final court for all constitutional matters – it makes the final decisions about the meaning of the Constitution and the Bill of Rights. Cases from the Constitutional Court interpret and develop the law and define our rights. There are different ways to find the laws you are looking for. At the back of this book we have included extracts from important legislation as well as a list of the legislation and addresses of websites to help you find the law you are looking for. You can also approach your local government municipal office and ask for complete copies of by-laws, regulations and policies. All of these should be on your municipality's website.

2.1.3 The councillors' Code of Conduct

National legislation, such as the Municipal Structures Act, sets out how municipal councillors, ward committees, and administrative officials must behave, and the penalties for improper behaviour.

The Code of Conduct for municipal councillors sets out certain ethical and other standards to ensure the integrity of councillors and their accountability to your community. Use this Code of Conduct to demand accountability from your municipal councillors. You can do this by making a complaint and asking for enforcement of the Code.

Make sure you **understand the Code of Conduct** so that you know **what your councillor should or shouldn't be doing!**





2.2 What must local government do?

Local government is one of three spheres of government in South Africa. The other two spheres are provincial and national government.

The three overlapping spheres of government



Local government, or municipal government as it is also known, is made up of three groups:

- **elected councillors** who form a municipal council
- an **administration** made up of officials appointed by a municipal council
- **the people** who live in the municipality, including residents, groups, community based organisations (CBOs) and businesses (s.2(b) of the Municipal System Act).

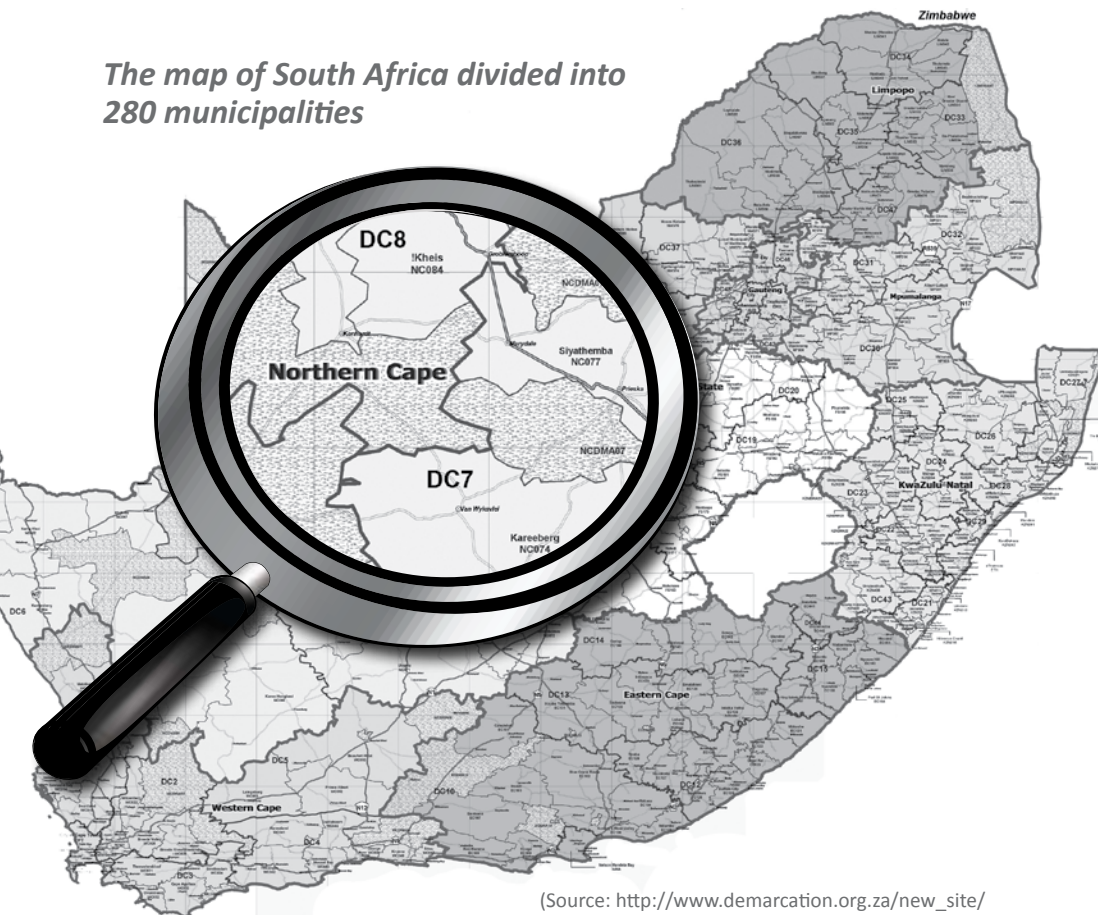
A municipality is more than a geographic area or the government officials who work there. When we talk about a municipality it includes the people who actually live there!



South Africa is divided into more than 280 separate municipalities. Wherever you live, you are part of a local government. There are two types of local government:

- **Metropolitan** municipalities – eight high-density, large urban areas namely Buffalo City (East London), City of Cape Town, Ekurhuleni **Metropolitan** Municipality (East Rand), City of eThekwin (Durban), City of Johannesburg, Mangaung Municipality (Bloemfontein), Nelson Mandela **Metropolitan** Municipality (Port Elizabeth), and City of Tshwane (Pretoria).
- **Non-Metropolitan** – made up of district and local municipalities such as Govan Mbeki Local Municipality (Gert Sibande District Municipality) and Sol Plaatje Local Municipality (Frances Baard District Municipality).

*The map of South Africa divided into
280 municipalities*



(Source: http://www.demarcation.org.za/new_site/pages/default_new.html)



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S. 152 in Chapter 7 of the Constitution explains the duties and functions of local government including:

- democratic and accountable governance
- provision of services
- promoting social and economic development.

Remember, the
**Constitution is the
highest law in the
land!**

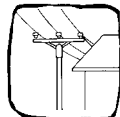
Local government has the power to make and enforce laws in the areas defined by s. 156 of the Constitution. Other local government powers are shared with national or provincial governments.

Local government has a legal duty to deliver municipal services. The most important local government duties include providing basic services such as:

- **water and sanitation**



- **electricity**



- **refuse removal**



- **municipal health services**



- **municipal public transport**



- **municipal roads.**



Other duties include firefighting, parks and recreation, roads and public transportation, the regulation of child care and public spaces. Local government has also a critical role to play in the provision of housing.



2.3 Local government must...

2.3.1 Provide basic services

Local government must give priority to the basic needs of the community (s. 153(a) of the Constitution). In providing basic services like water and electricity it must ensure that each member of the community has access to at least a minimum level of basic service (s. 139(5) of the Constitution; s. 73 (1) of the Municipal Systems Act). These duties have been reinforced in two judgments of the Constitutional Court (*Joseph, Mkontwana*).

Throughout the guide **cases** are referred to by the first name and are *italicised*, the full references **can be found in Section 10**

2.3.2 Promote development and the environment

Local government must promote a safe and healthy environment, as well as social and economic development.

2.3.3 Encourage community participation

Local government must encourage the involvement of the community in matters of local government. In practice this means that it must not only **consult** with the community, but also allow and promote community participation in decision-making.

2.3.4 Respect, protect, promote and fulfil human rights

Local government must respect, protect, promote and fulfil human rights (s. 7(2) of the Constitution), such as the right to water, a clean and healthy environment, and housing.

- **Respect** means it must not stand in the way of realisation of the right – like failing to grant a license to allow a community to drill a well for drinking water.
- **Protect** means it must not allow others to undermine the realisation of the right – like allowing companies to pollute the drinking water supply.
- **Promote** means it must do what it can to facilitate the realisation of the right – for instance by maintaining and repairing pipes needed to deliver drinking water and sanitation.
- **Fulfil** means it must take positive steps to ensure that the community has access to affordable, clean drinking water, for instance by implementing free basic services to those in need and by constructing infrastructure to make services accessible.



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2.3.5 Achieve human rights step-by-step

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.

What government *must do* is to make a plan to realise rights within their available resources, and carry out that plan step-by-step to *improve* people's enjoyment of their rights. If government fails to make a plan, or leaves vulnerable people out of the plan, or later on ignores the plan they made, this is a violation of human rights.

The human rights obligations apply not just to local government administration, but to anyone local government has hired to deliver services to the public, for example municipally owned companies such as Johannesburg Water, publicly owned parastatals like Eskom, private companies and CBOs.

2.4 Make your local government work

Local government's mandate is clearly set out in s. 152 of the Constitution. Local government has an obligation to consult with communities and for community participation to be part of the decision-making processes. Councillors are elected to represent and serve the community in realising people's Constitutional rights to basic services.

Too often in dealings with local government, communities feel like they are on the outside looking in. They feel that their opinions and needs are ignored. Just because there are laws and regulations for community involvement and participation, does not mean they are always followed. The reality is that government sometimes ignores legitimate concerns, fails to keep its promises or provide access to basic services.

This is not the kind of local government that we are entitled to. In order for people's Constitutional rights to basic services to be fulfilled we need local government that is responsive and accountable. We need local government that makes good decisions that will benefit communities as a whole. We need local government that addresses the right priorities, that ensures social cohesion and stability, and that involves us in decisions. To create this kind of local government it is important that you take action. Demand to participate in consultations and decision-making processes and hold your municipality to account!



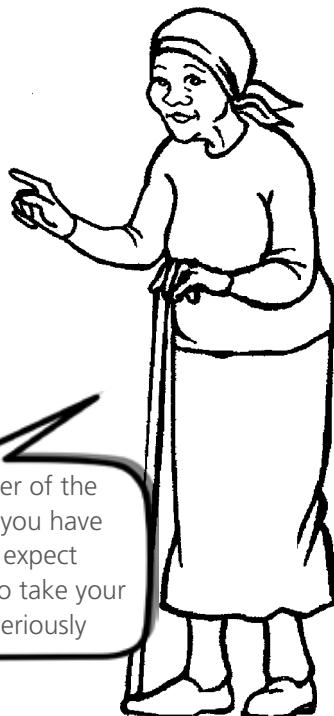
2.4.1 Report consistent failure to the provincial or national government

If your efforts to hold the municipality to account for the use of public resources are unsuccessful and you can show the municipality is unable to provide basic services and meet its financial commitments, you should report incidents to the provincial department responsible for local government.

If the provincial government finds that the municipality cannot fulfil its obligations it can impose a recovery plan. This involves:

- assessing the seriousness of the problem and the municipality's financial position
- identifying strategies to deal with financial management weaknesses
- identifying resources necessary to implement these strategies and where these resources should come from
- setting out timeframes for the implementation of the recovery plan.

If the municipality refuses to accept the plan, or if it cannot implement the plan, the provincial government can dissolve the municipal council and place the municipality under administration until new elections can be held (s. 139(4)(5) of the Constitution; s. 136-149 of the Municipal Finance Management (MFMA)). If this fails to bring about necessary improvements, the national government can also intervene and administer the municipality until new elections are held (s. 150 of the MFMA).



As a member of the community you have a right to expect government to take your concerns seriously



3 ENGAGING WITH LOCAL GOVERNMENT

3.1 Your right to participate in local government

Public participation is crucial in the building of an effective democracy. In order to help you better understand your role and how you can participate, this chapter introduces the officials, role-players and processes which exist in the local government sphere.

Your community
has a **right to be
involved** in local
government!

S. 152 (1)(e) of the Constitution requires local government to “encourage the involvement of communities and community organisations in the matters of local government.”

This right to participation is set out in the Constitution and local government legislation. Your community can participate at various levels and through different formal and informal processes, for example:

- Participation as voters
- As residents who express their views before, during and after policy development
- As participants in ward committees and IDP forums
- As activists in monitoring the performance of local government.

Consultation and engagement between government and local communities must be “meaningful”. In practice, this means that a municipal council must publicise its activities and give enough notice and time for consultation and feedback before a decision is taken. It also means that input from the community must be reflected in council decisions.



3.2 Understanding who is who

3.2.1 *The key officials and their duties*

Power of the mayor

Mayors are councillors elected by members of a municipal council (see below for an explanation of municipal council). How much power does your mayor have? This depends on whether your municipal council gives executive powers to the mayor, or to an executive committee that includes the mayor as well as other elected councillors. In very small municipal councils, with nine or less members, each councillor has both executive and legislative responsibilities. If executive powers are given to a committee, the mayor becomes the chair of the committee. The mayor then has the responsibility to set committee agendas and run meetings, but does not have greater power than the rest of the committee members.

If the mayor has executive powers, he or she may appoint a mayoral committee. A mayoral committee is like a cabinet at local government level. It is not obliged to hold its meetings in public or include other members of council. When the mayor is absent or unavailable, the deputy mayor takes over his or her responsibilities.

Who is the speaker?

The speaker is sometimes referred to as the chairperson of the municipal council. The speaker is elected by a majority of council members and is responsible for convening municipal council meetings, co-ordinating the setting of the meeting agenda, enforcing the Code of Conduct, regulating debates and discussions, and conducting meetings of council. The mayor or speaker is also responsible for ensuring that council documents are made public under s.1 of the [Promotion of Access to Information Act](#).

Who is the party whip?

Each political party represented in the municipal council has a party whip. Party whips are called together by the speaker to set agendas and allocate time for meetings, determine the composition of committees, and other functions. The chief whip represents the majority party in the municipal council. Each party has its own whip on each of the municipal committees.

If your councillor is not calling or attending public meetings to report on the activities of the council, ask the party whip to take action. You have the right to be informed about the activities of council.



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Who is your municipal councillor?

Municipal councillors are meant to be the link between the public and the council. They are elected in municipal or local government elections to represent their constituents.

Get to know your councillor! Councillors are required by law to support public participation and to represent the interests of their communities. They must make sure that community issues are on the municipal council agenda. Councillors are involved in ratifying decisions made by the council through voting on issues such as resolutions, policy changes, the IDP and the annual budget. They have the opportunity to represent the interests of their constituents.

Councillors are expected to:

- communicate constantly with their constituents to get input into council decisions
- understand and express the needs of the community
- collect information on concerns related to municipal delivery and report back to council.

In addition your councillor must:

- provide your community with information on the agenda, date, time and venue of council meetings
- ensure that the concerns of the community are taken seriously and reflected in the IDP process
- be accessible to ensure that he or she is in a position to represent their views on any topic that affects the community.

Remember:

- Councillors are your elected representatives. This means they need to carry out their duties in an accountable and transparent way. Hold them to their duties!
- Councillors are governed by a Code of Conduct and breaches of the Code of Conduct are a disciplinary matter. Use the following diagram to note whether your councillor do the things they must, according to the Code of Conduct.



Does your councillor:

**Attend meetings
of the municipal
council and
committees**

☐ yes

☐ no

**Report back to
their community at
least four times per
year concerning
the activities of
local government**

☐ yes

☐ no

**Disclose information
including any benefits
their business partners or
family members stand to
acquire from a municipal
contract and avoid any
conflicts of interest**

☐ yes

☐ no

**File a detailed
report of their
financial interests
to the municipal
manager**

☐ yes

☐ no

Who is your municipal manager?

The municipal manager is the head of the local government administration. He or she is appointed by the executive. The municipal manager is responsible for managing the day-to-day operations of the municipal administration and for the implementation of plans and policies.

Recently, the Municipal Systems Act was amended to ensure a more effective and independent municipal administration through closer regulation of municipal managers and their direct subordinates.

Important provisions of the new law are:

- Amendments to Section 56 will mean that an appointment of a municipal manager or his direct subordinate will be null and void if that person does not have the skills, expertise, competencies or qualifications that the Minister will prescribe.
- Municipal managers are barred from holding political office in a political party, whether in a permanent, temporary or acting capacity. "Political office" refers to the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of a political party nationally or in any province, region or other area in which the party operates.

Another section provides that a staff member of any municipality who has been dismissed for misconduct may only be reemployed in any municipality after the expiry of a prescribed period.

Finally the new law states that a staff member dismissed for financial misconduct, corruption or fraud, may not be re-employed for a period of ten years.



3.2.2 Key council committees and their duties

Municipal council

The councillors you elect form a municipal council. This is the body that makes the by-laws and decisions for local government and oversees the executive and administration.

A municipal council has a number of different responsibilities. These include making the laws and policies, providing financial oversight, planning the budget, and hiring the municipal manager. It is also responsible for ensuring that the municipal administration fulfils its duties to the community.

Executive powers of municipal council

The executive powers of local government are considerable and include the duty to:

- monitor the municipal administration and review the performance of all aspects of local government
- make recommendations to council
- oversee provision of services to the community
- report annually to council on the effect of community participation and consultation in local government (s. 44(3)(g)(h) of the Municipal Structures Act).

These powers are exercised either by a mayor, or by an executive committee.

Executive committee

Where a committee exercises executive powers, it elects a mayor to act as its chairperson, but the mayor does not have greater power than other members of the committee. Like municipal council meetings, the meetings should be open unless it can be shown to be reasonable to exclude the public due to the nature of the agenda (s. 20(2) of the Municipal Systems Act). The executive committee (or executive mayor) must submit a report and recommendation to municipal council before council decides to:

- pass a by-law
- approve a budget
- impose rates, taxes or other charges
- take out loans
- approve the IDP

- decide human resource issues such as the hiring and conditions of service of the municipal manager and heads of administrative departments.

Council committees

Each municipal council will appoint standing committees elected from among its members. Usually these include a finance committee; service committees such as water, sanitation, electricity; human resources; and development committees. The councillor responsible for each department of government is sometimes called the Portfolio Head. So, for example, if you have a problem with water service, you can make contact with the head of the water portfolio. Other important committees include the oversight committee and the ethics committee that deals with Code of Conduct matters.

You are entitled to see reports and recommendations of the executive



4 PARTICIPATE IN KEY PROCESSES

This chapter describes a number of key local government processes that you should participate in to ensure that the needs in your community are met and the priorities addressed. It presents an outline of some of the important processes of engagement – elections, the IDP, and local government budgeting.

4.1 Elections

4.1.1 *Understand how elections work*

Local government elections must be held at least once every five years.

There are three types of municipalities. They are:

- Metropolitan
- local
- district.

Metropolitan and local municipalities

Most municipalities are divided into areas called wards. And, in most municipalities, there are two ways of being elected as a councillor. The first way is to be elected as a ward councillor.

A ward councillor is an official elected to represent an area (or “ward”) on council. This councillor can represent a political party, can stand as independent candidate or represent a local association such as the Ratepayers Association. The candidate who receives the most votes in a ward is elected as the ward councillor. This is called the “first past the post” electoral system. If the ward councillor leaves office for any reason, such as he or she resigns, a by-election must be held to elect a new councillor.

Ward councillors make up half of the representatives elected to the council. The other half of councillors are elected as party representatives through a system called





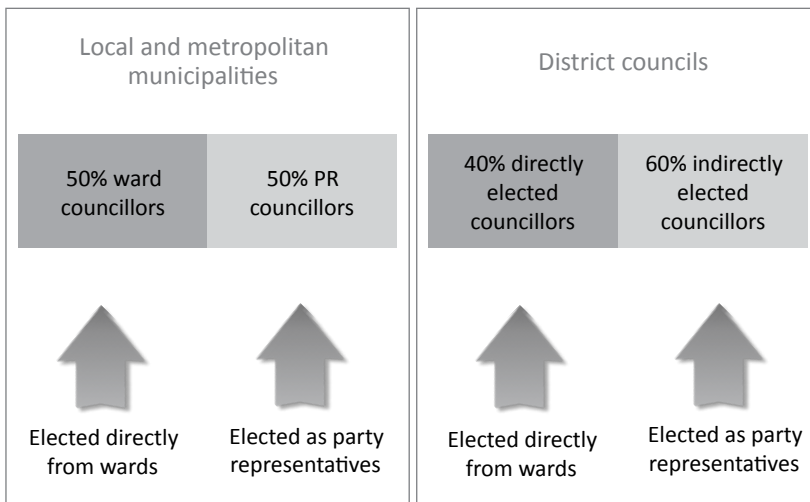
proportional representation (PR), based on the proportion (percentage share) of votes their political party receives in the election. They are known as PR councillors.

Because ward councillors are elected by their wards they are more directly accountable to their communities than PR councillors who are more directly accountable to the political party that put them on the list.

Municipalities that have ward councillors may establish ward committees. These committees should be a tool for the participation of communities in local government.

District municipalities are not divided into wards. Of the district councillors, 60% are appointed by their local municipalities and the remaining 40% are elected directly by the voters based on PR.

Voters in these district municipalities cast three votes: one vote for a ward candidate, one vote for a party on the local council, and one vote for a party on the district council.



Local government elections are different from provincial or national elections, as national and provincial elections only use the PR system where voters vote only for a political party and not for individual candidates. They are also (currently) held on a different day.

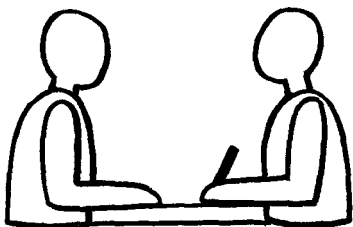


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4.1.2 Register to vote!

You can only vote if you are registered on the voters' roll, so make sure you are registered!



You can check to see if you are registered to vote by contacting the Independent Electoral Commission (IEC) or your Municipal Electoral Office. You will need your ID number.

In order to register you must:

- be at least 16 years old (you can register to vote at 16, but need to be 18 to vote)
- apply for registration in person
- be a South African citizen (permanent residents cannot vote, even if they have a green ID book)
- have and show a valid bar-coded ID book or a valid temporary identity certificate.

The deadline to apply to register to vote is the day before the election is **proclaimed** – check with the IEC for the exact date.

For more information on how to register to vote and on elections contact the IEC on tel: **012 622 5700** or email: **iec@elections.org.za**.

Details of provincial and municipal electoral offices are available on the

Contact Us link on **www.elections.org.za**. You can also look at s. 5-10, s. 73 of the **Local Government: Municipal Electoral Act**

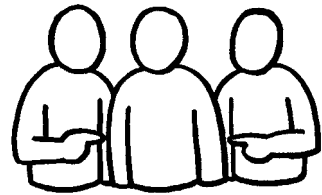
If you are not available to go to the voting station because you have a disability or are pregnant or out of the country, you can apply to vote in advance, in a special vote.

You only need to register once unless you move or the boundaries of your voting district change, in which case you must reregister there. You must vote in the municipal ward where you are registered to vote.



4.1.3 Nomination of ward candidates

Your participation in elections is not only restricted to voting. Your community can also nominate candidates who you believe will represent and fight for the interests of your community.



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 (depending on the size of your municipality, as set by the IEC. It is refunded after the election if the candidate receives 10% or more of the vote).

Candidates who are employees of local, provincial or national governments, or elected representatives in other national, provincial, or local governments, if elected, must resign from their job before taking office.

Political parties must be registered with the IEC to run PR candidates. Each party sets their own procedures for nominations to the PR list. If you are a member of a political party, this is another way you can get involved in the selection of candidates – by attending nomination meetings and electing party candidates. PR candidates must meet the same criteria and party lists are registered with the IEC and available to the public.

4.1.4 Elect an accountable councillor

S. 152(1)(a) of the Constitution requires that local government must be democratic and accountable. Accountability means that people you elect should:

- respond to the needs of the community
- prevent abuse of power and corruption
- keep the community informed about what they are doing.





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Political party deployment

Even though local government elections are intended to focus on the needs of local communities, local elections in South Africa are often dominated by national politics and the vast majority of local candidates are nominated by, and ultimately accountable to, national political parties, rather than their local constituency.

Political parties fill most of the seats in every sphere of government, including local government. This is the case even though there are open nominations for independent ward councillors at the local level who can be non-party candidates.

Find out the following:

- » How do the political parties in your ward nominate their candidates?
- » Do the candidates actually live in your area?
- » Do they know the issues?
- » Are they prepared to listen to you?
- » How can you push political parties to choose candidates who won't ignore your needs after the election is over?





4.2 Ward committees

Ward committees are meant to encourage participation by the community – their job is to make municipal council aware of the needs and concerns of residents and keep people informed of the activities of municipal council.



Ward committees are made up of a ward councillor and no more than ten people who are elected from the ward and who serve voluntarily for a five-year term. Your municipal council must make rules regarding the election of ward committee members, including how often meetings take place, and the dissolution of ward committees.

The ward councillor is responsible for organising meetings and setting the ward committee agendas (s. 72, 73, 77 of the Municipal Structures Act). If the ward councillor does not attend the meeting, the ward committee may set the agenda itself. The ward committee is an advisory body, meaning that it can make recommendations to municipal council, but does not have the power to make decisions on its own. Some municipalities pay ward committee members a stipend.

Your ward committee should be an effective way of spreading information concerning what your community wants from municipal council and what council is doing. Make it work.

Some wards have no committees, some committees are not active and some function as part of their councillor's political party. Take back your ward committee and make it a true voice of the community by following these steps:

- Find out what your municipality's policies or rules are for ward committees in terms of notice and agendas for meetings, and report back. Use the following sources to get this information – the internet, your municipality's website, or by asking your local municipality.
- Find out whether your ward committee is effective in representing the community, in other words – Does it meet regularly? Do the ward councillors attend? Do they properly represent the issues to council? Do they report back?

You have the right **to attend meetings, or stand for election** to your ward committee

Find out who the members of your ward committee are



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- If your ward committee is not functioning effectively, report the matter to the chief whip, the mayor, or the speaker. You can also file a petition to the municipal council asking for it to take action.
- Get involved, attend meetings, insist that the committee debate important issues of concern to the community, and stand in the next elections to become a member. Demand that your ward committee is representative of your community!



4.3 Integrated Development Planning

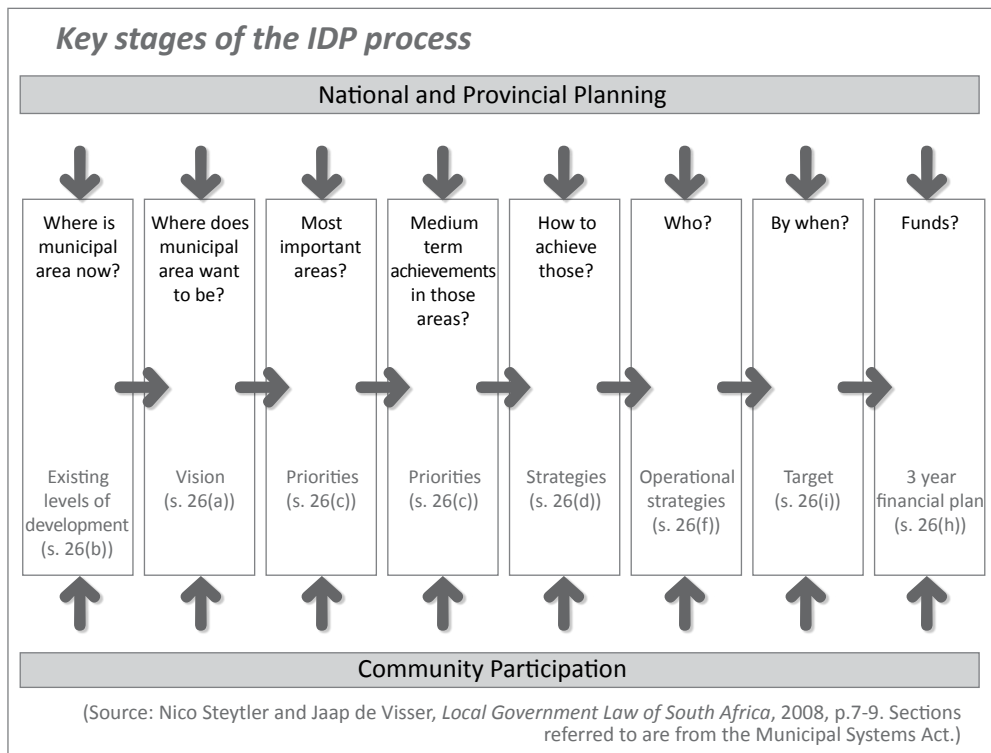
The strategic plan to promote economic and social development in your community is called an Integrated Development Plan (IDP). It sets out a five-year plan for the municipality and must be reviewed each year by the council.

The Constitution instructs each municipality to manage its budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community (s. 153(a) of the Constitution).

One of the most important instruments that a municipality uses to carry out this Constitutional obligation is the IDP. In order to work properly, the municipality should assess community needs and draw up a vision for the long-term future. The municipality must identify priority issues for attention and within those priority areas, objectives to be reached within the term of that council. Strategies for reaching these objectives must be set out and delegated to specific departments. The municipality must provide and set aside sufficient money for each of these strategies in the three-year budget.



Central to this entire process is continuous interaction with the communities and with national and provincial government in order to achieve an holistic plan for the municipal area – see the diagram below.



The council must adopt a document called a process plan that sets out how the council intends to go about planning, drafting, adopting and reviewing the IDP for that municipality. The process plan must be adopted within a set period after the start of the council's elected term. The local community must be consulted on the process plan before adoption and be given notice of the contents of the process plan after it has been adopted.

The process plan must allow for the local community to be consulted on its needs and priorities through the mechanisms established by the municipality. The Municipal Systems Act calls for a participatory process that goes further than consultation. It instructs each municipality to



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ensure that the local community is allowed to participate in the drafting of the IDP. It must also make provision for other organs of state, including traditional authorities, to be consulted.

Have you been consulted on your community's IDP?

Municipal councils must encourage and support community participation in the formation, implementation and monitoring of the IDP.

The IDP is a good idea in theory. In practice, however, it seems that communities are often excluded from participating in budgeting and IDP processes because these processes are often very top-down and technical.

Make sure the IDP addresses your community's needs!

A report by the Public Services Commission (October 2010, p.20) found that IDPs in municipalities were "drawn up for compliance reasons and municipal activities carried on in spite of, and not on the basis of, the IDP". It noted that 45% of the municipal IDPs "lacked financial strategies" and "most lacked budgets".

Every municipality is required to establish an IDP forum or committee to develop, monitor, measure and review the municipality's IDP.

If your IDP forum is not **functional** you have a right to ask questions

The forum should consist of members of the community chosen by the municipal council, including members of ward committees. Forum members are entitled to 14 days notice of any meeting to give them the opportunity to consult with the wider community. In addition to the forum, community members and groups are entitled to review and provide comments regarding the IDP before it is tabled with the municipal council. Ward committees should play an

important role in communicating ward issues and priorities to the IDP forum, and asking how those concerns will be met.

These structures have been set up by government and your community has a right to be taken seriously. Chapter 6 explains the possible actions you and your community can take to make sure your voices are heard.



Take action on IDPs

- » Demand participation in the IDP process. Make it a document that reflects your community's needs.

Have you seen the IDP for your municipality? A copy is supposed to be available to community members. Get a copy now!

- » Monitor government:

- What are the plans in the IDP and have they been implemented?
- Conduct an assessment of government delays – file a request for access to information (see below).
- 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?
 - Demand a copy of the contract or service delivery agreement
 - 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?
- Build support for the right to service delivery and develop an action plan to use in the following ways:
 - Ask your councillors and mayor to support the plan
 - Get the IDP committee to adopt the plan
 - Present your action plan to municipal council for endorsement
- Nominate candidates from among those individuals who understand and support the plan and help them get elected to the ward committee or municipal council.



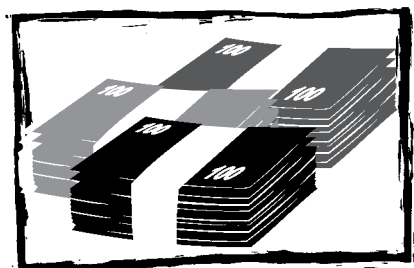
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Questions you could ask councillors about the IDP on behalf of the community:

- » Does my municipality's IDP consider all the major issues present in this community, or does it leave something out? Does it help to preserve or improve the environment?
- » Is this plan going to be implemented in a step-by-step way where responsibilities of all those implementing it are clearly stated?
- » Is the implementation going according to plan, or are there major blockages that have arisen. What can be done to resolve these?

(Source: SALGA, *Councillor Induction Programme: Handbook for Municipal Councillors*, 2004, p.44)



4.4 The municipal budget

Laws such as s. 152 of the Constitution, s. 5 of the Municipal Systems Act, s. 19 of the Municipal Structures Act and the Municipal Finance Management Act regulate municipal financial management. These laws

outline the processes involved in collecting and using money available to the municipality as well as the responsibilities of officials in these processes. Importantly, they also require community participation in activities such as budgeting, planning and the evaluation of services.

Participation
is required for
budgeting,
planning and
evaluation



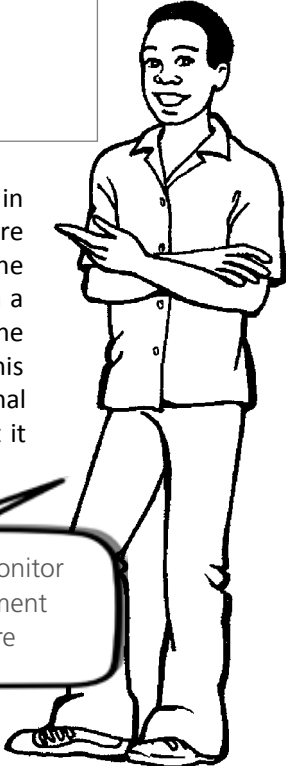
4.4.1 Where does the money come from?

Municipalities get their revenue from three sources. First, they raise some of their own revenue by charging all people who own property such as land, houses and businesses rates based on the value of their property. The second way they raise some of their own revenue is by charging tariffs for services like water, electricity, refuse removal and the use of municipal facilities such as sports grounds. Some municipalities can generate a lot of revenue in this way, while poorer municipalities raise virtually nothing and are almost totally dependent on funding transfers from national government, which is the third source of revenue for municipalities.

Municipal property rates

If you cannot afford to pay property rates because you are receiving a social grant or are unemployed, you may be eligible for a temporary waiver, reduction or rebate on the rates you owe the municipality. Contact your municipal office to find out how to apply and the conditions of eligibility. Property rates rebates might be linked to registering on the municipal indigency register (see relevant section on indigency register).

The national government provides funding to municipalities in two ways. The first is through what is called an “equitable share allocation”, which is a transfer from the national Treasury. The amount of equitable share a municipality receives depends on a number of factors such as the size of its low-income population, the cost of basic services and its capacity to raise its own revenue. This allocation is meant to be used for basic services and operational costs. One problem with the equitable share allocation is that it is an unconditional grant, which means that local government can spend the money on other things rather than basic services, even if it should be using the money to improve basic services.



We need to monitor
local government
expenditure



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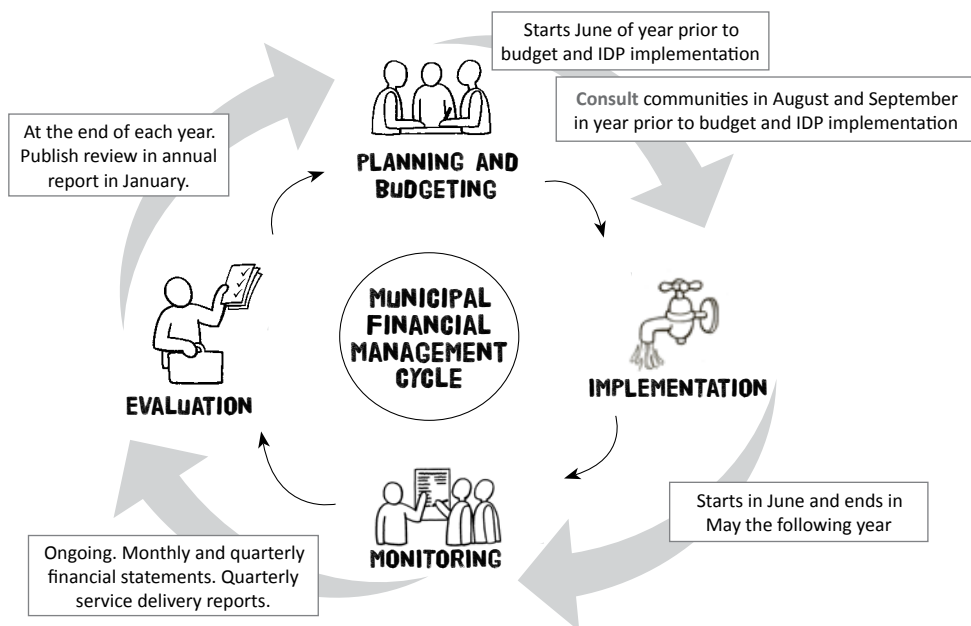
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Municipalities also receive funding from national government in the form of conditional grants. The Municipal Infrastructure Grant (MIG) is the most important conditional grant from national government. MIG must be used to extend or maintain the infrastructure for the provision of basic services such as water, electricity and sanitation.

In the past, municipalities have not spent all the money allocated to them through this grant due to a lack of capacity and the mismanagement of funds. During the 2010/11 financial year, for example, 272 municipalities in South Africa did not spend a quarter of what was available to them and some of this money had to be returned to Treasury. This has most certainly contributed to the slow pace at which municipalities are providing infrastructure for services.

4.4.2 *Municipal financial management cycle*

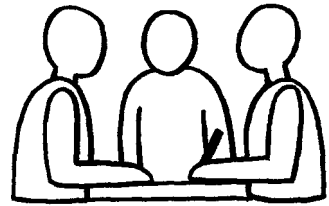
Regardless of where the money comes from or what it is used for, it must be managed and accounted for in the same way each year. Municipal finance management can be presented as an annual cycle that includes four broad activities: planning and budgeting; implementation and spending; monitoring of services and spending; and evaluation of services and spending.





Each of these broad activities provides community members and activists, such as you, with opportunities to participate, monitor and make sure that the municipality is using the money available to it in the best interest of the community. If something is not working during one activity, this can have an impact on the implementation of the next activity. It is the municipality's responsibility to make sure the system is functioning properly. The rest of this section describes each of the four stages of the municipal financial management cycle in more detail.

Planning and Budgeting: Each year municipalities are required to review their IDPs and budgets (s. 21, 57, 69 of the MFMA). This process starts in June of the year before the municipality will implement its IDP and spend its budget on service delivery. The budget is the municipality's financial plan and indicates how much money will go towards each of the activities outlined in the IDP. The budget should outline where the municipality is getting its money from, how much it will receive and how much will be spent on things like salaries, goods and services, infrastructure and equipment.



The law requires the municipality to consult the community when setting its priorities, developing its plans and allocating resources to priorities through the budget. In August and September in the year before a budget is implemented, the municipality must get input from communities on what they think of the services they are receiving and any changes in needs and expectations (Chapter 4 of the Municipal Systems Act).

Have you been consulted on the budget?

The municipality then amends its IDP and develops a draft budget. Once this has been done, the municipality must once again consult the community to ensure that needs and reasonable demands are being met (s. 21 of the MFMA; Chapter 4 of the Municipal Systems Act). If these needs are not met, the IDP and budget may be revised. This should be done between March and April before the financial year starts in June.

It is your councillor's responsibility to make sure that you are consulted in drafting the budget and that your needs are considered in planning and that there are sufficient resources allocated to meeting municipal commitments. It is both your councillor and municipality's responsibility to ensure that you know what services should be delivered and to provide evidence that resources have been allocated to do this. As part of a ward



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committee, social movement or on your own it is your responsibility to ensure that community needs and demands are heard and that they form the basis of planning and budgeting



Implementation: Here the municipality starts to spend the money provided in the budget on activities outlined in the IDP. It pays salaries and service providers, buys goods needed to deliver services, buys and maintains machinery and equipment, and develops and maintains infrastructure. This process starts in June and ends in May the following year (s. 69 of the MFMA).

All these activities should be **clearly outlined in the IDP and budget**

This means that you can use these documents to monitor your municipality's progress in delivering on these promises. Go to project sites and check that services and infrastructure are being delivered or you can demand that your councillor provides evidence that this is happening! For example, if the IDP and budget show that the municipality plans to extend water pipes to your township this year, go to the places where these projects are to be implemented and make sure that construction has started on time! You can then also monitor progress made in implementing these projects against plans and the budget and make sure that they are on schedule. And you can ask about which companies are involved in the project and how they got the tender – this is to ensure that the correct processes were pursued and that the contract was not awarded just because of political connections.

There is a list of **organisations actively involved in monitoring service delivery** in Section 8 of this guide

If you are not satisfied that services are being delivered properly, you can raise the issue in ward committee meetings, approach your councillor for an explanation or form an interest group to demand that your concerns are dealt with. You can also contact or join existing organisations.

Monitoring: In order to ensure that it is delivering on the IDP and that it is spending its budget as it should, the municipality must carefully monitor its activities and spending. To do this the municipality must have systems that track the payment of salaries, the purchase of goods, and the payment of service providers and building contractors. The municipality must also physically verify that services are being delivered and the infrastructure is being developed in-line with set norms and standards. The municipality is required to develop monthly





and quarterly financial statements (reports on how they spent their money) as well as quarterly service delivery reports (s. 62 and s. 71 of the [MFMA](#)).

Make sure that your councillor explains the contents of these reports at ward committee meetings and that he or she addresses your concerns.

Evaluation: At the end of each year, the municipality must look back over the year and assess how well it has done in terms of delivering on its promises in the IDP and if it spent its money in-line with its budget. The municipality should publish this review in an annual report in January each year.

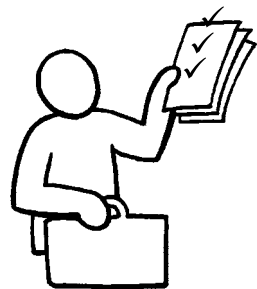
Each municipality is also required to have an audit committee that must carry out an external and objective review of the municipality's finances. The audit committee must have the majority of its members from outside of the municipality to ensure that the committee is independent and can operate in an open and transparent fashion (s. 166 of the [MFMA](#)). It is important that you find out who is on your audit committee, how often they meet, and what their responsibilities are. If there is no audit committee, you should insist that one is formed, and publicise the failure. All this information should be made available, along with their report, in the annual report.

Independent institutions such as the Auditor General (AG) are also required to audit the municipality's spending and performance in delivering services. They produce a report that must appear in the municipality's annual report (s. 122-126 of the [MFMA](#)). The AG's findings on the 2009/10 audit outcomes highlight the following:

- Municipalities could not account for more than R10 billion in the year, with much of it potentially lost through fraud and corruption.
- Failure to comply with public finance legislation and regulations is widespread.
- 89% of municipalities did not comply with legislation on service delivery performance reporting and 24% of municipalities did not report at all.

Evaluations of spending and service delivery are important since they tell the municipality what they have done well, what they have not done well, and what they need to do in future to meet their obligations. They

Make sure that the municipality is fulfilling these responsibilities by **demanding to meet your councillor and see these reports**





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form the basis of future amendments to the IDP and the budget for the next year.

These evaluations, especially the independent ones, also provide you with a good indication of how well your municipality is doing and must be made accessible to you in the annual report. These reports should be available at your municipal office, in libraries and on the internet.

Being prepared
before these
hearings will allow
you to **make sure**
that your voice is
heard

The municipality is also required to hold public hearings to debate these reports. These hearings should take place in January each year. Make sure that you discuss service delivery issues with other members of your community beforehand and that your councillor is aware of your concerns.

If your efforts to hold the municipality to account for the use of public resources are unsuccessful and you can show the municipality is failing to provide basic services and meet its financial commitments, you should report incidents to the provincial department responsible for local government or even to the national government department – the Department of Cooperative Governance and Traditional Affairs.





If the provincial (or national) government finds that the municipality cannot fulfil its obligations it can impose a recovery plan. This involves:

- assessing the seriousness of the problem and the municipality's financial position
- identifying strategies to deal with financial management weaknesses
- identifying resources necessary to implement these strategies and where these resources should come from
- setting out timeframes for the implementation of the recovery plan.

If the municipality refuses to accept the plan or if it cannot implement the plan, the provincial government can dissolve the municipal council and place the municipality under administration until new elections can be held (s. 139 (4)(5) of the Constitution; s. 136-149 of the MFMA). If this fails to bring about necessary improvements, the national government can also intervene and administer the municipality until new elections are held (s. 150 of the MFMA).

Take action on the budget

- » Find out how much money your municipality receives!
- » Demand to participate in the budgeting process!
- » Ask your municipal officials how your municipality uses their equitable share and how much goes to basic services. If the money is being spent on other things, you can go to the media and publicise the issue. You could also start a campaign to make the equitable share a conditional grant – in other words, to ensure that the funding goes to basic services.
- » Find out how your municipality has done in spending its infrastructure grant. You should ask them whether they are spending the MIG grant and if they aren't, you should campaign for them to spend the money to invest and maintain infrastructure.



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Treatment Action Campaign (TAC): monitoring health budgets

Where does the money go? Faced with health clinics without enough ARV's or other important medications, or sometimes even without paper towels, community members and treatment literacy workers with the TAC joined forces to launch a community survey. They wanted to get the facts on the gaps in health services in two of the poorest districts in South Africa namely Lusikisiki (Eastern Cape) and Umgungundlovu (KwaZulu-Natal). Their aim was to improve health service delivery and to hold government accountable to its promises for better health.

The group gathered information by visiting health clinics and centres where they asked questions from community members and health workers to find out what was happening.

They asked for help from another organisation, the Centre for Economic Governance and AIDS in Africa (CEGAA).

They compared what the facts on the ground were to what the government said they were doing in their strategic plans and budgets.

They presented their findings and a report to the public and government at a public hearing where community members had a chance to speak directly to those responsible in government.

As a result of this initiative, the community is starting to see positive changes in their health services. They continue to monitor what is happening through community scorecards, and are planning an audit. If you want to know more about how to go about conducting a community survey, scorecard, or audit, or more information on community monitoring contact the Treatment Action Campaign (www.tac.org.za).



4.5 Holding local government to account

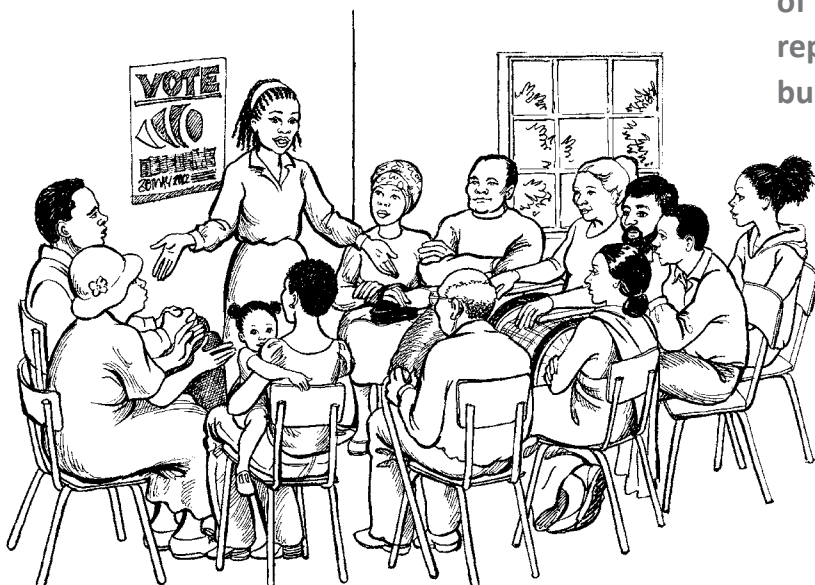
Throughout the guide we have already referred to various ways in which you can participate in local government and how local government must involve communities and have a duty to report back (s. 17(2)(e) and Schedule 1 of the Municipal Systems Act). We have also raised the importance of asking councillors and your municipality questions about subjects such as the IDP, budgets, service delivery, etc. Monitoring local government is dependent on having information – information on what was planned and information on what was delivered. Council meetings can be an important source of information, while the Promotion of Access to Information Act (PAIA) is an important tool for you to use to demand the information you need. There is more information about it in Section 4.6.

4.5.1 Ensure that your councillor delivers

Get involved and stay involved

Voting in the local government elections is only the first step in ensuring a people-centred local government which delivers the services your community needs. A more difficult and ongoing process is ensuring that those voted into power deliver on what they have promised.

Attend council meetings to find out what's happening, or read the minutes and demand copies of progress reports and budget plans





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Monitor how your councillor is performing

South Africa does not have a formal recall mechanism. In some other countries, it is possible to end a councillor's term of office simply by collecting enough signatures from local voters in support of a **recall** petition. While this is not possible in South Africa, you are not powerless and you can still pressurise candidates to fulfil their election promises.

Find out the following:

Remember
what your
councillor
promised
during the
elections and
find out if they
are sticking to
those promises

- Is your councillor prepared to put promises in writing?
- Is your councillor vague on when things will be delivered, or do they commit to delivering specific things by a set date?
- Has your councillor delivered on key demands? If not, are they able to give good reasons for not having delivered?
- Does your councillor engage with your community to identify issues of concern?
- Does your councillor convey community concerns, issues and decisions to the municipal council and officials?
- Does your councillor regularly feed information back to the community on the state of affairs of the municipality, including its finances?

Remember: If a councillor does not deliver, you can demand and campaign that they resign. The resignation of a ward councillor will result in a by-election which will give you another chance to make sure the candidates take your demands seriously. A PR councillor is simply replaced using the party list. In this case, demand that the party consults with your community before simply appointing another councillor.



Corruption in local government

In 2011 the Institute for Democracy in Africa (Idasa) conducted a citizen-satisfaction survey of adult South African residents in 21 municipalities in Mpumalanga, Limpopo, KwaZulu-Natal and North West. The report found that most people were not happy with their councillors – *"66% of the respondents think that government staff and councillors benefit privately in a dishonest manner from resources intended for service delivery..."*

(Source: Idasa, *The State of Local Governance from a Citizen Perspective*, 2011, p.32).



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Making local government work An activist's guide

Attend council meetings

People have a right to attend most council meetings. Use this to ensure that council operates in a transparent manner. Municipal council and its committees must open their meetings to the public when they concern the following:

- service delivery agreements
- the budget
- any by-law
- any amendment to the Integrated Development Plan
- a performance management system or its amendment. (s. 160 (4) of the Constitution; s. 19 of the Municipal Systems Act)



The municipal manager must notify the public of the time, date and place of every ordinary meeting as well as any special or urgent meeting of the council. The exception is if matters under discussion are so urgent that it is not possible to notify the public. Council may conduct closed meetings in other circumstances *only where it is reasonable* to do so. The criteria under which a meeting can be closed must be set out in a by-law.

Municipal activities
are **public** activities
– **challenge any**
suggestion that
municipal work is
secret

Although the committees of the municipal council must also be open, there is no requirement in the law to notify the public of committee meetings. This makes it difficult to participate. Contact your councillor or the chair of the committee (or the portfolio head) to find out when and where committee meetings will be held on issues that concern you. Let them know if you require assistance such as transport, childcare, or interpretation in order to participate.

5 KNOWING AND USING YOUR BASIC SERVICES-RELATED RIGHTS



All of the rights in the Constitution are important, and this guide has already explained some of the rights that are relevant for monitoring local government and ensuring it is accountable. This section sets out local government's main obligations to improve your living conditions and your wellbeing. It focuses on the functions of local government that most directly affect you and your local community.

5.1 Your right to adequate housing

5.1.1 What are your rights?

Your right to adequate housing is protected in s. 26 of the Constitution. Adequate housing is more than having a roof over your head. Depending on your circumstances, housing should include things like:

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





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5.1.2 What are government's duties?

Provincial and national government have the main responsibility for ensuring that everyone has access to adequate housing. But local government is involved in housing in three ways:

- As a development planner for housing.
- As an owner of government land.
- As a provider of services.

In March 2011, six Metropolitan municipalities and two district municipalities received “level two accreditation”, which means that these municipalities now also have the power to approve and manage housing construction programmes and ensure technical quality assurance. The powers of local government to administer housing programmes and deal with housing subsidies will increase as more municipalities get accredited to higher levels.

The government has a special obligation to protect the interests of disadvantaged and vulnerable groups like persons with disabilities, children, elderly persons and single mothers.

5.1.3 What actions to take if your rights are violated

S. 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 government, including local municipalities, and private landlords, must act fairly before they can force you to leave your home.

Before the government or a private landlord (or the police or the private security company they employ) can demolish your shack, evict you, or take you to court they must:

- talk to as many people who are affected as possible, and make a special effort to reach out to poor people that might be made homeless by the eviction or demolition
- approach affected people to discuss their plans and look for ways to resolve the problem so that everyone is satisfied.



If government wants to discuss evicting you, some of these suggestions might be useful.

- If the government says it is concerned with the safety or public health situation of your home, you can request them to improve or upgrade your home or the informal settlement or community while you live there.
- You can ask the government to find or provide suitable alternative accommodation.
- If you agree to relocate, you should find out about the following before you agree to move:
 - ▶ Where is the land?
 - ▶ What housing is available and what permanent housing is going to be made available?
 - ▶ Are members of your community registered to receive this new housing?
 - ▶ When will this housing be available? What services are available?
 - ▶ Are there clinics, schools and economic opportunities nearby, and what transport services are available?

The following case study explains the steps that poor people in the Johannesburg inner city took when the government wanted to evict them from their flats.

Meaningful engagement and alternative accommodation in inner city Johannesburg

For many years, the City of Johannesburg was evicting occupiers of “bad buildings” in the inner city because of health and safety concerns and its broader Inner City Regeneration Strategy. The City evicted thousands of people who could not afford market rates for housing. In 2006, occupiers 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.

The case is important as it stopped the City from evicting poor occupiers without providing alternative accommodation and brought the need for “meaningful engagement” in eviction cases to the attention of judges throughout the country





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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 talked about the situation (meaningful engagement), 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 are still living in the new buildings today. The case is important for two reasons. It stopped the City from evicting poor occupiers without providing alternative accommodation and it also brought the need for meaningful engagement in eviction cases to the attention of judges throughout the country, which means that it is now the law that if municipalities want to evict people, they have to discuss the alternative housing options with the people.

And, in April 2011, a judge ordered the City of Johannesburg to provide emergency housing – water and sanitation, as well as improved shelter – to a group of 200 people who the City had illegally evicted without meaningful engagement or providing alternative accommodation.

Court Orders the City of Johannesburg to provide Emergency Housing to people who had been illegally evicted and were living on a refuse dump

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 a 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.

5.1.3 How to enforce your rights

If discussions between government and the community break down, local government must stick to the legal process. It must go to court and get a court order before it can force you to leave your home. You are entitled to written notice of the court hearing and the reasons for the eviction, and a chance to be heard in court. If you ask, the judge should give you time to find a lawyer. If you cannot afford a lawyer, tell the court, which can appoint a lawyer to represent you. If an eviction will leave you homeless, a judge may find that local government has an obligation to make sure you have another place to live, at least on a temporary basis. 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.

If your home is destroyed without a court order, you are locked out of your home, or your electricity or water is disconnected in order to force you to leave the place where you are living, and this was done without a court order, then it is an illegal or constructive eviction.

Here are some things you can do. You can call the police or someone from the list of the legal resources provided in the back of this book. But, if the situation is urgent, go to a High Court or Magistrate's Court and ask to speak to a judge yourself. If you cannot find or afford another home, tell the court that you are going to be homeless. You can ask the judge to give you an urgent interdict to stop whoever is evicting you illegally from continuing. You should tell the judge how long you have lived on the land or in the property and how bad it will be for you and your family to lose your home. The court has the power to stop the eviction and may want to find out what plans local government has to assist you to find alternative accommodation.

Mobilise on the ground. Ask your friends, neighbours and community members to come to court with you. Contact the local media and send a sms to national radio stations and newspapers with your story.

**It is illegal to evict
you from your
home without a
court order! You
can challenge an
illegal eviction!**



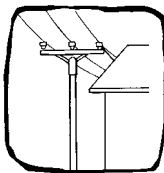
5.2 Your rights to water, electricity and sanitation

5.2.1 What are your rights?



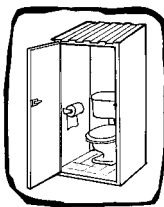
Your right of access to sufficient water is protected in s. 27(1)(b) of the Constitution. According to national regulations, everyone has the right to a minimum basic water supply (Water Services Act, Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN 22355 of 8 June 2001). According to regulation 3(b), the minimum supply for basic water is:

- 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)
- at a minimum flow rate of not less than 10 litres per minute
- within 200 metres of a household and
- with an effectiveness such that no consumer is without a supply for more than seven full days in any year.



There is no right to electricity in the Constitution, but there is a right to basic municipal services in s. 73 of the Municipal Systems Act. In a case known as *Joseph*, the Constitutional Court said that the right to basic municipal services includes electricity.

Similarly, there is no right to sanitation in the Constitution, but it is part of the right to basic municipal services in s. 73 of the Municipal Systems Act. And it is protected by Regulation 2 of the Water Services Act, Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN 22355 of 8 June 2001), which 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”.



You also have a right “to an environment that is not harmful to your health or wellbeing” (s. 26(1), s. 24(a) of the Constitution), which is something that relates to adequate access to water, electricity and sanitation. Sanitation is very important for maintaining health – children often get sick because of problems of waterborne disease, and women have to struggle a lot to meet their family's needs when water is scarce. Your rights to water, electricity and sanitation are also related to your right to adequate housing and access to health services.



5.2.2 What are government's duties?

Local government is responsible for the provision of water, electricity and sanitation services to households. Municipalities must act reasonably, using a development plan, to extend basic water and basic electricity services to everyone. This means that local government has an obligation to move forward, step-by-step, to make sure the poor, and especially vulnerable people such as women and children, have improved access to adequate water, electricity and sanitation. Municipalities are not entitled to unfairly discriminate in delivering water, electricity or sanitation services based on race, gender, HIV/AIDS status, disability or any other protected ground (s. 9 of the Constitution).

Local government also has a duty to discuss with communities what kind of water, electricity and sanitation is appropriate in each case. Municipalities should attempt to continually improve access to water (from river access, to communal taps, to yard taps, to in-house provision) and should try to electrify all areas and provide sanitation. Regarding sanitation, it is usual that urban areas will have waterborne sanitation, while rural areas might have other forms of “dry” sanitation such as chemical toilets or Ventilated Improved Pit latrines (VIPs).





Free basic services: water and electricity

National laws state that local municipalities should have a policy to provide free basic water and free basic electricity to people who cannot afford to pay for these services (s. 73 of the Municipal Systems Act). Municipalities can choose whether to give free basic water and electricity to everyone (universal allocation) or to target poor households (means-tested or targeted allocation, like a social grant). The national standard for free basic water is 6 kilolitres (6 000 litres) per household per month for water, and 50 kilowatt hours (kWh) of free basic electricity per household per month. Some municipalities provide free basic services and others do not. And some municipalities provide more free basic water and more free basic electricity than these amounts. In many municipalities, you have to register on the indigency register to receive free basic water and free basic electricity. In some municipalities, if you have waterborne sanitation, there is an extra allocation of free basic water to cover basic sanitation. You have the right to ask whether there is a free basic water and a free basic electricity policy and whether your household qualifies for benefits under these policies. If there is no free basic water or free basic electricity policy in your municipality you can demand that it is implemented.

5.2.3 How to enforce your rights

What to do if your municipality does not provide adequate basic services

If your municipality does not provide free water or electricity services, or if you do not have adequate sanitation (for example, if you have to use the buses or pit latrines that do not offer privacy, protection or hygiene), demand that your local government provides free basic services for those in need:

- Make your demands in a petition to municipal council, at your IDP forum, and your ward committee
- Nominate and elect candidates who support free basic services
- Naming and shaming – publicise nationally your municipality's failure to look after the poor
- Seek legal advice – the failure to provide free basic service may infringe your constitutional right to equality and water



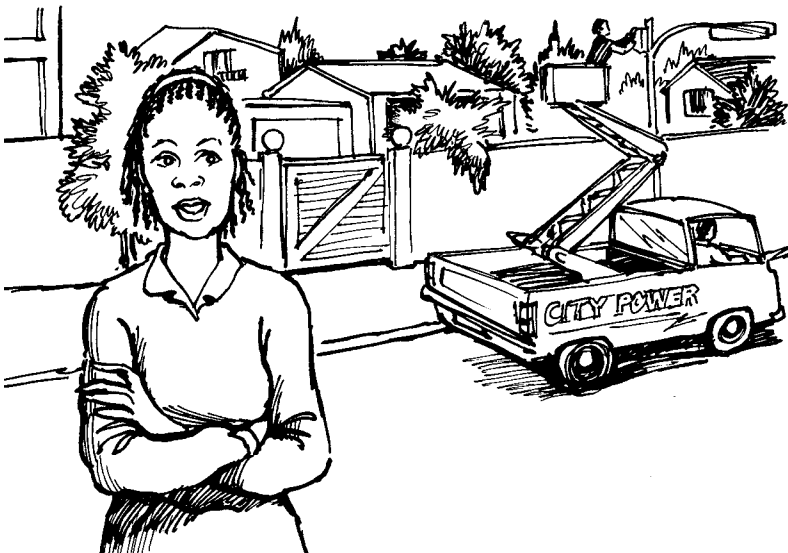
Use the Water Budget Monitoring Education Tool (at the back of this guide) to hold government to account for its water budgets and plans.

You have a right to fair treatment – it is illegal to cut-off your water or electricity without notice! Before your water or electricity service can be disconnected, you must receive notice of the municipality's intention to disconnect your water supply, and be given a chance to respond. But if you have an illegal electricity supply, government has the right to disconnect it without notice.

**What to do if your
water or electricity
is cut off**

If you have an in-house water or electricity connection with a credit meter account (where you receive a bill every month directly from the municipality), the notice must be in writing, and it is usually at the bottom of your water and electricity bill. You must be given the chance to explain your circumstances and to make a plan to pay the arrears (s. 3(2)(b) of the Promotion of Administrative Justice Act, (PAJA); s. 4(3) of the Water Services Act).

If you rent and do not receive a bill because the landlord pays the municipality for water and electricity, the municipality must still notify you of its intention to disconnect your water or electricity supply, in writing and 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.





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If you have a prepayment water or electricity meter, the notice is usually in the form of flashing numbers on the meter warning you about how little water or electricity is left. In this case, and only for water, if you fear you will run out of water and do not have money to purchase more credit, you need to go and talk to your local municipal service centre before the water runs out.

If you cannot afford to pay for water or electricity, you should tell your water service provider and make sure you are registered for free basic services if your municipality has an indigency register. If you cannot afford to pay for water, it is against the law to cut off your water, even if you owe money on your account (s. 4(3)(c) of the Water Services Act). It is not against the law to cut off your electricity supply, but you must be given notice.

**It is against the law
for your water to
be disconnected if
you are too poor
to pay for water!**

If you rent your home and your landlord disconnects your water or electricity supply without a court order, this too is against the law! (S. 16(h)(A) of the Rental Housing Act). Notify your water or electricity service provider and ask for your water or electricity service to be turned back on. If necessary, make an urgent application to your Rental Housing Tribunal for an order to reconnect the water or electricity supply. You can also make an urgent application to court, by yourself or with the assistance of a legal organisation (such as those provided in the back of this guide).

Joburg tenants win case on electricity disconnection

In 2009 a group of low-income residents in a Johannesburg building went to court after the municipality disconnected their electricity service even though they had been paying their landlord for electricity. It turned out that the owner of the building wasn't passing this money on to the electricity service provider and, in response, the municipality disconnected the tenants' electricity supply without notice. The residents won their case – called *Joseph* – in the Constitutional Court, which said that they had a right to notice and an opportunity to make representation before their electricity was disconnected. (*Joseph*)



The Phiri water struggle

In 2004 the City of Johannesburg installed prepayment water meters in Phiri (Soweto), the residents – together with a social movement, the Anti-Privatisation Forum (APF) – mobilised to protest against. They told their councillors that they didn't want prepayment water meters because they resulted in automatic disconnection and left them for days on end without water because the Free Basic Water supply wasn't enough to provide adequate water to multi-dwelling stands with backyard shacks. Finally, the residents got lawyers to help them and went to court. When in 2009 the Constitutional Court handed down judgment in the case, it was not in favour of the Phiri applicants. However, the community's opposition to the prepayment water meters and their mobilisation in the media and around the court case ensured that the City understood that prepayment water meters were unpopular. As a result, the City provided additional Free Basic Water to poor residents of Johannesburg, through the Expanded Social Package. It also replaced the old prepayment water meters with new ones that don't automatically disconnect after the Free Basic Water Supply is finished. (*Mazibuko*)

Makhaza informal settlement's struggle for private toilets

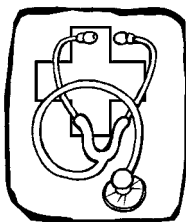
In April 2011, Judge Nathan Erasmus ruled in the Cape High Court that the Cape Town municipality had violated the human and constitutional rights of residents of Makhaza in Khayelitsha by installing unenclosed toilets. In a victory to the community, the judge ordered the City to enclose the 1 316 toilets and said that the provision of unenclosed toilets was unlawful and inconsistent with the mayor and City of Cape Town's Constitutional duties. (*Beja*)





5.3 Your right to health services

5.3.1 What are your rights?



Your right of access to healthcare is protected in the s. 27 of the Constitution. While provincial government has most of the responsibility for providing healthcare services, local government plays a role in primary healthcare (clinics).

What primary health care services should you expect in your district?

At a minimum, the following services should be available at a clinic or health centre near you:

- Non-emergency services at a clinic for at least eight hours a day, five days a week. Services here should include: immunisation services, contraception, termination of pregnancy, antenatal care, services for infants and children, treatment for sexually transmitted infections, testing and treatment for HIV, testing and treatment for TB, treatment for chronic conditions such as diabetes and high blood pressure.
- Emergency and in-patient care at a district health centre or district hospital 24 hours- a-day, seven days a week.
- Referral and patient transport from a primary health care facility, should you require complex procedures, such as surgery, at a provincial or tertiary hospital.





5.3.2 What are government's duties?

Local government is in part responsible for the delivery of those services in the area of prevention of communicable diseases, water quality monitoring, waste management and pollution control, funeral regulation and in some instances primary health care. It is local governments' responsibility to ensure that you live in a safe and healthy environment (s. 152 (d) of the Constitution; s. 3(l) of the Municipal Systems Act; s. 84(i) of the Municipal Structures Act; s. 32 (1) of the National Health Act).

Environmental health

Local government has a duty to ensure safe water, to prevent water borne related diseases, manage solid waste and air pollution. Municipalities are required to include environmental health in their strategic plans (s. 23 of the Municipal Systems Act) and ensure that there is funding available for this purpose in its budget.

Municipal clinics

Delivery of health care is the responsibility of provincial government. However, some large municipalities run municipal clinics that provide primary health care services. These municipal clinics are paid for by the provincial government, based on an agreement between the province and the municipality (s. 32 (3) of the National Health Act).

District health system

Primary health care includes doctors visits, check-ups, and immunisations. Most primary health care services are provided at the local level through the district health system, which is part of the provincial health system.

The district health system is divided into health districts and sub-districts. The boundaries of these districts should match those of the district and Metropolitan municipalities (s. 29 (2) of the National Health Act) while the boundaries of the sub-district should match the boundaries of your local municipality (s. 30 of the National Health Act). Health districts and sub-districts are responsible for the delivery of primary health care at clinics, district health centres and district hospitals within their boundaries.

District health managers are responsible for the development and management of district health budgets and strategic plans, including a district human resource plan (s. 33 of the National Health Act). These plans and budgets must be made available to you upon request.

District health managers are also responsible for overseeing the purchasing of goods and services from suppliers and the management of primary health care facilities



5.3.3 How to enforce your rights

If you believe that local government is not doing enough to promote a healthy environment you should approach your councillor and the environmental health officer in your municipality to find out what they are doing to fix the problem. As an individual, or as a community group, you have a right to information regarding your municipality's environmental health plans. Environmental health services should be included in the IDP and adequately funded in the municipal budget.


If you are unhappy with the services you are receiving from your municipal clinic, you can approach the clinic manager, the municipality or your councillor to demand better service. If that doesn't work, contact your provincial department of health to find out whether your clinic is providing the services they are supposed to. If they are not meeting provincial standards, you have a right to demand that they do.

The Department of Health is creating an office of Health Standards Compliance in 2011/2012. Once this is established you should also report poor service there. Find out whether your clinic or community health centre has a committee, when they meet and how you can become involved. Check provincial legislation to find out how your health centre's committee is established and their function. These committees should consist of members of local government, health management and, most importantly, members of the community. If your clinic does not have a committee, put pressure on the district health manager or provincial government to form a committee and get them working.

In order to monitor your right to health, organise or join community based organisations (such as the TAC) that monitors the delivery of health care. Community organisations can play an important role in monitoring services at clinics and health centres by comparing what the clinics are doing against the plans outlined in district health plans and budgets.

If you are concerned about the delivery of services for HIV and AIDS in your district or municipality, you could also participate in your district or local AIDS council. These councils are important because they

monitor the implementation of provincial HIV and AIDS plans and can provide input on how best to manage the pandemic in their areas. If these councils are not functioning in your area, approach your councillor and district health manager to find out what you can do to get them working, and contact the TAC.



The District Health Offices in your municipality must provide you with information on the services they provide



5.4 Your rights to basic education

5.4.1 What are your rights?

Section 29(1) of the Constitution says that “everyone has the right to a basic education, including adult basic education.” Basic education means schools where it is possible to learn and acquire knowledge, with enough teachers, educational resources and in an environment that encourages learning.



5.4.2 What are government’s duties?

In terms of the Constitution providing “education at all levels, excluding tertiary education” is a duty of national and provincial government. Local government is only given responsibility for the provision of child care facilities. Local government has no direct powers over schools, other than responsibility for much of the environment in which they are situated. However this does not mean that there is nothing that can be done about schools in our communities.

Apart from the Constitution, the two laws that govern the duty to provide basic education are the South African Schools Act (SASA) and the National Education Policy Act (NEPA). In terms of the SASA:

- Schooling is compulsory between the ages of 7 and 15 (section 3(1)). This is to ensure that all learners are guaranteed access to quality learning.
- The Provincial Member of the Executive Council (MEC) for education must provide public schools for the education of learners “out of funds appropriated for this purpose by the provincial legislature.” (Section 12 (1))
- “... the provision of public schools ... may include the provision of hostels for the residential accommodation of learners.”
- “... a public school may be an ordinary public school or a public school for learners with special education needs.”

Does your local government provide **safe and good quality child care facilities**? If not, **why not**? Are child care facilities part of the IDP?

Do we have to pay fees for schools?

The government has a responsibility to meet the needs of everyone for basic education. In 2011 it announced that in future schools will be designated as either “fee-paying” or “non fee-paying” schools depending on the ability of parents in a community to afford fees. If you cannot afford fees you should not have to pay anything. But this should not affect the quality of your or your child’s education.



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Schools must have water, electricity and sanitation!

Schools are situated within our communities. Their success depends on other factors which *are* the responsibility of local government, including public transport, access to water and sanitation and safety. The right of children to basic education therefore reinforces local government's responsibility to fulfil these rights.

According to the Constitution local government is meant to promote social and economic development. A municipality is supposed to "structure and manage its administration and budgeting and planning processes to give priority *to the basic needs of the community*, and to promote the social and economic development of the community." These basic needs include basic education!

It is therefore disturbing that many schools in South Africa, primarily those in rural areas, lack these basic resources, such as libraries, which are essential for children's development.

In terms of the Constitution rights to healthcare services, water and sanitation are linked to the availability of resources. However, activists should argue that in the context of the right to basic education, these services are non-negotiables when it comes to their existence within schools!

Providing municipal
libraries is also
a responsibility
of provincial
government.
**Access to books for
adults and children
is essential to
education**

Insisting on proper facilities

In 2010 seven primary schools in rural areas of the Eastern Cape got together to bring a court case to demand that the government provide their schools with proper facilities, including toilets, water, proper classrooms. They approached a public interest organisation called the Legal Resources Centre (LRC). As a result of their court case the government entered in to a settlement agreeing to spend billions of rand on these schools and other "Mud schools" in the Eastern Cape. Partly as a result of the publicity created by this case, in June 2011, the National Department of Basic Education took over the running of schools in the Eastern Cape.



5.4.3 How to enforce your rights

Participate in School Governing Bodies (SGBs)!

Section 16 of SASA deals with governance and management of public schools. It specifically provides that:

“(1) ... the governance of every public school is vested in its governing body....”

According to SASA a SGB should be composed of:

- Elected members, including parents of learners at the school, educators and learners
- The principal
- Co-opted members who can include ordinary members of the community.

S. 20 and 21 of SASA deals with the functions of governing bodies. S. 21 says that a governing body may apply in writing to the Provincial Head of the Department of Basic Education to be allocated any of the following functions:

- a) To maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;
- b) To determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;
- c) To purchase textbooks, educational materials or equipment for the school;
- d) To pay for services to the school;
- e) To provide an adult basic education and training class or centre subject to any applicable law; or
- f) Other functions consistent with this Act and any applicable provincial law.





6 MOBILISING COMMUNITIES AND BUILDING COMMUNITY ORGANISATIONS

Reports have repeatedly identified the following as factors which lead to poor service delivery and backlogs:

- Poor communication and accountability to the community by councillors
- Inadequate skills and capacity within the council
- Lack of coordination between the political and administrative arms of local government
- Corruption and fraud by councillors and officials
- Poor financial management and monitoring
- Political infighting between factions within parties.

This chapter tell you what you can do to tackle these problems.

Earlier in the guide we explained key local government structures and role- players, as well as how to participate in the formal structures and processes. This chapter deals with other ways that you can make sure local government fulfils its responsibilities. It shows you how you can participate actively in local government through public campaigns and protests. It covers the following:

- Get organised
- Your right to know
- Get the facts
- Report
- Write a letter
- Draw up a petition
- Prepare a press release and contact the media
- Organise a protest march
- Make an appeal or formal complaint
- Got to court
- Contact the Public Protector.



6.1 Get organised

Organising and mobilising your community is the best way to protect your the rights, challenge unfair, corrupt or discriminatory practices, improve access to water, electricity and other services, or remove other barriers to community involvement. Here are some ideas to help you organise in order to reach your goal:

Organise by calling a meeting to talk about local problems and find out what others are doing, collect the facts, and discuss how you will make decisions as a group so that you can act together to solve problems.

Develop ties with other community based groups, movements or coalitions to add strength and apply more pressure.

Build effective ward committees to gather information and put your issues on the municipal council agenda.

Identify allies outside government, like human rights NGOs, who are working on the same problems.

Monitor the quality of services in your community

The quality of services that you receive is an important community issue and you have the power to demand your rights to basic education, health water, sanitation and electricity services! Monitor service delivery in your area by attending meetings and monitoring the budget and the IDP process. (For help on how to monitor water or electricity budgets see the reference to the *Water budget monitoring education tool* on page 106)





6.2 Your right to know

The Constitution states that you have a right to information.

32(1) Everyone has the right of access to –

- a) any information held by the state; and
- b) any information that is held by another person and that is required for the exercise or protection of any rights.

Getting answers from the right source can help activists find out what government is doing and can assist with campaigns. Local government is legally required to provide the public with access to information such as by-laws, resolutions, minutes of meetings, IDP and performance management reports, among other records. The municipal manager is responsible for maintaining such records (s. 32 of the Constitution; s. 117 of the Municipal Systems Act).

To obtain information directly, you need to make a written request to the municipal manager, or the official given the job of releasing or making the information available. The municipality has an obligation to assist persons who cannot read or write. Once you have requested information make sure you get a reply! While information related to by-laws or reports should be available immediately, some documents like committee minutes or resolutions may take time to get together. If you are not satisfied with the response to your information request, complain to municipal council by contacting the speaker's office.

6.2.1 How to use PAIA: Steps to follow in information requests

What if you are refused information? You can then use the Promotion of Access to Information Act (PAIA).

First, write to ask for documents. But if you don't get them make a request for information under PAIA.

Municipal officials are required to assist people by giving them the proper forms to apply for information using PAIA and any help you need to complete your application.

To find out how to make a request, ask your local government officials to provide you with their access to information manual or check on your municipality's website. After you have made an official request, the municipal manager or the municipal information officer must respond within 30 days. They can request a 30 day extension if there are a large number of documents or they are located off-site. But they must tell you this.



PAIA Appeals

If your request for information is refused or ignored you can appeal. You must do this within 60 days. The mayor or designated person must respond to you in 30 days. If you do not receive a response within the deadline, your appeal is considered to have been dismissed, and you move to the next stage.

If your appeal is denied you should receive a written decision with reasons including the sections of PAIA the municipality relied upon to deny you information.

If you disagree with the decision to deny your request for information or want to challenge the failure to respond, you can apply to a court for what is called a “judicial review”. You will need the assistance of a lawyer for this application. (See Section 6 on using the courts)

Unfortunately, the administrative process under PAIA lacks teeth because there are no penalties for a failure to respond to your request and no external body to monitor local government’s response.

Community members often lack the time or resources to follow this process and then give up. Don’t! If you are having problems contact the SA Human Rights Commission, Public Protector or human rights non-governmental organisations (NGOs) such as the Freedom of Expression Institute (FXI) or the Open Democracy Advice Centre (ODAC).

Although PAIA is
**meant to help
people to access
information**, it
**is often used
by government
officials to tire
activists out
and deny them
information!**





6.3 Get the facts

It is important to gather all the facts about a problem. You can do this by researching the problem, gathering evidence by talking to people, or by organising a meeting where everyone can explain how the problem is affecting them. Take notes and list as many details of the problem as possible so that there is a complete picture.

An accurate record is essential, particularly if you are going to make a **formal complaint, or go to court**

It is important to keep a record of all meetings and attempts to solve a problem. Some people call this a “paper trail”.

Keeping a paper trail requires keeping a record of everything related to the issue, including the details of all phone calls, meetings, or other discussions with local government councillors or officials providing local government services. The details must include the date, what was discussed, what commitments were made or not, and what information may have been revealed.

6.4 Report poor service delivery

Remember local government has a legal duty to provide services to our communities. So, the first step in taking action is to report the problem. Go to the people who are responsible and ask for a date by when you can expect a response and what you can expect to be done. Record the name of the person you spoke to and what they have said.

Remember: If you are refused access to information, **ask them to put this in writing.** You can then **apply for the information under PAIA**

Find out about the relevant law or policy

As we have shown in this guide, law and policy is important, so talk about it with your comrades before you start a campaign or protest.

When you meet officials, ask for a copy of the law or policies/plans/strategies that apply to your problem. Ask what the municipality has planned to do. Getting this information will help you know where the problem lies. Is your problem because there is no municipal policy, or because the policy is bad, or because the municipality is not following their own plan/policy/by-law?



Your municipality must provide you with the documents you ask for, including policies, plans, strategies, by-laws, regulations, and legislation.

6.5 Write a letter

Once you have collected all of the information you need, *write a letter* or memorandum setting out your complaint. The box below explains what you should include in your letter.



Your letter should:

- contain all the information about the problem including the number of people affected, what they have experienced and how long the problem has been going on.
- have all the information about what steps you took to solve the problem.
- include copies of any letters that have already been sent.
- include, if you have them, copies of relevant by-laws, policies etc.
- explain what your organisation or community demands. Be specific as you can, for example, a tap for every four households, clean water and monthly water testing, accessible water no more than 200 metres from people's homes, weekly reports to the community about what work has been done to improve the water service.
- give a reasonable time for delivery of these services.
- ask for a response within a specific date.



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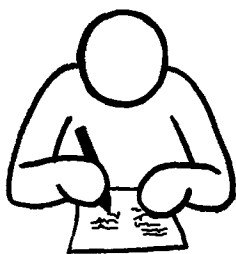
If you don't know
who to contact, ask
who is in charge

If the councillor or officials you report the problem to do not respond within a reasonable time, or their response is not helpful, go to officials higher up in the structure: ask for the supervisor, manager or another responsible person and make the complaint again. Each time you do not receive a response that is helpful, continue going up the "chain of command" all the way to the top including supervisors, managers, the municipal manager, the portfolio committee chairperson, the mayor, the provincial government, national government, the judge, or even to the Constitutional Court.

If – as a result of your letter – government officials or politicians ask you to meet them, do! But before your meeting:

- Hold a meeting with the community!
- Decide what your demands are!
- Decide what is a reasonable amount of time for the government to do these things.
- Decide who will speak on behalf of the community.

Be prepared to be flexible, but also be firm. If the meetings do not result in any improvements, or if you feel like promises are being made but not kept, keep up your campaign. Remember these are your rights.



6.6 Draw up a petition

Everyone has the right to draw up, submit and get a response to a petition. A petition can be a complaint or a set of demands. The more people who support it, the better. Each council is required by law:

- to allow for petitions and to have proper procedures to receive and respond to petitions
- to respond promptly to a petition.

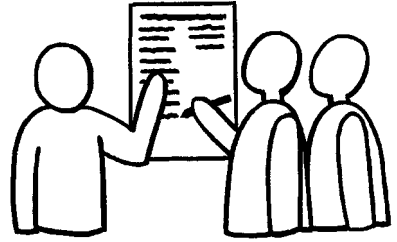
Remember that
the **meetings of
the council and its
committees are
open to the public**

Each municipality sets its own rules regarding the process for a response to a petition. It is likely that the petition will be referred to management committees and to the relevant departments who will make recommendations to the relevant portfolio committees. Keep track of the progress of the petition to ensure that it does not get ignored.



Ask your municipal office for the municipal rules and standing orders, and a copy of the petitions policy and the public participation policy (s. 44(3)(g)(h) of the Municipal Structures Act).

The timing of a petition is important. It is best to submit it to the council or speaker shortly before a council meeting, and then demand a response from the council at that meeting (s. 5(1) and s. 17(2)(a) of the Municipal Systems Act).



6.7 Prepare a press release and contact the media

Newspapers, radio stations and the TV have the power to inform thousands more people about your campaign, and to get your voice heard by everyone, including government officials.

Writing a press release

Most press releases should be no more than two pages long. A press release should highlight the facts, your demands, and what you want the media to talk about. It should say clearly what you want. It should give the name and telephone number of two people who can give more detail about the campaign and who are willing to be quoted and have their names used in the media.

You can also organise a press conference. This is when you invite reporters to come to a meeting where spokespeople from your community organisation speak out publicly about the problem and the solution.

Use social media

Today millions of people are connected in one way or another to the internet. This is called social media. It is another way of reaching large numbers of people with your campaign. Facebook, Mixit and Twitter can also be effective in getting your voice heard.





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Facebook connects people with one another through the internet. It is a good way of spreading news about a meeting, **petition** or demonstration. Facebook was used by activists in the struggles for democracy in Egypt to mobilise and maintain pressure on the government to bring about political change. It is easy to create a Facebook page for your organisation and use it to communicate with and organise people in your community. And Facebook is free!

Twitter is another way to help mobilise a community. Twitter is a website that allows users to read short messages from other users, to send their own messages, and to resend messages received from others. It can easily be read on a person's phone if you have internet access.

6.8 Organise a protest march

The right to take to the streets in order to march or picket is recognised in the Constitution (s. 17 refers to everyone's right to peacefully assemble, demonstrate, picket and to present petitions). Holding a gathering and airing grievances in public gets the attention of people in power! But when organising a demonstration there are certain procedures that must be followed. To ensure that your march is legal, you must follow the procedures set out in the Regulation of Gatherings Act.

The Gatherings Act regulates matters associated with gatherings that are held in private or public spaces like streets, parks, steps of a building etc. Basically, the Gatherings Act is a manual that explains in detail exactly what must be done, and how, in order for a gathering to be legal.

In terms of the Gatherings Act a gathering is a march, picket, or parade of more than 15 people. Further, the Act says a gathering is an activity that expresses any form of contestation or is critical towards whomsoever, whether it is, for example, a person, a company or government body.

A gathering requires prior notification to the relevant local authority. But a demonstration of 15 people or less requires no notification.



Steps to take when organising a march

Identify the convener

The convener is the person who is officially in charge of a gathering, and who is responsible for asking permission from the local authority. They are the contact person for your organisation.

Fill in the notice form

The process for notifying the local authority is as follows:

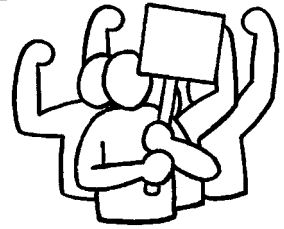
- » Firstly, the convener fills in the notice form and gives it to the local authority.
- » Secondly, the convener must take part in the negotiations at any meeting that may be called by the representative of the local authority.

A deputy convener must also be appointed, to replace the convener when necessary.

A notice is a form containing the details of the gathering, the details of the convener, and, when it applies, the details of the organisation. This signed and completed document is handed to the local authority to inform them about the gathering.

The information requested on the form is listed below. Where the local authority does not provide such a form, the convener must create a document that is similar to this by writing down all the questions below and completing the answers. In both cases the convener must sign the form. See the FXI contact details in Section 9 of this guide and get hold of their handbook for more information on what needs to go in a notice. This is also available at <http://fxi.org.za/PDFs/Publications/RGAHandbook.pdf>.

(Source: Freedom of Expression Institute (FXI), *The right to protest: a handbook for protestors and police*, 2007)



You have a right to protest. Giving notice is not about asking permission to hold a gathering. It is about **letting the local council know that you are using your constitutional right**, and how and when you will be doing this (see eg page 70 and 71)



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Keep a record of who you gave the notice to and of the time and date

Identify the right person to give the notice to

The notice must be given to the responsible officer, either by hand or fax. The responsible officer is the person appointed by the local authority to deal with matters associated with gatherings and he/she has the authority to permit a gathering. In Johannesburg, for example, the responsible officer is based at the Johannesburg Metropolitan Police Department.

Ensure the notice is given on time – at least seven days before your protest

According to the law, the notice must be given to the responsible officer at least seven days before the planned gathering. If it is not possible to send the notice seven days in advance, the convener must include in the notice the reason why it was not sent on time. If a notice is sent within 48 hours of the gathering, the responsible officer may legally prohibit the gathering without reasons.

Meet the authorities

In most cases the convener will be invited to a meeting by the responsible officer. This meeting is called a Section 4 meeting and is normally attended by the following:

- » The convener or, if he/she cannot make it, the deputy convener
- » The responsible officer
- » A representative of the police
- » Any other officer concerned.

The purpose of the meeting is to discuss any possible changes to the gathering as it is planned and described in the notice. The responsible officer or the police representative may want you to follow another route than the one described in the notice for security or other reasons.



Important: The Section 4 meeting is a negotiation between all parties. It is NOT the local council or police telling you what you may or may not do.

If an agreement is reached, the gathering may proceed in accordance with the notice as it has been changed. If no agreement is reached, the responsible officer may impose on the convener any reasonable changes to the conditions under which the gathering was planned to proceed.

If the convener is not called to a meeting within 24 hours of sending the notice, the gathering is automatically legal and approved, and can proceed without any further formalities under the conditions described in the notice.

The right to take to the streets in order to march or picket (e.g, against poor service delivery or corrupt officials) is recognised in the Constitution



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Notice form that must be filled in if you are organising a march

NOTICE UNDER THE REGULATION OF GATHERINGS ACT, 1993 (ACT 205 OF 1993)

To the Responsible Officer:

DD Nkhwashi (W.P. Fourie)
Tshwane Metropolitan Police Department
Directorate: Road Policing
Section: Road Auxiliary Services (Events
Management office)

174 Visagie Street
Rondalla Building
4th Floor, Room 4015
(Middle block)

PO Box 4133
Pretoria
0001

Telephone: (27) (12) 358 7175/ 7162
Telephone: (27) (12) 358 7004
Facsimile: (27) (12) 358 7081

Email: impdevents@tshwane.gov.za

I (the convener / representing the convener) am aware of the provisions of the Regulation of Gatherings Act, 1993 (Act 205 of 1993) and wish to notify you in terms of section 3 of the said Act of an intended gathering.

The following particulars are applicable:

1. CONVENER

	FULL NAME(S) & SURNAME:	ADDRESS:	ID NUMBER:	TELEPHONE & FAX NUMBERS:	EMAIL ADDRESS & OTHER NUMBERS:
CONVENER				Tel: Cell: Fax:	
DEPUTY CONVENER				Tel: Cell: Fax:	

2. ORGANIZATION

The Convener is acting on behalf of: (Please state full details of organization)

3. THE GATHERING

3.1 The purpose of the gathering:

3.2 Gathering Information:

TIME:	DATE:	DURATION:

3.3 Venue of the gathering: (Please state full details)

3.4 The anticipated number of participants to attend the gathering are

3.5 Our organization have appointed / intend to appoint (number) marshals for crowd controlling. (The list of names of these marshals is enclosed separately)

3.6 Procession / March:
3.6.1 State full details of the exact and complete route of the procession / march:

3.6.2 The participants will assemble at (time)..... at (place).....

3.6.3 The procession will commence at (time)..... at (place).....

3.6.4 The procession will end at (time)..... at (place)..... and the participants will disperse at (time).....



the point of dispersal by:

3.6.6 The number and types of vehicles to form part of procession are note that generally no vehicles are allowed to form part of the march) (Please

4. **TIME OF NOTICE**
If notice is given later than seven days prior to the gathering, please state the reason(s) why the notice was not given timely:

5. **PETITION**
We wish to hand over a petition to: (Please state full details of organization & name of person to receive the petition)

6. **OTHER FACTS PERTAINING TO THE GATHERING**

7. **GENERAL CONDITIONS**

The information received in this application is to be used by the City of Tshwane Metropolitan Municipality employees. Access to this information is open to members of the public upon written application. The Municipality is to be regarded as the agency that holds the information.

You may make application for access or amendment to the information held by the Municipality. You may also request the Municipality to suppress your personal information from a public register.

The convenor(s) must ensure that all participants and other role players adhere to the conditions set out by the TMPD as well as all applicable legislation.

The convenor(s) must comply with all provisions of the Regulation of Gatherings Act, 1993 (Act 205 of 1993), the National Road Traffic Act, 1996 (Act 93 of 1996), the municipal traffic by-laws and all other legal provisions applicable to this occurrence.

The convenor(s) and all participants must adhere to all instructions given by members of the Tshwane Metropolitan Police Department (TMPD) and South African Police Services (SAPS).

No marks may be made on the road surface or on any municipal property and there may be no lamping whatsoever with road traffic signs and marks.

Final arrangements between the convenor(s) of the occurrence and the TMPD must be done five working days prior, if possible, to the occurrence.

No advertising sign, mark or poster may be displayed without the written permission of the General Manager, City Planning Division of the City of Tshwane Metropolitan Municipality (CTMM). (If and when the General Manager has given permission, an example of the approved advertising sign, mark or poster must be submitted to the Events Coordinating (Planning) Office at least five working days prior to the event).

The convenor(s) is responsible for the clearing up and removal of all refuse left by participants at the venue of the occurrence. The Service Delivery Department of the CTMM could provide this service at current rates. Arrangements in this regard must be made at least five working days prior, if possible, to the occurrence with the Department concerned and proof of this must be submitted to the Events Coordination (Planning) Office.

The convenor(s) must control all participants at the venue of the occurrence in order to prevent any obstruction to other traffic. (No support vehicle is allowed to drive in front, next to or at the back of participants).

The convenor(s) must ensure that the starting / ending time of the occurrence is adhered to.

The convenor(s) must complete and hand in the official indemnity form of the TMPD at least five working days prior, if possible, to the occurrence to the Events Coordination (Planning) Office.

The organizer/company must be in possession of public liability insurance for the said event and proof thereof must be handed in at the Events Management Office of this Department.

The convenor(s) is liable for the service delivery cost (as calculated by the TMPD) relating to the occurrence:

- (1) All payments must be done at Ground Floor, Rondebosch Building, 174 Viaage Street, Pretoria.
- (2) A deposit of 50% of the full amount owing must be paid in at the TMPD at least five working days prior, if possible, to the occurrence.
- (3) Failure to pay the deposit (if applicable) will lead to cancellation of the said occurrence.
- (4) The balance of the full amount owing, must be paid in at the TMPD within five working days after the completion of the said occurrence.
- (5) Where payments have been made, proof thereof must be submitted to the Events Coordination (Planning) Office.
- (6) Failure to pay moneys owed to the TMPD will result in possible legal action.

The convenor(s) may only appoint marshals who are at least 18 years old. Marshals must be identifiable and uniform. The convenor(s) must further ensure that all marshals are present at the points where they have undertaken to provide a service. If, for some reason, a marshal does not arrive or cannot provide the service, it is the duty of the convenor(s) to provide a substitute who will meet the requirements set out in this paragraph. The duties of appointed marshals are strictly limited to the protection of participants and to indicate the route, where applicable. (Marshals may not execute traffic control).

The convenor(s) must honour all agreements with the TMPD as well as adhere to all instructions relating to the occurrence.

The Chief of Police of the TMPD, or his representative, reserves the right to stop the occurrence or parts thereof if the conditions set out in this document are not met and / or if circumstances relating to the provisions of any act should require this.

I, the convenor(s), hereby state that I have provided correct and true information and I further accept all the conditions as set out in this document and will adhere to them.

Signed at Pretoria on thisday of 2005.

CONVENOR (Signature & print name)



Can a gathering be prohibited?



In most cases, no!

The police or the responsible officer may prohibit the gathering only after meeting the **convener** to discuss the reasons why. The responsible officer must also give written reasons justifying the prohibition. To justify the prohibition, the officer must feel that one of the following will take place and that it will not be possible for the police to prevent these:

- The gathering will result in serious disruption of traffic
- The gathering will result in injury
- The gathering will result in extensive damage to property.

You can challenge this decision – if you believe your march should not have been prohibited, you may approach a Magistrate's or High Court and ask the magistrate or judge to override the prohibition illegal and give permission for the gathering to go ahead.

If the gathering takes place despite the prohibition, it will be treated as illegal. Any person attending a prohibited gathering is committing an offence.

When you organise a march make sure you have marshals and other activists to guide a demonstration and prevent it from getting out of control.

See **Section 9** of this guide for the **contact details of the ICD**

If the police act violently or break the law at a legal gathering, you should complain to the relevant police department and contact the Independent Complaints Directorate (ICD), which investigates complaints of criminality and misconduct against members of the police.



Prevent Violence and Disruption during a Protest

Sometimes people's anger at their conditions can turn to violence – against local government officials, local government buildings and even other members of the community.

Resorting to violence is against the law and is not protected by the Constitution! It also creates risks for your organisation and community:

- » Violence creates the opportunity for criminals to hijack a protest for their own purposes.
- » Violent action makes it possible for government to portray you as criminals and ignore your demands.
- » Destruction of public facilities such as libraries or schools harms your own community.
- » Violence divides people. Disunity weakens your campaign and your organisation.
- » It will be easier for the police or local officials to stop you from protesting in future.

6.9 Make an appeal or formal complaint

In addition to petitions, marches, protests and meetings there are other legal ways of enforcing your rights. You have a right to make a formal appeal against any decision taken by the council or its officials, to go to court or approach one of the watchdog institutions established by the Constitution, such as the Human Rights Commission or the Public Protector.

S. 62 of the Municipal Systems Act sets out the appeal process. You can:

- appeal to the municipal manager if a problem you have reported is not resolved
- make a complaint to the municipal manager if government officials do not follow the code of conduct
- appeal to the municipal council if your municipal manager makes a decision you do not agree with or fails to get back to you



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- make a complaint to the provincial government minister responsible for local government (known as the MEC for local government) if your municipal council is failing to ensure that its staff are following by-laws, policies, or legislation or failing to award or monitor tenders properly
- make a complaint to the Department of Cooperative Governance and Traditional Affairs (the national department responsible for local government) if your provincial government does not respond adequately.

How to appeal

- » Write a letter with the details of your complaint – don't forget to include the dates and names of the people you spoke with as well as what you discussed, and any documents or letters
- » Deliver your letter to the municipal manager within 21 days of the date you were notified of the decision. Make sure you get an acknowledgment in writing!

Once you have lodged an appeal the government must appoint people or a committee to look at the appeal. This must take place within six weeks. After that you have a right to a decision within a reasonable period. If you disagree with the decision of the appeal body you can apply to a court for a review of the decision.



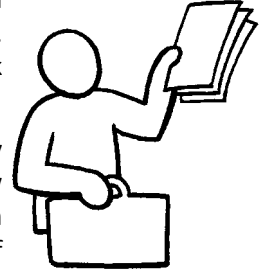
6.10 Go to court!

You have the right to go to court to protect your rights. If there is an urgent matter – for example, your water is disconnected without notice and you don't have money to pay for water, or you are facing an eviction and have nowhere to go – you can try to find a lawyer to help you and if you can't, you can try to go directly to the court to defend your rights. But, if the matter isn't urgent, it is often best if you can show that you have first tried other ways to sort out the situation, including complaining to government, attending meetings and the other processes described in this guide.



Your organisation should find out what legal resources exist in your community, whether you are planning legal action or not. You can also contact some of the organisations listed at the back of this guide.

There are a number of ways in which your organisation can try to find a lawyer – you can contact the Legal Aid Board, the Law Society of South Africa, a body such as the South African Human Rights Commission, or a legal NGO or advice office. See back of guide for list of organisations that could assist.



6.10.1 Going to court without a lawyer

If you are unable to find a lawyer and you need to represent yourself in court, the following tips might help.

- Bring all your evidence to court on the date of your hearing, including the people who will speak on your behalf and any papers you want the judge to see, such as bills and evidence of having paid them or evidence that you cannot afford to pay for housing or services, promises that were made to you by the government etc.
- Introduce yourself to the court and tell the judge what you want him or her to do for you. The judge will make an order at the end of the case so don't forget to explain what your community sees as the solution. This is called a remedy.
- You will be given a chance to ask questions to the other side in the case, or their witnesses, so be ready to ask them to give information to the judge that could help you.

The benefits and risks of going to court

Going to court has resulted in a number of important victories for communities, as well as in some setbacks. It is one important way of compelling local government to respect and give effect your Constitutional rights. However, litigation can also have some risks if it is not properly prepared:

- » Legal proceedings are very demanding of your time and capacity. It is important to make sure that legal action strengthens and empowers community organisation, rather than distracting from it.



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- » Legal documentation and arguments sometimes appear to be complex. They are usually in English and can be difficult for all members of the community to understand. Building legal literacy, an understanding of the law, is a vital part of organisation building.
- » Legal action requires detailed attention to dates, times and records of correspondence and meetings. This is an important part of our struggle!
- » Legal action can be very expensive, but some lawyers will work for free. Don't be afraid to ask!
- » Sometimes cases may be lost for technical or procedural reasons that have nothing to do with the real issues. Again, it is essential that you always pay attention to details.

Litigation on its own can never resolve all of your challenges. If it is approached the wrong way your organisation can be diverted and demobilised by having to devote time and resources to preparing statements, affidavits and attending meetings. But this process can also be empowering if everyone is involved.



Before beginning litigation, consider carefully how your organisation will deal with these risks



6.11 Contact the Public Protector

The Public Protector's office (PPO) is an independent watchdog agency established under Chapter 9 of the Constitution. It has the power to investigate any impropriety (wrongdoing) in any sphere of government, including local government and report on this publicly. Improprieties of public officers include abuse, discourteous or improper conduct, undue delay, dishonesty with public funds, unlawful enrichment and other forms of poor administration.

If you are going to make a complaint it must be within two years of the problem arising, although the PPO can extend this period in exceptional circumstances. Not every allegation results in an investigation. The PPO has the legal discretion, or right, to choose when to take action.

In addition to investigating improper action by government, the Public Protector acts:

- as mediator of requests under PAIA
- as investigator/mediator/dispute resolution counselor under the Protected Disclosure Act.

The Public Protector has wide investigatory powers including the power to order witnesses to testify under oath or to produce any document and to search and seize property under a warrant. Failure to comply with the PPO is a criminal offence.

The PPO may offer to mediate, conciliate, negotiate a resolution, or investigate and publicise its findings, as well as recommend that criminal charges be laid.

The Public Protector currently has 20 offices across South Africa. **The PPO's services are free. The toll free line is: 0800 112040**

For more information go to **www.pprotect.org**



6.12 Contact the South African Human Rights Commission

The South African Human Rights Commission (SAHRC) is an independent national body established by Chapter 9 of the South African Constitution. It monitors, protects and promotes the observance of human rights. If you feel that your human rights are being violated, you can approach the SAHRC. There are various ways in which they can help:

- They can give you legal advice.
- They can investigate complaints.
- They have the power to litigate in various courts, including the Equality Courts, to seek redress for human rights violations. In 2010, for example, the SAHRC was a friend of the Court in the case challenging open toilets in Khayelitsha in Cape Town.
 - They have a specific mandate set out by PAIA to promote the right to access information and monitor compliance with this Act.

Contact the **SAHRC**
on **tel: 011 877 3600**
or **www.sahrc.org.za**

The Commission has an office in each of South Africa's nine provinces and you can contact them to find the office that is closest to you.





6.13 Report Corruption: Whistleblowing

Every year millions, if not billions of rand, are stolen from local government. Money is stolen in corrupt tenders, by councillors and officials directly, or by companies that accept payment and don't do the work. This is money that should be spent on services and upgrading communities. This is corruption. We can fight it.

If you work as an employee of local government and you see evidence of corruption or serious maladministration you should report it. This is called "whistleblowing".

The main South African law that applies to whistleblowing is s. 26 of the Protected Disclosure Act (PDA). This Act only applies to whistleblowing by employees but it includes people who work both in both government and for private employers. The law is meant to encourage people to report corruption by protecting employees from victimisation from their employer or other employees when they report wrongdoing ("make a disclosure"). This is very important because people are afraid of being harassed or dismissed if they report wrongdoing.

What is a "protected disclosure"? When you report activities of your employer that are criminal, discriminatory or otherwise illegal you should, as an employee, be entitled to protection from being harassed or victimised, under the Protected Disclosures Act. It can include corrupt practices such as kickbacks or bribes, or failure to follow proper tendering policy. It can be a danger to health or safety or potential damage to the environment that can have serious consequences if not stopped.

Remember, non-employees who have information about wrongdoing or corruption do not have legal protection against retaliation under this Act if they blow the whistle. But you can ask the Public Protector to investigate and make a report or report your allegation and open a case with the police.

If you need help with whistleblowing consult lawyers, human rights organizations or an organisation like the Open Democracy Advice Centre (ODAC), who can give you advice on how to use this Act.

For more
information
about how to use
the Protected
Disclosure Act
go to [ODAC_Whistleblowing_Report_web.pdf](#)



NOW GET ORGANISED

Now that you have read this book, use what you have learned to bring about change in your community and demand accountable service delivery.

This guide has aimed to:

- empower you with knowledge about your rights in law and under the Constitution in relation to local government
- give you practical advice about ways to ensure that your local government officials understand and take your community's needs seriously
- give you guidance about how to organise if local government is not responding to your needs
- link you to organisations that can provide assistance in your campaigns for effective and accountable local government.

Take action:

- Join or form an organisation to work for accountable local government
- Set up a discussion group to learn more about the issues raised in this book
- Discuss how your community could take steps to ensure that your local government is more accountable to you.

We would like to hear from you regarding your experiences of monitoring and enforcing your rights, and taking action to hold government to account.

Report to us on your experience.

Use our website:

www.localgovernmentaction.org

8 LAW AND POLICY YOU MUST KNOW



These are the important parts of our Constitution and other laws that can empower you to engage effectively with your municipality – know your rights!

8.1 The Constitution of South Africa

The Constitution is the supreme law the country. All other laws must comply with the Constitution: Below are extracts directly relevant to local government.

Section 1. Republic of South Africa

The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- b) Non-racialism and non-sexism.
- c) Supremacy of the Constitution and the rule of law.
- d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Section 2. Supremacy of Constitution

This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.



8.1.1 Rights to engage in political activity:

Section 16. Freedom of expression

1. Everyone has the right to freedom of expression, which includes –
 - a) freedom of the press and other media;
 - b) freedom to receive or impart information or ideas;
 - c) freedom of artistic creativity; and
 - d) academic freedom and freedom of scientific research.
2. The right in subsection (1) does not extend to –
 - a) propaganda for war;
 - b) incitement of imminent violence; or
 - c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Section 17. Assembly, demonstration, picket and petition

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

Section 18. Freedom of association

Everyone has the right to freedom of association.

Section 19. Political rights

1. Every citizen is free to make political choices, which includes the right –
 - a) to form a political party;
 - b) to participate in the activities of, or recruit members for, a political party; and
 - c) to campaign for a political party or cause.
2. Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
3. Every adult citizen has the right –
 - a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - b) to stand for public office and, if elected, to hold office.



8.1.2 Socio-economic rights:

Section 26. Housing

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Section 27. Health care, food, water and social security

1. Everyone has the right to have access to –
 - a) health care services, including reproductive health care;
 - b) sufficient food and water; and
 - c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

Section 29. Education

1. Everyone has the right –
 - a) to a basic education, including adult basic education; and
 - b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –
 - a) equity;
 - b) practicability; and
 - c) the need to redress the results of past racially discriminatory laws and practices.



8.1.3 Rights to information and fair administrative action:

Section 32. Access to information

1. Everyone has the right of access to –
 - a) any information held by the state; and
 - b) any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Section 33. Just administrative action

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must –
 - a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
 - c) promote an efficient administration.

Section 34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.



8.1.4 Rights to an accountable and effective local government:

Section 151. Status of municipalities

1. The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.
2. The executive and legislative authority of a municipality is vested in its Municipal Council.
3. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
4. The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

Section 152. Objects of local government

1. The objects 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.
2. A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

Section 153. Developmental duties of municipalities

A municipality must -

- a) structure and manage its administration and **budgeting** and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- b) participate in national and provincial development programmes.



Section 154. Municipalities in co-operative government

1. The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

8.1.5 Requirements for the open and democratic functioning of municipal councils:

Section 160. Internal procedures

2. The following functions may not be delegated by a Municipal Council:
 - a) The passing of by-laws;
 - b) the approval of budgets;
 - c) the imposition of rates and other taxes, levies and duties; and
 - d) the raising of loans.
3.
 - a) A majority of the members of a Municipal Council must be present before a vote may be taken on any matter.
 - b) All questions concerning matters mentioned in subsection (2) are determined by a decision taken by a Municipal Council with a supporting vote of a majority of its members.
 - c) All other questions before a Municipal Council are decided by a majority of the votes cast.
4. No by-law may be passed by a Municipal Council unless –
 - a) all the members of the Council have been given reasonable notice; and
 - b) the proposed by-law has been published for public comment.
6. A Municipal Council may make by-laws which prescribe rules and orders for –
 - a) its internal arrangements;
 - b) its business and proceedings; and
 - c) the establishment, composition, procedures, powers and functions of its committees.



7. A Municipal Council must conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so having regard to the nature of the business being transacted.
8. Members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that -
 - a) allows parties and interests reflected within the Council to be fairly represented;
 - b) is consistent with democracy; and
 - c) may be regulated by national legislation.

Section 162. *Publication of municipal by-laws*

1. A municipal by-law may be enforced only after it has been published in the official gazette of the relevant province.
2. A provincial official gazette must publish a municipal by-law upon request by the municipality.
3. Municipal by-laws must be accessible to the public.

8.1.6 *Rights to an accountable and responsive public administration:*

Section 195. *Basic values and principles governing public administration*

1. Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
 - a) A high standard of professional ethics must be promoted and maintained.
 - b) Efficient, economic and effective use of resources must be promoted.
 - c) Public administration must be development-oriented.
 - d) Services must be provided impartially, fairly, equitably and without bias.
 - e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
 - f) Public administration must be accountable.



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- g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
- i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.



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8.2 The Batho Pele principles

The Batho Pele (“People First”) principles are aligned to the Constitution – know the service you’re entitled to. Government officials must follow the “Batho Pele” principles which require public servants to be polite, open and transparent and to deliver good service to the public.

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.



8.3 The Municipal Code of Conduct

The Code of Conduct (which can be found at Schedule 1 to the Municipal Systems Act) prescribes how municipal councillors, ward committees, and administrative officials must behave, and the penalties for improper behaviour.

8.3.1 What the Code of Conduct says

In general, the Code of Conduct requires that councillors must perform their duties:

- in good faith (or with a desire to act fairly towards others)
- honestly
- transparently
- in the best interests of the municipality (which includes the interests of the community).

In addition, the Code of Conduct requires that:

Councillors must declare to the municipal manager, in writing, all their financial interests, within 60 days of their election (The Municipal Systems Act, Schedule 1: Code of Conduct, item 7(4)). You can demand to have access to the interests declared by one or more councillors.

A councillor must disclose (make public) any interest he has in any matter that is being considered by the council or its committees. This can be a direct or indirect interest, personally or through a spouse, partner or associate. Unless the council decides that the interest disclosed is trivial or irrelevant, that councillor must withdraw and not participate in council or committee meetings on that matter. (The Municipal Systems Act, Schedule 1: Code of Conduct, item 5(1))

A councillor must disclose any special benefit that he or she, or his or her family member or spouse or partner will get from a contract that has been or will be signed with the municipality (The Municipal Systems Act, Schedule 1: Code of Conduct, item 5(1)). This must be done at the first council meeting where this is possible.

Full-time councillors are not allowed to have any other paid work without the permission of the council. (The Municipal Systems Act, Schedule 1: Code of Conduct, item 8)



The Code of Conduct also states the following:

Councillors may not use their positions or confidential information for personal profit nor for the improper benefit of any other person. (Municipal Systems Act, Schedule 1: Code of Conduct, item 6(1))

Councillors may not request or accept any rewards, or gifts or favours for :

- voting or not voting on a matter before the council or any committee
- persuading the council to make a decision one way or the other on any matter
- making representations to the council
- disclosing confidential information. (The Municipal Systems Act, Schedule 1: Code of Conduct, item 9)

Councillors may not disclose confidential information of the council to people who are not allowed to know it. (The Municipal Systems Act, Schedule 1: Code of Conduct, item 10)

Councillors are not allowed to interfere with the municipal administration. It is a criminal offence for a councillor to attempt to influence an employee or agent of the municipality not to enforce a law or a council decision. This offence can be punished by a fine or a jail sentence of up to two years. (The Municipal Systems Act, Schedule 1: Code of Conduct, item 11)

8.3.2 Enforcing the Code of Conduct

You can demand the enforcement of the Code of Conduct. The person who is mainly responsible for enforcing the Code of Conduct is the speaker of the local council. He or she must investigate if there is a reasonable suspicion that the Code of Conduct has not been complied with. After giving the councillor an opportunity to respond, the speaker must prepare a report which must be given to the council and made public. The council is then able to investigate whether a breach of the Code of Conduct has taken place. This investigation must be done by a committee of councillors. If the council decides that a councillor has breached the code of conduct, the council can:

- issue a warning,
- reprimand the councillor
- fine the councillor
- request the MEC (Provincial Minister) to suspend or remove the councillor from office.



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If the council's own investigation is not enough or produces a flawed result, the MEC can intervene and conduct his own investigation. The MEC has power to suspend or remove the councillor from office.

Most of the code of conduct applies also to traditional leaders who take part in a municipal council, but such traditional leaders cannot be reprimanded or fined. The council does have the power to request the MEC to suspend or cancel the traditional leader's right to participate in the council.

8.4 The Municipal Systems Act, 32 of 2000

Section. 16

1. A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose –
 - a) encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in-
 - (i) the preparation, implementation and review of its Integrated Development Plan in terms of Chapter 5;
 - (ii) the establishment, implementation and review of its performance management system in terms of Chapter 6;
 - (iii) the monitoring and review of its performance, including the outcomes and impact of such performance;
 - (iv) the preparation of its budget; and
 - (v) strategic decisions relating to the provision of municipal services in terms of Chapter 8;
 - b) contribute to building the capacity of –
 - (i) the local community [to enable it to participate in the affairs of the municipality; and
 - (ii) councillors and staff to foster community participation; and
 - c) use its resources, and annually allocate funds in its budget, as may be appropriate for the purpose of implementing paragraphs (a) and (b).



Section 17. *Mechanisms, processes and procedures for community participation*

1. Participation by the local community in the affairs of the municipality must take place through –
 - a) political structures for participation in terms of the Municipal Structures Act;
 - b) the mechanisms, processes and procedures for participation in municipal **governance** established in terms of this Act;
 - c) other appropriate mechanisms, processes and procedures established by the municipality;
 - d) councillors; and
 - e) generally applying the provisions for participation as provided for in this Act.
2. A municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this purpose provide for –
 - a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community;
 - b) notification and public comment procedures, when appropriate;
 - c) public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate;
 - d) consultative sessions with locally recognised community organisations and, where appropriate, traditional authorities; and
 - e) report-back to the local community.
3. When establishing mechanisms, processes and procedures in terms of subsection (2) the municipality must take into account the special needs of –
 - a) people who cannot read or write;
 - b) people with disabilities;
 - c) women; and
 - d) other disadvantaged groups.
4. A municipal council may establish one or more advisory committees consisting of persons who are not councillors to advise the council on any matter within the council's competence. When appointing the members of such a committee, gender representivity must be taken into account.



Section 18. *Communication of information concerning community participation*

1. A municipality must communicate to its community information concerning –
 - a) the available mechanisms, processes and procedures to encourage and facilitate community participation;
 - b) the matters with regard to which community participation is encouraged;
 - c) the rights and duties of members of the local community; and
 - d) municipal governance, management and development.
2. When communicating the information mentioned in subsection (1), a municipality must take into account –
 - a) language preferences and usage in the municipality; and
 - b) the special needs of people who cannot read or write.

Section 19. *Public notice of meetings of municipal councils*

The municipal manager of a municipality must give notice to the public, in a manner determined by the municipal council, of the time, date and venue of every-

- c) ordinary meeting of the council; and
- a) special or urgent meeting of the council, except when time constraints make this impossible.

Section 20. *Admission of public to meetings*

1. Meetings of a municipal council and those of its committees are open to the public, including the media, and the council or such committee may not exclude the public, including the media, from a meeting, except when –
 - a) it is reasonable to do so having regard to the nature of the business being transacted; and
 - b) a by-law or a resolution of the council specifying the circumstances in which the council or such committee may close a meeting and which complies with paragraph (a), authorises the council or such committee to close the meeting to the public.
2. A municipal council, or a committee of the council, may not exclude the public, including the media, when considering or voting on any of the following matters:



- a) A draft by-law tabled in the council;
 - b) a budget tabled in the council;
 - c) the municipality's draft integrated development plan, or any amendment of the plan, tabled in the council;
 - d) the municipality's draft performance management system, or any amendment of the system, tabled in the council;
 - e) the decision to enter into a service delivery agreement referred to in section 76 (b); or
 - f) any other matter prescribed by regulation.
3. An executive committee mentioned in section 42 of the Municipal Structures Act and a mayoral committee mentioned in section 60 of that Act may, subject to subsection (1) (a), close any or all of its meetings to the public, including the media.
 4. A municipal council –
 - a) within the financial and administrative capacity of the municipality, must provide space for the public in the chambers and places where the council and its committees meet; and
 - b) may take reasonable steps to regulate public access to, and public conduct at, meetings of the council and its committees.

Section 21. *Communications to local community*

1. When anything must be notified by a municipality through the media to the local community in terms of this Act or any other applicable legislation, it must be done –
 - a) in the local newspaper or newspapers of its area;
 - b) in a newspaper or newspapers circulating in its area and determined by the council as a newspaper of record; or
 - c) by means of radio broadcasts covering the area of the municipality.
2. Any such notification must be in the official languages determined by the council, having regard to language preferences and usage within its area.
3. A copy of every notice that must be published in the Provincial Gazette or the media in terms of this Act or any other applicable legislation, must be displayed at the municipal offices.
4. When the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation, will assist that person to transcribe that person's comments or representations.



5.

- a) When a municipality requires a form to be completed by a member of the local community, a staff member of the municipality must give reasonable assistance to persons who cannot read or write, to enable such persons to understand and complete the form.
- b) If the form relates to the payment of money to the municipality or to the provision of any service, the assistance must include an explanation of its terms and conditions.

Section 21 (a) Documents to be made public

1. All documents that must be made public by a municipality in terms of a requirement of this Act, the Municipal Finance Management Act or other applicable legislation, must be conveyed to the local community –
 - a) by displaying the documents at the municipality's head and satellite offices and libraries;
 - b) by displaying the documents on the municipality's official website, if the municipality has a website as envisaged by section 21B; and
 - c) by notifying the local community, in accordance with section 21, of the place, including the website address, where detailed particulars concerning the documents can be obtained.
2. If appropriate, any notification in terms of subsection (1) (c) must invite the local community to submit written comments or representations to the municipality in respect of the relevant documents.

Section 21 (b) Official website

1. Each municipality must –
 - a) establish its own official website if the municipality decides that it is affordable; and
 - b) place on that official website information required to be made public in terms of this Act and the Municipal Finance Management Act.
2. If a municipality decides that it is not affordable for it to establish its own official website, it must provide the information in terms of legislation referred to in subsection (1)(b) for display on an organised local government website sponsored or facilitated by the National Treasury.
3. The municipal manager must maintain and regularly update the municipality's official website, if in existence, or provide the relevant information as required by subsection (2).



Section 42. *Community involvement*

A municipality, through appropriate mechanisms, processes and procedures established in terms of Chapter 4, must involve the local community in the development, implementation and review of the municipality's performance management system, and, in particular, allow the community to participate in the setting of appropriate key performance indicators and performance targets for the municipality.

The Municipal Systems Act, 2000, especially chapter 6, establishes the legal framework for performance management in municipalities. According to the Act, all municipalities should:

- Develop a performance management system
- Set targets, monitor and review performance based on indicators linked to their IDP
- Publish an annual report on performance for the councillors, staff, the public and other spheres of government
- Incorporate and report on a set of general indicators prescribed nationally by the minister responsible for local government
- Conduct an internal audit on performance before tabling the report
- Involve the community in setting indicators and targets and reviewing municipal performance.





8.5 The Municipal Structures Act, 117 of 1998

Legally your community has the right to be included in monitoring and reviewing the performance of your municipality. This is set out in the following legislation:

Section 19. *Municipal objectives*

1. A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.
2. A municipal council must annually review –
 - a) the needs of the community;
 - b) its priorities to meet those needs;
 - c) its processes for involving the community;
 - d) its organisational and delivery mechanisms for meeting the needs of the community; and
 - e) its overall performance in achieving the objectives referred to in subsection (1).
3. A municipal council must develop mechanisms to **consult** the community and community organisations in performing its functions and exercising its powers.



9 ORGANISATIONS THAT CAN HELP YOU



9.1 Budgets

Auditor-General

Tel: 012 426 8000
Fax: 012 426-8257
www.agsa.co.za

Financial and Fiscal Commission Constitution s. 220

Tel: 011 207 2300
Fax: 011 207 2344
www.ffc.co.za

Idasa

Pretoria
Tel: 012 392 0500
Cape Town
Tel: 021 467 7600
Fax : 012 315 5126
www.idasa.org.za

International Budget Partnership

Cape Town
Tel: 021 461 7211
Fax: 021 461 7213
<http://www.internationalbudget.org>

Municipal outreach

Tel: 011 482 7221
Fax: 011 482 7690
<http://www.eumunicipaloutreach.org.za>

Public Service Authority Monitor

Tel: 046 603 8358
Fax: 046 622 7215
Email: psam-admin@ru.ac.za
<http://www.psam.org.za>

9.2 Elections

Electoral Institute for the Sustainability of Democracy in Africa (EISA)

Tel: 011 381 6000
Fax: 011 482 61 63
Email: ibrahim@eisa.org.za
www.eisa.org.za

Independent Electoral Commission

Tel: 012 622 5700
Fax: 012 622 5784
www.elections.org.za



9.3 Free legal advice

Probono.Org

Tel: 011 339 6080
Fax: 011 339 6077
www.probono-org.org

Legal Aid SA Johannesburg Head Office

Tel: 011 877 2000
Email: communications2@legal-aid.co.za
Legal Aid Advice Line:
08610 53425 8 (LEGAL 8)
www.legal-aid.co.za/index.php/Gauteng-Province.html

Women's Legal Centre

Tel: 021 424 5660
Email: jody@wlce.co.za
www.wlce.co.za/

National Alliance for the Development of Community Advice Offices (NADCAO)

Tel: 021 686 6952
Fax: 021 6866971
Email: pa-nd@blacksash.org.za
www.nadcao.org.za

University law school clinics

UCT Legal Aid Clinic

Tel: 021 650 3551/3530
Email: legalaid@law.uct.ac.za

University of Western Cape Legal Aid Clinic

Tel: 021 959 2756
Email: servicedesk@uwc.ac.za

Stellenbosch University Law Clinic

Tel: 021 808 4853
Email: yolandi@sun.ac.za

University of Johannesburg Law Clinic

Tel: 011 559 2633
www.uj.ac.za/EN/Faculties/law/about/Pages/LawClinic.aspx

University of Pretoria Law Clinic

Tel: 012 420 4155
Email: aniki.vanwyk@up.ac.za
<http://web.up.ac.za/default.asp?ipkCategoryId=327>

Rhodes University Legal Aid Clinic (Grahamstown)

Tel: 046 622 9301
Email: LegalAidClinic@ru.ac.za

Queenstown Rural Legal Centre

Tel: 045 838 5600
Email: rurallegalcentre@ru.ac.za

UNISA Legal Aid Clinic

Tel: 012 429-4838/4848
Email: lombam@unisa.ac.za
www.unisa.ac.za/Default.asp?Cmd=ViewContent&ContentID=23064

UNIVEN Legal Aid Clinic

Tel: 015 962 8637/ 8257/8000
Email: info@univen.ac.za



Centre for Community Law and Development (CCLD), University of North West

Tel: 018 297 5341

Email: Lizelle.dupisani@nwu.ac.za
www.puk.ac.za/fakulteite/regte/ccld_e.html

University of Free State Law Clinic

Tel: 051 448 5940

Email: info@ufs.ac.za
<http://law.ufs.ac.za/content.aspx?id=32>

University of KwaZulu Natal Law Clinic

Durban

Tel: 031 260 2151

Email: dbnlaw@ukzn.ac.za
<http://law.ukzn.ac.za/LawClinic.aspx>

Pietermaritzburg

Tel: 033 260 5014

Email: pmblaw@ukzn.ac.za
<http://law.ukzn.ac.za/LawClinic.aspx>

9.4 Government agencies

Department of Cooperative Governance and Traditional Affairs:

Tel: 012 334 0995

Fax: 012 326 4478

www.dplg.gov.za

National Treasury

Tel : 012 315 5111

Fax : 012 315 5126

www.treasury.gov.za

South African Local Government Association (SALGA)

Tel: 012 369 8000

Fax: 012 369 8001

www.salga.net

Rental Housing Tribunal

Gauteng Rental Housing Tribunal

Tel: 011 630 5035/5006

Email: rentaltribunal@gauteng.gov.za

<http://www.dlgh.gpg.gov.za/Pages/HousingTribunalForms.aspx>

Other Provincial Rental Housing Tribunals

Tel: 012 358 8852/1159/4023

Email: violetme@tshwane.gov.za



9.5 Socio-economic rights

Black Sash

Helpline: 072 66 33 739
Fax: 021 686 6971
Email: help@blacksash.org.za
www.blacksash.org.za

Development Action Group (DAG) (Cape Town)

Tel: 021 448 7886
Fax: 021 447 1987
Email: dag@dag.org.za
www.dag.org.za

Education Training Unit

Tel: 011 403 6291
Fax: 011 648 2054
www.etu.org.za

Equal Education

Tel: 021 387 0022
Fax: 0865 169 396
www.equaleducation.org.za

Lawyers for Human Rights (LHR)

Johannesburg office
Tel: 011 836 9831
Fax: 011 339 2665
www.lrc.org.za

Durban office
Tel: 031 301 7572
Fax number: 031 301 0538
Email: mahendra@lrc.org.za

Cape Town office
Tel: 021 481 3000

Grahamstown office
Tel: 046 622 9230
Email: nsomandi@lrc.org.za

Legal Resources Centre (LRC)

National office
Tel: 027 11 836 9831
Fax: 027 11 834 4273
www.lhr.org.za

Johannesburg office
Tel: 011 339 1960

Pretoria office
Tel: 012 320 2943

Durban office
Tel: 031 301 0531
Email: durban@lhr.org.za

Stellenbosch office
Tel: 021 887 1003
Email: sheldon@lhr.org.za

Organisation of Civic Rights (OCR)

Tel: 011 492 0568
Email: info@hurisa.org.za
www.ocr.org.za

ProBono.Org

Tel: 011 339 6080
Fax: 011 339 6077
www.probono-org.org

SECTION27

Tel: 011 356 4100
Fax: 011 339 4311
E-mail: info@section27.org.za
www.section27.org.za

Socio-Economic Rights Institute of South Africa (SERI)

Tel: 011 356 5860
Fax: 011 339 5950
Email: sanele@seri-sa.org
www.seri-sa.org


Social Justice Coalition

Tel: 078 371 4147

www.sjc.org.za

Treatment Action Campaign

National Office

Tel: 021 422 1720

Fax: 021 422 1720

www.tac.org.za/community

South African Council of Churches

Tel: 011 241 7800

Fax: 027 11 492 1448

www.sacc.org.za

Community Law Centre (CLC)

Tel: 021 959 2490 / 2950 / 2951

Fax: 021 959 2411

Email: serp@uwc.ac.za

www.communitylawcentre.org.za

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

FXI (Freedom of Expression Institute)

Tel: 011 482 1913

Fax: 011 482 1906

e-mail: fxi@fxi.org.za

www.fxi.org.za

Open Democracy Advice Centre (ODAC)

tollfree whistleblowing hotline

0800 52 53 52

www.opendemocracy.org.za/

litigation

South African History Archive (SAHA) Access to Information Programme

Tel: 011 717 1941

Fax: 011 717 1964

Email: gabriella@saha.org.za

tammy@saha.org.za

www.saha.org.za

South African Human Rights Commission (SAHRC)

Johannesburg office

Tel: 011 484 8300

Email: sahrcinfo@sahrc.org.za

www.sahrc.org.za

Cape Town office

Tel: 021 426 2277

Email: pcarelse@sahrc.org.za

The Office of the Public Protector

Tel: 012 366 7000

or 0800 11 2040

Fax: 086 575 3292

www.pprotect.org



9.7 Whistleblowing/anti-corruption

Municipal Demarcation Board

also includes local government capacity assessments by province,
Anti corruption hotline:
0860 701 701
www.demarcation.org.za

ODAC

Tel: 021 4613096
Fax: 021 4613021
www.opendemocracy.org.za/wp-content/uploads/2010/10/odacnew.pdf

*ODAC tollfree whistleblowing
hotline 0800 52 53 52
www.opendemocracy.org.za*

Public Protector Office

Tel: 012 366 7000 or
0800 11 2040
Fax: 086 575 3292
www.pprotect.org

SAMWU

Tel: 021 697-1151 / 4
Fax: 021 696-9175
www.samwu.org.za



10 WEB ADDRESSES FOR LAWS, POLICIES AND CASES



10.1 Legislation

1. Constitution of the Republic of South Africa, 1996.
<http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>
2. Kwazulu-Natal Elimination and Prevention of Re-emergence of Slums Act, 2007.
<http://www.sadelivery.co.za/files/delivery/resources/slumacts.pdf>
3. Municipal Electoral Act, 2000.
<http://www.capecgateway.gov.za/Text/2003/a27-00.pdf>
4. Municipal Financial Management Act, 2003.
<http://www.info.gov.za/acts/2003/a56-03/a56-03a.pdf>
5. Municipal Structures Act, 1998.
<http://www.bloemfontein.co.za/docs/Municipal-Structures-Act.pdf>
6. Municipal Systems Act, 2000. (also includes the Code of Conduct)
http://www.saflii.org/za/legis/num_act/lgmsa2000384.pdf
7. National Health Act, 2003.
<http://www.info.gov.za/view/DownloadFileAction?id=68039>
8. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998.
<http://www.info.gov.za/view/DownloadFileAction?id=70676>
9. Promotion of Access to Information Act, 2000.
<http://www.polity.org.za/article/promotion-of-access-to-information-act-no-2-of-2000-2000-01-01>
10. Promotion of Administrative Justice Act, 2000.
<http://www.justice.gov.za/legislation/acts/2000-003.pdf>
11. Protected disclosure Act, 2000.
<http://www.justice.gov.za/legislation/acts/2000-026.pdf>
12. Regulation of Gatherings Act, 1993.
<http://www.polity.org.za/article/regulation-of-gatherings-act-no-205-of-1993-1993-01-01>
13. Regulations Relating to Compulsory National Standards and Measures to Conserve Water GN 22355, 2001.
<http://www.bloemfontein.co.za/docs/Regulations-Water-Conservation.pdf>



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14. Rental Housing Act, 1999.
<http://www.info.gov.za/view/DownloadFileAction?id=70618>
15. Water Services Act, 1997.
<http://www.dwaf.gov.za/Documents/Legislature/a108-97.pdf>

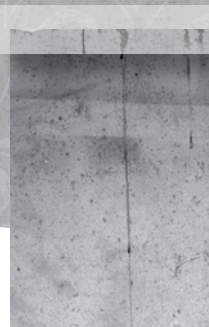
10.2 Other useful documents

1. CALS, 'Water Services Faultline Report'
<http://www.wits.ac.za/files/resfd5179ffe9b24ecfa4110e1ee24cbb20.pdf>
2. CALS, 'Water Budget Monitoring Education Tool'
<http://www.wits.ac.za/files/res1d6124c660eb4720ae7ff305301c604e.pdf>
3. FXI, 'The right to protest: a handbook for protestors and police'
<http://fxi.org.za/PDFs/Publications/RGAHandbook.pdf>
4. Public Service Commission Report
<http://www.psc.gov.za/documents/2010/PSC%20AR%202010.pdf>
5. SERI, 'A Resource Guide to Housing in South Africa 1994-2010'
http://www.seri-sa.org/images/stories/SERI_Housing_Resource_Guide_Feb11.pdf
6. SERI, 'Basic Sanitation in South Africa: A Guide to Legislation, Policy and Practice'
http://www.seri-sa.org/index.php?option=com_content&view=article&id=17&Itemid=29
7. The Batho Pele Principles
<http://www.dpsa.gov.za/batho-pele/Principles.asp>
8. White Paper on Local Government, 1998
<http://mfma.treasury.gov.za/MFMA/Guidelines/whitepaper.pdf>

10.3 Cases

1. Beja v Premier of the Western Cape (2011).
<http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZAWCHC/2011/97.html&query=Beja%20and%20Others%20v%20Premier%20of%20the%20Western%20Cape%20and%20Others>
2. Joseph v. City of Johannesburg (2009).
<http://www.saflii.org/za/cases/ZACC/2009/30.html>
3. Rand Leases Properties v Occupiers of Vogelstruisfontein (Marie Louise):
http://www.seri-sa.org/images/stories/randleasesproperties_order_15Apr11.pdf
4. Mkontwana v. Nelson Mandela Municipality (2004).
<http://www.saflii.org/za/cases/ZACC/2004/9.html>
5. Mazibuko v City of Johannesburg (2010).
<http://www.saflii.org/za/cases/ZACC/2009/28.html>
6. Occupiers of Olivia Road v City of Johannesburg 2008 (3) SA 208 CC
<http://www.saflii.org/za/cases/ZACC/2008/1.html>

11 GLOSSARY



act	any law passed by parliament and signed by the President
accountable	capable of being called to account and to justify one's actions
audit	inspection and verification of accounts
audit committee	an independent committee responsible for overseeing the auditing of a council, which should be made up of independent persons with financial skills
authority	legally recognised power
budget	a budget is an official plan for how to spend money
budgeting	budgeting is the process of predicting and controlling the spending of an organisation
by-election	an election in a single ward to fill a vacancy
by-law	a law which is made by a local authority
capacity	the skills and resources available to perform a function
conditional grant	conditional grants are grants that are made for specified purposes
constituency	refers to the body of voters that elect their representatives in a democracy. A constituency is not just those voters that have voted for a particular candidate or party, but all people within the area governed by the municipality
constituents	people making up a constituency
constructive eviction	actions by a landlord that forces a tenant to leave the premises (as by rendering the premises unfit for occupancy) without physical expulsion or legal process
consult	to seek views and input from the person(s) consulted



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convener	under the Gatherings Act, the person responsible for a gathering or march
convening	to call people together, for example, for a meeting
co-opted	a co-opted member is one who is invited to join after the body is first established
corruption	illegal or immoral wrongdoing related to twisting the rules, often to make money, for your own benefit or for your family's benefit
discriminate	make an unjust distinction in the treatment of different categories of people, for example on the grounds of race, sex or age
dissolve	To bring to an end
district municipalities	a class of municipalities
eligible	qualified to be chosen
equitable share	the allocation of revenue to the local sphere of government as required by the Constitution
ethical	morally correct
evidence	information that can be relied on to prove the facts in a case
executive power	power to enforce or carry out the laws; also the arm of government that implements laws and policies (executive)
fee-paying schools	schools where parents can afford to pay school fees
free basic electricity (FBE)	an amount of water provided by the government for free, mainly for the benefit of poor households
free basic water (FBW)	an amount of electricity provided by the government for free, mainly for the benefit of poor households
functional	working or operating properly
governance	the action or manner of governing
grant	a contribution, usually money, by one government entity to another. Most often, these contributions are made to local governments from national and provincial spheres of government. Conditional grants are grants that are made for specified purposes



grievance	a complaint
indigency register	municipal register of indigent people
indigent	a very poor person
infrastructure	the basic physical and organisational structures needed for the operation of a society
Integrated Development Plan (IDP)	the document put together by each municipality to set out development plans. An IDP process is aimed to ensure that projects that the municipality undertakes are in the interests of the community they serve. It also aims at co-ordinating projects to avoid waste or duplication of work
interdict	a court order forbidding an action
judicial review	a procedure by which a court can judge the legality of an administrative action by a public body
litigation	a legal proceeding in a court
mandate	an official order or commission to do something, or the authority and duty to do something, regarded as given by the electorate to a party or candidate that wins an election
metropolitan	the council of one of the major urban centres
Municipal Infrastructure Grant (MIG)	a conditional grant from national government that goes to local government for maintaining and improving municipal infrastructure
monitor	to observe and check over time
non fee-paying schools	schools where no-one has to pay for fees or even apply for exemption from fees (automatically free)
petition	a formal written request or complaint, typically signed by many people, addressed to an authority such as a council
proclaim	to declare publicly and officially. Once laws are enacted, they are proclaimed in the government gazette for public information.
proportional representation (PR)	a type of electoral system that attempts to match the proportion of seats won by a political party with the proportion of the total vote for that party. In this system, you vote for a political party rather than a specific person, and the party assigns candidates off a list, according to the number of votes the party gets



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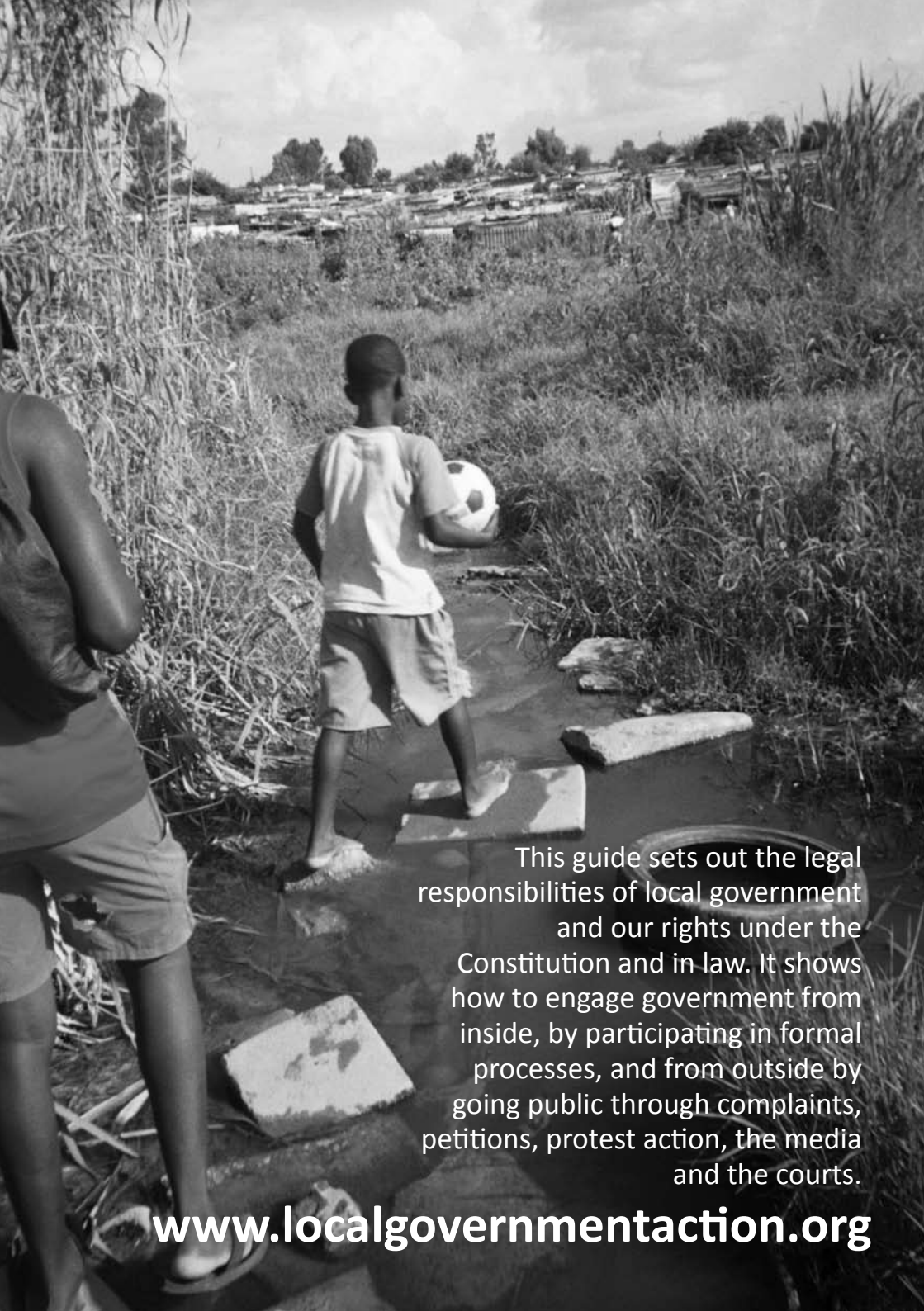
protected disclosure	a protected disclosure is a statement or report about serious wrongdoing, like corrupt conduct, maladministration or a substantial waste of public money that in certain cases (see section on Whistleblowing) entitles the person who made the disclosure to protection from reprisals, victimisation or prosecution.
rates	a tax on commercial land and buildings paid to a local authority
ratifying	to give formal approval to something, usually when it has already happened
recall	the procedure by which a public official may be removed from office. The act of recalling or summoning back, especially an official order to return
revenue	a government's annual income from which public expenses are met
sanitation	toilets or sewerage systems
standing orders	an order or ruling governing procedures of a municipality, council, or other deliberative body
stipend	A fixed regular sum paid as a salary or as expenses
subordinate laws	Laws that are secondary, or subject to the authority or control of another law. Government Regulations are a form of subordinate laws
supreme law	The highest law in the land, usually referring to the Constitution. All other laws must be in line with the provisions of the Constitution.
transparent	open to public scrutiny
unconditional grant	A grant from national government that is not ring-fenced i.e. the municipality can spend the money how it wants to.
whip	An official of a political party appointed to maintain discipline among its elected representatives, especially so as to ensure attendance and voting in debates.
whistleblowing	Whistle-blower – a person who informs on someone engaged in an illicit activity.



Through photography, Umuzi Photo Club places young people from South Africa's developing communities at the centre of conversations on important community issues, cutting through socio-economic and generational boundaries. Township youth develop photography, visual literacy and critical thinking skills in fun, interactive workshops, and become advocates for change with their visual testimony of pressing community issues. The raw, honest images they shoot are exhibited in situ to encourage youth-centered, community dialogues, as well as petition stakeholders, such as local government, to enact positive change. In this way, Umuzi facilitates child participation at a community level. Through international exhibitions and media coverage, Umuzi amplifies its young activists' messages to reach influential patrons at home, and abroad. Umuzi is thus a powerful local, as well as international platform for these otherwise marginalised young people to tell their stories.

"Umuzi" is a Zulu word meaning "village".

www.umuziphotoclub.blogspot.com



This guide sets out the legal responsibilities of local government and our rights under the Constitution and in law. It shows how to engage government from inside, by participating in formal processes, and from outside by going public through complaints, petitions, protest action, the media and the courts.

www.localgovernmentaction.org