



SOUTH AFRICAN LOCAL
GOVERNMENT ASSOCIATION

SALGA

Inspiring service delivery

Deepening and strengthening Local Democracy through inclusive government and governance

17th October 2016

Constitutional and Legislative obligations

- a) That we understand the implications of being a **Republic**
- b) That therefore we all know, understand and uphold the Constitution
 - i. **Section 1** enjoins each councillor and council to ensure an **ACCOUNTABLE, RESPONSIVENESS AND OPENNESS**
 - ii. **Section 2** states that the Constitution is the supreme law of the Republic; **LAW** or **CONDUCT INCONSISTENT** with it is invalid, and the obligation imposed by it **MUST** be fulfilled; **WHAT IS THE VALUE OF AN OATH OF OFFICE THEN?**
 - iii. **Section 32** Compels the state and therefore each municipal council to guarantee **access to any information** which might include by laws, plans, budget etc and this must be read together with **section (2)** of the Municipal Systems Act. This must also be read together with **section (6)(3)(d)** which enjoins the municipalities to take into account the language usage and preferences. This imposes an obligation to all municipalities to position themselves to be able to ensure a **qualitative accessibility of information to citizens.**

Preamble of the Constitution

1. Lay the foundations **for a democratic and open society** in which **government is based on the will of the people** and every citizen is equally protected by law;
2. Improve the quality of life of all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nation

CONSTITUTIONAL AND LEGISLATIVE CONTEXT

- iv. **Section 32** instructs us to enable everyone access to information. Access to information is a critical enabler for inclusive governance*
- v. **Section 33** read together with **section 195** which enjoins us to behave in a particular manner in presiding over the affairs of the state and public administration*
- vi. **Section 42 (3)** emphasises the government by the people in particular in representation, public policy and law making processes*

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CONSTITUTIONAL AND LEGISLATIVE CONTEXT



- viii. **Section 152 (1)(a)** instructs municipalities to provide democratic and accountable government for local communities as well as **(e)** to encourage the involvement of communities and community organisations in the matters of local government
- ix. The above must be read in conjunction with **section 160 (4) (c)** which instructs us to ensure prior passing any by law a municipal council ensure the proposed by law is published for public comments. as well as **section 160 (7)** which enjoins a municipal council to conduct its business in an open manner. This is further emphasised in **section 195 (e)** which compels the public sector to ensure that people's needs are responded to, and the public must be encouraged to participate in policy making as well as **section 195 (f)(g) read together with section (50) of MSA** which states that Public Administration must be accountable, that transparency must be fostered by providing the public with timely, accessible and accurate information

SA LOCAL GOVERNANCE CONTEXT



- The White Paper on LG provides clear guidance on how municipalities have to work with citizens, and states the following:
- *Municipalities require active participation by citizens at four levels:*
 - **As voters** – *to ensure maximum democratic accountability of the elected political leadership for the policies they are empowered to promote.*
 - **As citizens** who express, via different stakeholder associations, their views before, during and after the policy development process in order to ensure that the policies reflect community preferences as far as possible.
 - **As consumers and end-users**, who expect value-for-money, affordable services and courteous and responsive service.
 - **As organised partners** involved in the mobilisation of resources for development via for-profit businesses, NGOs and community-based institutions.
- In addition, it provides that:
 - *Municipalities need to **develop mechanisms to interact** with community groups to identify service needs and priorities as well as community resources that can be unlocked and channelled for development ends.*

Preamble of the Municipal Structures Act

1. WHEREAS there is fundamental agreement in our country on a vision of **democratic** and **developmental** local government, in which municipalities fulfil their constitutional obligations to ensure sustainable, effective and efficient municipal services, promote social and economic development, encourage a safe and healthy environment **by working with communities** in creating environments and human settlements in which all our people can lead uplifted and dignified lives;

Preamble of the Municipal Systems Act



1. Whereas a fundamental aspect of the new local government system is **the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management;**
2. Whereas the new system of local government requires **an efficient, effective and transparent local public administration** that conforms to constitutional principles;
3. Whereas there is **a need to create a more harmonious relationship between municipal councils, municipal administrations and the local communities through the acknowledgement of reciprocal rights and duties;**

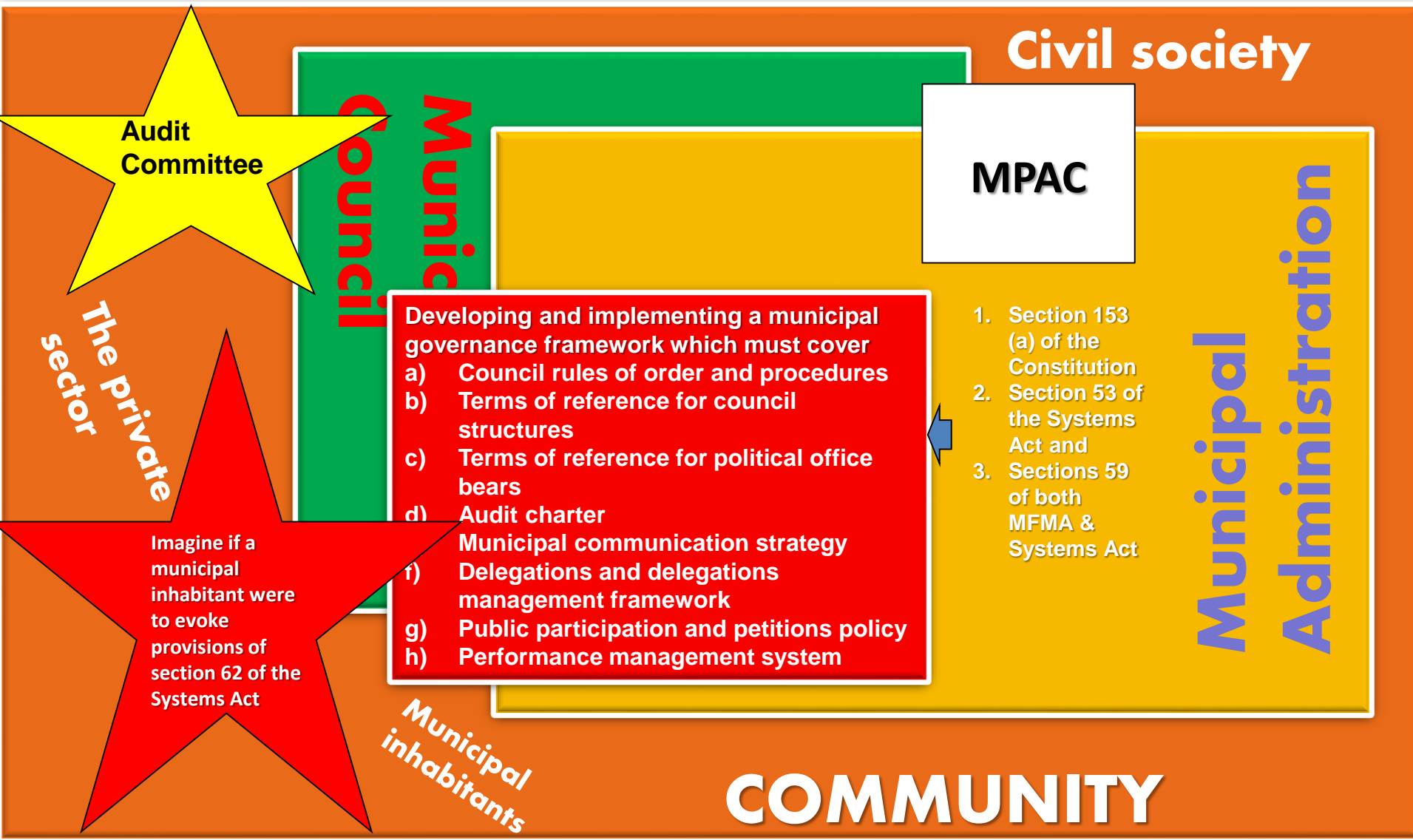
SA LOCAL GOVERNANCE CONTEXT

1. Section 19 of the Municipal Structures Act, 1998, provides
 1. (3) A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.
2. S4 of the Municipal Systems Act provides wrt the duties of a municipality:
3. (2) The council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has the duty to-
 1. (c) **encourage** the involvement of the local community;
 2. (e) **consult** the local community about-
 1. (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and
 2. (ii) the available options for service delivery;
4. Section 5 of the Systems Act addresses the rights and duties of members of the local community.

SA LOCAL GOVERNANCE CONTEXT

- S6 of the Systems Act addresses the duties of the municipal administration:
- (b) *The administration of a municipality must-*
 - (d) *establish clear relationships, and facilitate co-operation and communication between it and the local community;*
 - (e) *give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive, and*
 - (f) *inform the local community how the municipality is managed, of the costs involved and the persons in charge.*
- Ch. 4 of the Systems Act, being sections 16-22 is entirely devoted to community participation and addresses *inter alia* the following aspects:
 - **development** of a culture of community participation;
 - **mechanisms, processes and procedure** for community participation;
 - communication of information concerning community participation;
 - public notice of meetings of municipal councils (**as a means to notify and invite NOT mere compliance**); and
 - admission of public to meeting and communications to local communities.
- Many other legal provisions underpinning the (desired) participatory nature of LG.

What is a municipality section 2 MSA



Section 141 (3)(bb) of MFMA

1. Executive Mayoral
2. Collective Executive
3. Plenary system
4. District reps

Another way of looking at sections 100 & 139?

What does this mean? Should it be left to governance to define and determine the extent?

Have we allowed the government a wide space to dictate

1. Indicative
2. Informative or
3. Substantively consultative (Joint visioning)

What role can civil society play in the actual delivery at project level?

To what extent have we allowed Community Representatives to be party co-opted inside the council?

- Layers of accountability which in my view are an opportunity for civil society

Participatory planning, budgeting & performance reviews

Participatory delivery mechanisms

Inclusive governance

1. Structures
 - Ward Committees
 - Oversight structures
 - MPAC
 - Audit Committees etc
 - Council Committees

1. To what extent do demand to participate?
2. What role can we play to compel the three spheres of government to operate as a systematic single who?

Are our municipalities in a state of incompleteness due to the less pronounced role of the third leg?

Mixed electoral system

1. Political reps
2. Community reps

Intermeshed legislative and executive powers

Composition of these structures

Definition of a municipality

How organised and poised are you to claim your space in municipalities as civil society?



GOVERNMENT RESPONSE TO COMMUNITY PROTESTS

There is ample evidence that in many instances members of the community try other means of engaging with authorities before they embark on protest actions.

Government Response before the protest (in certain instances):

- Letters and petitions submitted by community members are ignored;
- Leaders make promises that are not kept;
- Send junior ranking officials to interact with members of the community;

Government Response during the Protest (in certain instances):

- Deployment unprepared members of the SAPS;
- Leaders visit protest areas not as government, but as leaders of political parties

Government Response after the protest action (in certain instances):

- Top leadership visit areas, meet with communities and make promises;
- Weak communication;
- Register grievances and do very little to address them;
- No action taken against those destroying property;
- No action taken against officials who might have neglected their duties :

CONCLUSION

- Clearly, practice has shown that election to public office is not an end in itself; equally important is keeping the elected representatives to their promises.
- Participatory democracy is of particular importance at the local level, allowing the community to identify with the political institutions that govern them and fostering a sense of ownership over common resources.
- Inclusive governance requires that all the inhabitants of the community claim their rightful place in local governance.
- But this requires a strong public that can interact with LG in an informed and directed manner and use the spaces available for participation on key decisions for more effective local solutions.
- In this regard, it is incumbent on LG to encourage and create conditions for the local community to participate in the affairs that govern them.



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