



# ANTI-CORRUPTION GUIDE & TOOLS FOR CIVIL SOCIETY

Providing civil society organisations and  
activist networks with tools required to  
combat corruption.

**Published by the**

Deutsche Gesellschaft für

Internationale Zusammenarbeit (GIZ) GmbH

**Registered offices**

Bonn and Eschborn, Germany

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**As at**

March 2024

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On behalf of the

German Federal Ministry for Economic Cooperation and Development (BMZ)

This guide was conceptualized and published by The Ethics Institute and the Transparency, Integrity and Accountability Programme in South Africa (TIP), based on an understanding of the needs of individuals in Civil Society Organisations (CSOs). TIP is a partnership programme agreed to between the governments of Germany and South Africa. It is co-financed by the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Swiss State Secretariat for Economic Affairs (SECO) and is implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in partnership with the Department of Planning, Monitoring and Evaluation (DPME).

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Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

2024

ISBN: 978-0-7961-6217-5

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# Introduction

# Introduction

## 1. Background

Corruption is a problem that impacts negatively on people's lives. Resources are stolen, municipalities are broken, job creation is stifled, and services are not delivered.

Each person living in South Africa is impacted by corruption. It undermines the rule of law, ethical principles, and sustainable economic growth. It destabilises our society – threatening our democracy's foundational institutions and ideals.

While government is working to address the problem, everyone agrees that South Africa needs a 'whole of society' approach to meaningfully combat corruption. This means that all of society should commit to not engaging in corruption, and all of society should hold each other accountable.

## 2. Why did we put this guide together?

The National Development Plan has a vision of *"a South Africa which has a zero tolerance for corruption, in which an empowered citizenry have the confidence and knowledge to hold public and private officials to account, and in which leaders hold themselves to high ethical standards and act with integrity"*.

This guide was developed to build the knowledge and confidence of communities and to give them tools to help them:

1. Better understand corruption and how it works.
2. Hold their municipalities to account.

The municipal environment is highly driven by legislation and regulations. This makes it rather complicated to know your rights and how things are supposed to work. But, when you do know how things are supposed to work, it empowers you to hold the municipality to their responsibilities.

**This guide is therefore developed to empower people to play their part in reducing corruption.**



### 3. What this guide will help you with

This guide is aimed at civil society organisations and activist networks. It is intended to provide the reader with the knowledge and tools required to combat corruption. It is divided into two parts:

#### PART 1 - UNDERSTANDING CORRUPTION AND PUBLIC ACCOUNTABILITY



This is the theoretical part where we explain:

- What corruption is, and the various ways that it happens. What enables corruption – making it possible, and how we can combat corruption.
- How government works and what citizens' rights are in engaging with government and holding them accountable.

#### PART 2 – CIVIL SOCIETY TOOLS FOR COUNTERING CORRUPTION



This is the practical part of the guide where we give clarity on laws and tools for:

- Participating in municipal decision-making
- Exercising your right to transparent information
- Holding your municipality to account
- Reporting corruption
- Starting a social movement
- Engaging with parliamentarians

While corruption happens in all sectors of society (including both public and private sectors), this guide is mainly focused on corruption in the public sector, and mostly at the municipal level.

## List of abbreviations:

|                                                                                     |                                                    |
|-------------------------------------------------------------------------------------|----------------------------------------------------|
| <b>AG</b>                                                                           | Auditor-General                                    |
| <b>DG</b>                                                                           | Director-General                                   |
| <b>DPSA</b>                                                                         | Department of Public Service and Administration    |
| <b>HoD</b>                                                                          | Head of Department                                 |
| <b>IDP</b>                                                                          | Integrated Development Plan                        |
| <b>IPID</b>                                                                         | Independent Police Investigative Directorate       |
| <b>MFMA</b>                                                                         | Municipal Finance Management Act                   |
| <b>MM</b>                                                                           | Municipal Manager                                  |
| <b>PAIA</b>                                                                         | Promotion of Access to Information Act             |
| <b>PAJA</b>                                                                         | Promotion of Administrative Justice Act            |
| <b>PP</b>                                                                           | Public Protector                                   |
| <b>PRECCA</b>                                                                       | Prevention and Combating of Corrupt Activities Act |
| <b>PSC</b>                                                                          | Public Service Commission                          |
| <b>SAPS</b>                                                                         | South African Police Service                       |
| <b>SCM</b>                                                                          | Supply Chain Management                            |
| <b>SDBIP</b>                                                                        | Service Delivery Budget Implementation Plan        |
| <b>SIU</b>                                                                          | Special Investigating Unit                         |
| <b>SLA</b>                                                                          | Service-Level Agreement                            |
|  | Practical Tools                                    |
|  | What you can do                                    |
|  | Additional Resources                               |



# PART 1

## UNDERSTANDING CORRUPTION AND PUBLIC ACCOUNTABILITY

## A. Understanding corruption



In this section we provide you with:

- An understanding of the common and legal definitions of corruption
- Practical examples of how corruption manifests so you can recognise it when you see it
- An understanding of things that enable corruption, or make it worse
- An understanding that not everything bad is corruption
- An indication of signs that corruption is happening
- Some thoughts on how we can fight corruption

In this section we unpack the concept of corruption.

It is important for citizens to be able to recognise corruption, and then to do something about it. If we don't play our role as citizens, we run the risk that corruption will become the norm.

All fundamental development challenges are worsened by corruption – the lack of access to healthcare, inadequate education, lack of economic growth – and joblessness.

Corruption impacts us at a country level in that it impacts our economic growth prospects. Many people decide to leave corrupt countries as they are seen as unstable. This means there are fewer people paying taxes, less economic growth, and less money to spend on development.

It impacts us at a community level; for example, corruption in tender processes results in housing, water, schools or roads not being delivered. It can also damage the criminal justice sector (police, prosecuting authority and courts) – which means that criminals are not held accountable – thereby increasing levels of crime in the community.

All of the above also affects us at the individual level. There is less money to go around, fewer jobs, and more corruption at the transactional level. This makes it more difficult to get electricity connections, ID documents, hospital services, and access to schools. There is also considerable evidence that corruption undermines confidence in government and faith in democracy and can be a significant contributor to political instability and, in extreme cases, civil unrest.

## 1. What is corruption?<sup>1</sup>

We all have a relatively good idea of what corruption is, as we frequently see it in the news. But not everything we think of as corruption is necessarily legally corrupt. Let's look at two definitions of corruption – a common definition, and a legal definition.

### 1.1. Common definition

The common definition of corruption, as used by Transparency International is –



***Corruption = The abuse of entrusted power for private gain.***



A key concept is **entrusted power**. If I am appointed as a public servant, I am entrusted with the responsibility to do my work professionally in the interest of the public. If I am appointed in a private sector company, I am entrusted with the responsibility to do my work in the interest of the company. If I then abuse this entrusted power for private gain, it is corruption.

It is important to keep in mind that corruption can take place in the private as well as public sector.

### 1.2. Legal definition

In South Africa, corruption is legally defined by the Prevention and Combating of Corrupt Activities Act (no. 12 of 2004) – also known as PRECCA.

In short, this Act says that:



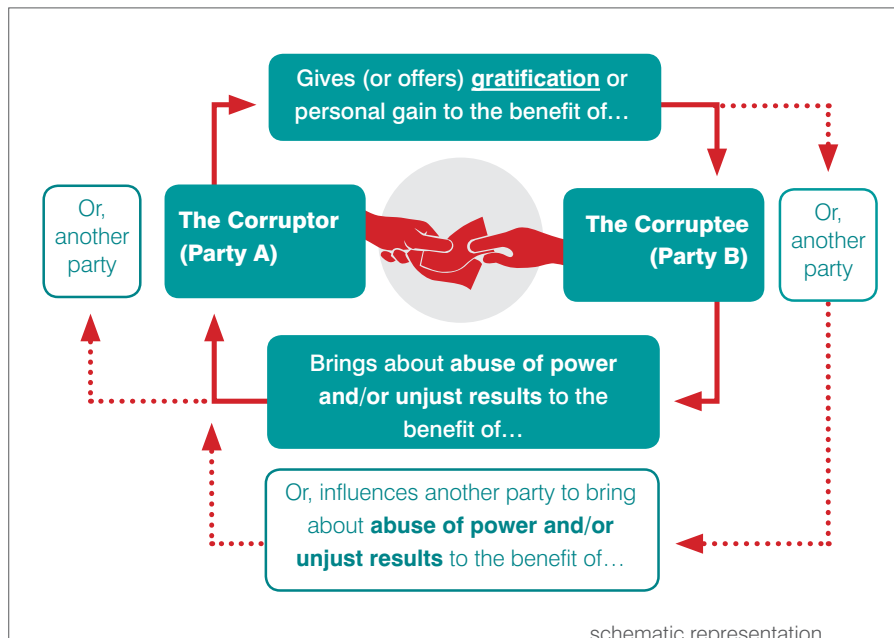
***Corruption = When one party gives another party anything of value with the purpose of influencing them to abuse their power.***

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<sup>1</sup> Large parts of this section are adapted from the *Business Unity South Africa – Anti-Corruption Guide for SMEs (2009)*, developed by The Ethics Institute and funded by GIZ (both under previous names).

The most common example of corruption would be when a person pays a bribe to avoid a traffic fine. In this case the item of value (which the Act calls 'gratification') is usually money, and the abuse of power is that the traffic officer does not give a fine (or arrest the person) as they are supposed to. The person who offers the bribe (the corruptor) as well as the person who accepts a bribe (the corruptee) will be guilty of corruption.

This can be graphically represented as follows:



### Some other things in the Act which you might not know:



- 'Gratification' **does not have to be money**. It can also be gifts, entertainment, loans, employment, or any other benefit such as sex or sexual favours.
- The parties can be either **people or organisations**.
- If you bribe a public official in **another country** you can also be charged for corruption in South Africa.



- You don't actually have to hand over any 'gratification'. If you **merely offer** a bribe you can be charged for corruption. Of course, this works both ways – if you simply ask for a bribe you can be charged for corruption.
- If you are a business owner or senior manager, and you know of corruption, fraud, or extortion involving **more than R100 000**, you have a duty to report it to the police. If you don't report it, you could be found guilty of a crime.
- The Act specifically criminalises corruption relating to **tenders, contracts, agents, public officers** and a number of other matters.

### 1.3. Examples of corruption

Corruption happens in many different ways. Here are a few examples:

#### Bribery

- Bribery is basically what the PRECCA law refers to – giving any item of value to illegitimately influence the actions of an individual holding an official duty. A bribe implies that you are making a payment to convince the official to do something they should not do.
- Paying a school principal to give your child a space in the school, even when your child does not qualify, is a bribe. Or paying the traffic officer money to let you go without a fine even though you have been speeding.

#### Kickbacks

- This is when someone receives a contract, and then pays a part of the profit back to the person who gave them the contract. It is basically a bribe.

#### Facilitation payments

- This is paying to fast-track a routine government action to which you are entitled.
- For example, you are applying for a liquor license. You would probably have received it anyway if everything was in order, but it would've taken much longer if you hadn't paid the official.
- According to PRECCA, such payments would fall within the definition of an unauthorised gratification, and as such, would amount to corruption..

## Sexual corruption

- Corruption can also involve the abuse of power for sexual favours – for example, giving someone a job in exchange for sex.
- Giving sexual favours to influence decisions will be considered a form of 'gratification' under the PRECCA law, and will therefore be legally corrupt.

## Self-dealing

- This entails disregarding your entrusted power and awarding a contract to yourself or a company in which you have a share. (E.g., giving someone a catering contract because your company will subcontract for the drinks.)



- Municipal officials are not allowed to be given contracts with any organ of state. In other words, they can't do business with their (or other) municipalities.
- Public officials must provide an annual disclosure of interest wherein they disclose any financial interests that they have in companies.

## Nepotism

- Awarding jobs or tenders to family members, or companies belonging to family members.



- A disclosure of interest is also required by family members of public officials when they apply for a job, or submit a tender. This is to ensure that there is no undue influence in these processes.

## Cronyism / patronage politics

- Cronyism is a practice of awarding jobs and other advantages to friends, business associates, or political allies. For example, cronyism occurs when appointing 'cronies' to positions of authority regardless of their qualifications.
- The practice of 'destructive deployment' is an example of this. People are given positions based on political affiliation rather than on merit. This leads to incompetent and biased people in positions of authority.

## State capture / criminal capture

- State capture is a type of systematic corruption whereby a small interest group takes control of the state institutions and processes, directing public policy and public expenditure away from the public interest and instead fulfilling their own interests. This is what the Zondo Commission found had happened in the relationship between former president Jacob Zuma and the Guptas.



- Capture can also happen at other levels of government, for example, in municipalities. Here a network of 'cronies' captures the municipality and directs resources towards themselves. In effect, a group of criminals are robbing the municipality of its resources, but through bureaucratic means.



### **Extortion**

- Extortion is slightly different to corruption. While corruption has two guilty parties, extortion has only one.
- Extortion is when someone is threatened or intimidated into giving money or other property. Extortion generally involves a threat being made to the victim's person or property, or to their family or friends. It can also entail the threat to expose the details of someone's private life to the public unless some form of payment is exchanged.
- An example would be gangs threatening a business owner to pay them or they will damage their property.
- Cyber sextortion is a form of extortion that frequently starts with sharing of explicit images. The person who received the images then threatens to make them public unless the other person has sex with them or shares more images.

## **2. Things that enable corruption**

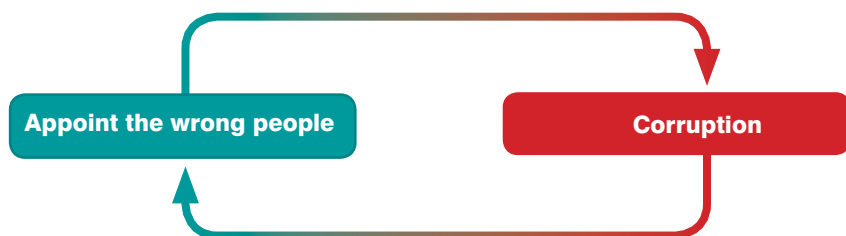
While they are not legally corrupt, there are some actions that lay the foundation for corruption to happen – especially in municipalities. Communities need to be especially aware of these issues so that they can act in time to ensure that the governance systems are not broken.

### **2.1. Wrong appointments**

Based on our research, we've found that the one thing that destabilises municipalities most is the appointment of inappropriate people into the administration of municipalities. This is a type of cronyism, and it is especially important for communities to be vigilant about this due to the destructive effect that wrong appointments can have on municipalities.

Think about it like this: According to the legislation, politicians do not have any power to decide who gets tenders. They do, however, have the power to appoint municipal managers and the managers directly below the municipal manager. If they appoint their cronies into these positions, their cronies can easily be influenced to award tenders wrongfully, or to appoint other cronies into the administration. If these cronies refuse to do what the politicians say, they can quite easily be fired by a political decision as well. They therefore have to do what the politicians say, otherwise it will be a 'career-limiting move'. In this way, the decision-making structures of the municipality can become captured by criminal networks.

What's more, because of patronage politics and cronyism (made worse by the deployment of incompetent people), the administrative system of municipalities is negatively affected. In other words, corruption leads to incompetence. And incompetence makes it easy for people to be corrupt.



From a community perspective, it is critical to understand the importance of appointing professional and ethical leaders into the administration.



**This is the most important place to get involved. If the wrong people are appointed, you will struggle with corruption and inefficiencies all the time.**

Some checks and balances have been put in place to ensure that the wrong people are not appointed. **See section C.iv.1 on page 39 for more on this and what you can do.**

## 2.2. Wrong councillors

It is important to note that minimum competency requirements apply only to people in the administration – not councillors. Councillors are elected, not appointed. As such there are no specific criteria that they need to comply with. (The SA Human Rights Commission have recommended that minimum competency levels should be introduced, but we are far from this happening.)

While it is important to the democratic process that everybody should be able to be represented on the council, our research has found that without a good understanding of governance and municipal laws and policies it is very difficult for councillors to provide oversight. This means that in effect there is no-one who has the skill to check the work of officials. Therefore, if officials are corrupt, it will be almost impossible to hold them to account.

There are no real checks in place to deal with this. Communities should therefore engage with political parties to ensure ethical and competent councillors are put forward as candidates. See the Code for Ethical Leadership in Local Government below (p14).



**It is important to realise that ethical leaders without the required competence will still be ineffective.**

### What can you do?



Where the right level of skill does not exist within council, communities can advocate for the appointment of independent external people on oversight committees. Here it frequently helps to get professional people such as accountants or auditors – especially onto financial oversight committees, such as the audit committee.

As an individual you can also do your best to vote for people who are both ethical and competent.

## 2.3. Unethical culture

Where leadership is weak (or leaders change too frequently), and inappropriate people have been employed in the system, it is unlikely that a positive ethical culture of professionalism will develop. Good governance systems may not be implemented, people

may not abide by the legislation, and policies and procedures may be bypassed. People may not follow the rules, and may not be held accountable.

There is a direct correlation between an ethical culture and the audit performance of municipalities. The following research from the Local Government Ethical Leadership Initiative shows the agreement scores for municipalities who have adverse (bad) audits, and those who have clean (good) audit outcomes for the question: **“To what extent do you agree that the following undermines ethical leadership in your municipality?”**

As you can see, the environment is much more ethical in municipalities where there are better audit outcomes.

| “To what extent do you agree that the following undermines ethical leadership in your municipality?” |                                                                              | Adverse / disclaimer audit | Difference | Unqualified / clean audit |
|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|----------------------------|------------|---------------------------|
| 1                                                                                                    | Criminal elements capturing the municipality                                 | 71                         | -32        | 39                        |
| 2                                                                                                    | Corruption in supply chain management                                        | 75                         | -31        | 43                        |
| 3                                                                                                    | Provincial government abusing s139 interventions for political purposes      | 66                         | -29        | 37                        |
| 4                                                                                                    | Personal greed                                                               | 79                         | -28        | 51                        |
| 5                                                                                                    | Instability in top management                                                | 69                         | -28        | 41                        |
| 6                                                                                                    | No consequences for councillors when they do wrong                           | 80                         | -28        | 53                        |
| 7                                                                                                    | No consequences for senior managers when they do wrong                       | 71                         | -25        | 47                        |
| 8                                                                                                    | The danger of taking a stand for “what is right” - you can get hurt / killed | 78                         | -25        | 53                        |
| 9                                                                                                    | Lack of education, skills and qualifications among officials                 | 65                         | -23        | 42                        |
| 10                                                                                                   | Officials misrepresenting facts to councillors                               | 64                         | -22        | 41                        |

For a professional culture to develop, everyone must be aligned on a common purpose. If this alignment is in place, people will be appointed to fulfil this purpose, and will be effectively managed to achieve it.

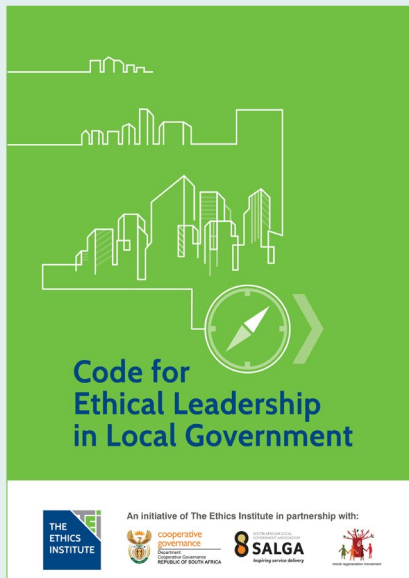


**It is important that as civil society we elect leaders who are ethical and also insist that the municipality appoint ethical staff.**



## ADDITIONAL RESOURCES

The *Code for Ethical Leadership in Local Government* was developed specifically to address challenges with ethical leadership in local government. Communities can require that their leaders uphold the Spirit and Principles of the Code, so that the desired Outcomes are achieved.



For more information on the Code scan the QR code below or visit [www.tei.org.za/lgeli](http://www.tei.org.za/lgeli)

### 3. What is NOT corruption

We often think that anything that goes wrong in government is corruption. This is not necessarily the case. Sometimes things go wrong because of lack of planning, or lack of skills and resources. Sometimes people also just make mistakes.

From a community perspective, it will still be frustrating when you do not receive the services you require, regardless of the reason. But you should be careful of accusing people of corruption when this is not the case.



**Keep in mind that most public servants are honest people who want to serve the public. Don't treat those people who are honestly trying to do their jobs as if they are corrupt.**

### 4. What are signs of corruption?

Corruption is generally done in secret, and it is therefore very difficult to know when it is happening. Here are a few red flags, or warning signs:

#### Decisions that don't make sense

Sometimes you can see that something has been purchased, or built, and that this is not a logical use of resources. In the South African legislation this can be:



- **Unauthorised expenditure** – Where something was bought even though there was no budget for it;
- **Irregular expenditure** – Where something was bought without following the right procedures;
- **Fruitless and wasteful expenditure** – Where there was no need for the product or service, or there was no public benefit from the product or service.

#### Too much secrecy

Where there is corruption people will likely want to hide the details of the transaction. Information that should be publicly available might not be, and you can't get information even when you ask for it.

## Unexplained wealth



When people suddenly come into a lot of money, they can generally explain how that happened. For example, a relative might have left them money in their will, or they had a business success, or sold an asset. When people cannot explain where their money comes from it becomes suspicious.

At the same time, people do have a right to privacy, so it might be difficult to find out. Ask yourself if you would be comfortable discussing your financial situation with the public. There is, however, a requirement that public representatives (i.e. councillors) disclose their financial interests. A portion of this disclosure should be made public.

The website [www.korruptiontorjunta.fi](http://www.korruptiontorjunta.fi)<sup>2</sup> gives the following warning signs of corruption:

### Problems with decision-making



- **Secrets:** Documents and information that according to law should be made public have not been published. Decisions and the reasoning behind them are not disclosed to stakeholders or employees.

- **Decisions that repeatedly benefit a specific partner:** Employee and organisational interests are continuously marginalised or ignored due to ambiguous/unclear criteria.



- **Centralised power:** Contract management, ordering, and invoice processing are among the tasks that fall under the job scope of one person or department and there is no oversight function.



- **Conflicts of interest and long job tenure:** When the head of procurement has been there for 10 years, they know how to get around the system without being caught. For example, giving close relatives tenders because they have different surnames.

<sup>2</sup> <https://korruptiontorjunta.fi/en/how-to-recognise-corruption>

## Finances



- **Dubious invoices:** What is being charged is not stated simply and clearly on invoices.



- **Very large payments:** The payment amount exceeds the service or product's real cost.



- **Very large entertainment expenses:** Unusually large amounts have been spent to entertain an external party.
- **Financial reporting flaws or errors:** Funds have been added or disappeared, but the reporting has not disclosed or explained where the money came from or went to.

## Suspicious procurements



- **Very large or unreasonable procurements:** Material ordered for the organisation without any real use for it, such as large stationary orders.



- **Approving poor products or services:** Even when goods or services develop problems, they are not replaced with better ones.



- **One service provider keeps winning contracts:** The municipality will go through a competitive tender process; however, the same company always wins the contract.

## Competitive tendering shows signs of cartels (criminal organisations/gangs)



- **Unexpected lack of tenders:** A business that was anticipated to submit a bid for a contract chooses not to.
- **Unusual tenders:** For no apparent reason, one tender is significantly different to the others.



- **Withdrawing from competitive tendering:** One of the tenderers voluntarily withdraws.
- **Deliberate failure:** A simple oversight by one of the tenderers causes the company to be eliminated from the competitive tendering process.



- **Losing companies become subcontractors:** The company that lost the competitive tender becomes a subcontractor of the winning company.



## 5. How can we combat corruption?

Corruption is complex, and tackling it requires action by all of society, including the public sector, private sector communities and civil society.

In theory, we can combat corruption by:



- Limiting monopoly power
- Limiting discretionary decision-making
- Increasing transparency
- Ensuring accountability
- Improving ethics

**Limiting monopoly power** may not be possible, as the state is the only one that is going to provide certain services for free (e.g. healthcare and schooling), and is the only party that can provide certain other services – such as granting citizenship. We should therefore focus our attention on other places.

**Limiting discretionary decision-making** is mostly achieved through legislation, regulation and policies that aim to improve governance. In South Africa there is a very good regulatory framework in place in most instances. This frequently involves:

- Taking big decisions through committees rather than by individuals;
- More than one person or committee signing off on decisions;
- A more diverse range of people on committees;
- More knowledgeable people on committees;
- Automation of processes to try and limit discretionary decision-making;
- Limiting the public interface to reduce chances of the public offering bribes to officials.

Due to the above, we have fairly complex legislation around public procurement, the distribution of public money, and the appointment of public officials. While it is not really in the power of the public to improve regulations, we can try to ensure that the regulations are adhered to through increased transparency and accountability.

**Increasing transparency** is achieved by the legislation stating that certain decisions need to be overseen by committees or public representatives (politicians), but also by ensuring that certain information should be accessible to the public. **This is one area where the public can and should play a more active role to ensure that the information that should be public is made public.**

**Ensuring accountability** is sometimes quite difficult. Even though information is made public, and the public might strongly suspect that corruption has taken place, those with the power to hold others accountable might not do so. **It is then up to the public to try and ensure accountability through public pressure. Citizens can also report wrongdoing to the relevant authorities.**

**Improving ethics** might also seem difficult. It is frequently a function of leadership, which is why it is so important to choose leaders well, and to also hold our leaders accountable. We should also provide oversight when senior officials are appointed into our departments and municipalities to ensure they are competent and ethical. But it also helps to build an ethical society where the standard of ethics of all people is improved.

## B. Understanding public accountability

In this part we provide an overview of the way in which government in South Africa is structured and the avenues through which society can engage with government.

The purpose of this section is to provide the reader with:

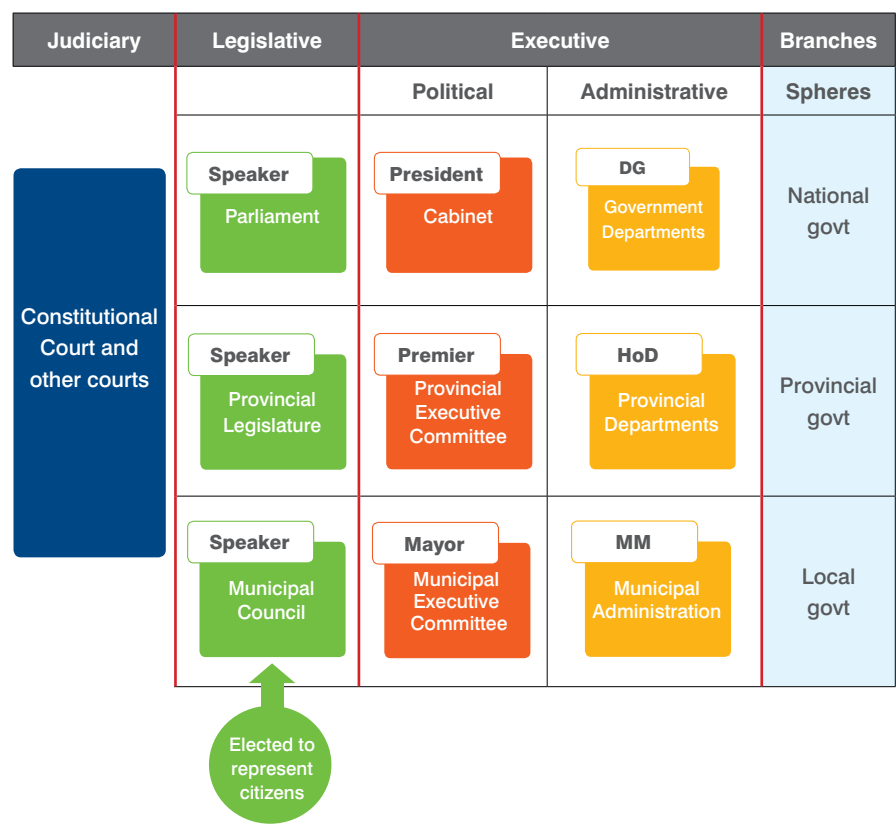


- An understanding of the spheres of government, their roles – powers and functions
- The role of society in terms of public accountability

# 1. Structure of government

The most important thing to know about South Africa’s system of governance is that it is a **constitutional democracy**. Chapter 1, Section 1(c) of the Constitution says that the Republic of South Africa is founded on the “supremacy of the Constitution and the rule of law”. This means that the Constitution is the highest law of the land, and no other law may conflict with it; nor may the government do anything that goes against it. All government decisions should therefore be in line with the Constitution.

The second thing is that our governance system is based on a separation of powers between the different branches of government. These branches are the Legislative, Executive, and Judiciary. No one branch of government holds all the power.



The judiciary seeks to ensure that all actions of citizens (including the Legislative and Executive branches) are in line with the laws of the country, and especially the Constitution.

Citizens vote to get public representatives into Legislative positions – be it in Parliament, Provincial Legislature, or Municipal Council. The Legislative branch writes the laws of the country and is responsible for holding the Executive to account. The head of the Legislative branch is the Speaker of Parliament.

The Executive branch (also known as the government) governs the country and seeks to implement laws and policies. It forms and manages government departments to try and fulfil its obligations as set out in the Constitution. The head of government is the President.

The President will appoint a cabinet of ministers to be the political heads of these departments. They will in turn appoint Directors-General to head up each of the departments.

This structure is then repeated at the provincial and municipal levels. All three spheres of government are collectively called the **public sector**.

However, the **Public Service** is only made up of national and provincial governments. They fall under the Public Service Act, the Public Service Regulations, and the Public Finance Management Act. These can be easily accessed at <https://www.dpsa.gov.za/legislation/>

Our Constitution envisages that government is accountable to citizens and society for the decisions and actions which it takes. The legislative arm provides oversight of the executive. Government must also consult with communities about projects that impact on them. In addition, citizens have the right to hold government to account for the decisions or actions they take, and to be given reasons from government for the decisions that affect them.

The link with communities is especially important in municipalities. We tend to think of the municipality as only the council and the municipal officials.

The Municipal Systems Act, however, says that there are three, not two components:

- i. the community;
- ii. the administration (officials); and
- iii. the political structures (councillors).



**The community is an integral part of the municipality, and it plays an important part in ensuring good governance.**



### ADDITIONAL RESOURCES

For a more comprehensive view of the structures of government, please refer to:

- <https://www.etu.org.za/toolbox/docs/localgov/webundrstdlocgov.html>
- <https://www.gov.za/about-government/government-system/structure-and-functions-south-african-government>
- <https://www.gcis.gov.za/sites/default/files/docs/resourcecentre/yearbook/11-GovernmentSystems2018.pdf>



The focus of this guide is mostly on the municipal sphere of government, as that is the level at which services are mostly delivered and where citizens engage the most.

### Civil society's role in countering corruption

Now that we have a better idea of what government is and can recognise what corruption is, let's focus on your role as civil society in countering corruption – i.e., what can you do?



### Some of the ways in which you can play your role as a citizen:

- **Vote:** Elect ethical leaders who will represent your interest.
- **Monitor how your elected leaders conduct themselves once in office:** Do they deliver on their promises?
- **Know your rights:** Understand the Constitution and laws and what these mean for you.
- **Know your municipality:** Who are your municipal leaders?
- **Understand how a municipality should function:** What are the processes the municipality should follow?
- **Participate in municipal decision-making processes.**
  - Engage in public participation processes around matters that affect your interest.
  - Communicate with your municipality through written and oral submissions.
  - Attend forums and meetings convened by the municipality, providing inputs.
- **Hold your municipality to account:** Understand what it should be doing, and hold them accountable when they don't do what they say they will do. Ask questions.
- **When something goes wrong, report it through the appropriate channels.**
  - Lodge complaints when services are not what they are meant to be.
  - Report illegal activities/ corruption when you see it.



**Your role as a citizen is critical. Empower yourself, know your rights, and use your voice**



# **PART 2**

## **CIVIL SOCIETY TOOLS FOR COUNTERING CORRUPTION**

In this section we provide practical ways in which civil society can counter corruption based on existing legislative instruments. The aim is to empower civil society members to follow legitimate avenues for having their voice heard.

We outline:



- Formal processes for participating in municipal decision-making;
- How to exercise your right to transparent information;
- How to hold your municipality to account using legislation;
- How to report corruption;
- How to build a public awareness campaign around corruption.





## A. Participate in municipal decision-making processes

Municipalities are required by law to encourage their communities to be part of their municipal decision-making processes. Chapter 4 of the Local Government Municipal Systems Act says the following:

### **Development of culture of community participation**

*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 the preparation, implementation and review of its integrated development plan in terms of Chapter 5;*
  - i. the establishment, implementation and review of its performance management system in terms of Chapter 6;*
  - ii. the monitoring and review of its performance, including the outcomes and impact of such performance;*
  - iii. the preparation of its budget; and*
  - iv. 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).*

Municipalities must develop a culture of participation by creating mechanisms, processes, and procedures for community participation, communicating information to the community, giving notice of municipal meetings to the public, allowing the public to attend council meetings, making certain documents available to the public and making information available on their websites.

Municipalities must encourage the involvement of communities in municipal decision-making processes by:

- facilitating the submission of recommendations and complaints to councils;
- keeping communities informed of council meetings and decisions and updating them about municipal affairs, including finances; and
- encouraging them to attend open meetings of the council.

In order to ensure the inclusion of all citizens, the municipality must ensure that citizens who cannot read or write and people who have disabilities should receive special assistance so that they are able to understand what is being discussed. In addition, the municipality must also accommodate the language preferences of the community.



### **What can you do?**

- Know where and how to access information that your municipality publishes about community participation processes.
- Engage your local councillors.
- Understand the needs of your community.
- If you have a skill that you can use to help make the needs of your community known to the municipality, offer that skill.
- Participate in municipal decision-making processes.
- If municipal records including council agendas, minutes of meetings and other public documents and records are not made routinely available, speak out and seek access.



**Make your voice heard.**

## B. Exercise your right to transparent information



### Think about this scenario:

You own a small business that sells paint. Since you also have another business to run, you appoint a manager to run this business on your behalf. This manager runs all aspects of the business, including the bookkeeping and bank accounts. After a few months you go to the manager and demand to see the financial books as well as the bank account. He refuses, saying it is confidential information.

Clearly this is not right. It is your money, and you have a right to know how it is being managed.

In the same way, government spends citizens' tax money. We elect politicians and appoint officials to manage our money effectively, and to spend it in our interest. As such, we have a general right to know how the money is being spent. The law requires this and the public have a right to know how these resources are being used.

### 1. Know the Constitution

As is set out in the following extract from the Constitution, people in South Africa should, as a general principle, have access to all information held by the state. In other words, there is a general rule that things should be transparent.

#### **Section 32 of the Constitution**

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.*

*(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.*

When you ask for information, you may, however, be told that this right to information is limited, and that you can't have access to the information. This may be true in some cases, BUT the state is required to provide good reasons should it decide to refuse you access to information.

Let's again see what the Constitution says:

### **Section 36 of the Constitution**

36. (1) *The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –*
- (a) the nature of the right;*
  - (b) the importance of the purpose of the limitation;*
  - (c) the nature and extent of the limitation;*
  - (d) the relation between the limitation and its purpose; and*
  - (e) less restrictive means to achieve the purpose.*
- (2) *Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.*

It gets a bit technical, but the core principle is that the limitation needs to be reasonable and justifiable. In other words, they can't just give you random reasons – the law provides a specific list of what information may or must be refused under certain circumstances. Some reasonable examples would be:

- i. The police are investigating a case, and the information that they have is confidential, because if they release it, it would jeopardise their case.
- ii. The Department of Home Affairs cannot give you a list of all South Africans' contact information, as this is confidential. They are entrusted to keep it, but can't share it. You wouldn't want your personal information to be shared.
- iii. A municipality that is busy with a big tender can't give you the full tender documents submitted by a bidder, as this would have all of their confidential pricing information. They do, however, have to give the overall price that each company quoted, and their reasons for contracting with the winning bidder if they were not the cheapest. Then they also need to provide all of the information on what they paid in the end.

## 2. What to do if you are not given the information you ask for?

### 2.1. Promotion of Access to Information Act

Example: You are the leader of a local community forum. Your councillor said three years ago that your area was getting a new library. This was supposed to be completed in two years. So far you have seen no work on the ground. Your councillor arranges for someone from the municipality to come and give you feedback. They say that the contractor was appointed, but after their first payment they never started work. You now want information on the process that was followed to appoint the contractor, who all the contractors were that submitted bids, and whether this was the best contractor. You also want to know who signed off on the payment before any work was done. The official says that this is all confidential information. They can't explain why it should be confidential, and you believe you are entitled to the information.

If someone refuses to give you the information that you think you are entitled to, you can use the Promotion of Access to Information Act (PAIA). If you follow the procedure set out in the Act (including the appeal procedure), and they still deny you the information, you can take the matter to the Information Regulator to decide if their decision is fair. If the Information Regulator says they must give you the information, they have no choice.

PAIA gives effect to the right to access to information set out in section 32 of the Constitution. The government cannot refuse to give information that is necessary for you to exercise or protect your Constitutional rights, neither can private organisations. When requesting information from a private organisation you must state which constitutional right you are protecting or exercising. However, when looking for information from the government, you don't need to provide reasons about what right you are protecting.

Below, we give a very simplified overview of PAIA. If you want more detail, please look at the following resources:



## ADDITIONAL RESOURCES

The Information Regulator is the government agency responsible for dealing with Access to Information issues in SA. They compiled the following guide:

- Guide on how to use the Promotion of Access to Information Act 2 of 2000
  - [https://infoeregulator.org.za/wp-content/uploads/2020/07/PAIA-Guide-English\\_20210905.pdf](https://infoeregulator.org.za/wp-content/uploads/2020/07/PAIA-Guide-English_20210905.pdf)

Furthermore – each organisation should, on their website, have an Access to Information Guide on how their processes work.

The South African History Archive has a **Freedom of Information Programme** that has some very useful resources to assist communities with access to information:

- PAIA Resource Kit
- PAIA Workshop Guide
- Community Guides
  - <https://foip.saha.org.za/static/training-paia>

## THE PAIA PROCESS

### Step One: Define your request

State what it is you are requesting. In most cases, the more specific the request, the better the chances of getting a positive response.

The main types of PAIA request forms are:

- Form 2: Request for Access to Record [Regulation 7]
- Form 4: Internal Appeal Form [Regulation 9]
- Form 5: Complaint Form [Regulation 10]

## **Step Two: Identify the entity and find the relevant information officer**

As mentioned above, the procedure for requesting records from a public body differs from that of a private body. Therefore, first find out whether you want to request information from a public entity (government) or private entity. Then you will need to find the entity's name, address, and the information officer's name. The entity's website should have all the information you need, as all government departments are required to produce a PAIA manual to help the public complete requests for information. Before going to the department or private entity, try calling to find out the name of the information officer and to check if the information on the PAIA manual is still relevant. Remember, in the "Particulars of record" section, make sure you describe exactly what document you are seeking. Submitting a vague request may delay its processing!

## **Step Three: Complete the form and submit**

Complete the form with all the relevant details and submit. If possible, contact the information officer and ask about the best way to deliver your PAIA request. You may email, post or hand deliver your form.

## **Step Four: Pay any fees**

Request fee and access fee: A request fee will be charged for asking for access to the records. An access fee will be charged if your application was successful and you need photocopies of the document; otherwise, viewing the documents in person will be free.

## **Step Five: Wait for 30 days (or 60 to be safe)**

Your request for information must be responded to by an information officer within 30 days. However, the law permits them to ask for a single 30-day extension if there are specific reasons, such as:

- The request is for a very large number of records;
- The request necessitates a search of records in the office of that body, which is not located in your city or town;
- The request calls for consultation that cannot reasonably be accomplished within 30 days.

## Step Six: Receive their response

Please note, there are circumstances when specific requests will be rejected, for example, to protect state security or the privacy of a third party. It should also be noted, however, that PAIA gives the Information Regulator the authority to censor information from a record, if possible, which could otherwise result in you not receiving the record. For example, if you request a document and paragraph six contains confidential information, the information officer will censor paragraph six and grant you access to the rest of the document.

## Step Seven: Approved or Appeal

If you disagree with the reasons given, you have 60 days from the date of refusal to file an internal appeal. The appeal result must be sent to you within 30 days.

Note, there is **no** internal appeal process for a private body.

If you are still unhappy after the appeal with the public body, or after a refusal from a private body, you can file a complaint with the Information Regulator's Office.

Information Regulator: <https://inforegulator.org.za/complaints/>





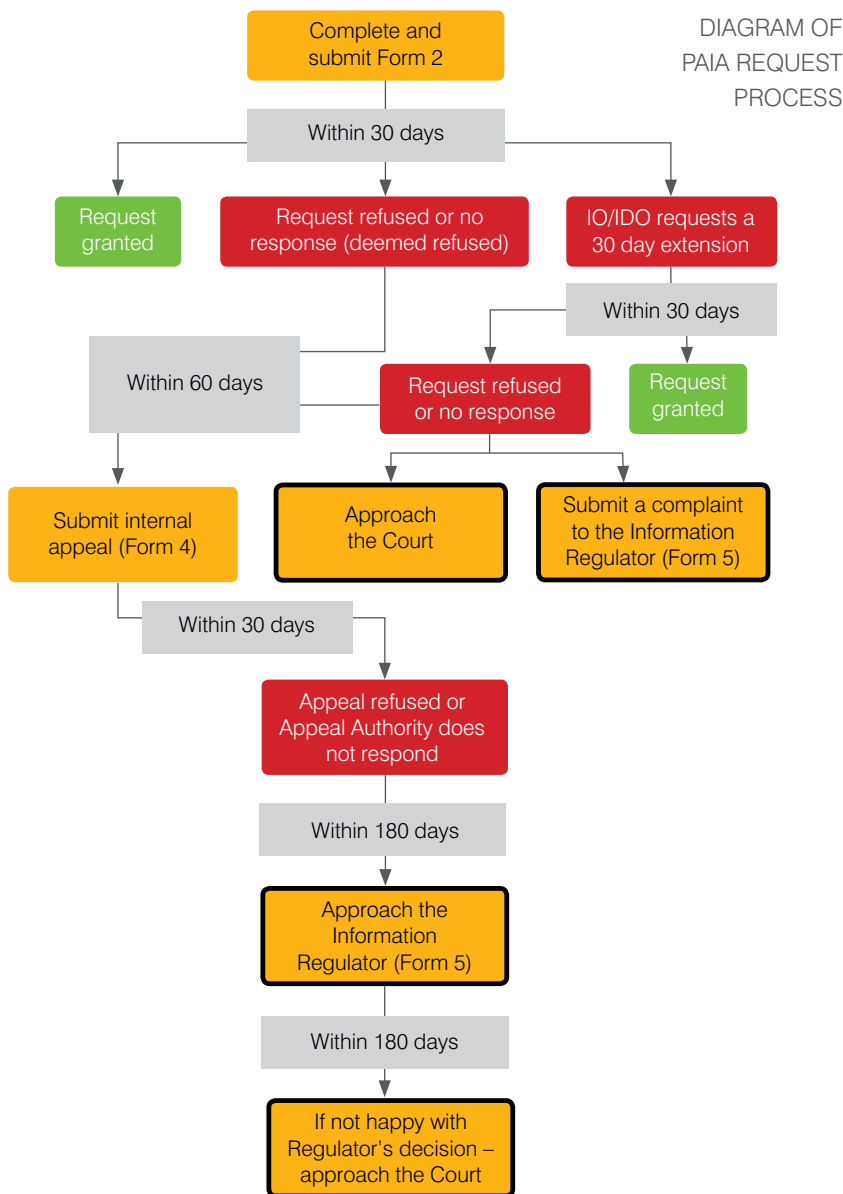


Diagram adapted from the Information Regulator's **Guide on how to use the Promotion of Access to Information Act 2 of 2000**, p.56

## 2.2. Promotion of Administrative Justice Act

Example: You have applied for a payment from the Unemployment Insurance Fund (UIF). After going through the internal processes with the Fund, they say that your case has been decided, and that you are not due a payment. They, however, do not give you reasons as to why this happened, or what you should have done differently.

*The Promotion of Administrative Justice Act, 2000 (PAJA) seeks to give effect to section 33 of the Constitution: “(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.”*



### ADDITIONAL RESOURCES

The Department of Justice has a resources page that deals with PAJA. It is well written and easy to read.

- <https://www.justice.gov.za/paja/faq.htm#:~:text=The%20PAJA%20gives%20you%20a,that%20decisions%20are%20taken%20properly>



## What is administrative action?

The administration is made up of:

- All organs of state, including Parliament, the Presidency, national and provincial departments, the municipal administration, constitutional bodies, public entities, judicial institutions, subsidiaries, SETAs, universities, galleries, museums, theatres, etc.

Any decision taken by the administration that infringes on the rights of people is administrative action.

## Examples:

- Applying for an ID document
- Applying for an electricity connection
- Having a building plan approved

## What does PAJA say about administrators?

Before administrators make any decision that could affect your rights, they must ensure that they follow fair procedures and that you have your say. They must explain the decision clearly and let you know about internal appeals within their department. If there are no internal appeals, you can ask for decisions to be reviewed by a court. They must advise that you can ask for written reasons for decisions.

### Before taking a decision, administrators must:

Inform anyone whose rights will be affected on what they plan to do; and allow them enough time to reply.

## When can I request reasons?

You have 90 days from the finalisation of the decision to request a statement of reasons for any decision adversely affecting your rights. In some cases, a statement of reasons may be provided without your request.

## How do I request reasons?

Make your requests in writing and include the following information:

- State the decision you are requesting reasons for;
- Explain why you think the decision is wrong; and
- Provide your contact information.

## When can I expect to receive reasons?

You must be given reasons within 90 days of the administrator receiving the request. What if I am still not satisfied with the reasons provided?

Some departments give you the right to an internal appeal. You are advised to exhaust all internal appeals before taking any other action. The entity must advise you on how to do this.

If an internal appeal does not exist or you have applied for an internal appeal but are still dissatisfied, you can seek a review of the decision from a court. This must be done within 6 months after the decision on the internal appeal has been made.

It costs a lot of money to take a case on review, so try and see what can be done at the local level.

- Ask a political party in your area for help;
- Complain to the area or regional manager of the department concerned; or
- Complain to your Ward Councillor or Provincial MEC of the relevant department.



#### **IMPORTANT DOCUMENTS:**

##### **1. Form: Request for Reasons**

<https://www.justice.gov.za/paja/docs/2007%2011%2Form%20to%20request%20reasons.pdf>



##### **2. Form: Request for a prior notice and the opportunity to make representations before the decision is made**

<https://www.justice.gov.za/paja/docs/2007%2011%20Form%20for%20Prior%20Notice.pdf>



## C. Hold your municipality to account

Communities can increase transparency and raise accountability by being involved with the municipality.

Corruption can occur in many areas, for example, the allocation of RDP houses and social grants, in citizenship applications, and policing services, to name a few. It is not possible to explain the controls / checks and balances for all corruption-prone transactions. We can, however, give an indication of the rules relevant to some specific areas that are important when it comes to corruption in the municipal sphere.

**Firstly**, it is important to know who is appointed to manage the municipality, if they have the right skills and are not implicated in corrupt behaviour elsewhere. These people will be managing the municipality, and if you have the right people, they should be able to manage everything in a way that leads to less corruption.

**Secondly**, it is important to provide input into what the municipality plans to spend its money on. This avoids spending money on projects that will not benefit the community. It also helps to know how much money is budgeted for certain projects.

Imagine that an upgrade to the water system of your community is being planned. If you know how much was budgeted, and you know who received the tender, and for what amount, then you can also monitor if the project is implemented within budget and up to standard. This may not remove all corruption from the system, but you may get the water system that your community needs.

We will therefore give some guidance on the following areas that citizens can be involved in and provide oversight of:

- i Appointment of senior officials
  - This determines who will manage the municipality.
- ii The compilation of the Integrated Development Plan and municipal budget
  - This determines what the municipality's money will be spent on, and how much is budgeted for certain projects.
- iii Procurement of goods and services
  - This determines how much money the municipality will pay, and who will do the work.

iv Implementation of projects

- This determines whether the work is done to the right standard, and within the budget.

With sufficient knowledge, communities can try to provide oversight of these areas. We will give an indication of some of the controls (or checks and balances) that are in place in these areas, what information citizens can ask for, what information should be public, and how communities can use this information to provide oversight.

## 1. Appointment of senior officials

Council is responsible for appointing the municipal manager (MM) and those senior officials who report directly to the MM. (These other senior managers are called section 56 managers, because this is the section of the Municipal Systems Act that applies to them.)

Council can, however, not appoint just any random person. They need to appoint a suitable person. South African research has shown a very strong correlation between appointing people based on political reasons (as opposed to on merit) and poor performance.



### How the process works

The process and competencies of appointing these officials are regulated by the:

Municipal Systems Act (sections 54A to 57A)

- [https://www.saflii.org/za/legis/consol\\_act/lgmsa2000384.pdf](https://www.saflii.org/za/legis/consol_act/lgmsa2000384.pdf)

Municipal Regulations on Minimum Competency Levels

- [http://mfma.treasury.gov.za/TrainingandValidation/reg\\_gaz/Pages/GazetteNo29967.aspx](http://mfma.treasury.gov.za/TrainingandValidation/reg_gaz/Pages/GazetteNo29967.aspx)





### Some things to note:

- i Due process must be followed. The posts must be advertised nationally to attract a pool of candidates nationwide, and council must then select from this pool of candidates a suitable person who complies with the prescribed requirements.
- ii The people appointed must at least have the relevant skills, expertise, competencies and qualifications. These are prescribed in the Regulations on Minimum Competency Levels.
- iii A decision to appoint these managers is null and void if the person doesn't have the necessary skills, expertise, competencies or qualifications, or if the appointment was not made in line with the Municipal Systems Act.
  - a. The appointment doesn't automatically become null and void, however. It must be enforced by the MEC for Local Government in the province, or the relevant minister. The municipality must inform the MEC within 14 days of the appointment, and the MEC must act within 14 days of becoming aware. If the MEC doesn't act, the responsibility goes over to the Minister. If both of them don't act (using legal recourse within a relatively short period of time) the appointment is deemed valid. **Citizen activism in cases of inappropriate appointments is therefore crucial and must be quick.**
- iv. Important to note is that none of these managers may hold office in a political party, whether in a permanent, temporary or acting capacity. In other words, they can't serve in the management structures of a political party, and serve as an official.
- v The appointment of a MM is for a period of 5 years.
- vi. The appointment of a section 56 manager is permanent.
- vii. Both MMs and section 56 managers must sign performance agreements with the municipality.
  - a. If they don't perform up to the standards set out in these agreements they can be removed.
- viii. Any municipal official who has been dismissed due to misconduct, or who resigned before the disciplinary proceedings have been completed, cannot be appointed into any municipality in the country for a period prescribed by the minister.
  - a. If they were dismissed for financial misconduct, corruption or fraud, they may not be re-employed in any municipality for a period of 10 years.
  - b. The municipality, and the Minister must keep a register of this.



## What you can do

There are clearly many rules in place to ensure the appointment of appropriate managers. Communities are therefore encouraged to find out when managers are being appointed, to follow these appointment processes and to provide additional oversight.

A simple thing you can do is an internet search of the people who are shortlisted or appointed, to see if they have previously been involved in unscrupulous activities. If you find something suspicious you should ideally raise this with the Speaker of Council before an appointment is made. Keep in mind though that people are sometimes accused wrongly (and sometimes for political reasons), and just because they are accused doesn't mean they are guilty.

However, if you don't agree with the appointment outcomes you can engage with the mayor and with the MEC for Cooperative Governance in your province. This engagement should be in writing. If you do not obtain a remedy there, you should approach the Minister for Cooperative Governance and Traditional Affairs.



**A simple thing you can do is an internet search of the people who are shortlisted or appointed, to see if they have previously been involved in unscrupulous activities.**

## 2. Assigning budgets

The Integrated Development Plan (IDP) sets out the municipality's plan for the medium to long term. It is compiled by the municipality based on an understanding of the needs of the community. The municipal budget is the means by which the IDP is realised, as it provides the resources/money through which the priorities set out in the IDP can be implemented. The link between the IDP and the budget is therefore critical.





## ADDITIONAL RESOURCES

You can watch a very informative video that takes you through the entire process:

- <https://municipalmoney.gov.za/>
- [https://www.youtube.com/watch?v=HeQiX\\_e8ubg](https://www.youtube.com/watch?v=HeQiX_e8ubg)



The IDP process is explained here:

- <https://municipalmoney.gov.za/>

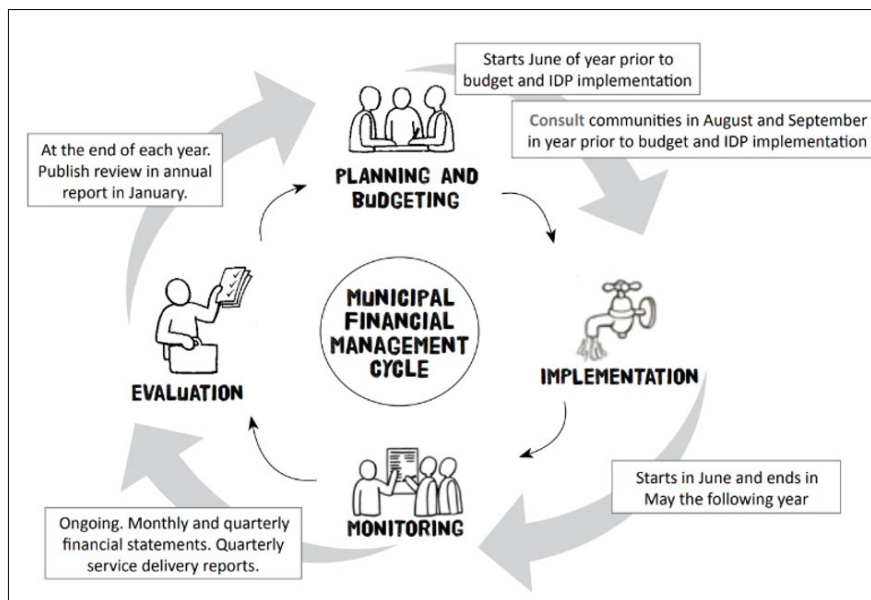


The municipal budgeting process is explained in the following document:

- A Guide to Local Government Budget Advocacy
  - <https://asivikelane.org/wp-content/uploads/2020/11/guide-to-local-government-budget-advocacy-in-south-africa-2017-highres.pdf>
- Local Government Planning and Budget Process (Poster)
  - [URL & QR Code to be allocated](#)
- Civic Education for Youth
  - <https://www.undp.org/south-africa/publications/toolkit-civic-education-youth>



This process is summarised in the picture below.



Picture taken from: *Making Local Government Work – An Activist Guide*



## How the process works

Every five years, municipalities create an IDP which outlines the municipality's service delivery objectives, sets goals, and provides guidance for development. The IDP must be developed in consultation with the community through relevant forums and various stakeholders to determine the community's needs.

- It is your responsibility to know when these engagements are taking place, to attend, keep yourself informed and have your voice heard.

Once the IDP is developed, the municipality determines what it can afford, how it will raise the money needed for the budget and what it will spend it on. In this way the municipality develops its draft budget. This should be done before end of May every year.

- You should also have a chance to look at the budget draft and make comments.

- Council must approve the budget before the start of the new financial year (which runs from 1 July to 30 June).
- This phase answers the question: What is the budget allocated for service delivery?
- The municipality then meets with the community again to present the draft copy of the IDP and the budget.
- It is again your responsibility to know when these engagements are taking place, to attend, keep yourself informed and have your voice heard.

The final IDP document must also be approved by council and thereafter made available for publication in the local newspapers and the official municipal website. Copies of the plan must be available at public buildings, such as libraries.

The IDP needs to be relooked at annually and adjusted to the budget to make sure that the results are in line with the strategic goals outlined in the plan.

### **How much is your municipality spending on salaries?**

While this might not seem related to corruption, some municipalities spend so much of their budget on salaries, that there is no money left to provide services. This sometimes happens because people are corruptly appointed into positions that do not exist. The National Treasury norm is that 25–40% of the expenditure should be spent on salaries. Municipalities should obviously aim to have this lower, rather than higher. If your municipality spends more than this you should find out why.



### **What you can do**

- Is the IDP being implemented as it should be?
  - Access your IDP through the municipality's communication portals and monitor progress – is the municipality delivering as it said it would?

- Go to project sites and see if the projects are being delivered as they are meant to be.
- Your municipality should develop monthly and quarterly financial statements and quarterly service delivery reports – get your hands on these and track progress.
  - Your councillor should explain these reports at your ward committee meetings.
- Engage your councillor if you have concerns.
- If you have concerns, attend your ward meetings and raise your concerns.
- Attend council sittings and portfolio meetings. It is vital to find out the facts!
  - For example, if the municipality has contracted a company to build a bridge or renovate a local clinic, ask:
    - Who is responsible for the management of the project?
    - How much money will be spent?
    - How long will it take to complete the project?
  - Also demand a copy of the service agreement contract and work outline.

Answers or information from these questions will ensure the community is empowered and has enough information to monitor the progress of projects and to hold the administration accountable.

## **b) Monitor Budget**

Monitoring the local budget is a crucial part of holding government accountable.

You should be asking: How is the money which has been budgeted being spent and how much is being spent on service delivery?

You can look at your municipality's website for the IDP, Service Delivery Budget Implementation Plan (SDBIP) and municipal budget to get a sense of how the municipality is spending its money.

The table below gives a useful outline of the difference between the IDP and the budget. The municipality is required by law to engage citizens in the drafting of both these documents as well as before these documents are finalised.

| <b>IDP</b>                                                                          | <b>SDBIP</b>                                                               | <b>Municipal Budget</b>                                                                                    |
|-------------------------------------------------------------------------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| It is a 5-year development plan                                                     | Similar to the IDP but is a 1-year plan                                    | Explains where the municipality gets its money, how much it is getting and what the money will be spent on |
| Outlines how the municipality will spend its budget and its development priorities  | It gives a clear picture of what will happen in the current financial year | Usually contains tables, graphs and charts as well as written information                                  |
| It is a lengthy document with the municipal vision                                  | Its aim is to make sure that the IDP is aligned to the municipal budget    | A municipality is legally required to consult citizens in drafting and finalising it                       |
| A municipality is legally required to engage citizens in drafting and finalising it | It also gives information on how government plans to measure its progress  | The municipality is legally required to make it publicly accessible                                        |
| The municipality is legally required to make it publicly accessible                 | The municipality is required to make it publicly accessible                |                                                                                                            |

*Table taken from the Citizen-based Monitoring of Frontline Service Delivery Toolkit (2019).pdf*

The audit committee and Municipal Public Accounts Committee (MPAC) are supposed to monitor how your municipality is managing its finances.



### **What can you do?**

Check the following:

- Does your municipality have an audit committee and MPAC?
- If not, insist that one is established. Raise awareness of the lack of oversight.

- Find out who is on the committee and, very importantly, whether they have the qualifications and skills to provide oversight of financial matters.
- If they don't, you should insist that independent experts are appointed who do have the right qualifications and skills.
- Find out how it works, how often they meet, and how you can make inputs.



**Citizens are encouraged to attend council sittings and portfolio meetings. It is vital to find out the facts!**

### 3. Procurement processes

Procurement refers to the buying of goods and services for the municipality. This forms a large part of the budget of municipalities, and municipal corruption often happens here.

Procurement is part of a broader process of Supply Chain Management (SCM), which includes the identification of the needs for purchasing, as well as vetting of suppliers. The words 'Supply Chain Management' and 'procurement' are sometimes used interchangeably.

#### **Procurement values in the Constitution**

Section 217 of the Constitution says that government procurement systems must be **fair, equitable, transparent, competitive and cost-effective**. These values should guide all government procurement policies and how they are implemented.

National Treasury's 'General Procurement Guidelines' specify that the procurement process is based on the following five pillars:

- i Value for Money
- ii Open and Effective Competition
- iii Ethics and Fair Dealing
- iv Accountability and Reporting
- v Equity

To promote the Constitutional values and the five principles, the procurement process in government is highly regulated. Many of the controls are specifically put in place in an attempt to avoid corruption.

The procurement process is regulated by the:

- Local Government: Municipal Finance Management Act, 2003 (MFMA)
  - [http://mfma.treasury.gov.za/MFMA/Legislation/Local%20Government%20-%20Municipal%20Finance%20Management%20Act/Municipal%20Finance%20Management%20Act%20\(No.%2056%20of%202003\).pdf](http://mfma.treasury.gov.za/MFMA/Legislation/Local%20Government%20-%20Municipal%20Finance%20Management%20Act/Municipal%20Finance%20Management%20Act%20(No.%2056%20of%202003).pdf) and the
- Municipal Supply Chain Management Regulations
  - <http://mfma.treasury.gov.za/RegulationsandGazettes/Gazette27636/Pages/default.aspx>



## ADDITIONAL RESOURCES

The procurement process in municipalities is simply explained in the following guide:

- **Understanding the municipal procurement process – A guide for businesses.**
  - <https://www.tei.org.za/wp-content/uploads/2024/03/Municipal-Procurement-Guide-for-Business.pdf>



There is also a very good and comprehensive guide on monitoring the procurement process:

- **Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organisations**
  - <https://asivikelane.org/wp-content/uploads/2020/11/guide-to-monitoring-public-procurement-in-south-africa-2015.pdf>



The following extracts from the guide for municipal procurement are helpful for an overview.

### The 10 most important things to know from a business's perspective.

1. There are different procurement processes for different contract amounts. The higher the amount, the more checks and balances are in place.
  2. All contracts above R30 000 must be advertised as follows:
    - R30 000 to R200 000 – 7 days on the municipal website and notice boards.
    - R200 000 to R10 million – 14 days prior to bid closing, in appropriate media.
    - Above R10 million, or of a long-term nature – 30 days prior to bid closing, in appropriate media.
- By advertising correctly, the municipality ensures that all interested parties hear about the tenders, and that there is enough time to prepare a submission.*
- 
3. If you submit a quote or a bid for any amount above R30 000, it must be submitted in the tender box by the specified time.
    - You are allowed to be present when the box is opened.
    - The official must read the names of all the bidders and, *if it is practical*, also their bid amounts in public. **Ask for it if they don't!** (Reading bid amounts may be impractical if the bid called for unit prices for a large number of different items.)
  4. For contracts above R200 000, the details of all bidders must be placed on the municipal website within 10 days from bid closure. It must include the following information:
    - Bid reference number and description of the deliverables;
    - Names of all bidders who submitted in time;
    - B-BBEE status level of all bidders;
    - Local content percentages (where applicable); and
    - Total price of the bids (where practical).

This information must remain on the website for 30 days and must also be available at municipal offices and libraries.
  5. Once the bid is awarded, the following information must be made available on the website:
    - Contract number and description;
    - Name of the successful bidder;



- The contract price;
- Brands;
- Dates for completion of contracts; and
- Preference points claimed.

*Points 3 to 5 are there to make the process more transparent! If you have all of this information it is a lot more difficult for any corruption to creep in. The first step is to be there when the bids are opened!*



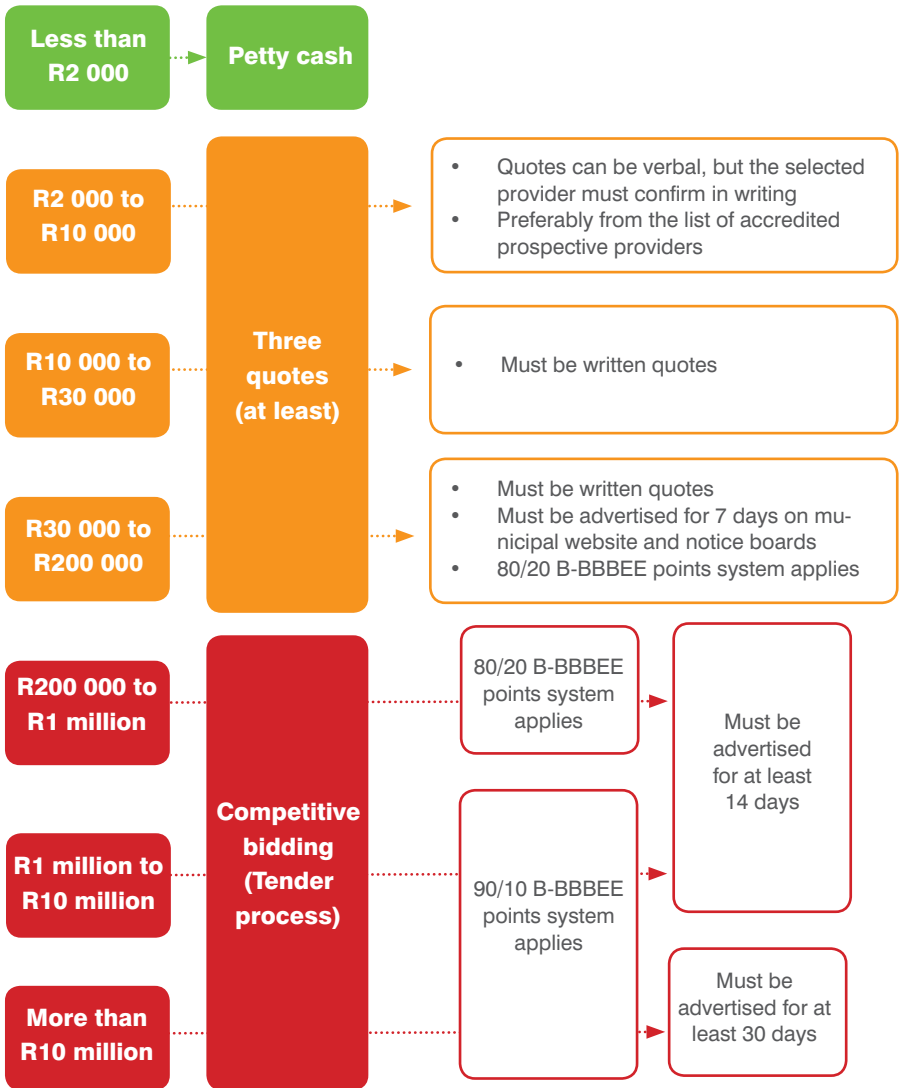
- If you've won the bid, you must be sure that the person signing your contract has the authority to do so.
- If you were not successful, you have the right to know why. You can ask the Supply Chain Management unit informally, but you may also be required to fill in forms to get access to the information.
- If you have a dispute, you can raise it with the municipal manager in writing within 14 days of the decision being made.
  - If your concern is not resolved in 60 days you may refer it to the relevant provincial treasury.
  - If it is not resolved there you may refer it to National Treasury.
  - You can also take the matter to court.
- Businesses may be barred from doing business with municipalities, or may have their bids rejected if:
  - They have not performed adequately in previous contracts with organs of state (including municipalities);
  - They, or any of their directors have been convicted of fraud and corruption and have been placed on National Treasury's list of tender defaulters;
  - Their tax matters are not in order with SARS;
  - Their accounts (e.g. rates and taxes) are outstanding for more than three months with any municipality or municipal entity; or
  - Any of their directors, managers, principle shareholders are in service of the state.
- Businesses are not allowed to discuss pricing or other competitive information with each other prior to a bid (unless they are submitting a joint bid). It could be seen as price fixing.

*This is important for businesses. They must make sure that none of their company's directors are in service of the state.*



## How does the process work?

The process that is followed depends on the expected contract amount as shown below. (Note that all amounts include VAT.)



*Bids may not be split into smaller parts to avoid following the required process.*

Let's go through each process:

### **Petty cash – Purchases below R2 000**

Managers may use petty cash for purchases of R2 000 or less. Any manager may sign off on the petty cash purchases in their unit, but they must keep all receipts and must report this to the Chief Finance Officer (CFO) on a monthly basis.

### **Three quotes – R2 000 to R200 000**

For purchases of R2 000 to R200 000 the municipality must get at least three quotes. They may, however, also approach more than three suppliers. This is considered good practice, since not all suppliers respond to the call for quotations, which would leave the municipality with fewer than three quotes. If they ask for three (or more), but get fewer than three they must explain this in writing and report this to the CFO.

There are a few differences in the procedures for quotes in this range, dependent on their value:

#### **From R2 000 to R10 000**

The municipality does not need to advertise for purchases below R10 000. They should first go to their list of accredited prospective providers and request quotes from suppliers who indicated that they can provide the service required. They should approach accredited suppliers on a rotational basis in a manner that promotes ongoing competition. They can, however, also ask for quotes from service providers not on the list if there aren't suitable providers on the list.

The quotes may be verbal, but the accepted quote must be confirmed in writing.



*The municipality may not tell potential service providers what their competitors quoted.*

*In other words, as a business you may not ask what the cheapest quote is so that you can beat it. This would not be fair to the other businesses.*

#### **R10 000 to R30 000**

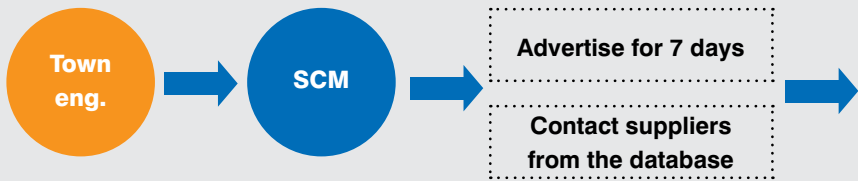
This works the same as the quotes for below R10 000, except that all the quotes must be in writing.

## R30 000 to R200 000

This process again works the same, except that the municipality must advertise for at least 7 days on their website and notice boards. You will need to monitor these if you want to know of upcoming opportunities, or you may be contacted if you are on their list of accredited prospective providers.

From R30 000 the B-BBEE criteria also start applying.

Let's see how this process works by using the example of a town engineer who wants to buy a large-format printer with an estimated value of R50 000.



- The town engineer gives the specification to the Supply Chain Management (SCM) unit, who will contact suppliers from the database and place the advert.



- The bidders must submit their bids in the tender box before the cut-off time indicated on the advert.
- Bids must be stamped and signed by the official opening the tender box and a witnessing official and logged in a register.
- The bids must be opened in public directly after the cut-off time. In other words, you may be present.
- The names of the bidders and, if practical, the bid amounts must be read in public. This is a great opportunity to ensure transparency by attending.



- SCM does a check to see whether you have submitted all the right documents and signed at the right places, etc. You must comply with all administrative requirements, otherwise your bid will be disqualified.
- The town engineer (or whoever needs the goods) does a technical evaluation (if there are functionality criteria).
- SCM calculates scores based on functionality, price, and B-BBEE criteria.
- They give their written recommendation to the municipal manager, or another manager who has the delegated authority, to make the award.

## Competitive bidding (Tenders) – Above R200 000

The system becomes more complex as the price gets higher. This is to ensure that there are more checks and balances to prevent corruption and that the right purchases are made for the right price. It does, however, also mean that the process becomes quite technical and you have to be careful to comply with everything to prevent your bid from being disqualified.

**New Values:** The Amendments to Regulations regarding Supply Chain Management of 14 December 2023 states that the values requiring competitive bidding are now as follows:

- District Municipality – Above R200 000 (VAT included)
- Local Municipality – Above R300 000 (VAT included)
- Metro Municipality – Above R750 000 (VAT included)

All competitive bidding takes place through a bid committee system. There are three committees involved:

- **The Bid Specifications Committee**

This committee is responsible for ensuring the bid specification documents are clear and fair, and comply with all necessary requirements.

Specifications may not be written to suit a specific service provider. For example, specifications may not refer to specific brand names.

- **The Bid Evaluation Committee**

This is where the main evaluation of bids takes place. This committee scores all submissions according to their ability to execute the contract, price and B-BBEE rating, and submits a recommendation to the Bid Adjudication Committee.

The Bid Evaluation Committee should ideally have different members from the Bid Specification Committee, but if it is not practical (as might be the case in smaller municipalities) the members can overlap.

- **The Bid Adjudication Committee**

This is an oversight committee that will consider the Bid Evaluation Committee's recommendations and, depending on its delegated authority, make either a final award, or a recommendation to the accounting officer.

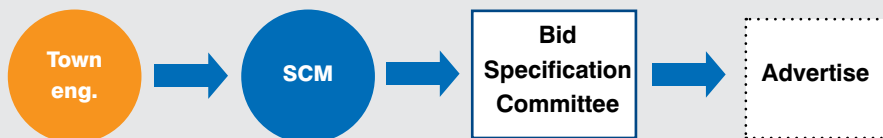
They are allowed to recommend a company other than the Bid Evaluation Committee's preferred bidder, but they must have very good reasons for doing this. There is obviously a risk for corruption here. Therefore, the municipal manager (also called the accounting officer) must agree to this and must let the Auditor-General, Provincial Treasury and National Treasury know in writing what the reason was for this deviation.

The Bid Adjudication Committee is not allowed to have the same members as the Bid Evaluation Committee. Bid Evaluation Committee members may give input at Bid Adjudication Committee meetings, but they may not vote.



**Note! Councillors (elected officials) are not allowed to participate in the procurement processes and may not serve on any of the committees.**

Let's use an example to show how this process works. If the town engineer wants to procure services of a contractor to construct a water pipeline with an estimated value of R800 000, the following process will have to be followed:



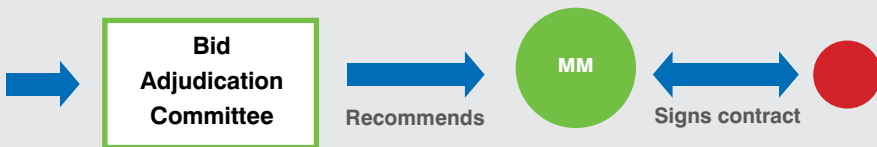
- The town engineer drafts an initial specification and submits it to the SCM unit, who does a basic check.
- It is then submitted to the Bid Specification Committee who does a formal review and sign-off. It can then go out on advertisement.
- Bids below R10 million must be advertised for at least 14 days, and above R10 million for at least 30 days.



- The bidders must submit their bids in the tender box before the cut-off time.
- The box will be opened by at least two officials. Bids must be stamped and signed by the official opening the box and the witnessing official and logged in a register.
- The bids must be opened in public directly after the cut-off time. In other words, you may be present.
- **The names of the bidders, their B-BBEE points claimed, and if practical, the bid amounts must be read in public. This is a great opportunity to ensure transparency by attending.**



- SCM does a check to see whether you have submitted all the right documents and signed at the right places, etc. You must comply with all administrative requirements, otherwise your bid will be disqualified.
- The town engineer (or whoever needs the goods) does a technical evaluation and gives the report to the Bid Evaluation Committee.
- The Bid Evaluation Committee will score the bid based on functionality, price, and B-BBEE criteria.
- They give their written recommendation to the Bid Adjudication Committee.



- The Bid Adjudication Committee meets to review a number of bids. They review the recommendation of the Bid Evaluation Committee. The municipal manager must make the final award, but he / she may delegate that authority to other people or the Bid Adjudication Committee.



The Code of Conduct for Municipal Staff Members also has the following inclusions:

## **Code of conduct for municipal staff members**

### **4. Personal gain**

(1) A staff member of a municipality may not

a) use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or

(b) take a decision on behalf of the municipality concerning a matter in which that staff member or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.

(2) Except with the prior consent of the council of a municipality a staff member of the municipality may not - be engaged in any business, trade or profession other than the work of the municipality.

(3) No staff member of a municipality may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.

### **5. Disclosure of benefits**

(1) A staff member of a municipality who, or whose spouse, partner, business associate or close family member acquired or stands to acquire any direct benefit from a contract concluded with the municipality must disclose in writing full particulars of the benefit to the council.

Similar rules apply to councillors. In other words:

- Municipal councillors and staff members may not do business with any municipality or entity of state. Put simply, they are not allowed to get contracts with the municipality.
- The family of councillors and staff members may do business with the municipality, BUT this needs to be proactively disclosed so that potential conflicts of interest can be managed. If such family members are given a contract you can ask to see if this was disclosed and managed appropriately.

One might ask – with all of these controls in place, how is it possible that corruption still occurs?

It seems that a lot of procurement corruption takes place because of pressure from more senior people, including councillors and senior managers.

Sometimes this happens because people have appointed their cronies into the system, but other times people do as they are told because they are scared to lose their jobs. This means that those who are supposed to provide oversight of processes often fail to do so, and it would be useful for the public to also get involved in oversight.



## What you can do

The guide, 'Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organisations' has some very practical suggestions about how to monitor the procurement process.

In reality, it is not possible to oversee all tenders of the municipality.

Frequently, it is the unsuccessful bidders who raise concerns when they believe there was corruption or wrongdoing.

As a community you may, however, want to provide oversight of the projects that affect your area specifically; for example, a tender for water supply that you know is coming from the IDP and municipal budget.

Some things that you should look out for include:

- How was the specification determined, and who was part of this process? Were any of the bidders part of compiling the bid specification?
  - Bidders may not be part of bid specification, as this would give them an unfair advantage.

- Was the bid written in a manner to unfairly benefit a specific supplier?
  - If brand names are specified, it should say 'or similar'.
- Was it appropriately advertised for the correct duration and in the correct media?
  - Sometimes bids are not widely advertised, or advertised over the December holidays, so that competing bidders are less likely to see them. This way it limits competition.
- Who served on the various bid committees, and do they or their families have interests in any of the bidders?

Keep in mind that the municipality can't necessarily give you information about this for each bid, as it wouldn't be practical for them to spend that much time on the additional work this would entail. Therefore, keep your questions for when you are really concerned about a project.

There is, however, certain information that has to be made available proactively by the municipality. In other words, it should be public even before you ask for it.

Section 23 of the Municipal Supply Chain Management Regulations specifies that:

- Bids must be opened in public.
- Bids must be opened at the same time and as soon as possible after the submission period has closed.
- Any member of the public may ask that the "names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price". Remember, this is not a price breakdown, but the total price for the bid. It may be impractical to read bid amounts if the bid called for unit prices for a large number of different items.
- All bids received in time must be recorded in a register that must be available for public inspection.
- The entries in the register AND THE BID RESULTS must be published on the website of the municipality.

So you can ask for a lot of information, but the information about who submitted bids, what the amounts were that they submitted for, and who the successful party was **MUST** all be published on the municipality's website.

This allows you to see whether the cheapest service provider won the bid. Keep in mind though that the cheapest service provider does not always win. There may also be functionality criteria, and B-BBEE criteria that have an impact on who the winning bidder is.

## 4. Contract monitoring

Some corruption might also take place after the bid has been awarded. You may therefore want to monitor the implementation of projects that are important to you.

### How the process works

Once a contract is concluded, it is general practice that a service-level agreement (SLA) is signed with the winning bidder. This agreement sets out what is required by the parties, and also the timelines and payment terms.

It is unlikely that this document will be made available to the public, as it may contain confidential information. It should, however, be used within the municipality to provide oversight of the delivery of the contract.



### What you can do

You can find out who in the municipality is responsible for managing the contract and providing oversight of delivery. If they know that they are being monitored by citizens, it may provide extra motivation to do a good job of monitoring delivery.

Here it might be best to work with your councillor. If there is going to be delivery in your area, ask for a meeting with the responsible official and also the contractor. You may want to get clarity on:

- What can be expected?
- By when will it likely be completed?
- Are there possibilities for local labour to be used?
- Who signs off on the successful delivery of the project before payment is made?

If you can get a knowledgeable member of the community involved it would be useful for them to check the quality of delivery. For example, if it is the construction of a school, you might want to get a retired builder, or engineer to monitor progress. If there is a local chamber of commerce, they might be able to put you in touch with someone who would be willing to assist free of charge.

Try to include as many people as possible in the meeting so that they know the community is engaged and invested in the process.

## 5. Integrity management

The 2015 Local Government Anti-Corruption Strategy has a section that applies specifically to municipalities and what they must do. This is called the Municipal Integrity Management Framework.



[https://www.cogta.gov.za/cgta\\_2016/wp-content/uploads/2017/02/LGACS-Integrity-Management-Framework.pdf](https://www.cogta.gov.za/cgta_2016/wp-content/uploads/2017/02/LGACS-Integrity-Management-Framework.pdf)



### What is required?

This Framework sets out in detail what the municipality's responsibilities are in combating corruption, and the following diagram presents an overview.



1. Municipal leadership should set the tone and drive good governance, organisational integrity and anti-corruption initiatives.
2. Communities must be acknowledged as the 'owners' of municipalities and initiatives must be put in place to ensure transparent and accountable governance, and community oversight.
3. Appropriate governance structures should be in place and should ensure effective governance, oversight and the implementation of the integrity management framework. There should also be sufficient capacity to implement the framework.
4. Municipalities should institutionalise integrity management initiatives based on the four pillars of prevention, detection, investigation, and resolution.
5. Effective information management systems should be implemented and municipalities must submit reports to appropriate entities to ensure transparency through monitoring, oversight and accountability.



## What you can do

You can ask the municipality how far they have come with implementing the Framework. To do this, first familiarise yourself with what they should have done. Keep in mind that they don't necessarily need to do everything in the Framework, but they do need to look at it and see what they think would be effective in combating corruption, and to give effect to the principles set out above.

## 6. Other publicly available information

To ensure transparency and accountability, there are various pieces of legislation and regulations that require certain information to be made public automatically.

### 6.1. Disclosures of interest

Both councillors and senior managers have to disclose their financial interests.

Disclosures of interest are an important way to ensure transparency in two ways.

Firstly, it helps the municipality to check that they are not contracting with a councillor or senior managers, and secondly, it helps the community to see what interests their councillors have that may influence their decision-making.

From the disclosures made we can, for example, see if the councillors or senior managers have an interest in any matter in which they made a decision, or if they have an interest in a company that has benefited from a contract with the municipality. Neither of these things is allowed.

Unfortunately, research shows that not many municipalities make this information public.

Councillor disclosures are regulated by the Code of Conduct for Councillors, which appears in Schedule 7 of the Municipal Structures Act.

- [https://www.gov.za/sites/default/files/gcis\\_document/202306/48786gon3538.pdf](https://www.gov.za/sites/default/files/gcis_document/202306/48786gon3538.pdf)

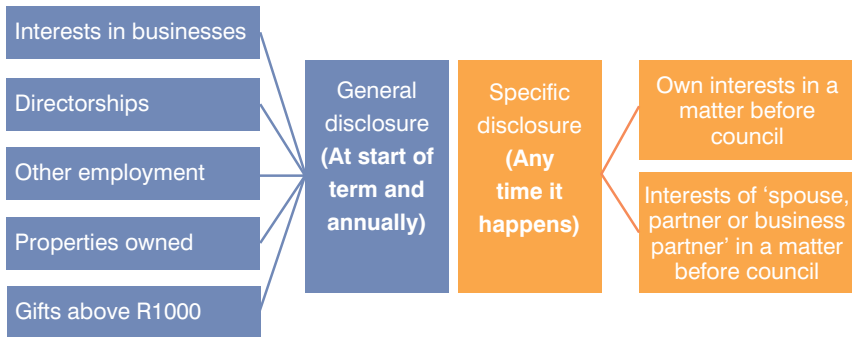


For senior managers, it is regulated in the Code of Conduct for Staff Members, which appears in Schedule 2 of the Municipal Systems Act 32 of 2000.

- <http://iwmp.environment.gov.za/book/export/html/383>



For example:



## 6.2. Auditor-General Reports

The Auditor-General (AG) is South Africa's supreme audit institution and is independent from government. Its focus is the correct use and management of public money. Section 188 of the Constitution requires that the AG reports on the finances of all levels of government (national, provincial and local) and gives them the power to audit any institution receiving public funds.

What does the AG audit?

- i. Financial statements: Are the financial statements accurate?
- ii. Performance: Did the organisation achieve what it was mandated to achieve?
- iii. Compliance: Does the organisation comply with relevant laws and regulations?



## What do different audit opinions mean?

There are five main audit opinions that the Auditor-General South Africa (AGSA) can give:

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Excellent</b>                      | <b>Unqualified opinion with no findings</b><br>Clean audit. Everything has been done the way it should be. <ul style="list-style-type: none"> <li>- Financial statements are accurate. The money is used for the intended purpose.</li> <li>- The organisation has complied with relevant laws, and reported properly on its performance objectives.</li> <li>- The organisation is well governed and in a position to deliver services.</li> </ul> |
| <b>OK</b>                             | <b>Unqualified opinion with findings</b><br>Not bad, but not ideal. <ul style="list-style-type: none"> <li>- Financial statements are accurate and there are no significant inaccuracies.</li> <li>- There are, however, problems with how they complied with laws, or their performance reporting. These will be stated.</li> </ul>                                                                                                                |
| <b>Concerning</b>                     | <b>Qualified opinion with findings</b> <ul style="list-style-type: none"> <li>- The financial statements contain significant inaccuracies.</li> </ul>                                                                                                                                                                                                                                                                                               |
| <b>Really bad. Could be Criminal.</b> | <b>Adverse opinion with findings</b> <ul style="list-style-type: none"> <li>- Many problems everywhere.</li> <li>- The financial reporting rules were not followed, and the organisation can't account for all its spending.</li> <li>- Too many significant inaccuracies. There may be criminal conduct.</li> </ul>                                                                                                                                |
| <b>Even worse</b>                     | <b>Disclaimed opinion with findings</b> <ul style="list-style-type: none"> <li>- The worst outcome.</li> <li>- The finances are so badly managed that the organisation cannot even produce evidence (documentation) to support its financial statements.</li> <li>- Almost no controls in place.</li> </ul>                                                                                                                                         |

There is also a sixth category that an audit can fall under:

|  |                                                                                                                                                                                                                                                      |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>Outstanding audits</b> <ul style="list-style-type: none"> <li>- Financial statements were either submitted too late for the AGSA to audit or not submitted at all. This category is usually considered as bad as a disclaimed opinion.</li> </ul> |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Table adapted from AGSA website: <https://mfma-2022.agsareports.co.za/pages/audit-101>

Citizens should be very concerned when their municipality has a **qualified** audit.

They should be outraged when the municipality has an **adverse** or **disclaimed** opinion, because it means that their money is being misspent – and there may even be criminal activity.

If this is the case for more than one year in a row, the community should take action.

## **What are unauthorised, irregular, and fruitless and wasteful expenditure?**

Sometimes bad audit outcomes also reflect that money was misspent. There are three definitions that you should know when it comes to misspending money:

### **Unauthorised expenditure**

- The organisation has spent more money than had been allocated. In other words, it spent money it was not supposed to.



### **Irregular expenditure**

- It spent money without using the correct processes.

### **Fruitless and wasteful expenditure**

- There was no benefit to the organisation for the money spent. The money was wasted.

These terms are important, because if someone authorised that type of expenditure, they are personally liable for it. In other words, they need to repay the money to the municipality. This is in terms of section 32 of the MFMA.

## Accountability ecosystem

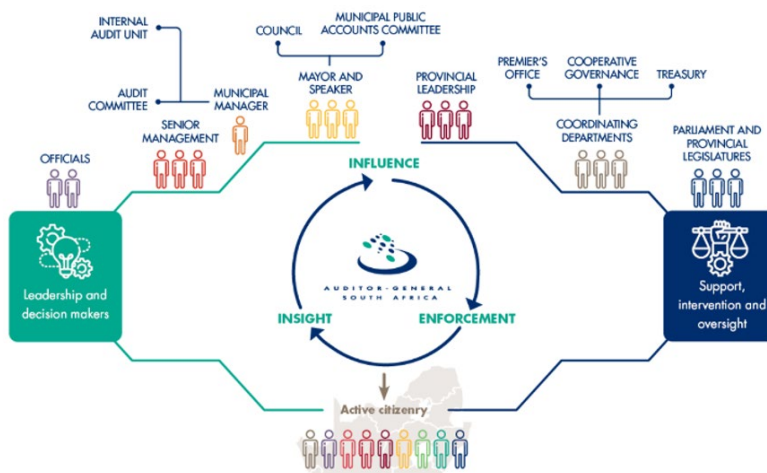


Figure: Active citizenry plays a role in the AG's accountability ecosystem

Source: <https://mfma-2021.agsareports.co.za/pages/accountability-ecosystem>

## 7. Using the legislation for accountability – Examples

Sometimes, it feels that the community can do nothing to hold the municipality to account. There are, however, certain tools in the legislation that can be used to assist with this.

Let us say that in your municipality any of the following has happened:

- i. The AG has found unauthorised expenditure in the municipality and recommended disciplinary and criminal action, yet there has been no action.
- ii. There has been fruitless and wasteful expenditure. A councillor instructed an official to sign off on a specific purchase that was clearly wrong. The councillor says it was not he or she who signed off, it was the official.
- iii. The municipality has received a disclaimer audit for three years in a row, and this is not being fixed.

In all of these instances the legislation will help you to ensure accountability.



## **Remember: The law is your ally in ensuring accountability.**

Let us look at what the law says.

The legislation that you will find most useful in holding the municipality to account are:

- **Municipal Finance Management Act (MFMA) and specifically:**
  - **Sections 171 – 175**
    - This says that officials and councillors are guilty of financial misconduct if they deliberately or in a grossly negligent way did, or did not do, certain things.
    - It specifies when this must lead to disciplinary proceedings, and when it must lead to criminal proceedings.
    - If someone is guilty of a crime in terms of section 173, they can face a fine, or be imprisoned for up to five years.
  - **Section 62 – 65, dealing with financial management**
    - This sets out the things that have to be done to not be guilty of an offence. In general, it says that good financial control must be practiced.
  - **Section 32**
    - This says that councillors, municipal managers and officials are personally liable if they caused misspending by the municipality. In other words, the money MUST be recovered from them in their personal capacity.
- **Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings**

These regulations set out:

- Who is responsible for investigations, who they should report to, and timelines for all the proceedings.
- Where allegations of financial misconduct must be reported to, and what these people should do.
- That an independent disciplinary board must be established.

### **Investigation**

- That a preliminary investigation must be conducted.
- If the allegation is not 'frivolous, vexatious, speculative or obviously unfounded', a full investigation must be conducted.

- A report must be submitted within 30 days of the investigation commencing to the mayor or municipal manager.
  - The speaker of council must also be informed.
  - A copy of the report must be submitted to the provincial treasury and National Treasury.
- Council should deal with the matter at its first sitting after the submission.

### Disciplinary steps

- If disciplinary steps are recommended, council must institute this through a resolution.
- If they don't, the investigator must notify the provincial treasury and National Treasury so that they can take action.
- A report must be prepared giving the details of the case, details of disciplinary steps, and steps taken to recover losses in terms of s.32 of the MFMA.
- This report and the investigation report, as well as the outcomes of the disciplinary matter and if criminal charges are laid, must be sent to the:
  - Mayor
  - Municipal manager
  - MEC for local government
  - National department responsible for local government
  - Provincial Treasury
  - National Treasury
  - Auditor-General.
- If the alleged transgressor is found guilty they *'may not be re-employed in any municipality in South Africa for a period of 10 years'* (see section 57A(3) of the Municipal Systems Act).

### Criminal proceedings

- Where criminal conduct is suspected of a councillor, it must be reported to the *'designated official'* in the municipality, as well as the Minister of Finance and the MEC for finance in the province.
- The report on the investigation must be submitted by the designated official to the MEC for finance, MEC for local government, Minister of Finance, and Minister responsible for local government.
- The municipal manager must report an offence under section 173 of the MFMA to the SAPS.
- If the person is found guilty it must be reported to National Treasury.

TABLE OF SOME SALIENT OFFENCES AND PENALTIES

| WHO                                                     | SIMPLE SUMMARY OF OFFENCES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | PENALTY                      |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| AO<br><br>Muni. And<br>AO of Entity                     | <p>Deliberately or in a grossly negligent way:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> contravenes provisions enumerated in S173 (1) or S173 (2)<sup>31</sup> – (whichever applies)</li> <li><input type="checkbox"/> fails to take reasonable steps re SCM policy</li> <li><input type="checkbox"/> fails to take reasonable steps to prevent UIFWe</li> <li><input type="checkbox"/> fails to take reasonable steps to prevent “corruptive practices”</li> </ul> <p>Deliberately:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> misleads or withholds information from the AGSA (or, if applicable, the parent municipality) Re: bank accounts or income</li> <li><input type="checkbox"/> provides false or misleading information in any document submitted to the AGSA, NT or any other organ of state</li> </ul> | Up to 5yrs in prison or fine |
| Snr Manager: Municipality or Entity                     | Deliberately or in a grossly negligent way contravenes or fails to comply with the condition of a power or duty delegated in terms of Section 79 or 106                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                              |
| Councillor                                              | Deliberately influences or attempts to influence the AO, CFO, senior manager or any other official to contravene the MFMA or interferes with financial management responsibilities of the AO or CFO and/or interferes in the management of operational activities of the municipality or entity- as the case may be.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                              |
| Councillor, official or director municipality or entity | Contravenes the provisions set out in Section 173 (5) or commit any of the prescribed acts (in summary, impeding the AO; giving false information in relation to investment or statutory information).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                              |

*Table taken from Consequence Management and Accountability Framework: An MFMA Perspective – September 2022*

Let us now look at how this legislation can be applied to our scenarios:

## Scenario 1

The AG has found unauthorised expenditure in the municipality and recommended disciplinary and criminal action against the official involved, yet there has been no action.

Section 173 of the Act says the following:

### Part 2: Criminal proceedings

#### Offences

173. (1) The accounting officer of a municipality is guilty of an offence if that accounting officer—
- (a) deliberately or in a grossly negligent way—
    - (i) contravenes or fails to comply with a provision of section 61(2)(b), 62(1), 63(2)(a) or (c), 64(2)(a) or (d) or 65(2)(a), (b), (c), (d), (f) or (i);

Section 62 (1) says:

**62.** (1) The accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure—

...

(e) that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15.

In other words, the municipal manager could not only be guilty of misconduct, but also of a criminal offence which could see them spending up to five years in jail. This can be useful in urging the municipal manager to institute disciplinary action.

## Who should act against the municipal manager?

According to the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, the matter must be reported to council and they must take appropriate action.

## Scenario 2

**The municipality has received a disclaimed audit for three years in a row, and this is not being fixed.**

This is similar to the previous scenario, in that the municipal manager did not comply with section 173 of the Act.

And specifically, section 62 (1) says:

### **General financial management functions**

62. (1) The accounting officer of a municipality is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure—

- (a) that the resources of the municipality are used effectively, efficiently and economically;
- (b) that full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards;
- (c) that the municipality has and maintains effective, efficient and transparent systems—
  - (i) of financial and risk management and internal control; and
  - (ii) of internal audit operating in accordance with any prescribed norms and standards.

With a disclaimer audit, the municipality did not even keep proper records of its transactions and this is therefore against section 62(1)(b). If this only happens one year, it is something that must be fixed, but three years in a row shows that the matter is not receiving attention. The municipal manager, as the accounting officer, must therefore be held to account.

## Who should act against the municipal manager?



According to the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, the matter must be reported to council and they must take appropriate action.

### Scenario 3

**There has been fruitless and wasteful expenditure. A councillor instructed an official to sign off on a specific purchase that was clearly wrong. The councillor says it was not he or she who signed off, it was the official.**

Section 32 of the MFMA says the following:

#### **Unauthorised, irregular or fruitless and wasteful expenditure**

32. (1) Without limiting liability in terms of the common law or other legislation—

- (a) a political office-bearer of a municipality is liable for unauthorised expenditure if that office-bearer knowingly or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instructed an official of the municipality to incur the expenditure;
- (b) the accounting officer is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, subject to subsection (3);
- (c) any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure; or
- (d) any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

(2) A municipality **must recover** unauthorised, irregular or fruitless and wasteful expenditure from **the person liable for that expenditure** unless the expenditure—

- (a) in the case of unauthorised expenditure, is—
  - (i) authorised in an adjustments budget; or
  - (ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and
- (b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

In other words, the councillor, who instructed the official, is liable. It may, however, be difficult for the official to prove this if there was no instruction in writing. In that case, the amount would have to be recovered from the official by the municipal manager.

## Other options for all three scenarios:

What if council does not take appropriate action?

Section 19 of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings Interventions states:

### **Interventions by Treasury**

19. If a municipality, designated official or municipal entity fails to investigate an allegation of financial misconduct or financial offence, the provincial treasury or the National Treasury may direct that the allegation be investigated.

In other words, you should then report the matter to the provincial treasury or National Treasury.

Other options:

You can also make contact with the provincial department responsible for cooperative governance. There are officials who specialise in provincial oversight and who can give you further advice.

Another port of call is the Auditor-General (AG). The AG has new powers that came into effect in 2019. The Public Audit Act now says that, where there are Material Irregularities, the AG can:

- *“refer a suspected material irregularity to a public body with a suitable mandate and powers;*
- *make recommendations in the audit report on how a material irregularity should be addressed, within a stipulated period of time. If these recommendations have not been implemented by the stipulated date, the AG may take binding remedial action and, if the irregularity involves a financial loss, issue a directive to the accounting officer or authority to quantify and recover the loss from the responsible person;*
- *issue a certificate of debt in the name of the relevant accounting officer or accounting authority if the accounting officer or authority fails to implement the remedial action.”*

### Final port of call:

Sometimes the matter is investigated in the municipality, but due to political pressure nothing is done about it, or council sits on the matter for years, or they investigate with predetermined outcomes. Your last port of call is to report the matter to the Public Protector. Make sure you have copies of all your previous correspondence with the municipality and treasury.

See section 4.2 on page 86 for *more info on making a report to the Public Protector*.

The Public Service Accountability Monitor has done a similar analysis for a national department using the PFMA.

- <https://psam.org.za/research/1289227228.pdf>



## **D. Report corruption**



Understand the practicalities of whistleblowing – including safety considerations. This will be a resource that is different to the Whistleblowing First Responder Guide (also commissioned by GIZ), as it focuses on giving practical advice to potential whistleblowers themselves, rather than those who take their calls.

Whilst the legislative framework is designed to minimise the risk of corruption, corruption will inevitably occur. When it does, we must be able to report it to relevant people who will investigate it with the aim of bringing perpetrators to justice and recovering stolen assets.

If you are aware of corruption taking place in your municipality or government department, it is important that you report this so something can be done about it and the corruption does not continue. Reporting corruption is part of your responsibility as an active citizen – it is one of the ways whereby you can contribute to ensuring that government functions the way it should.

As a citizen you have options to report corruption. You can report it to the government department/municipality or institutions that have been set up. You can also choose to report it anonymously or you can disclose your identity. When you report, you must know your rights as a citizen.

## 1. Consider your safety – Confidential and anonymous reporting

Reporting corruption can be dangerous. There are numerous cases of people who have been harmed, or even killed, for reporting corruption. You need to consider these risks before you report.

South Africa has a witness protection programme, but this will only kick in when the matter is in court, and that can take a very long time to happen. So you should not make a report thinking that you will be immediately protected by the police in the short term. There are, however, some things you can do to make reporting safer. If you are afraid you might be targeted, or harmed in any way, you should consider making a confidential or anonymous report.

A report of corruption is **confidential** if the person you are making the report to knows who you are, but they have promised not to tell anyone else your identity.

A report is anonymous if the person you are reporting to does not know your identity. In other words, when you call a call centre you can just say you don't want to give your name.

### Confidential reports

**Your name is known, but they will keep it secret.**

**Pros:** It is easier for the investigators to contact you for more information if they need to. This means there is more likely to be a positive result.

**Cons:** You have to trust that the person who takes your report will keep your information a secret. If they don't, people might know it was you.

### Anonymous reports

**Your name is not known.**

**Pros:** This is the safest way of reporting corruption. People will not know it was you, unless there is some other way for them to suspect that it was you who reported.

**Cons:** It is sometimes difficult to investigate anonymous reports, because investigators can't talk to you again later. For this reason, hotlines will give you a reference number. You will then have to call them back from time to time to see if more information is needed.

Keep in mind that if you have already spoken to other people about the matter, it may be known that it is you, even though you made a confidential or anonymous report. We also know that the people who make the reports often make their own identity known. If the matter reaches the news, they are so proud they made it happen that they can't keep quiet about it.

## 2. What information should you have when reporting corruption?

No matter where or how you report corruption, you will need to have as much information as possible. You will not need to be able to prove that corruption has taken place, but you should give investigators a good reason why you think that corruption has taken place, and where they can start their investigation. Without enough information, the investigator might not be able to find any wrongdoing.

- i. Details about the corruption
  - a. Who was involved? (Do you have names? Where do they work?)
  - b. What did they do?
  - c. When did this happen?
  - d. What proof do you have?
- ii. What actions did you take before reporting the corruption?
  - a. Did you first speak to the municipality?
  - b. Who did you speak to?
  - c. When?
  - d. Do you have any correspondence or documentation of earlier communication?



**If you do not give enough evidence, the investigators might find there is not enough proof, and they can reasonably close the investigation.**

### 3. Whistleblowing and whistleblower protection

We often hear people who report corruption being referred to as whistleblowers.



**Whistleblowing** can be defined as *“the disclosure of information by an individual or individuals about a perceived wrongdoing in an organisation, or the risk thereof, to people or institutions who the whistleblower believes will be able to act.”* (Transparency International)

Whistleblowing is an important way of combating corruption, because corruption usually happens in secret. It is sometimes difficult to detect when employees are engaged in corruption. This is why if you stumble across corruption you need to report it.

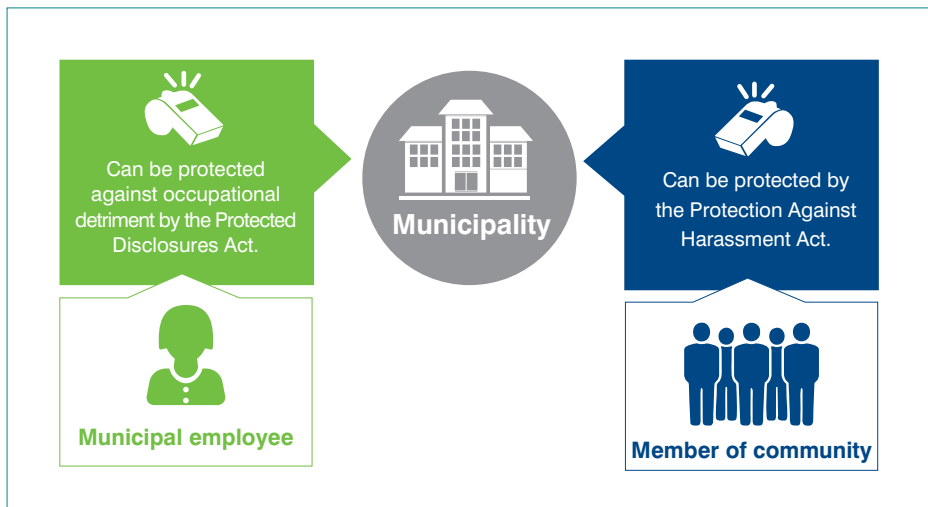
The downside to whistleblowing is that those who blow the whistle sometimes face negative consequences from those against whom they report. These people can be in positions of power, and may abuse this power to retaliate against the whistleblower.

**Whistleblower protection is** actually quite limited in South Africa.

It is important to make a distinction between people who work in an organisation (such as employees) and people who are receiving the service from the organisation, such as citizens or members of the community.

The Protected Disclosure Act of 2002 (amended 2017) protects employees against ‘occupational detriment’. This means that people can be protected from any negative action their employer might take against them if they blow the whistle about their employer, provided they follow the right process.

There is very little protection to members of the community who blow the whistle. Corruption Watch, in The Whistleblower Handbook, suggests that community members may be able to get some protection against forms of harassment based on the Protection Against Harassment Act of 2011.



Our focus here is on reporting corruption by citizens/members of the community and how you can advise a member of the community who comes to you about their options should they want to report corruption.

The law provides different levels of protection to those who come forward with information. To qualify for protection, the whistleblower must have a 'reasonable belief' that a wrongdoing has occurred, or is likely to incur, and the decision to report and seek protection is in the best interest of the public.

## What is not whistleblowing?

Reporting personal grievances does not constitute whistleblowing unless the particular case is in the public interest. A grievance is defined as any feeling of discontent, unfairness, or injustice which employees may have in respect of their work conditions, against a manager or supervisor, or a fellow worker. Such issues should be reported through an organisation's human resources grievance processes (Labour Guide, n.d.).

## **As a citizen, if you report corruption, your rights are as follows:**

- You have the right to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse. You can report to the SAPS if you are harassed.
- If you become a witness in a criminal case, you:
  - must report any threats to the police or to a senior state prosecutor
  - can be placed in a witness protection programme
  - and if the matter goes to court, the court could order that your evidence is provided behind closed doors.

### **3.1. What should you do if someone comes to you for advice**

People who are considering exposing corruption are often frustrated, stressed, traumatised and confused. It is important that you understand this and that you remain calm at all times.

Caution whistleblowers that their lives might change (if it has not already) by exposing the corruption, but don't frighten them. It is important that you are supportive and empathetic. Encourage them to seek legal advice from organisations such as The Whistleblower House ([www.whistleblowerhouse.org](http://www.whistleblowerhouse.org)) who facilitates free legal advice to ensure that they make their disclosure in the correct way.



#### **What you can do**

Should an individual show uncertainty in their readiness to blow the whistle but want to disclose the information and receive advice and weigh the risks of disclosing, offer to refer to them with a pseudo name so they do not have to disclose their personal details.

You can help by:

- listening to the person narrate their experience,
- understand what they want to do/what relief they seek to achieve, and
- advise them of the options available.





You could also help them to:

- identify to whom they can report the matter and
- the pros and cons/possible risks of reporting,
- their rights and responsibilities and
- what they can expect from the process.
- Write down what they want to report/say. This makes their reporting to the relevant bodies easier and clearer.



### **Questions to ask to better understand the issue**

Your questioning should not sound like an interrogation. Use an empathetic tone and converse with the whistleblower in a natural way.

1. Who committed the alleged wrongdoing?
2. What happened?
3. When did this occur? Is it ongoing?
4. Where did this happen?
5. In what capacity are you reporting? As an employee? As a concerned citizen? Were you directly affected?
6. Who else may have seen or heard this as a witness?
7. Have you reported this elsewhere or discussed this with anyone? If so, to whom did your report it, who did you tell, when did you tell them and why?
8. How has this affected you?
9. Is there any electronic or physical evidence about this wrongdoing?
10. Do you have any other information that might be helpful for an investigation?

You could then use these answers to put together a written outline which could assist the person reporting in narrating their case to other institutions.



The following two publications may be of use:



This gives details on how to blow the whistle, and protection available whether you are an employee or a member of the public.

<https://www.corruptionwatch.org.za/wp-content/uploads/2015/05/Corruption-Watch-Whistleblower-handbook.pdf>



This gives details on how to treat and advise people who want to blow the whistle.

[https://www.tei.org.za/wp-content/uploads/2023/04/Final\\_Whistleblowing-First-Responder-Guide\\_E-book\\_978-0-6397-6767-3.pdf](https://www.tei.org.za/wp-content/uploads/2023/04/Final_Whistleblowing-First-Responder-Guide_E-book_978-0-6397-6767-3.pdf)



## 4. Options for reporting

You can report corruption to the government department in which you witnessed/experienced the corruption, the SAPS or to other institutions set up to investigate specific types of corruption.

South Africa does not have a single anti-corruption agency where you can report crimes of corruption. Instead, the country currently follows a multi-agency approach with numerous organisations playing a role in investigating corruption. This includes the Public Protector, SAPS, and the Special Investigating Unit.

If you suspect corruption in a government department, the first option is to report it directly. We sometimes think that nothing will happen, but in many government departments there is strong commitment to fight corruption, and they will take your report seriously.

Also keep in mind, that if you want to report to someone such as the Public Protector, they will want to know if you have exhausted your local options. You may need to have proof of the communication you had with the government department.

If you have already tried reporting corruption inside the government department, but suspect it is not going to be resolved, or you think it is not only a disciplinary matter, but also a criminal matter, there are other possible avenues for reporting. We have set these out for you as well.

### 4.1. To the government department or municipality

There are likely different options to report corruption in each government department. Speak to someone you know and trust: While this might not be the right person to report corruption to, they may be able to point you in the right direction. This might include a councillor, or a senior manager.

**Check on the website:** There might be information there on ways to report corruption. The municipality will likely have a Fraud and Corruption Prevention Policy (or something similar) that will tell you where to report. The municipality may also have their own hotline that you can use.

**Report to the forensic unit:** Some larger municipalities have forensic units who do investigations inside the municipality. You can look for this information on your municipality’s website.

**Report to internal audit:** If there is no forensic unit, you could try the internal auditors. They generally have a professional qualification and subscribe to the Institute for Internal Auditors’ Code of Ethics.

**Report directly to the municipal manager:** The municipal manager’s details should be on the website, and you can report directly to him or her. They will then hand it over to the relevant people to investigate.

**Report to the speaker of council:** The speaker is responsible for managing the discipline of councillors. So, if a matter relates to a councillor, you may want to report to the speaker. Keep in mind that this might only lead to a disciplinary process, and consequences may not be very severe.

The Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings give the following reporting avenues, dependent on who is implicated in the ‘financial misconduct’.

| Person implicated:                         | Person / body to report to:                                    |
|--------------------------------------------|----------------------------------------------------------------|
| Municipal managers, senior manager, or CFO | Council, provincial and National Treasury                      |
| Any other official                         | Municipal manager                                              |
| Councillor                                 | ‘Designated official’, Minister of Finance and MEC for Finance |
| Speaker of council                         | Mayor                                                          |

You should, however, be fine if you report using the channels specified on the municipality’s website.

You might be told that SAPS can’t investigate a case that is already being investigated internally by the municipality, or that the municipality can’t investigate when there is a SAPS investigation ongoing. This is not true. The one is a disciplinary matter, and the other is a criminal matter, and they are two separate matters that can be dealt with separately and simultaneously.

## 4.2. Public Protector

The Public Protector is an independent organ of state that reports directly to Parliament. This means that political interference is theoretically limited here, and you could expect an independent investigation.

### **The Constitution of the Republic of South Africa**

#### **Functions of Public Protector**

182. (1) The Public Protector has the power, as regulated by national legislation—
- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
  - (b) to report on that conduct; and
  - (c) to take appropriate remedial action.



#### **Some important things to note:**

1. If you report to the Public Protector (PP), they will, however, not 'take' remedial action themselves. They will say that the relevant organisation must take the remedial action; for example, that disciplinary action must be taken against someone, or a service must be delivered.
2. The findings of the PP are, however, legally binding, and can only be challenged in a court of law. So if the municipality does not take the remedial action required, it can be forced to do so in court. There is, however, still room for corrupt people to frustrate the process.
3. The PP does NOT make criminal findings, but can require that the matter be criminally reported to SAPS.
4. The PP is intended to be an avenue of last resort. You must therefore first try to work with the municipality or other organisations to solve your problem. If you have done this, and have proof of your communication, you can go to the PP.
5. The PP does not have jurisdiction over private persons, private companies and court decisions – only public institutions that spend public funds.

6. The PP will investigate:
  - Abuse of power;
  - Unfair, discourteous or other improper conduct;
  - Undue delay;
  - Decisions taken by the authorities;
  - Maladministration;
  - Dishonesty or improper dealing with respect to public money;
  - Improper enrichment; and
  - Receipt of improper advantage.
7. Where can you report?
  - Phone 0800 11 20 40, toll free
  - Email: [registration2@pprotect.org](mailto:registration2@pprotect.org)



#### Public Protector's Website

- <https://www.pprotect.org/>



#### Useful video link on the role of the Public Protector

<https://civicsacademy.co.za/what-is-the-role-of-the-public-protector/>



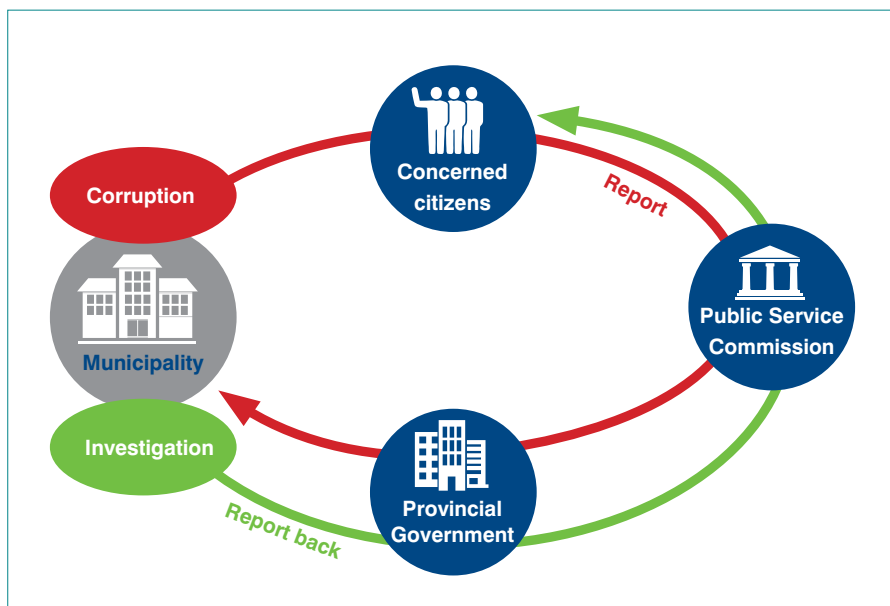
### 4.3. National Anti-Corruption Hotline

The National Anti-Corruption Hotline is managed by the Public Service Commission (PSC). This is an independent hotline, and you can remain anonymous if you choose to.

#### **National Anti-Corruption Hotline number – 0800 701 701**

It is, however, important to note that a report to the National Anti-Corruption Hotline will not be independently investigated. If you report corruption in your municipality, the PSC will forward the report either to the Office of the Premier or the Department of Cooperative Governance and Traditional Affairs in your province, who will in turn refer it back to the municipality to investigate.

In other words, you are back where you started. The only difference is that the municipality now has to report their progress in the investigation to the province. So, there is some external oversight.



#### 4.4. Provincial anti-corruption hotlines

Provincial hotlines frequently work similar to the National Hotline in that the case will be forwarded to the relevant municipal manager to investigate and report back. Visit the relevant provincial government's website for details.

#### 4.5. South African Police Service (SAPS)

If you have a criminal case of corruption you should report this to the SAPS. You can file the report at any police station, and they will refer the matter to the relevant agency within the SAPS. Large corruption cases will generally be investigated by the Hawks (Directorate for Priority Crime Investigation).

You can also contact the Hawks directly to find out more.

- Tel: 012 843 0148
- Email: [CorruptionReports@saps.gov.za](mailto:CorruptionReports@saps.gov.za)

Cases of corruption **against a police officer** should also be reported at your nearest police station. If they do nothing, you can escalate the matter to the Independent Police Investigative Directorate (IPID).

- Tel: 012 326 0408
- Email: [Complaints@ipid.gov.za](mailto:Complaints@ipid.gov.za)

## 4.6. Civil Society organisations

There are a number of Civil Society Organisations (CSOs) listed below that will also provide you with guidance on how and where to report corruption. Some of these organisations might assist with investigations, but keep in mind that they have limited resources. Also, they do not have any specific powers of investigation in the way that the Public Protector or SAPS have.

- Whistleblower House
- OUTA
- Corruption Watch

Corruption Watch has a webpage that gives details on various avenues to report corruption, depending on which department or organisation is involved:

- <https://www.corruptionwatch.org.za/take-action/report-corruption/who-else-can-help/#general-queries>

## 4.7. Special Investigating Unit (SIU)

The Special Investigating Unit (SIU) ([www.siu.org.za](http://www.siu.org.za)) is a dedicated anti-corruption agency. They generally only investigate larger corruption cases and can only investigate if they have a 'Presidential proclamation'. In other words, the president decides when and where they will investigate.

You can, however, report corruption to them:

- Tel: 0800 037 774
- Email: [siu@thehotline.co.za](mailto:siu@thehotline.co.za)

You should also be able to call them for advice if you know of corruption. They have offices throughout the country.



## E. Raise public awareness. Start a movement!

Another way in which you can combat corruption at community / citizen level is by mobilising your community, discussing your concerns and making your voice heard about your concerns regarding corruption. There is strength in numbers and getting other citizens and CBOs to be aware of what is happening builds the strength of the community and also contributes to public accountability.

Section 17 of the Constitution provides that:

*“everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.”*

The Regulation of Gatherings Act, 1998, states that “every person has the right to assemble with other persons and to express [their] views on any matter freely in public and to enjoy the protection of the State while doing so”.



### **What are the things that you can do?**

- Understand the laws and the rights of citizens/communities.
- Be an active citizen; use the law as it is intended.
- Understand your context and know when something is not ok, or not what it should be.
- Mobilise your community and contribute your skills to help your community.
- Know the other CBOs in and around your area, understand what they do and how you can support each other and join forces.
- Seek out other NGOs or agencies also concerned with similar issues and join forces.
- Know how to access which reporting channels and when.
- Write an article in the media expressing your concerns.
- Post on social media.
- Call in to your local radio station.

### Get involved in your community:

- Organise a meeting of concerned citizens to discuss concerns and agree on steps/actions you can take as a community – what are others doing, who will represent your interest.
- Emphasise the importance of participating in your ward committee structures as a community and have your concerns raised in council meetings.
- Arrange a peaceful protest.
- Organise and build up a campaign over time.

### Raise your issue to Parliament or the provincial legislature:

- Get issues elevated to Parliament/government structures.
- Parliament plays a pivotal role in promoting active citizenship to ensure the deepening of democracy. The members of Parliament are elected to represent and act as the voice of the people of the country. Parliament, therefore, is accountable to the people of South Africa.
- Another avenue for raising your concerns around corruption is through engaging Parliament. The People's Assembly has some very specific guidance on how to do that (<https://www.pa.org.za/blog/5-ways-get-involved-parliament>).



#### Here are some tips for starting a social movement.



- A social movement starts with an idea to tackle a certain societal issue shared by others.
- These individuals take time to understand and engage with the issue.
- For awareness campaigns/social movements to be successful, they need to be well planned and executed. With the help of other experienced individuals, it becomes easier to overcome common challenges and increase your chances of success.



- **NB: The campaign issue must resonate with people and increasingly matter to them.**

### **The movement spreads to include more people of the community.**



- For the movement to be effective, it needs active participation from the public.
- Use simple language and/or use real people's stories that people can relate to.
- Make use of media platforms to reach a wider audience.

### **Make it simple for people to get involved and back the cause.**



- Provide a few options for people to support your campaign, but don't overwhelm them. Make it easy for people to support the campaign.



### **Lastly, be flexible about the campaign plan.**

- Be flexible, be willing to take feedback and adjust accordingly.



### **ADDITIONAL RESOURCES**

For further inspiration you may want to look at:

- **Tips for running public awareness campaigns in Africa: Insights from eight case studies**
  - <https://www.comminit.com/la/content/tips-running-public-awareness-campaigns-africa>
- **A list of social movements in SA**
  - [https://en.wikipedia.org/wiki/List\\_of\\_social\\_movements\\_in\\_South\\_Africa](https://en.wikipedia.org/wiki/List_of_social_movements_in_South_Africa)



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# ANTI-CORRUPTION GUIDE & TOOLS

## FOR CIVIL SOCIETY

Corruption is a problem that impacts negatively on people's lives. Resources are stolen, municipalities are broken, job creation is stifled, and services are not delivered.

**Are you frustrated by corruption?  
Do you want to do something about it?  
Then have a look inside!**

Many people want to do something about corruption at the local level – especially in their municipalities. But it is difficult to know where to start.

This guide sets out to give a better understanding of:



- What corruption is.
- How it is enabled.
- How we can combat corruption.

It also gives tools to combat corruption – focusing specifically on the municipal level. This includes guidance on HOW TO:



- **Participate in Municipal Decision-making Processes.**
- **Exercise your right to transparent information.**
- **Hold your municipality to account.**
- **Report corruption.**
- **Start a movement!**

It is written for citizens and civil society organisations to use as a resource in the fight against corruption.