

ACCOUNTABILITY and CONSEQUENCE MANAGEMENT for local government

SALGA/CIGFARO
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Background



- The renewed focus on accountability and consequences of (non)-compliance is an international phenomenon, mainly in response to corruption among national leadership and the private sector. Globally there is a growing realisation in both developed countries and emerging democracies that local government needs to be held accountable in order to ensure that citizens receive the services and leadership that is basic to a mature democracy.
- Promoting alignment to consequences and accountability is an integral part of the intergovernmental relations policies (IGR) within the South African State. The responsibility of national, provincial and local government for mutual support, monitoring and accountability is well-defined in the Constitution. Chapter 3 of the Constitution emphasises the need for effective intergovernmental relations,
- What is unique about IGR in South Africa is that the Constitution elevates local government to a constitutional status, alongside the national and provincial government. It refers to the three spheres as 'distinctive, interdependent and interrelated'. These three terms capture the nature of local government.
- The Constitution clearly states that the powers of municipalities are not unlimited. This is why the Constitution also includes extensive powers and responsibilities for national and provincial governments to supervise municipalities.

Background



- First, national and provincial governments have powers to make laws that regulate local government. Second, they have the responsibility to monitor and support municipalities. Third, they have the power and sometimes even the responsibility to intervene into a municipality, if it breaks the law. Such an intervention may amount to the removal of municipal powers or the stopping of financial transfers:
 - Sections 155(6) and (7) as well as section 216(1) of the Constitution provide for the national and provincial powers to regulate, monitor and support.
 - Sections 139 and 216(2) of the Constitution contain a framework for interventions and the stopping of financial transfers.
- **It is important to note that A&CM should start at home before it can be enforced by other roleplayers.**
- **Accountability and Consequence** management remains to be at the core of a constitutional democracy in South Africa.
- One of the **key resolutions of the 2015 SALGA National Members Assembly**, was a request to develop a Consequences and Accountability framework for Local Government in South Africa.

Problem Statement



- After 25 years of local government in a deepening democracy, municipalities have several institutional resources available in the fight against corruption and maladministration, and their efforts to enhance institutional and personal integrity. Notwithstanding the range of institutions established, and mechanisms and instruments adopted against corruption (Jackson, 2009:17), a gap remains in the state's ability to enforce anti-corruption norms. This applies to legal, regulatory or functional codes, and the extent to which the bureaucracy complies with these norms.
- The COGTA 2009 State of Local Government Report identified a lack of accountability and internal oversight in municipalities as one of the aspects to be addressed to improve governance. The various Auditor-General reports have consistently found that there are low levels of compliance with legislation and that there is generally a lack of consequences for poor leadership and serious legislative and other forms of transgressions both at a political and administrative level.

Problem Statement

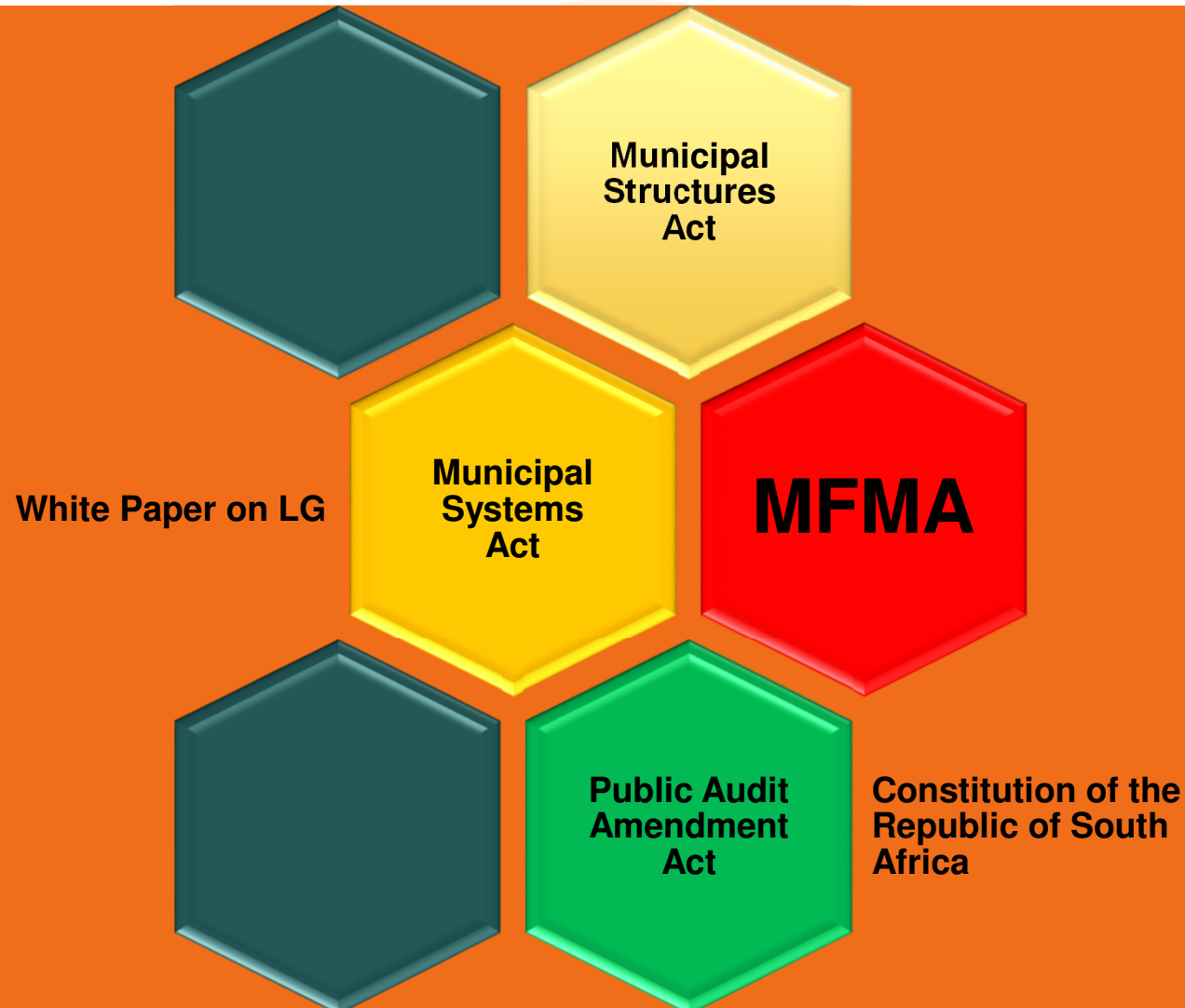


- Municipalities are easy targets to criminals who believe that municipalities' systems are weak and their detection methodologies are inadequate and can be manipulated. In the realisation that there is a need to strengthen oversight and controls, SALGA is developing this C&A framework for implementation by municipalities. An absence of consequences can be the result of **weak oversight** or **corruption**, but may also be the result of **lack of will** or **capacity** for the enforcement of consequences. The C&A Framework addresses the challenge that as long as there are no adverse consequences to mismanagement or incidents of corruption, people will not refrain from such behaviour.
- Promotion of adherence to consequences and accountability legislation and regulations requires support of stakeholders in an easily accessible source of information. Some current legislative documents are large and complex, and references to consequences and accountability are often embedded in larger sections. Easy access includes immediate availability of relevant information that concretises consequences and accountability issues. Hence, the proposed Framework for Consequences and Accountability aims to provide a concise and accessible tool for accessing relevant information.

Key roleplayers

- **Municipalities:**
 - Council,
 - Sub-committees of Council (MPAC, Audit Committees, Portfolio Committees)
 - Internal Audit function,
 - Accounting Officer and Senior management
- **SALGA**
 - Consequence and Accountability Framework
- **National Treasury**
 - MFMA, which includes Financial Misconduct Regulations
 - Minimum Competency Regulations
- **COGTA:**
 - Municipal Systems Act
 - Municipal Structures Act
 - Minimum Competency Regulations
- **AGSA:**
 - Public Audit Act and Amendments

Key Local Government Legal Architecture



Key objectives for developing a CA Framework

1

- To provide a **concise guide** on available options on which applicable consequences for which type or class of **transgressions and non-performance** apply.
- Also to reflect attendant implications for **failure to act by leadership** at both political and administrative levels.

2

To promote a **culture of accountable, professional and ethical** public administration that places emphasis on good governance and effective service delivery to local communities.

Guided inputs from the Provincial Working Groups

Questions

- What are consequences to be invoked from the key legislations: Municipal Structures Act, Municipal Systems Act, Municipal Finance Management Act and the Public Audit Amendment Act?
- Who should be responsible to invoke such consequences against the perpetrators of the law?
- What Institutions of the state should investigate and criminalise the offenders?

What are the practical case studies one can refer to as good examples where consequences were invoked?

C&A Framework Structure

The structure of the C&A Framework is based on four sections:

- Brief narrative of the legislation;
- Consequences of non-compliance for local, provincial and national governments; and
- Implementation or enforcement, outlining the process as to how the consequence must be imposed against those who failed to comply with the particular section of the legislation.
- Case study where the consequences were practically enforced

Local Government Municipal Structures Act 117 of 1998



- **Brief Narrative:** The Structures Act 117 of 1998 (hereinafter referred to as the Structures Act) provides for the establishment of a new generation of municipalities and essentially lays the foundation for a new system of local government in South Africa. The Structures Act deals fairly extensively with the Municipal Council and provides for issues such as the **election, removal from office of councillors**, and the **internal proceedings** in and **the dissolution of the Council**.
- **Key Section of the legislation:** **Sec 34 (4)** of the MSA states that ***“The MEC for local government in a province may dissolve a municipal council in a province in accordance with the provisions of section 139 of the Constitution of the Republic of South Africa, 1996”.***
- **Consequences:** ***The MEC concerned, must be individually held liable for a dysfunctional municipality and failing to execute the constitutional and developmental mandate if no interventions are made by the concerned MEC.***
- **Case Study:** Since the Constitution was adopted in 1996, the number of Section 139 interventions has increased from a total of 17 between 1996-2005, to a total of 63 between 2006 and 2015.

Local Government Municipal Structures Act 117 of 1998



- **Key Section of the legislation:** **Sec 40** of the Structures Act states that *“A municipal council by resolution may remove its speaker from office. Prior notice of an intention to move a motion for the removal of the speaker must be given”*.
- **Consequences:** If the Speaker is *underperforming*, or *fails to execute his or her fiduciary responsibilities*, the municipal council has powers and not the political party to remove him or her but a *notice must be given first to move a motion for the removal of the speaker*.
- **Case Study:** The removal of the Mayor and the Speaker in the Nelson Mandela Metro is a case in point. Whether this was done with good intention or not, Sec 40 of the Structures Act was put on a test and the removal was practicable.

Concluding comments



- The C&A Framework provides a concrete background and outline of the legal context for accountability and the consequences to be enforced in local government. The C&A Framework, though, should be read in the spirit of enhancing accountability and providing consequences through specific interventions where such accountability is not enforced or is otherwise undermined.
- Although each legislative aspect is compulsory for local government, the Framework itself remains a supportive tool. It is the aim of SALGA that this Framework is adopted by all municipalities and their representative forums, and that its application will lead to accountable and effective local government, and supported and monitored by provincial and national government. Ultimately, the Framework aims to improve the lives of our residents within the jurisdiction of local authorities through concerted and integrated delivery by all three spheres of government in the pursuit of developmental local government.

Accountability Sayings

“Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws.”

Plato

“Accountability breeds response-ability.”

Stephen R. Covey

“It is easy to dodge our responsibilities, but we cannot dodge the consequences of dodging our responsibilities.”

Sir Josiah Stamp

“Accountability is the measure of a leaders height.”

Jeffrey Benjamin



Thank
You!