



SOUTH AFRICAN LOCAL
GOVERNMENT ASSOCIATION

SALGA

Inspiring service delivery

**Improving Accountability and
Consequence Management
in Local Government Through
Enhanced Governance &
Oversight**

**GAUTENG PMA
17 November 2020**

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 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 Accountability & Consequence Management should start at home before it can be enforced by other roleplayers.
- Accountability and Consequence Management remains 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. In addition the SALGA NEC has on numerous occasions in their current term and as recently as the 18 June 2020 meeting resolved on the need for improved Accountability and Consequence Management to be exercised by Municipalities. In fact at the 18th June 2020 meeting the NEC was unpacking the 2018/19 MFMA audit outcomes and resolved that municipalities must exercise governance and oversight in order to ensure accountability and consequence management is practiced. Going further the NEC resolved that should municipalities fail to practice accountability and consequence management then SALGA will take steps to extract Accountability and Consequence Management from those Municipalities by reporting them to those stakeholders such as National Treasury and COGTA, who have powers available to them in current legislation to extract accountability and consequence management from municipalities.

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.

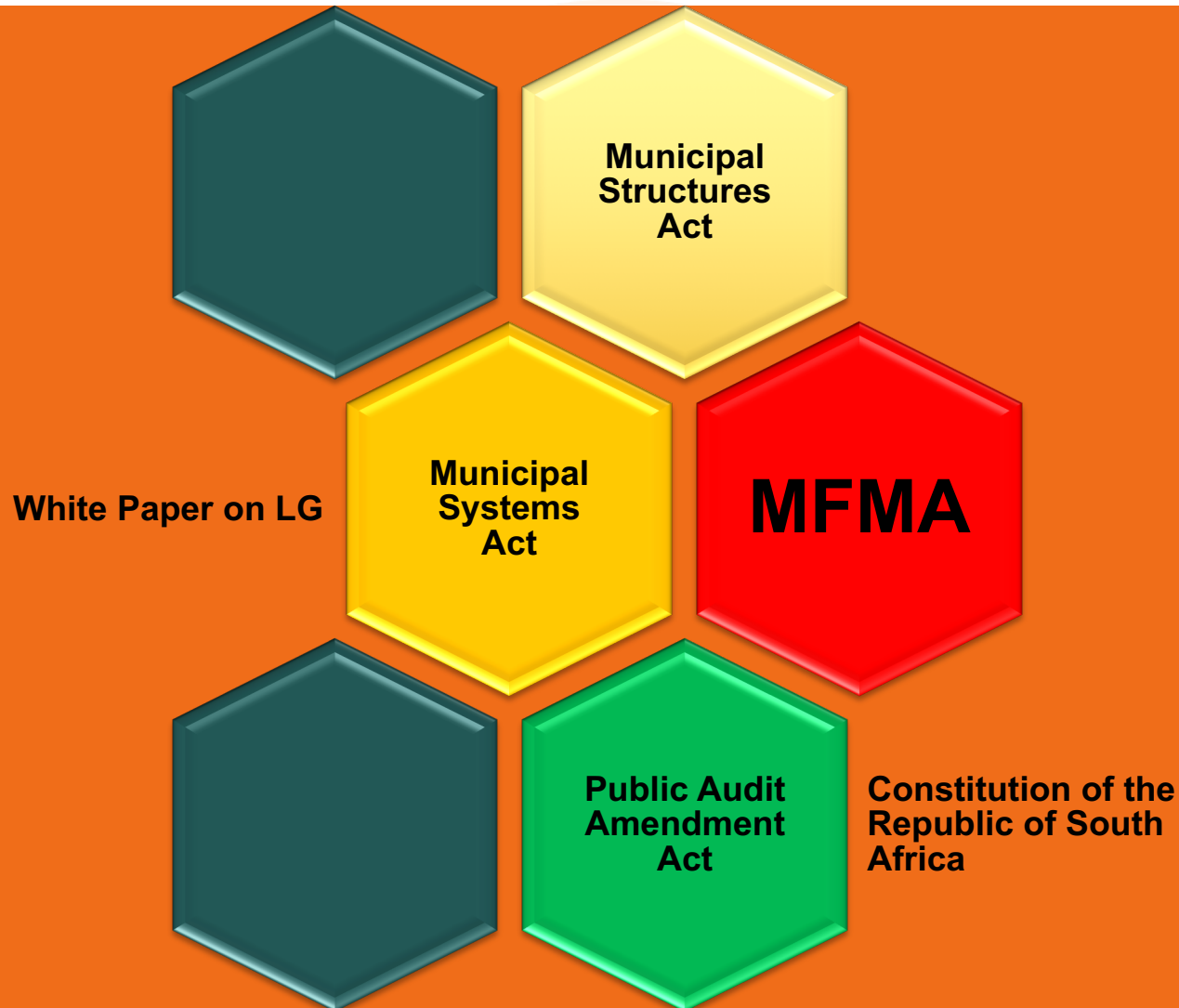
Problem Statement

- 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 an Accountability & Consequence Management (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

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.

Concluding comments

- The SALGA administration in responding to the NEC resolutions to ensure Municipalities practice Accountability & Consequence Management wrote letters under the signature of the SALGA CEO to the Municipal Managers of those municipalities who obtained Disclaimers, Adverse and whose Audits were not finalised by the legislated deadline requesting them to indicate what action they were taking in addressing the findings that the AG had raised. The letter was clear that failure to respond by the requested date will result in SALGA taking steps to extract accountability. In Gauteng 2 municipalities received these letters.
- SALGA is working closely with National Treasury and COGTA both Nationally and Provincially in order to ensure that Governance and Oversight is improved. SALGA is also encouraging National Treasury and COGTA to exercise the existing powers available to them in legislation in an appropriate manner in order to extract Accountability and Consequence Management from Municipalities when there is a need to do so, but to ensure there is no element of overreach practiced so it is done within the allowable parameters of what the legislation allows.

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!