



Democracy, government & public participation

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Introduction

When people vote for direct representatives or political parties in elections (for government and any other institutions), they are voting for these representatives or parties to make laws and policies on their behalf and to ensure that these are carried out. This is one of the most important principles of democracy. The Constitution sets out the right to vote, participate in political parties and stand in elections, in Section 19.

Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. Citizens have a role to play in participating in government and governance processes on an ongoing basis to ensure that the people they vote for carry out their duties and obligations. They have a constitutional right to be involved in these processes in all spheres of government: national, provincial and local. To participate effectively in the decision-making and implementation processes, you need to know:

- The systems and structures of all spheres of government (and key public entities)
- How laws and policies are made in all spheres of government
- What the best opportunities are for public participation in all spheres of government
- Different methods of participating
- The rights of citizens
- The obstacles and challenges to effective participation in decision-making and implementation processes
- How to strategise collectively to highlight and address the needs of especially poor and vulnerable communities and individuals

This chapter looks at democracy and at public participation in a democracy.

Democracy

Democracy is a way of governing a country. The most common definition of democracy is ‘rule by the people’. Citizens are allowed to choose public representatives to represent them in government. They do this in regular, free and fair elections. The public representatives run government on our behalf. They use our tax money to ensure that services are delivered.

However, the democratic practice of citizens doesn't end here. Democracy also means that the people who have been elected are accountable in various ways to the people who voted for them. They have to act and deliver on the promises they made during elections and should ensure the participation of local communities in setting plans and priorities.

All public representatives and officials must be open (transparent) and accountable in their actions and decisions.

When we vote, we give the government a mandate to pass and enforce laws on our behalf. In making laws the government has to follow the Constitution, and it uses the courts as well as the police to enforce the laws.

If the government becomes unpopular or doesn't do what it promised to do then people can vote for another party in the next election and vote the present government out of power. This is essentially how democracy works and why it can be an effective system of government.

The Constitution sets out the principles for how the public service should operate in section 195:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted
- Public administration must be development-oriented
- Services must be provided impartially, fairly, equitably and without bias
- People's needs must be responded to, and the public must be encouraged to participate in policy-making
- Public administration must be accountable
- Transparency must be fostered by providing the public with timely, accessible and accurate information
- Good human-resource management and career-development practices, to maximise human potential, must be cultivated
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation

The principles of democracy

Democratic principles are ideas that most people believe are essential for a democracy to thrive. The most important principles of democracy are:

Public participation: People have a right and a duty to participate in government and in civil society. Public participation includes standing for elections, voting in elections, becoming informed, holding and attending community meetings, joining civil and/or political organisations, paying taxes, and protesting and petitioning.

Equality: All people should be treated equally and without discrimination and be given equal opportunities.

Tolerance: While the party representing the majority of people runs government, in a democracy, the rights of opposition or minority groups are also protected.

Government serves all the people equally. Everyone should be allowed to express their opinions and join the political, religious or civil groups of their choice.

Accountability: Government must be accountable to the people for its actions, including the laws that are passed and how these laws are implemented. Our taxes are used for government spending and all budgets and financial statements should be presented to parliament and be available to the public.

Transparency: Government must be open to the public about its actions. It must allow the public to give input before new laws are passed.

Regular, free and fair elections: Elections must happen in a free and fair way, without intimidation, corruption or threats to the public before or during the election. Elections should also be held regularly. For South Africa, these occur every five years.

Accepting the results of elections: When a political party loses an election, the party and its supporters must accept this result.

Economic freedom: People in a democracy should be allowed to have some kind of private ownership of property and business, they should be allowed to choose their own type of work and join labour unions.

Controlling and preventing the abuse of power: There should be ways to prevent government officials from abusing their powers. The courts should be independent, and they should have the power to:

- Act against government officials or bodies that commit an illegal or corrupt act.
- Allow for public participation and elections
- Check police abuse of power
- Intervene where corruption is exposed

Human rights: The human rights of individuals and groups are enshrined and protected in the Bill of Rights. The Bill of Rights includes a list of rights and freedoms that are guaranteed to all people in the country. All rights and freedoms need to be protected to prevent these from being violated. Section 7 of the Constitution defines what the Bill of Rights is:

- The Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- The state must respect, protect, promote and fulfil the rights in the Bill of Rights
- The rights in the Bill of Rights are subject to the limitations contained or referred to in Section 36 or elsewhere in the Bill

Multi-party system: More than one political party must be allowed to participate in elections and play a role in government. Since the national and provincial elections in 2024 and in local government, independent candidates are also provided for.

Rule of law: The rule of law means laws rule above all else and that no one is above the law, including the parliament or president of the country. Everyone must obey the law and be held accountable if they break the law. The law must also be equally, fairly and consistently enforced. Laws are the rules made on our behalf by parliament. The judiciary acts as a referee and enforces the rule of law. They may judge any action by government, citizens, organisations or companies and will use the Constitution and laws to decide whether the action is legal or illegal.

Electoral system and electing a government

The Constitution gives everyone who is a citizen and 18 years or older the right to vote in elections.

The electoral system for the national assembly and provincial legislatures is the proportional representation system, and all citizens are entitled to vote if they are registered voters. Voters vote for a party or an independent candidate of their choice.

The local government electoral system is a mixture of proportional representation and constituency system.

South Africa holds national, provincial and local elections every five years, and the local government elections usually occur about two years after the national and provincial elections.

Having regular, free and fair elections is one of the cornerstones of democracy. This goes together with other important democratic principles such as the right to vote, to choose which party you want to belong to and the obligation to accept the results of an election.

There are different ways to elect representatives into government, including the system of proportional representation and the constituency-based system. The South African national and provincial elections are based on the system of proportional representation while the local government electoral system is partly based on proportional representation and partly constituency-based. In 2024, the Constitutional Court order that independents must be able to stand for national and provincial elections was implemented.

CHANGES TO THE ELECTORAL ACT IN 2024

In 2024, Amendments to the Electoral Act were passed by Parliament to accommodate independent candidates in Provincial Legislatures and Parliament. Three ballots were used, and parties received seats according to the percentage of the votes they won. Independents could also compete for a provincial seat or a regional to national-seat.

PROPORTIONAL REPRESENTATION

This means that parties get a certain number of seats in parliament according to the percentage of votes that they get in an election. So, for example, if your party gets 15% of all the votes in the country, then it gets 15% of the seats in parliament.

There are 400 seats in the national parliament. So, for every 1% of the vote, a party gets 4 seats. The example on the next page shows how seats are allocated for the top three parties that won seats in the 2014 election.

EXAMPLE: NATIONAL ELECTIONS 2014		
Party	% of the votes	Number of seats
African National Congress	62 %	247 seats
Democratic Alliance	22 %	89 seats
Economic Freedom Fighters	6 %	25 seats
Other small parties (together)	7 %	39 seats

CONSTITUENCY-BASED ELECTIONS

According to this system, the country is divided into voting areas called constituencies. Each political party chooses one person to represent the party in each constituency. This person is the party's candidate. Independents can also stand without a party backing them. People in a constituency vote for the candidate of their choice. So, a person only goes to parliament if they get the most votes in that constituency. It is also called the “first past the post” system and is used for ward councillor elections in South Africa.

For national and provincial elections, there are no small constituencies. Each province is, in effect, a multi-member constituency.

Local government electoral system

The local government electoral system differs from the national and provincial electoral systems of pure proportional representation. Voters get three ballots – one for the local council (party names), one for a ward candidate (individual names) and one for the district council (party names). In the local council, half of all councillors come from wards where they are directly elected as individuals. The other half come from party lists and are elected according to a proportional list system. District councils are partially elected based on proportional representation, and partially appointed by the councils of local municipalities within the district.

In the eight metropolitan councils (the City of Johannesburg, the City of Tshwane, eThekweni, Ekurhuleni, Mangaung, Buffalo City, the City of Cape Town and Nelson Mandela Bay Municipality), voters get only two ballots, as there are no district councils.

MUNICIPAL BY-ELECTIONS

By-elections take place within 90 days after a municipal ward council seat becomes vacant due to the death, expulsion or resignation of a ward councillor.

Public participation

Public participation means that citizens should be able to interact with government on decisions that affect them. Democracy should not end with elections, government makes

thousands of decisions that need input from the people. For example, many organisations and individuals make representations to parliament in public hearings when new laws are discussed. At a local level, municipalities should consult people on housing developments and the use of public land.

Citizens have a right (and a duty) to have a say on how the government does its work. Citizens also pay taxes and have a right to know how this money is being spent. If people don't participate, the government may make decisions without hearing the opinions of the people and, as a result, will not be transparent and accountable for their actions. This can lead to the abuse of power. The Constitution says all spheres of government (national, provincial and local) have to make it easy for people to participate in government. Section 118 (1)(a)(b)(i) and (ii) of the Constitution deals with public access to and involvement in provincial legislatures, and Chapter 4 of *The Local Government Municipal Systems Act* is dedicated to community participation.

So we can see that public participation is an important part of democracy – and in particular for South Africa – because it makes the government:

- Open and accountable for its actions
- Act on its promises (usually made in election manifestos, policy and budget speeches of ministers, and the annual State of the Nation Address (by the president)

If you want to participate effectively, you need to be properly informed, which means:

- Knowing what is happening in your community and what the important issues are
- Understanding government budgets and available resources
- Knowing what is happening in your broader society
- Knowing what your legal rights are and where decisions will be made

How can you participate and influence decision-making?

Here is a list of ways that you can participate and influence decision-making:

- Vote in elections
- Participate in party politics
- Organise, support and hold public demonstrations and campaigns
- Petition local, provincial and national leaders
- Lobby decision-makers (e.g. a municipal councillor, mayor, speaker, member of parliament or senior government official, e.g. municipal manager, and participate in decision-making processes, such as public hearings or public consultation meetings)

- Engage with ward committees, intergovernmental meetings, budget, IDP and local consultative meetings at a local government level. Use these to hold local councillors accountable and participate in policy formulation and implementation planning
- Make written or verbal submissions to council committees (*See pg 142: Checklist: Making a written and verbal submission*)
- Print and distribute leaflets to the public
- Use local radio and TV stations or social media networks, e.g. WhatsApp, Facebook and X, to spread your message
- Refer complaints to appropriate institutions like the South African Human Rights Commission (SAHRC), Commission on Gender Equality, the Public Protector, and Independent Police Investigations Directorate (IPID) for police issues
- People can also lobby constituency representatives of statutory institutions, such as the National Economic Development and Labour Council (NEDLAC), South African National Aids Council (SANAC) and other structures that encourage public participation

Voting in elections and lobbying are two of the most important ways of participating in decision-making processes.

Voting in elections

The Constitution gives everyone who is 18 years or older the right to vote in secret in elections. The *Electoral Amendment Act* (No. 34 of 2003) says a person who is a South African citizen, has a bar-coded ID and is 16 years old can apply to register as a voter. Their name can only be placed on the voter's roll once they reach the age of 18 years.

NATIONAL AND PROVINCIAL ELECTIONS

South Africa's national and provincial elections take place every five years.

Voters vote for a political party or an independent. The political party then gets a share of seats in parliament in direct proportion to the number of votes it got in the election. Each party then decides on members to fill the seats it has won. This is called a proportional representation (PR) voting system. Independents win a seat by getting the quota of votes needed for one seat.

Democratic national and provincial elections have taken place every five years starting in 1994.

Voters are registered to a voting district (VD) and appear on the voter's roll only at the voting station in that voting district. Special votes are allowed before elections for people who are travelling outside the country or voting district on election day or those who are disabled, infirm, elderly, or heavily pregnant. Prisoners are allowed to vote in national and provincial elections.

MUNICIPAL ELECTIONS

Municipal elections take place every five years. A mixed or hybrid system of both the ward system (a constituency system) and the proportional representation (PR) system is used for municipal elections. The first democratic municipal elections took place in 1995/6, and the first municipal elections run by the IEC took place in 2000.

There are 3 types of Municipal Councils in South Africa:

1. Category A: Metropolitan Councils
2. Category B: Local Councils (LC)
3. Category C: District Councils (DC) (have executive and legislative powers in areas that include local municipalities)

For metropolitan municipalities, there are 2 types of elections and ballots:

1. Metropolitan Council ward ballot with individual's names to elect one ward councillor in each ward and
2. Metropolitan Council proportional representation ballot with party names

In all local municipalities other than metropolitan municipalities, there are 3 types of elections and ballots:

1. Local Council ward
2. Local Council proportional representation
3. District Council proportional representation

MUNICIPAL BY-ELECTIONS

By-elections take place within 90 days after a municipal ward council seat becomes vacant due to the death, expulsion or resignation of a ward councillor.

SPECIAL VOTES: MUNICIPAL ELECTIONS

A special vote allows a registered voter who can't vote at their voting station

on election day to apply to vote on special vote days before election day.

Lobbying (campaigning, petitioning)

Lobbying means trying to influence or persuade individuals or groups with decision-making powers, such as people who make policy or laws, to support a position you believe is right or to take certain action. Organisations and individuals can lobby to directly influence decisions being made in all spheres of government.

WHO CAN YOU LOBBY?

In the work you and your organisation do, it is important to identify people whose cooperation or influence you need to help you with your work. These are usually decision-makers or key role-players. So, you lobby people who have the power to take action to support the needs and interests of those who do not have direct power and influence. Lobbying can be used to influence anyone with power, for example:

- Parents can lobby the school governing body to provide after-care at school
- Civics can lobby the police commissioner to have more police on duty at night
- HIV/AIDS activists and support organisations can lobby the president to provide affordable treatment for people who are HIV positive
- Civics can lobby local councillors to pass a by-law that says everyone should be given access to electricity
- Organisations can lobby members of parliamentary standing committees, cabinet ministers and heads of government departments to influence them in policy and law-making

The two main categories of decision-makers and role-players that you can target are people who support your cause and people who oppose you.

TIMING OF LOBBYING (CAMPAIGNS AND PETITIONS)

Make sure you understand where, when and by whom a decision will be made. Find out what rights you have in terms of public participation.

BUILDING GOOD RELATIONSHIPS WITH DECISION-MAKERS AND KEY ROLE-PLAYERS

One of the most important parts of lobbying is building relationships with people that you are planning to engage, in other words, decision-makers and key role-players

The stronger the ties of trust, mutual support and credibility between you and the person you are lobbying, the more effective your action will be.

These are some guidelines for building good relationships with key role-players:

- Provide useful, accurate, context-specific and truthful information:
- It is important for you and your organisation/network to understand and identify issues of protocol and to raise issues with the appropriate office first. For example, if there is a problem at a clinic, first raise this with the head of the clinic, then the area manager, then the provincial or district authority and finally with the MEC for Health, rather than the other way around. When making a submission to the municipal council, provincial legislature or parliament, it is protocol to take the issue to the relevant decision-making body to consider rather than going to the media first.
- It is important to identify the group/constituency you represent and to have affected persons and community representatives participate where possible in the submission/presentation
- Recognise what the person you are lobbying has done to benefit the community, so start with a positive and encouraging comment
- Offer to help with issues that they care about (so long as it doesn't conflict with your own interests), for example, helping to spread information
- Establish ways to work together in the future. Promote win-win solutions where the people you represent, as well as the decision-makers gain something positive
- Keep in regular contact, and don't be impatient if nothing happens immediately
- Follow up in writing with those you made a petition/submission to, thank them for their consideration, repeat what you have requested/called for and ask, if needed, when you can meet again
- Keep the community or interest groups informed of the latest developments
- Ensure that they own the lobbying strategy and can sustain it
- Keep the media informed about any changes or developments that may affect the issue

EXAMPLE

You want your municipality to test the drinking water of your community.

You believe a local factory has been pumping their waste into the water and it has been making people sick. You will have more chance of someone co-operating with you if you provide them with accurate information, for example, by showing them a record of the illnesses in the last month in the affected area (get these from a clinic or hospital) or providing evidence of the company dumping waste in the water.

TYPES OF LOBBYING

There are many different ways of lobbying, campaigning and petitioning. The different lobbying activities around an issue must be coordinated to make sure they have the greatest impact. It is important that strategic thinking precedes your action.

These strategies can broadly be categorised into 2 groups:

- Inside lobbying
- Outside lobbying

INSIDE LOBBYING

Inside lobbying includes a mix of the following:

- Holding meetings with decision-makers, such as local council representatives and members of parliament for your area
- Providing information to role-players, committees and government officials
- Making submissions to committee meetings/public hearings
- Attending hearings where policy is discussed
- Negotiating with decision-makers and other lobby groups
- Writing formal letters stating your position
- Submitting petitions to relevant committees
- Having discussions with people in informal situations, for example, before or after meetings, during social occasions

OUTSIDE LOBBYING

If inside lobbying is not effective, you should mobilise more support for your

issue through outside lobbying, for example:

- Speaking to the media, holding news conferences, visiting news editors, helping reporters with stories
- Building alliances with other organisations
- Public letter-writing campaigns
- Public campaigns such as rallies and demonstrations

METHODS OF LOBBYING

The following is a summary of methods you can use for lobbying:

Even before you engage in lobbying it is critical to mobilise support for your position or issue. With modern technology, support can happen via social media sites such as Facebook and Twitter, though it is important to have a local core group engaging with decision-makers.

MEETINGS: Ask if you can have a face-to-face meeting to present your case. Visit the person in their office or invite them to attend a meeting in the community. Always state clearly why the meeting is important and give them an agenda and a list of possible outcomes from the meeting. Remember to say what is in it for the decision-maker, for example, *"This meeting will provide you with the opportunity to make direct contact with more than 100 people from the community and to hear their concerns on the issue"*, or *"We will publish your response on our Facebook page where we reach 15 000 people from this city."*

WRITE LETTERS: Letters, emails and sms messages are the easiest method to use to lobby but they are not always the most effective. Many people in positions of power have administrative staff who read their mail and sms messages and summarise them for them. It is always advisable to call a meeting with decision-makers, after writing a letter or sending a message.

The different activities around an issue must be coordinated to make sure they have the greatest impact. So, for example, civil society organisations worked together on the Right to Know Campaign from 2011 to 2014 to raise concerns about the Protection of Information Bill. They used inside and outside lobbying, campaigning and petitioning to delay the passing of this bill. Their work helped to improve the law and address strong concerns from various civil society organisations and the media.

ASK FOR AN ON-SITE INSPECTION OR SURPRISE VISIT: Invite decision-makers to come and make on-site inspections if appropriate. For example, get the person to

come and look at the condition of a school. Committees of parliament have scheduled site visits that can be used to arrange engagements with affected communities or organisations.

Elected officials and municipal officials are the closest to people. Visits and meetings can be arranged more easily with this sphere of government. For example, invite an official or councillor to explain the budget to a ward committee or organised group in your area.

INFORMAL TALKS: Talk informally to committee members and decision-makers during tea breaks, etc. Introduce yourself and share your opinions.

PRIVATE MEETINGS: Organise meetings with national and provincial ministers, mayors and their advisors, and local councillors to explain your position.

PUBLIC MEETINGS: Attend and observe parliamentary committee debates/local council meetings.

PETITIONS: Petitions can be used to show how much popular support your issue has. You can use a petition to get as many signatures as possible from people in the community, or you can get a smaller number of key individuals or organisations to sign a petition to support your submission.

PUBLIC HEARINGS: When a bill is tabled in parliament, public hearings are often held where the public can make their submissions to the parliamentary committee dealing with the issue. This is a key moment to get the policy or law changed.

PHONE CALLS, SMS, FAXES & EMAILS: Get as many people as possible to telephone the decision-maker. Also, use SMS, faxes and email, if possible. Try to contact influential and well-known people by telephone. If you cannot speak to the decision-maker, leave a clear message, for example, "*We are phoning to object to the council closing the local health clinics*".

USE THE MEDIA: Use radio, newspapers and TV to spread the word and get publicity for your story. It always helps to make individual contact with a reporter who is prepared to follow the issue through.

MAKE SUBMISSIONS: If formal submissions to committees are unsuccessful, you can also make the submission to an influential member, such as a parliamentary member or a member of a local council committee. You can make a submission to draw attention to an issue or to try and influence the policy and law-making process.

USE THE LEGAL SYSTEM: Take a case to court or to one of the human rights commissions set up under the Constitution to investigate claims of human rights abuses. This is usually the last resort when all avenues of lobbying have failed, where there has been a failure to address an issue for a long period, or where drastic intervention is needed. This is called public interest litigation. *(See next page: Example of lobbying)*

EXAMPLE

This example shows the lobbying role played by an NGO or civil society network during the process of amending The Choice on Termination of Pregnancy Act.

February 2007

Women's health activists come together and develop a draft abortion policy proposal, which is submitted to the Department of Health and the ad hoc Select Committee on Abortion

August 2007

NGOs mobilise the media and make their own submissions to the public hearings

NGOs mobilise public opinion by running community workshops on abortion reform.

NGOs form an alliance

March 2008

The alliance of NGOs lobbies parliament through the distribution of pamphlets to parliamentarians and decision-makers and gives evidence to parliament in favour of abortion reform.

May 2008

Alliance collects data from focus groups to assess community opinion on The Choice on Termination of Pregnancy Act. Research helps in providing improved abortion access for women.

July 2008

Parliamentary hearing on implementation of the Act: Alliance mobilises support from other organisations to give input for the hearing

GUIDELINES TO EFFECTIVE LOBBYING

These are some practical tips on how to petition decision-makers and/or key role-players:

ENGAGE & INTERVENE EARLY: It is usually better to intervene as early as possible in the process of developing policy and laws. By the time an issue is being debated in

parliament, within a municipal council or being finalised in a government department, it is hard to get it changed significantly.

For this reason, it is important for your organisation to regularly check invitations to public hearings in newspapers, and in the media. There are dedicated websites and organisations that alert one to these developments. Examples include the Parliamentary Monitoring Group (PMG). At a local level, it is important to check local papers as regularly as possible.

RESEARCH OR DATA COLLECTION: When government publishes a draft strategy, policy paper, draft regulations or any form of discussion document, you should research the issue properly to be clear about it and, where necessary, collect evidence.

IDENTIFY DECISION-MAKERS: Analyse who has the power to make decisions on your issue and target your strategies in a very focused way at specific decision-makers. Remember, not everyone will agree with your position. Think how the role-player can benefit from agreeing with you and include this in your arguments.

Realise that your target audience may respond in three ways:

- People who support your position
- People who neither support your position nor oppose it and who can, therefore, be persuaded to support you (those who 'sit on the fence' or are undecided)
- People who are against you

For your cause/issue to be heard, every effort needs to be made to ensure that decision-makers thoroughly discuss your concerns and do not simply see you as an opponent.

Amongst those who support your cause, all must agree on the same way forward so that you do not confuse decision-makers. This requires time, patience and lots of communication.

BE CLEAR ABOUT YOUR AGENDA AND GOALS: Only use advocacy and lobbying that will address issues that have jointly been identified as core matters to improve the quality of life of the community or the interests of the group. Ensure that your arguments are tight and clear, and where possible, provide evidence to support your case.

Be clear about your issue and plan your own alternative or compromise position. Make sure you have thought through all the options. Know what it is that you want. For example, do you want a parliamentary committee to investigate why a government department has not done a certain job, are you asking for a law to be amended or a by-law or regulation to be scrapped?

This will form the basis of your submission to government, your media campaign, your representations to individual ministers or government officials and your networking with other organisations. It is important to -

- Know your issue (don't confuse by raising too many issues)
- Know your position
- Decide what you want to get out of the visit, for example, a commitment to vote for your issue, to provide information only
- Keep it simple
- Make recommendations to solve the situation rather than only describe the challenge or problem at length
- If it is a group visit, decide who will start the discussion and put your agenda on the table
- Seek endorsements from networks or organisations that support your position and or submission, and bring people from the affected community to also speak
- Only after engaging with the decision-makers share the entire submission with the media

PROPOSE SOLUTIONS: Propose to committee members or government officials a solution that can work. Avoid threats or aggressive language.

PREPARE FOR RESISTANCE & OPPOSITION: Analyse the opposition's position (to your issue) and develop counter-arguments. Often, arguments of affordability and resources are used to counter your submission. Make sure you have sufficient evidence to motivate why additional resources are required to meet your request/demands.

If additional resources are required or amendments to existing legislation are proposed, try to get professional advice on legal and cost issues.

LISTEN WELL: When making your submission:

- Look for opportunities to provide good information.
- Know your issue, but don't feel you have to have all the answers. Admit when you do not know something.

- Ask questions to get a better understanding.
- Share the opinions and concerns of other people in your community.
- Find out how much time you have been allocated for your submission or presentation – and aim to complete it in a shorter time. Often, programmes run late, or sudden changes are introduced.
- Take enough copies of your presentation for everyone present.
- Establish who will be presenting to the committee/decision-makers before or after you if your submission is part of public hearings.
- Make sure beforehand that the time, venue and date have not changed.
- Always assess afterward what worked well, what may require more work and what your future strategies are.

NEVER USE BLACKMAIL: Using blackmail, gifts or bribery to persuade someone to take a certain action is corruption and unethical behaviour, not lobbying.

DON'T BE AGGRESSIVE: Don't be argumentative or confrontational and don't get involved in mud-slinging. Be open to counter-arguments, but don't get stuck on them. Attack with correct facts, but avoid personal attacks or insulting slogans. Treat everyone with respect.

BUILD, DON'T DAMAGE WORKING RELATIONSHIPS: If the person has supported you in the past then acknowledge them and your appreciation of their support. If they haven't supported you in the past, they may well do so in the future, so don't turn them into a permanent enemy. Your response might stop them from becoming active opponents.

GET COMMITMENT & SUPPORT: Try and get a commitment from the person, for example, a written declaration or a public statement, if it is within their powers to do so. If you are unable to get a commitment and the conversation isn't going anywhere, thank the person and say that you would like to continue the discussion at another time.

FOLLOW-UP: After the meeting, if appropriate, send a thank-you note to all in attendance or to the chairperson of the committee. If commitments were made in the meeting, repeat your understanding of them. If staff members were present, thank them, and write to the administration too.

LOBBY ALL TARGET GROUPS/ RELEVANT AUTHORITIES: Don't only lobby one department or entity on an issue. Identify the target role-player's supporters, allies and opponents and include all of them. For example, an environmental health matter may require engagement with the provincial health department, the municipal

environment health department and the agency responsible for refuse collection, as a start. You should also lobby all political groups, not just the majority party.

CONSOLIDATE & BUILD YOUR LOBBY GROUP: Analyse which individuals and organisations can influence the decision-makers and/or role-players and try to mobilise them to support your issue. Never lobby alone. People with political power are usually more sensitive to lobbying action which represents their voters.

BRIEF ALL ROLE-PLAYERS: Keep other stakeholders informed about what is happening and the outcome of any lobbying action. Use meetings, regular emails, newsletters, SMS, WhatsApp, phone calls and other social media networks.

Structures of national government and public participation in these structures

The different branches of government at national level provide different opportunities for public participation. The following section looks at the structures of national government and the possibilities for public participation within these structures.

Structures of national government

THE EXECUTIVE BRANCH

The executive branch is responsible for the day-to-day running of the country. It consists of the president, deputy president and cabinet, and they oversee the public service. Some of the functions of the executive are to:

- Initiate laws and policy
- Carry out laws passed by parliament
- Carry out policies
- Co-ordinate the functions of the government departments and administrators
- Provide direction to heads of government departments
- Plan, monitor and evaluate government programmes

KEY ROLE-PLAYERS AND STRUCTURES IN THE EXECUTIVE

It is important to know what structures exist as they can be useful as a point of entry for your lobbying action.

The president, cabinet and deputy ministers are called the executive. The head of state is the president who leads the cabinet. The national assembly elects the president from among its members and leads the country following the Constitution and the law. The key role-players in the executive that may play a role in formulating policy or drafting law will be:

- The president
- The deputy president
- Ministers, directors general and other senior managers who are in charge of different government departments
- Inter-departmental committees. Often policy will cut across a number of ministries and departments. Inter-departmental committees are set up using representatives from different departments to deal with the policy as a whole and provide direction to directors general who head the public service. For example, in the case of delivery of water, this may involve the departments of water and sanitation, environmental affairs, human settlements, finance and cooperative government.

LEGISLATIVE BRANCH

The functions of the legislative branch of government are to:

- Develop and pass laws
- Contribute to developing policy
- Act as a watchdog on the activities of government
- Pass budgets and get reports from departments

The legislature consists of the national parliament made up of different structures, for example, a National Assembly, National Council of Provinces (NCOP) and various parliamentary committees. These are the key structures that you can lobby in the legislature:

PARLIAMENTARY COMMITTEES

The national parliament usually divides the members of parliament into small groups which focus on specific areas of governance. These smaller groups

are called parliamentary or portfolio committees. The main role of the portfolio committees is to:

- Make sure that policy issues and new bills are properly debated and looked at carefully
- Allow members of parliament to become specialised in a particular field of interest, such as defence or agriculture
- Provide a forum where the public can interact with parliament and government on specific issues and new bills
- Discuss and assess the activities of other government departments

There are about 40 portfolio committees in national parliament, one for each government department and several internal to parliament. For example there are portfolio committees on correctional services, health and international relations and cooperation.

The parliamentary committees of the National Council of Provinces are called Select Committees. There are 11 Select Committees that manage the issues sent to them by the portfolio committees of national parliament.

OTHER IMPORTANT ROLE-PLAYERS IN THE LEGISLATURE

- The speaker of parliament
- Political party whips (responsible for each party's members of parliament)
- Parliamentary committee chairpersons
- Committee secretaries
- Political party caucuses, where party members meet to discuss the party positions on an issue (these are closed to the public, but key members can be lobbied before meetings to raise issues)

Public participation in the process of making laws and policies at national level

It is important to know how laws and policies are made as these processes provide opportunities for public participation.

WHAT IS THE DIFFERENCE BETWEEN A LAW AND A POLICY?

A law is a set of legally binding rules passed by parliament and sets out standards, procedures and principles which must be followed. If a law is not followed, those responsible for breaking them can be taken to court.

A policy outlines a ministry's goals and the methods and principles it will use to achieve them. It is not a law, but it will often identify the need for new laws to achieve its goals.

So, policy sets out the goals and planned activities of government but it needs laws to implement the policy. Laws, on the other hand will be guided by the current policy when they are drafted.

All laws and policies are made according to the Constitution and may not contradict the rights embedded in it.

THE DIFFERENCE BETWEEN LAW AND POLICY

A policy statement says: "All citizens should have access to 15 litres of water a day".

The law says: "The national government has the power to regulate the amount of free basic water a municipality must supply."

MAKING NEW POLICY

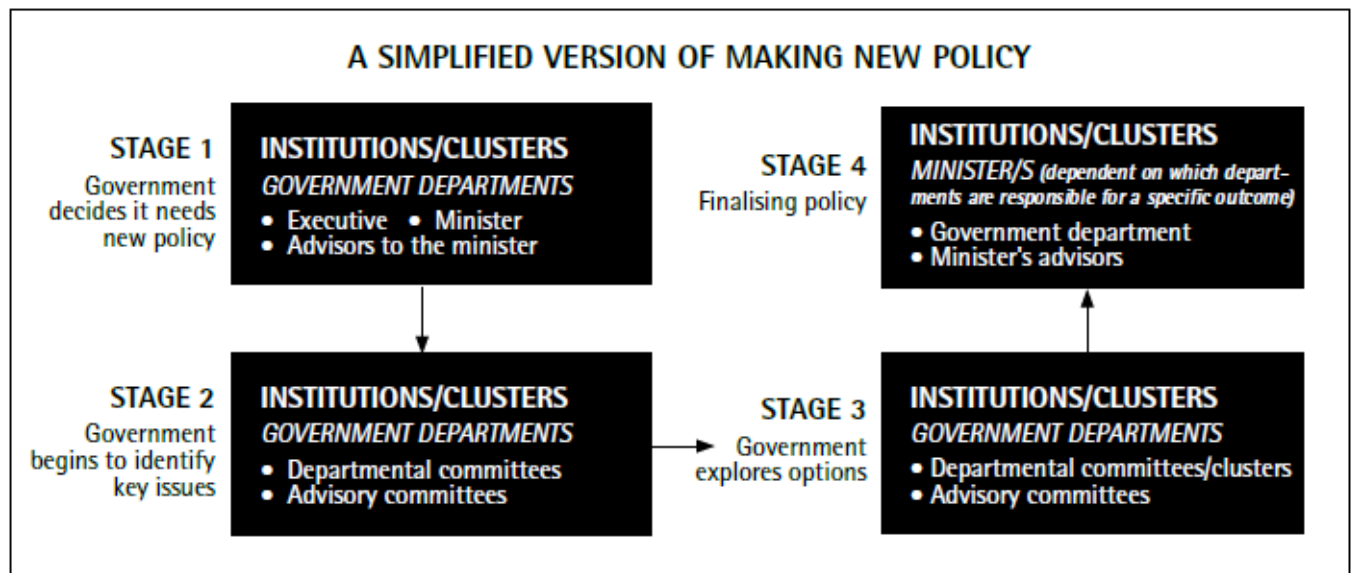
This is a basic format to show the process of making a new policy:

1. The government identifies the need and drafts a new policy.
2. Government identifies key issues. The appropriate department will identify key issues that are relevant to the problem. This is done through research and consultation with people in the field.
3. Government explores policy options. Once the department has explored the key issues, it will draw up a document outlining the key issues and give suggestions for solving the issues. This document is called a green paper or discussion document and is open to the public for comment (typically for a few months)
4. Government finalises the policy. The Department and Ministry look at all the issues and options and decide which issues are important and how they

intend to address these. They also take into account public comment on the green paper or discussion document. Cabinet will have to approve the government's final policy positions. The policy is then published as a white paper and adopted by parliament as the official policy of government. The white paper often forms the basis of laws that have to be passed to give effect to the policy.

NOTE

The ruling party in government will base their approach on the manifesto and policies of their party. Often, new policies are first discussed in party congresses, and the party's public representatives use these as a basis for the work they do in government. It is also important to try and influence political parties and to participate in their policy-making process whenever you have the opportunity. You can do this as a member of a party or as a participant in any public policy discussions held by the party. You can also lobby senior leaders in the party.



WHEN CAN YOU PARTICIPATE DURING THE POLICY-MAKING PROCESSES?

There are critical key moments in the policy and law-making process when it is best to lobby. These are linked to:

- The stage in the process of developing policy or law

- Knowing the institution and person involved who has the power to make changes

PARTICIPATING DURING THE POLICY-MAKING PROCESS		
POLICY STAGE	INSTITUTION/ROLE-PLAYERS	OPPORTUNITY FOR LOBBYING
Government decides it needs new policy	<ul style="list-style-type: none"> • Government departments/ clusters • Cabinet committees • Minister • Advisors to the minister 	<ul style="list-style-type: none"> • Media pressure • Alert government to the need for new policy it is considering • Meet with ministers and advisors • Alert parliament to the need for new policy (via parliamentary committees)
Government begins to identify key issues	<ul style="list-style-type: none"> • Government departments/ clusters • Departmental task forces • Advisory committees 	<ul style="list-style-type: none"> • Become part of advisory committees or task forces • Meet with relevant departments • Comment on discussion documents • Attend workshops
Government explores options	<ul style="list-style-type: none"> • Government departments/ clusters • Departmental task forces • Parliamentary committees 	<ul style="list-style-type: none"> • Comment on draft policy • Meet with department • Attend parliamentary hearings and make submissions • Attend workshops • Media pressure
Finalising policy	<ul style="list-style-type: none"> • Minister • Government departments/ clusters (upper level officials) • Minister's advisors • Parliamentary committees 	<ul style="list-style-type: none"> • Comment on revised draft policy • Meet with department or minister • Lobby parliament and attend committee meetings • Use media to stimulate public debate
<i>Acknowledgement: Based on Voices in Action: The Contact Trust</i>		

MAKING NEW LAWS

The job of drafting new laws is most often done by government departments. The government may decide it needs new laws to achieve its objectives or to carry out policies that have been drawn up. A draft bill is a draft law that has not been passed by parliament. 'Passed' means approved. An act is a law that has been passed by parliament.

This is a summary of the basic steps for making or passing a new law:

1. A draft bill is drawn up. A bill can be introduced in the National Assembly by a cabinet minister or deputy minister, a parliamentary committee, or a member of the National Assembly. If the bill comes from a department, the minister will first take it to Cabinet for discussion to make sure it does not clash with any other laws or policies. Once Cabinet approves it, it is tabled in the National Assembly. The draft bill can be made available for comment to the public. Once the public has commented, the department will make any changes that they think are necessary.
2. The minister tables the bill in parliament. The Bill is given a number, for example, *Bill 25 of 2011*.
3. Parliament looks at the contents of the Bill and sends it to a *parliamentary portfolio committee* for consideration.
4. The Parliamentary Committee debates the Bill. The Parliamentary Committee may ask the public for comment on the Bill. They will then usually hold hearings for anyone to attend where they debate the Bill. Once they have made any changes, they must send their report back to Parliament.
5. Parliament votes on the Bill. *At least half the members of the national assembly* must vote in favour of the Bill for it to be approved. If there is no majority, the Bill is rejected.
6. If the National Assembly has approved the Bill it gets sent to the *National Council of Provinces (NCOP)*. The NCOP considers the Bill. It can approve, suggest changes or reject the Bill. If it approves the Bill, it refers it back to the *national assembly* to be passed.

If the bill is about something that only the national assembly can make law on (a Section 75 bill): The NCOP can approve the Bill or suggest changes, but the National Assembly decides what the Bill finally says. Each member of the NCOP has one vote, and a simple majority of members is needed to approve the Bill. (A simple majority means half the votes plus at least one vote must be in favour of the Bill.) Examples of Section 75 Bills are defence and international relations bills.

If the matter is one that provinces can make law on (a Section 76 bill): The NCOP can approve, suggest changes or reject the Bill. To approve the Bill, each province has one vote, and at least five of the nine provinces must vote in favour of it. *If the NCOP suggests changes or rejects the bill and the national assembly doesn't agree, the NCOP can refer the bill to a mediation committee to resolve any differences.* Examples of Section 76 Bills are Bills on environmental affairs, cultural issues, etc.

- The mediation committee consists of 9 members of the NCOP and 9 members of the national assembly.
 - If the mediation committee resolves the differences, it refers the bill to the national assembly to be passed.
 - If the national assembly and NCOP still can't agree, then the national assembly has to have a special vote to make the bill law. It will only become an act if it gets a two-thirds (66%) majority in the national assembly.
7. The NCOP may advertise public hearings on Bills where they ask for public comment. People can also send their written submissions to the NCOP.
 8. The National Assembly passes the Bill.
 9. The President signs the Bill and it gets published in the Government Gazette. When this has happened, the Bill becomes law and is called an Act.

MAKING NEW LAWS: NATIONAL SPHERE	
PROCESS STAGE	INSTITUTION/ROLE PLAYERS
1. Bill tabled in parliament	PARLIAMENT <ul style="list-style-type: none"> • Minister
2. Referred to parliamentary committee	PARLIAMENTARY COMMITTEE <ul style="list-style-type: none"> • Government department • The public
3. Committee debates bill	PARLIAMENTARY COMMITTEE <ul style="list-style-type: none"> • Department/ministry • The public
4. Debate and vote on bill	MINISTER <ul style="list-style-type: none"> • Government department • Minister's advisors
5. In the case of a section 76, bill referred to NCOP for debate <i>approves, suggests, changes, rejects</i>	NCOP
6. Bill goes back to national assembly <i>changes implemented, bill passed by parliament</i>	PARLIAMENT
7. Bill sent to president for signature	PRESIDENT'S OFFICE

WHEN CAN YOU PARTICIPATE DURING THE LAW-MAKING PROCESS?

There are critical key moments in the law-making process when it is best to lobby. These are linked to:

- The stage in the process of developing law
- Knowing the institution and person involved (who has the power to make changes)

PARTICIPATING DURING THE LAW-MAKING PROCESS		
LAW-MAKING STAGE	INSTITUTION/ROLE PLAYERS	OPPORTUNITY FOR INPUT
1. Bill tabled in parliament	<ul style="list-style-type: none">• National assembly• Minister• Party whips	
2. Bill referred to parliamentary committee which holds public hearings	<ul style="list-style-type: none">• Parliamentary committee• Department	<ul style="list-style-type: none">• Written submissions• Oral representations• Informal lobbying• Media pressure
3. Committee debates bill and refers it back to parliament	<ul style="list-style-type: none">• Parliamentary committee	<ul style="list-style-type: none">• Written comment• Informal lobbying• Oral submissions• Media pressure• Lobbying related structures
4. Debate and vote on bill	<ul style="list-style-type: none">• Parliament and NCOP	<ul style="list-style-type: none">• Written comment• Public hearings (NCOP)• Media pressure
5. Bill sent to president's office for signature	<ul style="list-style-type: none">• President's office	<ul style="list-style-type: none">• Letter of objection• Media

EXAMPLE: SUMMARY OF THE POLICY AND LEGISLATIVE PROCESS LEADING UP TO THE PASSING OF AN ACT OF PARLIAMENT (THE WATER MANAGEMENT ACT)

DATE	WHAT HAPPENED
2005	<ul style="list-style-type: none"> • Technical study team appointed to review water management policy
2006	<ul style="list-style-type: none"> • Green Paper on water management policy for South Africa published
2007 January	<ul style="list-style-type: none"> • Deadline for comments (on green paper)
2007 January to July	<ul style="list-style-type: none"> • Executive (cabinet) approves broad policy principles of draft White paper • Draft White Paper on Water Management Policy published
2007 August	<ul style="list-style-type: none"> • Deadline for written submissions (on White Paper) • Parliamentary committee briefed on draft White Paper
2007 August to October	<ul style="list-style-type: none"> • Parliamentary committee holds public hearings
2008 up to May	<ul style="list-style-type: none"> • Draft White Paper amended and adapted
2008 up to May	<ul style="list-style-type: none"> • Executive (cabinet) approves final draft of White Paper
2008 May	<ul style="list-style-type: none"> • Copy of draft bill sent to various government departments • Parliamentary committee (portfolio committee) briefed on draft bill
2008 July	<ul style="list-style-type: none"> • Draft Water Management Bill published • Deadline for comments on draft bill
2008 August	<ul style="list-style-type: none"> • Changes made to bill • Public hearings in parliament
2008 September	<ul style="list-style-type: none"> • Parliamentary committee debates bill and refers bill to parliament • National Assembly passes bill
2008 September to October	<ul style="list-style-type: none"> • Bill referred to National Council of Provinces • Passed by NCOP with amendments
2008 November	<ul style="list-style-type: none"> • Parliamentary committee agrees to amendments • Refers bill to National Assembly
2008 6th November	<ul style="list-style-type: none"> • National Assembly accepts changes • Refers bill to president's office
2008 27th November	<ul style="list-style-type: none"> • President signs the bill, and it is published in the Government Gazette

Acknowledgements: Adapted from Voices in Action: published by The Contact Trust

DUTIES OF GOVERNMENT TO FACILITATE PUBLIC PARTICIPATION DURING THE LAW-MAKING PROCESS

The National Assembly, National Council of Provinces and provincial legislatures all have a duty to facilitate public participation in terms of the Constitution. Parliament can choose whatever method it believes will be best for public participation but it must make sure that members of the public and all interested parties are given a 'reasonable opportunity' to know about the issues and to have a proper say. A 'reasonable opportunity' means a meaningful opportunity that has the potential to influence a lawmaker's decision and Parliament must take account of the public's views. If there is insufficient public participation in a specific law, then it can be made invalid.

In the Constitutional Court case *Mogale and Others v the Speaker of the National Assembly and others* (2023), the question was whether the National Assembly, the National Council of Provinces and the Provincial legislatures fulfilled their constitutional duty to allow 'reasonable' public participation when they passed the *Traditional Khoi-San Leadership Act 3 of 2019* (TKLA). The Court found there was insufficient public participation, and the TKLA was declared unconstitutional and invalid.

There are three factors that the Constitutional Court said must be considered to decide whether public participation has been 'reasonable':

1. What does Parliament itself determine is reasonable
2. How important the legislation is and its impact on the public
3. Whether there are time constraints with passing a particular law

Structures of provincial government and public participation in these structures

You can use the same methods to participate in the provincial sphere of government as the national sphere. This is a summary of how you can participate in the law- and policy-making processes in the provincial government.

Structures of provincial government

THE EXECUTIVE BRANCH

The executive branch is responsible for the day-to-day running of the province. Some of the functions of the executive are to initiate laws and policy, carry out laws passed by parliament, carry out policies and coordinate the functions of the provincial government departments and administrators.

KEY ROLE-PLAYERS AND STRUCTURES IN THE PROVINCIAL EXECUTIVE

The key role-players in the executive that may play a role in formulating policy or drafting law will be:

- The premier, who is the head of the provincial government executive
- 10 members of the executive council (MEC), also called provincial ministers

THE LEGISLATIVE BRANCH

The legislative branch of government is responsible for making laws and developing policy. Every province has a Legislature made up of Members of the Provincial Legislature (MPLs). These are the functions of the legislature:

- to develop and pass laws
- to contribute to developing policy
- to act as a watchdog on the activities of government in the province (in the executive)

The legislature consists of the provincial legislature and various committees. These are the key structures that you can lobby in the provincial legislature:

LEGISLATURE COMMITTEES

The provincial legislature usually divides the MPLs (members of provincial legislatures) into small groups that focus on specific areas of governance. These smaller groups are called portfolio or standing committees. The main roles of the portfolio committees are to:

- Make sure that issues and new bills are properly debated and scrutinised

- Allow members of provincial parliament to become specialised in a particular field, such as finance or agriculture
- Provide a forum where the public can interact with provincial government on specific issues and new bills
- Oversee, discuss and assess the activities of government departments

There are two types of Committees; however, the names and institutional arrangements differ from province to province:

Standing committees are permanent. There are standing committees for each of the portfolios of the executive, for example, the education committee, public transport and roads and works committee. These are also called portfolio committees. There are also other standing committees which are not linked to portfolios but more to the running of the legislature, for example, the Special Committee on Public Accounts (SCOPA) which oversees all government spending.

Ad hoc committees are not permanent and only last for the time it takes them to finish a task.

Other important role-players in the provincial legislature include:

- The political party whips
- The parliamentary committee chairpersons
- The committee secretaries
- Political party caucuses and study groups (these are not open to the public, but you can lobby key members before meetings to raise issues)

Public participation in the process of making provincial laws and policies

MAKING NEW POLICY

The process of making policy follows the same format in the provincial legislature as in the national legislature. (See pg 115: *Public participation in the process of making laws and policies at national level*)

MAKING NEW LAWS

The process of making laws follows the same basic format as in the national legislature. However, there are a few important differences. These are the basic steps for passing a law in the provincial legislature:

1. **A draft bill is drawn up**, either by an MEC an MPL or a standing committee. The bill is published in the Provincial Gazette and notices which bring the bill to the attention of the public are placed in various newspapers. The public has at least 14 days to comment on the bill. Once the public has made its comment, the department will make any changes that they think are necessary.
2. **The Speaker introduces the bill in the provincial legislature.** It will be sent to the appropriate legislature committee.
3. **The legislature committee debates the bill.** The legislature committee may ask the public for additional comments on the bill. They will then usually hold public hearings (for anyone to attend) where they debate the bill, call in experts to comment on the bill and make any changes. Once they have made any changes, they must send their report back to the legislature.
4. **The legislature debates the bill and votes on it.** If there is a majority of votes in favour of the bill, it is passed. If there is no majority, the bill is rejected.
5. **The bill becomes an Act.** If the legislature passes the bill it then goes to the Premier to sign. It then becomes an Act.
6. **The Act is published in the provincial Government Gazette.**

MAKING LAWS AT PROVINCIAL LEVEL	
PROCESS STAGE	INSTITUTION/ROLE PLAYERS
1. Bill tabled in provincial parliament	<ul style="list-style-type: none">• Legislature• Minister
2. Referred to parliamentary committee	<ul style="list-style-type: none">• Legislature committee• Government department• The public
3. Committee debates bill	<ul style="list-style-type: none">• Legislature committee• Department/ministry• The public
4. Debate and vote on bill	<ul style="list-style-type: none">• Legislature• MEC
5. Bill sent to Premier for signature	<ul style="list-style-type: none">• Premier's office

HOW CAN YOU PARTICIPATE IN THE LAW AND POLICY-MAKING PROCESSES OF PROVINCIAL GOVERNMENT?

You or your organisation can participate in the policy- and law-making processes by:

- Attending provincial legislature committee meetings where policy and new laws are being discussed
- Making a written submission to a committee or to the legislature
- Attending public hearings during the early stage of writing a bill and/or
- Sending a petition and a letter or a document which is signed by many people. (See pg 123: *Duties of government to facilitate public participation during the law-making process*)

Structures of local government and public participation in these structures

All the methods of public participation described under national and provincial structures can be used at the local level of government.

Structures of municipal councils

Each municipality has a council where decisions are made: an executive or mayoral committee that coordinates the work of the municipality, a municipal manager that manages the municipality, and municipal officials and staff who carry out the work of the municipality. The council also sets up smaller committees (See pg 152 *Structures of a Municipality*). The municipality is made up in the following way:

The council

Elected members (councillors) who represent the people have legislative powers to pass by-laws and approve policies for their area. The council also sets up smaller committees.

The mayor

Elected by the council to co-ordinate the work of the council; the mayor and/or executive committee act as the executive of the council. The mayor is assisted by a mayoral executive committee.

The executive or mayoral committee

Made up of councillors with specific portfolios which match the departments within the municipal administration; they oversee the work of the municipal manager and department heads.

The municipal manager

The chief executive officer is head of the administration of the municipality and legally accountable for the finances and work of the municipality.

Municipal council officials

People who work for the administration.

Ward committees

Mainly advisory committees which can make recommendations on any matter affecting the ward. A ward committee consists of the councillor and a maximum of 10 people from the ward who are elected by the community. The ward committee, therefore, plays a very important role as a link between the community and decision-makers. It provides important opportunities for public participation. (See pg 154: *Ward committees*)

Ways of participating in local government

The most important opportunities for public participation at the local level are through using ward councillors and ward committees. The ward councillor is the direct link between the local council and the public, operating mainly through the structure of the ward committee. It is the councillor's responsibility to make sure that people are consulted and kept informed about council decisions, development and budget plans and any council programmes that will affect them. The *Municipal Systems Act* requires that municipalities take steps to ensure the participation of communities in decision-making.

Section 16 of the Act considers the following as key areas requiring community participation:

ASSESSING AND APPROVING THE BUDGET

Approving the budget is one of the most important functions of the council.

The ward councillor should not approve the budget until there has been proper consultation with the ward committee and other stakeholders. So, ward committees play an important role in the process, and they should look carefully at all the parts of the budget that will affect the people in their area. Of special importance are new developments or projects in the ward and the tariffs (prices) set for services like water and refuse removal. All members of the community have the right to observe the special council meeting when the budget is debated and voted on.

Ward committees should also be given regular feedback on the 'cash flow' of the municipality. 'Cash flow' means the movement of money into (income) and out of (expenditure) the municipality's bank account. Ward committees have a right to ask questions about how well the 'cash flow' is being planned and monitored.

PLANNING AND DEVELOPING THE INTEGRATED DEVELOPMENT PLAN (IDP)

Ward committees should work closely with the councillor and other community organisations (community-based organisations and NGOs) to identify priority needs and make sure these needs are included in the budget proposals and Integrated Development Plans.

MONITORING COUNCIL ACTIVITIES ON A REGULAR BASIS

Ward committees should insist on regular reports and feedback on municipal projects and services, either at ward committee meetings or at public hearings.

PERFORMANCE MANAGEMENT

The municipality must have clear goals and specific targets of what has to be done to make sure the goals are achieved. Every department and staff member should be clear on what they have to do and how their performance will contribute to achieving overall goals and targets. Performance management means that the performance of individuals, departments and the municipality as a whole should be monitored to make sure the targets are met and that resources are being used efficiently. Council should prepare a report for the ward committee at least once a year that shows how it has performed in relation to its objectives and the budget. This usually happens at the end of the financial year (July of each year). The report and audited financial statements must be made available to the public.

DIRECT ADVICE AND SUPPORT

Ward councillors are the most direct form of access people have to government. Usually people will turn to a ward councillor for direct advice and support. Once a

problem has been referred to a ward councillor, the person should demand to know what the ward councillor is doing or has done to deal with the problem.

ASK FOR A COUNCILLOR CLINIC TO BE SET UP

Request the councillor to set up a regular clinic on specific days at a certain place in the community. This means the councillor must be available to see anyone from the community at these agreed times. Advertise these dates around the community.

LOBBYING

Communities can use their councillors to lobby committees, the Mayor and other spheres of government. *(See pg 140: Problem 1: Lobbying local government) (See pg 104: Lobbying)*

ATTEND PUBLIC MEETINGS AND PUBLIC HEARINGS

Attend public meetings called by the councillor, ward committee or council. Identify which committees are making decisions about issues that concern you and attend public hearings of these committees. These meetings are open to the public.

USE THE MEDIA

Approach a local newspaper or community radio station and ask them to write or present a story on an issue that concerns the community, explaining what role the municipal council should play in dealing with the issue.

GET PUBLICITY AND GROW SUPPORT

Hold public demonstrations and mobilise public support (avoid violence and damage as you will lose public support with these actions). Build partnerships, alliances, and networks amongst local organisations and civic groups.

PLANNING AND IMPLEMENTATION OF MUNICIPAL SERVICE PARTNERSHIPS

Service delivery partnerships can be made between the municipality and the private sector, other spheres of government, or with CBOs and NGOs. Ward committees and the community can play an important role in the following ways:

- Help the municipality decide which services to develop and improve
- Develop proposals (with the help of CBOs and NGOs) for council to consider
- Have council appoint a committee of community representatives to monitor processes and to advise the municipality on priorities for service development

Communities or their representatives can evaluate future service providers and monitor the performance of those providing services.

Mechanisms, procedures and processes for community participation in local government

Section 17 of the *Municipal Systems Act* requires municipalities to put in place systems for communities to participate in the decision-making process. These include:

- The process of receiving, processing and consideration of petitions
- Procedures for notifying the public of issues being considered by the council and a process that allows for public comment
- Procedures for public meetings and hearings by councillors and municipal officials
- Regular sharing of information on the state of affairs of the municipality through consultation with community organisations and traditional leaders.

Municipalities must ensure that people who cannot read or write, people with disabilities, women and other disadvantaged groups are able to participate in these processes.

Each municipality should also have a system for processing and responding to complaints about service problems.

Inter-governmental relations and cooperative governance

Inter-governmental relations are the relationships between the three spheres of government. The Constitution states, ‘the three spheres of government are distinctive, interdependent and interrelated’. According to this clause, local government is a sphere of government in its own right and is not a function or administrative implementing arm of national or provincial government. Although the three spheres of government are autonomous, they exist in a unitary South Africa and have to work together on decision-making and must coordinate budgets, policies and activities, particularly for those functions that cut across the spheres.

Co-operative governance

Co-operative governance means that the three spheres of government should work together (co-operate) to provide citizens with a comprehensive package of services. The Constitution states that the three spheres have to assist and support each other, share information and coordinate their efforts.

Implementation of policies and government programmes requires close cooperation between the spheres of government, especially at executive level. For example, local government is represented in the National Council of Provinces, the Financial and Fiscal Commission and the Budget Council where the Minister of Finance discusses the proposed budget with provincial and local government.

Since 2009, ministries have been created within the presidency to strengthen long-term planning and performance monitoring. Ministries have been set up by different presidencies to address special issues like the electricity crisis, gender equality and youth employment. The National Planning Commission develops long-term planning for the economic and social development of South Africa.

The *Money Bills Amendment Procedure and Related Matters Act*, passed in 2009, enables parliament to exercise its true oversight role – and empowers the legislature to influence the budget directly.

The different spheres of government depend on each other for support in project implementation, and regular communication is essential. For example, when a municipality proposes the development of a new township in its integrated development plan, health and education services have to be provided by provincial government.

Water services have to be provided by national government, and finances for housing development have to be transferred from national to provincial government, from where it goes to the housing developers approved by the municipality.

Inter-governmental relations

In 2005, the *Inter-governmental Relations Framework Act* was passed to ensure that the principles in Chapter 3 of the Constitution on co-operative government are implemented. The Act seeks to set up mechanisms to coordinate the work of all spheres of government in providing services, alleviating poverty and promoting development. The Act also establishes a line of communication that goes from municipalities to the provinces and directly to the Presidency.

NATIONAL INTER-GOVERNMENTAL STRUCTURES

The President's Coordinating Council (PCC) is the main coordinating body at national level. It consists of the president, the deputy president, key ministers, premiers and the South African Local Government Association (SALGA). The PCC meets regularly to oversee the implementation of national policies and legislation and to ensure that national, provincial and local development strategies are aligned with each other.

At national level, each department has an inter-governmental forum where ministers meet with provincial MECs and SALGA. These forums are called MinMECs and are also attended by heads of departments. The purpose of MinMECs is to consult, coordinate, implement and align programmes at national and provincial level.

PROVINCIAL INTER-GOVERNMENTAL STRUCTURES

The premier in each province is responsible for coordinating relationships between national, provincial and local government in the province. A Premier's Inter-governmental Forum (PIF) consists of the premier, the provincial MEC for local government, other MECs, metro and district mayors and other mayors where necessary. Provinces use different names for these forums. The PIF meets regularly and consults on broad development in the province, as well as on the implementation of national and provincial policy and legislation. It also seeks to coordinate the alignment of provincial and municipal development planning and strategic planning. The PIF reports through the premier to the PCC.

Further optional forums can be established by the premier. In the Western Cape, for example, there is a Metro Inter-governmental Forum (MIF) where the provincial cabinet meets with the Cape Town mayoral committee regularly. The reason for this is that around 70% of the provincial population lives in the metro, and most of the economic and urban development is taking place in that area. There is therefore a huge overlap between the metro's budget and responsibilities and those of the province.

Inter-governmental forums may also be established at district level, where they would consist of the district mayor and local council mayors. Most of the inter-governmental structures are supported by senior management in the public service and in local government. At times, they will meet separately to prepare for the inter-governmental meetings. The Act provides for technical support structures to be established. Every inter-governmental structure must adopt its own rules to

govern internal procedures. Further inter-provincial or inter-municipal forums can also be established where necessary.

JOINT IMPLEMENTATION AND DISPUTES

In many development projects, more than one sphere of government may be involved in implementation. Where necessary, the different organs of state may enter into an implementation protocol (called a memorandum of understanding, or service level agreement) that describes the role and responsibility of each organ of state; outlines priorities and desired outcomes; and provides for monitoring, evaluation, resource allocation and dispute settlement procedures.

Any organ of state may declare an inter-governmental dispute. They must ensure that every reasonable effort has been made to avoid or settle the dispute before declaring it. Different organs of state cannot institute judicial proceedings against each other unless an inter-governmental dispute has been declared, and all efforts have been made to resolve the dispute. Once a dispute has been declared, organs of state must designate a facilitator and resolve the dispute.

It is very important for the principles of cooperative government, as contained in the Constitution, to be respected and observed by all spheres of government. Different spheres of government shouldn't take each other to court. The *Inter-governmental Relations Act* has been set up to facilitate cooperation and avoid legal proceedings between different spheres of government.

Inter-governmental relations go beyond the Act, and the *Municipal Finance Management Act* also requires consultation in the budgeting and planning process. At provincial level, technical committees should meet regularly to facilitate contact between departments and municipalities and to make sure that there is an alignment of planning priority strategies and resources between provincial and municipal government.

It is not enough for discussion to take place at the Premier's Inter-governmental Forum (PIF) – regular contact is necessary to ensure that development is coordinated and fast-tracked and that obstacles are removed where they impede delivery. This requires ongoing communication and open lines between the different spheres of government.

Traditional leadership, government and public participation

Traditional leaders and traditional councils have an active and important role to play in local government development programmes and service delivery. The *Traditional Leadership and Governance Framework Act* (No 41 of 2003), recognises tribal authorities as traditional councils with important functions linked to local government.

The Department of Cooperative Governance and Traditional Affairs provides support to the National House of Traditional Leaders; the Commission on the Disputes and Claims (that hears disputes on kingship and traditional leadership); and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (Cultural Rights Commission). Provincial committees deal with all claims and disputes about categories of traditional leadership below the kingship.

The Traditional Khoi-San Leadership Act (No. 3 of 2019) (TKLA)

The was passed to address shortcomings in the *Traditional Leadership and Governance Framework Act* (TLGFA) which denied certain constitutional rights to people living under traditional leaders. The TKLA recognized Khoi and San leadership, but some people criticized it because it gave new and extended powers over land to traditional authorities.

The TKLA was challenged in Court by rural communities and land rights organisations in 2021. In the case of *Mogale and Others v the Speaker of the National Assembly and Others* (2023) the Constitutional Court found the TKLA was invalid because parliament and provincial legislatures had not held a meaningful public participation process before the law was passed. The Court said that public participation must provide a reasonable opportunity for the public to influence the decision-making process. It said that the TKLA's public participation process was wrong because there was insufficient notice of community hearings, a lack of pre-hearing education, and limited access to hearings. The Court suspended the TKLA, saying it was invalid for 24 months to give parliament time to facilitate a meaningful public participation process.

Recognising traditional communities

A community can be recognised as a traditional community if it follows a system of traditional leadership according to its own community's rules and it follows a system of indigenous and customary law.

Establishing and recognising traditional councils

Once the premier of the province has recognised a traditional community it can establish a traditional council. The traditional council must be representative of the community in the following ways:

- 33% of its members must be women
- 40% of its members must be democratically elected
- The remaining members can be selected by the chief in terms of custom

The traditional council will be able to operate within a defined area.

Functions of traditional councils

The functions of traditional councils are to:

- Facilitate involvement of the traditional community in the development of a local government's integrated development plan (*See: Drawing up an Integrated Development Plan*)
- Support municipalities in identifying community needs
- Recommend interventions to government that will contribute to development and service delivery in the area controlled by the traditional council
- Participate in development programmes of municipalities and of the provincial and national spheres of government
- Promote indigenous knowledge systems for sustainable development
- Administer the affairs of the traditional community according to custom and tradition
- Assist, support and guide traditional leaders in the use of their powers and how they perform their functions
- Participate in the development of policy and legislation at local level
- Enter into service delivery agreements with municipalities regarding the provision of services to rural communities

- Promote the ideals of cooperative governance, integrated development planning, sustainable development and service delivery
- Warn the municipality about any danger that threatens the area or people living in a particular traditional council area
- Perform their duties and use their powers according to customary law in a way that is consistent with the Constitution.

Traditional councils have to be accountable to the provincial government by keeping proper financial records, by disclosing any gifts received and by following a prescribed code of conduct.

Partnerships between municipalities and traditional councils

Partnerships between municipalities and traditional councils are encouraged, and laws must be passed to strengthen these partnerships.

Withdrawal of recognition of traditional communities

Provincial laws must provide for the withdrawal of the recognition of a community as a traditional community as well as the withdrawal of the recognition of traditional councils.

A community can request that its recognition as a traditional community be withdrawn and it can request that it be divided into separate traditional communities or merged into single traditional communities. Before a community or council's recognition is withdrawn, there must be consultation with the provincial House of Traditional Leaders.

Leadership and removal of traditional leaders

A traditional leader can be removed from office on any of the following grounds:

- Conviction by a criminal court without an option of a fine on any criminal charge
 - Physical or mental incapacity or age
 - Where the finds that the traditional leader was wrongly appointed or recognised.
-

Houses of Traditional Leaders

Houses of traditional leaders are structured as follows: a national house of traditional leaders, provincial houses of traditional leaders and district houses of traditional leaders.

DISTRICT HOUSES OF TRADITIONAL LEADERS

A district house of traditional leaders must be established in a district municipal area or metropolitan municipality where there is more than one chieftainship. There should be between 5 and 10 members of the district house. The members are elected by an electorate consisting of all kings, queens or their representatives, chiefs and chieftainesses living in the district or metro municipality.

The functions of the district house are to advise the district or metro municipality on matters of:

- Indigenous and customary law, custom, traditional leadership and the traditional communities
- Development of planning frameworks that impact traditional communities
- Development of by-laws that impact traditional communities
- To participate in local programmes that have the development of rural communities as an object
- To participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in rural communities

Where a district house cannot be established, the functions of the district house must be performed by the different traditional councils within the district municipality or metropole.

Resolving disputes in indigenous and customary law

Where there is a dispute involving indigenous and customary law, members of the community and traditional leaders should try and resolve the dispute internally and according to custom.

If a dispute cannot be resolved internally, then it must be referred to the relevant provincial house of traditional leaders.

If a provincial house of traditional leaders cannot resolve the dispute, then the dispute must be referred to the premier of the province in consultation with the parties to the dispute and the provincial house of traditional leaders.

The Commission on Traditional Leadership Disputes and Claims

The Act establishes a *Commission on Traditional Leadership Disputes and Claims*. The powers and functions of the Commission are to investigate the following cases:

- Where there is doubt about a kingship, chieftainship or headmanship
- Contests over traditional leadership
- Claims by communities to be recognised as traditional communities
- Establishment or breakdown of tribes
- Disputes over traditional authority boundaries and the merger of tribes

Anyone can lodge a dispute with the Commission. They must say what the dispute or claim is about and give all relevant information. The Commission can decide not to consider the dispute or claim because they don't have enough information.

The Commission can also choose to do its own investigations.

Problems

1. Lobbying local government

The Municipal Council of Maluti-a-Phofung promised that it would provide running water to the whole town before the end of the year. It is now a year later, and there is still no running water in some parts of the town. In addition, the rubbish removal service only works sometimes and the rubbish is piling up and causing a health hazard. The residents of the town have been to see the council, but nothing seems to help. They say it is their right in terms of the Constitution to have running water and a proper rubbish removal service.

WHAT IS THE LAW?

The Constitution says people have the right to a clean and healthy environment

It is the job of the municipal council to provide facilities and services equally to the whole community. The integrated development plan should include a specific plan for the implementation of services, and communities have a right to know why the council is not implementing its plan.

It is government policy to provide a basic amount of free water (6,000 litres per month) to each poor household, wherever possible.

WHAT CAN YOU DO?

People can lobby local government and put pressure on them to force them to provide the facilities and services. It is important to check what the municipal council has committed itself to in the IDP and lobby it to implement the plan. There are different ways of doing this, and you can help people plan a campaign around the implementation of services. These are some of the ways to lobby for better services:

- Write to newspapers and build up a support base
- Build community support through speaking to people, for example, in their homes, at schools and religious gatherings
- Attend municipal council meetings that are open to the public and make your demands known
- Organise a peaceful demonstration throughout the town to tell people what the council needs to do
- Send around a petition for people to sign and take this to the council
- Organise public meetings and ask local councillors to attend

- Arrange for a delegation that is representative of the community to meet with councillors
- Make a complaint to the South African Human Rights Commission based on the discrimination against your community and your right to have access to a healthy and safe environment. (See pg 57: *Making a complaint to the South African Human Rights Commission*)

Checklists

Lobbying

Find answers to these questions before you start lobbying or campaigning:

- What do you want to campaign for? Be clear about the result you want to achieve
 - Who has the power to decide on that issue?
 - Who else can influence the decision-maker, and how can they be mobilised?
 - What will the opposition say?
 - How will the decision-maker benefit from the result you want to achieve?
 - What lobbying methods should you use?
-

Making a written or verbal submission

Plan what you are going to say when you make your submission or what you are going to write in your submission. Focus on your main objective and keep this in mind as you develop a simple message. Use this format when planning the content:

- Introduction: present the issue that has led to you making the submission
- Make two or three points about why it is important to act on the issue
- Present your demands
- State the facts that support your demands (including legal grounds for the demands)
- Give evidence that can prove the facts
- Make suggestions for resolving the issue
- If you use charts or graphs, keep them very simple and clear
- Keep your presentations short, simple and very clear
- Don't be aggressive, threatening or imply that the person knows nothing about the issue.

WRITTEN SUBMISSION

A written submission should follow the same basic format described in the previous point, but you should include the following:

- Explain who you are and what your organisation represents
- Describe what support you have from other organisations or individuals in respect of the issue
- Say how the person will benefit if they support your proposed action.

VERBAL SUBMISSION

When you make a verbal submission, you should aim to:

- Gain the respect of the committee members
- Provide a clear and convincing explanation of your position and the facts or reasons behind it
- Win the support of the committee on your issue.

You can use the written submission as the basis for a verbal presentation. However, there are additional factors that apply to a verbal submission. These are:

- Organise your presentation carefully and leave out non-essential information
- Before beginning your presentation, introduce yourself and your group
- Address the Chair of the committee and follow the rules made by the Chairperson
- Try and make your presentation interesting both in terms of style and content
- End with a strong statement of what you want to achieve
- Summarise your presentation in writing and leave it with the group.