



The effectiveness of financial disclosure regulations as an anti-corruption tool in local government

EXECUTIVE SUMMARY

This paper examines the financial disclosure regulatory framework for municipal councillors in South Africa. Drawing strongly on empirical data, it provides a detailed critique of this framework's practical implementation, including the scope and content of disclosure requirements, compliance by elected officials, institutional support and capacity for disclosure, public access to information, and monitoring and oversight mechanisms. By assessing municipalities in terms of these issues, the paper allows for substantive discussion and comparison of the implementation of financial disclosure regulations across various municipalities.

Emphasis is placed on case study research and identifying the common trends and weaknesses, especially where the disclosure process departs from its intended objectives as set out in legislation. The paper concludes that despite South Africa's progressive disclosure laws for municipal councillors, certain aspects of the regulatory system are inconsistent. In addition, and as a result of these inconsistencies, practical implementation varies dramatically across municipalities. In many cases institutional support and capacity for disclosure is also lacking, as is the effective monitoring and oversight of disclosure, and the enforcement of sanctions. Finally, the inability of citizens, in some cases, to exercise their right to access the disclosure documents severely curtails transparency and undermines the accountability of public decision-making.

INTRODUCTION

To control potential conflicts of interest and ensure greater accountability, many democracies like South Africa have introduced financial disclosure regulations that impose obligations on elected public officials to publicly declare their

personal financial and non-financial interests. By making this information publicly available, the conduct of public officials is made more transparent, thereby allowing democratic institutions and citizens to hold politicians accountable.

At the same time, the demand for evidence on the effectiveness of these regulations is increasing. Have disclosure regulations been observed and do they help to promote integrity in public life?

This enquiry is especially important for local government institutions. Municipalities are crucial in the fight against poverty and inequality in South Africa. They are constitutionally mandated to deliver essential services to communities while promoting developmental objectives. Section 152 of the South African Constitution states that local government must provide democratic and accountable government to local communities, ensure the provision of services to such communities in a sustainable manner, and promote social and economic development.

To ensure the quality of service delivery, the legislative frameworks that govern South Africa's 278 municipalities also emphasise a culture of public service and accountability among local officials.

However, despite its valuable societal role, local government shows signs of distress. Since the conceptualisation of the regulatory requirements in 2000, municipalities have experienced a number of governance and administrative challenges that severely undermine their ability to entrench a culture of ethical conduct and accountability. Ultimately, these governance failures contribute towards the deterioration of municipality functionality and their inability to deliver on their socio-economic mandates.

The paper starts with a discussion of recently recorded conflicts of interest situations in South African municipalities.

By highlighting case studies, insights into the nature of corruption in these public institutions are illuminated. The paper then outlines the regulatory requirements for elected councillors, as set out in the Local Government Municipal Systems Act 2000 (Act 32 of 2000) (LGMSA), before turning to a detailed critique of the implementation and effectiveness of the financial disclosure system in local government. Drawing on empirical data, the paper examines various aspects of the disclosure process, including (1) the scope and content of disclosure; (2) levels of compliance among councillors; (3) public access to financial disclosure information; and (4) monitoring and oversight mechanisms.

Emphasis is placed on case study research and identifying the common trends and weaknesses that can be identified, especially where implementation departs from the intended objectives of the process as set out in legislation. The purpose of this paper is to examine the effectiveness of financial disclosure regulations as an anti-corruption tool. To this end, it provides recommendations on steps to be taken to improve disclosure practice in South Africa.

Defining conflict of interests

A 'conflict of interests' is generally regarded as a situation in which a public official has a private interest that may influence or appear to influence a public decision. It can be thought of as an inconsistency or clash between a public official's duties and his/her private interests. As such, a conflict of interests may be defined as 'a conflict between the public duty and the private interest of a public official, in which a public official's private-capacity interests could improperly influence the performance of his/her official duties and responsibilities'.

However, several misconceptions surround the notion of 'conflict of interests'. There is sometimes a tendency to confuse conflict of interests with corrupt or unethical behaviour. Conflict of interests should be understood as situations, not actions, and it is clear that a public official may find him-/herself in a conflict of interest situation without actually behaving corruptly. In other words, being in a conflict of interests situation is not the same thing as using one's public office for private benefit. A public official who finds him-/herself in such a situation may choose not to allow the private interest that conflicts with the public interest to wrongly affect his/her conduct. While bribes, kickbacks and extortion all involve conflicts of interests, the abuse of influence, such as nepotism, favouritism and misuse of public property, also constitutes a conflict of interests. These situations arise as an inevitable consequence of the fact that people generally occupy multiple social roles. Thus, the sources of conflict are numerous. Traditional sources of influence include jobs, gifts or hospitality offered to officials and their family members. However, increased cooperation with the private sector has also multiplied opportunities for conflicts of interest. These include:

- A public official having private business interests in the form of partnerships, shareholdings, board memberships, investments and government contracts
- A public official having affiliations with other organisations
- A public official working for a private company that has a relationship with his/her public institution

Source F Malan and B Smit, *Ethics and leadership in business and politics*, Lansdowne: Juta, 2001, 9; Bertram I Spector (ed), *Fighting corruption in developing countries: Strategies and analysis*, West Hartford: Kumarian Press, 2005, 5; OEDC (Organisation for Economic Co-operation and Development), *Guidelines for managing conflict of interest in the public service*, Policy brief, Paris: OECD, 2005, 2.

The paper concludes that despite South Africa's progressive disclosure laws for local councillors, certain aspects of the regulatory system are misleading. In addition, and as a result of these inconsistencies, practical implementation varies dramatically across municipalities. In many cases institutional support and capacity for disclosure are also lacking, as are effective monitoring and oversight of disclosure, and the enforcement of sanctions. Finally, the inability of citizens, in some cases, to exercise their right to access disclosure documents severely curtails transparency and undermines the accountability of public decision-making.

CONFLICT OF INTERESTS IN MUNICIPALITIES

The *State of local government in South Africa* report released by the Department of Cooperative Governance and Traditional Affairs (COGTA) in 2009 provides government's own assessment of the root causes of the distress in local municipalities. The report identifies a range of governance issues that provide opportunities for conflict of interests and corruption, including weak enforcement of oversight and accountability frameworks, nepotism, cronyism, fraud, and poor public ethics and values.¹

The COGTA report notes that contestation among local political elites for access to state resources and wealth accumulation highlights an absence of appropriate values or ethics among these officials and a genuine lack of concern for public office and their respective communities. Secondly, a culture of patronage and nepotism is now so widespread in many municipalities that the formal municipal accountability system is ineffective and inaccessible to many citizens. And thirdly, poor financial management and a lack of controls and accountability systems leave municipalities vulnerable to abuse and fraudulent activity.

In the same year government responded to these governance challenges by approving the National Turnaround Strategy for Local Government. Key interventions focus on improving transparency and accountability in decision-making and procurement processes, and regulating conflict of interests by implementing existing integrity frameworks such as codes of conduct and financial disclosure regulations.

Subsequent reports continue to lament the state of financial governance in many municipalities. Recent auditor-general (AG) reports identify the lack of governance principles, mismanagement and poor accountability controls as key reasons for the state of despair in municipalities. The 2009–2010 consolidated AG report on local government audit outcomes noted that only 7 of the 237 municipalities reported on received clean audits.² In addition, only 24 per cent improved on

their 2008/2009 audit outcomes, 6 per cent had regressed, 40 per cent received financially unqualified audits but with findings and 30 per cent received disclaimed or adverse audits.³ The report also notes the increased level of non-compliance among municipalities with laws and regulations, and unauthorised expenditure among 46 per cent of municipalities amounting to R5 billion in the 2009–2010 period.

Another report published by the Public Service Commission (PSC) entitled *Profiling and analysis of the most common manifestations of corruption and its related risks in the Public Service* stated that:

The investigative capacities in the local sphere of government, which is currently fragmented, needs coordination and integration. The PSC is of the view that more attention should be devoted to the prevention of corruption and to identifying and eliminating systemic regulative and organisational gaps that create corruption-prone environments. Preventive actions should focus on reforming regulatory frameworks to reduce [the] discretionary powers of municipal officials and open government measures such as increased transparency of decision-making procedures and public participation.⁴

Public procurement is a well-known locus of conflict of interests and corruption in local government. Each year councils put out to tender a vast number of contracts for the delivery of services. The relationship between money and political corruption is well documented.⁵ When government departments are involved in awarding contracts and benefits to private companies and individuals, self-enrichment, kickbacks, political donations and bribes can influence the selection of private entities that are awarded contracts to supply services and goods. This may also include offers of directorships or company shares. Groups or individuals connected to public officials may even expect help or favours in the tendering and associated processes. Simply put, the concern relates to undue influence or favouritism.

In South Africa, a major concern identified by government, civil society and media is the opaque nature of state tendering and procurement systems, particularly at the local level.⁶ The lack of transparency has opened up the tender system to repeated abuse.

These challenges are compounded by the vast allocations of national revenue that are transferred to municipalities, in addition to their own sources of revenue, to help them fulfil their duties and responsibilities. The Division of Revenue Act for the 2010 budget indicates that local government attracts 7,3 per cent of the overall fiscus and intergovernmental

transfers to local government are set to increase. National transfers to local government totalled R50,1 billion in 2009/10, rising by 8,4 per cent to R73,2 billion by 2012/13.⁷

The 2009–2010 *Auditor-general's consolidated report on local government audit outcomes* (AG report) found that supply chain management (also known as state procurement) produced excessive irregularities in municipalities and stated that 'corruption and fraud cannot be discounted, especially among councillors and senior managers'. The report also noted that of the 56 per cent of municipalities and municipal entities investigated, awards were made to 642 people who were in the service of the state. Of those, 19 were councillors in the service of a municipality. The AG report also noted when reflecting on the compliance and transparency of procurement processes that contracts to the value of R76 million were awarded to people in the service of municipalities, including 19 councillors, a mayor and a municipal manager.⁸

Again, in the most recent AG report (2010–2011) released in 2012, the AG points to the link between irregular and unauthorised expenditure and violations of state procurement processes. Of the 267 municipalities that incurred 'unauthorised' spending, 215 of these cases were related to supply chain management.⁹ This means that 80 per cent of irregular expenditure is attributable to non-compliance with supply chain management legislation.¹⁰

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The 2012 AG report also states that unauthorised, irregular and wasteful expenditure was incurred by 86 per cent of local municipalities, amounting to R4,3 billion for the 2010–2011 period.¹¹ This type of expenditure is 'indicative of an environment where incurring unauthorised and irregular expenditure has become the norm and not the exception'.¹² The report also notes the negative implications of unauthorised spending that led to money for other programmes being diverted, thereby negatively affecting service delivery and the financial stability of the municipality.

Chapter 2 of the Municipal Finance Management Act 2003 (Act 56 of 2003) (MFMA) sets out standards for the management of the financial affairs of municipalities and

deals specifically with supply chain management policy.¹³ In addition, the Municipal Supply Chain Management Regulations (MSCMR) explicitly lay out prohibitions on councillors doing business with the municipality they serve.¹⁴ Clause 44 of these regulations reads as follows:

Prohibition on awards to persons in the service of the state

44. The supply chain management policy of a municipality or municipal entity must, irrespective of the procurement process followed, state that the municipality or municipal entity may not make any award to a person—
- (a) who is in the service of the state;
 - (b) if that person is not a natural person, of which any director, manager, or principal shareholder is a person in the service of the state; or
 - (c) who is an advisor or consultant contracted with the municipality or municipal entity.¹⁵

Section 36 of the MSCMR serves as a potential loophole for following correct procurement procedure. This ‘emergency’ clause allows for ‘Deviation from and ratification of minor breaches of procurement processes’ under certain conditions:

Deviation from, and ratification of minor breaches of, procurement processes

36. A supply chain management policy may allow the accounting officer—
- (a) to dispense with the official procurement processes established by the policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only—
 - (i) in an emergency;
 - (ii) if such goods or services are produced or available from a single provider only;
 - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (iv) [for the] acquisition of animals for zoos; or
 - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
 - (b) to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties, which are purely of a technical nature.¹⁶

eThekweni Metro is a case of irregular expenditure resulting from violations of the MSCMR.

eThekweni Metro

The AG’s 2009–2010 report recorded R534 million worth of irregular and non-compliant expenditure at the eThekweni Metro during 2010.¹⁷ A forensic audit investigation was ordered by the mayor and undertaken by Ngubane and Co. The report, known as the Ngubane report, was tabled by the city council on 22 February 2011.

The report alleged that, among others, former Municipal Manager Mike Sutcliffe had failed in his duties to the extent of permitting R502 million in irregular spending.¹⁸ Following this report, the African National Congress (ANC) appealed to COGTA to verify the corruption allegations contained in the report. This resulted in an investigation by the forensic auditing firm Manase and Associates.¹⁹ In the AG’s 2010–2011 report irregular spending at eThekweni Metro was recorded as having risen to more than R1.3 billion in 2011.²⁰

The full Manase report has not been made available to the public, but a summary was released on 7 February 2012. The report found widespread irregularities, including breaching of tender procedures, lack of budgetary controls, and councillors and employees doing business with the municipality.²¹ Some of the findings of the report included that ten councillors had companies that were involved in business with the municipality, which is a deviation from paragraph 6 of Schedule 1 of the Code of Conduct of the LGMSA.

There was a lack of compliance with the MSCMR that led to the irregular spending of more than R2 billion in the previous three years. This amounts to an increase of 42 per cent for 2010 to R532 million and 158 per cent for 2011 to R1.3 billion.²² Irregular expenditure related primarily to the irregular procedure in awarding contracts. KwaZulu-Natal’s head of the AG’s Office, Vanuja Maharaj, says that contracts have been awarded by the municipality for services in contravention of the MSCMR, clause 44.²³

Another irregularity in the awarding of tenders was the use of emergency procedures.²⁴ Section 36 of the MSCMR serves as a loophole. This clause allows for ‘deviation from and ratification of minor breaches of procurement processes’ under certain conditions.

In a municipal Executive Committee meeting in March 2011, the council instructed Municipal Manager Sibusiso Sithole to take urgent steps to curb the recurring problem of conflicts of interest (employees doing business with the municipality). The meeting decided that ‘before an official applies for Section 36, committee members should take a closer look at the proposed reason behind the usage and that the official concerned will have to give a detailed explanation of why Section 36 has to be used’.²⁵

One hundred and sixty-one municipal employees were found to be doing business with the municipality.²⁶ This is in contravention of Section 4(3) in conjunction with 4(2) a i) and (ii) and Section 5(1) of Schedule 2 of the LGMSA. According to this Act, municipal staff must receive the consent of council before participating in contracts for providing goods and services to the municipality.²⁷

Sol Plaatje Municipality provides an example of gross violations of the MFMA.

Sol Plaatje Municipality

John Block, Northern Cape ANC chairperson, former Sol Plaatje mayor Patrick Lenyibi, municipal manager Frank Masilo and chief financial officer Nandhipa Madiba all face charges of corruption, fraud and violating the MFMA.

Director Gaston Savoi of the company involved, Intaka Holdings, and the company’s industrial director, Fernando Praderi, also face charges. The allegations involve Intaka being paid an excess of R2.7 million for the installation of a water purification plant before the installation took place. The accused face collective fraud, tender and racketeering charges that involve approximately R112 million.²⁸

The Preferential Procurement Policy Framework 2000 (Act 5 of 2000) provides a framework for the implementation of the procurement policy as outlined by Section 217(2) of the Constitution.²⁹ It aims to ensure transparency and fair competition in procurement processes. Midvaal Municipality is an example of an institution that has violated this legislation.

Midvaal Municipality

The public protector found the Midvaal Municipality guilty of maladministration and improper conduct. Democratic Alliance (DA) leader Andre Odendaal was appointed as the council's debt collector and lawyer while simultaneously holding the position of DA constituency chair – a situation that raises questions about conflicting interests in his various roles.³⁰

The public protector said that the municipality had violated the Preferential Procurement Policy Framework by retaining the same legal firm for 30 years without following proper procedures. There was a lack of compliance by the accounting department with debt management collection and irregularities in taking action against a vendor who owed R869 000, while a house in Henley-on-Klip owned by the municipality was auctioned by Odendaal to a company owned by him and later resold.³¹

The municipality is currently under investigation by the Special Investigations Unit (SIU), and the public protector has ordered the municipality to review the work Odendaal engaged in during his 29 years of employment as the municipality's lawyer.³²

In addition to irregularities and non-compliance with key legislation, another closely related element in the complexity of corruption at the local government level is undeclared interests and councillors having business interests in procurement contracts awarded by the municipality in which they are serving.

As we have seen, clause 44 of the MSCMR explicitly forbids the awarding of contracts to persons or entities owned/managed by a local government institution if they are in the service of the institution or any other state institution.

Nonetheless, the AG's 2010–2011 report found that the number of prohibited awards had increased from 22 per cent in 2009–2010 to 46 per cent. The AG cautions that this increase is not unexpected, since the prior year's audit dealt with metros and high-capacity municipalities only, while the scope of the 2010–2011 audit increased to include other local municipalities. R144 million worth of awards went to employees and councillors of municipalities. Of this, R66,5 million was awarded in the province of Gauteng. R443 million worth of awards were granted to officials of other state departments.³³ A further R227 million worth of awards were made to close family members of people in the service of municipalities. R181,5 million of this total took place in the North West Province alone.³⁴ These awards to employees and councillors are of particular concern 'as these could have been prevented and detected by implementing basic controls, including declarations of interest by the parties'.³⁵

Aside from councillors, suppliers are also required to declare their interests. The AG report finds that where prohibited awards were discerned, the municipality did not ensure that the supplier's declaration was submitted or the supplier failed to declare the interest. The AG warns that 'failure by suppliers to declare their interests constitutes a corrupt and fraudulent act and should be investigated and dealt with in accordance with legislation'.³⁶

Undeclared interests refer to business interests or assets that public officials fail to disclose in their annual declaration form. Compliance with disclosure legislation refers not only to the submission of a declaration form, but more importantly to *accurate* and *comprehensive* disclosure.

The need for oversight of financial declarations is thus paramount in order to monitor the completeness of the declaration. In order to be effective as a preventative anti-corruption tool, oversight of financial declarations needs to take place immediately after submission so that anomalies or partial declarations can be identified timeously. Unfortunately, in South Africa, these undeclared business interests are only discerned *after* the act of corruption has taken place. Madibeng, Rustenburg and Thabazimbi Municipalities provide apt examples.

Madibeng Municipality

On 10 November 2009 the SIU was mandated by proclamation to probe municipalities in the North West Province identified by provincial government as suffering from fraud, corruption and maladministration that have contributed to the lack of service delivery.

In October 2010 Willie Hofmeyer, then-head of the SIU, gave a status report on the SIU's investigation into corruption allegations at four municipalities (Madibeng, Greater Taung, Mafikeng and Ventersdorp) in the North West Province to provincial Premier Maureen Modiselle. The SIU found that 83 payments amounting to an excess of R103 million were made by one of these municipalities for services to two companies with the same invoice number. At Madibeng Municipality 341 officials had business interests in contracts valued at R21.7 million between 2005 and 2009.³⁷ R10.2 million was owed by Madibeng Municipality for services. According to Premier Modiselle, this corruption in the public service 'is bleeding government's programmes of service delivery'.³⁸ In December 2010 the municipal manager of Madibeng Municipality was dismissed after being found guilty of 15 charges of misconduct, which included bribery and corruption worth an estimated R650 000.³⁹ The Congress of South African Trade Unions (COSATU), its affiliates and community members of Madibeng marched to the municipal offices in September of 2011 demanding quality service delivery to the poor and the working class.⁴⁰ In February 2012 COSATU reiterated that it 'will not lose momentum in its campaign to demand to see the SIU investigation report which was proclaimed in 2009'.⁴¹ Instead of the full report (which was supposed to investigate 24 municipalities) being released, only a summary was provided that covered 8 municipalities.⁴²

Rustenburg Municipality

Moses Phakoe was shot in March 2009, two days after he handed over a file of allegations to then-Cooperative Governance Minister Sicele Shicika. The allegations involved office bearers and officials in

the Bonjanala District Municipality (of which Rustenburg Municipality forms part). In a document obtained by the *Mail & Guardian*,

Various law enforcement agencies have been inundated with reports and complaints of rampant acts of corruption within the Rustenburg local municipality. The complaints relate to the inappropriate handling of tender processes, shabby and undeclared interests in such by council officials and or councillors.

The nature of the complaints illustrates that organized crime is prevalent. Criminals [and] corrupters have access [to] and an upper hand over administrative procurement procedures and officials and are able to influence decisions on the basis of blackmail, bribes and extortion.

They are able to switch their operations, benefiting from small and major contracts in directorates where officials are easily corrupted, blackmailed or issued with unlawful instructions by their respective political or criminal principals to award tenders in favour of their principals' preferred bidders.⁴³

It is suspected that the contents of the document that contained fraud and corruption allegations could be linked to Phakoe's murder. Former Rustenburg mayor Matthews Wolmarans was arrested in September 2011 along with ANC mayoral committee member Amos Mataboge; both were charged with conspiracy and murder.⁴⁴

On 16 July 2012 Wolmarans and his former bodyguard, Enoch Mtshabawere, were found guilty of the murder of Phakoe by the Rustenburg High Court. According to Judge Ronnie Hendricks, 'the State did prove beyond reasonable doubt that the two accused planned to kill the deceased'.⁴⁵

Thabazimbi Municipality

On 18 January 2010 the South African Municipal Workers' Union (SAMWU) deputy general secretary, Walter Theledi, said it had received information indicating that the Thabazimbi Municipality had been 'crippled by corruption and nepotism for more than two years'.⁴⁶ SAMWU further alleged that the state of the municipality was impeding service delivery in the municipal area. These concerns included the disappearance of R3,6 million from the municipality's account in March 2009 without any subsequent investigation and failure to adhere to supply chain management policy in the procurement of services. According to SAMWU, 'this blatant disregard for policy has led to tenders being awarded to friends and a misuse of municipal infrastructure'.⁴⁷

Similar allegations were made against the municipality in January 2011. SAMWU threatened that its workers would 'shut down the services they provide' unless the municipality produced a strategy to address the corruption.⁴⁸ The union alleged that its investigation into the municipality had led to the uncovering of 'grave corruption in the form of fraudulent qualifications and the squandering of rate payers monies, amounting to millions of Rands'.⁴⁹ In addition, the union also claimed to have in its possession evidence of fraudulent tenders at the municipality.⁵⁰

In October 2011 the Organised Crime Unit began to investigate corruption allegations against Kgoplang Booysen, a technical manager at Thabazimbi Municipality. A case was opened against Booysen by Johannes Mothlomi, owner of Mothlomi Construction Company, who claims that he paid R230 000 towards Booysen's Audi in exchange for two tenders being awarded to his company. The first was a R1,9 million contract to manufacture paved bricks in 2007 and the second a contract worth R2,2 million in 2009. Both contracts were awarded without the tender announcement being made public.⁵¹

In conclusion, while the variation in the institutional performance of municipalities is due in part to their spatial location, a poor skills base and socio-economic legacies,

at the same time a lack of accountable political leadership, patronage, nepotism, poor public ethics and, importantly, weak accountability and oversight mechanisms further compound these realities. And given the significant interaction between the public and private realms at the local level, as well as the vast monetary sums involved in procurement, significant potential remains for conflicts of interest and corruption.

THE CONSEQUENCES OF CORRUPTION FOR LOCAL COMMUNITIES AND INSTITUTIONS

In South Africa, where socio-economic inequality and poverty are widely prevalent, corruption can have severe consequences for vulnerable communities. Corruption breaks the link between citizens and the fair delivery of public services; private interests distract corrupt public officials to the detriment of the broader public interest; socio-economic development is sidetracked; and public resources are diverted away from service delivery, with the poorest citizens bearing the most severe consequences. Similarly, the diversion and misappropriation of funds from rigged tenders reduce the developmental budget of government and its overall effectiveness. The COGTA report states that poor accountability and corruption have both contributed significantly to a decline in the quality of services provided by many municipalities.

Conflicts of interest and corruption also serve to deepen people's cynicism regarding politicians and politics. Serving the public interest is fundamental to public office. Citizens expect public officials to serve the public interest with fairness and to manage public resources properly. If citizens believe that their elected officials do not act for the public good, or that they misuse their office to benefit themselves or others close to them, then public trust, vital to the legitimacy of democratic institutions, is eroded.

The AG warned that 'the level of service delivery to citizens and the degree to which government's socio-economic objectives are promoted are directly and significantly helped or frustrated by the degree to which the procurement systems in local government comply with the SCM [supply chain management] legislation'.⁵² Non-adherence to supply chain management legislation undermines the public's confidence in the ability of elected officials to advance their interests and consequentially deprives citizens of basic services.⁵³

The lack of citizen confidence and trust in local government is evident in the spate of community protests across South Africa following the 2009 national and provincial elections. While the number of reported community protests occurring have generally been on the decrease, the number of reported violent protests is on the increase. In 2007 and 2008 South Africa experienced

approximately nine to ten protests per month, on average. In 2009 that number rose to approximately 18 per month, while in 2010 the number declined to 11 per month.⁵⁴ This indicates a high number of community protests – over a hundred every year. And the figure has increased in 2012. According to Municipal IQ, a local government data and intelligence service institution, 2012 has thus far recorded the highest number of delivery-linked protests post-1994:⁵⁵ 372 service-delivery protests have been recorded between January and May of this year, according to national police spokesperson Vishnu Naidoo. Municipal IQ points to the Western Cape Province as a particular hotspot for protests: the province accounts for 25 per cent of protests recorded thus far.⁵⁶

Citizen protests are not only expressions of dissatisfaction and frustration with the quality of service delivery. They also indicate the alienation of citizens from local government due to the poor quality of governance in these municipalities. Corruption, patronage and the mismanagement of funds are often cited as key motivations behind social protests in urban centres.⁵⁷ Evidence shows that the majority of protests in 2012 have occurred in informal settlements in the largest metros such as Johannesburg, Ekurhuleni and Cape Town. A factor to take into consideration is that these cities also experience the highest rates of population growth: the statistical link between high levels of migration and service delivery protests is strong.⁵⁸

THE REGULATORY FRAMEWORK FOR LOCAL GOVERNMENT

Income and asset disclosure systems (financial disclosure systems) have been recognised globally as a key tool to fight corruption and have the potential to support both the prevention of corruption and the enforcement of sanctions.⁵⁹ Financial declaration systems that require public officials to declare their financial interests and assets 'are intended to prevent and help detect the use of public office for private gain, and help build a climate of integrity in public administration'.⁶⁰

According to key international anti-corruption standards (see below), states should adopt financial declaration legislation, which is an important component of the anti-corruption and integrity system of a country.

United Nations Convention Against Corruption (2003) (UNCAC) Article 8(5) of Chapter 2:

Each state party shall endeavour, where appropriate and in accordance with the fundamental principles of domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

The technical guide to the UNCAC provides further recommendations regarding financial disclosure.⁶¹ At the continental level, the African Union Convention Against Corruption reinforces the requirements set out by the UNCAC.

African Union Convention Against Corruption (2003) Article 7:

In order to combat corruption and related offenses in the public service, State Parties commit themselves to:

- Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service
- Create an internal committee or similar body mandated to establish a code of conduct and to monitor its implementation, and sensitize and train public officials on matters of ethics.
- Develop disciplinary measures and investigation procedures in corruption and related offenses with a view of keeping up with technology and increase the efficiency of those responsible in this regard.

The Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is the first legally binding standard that focuses on the supply side of the bribery transaction. South Africa is one of the six non-member countries (along with the 34 OECD member states) to have adopted the convention.⁶²

South Africa manages conflicts of interest through codes of conduct and legislation that apply to both the executive and legislative branches of government at all three levels: national, provincial and local.

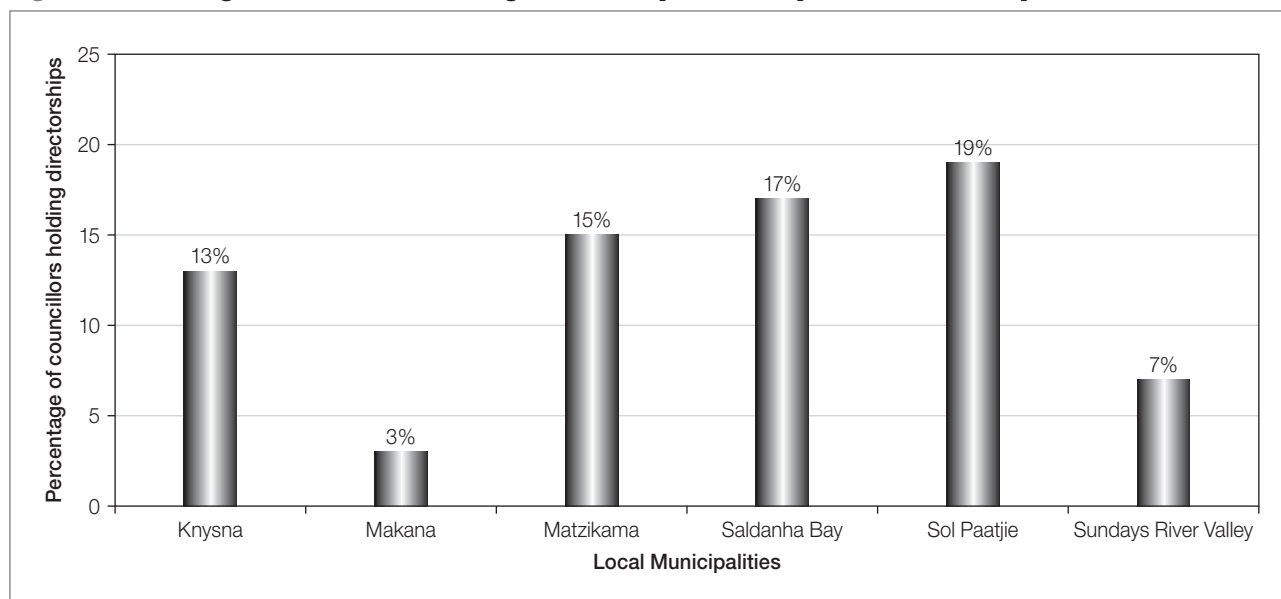
All elected public officials in South Africa are required to declare their interests on an annual basis and to use the practice of recusal in official deliberations involving these interests.⁶³

Schedule 1 of the LGMSA contains the Code of Conduct for local councillors. The preamble states:

[C]ouncillors are elected to represent local municipalities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role, councillors must be accountable to local communities.⁶⁴

Section 5 of this Act is entitled 'Disclosure of interests' and stipulates that a councillor must disclose any direct or indirect personal business interest that the councillor (or his/her spouse, partner or business associate) may have related to any matter before the council or committee to the municipal council or any committee of which the councillor is a member. The section goes on to further

Figure 1 Percentage of councillors holding directorships in a sample of local municipalities, 2010



instruct councillors to withdraw from the proceedings of the council or committee when the matter is considered, unless the council or committee deems the councillor's interest to be trivial or irrelevant.⁶⁵

If a councillor is aware that he/she or his/her spouse, partner, business associate or close family member stands to receive any direct or indirect benefit from a contract with the municipality, the councillor needs to disclose full details of the benefit at the first municipal council meeting.⁶⁶

Section 7 of Schedule 1 of the LGMSA requires councillors to declare their interests within 60 days of being elected or appointed to office. These interests include shares and securities; membership of close corporations; interests in trusts, directorships, partnerships, employment and remuneration; and interests in property and pensions.

In addition, gifts received 'above a prescribed amount' must be declared. Regarding the distinction between confidential and public sections of the financial declaration, section 7, sub-clause 4 gives the municipal council the mandate to determine which of the financial interests must be made public, 'having regard to the need for confidentiality and the public interest for disclosure'.⁶⁷

OVERVIEW OF COUNCILLORS' PRIVATE INTERESTS

Apart from the position of executive mayor, which is a full-time position, the vast majority of councillors hold part-time positions and one would expect them to have outside employment. These outside interests do not necessarily constitute conflicts of interest as such and instead provide councillors with legitimate sources of additional income. Only when councillors' private business interests are linked to their respective municipalities do conflict of interest situations begin to arise.

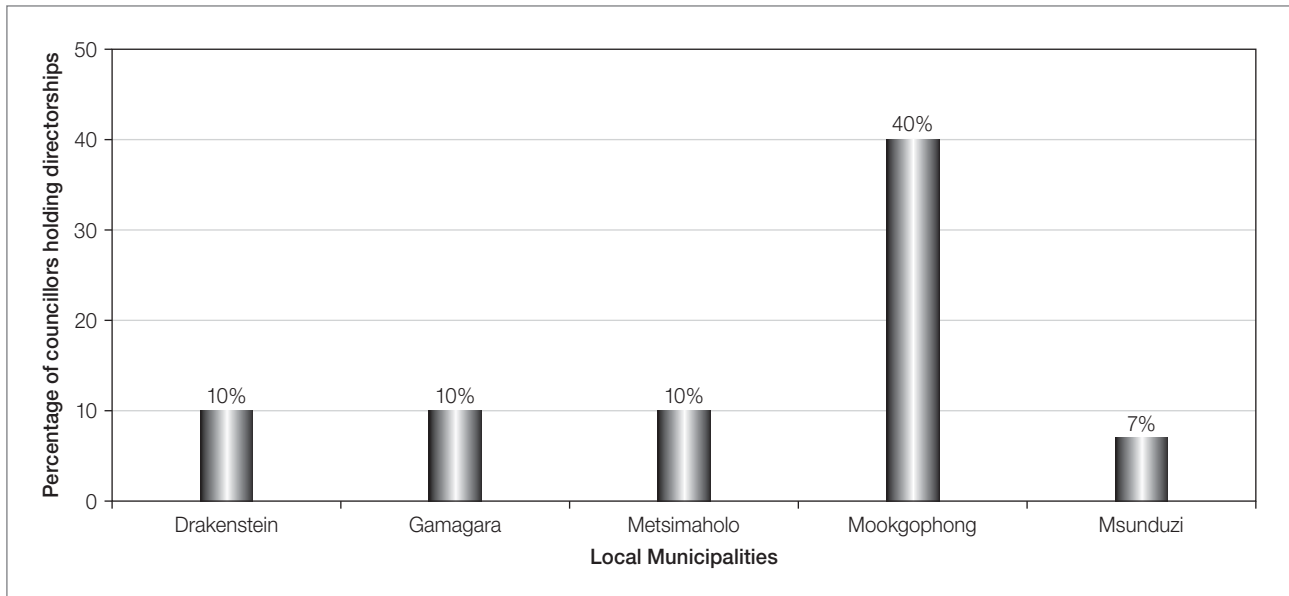
This section presents a snapshot overview of interests held by a random group of councillors and is meant to provide a preliminary understanding of the types of interests held by municipal councillors in South Africa.⁶⁸ An analysis of councillors' disclosure records for 2010 and 2011 reveals that large numbers of elected officials have outside financial and other interests. These range from directorships to outside employment, memberships of companies and shares. Using the ISS Who Owns What? database,⁶⁹ one can calculate the number and type of outside financial interests and assets held by councillors in each local municipality.⁷⁰ Using the council lists, one can determine how many councillors from each municipality have interests. During fieldwork research the ISS was granted access to the disclosure forms of 24 local municipalities (out of the 75 contacted in 2011). At least 17 of 24 institutions provided councillor lists from which we calculated the percentages of interests declared.

Select data shows that directorships are fairly common among councillors across municipalities, although the percentages are low. Figure 1 shows that in 2010 fewer than 20 per cent of councillors in each municipality disclosed directorships.

Figure 2 indicates that in 2011 the highest percentage of councillors with directorships within a municipality was 40 per cent, in Mookgophong Municipality. However, this only translates into four of the ten councillors. Sol Plaatje Municipality and Drakenstein Municipality had the highest number of directors, with 10 out of 54 councillors and 6 out of 61 councillors, respectively. It was also common to find that councillors who had directorships in a specific company would often state that they owned shares or were members of/partners in the same company.

Private interests also include outside employment, company memberships and shares. Outside employment

Figure 2 Percentage of councillors holding directorships in a sample of local municipalities, 2011



was a more common occurrence than directorships. A snapshot of 14 municipalities (Figures 3 and 4) shows that the percentage levels of outside employment did not exceed 43 per cent in 2010 and 2011. In 2010 Saldanha Bay Municipality and Swartland Municipality had the highest percentage of councillors employed outside the municipality, at 38 per cent and 35 per cent respectively. Of the nine local municipalities that had councillors employed outside the municipality in 2011, Blue Crane Route Municipality, Kannaland Municipality, Mookgophong Municipality and Umdoni Municipality each recorded percentages of 30 per cent and higher.

Analysis of the disclosure forms also indicates a tendency towards state employment, usually with a government department such as the Department of Education, whether

as teachers, principals or supervisors. A study by the PSC indicates similar findings.⁷¹ Its 2007 investigation of local and district municipalities in Limpopo and the Western Cape showed that of the 1 057 councillors in Limpopo, 321 (30 per cent) were employed as public servants upon election, and of the 820 councillors in the Western Cape, 19 (2 per cent) were employed. The report also claimed that this could become problematic if the situation was not efficiently monitored, as the performance of the employees may negatively affect either their capacities as councillors or their service delivery as public servants.⁷²

Gifts

Gifts were not frequently declared at the local government level. Only 9 out of 23 municipalities had councillors who

Figure 3 Percentage of councillors with outside employment in a sample of local municipalities, 2010

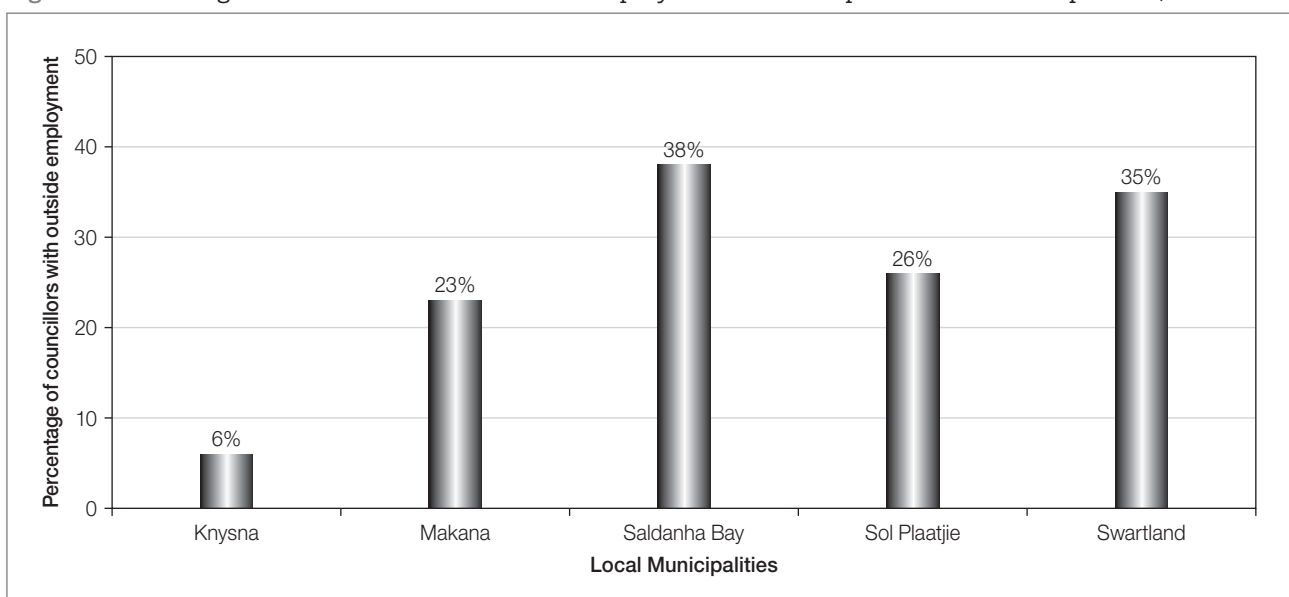
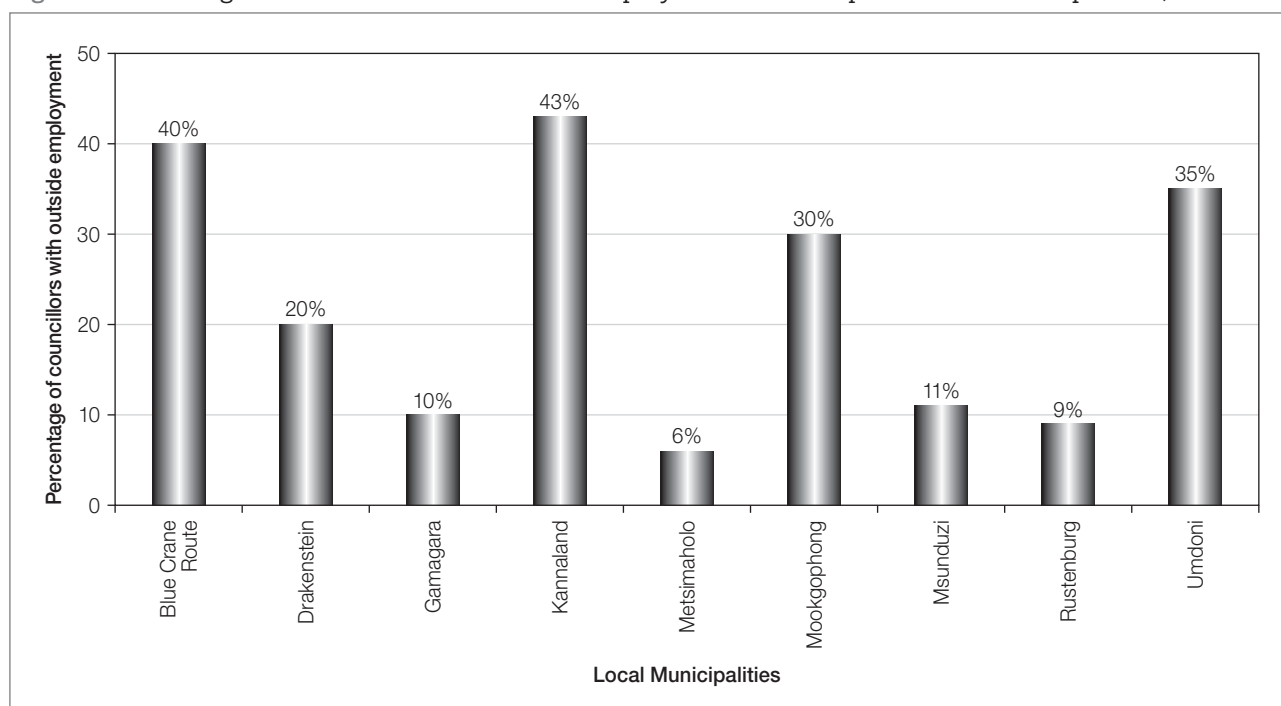


Figure 4 Percentage of councillors with outside employment in a sample of local municipalities, 2011



declared gifts, with very low numbers of councillors. However, this may be an indication that there is a legislative loophole in Schedule 1, section 7, which states that ‘Gifts received by a councillor above a prescribed amount must also be declared in accordance with sub item (1)’.⁷³ This enables municipalities to use their own discretion when determining the prescribed value amount above which gifts should be declared.

Having outlined the formal disclosure requirements for South Africa’s local representative and the types of interests held, we now turn to an evaluation of the actual implementation of financial disclosure regulations in South Africa’s municipalities. These aspects include the scope of financial disclosure, compliance by elected officials, public access to information, and finally, monitoring and oversight mechanisms.

SCOPE AND STANDARDISATION

Scope of financial disclosure

Sound disclosure regulations are founded on the premise that elected officials should be required to declare a wide range of financial and other interests. The more varied and accurate the contents, the more transparency and accountability are extended to any disclosure regime.

The UNCAC states that public entities must establish measures that require officials to declare to appropriate authorities ‘their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result’.⁷⁴ From here, various categories may be added or expanded on in the detection

of potential conflicts of interests and corrupt practices. There seems to be a general consensus regarding the broader categories of disclosure: these include various forms of income, assets, and pecuniary interests; positions in profit or non-profit firms; and gifts.⁷⁵ In the strictest form, types of incomes that must be disclosed include salaries, fees, interest, dividends, revenue from the sale or leasing of property, insurance compensations, lottery winnings, inheritances and pecuniary gifts, as well as the values or amounts and their sources.⁷⁶ Not all these forms of income need to be disclosed or stated in this way.

Various forms of assets may also be disclosed. These may include real estate, moveable property, construction materials, shares and securities, extended loans, and savings in bank deposits or in cash, and their values or amounts.⁷⁷

Pecuniary interests may take the form of remunerated employment, occupations, board functions other than the official position, debts, assumed guarantees, insurance arrangements and pension schemes, to mention a few.⁷⁸

Gifts are a contentious category. This is because, firstly, gift giving is often informal in nature.⁷⁹ Secondly, in certain cultures gift giving is regarded as a sign of respect. While it is possible to forbid gifts in some countries, it is perceived to be an insult to refuse a gift in some African contexts.⁸⁰ To assist with conflict of interest detection, many regimes ask the official to declare the sources and monetary value of gifts.

Compared to other countries, South Africa asks its elected councillors to declare a wide range of assets and interests. The LGMSA outlines these requirements.

LGMSA, Schedule 1, section 7

Declaration of interests:

7. (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:
- A.) shares and securities in a company;
 - B.) membership of any close corporation;
 - C.) interest in any trust;
 - D.) directorships;
 - E.) partnerships;
 - F.) other financial interests in any business undertaking;
 - G.) employment and remuneration;
 - H.) interest in property;
 - I.) pension; and
 - J.) subsidies, grants and sponsorships by any organisation.
- (2) Any changes in the nature or detail of the financial interests of councillor must be declared in writing to the municipal manager annually.

For the information to be useful, it is important that each type of item disclosed includes all the relevant details. For instance, gifts should include their monetary value and the name of the person or institution giving the gifts. Shares and other financial interests should list the company or entity and the monetary value.

Complete and comprehensive disclosure records

Oversight and accountability relies on comprehensive disclosure records. Therefore the information disclosed must

be of high quality. To assess comprehensiveness, a content analysis of declarations received from municipalities shows that many disclosure records are poorly completed, incomplete or omit important information, such as the date of submission. Examples shown in Figures 5 and 6 indicate how handwritten submissions in particular make records difficult to decipher. In addition, the information is vague and incomplete, eg the names of companies or entities are not included. If the information disclosed is unclear or incomplete and not easily understood, it will reduce the effectiveness of financial disclosure as a tool to manage conflicts of interest. Without complete and accurate records, the ability of an institution and the public to exercise oversight and detect potential conflicts of interest is diminished.

In addition, satisfactory compliance partly relies on comprehensive disclosure records. Incomplete records open the way to higher levels of non-compliance. Without the ability to know what is on the form, people will not be able to decide if it contains important information. In some cases, one cannot tell if the information is correct or if something has been left out.

Standardisation of disclosure records

Financial disclosure regulations do not provide or require a standard template with set categories for municipalities. The task of template design and distribution is left to each municipality's discretion, resulting in very little uniformity

Figure 5 Photograph of poorly completed form

<u>NATURE OF INTEREST</u>	<u>DETAILS</u>
Shares and Securities in any Company	Not JSE but have in pr Co. Coops of Interest or old Mutual.
Membership of any Close Corporation	Yet but Dormant.
Directorships	NONE.
Partnerships	NONE
Other financial Interest in any business undertaking	Farming Enterprise
Employment and Remuneration	Farming and Council.
Interest in property	Interest in property holding Trust.
Pension	Cape Joint Pension Fund.
Subsidies, Grants and Sponsorships by any organization	None

Figure 6 Photograph of virtually illegible form

<u>NUMBER OF SHARES</u>	<u>NATURE</u>	<u>NORMAL VALUE</u>	<u>NAME OF COMPANY</u>
None	None	DeRegistered	Relebany Catering Ltd.
None	None	DeRegistered	4d Telestial Solution Ltd.
None	None	DeRegistered	Max ka
		DeRegistered	Phofo Constructi- -ond Ltd.
± R50 000	Pension paid out	± R50 000	Metropolitan Life insurance
R19 200	Rooms rental	R19 200	House no. 1819 Humbidi Township Vryburg

across and within municipalities (across years) in terms of the content categories and layout of templates. The lack of a standardised approach to disclosure content presents opportunities for councillors to omit important information and makes comparative monitoring difficult, with significant implications for accountability. It may be difficult for staff to establish whether a councillor is hiding interests deliberately or as a result of poorly designed forms.

Further content analysis identified the following problems resulting from the lack of a standardised approach:

- Insufficient space provided to fully complete records
- The omission of categories required by legislation: common omissions include gifts and trusts
- The submission of emails and hand-written forms and their acceptance as declarations

Greater standardisation with respect to the content categories of these important documents is highly recommended.

Case study: City of Cape Town Metro

In July/August 2012 the City of Cape Town Metro launched a new electronic system of financial disclosure for its councillors. The Councillor Support Office, tasked with overseeing the financial disclosure process, sought the help of the Enterprise Resource Planning Department to determine how it could distribute the financial disclosure forms electronically.

Three challenges motivated the City of Cape Town Metro to make the decision to digitise:

- Staff acknowledged that storage facilities were not fireproof and hence the submissions could easily be damaged.
- The verification of information was deemed very difficult because checking the value of assets and incomes was very difficult using the physical form. Additionally, this was a very time-consuming exercise.
- It was difficult to ensure punctual compliance. The metro had experienced cases where councillors were fined for not disclosing on time in the past.

Electronic system

The electronic system is a portal-based application (SAP software) that allows officials to complete their leave applications, minutes and payslips electronically. The metro initially adopted the system as part of its efforts to centralise 'financial and management accounting, procurement, materials management, human resources, and payroll management' operations.⁶² Councillors now use the same system to submit their declarations of interests, leave application forms, and statements of attendance or absence from meetings.

Declaration of interests

Councillors log in to the system, then 'create' their own form by ticking in the blocks where they have interests. Once they tick the block, information regarding that type of interest is requested. For example, once one ticks the 'Gifts' block, a section will open up requesting further information pertaining to the gifts received. Once a section has been ticked, information must be completed, as the system will not allow the councillor to move on and complete the remainder of the form (or submit it) unless all information is complete in the section. Once the form has been successfully completed and submitted as a PDF, the manager at the Councillor Support Office will receive an email stating that the councillor has submitted his/her declaration. Whenever changes are made the manager receives an updated PDF version, allowing staff to detect which amendments have been made.

Positive changes are expected as a result of the new electronic system:

- *Compliance*
Reminders are sent to councillors a month before declarations are due. The manager receives updates of councillors who have failed to declare. With the click of a button, he/she is able to send out reminders to declare. When using the system, councillors cannot proceed to the next page unless they have completed the previous page, which obliges them to provide full information.
- *Monitoring and oversight*
The system detects whether information is not correct or does not match and alerts the manager. Additionally, personal information need only be entered the first time. Thereafter, councillors only need to update information. The manager can 'decline' information if it is incorrect and the councillor will receive a notice stating that a change must be made.
- *Access to information*
Councillors have ready access to the electronic declaration forms and receive training. In addition, the new system allows the public sections of the declarations to be easily extracted and printed for public use.⁸¹

Based on the challenges outlined in this section, a few recommendations can be made that could assist in addressing the existing deficiencies:

- In the interests of monitoring and accountability, it is vital that records are complete, consistent and regularly submitted. Greater standardisation in the form of a uniform disclosure record template for councillors at all municipalities and metros in South Africa will improve public accessibility to the information, as well as monitoring and oversight.
- An online submission facility for councillors would also introduce uniformity across democratic institutions and address current challenges such as illegible handwriting and insufficient space.

COMPLIANCE LEVELS AMONG COUNCILLORS

The validity of a financial disclosure framework depends on the submission of financial disclosure forms by councillors. For declarations to have an effect the information must be submitted in a timely and comprehensive manner. When councillors fail to submit declarations of interest it is impossible to exercise oversight over their conduct and detect potential conflicts of interest. Non-compliance renders the entire monitoring and oversight process ineffective. It is therefore critical that compliance rates are communicated to the public and sanctions for non-compliance are enforced.⁸³

The duties that are related to disclosure include, firstly, submitting a declaration of interests and assets, while the second concern is *what* information is provided in the declaration. Possible violations relating to the first point (the need to submit a declaration) can include failure to submit

or late submission. Violations related to the second concern (what information is provided) include incomplete information, inadvertently false information or intentionally false information.⁸⁴

This section addresses the issue of compliance with financial disclosure requirements among South Africa's municipal councillors and provides recommendations on how to improve the submission process.

Legal requirements for compliance

Municipal councillors are required to declare their financial and non-financial interests when they are elected to office following elections and thereafter on an annual basis when there are changes to their interests. As outlined in the LGMSA, Schedule 1, section 7, councillors must declare their financial interests to the municipal manager within 60 days of election and appointment. In addition, any changes in the nature or details of the financial interests of the councillor must be declared to the municipal manager annually.

This stands in contrast to requirements for annual disclosure for elected officials at the national and provincial levels of government, where elected representatives are required to declare their interests each year irrespective of whether there are changes to their private interests.

The ambiguous nature of the legislation regarding annual disclosure has resulted in a varied approach to compliance in municipalities, with some insisting that their councillors declare their interests each year, while others require councillors to declare their interests following their election to office and thereafter only declare if a change in their financial interests or assets has occurred. In the latter instance it can result in many councillors declaring their interests only once in their five-year tenure.⁸⁵ Evidently, Schedule 1, section 7 is interpreted differently by enforcement officials across municipalities.

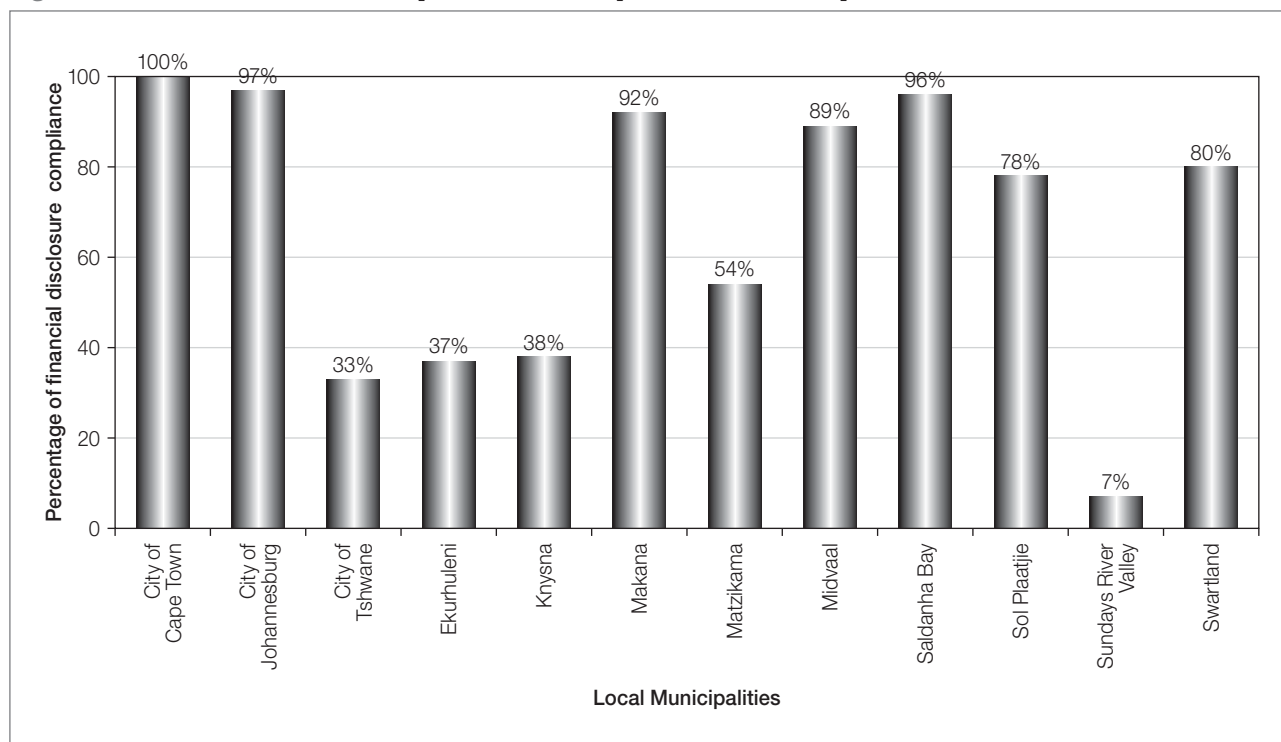
Compliance levels: 2010 and 2011

ISS research found significant variations in compliance levels across municipalities. In 2010 a sample of 11 municipalities (including 4 metros) shows that only one institution, the City of Cape Town, met the required 100 per cent compliance rate, while the City of Johannesburg achieved 97 per cent compliance.

The extent of the variation in compliance across municipalities is illustrated in Figure 7. Saldanha Bay Municipality achieved 96 per cent, with 22 of its 23 local councillors submitting declarations. In contrast, Sunday's River Valley achieved only 7 per cent compliance, where only 1 out of 14 councillors declared his interests.

Declarations of interests by newly elected councillors following the 2011 municipal elections suggest a marked

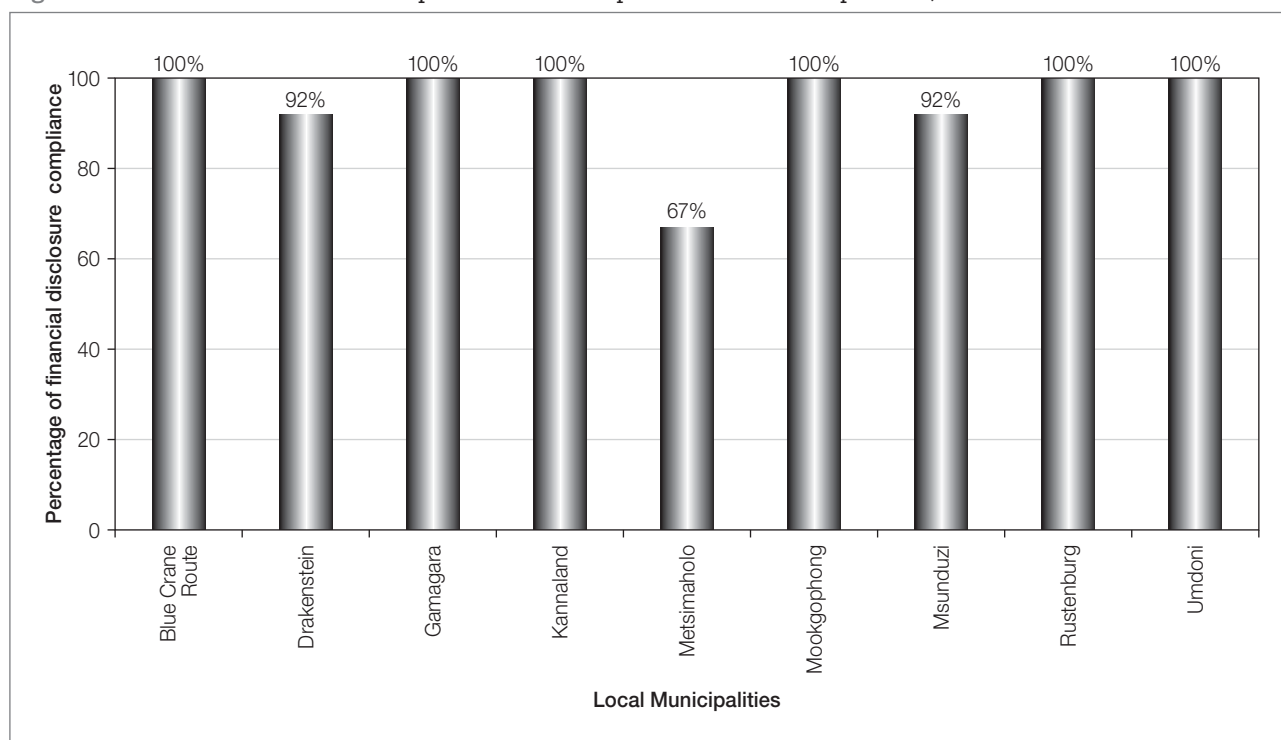
Figure 7 Financial disclosure compliance in a sample of local municipalities, 2010



improvement in compliance levels in many municipalities. In 2011, from a sample of nine municipalities, six achieved 100 per cent compliance. The higher compliance levels might be attributable to the holding of local elections in that year, since the legislation requires declarations to be made by councillors within 60 days of an election. In some institutions, however, the ISS found that

declarations were not submitted within the 60-day period, suggesting that even when there was 100 per cent compliance, it is not always done in a timely manner. Of the municipalities that had 100 per cent compliance levels in 2011, only Gamagara and Rustenburg municipalities had all forms signed before the 60-day cut-off point.

Figure 8 Financial disclosure compliance in a sample of local municipalities, 2011



Challenges for compliance

Apart from non-compliance, a range of other factors can either aid or undermine satisfactory compliance and are dealt with below.

■ Timing of submissions

Councillors are required to submit their declarations timeously to ensure a successful disclosure regime. Irregular and overdue submissions that fail to meet the submission deadline render the information unavailable for oversight and monitoring by staff and the public.

Eastern Europe and Central Asia case studies

In a study on financial disclosure in Eastern Europe and Central Asia, it was found that the most common time for the submission of declarations is upon taking office, annually thereafter and on leaving office. Various institutions will determine what they feel is the best time to disclose. What must be taken into consideration is the purpose of the declaration. For instance, some institutions may require submissions to be made more often for the purpose of wealth monitoring. On the other hand, others may only require changes to be declared.

Source OEDC, *Asset declarations for public officials*

■ Incomplete or poor-quality information

Accountability relies on the full and accurate declarations of interests. In practice, however, incomplete declaration records raise the question as to whether the councillor has fully declared his/her interests and assets. Poor-quality information undermines the integrity of the information. The difference in quality between handwritten and typed disclosure forms is apparent, with handwritten records being very difficult to understand. Moreover, spelling mistakes regarding company names are common. All these factors can contribute to compromising the quality of the data and undermine the chances of detecting conflicts of interest.

■ Poor internal communication

In some institutions submission deadlines are not met due to the failure to communicate submission deadline dates to councillors by the staff of municipalities tasked with the implementation of the disclosure framework.

In addition, although the LGMSA stipulates that all declarations must be made to the municipal manager, this is not always the case. In fact, in only 4 of the 21 municipalities we studied did the municipal manager receive the forms. Most commonly, enforcement of compliance is via the office of the speaker, the administration office, corporate services, councillor support or human resources.

Moreover, of the 21 municipalities interviewed, two stated that no information on financial disclosure

requirements is conveyed to their councillors. Seven indicated that they provided the relevant legislation either on the form itself or in a booklet. Twelve indicated that in addition to providing the legislation, they also conducted discussions on the declaration process. Of these twelve, three municipalities stated that they address the matter during council meetings. Six stated that they conducted some form of training during the induction process or in the form of workshops. Two indicated that the South African Local Government Association (SALGA) and/or the provincial government conducted information sessions regarding financial disclosure. The City of Cape Town proved to be an exceptional case. This metro conducts three-day workshops specifically focused on declarations of interests.⁸⁶ In an environment where legislation is open to interpretation, it is very important for legal experts, enforcement staff and councillors to hold discussions on what is needed to ensure full compliance.

The analysis provided in this section has led to some recommendations that could help enhance compliance levels among councillors:

- One of the major weaknesses identified is that the LGMSA does not clearly stipulate whether councillors' declarations need to be submitted annually, irrespective of changes to the nature of their private interests. The legislation should be amended to provide clarity in this regard to ensure uniformity across municipalities, and we urge COGTA to address this.
- Improved internal communication is needed to ensure that councillors and staff remain informed of submission deadlines and processes to prevent non-compliance.
- Municipalities should strengthen their monitoring and oversight mechanisms so that non-compliance can be timeously identified and measures can be taken to assist councillors to remedy the situation.
- Municipalities are encouraged to enforce penalties and sanctions for late submissions, incomplete disclosure and non-compliance.

ACCESS TO INFORMATION

At the heart of disclosure is the principle of transparency. Through public disclosure financial disclosure records act as public statements against which officials can be held to account. If the interests of elected officials remain hidden from public view after disclosure, the process serves little purpose. Especially in countries where parliaments have few internal investigatory mechanisms and powers, like South Africa, monitoring and oversight rely in large measure on public accessibility. It is therefore imperative that citizens can easily access these records to be able to scrutinise them and thus hold their councillors accountable.

Public disclosure ensures that citizens are better informed and that civil society's role in the verification of disclosure records can improve enforcement and increase the credibility of the system.⁸⁷ Access to financial declarations can also assist lifestyle audits and deter the abuse of public office for private gain.⁸⁸ A report by the World Bank and the United Nations Office on Drugs and Crime (UNODC) entitled *Public office, private interests: accountability through income and asset disclosure* supports this view.⁸⁹ It argues that public awareness of the financial disclosure regime's legal mandate and procedures encourages greater civil society engagement with anti-corruption policies, thereby increasing the likelihood of public attention focusing on the ethical conduct of public officials. Public awareness coupled with an effective public complaints mechanism can improve the detection of ethical breaches. Importantly, however, the literature cautions that public access to disclosure information cannot be a substitute for effective monitoring and verification.⁹⁰

Disclosure can occur in different ways: proactive publication can take place where declared information is disclosed to the public without demand either in paper format or electronically over the Internet. There is an increasing trend towards this form of disclosure. In South Africa, the national members of parliament's disclosure records are made electronically available.⁹¹

Alternatively, disclosure can occur on demand from citizens or media. In these cases, access can be either unconditional or dependent on specific conditions such as knowing the identity of the requester or paying a fee to cover administrative costs.⁹²

Balancing transparency and privacy

The publication of financial disclosure records raises important but controversial issues with regard to the right to privacy. While it is important to secure the benefits associated with transparency, these must be balanced against officials' right to privacy, for it is the personal integrity of officials and their families that is at stake: it is their financial and other interests that are exposed for all to see. The major arguments against public disclosure are that it violates the rights of privacy of the declaring party and, secondly, that there are security concerns relating to personal information being made available about officials or their property.⁹³ Nevertheless, although privacy is considered a fundamental right, it can undermine the financial disclosure regime, especially in countries that lack scrupulous regulation and verification procedures and therefore depend on public access for scrutiny.⁹⁴

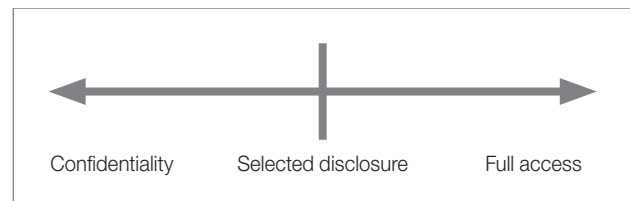
A successful disclosure regime faces the dual challenge of balancing the public's right to access disclosure information and officials' right to privacy. Striking a balance

between transparency and privacy is difficult. The less South Africa relies on the integrity of internal regulation and oversight, the stronger the case for public disclosure as a mechanism for detecting and controlling conflicts of interest.

The World Bank/UNODC publication suggests ways to circumvent the problem of violating privacy or security concerns. Access can be provided to certain categories of disclosed information; restrictions can be placed on the use of and access to disclosed information, such as through fees to cover administrative costs and the need to make an appointment to view the forms; access can be denied to certain categories of officials' declarations; and the entire disclosure form can be kept confidential.⁹⁵ However, caution is needed to ensure that restrictions do not prevent the public from gaining access.⁹⁶

Globally, public access mechanisms range across a wide spectrum (see Figure 9). On the one end of the continuum excessive confidentiality allows for no public access (unless a court orders it), while full access provides all disclosed information for public scrutiny.⁹⁷ Selected disclosure as a mid-range compromise agreement allows only for certain categories of data to be publicly disclosed.⁹⁸

Figure 9 The range of disclosure options



South Africa's disclosure framework is characterised by access to information and is relatively more open than many other disclosure regimes globally. It can be categorised as requiring selected disclosure, because legislation requires a split of declared information into public and non-public parts (the latter is limited to information relating to spousal or immediate family interests and addresses of private residences).

A citizen's right of access to information is enshrined in the South African Constitution, and in two key pieces of legislation: the Promotion of Access to Information Act 2000 (Act 2 of 2000) (PAIA) and the LMGSA.

Legislative requirements for access to financial disclosure records

The right of citizens to access information is enshrined in Section 32 of the **Constitution**:

- Everyone has the right of access to—
- (a) Any information held by the state; and
 - (b) Any information that is held by another person and that is required for the exercise or protection of any rights.

The **PAIA** gives effect to this right and overrides any legislation that limits this right:

This Act applies to the exclusion of any provision of other legislation that

- (a) Prohibits or restricts the disclosure of a record of a public body or private body and;
- (b) Is materially inconsistent with an object, or a specific provision of this Act.

According to Section 7(4) of Schedule 1 of the **LGMSA**:

- (4) The municipal council must determine which of the financial interests referred in 45 sub item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Section 70(2)(b) of the same Act also states that the municipal manager must 'communicate sections of the Code of Conduct that affect the public to the local community'.

However, unlike regulations that govern disclosure at the national and provincial levels, the LGMSA does not identify which of the councillors' interests should be made public and which should remain confidential. Instead the Act (Schedule 1, section 7(4)) makes municipal councils responsible for this decision when it states that, 'The municipal council must determine which of financial interests ... must be made public having regard for the need for confidentiality and public interest for disclosure.'

This section of the Act is ambiguous and has led to confusion and inconsistency within councils about how best to interpret the intentions of the legislation. As a result, there is significant variation across municipalities, with some municipalities choosing to make the entire contents of the record confidential without giving due consideration to the public interest for disclosure. This effectively nullifies citizens' rights to access information and is a serious misinterpretation of intentions of the legislation.

Testing the right to access information

Citizens face several challenges if they wish to access councillors' financial disclosure records for the following reasons:

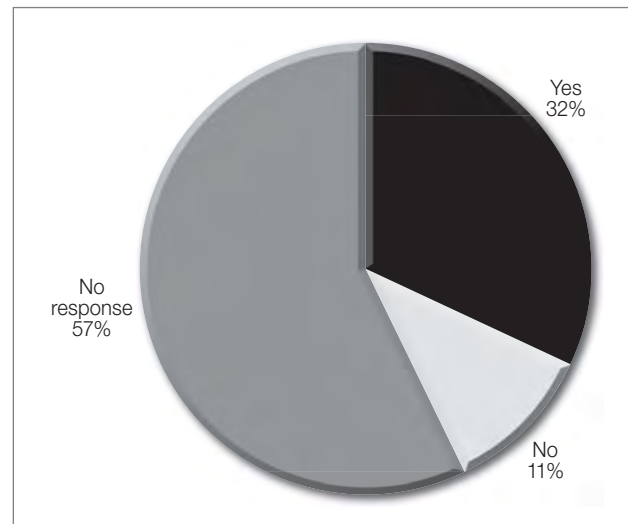
■ **Confusion at municipal level about public disclosure**

In 2011 the ISS approached a randomly selected group of municipalities to test the right to access the information contained in financial disclosure records.

To date, of the 75 municipalities contacted in 2011, the ISS has received permission to access councillors' disclosures from 32 per cent (24 municipalities), while 11 per cent (8) denied access and 57 per cent (43) did not respond, despite numerous requests (Figure 10). On average, these percentages indicate that for every three municipalities the ISS contacted, only one was willing to make its councillors' disclosure records available in a reasonable time. If these figures are

extrapolated to all 278 local municipalities in South Africa, the project can realistically hope for the support of approximately 92 municipalities in total.

Figure 10 Municipal responses to access to information requests



Rustenburg case study

As one of the best-performing local municipalities according to COGTA's 2009/10 report, Rustenburg Municipality became one of the first local municipalities to be contacted by the ISS. Following multiple communications between December 2010 and April 2011, it was found that the municipality had never instituted a financial disclosure system for its councillors. A plan was then set into motion to develop a financial disclosure system, which the municipality aimed to implement when the new councillors arrived following the 2011 local government elections.⁹⁹ A representative of the municipality, the chief audit executive in the Office of the Municipal Manager, attended the launch of the ISS's Who Owns What? database on 5 August 2011. Within days the ISS received documents indicating that discussions within the Directorate: Corporate Support Services, Unit: Legal and Valuations in April 2011 had concluded that the municipality would introduce a financial disclosure system.¹⁰⁰ On 1 September 2011 the ISS received the declaration forms of members of the Executive Council.¹⁰¹ Rustenburg is a shining example of how a municipality can develop and implement a system in record time.

Overall, it took the ISS an average of 79 days (two-and-a-half months) to gain access to each municipality's financial declarations. On average, each municipality required 7,8 contacts (via telephone and email) for access to be facilitated. However, the ease of access to information also varied greatly from institution to institution. Access to financial disclosure records remains a cumbersome, lengthy and expensive process for ordinary citizens.

■ **The use of a PAIA application**

Some municipalities insist that citizens follow the instructions given in the PAIA before they will grant public access to official records. The Act lays down a

legal application process that citizens can use to request access to information held by the state or another person that is required for the exercise or protection of one's rights. Generally, using this procedure is costly and a cumbersome administrative obstacle for most citizens, creating unnecessary impediments to accessing information that should reside in the public domain in any case.

Knysna and Steve Tshwete municipalities, PAIA applications

A trend across municipalities in April 2011 was their request to the ISS to make a PAIA application in order to gain access to the public section of councillors' financial disclosure records. In April 2011 the ISS received these requests from the Steve Tshwete Municipality and the Knysna Local Municipality. In both instances applications were completed and sent to the institutions. In May and June 2011 the ISS received financial records from both the municipalities.

eThekwini Metro

In 2008 the ISS received eThekwini Metro's 2004 and 2005 disclosure records. However, in 2010, when the ISS requested the records for 2006 and subsequent years, the metro refused, responding in letter by saying the following:

Please be advised that the Systems Act, Schedule 1 of the Code of Conduct states that (4) the municipal council must determine which of the financial interests referred to in sub item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure. Therefore, please be advised that the City Manager has indicated that no such disclosures will be made public until Council has given guidance. Therefore we will not, at this time, be able to provide the disclosure forms as requested.

The ISS subsequently submitted a PAIA application to eThekwini Metro in August 2011 to gain access to its councillors' financial disclosure records. This change in strategy was deemed necessary after the ISS had been denied access by the metro for three consecutive years. The metro had 30 days in which to respond to our application. We received an acknowledgement from the metro in October 2011.

On 15 December 2011 the ISS was informed that eThekwini Metro had agreed to provide access to its councillors' financial disclosure records dating from 2009 to 2011. Hard copies of the disclosure records arrived at the ISS offices in January 2012. They are available to the public on the ISS Who Owns What? database.

The financial disclosure records of South Africa's elected politicians are available at *Who Owns What? The ISS Online Database of Politicians' Interests and Assets*, <http://www.issafrica.org/corruption/whoownswhat>

Public access is key to an effective financial disclosure regime. It increases opportunities for all South African citizens to identify and prevent potential conflict of interest situations among their elected politicians. By allowing public access to disclosure records municipalities can demonstrate their genuine commitment to transparent and accountable governance.

Considering the status quo of public access to disclosure records, we recommend the following measures:

- Municipalities should avoid using the PAIA mechanism as an administrative obstacle to citizens' access to financial disclosure declarations. This information should be readily available and easily accessible to the public.
- Municipalities can strengthen public access to information by publishing an annual electronic or hardcopy register containing all the latest financial disclosure records of councillors.

MONITORING AND OVERSIGHT

Conflicts of interest and corruption continue unabated in municipalities despite financial disclosure regulations designed to detect and control unethical activities. Why is this regulatory system failing to detect violations? The explanation may lie with a poorly conceptualised monitoring and oversight system that is designed to achieve compliance, but provides very little effective scrutiny to detect irregularities in the declared information.

An effective financial disclosure system needs to establish a credible threat of detection. This may be achieved through a combination of the following: close review, targeted verification and public access. In addition, the system also needs to exhibit a credible threat of consequences for violations. In order to establish such a threat, financial declarations need to be open to scrutiny (or the financial disclosure system needs to incorporate scrutiny). There are different means of verifying the information that is disclosed. The capacity to verify every single declaration is in most cases impossible, so the question of which declarations to verify arises.¹⁰²

Verification of disclosure records

The verification of the completeness and accuracy of records is important to detect and control conflicts of interest and to maintain the disclosure system's integrity. If elected officials believe that their disclosure records are never checked, they may be more willing to omit information or provide false data. The disclosure regime also risks collecting a large amount of useless records with little purpose.

Ideally, a reviewer should (1) protect councillors from invasions of privacy and scandal; (2) ensure that declarations comply with legal requirements; and (3) serve the public's interest by helping to detect and manage potential conflicts of interest among councillors.

In South Africa, monitoring and enforcement remains largely the responsibility of the staff in parliament and local councils. These 'in-house' arrangements are beneficial for conflict of interest control, since submissions are made directly to a supervisor who is most likely to have knowledge of a public official's duties and whether or not a private interest might interfere with them. However, they can only be effective in systems where supervisors perform their duties properly. In South Africa, however, reviewers are not required

to fulfil the third function of detecting irregularities. Thus, the reviewer is not obliged to scrutinise the data provided by councillors. Monitoring and oversight requirements are rudimentary, only demanding that compliance is met.

Requirements for oversight and monitoring of declaration of interests: an in-house arrangement

The Code of Conduct for Councillors in Schedule 1, section 7 of the LGMSA requires councillors to declare their interests to the municipal manager. However, it does not outline any specific requirements for internal or external review of the contents of disclosures to be performed by the institution or its staff.

If financial disclosure regulations are to be truly effective, declarations should undergo a rigorous and systematic annual monitoring process where staff can flag irregularities and institute investigative proceedings where necessary.

Recognising this weakness, several municipalities have opted for additional investigatory measures that go beyond compliance checks. Of the 18 municipalities that the ISS interviewed in 2011, less than half have introduced additional internal review processes. Instead, most rely on external oversight through the Auditor-General's Office where the contents of records are usually compared with data in the Companies and Intellectual Property Commission (CIPC, previously known as the Companies and Intellectual Properties Registration Office, or CIPRO) database.

Examples include the following:

- Johannesburg City Council has introduced an *integrity commissioner* who is tasked with inspecting each declaration of interest and providing advice to councillors, and who has powers to initiate investigations.
- Midvaal Municipality requires that its councillors' financial disclosure records be scrutinised by the council's *Procurement Committee* to ensure greater oversight of councillors' interests and activities.
- Some institutions have adopted an *internal review system* whereby declaration records are sent to the individual municipality's internal audit department for checking.

Case studies: internal review systems

Midvaal Municipality¹⁰³

The Midvaal Municipality Procurement Division performs checks to see if a councillor is involved in procurement processes or the awarding of tenders. The Acquisitions Officer uses CIPRO and, with the councillor's identification number, checks who has outside, private interests in companies. If it is discovered that a councillor is engaged in business with the state, the business is blocked on a system called the procurement software system. This system is used nationally and once a business is blocked, it is visible to all throughout the system.

The performance and systems management coordinator

is employed in terms of Chapter 6 of the LGMSA and works alongside the municipality's internal auditors. Upon receiving financial declarations from councillors, the following categories are scrutinised: vehicles, financial assets and business interests. Financial assets are sent to the Finance Department to be verified and the business interests of councillors are sent to the Supply Chain Management Unit, where the interests are checked and verified.

City of Cape Town¹⁰⁴

The Councillors Support Office sends declarations to the council's internal auditors. The auditors then cross-check councillors' identification numbers against the council's system of vendors, which are registered with the Supply Chain Management Department of the City of Cape Town. If it is found that a councillor has an interest in a company that is doing business with the city, that particular company is deleted from the database, which is linked to all other metros and provinces in South Africa. If there is an irregularity, the speaker will be informed and will call on the councillor concerned, who then has three days in which to correct the forms.

Sundays River Valley Municipality¹⁰⁵

The disclosure records undergo an internal audit, and are then sent to the auditor-general. At council meetings, Standing Committee meetings and Supply Chain Committee meetings there is a standard item on the agenda that requires officials to declare any interests they may have in companies concerned with matters contained in the agenda. A register exists in which these interests must be declared.

Challenges for effective monitoring and oversight remain, however.

Retrospective external oversight – too little, too late?

All municipalities are required to submit financial statements to the Office of the Auditor-General for auditing purposes, which include information pertaining to the salaries, allowances and benefits of councillors. The AG Office checks for the compliance of declarations and tests for the completeness of the declaration form.

The AG Office is most interested in irregular expenditure, which often involves business being done by councillors with municipalities. However, it only detects irregularities long after the event occurred. At this point the detrimental effects of corruption on the municipality and service delivery are difficult to reverse. A well-resourced internal investigatory model may be better equipped to detect and thwart such incidents timeously.

Internal oversight: poorly resourced investigatory capacity

To ensure more effective and timeous checks to detect irregularities, internal reviewers need to be able to compare the contents of declarations with information held in other public registers and agencies, including the South African

Revenue Service (SARS), the CIPC and banks. It is doubtful whether relevant municipal staff can easily access such databases or possess the skills to complete detailed audits.

Public access: a crucial yet under-utilised oversight mechanism

The majority of municipalities continue to rely on public access to the information in councillors' disclosure records to detect conflicts of interests. For these institutions, external actors like the media, citizens, civil society and oversight bodies such as the public protector are critical for ensuring oversight and accountability. However, this method of oversight is flawed in several respects:

- Scrutiny of disclosed information only occurs once a citizen or public body lodges a complaint.
- Obtaining access to councillors' disclosure forms is very difficult for the majority of citizens.
- Most citizens (and journalists) are not equipped to perform proper audits or verification, since they are not permitted access to registers such as SARS data and personal banking information, nor are many likely to possess the relevant skills to use such data.
- Citizens are only allowed access to the public section of the declaration forms and are therefore denied the opportunity to scrutinise all relevant data and interests (especially data pertaining to spouses).

Enforcement of penalties and sanctions

Violations or failure to fulfil financial disclosure obligations relate mainly to (1) failure to submit a declaration, and (2) incomplete or false submissions. The capacity to demonstrate a credible threat of consequences for violations of disclosure requirements is essential. Important points to take into consideration include that the consequences must be appropriate for and proportionate to the violation, and that they must be able to be enforced consistently.¹⁰⁶

A range of punitive measures exists globally and includes the following:¹⁰⁷

- *Administrative sanctions:* fines, suspension of salary, demotion, suspension or removal from office
- *Criminal sanctions:* prison sentences
- *Reputational sanctions:* the publication of the names of those who have submitted their declarations after the deadline or have failed to submit altogether, or the publication of the sanctions implemented

Timely and consistent responses to financial disclosure violations can be even more critical than the severity of sanctions. In order to ensure that these requirements are met, there needs to be the capacity to enforce sanctions.¹⁰⁸

South Africa's Code of Conduct outlines a list of disciplinary sanctions that include formal warnings, fines, suspension and dismissal.

Breaches of code Section 14 of the LGMSA

The Code of Conduct for Councillors in Schedule 1, section 14(2) of the Act states:

- If the council or a special committee finds that a councillor has breached a provision of this Code, the council may –
- (a) issue a formal warning to the councillor;
 - (b) reprimand the councillor;
 - (c) request the MEC [member of the Executive Committee] for local government in the province to suspend the councillor for a period;
 - (d) fine the councillor; and
 - (e) request the MEC to remove the councillor from office.

ISS research suggests that municipal oversight functions are ineffective and rarely detect irregularities and violations. Of the municipalities interviewed by the ISS, most report that their disclosure systems had never detected a conflict of interest among their councillors. If municipal staff do not detect violations, it follows that municipalities are rarely required to enforce any sort of penalty or sanction against a councillor for breaching the Code of Conduct. Monitoring focuses on compliance among councillors and less on violations relating to incomplete or false information, due mainly to poorly resourced investigatory capacities in most municipalities. It is therefore difficult to draw any conclusion on the effectiveness of the enforcement of sanctions by municipalities.

This section has drawn attention to the systemic weaknesses in the current financial disclosure monitoring and oversight mechanisms at the local government level. The next section provides recommendations that could assist in addressing this critical challenge.

RECOMMENDATIONS

Suggestions to assist with effective implementation follow. These suggestions draw on research, best practice and lessons learnt from South African institutions.

Scope and content

■ **Ensure complete and accurate submissions**

In the interests of monitoring and accountability it is vital that records are complete, consistent and regularly submitted. A complete register is an effective register.

■ **Standardise submissions**

Greater standardisation will improve public accessibility to the information, as well as monitoring and oversight. Standardisation also ensures that all elected councillors are subject to a similar sets of ethical requirements. A suggested example of a comprehensive template that

includes all categories required by legislation is available online at http://www.ipocafrika.org/index.php?option=com_content&view=article&id=112&Itemid=92

■ **Electronic submission**

Municipalities are encouraged to consider introducing an online submission facility for councillors. Not only would an online, electronic service improve public access and monitoring, it would also introduce uniformity across democratic institutions. It should also make the submission process more user-friendly for elected officials, thus encouraging compliance. Electronic submissions will also address problematic issues of illegible handwriting and insufficient space.

If municipalities feel that electronic submissions may lead to unethical behaviour, templates can be completed electronically, printed, then signed by the councillor in the presence of the official accepting/collecting the forms, so as to avoid any fraudulent behaviour.

■ **Training and awareness workshops for councillors**

Municipalities are encouraged to provide ethics training for councillors to raise awareness about the need for full and complete disclosure of their financial and other interests. Remember that disclosure protects not only the public interest, but also that of councillors.

■ **Written guidelines for councillors**

Municipalities are encouraged to provide clear, written guidelines to councillors about the processes to be followed when completing annual disclosure records and how to correctly update a disclosure record in mid-year.

Compliance

■ **Legislative amendment**

The LGMSA does not clearly stipulate whether councillors' declarations need to be submitted annually, irrespective of changes to the nature of their private interests. The legislation should be amended to provide clarity in this regard to ensure uniformity across municipalities. It is recommended that annual disclosure should be made mandatory for all local government officials, as is the case at provincial and national levels.

■ **Electronic submissions**

Municipalities are encouraged to introduce an online submission facility. This will ensure a user-friendly portal for users and timely and comprehensible submissions. It will also assist municipalities to improve compliance levels.

■ **Improved communication**

All councillors and staff should be informed of submission deadlines and processes in order to prevent non-compliance. Senior council members, including speakers, can support compliance by

submitting timeously themselves and encouraging councillors to meet their public duties.

■ **Training and capacity building**

Training for councillors can help clarify the importance of and commitment to the financial disclosure framework and its regulatory procedures and deadlines.

■ **Monitoring and oversight**

Municipalities should strengthen their monitoring and oversight mechanisms so that non-compliance can be quickly identified and measures can be taken to assist the councillor to remedy the situation.

■ **Enforcement of penalties for non-compliance and late submissions**

Municipalities are encouraged to enforce penalties and sanctions for late submissions and non-compliance, especially for repeat offenders. Sanctions and penalties provide an incentive for councillors to submit on time, especially if the repercussions of their actions include a financial penalty (either a fine or the deduction of a percentage of their income) or the loss of benefits. When councillors believe that their institutions do not take ethical conduct and integrity seriously they will fail to commit to the principles that underpin the financial disclosure framework for public officials.

Access to information

Making public disclosure mandatory by law is no guarantee that the public will be able to obtain the required information. Rather, it is recommended that municipalities and their councillors play a positive role in ensuring that this right is realised in practice in the following ways:

- Municipalities must recognise that the principle of access to information is a democratic right in South Africa. In the case of financial disclosure, it is the key mechanism that enables the oversight and accountability of conflicts of interest and possible corruption among elected councillors.
- Municipalities should avoid using the PAIA mechanism as a way of denying citizens access to financial disclosure declarations. This information should be readily available and easily accessible to the public.
- Municipalities can strengthen public access to information by publishing an annual electronic or hardcopy register containing councillors' latest financial disclosure records.
- Municipalities can make councillors' latest financial disclosure records available online each year on the ISS Who Owns What? database (<http://www.issafrika.org.za/corruption/whooownswhat>).
- Municipalities must make it easier for citizens to identify staff dedicated to helping the public with requests for councillors' disclosure records.

- Municipalities should follow best practice established in national and provincial legislatures in terms of deciding what information should remain public and what confidential.
- Municipal staff can use ethics training workshops to raise awareness among councillors about legislative requirements and the rationale behind public access to financial disclosure records.

Public access is key to an effective financial disclosure regime. It increases the ability of all South African citizens to identify and prevent potential conflict of interest situations among their elected politicians. By allowing public access to disclosure records, municipalities can demonstrate their genuine commitment to transparent and accountable governance.

Monitoring and oversight

Mandating public disclosure by law is no guarantee of an effective regulatory framework that will detect and control the detrimental effects of conflicts of interest in public life. Municipalities and their staff have to actively participate in oversight and monitoring, and can do so in the following ways:

- Municipalities should recruit non-partisan and independent personnel with powers to proactively monitor and investigate potential irregularities and anomalies in the declarations. This person can provide additional support to the municipal manager, who is primarily responsible for achieving 100 per cent compliance.
- Municipalities should use their existing oversight structures and committees, such as internal procurement committees, to provide additional oversight support.
- Municipalities should call on SALGA to provide a standardised method of submitting declaration forms and exercising more professional controls in the scrutiny of data to control conflicts of interests.
- There is also merit in municipalities approaching external oversight institutions, including the AG or SARS, to provide further assistance.
- At present, public access to information is the primary mechanism that allows for the oversight of elected councillors' private interests. Municipalities can promote public access to information – and thereby strengthen oversight and accountability – by publishing an annual electronic or hardcopy register containing councillors' latest financial disclosure records.
- Compliance levels and repeat offenders can be communicated publicly.

- Coordinating bodies, such as SALGA, should develop guidelines or a handbook for the implementation of financial disclosure at local municipalities. These guidelines must be communicated clearly to all councillors and staff tasked with disclosure within municipalities. SALGA can also provide training to all new councillors about the requirements and importance of financial disclosure.

CONCLUSION

Evidence suggests that local government institutions continue to face numerous challenges in the effective implementation of financial disclosure regulations as a key mechanism to manage potential conflicts of interests.

While a regulatory framework exists, this is insufficient to ensure an effective disclosure system. A successful system requires comprehensive and clearly articulated legislation, a uniform understanding of requirements by elected officials and staff, efficient processes for disclosure, and the effective monitoring and oversight thereof. Failure to declare interests or failure to submit accurate and comprehensive disclosures needs to be sanctioned to relay a message that non-compliance holds negative implications for elected officials.

At the same time, however, public institutions should not overly rely on rules and regulations as the panacea for preventing corruption.¹⁰⁹ A 'top-down' compliance-based approach places little emphasis on the over-arching values that ought to guide the behaviour of people in public positions. If public officials do not own these values, they come to view conflicts of interest regulations, like asset disclosure, as an imposition on their individual freedoms or simply as cumbersome bureaucratic necessities of public life. A top-down approach, which simply imposes rules and enforces compliance, may encourage an instrumental attitude to the rules themselves ('I will ignore or circumvent this regulation unless the risk of getting caught is too high').¹¹⁰ Instead, a values-based approach can play an important role in the moral life of institutions by laying the foundations for ethical conduct.

Of course, political will is also most critical in ensuring the effectiveness of financial disclosure as an anti-corruption tool. Politicians regularly ignore conflicts of interest among their officials even when these are brought to their attention. The most effective regulatory environment is ineffective unless there is a demonstrable political will to deal with corruption.

While public access to information is essential, it is not sufficient as a substitute for effective oversight. Local government institutions must adopt internal mechanisms to improve their capacity to scrutinise declarations in an open and transparent way. And without an adequate internal oversight and investigative mechanisms, omissions in

declarations will merely undermine the entire financial disclosure regime.

Finally, the authors note that far greater attention needs to be paid to the systemic reasons for corruption in South Africa, including how the nature of state formation affects the nature of corruption. A macro approach to corruption will provide valuable insights into the common causes of conflicts of interests in the public sphere and can certainly assist anti-corruption policymaking efforts. However, this important endeavour is beyond the scope of this paper.

The paper highlights not only the challenges, but also possible remedies for policymakers. A greater understanding of the nature of the challenges, a recognition of the value that financial disclosure frameworks offer as a means to address corruption, and the political will to implement this tool are important cursory steps towards promoting improved transparency and the increased accountability of elected officials in South Africa.

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ABOUT THE PAPER

This paper examines the financial disclosure regulatory framework at local government level in South Africa. Drawing on empirical data, it provides a detailed critique of this framework's practical implementation. Specifically, it looks at the scope and content of disclosure requirements, compliance by elected officials, institutional support and capacity for disclosure, public access to information, and monitoring and oversight mechanisms. It highlights weaknesses in the current implementation of financial disclosure regulations and concludes with policy recommendations to strengthen the effectiveness of financial disclosure as an anti-corruption tool.

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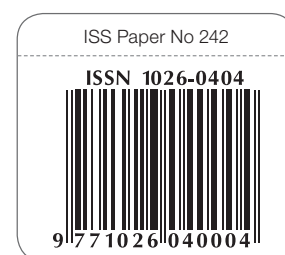
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