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Ward Committee Establishment and Election Guiding Framework, 2016

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SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION

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WARD COMMITTEE ESTABLISHMENT AND ELECTION GUIDING FRAMEWORK, 2016

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1 ACRONYMS

1.	**CDW**	**Community Development Worker**
2.	**MFMA**	**Local Government: Municipal Finance Management Act, 2003**
3.	**MPAC**	**Municipal Public Acounts Committeee**
4.	**LGWP**	**The White Paper on Local Government**
5.	**IEC**	**Independent Electoral Commission**
6.	**IDP**	**Integrated Development Plan**
7.	**PR**	**Proportional Representation**
8.	**WC**	**Ward Committee**

2 Purpose of the framework

The main purpose of this Guiding Framework is to provide a uniform approach which Metropolitan and Local Municipalities could use as a basis to customize, adopt and implement during the Ward Committee elections and operations in order to ensure improved functionality of these structures and ultimately deepened local democracy and municipal accountability.

3 Preamble

The advent of democracy in 1994, and the attendant maturing system of local government in 2000, brought about a new democratic local governance system which promotes certain basic values and principles. Such values and principles include transparency, accountability and an open and inclusive system of governance through community involvement in governance, and planning and democratisation of development. This certainly placed South Africa in par with other democratic governments throughout the world and positioned it as a reputable reference form of effective decentralised system of government.

The Constitution and several legislative prescripts place sufficient emphasis on community involvement in the affairs of the municipality, which carries a substantively bigger weight and deeper meaning than public participation. Therefore, the notion of participation remains a key cornerstone of good governance and constitutes an integral component in the policy making process, development planning and budgeting.

Pursuant thereto section 152 of the Constitution, places the participation of communities at the centre of service delivery and other matters of Local Government. Correspondingly, the Local Government: Municipal Structures Act, 1998 and Local Government: Municipal Systems Act, 2000 provides the legislative framework for the establishment of Ward Committees by municipalities. Set out below is a broad guide to municipalities towards the election and functioning of Ward Committees.

4 Legislative Framework

4.1 Broader context

The legal provisions for the election and operation of Ward Committees are contained in sections 72 to 78 of the Local Government : Municipal Structures Act, 1998 (hereinafter referred to as "the Structures Act") and whilst the Structures Act provides for the establishment of the committees and gives guidelines on the composition, status and roles of the committees, the Municipal Council remains responsible for the formulation of policies regarding basic issues such as the process for the establishment of the Ward Committees, which includes their election, membership, terms of reference, their roles and responsibilities, re-imbursement of expenses and administrative support. Both Metropolitan and Local Municipalities are required to ensure that a formal policy is developed for the election and functioning of the committees and prior the process of establishment, such policies are adopted by the council in order to ensure legitimacy of Ward Committees and the associated processes.

It is always important for Municipalities to realise that the law sufficient provision for participatory and transparent system of governance in South Africa. Accordingly, in section 1 of the Constitution, 1996, provides that South Africa is a sovereign, democratic state founded on the values of human dignity, equality, human rights, non-racialism, non-sexism, supremacy of the Constitution, the rule of law, universal adult suffrage, a national common voters' roll, regular elections, a multi-party system, accountability, responsiveness and openness.

This section gives a clear and unequivocal indication of the democratic nature of the society envisioned by South Africans. One obvious inference of a constitutional democracy is that the state is subject to the rule of law and is supposed not only to observe the law in general terms, but to comply meticulously with every constitutional and legal duty imposed on it. The Constitution has enhanced and entrenched local government as a sphere of government, alongside the national and provincial spheres. With this constitutional recognition, the local sphere of government is now vested with the mandate of development of the local communities by providing services that improve the social and economic conditions of the people. This mandate of local government is moulded in the concept of Developmental Local Government. Developmental local government has been defined as local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives[1]. The Constitution further provides for a variety of fundamental rights that constitute the core of the constitutional and legislative mandate of municipalities. The Bill of Rights emphasises equality, human dignity, freedoms, environmental sustainability, as well as rights to access to housing, health care, food, water, social security, education, access to information. Accordingly, section 152 (1) the Constitution sets five objectives for the local sphere of government and these are summarised below:

(a) *To provide* ***democratic*** *and* ***accountable government for local communities****:*

The extent to which a municipality is democratic in keeping with constitutional provisions should be demonstrated by how effective checks and balances are to ensure an accountable municipality to the people and how substantive reports are and most importantly, how the democratically elected leadership conduct itself as guided by the fundamental values of the Constitution. The municipality should also effectively leverage benefits offered by the establishment of Ward Committees to deepen local democracy and foster a culture of transparency and openness. The objective requires the local public administration to be professional and meet the requirements set out in section 195 of the Constitution and section 50 of the Local Government: Municipal Systems Act, 2000 (hereinafter referred to as "the Systems Act").

(b) *To ensure* ***sustainable provision of services to communities:***

While the intention is not to offer an alternative to conventional interpretations, sustainability in terms of this framework also means that each development intervention approved by the municipality will ensure that communities play an instrumental role in order to own the development, and support that the limited resources of the municipality will be used wisely to ensure a wider and long term impact, thus value for money. Each municipality must, across programmes, mainstream the targeting of groups such as the youth, women, disabled etc. With respect to the environmental sustainability, preservation should assume prominence where the nature of development will impact on the natural habitat.

(c) *To promote* ***social and economic development:***

In addition to other interpretations of this objective, all decisions of the municipality including concrete projects will be directed at improving the wellbeing of the people. The emphasis above clearly talks to the mandate of the Municipality. Its continued relevance is dependent on its capacity to grow the local economy, promote social cohesion and effectively provide services to the inhabitants in a sustainable manner. Within the context of accountable and inclusive governance, what the municipality does on a daily basis should be reflected in periodic reports to the different constituencies within its jurisdiction and should be consistent with the collectively determined development priorities and indicators during the consultative processes.

(d) *To promote a* ***safe and healthy environment****;:*

The inferior living conditions imposed on the majority of South Africans by the system of apartheid had severe socio-economic consequences on erstwhile disenfranchised

people. It robbed the majority of their human dignity and deprived them of basic human rights. Respect for the dignity of all human beings is particularly important in South Africa. Apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new Constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new Constitution.[2] Consequently, municipalities have an obligation to create and sustain an environment in which services are provide to all regardless of their physical locus based on the applicable norms and standards. As a sphere of government at the cutting edge of fundamental transformation, municipalities are better places to deconstruct apartheid spatial injustices. Transformation of the lived experience of all is practically at the core of the mandate of local government. Social integration both physically and in terms of redress should remain a product of collectively determined co-vision by both municipalities and representatives of the people.

(e) *To **encourage communities and their organizations to become involved** in local government matters.*

As part of the governance model, structures and systems must be in place to foster effective public participation and community involvement in the processes and structures of the municipality including the Audit and Municipal Public Accounts Committees (MPAC) and most importantly Ward Committees (WC). At the same time it is crucial for all municipalities to accept that it is enjoined in terms of the Constitution to invest resources to nurture a culture of active involvement in municipal governance meaning both individual inhabitants and organised social formations (including civil society) take keen interest in how the municipality is being governed and where there are areas of concern, appropriate platforms are created to facilitate a continuous engagement between the municipality and its stakeholders. The municipality, therefore, should ensure in its annual plans that resources are allocated for this purpose, including a system that monitors the performance of Councillors, the administration in doing their constituency work as well as that of Ward Committee in terms of discharging their mandate.

4.2 White Paper on Local Government

The **White Paper on Local Government (LGWP) of 1998** (hereinafter referred to as "the White Paper") substantively outlines the strategic transformation vision for local government in South Africa and outlines four principle for community participation viz:

a) To ensure political leaders remain accountable and work within their mandate;

b) To allow citizens (as individuals or interest groups) to have continuous input into local politics;

c) To allow service consumers to have input on the manner services are delivered;

d) To afford organised civil society the opportunity to enter into partnerships and contracts with local government in order to mobilise additional resources.

The White Paper accordingly implores municipalities to develop mechanisms to ensure citizen participation in policy initiation and formulation, and the monitoring and evaluation of decision-making and implementation. Flowing from the Constitution of the Republic and the developmental local government vision as outlined in the White Paper; several transformative legislative prescripts were enacted and these are summarised below with a specific focus on community involvement and public participation. While the intention is not to outline all crucial legislative provisions for purposes of clarity a succinctly overview is given.

4.3 Local Government: Municipal Structures Act, 1998

The Structures Act unequivocally compels the sector to establish a democratic system of local government in line with the Constitution of the Republic. The Act clearly sets the tone in terms of the intended qualitative departure from an undemocratic system of local government into a democratic system where structures are aligned to the fundamental values of the Constitution. In its preamble the Act states;

WHEREAS past policies have bequeathed a legacy of massive poverty, gross inequalities in municipal services, and disrupted spatial, social and economic environments in which the people continue to live and work;

And WHEREAS there is fundamental agreement in the country on a vision of democratic and developmental local government, in which municipalities fulfil their constitutional obligations to ensure sustainable, effective and efficient municipal services, promote social and economic development, encourage a safe and healthy environment by working with communities in creating environments and human settlements in which all people can lead uplifted and dignified lives;

The Structures Act is, therefore, a key piece of legislation for community involvement and public participation at the local sphere of government in South Africa. The Act, in sections 71 and 72 provides for the establishment of Ward Committees in Metropolitan and Local Municipalities with a ward participatory model, to enhance participatory democracy through such ward committees. The explicit obligation on municipalities in terms of this provision is a requirement to ensure a system of governance that through well-established mechanisms strives to balance aggregative and deliberative forms of democratization. The roles, responsibilities, and regulations pertaining to these Ward Committees are set out in part four of the Act. The Act further provides a broad guide in terms of how to constitute Ward Committees and the following is clearly:

a) Ward Committees should comprise of ten people;

b) Ward committees should be chaired by a Ward Councilor;

c) Women should be equally represented on Ward Committees;

d) The composition of Ward Committees should be representative of the communities they serve;

e) Traditional authorities must be included into participatory processes.

Schedule five of the Act outlines some of the responsibilities of Ward Councilors and these encapsulate the requirement for quarterly "progress" reports to the public. In section (72 (3)) as required in terms of section (152 (1) (e)) of the Constitution, elaborates on the roles and functions of Ward Committees, whose primary objective is to enhance participatory democracy in local government.

With regard to the expected role of the Executive, the Act compels them (in section (44) (3) (g)) to produce an annual report reflecting the extent to which the local community has been involved in municipal affairs. The Executive is further compelled to ensure that regard is given to public views, and a report on the effect of consultation on the decisions of the Council. Correspondingly, in Schedule 5 the Act stipulates that each Councillor must report back quarterly to the public, and that indicators have to be developed to inform these quarterly reports. The Act in sections (73 (4)) and (73(5) (d)) provides for a municipality to commit resources to enable Ward Committees to perform their functions and exercise their powers effectively.

4.4 Local Government: Municipal Systems Act, 2000

The Systems Act is of equal importance in relation to the parameters of community involvement and public participation at the local government level. In its broad legislative statement of intent, the Act seeks *to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures*[3]. It also seeks *to provide for community participation; to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government.*

In its preamble the Systems Act sets the tone to qualitatively break with the past and states: *WHEREAS a fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management;*

And WHEREAS the new system of local government requires an efficient, effective and transparent local public administration that conforms to constitutional principles[4];

The Act emphasizes the need for community participation in governance processes. Furthermore, the Act sets out various methods and obligations for municipalities in facilitating engagement with the communities they serve. These include some of the following:

a) In section 16, the Systems Act compels *municipalities to develop a culture of municipal governance that complements formal representative government with a system of participatory governance. In terms of this section, municipalities, "must" for this purpose; (a) encourage and create conditions for the local community to participate in the affairs of the municipality, including in (i) the Integrated Development Plan, (ii) the performance management system, (iii) performance review processes, (iv) the budgeting processes, and (v) strategic decisions relating to services.*

b) Further thereto, in terms of section 16(1) *specifically, municipalities must also contribute to building the capacity of local communities to enable them to participate in the affairs of the municipality.* The section also refers to public participation in the Performance Management System, primarily through *ongoing participation and the production and dissemination of the annual report.* Sections 42 and 44 also relate to the Performance Management System as it *stipulates requirements for setting targets and indicators and criteria for implementation.*

c) Related to the foregoing are provisions of section 21 which compels municipalities to put in place *public communications processes. This can happen through newspapers, radio broadcasts or official notices at municipal offices*.

d) Section 21(4)(5) further compels each municipality to institutionalise systems and processes that are geared to equip municipal inhabitants to engage with the Council in terms of public written and oral submissions and the requirements to draft and make accessible simplified forms for such a purposes including in instances where assistance should be provided to those who are unable to write or complete such applicable forms.

e) The Systems Act substantively addresses all aspects that are crucial to empower the voice of communities and municipal inhabitants in particular in terms of budgeting, planning, performance planning and reviews, reporting, setting of tariffs etc.

Fundamentally, the Systems Act instructively outlines the responsibilities for Ward Councilors including a requirement for a minimum number of meetings that must be convened at ward level for reporting purposes. In terms of section 5(1)(e)(i) each municipality is obliged to ensure all Council proceedings are open to the public including an obligation to notify the public of such meetings; read sections 16, 17, 18, 19, 20, 21, 21A, & 21B of the Act. This is further detailed in the Local Government Municipal Planning and Performance Management Regulations, 2001 where in terms of Regulation 15 communities should participate in monitoring, measuring and reviewing municipal performance.

4.5 The Local Government: Municipal Finance Management Act, 2003

The Local Government: Municipal Finance Management Act, 2003 (hereinafter referred to as "the MFMA") relates more specifically to the financial management of local municipalities. The Act is relevant to public participation to the extent that it promotes financial accountability and transparency[5]. Financial matters must, in terms of the Act, *be discussed at council meetings and included in annual reports*, as such, section 127 (5) specifically states that municipalities must make public, and invite local communities to submit representation, immediately after their annual reports are tabled. It further state that in terms section 129 (3) *municipalities must make their annual reports public within seven days of adoption of such a report.*

Several sections of the Act outline processes pertaining to participatory planning and budgeting. Section 21(1) (b) of the MFMA compels the Mayor at least ten months before the start of the budget year to table a time schedule setting deadlines for the tabling and approval of the budget and the IDP. The Act further instructs the Accounting Officer (MM) in terms of section 22 (a) to oversee the process during which the budget is made public and must invite public responses on the budget. In line with the two requirements above, the Council has a collective obligation in terms of section 23 (1) to consider the views of the community with regard to the budget. The Act in terms of section 53(3)(a) further enjoins the Mayor to be accountable for monthly revenue and expenditure projections, quarterly service targets, and performance indicators that must be made public not later than 14 days after the implementation plans have been approved. The Act further enjoins all, including other spheres of government who play an active role in the terms of sections 141(3)(a)(iv), 141 (3)(c)(i) and 141(3)(c)(ii)(bb) of the Act to consult communities and community organisations during the process of formulating a Financial Recovery Plan which by implication is applicable to municipalities that are under intervention or is receiving intensive hands on support.

The above is a high – level summary of key local government legislative prescripts guiding the local sphere of government to nurture a culture of inclusive governance and public participation. A proper understanding of these is crucial in order to appreciate the strategic importance of Ward Committees, albeit they are not the only mechanism to foster a culture of accountability, community involvement, open and transparent system of local government. Municipality should thus consider and where applicable, adopt the following principles to guide its processes towards deepening local democracy, fostering a culture transparency and accountability. It is also important to create a shared understanding of the basis of and the importance of community involvement and the following assumptions might provide a broad perspective:

4.6 Basic assumptions underlying community involvement include:

a) Participatory municipal governance is designed to promote the values of good governance and human rights;

b) Participatory municipal governance acknowledges a fundamental right of all people to participate in the governance system;

c) Participatory municipal governance is designed to narrow the social distance between the electorate and elected councillors;

d) Participatory municipal governance requires recognising the intrinsic value of all of the people, investing in their ability to contribute to governance processes;

e) Participatory municipal governance should create appropriate mechanisms to ensure that the people can participate as individuals, interest groups or communities more generally.

4.7 Principles underpinning community involvement and public participation

a) **Inclusivity** each municipality should be poised to allow for quality engagements with communities using different approaches in addition to Ward Committees and in that process there should be willingness to embracing all views and opinions in the process of community consultative processes.

b) **Diversity** In a community participation process: it is important to understand the differences associated with race, gender, religion, ethnicity, language, age, economic status and sexual orientation. These differences should be allowed to emerge and where appropriate, ways sought to develop a consensus and therefore policy development, budgeting and planning processes must build on this diversity.

c) **Encouraging community participation:** Capacity-building is the active empowerment of role players so that they clearly and fully understand the objective of public participation and may in turn take such actions or conduct themselves in ways that qualitatively contribute to achieve the delivery of the co-created vision of the municipality.

d) **Transparency**: promoting openness, sincerity and honesty among all the role players in a participation process.

e) **Flexibility:** the ability to make room for change for the benefit of the participatory process. Flexibility is often required in respect of timing and methodology. If built into the participatory processes upfront, this principle allows for adequate public involvement, realistic management of costs and better ability to manage the quality of the output.

f) **Accessibility:** at both mental and physical levels - collectively aimed at ensuring that participants in a public participation process fully and clearly understand the aim, objectives, issues and the methodologies of the process, and are empowered to participate effectively. Accessibility ensures not only that the role players can relate to the process and the issues at hand, but also that they are, at the practical level, able to make their input into the process. Platforms and medium of communication including use of relevant language is crucial to ensure accessibility.

g) **Accountability:** the assumption by all participants in a participatory process of full responsibility for their individual actions and conduct as well as a willingness and commitment to implement, abide by and communicate as necessary all measures and decisions in the course of the process is a cornerstone of good municipal governance. The engagement should be characterised but a collectively shared spirit of reciprocity.

h) **Trust, Commitment and Respect**: Above all, trust is required in a public participatory process. Invariably, however, trust is used to refer to faith and confidence in the integrity, sincerity, honesty and ability of the process and those facilitating the process. Going about participation in a rush without adequate resource allocations will undoubtedly be seen as a public relations exercise and this is likely to diminish the trust and respect of community in whoever is conducting the process in the long term, to the detriment of any public participation processes.

i) **Integration**: the public participation processes are integrated into mainstream policies and services, such as the IDP process, service provision planning.

5 Establishing Ward Committees with Clear Delegated Functions

5.1 Ward Committees

Although they are not the only means through-which inclusive governance may be achieved, Ward Committees are a crucial mechanism to deepen local democracy and promote accountability. They are organs of community involvement whose strategic thrust mainly is to foster a culture of people centered and people driven local government system to ensure efficiency and effectiveness for socio – economic planning and service provision. As political units underpinning participatory democratic processes a ward offers the local sphere of government an opportunity to nurture social cohesion and thereby deconstruct the past apartheid spatial geography through integrated wall to wall municipal boundary system. They are also strategic enablers for social integration in municipalities.

5.2 Status of the Ward Committee

It is important for both the council and members of the community including civil society formations to understand that a Ward Committee

a) Is an advisory body;

b) Is a representative structure;

c) Is an independent apolitical committee of the community in a ward;

d) should be impartial and perform its function without fear, favour or prejudice;

e) constitute a layer of accountability and support to the Ward Councillor;

f) as a representative structure of the community it is accountable to the community;

g) is an integrative umbrella body responsible for coordination of ward developmental initiatives, promotion of accountability and social cohesion.

5.3 Powers and Functions of Ward Committees

In terms of the Structures Act, Ward Committees may make representations on any issues affecting the ward to both the Ward Councilor, and through the Ward Councilor to the Municipal Council. A provision to this effect should be made in the Rules of Order of the Council to provide for mandatory periodic reports to the Council through the Speaker. These can include recommendations on any matters affecting the community (ward). A ward committee may make recommendations on any matter affecting its ward to the ward councillor; or through the ward councillor, to the metro or local council, the executive committee or the executive mayor or the relevant metropolitan sub-council. They may have such duties and powers as may be delegated to them through the municipal policy in line with the provisions of Section 59 of the Systems Act. In addition, Ward Committee members have a responsibility amongst other things:

a) To assist the Ward Councilor in carrying out her/his mandate in particular with respect to community engagement, consultation and they should act as the official liaison mechanism on all strategic municipal matters affecting the community;

b) Ward Committees should be the official body through which the Ward Councillors liaises with the community and all organised stakeholders regarding any matter affecting their respective wards and more specifically items on the agenda of the Municipal Council which is likely to affect any particular ward;

c) To act as an advisory body on council policies and matters affecting communities in the ward;

d) To submit or table reports and plans addressing the needs and priorities of the ward to the Council;

e) To facilitate feedback on matters raised with the Ward Councillor by the community and to the council through the Ward Councillor;

f) Facilitate establishment of sub-structures within a ward in order to ensure effective community interaction;

g) To mobilise partnership for the development of local projects as well as play a coordinative role for all local Projects Steering Committees within the ward;

h) To attend to door-to-door campaigns and to arrange interaction with substructures in the ward, such as street committees where such exist;

i) To keep records of complaints, queries and requests received from the community in a ward and communicate these through formal municipal mechanisms for resolution and feedback;

j) To ensure effective information dissemination to all members of the community and community organisations;

k) To provide support to the municipality to maintain an updated ward profile, as well as, the database of indigent households within a ward;

l) To, on behalf of the community, participate in plans and programmes of the municipality and other spheres of government impacting on the development of the ward;

m) To foster a good working relationship with Community Development Workers employed to serve their respective the ward communities;

n) To serve as a specialized participatory structure that filter through information from the community to the council and from the council to the community;

o) To create formal, unbiased communication channels and cooperative partnerships between a community and a Council;

p) To serve as a mobilizing agent for community action, in particular during the identification of challenges and promoting access to services, implanting a culture of:

   i. Service payment campaigns;

   ii. The integrated development planning process;

   iii. The municipality's budgetary process;

   iv. Decisions about the provision of municipal services;

   v. Development, implementation and any decision about by-laws;

vi. Decisions relating to implementation of Municipal Property Rates Act (MPRA);

vii. Identification of households who qualify for indigent support;

q) A Ward Committee may express dissatisfaction in writing to the Municipal Council on the non-performance of a Ward Councillor;

r) A Ward Committee may, subject to available capacity and resources, conduct an annual satisfaction survey to measure its operational efficacy in order to particularly assist the committee in the execution of its functions and powers and in general provide feedback to the municipality gauge levels of community involvement[6]. The satisfaction survey should be administered in the ward by Ward Committee members with the support of the administration and the Ward Councillor.

5.4 Composition of Ward Committees

Each Ward Committee consists of the elected Ward Councillor (as cjairperson) and ten additional members elected by the community to represent organisations, sectors and geographically determined blocks of residents within the boundaries of a specific ward. A Community Development Worker (CDW) could be attached to each ward to provide support to the committee, depending on the municipal policy with regard to CDWs. The Ward Councillor, as a representative of the Council should as prescribed in terms of legislation be the Chairperson of the Ward Committee.

a) In the absence of the Ward Councillor, a Councillor should be nominated by the Speaker to act as Chairperson of the affected Ward Committee.

b) The complexity of any ward might point to a likely deficiency where individuals might not sufficiently represent the collective aspirations of all different and potentially competing interest within it; as such, no individual representation should be directly elected into a Ward Committee. Each municipality should undertake a substantial analysis of communities within every ward and determine the best possible approach to ensure substantive and quality representation of all within a ward, lest it denies the council a sense of the collective aspirations of the people. A council approved stakeholder register should be used to determine sectors to be represented in the committee.

c) As indicated above representatives that are elected into a Ward Committee can be elected based on a sectorial and spatial basis to accommodate circumstances prevailing in a particular municipal context. These may include a proportion for Civil Society Organisations, sectoral community organisations, geographical blocks/grouping of villages, women and youth composition of the Ward Committee.

d) Women and youth should be equitably represented in the Ward Committee. The responsibility to ensure gender and youth representation should be shared between the municipality and all stakeholders. This may mean that, where the situation compels, a specially designated civil society organisation, community organisation or geographic block may be specifically requested to designate a woman, youth and disabled person to represent it in the Ward Committee.

e) In each Ward Committee, a municipality should ensure a balanced sectoral representation. Such sectoral interests could albeit not all can possibly be represented include but not limited to the following:

i. Gender

ii. Organised formal business community

iii. Organised informal business community

iv. Civil Society Organisation

v. Socio-economic development

vi. Traditional institutions and faith based organisations[7]

vii. Special designated groups

5.5 Eligibility criteria for election into a Ward Committee

Each municipality may establish a Special Committee to facilitate development of rules to regulate the procedure and criteria to guide the Ward Committees election. The Office of the Speaker with the support of the Accounting Officer and relevant Portfolio Heads should constitute this committee; amongst such eligibility consideration may include criteria such as:

a) For any person to be elected into or serve in a Ward Committee one should be a registered voter whose name appears on the voters roll of the Independent Electoral Commission (IEC) for that particular ward8;

b) For any person to be elected into or serve in a Ward Committee one should not be a member of the Council;

c) For any person to be elected into or serve in a Ward Committee one should not be permanently or contractually employed by a Municipality;

d) For any person to be elected into or serve in a Ward Committee one should not be a Community Development Worker (CDW) or employed by another sphere of Government

e) For any person to be elected into or serve in a Ward Committee one should not have been indebted with the municipality for a period longer than three (3) calendar months, with the exception that proof can be provided that necessary arrangements have been made to settle the debt and continue to remain in good standing for the duration of the term of office;

f) For any person to be elected into or serve in a Ward Committee one should not have been convicted of an offence and sentenced for a period of not less than twelve (12) months[9].

g) Close family members (husband, wife, child, and parent) may not serve on the same Ward Committee provided that they have knowingly been elected by either their geographic areas or organisations they represent in the Ward Committee.

The Code of Conduct for Ward Committee Members as developed by SALGA will be applicable to members of the committee during their term of office.

5.6 Procedure for Election

a) The Municipal Manager should advertise a notice for the establishment of Ward Committees in all respective wards of the Municipality in the local newspapers and inviting nominations for organisations, sectors and geographical areas.

b) The Municipal Manager should ensure that in addition, other relevant means of communication should be used to communicate the establishment of Ward Committees to residents with each ward.

c) Where more than one election in a ward is to take place due to the ward's geographical nature, the number of Ward Committee members of each area where meetings will take place, should be determined proportionally according to the registered number of voters in terms of the IEC's voters roll

d) The meetings should be conducted by the respective Ward Councillor(s) or a Proportional Representative Councillor (PR), mandated by the Speaker.

e) The Municipal Manager should appoint a competent Manager or official to act as an Election Officer during the Ward Committee election.

f) A minimum of not less than 5 (five) organisations and /sectors should be elected as members of a particular Ward Committee whilst the balance should be elected from geographical block/areas.

g) The organisations/sectors eligible for election must have been operational in the particular ward for at least one (1) year and must within three (3) months after election submit to the Office of the Speaker a Constitution or official registration documentation.

h) The ratio between organisations/sectors and geographical block representation, also taking into consideration (f) above, must be properly canvassed and provided for in a council adopted policy and such should be presented and agreed upon by the voters (public) contesting elections.

i) The geographical block representatives should establish a committee for the identified block within thirty (30) days after the Ward Committee election to structure a process to be used to ensure a structured interaction between the Ward Committee and members of the community for such to be formalized as part of the annual work plan of the Ward Committee.

j) Only registered voters, whose names appear on the voters roll for the particular ward, should be eligible to participate in the elections of the particular Ward Committee.

k) An eligible voter must only make one nomination or second a nomination for an organisation/sector and/ geographical block respectively, during the election process of a particular Ward Committee.

l) Voting for members of a Ward Committee should take place by secret ballot, on pro-forma ballot papers prepared by the municipality.

m) A registered person can only vote for one organisation/sector and one geographical block representative during the election process of a particular Ward Committee.

n) If an organisation/sector is to be represented on the Ward Committee no other member of the executive of that particular organisation/sector should be eligible to be elected as a geographical block representative for the particular Ward Committee[10].

o) Nominations for organisations/sector and geographical blocks respectively should be accepted in the order of the highest to the lowest number of votes achieved during the election.

p) In the event that more nominations are received than available opportunity for representation or vacancies on the particular Ward Committee, the meeting should decide to place the particular nominations on a replacement list.

q) If a member of a Ward Committee resigns or seizes to be a member, the organisation/ sector/geographical block on the short list (*taking into consideration the agreed ratio*) which received the next highest number of votes at the election will be eligible to fill the vacancy. In the absence of a shortlist the Ward Committee may decide to fill the vacancy in terms of the process set out in this chapter.

r) The appointed Manager or Official presiding over the election process must announce the total votes cast for organisational representatives and representatives at the meeting and such results must be recorded in the minutes of the meeting.

s) Any person nominated on behalf of an organisation/sector/ geographical block must indicate his/her acceptance of such nomination prior the voting process.

t) If the same number of votes is cast during any election the result should be determined by way of casting the lot.

u) The decision(s) of the appointed Presiding Officer will be final, upon applying the applicable rules for election purposes set out in this framework.

v) If a person (organisation/sector/geographical block representative) makes any misrepresentation regarding eligibility as a candidate at a meeting, such person or organisation should be disqualified to serve as a member for the term of the Ward Committee.

w) The election results for the establishment of Ward Committees should be officially reported to the Council by the Municipal Manager.

5.7 Process of handling objections

a) An objection to the election process may be submitted in writing to a Provincial Department of Cooperative Governance within 14 days following the date in which the election was conducted,

b) The relevant Provincial Department of Cooperative Governance should acknowledge receipt within seven working days upon receipt of an objection.

c) An investigation should be conducted in consultation with all the affected interest groups and the municipality.

d) The complainant should be advised of the outcome of the objection within 30 days from the date the objection was launched.

e) The municipality has an obligation to ensure that all pending objections have been finalized before the new Ward Committee members are formally introduced to the community.

5.8 Conduct of Members

a) A member of the committee:

i. Must perform the functions of the committee in good faith and without fear, favour or prejudice;

ii. May not use the position or privileges of a member for private gain, or to improperly benefit another person;

iii. May not act in any other way that compromises the credibility, impartiality, independence or integrity of the committee;

iv. Must adopt the principle of accountability to the community and all political party represented in council;

v. Must be accessible for the community and ensure that all role players can relate to the process and the issues at hand and are able to make their input into the processes of the committee;

vi. Must adopt the principle of transparency to promote openness, sincerity and honesty among all the role-players in a participative process and promote trust and respect for the integrity of each role-player and a commitment by all to the overriding objectives of the process in the interest of the common good;

vii. Must recognise diversity and understand the differences associated with race, gender, religion, ethnicity, language, age, economic status and sexual orientation, among others;

viii. Must embrace all views and opinions in the process of community participation. Special effort should be made to include previously disadvantaged persons and groups, including women and youth in the activities of the Ward Committee;

ix. Must provide an apology with a valid reason to the Chairperson of the committee if a meeting cannot be attended.

b) Ward Committee members must sign a Code of Conduct, which should be administered by the Speaker. The Code of Conduct developed by SALGA for Ward Committees may be customized to municipal specifications

c) If a member has a direct or indirect financial interest in any matter serving before the committee, unless that interest is the same as any other person in the ward, such person should recuse himself/herself from such discussion.

d) If the Ward Councillor must recuse himself/herself from discussion of an item at the committee, he/she should through the Speaker arrange with another Councillor to chair the meeting during such recusal.

5.9 Termination of Membership

a) A Ward Committee member should immediately vacate the office during a committee's terms of office if that member: -

i. Resigns in writing

ii. No longer qualifies

iii. Is removed from office

iv. Is deceased

v. Becomes indebted to the Municipality for more than 3 (three) calendar months and where no agreement was entered into and honoured for payment for such debt.

vi. Is no longer capable to perform the duties attached to the office by majority decision of all members of the committee

vii. Is convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

viii. Represents an organisation/sector/geographical block which fails to adopt a constitution or to provide minutes of at least three of the regulated meetings per annum.

ix. Disciplined and expelled in terms of the Code of Conduct for Ward Committee members. Once a member has been expelled from a Ward Committee he/she may not be re-elected during the same term of office for Ward Committees.

x. The represented organisation or geographic area following the prescribed process and procedure submits a compelling case for the removal of their representative in the Ward Committee

xi. Becomes a candidate in a municipal by-election for either the same or another ward

xii. Is no longer a resident in the ward.

5.10 Filling of Vacancies

a) Ward Committee vacancies should be filled from the replacement list from the previous ward election.

b) In the absence of such a replacement list, vacancies should be filled by following the election procedure set out in this framework and such a process should be provided for in the Council adopted Rules of Order as well.

5.11 Term of Office

a) The term of office of a Ward Committee shall coincide with the term of office of the Council.

5.12 Dissolution of Ward Committees

a) The Council may dissolve a Ward Committee if the committee fails to fulfil its objectives, based on the following indications:

i. A Ward Committee fails to convene three (3) consecutive official meetings in terms of Council's meeting cycle.

ii. In the event of fraud, corruption or any serious malpractice in which the particular Ward Committee is found to be involved.

iii. When members of the Ward Committee decide to dissolve it

b) There should be due notice before a Council proceeds to dissolve a Ward Committee.

5.13 Dissolution Procedures

a) Ward Committee members should be served with a notice of termination and be provided with an opportunity to respond to the notice within 30 days of a council resolution.

b) A Ward Councillor must also report back to a community meeting of the decision including reasons led to such decision.

5.14 Ward Committee Meetings 11

5.14.1 Meeting Procedures

a) Unless a Ward Councillor, or municipality, wishes to appoint a secretary, the Ward Committee may appoint a Secretary and Assistant Secretary from its membership to fulfill relevant duties of the Ward Committee.

b) Ward Committee meetings are convened and chaired by the Ward Councilor.

c) The Ward Councilor through the Speaker may delegate in writing the chairing of a meeting in his/her absence to a member of the Ward Committee.

d) A Ward Committee may establish one or more sub-committees necessary for the performance of its functions and involve organizations and members drawn from the community more broadly.

e) Each Ward Committee member shall chair all sub-committee meetings linked to the portfolio s/he represents at a ward committee level.

f) A formal process to determine formalization of participation in a sub – committee of the Ward Committee should be developed and formalized by the municipality.

g) The Ward Committee and sub-committees may meet together as a ward forum for major discussions.

h) All stakeholders in the ward should be encouraged to participate in sub-committees that are relevant to their fields of interest and to their day-today functioning as a sector.

i) Additional to standing items of a strategic agenda, members of the Ward Committee must submit items to be discussed, well in advance to the Chairperson.

j) The chairperson will be responsible to prepare an agenda for Ward Committee meetings.

5.14.2 Frequency of meetings

a) A metropolitan or local municipality should make rules regulating the frequency of meetings of Ward Committees.

b) Ward Committees should at the beginning of the year determine a programme for Ward Committee meetings so as to align with meetings of the Municipal Council.

c) Regular meeting intervals need to be determined and aligned with municipal specific annual plans and consideration of statutory reports

d) A Ward Committee as required by legislation should meet at least quarterly. However, this shall not influence the frequency of sub-committee and community meetings.

e) All Ward Committees in a municipality should as far as reasonably possible adhere to the same meeting intervals.

f) Schedule of Ward Committee meetings may be submitted to relevant Provincial CoGTA and copies made available to all Ward Committee members and key stakeholders.

5.14.3 Quorum and decisions

a) A majority of Ward Committee members should be present before a vote may be taken on any matter (50% + one member) and a Chairperson

b) A Ward Committee should endeavour to take decisions based on consensus.

c) If consensus on any matter cannot be achieved, such matter may be determined by supporting vote of at least the majority of the members of the committee (50% +one of the committee members present).

5.14.4 Public Ward Committee meetings 12

a) Public meetings are mainly held in order:-

i. To register the concerns and inputs of the community with regard to service delivery, general development of the community, disaster management and any other municipal concern the community may have; and

ii. To report back to the public on issues affecting the community.

iii. To address sectoral stakeholders on specific matters affecting their organisations

b) Ward or public meetings should be chaired by Ward Councilor or a PR Councillor as formally designated by the Speaker.

c) The Councilor may request Ward Committee member to respond to issues raised in a community meeting.

d) If the committee decides to hold a public meeting it may publish a notice in a newspaper circulating in the area concerned, stating the time, date and place of the meeting or each meeting and inviting the public to attend the meeting or meetings. Alternatively, the public may be advised of the meeting through loud hailing, in which case, the loud hailing system should be audible enough to transmit a clear message and the time for loud hailing should be taken into account to ensure that all citizens are informed of the meeting.

e) The scheduled date, time and place of the public meeting should be convenient so as to encourage the greatest number of people to attend. The venue:-

i. Should be in a well-known place;

ii. Should be easily accessible and where possible, also disabled-friendly; and

iii. Should be large enough to accommodate all people present.

f) The Office of the Speaker should ensure that a schedule of all planned community meetings in all wards is compiled on an annual basis and distributed to the community via the relevant means of communication.

g) The council may determine the frequency of community meetings in each ward based on the need and the expectations of the community.

h) Preferably, at least one community meeting should be convened in each ward in a period of three months.

i) Where the jurisdiction of a Traditional Authority extends to the ward where a public meeting is to be held, the relevant Traditional Authority should be informed of the public meeting.

j) When the committee publishes a notice, it should be conveyed, where appropriate, by radio or other appropriate means of communication, such as direct mail outs and posters or notices in key areas such as clinics, schools, bus stops and libraries, the contents of the notice in the area concerned.

k) At a public meeting a representative of the committee should:-

   i. Explain the meeting procedures, such as adoption of the agenda and time allowed for questions;

   ii. Explain the issues the committee has to consider, including any options open to the committee;

   iii. Allow members of the public attending the meeting to present their views on these issues;

   iv. Answer relevant questions

   v. Keep minutes of the meeting and inform the public that Ward Committee meeting and public meeting minutes are public documents, and that the community has access to these documents and may make receive copies on request subject to affordability

   vi. Give feedback on previous issues, including reasons if there is a lack of progress.

l) Public meetings are not political platforms and Ward Committee members and the public should refrain from making party political statements, campaigning and canvassing.

m) For purposes of participation in public meetings, a Ward Committee may keep a register of interest groups and organisations that are active in the ward.

n) Each municipality should determine Ward Committee public meetings procedures as part of the council adopted police framework regulating the business of these committees.

5.14.5 Work programme

The Ward Committee:-

a) Should submit a programme (Ward Operational Plan) with specific outputs of work for one year to the office of the Speaker or other designated political functionary in July of each year;

b) Should perform the functions as set out to achieve the work indicated in the work programme:

   i. On own initiative;

   ii. On request by the Ward Councillor;

   iii. On request by the Speaker or other designated political functionary; and in accordance with priorities and reasonable time frames determined by the Speaker or other designated political functionary.

c) Each Ward Committee member should submit to the municipality on a monthly basis a report on activities undertaken within the specified month. This may be used as one of the determining factors for reimbursement of Ward Committee members for out of pocket expenses incurred.

d) The Ward Councillor should submit to the municipality on quarterly basis a Ward Report indicating the work done by the Ward Committee within the three months period in line with the planned outputs in terms of the ward programme (Ward Operational Plan)

e) Any Ward Committee member whose representative(s) (organisation/sector/ geographical area) is absent, irrespective of any apology tendered, from six (6) consecutive meetings of the committee during its term of office will be replaced in terms of the rules for the filling of vacancies.

6 Reimbursement of out of Pocket Expenses

a) Ward Committee members or their secundus should be reimbursed for out of pocket expenses in accordance with a pre - approved formal schedule which should be included in the current municipal operational budget. The Ward Committee members should be obliged to:

i. Attend formal scheduled Ward Committee meetings (per Council's meeting cycle) and should be present for the duration of such meetings.

ii. Communicate regular service delivery request (if any) via the existing formal municipal communication channels

iii. Attend training and capacity building programmes and be present for the duration of such programmes.

iv. Ensure that quarterly report-back meetings are held with their respective organisations, sectors, and geographical blocks. (Each member should be required to submit minutes of meetings to serve as proof of meetings held).

v. Attend and/or participate in other forums or meetings as formally communicated by the municipality and should be present for the duration of such meetings.

vi. Elected Ward Committee members should be reimbursed for out of pocket expenses as per the following guidelines, namely:

a. That the reimbursement amount should be paid to the Ward Committee members in person and not to the organisation/sector/geographical block that he/ or she represents

b. That secundus for representatives of organisations/sectors should not be reimbursed for attendance in the absence of the first/second nominated representatives at a particular, official Ward Committee meeting.

c. That reimbursement only be paid on verification of attendance register of meetings attended and that reimbursement should only be electronically transferred to the bank account of the relevant Ward Committee member(s)

d. That a Ward Committee member may elect not to be reimbursed by informing the municipality in writing to such effect.

7 Responsibilities of the Municipal Administration

a) Provide administrative support to Ward Councillors and Ward Committees to arrange official Ward Committee meetings by:

i. Compiling agendas of respective Ward Committees.

ii. Attending to logistic arrangements (e.g. venues, equipment, etc.).

iii. Serving of notices (publicity) of meetings to residents in respective wards on a predetermined periodic basis.

iv. Recording and circulating minutes and agendas to Ward Councillors, Ward Committees and other affected parties.

v. Attending all official Ward Committee meetings as and when required in terms of matters for consideration.

vi. Attending Ward Committee meetings on request to respond to and resolve outstanding matters and record new ones

vii. Provide technical support to Ward Councillors and Ward Committee members in their official capacity, relating to municipal services and constituency work.

viii. Assist with the interpretation of information/translations in official languages applicable to the Municipality, where necessary.

ix. Facilitate and assist with involvement of Ward Committees in IDP, budget processes, Performance Management, etc.

x. Implement or assist with projects directly affecting Ward Committee constituencies.

xi. Develop and provide capacity building and training programmes for Ward Committees when necessary during their term of office.

xii. Assist with arrangement and/or provide municipal transport to Ward Councillors and Ward Committee members to attend to official business where necessary.

xiii. Facilitate and ensure the payment of out of pocket expenditure to Ward Committee members as per the policy of the municipality.

xiv. Record and monitor performance of respective Ward Committees as per the Municipality's applicable policies.

8 Dispute Resolution

The following mechanisms are recommended when disputes arise within Ward Committees:

a) Every effort should be made to deal with disputes before it spills over into the community;

b) When a dispute arises, the Ward Committee should report the matter to the Ward Councillor to resolve the dispute directly or through mediation mechanisms;

c) If the attempt at mediation fails, the matter should be submitted to the Council Whip who should arbitrate, provided that the matter does not involve either the Ward Councillor and the Council Whip

d) If the majority of committee members remain aggrieved, the matter should be taken to the council through a channel decided upon by council or through the Office of the Speaker or other designated political functionary. Council may decide to establish a special committee to conduct an inquiry on the grievances and make necessary recommendations to full council. This should be avoided as far as possible.

e) As a last resort, a matter may be referred to the relevant Provincial Department of Co-operative Governance for mediation and final arbitration. This is however not the preferred solution to internal municipal disputes.

9 Accountability

a) The Chairperson of the Ward Committee with designated administrative support should ensure that full and proper records and minutes are kept of the of Ward Committee meetings;

b) The Chairperson should ensure that the committee's available resources are properly safeguarded and used in the most effective and efficient way;

c) He/she should ensure that all statutory measures applicable to the committee are complied with;

d) He/she should ensure that all recommendations made by the Ward Committee are formalised and submitted to the Office of the Speaker or other designated political functionary for presentation to the Council at intervals determined in the Council Rules of Order;

e) He/she should report a view adopted by the Ward Committee to the Council but may indicate his or her disagreement with the view in the report;

f) He/she should ensure the production of a progress report on major achievements and areas of failure, with reasons, on quarterly basis;

g) He/she should submit the progress report to the Speaker or other designated political functionary for a review of the performance of the committee; and

h) He/she should take full responsibility for implement any corrective measures to ensure effective and efficient performance of the committee as suggested by the Speaker or other designated political functionary.

10 Conclusions

This framework attempts to cover a number of important aspects regarding the establishment and election of Ward Committees. It has been developed in research to numerous research findings and criticisms that has been levelled against the current system. Municipalities are advised to consider the proposed model, customise it to their peculiar context. Municipalities are urged to ensure that prior the election of the new Ward Committees each has a council adopted policy and as much as possible such a policy covers the chosen model to be followed.

(Endnotes)

1 Local Government White Paper (1998); Republic of South Africa

2 The Makwanyane case, para 239

3 Read together with section 2 of the Systems Act

4 Read section 195 of the Constitution together with section 50 of the Systems Act

5 Read together with sections 1, 152 and 195 of the Constitution as well as section 50 of the Municipal Systems Act.

6 In municipalities where these surveys are conducted, a comparative overview could form part of the required annual report in terms of section (44) (3) (g) of the Structures Act.

7 Each municipality can exercise its discretion depending on the predominant composition of its demographics

8 The principle should be that, if one did not see it necessary to exercise his/her right to vote during the most recent local government election, such an individual should be deemed to have automatically disqualified him or herself.

9 It might be necessary for Municipalities with rural areas in their jurisdiction to also establish whether an individual was not found guilty and sentenced in a tribal court for an offence which such a fine or sentenced was served. There may be legislative technicalities on the validity of this sentence as such, a legal opinion might be necessary to test the proposal.

10 Executive" means, for the purposes of this paragraph, a person elected or co-opted to manage the affairs of that organisation/sector.

11 Each Municipality should formally schedule Ward Committee meetings and these to be part of the operational plan of the municipality in order to ensure proper alignment with the required community feedback reports

12 It is important to understand that Ward Public meetings are not meant to replace the required community and political constituency work of Councillors. These are in relation to the work of Ward Committees only

