



Local Government in South Africa

Responses to Urban-Rural Challenges

edited by

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with the support of SALGA - South African Local Government Association





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The H2020-MSCA-RISE-2018 project aims to provide solutions for local governments that address the fundamental challenges resulting from urbanisation. To address these complex issues, 18 partners from 17 countries and six continents share their expertise and knowledge in the realms of public law, political science, and public administration. LoGov identifies, evaluates, compares, and shares innovative practices that cope with the impact of changing urban-rural relations in major local government areas (WP 1-5).

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People's Participation in Local Decision-Making



6.2. Participatory Budgeting

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Relevance of the Practice

The 'community of the municipality' is recognized under the Municipal Systems Act as one of the constituent components of the municipality thus speaking to the question of the structure of local government under report section 4 and the integral position occupied by the community in this regard.¹⁸⁰ Budgeting on the other hand touches on the expenditure responsibilities and responsibility for the delivery of public services by local governments under report section 2 as well as municipal financial arrangements, especially own source revenues intended to incentivise local participation, under report section 3. Participatory budgeting also touches on report section 5 on intergovernmental relations in the sense that provincial governments and the national treasury play a role in monitoring the compliance of municipalities participating in compulsory consultative processes. Participatory budgeting is therefore critical for the LoGov-project in the sense that it speaks to all five report sections.

Additionally, participatory budgeting by definition brings out the plurality of actors involved, ranging from ordinary citizens to community groups and interest groups mainly drawn from the private sector and civil society given the implication of the budget process on local taxes, levies and charges. The diversity of these actors and the attendant level of skills required to facilitate meaningful participation brings out how differently participatory budgeting is experienced in rural as compared to urban local governments.

One of the objects of local government under the South African Constitution is to 'encourage the involvement of communities and community organisations in the matters of local government' (Section 152(1)(e)). The aim is to ensure that the subnational developmental agenda is set by the people at the local levels. The budgeting process allows municipalities to set their expenditure priorities that drive subnational development. In this respect, municipalities are required to structure and manage their budgeting processes to give priority to the basic needs of the community (Section 153(a) of the Constitution). Participatory budgeting is, therefore, key in ensuring this is achieved.

¹⁸⁰ Sec 2(b), Systems Act.



Description of the Practice

Participatory budgeting requires the involvement of local communities in budgetary decision-making that informs the implementation of plans contained in local government IDPs as well as in monitoring public spending.¹⁸¹ The budget cycle consists of four phases: budget formulation, budget approval, budget implementation and audit.¹⁸² While each of these phases involves key decision-making that would require public participation, this section shall focus on the first two phases which are key in giving communities a chance to set local expenditure priorities. The Constitution, the Local Government Municipal Finance Management Act (MFMA) as well as the Local Government Municipal Systems Act (Systems Act) regulate participatory budgeting by local governments. Section 215(1) of the Constitution requires municipal budgets and budget processes to promote transparency, accountability and effective financial management. This is achieved in practice through participatory processes. It is important to note that the Municipal Systems Act which sets out the requirements for public participation does not distinguish between urban and rural municipalities, such that the same provisions equally apply to rural and urban municipalities.

The mayor (and in the case of a municipality which does not have a mayor, the ‘designated councillor’)¹⁸³ and the municipal manager are the main players in the process of budget formation.¹⁸⁴ The mayor is required to provide general political guidance over the process and the priorities that guide budget preparation.¹⁸⁵ The municipal manager is required to offer necessary administrative support to the mayor in carrying out this function.¹⁸⁶

A municipal manager is required, once an annual budget is tabled (introduced for debate and adoption) in a municipal council, to make the budget and any supporting documentation available to the public and to invite the local community to submit representations in connection with the budget.¹⁸⁷ The mayor of a municipality is required to coordinate the annual budget preparation process and is in this regard required to undertake all vertical and horizontal consultative processes involving the national, provincial, and district municipalities as well as other local municipalities.¹⁸⁸ Once the annual budget is tabled before the municipal council, the council is required to consider the views of the local community and give the mayor

¹⁸¹ Noluthando S Matsiliza ‘Participatory Budgeting for Sustainable Local Governance in South Africa’ (2012) 47 Journal of Public Administration 223.

¹⁸² Dullah Omar Institute (DOI) and International Budget Partnership (IPB) South Africa, ‘Measuring Transparency, Public Participation and Oversight in the Budget Processes of South Africa’s Metropolitan Municipalities: Findings from the 2019 Metro Open Budget Survey’ (2019) 5.

¹⁸³ Sec 57, Local Government Municipal Finance Management Act (MFMA).

¹⁸⁴ Sec 16(2), MFMA.

¹⁸⁵ Sec 53(1)(a), MFMA.

¹⁸⁶ Sec 68, MFMA.

¹⁸⁷ Sec 22, MFMA.

¹⁸⁸ Sec 21(2), MFMA.



an opportunity to respond to the views and, if necessary, to revise the budget and table amendments for consideration by the council.¹⁸⁹ This forms the main entry point for public participation with respect to the formulation of municipal budgets.

The courts have been insistent on the need for and the quality of participation in the budget process at the local level. For instance, the High Court, in the *Borbet* case, emphasized that municipalities have a special obligation to ensure the participation of the public when it comes to the budget. The Court stated that this obligation extends beyond the formalities of availing information and hosting public meetings, and requires municipalities to ensure and demonstrate that the processes of public participation result in meaningful engagement with local communities. In this regard, municipalities are required to ‘put in place mechanisms that create conditions for public participation and that build the capacity of communities to participate’.¹⁹⁰ They are also required to ‘allocate resources to the task and to ensure that the political and other structures established by legislation are employed to meet the objectives of effective public participation’.¹⁹¹ However, as to what degree or what methodologies of participation constitute effective and meaningful engagement, the Constitutional Court subjects this to the discretion of the respective legislative body based on the context of each case as long as it can be demonstrated that whatever measures were undertaken were objectively reasonable in the circumstances.¹⁹² The reasonableness test established in the *Doctors for Life* case above is applied in such an instance.

However, where a specific budgetary proposal affects a target community or group of persons, courts have required that municipalities make an extra effort to ensure that this affected group is specifically consulted on the proposals. This is the position adopted by the Supreme Court of Appeal in *South African Property Owners Association v Council of the City of Johannesburg Metropolitan Municipality and Others*.¹⁹³ In this case, the City of Johannesburg proposed increases in property rates on business premises as a last minute inclusion to fill up gaps noted in the budget without following the required consultation process under the Municipal Property Rates Act and the Systems Act.¹⁹⁴ The Court, in holding that the process was unlawful, stated that the Property Owners Association who stood to be affected the most by the proposed levy ought to have been involved.

The Municipal Finance Management Act gives the National Treasury with the assistance of provincial treasuries general oversight over municipal budgets to monitor, provide support and ensure compliance with provisions of the act, key among them being the requirement for

¹⁸⁹ Sec 23, MFMA.

¹⁹⁰ *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality* (3751/2011) [2014] ZACEPEHC 35; 2014 (5) SA 256 (ECP) (The Borbet Case) [80].

¹⁹¹ *ibid.*

¹⁹² The Borbet Case [68]-[82].

¹⁹³ 2013 (1) BCLR 87 (SCA) paras 35-37; See also Nico Steytler and Jaap De Visser, *Local Government Law of South Africa* (LexisNexis 2016) 6-12(2).

¹⁹⁴ Steytler and De Visser, *Local Government Law of South Africa*, above, 6-12(2).



public participation in the budget process.¹⁹⁵ Municipalities, however, retain their constitutional mandate of adopting their own budgets. In carrying out their oversight role, national and provincial treasuries therefore rely on municipal declarations that public participation was undertaken and the detailing of the specific processes in municipal reports but have no control over the quality of participation as this falls in the exclusive arena of municipalities.

Assessment of the Practice

A budget serves as a local government's primary economic policy tool and feeds two critical goals that are of central interest to the community: that of translating policy objectives contained in IDPs into real life projects based on existing revenue and the other of structuring and re-structuring income sources to raise additional revenue.¹⁹⁶ In this respect, the community has an interest in shaping the local government's priority areas while at the same time playing a role in determining how such prioritisation will affect them in terms of revenue sourcing. Participatory budgeting also aims to ensure transparency and inclusiveness in the allocation of public resources in a bid to foster social justice through their equitable distribution.¹⁹⁷ The scope of those involved in the process is covered in the definition of who constitutes the 'local community'. Section 1 of the Municipal Systems Act defines a local community as comprising of:

'the residents of the municipality; the ratepayers of the municipality; any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality; as well as visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality.'¹⁹⁸

The Preamble and various sections in the Municipal Systems Act place special emphasis on the poor and other disadvantaged sections of this body of persons.¹⁹⁹ Moreover, there is no specific differentiation or exclusion from participation in practice. Where a particular group is affected, there is a duty on local government to facilitate their involvement. For example, where a specific budgetary proposal affects a specific community or group of persons, local governments have a duty to make an extra effort to ensure that this affected group is specifically consulted on the proposals as per the *South African Property Owners Association v Council of the City of Johannesburg Metropolitan Municipality and Others* case discussed

¹⁹⁵ Sec 5(2)(a) as read with Secs 5(3)(c); 5(4)(a) and 27(1).

¹⁹⁶ Marcel Reutener and David Fourie, 'The Role of Civic Participation in the South African Budgeting Process' (2015) 4 Public and Municipal Finance 7.

¹⁹⁷ Matsiliza 'Participatory Budgeting for Sustainable Local Governance in South Africa', above, 443 and 445.

¹⁹⁸ Act 32 of 2000.

¹⁹⁹ Act 32 of 2000.



above.²⁰⁰ Moreover, to ensure inclusivity, municipalities have a responsibility to take into account the special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups, as well as language.²⁰¹

Whereas participatory budgeting gives room for community involvement, it is not enough to require that the municipal manager makes the budget and documentation 'available to the public'.²⁰² There is need to specifically require that a notice be published in a newspaper of general circulation informing the public of the availability of the budget for scrutiny; inviting comments and specifying dates for receipt of comments as well as for public hearings for feedback and contributions on the draft budget.²⁰³ While this may be key in ensuring that the information reaches most people, it is more appropriate for urban municipalities where a majority have access to newspapers. Alternative arrangements should be made by rural municipalities to ensure that the community can actually access the necessary documentation whenever this is made available to the public. And even then, rural communities would still have access challenges due to the long distances that exist between individual villages and local government offices as a result of the interplay between rural settlement patterns and ward population quotas.²⁰⁴ This is less of a challenge in urban municipalities which meet the ward population quotas within smaller areas hence facilitating ease in physical access to municipal offices.²⁰⁵

Additionally, the timing of participation comes too late in the process given it is required at the budget-adoption/tabling stage rather than at the budget-preparation stage.²⁰⁶ This perhaps explains findings from an Open Budgets Survey conducted across metropolitan municipalities that indicated stronger performance in public participation at the budget approval phase as compared to the budget preparation phase.²⁰⁷ Further, revision of the budget by the mayor at this stage is conditional on its being 'necessary'²⁰⁸ which thereby constricts the chance that public comments will have much effect on the final form of the budget. Community participation hence needs to be required at the level of preparation to give the public more latitude to make contributions that will set the objectives and propose alternatives that will generally shape the budget rather than seek to amend an already formulated budget. This way,

²⁰⁰ 2013 (1) BCLR 87 (SCA) paras 35-37; See also Steytler and De Visser, *Local Government Law of South Africa*, above, 6-12(2); also see the Introduction to People's Participation in Local Decision-Making, report section 6.2.

²⁰¹ Sec 17(3), Systems Act.

²⁰² Sec 22, MFMA.

²⁰³ Itumeleng J Motale, 'Public Participation Strategy for Budgeting in Local Government: The Case of Tlokwe Local Municipality' (Masters Dissertation, North-West University 2012) 54.

²⁰⁴ Interview with Nontando Ngamlana, Executive Role, Civil Society Organisation (1 April 2021).

²⁰⁵ Interview with Nontando Ngamlana, above.

²⁰⁶ Motale, 'Public Participation Strategy for Budgeting in Local Government', above, 55; Sec 23 (1), MFMA.

²⁰⁷ DOI and IBP South Africa, 'Measuring Transparency, Public Participation and Oversight in the Budget Processes of South Africa's Metropolitan Municipalities', above, 3 and 14.

²⁰⁸ Sec 23(2)(b), MFMA.



the goal of public participation as a tool to inform rather than comment on decision-making will be achieved.

However, it is worth noting that the Systems Act gives municipalities a free hand to design levels and processes of participation.²⁰⁹ In this respect, different municipalities undertake participation at different stages in the budget formation process. Notwithstanding, as highlighted above, participation at the budget formulation stage in metropolitan municipalities is still weak.²¹⁰

The following challenges stand in the way of effective public participation with respect of budget formulation in municipalities. First, budget literacy levels, i.e. the capacity of members of the local community to meaningfully engage with technical budgetary language and analyse budget portfolios varies with education levels. This is worsened by the highly technical and complicated nature of budget templates that the National Treasury requires municipalities to use in their budgeting.²¹¹ This thus stifles the process of community engagement in the sense that very few people develop interest to take part in the public fora where budgetary discussions and prioritisation take place.²¹² The few that have the capacity are usually elites who may not always represent the interests of the local community especially the poor and marginalised with respect to budgetary priorities thus hampering effective participation. This difference is more pronounced in rural municipalities compared to urban municipalities. This problem therefore requires that municipalities present simple and realistic budget choices to communities rather than the usual complex budget documents so that communities can effectively take part in budgetary decision-making, especially in areas where there are low literacy levels.

Second, revenue fluctuations and volatile financial bases among municipalities,²¹³ i.e. the amount of revenue collected fluctuates across municipalities depending on the size and level of urbanisation. Some rural communities are unable to provide sufficient revenue to administer municipal affairs.²¹⁴ There is furthermore little or no interest by donors to develop such municipalities. The result is municipalities that lack in a revenue base sufficient to cater for the various needs of the local communities. Community participation in such contexts is highly hampered by the fear of municipalities promising more than they can deliver. This then

²⁰⁹ Sec 17, Systems Act.

²¹⁰ DOI and IBP South Africa, 'Measuring Transparency, Public Participation and Oversight in the Budget Processes of South Africa's Metropolitan Municipalities', above, 3 and 14.

²¹¹ Interview with Nontando Ngamlana, above.

²¹² Matsiliza 'Participatory Budgeting for Sustainable Local Governance in South Africa', above, 450.

²¹³ *ibid* 447.

²¹⁴ *ibid* 449.



furnishes pretext for participation being undertaken as a formality to meet the minimum legal requirements.²¹⁵

Third, inflexibility in capital spending. Most capital spending at the municipal level (which is the most important for public participation) is usually planned years ahead thus leaving little room for making changes in subsequent annual budgets. This therefore limits the scope of input that could have come from participatory processes. Moreover, especially for rural municipalities, capital spending is mainly funded through conditional grants from the national government which come with predetermined conditions that are largely not negotiable. Therefore, although the law creates the impression that everything in the municipal budget is negotiable, discretion in capital spending is often limited thus constraining the room for and the significance of public participation.

Despite South Africa having an elaborate system for public participation, its local governments still experience a high rate of protests. While this may be indicative of a failure of the quality of formal participation, it may also be a symptom of the disconnect that exists between pre-budget participation (both at the formulation and approval phases) and participation at the implementation stage. Moreover, it can also be seen as informal participation in invented spaces. There is, therefore, need to ensure quality participation in all the phases of the budget process. Notwithstanding, such protests, being an informal form of participation, have been key in producing policy changes on broader issues and highlighting weaknesses and failures in local systems of participatory democracy thus giving room for improvement or intervention by other spheres of government.

Notwithstanding, the urban-rural divide is evident with respect to the nature and extent of participation that is undertaken by South African municipalities. Legislative measures aimed at differentiation and asymmetry have however been put in place in an attempt to bridge the divide by accommodating the peculiarities of the various categories of local government in terms of the extent of their resources and the uniqueness of their demographics. While the differentiation has gone a long way in increasing room for participation in rural municipalities, urban municipalities nonetheless enjoy higher levels of participation due to the advantages of budget literacy and better access to budgetary information as well as having steady and wider pools of own-source revenue compared to rural municipalities.

²¹⁵ The World Bank 'Accountability in Public Services in South Africa' (2011) 62
<http://siteresources.worldbank.org/INTSOUTHAFRICA/Resources/Accountability_in_Public_Services_in_Africa.pdf> accessed 2 December 2019.



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