

# Budget meetings behind closed doors?

## Interpreting the Systems Act on public access to meetings

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Can mayoral committees and executive committees hold meetings behind closed doors about critical issues like draft by-laws or draft budgets? Does section 20 of the Systems Act allow the public access to all meetings of council and mayoral committees?

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### Section 20 Systems Act

Section 20(1) of the Municipal Systems Act provides that meetings of the council and any of its committees are open to the public. Meetings may

be closed if the nature of what is on the agenda warrants it, but only if there's a by-law or resolution that sets out, in general, the circumstances under which a meeting may be closed.

Section 20(2) of the Municipal Systems Act also says that, when “the council or any of its committees” discusses certain critical matters, the meeting *must* be held in public. These matters are: draft by-laws, draft budgets, draft IDPs, draft performance management systems and decisions to enter into service delivery agreements with external service providers. Finally, the Act states in section 20(3) that an executive committee and a mayoral committee may close their meetings if it is reasonable to do so having regard to the nature of the items on the agenda. At first blush, this appears to be an unqualified right of the executive. It is not followed by a provision similar to the one discussed above, which instructs meetings of the council and its committees on certain critical matters to be held in public at all times. This would mean that a mayoral committee and an executive committee could, in fact, have their meetings about issues such as the budget or the IDP behind closed doors.

However, the Constitutional Court’s judgment in *Democratic Alliance v Masondo* 2003 (2) BCLR 128 (CC) [see *LG Bulletin* Vol 5(1)] gives rise to a different interpretation. It is suggested that it implies that the right of mayoral committees and executive committees to close their meetings should be read together with the qualification in subsection 20(2), which prohibits this for meetings on certain critical issues.

In *Democratic Alliance v Masondo*, the Constitutional Court had to rule on whether or not the mayoral committee is a ‘committee of the council’ (and therefore subject to the proportionality requirement of section 160(8) of the Constitution). The Court held that the mayoral committee is not a ‘committee of the council’. It is thus clear that the mayoral committee cannot be subject to the qualification of subsection 20(2) of the Municipal Systems Act. It can close all its meetings if it is reasonable to do so. It is submitted that this is in line with the nature of the mayoral committee being composed by the executive mayor. The question is, however, whether the same applies to the executive committee? Can the executive

## key point

- A meeting of an executive committee must always be open to the public if any one of the following topics is discussed or voted on: draft by-laws, draft budgets, draft IDPs, draft performance management systems and decisions to enter into service delivery agreements with an external service providers.

committee close its meetings when it discusses draft by-laws, draft IDPs, draft budgets etc? Subsection 20(2) states that a *committee of the council* has a limited right to close its meetings: meetings on draft by-laws, draft budgets, draft IDPs etc. must be public at all times.

### Comment

In *Democratic Alliance v Masondo*, the Court stated that, unlike the mayoral committee, the executive committee is, in fact, a *committee of the council*. With respect to the qualification in section 20(2) of the Systems Act, the conclusion must therefore be that it does apply to executive committees. An interpretation of section 20(2) of the Municipal Systems Act that is harmonious with the Constitutional Court’s interpretation of the phrase ‘committee of the council’ renders that particular section applicable to executive committees. It is therefore suggested that the meeting of an executive committee must always be open to the public if any one of topics listed above is discussed or voted on.

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Jaap de Visser  
Institute of Constitutional  
and Administrative Law  
Utrecht University

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# Updates

- The Intergovernmental Relations Framework Bill has been passed by the National Assembly's Portfolio Committee for Provincial and Local Government. As a section 75 Bill, it is to be referred to the NCOP where each member will vote and not the provinces as a whole.
- The Municipal Demarcation Board has formally published all notices regarding ward delimitation and will hand over the ward boundaries to the Independent Electoral Commission on 20 May 2005.
- Local government elections were held for the first time in Lesotho on 30 April 2005 and were won by the ruling Lesotho Congress for Democracy (LCD) party. The elections are a decisive step towards the transfer of power from traditional leaders to democratically elected councils, which is meant to curtail the power of central government and improve service delivery. The elections were conducted in 1 272 electoral divisions.

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### Enquiries

Professor Nico Steytler or Reuben Baatjies, (021) 959 2950.

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