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Registers of councillors' interests: A missed opportunity to enhance accountability and transparency in local government

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1. Introduction

This report presents the findings of a study undertaken by the Multilevel Government Project at the Dullah Omar Institute. The study examined whether municipalities are publishing councillors' declarations of interest on their respective municipal websites. This is against the background that the law requires councillors to declare their financial interests within 60 days of assuming office and for each councillor to update the municipal manager every time there is a change in his or her interests. Further, the municipal council must decide which components of the declarations of interests should be made accessible to the public. The study established that the majority (12) of the sampled municipalities (20) are not making the declarations of interests for councillors available on the municipal websites. Without relevant information, such as these declarations, it is difficult for citizens and communities to hold municipalities and councillors accountable. The report is organised as follows: a brief background to the study is provided, followed by an overview of the research methods. The key findings of the study are then presented before conclusive remarks are given.

2. Background

There is a growing quest for accountability and transparency in governance processes throughout the world. The United Nations Convention Against Corruption (UNCAC) requires states to do what is needed to promote transparency and prevent conflicts of interest in governance. Part of this mandate is to create processes whereby public servants, such as councillors, must declare certain financial interests to a designated authority. These interests may be remunerative work outside of council, investments, assets, or substantial gifts. The UNCAC also determines that public officials must disclose any interest that may be relevant to a transaction if they are involved in a government's procurement system.¹

At the continental level, the African Charter on the Values and Principles of Decentralisation (2014), states that public officials have a general duty to display ethical behaviour and to be transparent in fulfilling their duties.² The Charter is complemented by the African Charter on Preventing and Combating Corruption which states that disclosures of interests must be made when an official takes office, during their tenure, and after their office has been terminated.³ This enables authorities and the community, at large, to evaluate the growth of such interests at regular

¹ Aa 7(4), 8(5) and 9(1)(e) of the UNCAC.

² A 14 of the African Charter on the Values and Principles of Decentralisation. It should be noted that the Charter is not yet in enforce as it has not yet secured the necessary signatures from member states to be operative.

³ A 7(1) of the African Charter on Preventing and Combating Corruption.

intervals. In this way, it is easier to detect illicit enrichment. On South African soil, this obligation carries much symbolism. It is a practical extension that flows from the founding values of the Constitution, a government that is transparent and accountable to its people.⁴ The Constitution sets out some minimum principles for public administration which all public officials and organs of state, such as councillors, must adhere to when they fulfil their mandates.⁵ Two of these principles are that they must be accountable and transparent.⁶ Transparency should be fostered by “providing the public with timely, accessible, and accurate information”. More specifically on local government, one of the constitutional objects of local government is to provide democratic and accountable government for local communities. This object was further developed in the White Paper on Local Development (1998) which identifies accountability and transparency as critical to developmental local government. Various pieces of legislation provide a variety of procedures and mechanisms to ensure that local government is transparent and accountable. The declaration and publication of financial interests for councillors is one such mechanism.

The Municipal Structures Act of 1998 sets out a detailed Code of Conduct for Councillors which prescribes the expected standard of behaviour for councillors and is legally enforceable. Among other things, the Code requires councillors to disclose certain interests on two occasions. First, when a councillor assumes office, they must make a written declaration of certain interests within sixty days to the municipal manager.⁷ These interests include any financial interests in a company, closed corporation, trust, partnership, or other business undertakings, employment, remuneration, property, subsidies, grants, or other sponsorships.⁸ Councillors must also notify the municipal manager every year if any substantial changes in the status of declared financial interests take place.⁹ This means that the obligation to declare interests is a continuous one, and not a once-off arrangement. Second, councillors should declare their interests on a case-by-case basis depending on the matter before the council or committee of the council. These disclosures are primarily aimed at making the council or a committee aware of any personal or business interest that may have an impact on a matter currently serving before the committee or council.¹⁰ This way the integrity of a specific decision is protected. After receiving the declarations, the municipal council must decide which of these declarations must be made public. When making

⁴ Ss 1 and 41(1)(c) of the Constitution.

⁵ S 195(2) of the Constitution.

⁶ Ss 152(1)(a) and 195 (1)(f) and 195(1)(g) of the Constitution.

⁷ Schedule 7, item 8(1) of the Structures Act.

⁸ Schedule 7, item 8(1) of the Structures Act.

⁹ Schedule 7, item 8(2) of the Structures Act.

¹⁰ Schedule 7, item 6 of the Structures Act.

this decision, the municipal council should weigh up the public's need for access to information against the councillor's confidentiality.¹¹ This means that closing the declarations entirely to the public is not legally permissible.

The Municipal Systems Act of 2002 gives some guidance on how official information, such as the declarations of interests, must be made public to the community. Official information, or documents, is seen as all the information required to be made public under the Municipal Systems Act, the Municipal Finance Management Act of 2003 (MFMA), or any other legislation.¹² The Municipal System Act requires that official documents must be displayed at all municipal offices, libraries, and official websites.¹³ The Act further requires every municipality to establish and maintain an official website for this purpose. It is the municipal manager who is ultimately responsible for ensuring that the municipality's website is maintained and regularly updated with the latest documents and information.¹⁴ Additionally, the MFMA determines that any official document must be available to the public on the website within five days of that document being tabled in the council.¹⁵ Thus, it is clear that there is a legislative obligation on all municipalities to publish key information and documents through their respective websites, among other channels.

3. Research Methodology

This report is based on a desktop study that primarily relied on data gathered from municipal websites through a survey. The study specifically examined whether municipalities publish the interests of their councillors that have been approved by the municipal council for publication, as required by law. The survey considered information on municipal councillors' declarations of interest that was available from 1 January 2021 to 31 March 2024. The study thus focuses on councillors who were elected in the 2021 Local Government elections.

To assess the degree of transparency in the publication of councillors' financial interests, we purposively sampled 20 municipalities (listed in Table 1 below) ranging from rural to urban municipalities. We expanded the sample of a [previous study](#) undertaken by the Dullah Omar Institute on the same subject. The sample includes municipalities across all nine provinces, in all three municipal categories, as well as across all of the subcategories used by the National Treasury. The sample includes a wide variety of municipalities, each with its own unique set of

¹¹ Schedule 7, item 8(4) of the Structures Act.

¹² S 21A(1) of the Systems Act and s 75(1)(l) of the Municipal Finance Management Act.

¹³ S 21A(1) of the Systems Act.

¹⁴ S 21B of the Systems Act.

¹⁵ S 75(2) of the MFMA.

circumstances, resources, and locations. The municipal websites were all assessed between 4 March 2024 to 11 March 2024 to ensure an even-handed approach. The data used for analysis was based on information that was accessible on these websites only during the survey period.

Table 1: Sample of municipalities

Province	Municipality
Western Cape	City of Cape Town Metropolitan (A) West Coast District Municipality (C1)
Gauteng	City of Tshwane Metropolitan (A) Emfuleni Local Municipality (B1)
Free State	Mangaung Metropolitan (A) Dihlabeng Local Municipality (B2) Lejweleputswa District Municipality (C1)
Eastern Cape	Sarah Baartman District (C1) Nelson Mandela Bay Metropolitan Municipality (A)
KwaZulu-Natal	King Cetshwayo District (formerly Uthungulu) (C2) City of eThekweni Metropolitan (A) Ezingoleni Local Municipality (B4)
North West	Dr Kenneth Kuanda District (C1) Ngwaka Modiri Molema District Municipality (C2)
Northern Cape	Khai-Ma Local (B3) Dawid Kruiper Local Municipality (B2)
Limpopo	Ba-Phalaborwa Local (B3) Polokwane Local Municipality (B1)
Mpumalanga	Dr JS Moroka Local (B4) Emalahleni Local Municipality (B1)

The website of each of these municipalities was examined based on three questions:

- a) *Are the financial interests of councillors elected during the 2021 general local government elections available on the municipal website?*

This question assessed whether municipalities have taken some steps to publish information on councillors' declarations of interests on their websites. Municipalities will fulfil this requirement if the information is published on the municipal website and the information is relevant and relates to the 2021 cohort of councillors. Considering that the law requires councillors to declare their financial interests within 60 days of being elected, it is reasonable to expect this information to be available on municipal websites, considering that two years have passed since the 2021 local government elections.

In contrast, municipalities will not fulfil this criterion if they do not publish information on councillors' financial interests at all or if the published declarations are not relevant to the 2021 cohort of councillors.

- b) *Is the information on the register of councillors' interests on the municipal website complete?*

The interest register that is published on the municipal website must be complete, meaning it must be detailed enough to provide an ordinary member of the public with a good idea of the interests held by councillors. It is thus reasonable to expect that at least 75% of the councillor's financial interest must be made public. The interest register must also clearly list the exact interests of each councillor, as provided in Item 1(8) of the Code of Conduct for Councillors. For example, the register must indicate if councillors have shares and securities in companies, and hold any directorship or interest in any property, amongst other things. This criterion will not be met if the municipality does not publish councillors' declarations of interests, or if the municipality publishes less than 75% of councillors' interests and such interests are not clearly listed in accordance with Item 1(8) of the Code of Conduct for Councillors.

- c) *Is the register of councillors' interests easily accessible on the municipal website?*

This criterion assesses whether the register for councillors is easily accessible to the public. The requirement will be met if the register is identifiable on the municipality's website, and can be located on the municipal website within five clicks. It will also be met if a member of the public can access the register on the municipality's website without any administrative barrier, such as a duty to register, pay a fee or make an application to access the information. Furthermore, it will be met

if the register is included in the annual report of the municipality published on the municipal websites, where such a report highlights the register on the table of contents page.

The requirement will not be met if the register is not available on the municipal website, or if citizens must pay, register, or make an application to access it. It will also not be met if the register is present, but due to a website malfunction, it is inaccessible. In addition, a municipality will fail to meet the criterion if the number of clicks exceeds five to locate the register or where the register is included in the annual report but is not clearly labelled in the relevant table of contents page.

4. Findings

4.1 Only a few of the sampled municipalities published councillors' interests

As stated above, the law requires municipalities to publish their councillor's interests. However, only eight out of the 20 surveyed municipalities comply with this requirement. These municipalities are [Nelson Mandela Metropolitan Municipality](#) (A), City of eThekweni (A), West Coast District Municipality (C1), Dr Kenneth Kaunda District Municipality (C1), [Ba-Phalaborwa Local Municipality](#) (B3), Dawid Kruiper Local Municipality (B2), Ngwaka Modiri Molema District Municipality (C2) and Polokwane Local Municipality (B1). There is not one specific category of municipalities that outperformed another, which suggests that all municipalities have the potential to comply with the legislative requirements of publishing the declarations of interests for councillors.

Notably, these municipalities do not have a dedicated page on their websites where the register can be accessed. Instead, the municipalities attached the financial disclosure registers as annexures to the annual reports, clearly listing them in the table of contents page.¹⁶ These are listed as Annexure "J", which complies with the requirements set out by National Treasury.¹⁷ This has been standard procedure in these municipalities before the 2021 local government elections.¹⁸

¹⁶ Ngwaka Modiri Molema District Municipality 'Annual Report 2022/2023: Disclosures of Financial Interests' (2024) 276 available at <https://www.nmmdm.gov.za/download/annual-report-2022-2023/?wpdmdl=15706&refresh=65eacd0b4b5b41709886731&ind=1707138171715&filename=Draft%20Annual%20Report%202022-23.pdf> (accessed 8 March 2024).

¹⁷ National Treasury MFMA Circular 11 of 14 January 2005, read with the Annual Report Template of 2012 that is published on National Treasury's website.

¹⁸ Nelson Mandela Bay Metropolitan Municipality Annual Report 2020/2021 - APPENDIX J – DISCLOSURES OF FINANCIAL INTERESTS (2020) https://www.nelsonmandelabay.gov.za/DataRepository/Documents/nmbm-2020-21-annual-report_sMpMA.pdf (accessed 7 March 2024).

Significantly, of the eight municipalities that published the interests, Dr. Kenneth Kaunda DM stands out for also publishing the name of the business or company, the nature of the financial interest (directorship, shareholder, or owner), and the percentage of such interest.¹⁹

Two of the eight municipalities that published declarations of financial interests for councillors, had declarations that were either incomplete or did not include information on the current cohort of councillors elected in 2021.²⁰ For instance, the City of eThekweni Metropolitan Municipality only published the financial interests of the executive and not the other councillors.

4.2 The majority of the sampled municipalities did not publish councillors' interests

Of the 20 sampled municipalities, 12 municipalities did not publish their councillors' interests on their respective websites. These are: Mangaung Metropolitan Municipality (A), Emfuleni LM (B1), City of Cape Town (A), City of Tshwane (A), Dihlanbeng Local Municipality (B2), Sarah Baartman District Municipality (C1), JS Moroka Local Municipality (B4), Nongoma Local Municipality (B4), Emfuleni Local Municipality (B1), King Cetshwayo District Municipality (C2), Emalaheni Local Municipality (B1) and Lejweleputswa District Municipality (C1). These municipalities publish other information such as the list of names of councillors and the number of part-time and full-time councillors, see [Emfuleni Local Municipality](#) and [Mangaung Metropolitan](#) in this regard.

In some instances, municipalities such as [Lejweleputswa District Municipality](#) do not disclose the financial register in their published annual reports as an annexure. In particular, Sarah Baartman DM includes the financial interests' disclosure register in its annual report's table of contents page as an annexure, but the annexure simply refers the reader to the municipality's financial statements. In extreme cases, some municipalities simply do not publish their annual reports on their respective website, see [Mangaung](#).

4.3 Some councillors do not declare their interests

The study established that some councillors fail to declare their interests to the municipal manager. Ba-Phalaborwa Local Municipality and Ngaka Modiri District Municipality are examples

¹⁹ Dr. Kenneth Kaunda District Municipality (undated) <https://kaundadistrict.gov.za/mayor.html#> accessed on 7 March 2024. See also West Coast DM and City of eThekweni, which provides the financial value of any property owned, whether the councillor receives remuneration outside of the municipality, any pension benefit and value, and any interest in a corporate entity (type of interest owner, shareholder, or director) with the percentage.

²⁰ See for example Khai-Ma Local Municipality (date unknown) <https://khaima.gov.za/> accessed on 7 and 11 March 2024. Only the 2018/19 Annual Report was available.

of this.²¹ Four (of 46) councillors of the former and two (of 12) councillors of the latter did not submit their interests to the municipal manager. Even councillors that occupy key political positions are also in the habit of not disclosing their interests. For example, the Executive Mayor of Ngaka Modiri District Municipality, Councillor PK Molefe, is indicated in the Municipality is declarations of councillor's interest register as have failed to disclose his interests.²² It may be that it was an oversight, or it may be indicative of a larger problem where public officials evade accountability. It is important to note that a failure to make any disclosure of interests violates the Code of Conduct for Councillors. Violations of the Code must be investigated and addressed by the Speaker, Council, and the MEC for local government.

4.4 Many councillors indicate they have no interests to declare

The survey also established that there is a large number of councillors who indicated they had nothing to declare. Many of these councillors occupy offices such as mayors, speakers, or whips which receive substantial full-time remuneration and benefits. For example, in Khai-Ma Local Municipality six out of seven councillors had no financial interests to declare, the Annual Report simply indicated "NIL" opposite the relevant councillors' names. Other examples of such declarations can be found in the Annual Reports for the David Kruiper Local Municipality (37 of 39), West Coast District Municipality (13 of 25), Ngwaka Modiri Molema District Municipality (4 of 12), Ba-Phalaborwa Local Municipality (39 of 46) and the Dr. Kenneth Kaunda District Municipality (16 of 25). This suggests that these individuals do not have any interest in any business, property, or pension for example.²³ It is possible that indeed these councillors do not have any interests to declare. Alternatively, they have interests but they are not just declaring them. The latter raises serious questions on accountability and transparency.

4.5 Making public access to councillor's interests subject to PAIA

The City of Cape Town did not publish any of its councillor's declarations. Instead, it adopted a policy called the "Disclosure of Financial Interests Policy 2005". In this policy, the City undertakes to keep and maintain a Register of Members' Interests. This register consists of two components,

²¹ Ngwaka Modiri Molema District Municipality 'Annual Report 2022/2023: Disclosures of Financial Interests' 276 available at <https://www.nmmdm.gov.za/download/annual-report-2022-2023/?wpdmdl=15706&refresh=65eacd0b4b5b41709886731&ind=1707138171715&filename=Draft%20Annual%20Report%202022-23.pdf> (accessed 8 March 2024).

²² Ngwaka Modiri Molema District Municipality 'Annual Report 2022/2023: Disclosures of Financial Interests' 276.

²³ Such as interests in a company, closed corporation, trust, partnership, or other business undertakings. Any other source of money such as outside employment, remuneration, subsidies, grants, sponsorships or property.

one that is available to the public and another that is confidential. Every disclosure must be public except the financial value of interests in a corporate entity (that is not a public company); remuneration for employment outside of the council; the address of private residences; the value of pension benefits; and details of close family members' financial interests. Anyone can access this register through a *Promotion of Access to Information Act* (PAIA) application procedure. A requester should make such an application during office hours at the offices of Councillor Support Services.

The question is whether it is legally permissible to subject information which the law requires be made public to a PAIA process? Recently the High Court had the opportunity to consider this question. In this judgement, the court had to decide whether it was lawful for a body corporate to require a property owner to make a PAIA application to access information that should be made available to all owners by default in terms of the *Sectional Titles Schemes Management Regulations*. The language used in the judgement suggest that the court's finding applies to all incidences where legislation, other than PAIA, creates a right to access specific information, in this specific case, producing the body corporate's bank statements to property owners. The court ruled that institutions may not require an application process in terms of PAIA, if other legislation already create a right or entitlement to that information. The court described the impact of requiring a PAIA application, despite an existing right to information as:

“it would be truly perverse to encumber specific statutory rights of access to information with the machinery of PAIA, which is manifestly designed to kick-in only when no such specific rights exist... it ought to be read to facilitate rather than encumber the dissemination of information.”²⁴

Under the Municipal Structures Act, community members have an existing right to access those declarations of councillors' interests that the municipal council resolved it would make public. Municipalities may thus not require residents to follow a PAIA application process to access the declarations of councillors' interests that the council decided to make public. This is because the Municipal Systems Act and its counterpart, the Municipal Structures Act, give a pre-existing right to communities to access information on the declarations of councillors. It is, however, legally permissible for a municipality to require a PAIA application to access those declarations of councillor's interests that the municipal council decided not to make public.

²⁴ *Montrose Mews Body Corporate v Moela* [2024] ZAGPJHC 198, para 22.

4.6 What municipalities commonly disclose

Although many municipalities did not publish any councillors' interests, they do publish information relating to the remuneration of councillors. The MFMA requires these disclosures as additional notes to the annual financial statements of the municipality.²⁵ Failure to do so attracts the scrutiny of the Auditor-General and may lead to unfavourable audit findings. Additionally, material deviations might serve as a motivation for the National Treasury to withhold the municipality's equitable share. There are therefore good enforcement mechanisms to ensure that these disclosures reach the public, albeit in a user-unfriendly manner. These disclosures are still buried in financial statements and annual reports, which may be several hundred pages long.

Municipalities also publish declarations of interests for senior municipal staff instead of councillors. The law requires the municipal manager and other senior managers to declare their interests to the municipal council within 60 days of assuming office, just like councillors.²⁶ It appears that municipalities are taking these provisions more seriously than those relating to councillors.

5. Conclusion

Accountable governance at all levels of government relies significantly on transparency. This is because without making key governance information easily accessible, it is difficult for citizens, community organisations, and other stakeholders to enforce accountability. Declarations of interests by public representatives are an example of such key governance information. The publication of this information enables citizens, communities, and other stakeholders to familiarise themselves with the nature of public representatives who will be making decisions on their behalf. The regular publication of these declarations further enables the evaluation of the growth of such interests at regular intervals. On the national Parliament's website, the [register of Members of Parliament's interests](#) can be accessed within three clicks. The website provides detailed registers from 2009 up to 2023, with a good overview of the interests of each Member of Parliament. The opposite is true when it comes to local government. This study has revealed that most of the sampled municipalities do not make councillors' interests available on their municipal websites. By doing so, they are making it difficult for communities in their areas to enforce accountability. This is an area where enforcement and oversight are lacking. Is the study's finding reflective of the overall state of transparency across the local government sector? The study was based on a

²⁵ S 124(1) of the Systems Act; Circulars 11 and 32 of National Treasury.

²⁶ S 56 and Schedule 2 of the Systems Act.

sample of 20 municipalities which may be too small to provide a complete picture. Hence, there is a need for more comprehensive research on this topic that not only explores the state of transparency, but also seeks answers on why municipalities do not publish their councillors' financial interests on their websites.

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