Local Government Anti-corruption Strategy

Department of Co-operative Governance
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BREAK THE CORRUPTION CHAIN

cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

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A. Foreword

Minister of Co-operative Governance and Traditional Affairs (CoGTA)

Fraud and Corruption has become one of the main issues occupying the public discourse. Government has prioritized the fight against corruption in the public and the private sector. The fight against corruption is one of the key pillars and a priority area of our Back to Basics strategy.

Municipalities are perceived to be the hub of corruption. In almost all areas where there is protest over service delivery; corruption features as one of the main contributory elements. Communities take to the streets over looting of public resources meant to uplift them.

The jostling for positions of senior managers, factionalism, nepotism, political interference in municipalities are some of the elements of the governance system which are driven by a quest for access to resources and control of the levers of power for self-serving ends.

Deviations from set standards and norms enshrined in various legislative enactments and policies, is a daily occurrence in the governance of most municipalities as evident from the Auditor General's reports. There is no consequence management and action is taken against those found to have broken the rules, this cultivate a culture of non-compliance with prescripts.

The country has some of the best legislative regimes and has established proper structures to address corruption. Laws serve the purpose for which they were enacted only if implemented and enforced. There is no will or commitment within municipalities or provinces to enforce the laws and eradicate corruption. Laws that are unenforced are like non-existent.

The revised Local Government Anti-Corruption Strategy (LGACS) and the Municipal Integrity Management Framework provide a high level road map for the three spheres

of Government (national, provincial and local) on how to deal with fraud, maladministration and corruption. The National Development plan put Combating fraud and corruption as one of the key priorities of Government.

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The aim of this Strategy, therefore, is to address the above as well as ensuring that there are serious consequences for corruption, fraud and maladministration, and that action will be taken against perpetrators, including forfeiture of assets and instituting of civil claims in line with the Back to Basics campaign.

This Strategy is a product of collaborative efforts with the South African Local Government Association (SALGA), relevant national and provincial departments, municipalities, law enforcement agencies, other partners including labour, business and civil society. It is premised on the following broad strategic objectives:

- Promoting community ownership;
- Strengthening municipalities' resilience against corruption;
- Building trust and accountability through effective investigation and resolution.
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The success of its implementation lies in ensuring that there is adequate capacity. In this regard, Anti-Corruption Technical Working Groups have been established in all provinces to play an oversight role amongst other things.

I therefore would like to acknowledge and thank the contribution, dedication, commitment and hard work of all role-players and partners who participated in the engagements and development of this Strategy, but most importantly we must all seek to implement this strategy with vigour.

DES VAN ROOYEN, MP
MINISTER

B. Purpose

To set out the strategic objectives to be pursued by the local government sector in combating corruption in South African municipalities.

C. Context

The Diagnostic Report of the National Planning Commission identified high corruption levels as one of the 9 primary challenges facing South Africa. It is a challenge in all spheres of society, and it is imperative that every sector combats corruption, individually and collectively, if we are to succeed.

Corruption breaks down societal norms, erodes good governance and obstructs service delivery. Municipalities must combat corruption not as a side project, but as part of the consistent drive to deliver services to communities, and to achieve the other 'Objects of local government' as set out in section 152 of the Constitution.

Municipalities must also promote the 'Basic values and principles governing public administration'. These are set out in section 195 of the Constitution and include the following principles which are particularly important in the promotion of good governance and combatting of corruption:

> *(a) A high standard of professional ethics must be promoted and maintained.*
>
> *(b) Efficient, economic and effective use of resources must be promoted. …*
>
> *(f)   Public administration must be accountable.*
>
> *(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.*

The 2006 Local Government Anti-corruption Strategy was a key initiative in promoting anti-corruption efforts in the local government sphere. The strategy formed part of a comprehensive legislative and regulatory environment aimed at combatting corruption. Today this regulatory environment remains in place, but there are still significant challenges regarding implementation.

At the 2013 South African Local Government Association (SALGA) Anti-corruption Summit, there was a collective resolution to: *"Intensify the fight to collectively combat all forms of fraud, corruption and maladministration, including through a revised Anti-Corruption Strategy for Local Government"*

In line with this resolution, and to support the Back to Basics Approach, the Department of Co-operative Governance (DCoG) has reviewed the Local Government Anti-corruption strategy.

The review has been undertaken in collaboration with SALGA and the Department of Public Service and Administration (DPSA) and in consultation with various other key role-players, including law enforcement agencies.

The review also forms part of a broader campaign to strengthen anti-corruption initiatives in South Africa.

- The National Development Plan (chapter 14) and the Medium Term Strategic framework (Outcomes 3, 9 and 12) both deal extensively with anti-corruption and good governance initiatives;
- The recently signed Public Administration Management Act legislates a number of interventions intended to combat public sector corruption;
- Cabinet has approved the Public Service Integrity Management Framework;
- The Anti-corruption Task Team (ACTT) is reviewing the National Anti-corruption Strategy, which also looks at local government matters; and
- National Treasury is reviewing government's procurement processes.

This revised Local Government Anti-corruption Strategy aims to consolidate initiatives aimed at combatting corruption in the local government sphere and to align with existing and emerging initiatives.

D. Vision

A local government sector where:

- Leadership is unquestionably committed to high ethical standards, service delivery and good governance;
- A sense of openness and accountability defines the relationship with the citizens;
- Robust governance and oversight processes are institutionalised and resourced;
- A professional ethical culture is embedded; and
- Corruption incidents are dealt with justly and decisively.

E. Principles of the Local Government Anti-corruption Strategy

The revised strategy seeks to:

a) Provide a holistic and integrated approach to fighting corruption at the local government level;

b) Promote prevention, detection, investigation, resolution and public participation as the platform for the strategy;

c) Support comprehensive public awareness and civil education; including strengthening community participation in the fight against corruption in municipalities;

d) Professionalise the local government sector and to promote ethical conduct;

e) Promote the integrity of municipal business processes, including comprehensive risk management.

Within this context, this Strategy affirms the commitment of local government to work collaboratively with all relevant agencies and chapter 9 institutions to report fraud and corruption and effectively implement measures against those found in contravention of applicable policies, systems and legislation.

F. Strategic objectives - overview

The local government anti-corruption strategy is built around the following three strategic objectives and the supporting focus areas:

1. **Promoting community ownership**

   a) Facilitating a national dialogue on governance and ethical leadership in municipalities

   b) Implementing basic public participation responsibilities

   c) Developing and promoting good practice in community oversight

   d) Driving an anti-corruption awareness campaign

2. **Strengthening municipalities' resilience against corruption**

   a) Implementing the Integrity Management Framework in municipalities

   b) Developing a community of Integrity Management Practitioners

3. **Building trust and accountability through effective investigation and resolution**

   a) Developing municipal capability to manage investigations and consequences

   b) Providing capacity support to municipalities for investigations and disciplinary procedures

   c) Improving oversight of investigations and consequences

G. Strategic objectives

This section clarifies why these objectives are important and gives more detail on what programmes will entail.

1. Promoting community ownership

1.1. Context

The White Paper on Local Government (1998) provides that developmental local government needs to be accountable and transparent, defining accountability as the willingness to account for decisions and actions. Developmental local government requires a political leadership which creates opportunities to account to the community over and above regular elections. A political 'culture of participatory governance' is vital if the vision of development local government is to be realised.

Section 152 of the Constitution stipulates the objects of local government, which include:

- To provide democratic and accountable government for local communities; and
- To encourage the involvement of communities and community organisations in the matters of local government.

Municipalities' responsibilities in this regard are elaborated in Chapter 4 of the Municipal Systems Act, which deals with Community Participation, and specifically highlights the *"Development of culture of community participation"* (s. 16). 'Putting people first' is also one of the 5 pillars of the Back to Basics Approach. It highlights the need for improved compliance with the letter and spirit of the laws regarding public participation.

As the 'owners' of municipalities communities are entitled to transparent and accountable governance. The municipal administration is accountable to the municipal council, which is in turn accountable to local communities. The interface between communities and municipalities, however, remains a challenge - especially as it relates to transparency of processes and accountability mechanisms. Besides traditional public participation methods there is also a need to develop innovative platforms for engagement, transparency and oversight. A number of South African and international good practice examples exist in this regard.

Communities also engage with municipalities through their elected representatives. This requires leaders to lead in the interest of communities.

The National Development Plan states that *"South Africa needs a national conversation about the qualities of leadership that are required in all areas of public life. The first national plan*

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provides an excellent opportunity to provide that conversation and to identify the leadership attributes that are essential to build a just and equal nation"[1].

Such a conversation is critical at local government level. Beyond merely specifying leadership qualities there is a need for a discussion that gives practical guidance on the values, responsibilities and arrangements required for good governance.

The King Report on Corporate Governance sets principles for ethical leadership and good governance in South Africa. Its principles are supported by government, but it does not address challenges specific to local government. There is a need for a widely consulted, local government owned document that sets out governance and ethical leadership principles for local government.

Citizens themselves however also have a role to play. There is broad media coverage of corruption matters, yet there is very limited communication on the role of citizens in combatting corruption. The people of South Africa should understand that they have the power to be part of the solution.. The National Development Plan sets out the vision of *"a South Africa which has a zero tolerance for corruption, in which an empowered citizenry have the confidence and knowledge to hold public and private officials to account and in which leaders hold themselves to high ethical standards and act with integrity."*[2]

Municipalities are also dependent on citizens to identify and report cases of corruption. People will however only report if they trust that their reports will be of consequence. Successes need to be communicated in a way that shows commitment and impact.

The Anti-corruption Task Team will be initiating a coordinated national anti-corruption awareness campaign. There is an opportunity to align with this campaign for maximum impact.

1.2. Focus areas

The issues identified above will be addressed through the following initiatives:

a) Facilitating a national dialogue on governance and ethical leadership in municipalities

A structured national dialogue should be facilitated to determine 'Values and principles for ethical governance in municipalities'. The process should culminate in a widely consulted document that specifies not only abstract values, but specifically how to operationalise good governance and ethical leadership in practice.

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[1] National Development Plan, p.410

[2] National Development Plan - p.402

Roles and responsibilities:

The Minister of Co-operative Governance and Traditional Affairs should initiate a national dialogue and establish a multi-sectoral body to drive the initiative.

A broad spectrum of knowledgeable or interested parties should contribute to the discussion. (E.g. municipalities, provinces, SALGA, community bodies, political parties, professional associations, labour, and business.)

b) Implementing basic public participation responsibilities

There should be minimum compliance with legislative and regulatory requirements aimed at promoting community participation. Plans should align with and support the 'Putting people first' pillar of the Back to Basics Approach.

Roles and responsibilities:

The implementation responsibility lies with municipalities.

National and provincial departments for local government will monitor and support implementation in line with the Back to Basics Approach.

c) Developing and promoting good practice in community oversight

Innovative solutions and good practice need to be developed in the following areas:
- Encouraging participation
- Improving transparency in municipal processes;
- Promoting participative community oversight; and
- Ensuring municipalities are responsive to community reports of corruption.

Roles and responsibilities:

SALGA will co-ordinate the research and development of good practice by engaging with DCoG, provinces, municipalities and organisations from other sectors (e.g. research institutions, civil society, and professional bodies). They will facilitate the establishment of communities of practitioners dealing with community participation and oversight.

Provinces should co-ordinate provincial knowledge sharing initiatives and support municipalities with the implementation of emerging good practice.

Innovative municipalities should share their experiences and participate in forums. Municipalities that have the capacity should implement emerging good practice.

d) Driving an anti-corruption awareness campaign

An awareness campaign should be launched to:
- Promote an understanding of corruption;
- Drive a social aversion to corruption;
- Motivate the reporting of corruption;
- Make citizens aware of their rights (e.g. for accountable governance); and
- Promote citizen involvement in municipal governance.

The campaign should have a strong national identity and should align with the Anti-corruption Task Team's national campaign. Efforts should be made to collaborate with all sectors to strengthen the impact.

Roles and responsibilities:

DCoG will collaborate with relevant departments and role-players (e.g. the Department of Communications, the Anti-corruption Task Team, civil society, the media and business) to develop a communication master plan for local government that aligns with the national anti-corruption campaign. Resource material and guidance on local campaigns will be developed.

National, provincial and local government will drive the roll-out of the co-ordinated campaign in their sphere of influence.

Communities (e.g. religious organisations, community organisations, schools, and business bodies) should be encouraged to participate in campaigns.

2. Strengthen municipalities' resilience against corruption

2.1. Context

An organisation's resilience against corruption is often understood to be a reflection of its anti-corruption capacity. It should however be acknowledged that resilience against corruption is perhaps even more dependent on an organisation being well governed, having competent administrative capacity, and being focussed on delivering on its mandate.

Developing such organisations is the focus of the Back to Basics Approach as can be seen from its 5 pillars:
- Putting people first;
- Basic Services;
- Good Governance;
- Sound Financial Management; and
- Building institutional Capability.

To avoid duplication of the Back to Basics Approach this strategy will remain focussed on municipalities' anti-corruption initiatives, but also ensuring that such initiatives contribute to improved governance, competence and professionalism.

In the Public Service (i.e. national and provincial government) there is a requirement for all departments to develop specified levels of Minimum Anti-corruption Capacity (MACC). It has become the standard 'checklist' for assessing departments' progress in this regard. There has however been an acknowledgement in the Public Service that the focus should shift to a more pro-active approach that focuses on promoting ethics and organisational integrity. The Public Service Integrity Management Framework (approved by Cabinet in 2013) was developed to fill this gap.

The 2006 Local Government Anti-corruption Strategy contains elements of a measurable standard for municipalities, but there are also a number of existing legislative and regulatory requirements that should be implemented as part of anti-corruption initiatives. There is

however no single coherent specification of exact requirements, which contributes to weak implementation.

There is therefore a need for a framework that consolidates initiatives and requirements to promote integrity and combat corruption. It should be specific to local government while aligning to national initiatives. It should also be measurable to ensure implementation can be monitored. The "*existence and efficiency of anti-corruption measures*" will be monitored as part of the Back to Basics Approach.

Mayors and municipal managers should drive and support the implementation of integrity initiatives. At the same time there is a need for a cadre of professionals to implement these initiatives.

2.2. Focus areas

a) Implementing the Integrity Management Framework in municipalities

To drive the constitutional imperative of promoting the basic values of public administration and to take measures to prevent corruption as is required by the Municipal Systems Act s.6(2) this strategy sets out an Integrity Management Framework that will serve as a guideline for municipalities in implementing their initiatives to promote integrity and combat corruption.

The Framework aligns with current public sector initiatives, but is modified to be specifically applicable to municipalities. It is intended to set out municipalities' complete responsibility in implementing the Local Government Anti-corruption Strategy.

The following diagram gives a schematic overview of the Framework.
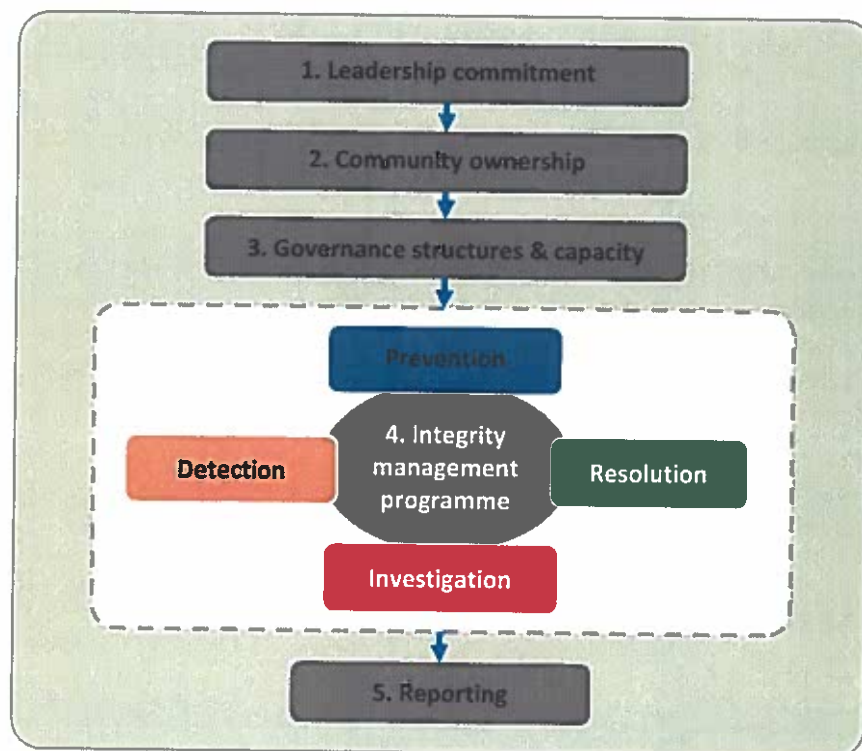
1. Municipal leadership should set the tone and drive good governance, organisational integrity and anti-corruption initiatives.
2. Communities must be acknowledged as the 'owners' of municipalities and are therefore entitled to transparent and accountable governance.
3. Appropriate governance structures should be in place and should ensure effective governance, oversight and the implementation of the integrity management framework. There should be sufficient capacity to implement the integrity management framework.
4. Municipalities should institutionalize integrity management initiatives based on the four pillars of:
   - Prevention
   - Detection
   - Investigation; and
   - Resolution.
5. Effective information management systems should be implemented and reports must be submitted to appropriate bodies to ensure transparency in terms through monitoring, oversight and accountability.

The entire Integrity Management Framework is set out in Appendix A.

Roles and responsibilities:

The main implementation responsibility lies with local government.

DCoG will, in conjunction with SALGA and other relevant role-players:

- Develop guidelines and resources to support implementation;
- Facilitate skills development in provinces to capacitate them to support municipalities;
- Develop a model information technology system to enhance good governance within the sector.
- Review the efficacy of the National Anti-corruption Hotline to ensure it provides timely and trusted reports to municipalities.
- Develop a clean administration maturity assessment tool (i.e. monitoring indicators)
- Monitor implementation across municipalities at regular intervals using the instrument; This will be done with differentiation and the context of municipalities in mind.
- Establish a national peer review mechanism and provide administrative and technical support thereto;
- Report on the state of implementation and the impact to parliament and provincial legislatures.

Provinces will support municipalities in the implementation of the framework and will support DCoG in monitoring and oversight.

A number of other departments will be responsible for driving programmes which align with their mandate. For example national and provincial treasuries will keep promoting sound financial management and supply chain practices.

b) Developing a community of Integrity Management Practitioners

A skilled and committed cadre of integrity practitioners should be developed. They will develop and exchange good practice and provide collegial support. Learning networks should be developed nationally and provincially.

Mayors and municipal managers should attend dedicated learning events to enable them to drive programmes.

Roles and responsibilities:

DCoG and SALGA to collaborate with other role-players (e.g. the School of Government and professional bodies) to develop programmes to capacitate integrity professionals.

DCoG and SALGA to initiate provincial and national networks and learning forums, including forums for mayors and municipal managers.

Municipalities should identify appropriate integrity practitioners and support their development.

3. Building trust and accountability through effective investigation and resolution

3.1. Context

The National Development Plan points out that accountability is essential to deter people from involvement in corruption[3]. The National Planning Commission's Diagnostic Report however found that "Weak accountability and damaged societal ethics make corruption at lower levels in government almost pervasive"[4].

There are a number of provisions in legislation for ensuring accountability related to misconduct in municipalities. Among these are:
-   The Code of Conduct for Councillors which also deals with breaches of the Code by councillors;
-   The Code of Conduct for Municipal Staff Members, and Section 67(1)(h) of the Municipal Systems Act which require disciplinary procedures to be in place.
-   Section 57A of the Municipal Systems Act which restricts the appointment of municipal staff members dismissed for misconduct;
-   Section 32 of the MFMA which deals with unauthorised, irregular, or fruitless and wasteful expenditure;
-   Chapter 15 of the MFMA which deals with financial misconduct;

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[3] National Development Plan - Executive summary, p.46
[4] National Planning Commission Diagnostic Report, p.37

- The recent 'MFMA: Municipal regulations on financial misconduct procedures and criminal proceedings, 2014' which specifies investigative and disciplinary procedures, as well as reporting responsibilities relating to financial misconduct; and

The implementation should be monitored by the municipal oversight structures which include Audit Committees, Municipal Public Accounts Committees, and the Councils themselves.

In addition to this section 105 of the Municipal Systems Act provides for MECs responsible for local government to monitor municipal matters. Section 106 of the Municipal Systems Act also allows MECs to engage with municipalities where "maladministration, fraud, corruption or any other serious malpractice" has occurred and to investigate if necessary. It also provides for the Minister responsible for local government to request investigations or to investigate the matter if no investigation has been conducted within 90 days of such a request.

Despite all of these initiatives the Auditor-General's 'Consolidated general report on the audit outcomes of local government – 2012-13' found that lack of consequences for irregular expenditure are a serious concern[5]. The initiatives are not being applied consistently and oversight legislation is seldom invoked.

DCoG's assessment of investigations that have been conducted in municipalities, as well as law enforcement agencies' experience in municipal investigations highlight a number of factors that impede accountability:
- Lack of knowledge or experience in dealing with corruption allegations in a procedurally correct manner;
- Lack of expertise in municipalities (e.g. investigators, labour relations and presiding officers);
- Use of incompetent or unscrupulous external forensic investigators;
- Interference with investigations / Intimidation of investigators (also applicable to municipal investigations conducted by provinces);
- Recommendations from investigations are not implemented; and
- Losses are not recovered.

The complex regulatory environment, including fragmented and cross-regulation contribute to the problem. Investigations are also impeded by a lack of integration between municipal HR systems which keep information such as ID numbers and banking details.

A number of reporting requirements exist that would further improve transparency and ensure accountability. This includes information on:
- Allegations, investigations and outcomes;
- Dismissals;
- Blacklisting of suppliers; and
- Declarations of interest.

To enable the sensible use of such information there should be structured information management systems and processes, both at municipalities and at departments and agencies that receive the reports.

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[5] Auditor General's 'Consolidated general report on the audit outcomes of local government – 2012-13', p51

3.2. Focus areas

a) Developing municipal capability to manage investigations and consequences

All municipalities should have the capability to navigate the pitfalls and technicalities to ensure that investigations and disciplinary procedures are conducted procedurally correct. Not all municipalities will have internal investigative capacity, but they should have standard procedures for ensuring sound resolution which may include working with external agencies.

Roles and responsibilities:

DCoG and the Anti-corruption Task Team will develop a capacity building programme and support which may include:

- A plain language guide on applicable regulations and procedures to follow for ensuring accountability;
- Training for relevant officials at municipalities and provinces; and
- Helplines.

b) Providing capacity support to municipalities for investigations and disciplinary procedures

Where municipalities do not have the capacity to investigate or drive successful disciplinary procedures they should have access to competent people to assist them.

A national database of accredited professionals should be developed to ensure high standards in investigations and disciplinary proceedings where external professionals are contracted.

Roles and responsibilities:

DCoG will, working with the DPSA and the Anti-corruption Task Team ensure that capacity and processes exist to provide such support. This may, for example, take the form of a pool of experts, utilising resources in the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit established by the Public Administration Management Act (s. 15), or in the form of a Special Tribunal as allowed under the Special Investigating Units and Special Tribunal Act.

The same role-players should consider the establishment of the database of accredited professionals.

c) Improving oversight of investigations and consequences

Mechanisms should be institutionalised to:

- Ensure transparency and oversight of investigations;
- Provide quality control on investigations;
- Promote individual accountability and responsibility of officials and councillors

- Ensure the recovery of losses
- Monitor the implementation of the recommendations flowing from investigations; and
- Ensure enforcement of just recommendations.

A <u>multi-agency approach</u> should be promoted for high value or high profile investigations as this promotes peer oversight.

Roles and responsibilities:

DCoG will work with the Anti-corruption Task Team to develop a robust oversight model that will ensure accountability. Provinces should be consulted and form part of the oversight solution.

Municipalities should develop and institutionalise procedures to ensure investigations are dealt with professionally and consistently and that there are just consequences for perpetrators. Oversight responsibilities should be assigned to relevant governance structures.

d) Improving information management

Accurate, complete and timely information should be available to improve oversight, accountability and risk management.

Roles and responsibilities:

DCoG will, in consultation with relevant role players (e.g. the Anti-corruption Task Team, National and Provincial Treasuries, provincial departments responsible for local government, the Auditor-General, and organised local government) ensure clear co-ordination and improved alignment of information management, monitoring and reporting standards and processes across all spheres of government.   There should be an efficient and coherent reporting framework that clearly stipulates all reporting and oversight obligations.

DCoG will, working with the Anti-corruption Task Team and other relevant role-players, explore the integration of municipalities HR databases.

DCoG and relevant role players (e.g. National Treasury) will explore making information technology available to municipalities to improve financial management and pro-active detection of red flags.

DCoG should consider moving municipalities to a single e-disclosure platform which gives municipalities access to their own information and allows national oversight. The DPSA has developed such an e-disclosure platform and should be consulted to explore synergies or the sharing of technology.

DCoG to consider the desirability of making disclosure compulsory for all municipal officials (not just senior managers).

Municipalities and provinces should align their information management, monitoring and reporting to the information requirements of relevant entities.

Departments and agencies that receive reports should ensure that they have capacity to analyse reported information and take action if necessary. There should also be consequences for non-reporting.

H. Roles and responsibilities

In general DCoG will be responsible for driving the strategic objectives set out in this document. They will however need the support and collaboration of many other organisations such as National and Provincial Treasuries, premiers' offices and provincial departments responsible for local government, the Anti-corruption Task Team, and the Department for Public Service and Administration.

As organised local government the South African Local Government Association (SALGA) has contributed to the development of the strategy. It is a general implementation partner to DCoG, but will more specifically assist in developing resources and supporting municipalities to implement the strategy. Provinces will also be a key partner in support, monitoring and oversight of municipal implementation.

It is acknowledged that some of the initiatives outlined are already underway as part of the Back to Basics Approach or are being led by other departments or entities. DCoG will align with and support these initiatives and avoid duplication.

The most important role-players are municipalities themselves. Municipalities' responsibilities are consolidated in the Integrity Management Framework.

Specific responsibilities are set out under each focus area.

I. Implementation monitoring and co-ordination

DCoG will form a national implementation steering committee with other role-players. The steering committee will be required to meet quarterly to monitor implementation of the strategy and co-ordinate activities.

All provinces should establish some form of anti-corruption technical working group which will, besides other functions, also monitor implementation in provincial municipalities.

DCoG should report to provincial legislatures and Parliament on implementation and impact. These legislatures will fulfil an oversight function to ensure implementation.

Within municipalities an appropriate committee should be tasked with implementation oversight.

Appendix A: Municipal Integrity Management Framework