

The procurement of basic services should respond to the needs of women

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Table of Contents

1. Introduction.....	3
2. Outsourced basic services are failing women living in informal settlements	4
2.1 Women carry the greatest burden when service delivery fails	4
2.2 The procurement of outsourced basic services also fails women	6
3. Can gender-responsive public procurement address these challenges?	7
4. Do current policy and legislative frameworks support gender-responsive procurement?.....	9
4.1 The South African procurement framework	9
4.1.2 Municipal Finance Management Act (MFMA)	11
4.1.3 The Municipal Systems Act (MSA)	11
4.1.4 Municipal Supply Chain Management Regulations of 30 May 2005	13
4.1.5 The Public Procurement Bill	14
4.2 South African policies that can support gender-responsive procurement	16
4.2.2 The Informal Settlements Upgrading Programme (2004, updated in 2009).....	17
4.2.3 National Sanitation Policy (2016)	18
4.3 International guidance and best practice.....	19
5. Practical examples of how community input in procurement improved service delivery within the current framework.....	21
5.1 Improved bid specifications for the hiring, delivery and maintenance of chemical toilets in the Cities of Ekurhuleni and Tshwane	21
5.2 Residents in Knysna influence the way chemical toilets are delivered.....	23
6. Conclusion and recommendations for reform	26
Bibliography	29

1. Introduction

This research paper argues that gender-responsive procurement should be inclusive of the voices and needs of women. This will have far-reaching benefits by ensuring safer and healthier access to basic services for women, children and other vulnerable groups living in informal settlements in South Africa.

A large share of basic water and sanitation services to informal settlement residents is provided by contractors appointed by municipalities through the public procurement process. Evidence shows that women living in these settlements are disproportionately impacted by challenges associated with outsourced basic services. These challenges range from insufficient or non-existent needs assessments to inadequate tender specifications and contract monitoring. Overall, this suggests that the procurement of these services is failing women

Currently, gender-responsive procurement policies focus heavily on increasing contracting to women-owned businesses, and not on including the needs and experiences of women who benefit from these services (i.e., the end-users).

The paper reviews existing legislation and finds that current legal frameworks do not prevent community involvement during procurement processes. On the contrary, the legal framework implies that community engagement is imperative. Examples from Knysna, Ekurhuleni and Tshwane municipalities are included to illustrate how this has worked in practice.

Several supporting policies, including the National Sanitation Policy (2016), encourage women's involvement in the planning and delivery of services. The paper also finds that gender-responsive procurement which includes women's needs aligns with international best practices and objectives, such as the Sustainable Development Goal 6: *Clean water and sanitation for all*.

The paper concludes with recommendations for amendments to current supply chain management policies and regulations that will ensure that the needs of women are included in the public procurement process.

2. Outsourced basic services are failing women living in informal settlements

Approximately 10 million residents in South Africa live in informal settlements, with little or no access to water, sanitation, and electricity. Nearly half of these residents are women.¹

2.1 Women carry the greatest burden when service delivery fails

In June 2023, 40% of residents from 351 settlements across the country's eight metropolitan municipalities (metros) told the Asivikelane Initiative² that they use a chemical toilet. These toilets are provided, serviced, and maintained (which includes cleaning and desludging) by outsourced service providers. Three percent of residents use Ventilated Improved Pit (VIP) toilets which are desludged by outsourced contractors. A further 12% of residents rely on water tanks and water trucks as their main source of water. The water trucks are operated by private contractors, either filling up water tanks or providing water to residents directly.³ A significant number of informal settlement residents are therefore dependent on external contractors to provide them with basic services.

Evidence collected by Asivikelane shows that women living in these settlements are disproportionately impacted by the challenges associated with outsourced basic services, such as dirty, unsafe and inappropriate toilets, and water tanks running dry.

Safety is a primary concern that women have when using communal services in informal settlements.⁴ Various social audits undertaken in South Africa have shown that the insecure environment of informal settlements heightens this concern as

¹ Statistics South Africa. *General Household Survey 2019*. [Own calculations done] (electronic dataset). (28 May 2019) <https://www.datafirst.uct.ac.za/dataportal/index.php/catalog/852/get-microdata> (Accessed 6 September 2021)

² In March 2020, the International Budget Partnership South Africa (IBP South Africa) and its civil society partner organisations launched the Asivikelane Initiative. This initiative gives a voice to informal settlement residents in South Africa's major cities who face severe basic service shortages. It supports informal settlement communities to monitor the delivery of water, sanitation and refuse collection services and to engage with their municipality about these services.

³ Asivikelane Initiative. *Asivikelane 37*. [Excel file with own calculations done]. (electronic dataset) (26 June 2023) <https://asivikelane.org/wp-content/uploads/2023/06/2023-06-20-asivikelane37-observations-report.xlsx> (Accessed 31 July 2023)

⁴ Weimann, A., Kabane, N., Jooste, T., Hawkrige, T., Smit, W., & Oni, T. (2020). Health through human settlements: Investigating policymakers' perceptions of human settlement action for population health improvement in urban South Africa. *Habitat Int.* (Volume 103, 102203).

external communal toilets and taps are not planned for or installed with women's safety in mind.⁵

In metros for example, 24% of female residents told Asivikelane that they feel unsafe using municipal toilets during the day, with almost three-quarters feeling unsafe at night. Toilets often don't have doors and cannot lock securely if there are doors. Toilets are particularly dangerous to use in the dark, with 84% of women specifically saying that there is inadequate public lighting in their settlements.⁶

Women have also reported that they face health risks because toilets are dirty or are cleaned with chemicals that are inappropriate, and vary from being either too strong or not being strong enough. Some women have also indicated that they clean chemical toilets themselves when service providers have not arrived as scheduled.⁷

In November 2021, 60% of female residents from metros who participated in Asivikelane that month said that they would prefer separate toilets for men and women in their settlements. Many commented that this will improve safety.⁸

Women also typically perform household duties of collecting and managing the use of water for cooking, cleaning, washing and laundry. In August 2021, 58% of residents participating in Asivikelane said that the water for their household is collected by a woman living in that household. Many women have told Asivikelane that they must collect water more than once a day for these chores.⁹

Women are usually the ones caring for children, the aged and sickly relatives.¹⁰ The multitude of additional tasks placed on women, and the amount of time needed

⁵ Jooste, T., & Mathibela, N. (2020). *Improving the lives of women in informal settlements starts with fixing basic services*. <https://asivikelane.org/wp-content/uploads/2020/12/brief-5-women-in-informal-settlements-nov-2020-final-1.pdf> (Accessed 13 July 2023)

⁶ Asivikelane Initiative 2021a. *Asivikelane 20*. [Excel file] (Electronic dataset) (25 August 2021) <https://asivikelane.org/wp-content/uploads/2021/08/asivikelane-number-20-results-for-website.xlsx> (Accessed 1 August 2023); own calculations.

⁷ Asivikelane Initiative 2021a. *Asivikelane 20*. [Excel file] (electronic dataset). (25 August 2021) <https://asivikelane.org/wp-content/uploads/2021/08/asivikelane-number-20-results-for-website.xlsx> (Accessed 1 August 2023); own calculations.

⁸ Asivikelane Initiative 2021b. *Asivikelane 23*. [Excel file] (electronic dataset). (24 November 2021) <https://asivikelane.org/wp-content/uploads/2021/11/asivikelane-number-23-results-for-website.xlsx> (Accessed 2 August 2023); own calculations.

⁹ Asivikelane Initiative 2021a. *Asivikelane 20*. [Excel file] (electronic dataset). (25 August 2021) <https://asivikelane.org/wp-content/uploads/2021/08/asivikelane-number-20-results-for-website.xlsx> (Accessed 1 August 2023); own calculations.

¹⁰ South African Department of Women, Youth and Persons with Disabilities *South Africa's report on the progress made on the implementation of the Beijing platform for action 2014 - 2019*. (2019)

to carry out these tasks, limit the time and energy available for pursuing paid work.¹¹ In the long run, this constrains their socioeconomic mobility.¹²

2.2 The procurement of outsourced basic services also fails women

Because a large proportion of basic services are outsourced, the above evidence suggests that the procurement of these services is failing women by not considering their specific needs.

Tender specifications for the contracts for outsourced basic services determine the type and location of services delivered, which should include residents' input. Yet residents are rarely included in needs assessment processes or in the drafting and finalisation of tender specifications.¹³

Government is also particularly weak at monitoring service providers, and residents pay the price when poor service delivery is allowed to persist without recourse or correction. The non-publication of tender specifications makes it difficult for residents to monitor the work of these service providers and thus limits their ability to hold service providers accountable.

While municipalities are expected to promote community participation broadly, these processes are typically gender-blind. This can result in processes that are male-dominated, which in turn disempowers women and can lead to outcomes which do not respond to their priorities.¹⁴

<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/64/National-reviews/South%20Africa.pdf> (Accessed 30 July 2023).

¹¹ Dixon, J. (2013). *Moving through the city: gender and floods at play. A case study of Sweet Home Farm informal settlement in Cape Town.*

https://www.mistraurbanfutures.org/sites/mistraurbanfutures.org/files/moving_through_the_gender_and_floods_at_play.pdf (Accessed 12 August 2023).

¹² Jooste, T., & Mathibela, N. (2020). *Improving the lives of women in informal settlements starts with fixing basic services.* <https://asivikelane.org/wp-content/uploads/2020/12/brief-5-women-in-informal-settlements-nov-2020-final-1.pdf> (Accessed 13 July 2023).

¹³ Jooste, T. (2023). *Knysna communities pave the way for female-friendly sanitation.* https://asivikelane.org/wp-content/uploads/2023/03/asivikelane-wc_brief-1-gender-toilets-final.pdf (Accessed 2 August 2023).

¹⁴ Oyeyemi, T. (2 November 2021). Shack settlements need to be designed around women. *New Frame.*

3. Can gender-responsive public procurement address these challenges?

Gender-responsive procurement has emerged as a favoured tool of public institutions in their pursuit of broader gender equality. However, most institutions see gender-responsive procurement narrowly as the procurement of services from women-owned businesses that should serve as the main catalyst for social and economic transformation.¹⁵

For example, UN Women defines gender-responsive procurement as “the selection of services, goods and civil works that considers their impact on gender equality and women’s empowerment.”¹⁶ The World Bank considers the increased appointment of women-owned businesses is a key driver for transforming gender relations and shifting economic benefit.¹⁷

The African Development Bank (ADB) argues that the chief obstacle to achieving gender-equity is that “women-owned businesses face disproportionately more challenges and have less access to funds in public procurement.”¹⁸ To address this, the ADB promotes the implementation of *affirmative procurement measures* when delivering infrastructure projects by increasing the participation of women-owned business in procurement.¹⁹

South Africa’s framework for gender-responsive procurement has a similar interpretation. The country’s policy of preferential procurement specifically targets women as a part of a broader strategy to promote gender equality and address historical gender-based disparities in economic opportunities. By targeting women in preferential procurement, the government aims to empower women economically,

¹⁵ According to UN Women, a women-owned business defined as “*legal entities that are more than 51-per-cent owned, managed, and controlled by one or more women*”.

¹⁶ UN Women. (n.d.). *Gender-responsive procurement. Procurement*. <https://www.unwomen.org/en/about-us/procurement/gender-responsive-procurement#:~:text=Gender%2Dresponsive%20procurement%20is%20the,gender%20equality%20and%20women%27s%20empowerment> (Accessed 12 July 2023)

¹⁷ McGann, N., & Ali, N. (28 April 2021). Mainstreaming gender in public procurement. *World Bank Blogs* <https://blogs.worldbank.org/governance/mainstreaming-gender-public-procurement> (Accessed 12 July 2023).

¹⁸ African Development Bank. (1 April 2019). African Development Bank advances gender equality in African procurement. *News and Events*. <https://www.afdb.org/fr/news-and-events/african-development-bank-advances-gender-equality-in-african-procurement-19152> (Accessed 15 July 2023).

¹⁹ African Development Bank. (1 April 2019). African Development Bank advances gender equality in African procurement.

contribute to broader socioeconomic transformation and fulfil the legislative requirement of the Broad-Based Black Economic Empowerment (B-BBEE) Act, which includes gender as one of the key pillars.

Both internationally and locally, so-called gender responsive procurement frameworks and policies therefore emphasize the supply-side benefits of gender inclusion, focusing on preferential procurement which promotes women-owned businesses as suppliers.

While the emphasis on the supply-side is necessary, this narrow interpretation of gender responsive procurement does not consider the needs of the women and girls who are the beneficiaries of publicly procured services i.e., the end-users. Addressing this gap will go a long way to ensure more inclusive and responsive services.²⁰

Sheila Quinn, the European Union's Gender Equality and Women Empowerment Technical Assistant to South Africa, also addresses this overlooked but crucial element of gender-responsive procurement. She argues that "the distribution and delivery of procured services must be done in such a way that it meets the differential needs and expectations of women and men as beneficiaries of those services".²¹

By including women in decision-making processes, the government can identify the gender impact of decisions in advance and deliver services which protect and benefit them. This approach would result in true gender-responsive procurement. This paper thus argues for broadening the framework of gender-responsive procurement to include the needs and voices of women throughout the procurement process, and not merely limiting it to the ownership of businesses who receive contracts.

To support truly gender-responsive public procurement, procurement decisions should be based on a sound understanding of the differentiated needs of women and men. This can start with an analysis of gender-disaggregated socioeconomic data about access to services, different patterns of use and preferences, as well as

²⁰ Oyeyemi, T. (2 November 2021). Shack settlements need to be designed around women. *New Frame*.

²¹ Quinn, S. (2023). *Public Procurement and Gender Equality – The Realities*. Unpublished policy brief presented at a conference on Procurement as an Instrument for Gender Equality at Department of Women, Children and Persons with Disabilities, 8 June 2023. (Copy on file with author).

measurable benefits and risks that basic service delivery poses to women and girls.²² Importantly, the data used should not be restricted to official surveys and technical analysis, but should include asking users, especially women, directly what they want or need.

4. Do current policy and legislative frameworks support gender-responsive procurement?

South Africa's procurement framework, as well as supporting policies, provides a strong case for the needs and voices of women who live in informal settlements to be included in the procurement process. This section assesses that framework and supporting sector-specific policies, as well as international commitments and best procurement practice.

4.1 The South African procurement framework

South Africa has a fragmented procurement framework, which derives its principles from the Constitution²³ and is given effect at municipal level through the Municipal Finance Management Act²⁴, the Municipal Systems Act²⁵ and various directives, regulations, and local supply chain management policies. While the Preferential Procurement Policy Framework Act 5 of 2000 and related regulations are crucial in the procurement process in South Africa, it deals with the ownership of businesses and companies when evaluating and awarding bids. Therefore, it will not be considered for this evaluation of the procurement framework, which focuses on opportunities within the procurement process where community participation can and should take place.

4.1.1 The Constitution of the Republic of South Africa

Section 217 of the Constitution cements South Africa's procurement principles in the country's supreme law. It provides in section 217(1) that any organ of state²⁶,

²² Organisation for Economic Co-Operation and Development. (2021). *Selected stocktaking of good practices for the inclusion of women in infrastructure* (p. 22).

²³ The Constitution of the Republic of South Africa, 1996

²⁴ Local Government: Municipal Finance Management Act No.56, 2003

²⁵ Local Government: Municipal Systems Act No. 32, 2000

²⁶ Organ of State is defined in section 239 of the Constitution as "(a) any department of state or administration in the national, provincial or local sphere of government; or (b) any other functionary or institution— (i) exercising a power or performing a function in terms of the Constitution or a provincial

which includes municipalities, must use a “fair, equitable, transparent, competitive and cost-effective”²⁷ system when contracting goods or services.

Section 217(2) further provides that section 217(1) does not prevent an organ of state from implementing a procurement policy which provides for a) categories of preference in the allocation of contracts, and b) the “protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination”.²⁸

Section 217(2) is generally interpreted to focus solely on providing for preferential procurement as detailed in the Preferential Procurement Regulations, which deals with preferred ownership categories. We argue that a broader interpretation should be given to section 217(2)(b), specifically that it should be interpreted to include the meaning that a procurement policy of any organ of state can be used to provide for the protection and advancement of certain categories of persons impacted by unfair discrimination.

The evidence in Section 2 should suffice to illustrate the discrimination suffered by informal settlement residents in general, and women in particular, who depend on outsourced basic services.

We argue that Section 217(2)(b) can be interpreted to mean that procurement policy can be used to protect and advance the lives of informal settlement residents who depend on the state to provide them with access to basic water and sanitation.

Section 195 of the Constitution provides for the basic values and principles governing public administration, which should have an impact on the way the state provides basic services, as this is a key administrative function by local governments, even when the service is outsourced to private providers.

The key principles in section 195 to be highlighted are 195 (c), (d), (e), (f) and (g).

Section 195 (c) provides that public administration must be development-orientated, while section 195(d) provides that services must be “provided impartially, fairly, equitably, and without bias”. Section 195(e) provides that people’s needs must

constitution; or (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer”.

²⁷ Constitution of the Republic of South Africa, 1996, s 217(1).

²⁸ Constitution of the Republic of South Africa, 1996 s 217(2)(b).

be responded to, and that the public must be encouraged to participate in policy making. Section 195 (f) requires that public administration must be accountable, while section 195 (g) requires that public administration must be transparent and that the public must be provided with timely, accessible and accurate information.²⁹

These principles imply that it is a constitutional imperative for municipalities to obtain input from communities before and while providing services. Municipalities should also provide detailed information such as service delivery schedules and tender specifications when services are delivered.

4.1.2 Municipal Finance Management Act (MFMA)

The Municipal Finance Management Act, which aims to ensure sound and sustainable financial management and practices in municipalities across the country, gives some practical direction on how to include community participation in supply chain management and other key municipal processes.

Chapter II part 1 of the Act sets out the broad principles and processes that municipalities must adhere to and incorporate into their individual supply chain management policies.

Section 112(1)(k) of the MFMA provides firstly that the supply chain management policy of a municipality or municipal entity has to provide for participation of persons who are not officials from the municipality in the supply chain management process.³⁰ It can therefore be argued that the door is open for community participation when needs assessments are done, when tender specifications are compiled and the implementation of contracts are being monitored.

Section 116(3)(b) of the MFMA requires that the local community be notified and given an opportunity to submit representations when a municipality and a municipal entity want to amend a contract.³¹

4.1.3 The Municipal Systems Act (MSA)

The Municipal Systems Act explicitly focuses on the social and economic upliftment of local communities and aims to provide “universal access to essential services that are

²⁹ Constitution of the Republic of South Africa, 1996, s 195 (c), (d), (e), (f), (g)

³⁰ MFMA, 2003, s 112(1)(k)

³¹ MFMA, 2003, s 116 (3)(b)

affordable to all".³² It is also the piece of legislation which most prominently provides for community participation in all levels of local government activity, including the public procurement process.

The MSA makes a critical distinction when it sets out what a municipality consists of in section 2 of the Act. It provides that a municipality consists of its political structures, its administration, as well as the community who lives in the municipality.³³ This is indicative of the importance of communities at local government level, as they are not legislatively seen as separate from the municipality, but rather as part of it.

This view is given effect to in the numerous ways in which communities are brought into the municipality's decision making in terms of, among others, its planning, budgeting and oversight processes.

Chapter 4 of the Act explicitly deals with community participation and includes provisions to develop a culture of community participation at municipal level, as well as provides for mechanisms, processes and procedures for community participation. Section 17(2) provides that when mechanisms, processes and procedures are established, such as public meetings, consultative and report back sessions, a municipality must consider the special needs of people who cannot read or write, persons with disabilities, women and other disadvantaged groups.³⁴

This means that the special needs of women in informal settlements should be taken into consideration when they take part in any community participation sessions held by a municipality.

The MSA takes community participation in the procurement process further than any other piece of legislation, or regulations, as it explicitly provides that community members must be consulted before a service delivery agreement is entered into with an external service provider.

A service delivery agreement is defined as an agreement between the municipality and an institution or person who provides a municipal service on behalf of the municipality.³⁵ A contract with a service provider who provides chemical toilets

³² MSA, 2000

³³ MSA, 2000, s 2(b)

³⁴ MSA, 2000, s 17(2) and 17(3)

³⁵ MSA, 2000, s 1 - Definitions.

or water tanks to informal settlements, for example, would fall under the definition of a service delivery agreement.

If the municipality decides to enter into a service delivery agreement with an external service provider, section 80 of the MSA comes into effect.

Section 80(2) in Chapter 8 of the MSA states:

Before a municipality enters into a service delivery agreement for a basic municipal service it must establish a mechanism and programme for community consultation and information dissemination regarding the service delivery agreement. The contents of a service delivery agreement must be communicated to the local community through the media.³⁶

While section 80(2) is not specific in terms of the type of mechanism that must be used to consult communities, it is unambiguous in its requirement that consultations with the community take place before an agreement is entered into, and that information about the pending agreement must be actively disseminated, and not merely be publicly available upon request. There is therefore a positive duty on municipalities to consult communities, as well as provide them with information about the pending agreement.

The wording however does not indicate at what stage during the procurement process the consultation must take place, and whether it should be before the bid specifications are drafted or whether it is the draft bid specifications which the municipality must seek consultation on before it is finalised. Either of those opportunities would be beneficial to communities, as it is critical that their inputs be considered before the specifications are finalised.

4.1.4 Municipal Supply Chain Management Regulations of 30 May 2005

While each municipality must draft its own supply chain management policy and pass it in council, the blueprint is contained in the Municipal Supply Chain Management (SCM) Regulations of 30 May 2005³⁷ which was drafted in accordance with section 168 of the MFMA.

Municipal SCM policies must provide for procuring goods and services, disposing of goods and assets, and selecting contractors to provide municipal

³⁶ MSA, 2000, s 80 (2)

³⁷ Municipal Supply Chain Management Regulations, 2005, GN 868 of 30-05-2005

services. In line with section 217 of the Constitution, the policy must be fair, equitable, transparent, competitive and cost effective.³⁸

The regulations do not explicitly refer to a requirement to conduct a needs analysis before a municipality embarks on a procurement process. Some individual municipal supply chain management policies do provide for this as a key step in the process.

As bid specifications set out the technical specifications of what the municipality aims to procure, it is instructive to consider who can be members of a bid specification committee – which draws up the specifications – according to the regulations. Regulation 27(3) provides that a bid specification committee must be made up of one or more officials of the municipality or a municipal entity and may include “external specialist advisors”.³⁹ Specialist advisors is not defined in the regulations. Individual SCM policies reviewed for this paper also provide, in line with the regulations, that external specialist advisors may be included on the bid specification committee, but also do not define what they consider to be an external specialist advisor.⁴⁰ It is therefore unclear who municipalities see as external specialist advisors. Are they industry experts, consultants, Non-Governmental Organisations, or the community members who are end-users of a service?

We argue that the end-users of a service procured by a municipality, such as an informal settlement resident who uses a chemical toilet, does constitute an expert on a service and would be well-placed to advise a bid specification committee on what residents need from a service.

4.1.5 The Public Procurement Bill

The above sections illustrate a fragmented procurement system which leaves municipalities with significant discretion in their own procurement policies.

The new Public Procurement Bill⁴¹ aims to provide a unified framework for all government procurement, including procurement by municipalities.

³⁸ Municipal Supply Chain Management Regulations, 2005, GN 868 of 30-05-2005, s 2.

³⁹ Municipal Supply Chain Management Regulations, 2005, regulation 27 (3)

⁴⁰ See: Ekurhuleni Metropolitan Municipality Supply Chain Management Policy, s 9.3; Tshwane Metropolitan Municipality Supply Chain Management Policy, s 25.1; Knysna Local Municipality 2022/23 Supply Chain Management Policy, s 25(6)

⁴¹ Public Procurement Bill B18-2023.

The Public Procurement Bill, which has so far only been approved by Cabinet and has not yet been passed in the National Assembly, will establish a Public Procurement Office⁴² which seemingly will be crucial in enhancing the currently haphazard approach towards bringing the public and other stakeholders closer to the procurement process. Part 3 of the Bill explicitly deals with access to procurement processes.

Section 26 of the Bill provides that the Public Procurement Office must determine measures for how the public, civil society and the media can have access to procurement processes, how they can scrutinise procurement and how they can monitor high-value or complex procurement that carries significant corruption risks.

⁴³

If the Bill is enacted, section 26 will be crucial for design and implementation by the Public Procurement Office, as this provision can result in significant progress for including community members in the procurement process and can be tailored to ensure that the needs of women in informal settlements are heard and accommodated in the delivery of basic services. It can also lead to communities being brought closer to the contract monitoring process, which has not previously been explicitly linked as a role that should be played by the public.

While the Treasury's Municipal Supply Chain Management Regulations and municipal supply chain management currently do not explicitly require community voices to be included in the public procurement process, the current procurement framework does allow for this. This means that true gender-responsive procurement can be implemented, as there is nothing that legally prevents it. This paper, in fact, argues that the current framework requires gender-responsive procurement that takes the needs of women into account. In addition, this paves the way for municipal officials who are part of the procurement process, to find innovative ways to incorporate the voices of women in informal settlements throughout the procurement process.

⁴² The Bill does not explain how and if this office will be any different from the current Office of the Chief Procurement Officer in the National Treasury.

⁴³ Public Procurement Bill B18-2023, s 26.

4.2 South African policies that can support gender-responsive procurement

There are several supporting policies which bolster the call for gender-responsive public procurement to be broadened from the current focus of preferential procurement from women-owned businesses, to include women as end-users of services.

4.2.1 The Gender-Responsive Planning, Budgeting, Monitoring, Evaluation and Auditing Framework (2019)

In March 2019, Cabinet approved the Gender-Responsive Planning, Budgeting, Monitoring, Evaluation, and Auditing Framework (GRPBMEAF).⁴⁴ This framework focuses on realising gender equality across all government functions and spheres, by promoting the institutionalisation of women's empowerment and inclusion.

This framework has a number of key strategic objectives. The most relevant for our purposes is the objective: "To ensure women's empowerment and gender equality (WEGE) are at the centre of public policy priorities, results-based planning, budgeting and accountability".⁴⁵ With this, the GRPBMEAF aims to ensure the following:

- Gender-responsive policy and programmes at levels of government
- Gender-responsive institutions and systems of public administration
- Gender-responsive financing which is transparent and adequate

The public procurement process is a critical part of the implementation of government budgets. The GRPBMEAF however does not expand on the role of public procurement in pursuing women's empowerment and gender equality, beyond focusing on the preferential procurement of businesses owned by women, youth, and persons with disabilities.

⁴⁴ Department of Women, Youth and Persons with Disabilities. (27 March 2019). *Framework on Gender-Responsive Planning, Budgeting, Monitoring, Evaluation and Auditing*.

⁴⁵ Department of Women, Youth and Persons with Disabilities. (2021). *The Implementation of the Gender Responsive Planning, Budgeting, Monitoring, Evaluation and Auditing Framework*. Unpublished presentation presented at the Parliament of South Africa Multiparty Women's Caucus meeting, 27 May 2021. (Copy on file with author).

We argue that to truly achieve the Gender-Responsive Planning, Budgeting, Monitoring, Evaluation, and Auditing Framework's objectives, gender-responsive procurement should be promoted when implementing this framework, and procurement legislation should explicitly enable this.

4.2.2 The Informal Settlements Upgrading Programme (2004, updated in 2009)

In 2004, the South African Government launched the Upgrading of Informal Settlements Programme (UISP).⁴⁶ Under the UISP, settlements are to be incrementally upgraded, starting with rudimentary and/or communal services (such as shared taps and toilets). Many of these rudimentary or basic services are provided by outsourced service providers. Where feasible, settlements are developed to the final phase – the construction of houses which are provided via a full subsidy to qualifying residents.⁴⁷

For various reasons, most settlements haven't and will never reach the stage of housing development. Achieving universal access to basic services is thus particularly important in this context.

The UISP specifically aims to include community knowledge in the upgrading process and requires municipalities to set aside 3% of each project budget to facilitate this.⁴⁸ Despite these provisions, the UISP makes no mention of gender-responsive approaches, failing to acknowledge that the female experience of living in informal settlements is very different from that of males.

According to the Isandla Institute, practitioner experience shows that residents often “articulate diverging (and sometimes competing) needs and aspirations; and an individual resident's capacity to participate in their community is influenced by the gender relations that enable them to do so.”⁴⁹

We argue that the UISP provisions should be implemented in a way that gives women an equal opportunity to voice their concerns and influence service delivery decisions affecting their communities. This can be done specifically by including

⁴⁶ Department of Human Settlements. (2009). *National Housing Code: Volume 4: Incremental Interventions: Upgrading of Informal Settlements*.

⁴⁷ Fieuw, W., & Mitlin, D. (2017). What the experiences of South Africa's mass housing programme teaches us about the contribution of civil society to policy and programme reform. *Environment and Urbanization*, 30(10), 215 – 232.

⁴⁸ Fieuw, W., & Mitlin, D. (2017). *Environment and Urbanization*, 30(10), 215 – 232.

⁴⁹ Isandla Institute. (2018). *Transforming Gender Relations through Informal Settlement Upgrading*, 7.

gender-responsive procurement requirements in the programme delivery and implementation.

4.2.3 National Sanitation Policy (2016)

The National Sanitation Policy 2016 stipulates that women and girls should be included in decision-making about sanitation services. Furthermore, it states that “sanitation services should be provided in informal settlements in consultation and with the participation of the community”.⁵⁰

This compels local government, responsible for delivering basic sanitation services, to apply an inclusive and participatory approach when delivering sanitation services.

The National Sanitation Policy includes several policy positions. Three of these are worth highlighting, as they aim to address long-standing gaps in policy and will hopefully improve basic service delivery and address the specific needs of women:

- Municipalities are obligated to provide basic sanitation in permanent informal settlements, and all sanitation should be delivered through a participatory process.
- The Minister for Water and Sanitation must develop norms and standards for sanitation services in informal settlements.
- Municipalities must implement women-centred approaches, such that: “sanitation provision must focus on enabling women to play a meaningful role at all levels in consultations, planning, decision-making and, in the operation, and management of services”.⁵¹

These policy parameters are important catalysts for promoting inclusive, participatory, and accountable service delivery which centres the needs of women and girls. The gender-responsive procurement of toilets in informal settlements is one practical and important way to give effect to the policy positions of the National Sanitation Policy.

⁵⁰ South African Department of Water and Sanitation. (2016). *National Sanitation Policy*.

⁵¹ South African Department of Water and Sanitation. (2016). *National Sanitation Policy*.

4.3 International guidance and best practice

International commitments and best procurement practices provides further impetus to bring communities, especially women, closer to the procurement process.

South Africa, as a member of the United Nations since 1945,⁵² has committed to implement the 17 UN Sustainable Development Goals. Of particular importance is Goal 6, which provides for clean water and sanitation, specifically Target 6.2 and Target 6(B).

Target 6.2 provides that a country will “achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.”⁵³ This implies that South Africa must prioritise the needs of women, girls and others in vulnerable situations when it provides equitable sanitation.

Goal 6(B) sets as its target that South Africa will “(s)upport and strengthen the participation of local communities in improving water and sanitation management.”⁵⁴ This can be interpreted that in order to achieve SDG 6, South Africa must actively involve informal communities in the decision-making, and then the delivery of water and sanitation, to ensure adequate access to these services.

While the SDGs do not explicitly refer to the role of public procurement in achieving the SDG 6, the implication is clear. The needs of women and girls living in informal settlements must be prioritised in the delivery of basic sanitation services, meaning that their needs must be prioritised in the tender specifications of these services. In addition, women must be actively consulted about their needs when the specifications are drafted and also be actively involved in the monitoring and feedback on the delivery of these services.

It is also instructive to look at international guidance on best principles in procurement.

⁵² United Nations. (n.d.). *Member States. United Nations*. <https://www.un.org/en/about-us/member-states> (Accessed 04-08-2023)

⁵³ United Nations. (n.d.). *Sustainable Development Goal 6: Clean Water and Sanitation, Target 6.2. United Nations* <https://southafrica.un.org/en/sdgs/6> (Accessed 04-08-2023)

⁵⁴ United Nations. (n.d.). *Sustainable Development Goal 6: Clean Water and Sanitation, Target 6 (B). United Nations* <https://southafrica.un.org/en/sdgs/6> (Accessed 04-08-2023)

The Organisation for Economic Co-operation and Development (OECD) developed its Principles for Integrity in Public Procurement, which was published in 2009 and takes the form of a recommendation by the OECD. The recommendation is described as a “policy instrument to help governments prevent waste, fraud and corruption in public procurement”.⁵⁵

The OECD compiled a checklist for enhancing integrity at each stage of the procurement cycle, and is particularly instructive about where community needs can play a crucial role in the procurement process.

The lack of an adequate needs assessment is a key risk to integrity in the pre-tendering phase. One of the precautionary measures the checklist proposes in the needs-assessment stage, is that the procuring entity must “consult representatives from end-user organisations and the wider public in the needs assessment”⁵⁶, and cites an example of conducting it in the form of a survey. This can be taken to suggest that as “end-users”, informal settlement residents should be consulted during the needs assessment stage.

The OECD further recommends in the checklist that the end-user should be included in the definition of the requirements stage and that the tender-specifications be based on what has been identified in the needs assessment. It states that: “Suppliers and end-users may be consulted in the drafting of specifications, provided that the number of participants is sufficiently large and representative, and that the results are reviewed in light of market analysis done by the procuring authority to provide objective analysis”.⁵⁷ Clearly the end-user – in this case informal settlement residents – can make critical inputs to the tender specifications.

The OECD further emphasises the need to be transparent about information, as it proposes that tender specifications be set up in advance and published.⁵⁸

The importance of publishing tender information throughout the tender process is critical as it promotes public scrutiny and external monitoring for improved service delivery.

⁵⁵ Organisation for Economic Co-Operation and Development. (2009). *OECD Principles on Enhancing Integrity in Public Procurement* (p. 3).

⁵⁶ *OECD Principles on Enhancing Integrity in Public Procurement* (2009, p. 54).

⁵⁷ *OECD Principles on Enhancing Integrity in Public Procurement* (2009, p. 59).

⁵⁸ *OECD Principles on Enhancing Integrity in Public Procurement* (2009, p. 62).

The OECD finally raises the importance of including the end-user in monitoring contract implementation. As part of the measures to closely supervise the contractors' performance and integrity, the OECD recommends that third parties, such as a representative from an end-user organisation, scrutinise the process of implementing the contract.⁵⁹ The checklist further proposes that stakeholders, civil society and the wider public should be enabled to do this by organising regular review meetings between the contractor and the customer which should record end-user satisfaction with the service.

Overall, the implication of the OECD recommendations is that informal settlement residents as end-users should be involved in the majority of the public procurement phases, with the exception of the bid evaluation phase. This can be further interpreted that both men and women as end-users of basic services should be involved in the ways described above.

5. Practical examples of how community input in procurement improved service delivery within the current framework

While the needs of communities, especially women, are rarely taken into consideration when basic services are procured by municipalities from external service providers, there are practical examples of where this has happened in South Africa and from where guidance can be taken on how the process can work.

5.1 Improved bid specifications for the hiring, delivery and maintenance of chemical toilets in the Cities of Ekurhuleni and Tshwane

In 2018, two of the Asivikelane partners, the International Budget Partnership and Planact worked with 13 informal settlements in the City of Ekurhuleni to conduct a social audit on using the contract for the hiring, delivery and maintenance of chemical toilets.⁶⁰ A social audit is a community-led process of monitoring the delivery of a service based on the commitments by government as set out in official

⁵⁹ OECD *Principles on Enhancing Integrity in Public Procurement* (2009, p. 70).

⁶⁰ International Budget Partnership South Africa. (February 2019). *Impact Case Studies 1 Ekurhuleni* https://asivikelane.org/wp-content/uploads/2021/07/2019-02-impact-case-studies-1_ekurhuleni-final.pdf (Accessed 2 August 2023); Planact, International Budget Partnership South Africa & Social Audit Network. (2018). *Scaled up Social Audit City of Ekurhuleni 2018*. <https://asivikelane.org/wp-content/uploads/2023/02/2018-ekurhuleni-social-audit-report.pdf> (Accessed 2 August 2023).

documents such as contracts and bid specifications. Communities engage government on the improvement of the service based on the evidence collected during the social audit. In this case, the social audit was done in close partnership with officials from Ekurhuleni's Water and Sanitation Department.

Upon conclusion of the social audit, community representatives and Planact discussed their findings and recommendations with the officials from Ekurhuleni. One of the main problems identified was vague bid specifications.

The contract was due to end in July 2019, and the invitation to bid for the new contract, along with the tender specifications, was released early in 2019. The revised specifications addressed some of the challenges identified by communities during the social audit and were a significant improvement on the old specifications. For example, contractors would be required to attach a waterproof service delivery schedule on the front and back of each toilet door, meaning that residents will know who is responsible for servicing their toilets and when this should happen. All toilet units would be required to have a ventilation pipe and air vents to ensure the flow of fresh air – this is in response to residents reporting that they couldn't use toilets because of an odour and internal heat build-up due to poor ventilation. The new contract required that chemicals be tested by a laboratory to confirm their safety and suitability. This was in response to residents complaining of health issues caused by the strong chemicals used to clean the toilets. For the first time, guidelines for the design of toilets that can be used by residents with disabilities were included in the specifications, meaning that these residents will have access to suitable toilets.

While only 13 informal settlements participated in the social audit, in 2019 the contract covered 119 settlements and almost 600 000 residents, meaning that the changes would improve the provision of sanitation to more than a half million residents. Early in 2022, the contract was put out to tender for another three-year period, with the improved specifications as part of the new tender. This means that informal settlement communities in Ekurhuleni continue to benefit from the 2019 engagement between residents and the municipality.

In 2021, the Asivikelane partners in the City of Tshwane started to engage with officials in the City's Rudimentary Services Unit which is responsible for managing

the contract for the delivery and servicing of chemical toilets in informal settlements.⁶¹ Asivikelane regularly shared the challenges that residents had been experiencing with their chemical toilets with the officials. Asivikelane also shared the Ekurhuleni chemical toilet specifications with the officials.

During the engagements, Asivikelane learned that the Unit was busy drafting the specifications for the new tender for the delivery and servicing of chemical toilets to be awarded in 2022. When the revised specifications were released with the tender notice in the second half of 2021, these included the specifications from the Ekurhuleni tender for the provision of toilets for residents with disabilities, as well as the requirement that services delivery schedule should be attached to the front and back door of each toilet.

The Unit has also indicated that they would use the information received from communities to strengthen their own monitoring of the delivery of the service. This example again illustrates how community engagements with officials can lead to improved tender specifications, improved monitoring and, ultimately, better services.

5.2 Residents in Knysna influence the way chemical toilets are delivered

Data collected from residents through Asivikelane Western Cape shows that almost 40% of all residents living in Knysna's informal settlements and participating in Asivikelane rely on chemical toilets as their primary form of sanitation.⁶² Knysna municipality has appointed private contractors to provide and service these chemical toilets. This is a temporary solution as the municipality is struggling to install permanent services due to budget constraints and growth in informal settlements.

The Asivikelane Western Cape initiative monitors the provision and servicing of these chemical toilets in 60 informal settlements in Knysna.⁶³ As part of this initiative, community facilitators work with one of the Asivikelane partners, Development Action Group (DAG), to advocate for improvements in the provision of services to informal settlements in the municipality. The community facilitators act as a link between the

⁶¹ Interview with Thando Mhlanga, Senior Programme Officer, International Budget Partnership South Africa. (Email interview, Thursday, 3 August 2023)

⁶² Asivikelane Western Cape. (2023). *Asivikelane Western Cape 10*. (3 March 2023) <https://asivikelane.org/wp-content/uploads/2023/03/asivikelane-wc10-knysna-final-2.pdf> (Accessed 3 August 2023); own calculations.

⁶³ Asivikelane Western Cape regularly engages over 440 residents each month, about how they experience water, sanitation, and solid waste services in Knysna informal settlements. Over 75% of participants are female.

communities they live and work in, and the municipality, which includes both the administrative side of the municipality as well as the political side, specifically the respective ward councillors. Two of these facilitators, Marthina Tietties and Siphosethu Mamayo, have shared their experiences of advocating for the improvement in the provision of chemical toilets to their settlements.

While monitoring the provision of chemical toilets as part of the Asivikelane Campaign, women in the communities told Tietties and Mamayo that they felt unsafe using the chemical toilets because they had to share them with the men in the community, and that the toilets were very unhygienic.

Tietties⁶⁴ lives in the Soccer Valley informal settlement in Rheenendal. The settlement is about six years old with 109 households. The settlement has 10 communal flush toilets built around four years ago. These initially served the first 10 households that had settled in Soccer Valley, but as the settlement expanded, these 10 toilets were insufficient to service the growing community.

In response, the municipality provided chemical toilets to Soccer Valley. Currently, 10 chemical toilets serve 100 households. This means that 10 households have to share one toilet.

Tietties said in an interview conducted for this research paper that women in Soccer Valley told her that they felt unsafe sharing the chemical toilets with men. The doors did not lock, and they were often faced with very dirty toilets.

After discussions with the community, she approached the ward councillor, Hilton Stroebel (councillor for ward 5). She shared requests from the women in the settlement with him for two new chemical toilets, one for women only and the other for men only.

Stroebel responded to the concerns raised and the women's requests by asking the municipality to provide two new chemical toilets.⁶⁵ After the new toilets had arrived in Soccer Valley, DAG assisted Tietties with printing and putting up signs on the two

⁶⁴ Interview with Marthina Tietties, Community Facilitator, Asivikelane Western Cape campaign. (Telephonic Interview, 13 July 2023). (Recording on file with authors).

⁶⁵ Interview with Hilton Stroebel, Ward 5 councillor, Knysna Local Municipality. (Telephonic Interview, Wednesday 19 July). (Recording on file with authors).

new toilets indicating that one is for women only, and the other for men only. Stroebel supported this initiative to label the gender-specific toilets.

The move towards gender-separated toilets in Soccer Valley has had a knock-on effect. New chemical toilets, with separate toilets for women and men were also provided in the Uitsig informal settlement in Rheenendal after similar issues were raised by the women in Uitsig. These women had said that they previously preferred to use buckets instead of chemical toilets as it felt safer and cleaner.

Stroebel said that he will consult informal settlement communities on whether they would prefer toilets separated by gender in future. He believes that it is imperative to get communities' inputs when the municipality decides what type of services to provide. He acknowledges that, as the users of these services, communities know best what type of service would suit their needs.

The provision of toilets separated by gender has not been limited to ward 5. In ward 4, Councillor Phindile Petros worked closely with Siphosethu Mamayo to ensure that separate toilets for men and women were provided to two informal settlements in his ward, Greenfields Nkandla and Pelindaba.

When interviewed,⁶⁶ Mamayo said that while collecting evidence as part of Asivikelane Western Cape, women had told her that they did not feel safe when sharing chemical toilets with male residents, and that the toilets were unhygienic and caused women to contract infections.

Mamayo raised this with Petros, who then took the request to the relevant municipal department. As a result, new chemical toilets were delivered to both informal settlements and Mamayo arranged for signs to be put up to indicate which toilets are for women and which are for men.

By implementing these changes, these community facilitators influenced the delivery of an existing outsourced service to improve the welfare and safety of women and children. Had they been given a chance to provide input into the initial tender specifications for this contract, their impact and reach would likely have been far greater.

⁶⁶ Interview with Siphosethu Mamayo, Community Facilitator, Asivikelane Western Cape campaign. (Telephonic Interview, Thursday, 13 July 2023). (Recording on file with authors).

In May 2023, Asivikelane Western Cape partners submitted inputs into Knysna municipality's latest procurement process for the provision of chemical toilets to informal settlements in 2024. These inputs included detailed recommendations for contract specifications that prioritise the needs of women. Knysna municipality has yet to confirm whether the inputs will be included in the future tender specifications, but their consideration of community recommendations is a notable step in the right direction, and it lays a foundation for inclusive procurement.

The Knysna example proves how gender-responsive procurement can work in practice within the current procurement framework and underscores the importance of communities working with the municipality and their ward councillors.

6. Conclusion and recommendations for reform

The evidence in this paper illustrates the extent to which informal settlement communities, especially women, are being negatively impacted by the provision of basic services by external service providers.

Not only are these services failing residents, in particular women, who have to use them, but the procurement system itself fails them by keeping them, the end-users of the services, out of the procurement process.

There is a myriad of reasons behind this.

The first is the framing around what constitutes gender-responsive procurement. The focus is generally skewed, both internationally and in South Africa, towards preferential procurement from women-owned businesses.

This focus does not address the need for gender-responsive procurement throughout the procurement process. The specific needs of women should be incorporated throughout the procurement process, from planning up to the contract monitoring phase.

This would contribute significantly to achieving true gender equity for all women living in informal settlements, and not just limit it to women who own businesses which do business with the state.

The legislative and policy review also indicates that there is nothing in law and policy which prohibits asking community members, especially women, what they need in basic service provision, as well as consulting residents on tender specifications and including them in the contract implementation phase. On the contrary, it would seem imperative to bring the end-user closer to the procurement process.

Doing so would align with international best practice, as well as aid South Africa in its commitment to achieve Sustainable Development Goal 6.

However, within the current procurement framework, there are multiple ways in which the voices and needs of women can be prioritised.

The first opportunities are in the **needs assessment phase**.

We suggest that the Municipal Supply Chain Management Regulations should be amended to specifically provide for a needs assessment to be done prior to the drafting of tender specifications for contracted basic services. The regulations should specify how a needs assessment should be conducted. This should include that women living in informal settlements must be consulted when doing a needs assessment for the provision of basic services.

In line with the Municipal Structures Act, the SCM regulations should specify that community members, especially women, be consulted before a service delivery agreement is entered into for the provision of basic services by external contractors.

In the **bid specification phase**, we propose regulations should be amended to explicitly indicate that end-users of basic services are considered specialist external advisors who can advise bid specification committees on the tender specifications.

Once bid specifications have been drafted, they should be shared with communities for input before finalisation.

We also suggest that the tender specifications should include that companies that submit bids for the provision of basic services to informal settlements should demonstrate applicable knowledge of the context. This should explicitly be part of the evaluation criteria.

The final, but equally critical, phase in which women who are the end-users of services should be included is the **contract implementation phase**.

We propose that once a tender has been awarded, any additional agreements or service delivery schedules should be shared with communities. The final tender specifications should also be shared with communities.

Regulations should also provide for the creation of a mechanism which allows for community members to be an official part of the contract monitoring process to ensure that tender specifications are followed.

This mechanism should also include space for end-users to review the services that they are receiving and measure whether the service is responding to their needs.

National Treasury should further ensure that all municipal supply chain management policies are reviewed to include the provisions above.

We also propose that the Auditor General should consider assessing the above as part of their MFMA audits.

Assuming the Public Procurement Bill 2023 will be accented to by the President of the Republic of South Africa and the current municipal SCM regulations will be replaced by new regulations, the Bill and regulations should accommodate all the above recommendations.

It should be emphasised that none of the recommendations above are against current legal provisions. This means that nothing precludes municipalities from implementing these recommendations while following their current SCM policies to ensure that the needs of communities in general, but women specifically, are responded to when providing basic services in informal settlements.

The Knysna, Ekurhuleni and Tshwane examples explicitly provide evidence that this can already be done in practice.

It should be noted that these recommendations can easily be applied to the procurement of any basic services infrastructure, such as permanent communal toilets or the provision of taps.

The needs of women must be considered throughout the procurement process to give effect to the Constitution and relevant legislation. Only when the needs of women are considered and included throughout the process, will public procurement be truly gender responsive.

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