



URBAN SAFETY BRIEF No. 1/2018

By-laws as a tool for urban safety regulation in South African cities

This Urban Safety Brief looks at ways in which cities can use by-laws as a tool for regulating urban safety.

The SA Cities Urban Safety Reference Group's Briefs Series is designed to distil the state of current knowledge on urban safety-related topics for a policy and planning audience. It is presented quarterly to the City Budget Forum and other key stakeholders.



BACKGROUND

By-laws are perhaps the most powerful regulatory instrument available for municipal administrations striving to create inclusive, accessible and safe cities for their residents and visitors. The authority to pass by-laws lies exclusively with the Council. By-laws bind both the municipality (political and administrative structures) and the community (including residents, rate-payers, non-governmental organisations, the private sector and labour organisations). By-laws offer a means of controlling human and corporate behaviour because they are directly enforceable and compliance to by-laws is mandatory. Therefore, they have the potential to effect positive change in the safety profile of a city over time.

This policy brief explains how by-laws can be used to legislate on the powers of authorised municipal officials in matters such as environmental health, disaster management, public space, public amenities and informal trading, and that safety by-laws can control and regulate certain activities and conduct. After considering by-laws as governance instruments, the process of making by-laws and principles for effective by-laws are explained. The policy brief then explains that various roleplayers and stakeholders must be involved and argues for the expansion of municipal courts. It concludes with some guidelines for safety by-laws.



DISCUSSION

01 By-laws as governance instruments

By-laws bring order and certainty to the urban environment. By-laws provide certainty both to city residents (who know what behaviour and actions are permitted or not permitted) and to the municipality (enforcement officials know what powers they have to enforce order in their jurisdiction). The effectiveness of by-laws lies in their ability to be tailor-made to local circumstances. Cities can pass by-laws to deal with their specific circumstances, provided the by-laws do not conflict with national legislation and relate only to local government functions. The potential to create innovative by-laws is limitless, so long as by-laws are complemented by other mechanisms, such as planning and financial instruments (e.g. tax incentives and subsidies).

By-laws can also be enforced on the spot, with (for example) municipal officials issuing fines for a breach of the by-law. Such visual enforcement can have a knock-on effect in the community, which stimulates further compliance. The enforcement of by-laws can lead to a significant reduction in crime (one aspect of community safety), not only at city level but also nationally.



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By-laws written with the Criminal Procedure Act (No. 51 of 1997) and the National Prosecuting Authority Act (No. 32 of 1998 – Section 22) in mind are powerful crime-fighting tools for municipal officials. When combined with effective training of municipal personnel in criminal enforcement, these tools can lead to successful prosecutions in criminal court, which serve as an effective deterrent. By-laws can also contain administrative enforcement provisions, such as contravention notices and directives.

Each municipality decides on the number of and design of its by-laws. Therefore, given the lack of a national or provincial by-law “template”, municipalities cover urban safety differently in their by-laws. A survey of some South African cities revealed that the aspects to urban safety typically covered in by-laws include: beaches, community safety, disaster management, environmental health services, events, fireworks, informal trading, problem properties, public amenities, public parks and streets, roads and traffic safety, storm water management, streets, public places, nuisances

(including noise), behaviour and substance abuse. This list is not exhaustive, and the by-laws have varying aims, from promoting a safe and health environment, to establishing support structures (e.g. a committee), promoting constitutional rights (e.g. Section 24 environmental right) and prohibiting certain activities and conduct (e.g. in the event of a disaster). Typically, the by-laws contain:

- Provisions on the powers of authorised officials.
- Measures to manage, control and regulate access and behaviour.
- Measures to prevent, minimise and prohibit nuisances and certain activities/conduct.

By-laws can effect positive change in a city over time, as residents are instructed what *to do*, rather than what *not to do*. A municipality wanting to improve community safety could use by-laws to instruct and incentivise measures that reduce crime. For instance, a business that installs security lighting in the streets and pavements surrounding its building could receive a rates rebate.

02 The by-law-making process

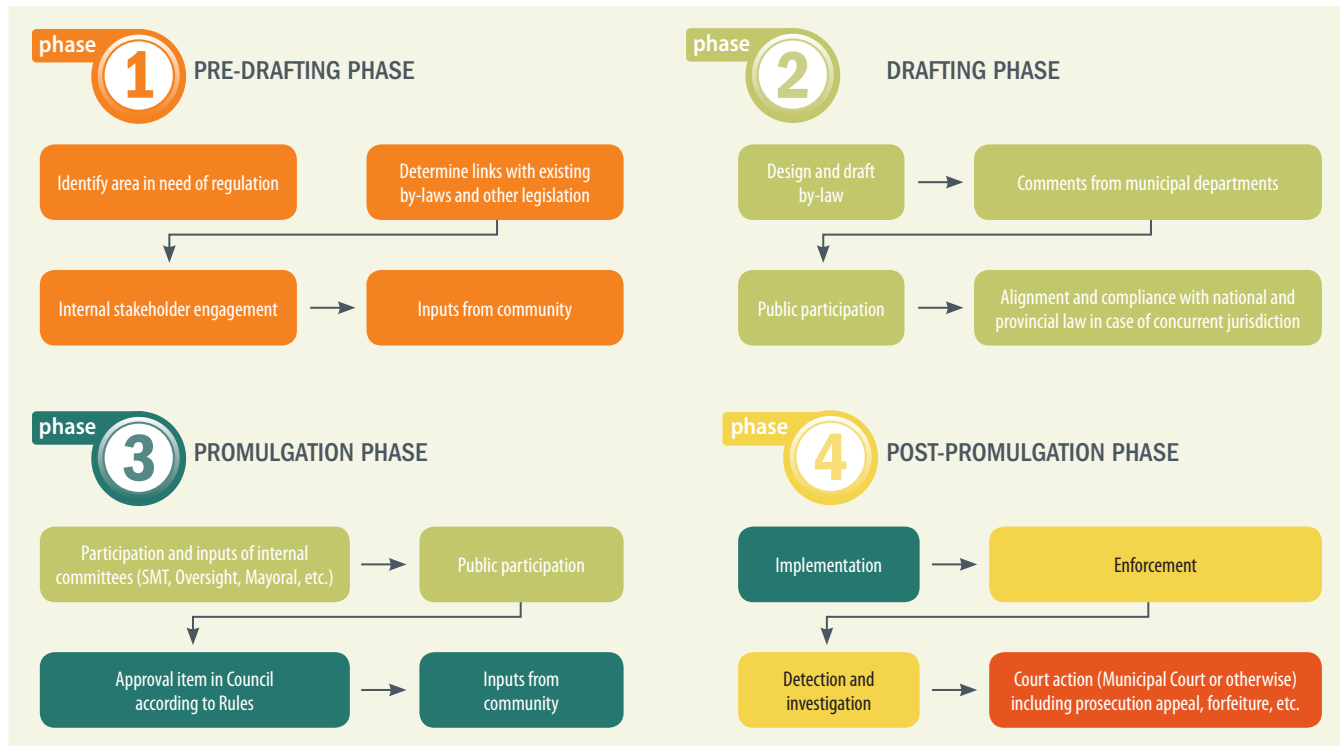
The proper drafting of a by-law requires legal and other skills and resources, which may be out of reach for many municipalities. Therefore, policy-makers should embrace the potential of *standard draft by-laws*, as provided for in Section 14 of the Local Government:

Municipal Systems Act (No. 32 of 2000). The Act states that local government may request an MEC or Minister to make standard draft by-laws and prescribes a process to be followed when promulgating by-laws. The by-law process is summarised in Figure 1 and Figure 2.

FIGURE 1: The by-law-making process



FIGURE 2: From pre-drafting to post-promulgation



03 Principles to guide the by-law making process:

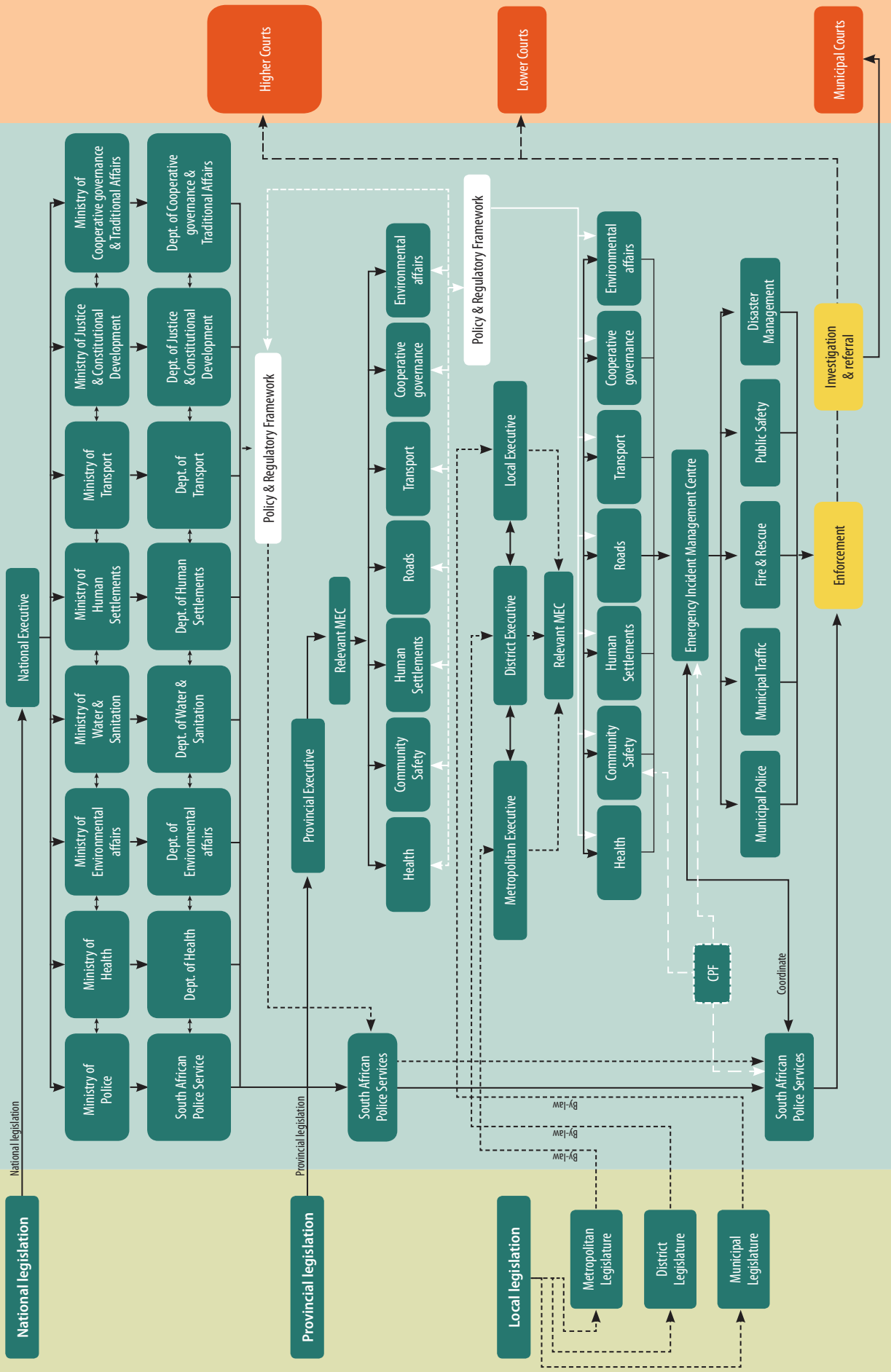
KEEP IT SIMPLE	BE CONCISE	BE CONSISTENT	KEEP TO A CLEAR STRUCTURE	FOLLOW PRESCRIBED PROCESS
Use language that as many as possible can understand (avoid legal jargon/ technical language).	Avoid repetition and check each statement addresses the purpose and intent of the by-law.	Standardise and use consistently any terms/ definitions.	Ensure that each paragraph addresses a separate issue.	Give reasonable notice to Council members, publish in the provincial Gazette and make readily available to the public.

04 Requirements for making by-laws work

A by-law must be initiated, developed, implemented, complied with and enforced in order to deliver on its objectives. It must also be understood by all relevant stakeholders. As the illustration on page 4 shows, the success of safety by-laws require a cooperative governance approach. Certain requirements are:

-  An organisational structure that meets the challenges of the jurisdiction and complies with the national framework and constitutional imperatives.
-  Access to services and information by the community (e.g. Emergency Incident Management Centres for reporting incidents and complaints), education and awareness-raising, and activation/coordination of relevant services and departments.
-  Effective follow-through, i.e. investigation and prosecution where necessary.
-  Exploration of the opportunities presented by new information and communication technologies.
-  Feedback on (and further development and maintenance) of local legislation and/or policy and corresponding information portals.
-  Inclusion of cooperative and democratic governance structures such as Community Policing Forums (CPFs), or other Public/Private Partnerships.

LOCAL GOVERNMENT – BY-LAW DEVELOPMENT AND ENFORCEMENT



05 The role of municipal courts

The law does not require a municipal area to have a municipal court, and few municipalities have such specialised lower courts. Instead, traffic offences and by-law contraventions are dealt with by Magistrates' Courts. Well-functioning municipal courts could make by-law compliance and enforcement more effective, as they would be able to prioritise and dedicate time and resources to by-law contraventions. The challenge is that the concept of a "municipal court" is not yet clearly defined. If a national municipal courts' statute were in place, the departments of justice and correctional services, and of cooperative government and traditional affairs could join forces with municipalities to identify suitable buildings, provide infrastructure and support, and (later) offer judicial training on the substance, scope and reach of by-laws that fall within the jurisdiction of such courts.



CONCLUSIONS

By-laws relating to environmental health, disaster management, public spaces and amenities, informal trading etc. could be used to legislate the powers of officials and institute measures to control/regulate access and behaviour in public places, at events and under specific circumstances. Safety by-laws could also provide for measures that prevent and prohibit certain activities and nuisances, as well as for municipal licensing systems.


New or additional safety by-laws should be aligned with other by-laws and applicable provincial and national policies and legislation. The drafting, implementation and enforcement of by-laws require specialised skills and acumen. Political will, as well as intergovernmental and multi-stakeholder support and collaboration are key for municipalities revising their safety by-laws, as part of the broader aim to make South African's cities inclusive, accessible and safe.

This brief was compiled by the SA Cities Urban Safety Reference Group with support from the UCT Centre of Criminology in collaboration with the South African Research Chair: Cities, Law and Environmental Sustainability (CLES), North-West University.

The Urban Safety Reference Group is a platform for peer-to-peer learning and knowledge sharing among practitioners from the SACN member cities as well as other key government role-players on urban safety and violence prevention. It is convened by the South African Cities Network (SACN) with the support of the GIZ-Inclusive Violence and Crime Prevention (VCP) Programme.

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