

# Strengthening municipal systems for inclusive and sustainable water and sanitation in South Africa



November 2021

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# Acronyms and abbreviations

<b>AGSA</b>	Auditor-General of South Africa	<b>MISA</b>	Municipal Infrastructure Support Agency
<b>CESCR</b>	United Nations Committee on Economic, Social and Cultural Rights	<b>MTREF</b>	Medium-Term Revenue and Expenditure Framework
<b>CoGTA</b>	Department of Cooperative Governance and Traditional Affairs	<b>MuSSA</b>	Municipal Strategic Self-Assessment System
<b>CSO</b>	civil society organisation	<b>NGO</b>	non-governmental organisation
<b>DG</b>	Director-General	<b>NW&amp;SMP</b>	National Water and Sanitation Master Plan
<b>DPLG</b>	Department of Provincial and Local Government	<b>NWSRS</b>	National Water Services Regulation Strategy
<b>DWAF</b>	Department of Water Affairs and Forestry	<b>PARI</b>	Public Affairs Research Institute
<b>DWS</b>	Department of Water and Sanitation	<b>PMBEJD</b>	Pietermaritzburg Economic Justice and Dignity Group
<b>FBS</b>	Free Basic Services	<b>RDP</b>	Reconstruction and Development Programme
<b>FBSan</b>	Free Basic Sanitation	<b>SAICE</b>	South African Institution of Civil Engineering
<b>FBW</b>	Free Basic Water	<b>SALGA</b>	South African Local Government Association
<b>FFC</b>	Financial and Fiscal Commission	<b>SAPS</b>	South African Police Service
<b>GHS</b>	General Household Survey	<b>SDG</b>	Sustainable Development Goal
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights	<b>SERI</b>	Socio-Economic Rights Institute of South Africa
<b>IDP</b>	Integrated Development Plan	<b>Stats SA</b>	Statistics South Africa
<b>IGR</b>	Intergovernmental Relations	<b>WASH</b>	water, sanitation and hygiene
<b>IMC</b>	inter-ministerial committee	<b>WHO</b>	World Health Organization
<b>IRIS</b>	Incident Registration Information System	<b>WSA</b>	Water Services Authority
<b>LGFF</b>	Local Government Fiscal Framework	<b>WSDP</b>	Water Services Development Plan
<b>MEC</b>	Member of the Executive Council	<b>WSP</b>	Water Services Provider
<b>MFMA</b>	Municipal Finance Management Act		
<b>MFRS</b>	Municipal Financial Recovery Services		
<b>MIG</b>	Municipal Infrastructure Grant		

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# Summary of findings and recommendations



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▲ An aerial view of the Kya Sands informal settlement and Bloubostrand, a middle-class suburb with larger houses and swimming pools located in Johannesburg, Gauteng province.

## Water and sanitation progress globally is characterised by poor sustainability, social exclusion, weak accountability, poor scalability, and insufficient prioritisation and resourcing.

These issues are symptomatic of system weaknesses, so require systems thinking to tackle them. They are worsened and made more urgent by poor environmental sustainability, growing demand and competition for water, weak governance, structural inequalities, and climate change.

In theory, South Africa has in place many of the requirements to deliver Sustainable Development Goal (SDG) 6 (universal access to water and sanitation): a clear institutional framework, progressive policies and regulations, an engaged and informed media, and an active citizenry that creatively and persistently claims their socio-economic rights, including to water and sanitation. However, in May 2020, the Department of Water and Sanitation (DWS)<sup>i</sup> confirmed that only 64% of households had access to a reliable water supply service<sup>1</sup> and the 2019 National Water and Sanitation Master Plan reports that after 26 years, the percentage of the population receiving reliable water services is lower than it was in 1994. Eighteen percent of the population does not have access to improved sanitation.

Many of the challenges associated with water and sanitation service provision relate to the state of local government. National government and donors have invested significant resources in building municipal systems: increasing capacity and strengthening governance. Despite these investments, many municipalities are still unable to deliver a basic and reliable service to all households.

**...many municipalities are still unable to deliver a basic and reliable service to all households.**

<sup>i</sup> The national department responsible for water and sanitation has had several iterations, as the Department of Water Affairs and Forestry, then as the Department of Water and Sanitation, followed by the Department of Human Settlements, Water and Sanitation. In July 2021, water and sanitation was split from Human Settlements, and is now the Department of Water and Sanitation (DWS). All references to the national department responsible for water and sanitation use 'DWS', for simplicity.



The three **main research questions** to be answered in this research project on *Strengthening municipal systems for inclusive and sustainable water and sanitation in South Africa* are:

- Why has the delivery of basic water and sanitation services not met expectations?
- Why have efforts to improve outcomes resulted in so little success?
- What are the recommendations for strengthening these systems, considering the high failure rate of previous initiatives?

The main conclusions that can be drawn in answering the first two questions – the reasons for the failure of delivery to meet expectations, and the limited impact of efforts to improve delivery – are:

- There is a general failure to apply a systems approach and/or analysis to the delivery of water and sanitation services, and, as a result, large parts of the system are effectively 'invisible' as potential contributors to problems. This results in their exclusion from solutions.
- The dominant approach of building technical skills and expertise in water and sanitation services is necessary but represents a response to only part of the larger systemic problems, which include the financial viability of service provision, and the growing inability of households to pay for services.
- The Free Basic Services (FBS) policy was intended to be the foundation of affordable universal access, but the reality is that significant erosion of actual benefits has contributed to increased poverty and inequality. Only around 20% of households funded in the national budget for FBS actually receive them from their responsible municipality.

- Detailed and comprehensive problem diagnosis that captures all the actors (people and institutions), factors (social, economic, political, environmental, technological) and the interactions between them contributing to poor delivery outcomes is rarely carried out. Instead, there is a strong solution bias in the system, focusing on the details of a solution while assuming all the details of the problem are known.
- In general, there is little focus on including communities in diagnosing problems, developing solutions, or overseeing municipal service delivery. This exclusion of the community point of view is illustrated in the lack of meaningful action in places where communities have not had access to water for more than two years, or the failure to critically assess the affordability of municipal service bills for poor households (effectively a barrier to access).
- Related to this is the fact that community efforts, through protest or formal channels of engagement, including litigation, have had limited impact in ensuring long-term and sustainable improvements in the quality and reliability of water services. The systemic changes recommended in this report are vital to enable the government to implement court orders and address the demands of its constituents for safe, affordable water services. Revitalised methods of engagement, both formal and informal, are essential to the democratic project, as is the responsiveness and meaningful engagement by municipalities with consumers living in their jurisdictions.
- The current structure of the Intergovernmental Relations (IGR) framework gives limited authority to the national government to enforce delivery standards, but DWS has access to an effective remedy (Section 63 of the Water Services Act) that it is not currently making use of.
- Regarding the funding of infrastructure maintenance, the current model is problematic. Municipalities are required to fund maintenance out of their own revenue (at their sole discretion) rather than out of dedicated conditional grants. The financial strain on many municipalities means they simply do not set aside funds for this purpose. The resulting general deterioration in infrastructure is the main reason for the poor quality of services, including interruptions.

## Our recommendations, based on the analysis contained in this report, are:

- i. **Performance threshold:** DWS should, as a matter of urgency, commit to the use of Section 63 of the Water Services Act to deal with serious problems in the sector, and promulgate (promote) detailed applicable regulations to the Act. These regulations should ideally include at least:
  - details as to exactly what criteria will be used to determine ‘not effectively performing any function imposed by or under the Act’ so there is clarity on when an intervention may be triggered.
  - details as to how the effectiveness of a provincial intervention will be assessed, including timeframes for doing so (to give clarity to 63(2)(b)).
  - the establishment of an internal unit (similar to the Municipal Financial Recovery Services (MFRS) unit within the Treasury) that will assume responsibility for managing such interventions.

This will not only greatly increase national oversight over the delivery of water and sanitation services but will also set a clear tolerance threshold for poorly performing water services authorities (WSAs). This is likely to provide a strong incentive for improved performance.
- ii. **Free Basic Water (FBW) and Free Basic Sanitation (FBSan) provision:** The provision of FBW and FBSan (and other) services requires urgent attention, so more poor households can benefit. The various state actors – the South African Local Government Association (SALGA), the National Treasury, and the Department of Cooperative Governance and Traditional Affairs (CoGTA) – need to intervene to (among other things):
  - agree on common, less onerous, standards and processes across all municipalities to target FBS to poor households.
  - create an ‘ombud’ type function where households can appeal in a municipal failure to register them for FBS or where they are registered but not actually receiving the services.



- agree on the cost recovery (national budget allocations) for each service. If necessary, fewer households may be funded in the national budget, but the clear goal should be to ensure households funded in the national budget receive services. Alternatively (and ideally), additional funding can be made available (the FBS programme is a relatively small part of the national budget).

One effective oversight mechanism would be for the Auditor-General of South Africa (AGSA) to include the FBS in the annual audit report – including data on how many households receive the services in each municipality, compared with the number funded in the national budget for that municipality. These audit reports are highly visible documents, and the inclusion of the FBS would force each municipality into a discussion about their delivery.

**iii. Community participation:** Mechanisms for more effective community participation in both the definition of problems and the development, implementation and oversight of solutions, centred on a co-production model (rather than the current Integrated Development Plan (IDP) processes of minimal engagement). In particular, there are significant possibilities for using the resurrected Blue and Green Drop reports as the basis of increasing community engagement around the quality and reliability of services, since the reports clearly indicate which municipalities are falling behind.

**iv. How could we make community action more effective?** This is not an easy question to answer, but some potential areas are:

- Focusing on clear ‘one issue’ problems, such as the failure to deliver FBW, which stems in large part from the problems with the household indigent (poor) status registration. Focusing on one clear issue, making a detailed list of what needs to be done to address it, and pursuing a long-term strategy would, we believe, increase the likelihood of positive change.
- There are several interesting possibilities based around the use of technology to facilitate social auditing of water and sanitation outcomes by communities, and to integrate these into the annual official audit process (carried out by the AGSA). The AGSA’s annual reports always obtain a great deal of media attention and parliamentary discussion. Therefore, they offer a good platform to highlight community issues.



▲ Budget information from the Nelson Mandela Bay metro municipality, located in the Eastern Cape province.

- The fact that legal action in terms of S 139 interventions generally results in the state complying with judgments suggests it may be very worthwhile for civil society to focus on more widespread use of Section 63 of the Water Act (which can be used to trigger an S 139(1) intervention).
- v. **Services that reduce poverty and inequality:** A more pro-poor and developmental approach towards the design of infrastructure in urban areas that (a) considers actual (not assumed) spatial density, and (b) is oriented towards the role of infrastructure in supporting livelihood opportunities rather than the minimum basic service. There is little point in national development strategies around township development if the basic infrastructure in those townships is unable to support such development.
- vi. **Infrastructure maintenance:** The current infrastructure maintenance funding model, where dedicated (conditional grant) funding is for new infrastructure and municipalities are expected to fund maintenance out of their own revenue, is clearly not working and needs urgent revision. Failure to do so will result in a further deterioration of services for (predominantly poor) households and burden the state with an enormous bill.
- vii. **Civil society engagement:** A programme of engagement with the Inter-Ministerial Committee on Water and Sanitation by civil society organisations active in the water and sanitation sector is needed.

## 01

## Introduction



▲ A row of chemical toilets servicing shacks in Khayelitsha, Cape Town, Western Cape province.

## 1.1.

## Purpose and scope

This research focuses on the delivery of water and sanitation by municipalities in South Africa. The overall purpose of the assignment is to provide informed recommendations to improve municipal water and sanitation services through systems strengthening interventions and approaches. An analysis of the relative efficacy of different strategies and programmes employed to strengthen or revitalise the municipal delivery of basic services should provide useful insights into the constraints prevalent within the wider basic services ecosystem.

The aim of such an analysis is to identify binding constraints on municipal service delivery and distil implications and lessons from an analysis of how and why institutional capacity building efforts to date have had a limited effect.

From these implications and lessons, the report sets out recommendations for systems strengthening interventions and approaches to address the systemic underpinnings of municipal services delivery failures, specifically in the provision of accessible, equitable, affordable and sustainable water and sanitation services.



The three **main research questions** to be answered in this research project on *Strengthening municipal systems for inclusive and sustainable water and sanitation in South Africa* are:

- Why has the delivery of basic water and sanitation services not met expectations?
- Why have efforts to improve outcomes resulted in so little success?
- What are the recommendations for strengthening these systems, considering the high failure rate of previous initiatives?

## 1.2.

## Context



Sustainable Development Goal (SDG) 6 focuses on universal access to water and sanitation, with the following targets:

- **6.1** By 2030, achieve universal and equitable access to safe and affordable drinking water for all.
- **6.2** By 2030, 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.
- **6.3** By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.
- **6.4** By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity.
- **6.5** By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate.
- **6.6** By 2030, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes.

Most countries are off track to achieve SDG 6. In 2020, 2 billion people lacked safely managed drinking water, 3.6 billion lacked safely managed sanitation, and 2.3 billion lacked a basic handwashing facility with soap and water at home.<sup>2</sup> Many countries will not achieve universal access to even basic levels of service by 2030 unless governments and donors assign greater importance to delivering and sustaining water and sanitation services that reach marginalised people.



Water and sanitation progress globally is characterised by poor sustainability, social exclusion, weak accountability, poor scalability, and insufficient prioritisation and resourcing. These issues are symptomatic of system weaknesses, so require systems thinking to tackle them. They are worsened and made more urgent by poor environmental sustainability, growing demand and competition for water, weak governance, structural inequalities, and climate change.

At the time of South Africa's transition to democracy in 1994, between 12 and 14 million people (out of approximately 40 million), the vast majority of whom were black, had no access to an improved water supply. Areas that lacked access to water services were located mainly in the former Bantustans<sup>ii</sup> and informal urban settlements, mirroring apartheid spatial injustice.

In theory, South Africa has in place many of the requirements to deliver SDG 6: a clear institutional framework, progressive policies and regulations, an engaged and informed media, and an active citizenry that creatively and persistently claims their socio-economic rights, including to water and sanitation.

However, in May 2020, the Department of Water and Sanitation (DWS)<sup>iii</sup> confirmed that only 64% of households had access to a reliable water supply service<sup>1</sup> and the 2019 National Water and Sanitation Master Plan reports that after 26 years, the percentage of the population receiving reliable water services is lower than it was in 1994. While more homes in total have water now, a lower percentage of all homes have water. This reflects, in part, the fact that households (the most common unit to which services are delivered) have expanded at a more rapid pace than the total population, due to rapid urbanisation and a corresponding decline in the average household size.<sup>3</sup>

<sup>ii</sup> Bantustans were an important part of the apartheid state's administrative structure, creating notionally 'independent' states for the black majority inside South Africa's borders.

<sup>iii</sup> The national department responsible for water and sanitation has had several iterations, as the Department of Water Affairs and Forestry, then as the Department of Water and Sanitation, followed by the Department of Human Settlements, Water and Sanitation. In July 2021, water and sanitation was split from Human Settlements, and is now the Department of Water and Sanitation (DWS). All references to the national department responsible for water and sanitation use 'DWS', for simplicity.

Many of the challenges associated with water service provision relate to the state of local government. In terms of the allocation of municipal functions under the Constitution and other legislation (such as the Municipal Structures Act), municipalities serve as the frontline for communities seeking access to water and sanitation. Many municipalities are failing to fulfil a core function: to deliver services such as water, sanitation and electricity, and thereby to realise the socio-economic rights of the people living in their jurisdictions. Ensuring equitable access to water remains one of the most crucial challenges in democratic South Africa.

National government and donors have invested significant resources in building municipal systems: increasing capacity and strengthening governance. Despite these investments, many municipalities are still unable to deliver a basic and reliable service to all households. Therefore, research is needed on what has or has not worked in terms of strengthening or revitalising municipal systems, and why.

▼ [The Gydo Pass in the Western Cape province.](#)



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### 1.3. Method

This research is located within WaterAid's systems approach to water, sanitation and hygiene (WASH):

*'Strong systems are needed to ensure WASH gains last and deliver benefits to everyone in society. We understand the WASH system to be all the actors (people and institutions), factors (social, economic, political, environmental, technological) and the interactions between them that influence the achievement of inclusive, sustainable, universal access to WASH. Much like an ecosystem consists of a biological community of interacting organisms and their physical environment, relevant literature sums up the WASH system as actors, factors and the interlinkages between them.'*<sup>4</sup>

Under this approach, intervention programmes are not viewed as isolated entities where there is a straightforward 'best practice' model that can be applied consistently to gain consistent results. Instead, each programme should be viewed as one that exists in a wider system of complex social, political, environmental, institutional and technical factors. The interplay between these different factors, and the interactions between different actors, dictates what barriers stand in the way of system improvements in respect to sustainability, scalability and inclusion, as well as what drivers and leverage points can be used to bring about change.



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The following method was used to answer the research questions:



#### Desktop review of existing legislation, regulation, policies and research, regarding the:

- over-arching goals of water and sanitation legislation
- system architecture – responsibilities, funding and oversight
- functions of municipalities related to water and sanitation
- factors that affect the ability of municipalities to deliver these functions
- current status of water and sanitation services (access, quality, affordability, etc.), including Free Basic Water (FBW) and Free Basic Sanitation (FBSan)
- past and current efforts to improve system outcomes, and the impact of these

The desktop review highlights system progress to date,<sup>iv</sup> key factors that have an impact on the delivery of water and sanitation, efforts taken to address shortcomings in delivery (access and affordability), the reasons why these have failed to generate the required result, and possible directions for more sustainable and inclusive improvements.

◀ A woman collects water from a spring. Residents of Verena C in the Mpumalanga province share the water source with livestock.

<sup>iv</sup> Note: The terms of reference indicates that WASH progress data should be disaggregated by wealth quintiles. Many of the relevant data sources either do not disaggregate data on this basis or do not do so on a national basis. Therefore, data has been disaggregated to a level that is possible within data availability constraints.



## Interviews

The interviews provide additional insights, based on the view from 'inside' the system. Such interviews provide more information on the origin and persistence of serious systemic problems than can be obtained from a document and literature review only.

A semi-structured interview process has been used, based on an ethnographic approach. This approach is an excellent tool to surface the details of complex issues that are unknown before the interviews. Extracts from the interviews are included throughout the report.

A total of 18 people were interviewed,<sup>v</sup> including:

- people currently working for the state in the delivery of water and/or sanitation services
- people who have previously worked for the state in the delivery of water and/or sanitation services
- local government representatives
- civil society organisation (CSO) representatives
- independent experts in local government provision of water and sanitation services

### 1.4.

## Structure of this report

**Chapter 2** sets out the over-arching context within which municipal water and sanitation services are located: the environmental constraints, the relevant policy goals and regulations designed to enable those goals, the institutional arrangements among the various system participants (the spheres of government, mandated organisations, civil society actors, etc.), and the (intended) funding model that underpins the entire system. This is the 'theory' of how the system should operate against which actual system outcomes can be compared, as a first step towards effective problem diagnosis.

**Chapter 3** presents a detailed picture of the current state of affairs: access to services (including affordability of service charges and the impact of the Free Basic Services (FBS) programme), perceptions of the quality of services, issues with the delivery of services (including infrastructure), and the efficacy of the funding model in terms of financial viability.

**Chapter 4** presents an overview of efforts to date to improve system outcomes.

**Chapter 5** presents an analysis of the findings set out in Chapters 3 and 4, with the goal of obtaining insights into why so many efforts to improve system outcomes have failed to have the desired results.

**Chapter 6** presents initial proposals for improving system outcomes.



◀ An engineer examines a delivery tunnel wall on the Lesotho Highlands Water Project, which supplies water to South Africa.

<sup>v</sup> An additional eight external local expert reviewers provided feedback on the first draft of the report.

# 02

## The over-arching context:

Environment, policy, regulation, institutional arrangements, and funding models

Water tanks at Lawley informal settlement near Johannesburg in the  
▼ Gauteng province.



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**This chapter begins with an overview of the environmental constraints on water availability in South Africa. This is followed by an overview of the legislative, policy and regulatory framework within which the municipal delivery of water and sanitation is located.<sup>vi</sup> This overview highlights the progressive goals of these laws and policies, as well as the significant post-1994 reorganisation of the sector, which reflected the new – and considerably expanded – mandate of local government. This is followed by an overview of the institutional arrangements in water and sanitation, notably those required to enable the post-apartheid Intergovernmental Relations (IGR) framework, which replaced a tiered system of government with three interconnected (and notionally equal) spheres of government working in a cooperative and coordinated manner, and the vital role of active citizenry. The last part of the chapter presents an overview of the system funding model, which was intended to facilitate the attainment of national water and sanitation policy goals.**



## 2.1. Environmental constraints: water availability

South Africa is a water-stressed country with increasingly scarce surface water sources, of deteriorating quality. Average annual rainfall is 495mm compared with a world average of 1,033mm. Climate change is already affecting the availability of water resources. As part of sub-Saharan Africa, South Africa is one of the countries expected to experience the greatest negative effects of climate change, while simultaneously possessing limited capacity and resources to adapt to these impacts.<sup>5</sup> Water availability is adversely affected by environmental degradation and resource pollution, inefficient use of water, inappropriate allocation of water in ways that does not serve the public interest, and the attempted implementation of overly complex mechanisms for water resource governance.

Existing inequalities in the distribution of water will only be further entrenched by the effects of climate change. In 2011, the National Planning Commission's Material Conditions Diagnostic warned that addressing supply and demand in the context of unevenly distributed and variable resources was a matter of central importance in national planning.

A persistent drought has devastated water supply over the past five years in five out of nine provinces in the country. The best-known example of failing water supply is Cape Town (in the Western Cape), where dam levels fell dramatically in 2015.<sup>6</sup> By mid-2017, the situation reached crisis proportions, with Cape Town set to become the first major city in the

world to run out of water when 'day zero' struck. Fortunately, over the months that followed, severe water restrictions in Cape Town cut consumption in half, and significant rainfall in June 2018 restored dam levels.<sup>6</sup>

Many municipalities are becoming increasingly poor at managing consumption, at metering, billing and collecting, and enforcing compliance. This means that if water restrictions become necessary they cannot be effectively implemented. Limiting FBW to indigent (poor) households may aggravate these problems if punitive tariffs are to be used to reduce demand, since these will only be effective if payment can be enforced. In practice, this has meant the only mechanism that can be used to reduce demand is to physically restrict supply to an entire community.<sup>6</sup>

To date, the management of water services in South Africa has failed to take sufficient account of the reality of limited water availability. Although restrictions on supply and punitive tariffs are regularly used in drought periods, interventions that would have a more meaningful impact – such as significant improvements in infrastructure maintenance and asset management to reduce network losses – have not materialised. There are also no clear policy guidelines (or associated implementation of a clear framework) for determining how long-term water use is to be prioritised against a background of limited supply and competing demands.

<sup>vi</sup> For a comprehensive overview of the complex regulatory system for water services in South Africa, see Socio-Economic Rights Institute of South Africa (2020). *Claiming water rights in South Africa*. Available at: [http://seri-sa.org/images/SERI\\_Water\\_report\\_FINAL\\_DEC\\_WEB.pdf](http://seri-sa.org/images/SERI_Water_report_FINAL_DEC_WEB.pdf) (accessed 9 Nov 2021).



Finance minister Tito Mboweni during the 2019 medium-term budget statement in Parliament in Cape Town. ►



## 2.2. Legislation, policies and regulations

This section outlines the relevant legislative, policy and regulatory context for municipal water service provision in South Africa. We examine binding international human rights law as well as the South African Constitutional right to water, and then summarise the key national laws governing water service provision in the country. These laws include the National Water Act (1998), Water Services Act (1997), Municipal Structures Act (1998), Municipal Systems Act (2000) and the draft National Norms and Standards (2017). This section also discusses some of the main frameworks and strategies, including the Free Basic Water Implementation Strategy (August 2002, revised in 2007), Strategic Framework for Water Services (September 2003), Free Basic Sanitation Implementation Strategy (2009), and the National Water Services Regulation Strategy (2010).

### 2.2.1. International law

The International Covenant on Economic, Social and Cultural Rights (ICESCR) governs socio-economic rights, with the rights to water and sanitation viewed as indirect rights linked to Article 11(1), which deals with the right to an adequate standard of living. In 2015, South Africa ratified the ICESCR, which means the country is legally bound by its provisions. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) – the body that interprets the ICESCR and clarifies related obligations – has stated ‘the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living,

particularly since it is one of the most fundamental conditions for survival’.<sup>7</sup> In 2010, the United Nations General Assembly adopted a resolution recognising that ‘the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human beings’ and the United Nations Human Rights Council subsequently adopted a resolution affirming that the rights to water and sanitation are part of international human rights law and are therefore legally binding.

The UN CESCR General Comment 15 on the right to water, adopted in 2002, sets out that ‘water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights’.<sup>8</sup> General Comment 15 states that the minimum core content to be immediately achieved by states (or to be justified in terms of insufficient resources) includes an obligation to ensure everyone’s equitable and safe physical and economic access to the minimum essential amount of water required for personal and domestic use. States must progressively realise human rights, using the maximum available resources. General Comment 15 provides generally applicable parameters of the normative content regarding availability, quality and accessibility (physical, economic, non-discrimination and information dimensions).



◀ A protestor jumps over a puddle of water in Sasolburg in the Free State province. The protests were around the 2013 announcement of the intention to merge the Sasolburg and Parys municipalities.

According to General Comment 15, the supply for each person should be sufficient and continuous for personal and domestic uses, including drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. The General Comment does not stipulate a specific amount of water to be provided for these purposes, but it notes that the amount available to every person should correspond with the World Health Organization (WHO) guidelines.<sup>8</sup> In terms of accessibility, General Comment 15 stresses the obligations to ensure water services and facilities are within safe physical reach of all sections of the population without discrimination on any prohibited grounds, are affordable for all, and that there is sufficient readily available information about all water services.

### 2.2.2. The South African Constitution

Section 27(1)(b) of the Constitution states 'everyone has the right to have access to sufficient food and water' and Section 27(2) states 'the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of ... these rights'. Although there is no explicit right to sanitation in the Constitution, it can be inferred from the right of access to housing in Section 26 and the right to a healthy environment in Section 24. In relation to waterborne sanitation, the right of access to sufficient water is guaranteed in Section 27(1)(b).<sup>9</sup> Section 27 expressly stipulates that the right is enjoyed by 'everyone' and can therefore be claimed regardless of nationality, race, gender or ability. The state must therefore respect, protect, promote and fulfil the right to water, which places both positive and negative duties upon it. The negative duty translates as an obligation to refrain from interfering with any existing right of access to water, such as by arbitrarily cutting off water supply. The duty to protect the right to water encompasses an obligation on the state to take measures to



**The Constitution states 'everyone has the right to have access to sufficient food and water'.**

protect vulnerable groups against violations of their rights by more powerful entities. This means the government is obliged to prevent the discontinuation of water supply by a third party – so if, for example, a farmer unreasonably and arbitrarily cuts off access to water used by lawful occupiers of his private property, the state must restore such access.<sup>10</sup> In *Residents of Bon Vista Mansions*, the High Court held that the obligation to respect entails that the state may not take measures that result in the denial of access. Therefore, disconnecting a pre-existing water supply was found to be a breach of Section 27(1). The Court noted that while the Water Services Act allows a water services provider (WSP) to set conditions under which water supply may be discontinued, the procedure to discontinue must be fair, equitable, and provide reasonable notice and an opportunity to make representations. Furthermore, where someone proves to the WSP that they are unable to pay, their water services may not be cut off.<sup>14</sup> In addition, if the disconnection amounts to a constructive eviction (i.e. the person is forced to leave their home), a prior court order must also be obtained in terms of Section 26(3) of the Constitution and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.<sup>5</sup>

In terms of positive duties, the state must take pro-active legislative, administrative, budgetary and other steps to expand the number of people who have access to water, and to progressively improve what kind of access they have. These duties are also subject to limitations set out in Section 36 of the Constitution. The right is a right of access to water, a right of access to sufficient water, and the right need not be immediately available but must be progressively realised within the available resources of the state.<sup>14</sup> Access implies two distinct but related obligations on the state. Firstly, the state must ensure all people have physical access to water. This means the facilities that give access to water must be within safe physical reach for all sections of the population, including vulnerable and marginalised groups. Secondly, the state must ensure all people have economic access to water. This implies the cost of accessing water should be set at a level that ensures all people are able to gain access to water without having to forgo access to other basic needs. Progressive realisation implies the state must both extend water services to

those with none, and provide increasingly better levels of service to those with existing access.<sup>14</sup> In the *Grootboom* case,<sup>11</sup> the Constitutional Court established that to be reasonable, government programmes must ‘respond to the needs of the most desperate’ and must ensure social and economic rights are ‘made more accessible not only to a larger number of people but to a wider range of people as time progresses’. In *Mazibuko*,<sup>12</sup> which dealt with the right to water, the Court adopted an interpretation of Section 27(1)(b) that is qualified by Section 27(2). This means that neither Section 27(1)(b) nor Section 27(2) exist as standalone entitlements but rather that the content of the right of access to sufficient water is dependent on the reasonableness of the programmes or policies that the state adopts to enable the right.<sup>10,13</sup>

The right to water and sanitation is also inseparable from a range of other human rights; is an enabling right to dignity, health, food, education and safety; and intersects closely with environmental rights.<sup>5</sup> Therefore, the relevant constitutional rights include: Section 9’s equality clause (which requires that there be no unfair discrimination in the provision of services), Section 10’s right to human dignity, Section 24’s right to an environment that is not harmful to health or wellbeing, Section 26’s right to housing, and Section 27’s healthcare-related rights.<sup>14</sup> Section 33 on the right to just administrative action is also important as it creates the framework for procedural fairness in all administrative decisions, including those to disconnect water services.<sup>14</sup>

The Constitution sets out the delegation of authorities among the different spheres of government, and the obligation on national and provincial government to support municipalities. Part B of Schedule 4 of the Constitution mandates local government as responsible for potable water supply and domestic wastewater and sewage disposal services, and Section 153(a) of the Constitution provides that local government must ‘structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community’. Section 154(1) states, ‘The national government and provincial governments, by legislative and other measures, must support

and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.’ Section 156(1) states, ‘A municipality has executive authority in respect of, and has the right to administer— (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and (b) any other matter assigned to it by national or provincial legislation.’ Section 184(3) states, ‘Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, healthcare, food, water, social security, education and the environment.’ Sanitation is however not included in the list, which has meant less attention has been focused on it than water.

Section 139 of the Constitution allows for an intervention in a municipality by either provincial or national government in the event of a serious failure in respect of either the delivery of key services (such as water) or financial governance.

### 2.2.3. National laws (and Norms and Standards)

In 1994, the Minister of Water Affairs formulated the White Paper on Water Supply and Sanitation Policy, which developed the premises of the Reconstruction and Development Programme (RDP) and outlined several policy principles and the institutional framework for water and sanitation provision. The white paper’s contents were later legislated in the Water Services Act 108 of 1997. The Water Services Act is the primary law relating to the accessibility and provision of water services (which includes drinking water and sanitation services)<sup>vii</sup> to households and other water users by municipalities. In 1998, the National Water Act was published, which deals with water resources (as opposed to water services). The Water Services Act and National Water Act are the two key pieces of legislation designed to enable the constitutional right to water in South Africa.<sup>6</sup> DWS was consolidating and merging the National Water Act and the Water Services Act to form one Water and

Sanitation Act.<sup>24</sup> It was envisaged that this would clarify the legislative framework regarding water management across the water and sanitation value chain.<sup>15</sup> However, as of 2021, the process of combining the two acts has been halted and, instead, key amendments to the two individual pieces of legislation are being focused on.

#### National Water Act (1998)

The National Water Act 36 of 1998 deals with the management and protection of water resources in the country. The Act establishes the national department as the custodian of water resources and provides the legal framework for water resources management in South Africa. Its purpose is ‘to ensure that South Africa’s water resources are protected, used, and managed in ways which take into account factors including meeting the basic human needs of present and future generations, promoting equitable access to water and redressing past racial and gender discrimination, promoting the efficient, sustainable and beneficial use of water in the public interest, providing for growing demand for water use, and reducing and preventing water pollution.’

#### Water Services Act (1997)

The Water Services Act is the primary law relating to the accessibility and provision of water services to households and other municipal water users by local government in South Africa. ‘Water services’ in the Act refers to both water supply and sanitation, including wastewater. Section 3 of the Act states ‘everyone has a right of access to basic water supply and basic sanitation’ and ‘every water services institution must take reasonable measures to realise these rights’. The Act sets out the Minister of Water’s mandated functions in the domestic water use sector: to establish, monitor and regulate guidelines to address national water and sanitation policies; to set criteria to guide subsidies; to provide minimum standards for water and sanitation services; and to monitor and regulate service provision. The Water Services Act states that although municipalities have the authority to administer water and sanitation services, all spheres of government have a duty within their physical and financial capabilities, to work towards this goal.

<sup>vii</sup> South African water and sanitation policy is highly integrated, even though a significant percentage of sanitation services used by households are not water-based.

The Water Services Act separates out the role of water services authorities (WSAs) (municipalities authorised with the powers and functions for water services) from the role of WSPs (entities to which the WSA delegates particular responsibilities for water service provision). The WSA function relates to the governance of the service; that is, ensuring universal access, regulation, planning, institutional arrangements, budgeting, oversight, monitoring, and so on. The WSP function relates to provision of the service; that is, operations and maintenance, tariff collection, major rehabilitation, and so on. The WSA is ultimately responsible for the service, regardless of whether or to which entity it decides to delegate certain provision functions to. It cannot delegate its authority function.

The Water Services Act requires each WSA responsible for water and sanitation services to prepare a water services development plan (WSDP) that includes information on: the nature of the need in the area of jurisdiction; existing water use; basic water and sanitation backlogs; WSPs that will supply services; proposed infrastructure; water sources to be used and the quantity of water to be obtained from and discharged into each source; estimated capital and operating costs of those water services; and the operation, maintenance, repair and replacement of existing and future infrastructure. WSAs must report annually to both provincial and national government on the implementation of their WSDPs.

The Water Services Act defines 'basic water supply' as the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene. 'Basic sanitation' is described as the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic wastewater and sewage from households, including informal households.

It should be noted that the Act does not elaborate on the details of the 'right of access'; there is general recognition that physical access needs to be accompanied by affordability in order to be effective access. The impact of institutional

arrangements in the post-1994 IGR framework on definitions of 'access' are discussed in more detail in Section 2.2.

### **Municipal Structures Act (1998)**

In 1998, the allocation of municipal powers and functions in the Constitution occurred in the Municipal Structures Act. Local government consists of three types of municipalities: metropolitan, district and local municipalities. While there are currently only eight metropolitan municipalities (large urban agglomerations, which function as both local and district municipalities), the rest of the country is divided into 44 district municipalities, which are further divided into local municipalities. A district municipality is therefore comprised of several local municipalities. The division of the powers and functions for water services between district, metropolitan and local municipalities are set out in Section 84 of the Municipal Structures Act.

According to the amended Section 84 of the Municipal Structures Act, the four main functions from Schedule 4B in the Constitution, which include water and sanitation services limited to potable water supply systems and domestic wastewater and sewage disposal systems, are, in practice, with district and metro municipalities, so they have the WSA function, but the Minister of the Department of Provincial and Local Government (DPLG) (now the Department of Cooperative Governance and Traditional Affairs (CoGTA)) authorised many local municipalities. Currently, district municipalities are WSAs in Kwa-Zulu Natal, Limpopo and the Eastern Cape, and local municipalities are WSAs in most other provinces.

### **Municipal Systems Act (2000)**

The Municipal Systems Act sets out the objects and developmental duties of local government and provides for integrated development planning at the local level. The Act outlines the machinery and procedures to enable municipalities to uplift their communities socially and economically and guarantee affordable universal access to basic services. It seeks to empower people living in poverty and ensure municipalities establish service tariffs and credit control policies that take their needs into account.<sup>16</sup>

The Municipal Systems Act states municipalities need to develop indigent policies to provide FBS to poor households. In developing their own indigent policies, municipalities are guided by CoGTA's National Framework for Municipal Indigent Policy and Implementation Guidelines which aims to improve access to basic services and goods and consequently reduce levels of poverty. The National Framework, referring to Section 9 of the Constitution, states that the principle of non-discrimination implies that municipal indigent programmes must be accessible to all residents.<sup>17</sup> While indigent policies are required, the National Framework does not recommend the use of indigent registers to target the allocation of FBS.<sup>18</sup> The objective of the National Indigent Policy Framework and Guidelines is to 'substantially eradicate those elements of poverty over which local government has control'.<sup>19</sup> These laws and policies resulted in the adoption of a Free Basic Water policy in 2001.

CoGTA is responsible for the development of policy and legislation regarding provinces, and to monitor the implementation of the Municipal Systems Act. It also plays an oversight role in terms of municipal service delivery performance. The role of the South African Local Government Association (SALGA) is to raise the profile of local government, to represent, promote and protect its interests, and to provide local government with advice and support.

Section 78 of the Municipal Systems Act sets out criteria and the process by which a WSA decides institutional arrangements, including whether it will provide the service itself (internal provision option) or contract out certain provision functions to a separate entity (external provision option). The Water Services Act is clear that even if a WSA decides to retain the WSP function internally, it must account for this WSP function separately.

### Regulations Relating to Compulsory National Standards and Measures to Conserve Water (2001)

In 2001, Regulations Relating to Compulsory National Standards and Measures to Conserve Water were published in terms of Section 9 of the Water Services Act. Regulation 2 of the Compulsory National Standards elaborates on the definition of basic sanitation outlined in the

Act and provides the minimum standard for basic sanitation services:

- (a) the provision of appropriate education.*
- (b) a toilet that is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against the weather, is well ventilated, keeps smells to a minimum, and prevents the entry and exit of flies and other disease-carrying pests.*

Regulation 3 of the Compulsory National Standards states that the minimum standard for basic water supply services is:

- (a) the provision of appropriate education in respect of effective water use.*
- (b) a minimum quantity of potable water of 25l per person per day or 6kl per household per month:*
  - (i) at a minimum flow rate of not less than 10l per minute.*
  - (ii) within 200m of a household.*
  - (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.*

These were updated in the National Norms and Standards published in 2017.

### National Norms and Standards (2017)

The draft National Norms and Standards were published in 2017 for comment since 'the current norms and standards for water and sanitation have, over the last few decades, inadvertently focused on addressing water services and backlogs in urban areas, unintentionally overlooking the diverse variances and challenges prevalent in the rural areas. Consequently, local government structures are dealing with a range of approaches to water service provision that span both urban and rural areas, which are often based on the allocation of powers and functions between district municipalities and local municipalities, thus creating confusion and misalignment in the provision of services.'<sup>20</sup>

The Norms and Standards draw on the principles of universal access, human dignity, user participation, service standards, redress, and value for money. The Norms and Standards state that the principles of sustainability, affordability, effectiveness, efficiency and appropriateness should be followed when supplying water to a community.

*'Cognisance is taken of the water scarcity context of the country, and as such reduction, re-use and recycling are common themes that underpin the norms and standards. The effectiveness of the services towards the protection of public health and the greater economic development agenda of the country also receives firm attention.'*<sup>21</sup>

However, there are many criticisms of the Norms and Standards, including that they resemble high-level policy goals rather than providing the basis of concrete guidelines for providers of water and sanitation services (or the oversight of these entities). As one of our interviewees put it:

*"Norms and standards need to reflect what can actually be delivered. So they need to be linked to the (municipal) financial system. Can the municipality actually afford to deliver these?"*

While published, the Norms and Standards have not yet been formally put into effect. However they are still relevant to local government.

#### 2.2.4. Frameworks and strategies

##### Free Basic Water Implementation Strategy (August 2002, revised in 2007)

The 2001 Free Basic Water policy was put into operation in the Free Basic Water Implementation Strategy of August 2002 (and later revised in 2007).<sup>22</sup> The Free Basic Water Implementation Strategy guarantees each household a free minimum quantity of potable water, set at 6kl per household per month (approximately 25l per person per day for a household of eight people), with encouragement to provide additional FBW if a municipality can afford it.<sup>13</sup> The strategy was later revised by Cabinet to limit access to FBW only to households registered as 'indigent' in a local municipality. (The indigent registration process is described in more detail in 2.3.(iii).)

##### Strategic Framework for Water Services (September 2003)

The Strategic Framework for Water Services is the comprehensive national framework for the water services sector, that seeks to align policies, legislation and strategies, outlining the changes



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◀ Residents from a township collect water from a municipal water tanker in drought-stricken Graaff-Reinet in the Western Cape province in 2019.

in approach needed to achieve policy goals. The Strategic Framework set out the future role of the Department of Water Affairs and Forestry (DWAF) as the national sector regulator.<sup>23</sup>

The Strategic Framework outlines the roles and responsibilities for WSAs and WSPs and different government departments, as well as other stakeholders. The framework also differentiates between a 'facility' (the infrastructure) and a 'service' (to be delivered by the infrastructure). The definition of a sanitation service includes the communication of safe hygiene practices.

According to the Strategic Framework, it is the responsibility of a WSA to ensure 'adequate and appropriate investments are made to ensure the progressive realisation of the right of all people in its area of jurisdiction to receive at least a basic level of water and sanitation services'; that is, a universal service obligation. The Strategic Framework states that the first step up the water ladder is the provision of at least a basic water and sanitation service to all people living in South Africa. According to the Strategic Framework, the FBW amount should eventually be increased from 25l to 50l per person per day (approximately 12kl per household per month for an average household of eight people).

### Free Basic Sanitation Implementation Strategy (2009)

In March 2009, the Free Basic Sanitation Implementation Strategy was approved. The strategy was developed to guide WSAs in providing all citizens with Free Basic Sanitation (FBSan) by 2014 and to implement their own FBSan policies in line with national policy. The strategy acknowledges that municipalities have an obligation to ensure households in poverty are not denied access to basic services due to their inability to pay for such services. The strategy adopts the principles that 'national guidelines should be implemented with local choice' and that there should be local flexibility in implementation of the strategy; that is, municipalities have considerable discretion in respect of their provision of sanitation services.<sup>24</sup>

### National Water Services Regulation Strategy (2010)

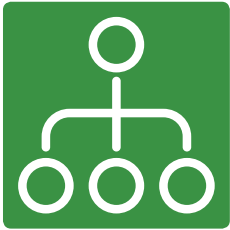
In 2010, DWS developed the National Water Services Regulation Strategy (NWSRS), which positioned DWS as the national regulator of water services. Previously, there was no national water services regulator and this regulation function was effectively left to municipalities. While the sector welcomed the move, many wanted there to be an independent regulator instead. This was because of concerns about DWS's willingness to regulate, especially given that it is both the main 'player' and only 'referee' in the water services sector.<sup>13</sup> The department has, to date, focused mostly on water resources-related issues rather than water services-related issues. This reflects some of the complexities regarding the mandate, discussed in the next section.<sup>viii</sup>

### National Water and Sanitation Master Plan (2018)

The National Water and Sanitation Master Plan (NW&SMP) developed by DWS is intended to guide the water sector with investment planning for the development of water resources and the delivery of water and sanitation services. It is a living document that identifies key actions in the water sector and allocates roles and responsibilities to all, from the various tiers of government, the private sector and other stakeholders, for the implementation of the plan. The Master Plan was intended to be refined through an Operation Phakisa methodology – a results-driven approach involving clear plans and targets, as well as ongoing monitoring of progress. The Operation Phakisa on Water and Sanitation was intended to see sector partners agree to concrete actions, budgets and timeframes necessary to implement the Master Plan and ensure a water secure future for the country, while also addressing the triple challenge confronting it – poverty, unemployment and inequality – but has not yet been initiated.

<sup>viii</sup> Note: In the August 2021 draft National Infrastructure Development Plan 2050 released by the Department of Public Works, provision is made for the establishment of an independent water regulator.





### 2.3. Institutional arrangements

The institutional arrangements across the state regarding the delivery of water and sanitation services to domestic consumer units are multiple and complex: different entities at national, provincial and local spheres of government have different responsibilities within the system, and this complexity is further complicated by overlapping and duplicating mandates within the various spheres of government for basic service delivery in local government (including water and sanitation).

Our interviews highlighted both a general perception that the institutional arrangements are (unnecessarily) complex, and a sense that many people operating in one part of the system had limited understanding of how other parts of the system worked (in particular, the details of the funding model and the affordability of services for households in poverty).

The institutional arrangements are directly linked to system outcomes, through several mechanisms:

- Siloed mandates mean the entire system is largely 'invisible' to many system participants. This makes it difficult for them to anticipate all the consequences of their decisions and/or to understand how their efforts at system improvements can be undermined.
- Complex arrangements mean many 'layers' between the bulk resource and the household, and this almost invariably adds to the costs that must be recovered from the end user.
- Oversight and accountability have proven difficult to achieve.

In this section, a brief overview of the current institutional arrangements is set out, focusing on the main roles and responsibilities that are relevant for the delivery of municipal services.

## National government

DWS is responsible for the overall planning and management of national water resources. DWS's 2020–2025 Strategic Plan indicates that agriculture is the largest user of water in South Africa (61% of total usage), followed by municipalities<sup>ix</sup> (27%), and with all others users making up the balance of 12%. The point here is that municipalities (and by extension households) only constitute one part of the DWS water resource management mandate.

Some of the interviewees expressed the opinion that DWS has not been providing the strong leadership (focused on getting the basics right) that the sector requires for the past ten years or so, because of high turnover in senior positions.

*"[DWS] haven't provided strong leadership – there have been so many DGs [Director-Generals] ... a lot of turnover in DGs and Ministers ... and now there is another new Minister."*

The National Norms and Standards highlight that DWS, as the regulator of water and sanitation services, is obliged to monitor water services institutions as specified in Section 62 of the Water Services Act. Water services institutions are bound to provide the necessary information required to conduct analyses on the quality of water services and performance. It is illegal for WSAs and WSPs to refuse, withhold or provide false information in terms of Section 82 of the Water Services Act. 'Participation in Blue Drop, Green Drop and No Drop assessments, and future assessments to be developed, is therefore mandatory.'

The Blue and Green Drop certification programme was introduced in 2008 as a form of incentive-based regulation. Blue Drop certification regards drinking water quality management and Green Drop certification regards wastewater quality management. Service providers are assessed using a standardised scorecard.

<sup>ix</sup> Including industrial and commercial users provided for through municipal systems.

The first Green and Blue Drop reports were issued in 2009, and every year thereafter until 2014, when the Minister of Water and Sanitation halted the publication of results.<sup>x</sup> Additionally, the No Drop programme (introduced in 2012) measures water use efficiency.

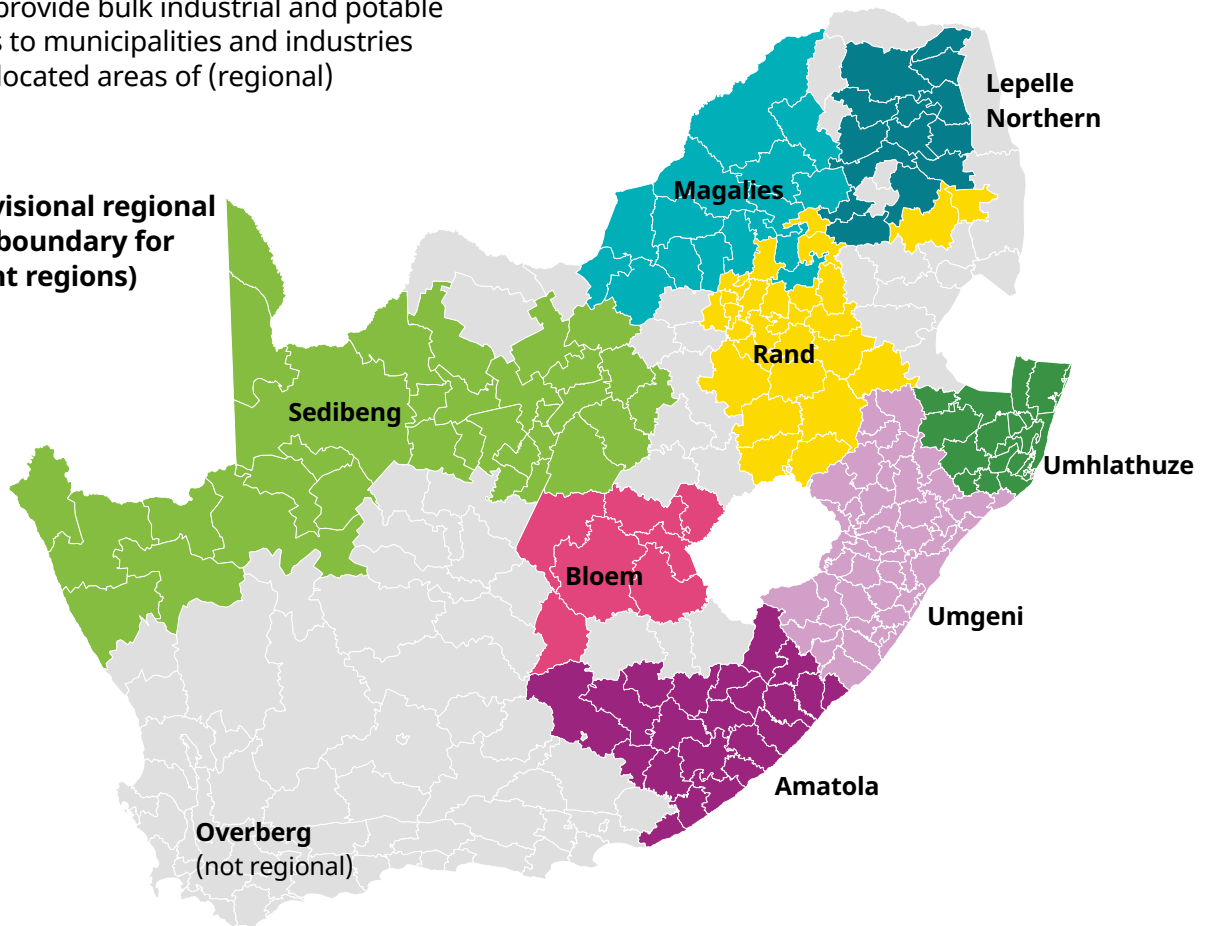
The national Water Trading Entity falls under the national department. It was established in 1983 with the mandate of the management of bulk water infrastructure and resources, and the sale of raw water (to water boards).<sup>xi</sup> In 2008, it was converted into a trading entity, in terms of the Public Finance Management Act.

The Water Services Act sets out the mandate for (state-owned) water boards, which are primarily mandated to provide bulk industrial and potable water services to municipalities and industries within their allocated areas of (regional) operation.

The water boards fall under the oversight of the national department. There are currently nine water boards:

- Amatola Water Board (Eastern Cape)
- Bloem Water (Free State)
- Lepelle Northern Water (Limpopo)
- Magalies Water (North West, Limpopo and Gauteng)
- Mhlathuze Water (KwaZulu Natal)
- Overberg Water (Western Cape)
- Rand Water (Gauteng, Mpumalanga and North West)
- Sedibeng Water (Free State, North West and Northern Cape)
- Umgeni Water (KwaZulu Natal)

**Figure 1: Provisional regional water board boundary for analysis (eight regions)**



- Western Region
- Southern Region
- Northern Region
- North Western Region
- North Eastern Region
- Eastern Central Region
- Central Region
- Eastern Region

<sup>x</sup> The general view in the water and sanitation sector is that the reports were halted in 2014 because of the local government elections scheduled for that year; that the ruling party did not want to publish poor scores for municipalities where it had the majority vote.

<sup>xi</sup> One interviewee noted that this is a National Water Resources Infrastructure Branch, and a Water Trading Account that deals with the revenue from, and expenditure related to, DWS infrastructure and functions, including the sale of water to water boards, municipalities and other water users.



In addition to responding to their core mandate, some water boards provide retail water and sanitation services on behalf of municipalities, as secondary activities.<sup>xii</sup>

Rand Water and Umgeni Water are the two largest water boards (particularly the former), and the remaining seven are relatively small. The issue of the lack of oversight of water board operational expenditure was also raised, as these costs are passed down to end users. (There is hope that an independent regulator will be in a better position to control this expenditure.)

The **Department of Cooperative Governance and Traditional Affairs** has the primary mandate for the oversight of local government in general, and operational areas in particular (financial oversight is a shared mandate with the National Treasury). CoGTA plays an important role in monitoring local government performance, providing support and capacity building, and identifying where operational problems are serious enough to warrant intervention.

The **South African Local Government Association** is a voluntary association of municipalities. Its role is to promote the interests of local government, and to contribute to building the capacity of municipalities.

The **National Treasury** has responsibility for the oversight of financial management and governance in local government, largely through the provisions of the Municipal Finance Management Act (MFMA) and its regulations.

The **Auditor-General of South Africa (AGSA)** is responsible for the auditing of financial and non-financial management in municipalities.

**Provincial government** has no dedicated direct water and sanitation function (or capacity) but plays an important role in other types of infrastructure development that have an impact on water and sanitation services, notably the housing (human settlement) development function, and exercises the discretion in terms of Section 139(1) interventions, which are applicable in instances of a failure to deliver basic services (see Chapter 4).

Additionally, provincial (along with national) government has a responsibility to support local government in the performance of all its functions, in terms of Section 154 of the Constitution.

At the **municipal level**, while metropolitan and district municipalities are, in practice, WSAs with the powers and functions for water and sanitation services, the Minister of CoGTA authorised local municipalities in the Free State, Gauteng, Mpumalanga, North West, Northern Cape and the Western Cape as WSAs.

Out of a total of 257 municipalities in South Africa, 146 are designated WSAs and therefore responsible for universal access to at least basic water and sanitation services, as defined by National Norms and Standards, in their areas of jurisdiction.<sup>25</sup> It must be emphasised that WSAs are responsible for planning and implementing massive infrastructure development projects and delivering new services to millions of additional households. **This represented a very different set of challenges than those faced before the political transition. In particular, the new structure of wall-to-wall municipalities with significantly increased powers and functions implied a considerably greater delivery burden.**

*“Pre-1994 [the water and sanitation delivery issue] was how to supply a relatively small group of users, how to keep a small, contained and well-managed system going.”*

Several interviews highlighted the belief that there are currently too many WSAs, and that if there were a smaller number of (better managed) WSAs this would result in improved economies of scale, corresponding improved financial resourcing, and a greater likelihood of all WSAs having sufficient technical capacity. Such a change would require an amendment to the legislation governing the allocation of local government functions.

*“We need a total overhaul of the water services authorities – many of which have huge institutional problems. They have no planning skills, no technical skills and no money.”*

<sup>xii</sup> See South African Government (no date). *Water and sanitation*. Available at: [www.gov.za/about-sa/water-affairs](http://www.gov.za/about-sa/water-affairs) (accessed 9 Nov 2021).



### Who is responsible for the oversight of water and sanitation delivery in municipalities?

The generally poor state of water and sanitation services in South Africa is discussed in more detail in the next chapter. But which institutions are responsible for ensuring WSAs actually deliver on their mandate and provide services that meet national development goals and Norms and Standards?



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▲ Handpump being used at the Ratanang informal settlement in Klerksdorp in the NorthWest province.

Unfortunately, this is a problematic area of overlapping and contested mandates. In terms of the IGR framework, local government is a separate sphere of government. Within this framework it is extremely difficult for the other spheres (national and provincial) to compel a municipality to do something in a particular way regarding its (the municipality's) delegated constitutional authority (which includes the provision of water and sanitation services).

Oversight of local government is a joint mandate between the National Treasury and CoGTA, but this relationship is not without its own territorial issues. As is discussed below, the funding model (specifically its appropriateness under current circumstances) is key to the ability of local government to deliver its mandate of universal affordable access to basic services to a certain standard. Funding and operations are therefore closely interconnected. But the general position is that the state of municipal finances falls under the mandate of the National Treasury, while the operations of local government (including the delivery of basic services) falls under the mandate of CoGTA. The question then is, who is responsible for an operational problem that arises out of a financial problem?

These IGR challenges are compounded by politics; it appears there is often an unwillingness to institute action against poorly performing municipalities when such intervention would undermine existing political networks.<sup>26</sup> There are several municipalities with consistently poor governance outcomes (such as disclaimer audit outcomes<sup>xiii</sup> over multi-year periods) or appalling service delivery outcomes (such as local residents not having access to a reliable water source for more than two years) where no action at all has been taken by either national or provincial government.

Section 139(1) interventions<sup>xiv</sup> are possible in a municipality that is failing to deliver basic services, but these interventions can only be instigated and managed by a province, and they are discretionary interventions, in that it is entirely at the discretion of the province whether to intervene.

<sup>xiii</sup> A disclaimer opinion is given when the auditor cannot find sufficient evidence to give any opinion of the accuracy of the financial statements.

<sup>xiv</sup> In terms of Section 139 of the Constitution.

The implication of all this appears to be that there is little real authority that DWS can exercise over poorly performing WSAs and that the S 139 framework is of little use for the department. This issue was highlighted in several of our interviews:

*“Even though the national Minister supposedly is responsible for water [services], they actually have no power in respect of interventions in respect of water and sanitation.”*

*“How do you enforce things? No point in making [municipalities] pay a fine.<sup>xv</sup> So what does regulation mean in this situation?”*

**This perception of the powerless national department is not true; in reality, DWS has access to an effective intervention structure to deal with poorly performing WSAs that it could make use of. Section 63 of the Water Services Act provides exactly such a remedy:**

63. (1) If a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development, request the relevant Province to intervene in terms of section 139 of the Constitution.

(2) If, within a reasonable time after the request, the Province—

- (a) has unjustifiably failed to intervene; or
- (b) has intervened but has failed to do so effectively,

the Minister may assume responsibility for that function to the extent necessary—

- to maintain essential national standards;
- to meet established minimum standards for providing services; or
- to prevent that Province from taking unreasonable action that is prejudicial to the interests of another province or the country as a whole.



▲ Communal toilets in Langa in Cape Town, Western Cape province.

**The implication is that DWS has at its disposal an extremely powerful tool to ensure all WSAs deliver minimum services, through the ability to force an S 139 intervention and to exercise oversight over that intervention (in that it can intervene itself if the province is not doing so ‘effectively’). Many of the people interviewed highlighted as a serious system problem that there are no consequences for poor outcomes in water and sanitation services.**

It is not clear why Section 63 of the Water Act has not been used to much greater effect. In part, this could be because of the general failures of the Section 139 intervention framework, which have blurred lines of responsibility and created confusion over how interventions are supposed to proceed. Another possible reason is that there is a general unawareness of this provision of the Act and how it relates directly to Section 139 of the Constitution. Certainly our interviews for this research suggested that there is little awareness, and during the Public Affairs Research Institute (PARI)’s own extensive research into Section 139 interventions in 2017 and 2018, Section 63 of the Water Act was never mentioned by any of the long list of government officials we interviewed.

<sup>xv</sup> On the basis that this would simply be recouped by the municipality from residents through rates and taxes and other service charges.



## 2.4. Civil society

*'In the English-speaking world and beyond, South Africa is habitually held up as the poster child of socio-economic rights. The Constitution and subsequent legislation contain a panoply of justiciable socio-economic rights; court jurisprudence has offered supportive and intellectually robust interpretations; and post-apartheid social mobilisation has been fused with rights-based discourse and head-line grabbing victories.'*

Langford M, Cousins B, Dugard J et al<sup>27</sup>

The anti-apartheid movement provides a clear example of civic action. The United Democratic Front and other liberation movements organised and sustained, over decades and in the face of organised state oppression, brutality, detention without trial, torture and assassination squads, the necessary local and international pressure to end apartheid in 1994. The nature of civic action in South Africa has shifted from one of opposition during the apartheid era, to a collaborative focus on legal reform and government-led 'reconstruction' during the first decade of democracy, to invited and invented forms of engagement and participation and both formal and informal rights-based strategies over the last two decades, as the fault lines described in this report have become more pronounced.

South Africa's legal framework and democratic structures make clear provision for meaningful engagement with users and CSOs and ensure the rights to freedom of expression, just administrative actions, an accountable civil service, access to information, and an independent media. Accountability and engagement channels are in place at all levels. Outside formal urban areas with utilities, local government ward councillors are a first point of engagement. Other local government engagement channels include Integrated Development Plan (IDP) and WSDP processes, elections, budget monitoring, social audits, petitions, reporting corruption, or reporting municipal misconduct to the Public Protector.



## 2.5. Funding model

The funding model for water and sanitation services is a key part of the system; sufficient funding flows are necessary to finance the capital infrastructure needed to address historical delivery backlogs, as well as to ensure the operational costs of the system (including the critical component of infrastructure maintenance) are adequately provided for.

There is little doubt that there is a serious financial crisis in the water and sanitation sector as a whole, and that a key (although not the only) driver of this crisis is the general failure of the municipal funding model to deliver to expectations. In a presentation to the standing parliamentary committee on 1 June 2021, DWS presented the following picture:<sup>28</sup>

*'The Committee was warned of a looming crisis: financial vulnerability of water services (including bulk) is such that if immediate action was not taken, we face the risk of not being able to ensure access to water in certain water board areas... we are under severe stress, with an operating deficit in the sector as a whole which requires urgent attention. The Water Trading Entity was owed R14.7 billion (just over \$1 billion) as at 30 April 2021 by water boards.'*

*'As at 31 March 2021, municipalities owed water boards over R12.6 billion (\$869 million) for bulk water purchased but not paid for. Four water boards are facing a financial crisis (Amatole Water, Bloem Water, Lepelle Northern Water, and Sedibeng Water). These water boards need urgent financial support to keep afloat between March and June 2021 for operations, maintenance and payment of salaries.'*

Additionally, the poor financial position of many municipalities is contributing to the water and sanitation infrastructure maintenance backlog<sup>xvi</sup> (currently estimated at around R200 billion – \$13.8 billion) which in turn is undermining service delivery.

<sup>xvi</sup> This maintenance is meant to be funded out of municipal revenue.

A critical question is therefore – What has gone wrong with the municipal funding model that we have arrived in this situation? There are two (high-level) possible answers to this question. The first is that the funding model is fundamentally flawed (i.e. it was never going to be able to deliver the required resources). The second is that the model itself is sound, but that the way in which it has been implemented (or not implemented) is the root cause of the current problems.

Many municipalities insist the problem is the first – that there is not enough money in the system to cover actual expenses. The National Treasury is clear that the underlying problem is the second one.

This section examines the structure of the funding model, and the assumptions that underpin it. The next chapter discusses how this funding model has developed in practice over the past 20 years. The funding model in question is that of local government as a whole, since water and sanitation services in South Africa are not generally delivered by ring-fenced agencies with discrete budgets (although there are exceptions in the large metros). Instead, a portion of services income is intended to fund the total local government operating expenditure budget.

The four main components of the ideal funding model for local government (and therefore the municipal water and sanitation system) in South Africa are:

- 1 cost recovery for operational expenses through service charges
- 2 affordable universal access
- 3 subsidisation of FBS for indigent households
- 4 conditional grants for capital investment (in addition to small amounts of own funding in larger municipalities)

Each component is discussed in more detail below.

## 1

### Cost recovery for operational expenses through service charges

The **cost-recovery model** is central to the municipal water and sanitation system funding model, and based on the assumption that all parts of the system's operating expenses, including payments to bulk suppliers, infrastructure maintenance, and all the non-capital expenditure costs associated with maintaining the system and delivering services to regulated standards, can be recovered from a combination of service charges and subsidies from the national budget, including for the provision of FBW and FBSan.

The Local Government Fiscal Framework (LGFF) is the framework that should ensure all of local government's service delivery obligations are adequately funded. It is therefore 'the aggregate revenue arrangement or funding framework of local government relative to the aggregate expenditure mandates and responsibilities of the sphere. In essence, the LGFF is the funding arrangement required to ensure that local government and individual municipalities are financed sufficiently to fulfil their constitutional mandates so that adequate services are rendered to communities.'<sup>29</sup>

The 1998 White Paper on Local Government envisaged a radically new form of local government for South Africa, delivering a much wider range of goods and services to far more people, in a very different way than in the past. No longer would municipalities be responsible only for the delivery of a limited number of basic services to a small group of people. Instead, they would be central to delivering the long-term developmental mandate of the post-apartheid state. In particular, the new municipalities would have most of the responsibility for addressing the country's huge basic infrastructure and services backlog and delivering universal access to services.

For these ambitious goals to be achieved, a just-as-radical new fiscal framework was required, to ensure all municipalities had access to sufficient resources to discharge their mandates.

A key foundational component of the White Paper’s municipal funding model was that **own revenue** would make up a significant portion of local government’s funding requirements. This assumption was reflected in this key statement:

*‘Municipalities do generally have sufficient revenue-raising powers to fund most of their expenditure... On average they finance 90% of their recurrent expenditure [operational or running costs] out of their own revenue, and in particular from property rates and user charges [for services].’*

The White Paper proceeded on the assumption that the main sources of own revenue for the new local government structure would be property rates (a tax levied based on estimated property value) and service charges (electricity, water, sanitation and refuse removal).

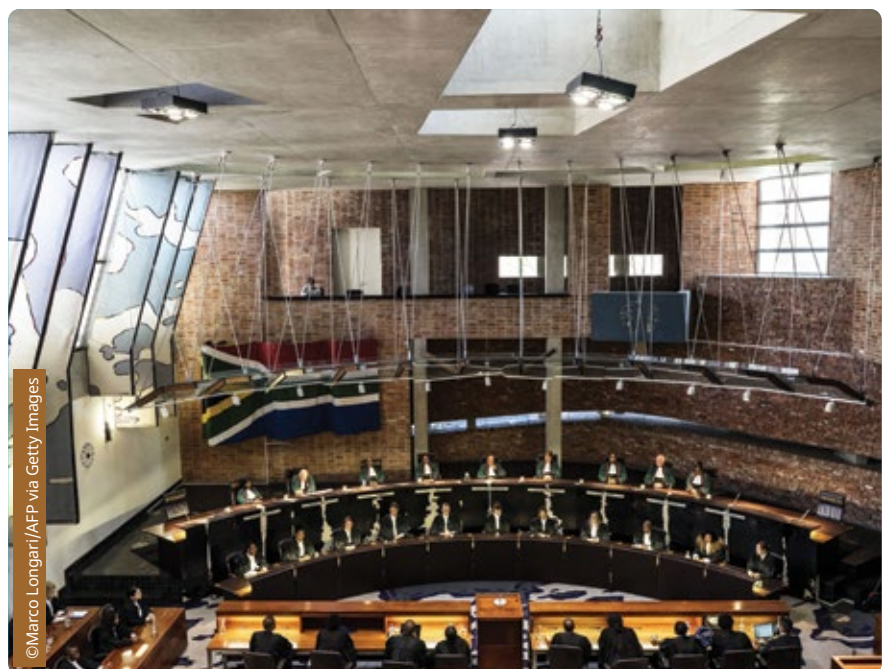
It was assumed that these items would be able to make up just over 81% of total own revenue (with the balance – 19% – coming from items such as rentals and other charges). That, in turn, implied that income from property rates and service charges would be sufficient to finance 73% of all local government operating expenditure requirements (i.e. 81% of 90%), as summarised in Table 1.

**Table 1: White Paper assumptions of the contribution of various income sources to own revenue and operating expenditure\* (1998)**

Income source	Assumed contribution to own revenue (%)	Assumed contribution to operating expenditure (%)
Property rates and taxes	19.9	17.91
Electricity sales	41.4	37.26
Water	11.8	10.62
Sewerage and refuse removal	8.2	7.38

\* Based in turn on the assumption that own revenue would make up 90% of total operating expenditure.

These White Paper calculations were carried through into the design of the current national fiscal framework, and it is the assumption of local government’s ability to raise its own revenue that underpins the current annual division of revenue allocations.



The Constitutional Court of South Africa in a sitting. ▶



## 2

## Affordable universal access

At the same time, the 1998 White Paper on Local Government emphasises the need to ensure basic services are ‘affordable’ in order to achieve the goal of universal access. When services are unaffordable to poorer households, the value of the social wage is eroded, as is its role as a redistributive mechanism. Each municipality therefore has a responsibility to ensure tariffs are set at affordable levels.

*‘All municipalities ... [must] provide a basic level of services to low-income households in their areas of jurisdiction at an affordable cost.’*

*‘Accessibility is closely linked to affordability. Even when service infrastructure is in place, services will remain beyond the reach of many unless they are financially affordable.’*

*‘The dominant principle underlying this new [local government fiscal] system will be equity – it should enable all municipalities to provide a basic level of services to low-income households in their areas of jurisdiction at affordable cost.’*

The White Paper also advocated ‘affordable’ services in the interests of ensuring municipalities would actually get paid for those services; that is, affordability was seen as key to effective revenue collection.

**The main point here is that in the White Paper there was no perceived conflict between these two goals – services priced at a level that all households could afford, and services priced at a level that would ensure sufficient income for local government; that is, the assumption was that there was a point of convergence in tariff setting at which both goals could be met.**

Women collecting water from a storage tank at the Lawley informal settlement near Johannesburg in the Gauteng province. ►

*‘Financial sustainability requires that municipalities ensure that their budgets are balanced [income should cover expenditure]. Given revenue constraints, this involves ensuring that services are provided at levels which are affordable, and that municipalities are able to recover the costs of service delivery.’*

*‘Municipalities can ensure affordability through ... setting tariffs which balance the economic viability of continued service provision and the ability of the poor to access services.’*

Importantly, however, nowhere in the White Paper (or subsequent regulation) is ‘affordability’ clearly defined so that it is clear at what level services are in fact affordable or unaffordable. There is therefore no regulatory benchmark against which affordability can be objectively assessed. The White Paper also emphasised that households that are ‘unable to pay even a portion of service costs’ should still have access to basic services, and that some form of subsidy mechanism was necessary to ensure this outcome. But, once again, there is no definition of what exactly qualifies a household as ‘unable to pay’.

This is a critical omission, not least because the White Paper stated ‘national government has an obligation to intervene on behalf of communities where municipalities, through inefficiency or a lack of commitment to delivery and development goals, fail to provide affordable services’. Such an obligation is rendered null and void if there is no clear benchmark to assess ‘affordable’.



## 3

## Subsidisation of FBS for indigent households

The concrete policies that have been implemented in response to the White Paper goal of affordable services are the various FBS – electricity, water, sanitation and solid waste removal. These policies aim to provide a limited amount of each service to qualifying indigent households – 50kWh of electricity per month, 6kl of water per month<sup>xvii</sup> (together with communal access points where households do not have individual water connections), and a range of basic sanitation options (with the details to be determined by each municipality, based on their circumstances).

There is general agreement outside of the state<sup>30</sup> that the amounts of (particularly) free electricity and free water are inadequate to meet the needs of most households. Research suggests that the minimum basic requirement for households is approximately twice as much water (10kl) as the current allowance. The FBS therefore represent only a portion of households' actual needs, but will still have an impact (although limited) on access to services and household disposable income available for other expenditure.

Local government is the gatekeeper of the FBS programme and local municipalities are the final arbiter of who can access these and who cannot. Even where the underlying FBS policy has been developed and is 'owned' by a national department (such as DWS) the responsibility for implementing the policy and delivering the service is allocated to local government.

The indigent registration process is central to access, and a household that is not registered by a municipality cannot obtain any free service (apart from a communal tap), no matter how poor they actually are. Each municipality has the

<sup>xvii</sup> The policy makes provision for 25l of water per person per day, which translates to 6kl per month for a household of eight people. However, municipalities do not calculate a different allocation for each household based on the number of members, and the general practice is to allocate 6kl per month (occasionally more) to all qualifying households.

responsibility (and sole discretion) to determine its indigent policy, which most municipalities have interpreted to mean qualifying criteria for indigent registration. Although national policies make suggestions in this regard, the final decision lies with a municipality, and there are significant variations in qualifying criteria and registration processes. The effective result is that the ability of a household to actually access FBS is determined to a significant degree by where they live.

According to SERI,<sup>31</sup> most municipalities require the following minimum documentation as part of an application to be declared an indigent household:

- application form signed by the ward councillor
- copy of the applicant's ID document
- proof of residence or ownership of property
- latest municipal account
- proof of income or unemployment
- proof of any social grants received

Many municipalities require additional documentation, such as a report from a social worker confirming that the household is poor, but provide no assistance to households to obtain such documentation.<sup>46</sup>

There is no appeal process for households that believe they have been unfairly deprived of access to any of the FBS.

Municipalities are not required to fund the FBS out of their own revenue, unless they decide to fund a higher level of services<sup>xviii</sup> or provide free services to non-indigent households. There is an annual allocation in the national budget to each municipality in respect of these services, which forms part of the local government discretionary equitable share allocation.

<sup>xviii</sup> A few municipalities provide free basic electricity in excess of the 50kWh and a small number also provide more than 6kl of free water.

Each year, the number of qualifying households in each municipality is estimated by the National Treasury (with input from Statistics South Africa (Stats SA)) using adjusted household income data from the 2011 census and the 2016 Community Survey. The amount of the subsidy per household is calculated using an estimated average cost of providing each service, and contains both an operations and a maintenance component.

That amount is multiplied by the number of estimated qualifying households in each municipality<sup>xix</sup> to obtain the equitable share transfer amount.

For the 2020/21 budget, the funding allocations (Rands per service, per household, per month and in total for each service) are as set out in Table 2. The allocation was intended to fund 10.36 million households in that year, at a total cost of R54.1 billion.

**Table 2: Amounts per basic service allocated through the local government equitable share, 2020/21**

Service	Allocation per household (R/month)			Total for the fiscal year
	Operations	Maintenance	Total	(R billions)
Energy	84.30	9.37	93.66	11.645
Water	130.38	14.49	144.86	18.011
Sanitation	96.21	10.69	106.90	13.290
Refuse removal	80.65	8.96	89.61	11.141
<b>Total basic services</b>	<b>391.53</b>	<b>43.50</b>	<b>435.04</b>	<b>54.087</b>

Source: Annexure W1 – Budget Review 2020 (p39)

Note: Amounts may not add up due to rounding.

Each year, the number of households funded for FBS in the national budget has **increased**, from 8.7 million in the 2014/15 financial year to 10.36 million in 2020/21.

It is important to note that the transfer of funds to municipalities in respect of the funding of FBS is **not a conditional transfer**. Instead, it is part of the discretionary equitable share. This means a municipality is perfectly able (within the law) to provide fewer households with these services than it has received funding for. **If a municipality provides fewer households with the FBS benefit (compared with how many are funded in the national budget), the balance of the money allocated to that municipality for FBS goes into general revenue, and can be spent as the municipality wishes, because it is a discretionary allocation.**



▲ Communal handpump at the Ratanang informal settlement in the North West province.

<sup>xix</sup> The detailed data per municipality is available in the equitable share summary data on the MFMA web pages: [http://mfma.treasury.gov.za/Media\\_Releases/LGESDiscussions/Pages/default.aspx](http://mfma.treasury.gov.za/Media_Releases/LGESDiscussions/Pages/default.aspx).

4

### Conditional grants for capital investment

One of the main challenges that the new (post-apartheid) government had to address was the enormous gap in basic service infrastructure in former Bantustans and black urban township areas (the ‘service delivery backlog’). Apart from Eskom’s township electrification drive in the 1980s and 1990s, there had been very little investment in basic service infrastructure in these areas by the apartheid government. A massive infrastructure expenditure programme was therefore envisaged to meet the goal of universal access to basic services. This programme would be implemented mostly by local government (with national focusing on investment in bulk infrastructure).

But most local municipalities did not have sufficient own revenue to fund this expenditure, and so provision was made for transfers from national.

These are in the form of **conditional grants**; that is, there are strict conditions in respect of the purpose for which such funds can be used. Conditional grants are used by national government when it believes that it is imperative the funds are not used for other purposes.

In the 2019/20 adjusted national budget, total direct conditional grant allocations to local government were just over R45 billion (or just slightly more than 10% of aggregate local government operating expenditure). Of this, R43.17 billion was for infrastructure investment. Another R6.9 billion was undertaken in indirect transfers. The components of these transfers and corresponding values for the 2019/20 national fiscal year are as set out in Table 3.

**Table 3: Conditional direct and indirect transfers to local government for infrastructure (2019/20)**



	R millions
Direct transfers	<b>43,172</b>
Municipal infrastructure grant (MIG)	14,816
Integrated urban development	857
Urban settlements development	12,045
Integrated city development	310
Public transport network	6,468
Neighbourhood development	602
Integrated national electrification programme	1,863
Rural roads asset management	114
Regional bulk infrastructure	2,066
Water service infrastructure	3,699
Municipal disaster recovery	133
Energy efficiency and demand-side management	227
Indirect transfers	6,913
Integrated national electrification programme	3,124
Neighbourhood development partnership	28
Water service infrastructure	644
Regional bulk infrastructure	3,094



▲ A water delivery truck in the Mpumalanga province.

There is no detailed breakdown of exactly how much of these transfers are allocated specifically to water and sanitation infrastructure. Apart from the dedicated sectoral grants in this respect, the MIG is intended to be used to address all basic services delivery backlogs. The urban settlements grant includes a component for informal settlements upgrading. There are also specific grants intended to facilitate a particular kind of urban spatial development, which may not include water and sanitation. However, it is likely that a significant part of the MIG is spent on water and sanitation (as key basic service areas) in addition to the dedicated water and sanitation infrastructure grants and components of other grants.

It should be noted that there are strict conditions attached to the conditional infrastructure development grants, one of which is that **as a general rule funds may not be allocated towards the maintenance of existing infrastructure, but only towards the development of new or upgrading infrastructure.** Some exceptions are permitted under particular circumstances (such as when a directive has been issued to a municipality or in emergency situations) but these are the exceptions and not the rule. As our interviews highlighted:

*“Since 1994 the focus was on serving the unserved. We haven’t shifted quickly enough away from building a whole lot more infrastructure to maintaining it. The [structure of the] capital grants is not keeping pace with the shift that needs to happen [from new infrastructure development to maintenance of existing infrastructure].”*

**The main reasons for under-spending are poor project planning, implementation and oversight.**

In general, and in aggregate across all of local government, there is **underspending of these conditional grants.** There are enormous variations, of course, with some municipalities consistently achieving full expenditure, while others have a dismal track record in this respect. The main reasons for under-spending are poor project planning, implementation and oversight. If these factors improved there is little doubt that underspending would be reduced.

However, **under current circumstances the amount of funding allocated to new infrastructure development appears adequate for existing plans.** The main funding gap is in respect of infrastructure maintenance, which must be funded by municipalities out of their own revenue.

It must be pointed out that expenditure on new infrastructure development does not necessarily result in delivery of services to Norms and Standards (or at all). The AGSA has highlighted several examples where water and/or sanitation infrastructure projects have been completed (and contractors have been paid), but the beneficiary communities have still not received access to the services.<sup>32</sup> These outcomes are also indicative of poor infrastructure planning and implementation (as well as corruption).

# 03

## The current state of water and sanitation services



©Morgan Trumble/Alamy Stock Photo

Inadequate infrastructure at the Imizamo Yethu informal settlement in Hout Bay, Cape Town, Western Cape province. ▶

This chapter presents an overview of the current state of municipal water and sanitation services, including issues of effective access to services, and linkages between poverty and such access.

#### The chapter focuses on:

- physical access to and quality of services
- quality of municipal water and sanitation infrastructure (which is both linked to the quality of services and indicates the vulnerability of the system and its ability to deliver in the future)
- affordability of services (including the delivery of free water and sanitation), which is an important part of effective access
- financial viability of the system (an indicator of serious structural problems and system vulnerability)



### 3.1. Physical access to and quality of services

DWS has stated that, despite achievements over the past 25 years, more than 3 million people are estimated to not have access to a safe and reliable water supply and an estimated 14.1 million do not have access to safe sanitation. 'In addition, the reliability of services to the country's households has declined to an estimated 57% as a result of inter alia aging infrastructure and poor operations and maintenance.'<sup>1</sup>

What are the details of access to services? What kinds of services are different households able to access, and what is the quality of those services?

Census data contains the most reliable data (as reported by households themselves in very large numbers), but the most recent census data is for 2011. In this report, three data sets are used to provide answers to questions of access:

- i. Stats SA's 2017 *The state of basic service delivery in South Africa: in-depth analysis of the Community Survey 2016 data*
- ii. The non-financial census of municipalities (most recent data is for 2019)

- iii. The General Household Survey (GHS), for which the most recent data is also for 2019<sup>xx</sup>

These data sets use different approaches to data collection:

- Statistical release P9115 (non-financial census of municipalities) consolidates self-reported service delivery data from municipalities, and has a 100% response rate from municipalities. The unit of measure for service delivery is the 'domestic consumer unit'. This is not strictly comparable with households, since it is the delivery point for water and sanitation, which may include a dwelling in which multiple households live or a shared communal facility.
- The GHS represents data from the household point of view, but uses a sampling methodology that implies a certain amount of data error.
- The Community Survey is a large-scale survey designed to fill data gaps between the censuses (which take place every ten years). Across all municipalities, 1.3 million households were covered.



**What can be concluded from these data sources about the current level of and trends in access to water and sanitation?**

Firstly, in respect of the data in P9115, the number of domestic consumer units to whom water services (13.36 million) and sanitation services (12.1 million) are delivered is significantly less than the estimated number of households (17.2 million). The difference is explained by both a lack of services, and multiple households that share service access points (although it is impossible to calculate the split accurately). This latter issue is a potentially very important factor (particularly in urban areas), since multiple household use of a particular access point may not be factored into infrastructure development plans, resulting in strain on that infrastructure at some future point. In fact, some of our interviews highlighted that infrastructure planning is generally **not** taking the common reality of multiple household users at designated single dwelling sites sufficiently into account.

<sup>xx</sup> Many statistical releases have been delayed by Covid-19 restrictions.



*“There is a strong trend for existing low-income settlements to densify, but [water and sanitation] systems design is critically influenced by [often incorrect] assumptions about how many people will be living there. This is how they decide how many pipes, what kinds of pipes... and then things go wrong because the assumptions were wrong... How do we build infrastructure that factors in the [actual] ways in which cities grow and change?”*

The second point to note is that the number of consumer units receiving water services increased by 19.5% over the period 2010 to 2019, while the number of consumer units receiving sanitation services increased by 23.7%. Over the same period, the number of households increased by 27%.

The implication is both that a higher percentage of households do not have access to services compared with 2010 and that there is likely more pressure on existing service points because of multiple household use, pressure which is apparently not taken into sufficient account in existing infrastructure planning models.

*“Gauteng gets 350,000 additional people per year. Most people go to informal settlements. The Gauteng system doesn’t take into account urbanisation. As settlements upgrade, the demand goes up.”*

Tables 4 and 5 summarise the various kinds of water and sanitation services supplied to domestic consumer units, as reported by local government, in aggregate, in 2019.

**Table 4: Type of water services delivered to domestic consumer units (2019)**

Type of water services	Number of domestic consumer units	% of total
Inside yard	9,686,478	72.5%
Less than 200m from yard	2,865,733	21.4%
More than 200m from yard	764,167	5.7%

Source: Statistical Release P9115 (2021)

**Table 5: Type of sanitation services delivered to domestic consumer units (2019)**

Type of sanitation services	Number of domestic consumer units	% of total
Flush toilets (sewerage system)	7,254,464	60.1%
Flush toilets (septic tank)	395,846	3.3%
Bucket system	42,434	0.4%
VIP latrines	3,276,982	27.2%
Other	1,089,552	9.0%

Source: Statistical Release P9115 (2021)





Another version of access is that presented by the household point of view in the GHS, although this uses a sample methodology. The main points from the 2019 GHS in terms of access to water and sanitation services are:

- The percentage of households with access to an improved source of water increased by fewer than four percentage points between 2002 and 2019 (84.4% to 88.2%). The greatest increases were in the Eastern Cape (+17.8 percentage points) and KwaZulu-Natal (+10.0 percentage points).
- However, the percentage of households with access to water actually **declined** in five provinces between 2002 and 2019. The largest decline was observed in Mpumalanga (-5.3 percentage points), Limpopo (-3.8 percentage points) and Free State (-3.7 percentage points).
- These percentage declines, however, do not show the fact that more households had access to piped water in 2019 than 18 years earlier.
- While the number of households with access to water in the dwelling increased by 70.5% (3.2 million households) between 2002 and 2019, growing from 4.5 million to 7.7 million, the percentage of households with access to water in the dwelling only increased by 4.5 percentage points over the same period.
- The percentage of households with access to improved sanitation increased by 20.4 percentage points between 2002 and 2019 (61.7% to 82.1%). The greatest increases were recorded in the Eastern Cape, where the percentage of households with access to improved sanitation increased by 54.1 percentage points to 87.6%, and Limpopo in which access increased by 36.5 percentage points to 63.4%. The installation of pit toilets with ventilation pipes played an important part in achieving the large improvements.

Fewer than 50% of households have piped water inside their dwelling as their main source of drinking water. Table 6 sets out the main sources of drinking water for households.

**Table 6: Main water source for drinking use by households (%) (2002–2019)**

	2002	2010	2019
Piped water in dwelling	40.4	42.8	44.9
Piped water on site/ yard	27.7	29.1	28.5
Communal tap	13.6	15.5	12.2
Neighbour's tap	0.6	2.5	2.5
Borehole on site	2.7	1.1	2.2
Borehole outside yard	5.9	3.2	1.4
Water vendor	2.8	1.3	1.7
Water tanker	0.6	1.4	1.7
On-site rainwater tank	1.3	0.3	1.4
Flowing river/stream	0.7	0.3	1.6
Other	3.7	2.5	1.9



Source: GHS 2019

According to the GHS, 3.1% of households (more than 500,000 households) still had to fetch water from rivers, streams, stagnant water pools, dams, wells and springs in 2019. Stats SA 2017<sup>4</sup> highlights the regional concentration of these households, reporting that **almost a fifth (19%) of households in rural B4 municipalities relied on streams, rivers and open water to access drinking water.**

Approximately 300,000 households (1.7%) are accessing drinking water from a water vendor (and incurring a cost for doing so), and 12.2% of households (2 million) access their drinking water from a communal tap.

In terms of access to different kinds of sanitation, Table 7 sets out the percentage of households with access to the various kinds of toilet facility.

**Table 7: Percentage of households by toilet facility (South Africa) (2019)**

Type of facility	% of households
 Flush toilet connected to sewerage system	59.9
Pit latrine with ventilation pipe	17.9
Pit latrine without ventilation pipe	14.3
 Flush toilet connected to septic tank	3.8
None	1.3
Bucket system	1.1
Other	1.7

Source: GHS 2019

There has been a significant increase in the percentage of households that have access to improved sanitation, from 61.7% in 2002 to 82.1% in 2019. (This implies, however, that 3 million households do not have access to improved sanitation.)

According to the GHS, in 2019 2.4% of households were either using a bucket system or had no access to sanitation. This represents a significant decline from the 12.6% of households reported in 2002, but still implies that 400,000 households fall into this category. **The 2016 Community Survey found that 5.9% of households in rural B4 municipalities (1 in every 17 households) had no access to sanitation.**

There are enormous differences in the different data sources (those reported by municipalities and those reported by households) in respect of the **prevalence of the bucket system** (the eradication of which has been a national priority and represents the only clear directive to municipalities in respect of the details of sanitation services to be provided).

Whereas municipalities reported that a total of 80,119 consumer units were provided with buckets, 377,231<sup>xxi</sup> households reported in the 2016 Community Survey that they used bucket toilets as their main source of sanitation. In addition, the **use of bucket toilets was reported in all provinces, including those that reportedly eradicated its use.**

These considerable differences in bucket system data underscore one of the issues highlighted in interviews – that many municipalities in fact have little idea of the actual service delivery situation in their area, a gap that presents a serious barrier to effective planning:

*“There is a general problem with a lack of credible [municipal] basic data, so [DWS] don’t actually know what is going on.”*

This macro survey sanitation data hides considerable provincial differences: access to a flush toilet ranges from 18.6% of households in Limpopo to 92.2% in the Western Cape. In Mpumalanga and Limpopo, more than a third of households are using unventilated pit latrines, compared with fewer than 1% in the Western Cape.

<sup>xxi</sup> A very similar amount to that reported in the 2019 General Household Survey.

Additionally, access to improved sanitation is higher in the metros (90% of households on an aggregate basis).

Stats SA (2017) indicated a range of the percentage of households with access to improved sanitation by municipality that varied from 16.1% to 98.7%.

**These differences further underscore that access to sanitation services is influenced to an enormous degree by where a household lives; despite National Norms and Standards, the decentralisation of infrastructure development, maintenance and the delivery of services effectively means access is determined by the capability (or lack thereof) of a particular municipality.**

What can be said about the **quality of water and sanitation services**? The first point to make is that the municipal Blue and Green Drop certification scheme, which was a key tool in objective assessment of service quality in different municipalities, was discontinued in 2014. The lack of a comprehensive objective benchmark makes it difficult to assess quality and differentiations among different locations. The Covid-19 pandemic has thrown many of these issues into sharp relief, because of the health implications for both households and healthcare facilities of not having access to quality water services. It appears that in aggregate the quality of services is declining, but once again there are enormous regional differences. In some extreme examples (such as Maluti-a-Phofung municipality in the Free State) some areas have been without water for years. Similar situations are seen in some places in the North West province.

The GHS records households' experience of 'water interruptions', which are defined to mean either a single interruption that lasts more than 2 days or more than 15 days of total interruptions over the 12-month period prior to the survey. The indicator is therefore a measure of relatively serious water interruptions. GHS 2019 indicated that, nationally, 25.8% of households (one in four) had experienced such interruptions. Once again, this aggregate data hides significant regional differences; only 12% of households in metros experienced such disruptions, while more than half (56.6%) of households in Limpopo experienced them.

The 2017 Stats SA report *The state of basic service delivery in South Africa: in-depth analysis of the*

*Community Survey 2016 data* presents information regarding community satisfaction with the delivery of services. The report also found that around one in four households experienced water interruptions in the prior three months, and also that there were enormous differences at the municipal level in the incidence of such disruptions, ranging from 1.6% of households to 85% of households. Interestingly, the study also indicated significant differences among metros, from 7.4% (Cape Town) to 20% (eThekweni). The study also found that the highest levels of interruption were found in Limpopo and in B4<sup>xxii</sup> category municipalities.

**In category B4 municipalities, 31% of households experienced water interruptions lasting 14 days or longer in the three months prior to the survey date.**

The aggregate data hides the significant outliers; in a relatively small number of municipalities (Maluti-a-Phofung is currently the worst offender) communities have been without a reliable source of water for more than a year, despite the infrastructure being in place to provide a service.

Local access to water is also often directly affected by periodic droughts, which are a part of normal weather patterns in almost every part of the country. This affects not only rural areas, but also larger urban areas, such as Nelson Mandela Bay. However, the effects of periodic drought are certainly amplified by poor planning (since such drought periods are not completely unexpected events), poor infrastructure maintenance (which results in significant losses of water), and corruption in infrastructure development.<sup>33</sup>

The 2016 Community Survey investigated household perceptions of water services, focusing on households that received piped water from municipalities. In total, 59% of households reported being satisfied with the municipal water service, but once again there were enormous differences related to household location. Satisfaction ranged from 9.9% to 86.7%. In 23 municipalities, fewer than 25% of households rated the service as 'good'. Municipalities where households more often reported services as 'poor' were most likely to be in the Eastern Cape, KwaZulu Natal and Limpopo. (The Eastern Cape is interesting to note because it is the province that recorded the greatest improvement in physical access to water services from 2002 to

<sup>xxii</sup> Mostly small rural municipalities.

2019. The implication is that increased access is not always accompanied by a high quality of service.)

Once again, there is an urban bias in the data: 70.4% of households in metros rated their water services as 'good', compared with only 35.3% of households in rural B4 municipalities. This emphasises **the finding that households in rural municipalities generally experience poor levels of water services**. The Stats SA 2017 study does not differentiate among different types of settlements within municipalities, but other research (such as Mutyambizi et al, 2010)<sup>34</sup> suggests that the residents of informal urban settlements generally have access to poor quality water (and sanitation) services.

In terms of household satisfaction with sanitation services, the survey found that, in aggregate, 60.7% of households rated the service as 'good', 22.9% rated it as 'average' and 16.5% rated it as 'poor'. The highest 'poor' ratings were recorded in B4 municipalities (23.9%). In terms of provincial spreads, only the Western Cape recorded a 'poor' rating among fewer than 10% of households.

Although the perceptions of water services are not disaggregated by household income, Stats SA has concluded that poor households with inadequate access to services are most likely to be dissatisfied with those services. That is, the conclusion can be drawn that **most households dissatisfied with services are poor households**.

Finally, it should be noted that the Community Survey 2016 found that 75% of households in South Africa did not believe municipalities were actively addressing the issues they felt were most important for households in their respective municipalities. **In all categories of municipalities – except for metros<sup>xxiii</sup> – the single most important issue that households had with their municipality was 'lack of safe and reliable water supply'**. In rural B4 municipalities, 43% of households stated that this was their most important issue with their municipality.

In summary, there is a significant gap between the delivery of water and sanitation services envisaged in the various policy documents and legislation (including the Constitution) and what communities are

actually receiving. It is a fairly similar story with other services, such as electricity and housing. In response, South Africa sees regular 'service delivery' protests by disgruntled communities. South Africa has one of the highest levels of social protest in the world, and the number of protests has increased steadily<sup>35</sup> (bearing in mind that Covid-19 restrictions on gatherings probably effectively reduced such activity in 2020).

However, except in particular examples where it is clearly the main issue, it is difficult to determine what percentage of such protest is driven primarily or mainly by water and sanitation issues, rather than electricity disconnections or other issues. Social protests generally reflect an overall level of discontent with and demand for (particularly) municipal services, including water, even though it may not be the trigger issue (which is often electricity disconnections due to non-payment of accounts).<sup>xxiv</sup> However, it would probably be accurate to say that sanitation is seldom the central issue in such protests, compared with water and electricity.

The town of Peddie and surrounding villages in the Eastern Cape province protested in 2020 after there was no adequate water supply for months. (Translation of sign: It's dirty in Peddie. Get lost!) ▼



<sup>xxiii</sup> Where the priority issue is the cost of electricity.

<sup>xxiv</sup> Municipalities generally cannot disconnect water as a result of non-payment of municipal accounts by households, although they can limit their use to the free basic allowance.



### 3.2. Quality of municipal water and sanitation infrastructure

There are strong linkages between the state of municipal infrastructure and the quality and reliability of service delivery, as well as the system funding model:

- The better the quality of infrastructure installed, the more likely that households will have access to a higher level of service (depending of course on the quality of the day-to-day operation of services).
- The more dilapidated the infrastructure (even if it was theoretically of a high quality when it was first installed), the more likely that the service will be poor, both in terms of quality and reliability. The amount of funding available for infrastructure maintenance (together with the ability to adequately plan and implement such maintenance) is a critical factor determining the actual state of infrastructure. Under the current municipal water and sanitation services funding model, the main source of revenue for infrastructure maintenance is service charges collected from customers. The lower the revenue collection rate, the more likely it is that maintenance is inadequately funded. (In Section 3.4., the current state of municipal finances in light of this linkage with the state of infrastructure is examined.)

The general view is that the quality of municipal services is declining in many locations,<sup>36</sup> due in part to a lack of maintenance expenditure by local government. The South African Institution of Civil Engineering (SAICE) rated South Africa's public infrastructure at a D (at risk of failure) in 2017, with sanitation outside of major urban areas graded with an E (unfit for purpose). Surveys (such as Stats SA) indicate high levels of dissatisfaction among households with the quality of municipal services. And so poor households are receiving a double blow: unaffordable tariffs combined with poor levels of service delivery.

This section considers the current quality and state of repair of water and sanitation infrastructure in local government.

*The state of basic service delivery in South Africa: in-depth analysis of the Community Survey 2016 data* report calculates **municipal infrastructure quality indices** from the point of view of households for each of the basic services, using the following method:

- Infrastructure quality is calculated by categorising the quality of infrastructure into five levels – no service, minimum, basic, intermediate, and full.
- Numerical values between 1 and 5 are allocated to each level of service, 1 being the lowest (no service) and 5 the highest (such as piped water in the dwelling in the case of water).
- The level of service provided is calculated as the average of the percentage of the population receiving a particular service.

The index provides an indication of the quality of infrastructure provided and is expressed as a number between 1 and 5. This index does not automatically correspond with the level of **service** that is delivered; high quality infrastructure does not necessarily imply that households receive a high level of service. However, it is an indication of basic service infrastructure investment trends, as well as the potential to receive a certain level of service (such as piped water in a dwelling rather than a communal tap).

In terms of **water services**, the infrastructure quality index ranged from 3.37 (Limpopo) to 4.65 (Western Cape). Fourteen of the 20 municipalities with the highest index scores were in the Western Cape. All but 1 (Ratlou in North West) of the 20 municipalities with the worst index scores were located in Eastern Cape (10 municipalities) and KwaZulu-Natal (9 municipalities).

**Notably, the report showed a strong inverse correlation between the number of poor households in a municipality and the quality of water infrastructure. That is, the greater the percentage of poor households in a municipality, the more likely that the quality of installed water infrastructure will be low.**

In terms of sanitation infrastructure, provincial infrastructure scores ranged from 3.6 in Limpopo to 4.8 in the Western Cape. But eight out of nine provinces received a sanitation infrastructure score of 4 or higher, compared with only 4 for water infrastructure. However, once again rural B4 municipalities had the lowest score – 3.5.

Just as in the water sector, there is a strong inverse correlation between the number of poor households in a municipality and the quality of sanitation infrastructure. That is, the greater the percentage of poor households, the more likely that the sanitation infrastructure is of a lower quality.

**The data therefore strongly suggests that areas with high percentages of poor households have lower-quality infrastructure, in both water and sanitation.** In part, this can be explained by historical infrastructure development patterns. In 1994, large parts of the former Bantustan and rural areas had little or no basic service infrastructure, compared with many urban (predominantly white) areas. This is the situation that the government has attempted to address with infrastructure expenditure since 1994. However, the fact so many households still do not have access to decent infrastructure in many of these areas suggests a particular anti-poor bias in the way in which infrastructure investment in these areas is planned and funded; that is, that poor households only ‘require’ the most basic of infrastructure.

This point of view was reinforced by some of the interviews, where respondents noted that, in general, poor households are seen as the ‘problem’ in the municipal services system, because of their low ability to pay (together with their illegal connections). This point of view indicates how these households have been transformed into nothing more than municipal customers (rather than people with rights to quality water and sanitation services). There is little in the way of imagining how infrastructure can be an asset for poor households that can be used in strategies to increase standards of living and livelihood opportunities.

*“Urban customers are universally seen as the problem, there is no understanding [in the national department] about the linkages between water and urban livelihoods and quality of life.”*

*“In most urban areas we have a situation where almost everyone has access to water and sanitation, but the real challenge is infrastructure that adds to quality of life and livelihood opportunities ... we have to think about different ways of delivering infrastructure that will actually facilitate poverty eradication and livelihoods.”*

*“[The system creates incentives] to deliver the absolute minimum basic of services in township and poor areas.”*

There is general agreement that – in aggregate – **the state of repair of municipal water and sanitation infrastructure is dire, and deteriorating**, and that this is a result of poor maintenance, rather than a lack of investment in new infrastructure. Indeed, the view is that South Africa has invested (and continues to invest) billions of Rands in new infrastructure that falls into disrepair, and that this represents an enormous waste of resources.

*“We have made a fundamental mistake in terms of focusing on new infrastructure and invested huge amounts, but then we were never able to maintain it, so we invest but we get further and further behind in terms of actual service delivery.”*

*“We spend more and more on infrastructure that everyone knows we cannot afford to maintain.”*

In a May 2020 presentation<sup>1</sup> to the standing parliamentary committee, DWS highlighted the following issues:

- The poor state of water infrastructure contributed to the 35% lost through leakage, representing an annual loss of R9.9 billion.
- 56% of wastewater treatment works and 44% of water treatment works were in a poor or critical condition and in need of urgent rehabilitation, and 11% were dysfunctional.

The current maintenance backlog in respect of municipal water and sanitation service infrastructure is estimated to be around R200 billion<sup>xxv</sup> – about **half** of the current consolidated local government total operating expenditure budget.

Many of our interviewees indicated they believed the lack of spending on infrastructure maintenance mainly represents poor planning and budgeting on the part of municipalities, rather than any underlying constraints on municipal revenue.



*“Operational budgets [are] not prioritised and [so] infrastructure [is] not maintained... When it goes it goes with a bang.”*

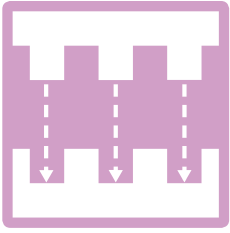


▲ Supporters of the African National Congress (ANC) during President Cyril Ramaphosa campaign in Bloemfontein in the Free State province, ahead of the local government elections in 2021.

<sup>xxv</sup> Source: interviews.

3.3.

### Affordability of services (including the delivery of free water and sanitation)



The quality of a services cannot be considered separately from access and affordability. Although high quality services should be a clear goal of the water and sanitation system, there is little point in high quality services that many households are not able to physically access (through appropriate infrastructure) or are not appropriately priced (so all households can afford to pay for them).

**Effective access can only be achieved when households are actually able to afford sufficient quantities of quality services.**

This may seem to be an obvious point, but as discussed in more detail in the next chapters, the reality is that there has been a lot of emphasis in rolling out new infrastructure (the area where the greatest success has been achieved) and trying to improve the quality of services (less successfully), but very little attention has been paid to the ability of households to pay for (access) the services.

What can be said about the actual cost of municipal services against the White Paper on Local Government’s promise of affordable universal access? Cost is a critical determinant of both access to services (households cannot access services they cannot pay for) and of general household welfare (if they must divert income from other necessities such as food to the payment for basic services).

There are two main sources of services for lower-income households – the FBS (for which there is no charge) and paid services. Each of these has an impact on affordability:

- The higher the level and reach of the FBS programme, the higher the level of affordability for poor households.
- The lower the cost of services relative to both household income and other claims on that income, the more affordable the services.

The current state of each of these (access to FBS and the cost of services) is discussed below.

The FBS comprise 50kWh of electricity, 6kl (6m<sup>3</sup>) of water, and sanitation and waste removal services at the municipality’s discretion<sup>xxvi</sup> each month, to households registered as indigent in a particular municipality. (Although there is general agreement that a higher (close to 10kl) of water is actually required to meet basic household requirements, the free 6kl meets an important minimum threshold, both in terms of access and household income constraints.) It is important to note that **if a household is not formally registered as indigent in their municipality they cannot access any of the FBS, no matter how poor they actually are.** The qualifying criteria for such registration are entirely at the discretion of each municipality, and there is no appeal process for households that believe they should be registered but are not.

Municipalities are not required to fund the FBS out of their own revenue, unless they decide to fund a higher level of services<sup>xxvii</sup> or non-indigent households. There is an annual allocation in the national budget to each municipality for these services, which forms part of the local government discretionary equitable share allocation. Each year, the number of qualifying households in each municipality is estimated by the National Treasury (with input from Stats SA) using adjusted household income data from the 2011 census and the 2016 Community Survey. The amount of the subsidy per household is calculated using an estimated average cost of providing each service, and contains both an operations and a maintenance component. That amount is multiplied by the number of estimated qualifying households in each municipality<sup>xxviii</sup> to obtain the equitable share transfer amount. Each year, the number of households funded for FBS in the national budget has **increased**, from 8.7 million in the 2014/15 financial year to 10.36 million in 2020/21.

<sup>xxvi</sup> Except for the supposed eradication of the bucket system.  
<sup>xxvii</sup> A few municipalities provide free basic electricity in excess of the 50kWh and a small number also provide more than 6kl of free water.  
<sup>xxviii</sup> The detailed data per municipality is available in the equitable share summary data on the MFMA webpages: [http://mfma.treasury.gov.za/Media\\_Releases/LGESDiscussions/Pages/default.aspx](http://mfma.treasury.gov.za/Media_Releases/LGESDiscussions/Pages/default.aspx).





It is important to note that the transfer of funds to municipalities regarding the funding of FBS is **not a conditional transfer**. Instead, it is part of the discretionary equitable share. This means a municipality is perfectly able (within the law) to provide fewer households with these services than it has received funding for. **If a municipality provides fewer households with the FBS benefit (compared with how many are funded in the national budget), the balance of the money allocated to that municipality for FBS goes into general revenue, and can be spent as the municipality wishes.**

The first point to make is that the number of indigent households ‘identified’ (registered) by local municipalities has **declined** from 2015 to 2019, as indicated in Table 8 below, in sharp contrast to the increase in the number of funded households in the national budget over the same period.

**Table 8: Total number of households registered as indigent by municipalities**

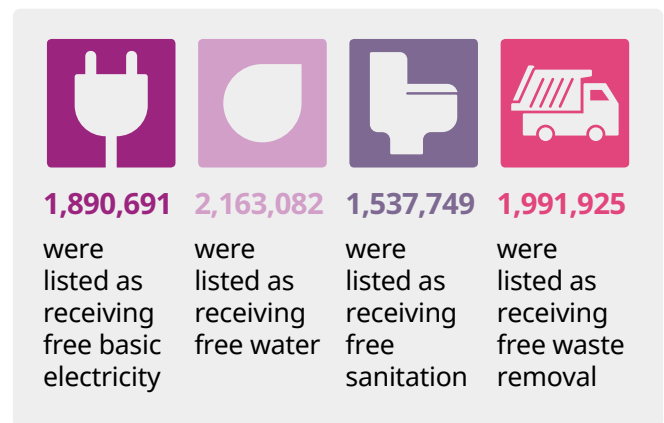
Year	Total number of registered indigent households
2019	2,895,124
2018	3,594,058
2017	3,511,741
2016	3,564,866
2015	3,570,602



Source: Stats SA

The total number of registered indigent households is only 28% of the total number of households funded in the national budget. In addition, the total number of **registered** indigent households (fewer than 3 million) also bears no resemblance to actual poverty levels. Current estimates are that around 4.3 million households live below the food poverty line (R2,340 per month for a family of four<sup>xxix</sup> at April 2020 prices) and that around 8.6 million households live below the upper bound poverty line income of R5,072 per month (also for a household of four at April 2020 prices).

To make matters even worse, **the data suggests that not all registered indigent households are actually receiving all (or any) of the FBS.**<sup>xxx</sup> In 2019, there were 2,895,124 registered indigent households, but only:



<sup>xxix</sup> The number used as an ‘average’ household size. Many poor households have significantly larger households, but 45% of poor households have between two and four members (according to Stats SA) and four seems a reasonable number to use as an average for these purposes.

<sup>xxx</sup> It is far from clear how all of this difference has materialised, but Table SA14 data from the Treasury suggests households registered as indigent are often not charged any property rates, and this may be the only benefit that accrues to those not receiving the other free services. In addition, about 15% of (mostly the poorest) South African households do not have a formal electricity connection, and therefore cannot receive the free basic electricity. However, there is no such explanation for the approximately 700,000 households registered as indigent, but not listed as receiving free water.

Although the national budget made allocations to local government for 10.1 million households to receive all the FBS in 2019, only a fraction of those households actually received the benefit. However, it should be noted that 2.2 million households are accessing water from communal standpipes funded by the municipality, and those should correctly be added to the indigent household beneficiaries of free water, which would give a total of around 4.3 million households receiving FBW. However, even with this adjustment, **fewer than 50% of the households funded for basic water in the national budget appear to be receiving a benefit.** (Given the percentage of households that have access to piped water in their dwelling, or on site or from a communal tap, this difference cannot be explained by lack of infrastructure.)

Many municipalities maintain that the actual cost of providing these services (particularly water services) is higher than the National Treasury allocations, and therefore that they cannot afford to deliver services to as many households as indicated in the national budget. There is probably some element of truth in this, notably in respect of water delivery in rural areas, but for this to present a full explanation the actual costs of providing the FBS would have to be several multiples higher than National Treasury estimates. This seems extremely unlikely. **No municipality has ever presented any empirical data to prove that the cost of delivering the FBS is significantly different from the amount allocated in the national budget.**

It is important to point out that these are **aggregate** figures. The data indicates that there are enormous discrepancies across municipalities in respect of the actual delivery of free services. Some municipalities deliver very close to their funded allowance, while others deliver at a level way below the aggregate data. Once again, this emphasises the very problematic reality that **the ability of households to access free services is determined to an extraordinary extent by where they live.** These variations entrench spatial inequality and poverty. Not only are households' living standards undermined by not having access to services, but households must purchase what they do not receive as a free allocation, thereby reducing what is available to spend on other basic expenses.

The implication is that although the free services are intended to provide a basic level of service for all poor households, in reality they only meet a small part of the requirements for a small number of households. Most poor households, therefore, have to pay for all or most of their municipal services. How affordable are these costs?

**The first point to be made is that municipal customers receive consolidated accounts that include all (itemised) property taxes and services charges (except for the notable exception of prepaid electricity)<sup>xxxi</sup> and payment cannot be made for one specific part of the account (i.e. a customer cannot elect to make a payment that is specifically for water or sanitation, or rates and taxes, but must pay the entire account). That is why the entire cost of all municipal services from the point of view of households must be considered in respect of a determination of 'affordability', rather than just the cost of water or sanitation services.**

Across the board, all municipal services – and, in particular, water – have increased in price well above the rate of consumer price inflation over the past ten years, making it clear that household affordability is not the priority in the current system. The South African Reserve Bank reported the following increases in municipal service costs over the ten-year period from 2010 to 2020 (during which period the increase in headline consumer inflation was 68%):<sup>37</sup>



Rates and taxes

**+118%**



Electricity

**+177%**



Water

**+213%**

But what are poor households actually paying each month? This is not an easy question to answer, because of the considerable variations in municipal service pricing, and the lack of equivalent data across all municipalities. However, some conclusions can be drawn in respect of metros and secondary cities, which is where most households live.

<sup>xxxi</sup> Approximately 70% of households have prepaid electricity meters.

Table SA14 (Household Bills) within the National Treasury's municipal medium-term revenue and expenditure framework (MTREF) data provides fairly comprehensive data for metros and secondary cities, although not all municipalities submit data, and there is no guarantee that submitted data is accurate. In any event, Table SA14 data indicates the average household bills for three categories of household – the third of which is listed as 'indigent household receiving free basic services'. It should therefore serve as a proxy for the poorest households in a municipality.

**The data indicates that the average monthly municipal account for an indigent household in the year ended June 2020 was R865 per month in a metro and R900 in a secondary town. Within this there are considerable variations. In secondary towns, accounts range from just under R500 per month to over R1,000. In metros, they range from R660 to R1,200.**

The largest component of these accounts is electricity, followed by water consumption, which in general varies between R200 and R300 per month.

Given how few poor households are actually registered as indigent, what is known about the larger category of poor (but not registered as indigent) households? The SA Cities Network's *State of Cities Finance Report 2020*<sup>38</sup> considers municipal accounts in the eight metros<sup>xxxii</sup> and Msunduzi for four categories of households (A–D). Category A households are low-income (but not indigent) households, with a monthly income of between approximately R4,200 and R8,500 per month (2019 values as estimated in the report). **On average across the metros, category A households were being billed R1,425 per month for municipal services in 2020. The biggest contributors were electricity at R675 per month and water at R400 per month.**

How 'affordable' are these bills? The food poverty line in South Africa is R585 per person per month (April 2020 prices).

<sup>xxxii</sup> Buffalo City, Cape Town, Ekurhuleni, eThekweni, Johannesburg, Mangaung, Nelson Mandela Bay and Tshwane.

Taking an average household<sup>xxxiii</sup> size of four people,<sup>xxxiv</sup> the implication is that minimum household food spend requirements<sup>xxxv</sup> are around R2,340 per month. Using the average **indigent** household monthly basic services cost calculated above, the implication is that **the 4.3 million households that live at or below the food poverty line are expected to allocate 45% of their monthly income towards the purchase of basic services.**

Pietermaritzburg Economic Justice and Dignity (PMBEJD)'s<sup>xxxvi</sup> calculation of the price of a minimum nutrition basket for a family of four was R2,576.13 in April 2020, and is probably more realistic in terms of basic nutrition requirements (since it considers both child and adult requirements) than the Stats SA food poverty line. Considering the Category A services accounts in the SA Cities Network, **an average family of four living in a metro requires a net income of R4,000 per month just to pay for basic food requirements (as per PMBEJD) and municipal services (at April 2020 prices).** The upper bound poverty line is an income of R5,072 per month for a household of four people (at April 2020 prices). These households will only have R1,071 remaining for all other expenses after food and municipal services (unless they sacrifice part of their food expenditure, which is the most usual outcome). **Half** of all South African households fall into this category.

**Under no circumstances then should the current price of basic services be considered 'affordable'. It appears very likely that half of all households are in fact being forced to sacrifice food expenditure to pay these accounts and/or are failing to pay them because the choice they face is food for their children or paying the account.**

However, it is important to note that the issue of affordability of services was dismissed by many of the people we interviewed (even after we presented the data set out above) as being an important system constraint.

<sup>xxxiii</sup> Municipal services are delivered at the household unit.

<sup>xxxiv</sup> Some poor households have considerably more members, but Census 2011 indicates that the majority (43%–48%) of households with no or low income had two to four members.

<sup>xxxv</sup> This represents a very basic minimum requirement.

<sup>xxxvi</sup> An NGO that collects extensive food basket and basic expenditure data and is probably the best source of such data regarding poor households.

*“There is no problem with affordability. People don’t pay because the service is so poor. If the quality of the service improved, then people would pay.”*

*“If people can pay for Coca-Cola and beer, then they can afford to pay for water.”*

Instead, a common perception is that service charges are **too low** and that proper cost recovery requires them to be increased.

*“Not many municipalities are charging cost-reflective tariffs: people should be paying more.”*

It must be pointed out that many municipal officials are aware of the fact that a large number of households cannot afford to pay their bills. But municipalities are locked into a fiscal framework (and corresponding pressure from the National Treasury) to set tariffs that are based on cost-recovery and to not have unfunded budgets.<sup>xxxvii</sup> The only place to match ever-increasing municipal expenditure is municipal services.

Apart from limiting access to services, the most significant impact of the unaffordability of municipal services is the low rate of revenue collection and the ever-increasing mountain of debt owed to municipalities by households. This is discussed in more detail below.



▲ Subsistence farmer harvesting bambara groundnuts in GaMashashane in the Limpopo province in 2021.

<sup>xxxvii</sup> That is, a budget where realistically anticipated revenue is insufficient to meet planned spending.



### 3.4. Financial viability of the system

The financial health of the municipal water and sanitation system is inextricably linked with the overall financial health of local government. There is no ring-fencing of income and expenditure associated with particular municipal functions, and the entire local government fiscal framework is based on subsidisation of almost all operating expenditure through the various rates and taxes and service charges.

There are strong correlations between the state of local government finances and the cost, quality and reliability of water and sanitation services that households will receive:

- The lower the rate of revenue collection (as a percentage of revenue billed) the less money is available for operating expenditure. Since municipalities tend to prioritise the payment of salaries, a shortfall in income is most likely to be reflected in non-payment to bulk service providers (which then has an impact on the financial viability of the remainder of the water and sanitation services system and can result in water cuts to the non-paying municipality), and limited allocations to infrastructure maintenance (which contributes to deteriorating quality of services). As discussed above, conditional grants can generally only be used for new infrastructure expenditure.
- The lower the rate of revenue collection, the greater the pressure on the municipality to implement ever-greater tariff increases, since current regulations do not allow for a municipality to have an unfunded budget, and the main source of revenue is service charges and property taxes.

**Although the idea of ‘cost recovery’ in setting tariffs appeals to many, it should be remembered that under the current regulatory environment there are very few controls over the municipal cost base that account payers are required to fund, or acknowledgement of the serious implications of this on poor households.**

There are many questions to be asked about the current cost structure of municipalities. Costs within a municipality are driven by multiple factors, both internal and external. Increases to the overall operating cost base (whether through inflated salary dispensations for senior managers,<sup>xxxviii</sup> the excessive and increasing regulatory burden on local government,<sup>xxxix</sup> poor financial management, or corruption) are effectively passed on to customers. In fact, the prohibition on unfunded budgets and current budgeting practices specifically encourages increases in revenue to match expenditure, rather than the other way around (cutting expenditure to match reasonable tariff income).

Local government in aggregate is in significant financial trouble, due to a variety of reasons, including declining revenue collection rates. The AGSA found that in the 2018/19 financial year:

- 79% of municipalities had a financial health status that was 'either concerning or requiring urgent intervention'.
- 31% of municipalities were considered to be in a 'particularly vulnerable' financial position.
- 34% of municipalities ended the year with a deficit (involving an aggregate amount of R6.3 billion of unfunded expenditure).

At the beginning of the 2019/2020 financial year, 126 municipalities (49% of the total) adopted unfunded budgets. This was a significant increase from the 74 municipalities that adopted unfunded budgets at the beginning of the 2016/17 financial year. After an intervention by the National Treasury, that number was reduced to 66. The fact remains, however, that almost half of all municipalities were planning to spend money they could not reasonably expect to collect, and almost a quarter still had unfunded budgets **after** Treasury intervention.

The situation declined further in the 2019/20 financial year (although even that was before the main impact of Covid-19 will be felt on municipal finances). The AGSA summarised the situation as follows:

<sup>xxxviii</sup> Local government does not form part of the public service, and so is not subject to its salary bands or wage determinants. As a result, senior managers in municipalities can – and often do – receive salaries that are significantly higher than senior public servants such as a DG in a national department.

<sup>xxxix</sup> The AGSA estimates that the annual cost for financial reporting alone is around R5 billion.

*'Local government finances continue to be under severe pressure as a result of non-payment by municipal debtors, poor budgeting practices, and ineffective financial management. The financial position of just over a quarter of municipalities is so dire that there is significant doubt that they will be able to continue operating as a going concern in the near future.'*

Unsurprisingly, the general unaffordability of municipal services means that payment levels are low, and the low revenue collection rate is one of the key factors behind deteriorating financial viability. (We should remember that the White Paper was quite clear that if tariffs were unaffordable, municipal customers would not be able to pay.)

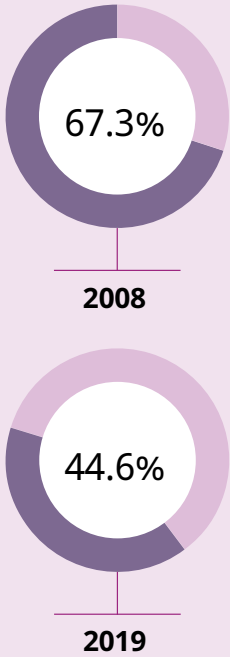
- Outstanding debt owed to local government has risen steadily over the past few years, from just under R130 billion at the end of the 2016/17 to just over R230 billion at the end of December 2020 (which in turn was almost R50 billion higher than in March 2020).
- Most of this debt (R192 billion) has been owed for more than 90 days, and 72% is owed by households. (The balance is owed by commercial enterprises and other parts of the state.)
- The AGSA estimates that no more than 60% of that debt can ever be recovered, given the assessed ability of households to pay.

GHS 2019 highlights that the increase in the percentage of households with access to water coincides with a decline in the percentage of households that pay for that water. In 2008, 67.3% of households reported that they were paying for water, compared with 44.6% in 2019. This decline can be explained in part by the above-inflation increase in water charges, but it also appears that the rise of pre-paid electricity meters has contributed; consumers cannot opt out of paying for electricity (which has also increased in cost well above inflation), but they are aware that in most instances the municipality cannot disconnect their water supply due to non-payment. Not paying for water has therefore become an expenditure management strategy (coping mechanism) for poor households.

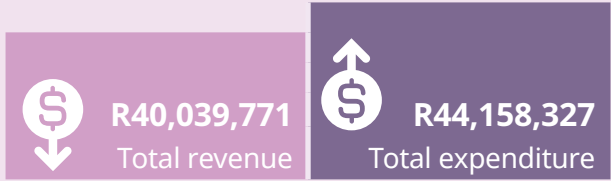


### Households paying for water

Health workers screen for Covid-19 in the Imizamo Yethu informal settlement near Cape Town. ▼



As discussed above, the financial health of the water and sanitation services sector cannot be separated from overall municipal financial health, but the available data suggests that, in aggregate, municipal water provision is being undertaken at a loss. Section 71 reporting data for the 2019/20 year within the National Treasury’s MFMA database indicates the following consolidated data for ‘water management’:



That implies an operating loss of just over R4 billion, and reflects in large part the 41% non-revenue water across the municipal system (bulk water received for which an account is never issued by the municipality). However, not all the actual revenue will be collected. If we assume a fairly optimistic revenue collection rate of 70% (the AGSA maintains that no more than 60% of billed revenue will ever be collected), then the actual operating loss increases to just over R16 billion. Even if we accept that there are errors in the data submitted in Section 71 returns by several municipalities, it is still extremely likely that operating losses in water services are significant.

If we apply a similar calculation to wastewater management, we arrive at an estimated operating loss of around R1.5 billion in 2019/20.

Against this background, it is hardly surprising that municipal debt to bulk water providers is increasing, and that maintenance budgets are much too low in many places.

The key point here is that – under the current operational and funding model – we have the following system outcomes:

- At current tariffs, services are generally not affordable for poor households, and many households that could afford to pay are not doing so because of the very poor quality of services.
- At current tariffs and within the current operating model, local government in aggregate is most likely providing services at a loss (and ‘filling’ the ensuing revenue gap by not paying bulk providers and neglecting maintenance).

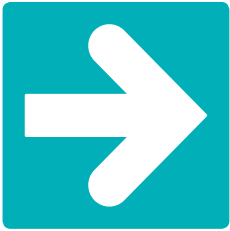
This has become an ever-worsening vicious cycle, with no apparent solution (not least because not everyone understands that this is a critical problem, as discussed in more detail in the next chapter).

# 04

## Efforts to improve municipal water and sanitation outcomes



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## 4.1. Introduction

Given that the performance of municipal water and sanitation services is inextricably linked to the overall management, governance and performance of a municipality, wider efforts to improve municipal outcomes (and not just those focused directly on water and sanitation) have been covered in this section. This is, however, an enormous area of activity. Almost every single national and provincial department, numerous dedicated agencies, donors and other actors are working in this space. Significant obligations are placed on national and provincial government by Section 154 of the Constitution, which states 'the national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions'. This is supplemented by Section 155(6) of the Constitution, which states, 'Each provincial government ... must ... (a) provide for the monitoring and support of local government in its province; and (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.'

The result is a multi-billion Rand system focused on improving municipal financial, operational and governance outcomes, and involving thousands of officials and hundreds of programmes.

**This chapter will not attempt to provide a comprehensive overview of the entire local government support system, but instead presents a very high level and summarised overview of:**

- the main components of the over-arching local government support and capacity building system, and the main reasons why these appear to have limited impact.
- specific efforts towards improving water and sanitation (infrastructure and services).
- Section 139 interventions.
- the role of civil society.

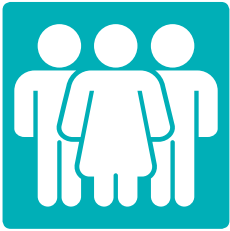
This overview provides insights into the focus areas of current efforts to improve local government outcomes, which can in turn be compared with the main drivers of municipal water and sanitation system outcomes discussed in the previous chapters. This analysis highlights gaps in current efforts to improve outcomes (what parts of the system are not receiving the requisite attention). This overview also highlights the dominant approaches towards improving outcomes, and whether they appear to be the most appropriate (likely to achieve the desired outcomes).

**Regarding all efforts to improve municipal outcomes (in general, water and sanitation services, and Section 139 interventions) the current state of local government indicates that most have had little or no success.** While there are undoubtedly municipalities that deliver services to a high standard, and a number that have recorded significant improvements over the past 20 years, it is clear that a significant percentage of households live in municipalities where water and sanitation services are either poor or very poor.



◀ A communal toilet at an informal settlement in Khayelitsha, Cape Town.





## 4.2. The over-arching municipal support and capacity building system

The over-arching system focused on improving outcomes in local government is delivered mostly by national and provincial CoGTA departments, which have the primary responsibility for the oversight of municipalities. National and provincial treasuries also make an important contribution, mostly related to efforts to improve financial management outcomes. The national DWS plays a relatively small role. There is considerable variation among the details of local government support programmes across provinces, and there is no common design or reporting standard for these programmes. However, the following general conclusions can be drawn about the operation and focus of most programmes, as well as some of the likely reasons for their limited impact:

i. The focus of almost all programmes is improving the skills and technical abilities of staff who work in municipalities. This most commonly takes the form of training, workshops, seminars on new regulations and legislation, and so on. This focus reflects the overwhelming sentiment across the state (and outside it) that the single most important impediment to improved municipal outcomes is municipal 'capacity', which is interpreted to mean the skills and expertise of the people employed in the municipality. The other factor is 'political will', in that 'politics' is seen by many as the only reason – apart from skills and expertise – that undermines municipal performance. For most participants in the municipal support system, there are no real **structural** reasons for poor municipal performance (such as the demarcation of municipalities, the allocation of powers and functions, or the local government fiscal framework) and so these programmes do not consider or address these issues. In addition, even though factors such as basic administration and business processes are routinely highlighted by the AGSA as factors that contribute to a poor operating environment, they receive far less remedial attention than staff training.

- ii. The impact of staff training is greatly diluted in municipalities where there is a high staff turnover and/or an over-arching operating environment that does not allow staff to put these skills to good use. Both factors characterise poorly performing municipalities.
- iii. The deployment of skilled experts to assist in municipalities (notably, regarding technical, engineering and accounting functions) is also an approach that has been used in several programmes, but since it is relatively resource intensive it is used far less often than the training/skills development approach. There is limited evidence to suggest that programmes with this focus have been more successful than others, although there are some exceptions. The main limiting factors appear to be:

- Deployed experts generally have limited influence beyond their immediate areas of work, despite the fact that events in other parts of the municipality can influence outcomes in the areas they have been assigned to. As one interviewee put it:

*"You can second the cleverest technical person to a problematic municipality and they can actually end up not being able to do anything because they don't actually have any authority to impact the real problems."*

- Technical experts generally are not skilled in change management, which is an important part of getting people to do things differently.
- iv. Some programmes are also focused on assisting municipalities to achieve specific goals, largely the development of policies, plans and strategies. These programmes recognise the importance of good planning in improving municipal operations. However, our interviewees highlighted the very real difficulties involved in developing good plans in smaller WSAs:

*"We keep thinking that they can do it if we only help them enough, but they never get there."*

- v. There is a disproportionate emphasis on ‘quick fixes’ to visible symptoms of underlying problems, rather than a long-term commitment to sustainable solutions. Addressing the complex problems in local government requires concerted effort over a long period, but there is considerable pressure to show short-term results, particularly when there has been a lot of visible public protest around an issue.
- vi. There is substantial programme fragmentation and duplication, which represents, in part, contestation among various national and provincial departments over who is ‘responsible’ for what in local government. A local municipality is a complex and interconnected system; the financial management and governance of the municipality has a direct impact on activities in functional service delivery areas, such as water and sanitation. A siloed approach towards solving complex problems is not helpful, since only one part of the problem is ever under consideration (or only falls under one organisational mandate (authority)), even when there is recognition that there are multiple factors that contribute to the problem.

*“A big restrictor [on improving water and sanitation services] in municipalities is procurement and supply chain management. I often think that they are trying to eliminate corruption, but it is so difficult to procure stuff. We were constructing pipelines to fill tanks: stores didn’t have the parts, we didn’t have the fittings. They couldn’t get what we needed because a new supplier was not appointed yet. Eventually you just sit and the task can’t be finished because you’re bound by these rules.”*

**In essence, the current fragmented approach to municipal oversight effectively prevents a systems approach to addressing serious service delivery problems.**

- vii. A lot of the programmes represent a response to compliance pressure – to obtain a clean financial audit, to show that various policies are in place, and so on – rather than a long-term effort to diagnose complex problems and deliver appropriate solutions in a sustainable manner.

Similarly, there is generally limited (if any) community participation in most programmes regarding problem diagnosis and solution development. Although legislation such as the Municipal Systems Act requires the municipalities to consult with communities during the preparation of development plans and budgets, the reality is that most municipalities do the absolute minimum required to demonstrate compliance. The general attitude is that communities ‘participate’ through directing their input to the local councillor (who may or may not act on that input).

- viii. Although there is a great deal of reporting that municipalities do in response to the provinces’ Constitutional obligation to ‘monitor municipalities’, there appears little corresponding detailed in-depth problem diagnosis, on which comprehensive and appropriate solutions can be built. Instead, a range of ready-made ‘solutions’ are most often deployed. This gap is further worsened by the fragmented and siloed nature of municipal support programmes, which effectively prevent a comprehensive ‘whole of municipality approach’. This fragmentation and mandate contestation undermines even the most carefully constructed but sector-limited response.
- ix. Most of these programmes report on their activities (how many people were trained, how many attended a workshop, how many reports were produced, etc.) rather than the outcomes of these activities; that is, how municipal performance was affected. As a result, many programmes can report that they have met all their targets (that they are a success) while having little real impact on actual outcomes in local government.



◀ A pit toilet at the Ratanang informal settlement in the North West province.



### 4.3. Focused efforts in the water and sanitation sector

According to DWS, the failure of some WSAs to provide reliable water and sanitation services is largely due to:

- lack of technical skills
- insufficient institutional capacity and funding to operate, maintain and manage water and wastewater infrastructure assets properly
- limited budget allocated by some municipalities for operations and maintenance relative to new capital works
- poor revenue management
- failure to employ suitably qualified technical staff

In addition, the department has highlighted that the national infrastructure grant funding mechanisms incentivise the building of new infrastructure, rather than the maintenance of existing<sup>x1</sup> infrastructure.<sup>39</sup>

The National Norms and Standards state that the following actions need to be taken at national and local levels to ensure the sustainable provision of levels of water services (tackled through a phased approach, not necessarily sequential):

- Align policy positions and implementation strategies across stakeholder departments focusing on long-term sustainable service delivery.
- Create and apply common definitions across stakeholder departments.
- Align and clarify municipal service definitions.
- Develop and regulate transparent financing strategies and accountability plans, including alignment of grants and subsidies, as well as setting appropriate water tariffs.
- Develop guidelines for good governance of water services.

<sup>x1</sup> This is a criticism of the existing conditional grant system that has been made by many other entities (including the Financial and Fiscal Commission (FFC) and SALGA) for several years. However, to date, there has been strong resistance to a fundamental revision of the system by the National Treasury, mainly on the basis that this funding is specifically to meet the long-term goal of eradicating the service delivery backlog, and that if municipalities managed their revenue properly then maintenance would be funded from own revenue.

- Develop guidelines for participatory planning and implementation.
- Provide a list of appropriate technologies for service levels (flexibility is allowed).
- Formalise and regulate monitoring and reporting processes.
- Ensure training and capacity building of officials, local government, implementing agents, and the public.<sup>40</sup>

During our interviews, the issue of how useful these Norms and Standards actually are in providing detailed guidelines for service delivery was raised. One criticism was that there are no clear linkages between the Norms and Standards and the fiscal reality of many municipalities (i.e. What can municipalities afford to deliver? And what kinds of services will be affordable for households and meet their delivery expectations?).

**It appears to be a commonly held position that municipalities should only provide the levels of service that are affordable. But the reality is that since these services must be funded largely from own revenue, municipalities with the highest percentages of poor households will provide the lowest quality of service. The central aims of these services are to significantly improve the living standards of poor households (to reduce inequality) and to facilitate economic opportunities. The logical outcome, therefore, of any 'you can only deliver what the local community can finance' policy would be to effectively trap poor households in poverty, and entrench apartheid patterns of inequality.**

DWS manages several dedicated support programmes that have an impact on local government. These programmes have a strong focus on assisting municipalities to develop more effective water and sanitation service plans and budgets. This reflects the general sentiment within DWS that one of the most serious obstacles to effective service delivery is poor planning. The AGSA's 2017 performance audit of selected water infrastructure projects also highlighted the contribution of poor planning to poor project outcomes. This, therefore, seems to be an appropriate area of intervention.

These support programmes include:

- **Water Services and Local Water Management:** The programme assists with the development of strategies, guidelines and plans for water services and management at a local level. Assisting municipalities with planning is acknowledged as an important intervention (given the low level of such planning in many places), but is also a constant source of frustration, because of the lack of credible data on which to base such plans, and the general perception that, despite extensive support in this area, some municipalities appear to be incapable of attaining the desired level of capacity.
- **Sanitation Planning and Management:** The programme sets out a national strategy for the planning of sanitation services and supports municipalities to plan for the sustainable provision of sanitation.

These programmes are both comparatively small when compared with the infrastructure support programmes (see below) run by CoGTA, both nationally and through the provinces. In 2019/20 the budget for the Water Services and Local Water Management Programme was R72.5 million, with R9.6 million for the Sanitation Planning and Management Programme.

DWS also developed and oversees the Municipal Strategic Self-Assessment System (MuSSA).<sup>41</sup> This is a tool that WSAs can use on an annual basis to identify vulnerabilities in their delivery model, and use that information to plan and implement better. The review is based on five 'essence questions' for 18 'business health attributes' related to service delivery in general and water and sanitation services in particular. Although there is no doubt this is a potentially useful tool, its actual efficacy within any particular municipality is determined by access to accurate information, the capacity within the municipality to use the information to plan and implement effectively, and sufficient available resources to fund those activities. These are exactly the factors that are most likely to be in short supply in poorly functioning municipalities.

*"We wanted to develop something that the municipalities could [use to] self-assess water quality and then use that to improve (and*

*so we developed MuSSA) ... If you answer it honestly then you get a good idea of how things are going: so you can address the issues yourself. But that hasn't worked out: there are just too many challenges to getting this done."*

Some believe efforts to improve data collection by municipalities, support self-analysis by municipalities, and significantly improve municipal planning are wasted in many municipalities; that there will never be sufficient internal capacity or resources to deliver these functions effectively.

*"There are some structural issues that we are just not getting to grips with – we need to identify these and do something about them and we need to have a sector-wide approach to this."*

In addition to these programmes, numerous other (non-DWS) entities oversee support programmes that are focused on municipal infrastructure support, and this would logically include water and sanitation infrastructure, although the lack of detailed reporting makes it difficult to accurately determine what portion is specifically for water and sanitation. These include programmes run by the Municipal Infrastructure Support Agency (MISA) (which forms part of CoGTA). The overwhelming focus of these programmes is to assist municipalities with new infrastructure funded under the various capital grants (notably, the MIG). That is, there is limited focus on the challenges of actually delivering a long-term quality service once the new infrastructure has been installed. This further emphasises the new infrastructure bias within the system.<sup>xii</sup>

In addition to efforts to improve planning in municipalities, significant efforts have been directed towards increasing technical capacity (and particularly engineering skills) in municipalities, in response to a range of data indicating that there is a general shortage of engineering skills. These efforts include

<sup>xii</sup> There is a common sentiment in these agencies that 'supporting municipalities with infrastructure' means assisting them with obtaining funding for the implementation of new infrastructure, rather than ensuring existing infrastructure actually delivers a quality and affordable service. In our assessment, this reflects the very siloed nature of the municipal support and capacity building system.

conditional grants for improving skills in infrastructure (Infrastructure Skills Development Grant), among others.

Research indicates that these efforts have had an impact on the employment of technical staff in municipalities. The number of municipalities without any civil engineering staff fell from 82 in 2005 to 28 in 2015. The number with only one such employee fell from 60 to 41 over the same period. However, questions must be asked about the **level** of skills, given that over the same period the number of municipalities with no qualified civil engineers increased, from 126 to 202.<sup>42</sup>

One of our interviewees pointed out that there are no regulated minimum competency standards for senior technical staff and suggested that such regulation would assist in improving technical capacity. Although this seems like a sensible proposal, experiences to date with such initiatives suggest the likely impact will be limited, due to the inability to force compliance. As just one example: the National Treasury (which in theory has the mandate of oversight of financial management in municipalities) issued minimum competency level regulations for municipal managers and chief financial officers. Thirteen years later (2021), only around half of all officials employed in these positions actually comply with the requirements,<sup>43</sup> and there is essentially nothing that can be done to enforce compliance.

Although suitably qualified staff are necessary, on its own this may not always have the anticipated results, for various reasons, including:

- i. Municipal outcomes in water and sanitation are influenced by many factors apart from the quality of technical staff. And technical staff have limited impact on most of those factors. For example, delays and problems with procurement are often cited as the reason for project delays, but there is little that staff in the water services department can do to influence procurement.
- ii. The vast majority of skilled people (who have many employment opportunities) do not want to work in dysfunctional municipalities, characterised by difficult politics, low staff morale and high staff turnover.

Despite these limitations, many people in the sector continue to insist that skills development is the most important intervention required.

As discussed above, the Blue and Green Drop certification system was generally seen as a factor that contributed to better sector outcomes, by increasing municipal accountability for poor outcomes.

*“The Green Drop and Blue Drop was fantastic ... it created an incentive for municipalities to improve services.”*

*“The Blue Drop and Green Drop reports actually worked really well: these had more impact than a lot of things.”*

*“Technical managers said that [the certification system] really helped them to get the resources that they need.”*

The discontinuation of the system was generally seen as negative for the sector. DWS recently announced that it is reintroducing the system, as part of Operation Vulindlela.<sup>44</sup> The reinstatement of the programme will also give local communities detailed information as to how their services compare with those in other municipalities.

**Over-arching all these efforts is the implicit assumption that every municipality with designated responsibilities for water and sanitation can deliver all these services to an acceptable standard, if only they receive enough support and have sufficient political will. That is, most (although not all) entities and persons engaged in these efforts do not believe either that there may be structural impediments to ever achieving that goal, or that perhaps after 20 years of efforts with little to show, a fundamentally different approach is required to deliver basic rights to water and sanitation.**

*“Engineers think that they can fix anything – they just won’t admit that there are a whole lot of other issues at play.”*

In May 2021, President Ramaphosa announced the establishment of an inter-ministerial committee (IMC) on water and sanitation, chaired by the Deputy President. The IMC is intended to function as a coordinating platform for government efforts in the sector.



## 4.4.

## Section 139 interventions<sup>45</sup>

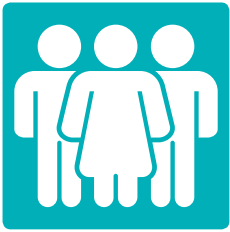
Section 139 of the Constitution allows for a provincial and/or national intervention in a municipality under certain circumstances. In theory, this should be an instrument that prevents significant collapse in municipal services. However, in general, the S 139 framework has failed to deliver to expectations, and the vast majority of interventions have resulted in no long-term improvement in municipal performance; in some instances, the municipality was in worse shape **after** the intervention. The main reasons for the poor outcomes are:

- Decisions about whether to intervene or not are often politically motivated, which means many of the consistently worst performing municipalities in South Africa have never been subjected to an intervention. There are currently no clear guidelines to set out the circumstances in which an intervention will be triggered. This gap is notable in relation to Section 139(1) interventions. This gap is not easy to remedy since there are no regulations relating to the Constitution (the normal way of providing clarity on particular sections of legislation). As a result, a new Act is required to set out the details under which interventions will take place, the criteria against which it will be managed, and so on. To date, this legislation has not materialised, due in part to contestations over which national departments have responsibility for oversight (and therefore regulating legislation).
- Even where an intervention does take place, it almost invariably only occurs when the municipality has been in a total state of collapse for many years. It is an extremely long and resource-intensive recovery process from such a state, and most municipalities are unable to recover. The delays in intervening are either politically motivated, or motivated by the mistaken idea that ‘independent’ municipalities should be entitled to perform badly for an extended period before any action is taken.
- Oversight and management of interventions is generally poor; in most examples, there is no clear plan for what the intervention wants to achieve, or regular and detailed assessment of progress towards those goals.
- In addition, S 139 distinguishes between discretionary interventions (where the province can, entirely at its own discretion, choose whether to intervene or not) and mandatory interventions (where the province must intervene if certain conditions are met, and where the national executive must intervene if the province fails to do so).<sup>xlii</sup> Mandatory interventions relate to financial problems in a municipality – S 139(4), which covers the failure to pass a budget, and S 139(5), which covers serious financial problems. Service delivery issues are covered under S 139(1), which are discretionary interventions. There is **no legal obligation at all** on a province to intervene in a municipality because of service delivery problems.

It should be noted that there are currently events in progress to improve the implementation of the Section 139 framework and therefore (hopefully) improve the outcomes of interventions.

**However, as discussed above, the national department has a potentially very powerful intervention tool at its disposal (Section 63 of the Water Services Act), which effectively means it can both initiate and oversee an S 139(1) intervention at its own discretion. Clarity in respect of exactly what would constitute the conditions for triggering Section 63 (and therefore an S 139 intervention) would be an effective way of signalling clearly to WSAs exactly what the minimum acceptable standards of service delivery are, and avoid the worst examples where households are effectively deprived of their Constitutional rights.**

<sup>xlii</sup> It should be noted, however, that, to date, all parties have often ignored the mandatory nature of S 139(4) and (5) interventions.



#### 4.5. Civil society

Chapter 2 briefly set out the structures for civil society engagement with municipalities, to participate in planning and budgetary decisions and to hold municipalities accountable. Chapter 3 analysed the underlying reasons for the rapid deterioration in municipal service delivery. Along with infrastructure, municipal responsiveness to users has deteriorated markedly. Formal or 'invited' participatory mechanisms have little effect in light of an increasingly unresponsive local state. Provincial and national interventions are made in the affairs of municipalities, often by court order. These interventions themselves are proving ineffective as municipalities are repeatedly placed under administration.

Civil society and user groups are increasingly turning to 'invented' forms of participation. In research supported by End Water Poverty,<sup>46</sup> SERI's Claiming Water Rights case studies<sup>47</sup> illustrate diverse strategies deployed by a range of civil society actors in various combinations and coalitions, including community-based organisations, social movements, marginalised local communities, practitioners and academics, highly professionalised non-governmental organisations (NGOs), and trade unions, to claim a range of socio-economic and political rights, including to water and sanitation.

The range of strategies that civil society actors, most commonly community members and organised leadership, employ includes (among others): engaging with government through formal participation channels, which are usually unresponsive; organising and mobilising communities; turning to protest; and ultimately, in a few instances, to the courts or provincial and/or national government through Section 139 interventions or to human rights institutions such as the South Africa Human Rights Commission. Protest, seeking national intervention, and litigation usually draw media attention. While these actions are underway and noting that services delivery issues are often ongoing, communities self-supply access to water and sanitation and other essential services.

In general, communities protest and litigate as a last resort after years of attempted engagement with an unresponsive state.

To access – and sustain access to – services, communities engage with government through formal channels. Local government ward councillors are often a first point of engagement. Other local government engagement channels include IDP and WSDP processes, elections, budget monitoring, social audits, petitions, reporting corruption, or reporting municipal misconduct to the Public Protector. Often, people without access to acceptable water services – such as undocumented migrants and land occupiers – are excluded from formal participation processes (and from FBS). Their inclusion is seldom brought about by tidy rights-claiming methods such as social accountability and formal participatory processes. Systems of local governance in the cases of Makana<sup>48</sup> (a formal town) and Marikana<sup>49</sup> (an informal settlement) for example only shifted when disruptive rights-claiming methods such as litigation and protest were employed. Indeed, these were the only strategies that had any effect after years of government engagement.

Despite an enabling legal framework that includes water as a justiciable right, growing surface water scarcity and declining access to reliable water services, there is a surprising lack of litigation, with only one case (*Mazibuko*) heard in the Constitutional Court. In 27 years, there have been approximately ten court cases related to water supply,<sup>xliii</sup> one case related to electricity supply,<sup>xliiv</sup> and two related to sanitation.<sup>xliv</sup>

<sup>xliii</sup> Concerned Residents of Flag Boshielo West and Others v Sekhukhune District Municipality and Another, 2015; City Council of Pretoria v Walker, 1998; Mazibuko and Others v City of Johannesburg and Others, 2008; Bon Vista Mansions v Southern Metropolitan Local Council 2002; Manqele v Durban Transitional Metropolitan Council, 2002; The Federation for Sustainable Environment and Others v The Minister of Water Affairs and Others (GPPHC), 2012; Umgeni Water v Sembcorp Siza Water (Pty) Ltd and Others, 2020; Mshengu and Others v Msunduzi Local Municipality and Others, 2019.

<sup>xliiv</sup> Joseph and Others v City of Johannesburg and Others, 2009.

<sup>xliv</sup> Beja and Others v Premier of the Western Cape and Others, 2011; Nokotyana and Others v Ekurhuleni Metropolitan Municipality and Others, 2009.

Dugard<sup>50</sup> describes the jurisprudence related to basic services as ‘relatively incoherent’ compared with, for example, housing jurisprudence, which has built a coherent and strategic litigation trajectory. Without comparative research across themes in the public interest law sector, it is difficult to draw conclusions. However, the impact of litigation is symbolic and political as well as material, and legal mobilisation is arguably more important than litigation itself, in that it underpins community mobilisation, which is what makes for effective rights-claiming strategies, both formal and informal. As Tissington<sup>51</sup> says, the gains from litigation should be examined through a broader lens, focused on the less material role of rights and law as a politicising agent, and for the potential of politicisation of this nature to counterbalance party and electoral politics, which dominate the present South African landscape.

Litigation is an important component of rights claiming, but it is most effective if used alongside other strategies such as community organisation and protest. Water rights can be achieved through strategic litigation that evokes other rights such as housing, land, or administrative justice and procedural fairness.<sup>48</sup> In Makana and in Marikana, for example, the legal tools of land expropriation and provincial intervention were employed to indirectly gain access to water services.<sup>52</sup>

South Africa has come to be known as the protest capital of the world. In 2004, the police recorded an average of 2.1 incidents of unrest per day. Between 2009 and 2012, an average of 2.9 incidents were recorded per day. This kind of increase in protest action has been referred to as a ‘rebellion of the poor’, largely concentrated in poor urban centres and characterised by disruption and sometimes violence, reaching ‘insurrectionary proportions’.<sup>53</sup> According to the South African Police Service (SAPS) Incident Registration Information System (IRIS), a total of 909 protest actions took place in six months from 1 August 2020 to 31 January 2021, during the Covid-19 lockdown. While all of these are loosely described as ‘services delivery protests’, it is likely that services account for a third of the protest actions.<sup>54</sup>

Most of the people who are ‘left behind’ are deliberately excluded from formal participation

processes, and indeed from indigent registration. This exclusion forces groups and communities to self-supply and to protest as a measure of last resort. As Khunou et al note, such communities in South Africa are largely black and poor, often marginalised and frequently criminalised.<sup>52</sup> Protest action comes at immense personal cost and risk. It means people must often confront the excessive use of force by police, misuse of the criminal justice system to stifle dissent, as well as clandestine and more informal forms of state violence like intimidation, threats of assault and assassination.

The Harrismith Water Heroes<sup>55</sup> provide an interesting example of a self-appointed non-profit service provider operating in a small town that is home to at least 40,000 people, and where municipal services have failed. In Tshakhuma in Thoyondou in the Limpopo province, 11 self-run water supply schemes provide water to more than 2,300 households. The agreement brokered by the provincial Member of the Executive Council (MEC) for CoGTA and agreed in court between the Kgetlengrivier local municipality and the Kgetlengrivier Concerned Citizens is an example of a short-term solution to rehabilitate and run water services in a small rural town where residents have more technical capacity and political will than the municipality. Thousands of households living in informal settlements self-connect, or pay a small amount to an informal provider to help them connect, to surrounding water infrastructure to avoid long queues at often non-functional communal water points. Tens of thousands of rural households still collect water from rivers and other unprotected sources when their water supply services break down, which, from the statistics, seems increasingly to be the case.

Like the at least 300 million people who rely on self-supply in sub-Saharan Africa, communities in Kgetlengrivier, Maluti-a-Phofung, Makana,<sup>56</sup> Thoyondou, and indeed in informal settlements and rural areas across the country, are organising their own access to water supply. They are building unlikely coalitions across class and race, they operate without formal recognition, they fix municipal infrastructure, they create their own connections, and they provide water services to people where municipalities have failed to provide adequate services. Civil society brings



significant energy for municipalities to engage in the provision of safe, sustainable and equitable water services.

Self-provision requires and shows innovation and agency, but water is a public good and it is profoundly risky for WSPs to operate without public oversight, or for users to self-supply. Without the legal obligation to operate within the parameters of National Norms and Standards, providers can offer services that are not affordable, at an unacceptable standard, of low quality, and at their own discretion. WSPs, regardless of their intentions, must be properly appointed and regulated.

A protest in Cape Town's Khayelitsha township over service delivery, including housing and sanitation. ▼



▲ Waste reclaimers under a flock of sacred ibis at the Robinson Deep landfill in Johannesburg.

# 05

## Conclusions



Two children above the Lesotho Highlands Water Project, the largest ▼ bi-national infrastructure project between Lesotho and South Africa.



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**The over-arching aim of this research project is to identify binding constraints on municipal water and sanitation service delivery and distil lessons and implications from an analysis of how and why institutional strengthening efforts have had a limited effect to date.**

**The three main research questions to be answered were:**

- Why has the delivery of basic water and sanitation services not met expectations?
- Why have efforts to improve outcomes resulted in so little success?
- What are the recommendations for strengthening these systems, considering the high failure rate of previous initiatives?

Based on the analysis contained in Chapters 2 to 4 of this report, what can be said in respect of answering the first two questions – the reasons for the failure of delivery to meet expectations, and the limited impact of efforts to improve delivery? The main conclusions that can be drawn are:

1

There is a general failure to apply a systems approach and/or analysis to the delivery of water and sanitation services, and, as a result, large parts of the system are effectively 'invisible' as potential contributors to problems.

2

The dominant approach to improving outcomes – building technical skills and expertise in water and sanitation services – is necessary, but represents a response to only part of the larger systemic problems.

3

The FBS policy was intended to be the foundation of affordable universal access, but the reality is that significant erosion of actual benefits has contributed to increased poverty and inequality.

4

Detailed and comprehensive problem diagnosis that captures all the actors (people and institutions), factors (social, economic, political, environmental, technological) and the interactions between them contributing to poor delivery outcomes is rarely carried out. Instead, there is a strong 'solution' bias in the system.

5

In general, there is little focus on including communities in diagnosing problems, developing solutions or overseeing municipal service delivery. This effective exclusion of the community point of view is illustrated in the lack of meaningful action in places where communities have not had access to water for more than two years, or the failure to critically assess the affordability of municipal service bills for poor households.

6

Related to this is the fact that many community protests around access to and the poor quality of services seem to have little impact in ensuring long-term and sustainable improvements in the quality and reliability of water services. The key question is – How can communities engage in more effective forms of protest that will increase the likelihood that remedial action materialises?

7

The current structure of the IGR framework gives limited authority to the national government to enforce delivery standards, but DWS has access to a very effective remedy that it is not currently making use of.

8

The current infrastructure maintenance funding model is problematic. Municipalities are required to fund maintenance out of their own revenue (at their sole discretion) rather than out of dedicated conditional grants. The financial strain on many municipalities means they simply do not set aside funds for this purpose. The resulting general deterioration in infrastructure is the main reason for poor quality of services, including interruptions.

All these factors have combined to create a situation where millions of households are denied basic rights to water and sanitation, where the ability to access these rights is influenced almost entirely by the municipality a household is lucky (or unlucky) enough to live in, and for the past 20 years there has been little meaningful action to change the situation. Each of these factors is discussed in more detail below:

**1**

**There is a general failure to apply a systems approach and/or analysis to the delivery of water and sanitation services, and, as a result, large parts of the system are effectively ‘invisible’ as potential contributors to problems.**

A review of the literature on efforts to improve the delivery of water and sanitation highlights a general lack of integrated systems thinking on problem diagnosis and solution design. In part, this is reflective of the siloed and fragmented institutional structure within which municipal systems are located (which effectively means no entity outside of the municipality has a mandate for the entire system). But it is also reflective of a general failure to include service users (and in particular lower-income households) into analysis in a comprehensive manner, or to consider structural impediments within the current service delivery model.

**In particular, the issue of the affordability of services for poor households has not been taken into account in a meaningful way**, either from the point of view of household poverty, or from the point of view of local government fiscal viability. The current approach – which simply maintains that households must pay – fails to take account of reality. South Africa needs a basic water and sanitation services system that provides quality and reliable services at costs that households can actually afford. Household affordability should be the starting point for the delivery of basic services, not an afterthought.

Additionally, the details, operation and challenges of the local government fiscal framework are central to the municipal water and sanitation system, and therefore to the outcomes of that system, but are seldom considered in any detail by water and sanitation sector experts, because it falls outside of their area of expertise.

*“We need to create functional municipalities. There is not much that can be done until the underlying structural problems have been addressed in local government.”*

**2**

**The dominant approach to improving outcomes – building technical skills and expertise in water and sanitation services – is necessary, but represents a response to only part of the larger systemic problems.**

Although having positions within water and sanitation service units filled with appropriately skilled staff is a necessary precondition for improved service, it is by no means the only remedy required. Investing in skills development when people are operating in a system that has deep structural flaws and presents numerous (non-skill) barriers to effective operation is an expensive and inefficient approach. Additionally, efforts to improve skills are undermined by high staff turnover in many municipalities, which means skilled staff are not retained, and the cycle of skills development never meets its targets.

**3**

**The FBS policy was intended to be the foundation of affordable universal access, but the reality is that significant erosion of actual benefits has contributed to increased poverty and inequality.**

As discussed in this report, a cornerstone of basic service delivery policy (and the National Development Plan) – that universal access to basic services is a key component of the social wage and of efforts to address poverty and inequality – is being eroded through the denial of millions of households of FBS. The result is that many of the poorest households in South Africa must find money to pay for these services, commonly through a reduction in food expenditure. In aggregate, they are paying billions of Rands each year for services they should be getting for free. As a result, poverty and inequality are worsened. To date, no one has taken responsibility for the current situation, or made any attempt to rectify it.

4

**Detailed and comprehensive problem diagnosis that captures all the actors (people and institutions), factors (social, economic, political, environmental, technological) and the interactions between them contributing to poor delivery outcomes is rarely carried out. Instead, there is a strong ‘solution’ bias in the system.**

For a variety of reasons, there is generally limited detailed diagnosis at an individual WSA level of what all the reasons (including ‘non-water and sanitation’) for a particular outcome (such as sub-standard water delivery) are. Instead, what is much more often seen is a set of assumptions about causal linkages (‘the problem is the shortage of skills’) which effectively results in the substitution of one problem (we do not have enough skilled people in the water department) for the actual problem. The siloed nature of support interventions encourages this approach. It discourages people from taking a system view of the drivers of a particular outcome, and encourages organisations to present ‘solutions’ that match their mandate and area of expertise and their preconceptions/assumptions of what the problems actually are. As the interviewees put it:

*“The dominance of the engineers in determining ‘the problem’ means that ‘politics is the problem’ and ‘engineering is the solution’.”*

*“Nobody is really thinking about the actual problems ... And [the current situation] makes it very difficult to agree on the problem.”*

*“We have to get away from ‘solutionism’ – we should be trying to figure out what the problem actually is, not just developing more solutions to what we **think** the problem is.”*

*“People are designing solutions and then they throw it over a wall and hope it hits a problem. If it doesn’t work, then it’s because it wasn’t implemented properly – nobody thinks maybe it was the wrong solution.”*

5

**In general, there is little focus on including communities in diagnosing problems, developing solutions or overseeing municipal service delivery. This effective exclusion of the community point of view is illustrated in the lack of meaningful action in places where communities have not had access to water for more than two years, or the failure to critically assess the affordability of municipal service bills for poor households.**

The research indicates that three quarters of South African households do not believe their municipality is addressing the issues most important to them, and water provision is at the top of that list. Additionally, there appears to be little interest in national departments in the issue of household affordability or household access to FBS.

These negative externalities could be addressed through a different model of community participation – one based on genuine co-production at all stages: problem diagnosis, solution development, and oversight. In respect of oversight, there are many examples around the world of increasing community participation using **social audits**.<sup>xlvi</sup> Such a model of community participation would be very different from the current, largely meaningless, ‘participation’ processes that mark the municipal IDP process.

<sup>xlvi</sup> These are community-led processes to determine whether the municipality has actually delivered the services it says it has delivered, and the impact of disclosed expenditure. It would be a complementary process to the annual financial audit undertaken by the AGSA, and provide an additional view on the performance of a municipality.

6

**Related to this is the fact that many community protests around access to and the poor quality of services seem to have little impact in ensuring long-term and sustainable improvements in the quality and reliability of water services. The key question is – How can communities engage in more effective forms of protest that will increase the likelihood that remedial action materialises?**

The systemic changes recommended in this report are vital to enable the government to implement court orders and address the demands of their constituents for safe, affordable water services. Revitalised methods of engagement, both formal and informal, are essential to the democratic project, as is the responsiveness and meaningful engagement by municipalities, with consumers living in their jurisdictions.

7

**The current structure of the IGR framework gives limited authority to national government to enforce delivery standards, but DWS has access to a very effective remedy that it is not currently making use of.**

As previously discussed, the current IGR framework makes direct enforcement of compliance with service delivery standards problematic, and the S 139 intervention framework has failed to deliver significant benefits. But DWS has a specialist mechanism at its disposal to fill these legislative gaps – Section 63 of the Water Act. Increased use of this section in cases of dysfunctional WSAs could make a significant difference to the quality and reliability of water and sanitation services for tens of thousands of households.

Windmill in the Tankwa Karoo National Park in the Northern Cape, taken during one of the worst droughts in South Africa.

©Bleach/Alamy Stock Photo

8

**The current infrastructure maintenance funding model is problematic. Municipalities are required to fund maintenance out of their own revenue (at their sole discretion) rather than out of dedicated conditional grants. The financial strain on many municipalities means they simply do not set aside funds for this purpose. The resulting general deterioration in infrastructure is the main reason for poor quality of services, including interruptions.**

There is a disproportionate emphasis – in both funding and support/capacity building initiatives – to rolling out new infrastructure rather than effectively maintaining existing infrastructure. Significant investments in water service infrastructure over the past 25 years have not been sufficient to match the increase in the number of households that require access to a safe and reliable water supply. The poor state of much of the infrastructure is responsible for much of the deterioration in services. A sustainable solution to the issue of infrastructure maintenance is urgently required.

*“For reasons I don’t understand there is a massive bias towards capital expenditure. And an unhelpful massive move away from repairs and maintenance and people monitoring [the system].”*

The current approach of ‘municipalities must fund maintenance out of their own revenue and must allocate sufficient funds for this purpose’ may be an accurate representation of the current fiscal framework, but it is also deeply unhelpful because this anticipated reality is simply not materialising. Eventually, the state will have to pay an enormous bill for the collective collapsed and dilapidated infrastructure. The sooner a solution is found that actually delivers, the smaller that collective cost will be.

The failure to take into account actual living arrangements in urban settlements is resulting in very poor infrastructure planning decisions – effectively undermining the development potential of such infrastructure investments. Additionally, much infrastructure development in poor areas appears to focus on delivering a basic minimum, rather than infrastructure that can facilitate long-term development and livelihood creation. This represents an important gap in the current approach to infrastructure design, which entrenches current patterns of poverty and inequality, and cements apartheid spatial patterns, with townships areas perpetually kept as low-income commuter dormitories, rather than centres of opportunity and development.

## 06

# Potential areas of action to improve system outcomes



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▲ Children playing in the Palala River in the Limpopo province.



**This section provides some proposed answers to the third of the research questions: What are recommendations for strengthening these systems, considering the high failure rate of previous initiatives?**

**We make the following recommendations, based on the analysis contained in this report:**

1

DWS should, as a matter of urgency, commit to the use of **Section 63 of the Water Services Act** to deal with serious problems in the sector, and promulgate (promote) detailed applicable regulations to the Act. These regulations should ideally include at least:

- details as to exactly what criteria will be used to determine 'not effectively performing any function imposed by or under the Act' so there is clarity on when an intervention may be triggered.
- details as to how the effectiveness of a Provincial intervention will be assessed, including timeframes for doing so (to give clarity to 63(2)(b)).
- the establishment of an internal unit (similar to the MFRS unit within the Treasury) that will assume responsibility for managing such interventions.

This will not only greatly increase national oversight over the delivery of water and sanitation services, but will also set a clear tolerance threshold for poorly performing WSAs. That is likely to provide a strong incentive for improved performance.

2

**The provision of FBW and FBSan (and other services) requires urgent attention, so that more poor households can benefit.** The various state actors in this regard – SALGA, the National Treasury and CoGTA – need to intervene to, among other things:

- agree on common standards and processes across all municipalities for the registration of indigent (poor) households.

- create an 'ombud' type function where households can appeal a municipal failure to register them for FBS, or where they are registered but not actually receiving the services.
- agree on the cost recovery (national budget allocations) for each service. If necessary, fewer households may be funded in the national budget, but the clear goal should be to ensure households funded in the national budget actually receive services. Alternatively, (and ideally) additional funding can be made available (the FBS programme is a relatively small part of the national budget).

One effective oversight mechanism would be for the AGSA to include FBS in the annual audit report – including data on how many households receive the services in each municipality, compared with the number funded in the national budget for that municipality. These audit reports are highly visible documents, and the inclusion of FBS would force each municipality into a discussion of their delivery.

3

**Mechanisms for more effective community participation** in both problem definition and solution development, implementation and oversight, centred on a co-production model (rather than the current IDP processes of minimal engagement). In particular, there are significant possibilities for using the resurrected Blue and Green Drop reports as the basis of increasing community engagement around the quality and reliability of services, since the reports clearly indicate which municipalities are falling behind.

4

**How could we make community action more effective?** This is not an easy question to answer, but some potential areas are:

- Focusing on clear 'one issue' problems, such as the failure to deliver FBW, which stems in large part from the problems with the household indigent (poor) status registration. Focusing on one clear issue, accompanied by a detailed list of what needs to be done to address it, and pursuing a long-term strategy would, we believe, increase the likelihood of positive change.
- There are also several interesting possibilities based around the use of technology to facilitate social auditing of water and sanitation outcomes by communities, and to integrate these social audit outcomes into the annual official audit process (carried out by the AGSA). The AGSA's annual reports always obtain a great deal of media attention, and parliamentary discussion. They therefore offer a good platform to highlight community issues.
- The fact that legal action in terms of S 139 interventions generally results in the state complying with judgments suggests it may be very worthwhile for civil society to focus on getting more widespread use of Section 63 of the Water Act (which can be used to trigger an S 139(1) intervention).

5

A more **pro-poor and developmental approach** towards the design of infrastructure in urban areas that:

- Takes into account actual (not assumed) spatial density.
- Is oriented towards the role of infrastructure in supporting livelihood opportunities rather than the minimum basic service.

There is little point in national development strategies around township development if the basic infrastructure in those townships is unable to support such development.

6

**A review of the infrastructure maintenance funding model.** The current situation, where dedicated (conditional grant) funding is for new infrastructure and municipalities are expected to fund maintenance out of their own revenue is clearly not working and needs urgent revision. Failure to do so will result in a further deterioration of service for (predominantly poor) households and burden the state with an enormous bill.

7

A programme of **engagement with the Inter-Ministerial Committee on Water and Sanitation by CSOs** active in the water and sanitation sector is needed.



▲ A training session of the Orange Farm grandmothers football team in Johannesburg, Gauteng province.

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Clean water,  
decent toilets and  
good hygiene



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▲ An emergency water tanker delivery to Muswodi village in drought stricken Venda in the Limpopo province.

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