



**NATIONAL COUNCIL  
OF PROVINCES** LOCAL  
**GOVERNMENT  
WEEK 2018**

Land Use: Towards Integrated Spatial Planning  
08 – 10 May



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**NATIONAL COUNCIL  
OF PROVINCES** LOCAL  
**GOVERNMENT  
WEEK 2018**

Land Use: Towards Integrated Spatial Planning  
08 – 10 May

Commission 1

**Municipal Infrastructure:  
Integrated Spatial  
Planning and the  
Provision of Services**



# **Municipal Infrastructure: Integrated Spatial Planning and the Provision of Services**

## **1. Questions for Consideration**

### **1.1. Human Settlements**

- a) What measures could be taken to improve capacity at municipalities in relation to the correct interpretation and implementation of legislation, land acquisition, management and registration processes?
- b) Due to the fact that the prevention of illegal occupation of land is a major challenge in many metropolitan municipalities, what steps may be taken to address the challenge?
- c) What legislative amendments may be required in order to streamline processes related to land management, acquisition and registration?
- d) What measures can be implemented to address the need for improved intergovernmental relations across the spheres of government and between SoEs and government departments?

### **1.2. Water and Sanitation**

- a) Apart from the working groups currently dealing with the issue of municipalities with debt owed for water services, what measures may be implemented to address the overall challenge of municipal debt in the water sector?
- b) What steps can be taken to address the need for capacity and the lack of maintenance of water infrastructure at municipal level?
- c) Despite progress made on improved access to water and sanitation, what further strategic interventions are required to ensure continuous improvement in access to these services?

### 1.3. Energy

- a) In addition to the Inter ministerial Task Team tasked with finding lasting solutions to the municipal debts to Eskom, what other mechanisms could be employed to resolve constitutional issues relating to electricity provision?
- b) What is the intergovernmental plan, which the NCOP could use to develop and oversee the cooperative governance and transfer of capacity from National and Provincial spheres to Local government?
- c) How can the National Treasury be capacitated to ensure that outstanding debts are paid to Eskom by Provincial, Local and National spheres of government

## **2. Executive Summary: Human Settlements, Water and Sanitation, and Energy**

### **2.1. Background**

Colonialism and Apartheid has resulted in a South African society that is deeply divided, which is further entrenched by an inequitable distribution of people and economic activity. The resulting spatial inequality serves to trap historically disadvantaged communities in poverty and underdevelopment. It also results in the creation inefficient cities, as well as undermining rural livelihoods. Spatial inequality in South Africa comprises different dimensions, including economic, social, environmental, institutional and psycho-social. These dimensions illustrate the complex nature of the challenge and serves to indicate how reconfiguring the spatial patterns engineered during Apartheid is likely to be a long-term endeavour, requiring significant political will, resources and dedicated effort.

Spatial segregation is problematic as it: 1) results in the physical separation of people from economic and social opportunities and activity and 2) entrenches the simultaneous and persistent under-development of informal settlements and enterprises. It also poses challenges to cost-effective and efficient delivery of services, such as water and sanitation, electricity and housing opportunities.

### **2.2. Human Settlements**

Many disenfranchised communities continue to be denied access to employment and economic opportunities by being geographically located far from such opportunities and by being structurally excluded from urban land markets in urban conurbations, secondary cities and small towns. Many municipalities also continue to experience challenges with the acquisition of land owned by the national and provincial government, State-owned Entities and the private sector for the advancement of their long-term strategic goals of integrated spatial planning and transformation, as well as inclusive economic development. While

many of the discussions around spatial integration take place in relation to urban regions, small towns play a pivotal role in bringing social and economic services closer to communities. Without these small centres, many people would have to endure the inconveniences of long distance travels to access even the most basic of services.

### 2.2.1. Key challenges

Some of the key challenges to addressing spatial inequality, specifically in urban areas, include the unlocking of well-located land in urban areas for residential development, the connection of bulk infrastructure and services to new housing developments, access to interim services, the lack of decent, affordable rental housing for low-income and poor individuals and the in-situ upgrading of informal settlements.

- There is a lack of an overarching strategic approach to spatial planning. This shortcoming is currently resulting in a fragmented system across various sector departments.
- The role of SOEs, national and provincial government departments in municipal planning IGR forums or structures are minor and they are therefore not really involved in strategic planning processes focused on land acquisition and release.
- One of the key issues in the management of land, at all levels of government, is the prevention of illegal occupation and invasion of land.
- Some municipalities have limited capacity (i.e. human resources) to ensure proper and efficient land administration and governance.
- There is a plethora of legislation and policies that exist with regard to the acquisition and release of land at the national, provincial, and local level. The understanding and knowledge of the policy and legislative framework for the disposal of non-core land is inconsistent across all spheres of government.
- In relation to the implementation of SPLUMA, there has been slow progress or no progress on matters requiring Council resolutions.
- Municipalities experience challenges with interpreting the SPLUMA and its Regulations.

- Unless urgent action is taken, the failure of some provinces to put forward names of municipalities to apply for accreditation and to support those municipalities will likely lead to the failure of the sector to meet the MTSF target of accrediting an additional 29 municipalities by 2019.
- Small towns whose economic base was dependent on predominantly one sector such as mining, manufacturing and in some instances agriculture have undergone decline. Global economic shifts within industries but also the general shift towards the tertiary sector have impacted negatively on towns.

### 2.2.2. Recommendations

- Metropolitan municipalities should provide a report to the NCOP on the feasibility of using zoning by-laws to provide mixed land use options in peripheral urban areas to address spatial integration, within 3 months of adoption of the Local Government Week report.
- The challenges presented by the lack of overarching strategic approach to spatial planning are complex and vast. The Department of Human Settlements should provide to the NCOP feedback on challenges experienced with the implementation of SPLUMA, and highlight remaining legislative shortcomings in relation to fragmentation of fiscal arrangements and infrastructure within 3 months of adoption of the Local Government Week report.
- In relation to illegal and violent land invasions in various metropolitan municipalities, all metropolitan municipalities must submit a report to the NCOP within 3 months of the adoption of the Local Government Week report. The reports should outline the extent and frequency of land invasions, the current state of affairs, measures taken to address these challenges and the efficacy of these measures taken to date.
- Municipalities need to be capacitated to correctly and effectively apply legislation to acquire land.
- It is proposed that a decentralised land disposal decision-making system be considered by SOEs and relevant government departments.
- Assert the municipal planning function to ensure compliance with SPLUMA.



- Engage and collaborate with the House of Traditional leaders in provinces that are experiencing challenges in terms of cooperation of traditional leaders with the implementation of SPLUMA.
- Planning capacity (human and financial resource) provisions should be made in municipalities to drive the SPLUMA implementation.
- Legislation governing the division of revenue should be amended to enable cross-municipal planning and infrastructure implementation.

### 2.3. Water and Sanitation

South Africa is a water scarce country that utilises a variety of surface and groundwater resources. These include rivers, lakes, and groundwater stored in soil, rock pores, aquifers and crevices. In November 2017, South Africa was ranked as the 30<sup>th</sup> driest country in the world.

#### 2.3.1. Key Challenges

The factors that contribute to the current state of affairs in local government are both historical and a result of current practices. When municipalities were established and assumed responsibility for various municipal infrastructure services functions, they inherited old infrastructure, some of which was overdue for replacement. The policy choices at that time were mainly in ensuring the unserved are served through instruments such as the Municipal Infrastructure Grant and Equitable share. Also, poor maintenance practices have led to asset stripping or consumption of infrastructure assets at a rate that reduced their actual service period to levels significantly below their design service period. Notwithstanding the gains made since 1994, it is becoming evident that there is a likelihood to regress purely on the basis of a number of challenges experienced by member municipalities. These include water resource availability (such as water availability and drought management), funding and financing (such as municipal debt), as well as infrastructure challenges (such as eradication of the bucket system).



### 2.3.2. Recommendations

- South Africa requires a nationally funded programme to be championed by the President. SALGA to prepare a proposal to effect such, working in collaboration with municipalities to support local and sectoral initiatives to reduce water demand and improve water-use efficiency.
- Working in collaboration with municipalities, SALGA to champion surfacing costing and pricing methodologies using a differentiated approach.
- Influence the development of the water and sanitation master plan to include the establishment of an independent regulator. SALGA, working in collaboration with municipalities, to influence its functions and scope of work.
- Enhance Technology and Innovation platform established, working in collaboration with research institutions, Science Councils, Local and International innovators and Embassies.
- SALGA to lobby National Treasury and the Department of Water and Sanitation to consider desalination of sea water and Acid Mine Drainage as part of their water sources mandate - The NDP calls for a regular review of evolving water resources management - Given growing uncertainty about the availability of water to meet expanding demand, the management approach must be regularly reviewed.
- There are currently working groups dealing with the issue of municipalities with debt owed for water services. The working groups could provide the NCOP with a report on the current state of affairs. Furthermore, the 30 implicated municipalities must each submit a report outlining challenges and progress made in terms of addressing the issue of debt to the NCOP within 60 days of the adoption of the Local Government Week report.

## 2.4. Energy

Electricity provision is the bedrock of economic growth and development of any modern economy. The appreciation of this notion is noted in the Energy White Paper of 1998, which outlines the restructuring framework for the supply (generation and transmission) and distribution of electricity. The White Paper

further mandates NERSA with the responsibility of issuing licences to the distributors and regulation of tariffs by Eskom and municipalities. However, in terms of Schedule 4B of the Constitution of 1996, Eskom is responsible for distributing electricity to municipalities within national and provincial legislative frameworks.

In accordance, clarity have been provided in the Municipal Systems Act, No.32 of 2000 in which municipalities were established as service authorities responsible for electricity provision to households and businesses in their areas of jurisdiction. The electrification of households in both urban and rural areas is not contested as this function resides under the Integrated National Electrification Programme (INEP) of the Department of Energy (DoE). In terms of implementation, both Eskom and Municipalities thus execute this function depending on signed service level agreements.

#### 2.4.1. Challenges

- Access to electricity is higher in more urban municipalities than in rural municipalities. While provincial figures are quite comparable in terms of access, municipal figures vary widely.
- Due to the limited ability to generate revenue from poor areas, municipalities are slow to extend electricity services to these areas.
- Although electricity is potentially a very important source of revenue for municipalities, many municipal distributors have in the past neglected to do the required maintenance and investment, thus raising the risk of power outages caused by ageing infrastructure.
- In essence, municipalities are struggling to fulfil their constitutional obligations owing to issues of poor governance, inappropriate spatial planning, massive service backlogs, and inadequate social infrastructure and this constrains their strategic contribution to economic development and poverty reduction, as envisaged in the NDP.
- The constitutional challenges of electricity provision between Eskom and Municipalities are attributed to a lack of Service Delivery Agreements, which

leads to municipalities' failure to pay Eskom on time, running into billions of Rands. Municipalities attribute this challenge to the existing legal frameworks, which undermine their constitutional obligations.

#### 2.4.2. Recommendations

- A working group comprising National Treasury, the Department of Energy, the National Energy Regulator of South Africa and SALGA could be established to investigate how to regulate finances and tariffs of distributors (Eskom and municipalities) more effectively, with a view to increasing transparency and cost-reflectivity, tariff rationalisation and convergence, increased use of time-of-use pricing and sustainable targeted and pro-poor subsidies. In addition, the National Treasury could consider how to regulate the electricity levy more effectively or how to do away with the levy.
- The National Council of Provinces (NCOP) should convene a working group to consider the structural, constitutional and systemic challenges that subvert the ability of municipalities in the provision of electricity towards economic development and job creation in their areas of jurisdiction.
- Legislation should be considered to provide clearer guidelines for distribution responsibilities, clear roles between Eskom and municipalities. Efforts to address the fragmentation of the EDI through the Regional Electricity Distributors (REDs) model have failed and seemingly, Approach to Distribution Asset Management (ADAM) is not a sustainable approach in addressing EDI challenges.

## 3. Water and Sanitation

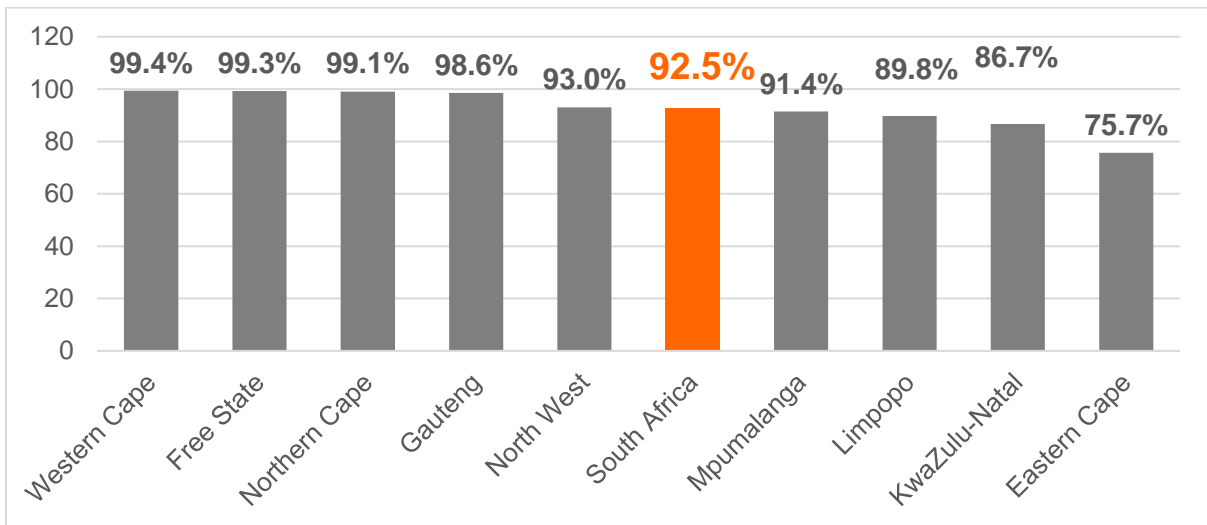
### 3.1. Introduction and Context

Water Infrastructure is key for socio –economic development and importantly for human well- being. The National Development Plan highlights water as a strategic resource critical for social and economic development and that there is growing concern about the potential impact of water-related risks. Some of these risks are highlighted in this paper. It further emphasizes that by 2030, all South Africans will have affordable, reliable access to sufficient safe water and hygienic sanitation. These sentiments are further echoed in the Medium Term Strategic Framework (MTSF) 2014 -2019 with emphasis on following three important targets that should be met by 2019.

1. A 5% increase in bulk water resources commissioned in comparison to 2014
2. Increase in the percentage of households with access to a functional water services from 85% in 2013 to 90% by 2019
3. Increase in the percentage of households with access to a functional sanitation service from 84% in 2013 to 90% by 2019 including elimination of the bucket system

In a quest to meeting these targets Municipalities have progressively delivered water services in a sustainable manner. To date 92% of South Africans enjoy access to clean water and well over 70 on Sanitation. The table below depicts access to water.

**Table1: Access to water**



**Source: Stats Community Survey 2016**

However, noting these gains it is becoming evident that there is likelihood to regress purely on the basis of a number of challenges experienced by member municipalities. These include, amongst others:

- a) Lack of Operations and Maintenance
- b) Water Availability, Allocation, Non-revenue Water and use
- c) Water Supply Reliability
- d) Drought Management
- e) Adapting and Mitigating the effects of Climate Change
- f) Flood Management
- g) Appropriate Infrastructure Investments (Raw Water development, potable bulk and retail)
- h) Costing and Pricing
- i) The use and scale of employing Technological and Innovative solutions in the management

To illustrate the above mentioned challenges the recent published 2016 South African Institute of Civil Engineers reports assessed the municipal infrastructure as follows:

**Water Urban: C+** Budgeting and spending on maintenance, rehabilitation and expansion remains inadequate for water supply in all areas. Damage caused by increased service delivery protests in urban and rural areas diverts funding from maintenance and expansion budgets. Consequently, given continually growing demands, communities face increasing risk of supply failures. Water leakage and other contributors to non-revenue water remain unacceptably high (losses of up to 40%). Demand management requires concerted attention to be effective.

**Water other areas: D-** The quality and the reliability of water supply has decreased in small towns and rural systems. Incentives resulting from 'Blue' and 'No Drop' quality monitoring have assisted in improving municipal management of drinking water quality and water loss control. Regrettably, the 'Blue Drop' report is no longer available in a format which allows comparison between Water Services Authorities.

**Sanitation Urban: C-** The condition and functionality of sanitation infrastructure is of grave concern, especially outside the major urban areas. Although the unserved-households percentage has decreased significantly since 1994, due to growth in population and households, the actual number unserved remains at about 4 million. 'Green Drop' performance scores are generally in the "good" to "excellent" range around major urban areas. However, many urban facilities are unable to cope with increased demand. Many (up to 30% of all) WWTWs are in critical condition, discharging increasing quantities of untreated waste into streams.

**Sanitation other areas: E** The skills required to operate and manage sophisticated sanitation and WWTW technologies are often scarce outside of major urban centres; consequently downstream users and ecosystems are subjected to high pathogen loads and eutrophication, and endure higher treatment costs to achieve potable water standards. Inhabitants in some rural areas still do not have access to safe sanitation. Pit toilets in rural and informal areas are frequently under-serviced, exposing residents to disease. (Note: The grading for "all other areas" in 2011 ought to have been an E, and that grade remains.)

### 3.2. Problem Statement

There are a number of factors that contribute to the current state of affairs in local government. The first one is *historical* and precedes the establishment of democratic local government. The second one is a result of *practices* in many municipalities post the establishment of democratic local government.

With regards to the first one; the historical factor, when municipalities were established and assumed responsibility for various municipal infrastructure services functions, they inherited old infrastructure some of which was way overdue for replacement. In a sense municipalities inherited municipal infrastructure refurbishment liability by taking up these functions. Essentially municipalities accepted an unalienable responsibility of replacing and refurbishing old infrastructure that was associated with the function. The policy choices at that time were mainly in ensuring the unserved are served through instruments such the Municipal Infrastructure Grant and Equitable share.

The above to some extent lead to a situation where there was no national or local funding available for investing in refurbishing and replacing infrastructure to ensure continued provision to services to the relatively developed areas of the country. In effect the country postponed investment in infrastructure refurbishment and replacement and further loaded this old infrastructure as more consumers utilized it.

With regard to the second one, poor maintenance practices have led to asset stripping or consumption of infrastructure assets at a rate that reduced their actual service period to levels significantly below their design service period. Hence the current challenges which requires huge investments. About 26% of the water supply systems assessed in terms of the Blue Drop framework in 2014 were found to be in the high and critical risk category and 57% were categorised as high to critical risk in terms of the Green drop assessment tool. This state of affairs poses a major threats in the delivery of water and sanitation.

### 3.3. Initiative underway

There a number of initiatives currently underway to explore mechanisms of financing infrastructure investment and enhancing of water management such includes but not limited to:

a) Reconfiguration of Municipal Infrastructure Grant

The primary aimed of such is to ensure going forward that there is maximise efficiency and effectiveness of utilising existing resources (grants) without necessarily not seeking extra funds, improvement on grant structures (proposals address service delivery and locational challenges applicable to the different types of municipalities) including reporting

b) Design of Municipal Non-Revenue Water

This initiate is aimed at ensuring access to private sector funding through an establishment of non-revenue water revolving fund. A process to help design the fund is currently underway

c) Exploring opportunities for scaling up wastewater reuse:

Acknowledging that wastewater re-use is scaled up for different purposes – such would include for industrial use, Agriculture and for flushing. In some municipalities such is being implemented and require to be scaled up. However funding for such might be a limitation.

d) Regional Management Support Programme – institutional turnaround programme focussing on water and sanitation services business currently in Amathole, OR Tambo and Sekhukhune District Municipalities.



### 3.4. Proposals

In supplementing the above-mentioned interventions- SALGA propose the following:

ISSUE	PROBLEM STATEMENT	PROPOSED INTERVENTION
<p><b>NON REVENUE WATER</b></p>	<p>Water loses Annually amounts to over R7B in revenue. Such threatens the financial viability municipalities and water security. Further research indicates that by 2030 there will be 17% water gap if non-revenue challenges are not addressed</p>	<p>The Country requires a Nationally funded Programme to be championed by the President. SALGA to prepare a proposal to effect such working in collaboration with municipalities - The NDP also call such - The Commission proposes running a national programme to support local and sectoral initiatives to reduce water demand and improve water-use efficiency.</p>

ISSUE	PROBLEM STATEMENT	PROPOSED INTERVENTION
<b>WATER PRICING</b>	The cost of providing water and sanitation vs current tariff regime do not based on the cost of services do not correlate. This disjuncture poses a challenge in the sustainability of service provision and importantly reliability water and sanitation service	Working in collaboration with municipalities SALGA to champion surfacing costing and pricing methodologies using a differentiated approach
<b>ESTABLISHMENT OF AN INDEPENDENT ECONOMIC REGULATOR</b>	The absence of an independent regulator in the water sector has contributed to the water value chain not being coherently pricing water. Such has led to each component of the value pricing determining its pricing methodology and tariff structure. This status quo has to change if the sector has to ensure its	Influence the development of the water and sanitation master plan to include the establishment of an independent regulator. SALGA working in collaboration with municipalities to influence its functions and scope of work

ISSUE	PROBLEM STATEMENT	PROPOSED INTERVENTION
	sustainability in the near future	
<b>TECHNOLOGY AND INNOVATION</b>	<p>Research undertaken by SALGA and the Water Research Commission indicates that 44% of plants employ less suitable (inappropriate) technologies when matched to their resource base, capacity to manage and effluent quality requirements, 33% of plant technologies are questionable and may not be the best fit for the operational and management environment, 22% of assessment plant employ suitable and sustainable technology options. If this trend continue it has a potential to plunge the sector into financial difficulties in operating and maintaining</p>	<p>Enhance Technology and Innovation platform established working in collaboration with research institutions, Science Councils, Local and International innovators and Embassies</p>

ISSUE	PROBLEM STATEMENT	PROPOSED INTERVENTION
	<p>infrastructure. In this regard an intervention is thus required to address the identified gap</p>	
<p><b>WATER RESOURCES (DESALINATION) FUNDING AND DEVELOPMENT</b></p>	<p>One of the key role of the Department of Water and Sanitation is to plan, fund and development bulk raw water infrastructures across the Country. However such has been limited to surface water.</p> <p>Water diversification (water mix) is a must going forward given the current and future challenges relating to water demand and supply, drought management and ensure that there is water security. To this end it has become crucial for the water sector to explore another sources of</p>	<p>SALGA to lobby NT and the Department of Water and Sanitation to consider desalination of sea water and Acid Mine Drainage as part of their water sources mandate -</p> <p>The NDP call of a regular review of evolving water resources management -</p> <p>Given growing uncertainty about the availability of water to meet expanding demand, the management approach must be regularly reviewed.</p>

ISSUE	PROBLEM STATEMENT	PROPOSED INTERVENTION
	<p>water in order to address ever-increasing demand. To mitigate the said risks desalination of sea water is one of the key sources of water in the future. However it is not clear who should be funding, developing and managing this emerging source of water. Currently municipalities are expected to fill in the gaps of developing own desalination plants and this is a challenge for municipalities. It is in this context that going forward the Department should include desalination as part of their mandate water Resources Development.</p>	

### 3.5. Conclusion

Meeting Sustainable Development Goals (SDGs), National Development Plan and the Medium Term Strategic Goals will require a collective effort for such to be attained. It is acknowledged that the attainment of these can be realized through amongst others exploring national and local interventions mechanism(s), harvesting national and international technology and innovative solutions, capacity-building support mechanisms with private and public sectors and secondly by involving local communities in decision making processes in water management.

Much efforts should be placed on a differentiated approach in supporting municipalities. Metros and Cities would require support that primarily focus on Mitigating Climate change, Costing and Pricing, Water Allocation and Use, Technology and Innovation and Water Security and meeting the SDGs. District will inevitable require support on institutional delivery mechanism(s) (institutional reform) enabling policy and legislative environment, funding and to some extent technology and innovation. To this end the role of National and Provincial Governments will be crucial in terms of section 154 of the Constitution. Parliament and related structures should going forward ensure such is undertaken without fail.

#### **Reference:**

**SAICE 2017 Infrastructure Report Card**

**SALGA 2013 the “decay” of Municipal Infrastructure**

**2014 Green and Blue Drop assessment Tool**

## **4. Energy Summit Outcomes**

### **It is time to implement the energy transition and revisit the traditional Electricity industry structure**

The objective of this paper is to summarise the main outcomes and recommendations of the Energy Summit which took place on the 7<sup>th</sup> to 9<sup>th</sup> March 2018 at the Sandton Convention Centre, and to inform Parliament on the recommendations that are to be implemented in short to medium term. The aim of the summit was to collectively discuss how the changing energy landscape affects municipalities economically, legally, financially and institutionally along with how municipalities can respond to these changes. From the discussions at the summit, solutions were proposed on how the future of local government energy should be approached and structured considering the changes that have been occurring in the sector.

There are two areas in the electricity distribution industry requiring the most urgent attention from parliament. Firstly it is becoming urgent to review the electricity industry structure as the current design is not sustainable given the fundamental shifts taking place in the energy industry. The redesign of the industry structure will need to consider generation, transmission and distribution, including an independent system operator. Secondly, the national energy planning documents, in particular the Integrated Resource Plan (IRP) must incorporate the fundamental transition which will take place within local government distribution jurisdictions, and change the face of electricity services within the planning period. The impasse constitutional powers of municipalities remain unresolved, adding to this are persistent systemic and structural challenges which are also due to the current dispensation and may be resolved by the redesign of the industry structure which would address some of the key legislative constraints.

#### **4.1. Background**

Globally the electricity sector is currently undergoing a fundamental change and this is no different for South Africa. There is a significant shift away from centrally controlled

generation, transmission and distributed systems to more decentralised means of electricity provision. There is also a shift towards more sustainable forms of electricity production, such as solar and wind energy and a shift towards increasing integration with telecommunications infrastructure.

These shifts are forcing electricity industry players to rethink the way in which they do business. Policy, legislation and regulations need to change to be more inclusive of decentralised models, grid infrastructure needs to be invested in to accommodate different types of electricity, and new revenue models need to be implemented to ensure that utilities remain financially viable into the future, providing service delivery to all and perform a developmental agenda.

South Africa has a very traditional electricity sector, consisting of Eskom as the bulk generator and transmitter of electricity, and Eskom as well as municipalities responsible for most of the local electricity distribution system. Policies in the energy sector are also extremely centralised, focussing on Eskom, with little to no room for municipal and customer participation.

Within this monopolistic system there are several challenges that are limiting the ability of municipalities to innovate, provide optimal electricity and energy services to their communities while responding to the profound changes taking place in the sector and ensuring the sustainability of the municipal institution. In particular, outdated revenue models, which rely on the sale of electricity from Eskom rather than the use of the grid, are further discouraging municipalities from responding to increasing demands for decentralisation.

#### **4.2. The SALGA Energy Summit**

SALGA convened the Energy Summit: Defining the Energy Future of Local Government from 07<sup>th</sup> to 09<sup>th</sup> March 2018. The Summit was well attended with approximately 1000 delegates representing the South African National Government, Provincial Government, Local Government, international institutions, energy sector representatives (e.g. NERSA, Eskom, AMEU, Energy Intensive User Groups, Energy



Industry Associations, IPPs), civil society representatives, non-profit organisations, amongst others.

The Summit presented a platform to facilitate constructive engagement between relevant stakeholders on areas related to;

- International energy related trends and the implications of the energy transition
- Energy models and systems related service delivery
- The protection of municipal revenue and emerging business opportunities
- The role of sustainable energy provision as an economic growth enabler,
- Business and energy sector structure,
- Innovative technologies in the energy sector,
- Alternative/renewable energy potential/opportunities,
- Effective resource utilisation.

The summit focused on three themes that invoked lengthy discussions by energy sector leaders. The themes were: megatrends within the sector that will serve as catalysts for change; reviewing the sector's legislative framework and policies; and lastly, the opportunities arising in the sector that may benefit everyone in the future.

The speakers (international and local) were carefully selected to ensure informed and professional contributions to the relevant sections of the Energy Summit programme. The speakers came from a variety of backgrounds, providing the views of the stakeholders affected by the energy sector. These backgrounds included international and local energy sector, national and local government, private sector, Eskom and civil society amongst others. The energy summit programme was designed in manner that ensured maximum participation of key stakeholders and effective information sharing whilst also making provision for inputs by honourable guests, plenary discussions, individual expert presentations, panel discussions and break away sessions.

The next section of this paper summarises the main outcomes and recommendations which were highlighted during the summit. It is crucial to note that all delegates pleaded for the Summit to be followed with **prompt and decisive action**, as municipalities are facing critical challenges and the time to act is now.

### 4.3. Main outcomes and recommendations

The Energy Summit afforded the delegates the opportunity to collectively reflect on the implications of the energy transitions for local municipalities, to review their role in the electricity value chain and to consider strategies to adapt to sustainable funding and operating models. The discussions were robust and a wide range of suggestions and proposals were made.

The key outcomes of the summit can be grouped into five themes as depicted below:



**Figure 1: Key Summit Outcome Themes**

The following sections highlight some of the main outcomes for each of the theme, many more suggestions were made and can be found in the Energy Summit Report. The outcomes and recommendations highlighted below are those which deserve urgent attention by Parliament.

### 4.4. Priority Recommendations

#### 4.4.1. Enabling Environment

##### **a) Review current (unsustainable) electricity industry structure**

The current arrangement favours the monopoly position of Eskom as a national power utility, thereby hampering municipal capacity to innovate and provide optimal electricity and energy services by taking advantage of the new technology available. The price of electricity is dangerously spiralling upwards, while Eskom is further falling into the

so-called Utility Death Spiral, whereby increasing electricity prices further pushes customers to reduce their electricity demand, calling for even higher prices, etc. This situation is untenable.

**The structure of Eskom needs to be urgently reviewed and in particular, the introduction of an Independent System and Market Operator (ISMO),** as discussed some years ago in parliament. The review of the Eskom structure is regarded as a crucial first step in addressing the structural deficiencies in the market arrangement. An ISMO, as an independent state-owned entity, would buy electricity from Eskom and other producers and sell it on to distributors.

The review of the whole industry structure and market arrangements must receive urgent attention and should consider the entire value chain. It therefore implies that the generation, transmission, distribution/reticulation and retail components of the value chain must be analysed and unbundled.

**b) Policy framework to be redesigned to cater for new, innovative and future realities**

The current policy and planning arrangement favours the default position of Eskom as the dominant supplier of bulk electricity. The national energy plans, and in particular the Integrated Resource Plan (IRP) should integrate the continuous and rapid shifts observed at the local government level. Active collaboration in IRP planning between the national-level team and municipal electricity distributors is required. Where available, municipal energy plans should be included in the IRP, allowing determinations by the Minister on new generation capacity. Trading, wheeling and the supply of decentralised electricity generation by municipalities (or at the municipal level) should be addressed in the policy framework.

**c) Constitutional Powers and SDAs between Eskom and municipalities**

In the current dispensation municipalities and Eskom are the main providers of grid electricity to end customers. Both municipalities and Eskom are licensed through the National Energy Regulator of South Africa (NERSA), to supply electricity within a defined licensed area. The presence of two licensed electricity providers within the same municipal area of jurisdiction creates conflict from a customer service and

revenue management perspective. This situation is further complicated by the absence of a service delivery agreement (SDA) between the relevant municipality (service authority) and Eskom as a service provider.

This issue has been reported many times to parliamentary structures, to the Presidential Coordinating Committee, an IMTTs was put in place to deal with the matter, yet no agreement has been reached, further impacting municipalities negatively. Given that the PCC meeting of 29 August 2017 did not support the recommendation to approach the Court to seek a declaratory order to clarify the 'executive authority' of municipalities in relation to electricity reticulation and distribution (as stipulated in Section 156 and Scheduled 4B of the Constitution of the Republic of South Africa) the Inter-Ministerial Task Team (IMTT) meeting held on 17 October 2017 resolved that an advisory panel should be appointed to provide legal clarity on the constitutional matters relating to electricity reticulation and distribution.

The advisory panel was appointed by the Minister of COGTA to commence on its task from 16 March 2018 and ending on 15 June 2018 or when the task is complete. An interim report is required to be submitted by 30 May 2018 and the final report on 11 June 2018. The first meeting to brief the Advisory panel took place on 12 April 2018 where it further requested more supporting documents from SALGA and Eskom

#### **4.4.2. Further Recommendations**

##### **a) Social Compact: a just and fair energy transition**

The need to protect the interest of the poor and the importance of transparent service cross subsidisation where required was reiterated at the summit. International and local trends indicate that higher income customers, including industrial and commercial customers are venturing into more affordable and reliable alternative energy options. This has a direct impact on the sales volumes and can subsequently lead to a reduction in revenue realised from the sale of electricity. It is revenue from the very same customer grouping that is needed to cross subsidise the poor customers and directly contributes to the revenue margins required to sustain and grow the municipal electricity business. The energy transition will unavoidably result in reduced

coal usage over the long term. However, planning for a just energy transition must start now. Many communities and families rely on income from the coal industry and this reality should be considered in the transition towards sustainable energy.

### **b) Operational resilience**

The energy transition will not be a success if municipal operations do not become more efficient and resilient. The summit called on municipalities to improve some of their practises through benchmarking, improved tariff design which separates the cost of providing electricity services from the cost of the energy itself (unbundling), increased revenue collection, to name a few. **This will require support from the Department of Energy, National Treasury, NERSA, and other institutions. It will require skills and resources at the municipal level.**

It is essential that the business model selected enables municipalities to leverage existing and new assets to generate additional revenue streams. Energy trading, wheeling, rooftop PV, energy storage, where applicable electric vehicle charging stations and data related service provision through existing infrastructure were highlighted as potential new revenue realisation opportunities. Business models which will facilitate the transition to a network service provider and reduce the dependency on the selling of electricity to end customers i.e. the traditional kWh business, should be prioritised.

### **c) New opportunities deployment**

Various suggestions were made for municipalities to take advantage of new opportunities available, in particular, **renewable energy generation at the local government level was seen as being necessary for municipalities in the context of the energy transition**, although this is limited by the current policy framework as previously discussed. This would bring numerous benefits to municipalities, including local economic development.

The expansion of the electricity grid in certain areas can only be done with substantial cost implications. In the drive to optimise the energy portfolio and to give all customers access to electricity, mini-grids become a very attractive option. The mini-grid can be

a stand-alone solution, with renewable energy sources. Mini-grids can be designed in a way that enables connection to the national electricity grid when this becomes a feasible options. **Amendment to the INEP programme could be discussed to integrate mini-grids as an efficient electrification option.** Another proposal was made to organise a tender programme, similar to the Renewable Energy Independent Power Producer Programme (REIPPPP) but aimed at providing energy access to unserved areas.

#### **d) Collaborative Leadership**

Currently there is no overarching institutional or governance arrangement accountable for the integrated electricity supply throughout the electricity supply value chain, inclusive of electricity delivery to end customers through the local government structure. The need for strong and decisive leadership is required. Collaboration is needed throughout the value chain and amongst several departments and spheres of government. It was recommended that **an Energy Reform Commission be appointed** to review the current structure, review the reform work done to date, define a more sustainable decentralised and variable solutions structure, craft the sector vision and implement the required structural changes.

### **4.5. Conclusion**

The electricity supply and distribution industry in its current form is no longer viable for local government, national government, state-owned institutions and society as a whole. Embracing the transition is no longer a choice but a necessity for the South African electricity sector to survive. The current regulatory environment is inhibiting instead of enabling the transition, where neither the energy transition, nor the role of local government, are acknowledged, as illustrated with the current Integrated Resource Plan (IRP). *[Extracts for the Energy Summit Declaration]*

The current electricity market structure is not creating a level playing field for all stakeholders and it restricts economic growth and effective market participation. It is therefore essential that the generation, transmission, distribution and energy retail model be reviewed and municipal realities be included in the national energy and

electricity planning along with outcomes and recommendation presented in this paper and in the Energy Summit Report be implemented.

## 5. Small Towns Regeneration

### 5.1. Background

Small towns play a pivotal role in bringing social and economic services closer to communities. Without these small centres, many people would have to endure the inconveniences of long distance travels to access even the most basic of services. Some of the challenges facing towns include social and economic factors that have impacted negatively on the viability of towns:

*Reliance on one sector* – Small towns whose economic base was dependent on predominantly one sector such as mining, manufacturing and in some instances agriculture have undergone decline. Global economic shifts within industries but also the general shift towards the tertiary sector have impacted negatively on towns.

*Migration* – for economic and other reasons, urbanisation has been on the increase, people migrating from rural areas and towns towards cities. In South Africa in particular, migration coincided with the end of apartheid, people moved from homelands and smaller towns to larger regional service centres and cities.

There are various factors why small towns remain essential in the South African context. In South Africa, there's still a considerable number of people living in small towns (more than 4,500 000 see table 1 below)), despite the pull factors that drive people to bigger towns and metropolitan centres.



**Table 1: Population and Population Changes in South African Settlements**

Functional Settlement Type (CSIR/SACN 2013v2)	Economic Activity (*Total GVA (xR1000))	Population 1996	Population 2001	Population 2011	% Change Per Annum (1996-2001)	% Change Per Annum (2001-2011)	% Change Per Annum (1996-2011)
City Regions	1 185 948	15 005 442	17 411 707	21 856 192	3.21%	2.55%	3.04%
Cities	1 78 276	2 782 186	3 209 787	3 876 064	3.07%	2.08%	2.62%
Regional Service Centres	88 770	209 350 4	233 331 5	268 614 6	2.29%	1.51%	1.89%
Service Towns	27 278	664 479	826 337	970 366	4.87%	1.74%	3.07%
<b>TOTAL CITIES &amp; LARGER TOWNS</b>	<b>1 480 272</b>	<b>20 545 611</b>	<b>23 781 147</b>	<b>29 388 768</b>	<b>3.15%</b>	<b>2.36%</b>	<b>2.87%</b>
Local and niche towns	123 168	341 870 3	393 732 6	434 599 3	3.03%	1.04%	1.81%
Rural Nodes in high density settlements	4 850	148 384	160 935	191 123	1.69%	1.88%	1.92%
<b>TOTAL SMALL TOWNS</b>	<b>128 018</b>	<b>3 567 087</b>	<b>4 098 261</b>	<b>4 537 116</b>	<b>2.98%</b>	<b>1.07%</b>	<b>1.81%</b>
REST OF SA (High density rural areas, densely populated areas and sparsely populated areas)		16 408 074	16 925 740	17 844 213	0.63%	0.54%	0.58%
<b>TOTAL SA</b>		<b>40 520 772</b>	<b>44 805 148.2</b>	<b>51 770 097</b>	<b>2.11%</b>	<b>1.55%</b>	<b>1.85%</b>

SOURCE: CSIR GAP 2013 based on StatsSA Census 1996, 2001, 2011; SACN/CSIR Settlement Typology 2013v6, CSIR TAT (Temporal Analyses Tool) 2013

Communities in small towns depend heavily on them for basic needs such as supermarkets, post office, magistrate court, health and education services, and so on. Maintaining a network of towns throughout South Africa that adequately perform the roles required at the various scales is critical for the wellbeing of South African society as a whole.

## 5.2. Discussion

### 5.2.1. The Small Town Regeneration Programme (STR)

The Small Town Regeneration (STR) programme is an initiative by the South African Local Government Association (SALGA) that is aimed at the regeneration, restoration and fulfilling the economic potential of underperforming small towns. The programme embraces the significance of small towns and their role in a larger hierarchy of settlements. In summary, the STR programme looks for ways and means to, among others:

- strengthen small town economies;
- provide better quality of life;
- build and leverage on the town's local assets

SALGAs Small Towns Regeneration Programme (STR) was launched in 2013 and is led by SALGA's Economic Development and Planning Directorate (EDP). The EDP through road shows and workshops in each province shared the conceptual approach of the programme with its focus on the importance and role of small towns in SA's space economy. As a result, various municipalities opted to participate in the programme particularly in the North West, Mpumalanga, KZN, Eastern Cape, Western Cape and the Northern Cape. SALGA subsequently hosted its inaugural national STR conference in October 2015 (Mangaung, Free State) which focused on the challenges and opportunities within the agriculture, tourism, transport and logistics and mining sectors as they relate to small towns.

Subsequent to the conference, the Central Karoo District Municipality (CKDM) in the Western Cape requested SALGA to host an exploratory dialogue on issues common to the Central Karoo towns and municipalities within the District. It was soon realised that many of the neighbouring municipalities and towns in the Karoo are faced with common threats and opportunities and would therefore benefit from exploring these issues collectively. For this reason the invitation to dialogue was extended to all municipalities in neighbouring the Central Karoo District, spanning four provinces (Eastern Cape, Western Cape, Free State and Northern Cape).

<b>Ten (10) slowest growing municipalities</b>			
<b>Name</b>	<b>Province</b>	<b>Municipal Type</b>	<b>2011 - 2016 Percentage Growth</b>
Umzumbe	KwaZulu-Natal	Rural municipalities	-16%
Intsika Yethu	Eastern Cape	Rural municipalities	-16%
Emalahleni (EC)	Eastern Cape	Rural municipalities	-16%
Vulamehlo	KwaZulu-Natal	Rural municipalities	-14%
Ngqushwa	Eastern Cape	Rural municipalities	-14%
Amahlathi	Eastern Cape	Small Towns	-12%
Engcobo	Eastern Cape	Rural municipalities	-11%
Tsolwana	Eastern Cape	Small Towns	-7%
Senqu	Eastern Cape	Rural municipalities	-6%
Mnquma	Eastern Cape	Rural municipalities	-6%

*Table 2: A select number of municipalities with declining population growth*

### 5.2.2. Establishing the Karoo STR Initiative

The Karoo dialogue took place on the 7th and 8th of April 2016 in Beaufort West. Representatives from over 13 Karoo municipalities spanning the four provinces as well as selected relevant national and provincial departments attended the event. The dialogue explored matters such as the fracking of shale gas, uranium mining, renewable energy, water, agriculture and tourism in the Karoo. It resulted in a number of resolutions, key of which was the establishment of a dialogue platform to explore legislative mechanisms for collaboration among these municipalities and the merits of developing a Regional Economic and Spatial Development Framework with a possible technical and implementation entity. SALGA was tasked with implementing the resolutions and set up a task team comprising national departments (COGTA, Treasury, DRDLR, CSIR) and the four SALGA provincial offices and EDP from the National office. SALGA is currently responsible for driving the initiative on behalf of its members across the four provinces.

### 5.2.3. STR and the Regional Approach

In addition to the organic regional development response narrated above, SALGA, at its National conference adopted the regional economic approach to planning in its 2017-2022 strategic framework. In the South African context, however, regional planning has largely been defined by District or Provincial boundaries (ie. Provincial Growth and Development Strategies), with a few exceptions (eg. Gauteng City Region). There are various arguments supporting regional planning, with the most two (2) most dominant being the economic and political argument. The economic argument is predicated on economic rationality, while the political argument is based on political accountability to local constituencies.

### 5.2.4. Types of Regions

There are various types of regions, each of which might be applicable to STR or any combination of types or regions might be suitable to enable development at this scale.

#### a) Administrative Regions

These types of regions are defined by political representation and administrative considerations. On the policy front, the region maintains a degree of consistency. This approach to regional planning is too territorial and only makes sense politically. Administrative regions have their downside, namely:

- It is too fixated with boundary limits;
- Inward looking and insular, also static and not dynamic enough;
- More often than not, promotes competition rather than cooperation

## b) Cooperative Regions

These regions are founded on cooperation and a shared developmental goal(s). This approach embraces the idea that economies of scale matter, that more benefits can be accrued through collaborating, which maximises the collective potential of small towns that would otherwise be weaker without partnerships. The results are immense, and they include improved knowledge sharing, and emergence of industrial clusters in strategic locations – to mention a few. Such regions are also able to make use of their collective power to lobby National Government for policy changes and improved resource allocation. Some advantages of cooperative regions include:

- **Shared services:** One case in point is that of a University. For a service of this size to be sustainable, it has to be shared over a larger area and population catchment. This is due to the high cost of providing and operating such a high order service. Sharing of sought after skills is another benefit that can be derived from cooperative regions. There are particular skills smaller areas struggle to attract, which is not the case when the area is bigger – as it would be in the case of a cooperative region;
- **Large scale infrastructure:** when municipalities organise themselves at a regional level, they can benefit from large scale infrastructure projects that are strategic and catalytic in nature; also they can plan and co-fund and develop infrastructure that serves the region, provided the appropriate legislature and IGR mechanisms promote cross-boundary planning and investment.

## c) Natural regions

This is a region which is defined by its common natural features of geography, geology, and climate. Examples would include mining regions, tropical regions, grassland regions, arid regions, ecoregions, bioregion, and so forth. Regions of this nature are self-defined and require little human

intervention with regards to drawing its boundaries. Natural regions often go hand in hand with resource preservation efforts, for example where climate change is an issue as well as lends itself to forming an identity for the region.

**d) Functional regions**

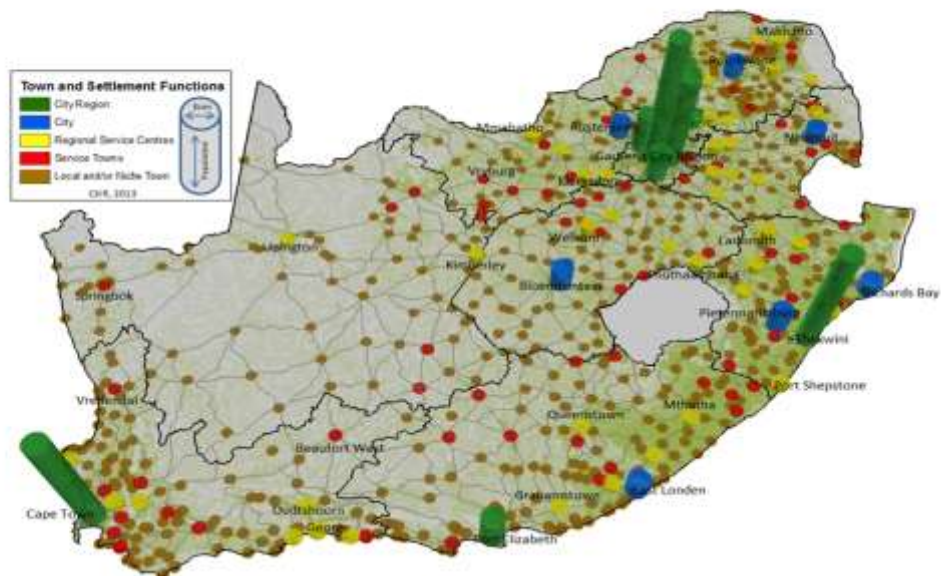
The hallmark of this type of region is economic footprint. Regional boundaries relating to this type of region are not static, and they can be defined by either, or a combination, of the following:

- Maximum Travel to work distances
- Commuting patterns over a larger area
- Economic inter-dependence & relative self-containment

**e) Migration Regions**

These are regions that either send or receive migrants. They are often multi-cultural in nature because of constant movement which is sometimes viewed as a threat. Migration regions, like other regions mentioned herein, also vary in scale. Some are intra-national (migration into Gauteng) while others are international (migration into South Africa. Most of the international migration regions are usually found in border towns.

Regions should be identified based on a clear problem. Regions and regional development need not threaten existing administrative regions, it is merely a means to ensure that issues that require more than one administrative region responds to that problem at the appropriate scale. That scale might traverse municipalities and provinces. By and large, the opportunity inherent in the economic regions require a much large scale to respond to and take advantage of the potential.



**Figure 1: Regional**

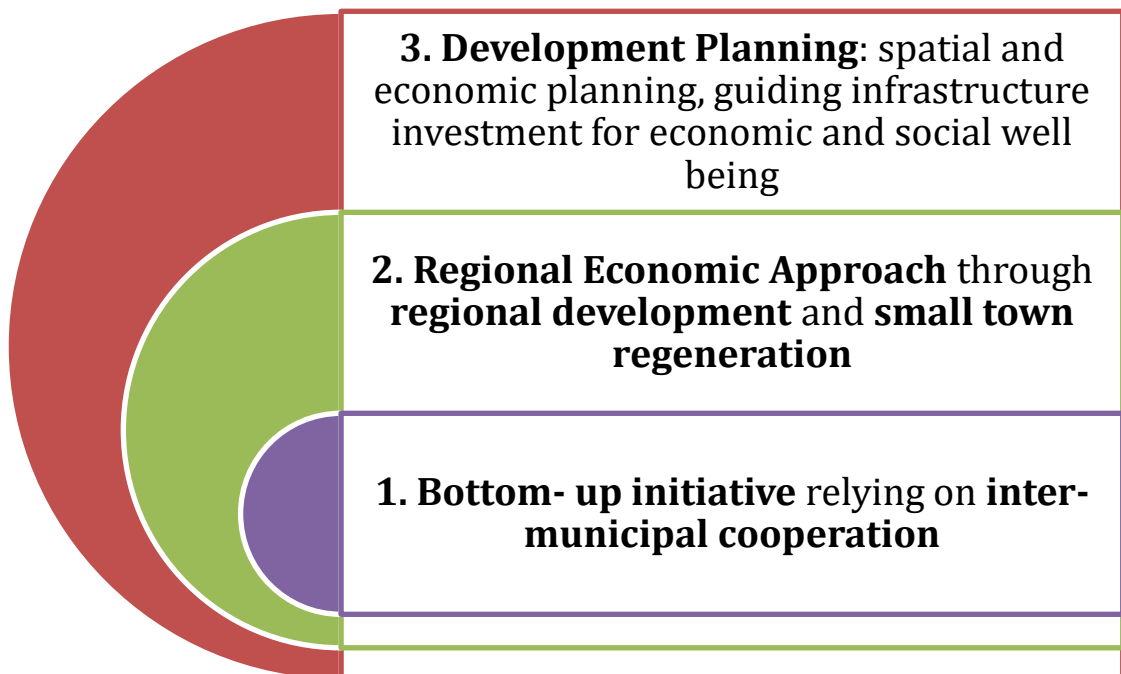
#### 5.2.5. Aspects of the Regional Development Approach

As mentioned, Salga is involved in institutionalising regional development from the bottom up in the Karoo and now in the Bojanala region.

SALGAs regional development approach comprises a few key fundamentals: it is **bottom-up**, meaning the individual municipalities initiate and drive the agenda. While bottom-up it is also relies heavily on **inter-municipal cooperation** to achieve development outcomes; not only cross-municipal but also cross district and in the case of the Karoo cross-province, the rationale for cooperation follows an environmental and economic logic rather than administrative boundaries and units.

The initiative adopts a **regional economic approach** to guide and identify regional trends, threats and opportunity which the individual municipalities need to respond to collectively. It also guides which municipalities need to cooperate and for what reasons. The nature of the issues determine the reasons and institutional form of cooperation; whether partnerships will suffice, or more

hardwired commitments are required to facilitate development over the medium to long term. The regional scale affords a lens wide enough to identify larger trends and dynamics, it is also at the local or small town scale at which intervention takes place. In other words, **small towns are the places for intervention** based on the identification of opportunity or risk identified at the regional level. Lastly the initiative adopts a distinct spatial and economic planning component as the basis to effect long term sustainability planning. A significant component of the initiative comprises the development of a **regional economic and spatial development plan**. In keeping with the regional and town scale implementation of the initiative, the town level regeneration plan should be aligned to and informed by the regional economic dynamics. Likewise, a spatial plan, where needed should indicate the desired land use patterns based on the identity of the area, the environmental and social features that are integral to the region. The factoring in of cultural preservation, inclusion of women, youth and the disabled will form a thread throughout the planning and implementation of the programme.



**Figure 2: key components in the regional approach to STR**



### 5.2.6. Establishing a National Regional Development System

Fostering regional development requires by many actors across the spheres of government and the private and non-profit actors. It requires policy and financial support and alignment to enable it to take hold.

#### **Actors**

Besides the local actors within the region, an effective system requires:

- National government
- Provincial government
- Other local bodies: e.g. collaborative local business associations
- District Municipalities, etc.
- Private sector
- Academia
- Media
- Networks

### 5.2.7. Data Platforms

Organised local government has a key role to play in empowering municipalities through access to data to analyse the space economy. A multitude of data custodians and data exists. However, many repositories/institutions have created independent/standalone platforms that lack interface with other datasets and currently all Departments/Institutions/repositories seem to be spending energy on creating 'new viewing platforms' of much the same data layers.

- A single repository for national spatial data sets is required.

### 5.2.8. Policy

The key enabling legislation that facilitates regional development planning include:

The key enabling legislation that facilitates regional development planning include:

- The Intergovernmental Relations (IGR) Act 13 of 2005:
  - o Provides the basis for political oversight and coordination of IGR structures
  - o Provides for inter-municipal cooperation IGR platforms
- The Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013:
  - o Enables promulgation of a region and gazetting of a regional spatial development framework
- Municipal Systems Act. No 32 of 2000 and Amendment Act, (MSA) No 44 of 2003:
  - o Creates the platform for municipal technical and implementation entities
- Division of Revenue Bill
  - o To provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government for the given year.

Despite these pieces of legislation, STR in the regional context requires further policy amendments to be effective:

**a) Intergovernmental Relations: Is the co-operative governance platform effective?**

The Intergovernmental Relations Framework Act, Act 13 of 2005, in Section 28 provides for: Intermunicipality forums: “(1) Two or more municipalities may establish an intermunicipality forum to promote and facilitate intergovernmental relations between them.” This is required in order to manage consensus and coordination. (2) The composition, role and functioning of an intermunicipality forum established in terms of subsection (1) must be determined by agreement between the participating municipalities. Section 29: “The role of an intermunicipality forum is to serve as a consultative forum for the participating

municipalities to discuss and consult each other on matters of mutual interest. The Act further reveals that Provinces, Districts and Municipalities must consult on matters of mutual interest, although decisions taken through inter Provincial/District/Municipal forums are not binding. Where implementation of policy or provision of service is required, it must be done through entering into an implementation protocol.

It is suggested that regional implementation protocols deal with at least:

- Co-operating on developmental challenges and opportunities affecting more than one municipality
- Coherent planning and development in the region
- Co-ordination and alignment of the strategic and performance plans and priorities, objectives and strategies
- Information sharing, best practice and capacity building
- What other matters would be relevant or of regional strategic importance?

### **Key Questions**

- *Is existing legislative scope sufficient for the required IGR relations that are needed to bring into effect areas of regional co-operation?*
- *Is their sufficient alignment of efforts among the three spheres of government and are these sufficiently documented and budgeted for in Municipal Integrated Development Plans with proper alignment and coordination of local, district and provincial plans? What is needed for improved alignment?*
- *Is there sufficient shared decision-making, co-ordination of budgets, policies and activities, particularly for those functions that cut across the spheres?*
- *What legislative accompaniments are required for improved co-operative governance?*

**b) The Division of Revenue Bill: What is needed to enable funding of regional development?**

Spatially bound budget allocations, and spatially delineated political constituencies and territorial performance management make cross-border budgeting and planning for areas of regional co-operation difficult. Due to the manner in which government functions have been divided between administrative boundaries, there is often an inherent competitiveness for resource allocation, for performance and of course for possessiveness over budget allocations, which often can result in stalemate over prioritisation, roles and responsibilities in regards to cross-boundary strategic initiatives.

**Key Questions**

- *How should resources best be pooled between Government ‘spheres’ and other government levels (departments, agencies, authorities, commissions, educational institutions, and others) to fund regional development?*
- *What budgetary and funding (and scheduling) arrangements are necessary to fund institutions (opex) and to fund regional development interventions (capex)?*
- *What legislative changes are required to the MFA, the Division of Revenue Act (DORA), any others for funding regional development?*
- *What conditionality of grant mechanisms/funding could be employed?*
- *How can long-term funding commitment be ensured?*

**c) Cross-Boundary Project Implementation**

The Municipal Systems Act further reveals that the Minister may, in the national interest and in consultation with the Cabinet member responsible for a functional area in question, request two or more municipalities to establish multi-jurisdictional service utility to conform to the requirements of national legislation applicable to the provision of a specific municipal service. The governance structure of Multi-jurisdictional service utilities refer to a board of

directors as implementation agents that need to undertake coherent implementation.

If areas of regional co-operation are currently best suited for being driven through multi-jurisdictional municipal owned entities, which are to be identified/requested by relevant local municipalities, then:

### **Key Questions**

- *Is regional development planning best to be left to Provincial competence or is local level better placed with access to more fine-grained information?*
- *What regional planning tool can respond to regions requiring RSDFs?*
- *What changes would be necessary in the longer-term if areas of regional co-operation would cross across administrative boundaries, in the true sense of functional regions?*
- *What is required if the institutional form of areas of regional co-operation remain informal (not promulgated, example a forum)?*

This discussion paper outline the STR programme and its evolution in adopting the regional approach to small town development. There are however certain hindrances that prevent adequate development of small towns, home to 4,500 000 people; some of them policy related which can be changed with little negative effect, some of them are resource related and improved coordination of government under the banner of the IUDF. The recommendations below attempt to respond to these challenges.

### **5.3. Recommendations**

Given the importance of small towns and the regional approach to small town development the following recommendations are made:

- Further and more fine-grained analysis required to allow for national understanding of regional economies
- Thereupon, develop and categorise municipalities according to a typology or system of regions

- Allocate, as part of IUDF implementation, funding for small town regeneration work to within the regional context
- That legislation governing the division revenue is amended to enable cross-municipal planning and infrastructure implementation

## **6. Advancing Integrated Spatial Planning and Transformation Through Effective and Efficient Land Release and Acquisition**

### **6.1. Background**

Since 1994, there has been little progress made in transforming the fragmented, distorted and exclusionary spatial form of many urban centres within the country. Notwithstanding the service delivery and development gains made since 1994, the planning ideals of spatial forms that allow for equitable access to land, the right of land use, sustainable development and economic prosperity have yet to be reached. Many disenfranchised communities continue to be denied access to employment and economic opportunities by being geographically located far from such opportunities and; by being structurally excluded from urban land markets in urban conurbations, secondary cities and small towns.

Moreover, the State (being the largest land owner in the country) has not fully explored its ability to advance its developmental mandate and to facilitate foreign direct investment by leveraging strategically located State-owned land. Government has allowed urban land market participants to interact without influencing their interactions through effective and efficient land governance that is aligned to government's long-term strategic goals.

The Integrated Urban Development Framework (2016) proposes an urban growth model of compact, connected and coordinated cities and towns, that also targets coordinated investments in people and places. Land, transport, housing, and employment creation constitutes this model's key structuring elements. Policy lever 5 of the IUDF states that "efficient land governance and management ensures stability and predictability in the land market and contributes to the growth of inclusive and multi-functional urban spaces".

The legislative framework for the acquisition and release of land by the State provides varying degrees of regulation of land governance and management. This legislative framework is consists of:

- The Constitution of the Republic of South Africa, 1996
- Local Government: Municipal Finance Management Act 56 of 2003
- Government Immovable Asset Management Act 19 of 2007
- Housing Act 107 of 1997
- Local Government Municipal Systems Act, 2000
- Interim Protection of Informal Land Rights Act, 1996
- Transformation of Certain Rural Areas Act, 1998
- Local Government: Municipal Finance Management Act, 2003 - Municipal Supply Chain Management Regulations
- Expropriation Act, 63 of 1975
- State Land Disposal Act No 48 Of 1961
- Provision of Land and Assistance Act No.126 of 1993
- Spatial Planning and Land Use Management Act No. 16, 2013

Despite the implementation of the afore-mentioned pieces of legislation, many municipalities continue to experience challenges with the acquisition of land owned by the national and provincial government, State-owned Entities and the private sector for the advancement of the municipalities' long-term strategic goals of integrated spatial planning and transformation as well as, inclusive economic development.

It is against this background that SALGA has initiated research on efficient and effective land release and acquisition approaches that municipalities can utilize in order to advance their spatial transformation and inclusive economic development goals. The objective of the project is to develop a range of land acquisition and release approaches and strategies that could be used by municipalities. The research will



explore differentiated approaches to urban land release for metropolitan, district and local municipalities within different geographical locations and with different profiles. The project also seeks to empower municipalities to be assertive in negotiating appropriate development outcomes in land acquisition and land release initiatives.

## 6.2. Land Management, Acquisition and Release Challenges

There have been a number of challenges experienced by municipalities in the acquisition of land owned by other parties and, in the release of municipal owned land. The challenges refer to both limitations with internal processes, systems and capacity constraints and, refer to external challenges with land transfer negotiations with external parties.

The challenges faced by municipalities include:

- **Land administration and data integrity-** Many municipalities do not have adequate asset registers. In instances where asset registers exist, there are data integrity concerns as linkages with the Deeds Offices and Office of the Chief Surveyor General's information systems is either non-existent or poor.
- **Managing Intergovernmental Relations-** The role of SOEs, national and provincial government department in municipal planning IGR forums or structures are minor and they are therefore not really involved in strategic planning processes focused on land acquisition and release.
- **Land Management-** One of the key issues in the management of land, at all levels of government, is the prevention of illegal occupation and invasion of land. The ability of municipalities to monitor and inspect land that might be susceptible to illegal occupation is poor.
- **Limited Municipal Capacity-** Some municipalities have limited capacity (i.e. human resources) to ensure proper and efficient land administration and governance. Moreover, in some cases, land and land acquisition as a tool for spatial transformation seems to be addressed after the adoption of the IDP and SDF. The empowerment of municipalities in terms of building capacity to be able to handle issues of land acquisition and release is essential.

- **SOEs and the release of land-** It is difficult for the municipalities to negotiate with SOEs and government departments around the issues of acquisition of non-core and non-strategic land. This could be attributed to the minimal involvement of SOEs and other government departments in the IGR process, which often means there is no clear communication channel between the municipality and the SOEs or government departments. It was also discovered from the study that SOEs do not always offer government right of first refusal on well-located land. Response from SOEs and government departments to municipality's request for land disposal usually takes a long time.
- **Delay in the release of land owned by National and Provincial Government** - The release process of land by national and provincial government is slow, complicated and, underlain by massive bureaucracy. In many cases, before land can be transferred to a municipality, it is offered to other national and provincial departments with the municipalities, and this process is often long-drawn out.
- **Knowledge of Legal and Policy Framework-** There is a plethora of legislation and policies that exist with regards to the acquisition and release of land at the national, provincial, and local level. The understanding and knowledge of the policy and legislative framework for the disposal of non-core land is inconsistent across all spheres of government. Some government departments and municipalities have a fair understanding of the provisions of legislation and policies, however a significant number do not have a fair understanding of those provisions.
- **Purchase Prices offered-** In many studies, municipalities have to purchase SOE- owned land at market related prices because efforts to negotiate reasonable settlements were often unsuccessful.

### 6.3. Proposals

A number of proposals are made for discussion and deliberation in the local government week. These proposals comprise considerations that all spheres of government could consider in order to facilitate efficient and effective land governance

and management as envisaged in the IUDF (2016) and The Constitution of the Republic of South Africa (1996). These proposals include the following:

**a) Investigating the Urban Land Commission Proposal**

The slow release of land by public authorities and state owned companies has been identified as one of the challenges in the acquisition of properties. Although, it has been stated that a forum called the **Joint Coordination Committee** which comprises of national Department of Rural Development and Land Reform, Public Works and SOE's was formed with the objective of resolving issues of slow land release. The impact of this forum is yet to be known and further investigation needs to be carried out. It is, recommended, that once the impact of this forum is assessed that a decision be made on whether it should be resuscitated or whether it should be reconstituted and given a new mandate.

**b) Addressing the Legal Framework**

There is a plethora of legislation that guides acquisition and disposal of land in South Africa, it is imperative that there is an understanding of which legislation is applicable to municipal acquisition and release of land. Moreover, there are a number of strategies that municipalities can use to acquire land, that range from negotiation for acquisition, leasing to expropriation, however many municipalities have limited knowledge of those strategies and approaches. For an example, there have been cases where municipalities have sold land only to buy it back for other development purposes. In order to avoid such occurrences, the possibility of municipalities leasing land rather than selling could be explored. It is, therefore, proposed that government officials (in particular local government officials) be capacitated and afforded the necessary training and support. The empowerment of municipalities in terms of building capacity to be able to handle issues of land acquisition and release is essential. Training on the processes of acquisition and release of land at various levels is required.

**c) Identification of Land and Addressing the Delays in the Disposal of State and SOE Land**

There needs to be an accepted method for identification of land not owned by municipalities. The process of identification, when to start identification and how to go about the identification process needs to be explored. This process could help in speeding up the acquisition of land by the municipality. The reduction of bureaucracy and the granting of municipalities the right of first refusal should form part of the land release policies of SOEs, national and provincial departments.

**d) Rethinking Municipal Planning and Improving IGR**

The incorporation of land that needs to be acquired and released needs to be thought about during the planning phase. Improvement of IGR would ensure that involving relevant officials early enough would ensure that acquisition and release of land could be expedited. Furthermore, there are no guidelines provided to municipalities on how to engage with SOEs on the acquisition of land. The municipality is expected to perform the land acquisition process with the SOE through their own initiative. It is proposed that a guideline be developed to assist municipalities on how to engage with SOEs on acquisition of land. Improving the IGR would also prevent some of the issues that municipalities currently encounter.

**e) Exploring the Use of Expropriation in the Acquisition of Land**

Existing studies conducted indicate that while the Expropriation Act is not currently being used by the municipalities to acquire SoE land, there are no clauses in the act that prevents this from happening.

**f) Advocating for Less Drawn-out Approaches for SOE land release**

The release of land by SOEs is a lengthy process. Responses from SOEs and government departments to municipalities' requests for land disposal usually takes a long time. Some land transactions between municipalities and SOEs can take up to 10 years, which could be attributed to the fact that the local offices of the SOEs are not authorized to sign off transactions. It is proposed that a decentralized land disposal

decision making system be considered by SOE and relevant government departments.

## **7. Overview and Implementation of the Spatial Planning and Land Use Management Act (Act 16 of 2013) (SPLUMA)**

### **7.1. Background**

The SPLUMA was promulgated in August 2013 and became operational on 1 July 2015. The SPLUMA entrenches The Constitution's assertions on the role of local government in municipal planning; and gives effect to a number of constitutional court judgements dealing with the role of municipalities and other spheres of government in municipal planning processes.

In order to give effect to the provisions of the SPLUMA, municipalities are required to meet certain readiness indicators that include:

- Preparing and adopting Municipal Planning Bylaws to give effect to the provisions of the SPLUMA and for processing land use applications, in the absence of SPLUMA compliant provincial planning laws.
- Establishing Municipal Planning Tribunals (i.e. Single Municipal Planning Tribunals, Joint Municipal Planning Tribunals or District Municipal Planning Tribunals).
- Determining and establishing Appeal Authorities that will deal with appeals against land use decisions taken by a Municipal Planning Tribunal (MPT) or an Authorised Official.
- Categorising land use applications into those to be referred to (a) a MPT for a decision and (b) an Authorised Official for determination.
- Adopting a new system of delegations in line with (a) the categorisation of land use applications and (b) the new decision making structures established in terms of the provisions of the SPLUMA.
- Establishing systems and processes to receive and process land use applications, because municipalities are authorities of first instance in the processing of land development applications.
- Developing and adopting new tariffs on land use related matters provided for in the SPLUMA.

In previous financial years SALGA, in partnership with the Department of Rural Development and Land Reform (DRDLR), the Department of Cooperative Governance and Traditional Affairs (COGTA) and, the Municipal Infrastructure Support Agency (MISA) rolled out SPLUMA training in all municipalities. Despite the continuous SPLUMA training and the support provided by SALGA and its partners, many municipalities have still not met the requisite SPLUMA compliance requirements.

## **7.2. DISCUSSION**

Through participation in a number of the national and provincial planning forums, SALGA has noted that municipalities continue to experience challenges with meeting the SPLUMA readiness indicators. Most of the challenges experienced by municipalities in meeting the key SPLUMA readiness indicators can be dealt with through some degree of innovation. The SPLUMA makes provision for differentiated models to operationalize the SPLUMA and to deal with most of the municipal capacity challenges. These include, but are not limited to, the establishment of district municipal planning tribunals in order to circumvent human resources capacity constraints within local municipalities. Furthermore, there is an urgent need for under-capacitated local municipalities to cooperate more with district municipalities, SALGA, provincial planning commissions (and/or provincial COGTA departments) and, provincial DRDLR in developing land use schemes and spatial development frameworks.

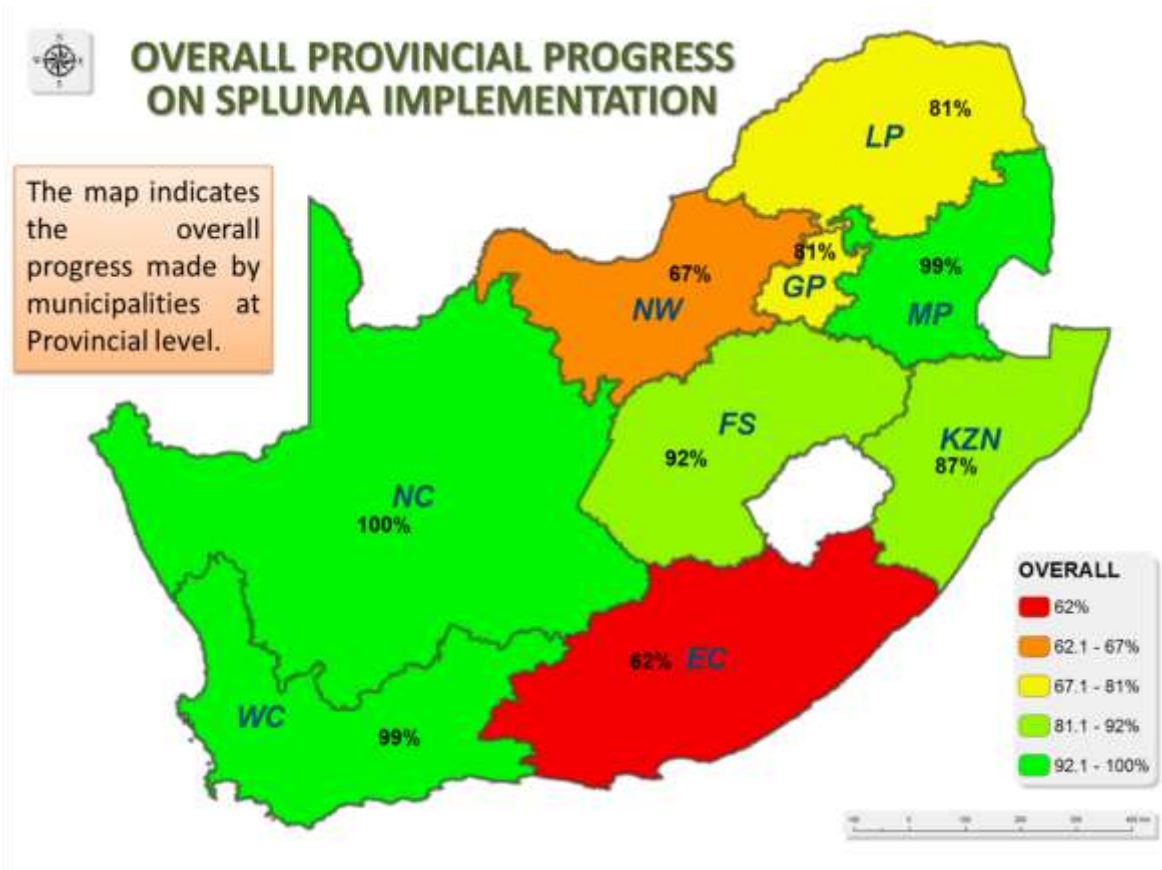
### **7.2.1. Overview of SPLUMA Compliance**

Of the readiness indicators listed under Section 2 of this discussion document, the key SPLUMA implementation requirements are:

- The gazetting of SPLUMA compliant municipal planning bylaws (in the absence of SPLUMA compliant provincial planning laws).
- The establishment of municipal planning tribunals (MPTs).

- The adoption of a new system of delegations.
- Developing and adopting new tariffs on land use related matters.

Out of all the provinces the Northern Cape, Western Cape, Mpumalanga and Free State are leading in terms of overall SPLUMA implementation and compliance, with progress at 100%, 99%, 99% and, 92% respectively.



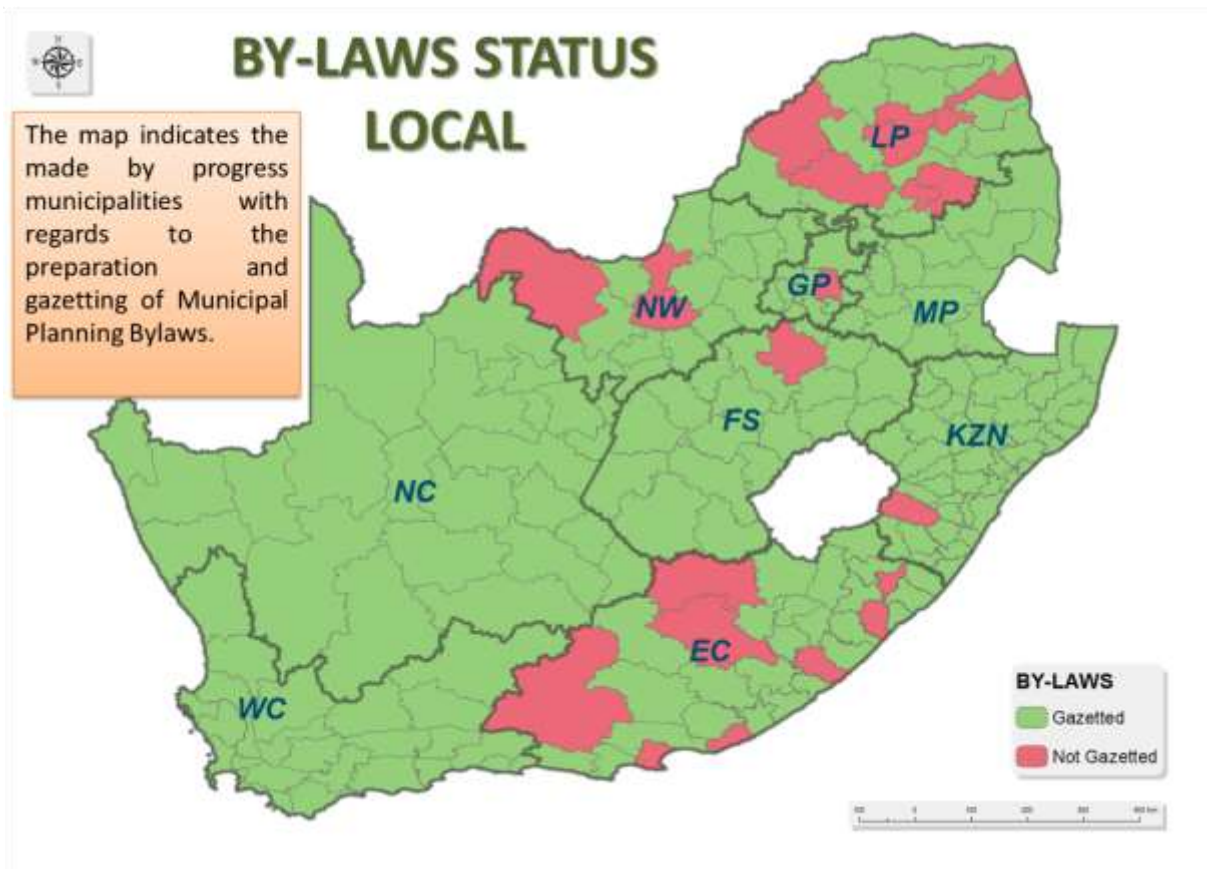
Overall Provincial SPLUMA compliance. (Source: DRDLR, February 2018)

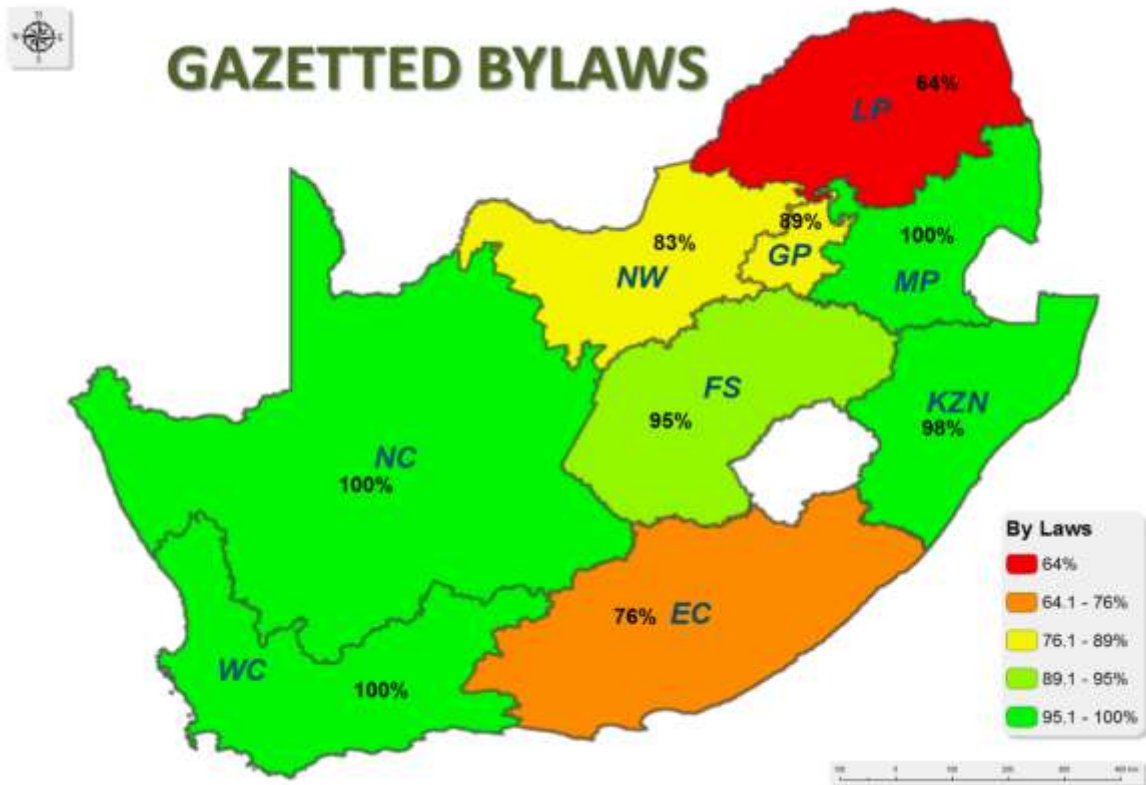
#### a) Gazetting of SPLUMA Compliant Planning Bylaws

The Planning Bylaws set out the procedures for dealing with land use related matters within municipalities. These procedures include public participation processes, as well as administration processes that need to be in keeping with the provisions of the Promotion of Administrative Justice Act (Act 3 of 2000) (PAJA).



All the municipalities in Mpumalanga, Western Cape and Northern Cape Provinces have gazetted their Bylaws. Over 98% of municipalities KwaZulu Natal, 95% in the Free State.



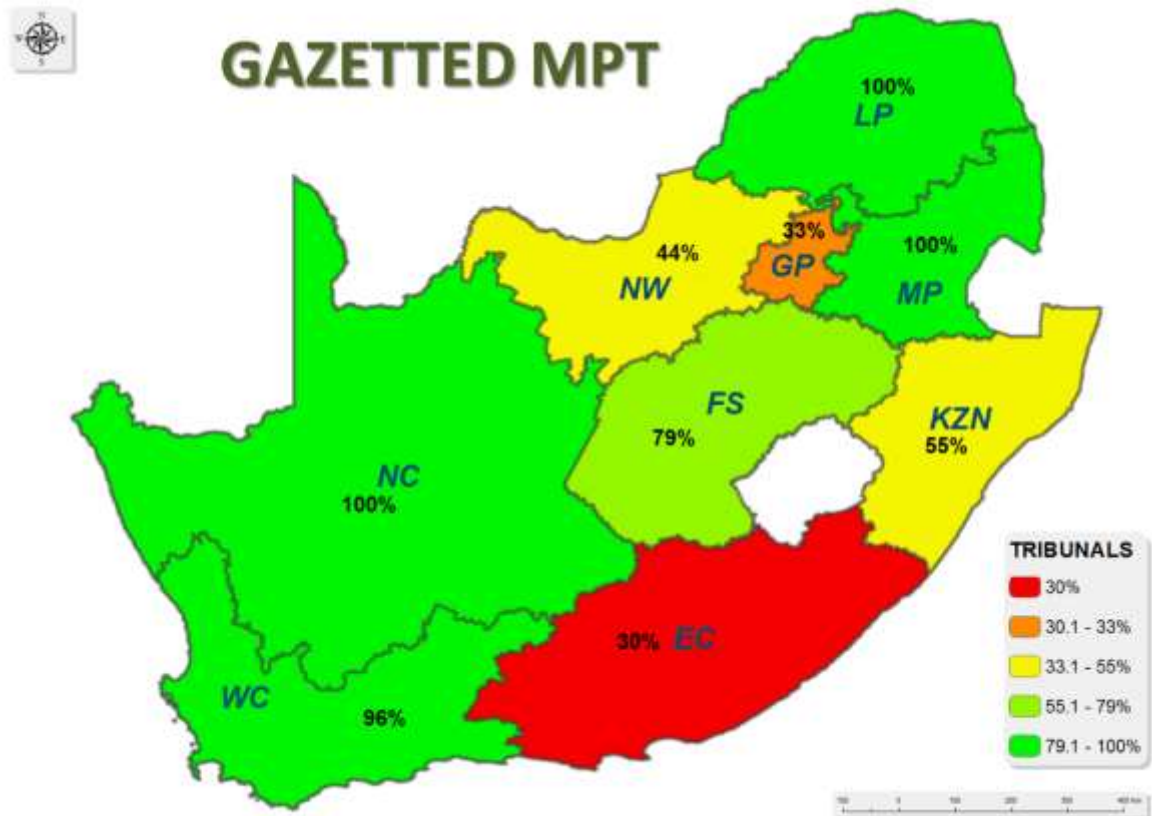


(Source: DRDLR, February 2018)

#### b) Establishment of MPTs

MPTs are critical statutory bodies within municipalities that are required to make decisions on land use and land development applications. Through a system of delegations, a municipality may appoint an Authorized Official (AO) to make decisions on certain types of land use and land development applications that do not have to serve before a MPT. Delegations are discussed in Section 3.1.3 of this discussion document. In cases where an applicant or an objector is not satisfied with the decision made by a MPT, either party may lodge an appeal, which will serve before an Appeals Authority that has been established by a municipality. This discussion document, however, focusses on the establishment of MPTs as the first critical statutory body that a municipality needs to set up in order to make decisions on land use and land development applications.

All the municipalities in Northern Cape, Limpopo and Mpumalanga have established MPTs. Over 96% of municipalities in the Western Cape have established MPTs. Municipalities in Eastern Cape, Gauteng, KwaZulu Natal and North West are making slow progress.

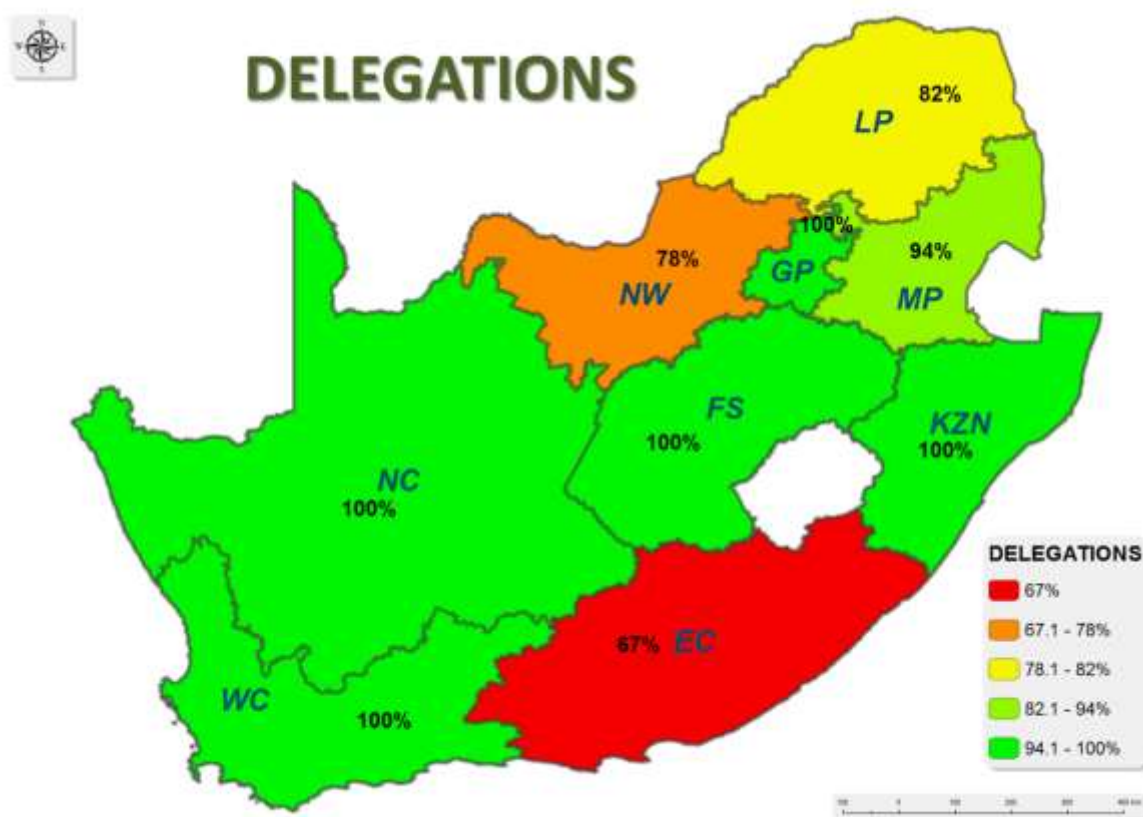


(Source: DRDLR, February 2018)

### c) Delegations

In an effort to create efficient systems of administration and decision making within municipalities, the SPLUMA makes provision for the categorization of land use and land development applications based on (among others) the impact of the proposed land use and development on the existing land uses and, the complexity of the land use and land development application. In the system of delegations that the municipality has to set up in terms of the SPLUMA, certain types of applications can be dealt with by an Authorized Official (AO) that has been nominated by the municipality, while other types of applications should serve before a MPT.

All municipalities in Northern Cape, Western Cape, Free State, KwaZulu Natal and Gauteng have set up systems of delegations. Over 94% of municipalities in Mpumalanga and 82% of municipalities in Limpopo have set up systems of delegation, Eastern Cape and North West are making slow progress.



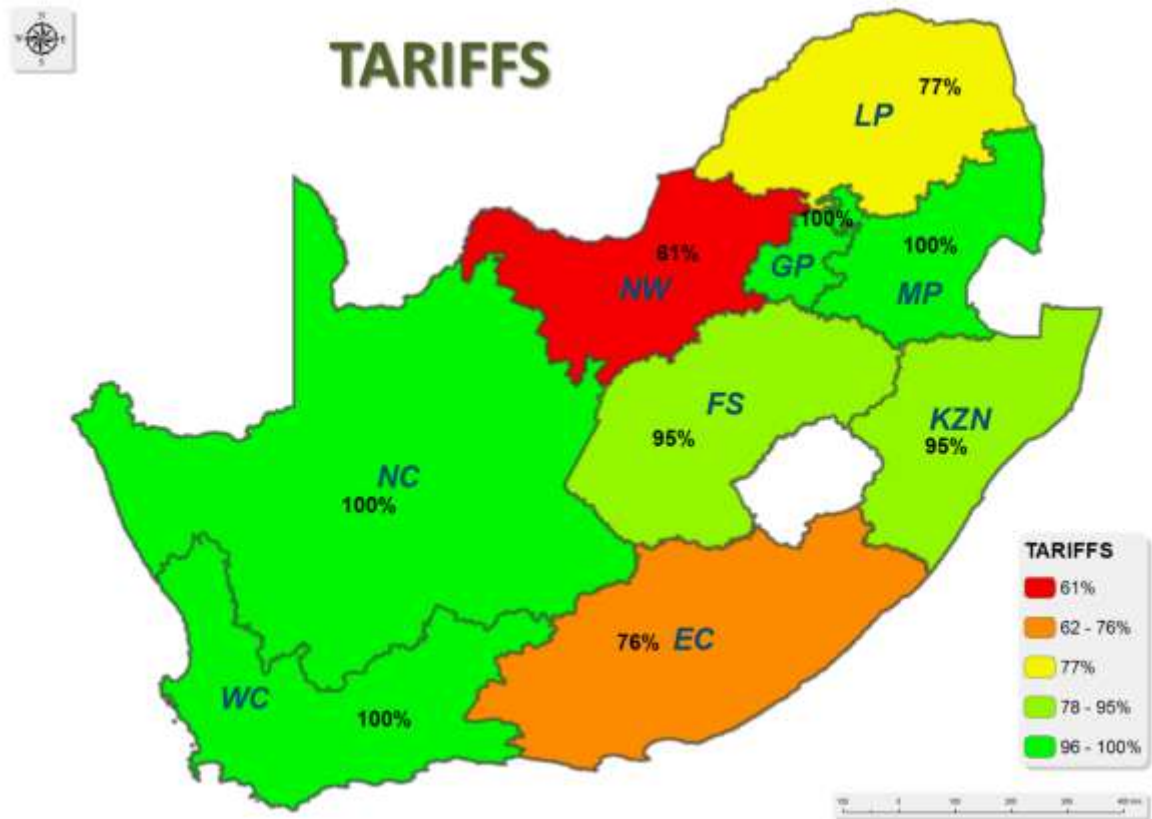
(Source: DRDLR, February 2018)

#### d) New Tariffs on Land Use Related Matters

The SPLUMA requires all municipalities to develop and adopt new systems of tariffs for all land use and land development related matters. The tariffs should cover all aspects of land use and land development related matters and, should coincide with the new land use classifications that have been set out in the municipalities' land use schemes.

All municipalities in Northern Cape, Western Cape, Gauteng and Mpumalanga have developed and adopted new systems of tariffs for all land use related

matters. Over 95% of municipalities in Free State and KwaZulu Natal have developed and adopted new land use tariffs. Eastern Cape, North West and Limpopo are making slow progress.



(Source: DRDLR, February 2018)

### 7.3. Key Reasons for Non-compliance

There key inhibitors for municipalities' compliance with the SPLUMA relate to both internal and external factors. The reasons cited by municipalities for non-compliance are summarized as follows:

- Internal delays with the appointment of members to serve on MPTs. In some municipalities, poor responses to calls for nominations to serve on MPTs.



- Municipalities in the Eastern Cape, KwaZulu Natal, Limpopo and North West continue to experience challenges with regards to the lack of and unwillingness of some traditional leaders to participate in SPLUMA matters. This has been cited as a major hindrance to SPLUMA implementation in the afore-mentioned provinces.

Other emerging issues pertaining to the implementation of the SPLUMA are:

- Slow progress or no progress on matters requiring Council resolutions. Lack of appreciation of the importance of planning as a foundation for service delivery and local economic development. The importance of planning and the SPLUMA within the local government needs to be heightened.
- Lack of funds to develop land use schemes and spatial development frameworks.
- Challenges with interpreting the SPLUMA and its Regulations.
- The relationship between the SPLUMA and other laws regulating the built environment, and the ensuing role of municipalities.
- Lack of innovation with regards to giving effect to the SPLUMA. Some municipalities are not aware that it is possible to minimize the impact of the SPLUMA requirements by adopting “a shared services model” when setting up MPTs and Appeal Authorities; designating Authorised Officials; developing land use schemes, spatial development frameworks and planning Bylaws.
- Lack of capacity within municipalities to deal with MPTs establishment processes, Bylaw customization, as well as land use and land development applications.

#### **7.4. Possible Implications for Non-Compliance**

The SPLUMA provides a framework for regulating land development as well as for enabling local economic development, investment decision making and, the provision of service delivery. As such, any delays to meet the SPLUMA readiness indicators will have far reaching consequences for the municipalities

concerned. Lack of certainty and delays in setting up decision-making structures on land development matters will not only act as a deterrent to potential investors, but will lead to failure by the relevant municipalities to spend their budget on infrastructure and human settlements. The latter will, in turn, likely result in community protests. It is imperative that municipalities are sensitized of the serious implications of the delays in meeting all the SPLUMA readiness indicators.

## **7.5. Recommendations**

- Assert the municipal planning function to ensure SPLUMA compliance
- Engage with the House of Traditional leaders in provinces that are experiencing challenges
- Town Planning capacity provisions to be made in municipalities to drive the SPLUMA implementation

## **8. Strengthening the Role of Local Government in the Delivery of Human Settlements Through Housing Accreditation and Assignment**

### **8.1. Introduction**

Taking the lead from the Breaking New Ground Strategy introduced in 2004, the housing sector has been undertaking a fundamental shift from the delivery of housing to the creation of human settlements. This re-orientation and broadening of the sector includes a shift in policy: away from delivering uniform RDP houses at scale, towards promoting integrated human settlements which include a variety of housing typologies and cater for different market segments.

Other key policy and delivery trends have been evident in recent years, including the following:

- A drive towards incremental housing and the provision of serviced sites to households, which can then be improved over time. This shift is evidence of an acknowledgement that the provision of fully-subsidised stand-alone house to all qualifying households is not sustainable or possible, given land and financial constraints.
- Increased resources and programmes for the upgrading of informal settlements and provision of basic services. The preferred approach is in-situ upgrading except in situations where the location is unsuitable or unsafe, or the area is too densely populated.
- Increased attention to the affordable housing market, also referred to as the Gap market (those households earning too much to qualify for a fully-subsidised house and too little to access bank finance). National government has increased investment in programmes to provide individual subsidies to households which can be used as a deposit to bring monthly loan instalments down to affordable levels.
- New national spatial and land use planning legislation (SPLUMA) to rationalize and reform planning legislation nationwide, which impacts on the planning and



delivery of human settlements and the role of municipalities in spatial transformation.

- The transfer of the Urban Settlements Development Grant (USDG) to metros, which is aimed at the upgrading of informal settlements and the provision of infrastructure for poor households.

In practice, the fulfilment of the right to access to adequate housing, as per Section 26 of the Constitution, is shared by the three spheres of government. Housing is listed in Schedule 4 of the Constitution as a concurrent national and provincial legislative competence. Yet the Housing Act, 1997, ascribes local government with responsibility for municipal planning, land identification and provision of bulk infrastructure and services—the fundamental ingredients of human settlements.

However the legal and policy framework provides for changes in the division of roles and responsibilities in the human settlements sector between the three spheres of government, through the accreditation and assignment of municipalities. Section 10 of the Housing Act provides for the accreditation of municipalities to perform aspects of the housing function on behalf of provincial departments, while Section 156 of the Constitution obligates national and provincial government to assign or delegate a function to municipalities, by agreement, if that function would ‘most effectively be administered locally, and the municipality has the capacity to administer it.’

Furthermore the Courts—through their jurisprudence—have effectively extended the scope of functions of municipalities through the requirement that local government provide alternative accommodation to those rendered homeless by evictions.

This discussion paper lays out the context for the role of local government in human settlements planning and delivery, summarises progress and challenges to date in the process of decentralization of the housing function to local government, and argues for an accelerated and coordinated approach to accreditation and assignment, in line with the objectives of the National Development Plan (NDP), the Integrated Urban Development Framework (IUDF), and international commitments.

## 8.2. International and domestic policy context for decentralisation of human settlements delivery

Following on the adoption of the New Urban Agenda (NUA) in Ecuador in 2016, South Africa faces the challenges of bringing home the NUA through the implementation of local policies on urbanisation, and the sustainable growth and development of cities. The NUA includes specific international commitments by member states regarding local government, including:

- To ensure appropriate fiscal, political and administrative decentralisation based on the principle of subsidiarity. (Para 89)
- To recognise role of local governments in follow-up and review of the New Urban Agenda (Para 163)

As stated in Paragraph 22, the NUA constitutes “a historic opportunity to leverage the key role of cities and human settlements as drivers of sustainable development in an increasingly urbanised world.”

Increasingly international consensus tells us that devolution and location of the built environment functions at the local level is critical to effectively manage urbanisation. Alongside the NUA, the Sustainable Development Goals and Addis Ababa Action Agenda also emphasise the placement of local government at the centre in the achievement of sustainable development and delivery of integrated human settlements. In the South African context, decentralisation of housing and human settlements functions is a key avenue for the implementation of the IUDF as our national urban policy. In order for local government to respond to the imperatives of the NUA and the SDGs, local municipalities and metropolitan municipalities especially must be playing a more prominent role in our intergovernmental structures.

In summary, the NUA and the IUDF call for cities to take a central role in driving economic, social and spatial transformation, but South Africa’s current division of powers and functions does not assign appropriate functions to enable municipalities, especially our major cities, to play the role they are called to, as per the NUA.

The intergovernmental relations challenge is central to the human settlements sector because human settlements delivery spans multiple sectors: water, housing, sanitation, planning, waste management etc. and the delivery of housing requires the correct sequencing of multiple outputs (land, bulk infrastructure, top structures). Thus cooperation across sectors and spheres of government is essential to human settlements delivery. Local government needs national and provincial support to address urgent community needs felt on the ground, while national and provincial government cannot implement housing projects on their own; LG is a necessary partner in the provision of bulk infrastructure and land, town planning approvals, and social facilitation.

Furthermore, the decentralisation of built environment functions at local level will lead to greater service delivery benefits:

- Coordinated development and planning: Municipalities can coordinate decisions around built environment and sustainable human settlements
- More efficiency due to: funding certainty, and quicker approval and implementation

In short, the interdependence of the three spheres of government in human settlements issues necessitates effective IGR institutions and clear division of powers and functions in the housing value chain.

### **8.3. Accreditation and assignment of the housing function**

Housing accreditation is a progressive, incremental delegation of the housing function from provincial departments to specific municipalities, as per Section 10 of the Housing Act, 1997. As a delegation, the accreditation of a municipality by an MEC can be reversed.

Assignment is the permanent transfer of the entire function to municipalities, as per the Municipal Systems Act and the Constitution, and includes the direct transfer of the Human Settlements Development Grant (HSDG) to assigned municipalities.

The table below shows the responsibilities associated with assignment and accreditation (Level 1 and Level 2).

Level 1 accreditation	Level 2 accreditation	Assignment
Subsidy budget planning Project and programme approval Beneficiary management Housing subsidy administration Subsidy management Reporting Document management system	<b>All level 1 responsibilities</b> <b>Plus:</b> Procurement and appointment of Implementing Agents Project/programme management Contract administration Technical quality assurance Budget management	<b>All level 1 and 2 accreditation functions</b> <b>Plus:</b> <b>Financial administration</b>

At present, 28 municipalities around the country are accredited at Level 1 or Level 2. No municipalities have yet been assigned the housing function.

Initially there were plans to assign the housing function to six metros in 2014. However, in 2014 Human Settlements MINMEC decided that assignment of the metros must be put “in abeyance”, but accreditation of municipalities could continue. MINMEC further resolved that, in the meantime, the Accreditation and Assignment Framework must be revised. Since this decision, progress on both housing assignment and accreditation has slowed down significantly.

Although 28 municipalities are accredited at Level 1 and Level 2 country-wide, on the whole these municipalities experience frustration with the accreditation process. Challenges to accreditation/ assignment include:

- Persistent concerns by MECs on performance and capacity of municipalities, which in the case of the Northern Cape has led to a roll-back of authority provided to accredited municipalities.
- Municipalities are accredited on paper, but day-to-day processes followed by the provincial department in the delivery of housing projects do not change, meaning that responsibilities for project approval, beneficiary administration etc. often still effectively rest with the provincial department.

- Although the Division of Revenue Act (DORA) requires that provinces gazette the amount of HSDG funding allocated to accredited municipalities, it was only in 2016/17 that all provinces finally came into compliance. Although provinces now gazette, they fail to specify the amount of HSDG funds to be transferred to the municipality, and the amount to be spent by the province in the municipality, as per DORA.
- Some provinces fail to provide operational funding to accredited municipalities, as required by the Accreditation Framework.

The MTSF Outcome 8 targets include the accreditation of a further 29 municipalities by 2019. However it appears this target will not be met, as only 10 municipalities (in the Free State and Limpopo) are making any substantial progress in the accreditation application process. In Eastern Cape, Gauteng and Mpumalanga, the provincial departments have failed to submit any names to the National Department of municipalities to apply for accreditation. The National Department is in the process of appointing a new independent panel to assess municipalities applying for accreditation, in addition to a team of independent auditors, and reports that the appointment will be finalised soon in order for assessments to commence in the 2018/19 financial year. SALGA will be closely involved in these assessments (as was done previously) to ensure a fair process.

With regard to assignment, there has been little to no discussion of reinvigorating the process at national level since the MINMEC resolution that halted the process in 2014. In IGR forums, a concern is consistently raised regarding spending by metros on the Urban Settlements Development Grant (USDG), and MECs frequently link poor spending on the USDG to delays in assignment. The argument put forth is that if municipalities cannot effectively spend their USDG, then it would not be prudent to transfer the HSDG directly to those metros via assignment.

The only progress on the assignment front has been in the Western Cape, where the MEC for Human Settlements and the Executive Mayor of Cape Town signed an MOA and roadmap to assignment in October 2017, which stated their commitment to

assigning the City of Cape Town by 1 July 2018. A Task Team, composed of officials from the City, the provincial department and SALGA, has been meeting since then to coordinate on the necessary legal and operational steps to be taken towards assignment. However the submission to provincial Cabinet on assignment has not yet been submitted, so the process in the Western Cape has effectively stalled.

#### **8.4. SALGA's position and strategy**

As outlined above, national urban policy and international obligations (New Urban Agenda) all call for the devolution of built environment functions to local government, in order for cities to fulfil their expected role as drivers of economic growth, social cohesion and spatial transformation. Decentralisation is viewed as critical to sustainable development, to achieve horizontal coordination with delivery of other basic services, funding certainty and vertical policy alignment. Furthermore, housing devolution will contribute to better outcomes in relation to managing urbanisation, containing sprawl and effecting spatial transformation.

Therefore SALGA's position is that the housing function must be devolved:

- To better capacitated municipalities on a progressive, incremental basis;
- With targeted support by national and provincial government to build capacity of local government, with national and provincial spheres held accountable for the support they must provide; and
- As part of a broad devolution strategy with a long term, coherent vision of empowering local government to exercise its developmental mandate.

When assignment of housing function to the six metros was put in abeyance in 2014, SALGA continued to lobby and advocate for decentralisation despite the shift in the political space. As a result of SALGA lobbying and advocacy, NDHS finally released the Municipal Human Settlements Grant (MHSCG) in a single lump sum in October 2014, after extensive delay in contravention of DORA. SALGA's other interventions since 2014 have been aimed at the following strategic priorities:

- Lobby for the full implementation of Level 1 and Level 2 accreditation for municipalities already accredited;

- Support municipalities who are newly applying for accreditation;
- Keep accreditation and assignment on the agenda and maintain pressure on National Department of Human Settlements (NDHS) and provincial departments to continue the process; and
- Provide input into the draft Revised Accreditation and Assignment Frameworks being developed by the NDHS to ensure the revised policy is supportive of local government.

## 8.5. Conclusion

Despite obstacles in the implementation of housing accreditation to date, it is becoming increasingly clear that strengthening of the role of municipalities via the accreditation and assignment process is a necessary step to achieve the objectives of the Integrated Urban Development Framework (IUDF), National Development Plan (NDP) and international commitments, including the New Urban Agenda. The accreditation and assignment process will enable capacitated municipalities to more effectively and proactively address urbanisation and land invasions, and empower them to improve human settlements delivery and spatial planning.

Unless urgent action is taken, the failure of some provinces to put forward names of municipalities to apply for accreditation and to support those municipalities will likely lead to the failure of the sector to meet the MTSF target of accrediting an additional 29 municipalities by 2019. In addition, provinces must fully implement the existing Accreditation Framework with those municipalities currently accredited, including full compliance with DORA requirements.

In 2018, the process of assignment must be re-started, with a joint commitment by all three spheres to work towards the assignment of capacitated municipalities, commencing with the metros and proceeding to selected intermediary cities as set out in the IUDF.

### **Prepared by:**

Alison Tshangana

SALGA Human Settlements Specialist

Email: atshangana@salga.org.za

## **9. Empowering municipalities to proactively address urbanisation, unauthorised land occupation and evictions**

### **9.1. Introduction**

Due to the pressures of urbanisation, larger municipalities are experiencing an increasing number of land invasions as the supply of affordable housing fails to meet the increasing demand of the population inflow to cities. Municipalities experience enormous pressure to provide services to a growing population, often resulting in the redirection of resources towards emergency accommodation and services, and away from planned bulk infrastructure investment. As a result of the failure to adequately plan for and provide a sufficient supply of affordable housing for a growing population, we have seen an increase in the number of incidents of unauthorised occupation of land and evictions in recent years. Land grabs, and evictions which eventually end up in the courts increasingly dominate daily news headlines.

### **9.2. Legal Framework**

Section 26(3) of the Constitution states that no one may be evicted from their home, or have their home demolished, without an order of court made after consideration of all the relevant circumstances. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, then gives effect to this clause in the Constitution by setting out fair procedures for eviction of unlawful occupants, and unpacking the “relevant circumstances” which the court must consider in deciding whether or not to grant an eviction order.

The PIE Act stipulates that, in order for the court to grant an eviction for illegal occupation, the court must determine whether such eviction is “just and equitable”. Given that the Constitution states that everyone has the right to access to adequate housing, it would not be just and equitable to evict someone if they would be rendered



homeless by the eviction. In other words, if a household is desperate and has nowhere else to go, an eviction cannot be granted unless temporary alternative accommodation can be made available to the evictees. In the landmark Blue Moonlight case, a critical precedent was set. In a case involving eviction from private land, the Constitutional Court granted the eviction order and stated that it was the State's responsibility to provide alternate accommodation. Importantly, the Constitutional Court held that it was the responsibility of the municipality to provide the alternate accommodation.

This puts local government in a difficult position. According Schedule 4A of the Constitution, housing is a concurrent responsibility of national and provincial government—not local government. The Housing Act sets out the role of all three spheres of government and indicates that local government is chiefly responsible for: identification of land, provision of services (including water, sanitation, electricity, roads, stormwater and transport) and planning, facilitation and coordination of housing development . Although some provinces use municipalities as implementing agents to deliver housing, in most cases the provincial department implements housing projects. The Human Settlements Development Grant (HSDG) are transferred from the national department to the provincial departments, and are spent on various government-subsidised housing programmes as set out in the National Housing Code.

Notably, the Constitution does allow for the shift of a function to municipalities if that matter would be more effectively administered at a local level, and if the municipality has the capacity to administer it. However the process of assigning the housing function to the metros was put on hold in 2014 by a decision of MINMEC. If the housing function was assigned to major municipalities, then those municipalities would receive the funds directly from the national department and could plan, budget and implement projects appropriately to house evictees in their jurisdiction. But in the present policy and fiscal framework, the only recourse municipalities have is to apply to the provincial department for funds under the Emergency Housing Programme for alternative accommodation for evictees. Often these applications are delayed or declined.

We are left with a basic contradiction: the Courts have stated clearly that they view housing as a municipal responsibility, as shown by court orders compelling municipalities to provide alternative accommodation to evictees. But our policy and fiscal framework doesn't provide those municipalities with the authority or resources to carry out the function.

Intuitively, citizens already assume that housing is a responsibility of local government, as evidenced by research showing that the majority of local community protests are triggered by housing concerns. It makes sense that local government, which is already responsible for the provision of basic services which are fundamental to human settlements, would also be responsible for planning and implementing the final piece which is the houses themselves. Devolution of the housing function to local government would facilitate coordination and delivery of integrated, sustainable human settlements, and empower municipalities to adequately and pro-actively plan for urbanisation.

The legal framework as it is, is untenable. While planning and community engagement efforts by municipalities often fall short and must be substantially strengthened, it is also true that municipalities are backed into a corner when private land owners fail to act in response to land invasions, allowing the mushrooming of informal settlements. Later, when the land is sold and the informal settlement has exploded to hundreds of households, the municipality is finally approached and told they must evict (and provide alternate accommodation), or be forced to purchase the land from the private owner at substantial cost. The court-ordered provision of alternate accommodation to thousands of evictees can disrupt existing plans to deliver units to beneficiaries who have patiently registered on the National Housing Needs Register and sat on waiting lists for years.

The former National Minister of Human Settlements indicated her intention to amend the PIE Act. As SALGA, we would like to see amendments to the legislation that better balance the rights of occupiers, private and state landowners, in a manner which

allows for sustainable municipalities and the fair allocation of government-subsidised housing opportunities. SALGA would like to see the Act amended to compel private landowners to take reasonable measures to protect their land from invasion, and to ensure that national and provincial government share the responsibility of providing temporary alternate accommodation to evictees. To this end, we have undertaken extensive consultation with our member municipalities, obtained a legal opinion on the related Constitutional issues, and submitted written input to the National Department on the draft PIE Amendment Bill.

### 9.3. Recommendations

In order to better support municipalities, SALGA must establish, in partnership with qualified NGOs or university partners, a dedicated Unit to empower municipalities to better address issues of unauthorised land occupation, evictions and land expropriation. The Unit should be capacitated to:

- a. Provide legal advice to municipalities in individual cases of imminent unauthorised land occupation and eviction cases. NB: the Unit would not have the capacity to represent municipalities or provide legal advice to all municipalities in all cases, but it could provide limited legal advice on strategy and approach.
- b. Represent municipalities in key precedent-setting cases, which have been strategically identified by SALGA as cases whereby there is good probability of securing a ground-breaking court judgement which would support local government. In this capacity, SALGA leads the sector in securing landmark judgements for local government.
- c. Monitor cases of unauthorised land occupation and eviction country-wide in order to identify trends and collect data which can support SALGA's lobbying and advocacy agenda.

- d. Lobby and advocate for changes to the legal and policy framework for land occupation and evictions
- e. Produce best practice case studies, lessons learned and other short publications to share learnings between municipalities, to advice on key court judgements etc.
- f. Set up peer learning forums and workshops on key topics and court judgements.
- g. Assist municipalities to develop proactive policies on unauthorised land occupation and evictions.
- h. Champion SALGA's lobbying, advocacy and support work for municipalities around the expropriation of land with or without compensation, including OLG's input into Constitutional Review process, consultation with municipalities, and legal advice and support to municipalities on key cases (see point a above).

#### 9.4. Conclusion

In conclusion, our South African Constitution ensures the right to access to adequate housing is held by rate-payers and unlawful occupiers alike. But the legal and policy framework must be brought into line to empower local government to have more power and resources to plan for urbanisation, act in cases of unauthorised land occupation, and adequately provide temporary alternative accommodation to evictees. Local Government cannot carry this burden alone.

**Prepared by:**

Alison Tshangana

SALGA Human Settlements Specialist

Email: [atshangana@salga.org.za](mailto:atshangana@salga.org.za)

## **10. Municipal Infrastructure: Integrated Spatial Planning and the Provision of Services: Human Settlements**

### **10.1. Background**

Since 1994, the democratic government faced a series of challenges, including spatial, economic and social transformation, economic growth and economic inclusion in order to move South Africa forward. At the core, are interventions aimed at addressing poverty and inequality, as well as the overall adverse legacy of Apartheid.

Colonialism and Apartheid has resulted in a South African society that is deeply divided, which is further entrenched by an inequitable distribution of people and economic activity. The resulting spatial inequality serves to trap historically disadvantaged communities in poverty and underdevelopment. It also results in the creation inefficient cities, as well as undermining rural livelihoods.<sup>1</sup>

### **10.2. Defining South Africa's Spatial Conundrum**

Spatial inequality in South Africa comprises different dimensions, including economic, social, environmental, institutional and psychosocial. These dimensions illustrate the complex nature of the challenge and serves to indicate how reconfiguring the spatial patterns engineered during Apartheid is likely to be a long-term endeavour, requiring significant political will, resources and dedicated effort.<sup>2</sup>

Spatial segregation is problematic because it: 1) results in the physical separation of people from economic and social opportunities and activity and 2) entrenches the simultaneous and persistent under-development of informal settlements and

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<sup>1</sup> High Level Panel (2017).

<sup>2</sup> Turok et al. (2017).

enterprises.<sup>3</sup> Current spatial patterns are to a significant extent a remnant of Apartheid spatial and social engineering. For example, the Apartheid legal tenure requirements in urban areas were often conditional on urban employment and long leaseholds or rental tenure, making it difficult for most black people to own property in urban areas.<sup>4</sup> The resultant land ownership and settlement patterns, as well as existing home ownership policies served as powerful barriers to black people's ability to accumulate assets and amass wealth and to become entrepreneurs. Specifically, the "homeland" system saw millions of black South Africans settling in the poorest parts of the country, where water and infrastructure scarcity and poor soil quality were some of the major obstacles to development. These constraints also mean that infrastructure development was neglected in these regions.<sup>5</sup>

South Africa is one of the most unequal and unevenly developed countries in the world. Growth has also been observed at different rates across different provinces and regions, with previously well-serviced areas generally showing better growth rates and performance, compared to previously neglected areas. This means that provinces such as Gauteng, the Western Cape have continued to perform well in terms of economic activity and contribution to the national Gross Domestic Product (GDP), with contributions made by the Northern Cape, Free State and the North West provinces, having diminished during the past two decades.<sup>6</sup> Figure 1 below provides an overview of provincial contribution to GDP over time.

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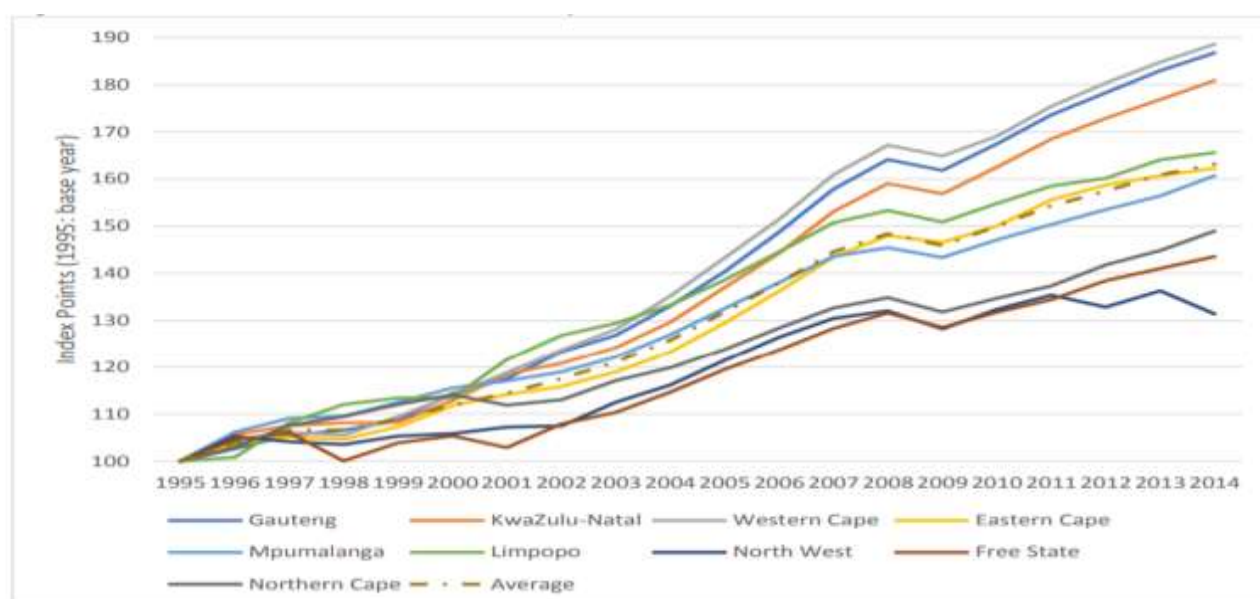
<sup>3</sup> Turok et al. (2017).

<sup>4</sup> Le Roux & Brown (2018).

<sup>5</sup> NPC (2011).

<sup>6</sup> Turok et al. (2017).

**FIGURE 1. GDP CONTRIBUTION PER PROVINCE**



Source: Turok et al. (2017).

### 10.3. Situational Overview of Human Settlements

Despite the significant and commendable progress made towards providing housing opportunities to the poor, against the backdrop of an inherited housing backlog of approximately 1.5 million in 1994. The backlog has since increased to around 2.1 million by 2016.<sup>7</sup> Some of the primary reasons for this phenomenon are related to changes in household structure, rapid urbanisation, lack of opportunities in rural areas, structural unemployment, more households meeting the subsidy income thresholds, and less access to private housing sector finance.<sup>8</sup>

Apart from the significant backlogs, the densities at which houses are constructed are often too low to create the necessary thresholds to support city functions and are, therefore, not viable. The poor location of some settlements in terms of access to economic and social facilities are also some of the fundamental challenges faced in addressing spatial inequality.<sup>9</sup>

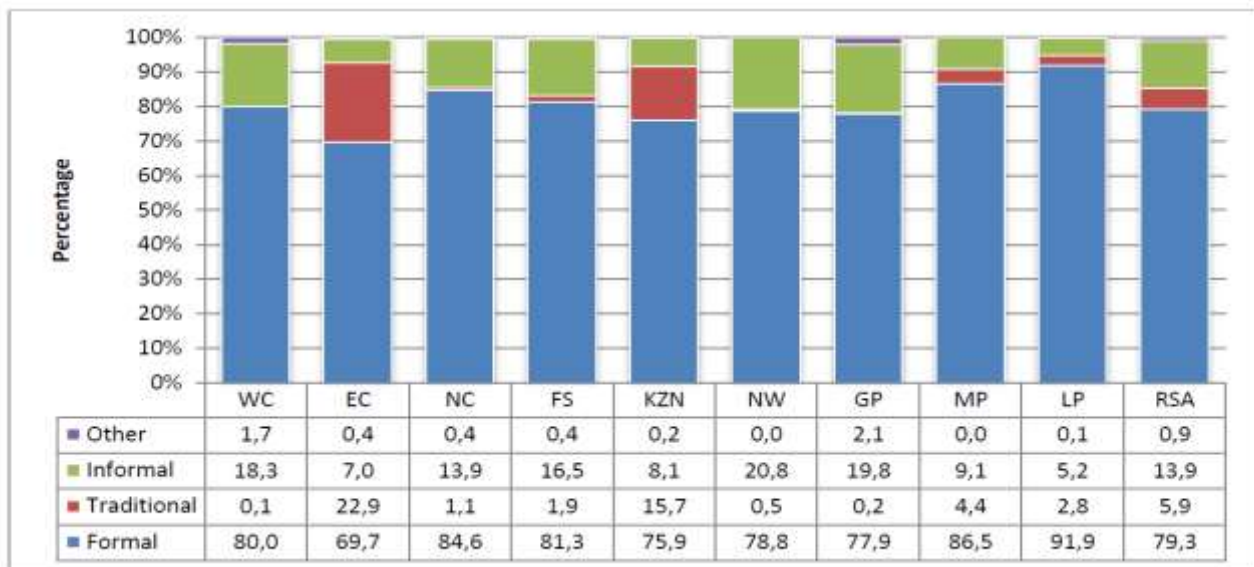
<sup>7</sup> Engineering News (2016).

<sup>8</sup> Le Roux & Brown (2018).

<sup>9</sup> Le Roux & Brown (2018).

While there has been significant improvements in access to adequate housing since 1994, there remains inter-provincial and local level variations. South Africa’s first inclusive population census survey in 1996 recorded 63.8 percent of households living in formal structures. By 2016, this figure improved to 79.3 percent. Figures 2.1 and 2.1 below illustrate housing type by both province and metropolitan area – which highlight provincial and local level differences.

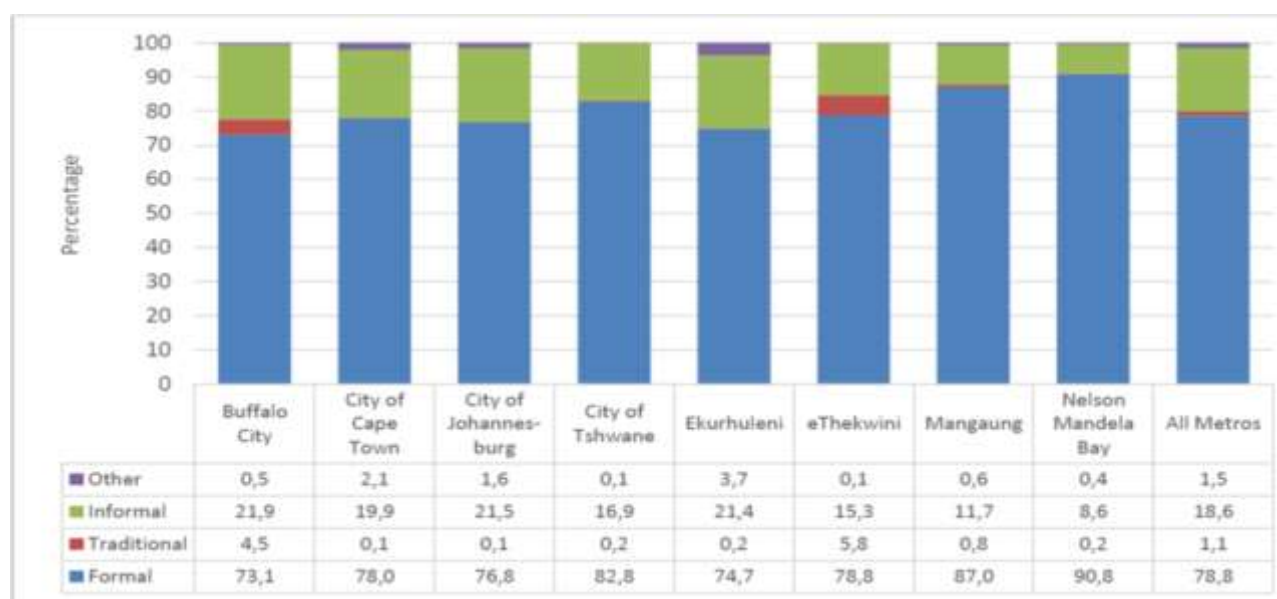
**FIGURE 2.1: HOUSING TYPE BY PROVINCE, 2016**



Source: General Household Survey, 2016



**FIGURE 2.2: HOUSEHOLD TYPE BY METROPOLITAN AREA, 2016**



Source: General Household Survey, 2016

### *Provincial changes*

In addition to improvements in the number of formal housing nationally, there has been some shifts between provinces. In 1996, the highest proportion of formal housing were recorded in the Northern Cape (80.2 percent) and Western Cape (78.4 percent), but these were subsequently surpassed by progress in Limpopo and Mpumalanga provinces. By 2016, the highest levels of formal accommodation were recorded in Limpopo and Mpumalanga. Limpopo's formal housing increased from 70.7 percent to 91.9 percent (the highest in the country and well above the national average), while Mpumalanga increased from 67.3 percent to 86.5 percent (second highest).

The Eastern Cape, despite improvements since 1996, continues to lag the rest of provinces. In 1996, the Eastern Cape recorded the lowest level of formal housing (47.3 percent) and the highest level of traditional dwellings (38.1 percent). By 2016, this improved to 69.7 percent and 22.9 percent respectively – but still not on par with national averages. KwaZulu-Natal province recorded the second lowest formal housing levels in 1996 (56.6 percent) and the second highest traditional dwellings (27.9 percent). By 2016, improvements were 75.9 percent (formal) and 15.7 percent (traditional). These two provinces continue to offer the highest levels of traditional

dwellings. It should be noted that major strides were made in Limpopo to reduce traditional dwellings over the 20-year period from 19.7 percent in 1996, to 2.8 percent by 2016.

All provinces, with the exception of the Western Cape and Northern Cape, managed to reduce their proportions of households functioning from informal dwellings over the 20-year period. The Western Cape's figure increased from 16.2 percent in 1996, to 18.3 percent by 2016. The Northern Cape increased slightly from 12.5 percent to 13.9 percent over the same period. The strongest progress with reducing the number of households living in informal dwellings was recorded in the Free State, which managed to reduce this figure from 26.1 percent in 1996, to 16.5 percent by 2016. While not the lowest proportion of all nine provinces, it made considerable progress in this regard. The lowest proportion of households in informal dwellings was recorded for Limpopo (5.2 percent) by 2016.

### *Overview of the metros*

While there appears to be some congruence between the average formal housing levels at national (79.3 percent) and metropolitan (78.8 percent) levels, it is not the case when it comes to informal housing, nor traditional dwellings. Traditional dwellings are significantly lower in major urban centres (1.1 percent), compared to national averages (5.9 percent). On the other hand, on average, major urban centres experience higher levels of informal housing (18.6 percent) than the national average of 13.9 percent. The averages recorded at national and metropolitan levels may also mask significant intra-provincial disparities.

Such disparities are evident, for example, in the Nelson Mandela Bay Metropolitan Municipality (NMBMM) – which recorded the highest level of formal housing of all the metros (90.8 percent). This figure is in stark contrast with its provincial average of 69.7 percent (the lowest of the nine provinces). This suggests that formal housing is severely concentrated in the NMBMM urban centre, with high levels of traditional housing in its surrounding hinterland. NMBMM also recorded the lowest levels of informal housing (8.6 percent) of all provinces. Figures 2.1 and 2.2 suggest that the

non-urban areas of the Eastern Cape have significantly higher levels of traditional dwellings than what is presented in the provincial average of 22.9 percent.

In contrast to NMBMM, the Eastern Cape province's second metropolitan municipality, Buffalo City, recorded the lowest formal housing levels of all metros (73.1 percent) – albeit still higher than the provincial average. Informal housing in Buffalo City was recorded as 21.9 percent (highest of all metros) – slightly ahead of the City of Joburg (21.5 percent) and Ekurhuleni (21.4 percent). The proportion of informal dwellings in both City of Joburg and Ekurhuleni are higher than its provincial average 19.8 percent.

Mangaung is the only metro that recorded a lower level of informal housing (11.5 percent) than its provincial average (16.5%). This implies surrounding non-metropolitan areas have a higher proportion of informal settlement households than the provincial average.

#### **10.4. Challenges**

Some of the key challenges to addressing spatial inequality, specifically in urban areas, include the unlocking of well-located land in urban areas for residential development, the connection of bulk infrastructure and services to new housing developments, access to interim services, the lack of decent, affordable rental housing for low-income and poor individuals and the in-situ upgrading of informal settlements.<sup>10</sup>

A key challenge highlighted by the Report of the High Level Panel is the fact that regardless of the large expansion of low-cost state-subsidised housing projects, supply has not rolled out fast enough to offset the increase in demand for state-subsidised housing. Due to the fact that poor, rural migrants are predominantly African, this has meant that the proportion of African households living in informal settlements is higher than what is often reported.<sup>11</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> Le Roux (2018).

#### 10.4.1. Urban fringe developments

Due to the fact that the subsidy scheme is typically provided through project-linked subsidies for larger scale housing developments, these developments often end up being located on the outskirts of existing townships on land that was initially acquired or zoned for township development during Apartheid.<sup>12</sup>

This also means that greenfield state-subsidised housing developments have typically been built on the margins of cities, rather than upgrading existing informal settlements and urban infill development, which targets well-situated land, contributed to the further entrenchment of unequal spatial development.

The tendency of locating large-scale subsidised housing developments on city outskirts has perpetuated the marginalisation of the poor and ultimately resulted in a lack of spatial transformation in urban areas.<sup>13</sup> This phenomenon is exacerbated by a lack of coordination between departments responsible for ensuring that social services (including police stations, transport, schools, clinics and libraries) are accessible to these new communities.<sup>14</sup>

#### 10.4.2. Lack of coordination and spatial planning

One of the overarching challenges identified in both the *National Development Plan* (NDP) and the report to the *High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change* (hereafter the HLP), is the lack of an overarching strategic approach to spatial planning. This shortcoming is currently resulting in a fragmented system across various sector departments. Furthermore, spatial planning lacks sufficient institutional authority within the system of government.<sup>15</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> Tissington (2010).

<sup>14</sup> Ibid.

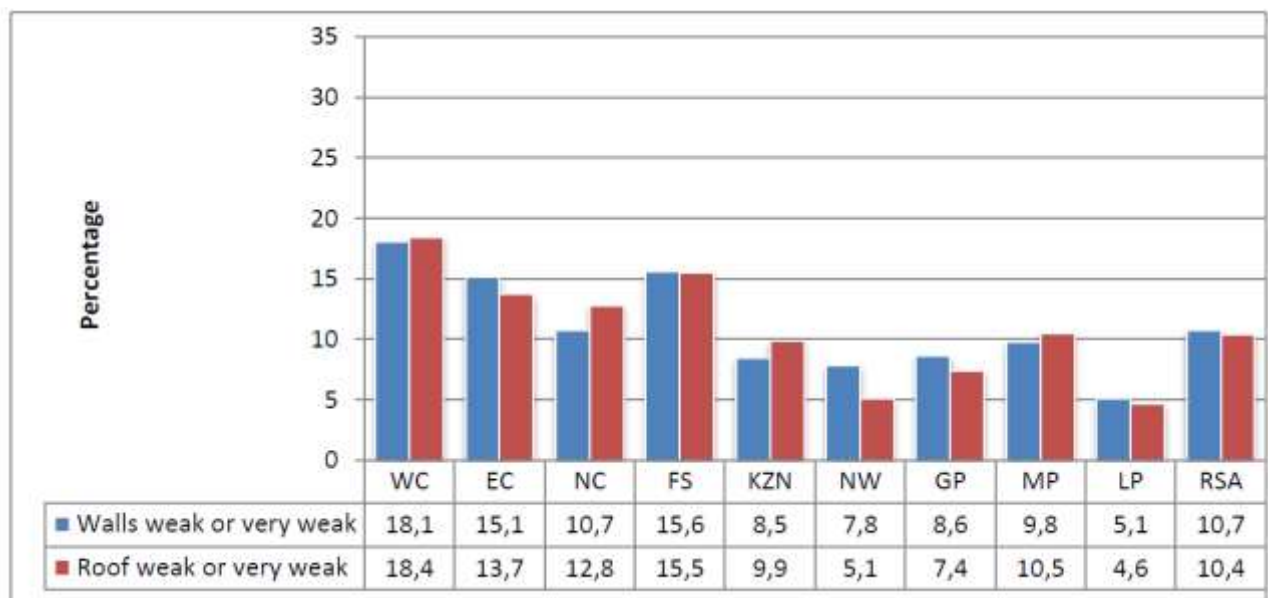
<sup>15</sup> HLP (2017).

The NDP also highlighted the need for addressing the fragmented fiscal arrangements for spatial development in housing, infrastructure and neighbourhood development.<sup>16</sup>

### 10.4.3. Rectifying subsidised housing structures

About 13.5 percent of South African households were living in state-subsidised (commonly referred to as RDP) dwellings by 2016. Many residents continue to raise concerns about the quality of the subsidised houses.

**FIGURE 3: COMPLAINTS ABOUT RDP STRUCTURES PER PROVINCE, 2016**



On average, about 10 percent of residents at national level complained about the quality of RDP structures. The lowest levels of complaints were recorded in Limpopo province, and the highest in the Western Cape, followed by the Free State province.

For the 2016/2017 financial year, the Department of Human Settlements set a national target of rectifying 3685 subsidised housing structures that were poorly constructed, and managed to rectify 4685 dwellings during the financial year.<sup>17</sup>

<sup>16</sup> NDC (2012).

<sup>17</sup> Department of Human Settlements (2017a).

In the recent past, Parliament has also raised the issue of poor quality of housing while on oversight. During an oversight visit to the Mangaung Metropolitan Municipality in 2017, the Portfolio Committee on Human Settlements raised concerns about the need for rectifying poorly constructed subsidised housing units. The provincial department and the municipality responded that it would comply with the ministerial directive.<sup>18</sup> Similarly, the issue of rectifying subsidised houses is also a major challenge in KwaZulu Natal province, in particular, structures constructed during the pre-1994 phase and the post-1994 20m<sup>2</sup> units.<sup>19</sup>

#### 10.4.4. Lack of adequate bulk infrastructure

In some regions, the lack of existing bulk infrastructure, including water and sanitation, electricity and roads, affect the ability to deliver housing opportunities.

- In Mpumalanga, the Tekwane North and Tekwane South housing projects in Mbombela Local Municipality has experienced several acts of theft and vandalism on site, and the unavailability of electricity infrastructure and insufficient bulk water services were ongoing challenges in the projects.<sup>20</sup>
- In Gauteng, the Provincial Department of Human Settlements listed the lack of bulk infrastructure as one of the primary contributing factors related to the low housing delivery rate.<sup>21</sup>

#### 10.4.5. Contracting challenges

Service delivery protests, unsafe working environments for officials and contractors and general incidents of violence near project sites are a cause of delays with housing developments. For example, in the City of Cape Town, gang violence in Valhalla Park project during 2017 resulted in a termination of a contract by the City. Poor

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<sup>18</sup> Department of Human Settlements (2017a).

<sup>19</sup> Ibid.

<sup>20</sup> Parliament (2017a).

<sup>21</sup> Department of Human Settlements (2017b).

performance by a contractor in Delft also resulted in a termination of a contract by the City of Cape Town.

#### **10.4.6. Protests and community resistance**

Protests and community resistance to projects often lead to delays in project delivery. For example, negotiations with non-qualifying community members at the Morkel's Cottage site resulted in project delays in the City of Cape Town. Further, community resistance (Not In My Backyard (NIMBY) attitudes) towards upgrading of informal settlements such as Tambo Square in the City of Cape Town have caused projects delays.

During 2017, violent protests erupted when backyard dwellers in Atteridgeville in the City of Tshwane were claiming RDP houses in Extension 19 for themselves, which were earmarked for beneficiaries from the informal settlement of Brazzaville.<sup>22</sup>

#### **10.4.7. Slow delivery of housing for Military Veterans**

A number of challenges are noted around the provision of housing for military veterans, including beneficiary verification, receiving top-up funding from the Department of Military Veterans, illegal occupation of houses and the issuing of title deeds.<sup>23</sup>

A number of challenges were recorded at the Lerato Park Military Veterans Housing Project in the Sol Plaatje Local Municipality in the Northern Cape. These challenges included title deeds not handed over to beneficiaries, illegal occupation of houses, regular updates on the national housing register was not done, the turnaround time at the Vryburg deeds office was too lengthy, top up funding for military veterans housing was not received, while the project was funded from the Human Settlements Development Grant (HSDG).<sup>24</sup>

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<sup>22</sup> Nthate (2017).

<sup>23</sup> Le Roux (2017b)

<sup>24</sup> Parliament (2017c).

#### 10.4.8. Title Deeds backlogs

South Africa is experiencing several challenges related to the timeous issuing of title deeds to subsidised housing beneficiaries. By 2016, the estimated total title deeds backlog nationally, was reported as 843 628 for pre-1994 stock, and 734 429 for post-1994 stock.<sup>25</sup>

A number of factors impact the issuing of title deeds, including delays in the township establishing process, a general lack of capacity at municipal and provincial levels of government, a lack of in-house expertise at local and provincial government levels, a lack of clarity around roles and responsibilities between different departments, and the illegal occupation of land and subsidised houses.<sup>26</sup>

The North West province faces challenges related to the construction of housing units and the transfer of title deeds to beneficiaries, including a lack of serviced sites from municipalities, and municipalities lacking a functional Spatial Planning and Land Use Management Act (SPLUMA) tribunals. This leads to delays in township establishments, and which in turn, affect the title deeds restoration programme. Illegal beneficiaries on the beneficiary register was another issue and the Department was in the process of verifying legitimate beneficiaries.<sup>27</sup>

#### 10.4.9. Slow release of land for urban developments

One of the key requirements for addressing the spatial legacy of Apartheid is releasing well-located land in urban areas. There are a number of processes and a lack of sufficient land within urban areas that negatively affect the availability and releasing of land for development in these areas.<sup>28</sup>

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<sup>25</sup> Department of Human Settlements (2016b).

<sup>26</sup> Le Roux (2017).

<sup>27</sup> Department of Human Settlements (2018).

<sup>28</sup> Le Roux (2017c).



By November 2017, the City of Joburg did not meet its target to deliver serviced stands for development, despite an annual target of 3179. While the reason for its underperformance remains unclear, poor planning and frequent changes to accounting officials were listed as general factors affecting the work of the provincial department of human settlements.<sup>29</sup>

#### **10.4.10. Land invasions and illegal occupation of RDP houses**

Land invasions and the illegal occupation of subsidised houses is ongoing challenge in several regions, as people become desperate to access housing.

In the eThekweni Local Municipality, the Cornubia Housing Project experienced challenges related to misaligned quotes and budget allocations, illegal evictions and occupation of houses allocated to beneficiaries, and challenges related to maintenance of houses.<sup>30</sup>

The City of Cape Town experienced challenges related to illegal land invasions at construction sites of projects aimed at upgrading informal settlements.<sup>31</sup>

In recent months, illegal, and occasionally violent, land invasions were recorded in Gauteng, especially around Tshwane and the City of Joburg. Specific targeted sites include Olievenhoutbosch in Centurion, Orange Farm, Blue Hills in Midrand, Weiler's Farm in Elandsfontein and off the Golden Highway near Eldorado Park.<sup>32</sup>

### **10.5. Recommendations for consideration during Local Government Week**

- Due to the fact that land use management is a municipal function, municipalities have the power to determine zoning bylaws. Municipal land use management

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<sup>29</sup> Gauteng Department of Human Settlements (2017).

<sup>30</sup> Parliament (2017b).

<sup>31</sup> City of Cape Town (2018).

<sup>32</sup> BusinessTech (2018).

systems need to be simplified and may include provisions for mixed land use to ensure that zoning laws do not prevent households from pursuing an economic livelihood from home, (except where such pursuits pose a risk of health and safety in neighbourhoods).

Metropolitan municipalities should provide a report to the NCOP on the feasibility of using zoning by-laws to provide mixed land use options in peripheral urban areas to address spatial integration, within 3 months of adoption of the Local Government Week report.<sup>33</sup>

- The challenges presented by the lack of overarching strategic approach to spatial planning are complex and vast. The introduction of the Spatial Planning and Land Use Management Act (16 of 2013) (SPLUMA) has, to a large extent, attempted to address a number of issues related to spatial planning and spatial inequality.

The Department of Human Settlements should provide to the NCOP feedback on challenges experienced with the implementation of SPLUMA, and highlight remaining legislative shortcomings in relation to fragmentation of fiscal arrangements and infrastructure within 3 months of adoption of the Local Government Week report.

- The KwaZulu Natal Provincial Department of Human Settlements needs to compile a report on the extent of ongoing challenges related to the rectification of subsidised houses in the province and present the report along with an implementation plan to the NCOP within 3 months of adoption of the Local Government Week report.

The Portfolio Committee on Human Settlements recommended that the National Department should ring-fence at least 5 percentage of the National Housing Budget so that Provinces with high rectification issues are prioritized.<sup>34</sup>

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<sup>33</sup> Sustainable Livelihoods Foundation (2017).

<sup>34</sup> Department of Human Settlements (2017).

- The Mbombela Local Municipality needs to submit a report to the NCOP within 30 days of the adoption of the Local Government Week report on the measures that are being undertaken to address the issues of service delivery, bulk infrastructure provision and security at the Tekwane North and Tekwane South housing projects.
- The City of Cape Town should, by involving its human settlements department, the Metro Police and the South African Police Service, develop a plan for dealing with safety challenges in high-risk areas where contractors are operating to avoid further contracts from being terminated. The City should report to the NCOP within 60 days from the adoption of the Local Government Week report.
- The City of Cape Town and the City of Tshwane should ensure that public engagements take place at least 30 days in communities prior to the launch of upgrading of informal settlements projects to ensure that community members are informed and their concerns have been noted to avoid disruptions and minimise opposition to these projects.
- In order to speed up the issuing of title deeds in the Sol Plaatje Local Municipality, the Department of Cooperative Governance, Human Settlements and Traditional Affairs should ensure that the title deeds are transferred by the Kimberley deeds office. The Department also needs to address the long turnaround time at the Vryburg deeds office. The Department should report back to the NCOP within 3 months of the adoption of the Local Government Week report.

Regarding challenges identified at the Lerato Park project in the Sol Plaatje Local Municipality, the Select Committee on Social Services recommended that title deeds be transferred to the Kimberley deeds office by the Department of Cooperative Governance, Human Settlements and Traditional Affairs, that all relevant departments be contributing to the fund in assisting the provision of

housing opportunities for military veterans, and that the Department of Military veterans investigate options for creating job opportunities for the military veterans to sustain their livelihoods.<sup>35</sup>

- The North West Province's provincial Department of Human Settlements should verify which municipalities do not have a functional SPLUMA tribunal and provide support to these municipalities to ensure that the tribunals are functional within 6 months from the adoption of the Local Government Week Report.

In relation to the ongoing challenges in the North West province, the Portfolio Committee on Human Settlements recommended that it continues to monitor progress with initiatives to address the challenges.<sup>36</sup>

- The City of Joburg Metropolitan Municipality needs to submit a report outlining the reasons for the poor performance in relation to the release of serviced stands for development to the NCOP within 30 days of the adoption of the Local Government Week report. This has been listed as one of the primary reasons for the slow housing delivery rate.
- Challenges related to the Cornubia Housing Project in the eThekweni Local Municipality need to be addressed. Beneficiary verification of current occupants should be conducted to identify illegal occupants. Furthermore, title deeds should be issued speedily to prevent disputes over ownership. The Municipality should report back on progress made in terms of this issue within 3 months of the adoption of the Local Government report to the NCOP.

The Select Committee on Social Services recommended that a national intervention was required, that verification exercises be performed on

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<sup>35</sup> Parliament (2017c).

<sup>36</sup> Department of Human Settlements (2018).

occupants and that the provincial Department submit a report on progress with the identified challenges to keep the Committee updated.<sup>37</sup>

- In relation to illegal and violent land invasions in various metropolitan municipalities, all metropolitan municipalities must submit a report to the NCOP within 3 months of the adoption of the Local Government Week report. The reports should outline the extent and frequency of land invasions, the current state of affairs, measures taken to address these challenges and the efficacy of these measures taken to date.

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# 11. Municipal Infrastructure: Integrated Spatial Planning and the Provision of Services: Water and Sanitation

## 11.1. Background

South Africa is a water scarce country that utilises a variety of surface and groundwater resources.<sup>38</sup> These include rivers, lakes, and groundwater stored in soil, rock pores, aquifers and crevices.<sup>39</sup> In November 2017, South Africa was ranked as the 30<sup>th</sup> driest country in the world.<sup>40</sup>

On the African continent, average rainfall varies greatly across countries, with northern Africa's arid regions receive as little as 50 mm rain per annum and central part of the continent, which is home to tropical forests, receiving over 4000 mm of rain per year.<sup>41</sup> South Africa's average annual rainfall of 450 mm, is far below the global average of 860 mm per year.<sup>42</sup>

In comparison to some neighbouring countries, South Africa's available water per capita (1000m<sup>3</sup> per person per year) is far lower, due to the fact that other countries experience a higher rainfall and/or they have smaller populations.<sup>43</sup> As an example, South Africa has less water per person than Namibia or Botswana, although South Africa is not the only water scarce African country.<sup>44</sup>

The proper management of water resources is therefore important to prevent water shortages and the interruption of critical water services. South Africa has since 2015 experienced a severe drought.<sup>45</sup> By February 2018, three provinces were declared

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<sup>38</sup> Colvin et al. (2016).

<sup>39</sup> Ibid.

<sup>40</sup> Gerbi (2017).

<sup>41</sup> Our Africa (2017).

<sup>42</sup> CSIR (2010).

<sup>43</sup> Ibid.

<sup>44</sup> Africa Check (2018).

<sup>45</sup> Essop (2016).

provincial disaster areas, namely the Northern Cape, Eastern Cape and Western Cape.<sup>46</sup> In March 2018, a national disaster was declared as a result of the drought.<sup>47</sup>

While the drought has largely been responsible for water shortages on some parts of the country, a number of other factors such as ageing infrastructure, climate change, pollution, leaks and alien vegetation, also contribute to water scarcity and challenges in the water sector.<sup>48</sup>

A mere 8 percent of the land in South Africa generate 50 percent of the river flows. Due to their important role in ensuring healthy river systems, these areas require improved protection.<sup>49</sup>

Apart from rivers, groundwater is increasingly being relied upon as a source of water, with more than 300 towns in South Africa already utilising groundwater resources. Aquifers can play an important role in alleviating droughts and storing water below ground, keeping it safe from evaporation.<sup>50</sup>

Due to the unequal distribution of rainfall and dams and the seasonal nature of rainfall across South Africa, ensuring equal access to water requires the storage and transfer of water.<sup>51</sup> At its core, South Africa's water infrastructure relies on dams and inter-basin transfer schemes, while smaller scale infrastructure (such as the bulk water infrastructure, urban, irrigation and wastewater systems) ensure that water is connected to taps at a household level.<sup>52</sup>

In 2008, two certification programmes were introduced at local government level (the Blue Drop and Green Drop) by the former Department of Water Affairs (currently Department of Water and Sanitation), to provide a qualitative tool to track the

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<sup>46</sup> Tandwa (2018).

<sup>47</sup> Herman (2018).

<sup>48</sup> CSIR (2010).

<sup>49</sup> Colvin et al. (2016).

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Colvin et al. (2016).

performance of Water Service Authorities in its provision of quality drinking water and wastewater treatment services.<sup>53</sup>

The Blue Drop focuses on freshwater resources such as rain, dams, rivers, wetlands, while the Green Drop includes wastewater treatment systems.<sup>54</sup> A risk rating tool was incorporated in the certification in 2013 to track the overall risk of treatment system to failure and the resulting risks posed to communities, the environment and economy.<sup>55</sup>

**TABLE 1: PERFORMANCE OF MUNICIPALITIES PER PROVINCE, 2013<sup>56</sup>**

<b>Province</b>	<b>Number of wastewater systems with scores &lt;30%</b>	<b>Number of 2013 green drop certificates</b>
Eastern Cape	34	1
Free State	46	1
Gauteng	0	8
KwaZulu-Natal	32	19
Limpopo	22	1
Mpumalanga	41	2
Northern Cape	33	1
North West	21	1
Western Cape	9	26
<b>National total</b>	<b>248</b>	<b>60</b>

Access to water infrastructure in South Africa has improved from 58 percent of the population having access to basic water services in 1994, to 91 percent by 2009.<sup>57</sup> However, due to population growth and urbanisation, an increasing number of people are migrating to the bigger metropolitan areas, increasing the number of households

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Colvin et al. (2016).

<sup>56</sup> Le Roux (2017).

<sup>57</sup> AMCOW (2011).

in need of water and sanitation services. This in effect means that government needs to keep up with what has been referred to as a “moving target.”<sup>58</sup>

## 11.2. Situational Overview of Access to Water and Sanitation

### *Statistical overview*

South Africa’s population has increased from around 45.8 million people in 2002 to 55.2 million people in 2016. Gauteng was the most populous province in 2016, with 13 million people, followed by KwaZulu-Natal (10.8 million) and the Eastern Cape (6.7 million people).<sup>59</sup>

To date, significant progress has been reported in addressing backlogs in water and sanitation service delivery since 1994.<sup>60</sup>

According to Statistics South Africa, 34 percent of the population had access to sanitation services in 1990 and 74.7 per cent of the population had access to improved basic sanitation facilities by 2015.<sup>61</sup> However, estimates by the UNICEF/WHO Joint Monitoring Programme for Water and Sanitation differs to that of South Africa. The Joint Monitoring Programme estimates that 70 percent of the South Africans had access to improved sanitation facilities – 4.7 percent less than the estimates produced by Statistics South Africa.<sup>62</sup>

South Africa has met its target for reaching the 2015 MDG for access to safe drinking water and has made moderate progress in reaching the target for sanitation.<sup>63</sup> Some sources have stated that the target for reaching 100 percent access to sanitation services by 2015 was unrealistic.<sup>64</sup>

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<sup>58</sup> Ibid.

<sup>59</sup> StatsSA (2016).

<sup>60</sup> Le Roux (2017).

<sup>61</sup> Ibid.

<sup>62</sup> WHO & UNICEF (2015).

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

By 2014, an estimated 46.3 percent of households accessed piped water in their homes, 27 percent accessed water on site, and 14 percent relied on communal taps. A further 2.7 percent of households relied on neighbours' taps, while 4.2 percent collected water from rivers, streams, stagnant pools, wells and springs.<sup>65</sup>

The percentage of households with access to "RDP-standard" sanitation has increased from 63.2 percent in 2002 to 79.5 percent in 2014.<sup>66</sup>

### *Access to adequate water*

By 2016, 88.8 percent of South African households had access to piped water, but only about 75 percent of households in Limpopo, and 75.7 percent of households in the Eastern Cape had such access. Despite this shortcoming, it is a definite improvement on the situation in 2002, when only 56.3 percent of households in the Eastern Cape had access to piped water. Access to water in dwellings, off-site, or on-site, was most common in the City of Cape Town (99.7 percent), Nelson Mandela Bay and Buffalo City (both at 99.2 percent), and the City of Johannesburg (99.1 percent).<sup>67</sup>

Nationally, 63 percent of households considered the quality of water-related services as "good" in 2016, although satisfaction has steadily been declining since 2005 when the figure was 76.4 percent. An estimated 46.4 percent of households had access to piped water in their dwellings in 2016, 26.8 percent accessed water on site, 13.3 percent relied on communal taps, and 2.4 percent relied on neighbours' taps. Despite the improvements in access to water services, 3.7 percent of households still had to collect water from streams, rivers, stagnant pools or dams, wells and springs in 2016.<sup>68</sup>

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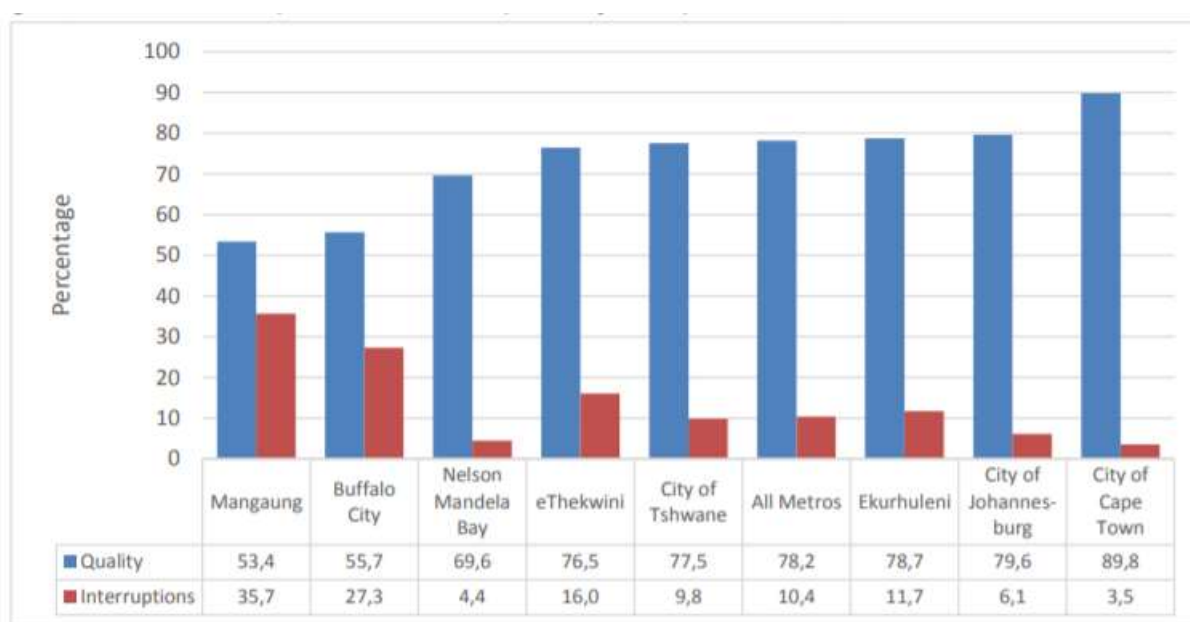
<sup>65</sup> Statistics South Africa, (2015).

<sup>66</sup> Ibid.

<sup>67</sup> StatsSA (2016).

<sup>68</sup> Ibid.

**FIGURE 1: HOUSEHOLDS SATISFIED WITH WATER SERVICES PER**



**METROPOLITAN MUNICIPALITY IN 2016<sup>69</sup>**

With respect to metropolitan municipalities, in 2016, the highest level of satisfaction with water quality was reported in the City of Cape Town (89.8 percent), which also reported the lowest level of water interruptions. The poorest quality was reported in Mangaung (53.4 percent) and Buffalo City (55.7 percent). These two metros also recorded the highest level of water interruptions, i.e. 35.7 percent and 27.3 percent respectively.

However, at a provincial level, the highest levels of interruptions were reported for households in Limpopo (68.1 percent) and Mpumalanga (58 percent). The lowest levels of interruptions were experienced in the Western Cape (2.5 percent) and Gauteng (5.8 percent).

<sup>69</sup> Ibid.

**FIGURE 2: PERCEPTIONS ABOUT THE QUALITY OF WATER PER PROVINCE,**

Perception	Statistic (numbers in thousands)	Province									
		WC	EC	NC	FS	KZN	NW	GP	MP	LP	RSA
Not safe to drink	Number	29	279	30	114	261	107	133	161	44	1 160
	Percentage	1,6	15,9	9,2	12,4	9,3	8,6	2,7	13,1	2,8	7,0
Not clear	Number	45	217	36	145	261	134	128	161	56	1 182
	Percentage	2,5	12,4	10,9	15,8	9,3	10,7	2,6	13,0	3,6	7,1
Not good in taste	Number	54	293	35	111	264	143	141	178	123	1 342
	Percentage	3,0	16,7	10,6	12,1	9,4	11,4	2,9	14,4	7,8	8,1
Not free from bad smells	Number	51	165	29	135	260	112	127	131	93	1 103
	Percentage	2,8	9,4	8,8	14,7	9,2	9,0	2,6	10,6	5,9	6,7

## 2016

The highest levels of negative perceptions of water quality were reported in the Eastern Cape, Mpumalanga and the Free State provinces. Respondents rated the water based on perceptions that it is not safe to drink, not clear, not good in taste and have a bad smell.

### *Improved sanitation*

At a national level, households with access to improved sanitation services increased from 62.3 percent in 2002 to 80.9 percent in 2016. The majority of households in the Western Cape (94.3 percent) and Gauteng (90.7 percent) had access to adequate sanitation, while only 57.1 percent of households in Limpopo and 67.4 percent in Mpumalanga had adequate access.<sup>70</sup>

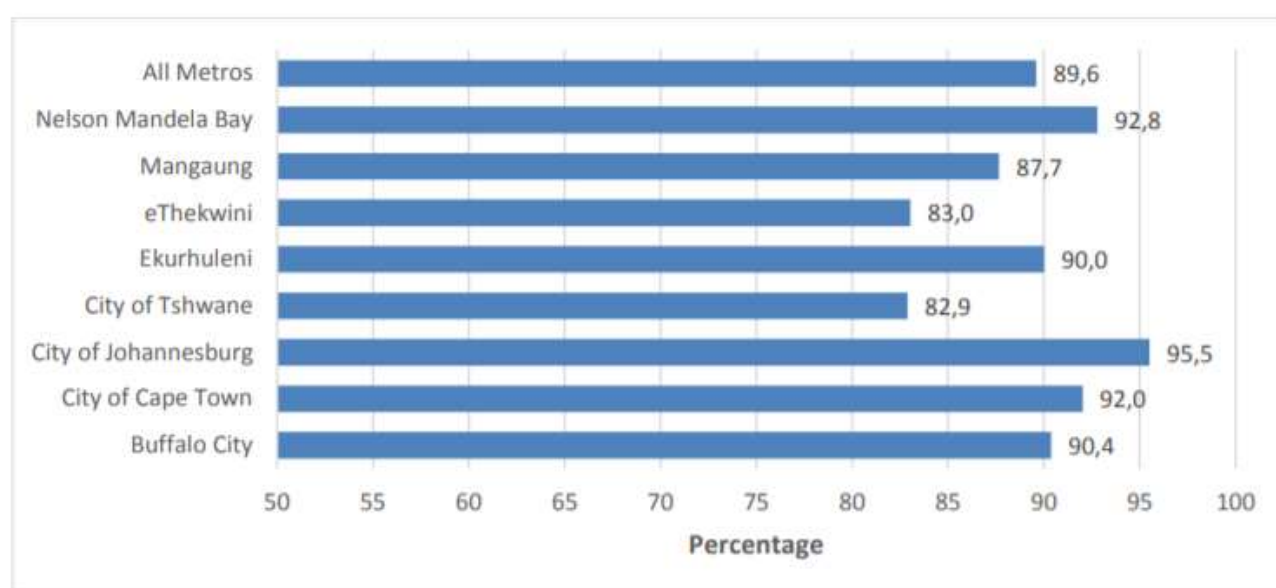
While the majority of households in the City of Joburg (95.5 percent) and Nelson Mandela Bay (92.8 percent) had access to improved sanitation facilities, households in the City of Tshwane (82.8 percent) and eThekweni (83 percent) were the least likely to have access to improved sanitation services. Nationally, the percentage of households without sanitation services, or who use bucket toilets decreased from 12.3 percent in 2002 to 4.2 percent in 2016. This indicates the significant strides made in terms of sanitation.<sup>71</sup>

<sup>70</sup> Ibid.

<sup>71</sup> StatsSA (2016).

Around a fifth of households expressed concerns around poor lighting (23.3 percent) and inadequate hygiene (20.9 percent), while 17.8 percent expressed concern for their physical safety when using toilets in shared facilities. Around 16.5 percent of households complained about long waiting times at shared toilet facilities.<sup>72</sup>

**FIGURE 2: HOUSEHOLDS WITH ACCESS TO IMPROVED SANITATION SERVICES BY 2016.**<sup>73</sup>



The poorest access to improved sanitation was recorded in Maphumulo in KwaZulu-Natal (16.1 percent), Makhuduthamaga in Limpopo (20.8 percent), Mfolozi in KwaZulu-Natal (21.7 percent), Nongoma in KwaZulu-Natal (23.5 percent) and Bushbuckridge in Mpumalanga (24.3 percent). Some of the municipalities experiencing the best rates for household access to improved sanitation include Overstrand in the Western Cape (99.2 percent) and Stellenbosch, Bergrivier (both located in the Western Cape) and Camdeboo in the Eastern Cape (all 98 percent).<sup>74</sup> This stark contrast highlights the extreme inequality experienced by households across South African municipalities in relation to sanitation services.

Below is a summary of the use of sanitation facilities per percentage of the South African population, based on estimates by the World Health Organisation and UNICEF

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Lehohla (2016).



in 2015.<sup>75</sup> The column titled “improved” indicates the percentage of the population with access to improved sanitation services, where the other columns refer to use of unimproved forms of sanitation.

**TABLE 2: OVERVIEW OF SANITATION TYPES IN RURAL AND URBAN AREAS<sup>76</sup>**

<b>Urban</b>				
	<b>Improved</b>	<b>Shared</b>	<b>Other unimproved</b>	<b>Open defecation</b>
1990	64%	24%	10 %	2 %
2015	70%	26%	3 %	1 %
<b>Rural</b>				
1990	38 %	10%	25%	27%
2015	61 %	16%	15%	8%
<b>Total</b>				
1990	51 %	17 %	18 %	14 %
2015	66 %	22 %	8 %	4 %

### 11.3. Challenges

#### 11.3.1. Bucket toilets

The non-financial census of Municipalities report released in 2016 by Statistics South Africa indicates a decrease in the number of bucket toilets supplied by municipalities, from 81 057 in 2015 to 68 028 in 2016. Gauteng, KwaZulu-Natal and Limpopo reported zero provision of bucket toilets, while Mpumalanga reported the same figure over the two-year period. The other five provinces showed a decrease in the provision of bucket toilets, with the major decreases recorded in North West (46.8%) and Eastern Cape (21,3%) and Northern Cape (12,7%).<sup>77</sup>

<sup>75</sup> StatsSA (2016).

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

- In 2016, Nelson Mandela Bay Metropolitan Municipality was identified as the municipality in South Africa with the highest number of bucket toilets (24 percent of consumer units using bucket toilets nationally). The municipality also has one of the largest populations in the country. Despite progress made in reducing the number of consumer units using bucket toilets from 30 202 in 2013 to 16 317 in 2016, the remaining high number of bucket toilets resulted in a violent service delivery protest in the municipality in May 2016.<sup>78</sup>
- Roughly 45 of South Africa's 278 municipalities in 2016 provided communities with this form of sanitation with the majority of bucket toilets located in the Free State, Northern Cape and Eastern Cape. Siyancuma in the Northern Cape was identified as the municipality with the highest percentage of domestic consumer units using bucket toilets, followed by Setsoto and Mafube in the Free State province.<sup>79</sup>

The Department of Water and Sanitation has identified the replacement of 15 638 bucket sanitation backlog systems in formal areas as one of the Strategic Objectives under Programme 3, (Water Infrastructure Development) of its Annual Performance Plan for 2018/2019.<sup>80</sup> This would involve the eradication of more than 32 000 buckets in formal areas and replacing it with adequate sanitation over the medium term. Despite these significant improvements, there is evidence that service delivery has slowed in some areas that are difficult to reach and to supply, such as informal settlements.<sup>81</sup>

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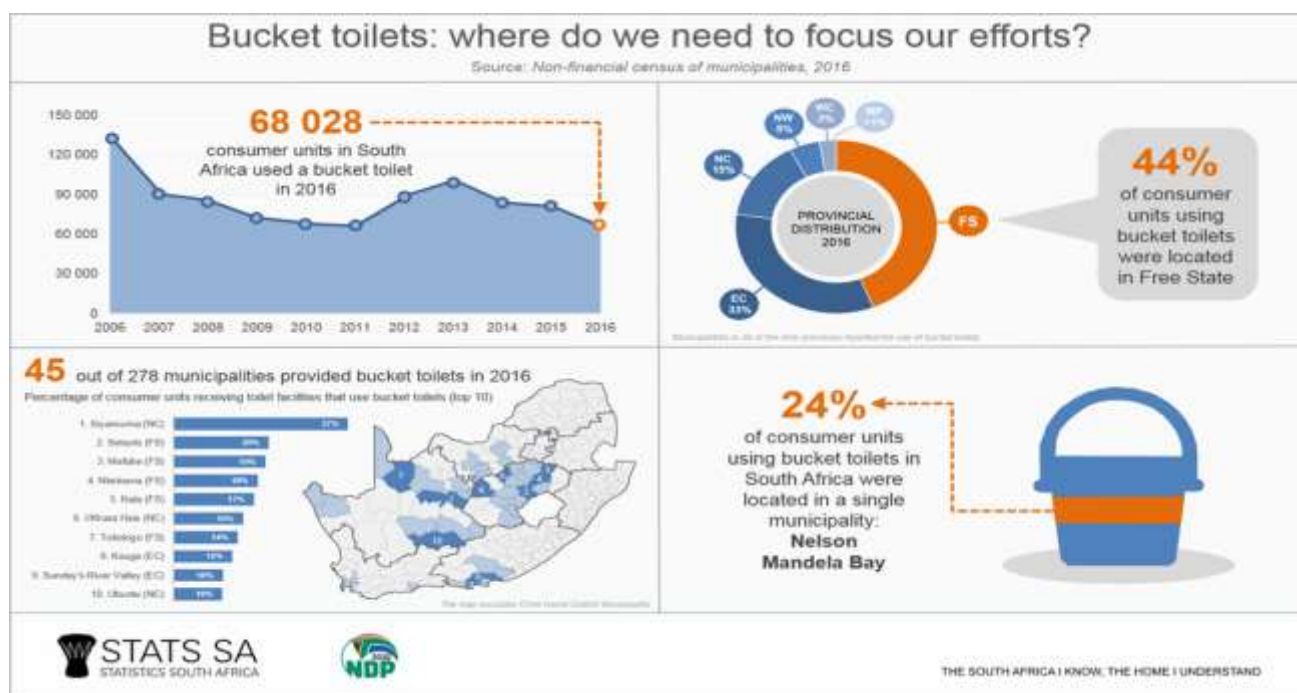
<sup>78</sup> StatsSA (2017)

<sup>79</sup> Ibid.

<sup>80</sup> Department of Water and Sanitation (2018).

<sup>81</sup> AMCOW (2011).

## DIAGRAM 1: THE USE OF BUCKET TOILETS IN SOUTH AFRICA



Source: Statistics South Africa (2016).

### 11.3.2. Challenges highlighted in the HLP report

The 2017 report of the High Level Panel on the *Assessment of Key Legislation and the Acceleration of Fundamental Change* (hereafter the “HLP”) highlighted two key challenges in relation to the provision of water and sanitation services. These are:

- Poor households suffer due to the high cost of water services. The use of prepaid water meters automatically deprive poor communities of the free basic water supply. However, the HLP does not make any specific recommendation to address this challenge.
- Poor access to clean water and sanitation services (poor quality water and sanitation services) leads to poor public health. The provision of water services is the responsibility of water services authorities which, according to the Water Services Act (No. 108 of 1997) and the Municipal Structures Act (No. 33 of 2000), are municipalities. However, the HLP does not make any specific recommendation to address this challenge.

During oversight visits to various provinces and engagements between parliamentary committees with national and provincial departments, as well as municipalities, a number of challenges related to water and sanitation services were identified.

### 11.3.3. Reliance on boreholes

During an oversight visit by the Portfolio Committee on Water and Sanitation to Limpopo on 15 to 17 August 2017, the following challenges were observed<sup>82</sup>:

- The strong reliance on boreholes in the Mopani District Municipality and the dependence of communities on groundwater in the region create significant challenges to ensuring water supplies in the area.<sup>83</sup> By 2015, there were 108 boreholes identified in 5 wards, where 75 were not operational and only 33 were operational. Currently, there are a total of 130 boreholes in the area, where 58 being operational and 72 not being operational.

### 11.3.4. Illegal connections and vandalism

- In wards 24 and 25 of the Mopani District Municipality in Limpopo (Muhla Headkraal, Sasekani, Petanenge, Zangoma, Bonn, Mafarana, Mulato, Ntsako and Sedan), illegal connections and vandalism of the reticulation network are ongoing challenges. Severe vandalism at the booster pump station at Coop needs to be repaired, despite ongoing budget constraints.
- In wards 26 and 27 of the Mopani District Municipality in Limpopo (Bordeaux, Hoveni, Hweetji, Masoma, Nyanyuka, Rhulani, Solani, Makhubidung, Mogapeng, Pharare and Shiluvane), vandalisation of standpipes, illegal connections and non-functioning existing infrastructure are ongoing concerns.

## 1.1 No water services provided

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<sup>82</sup> Parliament (2017d).

<sup>83</sup> Out of the 1270 boreholes in the Mopani District Municipality, 551 boreholes are located in the Greater Tzaneen Municipality (43 % of the boreholes in the Mopani District Municipality). Parliament (2017).

- In Lephaphane, the booster pump station has been discontinued and there is no bulk water supply to villages in the area. People have to rely on streams. It was decided that the completion of the booster pump station and damaged pipeline was not feasible and the project was terminated at 62 per cent completion of the project

#### **11.3.5. Funding and management challenges at water treatment works**

During an oversight visit by the Select Committee on Social Services to Mpumalanga on 27 -31 March, 2017, a number of challenges were identified<sup>84</sup>.

- Ownership of the Hoxane Water Treatment Works was not finalised by 2017.
- Confirmation of co-funding by the City of Mbombela Local Municipality for Northern Nsikazi to the amount of R101 million was still outstanding by 2017.

#### **11.3.6. Outstanding debt owed by municipalities for water**

There are significant challenges around the huge amount of outstanding debt owed by municipalities for the supply of water to areas under their authority. The debt mostly relates to the Free State, North West and Northern Cape provinces. Legal action has been taken against defaulting municipalities and the Department of Water and Sanitation has threatened to cut water to 30 municipalities owing over R50 million by December 2017.<sup>85</sup>

National Treasury has ascribed the underlying causes to under-funding of municipalities, municipal liquidity challenges that included political accountability, bloated municipal organisational structures, and a culture of non-payment.<sup>86</sup>

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<sup>84</sup> Parliament (2017a).

<sup>85</sup> Department of Water and Sanitation (2017).

<sup>86</sup> Ibid.

#### 11.4. Recommendations for consideration during the Local Government Week

- The Nelson Mandela Bay Metropolitan Municipality, Siyancuma Municipality in the Northern Cape, and Setsoto and Mafube municipalities in the Free State must provide the NCOP with a report on the extent of backlogs, progress and remaining challenges related to the eradication of the bucket system in their respective municipalities. The reports must be submitted within 30 days of the adoption of the Local Government Week report.
- The Mopani District Municipality must provide and update to the NCOP within 30 days of the adoption of the Local Government Week report on the progress made in the provision of water in the municipality, as well as remaining challenges related to the provision of water from boreholes.
- The Mopani District Municipality must furthermore, provide an update to the NCOP within 30 days of the adoption of the Local Government Week report on the remaining challenges and progress made in terms of addressing the issues of vandalism of stand pipes, illegal connections and non-functioning infrastructure.

In relation to ongoing challenges in the Mopani District Municipality, the Portfolio Committee on Water and Sanitation recommended that they receive progress reports on interventions taken by the Mopani District Municipality. These interventions should be aimed at building community relationships, participation and trust in relation to future water projects and addressing the large number of illegal connections, which are currently negatively impacting on bulk water infrastructure schemes

- An urgent intervention is required in Lephaphane (Tzaneen Municipality in Limpopo), where there are no water services provided by the municipality and where communities rely on streams. The Tzaneen Municipality needs to update

the NCOP within 30 days of the adoption of the Local Government Week report, on its plans for addressing the problem.

- The Mbombela Local Municipality must provide an update the NCOP within 60 days of the adoption of the Local Government Week report, on the current state of affairs regarding the management and ownership of the Hoxane Water Treatment Works and the co-funding of the Northern Nzikazi water project.

The Select Committee on Social Services recommended that Rand Water be approached to take ownership of the project. Furthermore, the Bushbuckridge Local Municipality should engage with the project roleplayers and stakeholders to ensure completion and successful management

- There are currently working groups dealing with the issue of municipalities with debt owed for water services. The working groups could provide the NCOP with a report on the current state of affairs. Furthermore, the 30 implicated municipalities must each submit a report outlining challenges and progress made in terms of addressing the issue of debt to the NCOP within 60 days of the adoption of the Local Government Week report.

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## **12. Municipal Infrastructure: Integrated Spatial Planning and The Provision of Energy Services**

### **12.1. Background**

The electricity sector plays a key role in both economic and social development. Together with housing and water, Government has prioritised the provision of electricity to all households to improve the standard of living, and to alleviate poverty in South Africa. The White Paper on Energy of 1998 outlines the restructuring framework for the supply (generation and transmission) and distribution sides of electricity while the National Electricity Regulator of South Africa (NERSA) play a key role in licensing of distributors and further oversees the quality standards within the sector and regulates tariffs set by Eskom and municipalities.

In addition to the generation and bulk transmission of electricity, schedule 4B of the Constitution (1996) further enjoins Eskom to distribute electricity to municipalities in their areas of jurisdiction subject to legislation and regulation by national and provincial government. The Municipal Systems Act (Act No.32 of 2000) establishes municipalities as service authorities and introduces a distinction between authority and provider. While the authority function includes the development of policies, drafting by-laws, setting tariffs, and regulating the provision of services in terms of the by-laws and other mechanisms, the service provider undertakes the actual service provision function.

The Electricity Regulation Act (Act No. 4 of 2006, as amended) states that persons operating an electricity 'distribution facility' must have a licence to do so. NERSA has licensed 188 distributors, including six (6) metropolitan municipalities, two (2) metropolitan electricity service providers (City Power and Centlec), 164 local municipalities, 1 district (uMkhanyakude District Municipality), 13 private distributors and Eskom.<sup>87</sup> Although all municipalities with a NERSA distribution licence are

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<sup>87</sup> StatsSA (2016)

electricity service authorities, this licence does not confer service authority status as this can only be done by the Minister responsible for local government.

There are delays in the finalisation of the Renewable Energy Independent Power Producer contracts. However, the contracts between Eskom and 27 Independent Power Producers has since been signed on 04 April 2018. Whilst the Department of Energy has reported that the Integrated Resource Plan (IRP) for Electricity was concluded and approved by Cabinet, concerns are that it was rushed and the new Cabinet will reprocess it. Whereas most stakeholders might welcome the reprocessing, the delays in the finalisation of the IRP creates uncertainty on the future energy mix of the country.

Over the medium term, the Department of Energy will focus on the strengthening of the Integrated National Electrification Programme (INEP) in order to ensure that 700 000 households' connections are achieved.

The bulk of the DoE's budget, over the years, has been allocated mainly for the electrification programme. This is currently still the case. The budget for this programme decreased from R6.2 billion in 2017/18 to R5.4 billion in 2018/19. This represents a decrease of 13 percent in nominal terms, whilst in real terms, the budget decreases by 17 percent. There is a substantial budget decrease in two sub-programmes, namely, the Integrated National Electrification Programme (INEP)– a decrease of 17 percent in real terms, and the Community Upliftment Programme – a decrease of 25 percent in real terms.

The overall budget of the DoE has decreased by R1.467 billion, from R8.1 billion in 2017/18 to R7 billion in 2018/19. This means the Department's budget has decreased by 18 percent, in real terms. The reductions of R1.4 billion were approved by Cabinet for the 2018/19 financial year. As noted above the reductions are mainly on the Electrification and Energy Programme and Project Management, the Department's largest programme, which account for almost 77 percent of the projected budget over the medium term.<sup>88</sup>

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<sup>88</sup> National Treasury (2018)

Service provision is the primary mandate of South Africa's 278 municipalities. Total spending by municipalities amounted to R310 billion in 2016, according to Stats SA's *Financial Census of Municipalities* Report. For the year to 30 June 2016, the largest contributor to municipal revenue was grants and subsidies received (30,9%), followed by electricity sales (28,3%), property rates received (14,7%), other revenue (11,0%) (Other revenue consists of fines, licences and permits, public contributions and donations, etc.), water sales (8,9%), sewerage and sanitation charges (3,5%), and refuse removal charges (2,7%).<sup>89</sup>

In 2016, the largest contributor to municipal total operating expenditure was employee-related costs (26,3%), followed by electricity purchases (22,6%), depreciation and amortisation (8,9%), other expenditure (8,2%), bad debts (6,7%), contracted services (5,9%), water purchases (5,6%), general expenditure (5,5%), repairs and maintenance (4,4%), interest paid (2,8%), grants and subsidies paid (2,0%), and remuneration of Councillors (1,1%).<sup>90</sup>

## 12.2. Problem Statement

Municipalities are the custodian of public funds. They are tasked with utilising public resources to address the needs of their communities for basic services such as infrastructure, water, electricity and refuse removal, as well as planning towards the spatial development of their localities. The National Treasury (2011) noted in the Local Government Budget and Expenditure Review points out that investment in local government is not resulting in returns for the national economy<sup>91</sup>. Collectively, poor governance, inappropriate spatial planning, massive service backlogs, and inadequate social infrastructure have resulted in constraints to economic growth and poverty reduction.

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<sup>89</sup> Stats SA (2017)

<sup>90</sup> Stats SA (2017)

<sup>91</sup> National Treasury (2011)

According to the Municipal Structures Act (Act No. 117 of 1998, as amended), the responsibility to distribute electricity is allocated to a district municipality unless a local municipality is authorised to do so by the national Minister responsible for local government. The South African Local Government Association - SALGA (2014) proclaims that Eskom is involved in the distribution of electricity in 140 municipalities, but these municipalities do not have Service Delivery Agreements (SDAs) in place.<sup>92</sup> Consequently, many municipalities consequently fail to make payments on electricity owed to Eskom leading to an accumulation of debt running into millions of Rands and the utility resorts to threats of cutting off electricity to the municipalities.<sup>93</sup>

This would have far-reaching consequences for residential and commercial entities. Electricity distribution is a major source of revenue for municipalities as the Municipal Fiscal Powers and Functions Act allows municipalities to levy a surcharge on electricity tariffs, even if Eskom provides it. Not providing electricity to residents can therefore have serious financial implications for municipalities.<sup>94</sup> The Municipal Manager's Forum of Salga (2017) is of the view that the endemic electricity distribution challenges in local government are constitutional, structural and systemic in nature. In addition, this dispensation as it stands does not compliment the existing legal frameworks, which directly undermines the municipalities' ability to fulfil their constitutional mandate.

### **12.3. Regulatory Framework of Energy Provision**

The electricity sector is regulated by the Electricity Regulation Act, which gives powers to NERSA with respect to licensing electricity providers and regulating tariffs. The sector is broadly separated into 'bulk' (including transmission) and 'reticulation' components. Provinces play no active role in this sector having no legal mandate to do so. Bulk electricity is the function of national government. In terms of the Constitution, electricity, reticulation is a Schedule 4B function. This means that, like water services, electricity is a local government matter over which national and provincial government have concurrent legislative authorities. However, while

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<sup>92</sup> Salga (2014)

<sup>93</sup> Ibid

<sup>94</sup> National treasury (2011) and Presidency (2015)

municipalities have the electricity reticulation authority, the provision of services is shared between municipalities themselves and Eskom.

There have been ongoing efforts to restructure the sector over the past decade through the creation of the Regional Electricity Distributors (REDs). However, Cabinet halted this process in 2010.<sup>95</sup> Considering the relative responsibility of district and local municipalities, Section 84(1) of the Municipal Structures Act provides that electricity reticulation is an exclusive district function. However, in reality District Municipalities have little role to play in the provision of electricity as they have not been licensed to do so by NERSA. In the main, service provision is split between Eskom Distribution and local government (local municipalities and metros) with a roughly equal split in terms of number of domestic consumers served. Municipalities sell more domestic electricity in terms of quantity (about 75 per cent), whereas Eskom is dominant in terms of supplying non - residential consumers.

One of the priority areas receiving attention now by the Presidential Infrastructure Coordinating Commission (PICC) is investment in the refurbishment of electricity distribution networks. The Department of Energy is applying for funds to run pilot exercises in a number of municipalities using the Approach to Distribution Asset Management (ADAM) developed by EDI Holdings.<sup>96</sup> While the burden of large scale electricity generation infrastructure investment could be reduced through demand management and the integration of privately owned, decentralised and embedded generation, many municipalities and cities may be resistant to this approach due to its potential to turn electricity buyers into electricity sellers.

Allocations from the Integrated National Electrification Programme (INEP) grants are intended to fund the capital costs of providing electrical connections to poor households and providing the bulk infrastructure needed to ensure a stable supply of electricity. Alternative sources of energy should be considered when it is not practical or cost-effective to connect all households to the national grid, such as in rural areas where solar panels could be more cost-effective.<sup>97</sup> INEP allocations can, however, not

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<sup>95</sup> StatsSA (2016)

<sup>96</sup> DPME (2015)

<sup>97</sup> National Treasury (2011)

be used to fund development in commercial development of wealthy suburbs. Given the focus on extending access, a concern raised by SALGA (2013) about the poor and decreasing reliability of the electricity distribution network and its impact on households and businesses alike should come as no surprise.

The Department of Energy also has a non-grid electrification programme which focuses mainly on electrification of remote rural areas where it is impossible to get electricity through the grid to these areas. The Department aims to expand the non-grid electrification programme to also cater for urban informal areas. Moreover, the Department has a policy on Free Basic Alternative Energy (FBAE). The policy provides that poor people, without access to electricity, should be provided with free basic alternative sources of energy. Alternative sources include free paraffin, liquefied petroleum gas (LPG), coal, etc. Municipalities are responsible for the implementation of this programme, such as identification of indigent households qualifying for the free services.

## **12.4. Energy Provision – An Integral part of Government Policy Outcomes**

### **12.4.1. National Development Plan**

The National Development Plan (NDP) 2030 represents a vision for investment in a strong network of economic infrastructure designed to support the country's medium and long-term economic and social objectives. This economic infrastructure is a precondition for providing basic services such as electricity, water, sanitation, telecommunications and public transport, and it needs to be robust and extensive enough to meet industrial, commercial and household needs. The NDP envisions greater social equity with regard to access to energy services by 2030.<sup>98</sup> According to the plan, this would be achieved by expanding access to energy (to 90 by 2030), maintaining affordable tariffs, and maintaining targeted and sustainable subsidies for poor households.<sup>99</sup> Non-grid options should be available for households without

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<sup>98</sup> National Planning Commission (2011)

<sup>99</sup> Ibid



access to electricity. Key policy issues and policy priorities identified by the NDP include the need to improve the municipal distribution services, and addressing the pricing of, and access to electricity in order to accommodate the needs of the poor.

#### **12.4.2. Medium Term Strategic Framework (MTSF) 2014-2019**

Following the NDP's proposal to increase the proportion of people connected to the electricity grid to 90 per cent by 2030, and to provide non-grid options to the remaining households, the MTSF aims to connect 1,4 million additional households to the grid between 2014 and 2019, and 105 000 additional non-grid connections.<sup>100</sup>

#### **12.4.3. Sustainable Development Goals (SDGs)**

SDG goal 7 aims to ensure universal access to affordable, reliable, sustainable and modern energy. In addition to ensuring universal access to modern energy services, the SDGs also target an increase in the share of renewable energy sources used, as well as doubling energy efficiency by 2030. South Africa has already experienced a huge increase in the percentage of households with access to electricity. Between 2002 and 2013, the percentage of households with access to electricity increased from 77,1 per cent to 85,4 per cent.<sup>101</sup>

Despite these improvements, electrification of households in rural areas and informal townships are hampered by concerns of practicality and cost-effectiveness. For instance, where informal areas have not been proclaimed electricity cannot be installed due to the threat of relocation. Similarly, the electrification programme in rural areas is troubled by the topography, a lack of infrastructure, and low population/household density.

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<sup>100</sup> Medium Term Strategic Framework 2014 - 2019

<sup>101</sup> StatsSA (2016)

#### 12.4.4. . Agenda 2063

Agenda 2063 aspires that people should have access to all the basic necessities of life including shelter, water, sanitation, energy, public transport and Information Communication Technology (ICT) by 2063.<sup>8</sup> Indeed, the DoE is also committed to ensuring that more than 90 per cent of households have access to modern energy by 2025.<sup>102</sup>

#### 12.5. Key Successes and Challenges

The provision of electricity can contribute significantly to the improvement of quality of life. In addition to providing a host of social benefits, access to electricity could also stimulate local economic development. Local governments play an important role in the distribution of electricity, and electricity is an important source of local government funding, particularly for larger urban municipalities. Although significant progress has been made since 1994 with the provision of electricity, significant challenges remain. Government is committed to not only expanding the electricity infrastructure, but to also provide free basic electricity services to poor households.

The success of the electrification programme is clear. Access to electricity is almost ubiquitous and 87,6 per cent of households had access to electricity in 2016.<sup>103</sup> Access, however, varies over space. Access to electricity is higher in more urban municipalities than in rural municipalities. While provincial figures are quite comparable in terms of access, municipal figures vary widely. In spite of the progress obtained in increasing the provision of electricity, further improvement is impeded by a range of factors such as the cost of extending electricity networks to rural areas due to the long distances.<sup>104</sup>

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<sup>102</sup> Agenda 2063 (2014)

<sup>103</sup> Stats SA (2017)

<sup>104</sup> National Treasury (2011)

Due to the limited ability to generate revenue from poor areas, municipalities are slow to extend electricity services to these areas. Although electricity is potentially a very important source of revenue for municipalities, many municipal distributors have in the past neglected to do the required maintenance and investment, thus raising the risk of power outages caused by ageing infrastructure. Although electricity distribution is constitutionally a municipal competency, Eskom still plays a huge role in electricity distribution in South Africa. Eskom distributed 212 107 gigawatts-hour (GWh) or 66 per cent of total electricity distributed to customers in the 2011/12 financial year to 15 per cent of the total customers.<sup>105</sup>

Municipalities only distributed 96 537 GWh or 30 per cent of total electricity distributed, even though they deliver to 85 per cent of total customers.<sup>106</sup> In addition, Eskom serves fewer customers and the statistics indicate that the utility's customers are relatively higher electricity users, driven mainly by the energy intensive mines and industries.

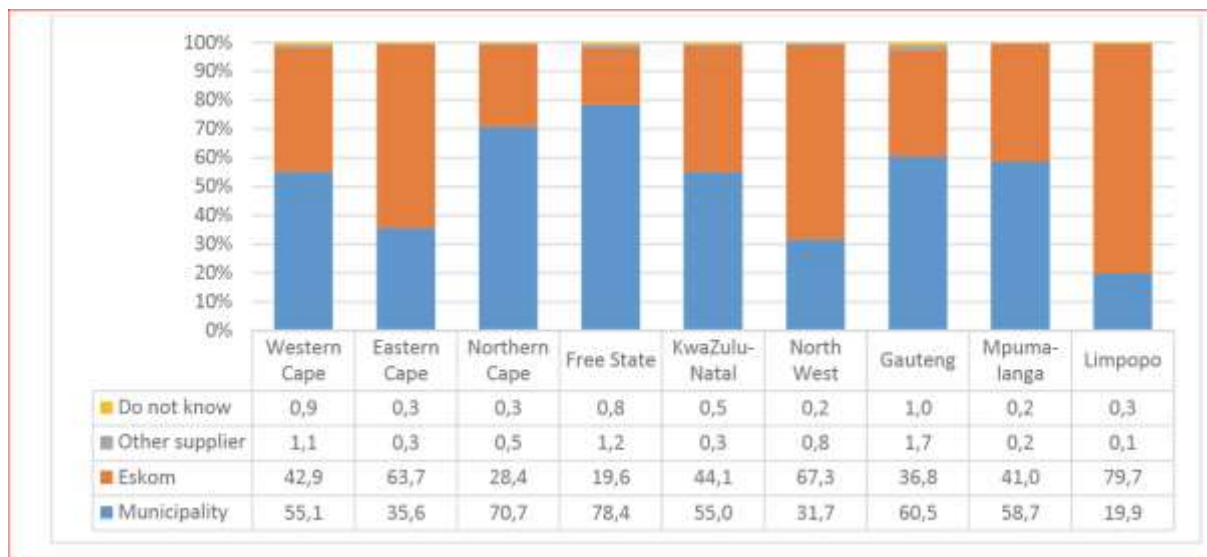
As stated above, the responsibility to distribute electricity to consumers is shared between municipalities and Eskom. This creates a situation where different areas in the same municipality could receive services from different service providers. Electricity is an important source of revenue for municipalities and revenue lost to Eskom reduces the available funds to cross-subsidise other services. The use of different service providers that are often using different tariff structures in the same municipality can create confusion among consumers.

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<sup>105</sup> SALGA (2017)

<sup>106</sup> Ibid

**Figure 1: Main supplier of electricity by Province**



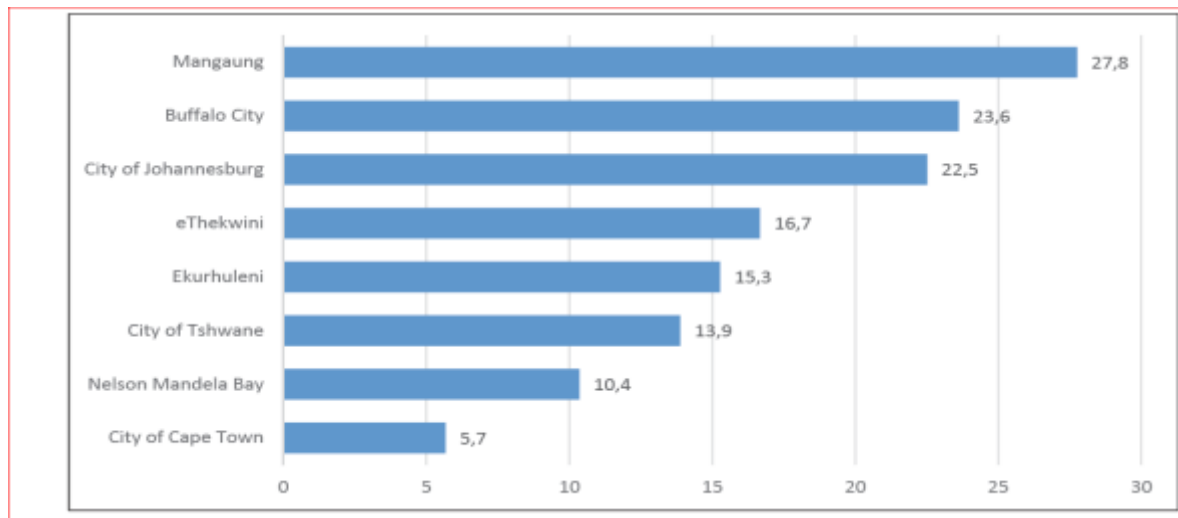
Source: (Stats SA, 2016)

Figure 1 above shows large variation across provinces with regards to the provision of electrical services by municipalities or Eskom. Municipalities provided services to the majority of households in Free State (78,4 per cent), Northern Cape (70,7 per cent), Gauteng (60,5 per cent) and Mpumalanga (58,7 per cent), while Eskom was particularly active in rural provinces such as Limpopo (79,7 per cent), North West (67,3 per cent) and Eastern Cape (63,7 per cent). Another huge challenge is the municipal debts owed by various municipalities to Eskom. By the end of March 2018, Eskom was owed about R13,5 billion (including interest) by Municipalities. This has negative implications for the job creation agenda, and socio economic development of the country and this is in direct contrast with the NDP aspirations.

In contrast to metros, rural municipalities were home to 24% of the national population in 2016, but they spent just 6% of the total municipal budget. Located mostly in KwaZulu-Natal, Eastern Cape and Limpopo, rural municipalities exhibit one striking difference in terms of how they spend their money: they devote very little to purchasing electricity. Urban municipalities can spend up to a quarter of total expenditure buying electricity from Eskom, which they then resell to residential, business and industrial customers. This process generates a financial surplus that they use to fund other activities. Many rural municipalities, however, do not take part in the electricity trade.

Eskom provides power directly to customers in rural areas without the municipality taking on the middle role. As a group, rural municipalities spent only 6% of their budgets on purchasing electricity in 2016, far lower than the national municipal average of 23%. With Eskom fully responsible for electricity distribution, rural municipalities are not burdened with the high costs associated with infrastructure development and maintenance.<sup>107</sup> Below is the figure, which shows examples of interruptions in electricity supply during 2016.

**Figure 1: Electrical interruptions by Metropolitan area<sup>108</sup>**



Source: (StatsSA, 2016)

“The prevalence of electrical interruptions in metros is presented in Figure 2 above. Electricity interruptions were least commonly reported in Cape Town (5,7 per cent) and Nelson Mandela Bay (10,4 per cent). Conversely, electrical interruptions were much more common in Mangaung (27,8 per cent), Buffalo City (23,6 per cent) and Johannesburg (22,5 per cent).”<sup>109</sup>

<sup>107</sup> Stats SA (2016)

<sup>108</sup> StatsSA (2016)

<sup>109</sup> Ibid

## 12.6. Recommendations

- A working group comprising National Treasury, Department of Energy, National Energy Regulator of South Africa and Salga could be established to investigate how to regulate finances and tariffs of distributors (Eskom and municipalities) more effectively with a view to increasing transparency and cost-reflectivity, tariff rationalisation and convergence, increased use of time-of-use pricing and sustainable targeted and pro-poor subsidies. In addition, the National Treasury could consider how to regulate the electricity levy more effectively or how to do away with the levy.
- The National Council of Provinces (NCOP) should convene a working group to consider the structural, constitutional and systemic challenges that subvert the ability of municipalities in provision of electricity towards economic development and job creation in their areas of jurisdiction.
- Municipalities in South Africa have constitutional and other legislative rights to supply electricity within their local boundaries. Eskom has legislative rights to supply electricity throughout South Africa where municipalities, or other licensees, are not supplying. However, these constitutional and legislative rights have their own challenges – adding to fragmentation of the Electricity Distribution Industry (EDI). Legislation should be looked at to give clearer guidelines for distribution responsibilities, clear roles between Eskom and municipalities. Efforts to address the fragmentation of the EDI through the REDs model have failed and seemingly, ADAM is also not a sustainable approach in addressing EDI challenges. In 2008, the electricity distribution infrastructure backlog was estimated to be R27 billion. In 2014, the backlog was estimated to be R68 billion – this means the situation is worsening. Challenges relating to the electricity distribution requires urgent attention to avoid a situation of having surplus electricity, which may potentially not be distributed to the end-users.

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## 13. Supporting Municipalities to Have Cleaner Towns and Cities

### Summary

The South African public spaces are very dirty due to the illegal dumped waste which could be the source of income through recycling thereby contributing to economic growth and job creation, and reducing social and environmental costs.

The CSIR study on waste roadmap has indicated that the waste sector has a potential of contributing over 15 billion rand in the economy. This discussion document highlights issues that are core to the challenges of having dirty towns and cities. It further recommends desired actions going forward.

### 13.1. Background

It is estimated that the country is generating approximately 59 million tonnes of general waste and in the order of 10% of waste generated is recycled. The remaining 90% goes to landfill sites and some are illegally dumped.

Waste management in South Africa is currently undergoing a paradigm shift. This paradigm shift requires that waste no longer be viewed as an unwanted by-product requiring disposal to landfill, but rather as a renewable resource, suitable for re-introduction back into local economies of municipalities.

Waste management legislation, while having an environmental protection based philosophy, is also driven by Government's priority of job creation. With a policy directive of moving up the waste hierarchy (which prioritises waste minimisation and recycling before considering disposal), job opportunities are recognised in areas of waste collection, transfer, separation, reuse and recycling.

### 13.2. Problem Statement

South Africa, like most of developing countries has a big problem of illegal dumping and littering, especially in towns and cities. This can be attributed to the lack of knowledge in people relating to the economic opportunities in waste and their role in keeping the environment clean. Added to that is the lack of the necessary municipal infrastructure and systems, in some instances.

The Constitution states that every person has the right to an environment that is not harmful to their health or well-being. Local government is obliged to provide waste management services to realise this right of society in their area of jurisdiction. Municipalities are responsible for refuse removal, refuse dumps and solid waste disposal.

In trying to keep the environment clean, most of municipalities are continuously investing a lot of resources in clearing the illegally dumped waste. It is believed that, not only municipalities, but everyone has a role to play in keeping the country clean. It begin with making the community aware of the need to take care of the environment.

### 13.3. What Has Been Happening in the Sector

SALGA, Department of Environmental Affairs and private sector have agreed to work together in a form of a Working Group, to conceptualise a national awareness campaign under the theme “**Keep South Africa Beautiful**”

The objective of the campaign is to positively reinforce the anti-littering and recycling behaviour; thereby creating a national culture within which citizenry is aware of and active in their role in attaining a clean, safe and healthy environment

The campaign will be anchored on the following pillars:

1. Increase awareness of the benefits of anti-littering (environmental, health, social, and economic), as compared to the negative impacts of illegal dumping behaviour.

- South Africans need to be aware of the positive impacts of good waste management
- Linked to this, there needs to be a strategic increase in the infrastructure available to support the desired behaviour – sufficient litter bins in high traffic areas supported by a systematic emptying of such bins by municipalities
- Better reinforcement of the law against littering.

2. Increase awareness around the economic opportunities in waste:

Advocate for entrepreneurship in the waste industry

Access to green economy while keeping our country clean.

3. Increase participation in waste minimisation activities.

South Africans need to have access to simple, accurate information about recycling. Linked to this, there needs to be a strategic increase in the infrastructure available to support the desired behaviour:

- Strategically located and marked bins,
- buy-back centres,
- drop-off centres,
- Material Recycling Centres

To date, the Working Group is finalising the strategy for running a national awareness campaign. The overall aim is to change the behaviour of our communities towards waste management issues.

### 13.4. Conclusion and Recommendations

Researches are increasingly showing that explaining the consequences of any action and offering alternative way of doing things goes a long way in altering behaviour. This is the approach that this campaign would be adopting within the constraints of resources. While acknowledging that there has been some efforts to shift behaviour in South Africa from a throwaway culture to a 'reduce; reuse; recycle' culture, they have been adhoc and isolated (on both a time and a geographical scale). It is important that a systematic and holistic approach be adopted at a national scale, which can filter down to a provincial and municipal operational level.

Whilst SALGA, DEA and Private sector will be working on the national campaign, it is recommended that the NCOP encourages every public representative to ensure that whenever they are having engagements with public and their constituency, they advocate for the following desired actions:

- A need to reduce wasteful consumption.
- A need to set a good example e.g. through picking up existing litter and throwing it in the bin
- Do not litter. Use the bin infrastructure available.
- Use existing recycling and waste management infrastructure correctly.
- Encourage municipalities to have an adequate infrastructure and enforce bylaws

**Prepared by:**

Balanganani Nengovhela

Specialist: Waste Management

Email: [mnengovhela@salga.org.za](mailto:mnengovhela@salga.org.za)



**NATIONAL COUNCIL  
OF PROVINCES** LOCAL  
**GOVERNMENT  
WEEK 2018**

Land Use: Towards Integrated Spatial Planning  
08 – 10 May

**Commission 2**

**Municipal Support and  
Intervention Framework**



## Commission 2: Municipal Support and Intervention Framework

### 1. Questions for Consideration

- What are the main challenges that prevent interventions in local government in South Africa from achieving the desired outcomes as expected? How can these challenges be addressed?
- What does Government at all levels need to do to sustain interventions over the short, medium and long term?
- What mechanisms are in place or necessary to set clear objectives for interventions and to monitor and manage the implementation of these interventions?
- What role does the Constitution, legislation and the Rules of Parliament envisage for the NCOP in terms of interventions? How is this applied in practice and what could the NCOP do differently to support the intervention process?

## 2. Executive Summary: Municipal Support and Intervention Framework: Intervention and Monitoring

### 2.1. Background

The Constitution of the Republic of South Africa, 1996, and the White Paper on Local Government provides for a system of developmental local government. This requires municipalities to prioritise the basic needs of the communities in the way they structure and manage their administration, budgets and planning processes, as well as to promote the social and economic development of communities. The Constitution enjoins national and provincial governments to, through legislative and other measures, assist municipalities in their task by supporting and strengthening their capacity (section 154(1)). Where municipalities do not perform their functions, or are unable to do so, the Constitution (section 139) and applicable legislation, such as the Local Government Municipal Structures Act, no. 117 of 1998 and the Municipal Finance Management Act, no. 56 of 2003, empower provinces to intervene in such municipalities.

Section 139 of the Constitution provides for three types of intervention, namely:

- **General interventions** - when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation the Constitution empowers the relevant provincial executive to either issue a directive to the municipality outlining the steps required to meet its obligations; assume responsibility for the relevant obligation or to dissolve the municipal council and appoint an administrator until a new council is elected.
- **Interventions relating to budget or revenue raising measures** - If a municipality cannot or does not approve a budget or any revenue-raising measures necessary to give effect to the budget, the provincial executive may take any appropriate steps to ensure that the budget or revenue-raising measures are approved. This includes dissolving a municipal council and appointing an administrator until a new council is elected, and approving a



temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

- **Financial emergency interventions** - If a municipality is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments because of a crisis in its financial affairs, the provincial executive has one of two choices. It can either impose a recovery plan to ensure that the relevant municipality is able to meet its obligations to provide basic services or meet its financial obligations, or it can dissolve the municipal council.

Provinces, however, may only intervene in municipalities as a measure of last resort. Between the fourth and fifth Democratic Parliaments, municipalities in all but one province, namely the Northern Cape, were placed under section 139 intervention. Whilst there are some examples of success stories (Mtubatuba Local Municipality in KZN), interventions have not always yielded the desired outcomes. In fact, after intervention some municipalities, such as the Makana Local Municipality (Eastern Cape), Mpofana Local Municipality (KwaZulu Natal), Ngaka Modiri District Municipality (North West) and the Nquthu Local Municipality (KwaZulu Natal), have regressed to such an extent that repeat intervention was necessary.

## 2.2. Challenges

Arguably, a number of factors contribute to the degeneration of the internal business processes of municipalities to the extent where provinces have to intervene in terms of section 139 of the Constitution.

These include, but are not limited to:

- Weak and/or fragmented local government municipal support, monitoring and oversight, which leads to poor governance and accountability.
- The support role of especially districts has been limited in providing training and capacity building, as well as the deployment of skilled professionals.



- Lack of a uniform approach to monitoring, support and intervention in terms of timing, resourcing and implementation.
- Weak internal controls and monitoring of the performance of municipalities, which leads to lack of compliance.
- The complexity of the legislative framework regulating municipalities.
- Inadequate strategic understanding of the local government environment.
- Limited provincial capacity to support municipalities to secure long-term sustainability.
- The lack of municipal buy-in with regard to support, monitoring and intervention initiatives.

However, interventions do not always yield the desired outcomes. This can partly be ascribed to the fact that there is no comprehensive uniform framework/guide/toolkit for the efficient implementation and management of interventions. Another contributing factor is the assumption that once a Municipal Council is replaced or new leadership takes over, things will change. The reality is that a newly elected council is not always capacitated and fully inducted to fulfill both its legislative and executive functions. Replacing the council is one measure of ensuring that section 139 achieves its desired outcomes but the lack of clarity and proper systems of monitoring and supervision are not always put in place in this process.

### 2.3. Recommendations

- Improve and strengthen oversight and monitoring of local government and enhance the visibility of the Select Committee on CoGTA in the provinces as part of identifying and managing early warning signs.
- Consider the feasibility developing a comprehensive Local Government Support and Intervention Framework.
- Improve the role of district municipalities in providing hands-on support to local government by amending section 88(2)(a) of Local Government Municipal Structures Act. In its present form, this provision is prohibitive, as it states that a district municipality, on request by a local municipality within its area of jurisdiction, may provide financial, technical and administrative support services

to such local municipality. This means there is no obligation to do so. Consideration should be given to amending this provision to be make the support function of district municipalities mandatory.

- There is a need to ensure a much stronger intergovernmental approach to interventions by clearly outlining the role for SALGA and Districts in supporting municipalities to render interventions unnecessary and when the need for an intervention does arise, to support the intervention process.
- The NCOP should conduct regular reviews of interventions to track performance and progress.
- There is need to address the elements of a sound exit strategy after an intervention, with provincial organised local government and districts playing a key role in supporting/ rebuilding the municipality towards sustainability.

### **3. Municipal Support Interventions Framework Focusing on the Monitoring, Support and the Application of Sections 139 of The Constitution: The Need for Regulatory Framework for the Implementation of Sections 139(8).**

The discussion document provides an analysis on the monitoring process for local government, support provision as provided by national and provincial government and in the process the application of section 139 of the constitution as applied by provincial government, including the key challenges experienced there-in.

#### **3.1. Introduction and Background**

The Constitution of the Republic of South Africa, 1996, entrenched local government as a fully-fledged wall to wall sphere of government in a system of cooperative governance in which the three spheres are distinctive, interrelated and interdependent. This is in response to the many challenges that our country is facing such as redressing poverty, inequality, underdevelopment and the marginalisation of people and communities. The Constitution and the Organised Local Government Act, 1997, allows for organised local government participation in the proceedings of the NCOP and to designate up to 10 part-time representatives to the NCOP in the national Parliament. The NCOP consists of 90 members, which comprises of a delegation from each of the 9 provinces. Each provincial delegation consists of 10 delegates, i.e. the Premier or SALGA: person designated by the Premier and 3 delegates designated by the Provincial legislature, and six delegates who are permanent delegates to the NCOP. They represent different categories of municipalities and have freedom of speech in the Council and in its committees, subject to its rules and orders with the attendant protection from civil or criminal liability, arrest, imprisonment or damages and are entitled to such other privileges as prescribed by legislation. In terms of the Organised Local Government Act 52 of 1997, SALGA can designate up to ten non-voting members to participate in the NCOP as non-voting members.

The South African Local Government Association (SALGA) is an autonomous association of municipalities which performs two distinct roles within the IGR system, the first the association vertically interacts as representative of local government with

national and provincial government and secondly on a horizontal level that promotes an integrating (support) function in relating to its members, the municipalities. The mandate of SALGA therefore is derived from Section 163 of the Constitution of the Republic of South Africa

As the South African Local Government System, enters its fourth democratic dispensation, it has become prudent for the sector to improve its functionality and its role within the developmental state of the South Africa. As a result the SALGA Strategic Plan 2017-2022 aims to strengthen SALGA's role as the Protector to enforce the rights of the local government sector as well as constructively Disrupt where the existing overall system of compromises the ability of local government to deliver on its mandate. The SALGA strategic plan asserts the notion that local government is the sector that is closest to the people and therefore, must be empowered, resourced and capacitated to assume its critical role of delivering quality services to its people.

The development of this discussion document on the, Municipal Support Interventions Framework for the National Council of Provinces Local Government Week, is intended to give precedence on the role of the national and provincial governments in effectively applying their constitutional values by ensuring that at all time the spirit of cooperative governance is achieved across board. The discussion document will therefore focus on the practise of the oversight role as practised by both National and Provincial Government in regulating the sector of local government, it will provide an analysis on the monitoring, supportive role applied by the other spheres of government, including analysing the role played by local government in self- monitoring. The paper will further look at the application of section 139 by the Constitution as applied by the Provincial Government, the challenges there-in and conclude by making certain proposals that needs to be considered for improving monitoring, supporting local government including improving the applications and implementations of section 139 interventions as provided by the Constitution.

### **3.2. Legislative Prescripts and Principles**

Constitution establishes the system of government in South Africa as a unitary state with decentralised characteristics, consisting of the national, provincial and local government spheres. In chapter 3 of the Constitution, the principles of intergovernmental relations and co-operative government are set out, requiring that each sphere of government performs the functions allocated to it and, in so doing, coordinates the execution of functions with other spheres so as to provide coherent government for the country as a whole. Within this context, there is an implicit assumption that each sphere will provide whatever support necessary to ensure such coherence and coordinated governance.

However, should any sphere of government be unwilling or unable to meet its obligations, the Constitution provides for a system of interventions, in terms of which the national government may intervene in provinces and provinces may intervene in municipalities. Section 100 regulates national interventions in provinces while section 139 structures provincial interventions in municipalities.

The importance of monitoring, support and intervention lies in the fact that municipalities have a developmental mandate to give priority to basic needs of the community as well as promote social and economic development of the community.

Local Government is tasked by the Constitution to structure and manage their administration, budgeting and planning processes to be able to carry out this developmental agenda. In addition, they should also participate in development programmes of national and provincial government.

The Local Government White Paper, 1998, defines developmental local government as local government that is committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives. Development local government comprises of four basic characteristics<sup>110</sup>:

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1. **Maximising economic growth and social development:** local government must exercise its powers and functions in a way that has a maximum impact on economic growth and social development of communities.
2. **Integrating and coordinating:** local government must integrate and coordinate developmental activities of other state and non-state agents in the municipal area.
3. **Democratic development: public participation:** local government are vehicle through which citizens work to achieve their vision of the kind of place in which they wish to live.
4. **Leading and learning:** municipalities must build social capital, stimulate the finding of local solutions for increased sustainability and stimulate the local political environment.

The developmental agenda of local government cannot be achieved without the support and participation of the National and Provincial spheres of government. Chapter 3 of the Constitution outlines that South Africa is made up of three spheres of government, which are distinctive, interrelated and interdependence.

**Distinctive:** Each sphere has its own powers and functions as allocated to it within schedule 4 and 5 of the constitution, and more specifically for local government its powers and functions outlined in the section 83, 84 and 85 of the municipal structures act, 1998.

**Interrelated:** Although each sphere has its level of autonomy, but the exercise of that autonomy is supervised by the other spheres, where section 154 is applied in that regard.

**Interdependent:** Each sphere must conduct its autonomy in the pursuit of achieving the greater common good of the country by cooperating with other spheres. This principles essentially provide that each sphere of government must exercise its powers and functions in a manner that is respectful as well as cooperate and coordinate their actions with one another.

The National Development Plan (NDP), Vision 2030, sets out a comprehensive plan to eliminate poverty and reduce inequality by 2030. It seeks to draw on the energy of its people, drive an inclusive economy and build key capabilities including the

necessary skills and infrastructure. A key element essential for the success of all NDP objectives requires building capacity of the state, and promoting leadership and partnerships throughout society. In that context, as the representative body of municipalities and for SALGA, to effectively deliver on its posture, it requires thoughtful leadership that is able to challenge the current legislative and policy systems that do not respond into serving and protecting the sphere of local government.

### **3.3. Local Government Monitoring**

Monitoring of local government happens at different levels. There is self-monitoring by municipalities through the required systems and processes for planning and performance management. Second, the Constitution and other legislation, especially the Municipal Systems Act and the Municipal Finance Management Act empower provincial and national government to monitor the performance of municipalities. It is at both levels that SALGA can play a meaningful role in supporting municipalities.

#### **3.3.1. Self-Monitoring of Local Government**

Chapters 5 and 6 of the Municipal Systems Act provide for integrated development planning and performance management, respectively, in municipalities. Section 38 of this Act requires a municipality to establish a performance management system to measure its own performance as well as enable it to report to other spheres of government on its performance as well as highlight any challenges.

A municipality is required to set key performance indicators along with targets to measure its performance against its development priorities and objectives as set out in its integrated development plan (IDP).

The Municipal Systems Act further requires municipalities to publish their key performance indicators and performance targets<sup>111</sup>. The results of the performance measurements also audited as part of the auditing processes by the Auditor-

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<sup>111</sup> Section 44

General<sup>112</sup>. As part of its annual report, municipalities must also produce an annual performance report in accordance with section 46 of the Municipal Systems Act. This report must detail the performance of the municipality and that of any external service provider and compare it with the targets set and performance of the previous year. This will show if a municipality has taken remedial steps to improve its performance where it has been poor.

The object of the Municipal Finance Management Act (MFMA) 56 of 2003 is to “*secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements*”.

The MFMA requires municipal managers prepare the following reports:

- Prepare and submit to the mayor and the provincial treasury **monthly budget statements**<sup>113</sup> reflecting the actuals for revenue, borrowings, expenditure, capital expenditure, allocations received and their expenditure and explanations on variances.
- Prepare and submit to the mayor, National Treasury and relevant provincial treasury a **mid-year budget and performance assessment report**,
- Taking into account the monthly budget statements referred to above; service delivery performance against the targets in the service delivery and budget implementation plan (SDBIP) of the municipality; progress on resolving problems in the annual report of the preceding year; and the performance of all municipal entities of the municipality.
- Prepare **annual report**<sup>114</sup> including, among others, financial statements, the Auditor-General’s audit report on the financial statements; annual performance report; assessment of any arrears on taxes and service charges; performance against revenue targets; corrective action taken or to be taken in response to the issues raised in the audit reports.

The MFMA, further obliges municipal managers to inform the provincial treasury in writing, of any failure by the municipal council to adopt or implement a budget-related

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<sup>112</sup> Section 45

<sup>113</sup> Section 71(1)

<sup>114</sup> Section 121



policy or supply chain management policy as well as any non-compliance by a political structure or office-bearer of the municipality with such a policy.

### 3.3.2. The National and Provincial Monitoring of Local Government

The National and Provincial governments have powers to make laws that **regulate** local government. Second, they have the responsibility to **monitor and support** municipalities. Third, they also have the power and sometimes even the responsibility to **intervene** into a municipality, if it breaks the law. Sections 155(6) and (7) as well as section 216(1) of the Constitution provide for the national and provincial powers to regulate, monitor and support local government.

### 3.3.3. The application of Section 105 of the Local Government: Municipal Systems Act, 2000

The monitoring role of provincial governments must be supported by an information system which enables the provincial government to determine where municipal capacity needs to be built and where support is required, and to ascertain whether and which kind of regulation or support is necessary. Section 105 of the Municipal Systems Act which requires the Member of a provincial Executive Council (MEC) to establish mechanisms, processes and procedures in order to:

- (a) Monitor municipalities in managing their own affairs and exercising their powers and performing their functions.
- (b) Monitor the development of local government capacity in the province.
- (c) Assess the support needed by municipalities to strengthen their capacity to manage their own affairs.

This allows the MEC to require municipalities to submit specified information to a provincial organ of state, but requires that the MEC relies as far as possible on the municipal annual performance reports as compiled in terms of section 46 of the Municipal Systems Act.

#### 3.3.4. Section 106 of Local Government: Non-performance and Mal-administration in Municipalities

Section 106 of the Municipal Systems Act, is applied by the Provincial Government as part of providing monitoring processes within local government. The application of 106 of the Municipal Systems Act does, however, not constitute an intervention. The section is applied, if the MEC for local government has reasons to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province.

It may of course often be necessary for the provincial government to conduct further investigations while the implementation 139(1)(b) of the Constitution is being applied, in order to make the intervention a success. The legal basis for such process can be found in three provisions:

- (a) Section 149 of the Municipal Finance Management Act provides that, if the provincial executive intervenes in terms of section 139, the provincial executive's representatives have access to all information necessary for resolving the municipality's problems;
- (b) The Provincial Executive's representative can use the ordinary powers, normally exercised by the Municipal Council or its structures, to conduct an internal investigation; or
- (c) If it is necessary that the investigation be conducted with the powers of an official Commission of Enquiry, a Commission of Enquiry can be appointed by the MEC outside of the 139(1) (b) intervention: the Commission can then investigate the municipality (including its temporary leadership).

The model below provides a summary on the how the implementation of section 105 and 106 of the local government Municipal Systems Act, should be applied in local government to monitor the performance of the sector. However, the key concern has been the lack of understanding and confusion over the legal terminologies that are applied when a municipality fails to fulfil its executive obligations, which is referred to as section 139 of the Constitution.

S 105 of MSA

The MEC of LG must establish mechanisms processes & procedures ito 155(6) of the Constitution:

- (a) Monitor municipalities in the province in managing their own affairs, exercising their powers and performing their functions;
- (b) monitor the development of LG capacity in the province; and
- (c) assess the support needed by municipalities to strengthen their capacity to manage their

S106 Non-Performance and maladministration; if an MEC has reason to believe that a municipality cannot or does not fulfil statutory obligation binding or that maladministration, fraud, corruption or any other serious malpractice has occurred

**The MEC must**  
 (a) by a written notice to the municipality request the municipal council or MM to provide the MEC with information required in the notice; or  
 (b) if the MEC considers necessary, designate a person or persons to investigate the matter

(2) In the absence of applicable provincial legislation, the provisions of section 2, 3,4, & 6 of the Commissions Act, and regulations made ito that act apply, with the necessary changes as the context may require, to an investigation ito subsection (1)(b)

(3) (a) An MEC issuing a notice ito subsection (1)(a) or designating a person to conduct an investigation ito of subsection (1)(b), must within 14 days submit a written statement to the NCOP motivating action

(b) a copy of statement contemplated in paragraph (a) must simultaneously be forwarded to the Minister (CoGTA) and to the Minister of Finance .

S 105 of MSA

When exercising their powers ITO. Sub-section (1) MEC's LG

- (a) rely as far as possible on annual reports ito of S46 & information submitted by municipalities ito sub-section (2) and;
- (b) may reasonable requests to municipalities for additional information after taking into account:-
  - (i) the administrative burden on municipalities to furnish the information
  - (ii) the cost involved and
  - (iii) existing performance monitoring mechanisms, systems and

4)(a) The Minister of CoGTA may request the MEC to investigate maladministration, fraud, corruption or any other serious malpractice which, in the opinion of the Minister has occurred, or is occurring in the municipality

b) The MEC must table a report detailing the outcome of the investigation in the relevant provincial legislature within 90 days from the date which the Minister requested the investigation and must simultaneously send a copy of such report to the Minister (CoGTA), the Minister of Finance and the NCOP

(5) (a) Where an MEC fails to conduct an investigation within 90 days, notwithstanding a request from the Minister ito of subsection (4)(a)

The Minister (CoGTA) may in terms of this section conduct such investigation


(b) The Minister must send a report detailing the outcome of the investigation referred to in paragraph (a) to the President.


### 3.4. General Provisions of Support by National and Provincial Government

Monitoring enables national and provincial government to identify areas of support to municipalities. The responsibility to support local government achieve its objectives

also emanates from the Constitution. Section 154 of the Constitution creates an obligation for national and provincial government to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

## GENERAL PROVISIONS OF SUPPORT

<p>Section 154 of the Constitution</p> 	<ul style="list-style-type: none"> <li>(1) Calls for the National and Provincial Government, by legislative and other measures, to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions;</li> <li>(2) Draft national or provincial legislation that effects the status institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government (SALGA), municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.</li> </ul>
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<p>Section 155(7) of the Constitution</p> 	<p>The national government, as per its responsibility and the provincial governments have the legislative authority to see to the effective performance by municipalities of their functions in respect of matters listed in schedules 4 &amp; 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1)</p>
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The White Paper on Local Government provides that the role of national government includes providing an overall framework for municipal capacity-building and support as well as an overall framework for a system of monitoring and oversight within which other organs of state, particularly provincial governments will perform these functions.

The Back To Basics model tasks DCoG and National Treasury with supporting municipalities with the development and implementation of comprehensive infrastructure and maintenance plans. Part of this support is also to provide

institutional support, strengthen governance, to improve expenditure, develop sound financial management as well as to build the capacity of councillors.

#### 3.4.1. The role of District Government in providing Support to its Local Municipalities

The Municipal Structures Act (1998) together with the White Paper envisaged that district municipalities would play the role of providing support to local municipalities as well as play a redistributive, coordination and planning role in their areas of jurisdiction. The role of district municipalities has evolved to include districts as providers of bulk services, development facilitators, co-ordinators and supporters of weak locals including the critical role of co-ordinating District Intergovernmental Forums as set out in the Intergovernmental Relations Framework Act (2005).

District municipalities are also meant to build the capacity of the weaker local municipalities falling within the district. Importantly, they serve as units for strategic planning and spatial coordination for the district, especially in cases where district municipalities are the water services authorities (WSA) for their area of jurisdiction. Where district municipalities have an authority function, they provide the local regulatory function over local municipalities which have the provider function.

#### 3.4.2. 4.2. The role of South African Local Government Association (SALGA) in providing Support to Local Government

Section 3 of the Municipal Systems Act, calls for Co-operative Government, by requiring that, municipalities must exercise their executive authority within the constitutional system of co-operative government envisaged in section 41 of the Constitution.



**NATIONAL COUNCIL OF PROVINCES**

**SECTION 163 OF THE  
CONSTITUTION: ROLE  
OF SALGA**

**For purposes of effective cooperative government OLG must seek too:-**

- (a) Develop common approaches for local government as a distinct sphere of government;
- (b) Enhance co-operation, mutual assistance and sharing of resources among municipalities;
- (c) Find solution for problems relating to local government generally; and

The National and Provincial spheres of government must, within the constitutional system of co-operative government envisaged in section 41 of the Constitution, exercise their executive and legislative authority in a manner that does not compromise or impede a municipality's ability or right to exercise its executive and legislative authority.

For the purpose of effective co-operative government, organised local government must seek to:-

- (a) Develop common approaches for local government as a distinct sphere of government;
- (b) Enhance co-operation, mutual assistance and sharing of resources among municipalities;
- (c) Find solution for problems relating to local government generally; and
- (d) Facilitate compliance with the principles of co-operative government and intergovernmental relations

The role of SALGA as an association that represents member municipalities is to pursue the spirit of cooperative governance, in providing support, capacity building programmes, but more importantly to give effect to the principles of section 41 of the Constitution and to ensure that the interests of local government are advanced and fostered.

### **3.5. Application of Section 139 of the Constitution as Applied by Provincial Government**

In cases where, should any sphere of government be unwilling or unable to meet its executive obligations, the Constitution provides for a system of interventions, in terms of which the national government may intervene in provinces (section 100) and provinces may intervene in municipalities (section 139) to correct the non-fulfilment of those executive obligations.

In the spirit of cooperative governance, interventions are a measure of last resort where support has not yielded fulfilment of executive obligations. In terms of section 139 (1) of the Constitution the provincial executive can intervene in a municipality when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or other legislation. The provincial executive may intervene by taking appropriate steps to ensure the fulfilment of the executive obligation(s) by issuing a directive, assuming responsibility for the function or dissolving the municipal council, depending on the severity of the executive obligation(s) not fulfilled.

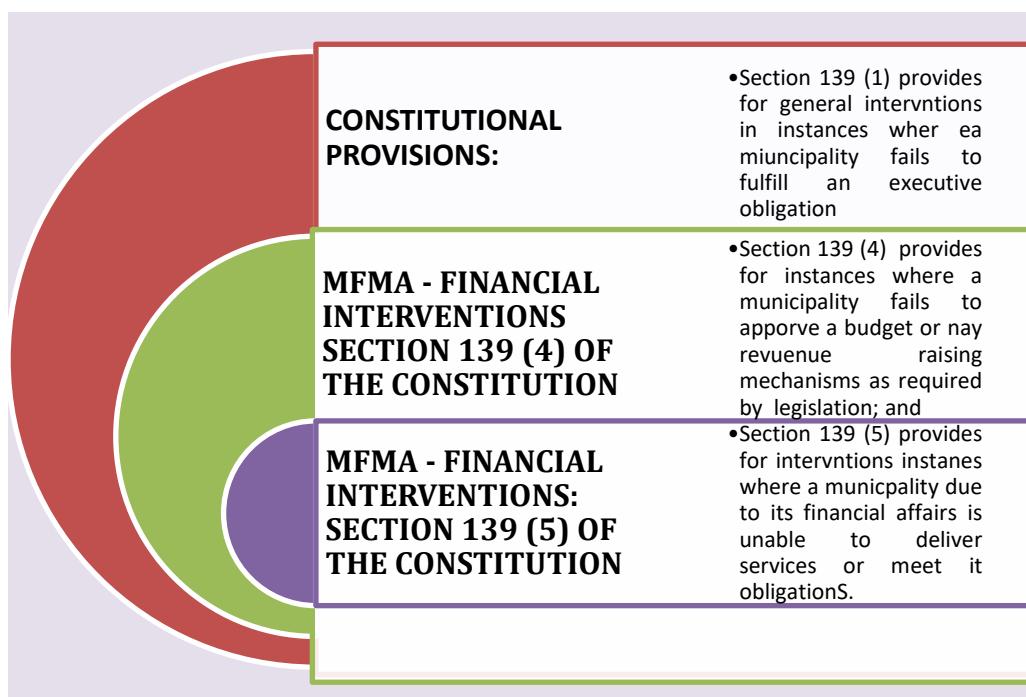
The exercise of this provincial power is, however, subject thereto that the intervention must end if the Minister of CoGTA disapproves the intervention within 28 days after the intervention began or it by the end of the 28 day period the Minister has not responded. The NCOP must also approve the intervention within 180 days after the intervention began. The NCOP must regularly review the intervention as it continues and make any appropriate recommendations to the provincial executive.

Since the advent of the Constitution, several interventions were undertaken from 1998 in terms of Section 139 of the Constitution. However, prominence was placed on interventions undertaken in terms of section 139 a list of interventions to date is attached as appendix A.

Currently, section 139 of the Constitution, as amended, provides for three instances in which a province can intervene in the affairs of local government. The scenarios are as follows:

- (a) Section 139 (1) provides for general intervention in instances where a municipality fails to fulfil an executive obligation;
- (b) Section 139(4) provides for instances where a municipality fails to approve a budget or any revenue raising mechanism as required by legislation; and
- (c) Section 139(5) provides for intervention in instances where a municipality due to its financial affairs is unable to deliver services or meet its obligation.

Section 139(8) of the Constitution provides that “national legislation may regulate the implementation of section 139, including the processes established by this section.”



## APPLICATION FOR SECTION 139

<p><b>ISSUE A DIRECTATIVE (139) (1)(a):</b> The provincial executive may issue a directive before it can assume responsibility describing the extent of its failure to fulfil its obligations and stating any steps required to meet its obligations, the option of the directive is not obligatory nor a precondition for assumption of responsibility</p>	<p><b>ASSUMPTION OF RESPONSIBILITIES 139 (1)(b):</b> The provincial executive may assume responsibility for the relevant obligation. The aim of the assumption of responsibility is to lift the municipality to minimum standards, to prevent it from harming the interests of other municipalities/the province or to maintain economic unity in the province. Before proceeding to the assumption of responsibility, the provincial executive (or the MEC) notifies the municipal council in writing of its intention to assume responsibility in terms of section 139 (1) (b) of the Constitution by submitting a written notice of the intervention to the Cabinet Member responsible for Local Government affairs (in this instance the Minister of CoGTA) the relevant provincial legislature and NCOP within 14 days after the intervention had begun</p>	<p><b>DISSOLUTION OF MUNICIPAL COUNCIL(139) (1) (C):</b> The provincial executive can dissolve the municipal council, "if exceptional circumstances warrants such a step". If the municipal council is dissolved its section 139 (1)(c) the provincial executive must immediately submit a written notice of the dissolution to the Minister of CoGTA, the relevant legislature and the NCOP. The dissolution can only take effect 14 days from the date of the receipt of the notice by the NCOP and Minister, however, if the NCOP and the Minister set aside within 14 days that the intervention (dissolution) is invalid. This type of intervention allows for the appointment of an administrator for a period until a new municipal council is declared elected.</p>	<p><b>INTERVENTION APPROVAL:</b> The intervention must end if the Minister disapproves the intervention within 28 days after the intervention began or by the end of that period the Minister has not responded, and if also the NCOP disapproves the intervention within 180 days after the intervention began or by the end of that period the NCOP has not responded.</p> <p>For approval of the intervention by the Minister, the Provincial Executive needs to ensure that a notice to 139 (2) is submitted to the Minister requesting approval for the intervention with the relevant information</p> <p>The NCOP must regularly review the intervention as it continues and make appropriate recommendations to the provincial executive.</p>
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**Note:** The Constitution is silent on the appointment of an administrator when the provincial executive assumes the responsibility in terms of section 139(1) (b), however, in practice it's noted that with most of these interventions, the provincial executives opted for the appointment of an administrator.

### 3.6. Experiences with Monitoring, Support and Application of Section 139 of the Constitution



### 3.6.1. Self-Monitoring by Local Government

Municipalities have the primary responsibility to ensure that they fulfil their obligations as set out in section 152 of the Constitution. A municipality must have an early warning monitoring and reporting system to first alert itself, then the province and the Minister of any possible or impending non-fulfilment of an executive obligation.

The municipality is expected to prepare an annual report reflecting on its performance in accordance with section 46 of the Municipal Systems Act. This process allows or provides for the monitoring of municipalities by provincial government as well as the establishment of national minimum standards for municipalities by national government.

It therefore appropriately places the responsibility of support and monitoring of performance by municipalities in the hands of provincial and national government.

Municipalities, MECs responsible for local government and the Minister responsible for local government are required to prepare performance reports annually. Yet the reality is that some municipalities are:-

- ✓ unable to table section 46 reports due to their inability to produce or compile a section 46 report,
- ✓ they lack proper systems to monitor organisational performance;
- ✓ Provincial and national government have struggled to find accurate, informed data on the status of municipalities;

In that perspective, monitoring for local government in terms of section 46, 47 and 48 has been inconsistent.

### 3.6.2. Monitoring by National and Provincial Government to local government

The effectiveness of provincial support, monitoring and intervention initiatives is undermined by certain factors which include, the fragmentation of support, monitoring and intervention responsibility among sector departments, the complexity of the legislative framework, bias towards a compliance-based checklist approach to monitoring, inadequate strategic understanding of the local government environment,

limited provincial capacity to support municipalities to secure long-term sustainability, and the lack of municipal buy-in with regard to support, monitoring and intervention initiatives.

- ✓ In addition, other priorities such as the Local Government Turnaround Strategy (2009-2014), Back to Basics programme (2014-2019) took over the reporting processes and resulted to section 46 reports taking a back seat.

The section 46 reports need to use a common set of criteria and indicators to enable a comparative analysis of municipal performance, understand municipal support needs and where a section 139 intervention may be required.

- ✓ DCoG is in the process of reviewing local government indicators and these have not been published as yet and used to inform the section 47 reports of municipalities, as result, this has impacted the monitoring role of province as well as national government.

### **3.6.3. Support by National and Provincial Government to local government**

Municipal Support and Intervention over the past 15 years has been fragmented and often the basis for it was unclear. There has been no generic guide or collectively shared approach in terms of:

- ✓ timing,
- ✓ resourcing and
- ✓ implementation of municipal support and intervention

In that regard support has been fragmented and therefore not impacted municipal performance.

- ✓ The support role of districts has been limited to the organising of training and capacity building and at times, the deployment and sharing of skilled professionals
- ✓ Districts are arguably ill-equipped, and sometimes too close to the problem, to provide the support and potential intervention required.

In most occasions provinces do not in general fulfil their role of monitoring and supporting local government effectively as required in terms of section 154 of the Constitution

#### **3.6.4. Application of section 139 of the Constitution by provincial government**

The nature of the problems experienced by municipalities that are instigated with section 139 interventions, can be grouped into the following broad categories:

##### **(a) Governance**

Governance problems range from political in-fighting to political mismanagement and include incidences of Council inability to perform as required by legislation, non-performance of top management and conflicts between top management and councillors.

The challenge around problems of a governance nature is that these are difficult to track through monitoring systems and often manifest themselves through administrative or financial difficulties experienced by the municipality.

In most instances, provinces learn of governance problems experienced by municipalities, through political channels, either by word of mouth or by the lack of decisions emanating from the municipality.

##### **(b) Financial**

The most glaring difficulty experienced by most municipalities is financial non-viability. Often this has been due to lack of adequate systems and capacity to effectively manage the financial situation at the municipality. The result is typically that the municipality does not raise sufficient revenue due to poor tariff policies, weak billing systems and lack of credit control.

In most instances, financial triggers have been picked up through established monitoring mechanisms like a myriad of National Treasury financial reports and Audit reports.

### **(c) Service Delivery**

Sections 152 and 153 of the Constitution clearly set out the service delivery obligations of municipalities. There have been no instances where lack of service delivery has triggered an intervention. This is unusual as it is certain that some municipalities are not delivering services effectively and are failing their consumers. It can be speculated that the reasons for this include:

- Lack of monitoring systems relating to services delivery
- Lack of consumer empowerment
- Greater urgency of governance and administrative issues

It has been observed that often municipalities are placed under section 139 of the Constitution are due to the lack of governance and financial systems in place, which have often led to the service delivery failures.

### **3.7. Lessons Learnt**

The critical observations that have been found is that, for the provincial government there seems to be inconsistency as to when and at what point a municipality can be placed under section 139.

#### **3.7.1. Factional Interests**

In some cases (and province), a particular failure is enough to invoke an intervention while in another it is not regarded so. The meaning of executive obligation and the understanding of **when can an intervention be applied**, is not watertight and

therefore gives the provincial executive a fair degree of discretion for deciding **“how bad is bad enough”** before interventions are invoked.

### 3.7.2. Impact of Poor Information to Monitor

In the absence of institutionalised section 154 monitoring systems, in many instances, provinces learn of governance problems being experienced by municipalities through political channels, by word of mouth, through sudden service delivery protests or by the obvious failure to execute legislative compliance decisions by the municipality, as a result:-

- ✓ Due to a lack of proper monitoring coupled with a lack of a regulatory framework on reporting, it is difficult to conclude that interventions have been successful over the years or not;
- ✓ This leads to a fair degree of political manipulation and inconsistency in the application of section 139 interventions;
- ✓ The mechanisms, processes and procedures of support in terms of section 105 of the Systems Act are often overlooked in favour of a section 106 investigation and; or a section 139 intervention;
- ✓ From the interventions applied, it is evidence that provinces are struggling with their constitutional commitment to support municipalities.

For the past five years, one has been able to observe that most municipalities that have been placed under section 139, the amount of capacity provided is specifically to manage the intervention and once the intervention is terminated or comes to an end, the municipality digresses again or an intervention is re-instated, leaving the municipality in a state of disarray.

### 3.7.3. Regularity and clarity applications to interventions

Unlike the financial interventions as provided in section 139 (4) and (5) and 139 of the Municipal Finance Management Act, 2003, where many of the pertinent issues that give rise to an intervention are regulated, many aspects of a standard S139 (1) intervention of the Constitution remain uncertain.

#### **(a) Appointment of Administrators:-**

- The vast majority of interventions are conducted in terms of section 139(1)(b), and such an application does not provide for an appointment of administrator, However, the Provincial Executive have tended to usually appoint an administrator to assume the authority role over the entire municipal administration even though an administrator is only mentioned in subsection (1)(c);
- The provincial governments have a prerogative on the appointment of, and the remuneration of Administrators, as they see fit, per provincial executive. The key concern though is that there are no national or provincial norms and standards in place to deal with the key aspects such as the purpose of regulating the appointments, remuneration, qualifications, skills, for administrators;

#### **(b) Management of Interventions:-**

- In practice, with the application of a section 139 (1) (c) interventions, there is an assumption that once the council is replaced or new leadership takes over that things will change. The dynamics here, is that the newly elected council is not always capacitated and fully inducted to fulfill both its legislative and executive functions, replacing the council is one measure of ensuring that section 139 achieves its desirable outcomes but the lack of clarity and proper systems of monitoring and supervision are not always put in place in this process;
- To date, there have been very few instances where lack of service delivery alone has triggered an intervention such as the case in Lekwa Local Municipality in October 2009. Which is concerning as there are some municipalities that are not delivering services effectively, and are thus failing their customers/consumers. It can be speculated that the reasons for this inaction include:
  - ✓ Lack of capacity to test services against norms and standards;
  - ✓ Lack of monitoring systems relating to services delivery;
  - ✓ Lack of consumer empowerment and engagement; and

- ✓ Greater focus on matters of governance, financial and administrative issues.
- It has been a tendency that the provincial executive will prematurely withdraw an intervention without a clear exit strategy or post intervention support programme to stabilise the municipal institution, As a result instead of an intervention being curative, it tended to create more instability and uncertainty;
- One has observed that some of the interventions in terms of section 139(1)(b) take unnecessarily long periods, sometimes exceeding two years, before they are revoked by the provincial executives concerned. The intervention in the Indaka Local Municipality, which began in November 2009, is a case in point. This intervention survived the May 2011 local government elections and continued until it was converted into a section 139(1)(a) intervention in January 2014, and was only revoked at the end of March 2015
- It has also been noticed that, sometimes, a Provincial Executive Council invokes an intervention at a given municipality and later terminates it, after it has run for a period of six months, to a year or more. Then, after several months or a few years later, the same municipality is subjected to another intervention by the Provincial Executive Council, for reasons similar to the previous intervention;
- In such cases this poses questions such as too; what was the purpose or outcome of the previous intervention, if the municipality, following an intervention, immediately finds itself with similar problems to those which it faced before? This problem also highlights the fact that recommendations made after the previous intervention are sometimes not followed by the municipalities, or that the Provincial Executive Council does not ensure that these are followed through;

### **3.8. SALGA's Observations with the Application of Section 139 of the Constitution and Key policy Proposals for Consideration**

#### **(a) Factional Interests**

Taking into account that there is no regulatory framework that defines the "executive obligation", provinces are likely to open themselves up for legal

challenges, it is therefore crucial that DCoG fast-tracks the development of the Intergovernmental, Monitoring, Support and Interventions Bill, which is intended to better determine and frame the respect to identification of failures to avoid unnecessary legal contestations.

**(b) Impact of Poor Information to Monitor**

- It is imperative that DCoG leads in the development of a coherent local government monitoring and evaluation framework, covering all stakeholders in the sector. The M&E framework must recognise the mandates of DCOG, NT, DPME; transversal departments; sector departments; provinces; municipalities; SALGA as well as design M&E arrangements to fulfil these mandates. Such M&E framework should inevitably ease the reporting burden faced by municipalities but improve in identifying areas of under-performance;
- Provinces do need to submit three months' progress reports during the course of the intervention, and close-out reports at the end of each intervention more importantly share such progress reports with the municipal council, the Minister always places such a condition on the approval of the intervention, yet the provincial government do not largely observe such a condition;

**(c) Regularity and clarity applications to interventions:**

- In an intervention in terms of section 139 of the Constitution, sub-sections (1) (c), (4) and (5) are the only sub-sections specifically providing for an appointment of an Administrator. However, the common sub-section almost always invoked by the provinces is section 139(1)(b) of the Constitution, the application of section 139 (1)(b) does not specifically provide for the appointment of the Administrator once it has been invoked;
- To date, the section 139(1)(b) intervention usually resulted in the deployment of a "Provincial Representative" or an Administrator who 'took over' the affairs of the municipality. This lack of clarity has often created confusion on the roles of the municipal manager vs the administrator or "provincial representative, especially in cases where the administrator has



assumed all the functionary functions of the mayor and the municipal manager;

- Without appropriate norms and standard for the regulation, appointment of administrators will continue to pose constraint and challenges within the municipal council. It would be advisable to that the terms of reference applicable to each intervention have strict time frames which all parties, including the municipal council and the municipal administration, must observe;
- Secondly the assumed responsibilities by the administrator needs to be clear and well reflected as to the powers and functions that will be performed by the appointed administrator. In several instances the administrator is appointed to take over functions that are ultra-vires

**(d)** The management of interventions:-

- The purpose of a section 139 intervention therefore is to assist a municipality to become sustainable and self-sufficient, to enable it, to perform the functions assigned to it by the Constitution and other legislation efficiently and effectively. The intervention is intended to be applied, as a curative measure to assist struggling municipalities rather than a punitive measure;
- Interventions in municipalities where there is political infighting between the members of the council and members of the administration have shown that s139 interventions do little to resolve the conflict;
- In such instances, it is recommended that it would be best for the political parties to engage in an intervention and play a role in addressing the political conflict in the municipality at the provincial level

### **3.9. Conclusions Drawn From Monitoring, Support and Interventions**

The following general conclusions can be drawn from the instances of monitoring, support and the application of section 139 interventions:

- Provinces lacked the capacity to deal with their mandate of monitoring and supporting local government in terms of personnel, funds, institutional knowledge, and expertise.

- Some of the interventions could have been prevented if early warning systems, leading to proper support, had been in place (Mafikeng, Lekwa-Teemane, Ditsobotla) are some of the cases in point).
- The Provincial government are usually totally reliant on the national CoGTA funds for their support programs and as such, often than not the provincial support programmes applied by the province are either not sustainable due to their limited resources;
- Often the provincial duty to monitor and support local government is viewed as an unfunded mandate.
- The NCOP seems to have played a key role in providing objectivity, mediation, and on-site investigation. This begs the question as to whether this could have been done by the province as part of their assistance role.
- In some instances, provinces like Northern Cape, Limpopo, Mpumalanga, are often reluctant to act sooner in providing the relevant support programmes, thereby avoiding the financial difficulties that their local municipalities end up enduring;
- The effectiveness of the interventions can be questioned. Are the interventions curative or were they simply temporary take-overs without the necessary skills transfers?

So far one can argue that there are very few cases where the application of section 139 was advanced and indeed turned around the municipality.

### 3.10. The Need for The Comprehensive Regulation of Section 139 Applications

Given the fact that certain aspects of section 139 are already extensively regulated by legislation (Constitution, MFMA), the question is whether all aspects of the section should now be subject to regulation. Section 139(8) of the Constitution provides that “national legislation may regulate the implementation of section 139, including the processes established by this section.” The question posed is whether such legislation is advisable.

Given the provisions of the Municipal Finance Management Act, 2003 (Act No. 55 of 2003) (MFMA) and the Municipal Structures Act, 1998 (Act No. 117 of 1998) (Structures Act) that deal with section 139, the question is rather whether all aspects of intervention in terms of section 139 should be regulated in legislation and clearly by the amount of inconsistencies in the application of section 139 intervention, it is by no doubt that there is a need for a legislation.

#### **3.10.1. Uniform approach**

The first reason is that legislation on section 139 would ensure a consistent approach to interventions. Section 139(8) legislation would complement the provisions in the MFMA, which provides a detailed framework for ‘financial’ interventions. It would thus appear that, where the intervention deals with financial matters and the province intervenes within the provisions of the MFMA, a sufficiently uniform and predictable process can be followed.

The ‘regular’ interventions in terms of section 139(1) show a different picture. For example, in some provinces, MECs have read section 139(1), in particular the power to dissolve councils, as a power which can be wielded with relatively little procedural rigour or prior engagement. With no guidance as to when to resort to the ultimate intervention mechanism, there have been instances where section 139(1) was applied outside of what is constitutionally permitted.

Section 139(8) would also supersede all other sector legislation on the question. Sector legislation is increasingly referring to interventions in terms of section 139 and MECs are sometimes even obligated to exercise this supervisory power. For example,

section 7(2)(f) of the Housing Act states that the MEC for Housing must, when a municipality cannot or does not perform a duty imposed by Housing Act, intervene in accordance with section 139 of the Constitution.

Section 10(3)(c)(ii) of the Housing Act states further that, if a municipality (that has been accredited to administer a housing programme) fails to perform, the MEC for Housing may intervene and take the steps necessary to ensure adequate performance. The object of the section 139(8) legislation is thus to provide provinces with a uniform approach to the supervision of local government.

#### **3.10.2. Clarity on the term “Executive Obligation”**

The review of interventions to date brought a number of issues to the fore around the interpretation of the term “executive obligation.” It is suggested that most of these issues require attention in policy or in the guidelines. They concern issues of interpretation and application of the Constitution.

The Constitution limits intervention to the non-fulfilment of an executive obligation “in terms of the Constitution or legislation.” This requires the intervening Provincial Executive to identify the statutory source of the executive obligations that are not being fulfilled. In many interventions, the references to executive obligations in the documentation submitted to the Municipal Council, Minister and NCOP are incomplete or inadequate. This practice may render the interventions vulnerable to legal challenges.

#### **3.11. Recommendations**

A persuasive case can be made for the enactment of legislation guiding provinces in the exercise of their supervisory power in terms of section 139.

- (a) As SALGA we still need to ensure a much stronger intergovernmental approach by clearly outlining the role for SALGA and Districts in supporting municipalities to

render interventions unnecessary and when the need for an intervention does arise, to support the intervention process;

- (b) Our approach must also address the elements of a sound exit strategy after an intervention, with provincial organised local government and districts having a key role in supporting/ rebuilding the municipality towards sustainability;
- (c) Finally, the attached table (annexure A & B) provides a framework, to keep track of current of interventions, the role that is played by SALGA in the provinces that are affected by such interventions and it must be used to ensure that the systematic implementation of the policy intent and legislative objectives are to strengthen local government to play its developmental role.

SALGA is of the view that the fast-tracking of the IMSI Bill and endorsement of the SALGA Municipal Support Interventions Framework by respective regulatory departments will go a long way in addressing some of the challenges and the inconsistencies found in providing monitoring, support and applying interventions in the local government sector.

## 4. Municipal Support and Intervention Framework: Intervention and Monitoring

### 4.1. Background

Section 151 of the Constitution<sup>115</sup> vests the authority to govern the local government affairs of communities in municipalities. In so doing, municipalities must adopt a developmental approach by structuring and managing its administration and budgeting and planning processes in a manner that gives priority to the basic needs of the community, and by promoting the social and economic development of the community.<sup>116</sup> In addition, the White Paper on Local Government (1998) acknowledges that it is in the interest of the nation that local government is capacitated and transformed to play a development role.

In order to assist municipalities in this task, section 154(1) of the Constitution places an obligation on national and provincial governments to, through legislative and other measures, support and strengthen the capacity of municipalities to manage their own affairs, to execute their powers and perform their functions. Furthermore, section 139 of the Constitution empowers provincial governments to intervene in a municipality that cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. The national or a provincial government may, however, not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.<sup>117</sup>

#### **Objects of Local Government<sup>118</sup>**

- (a) To provide democratic and accountable government for local communities;
- (b) To ensure the provision of services to communities in a sustainable manner;
- (c) To promote social and economic development;
- (d) To promote a safe and healthy environment; and

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<sup>115</sup> Constitution of the Republic of South Africa, 1996.

<sup>116</sup> Ibid, section 153.

<sup>117</sup> Constitution of the Republic of South Africa, 1996: Section 151(4).

<sup>118</sup> Ibid: Section 152(1)

(e) To encourage the involvement of communities and community organisations in the matters of local government.

The Constitution further commits Government to taking reasonable measures, within its available resources, to ensure that people have access to the various socio-economic rights enshrined in the Bill of Rights (such as adequate housing, health care, education, food, water, social security). As local government is the sphere of government closest to the people, local municipalities deliver many of the basic services. However, the White Paper on Local Government acknowledges that in reality the situation in cities, towns and rural areas are not consistent with the rights so enshrined. People continue to live in dire poverty, isolated from services and opportunities.

The Minister for Cooperative Governance and Traditional Affairs, Mr Z. Mkhize, recently confirmed this in a media statement when he noted that the performance of the majority of municipalities is below expectations. In particular, the Minister reported that: only 7% of the country's municipalities are well-functioning; about 31% are reasonably functional; 31% are almost dysfunctional and 31% are dysfunctional.<sup>119</sup>

This could possibly explain the surge in interventions into municipalities during the fourth and fifth democratic Parliaments, the bulk of which relate to interventions in terms of section 139(1)(b) of the Constitution, i.e. when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. An executive obligation could relate to the delivery of basic services, the development of policy and initiation of by-laws, or the implementation and administration of legislation related to local government.

This paper provides an overview of interventions in municipalities in terms of section 139 of the Constitution. In so doing, it sketches the legislative framework that regulates interventions by provincial executives in municipalities and provides a situational overview of section 139 interventions that occurred in municipalities during the fourth and fifth democratic Parliaments. It further highlights some of the challenges

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<sup>119</sup> Mkhize (2018).

associated with municipal interventions and suggests that the development of a comprehensive municipal support and intervention framework might contribute towards the success and sustainability of interventions. Finally, it makes some recommendations towards addressing the performance of municipalities.

#### 4.2. Legislative Framework for Municipal Interventions

Currently, no single or consolidated framework that governs the implementation and monitoring of interventions in municipalities is in place. Instead, the legal framework that regulates such interventions is located in different pieces of legislation. These include the Constitution, the Local Government Municipal Systems Act, no. 32 of 2000 (Systems Act), the Local Government Municipal Structures Act, no. 117 of 1998 (Structures Act) and the Municipal Finance Management Act, no. 56 of 2003 (MFMA). The table below provides an overview of the relevant provisions.

Constitution	Systems Act	Structures Act	MFMA
<p><i>Section 139 (1), (4) and (5):</i> Empowers the provincial executive to intervene in a municipality if:</p> <p>(1): A municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation.</p> <p>(4): A municipality cannot or does not fulfil an obligation in terms of the</p>	<p>Provides for the core principles, mechanisms and processes necessary to enable municipalities to forge progressively towards social and economic upliftment of local communities. It includes entails setting in place standards and systems guiding local government performance. It</p>	<p><i>Section 34 (3)(b):</i> Empowers the MEC for local government in a province to dissolve the municipal council in the province if an intervention in terms of section 139 of the Constitution has not resulted in the Council being able to fulfil its obligations in terms of legislation.</p>	<p><i>Chapter 13:</i> Sets out procedures and processes for the resolution of financial problems in a municipality.</p> <p><i>Section 135:</i> vests the primary responsibility for the resolution of financial problems in a municipality and that it must meet its financial commitments.</p>



<p>Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget.</p> <p>(5): A municipality, because of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments.</p>	<p>establishes an enabling framework for the core processes of planning for every undertaking, performance management, resource mobilisation and organisational transformation for sustainable service delivery and efficient performance. As it defines municipal powers and functions, it sets procedures and processes for community participation, Integrated Development Planning (IDP), performance management, local public administration and human resource management. It sets standards</p>		<p><i>Section 136:</i> If the MEC for local government in a province becomes aware that there is a serious financial problem in a municipality, he/she must promptly:</p> <ul style="list-style-type: none"> <li>•Consult the mayor of the municipality to determine the facts.</li> <li>•Assess the seriousness of the situation and the municipality’s response to the situation.</li> <li>•Determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution.</li> </ul>
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	<p>regarding provincial and national monitoring of local government performance, as well as the intervention where necessary.</p>		
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### 4.3. Observations

- Section 139 of the Constitution makes provision for three types of interventions by provincial executives into municipalities. These are:
  - *General interventions* when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. In such cases the Constitution empowers the relevant provincial executive to either issue a directive to the municipality outlining the steps required to meet its obligations; assume responsibility for the relevant obligation or to dissolve the municipal council and appoint an administrator until a new council is elected.
  - *Interventions relating to budget or revenue raising measures* - i.e. if a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget. In such cases the provincial executive may take any appropriate steps to ensure that the budget or revenue-raising measures are approved. This includes dissolving a municipal council and appointing an administrator until a new council is elected, and approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
  - *Financial emergency interventions* - i.e. if a municipality is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments because of a crisis in its financial affairs.

Intervention tools at the disposal of the Executive in such a case include the imposition of a recovery plan to ensure that the relevant municipality is able to meet its obligations to provide basic services or meet its financial obligations, and the dissolution of the municipal council.

- The implications of the provision contained in section 135 of the Local Government Municipal Finance Management Act is that if a municipality experiences a serious financial problem or anticipates problems in meeting its financial commitments, it must immediately seek solutions for the problem. In so doing, it must notify the MECs for local government and finance in a province, as well as the South African Local Government Association (SALGA). However, most municipalities fail to comply with the requirement contained in section 135 of the Structures Act. As a result, steps to address financial challenges only commence when the MEC discovers the problem and the extent of its manifestations without the municipal council taking the lead to solicit assistance and necessary intervention. If municipalities complied with this provision, it would be easy to plan and sustain any municipal intervention. Under normal circumstances and in cases where municipal leadership understand and acknowledge their problems of municipal management and leadership, including their fiduciary and executive obligations, planning and setting appropriate systems for intervention would not be a problem.
- The Local Government Municipal Systems Act defines municipal powers and functions, sets procedures and processes for community participation, Integrated Development Planning (IDP), performance management, local public administration and human resource management. It also sets standards regarding provincial and national monitoring of local government performance, as well as intervention where necessary.
- There are various reasons why municipalities fail to meet executive obligations. This include failure by omission, dereliction of duty, inability resultant from lack of skills and capability due to the quality of human resources employed, inertia and corruption, which manifests itself in local government when those in key positions, politically and administratively, deliberately allow a control and management environment that is not strictly regulated.

- Assumption of responsibility in terms of intervention means that the Executive Authority takes over all responsibilities in a municipality as may be justified in order to ensure compliance with essential minimum standards in service delivery implementation or performance of tasks to accomplish a service. When this happens, necessary steps are taken to prevent the Council from taking decisions prejudicial to the municipality. In doing so, the Executive Authority is required to appoint an appropriately qualified person with attendant skills as an Administrator during the period necessitating intervention.
- It is important to note that intervention in a municipality, as defined in the Constitution, has to be holistic in order to be sustainable during its implementation. It requires a collective effort, involving various role-players with appropriate skills and expertise. Moreover, it should focus strategically on a wide range of issues in the short, medium and long term. Every intervention should have regard to the requirements of co-operative government, inter-governmental relations and Integrated Development Planning (IDP) to achieve synergy, functional co-ordination and collaboration.

#### 4.4. Situational Overview of Interventions in Local Government

During the fourth and fifth democratic Parliaments, there has been a surge in interventions in terms of section 139 of the Constitution.

For example, during the fourth parliamentary term (2009-2014), provincial executives intervened in all but three provinces, i.e. Limpopo, Northern Cape and the Western Cape, intervened in the affairs of municipalities. During this period, the National Council of Provinces (NCOP) received 17 notices of interventions, 85% of which related to cases where provincial executives assumed responsibility for the municipalities' executive obligations in terms of section 139(b) of the Constitution. The remaining 15% of interventions are equally split between:

- dissolving the Municipal Council and appointing an administrator (s139()(c));
- imposing a recovery plan to enable municipalities in financial distress to meet their service delivery obligations (section 139(5)(a)); and

- dissolving Municipal Councils who cannot or do not approve legislative measures (including a budget or revenue-raising measures) to give effect to such recovery plans (section 139(5)(b)).

The number of intervention notices received by the NCOP almost doubled by the middle of the fifth democratic Parliament to 30 notices, albeit that this number includes repeat interventions in three local municipalities and one district municipality. As was the case during the fourth democratic Parliament, all but three provinces, namely Gauteng, Mpumalanga and the Northern Cape, experienced section 139 interventions midway through the term of the fifth democratic Parliament. As was the case during the fourth democratic Parliament, interventions in terms of section 139(1)(b) of the Constitution once again dominated (68%), followed by the dissolution of Municipal Councils in terms of section 139(1)(c) (19%) by the middle of the fifth democratic Parliament.

During the fourth democratic Parliament, the majority of interventions occurred in the North West Province (30%), followed by Mpumalanga (20%), KwaZulu-Natal and Free State (15% respectively), and the Eastern Cape and Gauteng (10% respectively). Almost half of the interventions that occurred by the middle of the fifth democratic Parliament were in KwaZulu Natal (48%), followed by the North West Province (23%) and the Eastern Cape and Free State (10% respectively). Whilst the Western Cape and Limpopo provinces did not experience any interventions during the fourth democratic Parliament, by the middle of the fifth democratic Parliament they experienced 6% and 3% of all interventions, respectively.

There are footprints of improved performance in some municipalities, which previously fell under section 139 constitutional intervention. These have shifted from disclaimers of audit opinion to qualified and unqualified audit outcomes. Mtubatuba Local Municipality in KZN was under intervention during the fourth Parliament. Now it has obtained a clean audit outcome. Conversely some municipalities have, notwithstanding intervention, regressed to the extent of necessitating a repeat intervention. These include the Makana Local Municipality (Eastern Cape), Mpfana Local Municipality (KwaZulu Natal), Ngaka Modiri District Municipality (North West) and the Nquthu Local Municipality (KwaZulu Natal).

It also remains a matter of concern that during both the fourth and fifth democratic Parliaments, provincial executives had to intervene in almost all provinces in terms of section 139 of the Constitution. The Northern Cape appears the only province that has not experienced any interventions during both the fourth and fifth democratic Parliaments.

#### **Questions for consideration**

- Why do interventions in local government in South Africa not yield the desired outcomes as expected?
- What is the root cause/s of failure of interventions?
- What does Government at all levels need to do to sustain interventions over the short, medium and long term?
- What mechanisms are in place to set clear objectives for interventions and to monitor and manage the implementation of these interventions?
- What best practices applied by the Northern Cape Province that has negated the need for any section 139 intervention can other provinces emulate?

#### **4.5. Challenges Necessitating Municipal Interventions**

Over the years, various challenges have necessitated intervention into the management and administration of municipalities. Key amongst these are:

- Cadre deployment in positions that require skills in local government municipal leadership. A question that should be taken into account whenever intervention is considered is why the quality in delivery of services at local government level continues to regress, given the comprehensive policy and legal framework that regulates the provision of such services? Secondly, what is the nature, scope and effect of the current practices in the local government's management value chain?

- The profile of municipal councillors, most of whom have no skills and knowledge of local government, but are expected to run municipalities based on their status as councillors by virtue of party lists. Party lists, in particular, do not consider the qualifications and skills of possible municipal councillors. Individuals become mayors and councillors as long as they fulfil political party requirements. Consideration is not given to how such persons will then be able to execute their respective fiduciary responsibilities in municipal government and leadership efficiently. In order to ensure responsible party government and the need to reposition local government as a main theatre for service delivery, government is advised to invest in local government. Strong governments rely increasingly on strong, efficient local governments that are equipped with appropriate skills to efficiently run and manage municipalities. Skills and sound knowledge of local government should be the main consideration when choosing council representatives. It is incumbent upon political leadership across political parties to ensure that those sent to local government possess appropriate knowledge and skills.
- Weak oversight of local government, lack of consequences or absence of consequence management, weak accountability and resistance to accountability.
- The scourge of corruption, which manifests itself in key municipal administrative and political levels, renders municipal internal audit and control units dysfunctional. Should these control units function properly, it would reduce a municipality's poor state of compliance by minimising as much errors of non-compliance as possible.
- Municipalities, which in the past have been placed under section 139 intervention, have either regressed or improved. Others experience repeat section 139 interventions due to a lack of action to further enhance a municipality's performance after termination of these interventions.
- Currently, interventions into municipalities are executed without any comprehensive framework or practical guide. Individual provinces are thus expected to develop their own processes within the parameters of the policy and legal framework governing interventions. This poses a major challenge to managing, monitoring and evaluating the implementation of intervention plans

and subsequent performance of affected municipalities. This challenge is further discussed in section 5 below.

- Where section 139 interventions have occurred, they are not necessarily sustainable as required. For example, in some municipalities with coalition municipal government it has been difficult for the municipality to move in terms of its role and mandate, with party politics over-riding and superseding all. A good number of municipalities under the tutelage of coalition municipal governments is prevalent in KwaZulu-Natal (KZN). There is currently no record of successful coalition municipal governments in South Africa.



## **5. Municipal Support and Intervention Framework**

It is impossible to sustain an intervention without a comprehensive standard-setting framework to guide implementation. Equally, every intervention must be planned to enable ease of implementation. For example, based on a broad range of challenges and problems affecting the functionality of a municipality, it may be desirable in planning for the intervention and on the basis of the challenge/s identified and defined, to determine the skills required to elicit the expected or desired outcomes. Thus, planning for an intervention assists in ascertaining its short, medium and long-term goals and objectives. Developing a composite municipal support and intervention framework that is applied uniformly by all provinces during the intervention process may be worth considering.

Any attempt at designing such a municipal support and intervention framework should include a focus on the following core elements:

### **5.1. Introduction**

The framework may commence with a problem statement regarding the performance of local government and its state of compliance and ability to deliver services satisfactorily. This may include the government's policy decision regarding the framework, its purpose and goals.

### **5.2. Background**

This section, among others, may focus on South Africa's vision for local government, based on its legacy and past systems of local government, which contribute significantly to the substantial gap in comparative local government performance. This should include policy and legislative arrangements necessary for the overall transformation of local government; the role of local government in the implementation of the vision of the National Development Plan (NDP), strategic repositioning of local government to transform public service delivery and Batho Pele and the role it should play in post-Apartheid South Africa.

### **5.2.1. Need and Desirability for a Local Government Municipal Support and Intervention Framework**

In particular, this section should include a focus on the current state of local government performance and compliance; the challenge of accelerating service delivery implementation; quality and skills of local government municipal personnel; quality and skills of local government municipal political leadership; functionality of municipal internal audit and control units; oversight of local government performance; revenue collection and management capacity; expenditure management and capacity; monitoring and evaluation of local government performance; reporting capacity and compliance; root causes of poor local government performance and compliance; consequence management and state of investment in local government to enhance government performance in service delivery implementation and development.

### **5.2.2. Pre-requisites for Successful Intervention in Local Government**

The provisions of Section 139 of the Constitution contain standing requirements and pre-requisite activities that must be complied with before any intervention is implemented. This may take the form of logical steps necessary to sustain the intervention, processes and procedures to be followed, as well as last resort measures to bring about normality in municipal governance. These for example include compliance with the Constitution chapter 3: Sections 40 and 41 (cooperative governance) and chapter 7: section 151 (status of municipalities or local government in South Africa's service delivery value chain); section 152 (objects of local government); section 153 (developmental duties of municipalities); and section 106 of the Local Government Municipal Finance Management Act. This section should include a focus on all relevant procedural and legal requirements contained in the Constitution and applicable legislation to ensure that, only when all other avenues have failed, the provisions of Section 139 of the Constitution are invoked as a matter of strategic necessity and compliance.

### 5.2.3. Planning and Organising for Local Government Municipal Support and Intervention

This section could contain a checklist of activities for all role-players involved in an intervention.

### 5.2.4. Actors, Role-players and Stakeholders in Local Government Municipal Support and Intervention

The role of the different actors or role-players is crucial in any intervention as a necessary measure and turn-around plan and methodology to achieve sustainability. To realise the objectives of co-operative government, inter-governmental relations and IDP, actors during intervention should include, for example, all sector departments in a province, working co-operatively with their respective national sector department leadership. Also included should be the National and Provincial Treasuries; Auditor-General's Office in a province; the Provincial Legislature and the Office of the Premier as a Provincial Centre of Co-ordination of government business across all spheres in each province. The NCOP, SALGA and the role of the private sector bodies and organisations in each province is equally crucial whilst youth and women desks, organised labour and local labour forums, civic associations and local structures of political parties can also add value to the process. It is therefore suggested that this section defines and clarifies the function that each of these role-players should or could perform in respect of interventions.

### 5.2.5. Establishment of Municipal Intervention Teams

Municipal intervention teams are central towards providing a mix of skills of the different actors, as well as allocating roles and responsibilities. This further enables division of labour through appropriate allocation of roles and responsibilities per skilled person assembled for best results and long-term sustainability of interventions. This section could outline the framework for intervention teams, specifying the type of activities required against persons to whom tasks are allocated.

#### **5.2.6. Setting Ground Rules and Standards**

This section could set out ground rules and standards for corrective action. This includes timelines, processes, procedures and reporting requirements for the municipal intervention teams. It is envisaged that this will promote focus, compliance, and the desire to perform per lead guidelines within allocated timeframes. This will also ensure that interventions are not drawn out unnecessarily.

#### **5.2.7. Implementing Interventions**

Successfully implementing interventions is crucial for attainment of the desired outcome within specified timeframes. It is necessary to improve municipal performance and compliance to ensure sustainable service delivery implementation within a system of co-operative government.

#### **5.2.8. Managing, Monitoring and Evaluating Implementation of Intervention in Municipalities**

This section could outline monitoring and evaluation guidelines for overseeing the implementation of interventions in municipalities.

#### **5.2.9. Conducting oversight of municipal performance during intervention**

Successful intervention may not be realised unless oversight of municipal performance is put in place. This should include oversight of council decisions, council resolutions, procedures and processes used and followed, as well as conducting in loco verification and oversight of service delivery projects.

#### **5.2.10. Preparing for Termination of Intervention and production of Final Report and Municipal Exit Strategic Plan**

This section could include a focus on the timelines for interventions, applicable notice periods, etc., contained in the Constitution and other applicable legislation.

#### 5.2.11. Managing municipal Post-Intervention Period

It is essential to manage the municipal post-intervention period and performance for continuous improvement and improvement of audit outcomes. This section could, for example, contain suggestions for post-intervention support for a defined period of time, followed by a close-out report.

### 5.3. Recommendations

Deterioration of municipal standards, lack of performance and compliance with prescribed procedures and processes in the management and administration of local government does not take place overnight. It happens and manifests gradually over a period to a stage where the situation worsens. Once a municipality nears a chronic state of collapse, it can no longer perform or fulfil its service delivery function, which, inevitably, leads to intervention by provincial executives into municipalities. It is suggested that a more proactive approach to providing assistance and support to municipalities, as required by section 154 of the Constitution, would go a long way towards negating the need for intervention into municipalities. To this end, the following recommendations are worth considering:

1. By 31 May 2018, the Minister of CoGTA, in consultation with the MECs for CoGTA, should report to the Select Committee on CoGTA on existing support provided to municipalities in terms of section 154(1) of the Constitution, as well as the Department's planned interventions to support municipalities in distress. In particular, this report should distinguish municipalities by level of functionality (well functioning, reasonably functional, almost dysfunctional and dysfunctional); the nature of challenges identified per category of functionality; the nature of support to be provided to these municipalities; timeframes for such interventions and expected outcomes. It is envisaged that a report of this nature will feed into the oversight programme of the Select Committee.

2. By 31 August 2018, the Minister of CoGTA should provide a report to the chairperson of the NCOP regarding the feasibility of developing a comprehensive Local Government Support and Intervention Framework to guide intervention implementation, monitoring and oversight, as well as post-intervention support, incorporating the core elements discussed in section 5 above. This exercise should include a review of existing frameworks/guidelines developed by individual provinces.
  
3. Both section 139(2)(c) of the Constitution and NCOP Rule 255(7) place an obligation on the House to regularly review an intervention while it continues and to make appropriate recommendations to the provincial executive. It is recommended that the NCOP refrain from limiting its oversight of interventions to those in progress, but that it reviews its processes to ensure continued oversight of municipalities post-intervention stage. This could be done by including periodic reports from SALGA and/or affected municipalities in its oversight programme, or even conducting on-site visits to such municipalities over a defined period after an intervention has ended.

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**NATIONAL COUNCIL  
OF PROVINCES** LOCAL  
**GOVERNMENT  
WEEK 2018**

Land Use: Towards Integrated Spatial Planning  
08 – 10 May

**Commission 3**

**Intergovernmental Fiscal  
Relations Review: Fiscal  
Allocation for the  
Development of Local  
Government**





## **Commission 3: Intergovernmental Fiscal Relations Review: Fiscal Allocation for the Development of Local Government**

### **1. Questions for Consideration**

- Is the reality of the current local government fiscal framework and the funding assumptions made in the Constitution and Local Government White Paper 20 years ago, aligned?
- Global climate finance can be accessed through a few South African accredited entities. However, the mandates of these entities are not fully aligned to those of local government – how can the architecture of national fiscal instruments be revisited to better channel funding flows to local government to address environmental management and the climate challenge, particularly for the development of climate-proofed infrastructure?
- Given the inadequate funding of Municipal Health Services and the current backlog in the appointment of Environmental Health Practitioners by Municipalities, what can local government do to ensure effective and equitable provision of Municipal Health Services to communities, as mandated by the Constitution?

## **2. Executive Summary: Intergovernmental Fiscal Relations Review: Fiscal Allocation for Developmental Local Government**

### **2.1. Background**

The local government fiscal framework affords municipalities numerous funding instruments to enable them to sustain effective and quality services as per their Constitutional objects. It is submitted that the local government business model, in terms of these revenue instruments and the many competing functions performed by municipalities, is insufficient. There is a need to review the fiscal framework in terms of what is being transferred from central government to local government.

### **2.2. Challenges and Recommendations**

The local government equitable share (the only unconditional transfer to local government) has plateaued over the past five years at 4% - 5%. Municipalities rely largely on their own revenue sources to meet multiple functions (including unfunded powers and functions) and operate under a constrained macro-economic climate. The inability of the country to recover from the 2008 'great recession' has resulted in it missing targeted growth projections for development, has led to an increase in unemployment and has led to more indigent customer profiles and ballooning municipal debts. There is a decline in infrastructure grants, as pronounced by the Minister of Finance in the 2018 Budget Speech; Infrastructure grants will be reduced by R 3,5 billion in the medium term. There is a need for municipalities to start leveraging on their infrastructure financing capacity with the reducing infrastructure grants.

The inability of municipalities to exercise their powers and functions as per their constitutional mandate impacts on the local government fiscal framework. The stalemate position of electricity reticulation between Eskom and Municipalities in terms of contestation of Service Delivery Agreements has an impact on the ability of

municipalities to enforce their debtor's collection policies. The growing debts owed to Eskom by municipalities needs effective intergovernmental relations practices to resolve the matter.

Amongst the objects of local government is the promotion of safe and healthy environments. The delivery of Municipal Health Services (MHS) is one such vehicle, which local government can use to realise this object. However, with the current challenges experienced in the sector, mainly as a result of inadequate funding or lack thereof, this might not be realised. The situation could potentially compromise quality of life through the emergence of preventable diseases and therefore require urgent intervention. This could include an increased allocation of municipal health services, which can be achieved through the review of the current funding arrangement.

Climate change has had an impact on the local government fiscal framework. The Local Government White Paper of 1996 contains assumptions about revenue instruments for local government that never could have anticipated the climate change effects municipalities are grappling with today. There is a need for climate finance that should be administered at a municipal level because municipalities deal with climate change challenges on a daily basis. The fiscal framework must also be redesigned to be responsive to climate change challenges.

### **3. Electricity matters and Eskom Debt Issues**

The objective of this paper is to discuss the progress made on the matter regarding the constitutional powers of municipalities in relation to electricity reticulation and also the status of the municipal debt to Eskom.

The focus areas in this paper is for the parliament to discuss on how to ensure that the constitutional matter is finalised and closed as it has been a persisting matter for several years with the negative impact on municipalities, also to make resolutions that are practical for the eradication of the municipal debt to Eskom and the debt to municipalities. With all the IGR platforms created during the years, the impasse constitutional powers of municipalities remain unresolved, adding to this are persistent systemic and structural challenges which are also due to the current dispensation. The municipal debt to Eskom is also as a result of these systemic and structural issues

#### **3.1. Background**

Globally the electricity sector is currently undergoing a fundamental change and this is no different for South Africa but the industry is still operation at a very old traditional model which is the main cause of all the challenges the industry is dealing with currently.

The impasse between Eskom and municipalities with regards to constitutional powers of municipalities has been going on for several years. The engagements between SALGA and Eskom during the year have not yielded or reached any agreement. This matter has been elevated to parliament in the past which resulted in an Inter-Ministerial Task Team (IMTT) formed to deliberate on the issue where the disagreements also persists culminating into the IMTT recommending for a declaratory order to the PCC which was subsequently rejected.

The aspect of municipal debt owed to municipalities came to the fore in March 2015 where Eskom was owed over R5 billion, as an intervention which was a concern to local government, National Treasury withheld the equitable share of a number of municipalities, due to their failure to pay outstanding amounts to ESKOM for the bulk

purchase of electricity. As at end of March 2018, the municipal debt to Eskom is R13.5 billion.

### 3.2. The Constitutional Powers of Municipalities on Electricity Reticulation

In terms of Section 156(1) of the Constitution, municipalities have the executive authority in respect of, and the right to administer, the local government matters listed in Part B of Schedule 4 of the Constitution. These matters include electricity reticulation. The executive authority encompasses the authority to implement national, provincial and municipal laws, as well as the right to administer the daily running and management (through planning and decision making) of an electricity service. Section 160 provides that a municipal council makes decisions concerning the exercise of its powers and the performance of all the functions of the municipality. In addition, the municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

Implementation of a municipality's function to reticulate electricity is facilitated by national legislation, in particular the Local Government: Municipal Systems Act, 2000. Municipalities have a duty to give effect to the provisions of the Systems Act by rendering municipal services through an internal mechanism (section 76a) or an external mechanism (section 76b). Municipalities are required to do an assessment to determine the most appropriate service delivery mechanism. An external service delivery mechanism may include an organ of state including a licenced service provider recognised in terms of national legislation, such as ESKOM. In order to render a service through an external mechanism (such as Eskom) municipalities are required to enter into a service delivery agreement with the service provider. This includes an instance where a licenced organ of state delivers the function like Eskom.

In the absence of an SDA Eskom's service unlawfully encroaches upon the original Constitutional powers of a municipality to perform its reticulation function and to charge fees for this service. In addition, the municipality's constitutionally entrenched fiscal power to impose surcharges on fees for electricity reticulation services rendered on its behalf is undermined.

Without a service delivery agreement between municipalities and Eskom, municipalities: (i) do not derive any revenue generated through the provision of electricity services to communities by Eskom; and (ii) are unable to use electricity as a credit control mechanism within Eskom supply areas, which is negatively impacting on their revenue collection for other trading services.

### **3.3. IMTT Progress**

Given that the PCC meeting of 29 August 2017 did not support the recommendation to approach the Court to seek a declaratory order to clarify the 'executive authority' of municipalities in relation to electricity reticulation and distribution (as stipulated in Section 156 and Scheduled 4B of the Constitution of the Republic of South Africa) the Inter-Ministerial Task Team (IMTT) meeting held on 17 October 2017 resolved that an advisory panel should be appointed to provide legal clarity on the constitutional matters relating to electricity reticulation and distribution.

The advisory panel was appointed by the Minister of COGTA to commence on its task from 16 March 2018 and ending on 15 June 2018 or when the task is complete. An interim report is required to be submitted by 30 May 2018 and the final report on 11 June 2018.

The scope of work of the Advisory Panel is to advise the IMTT after considering the interests of government as a whole as well as the citizens in determining the best policy recommendation for government to pursue going forward on the matter.

On 12 April 2018, the first advisory panel meeting sat for the purpose of being briefed by SALGA and Eskom on the matter. The panel further requested supporting documents from SALGA and Eskom for the next meeting. The proceedings and the success of the Advisory panel are closely monitored by SALGA.

### **3.4. Municipal Debt to Eskom**

The municipal debt to Eskom continues to rise, the matter is also a standing agenda item at the IMTT. The observations are that the adherence to Payment Arrangements is still problematic for a number of municipalities. Generally the Municipalities with

overdue Balances generally also struggle to pay their Current Account resulting in overdue balance increasing. When Equitable Share is received payments to Eskom improve just a bit

Eskom exerts pressure through the PAJA process, SALGA still views it as not a sustainable solution. It yields temporary improvements

- Once off payments
- Re-negotiation of Payment Plans
- Litigation by Municipality or Individual Customers
- Impact on Economy

In the past three (3) years the debt to Eskom has ballooned from R5.5 billion in September 2015 to R13.5 billion as at end of March 2018. This means the debt has been doubling every year. As at end of March 2018, the debt has escalated to R13.5 billion with Freestate owing the highest followed by Mpumalanga Province.

Figure 1: Total Debt per province as at end of March 2018

Province	Sum of Total Debt	Sum of Current	Sum of Overdue Balance
<b>Kwazulu Natal</b>	1,361,446,627	1,072,935,765	288,510,862
<b>Limpopo</b>	728,075,820	186,424,751	541,651,069
<b>Mpumalanga</b>	3,690,053,072	398,028,814	3,292,024,259
<b>Eastern Cape</b>	849,648,331	452,908,806	396,739,525
<b>Western Cape</b>	930,755,619	929,419,992	1,335,627
<b>North West</b>	1,215,239,642	347,789,475	867,450,167
<b>Freestate</b>	6,820,198,057	344,335,340	6,475,862,717
<b>Gauteng</b>	3,506,828,456	2,633,322,641	873,505,814
<b>Northern Cape</b>	959,209,268	126,366,854	832,842,414
<b>Grand Total</b>	<b>20,061,454,892</b>	<b>6,491,532,438</b>	<b>13,569,922,454</b>

Out of the total debt owed to Eskom about 80% of the debt is owed by only 20 Municipalities. This is shown in the figure 2 below.



Figure 2: Top 20 Overdue Municipalities

Municipality	Sum of TOT_DEBT	Sum of CURRENT	Sum of OVERDUE_BALANCE
MALUTI A PHOFUNG MUNICIPALITY	2,754,822,584	60,890,393	2,693,932,191
MATJHABENG	1,815,015,089	44,951,181	1,770,063,908
EMALAHLENI LOCAL MUNICIPALITY	1,654,635,020	77,182,846	1,577,452,174
NGWATHE LOCAL MUNICIPALITY	937,707,392	22,320,265	915,387,126
EMFULENI LOCAL MUNICIPALITY	873,181,744	252,214,106	620,967,638
GOVAN MBEKI MUNICIPALITY	561,570,907	48,068,874	513,502,033
LEKWA LOCAL MUNICIPALITY	502,335,783	23,572,757	478,763,026
THABA CHWEU LOCAL MUNICIPALITY	444,182,058	24,653,386	419,528,672
DITSOBOTLA LOCAL MUNICIPALITY (Including Lichtenburg)	296,703,429	11,131,891	285,571,538
NALEDI LOCAL MUNICIPALITY	280,892,216	8,853,724	272,038,492
THABAZIMBI LOCAL MUNICIPALITY	217,536,950	8,798,627	208,738,323
MOQHAKA MUNICIPALITY (INCLUDING STEYNSRUS)	230,403,313	37,724,053	192,679,260
DIHLABENG MUNICIPALITY	184,044,187	11,199,465	172,844,722
NALA LOCAL MUNICIPALITY	178,043,195	12,520,534	165,522,660
NKETOANA LOCAL MUNICIPALITY	171,049,965	6,243,244	164,806,722
MERAFONG CITY LOCAL MUNICIPALITY	155,988,211	17,232,819	138,755,392
WALTER SISULU LOCAL MUNICIPALITY	141,179,698	7,642,558	133,537,140
MODIMOLLE LOCAL MUNICIPALITY	130,808,893	7,484,938	123,323,955
KAI IGARIB LOCAL MUNICIPALITY	129,010,796	6,347,990	122,662,806
MANTSOPA LOCAL MUNICIPALITY	119,415,974	4,423,852	114,992,122
MOOKGOPHONG LOCAL MUNICIPALITY	118,187,653	3,884,938	114,302,715
<b>Total</b>	<b>11,896,715,058</b>	<b>697,342,441</b>	<b>11,199,372,617</b>

### 3.5. Some Interventions on the Eskom Debt.

#### 3.5.1. On the Constitutional Issue

- IMTT concluded that the matter cannot be resolved unless it goes for declaratory order
- Aug 2017, PCC did not agree for the matter to be taken to court
- IMC appointed an Advisory Panel to look at the matter and make recommendations to the IMC
- On 16 April 2018, first sitting of the Advisory Panel where it was briefed by SALGA and Eskom on the constitutional Matter



### 3.5.2. On Skills

- Advise to resuscitate the SALGA/ Eskom MoU and utilize the Eskom Training College
- Proposal to leverage on Eskom apprentices that are being offloaded and place them in the struggling municipality but issue is their salaries

### 3.5.3. On Revenue Management

- Advise to resuscitate the SALGA/Eskom MoU for capacitation of Revenue Management staff in municipalities
- Explore workable revenue management initiatives in these municipalities, not the Eskom original revenue management proposal
- Propose to treasury the revenue management infrastructure special grants for these municipalities

### 3.5.4. On Cash flow Management

- Ensure appointment of CFOs in these municipalities, most are acting
- Capacitation also needed and can leverage in available training through the Eskom/SALGA MoU
- Revive the adopt a municipality initiative
- SALGA submitted proposals to NERSA to review NMD Rules
- Eskom concessions on upfront payments in increasing NMD
- Eskom agreed to suspend interest for the municipalities who pay they current accounts

- Eskom concessions on Eskom vs Municipality Payment periods
- Eskom concessions to reduce interest on overdue amount to prime plus 2.5%

#### 3.5.5. On Funding

- Continue to engage with National Treasury(NT) to review of Equitable Share Formula through the SALGA proposals
- Impress upon NT to review the funding model of municipalities with the current realities in the economy which leave municipalities with customers who can't pay

#### 3.5.6. On Tariffs

- Eskom concessions, restructuring of Eskom bulk tariffs from 11 to 3 tariff structures
- NERSA to assist municipalities in implementing their Cost of Service studies towards cost reflective tariffs
- Training workshops to be done with the assistance of Metros and Eskom on Cost reflective tariffs including addressing the issue of Eskom seasonal tariffs

### 3.6. Conclusion

SALGA is concerned about the final terms of reference that the advisory panel is looking at options, the initial understanding and the inputs from SALGA were that the panel will interpret the law and make recommendation to the IMTT. It appears that the expected outcome now in the advisory panel is which entities between Eskom and Municipalities are best placed to serve the country better with regards to electricity. This is a course of concern from SALGA.

Without pragmatic solutions, the Eskom debt will continue to balloon. Engagements at the IMTT are merely for feedback purposes rather than coming with tangible and practical solutions on the matter.

Going forward, there is a need to decisiveness on these matters rather than to continue creating platforms that end up with the same debates and arguments without any tangible progress e.g. IMTT etc.

## 4. Climate finance for local government in South Africa: creating an enabling environment for enhancing access to global climate finance mechanisms and leveraging internal resources

### 4.1. Introduction

**The slow rate of investment in Climate Change action is significantly reversing the gains we have made by investing in development**

Municipalities recognize the constitutional and moral obligation to deliver on sustainable development, which is underpinned by the protection of the natural environment. However, the current fiscal regime, and critical capacity deficits at the municipal level, inhibit the appropriate institutionalization and performance of the environmental management function, inclusive of coastal management; air quality management; biodiversity management; and environmental planning; governance and awareness; amongst others. Added to this limitation, is the threat of climate change, which has already manifested at the local scale in the form of climate related disasters such as protracted droughts; wild fires; and storm surges. These challenges have resulted in South African municipalities and communities becoming increasingly vulnerable to the negative impacts of climate change. Moreover, the lack of dedicated funds for environmental and climate related performance in local government; has nullified the expression of national government that local government is a critical component of the national climate change response.

The various disciplines encapsulated in environmental management offer many avenues for climate change response action. Climate change mitigation and adaptation response is also vital across a number of sectors such as the water, health, disaster management, transport, human settlements, land use management, and public buildings sectors. Although these sectors are financed predominately under capital grants for infrastructure development (i.e. MIG, USDG etc.) little provision is made for the innovations required for implementing sustainable emissions reduction and climate resilience initiatives. As a result, there remains a significant financing gap in local government for climate change action in both mitigation and adaptation (and

resilience) sectors. It is therefore SALGA's intention to establish the following key issues:

- i. Determining the Climate Finance Gap that exists in the local government sphere (including an analysis to barriers of access to existing domestic and global climate finance mechanisms such as, but not limited to, the national Green Fund, Global Environment Fund, the Adaptation Fund, and the Green Climate Fund).
- ii. Tracking flows of climate finance both globally and domestically, and establishing appropriate modalities for local government access to climate finance.
- iii. Establishing opportunities in the national fiscus for unlocking and dedicating climate finance to local governments (i.e. including proposals on the opportunities presented by the Carbon Tax)
- iv. Conducting a feasibility analysis and proposals on SALGA's role in and requirements for supporting and enabling local government access to climate finance.

## **4.2. Background**

In March 2009, the national Department of Environmental Affairs convened the first national Climate Change Summit with the aim of initiating consultations on the proposed national policy framework for climate change. Subsequently, the National Climate Change Response White Paper was gazetted into policy in 2011.

The National Climate Change Response Policy (NCCRP) represented a policy framework within which all spheres of government and economic sectors would coordinate efforts towards realising South Africa's climate change mitigation and adaption efforts. Although outlining the importance of cooperative governance, and emphasising the roles of each sphere of government, the NCCRP does not definitively address the issues of finance, technology and capacity across government as well as within sectors.

In the years following the adoption of the NCCRP by Cabinet (2011 to date), there have been significant developments in the climate change response arena, both

globally and domestically. In December 2015, Parties to the United Nations Framework Convention on Climate Change (UNFCCC), during the 21st Conference of the Parties (COP21), endorsed the Paris Agreement as a globally accepted framework agreement for accelerated action on climate change. Ratified by over 80% of UNFCCC Parties (countries); the Paris Agreement holds legal force and requires that parties deposit Nationally Determined Contributions (NDCs) which serve as the yardstick by which nations are held accountable to implementing the Paris Agreement. The current round of negotiations (2016 – 2018) are aimed at concluding a Rule Book, which is a set of rules or measures by which the Agreement will be brought into force by the year 2020.

Significant achievements on a global scale attributable to the UNFCCC processes have included the agreement, in Paris at COP21 (December 2015), to increase global pledges to \$100 Billion USD per annum. It is anticipated that Annex I Parties<sup>120</sup> will pledge to the global climate facility (i.e. fund) for the aid of developing and least developed countries. In addition, 37 Annex I countries and the EU have agreed to second-round Kyoto targets (a second commitment period). These countries are Australia, all members of the European Union, Belarus, Croatia, Iceland, Kazakhstan, Norway, Switzerland, and Ukraine. However, the exit of the United States of America from the Agreement poses some negative implications from the ability of Parties to meet the targeted amount by 2020.

Domestically, successes on the national scale, following the gazetting of the NCCRP and hosting of COP17 by South Africa have included the following:

- Development of Long-term Mitigation Pathways - projected trajectory of mitigation efforts that will lead the country to peak, plateau and decline greenhouse gas emissions by the year 2015;
- Long-term Adaptation Scenarios - projections of climate impact and adaptation scenarios in a variety of economic sectors;

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<sup>120</sup> Annex I Parties include the industrialized countries that were members of the OECD (Organisation for Economic Co-operation and Development) in 1992, plus countries with economies in transition (the EIT Parties), including the Russian Federation, the Baltic States, and several Central and Eastern European States. All Annex I Parties, excluding the US, have participated in the 1st Kyoto commitment period.

- Framework for Climate Services - a system for data collection and sharing of climate and weather forecasting, early warning systems etc.;
- Nationally Determined Contributions (NDC) – a country submission to the UNFCCC outlining long-term targets for mitigation and adaptation in key sectors in accordance to requirements of the Paris Agreement;
- Draft Framework Legislation on climate Change that is currently being developed and consulted on – this framework legislation seeks to provide legislative impetus to climate change response.

#### 4.3. Limitations for full-scale climate change action at the local government level

Although there has been considerable progress in both policy and practice in South Africa's overall climate change response, SALGA has noted several impediments at a local government scale. Broadly, the NCCRP, the NDC; as well as the proposed draft framework legislation provide adequate policy imperatives to all actors. A considerable gap remains though, in the area of 'means of implementation', particularly in the local government sphere. This gap, more specifically, relates to the minimal availability and accessibility of climate finance, particularly cities and local authorities.

Climate finance refers to local (internal), national (domestic) or transnational (bilateral and multilateral) financing, which may be drawn from public, private and alternative sources of financing (UNFCCC - [http://unfccc.int/focus/climate\\_finance](http://unfccc.int/focus/climate_finance)).

South Africa has made commitments to the UNFCCC collective of Parties, in its NDC. These commitments include the reduction of emissions, where Greenhouse gas emissions are set to peak (2025), plateau (2025-2035) and decline (2035); expressed as trajectory range of 398 to 614 mega tons of carbon dioxide equivalent. South Africa has also committed to build the necessary institutional capacity for climate change response planning and implementation (2020 to 2030). However, without the necessary and appropriate fiscal and financing mechanisms in place, it is unlikely that the country will achieve these targets.

#### 4.4. Existing Climate Finance Mechanisms

Economic sectors that are considered high emitters of greenhouse gases require high levels of capital investments to implement lasting emissions reductions solutions. In South Africa, the energy sector is the highest contributor to greenhouse gas emissions due to fossil fuel based energy sources for electricity generation and fuel production. Consequently, high energy consumption sectors, such as buildings and transport, are considered the next highest emitting.

Therefore, for South Africa to achieve reductions in emissions by 35% in 2025, and 48% by 2035, the need for large capital funds becomes paramount. Although such funding instruments exist in the global environment, owed largely to those emanating from the UNFCCC system, there is a glaring funding gap at a domestic level. For developing countries though, the challenge is two-fold. The impacts of climate change manifest in severe weather events, resulting in disasters and loss and damage to infrastructure, property, lives, and ecosystem functioning. The net results of climate change pose significant economic losses, and thus must be either avoided or adapted to. This too requires significant funding injections, particularly in the context of development and service provision.

At the 22<sup>nd</sup> session of the Conference of the Parties (COP22) in Marrakech in 2016, Parties agreed to the convening of in-session workshops on long-term financing during 2017 and 2018, with a view of scaling up finance for both mitigation and adaptation. Since 2016, '**means of implementation**', i.e. **finance**, **technology transfers**, and **capacity building** have been a distinctive agenda of the UNFCCC climate talks. Key issues emerging from the workshops held by the UNFCCC in May 2017, have been the lack of focus of NDCs on enhanced domestic climate financing. SALGA hold the same view, in that the current NDC (to be revised every five years) does not include strategies for domestic climate finance. It is of SALGA's view that at a national level, mechanisms should be put in place to unlock climate finance internally (i.e. in the national fiscus) and to enable improved access to global climate finance instruments.

The tables appended in Appendix 1 (attached hereto) tabulate a list of available climate finance mechanisms, some of which have already been successfully accessed by South African municipalities. The problem however, lies in the fact that these funds



are seldom accessed directly by municipalities, and are directed to projects that are defined and implemented by implementing entities that are not municipalities. This creates a challenge of 'disconnectedness' from project implementation and ownership and results in reduced sustainability of initiatives when they do not become absorbed into future municipal plans, budgets and operations. Added to this, municipalities are not fully empowered to access funding opportunities on their own, and therefore not incentivised to build complementing capabilities in their own structures and funding instruments.

Global, and some domestic, funding mechanisms are inherently a positive indicator for the increasing appetite to fund climate action. However, the architecture of fiscal flows for climate change related work is characterised by a linear process where funds flow from sources, to national governments and implementing or designated entities of their choosing, and minimally to cities and projects with narrowed scopes of impact. This means that by and large, most municipalities are excluded from the 'agenda setting' of climate response projects. Where municipalities are involved, they seldom are the lead agents for implementation. In essence, these characteristics of the climate finance landscape are superimposed onto a system of finance that already presents many barriers to entry for local governments, particularly those that are categorised as small and under-capacitated.

SALGA does not wish to draw away attention from the fact that the existence of climate finance mechanisms is positive and desirous. It does, however, aim to place emphasis on the need to remove limitations and break barriers, especially those that exist domestically, for accessing climate finance. Importantly, SALGA wishes to influence the shifts in the prevailing fiscal environment of the country to allow for greater absorption of municipal funds in service delivery implementation that enhances municipal ability to reduce greenhouse gas emissions and improve the resilience of infrastructure and society to the impacts of climate change.

#### **4.5. Barriers to access**

Climate finance is critical to addressing climate change because large-scale investments are required to significantly reduce emissions, notably in sectors that emit

large quantities of greenhouse gases. Climate finance is equally important for adaptation, for which significant financial resources will be similarly required to allow countries to adapt to and reduce the disastrous impacts of climate change.

However in South Africa there are significant barriers to access. There is no coordinated and consolidate approach to building in-country means of implementation, i.t.o finance; capacity building and technology; resulting in continued reliance on donor and international sources of finance and technology support, both of which have considerable barriers to access.

Some of these barriers to access include:

- Limited capacity and ability of local authorities to develop qualifying project proposals;
- Onerous application requirements and processes;
- Systemic internal municipal challenges relating to audit findings, minimal technical staff complements; lack of co-funding resources, which all combine to reflect local authorities as high investment risks.

#### **4.6. Recommendations for improving municipal access to climate finance**

The projects listed in Table 3 of the Appendix (attached hereto), represent some projects where SALGA has provided technical support to overcome some access barriers. These successful application cases present a business case for SALGA to intensify its support to municipalities.

It is therefore proposed that SALGA establish internal capacity (within the SALGA structure) to prioritise municipal support related to accessing funds. However, whilst support for accessing global funds is important, SALGA also needs to prioritise and escalate efforts to ensure that the domestic fiscal regime makes provision for climate finance, in both the grant framework; as well as through other instruments. SALGA will need to conduct research to solidify proposals for fiscal arrangements that need to be reviewed to enable local government to adequately contribute to the national climate change response.

The implementation of the impending National Climate Change Act will hinge greatly on the success of local government in implementing sustained climate change response programmes across all service sectors. Opportunities for accelerating emissions reduction and entrenching systemic resilience have been evidenced in the delivery of alternative and renewable energy; low-carbon public and non-motorised transport; biodiversity management; greening of public spaces; energy efficiency programmes and green buildings; water conservation; and a variety of other initiatives implemented by municipalities. These functional areas, amongst others, require additional funding to complement existing resources in order to upscale implementation and whilst meeting the development challenge. This elevated degree of ambition therefore requires that the fiscal and financing policy environment act as an enabler and not a detractor from the already positive and significant contributions made by cities and local municipalities. To this effect, policy measures that need to be taken must include:

- A National Climate Change Act that clearly articulates the role and measurable contribution of local government in emissions reductions, particularly in the energy, transport, waste, and waste water treatment sectors.
- A national fiscal regime that:
  - establishes a Climate Fund designed to enable ease of access to municipalities;
  - apportions revenue generated from the Carbon Tax and Cross-border Carbon Taxes to local scale climate change implementation projects, forming part of the capital allocations to municipalities.
  - Applies an 'additionality' factor to infrastructure development grants to make provision for climate risk sensitive infrastructure development and deployment of appropriate technologies for emissions reductions and climate adaptation
- A systemic review of policy and regulatory tools to ensure that climate change permeates sector planning and budgeting instruments for the Human Settlements, Health, Water, Education, Energy, Mining and Minerals; Agriculture, Land Reform, Roads, and Disaster Management sectors.
- Establishment of a national coordinating structure that includes representatives of organised local government.

- Mandatory inclusion of climate change in local government integrated, sectoral, spatial and financial planning instruments.
- Establishment of a Local Government Climate Change Fund, administered by SALGA and adopted within the national climate finance architecture presided over by the national Department of Environmental Affairs.
- Joint review of the functioning of the domestic Green Fund and other existing domestic climate finance institutions to allow for conditions that improve municipal access and support to access climate finance.

**Prepared by:**

Telly Chauke

SALGA Specialist: Environmental Management & Climate Change

Email: [ichauke@salga.org.za](mailto:ichauke@salga.org.za)

## APPENDIX 1

### Existing Climate Finance Mechanisms

Globally, a number of funds exist aimed at addressing the funding deficits in developing countries. At country level though, developing countries, and South Africa in this case, have few instruments available to sector role players, and even fewer available to cities and local authorities.

Table 1 below provides a tabulation of climate financing instruments established under the UNFCCC system; the second table (Table 2) presents domestic avenues for accessing climate funds and progress made to date. Appendix 1 (attached) presents information on other global funds, highlighting those that are potentially accessible by local authorities.

Information captured in the tables includes the source of the funds (administrative authority), the type of climate action funded, as well as a reflection by SALGA on ease of access and status of the fund. This information assist in drawing a juxtaposition with domestically available funds, and assist shape recommendation on how best SALGA may take measures to assist member municipalities to access said funds.

*Table 1. Climate financing instruments established under the UNFCCC system*

<b>Fund name &amp; Value</b>	<b>Period of Operation</b>	<b>Objective</b>	<b>Target</b>	<b>Status of Operation</b>	<b>SA Eligibility and Status of Implementation</b>
Fast-start Fund (\$30 Billion USD)	Established in 2009 at COP15 to run from 2010 to 2012	Collective commitment by developed countries to provide new and	Country level funding for both mitigation	Closed in 2013	Closed

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
		additional resources approaching USD 30 billion for the period 2010 - 2012	and adaptation		
Least Developed Countries (LDC) Fund (undetermined value)	COP20 (2014) decided to continue fund indefinitely	Established to support a work programme to assist Least Developed Country Parties (LDCs) carry out, inter alia, the preparation and implementation of national adaptation programme	Least Developed Country Parties	Operated by the Global Environment Facility (GEF), as an operating entity of the Financial Mechanism of the Convention (Decision 27/CP.7.)	No – only LDCs

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
		s of action (NAPAs).			
The Special Climate Change Fund (SCCF) (undetermined value)	The Special Climate Change Fund (SCCF) was established under the Convention in 2001	To finance projects relating to: adaptation; technology transfer and capacity building; energy, transport, industry, agriculture, forestry and waste management; and economic diversification  supports adaptation and technology transfer in all	Developing countries - Supporting both long-term and short-term adaptation activities in water resources management, land management, agriculture, health, and infrastructure development, fragile ecosystems, including mountaino	Operated by the GEF	Yes  Application only by GEF Focal Points (Government or designate of government) in SA, GEF Focal Point is DEA

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
		developing country parties to the UNFCCC,	us ecosystems, and integrated coastal zone management.		
Global Environment Facility  GEF-6 (2014 – 2018) \$4.43 Billion USD	1991 – 2018 (likely to be renewed indefinitely in 2019)	Provision of financial and technical support to developing and least developed countries	All developing countries	Administer several funds (LDCF and SCCF)  Administers several trust funds and provides secretariat services, on an interim basis, for the	<b>Yes</b>  Application only by GEF Focal Points (Government or designate of government) in SA, GEF Focal Point is DEA



Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
				Adaptation Fund.  Currently 30 Donors (including South Africa)	
Adaptation Fund  (Undetermined value - The share of proceeds amounts to 2% of certified emission reductions (CERs) issued for any CDM	2010 to present	Established to finance concrete adaptation projects and programmes in developing countries Parties to the Kyoto Protocol that are particularly vulnerable to the adverse	All developing countries	Financed with a share of proceeds from the clean development mechanism (CDM) project activities and other sources of funding.	<b>Yes</b>  Application only by GEF Focal Points (Government or designate of government) in SA, GEF Focal Point is SANBI (Designated by DEA)

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
project activity.		effects of climate change.		The AF has a direct access modality (unlike the Green Climate Fund) – the challenge is that the Fund is established under the Kyoto Protocol which will cease to exist in 2020. Negotiations at COP23 will focus on the preservation of the Adaptatio	In 2015 <b>SALGA assisted 3 municipalities to access \$10 million USD (Namakwa DM, Mopani DM, uMgungundlovu) through small grants facilities</b>

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
				n Fund under the Paris Agreement	
Green Climate Fund (GCF)	Established in Cancun (COP16) in 2010, operationalized at COP20 in 2014  In May 2015, the fund became effective (when 50% of the 10 billion USD pledged in	To support projects, programmes, policies and other activities in developing country Parties using thematic funding windows.	Targets yet to be determined	Operated by the World Bank  Largest contribution of funds has been by the USA, which presents a challenge with the imminent exit of the USA from	Yes  Application only by GCF Focal Points (Government or designate of government) in SA, GCF Focal Point is DEA (designated to DBSA)  SALGA sits on Steering Committee for design of

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
	Berlin in 2014 became operational)			the Paris Agreement.  Not a direct-access facility	Local Implementing Facility/Funding Window with aim of influencing structure to enable accessibility for local government
Capacity Building Initiative for Transparency (CBIT)	2015 onwards (Paris decision)	As part of the Paris Agreement, Parties to the United Nations Framework Convention on Climate Change (UNFCCC) agreed to establish a Capacity-building Initiative for Transparen	All developing countries	National governments	<b>Yes</b>  Application only by National government (DEA) to:  • Develop a national inventory report of anthropogenic emissions by sources and removals by sinks of GHGs

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
		<p>cy (CBIT). The goal of the CBIT is to strengthen the institutional and technical capacities of developing countries to meet the enhanced transparency requirements of the Paris Agreement. These enhanced transparency requirements are defined in Article 13 of</p>			<ul style="list-style-type: none"> <li>• Collect Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.</li> </ul>

<b>Fund name &amp; Value</b>	<b>Period of Operation</b>	<b>Objective</b>	<b>Target</b>	<b>Status of Operation</b>	<b>SA Eligibility and Status of Implementation</b>
		the Paris Agreement.			

*Table 2. Domestic Climate financing instruments*

<b>Fund name &amp; Value</b>	<b>Period of Operation</b>	<b>Objective</b>	<b>Target</b>	<b>Status of Operation</b>	<b>SA Eligibility and Status of Implementation</b>
Green Fund  R800 million initial investment (awaiting replenishment)	2012 to present, although the fund is currently depleted  Administered by DBSA	Promoting innovative and high impact green programmes and projects  Building an evidence base for the expansion of the green economy, and	All sectors, private and government, research institutions	The fund is currently depleted.  By 2016, the funded had disbursed R782 million to 55 Projects covering investment projects, research initiatives and capacity	Municipalities eligible to apply based on opening of funding windows (i.e. calls for proposals)  Local Governments directly received only about 6% of the funds

Fund name & Value	Period of Operation	Objective	Target	Status of Operation	SA Eligibility and Status of Implementation
		Attracting additional resources to support South Africa's green economy development.		building programmes. Sectors covered: energy, waste, agriculture, mining and transport.	
Green Climate Fund	Not yet Operational  Administered by DBSA	Local Window under development – SALGA represents OLG in this process			

Table 3. Municipal access to financing mechanisms through SALGA support

<b>PROJECTS SUPPORTED BY SALGA TO ACCESS FUNDS</b>			
<b>Fund name &amp; Value</b>	<b>Municipality</b>	<b>Objective</b>	<b>Projects</b>
UN Climate Technology Centre and Network	iLembe DM awarded in 2016	UNFCCC Climate Technology Centre and Network (CTCN) for technical assistance to prepare sub-national Technology Road Maps.	<p><b>1.iLembe DM (\$500 000 USD) – Energy and Water Technologies</b> (± R7.5 million)</p> <p>Technology identification and prioritization; (2) development of the technology road maps; and (3) training course to increase capacity on energy efficiency and energy audits.</p> <p>The outputs produced under this technical assistance will be of immediate use for the KwaZulu-Natal province and the iLembe municipality to progress towards a low carbon climate resilient development path.</p> <p>The implementation and scaling up of the technologies identified and analysed under this assistance will provide a knowledge base and platform for</p>



**PROJECTS SUPPORTED BY SALGA TO ACCESS FUNDS**

Fund name & Value	Municipality	Objective	Projects
			<p>technology pilot projects which can be submitted to funding institutions such as the Green Climate Fund (GCF).</p> <p>The implementation of this technical assistance will have duration of one year and will be implemented in close collaboration with the National Designated Entity (NDE) of South Africa (Department of Science and Technology), KwaZulu-Natal's Economic Development, Tourism and Environmental Affairs Department (EDTEA), and the iLembe District Municipality.</p> <p>In preparation</p>
Adaptation Fund  (R10 million)	uMgungundlovu DM (uMngeni Resilience Project)  Namakwa DM	Small Grants Facility (SGF) to support community based adaptation	The SGF project is an Adaptation Fund project which is implemented and governed by the Department of Environmental Affairs (DEA), South African National Biodiversity Institute (SANBI)

**PROJECTS SUPPORTED BY SALGA TO ACCESS FUNDS**

Fund name & Value	Municipality	Objective	Projects
	Mopani DM	and ecosystem based adaptation	<p>1.Mopani DM – Community based adaption for local food production and municipal greening</p> <p>2. uMgungundlovu DM – uMngeni Resilience Project on rehabilitation of wetlands (ecosystem based adaptation)</p> <p>3.Namakwa DM – small scale agriculture and water use (community based adaptation)</p>
R20 Foundation  (value undetermined)	City of Tshwane  City of Johannesburg  Mantsopa Local Municipality	SALGA entered into Cooperation Agreement with R20, submitting 34 municipal project proposals for evaluation for funding. Six (6) projects	<p>Manstopa LM – Alternative waste treatment project</p> <p>City of Tshwane – Renewable energy (waste to energy)</p> <p>City of Johannesburg – waste to energy (biogas)</p>

**PROJECTS SUPPORTED BY SALGA TO ACCESS FUNDS**

Fund name & Value	Municipality	Objective	Projects
		<p>have been approved, and training conducted for project finance readiness conducted.</p>	<p>Msunduzi LM – alternative waste treatment and renewable energy (solar)</p> <p>Richmond LM – Solar street lighting</p> <p>Steve Tshwete – LED street lighting</p>

## 5. Enabling the role of local government in environmental management through the development of a Legal/Implementation Protocol and an creation of an enabling fiscal framework

### 5.1. Introduction: Contextualising the problem

The field of environmental governance is a vast and complicated area of South African law. While local government has an important role to play in environmental management (EM), and there are numerous Acts, Frameworks and Guidelines available, this role is complex, and often difficult to understand. The South African Local Government Association (SALGA) and the Department of Environmental Affairs (DEA) have jointly funded a study aimed at *defining the role of Local Government in Environmental Management and establishing the costs of performing environmental management functions*, with an objective of defining the legislative mandate of local government and advocating for an enabling fiscal regime for its implementation.

This discussion paper brings together the findings of the earlier draft legal framework, and a subsequent costing analysis. It outlines the role of local government in EM, and how it varies between types of municipalities. It has been written from the perspective of local government, as opposed to addressing EM responsibilities across all spheres of government in South Africa.

The goal of this discussion paper is to provide a clear starting point for the development of an Implementation Protocol in terms of the Intergovernmental Relations Framework Act, 13 of 2005. It focuses on clearly **defining the minimum obligations of local government with regards to environmental management** (EM), and arriving at recommendations for bridging the evident financing gaps for optimal performance. The rationale for doing so is that in many instances the desired budget and associated activities are for short of local authorities' obligation for environmental protection, with the primary concern being ensuring that sufficient resources are allocated, particularly in the current challenging economic climate. Furthermore, municipalities are given a number of discretionary EM powers, which must be considered in light of their overall responsibility for governing in a sustainable

manner. The extent to which municipalities are obliged to implement discretionary functions will vary from municipality to municipality in accordance with the environmental and other constraints they face.

This paper recognises that both financial and resource constraints do exist, and will take a long time to overcome. It proposes a combination of:

- using existing resources better;
- identifying specific areas of policy which have placed an unaffordable burden on municipalities, and where a more pragmatic approach (tailored to resources) to EM is recommended;
- understanding the power of the NEMA principles (especially in the context of polluter pays principle);
- and identifies areas of ambiguity which either require clarity, simplification, or additional resources.

The difficulty is further magnified by the gap which currently exists between the policy intention, and the current state of capacity and implementation in municipalities. In particular the lack of suitably trained human resources and the presence of more immediate service delivery and governance challenges facing local government. The analysis that follows should be viewed as the first attempt to provide a starting point for development of an Implementation Protocol, including clarity on the indicative costs involved with performing EM by municipalities; and frames SALGA's intention to advocate for a more decisive framework for the devolution of the environmental management function, which is presently concurrent between national and provincial government, to the municipal sphere.

It is important that the costs associated with environmental management are seen as indicative guidelines, due to the range of factors influencing the cost of environmental management in any given municipality, which includes: geographic size; distribution of functions between the district and local municipality; presence of estuaries, coastlines or other significant environmental features; the presence of invasive aliens

on municipal land; the number of activities requiring an air quality emission license in any municipal jurisdiction; etc.

## 5.2. Summary of local government legal mandate

South Africa, along with more than 100 countries, includes an ‘environmental right’ in its Constitution, which all levels of government, including local government, must give effect to. This environmental right is stated within section 24 of the Constitution:

Everyone has the right:

- a) to an environment that is not harmful to their health or well-being; and
- b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
  - i) prevent pollution and ecological degradation;
  - ii) promote conservation; and
  - iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The core local government responsibility, regardless of category, is that all its decisions and the actions it takes must be done in a manner that promotes the fulfilment of the environmental right. Its obligations in rendering services must be done in an environmentally sustainable manner. Local government is expected to strive to meet these objectives “within its financial and administrative capacity.”<sup>121</sup> This formulation provides municipalities with both an opportunity in terms of how they choose to meet their environmental mandate, and a challenge in applying “one size fits all” policy guidelines.

### 1. Key findings of the study

- **Environmental policy has been enacted without an assessment of the costs involved.** Local government is left with a choice of not meeting the policy expectations of them, or finding additional funding to meet these expectations.
- **Given the lack of clarity regarding “service-level” definition across the environmental function,** and the fact that the legal wording refers to the need to provide the function “within its financial and administrative capacity”,

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<sup>121</sup> Section 152 (2) of the Constitution

estimating the cost of providing the municipal environmental function becomes an art, not a science.

- **District versus local, both regulator and regulated.** Local government has the twin roles of being both the regulator (primarily through the environmental health function, but also through municipal designated EMIs), and the regulated (as, for example, being responsible for landfill sites, wastewater treatment etc.)
- The **type of skills available, and their position in the municipal hierarchy** are more important than the absolute number of people employed. The strategic nature of EM requires high level skills, which are in very short supply.
- **Lack of sufficiently qualified personnel:** While legislation is careful to say that environmental officers are to be designated among existing staff, and do not constitute an unfunded mandate, in reality many municipalities do not have sufficient, or suitably trained staff employed currently.
- While EM funds are scarce, **municipalities are not doing as much as they can to secure funding for EM.** For example, tariffs for solid-waste services are set too low to cover all service-related costs, while EM officials also need to argue more effectively for a larger share of existing municipal budgets. Governance and administration in particular is a potential target for greater efficiency.
- **Applying the “polluter pays” principle:** Local government needs to be better about tapping the private (or indeed public) sector for the required skills and resources. The case of Air Quality Management (AQM) and Waste management are the primary examples. Local government can seldom afford the cost of sophisticated monitoring equipment, but can require a key polluter to appoint a pollution officer, and to monitor and report their own activities accordingly.
- **The Integrated Development Plan (IDP) and Spatial Development Framework (SDF) are the key legal tools for planning and mainstreaming environment management.** These are tools all EM officials should and must focus on to ensure that EM priorities are incorporated into municipal planning and funding.

- Based on current reporting, “**Environmental Protection**” (the new mSCOA based reporting category for Environmental Management provided by National Treasury) **is a very small part of the entire municipal budget, accounting for around 1% of total municipal expenditure** in all municipal categories. There appear to be LMs in particular, who could internally reallocate funds within their existing municipal budgets with very small improvements in efficiency in the Governance and Administration function. To illustrate the point, it would require only an average 0.8% improvement in governance and administration (G&A) efficiency (and equivalent reduction in G&A expenditure, with zero impact on other services) to double the average current LM levels of expenditure on EM.
- While operational resources appear to be adequate, **funds to implement are a key gap**. Coastal Management planning and implementation is a prime example among DMs of inadequate funding.
- While addressing climate change in terms of both mitigation and adaptation is not currently articulated in any specific legislation<sup>122</sup>, it remains a concern for the whole municipality, and should form part of the IDP across all departments. Ensuring this happens will be a key challenge for the municipal head of environmental governance issues.
- **Where fees for EM services are gazetted, municipalities become constrained in their ability to cover their costs**. For example, regulations prescribing Atmospheric Emission licence fees were published in March 2016<sup>123</sup>. Unfortunately, many municipalities have noted that these fees are lower than either costs, or in some cases the fees that municipalities were already charging. It is unclear how municipalities are expected to fund the shortfall given the presence of these prescribed fees, which limit their ability to recover their costs.

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<sup>122</sup><sup>122</sup> Monitoring of GHG emissions is an AQ function (see below Section 6.4), but this is only a small component of climate change. A specific Climate Change Act is in development.

<sup>123</sup> GN 250 in *Government Gazette* 39805 of 11 March 2016  
([http://www.gov.za/sites/www.gov.za/files/39805\\_gon250.pdf](http://www.gov.za/sites/www.gov.za/files/39805_gon250.pdf))



### 5.3. Defining and devolving the environmental management function

South Africa's history has given rise to a process of law reform since the dawn of a constitutional era in 1994, initially brought about through the Interim Constitution (Act 2000 of 1993), and then through the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The Constitution, amongst other things, introduced an environmental right in section 24 within its Bill of Rights, which affords every person a right to an environment that is not harmful to their health or well-being, and places a positive obligation on the state to take "reasonable legislative and other measures" to realise the right.

Although the Environment Conservation Act, 73 of 1989, did regulate limited aspects of the environment, the regulatory regime for environmental management was generally fairly ad-hoc and fragmented, and considered inadequate to give effect to this right. Accordingly, the primary legislation promulgated to give effect to this right was the National Environmental Management Act, 107 of 1998 ("NEMA"), which commenced on 29 January 1999. The development of environmental law since NEMA has been ongoing, with the enactment of a number of specific environmental management Acts, subsidiary legislation, as well as a number of environment-related policies.

The Constitution (1996) states that "government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated" (s 40(1)). The "distinctive" element refers to the autonomy enjoyed by the spheres; that is, the degree to which each sphere is the final decision-maker on a particular matter that falls within its area of competence. In accordance with the environmental right, all organs of state, including municipalities, are required to take legislative and other measures to give effect to this right. However, the development of these legislative instruments, read together with the mandates given to the spheres of government in the Constitution, has also resulted in some confusion as to the roles and responsibilities of local government in relation to environmental management.

The role of municipalities in respect of environmental management is further enhanced in section 152 of the Constitution, which requires municipalities, amongst other things,

to ensure the provision of services to communities in a sustainable manner and to promote a safe and healthy environment. The Local Government: Municipal Systems Act 32 of 2000 (“the Municipal Systems Act”) gives further effect to these constitutional imperatives. Municipalities have the duty to strive to ensure that municipal services are provided in an environmentally sustainable manner. The National Strategy for Sustainable Development (NSSD), approved by Cabinet in 2011, further emphasises the need for “enhancing systems for integrated planning and implementation” as a way of mainstreaming and integrating sustainable development actions within all spheres of government (including municipalities) in order to achieve, amongst others, the goal of environmental sustainability.

Although provisions are made in law for environmental performance in the three municipal categories, these functions are largely discretionary and do not carry an explicit mandate for local government. The Environmental Legal Framework developed by SALGA as a compendium of functions as articulated in the National Environmental Management Act and its subsidiary Acts for Biodiversity, Protected Areas, Coastal Management, and Air Quality; provides a platform for the development of an Implementation Protocol to be entered to between the National Department of Environmental Affairs, its provincial departments, and municipalities in terms of the Intergovernmental Relations Framework Act, 13 of 2005.

#### **5.4. SALGA’s policy recommendations**

This Environmental Legal Framework aims to clarify the environmental mandate of local government, including an assessment of the associated costs; and is intended to:

- identify the local government mandate for environmental management;
- clarify the range and scope of environmental functions performed by municipalities;
- define a basket of environmental functions that are common across each of the categories of municipalities;
- enable local government to understand and implement their mandate for environmental management;

- enable government to track municipal compliance with their environmental roles and responsibilities through the identification of suitable compliance-based performance indicators; and
- provide for appropriate budgeting and funding allocation to municipalities to enable them to carry out their environmental management roles and responsibilities, based on a high-level costing analysis of what resources are required to enable local government to meet their environmental management mandate.

The Environmental Legal Framework therefore sets out the roles and responsibilities of municipalities. These roles and responsibilities have been divided into the following thematic areas (or sectors, as identified in the Environment Sector Strategic Plan):

- Overall environmental governance
- Air quality management
- Waste management
- Environmental impact management
- Conservation and biodiversity
- Coastal management

The proposed Legal Protocol, informed by the Environmental Legal Framework, is intended to clarify the allocation of responsibilities between the various spheres involved with EM. As agreed with DEA through the development of this Framework, the parties relevant in the Environmental Legal Framework for municipalities are:

- (a) the Minister of Environmental Affairs;
- (b) the Minister of Cooperative Governance and Traditional Affairs;
- (c) the provincial MECs responsible for environmental management in the provinces;
- (d) district, local and metropolitan municipalities; and
- (e) the South African Local Government Association.

Due to the cross-cutting nature of the environmental management other Ministers, such as the Ministers of Health and Water Affairs should also take this Framework into consideration, and support its implementation.

## 5.5. Key policy recommendations:

- i. In the context of the Department of Cooperative Governance and Traditional Affairs' "Back to Basics" campaign, SALGA and local government need to make a clear case for how EM should be considered a "basic" municipal service, and identify a minimum basket of EM services which all municipalities should be able to provide. This position paper provides a first draft of what this minimum basket should contain.
- ii. Reduce onerous reporting and planning requirements. To help reduce reliance on consultants, if the relevant parts of the IDP and SDFs are present (listed species, air management, waste management, strategic environmental assessment), municipalities should have more freedom to decide on the format of these documents/ to define what they include in these sections of the IDP.
- iii. Municipalities will first have to demonstrate that they have taken steps to implement proper cost accounting, revenue collection and tariff setting (where applicable) before they can approach NT for additional funding. However, should they manage to address NT's existing concerns as expressed in recent Budget circulars (see Circular 74 in particular), then SALGA and local government should frame their proposals within the NDP vision, including the concept of resilience. The NDP speaks about national-to-local fiscal transfers to incentivize environmental performance, but this has not yet been actualized.
- iv. Conversely, where DEA prescribes set fees, limiting the ability of local government to cover their costs and generate revenue, DEA should be willing to provide a grant to cover the revenue shortfall to affected municipalities. (A relevant example here concerns the AQ emission license function performed by DMs who have no access to property rates income, the primary source of general own revenue for local government.)
- v. Implementation funds are a key challenge. One strategy may be for municipal EM officials to convince other municipal departments on board in the need for funding. There are no one-size fits all solutions for implementation funds, although the EPWP programmes offer a very valuable opportunity. If there are problems with the allocation mechanism, then those problems needs to be raised with the DEA.

- vi. Municipal desire for greater control of EPWP funds. The current allocation system for EPWP funds means that a significant amount of money is available within municipal boundaries, ostensibly targeted at EM, but municipalities are unable to guide how these funds are spent in order to maximise outcomes. A key case in point in coastal management, where provincial allocations to Working on Coasts far exceed municipal budget allocations. This is counter-productive, and inefficient.
- vii. Work with National Treasury to ensure that the mSCOA revisions are useful to local government.
- viii. While total financial resources may be adequate in some circumstances, the true shortage is one of skills, human resources, and of a lack of appreciation for the environment in terms of funding priorities. Local Government EM officials have to make a better case for securing a more reliable share of the funds already available to municipalities. These funds are within the scale of efficiency improvement from other municipal budget sectors, in particular governance and administration.
- ix. Municipalities with poor air quality as identified by the DEA should be able to use the MIG to purchase emission monitoring stations. The poor are most affected by poor air quality through respiratory illness, and limited ability to move to cleaner areas. The poverty implications of poor air quality should be recognized.
- x. The DEA and SALGA should consider the development of sector based Implementation Protocols (for example, Coastal Management, or Air Quality), rather than one integrated Implementation Protocol, aimed at the entire EM basket. Another possible approach would be to prioritize the development of the sector based protocols with the SIPs.

## **5.6. Conclusion: Making the case for the environmental function in local government**

The DEA's Local Government Support Strategy, developed in collaboration with SALGA in 2015, identified "limited funding and absence of fiscal mechanism(s) to

support environmental performance within municipalities” as a key issue within the enabling environment for EM in local government.

However, this funding shortage must be viewed in the context of the entire municipal budget. As was demonstrated in the earlier section, EM costs account for a tiny fraction of municipal expenditure (around 1%), even where EM activities account for a greater proportion of the municipal responsibilities, as in the case of various District Municipalities.

However, **if there isn’t a problem of the quantity of funding being transferred, it may be a case of misallocation of available funds.** Environmental management is generally not recognized as a priority service for budget allocations in municipalities. Because EM is not recognised as a “basic” municipal function, EM funds are generally among the first to be cut. This requires EM staff to advocate strongly among councillors, finance, and other departments about the value of their services.

The true shortage is one of skills, human resources, and of a lack of appreciation for the environment in terms of funding priorities. Local Government has to make a better case for securing a better, more reliable share of the funds already available to municipalities. These funds are within the scale of efficiency improvement from other services, in particular the trading services.

This lack of adequate resource support has led to the following:-

- Non prioritization of environmental functions;
- Insufficient allocation of funds to environmental performance;
- Deployment of differently skilled individuals to manage environmental performance; and
- Poor environmental performance of municipalities

It is therefore important that full cost accounting services be implemented for all municipalities, thus enabling them to account for all costs and expenditures for environmental management operations and maintenance. This should cover air quality, water quality sampling and analysis, waste collection, transportation, landfill, street cleansing, fee collection, debt payment and depreciation at a minimum. This will enable municipalities to:-

- Plan more accurate budgets;

- Set realistic tariff charges and rates (most applicable to solid waste collection, but also for the processing of AQ licenses); and
- Collect more revenue.

SALGA foresees the development of a Legal or Implementation Protocol, in terms of section 35 of the Intergovernmental Relations Framework Act, 13 of 2005, as a necessary mechanism for formal devolution of the environmental function to enshrine concurrency across all three spheres of government. An Implementation Protocol may be developed by organs of state when, *inter alia*, such Protocol will materially assist national and/or provincial government in complying with its constitutional obligations to support the local sphere of government or to build capacity in that sphere.

It is suggested that the relevant national and provincial departments referred to in the Environmental Legal Framework consider the roles and responsibilities of local government, as depicted in this Framework, which should form the basis for intergovernmental consultation towards the development of an Implementation Protocol.

The draft Environmental Legal Framework serves as a basis and baseline for national government and local authorities to engage and negotiate an Implementation Protocol, or as recommended in the Discussion Paper, sector based Implementation Protocols. More importantly, though, the prescript that funds follow function represents a compelling argument for SALGA, with the support of the NCOP, to spearhead initiatives to revisit the grants and fiscal frameworks in light of embedding enabling conditions for local government's contribution to environmental governance.

**Prepared by:**

Telly Chauke

SALGA Specialist: Environmental Management & Climate Change

Email: [ichauke@salga.org.za](mailto:ichauke@salga.org.za)

## 6. Intergovernmental Fiscal Relations Review: Fiscal Allocations for Development Local Government

### 6.1. Background

Section 214(1)(a) of the Constitution of South Africa requires an Act of Parliament to provide for “the equitable division of revenue raised nationally among the national, provincial and local spheres of government”.<sup>124</sup>

In addition, Section 227 of the Constitution states that provincial and local government is entitled to an equitable share of nationally raised revenue to enable it to provide basic services and perform its allocated functions. The equitable share is an unconditional transfer to provinces and municipalities.

The share of nationally raised revenue allocated to the provincial and local government spheres through the equitable share is determined by the national budget process and endorsed by Cabinet; this is what is referred to as the vertical division of revenue. The provincial and local government equitable shares are determined using a formula, referred to as the horizontal division of revenue.

Local Government also receives additional allocations through conditional transfers, which is funding for specific purposes in support of national government priorities such as increased access to and the expansion of basic service infrastructure.

Local Government also has fiscal powers to raise own revenue more so than national and provincial governments. Thus it is important to emphasise that fiscal allocations are supplementary funding which is allocated to local government to be used in conjunction with own revenue to fulfil their constitutional mandate.

This review therefore focuses on fiscal allocation trends and municipal own revenue generation capacity as it relates to fiscal viability.

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<sup>124</sup> Constitution of the Republic of South Africa, 1996.



## 6.2. Local Government Fiscal Allocations

Local Government fiscal allocations is comprised of both the local government equitable share of nationally raised revenue and local government conditional transfers.

As stated above the local government equitable share is determined using a formula, known as the Local Government Equitable Share Formula (LGES). The LGES formula underwent an extensive review process during 2012, which was conducted in three phases.<sup>125</sup>

Phase 1 proposed revisions to the principles and objectives and these were presented to municipalities. Phase 2 used the revised principles and objectives to formulate a new structure for the formula. The proposed new structure for the formula was generally accepted by municipalities and endorsed by the Budget Forum in October 2012. Phase 3 constructed a new formula using data from the 2011 Census results and incorporated proposals from municipalities where possible.

The new formula is based on the principles of: objectivity, fairness, dynamism (that is the ability to respond to changes), transparency, simplicity, predictability and stability.<sup>126</sup> The new formula further aims to enable municipalities to provide basic services to poor households and enable municipalities with limited resources to afford basic administrative and governance capacity to perform core municipal functions.

The new formula is comprised of five components as follows:

- A basic services component which provides for the cost of free basic services to poor households;

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<sup>125</sup> Budget Review (2013), p. 35.

<sup>126</sup> Ibid. (2013), p. 35.

- An institutional component which subsidises for basic municipal administrative costs;
- A community services component which makes provision for core municipal services not included under basic services;
- A revenue adjustment factor which provides funds only to municipalities with limited potential to raise their own revenue; and
- A correction and stabilisation factor, which ensures that the formula's guarantees can be met, and levels out changes in allocations.<sup>127</sup>

The advantage of the new formula is that it is more redistributive than the old formula. The old formula produced allocations per poor household that resulted in municipalities with the least ability to raise own revenue receiving the lowest allocations. The new formula structure is also more transparent with realistic projections in respect of cost estimates for basic services and therefore capable of updating data.

A major challenge with the new formula is to ensure that once funds reach municipalities they are used to deliver services that benefit poor households. The new formula also imposed major changes to the allocations of some individual municipalities due to the updated 2011 Census data. For example, the allocations of some municipalities will decline and others will receive increased allocations. The new formula was therefore phased in over a five-year period to allow affected municipalities to adjust their budget planning and expenditure, accordingly.<sup>128</sup>

The review of the local government equitable share formula did not respond/resolve all aspects of funding raised by municipalities, but should be

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<sup>127</sup> Budget Review (2013), p. 36.

<sup>128</sup> Ibid. (2013), pp. 42-43.

viewed as an attempt to ensure a more equitable distribution of nationally- raised revenue.

A review is also currently underway with regard to local government conditional infrastructure grants. The purpose of the review is to assess whether the current local government infrastructure grant system is optimally structured to facilitate the efficient rollout of municipal infrastructure.<sup>129</sup> The assessment of the current infrastructure grant system has two dimensions:

- The first is to articulate the principles behind the municipal infrastructure grant system and assess whether the current system of infrastructure funding effectively responds to government's policy goals. For example, the review will assess if a certain sector is underfunded and if the split between targeting backlogs versus economic growth is appropriate given the existing government policies.
- The second dimension is to evaluate how efficiently public funds are being used to meet these policy objectives, largely guided by data analysis of the performance of individual infrastructure grants – thereby building on the analysis of the system's effectiveness as a whole. Questions to be answered in this regard include, are the grants easy to spend, suitably differentiated between rural and urban areas, and do they come with sufficient non-financial support?<sup>130</sup>

The review aims to recommend implementable changes to improve the functioning of the local government infrastructure grant system. Some recommendations have already been implemented and effected in the 2016 Budget as follows:

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<sup>129</sup> National Treasury (2013), p. 1.

<sup>130</sup> National Treasury (2013), p. 1.

- Municipalities will be allowed to use conditional grant funding to repair and refurbish existing infrastructure, which will result in improved services and securing future revenue streams;
- The number of water and sanitation grants will be reduced from four to two to better align water and sanitation projects, namely, the *Regional Bulk Infrastructure Grant* that funds large bulk water and sanitation projects and the new *Water Service Infrastructure Grant*, which funds the construction and the refurbishment and extension of reticulation schemes and on-site services in rural municipalities.
- The *Municipal Infrastructure Grant* will be amended to require secondary cities to plan how infrastructure investments will contribute to long-term urban development that alleviates the effects of apartheid spatial patterns. In addition, the provision introduced in 2015/16 that allows for MIG funds to be used for road refurbishment if certain conditions are met, will be strengthened and linked to the use of road condition and usage data collected through the *Rural Roads Asset Management Grant*; and
- A new formula for calculating the *Public Transport Network Grant* will be introduced over the 2016 MTEF, as the previous formula incentivised cities to plan very expensive transport networks in the hope of receiving more funding. The new formula should provide greater certainty about the national funding they can expect and encourage cities to plan and develop transport networks that is affordable to operate in the long-term.

Source: Division of Revenue (2016), pp. 100 and 101.

The sections that follow provides an overview of local government fiscal allocations trends, specifically equitable share allocations and a select number of conditional infrastructure grant allocations (i.e. those related to basic service infrastructure).

### **6.3. Local Government Equitable Share Allocation Trends**

This section provides an overview for local government equitable share allocations for the period 2009/10 to 2018/19.

The local government equitable share amounted to R23.8 billion in 2009/10 and increased to R62.7 billion by 2018/19. The local government equitable share allocations grew at an average rate of 11.4 per cent for the period under review.

The largest increase in the local government equitable share amounted to R7.8 billion or 18.8 per cent between 2014/15 and 2015/16. Other significant increases include - an increase of R7.4 billion or 13.4 per cent between 2017/18 and 2018/19; and an increase of R6.7 billion or 18.8 per cent between 2009/10 and 2010/11 (see Table 1 below).

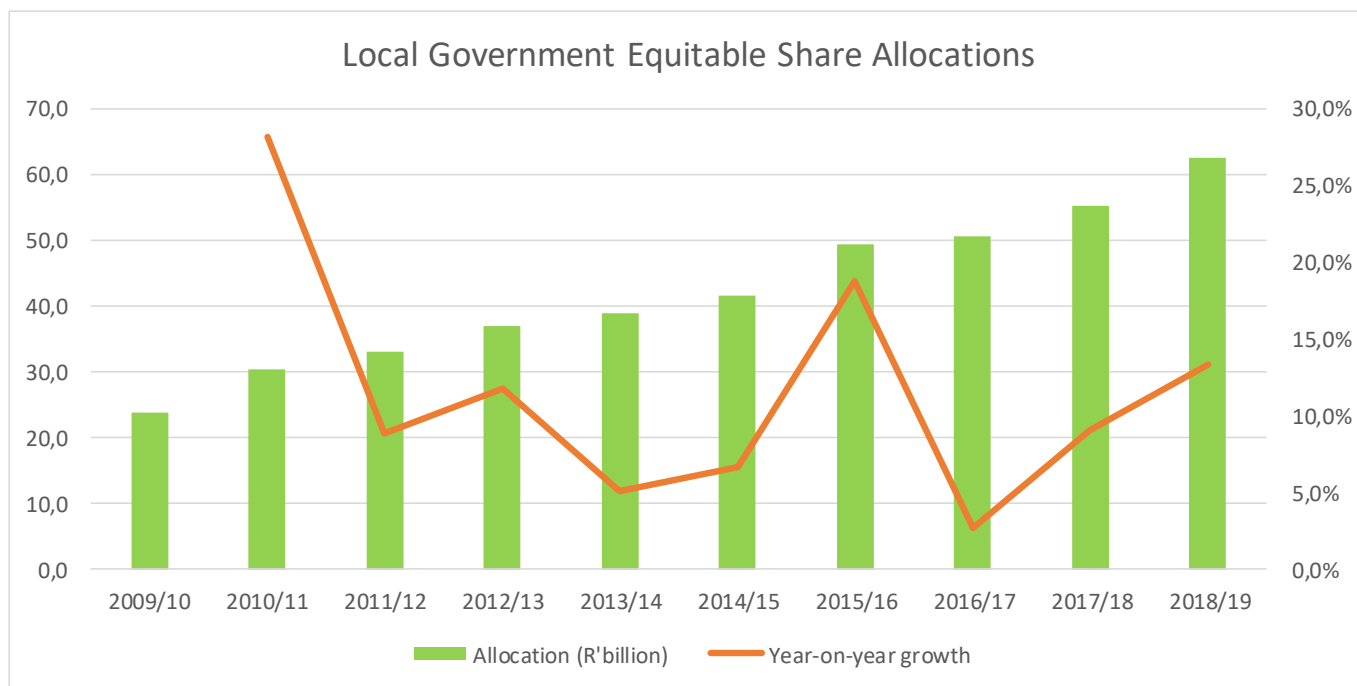
**Table 1: LG Equitable Share Allocations and Growth Rates for the period 2009/10 to 2018/19**

<b>Local Government Equitable Share</b>	<b>Allocation (R'billion)</b>	<b>Year-on-year growth</b>
2009/10	23,8	
2010/11	30,5	28,2%
2011/12	33,2	8,9%
2012/13	37,1	11,7%
2013/14	39,0	5,1%
2014/15	41,6	6,7%
2015/16	49,4	18,8%
2016/17	50,7	2,6%
2017/18	55,3	9,1%
2018/19	62,7	13,4%

**Source: Budget Review (2013-2018)**

Figure 1 below illustrates the local government equitable share allocation trends for the period 2009/10 to 2018/19.

**Figure 1: LG Equitable Share Allocation Trends for the period 2009/10 to 2018/19**



**Source: Budget Review (2013-2018)**

The local government equitable share as a share of nationally raised revenue<sup>131</sup> amounted to 3.4 per cent in 2009/10 and increased to 4.7 per cent by 2018/19 (see the sixth column of Table 2 below).

Local government's share of nationally raised revenue may appear insignificant but it is important to note that local government also receives additional transfers through conditional grant allocations from national and provincial governments. When accounting for conditional grant transfers the local government share of nationally raised revenue amounted to 7.5 per cent in 2009/10 and increased to 8.9 per cent by 2018/19(see the last column of Table 2 below).

<sup>131</sup> The total nationally raised revenue available to be divided among the three spheres of government.

**Note on the vertical division of nationally raised revenue:**

- Local government's share of nationally raised revenue is determined through the national budget process, which is endorsed by Cabinet. This is what is referred to as the vertical division of revenue (i.e. the revenue, which is available after making provision for national government debts-service cost and the contingent reserve).
- The total nationally raised revenue available to be divided among the three spheres of government has declined over the last few years due to the need for government to implement fiscal austerity measures as government debt-servicing cost increased.
- Stated differently, the share of government debt and debt-interest expenditure as a share of the national budget increased and will continue to increase over the 2018 Medium Term Expenditure Framework (MTEF) as government debt matures, meaning the amount of revenue available to be divided among the three government spheres becomes significantly smaller than what was projected initially.

**Table 2: LG Equitable Share Allocations as a Share of Revenue raised nationally**

Financial Year	Equitable Share Allocation (R'billion)	Conditional Grant and General Fuel Levy Allocations (R'billion)	Total LG Transfers (R'billion)	Total Revenue raised nationally available for division btw three government spheres (R'billion)	Equitable Share as percentage of Total Revenue (%)	Total LG Transfers as percentage of Total Revenue (%)
2009/10	23,8	27,7	51,5	690,1	3,4%	7,5%
2010/11	30,5	30,3	60,8	739,6	4,1%	8,2%
2011/12	33,2	35,1	68,3	813,5	4,1%	8,4%
2012/13	37,1	39,0	76,1	877,2	4,2%	8,7%
2013/14	39,0	43,6	82,6	946,6	4,1%	8,7%
2014/15	41,6	46,0	87,6	1 017,1	4,1%	8,6%
2015/16	49,4	49,0	98,4	1 115,9	4,4%	8,8%
2016/17	50,7	52,1	102,8	1 158,9	4,4%	8,9%
2017/18	55,3	55,4	110,7	1 248,8	4,4%	8,9%
2018/19	62,7	55,8	118,5	1 324,1	4,7%	8,9%

Source: Budget Review (2013-2018)

#### 6.4. Local Government Infrastructure Grant Allocation Trends

This section provides an overview of a select number of infrastructure grants that are related to the provision of basic service infrastructure such as water, sanitation, energy and human settlements. These infrastructure grants include:

- *Municipal Infrastructure Grant* is specifically aimed at providing capital finance for basic service infrastructure backlogs (i.e. water, sanitation, roads, refuse disposal sites and public facilities etc.) for poor households in all non-metropolitan municipalities.
- *Water Services Infrastructure Grant* is aimed at accelerating the delivery of clean water and sanitation facilities to communities that do not have access to basic water services by funding the construction of new infrastructure and the refurbishment and extension of existing water schemes.
- *Regional Bulk Infrastructure Grant* funds the bulk infrastructure needed to provide reticulated water and sanitation services to individual households.
- *Integrated National Electrification Grant* funding is a capital subsidy for municipalities to electrify poor households and fund bulk infrastructure to ensure the constant supply of electricity.
- *Urban Settlements Development Grant* is allocated to metropolitan municipalities to supplement their capital budgets to develop infrastructure for municipal services and upgrades to informal settlements.
- *Integrated City Development Grant* aims to incentivise metropolitan municipalities to focus their use of infrastructure investment and regulatory instruments to achieve a more compact and efficient urban spaces.
- *Neighbourhood Development Partnership Grant* aims to support metropolitan municipalities in developing and implementing urban network plans, specifically through the creation of a platform for third-party public and private investment, which will improve the quality of life in township urban hubs.

Source: Division of Revenue (2018), pp.101-106.



The infrastructure grants reported in this section include both direct transfers and indirect<sup>132</sup> transfers for the period 2012/13 to 2018/19.<sup>133</sup> The *Municipal Infrastructure Grant* is the largest grant in terms of Rand value of all the municipal infrastructure grants in the transfer system. The *Municipal Infrastructure Grant* allocation grew at an average rate of 1.6 for the period under review (see last column in Table 3 below).

The *Integrated City Development Grant* allocation grew the fastest at an average rate of 49 per cent, increasing from R40 million in 2013/14 to R294 million by 2018/19. The *Water Services Infrastructure Grant (direct portion)* had the next highest average growth rate at 35.5 per cent for the period under review, while the *indirect portion* of this grant funding grew at an average rate of 10.3 per cent.

The other infrastructure grants reported on in this section grew at an average rate of between 0.7 per cent and 9.6 per cent for the period under review, as follows:

- *Integrated National Electrification Grant (direct portion)* grew at an average rate of 8.8 per cent, while the *indirect portion* grew at an average rate of 9.6 per cent;
- *Urban Settlements Development Grant* grew at an average rate of 7.3 per cent;
- *Neighbourhood Development Partnership Grant (direct portion)* grew at an average rate of 0.7 per cent, while the *indirect portion* declined at an average rate of 15.6 per cent; and the
- *Regional Bulk Infrastructure Grant (indirect portion)* grew at an average rate of 2.2 per cent. A portion of the *Regional Bulk Infrastructure Grant* allocation was made a direct transfer as of 2016/17. The *direct portion* of this grant grew at an average rate of 2.9 per cent from R1.85 billion in 2016/17 to R1.96 billion in 2018/19.

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<sup>132</sup> National departments on behalf of municipalities that lack the capacity to spend the grant funding and implement projects spend indirect grant allocations.

<sup>133</sup> Note that the review period for the analysis of infrastructure grant allocation trends starts with the 2012/13 financial year and not 2009/10 due to the availability of data as a number of water and sanitation grants were rationalised to form the new *Water Services Infrastructure Grant*.

**Note:** As can be observed in the second last column of Table 3, a number of infrastructure grant allocations declined in 2018/19. A number of local government infrastructure grant allocations were reduced in the 2018 Budget due to fiscal austerity measures (as announced in the 2017 Medium Term Budget Policy Statement). The reductions were weighted towards grants that have a history of underspending or infrastructure grants that can defer implementation to a later date.

Source: Division of Revenue Bill (2018), pp. 101-109.

**Table 3: Local Government Infrastructure Grant Allocation Trends**

Local Government Infrastructure Grants (R'million)	Outcome								Revised Estimate		Estimate		Average Growth Rate	
	2012/13 Allocation	2013/14 Allocation	Year-on- year growth	2014/15 Allocation	Year-on- year growth	2015/16 Allocation	Year-on- year growth	2016/17 Allocation	Year-on- year growth	2017/18 Allocation	Year-on- year growth	2018/19 Allocation		Year-on- year growth
<b>Direct transfers</b>	<b>23 562</b>	<b>26 691</b>	<b>13,3%</b>	<b>28 031</b>	<b>5,0%</b>	<b>30 360</b>	<b>8,3%</b>	<b>33 239</b>	<b>9,5%</b>	<b>35 509</b>	<b>6,8%</b>	<b>34 832</b>	<b>-1,9%</b>	<b>6,7%</b>
Municipal Infrastructure Grant	13 879	14 224	2,5%	14 745	3,7%	14 956	1,4%	14 914	-0,3%	15 891	6,6%	15 288	-3,8%	1,6%
Water Services Infrastructure Grant	562	1 129	100,9%	1 051	-6,9%	2 035	93,6%	2 831	39,1%	3 329	17,6%	3 481	4,6%	35,5%
Regional Bulk Infrastructure Grant								1 850		1 865	0,8%	1 957	4,9%	2,9%
Integrated National Electrification Grant	1 151	1 635	42,1%	1 105	-32,4%	1 980	79,2%	1 946	-1,7%	2 087	7,2%	1 904	-8,8%	8,8%
Urban Settlements Development Grant	7 392	9 077	22,8%	10 285	13,3%	10 554	2,6%	10 839	2,7%	11 382	5,0%	11 306	-0,7%	7,3%
Integrated City Development Grant		40		255	537,5%	251	-1,6%	267	6,4%	292	9,4%	294	0,7%	49,0%
Neighbourhood Development Partnership Grant	578	586	1,4%	590	0,7%	584	-1,0%	592	1,4%	663	12,0%	602	-9,2%	0,7%
<b>Indirect transfers</b>	<b>4 819</b>	<b>5 704</b>	<b>18,4%</b>	<b>7 715</b>	<b>35,3%</b>	<b>9 143</b>	<b>18,5%</b>	<b>7 261</b>	<b>-20,6%</b>	<b>7 700</b>	<b>6,0%</b>	<b>6 780</b>	<b>-11,9%</b>	<b>5,9%</b>
Water Services Infrastructure Grant	337	247	-26,7%	732	196,4%	659	-10,0%	298	-54,8%	852	185,9%	608	-28,6%	10,3%
Regional Bulk Infrastructure Grant	2 523	3 261	29,3%	4 005	22,8%	4 858	21,3%	3 422	-29,6%	2 974	-13,1%	2 881	-3,1%	2,2%
Integrated National Electrification Grant	1 879	2 141	13,9%	2 948	37,7%	3 613	22,6%	3 526	-2,4%	3 846	9,1%	3 262	-15,2%	9,6%
Neighbourhood Development Partnership Grant	80	55	-31,3%	30	-45,5%	13	-56,7%	15	15,4%	28	86,7%	29	3,6%	-15,6%
<b>Total</b>	<b>28 381</b>	<b>32 395</b>	<b>14,1%</b>	<b>35 746</b>	<b>10,3%</b>	<b>39 503</b>	<b>10,5%</b>	<b>40 500</b>	<b>2,5%</b>	<b>43 209</b>	<b>6,7%</b>	<b>41 612</b>	<b>-3,7%</b>	<b>6,6%</b>

Source: Division of Revenue (2016 -2018)

## 6.5. Fiscal Viability of Local Government

The following section will explore the municipal fiscal framework and it will also give perspective on the fiscal challenges facing municipalities, trends in the income and expenditure by municipalities as well as trends in their borrowing, creditors and debtors.

### 6.5.1. A Brief Overview of the Fiscal Framework of Municipalities

In order for a municipality to provide the necessary public goods and services that will eventually lead to economic development, it needs to be financially sound. The fundamental function of municipalities, which is service delivery is hampered due to mismanagement of funds and a host of other factors. This has an enormous impact on the residents particularly the poor who depend on the essential services.

The financial viability of a municipality plays a pivotal role in the efficiency of service delivery.

According to the National Treasury, financial viability refers to the sustainability of the municipal budget, and whether the municipality is able to sustainably meet its expenditure commitments from its own revenues and transfers. According to this definition, a municipality should be in a position where it is able to meet its mandate with its available means and in a sustained manner. The Local Government Fiscal Framework goes a step further and defines financial viability as an act of balancing and managing revenue in conjunction with expenditure responsibilities. If this can be implemented successfully then a municipality is said to be financially viable.<sup>134</sup> According to the Constitution, municipalities are allowed to be transfer dependent even though they are expected to also maintain an acceptable level of financial viability.

Rural municipalities are the most vulnerable and susceptible to finance non-viability. Revenue transfers from national and provincial governments are hardly sufficient and despite this, the Constitution expects municipalities to show fiscal effort in raising revenue in line with their fiscal capacity. This also applies to the government when they make allocations to municipalities in terms of the equitable share. Government is expected to take the following into account as per section 214(2) of the Constitution:

- Must have regard for the fiscal capacity of a municipality – i.e. municipalities with low fiscal capacity should get a more generous share than municipalities with high fiscal capacity (all other things being equal);
- May not favour a municipality that does not raise own revenue commensurate with its fiscal capacity and tax base – i.e. municipalities that fail to show fiscal effort cannot look to national government for additional funding; and

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<sup>134</sup> FFC (2016), p. 7.

- May not discriminate against a municipality that shows fiscal effort, and collects own revenues in line with or even exceeding normal evaluations of its fiscal capacity.<sup>135</sup>

### 6.5.2. Fiscal Challenges Faced by Municipalities

Many municipalities are heavily burdened by debt to their creditors amounting to R17.4 billion, while only having R1.7 billion of the cash on hand. Most of the debt is owed to Eskom and several water boards. The debt undermines the financial sustainability of these state-owned enterprises as they are vulnerable to further downgrades by the likes of Fitch, Moody's as well as Standard and Poors. National and Provincial departments further exacerbate the dire financial position of local government due to outstanding debt however, the Department of Public Works is looking into settling these debts.<sup>136</sup>

Non-payment of creditors is a symptom of deeper underlying problems. These include weaknesses in revenue collection, and underinvestment in maintenance and renewal, which compromises the reliability of basic services. Too many municipalities also fail to adopt credible budgets, meaning that even if they stick to their budgeted plans, they will not be financially sustainable.<sup>137</sup>

District municipalities play a pivotal role in the functioning of the local municipalities in their area. They are also responsible for providing certain services directly. The abolishment of the Regional Services Council and Joint Service Board levies in 2006 placed pressure on district municipalities as that was a major source of revenue but has since been replaced by the Regional Services Council/Joint Service Board levies replacement grant to alleviate the pressure on district municipalities. Government is in the process of introducing another funding model once the national Department of Cooperative Governance (DoCG) has approved the functional role. The growth rate of allocations to the wealthiest district

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<sup>135</sup> National Treasury (2011), p. 37.

<sup>136</sup> Budget Review (2018), p. 77.

<sup>137</sup> Ibid. (2018), p. 77.

municipalities will be reduced so that districts with the smallest allocations (which tend to be in very poor areas) will receive increased funding.<sup>138</sup>

## 6.6. Trends in Income and Expenditure of Municipalities

This section looks at the trends relating to income and expenditure for all municipalities. It is necessary to distinguish between income received for the operations of municipalities as well as the expenditure of the latter. The same is applicable for capital income and expenditure. The purpose is to establish whether municipalities are spending more on items that will drive service delivery and economic growth or more money is spent on the operations and administration of municipalities.

From Table 4 below it is evident that service charges is the main sources of revenue followed by government grants and these amounts are expected to increase over the medium term. The other<sup>139</sup> own revenue component is the least contributor and is expected to increase by only R3.2 billion over the MTEF period. Looking at the operating expenditure items, other expenditure items, materials and bulk purchases take up the largest portion of the operating budget, followed by employee costs.

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<sup>138</sup> Budget Review (2017), p. 76.

<sup>139</sup> Note that income and expenditure items categorised as “other “ have not been defined.

**Table 4: Consolidation of Operating Revenue and Expenditure of all Municipalities 2017/18-2019/20**

<b>Operating Revenue and Expenditure (R' thousand)</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
<b>Operating Revenue Source</b>	<b>383 995 946</b>	<b>408 598 139</b>	<b>437 238 196</b>
Property rates	58 073 374	62 281 329	66 638 600
Service charges	173 058 621	186 759 347	200 864 157
Government grants	118 013 406	123 282 719	131 669 418
Other own revenue	34 850 545	36 274 744	38 066 021
<b>Operating Expenditure Item</b>	<b>346 274 685</b>	<b>369 510 916</b>	<b>394 360 300</b>
Employee costs	99 752 194	107 252 005	114 849 401
Finance charges	9 722 678	10 561 789	11 206 926
Materials and bulk purchases	97 064 944	103 962 947	111 865 061
Other expenditure	139 734 870	147 734 176	156 438 913
<b>Surplus/deficit</b>	<b>37 721 260</b>	<b>39 087 223</b>	<b>42 877 896</b>

**Source: National Treasury (2018)**

Table 5 below shows the capital revenue and expenditure items for all municipalities. Grants and subsidies is the largest source of capital revenue for municipalities. Capital revenue from other income sources represents the second largest income source for municipalities but is expected to decrease at the close of 2019/20 financial year. Finance from external loans is expected to decrease in 2018/19 but will increase again in 2019/2020. There is a downward trend in the income received from public contributions over the medium term and this may be counteracted by the expected increase in the grants and subsidies from national and provincial government.

**Table 5: Consolidation of Capital Revenue and Expenditure of all Municipalities 2017/18-2019/20**

<b>Capital Revenue Source and Expenditure Items (R' thousand)</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
<b>Capital Revenue Source</b>	<b>70 623 096</b>	<b>69 743 401</b>	<b>72 778 856</b>
External loans	13 276 655	12 957 197	14 059 536
Public contribution and Donations	831 432	728 163	620 359
Grants and subsidies	42 207 765	41 530 375	43 988 252
Other	14 307 244	14 527 666	14 110 709
<b>Capital Expenditure Item</b>	<b>70 623 096</b>	<b>69 743 401</b>	<b>72 778 856</b>
Water and Sanitation	22 112 500	22 406 679	23 150 584
Electricity	7 559 240	77 83 345	8 806 400
Housing	1 790 023	1 608 895	1 638 016
Roads and storm water	14 200 214	13 723 286	14 716 226
Other	24 961 119	24 221 196	24 467 631
<b>Surplus/deficit</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Source: National Treasury (2018)**

It is worth mentioning that municipalities are spending more on operating expenditure items compared to capital expenditure items that are supposed to address basic and social service infrastructure particularly in municipalities that have a large number of basic service backlogs. Operating expenditure for the year 2019/20 is expected to be R321.6 billion more compared to that of capital expenditure projected for 2019/20. This means that municipalities are spending more on salaries, material and bulk purchases.

**Table 6: Total Expenditure by Municipalities**

<b>Total Expenditure (R'thousand)</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
Operating Expenditure Item	346 274 685	369 510 916	394 360 300
Capital Expenditure Item	70 623 096	69 743 401	72 778 856
<b>Total</b>	<b>416 897 781</b>	<b>439 254 317</b>	<b>467 139 156</b>

**Source: National Treasury (2018) and own calculations**

## 6.7. Trends in Municipal Borrowing, Creditors and Debtors

Municipalities have budgeted to borrow R13.3 billion for the 2017/18 municipal financial year. This is an increase of R1.3 billion from the previous financial year. When a comparison is done on the budgeting trend for the previous years, as seen in Table 7 below it is expected that municipalities may downwardly adjust their borrowing budgets for the current year. An astounding trend observed is that municipalities have been borrowing less than 80 percent of their budgeted projections. This trend has a negative effect on their capital budget expenditure. The actual borrowing trend may be attributed to high borrowing costs or municipalities could be opting to replace borrowing with own revenue as it becomes available. This would be a good practice going forward as more funds can be directed to the core business of municipalities, which is service delivery.<sup>140</sup>

**Table 7: Municipal Budgeted Borrowings**

<b>Borrowings (R'thousand)</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/13</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2017/18</b>
Original budget	9 631 795	9 728 855	12 038 295	12 155 568	12 015 730	13 327 264
Adjusted budget	9 273 438	9 747 836	12 033 281	11 674 332	11 602 644	-
Actuals	6 490 000	7 583 000	9 357 000	9 222 000	8 099 900	908
<b>Actual borrowings as a percentage of Adjusted budgeted borrowings</b>	<b>70%</b>	<b>78%</b>	<b>78%</b>	<b>79%</b>	<b>70%</b>	<b>0%</b>

**Source: National Treasury (2018)**

Table 8 below shows the different category of municipal creditors and the amounts owing to each creditor for the period 2014/15 to 2016/17. Municipalities owed creditors a total of R 32.5 billion in 2014/15, which increased to R43.8 billion by 2016/17. Of the 2016/17 amount of R43.8 billion – R1.97 billion or 4.5 per cent is older than 30 days, R2.05 billion or 4.7 per cent is older than 60 days and R17.33 billion or 39.5 per cent is older than 90 days. It is therefore evident that municipalities are struggling to pay their creditors within the 30 days timeline as prescribed by the Section 65(2)(e) of the Municipal Financial Management Act (No.56 of 2003).

<sup>140</sup> Municipal Borrowing Bulletin (2017)



The largest amounts are owed to the following creditors: Bulk Electricity (i.e. Eskom), Bulk Water (i.e. Water Boards) and Trade Creditors for example, small and medium enterprises (see Table 8).

**Table 8: Municipal Creditors**

<b>Creditors (R'thousand)</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>
Bulk Electricity	9 852 826	13 496 507	16 056 088
Bulk Water	4 111 290	4 813 394	6 862 947
PAYE deductions	310 382	347 856	454 251
VAT (output less input)	-38 242	-59 834	24 840
Pensions / Retirement	325 544	403 729	457 469
Loan repayments	2 299 728	2 899 577	1 409 765
Trade Creditors	9 278 233	10 387 130	11 945 531
Auditor-General	214 015	232 818	265 419
Other	6 178 729	6 392 589	6 342 694
<b>Total</b>	<b>32 532 505</b>	<b>38 913 766</b>	<b>43 819 004</b>

**Source: National Treasury (2015-2017)**

An analysis of municipal debtors show that quite a large sum of money is owed to municipalities in terms of service charges (i.e. water and electricity) and property rates. Total debt owed to municipalities in 2014/15 amounted to R106.6 billion, which increased to R128.3 billion by 2016/17. Households account for the largest share of municipal debt over all three years of the period under review (see Table 9 below). Organs of state such as national and provincial departments make up approximately 5 per cent of all municipal debt for the period under review.

In 2016/17, a total R103.5 billion or 80.6 per cent of the R128.3 billion owed was older than 90 days. There is therefore a high likelihood that this debt would not be recovered and would have to be written off as bad debt, meaning a loss of essential revenue and cash flow for municipalities.

**Table 9: Municipal Debtors**

<b>Debtors (R'thousand)</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>
Organs of State	4 781 566	6 080 975	7 408 822
Commercial	23 221 114	25 819 370	27 136 585
Households	68 185 162	74 027 406	83 149 531
Other	10 363 942	7 612 560	10 653 815
<b>Total</b>	<b>106 551 784</b>	<b>113 540 311</b>	<b>128 348 753</b>

**Source: National Treasury (2015-2017)**

## 6.8. Conclusion

Municipalities are under intense fiscal pressures, which can mainly be attributed to the accumulation of debt owed to creditors such as Eskom and Water Boards, as well as the non-collection of revenue from property rates and service charges.

Municipalities experience a number of challenges in collecting property rates and services charges, which are related to disputes around billing and inadequate implementation of revenue and debt management policies. The issue is not only confined to the collection of revenue due but also in generating revenue, particularly for rural municipalities that are characterised by high poverty levels, high unemployment, an increasing indigent population resulting in a lower tax base. Thus, more and more municipalities are becoming reliant on fiscal transfers (i.e. equitable share and conditional grants) to fulfil their basic service delivery mandate.

Fiscal transfers from the national government and provincial governments are however supplementary funding, while own revenues generated by municipalities lies at the core of the local government funding model.

Municipalities also need to address the issue of high operating costs within the municipality and ensure adequate funding is set aside for infrastructure spending, as this would attract external investment, contribute to local economic development and ultimately reduce unemployment and poverty levels.

## 6.9. Recommendations:

- The current fiscal reviews underway should aim to ensure that:
  - 1) The equitable share formula is responsive to socio-economic circumstances (i.e. high poverty and unemployment levels, high indigent population levels and higher cost of delivering a service due to distances etc) of more rural municipalities compared to municipalities that have a sufficient tax base from which it can generate revenue. The previous review made a first attempt to divert more funding towards rural municipalities, however, the formula is still heavily population-driven and is therefore more responsive to changes in population than changes in socio-economic indicators; and
  - 2) A larger share of conditional infrastructure grant transfers should be directed towards municipalities that lack access to credit markets to raise capital for essential service infrastructure.
    - National Treasury should indicate by when the review of the local government infrastructure grants will be concluded and the findings published.
- Municipalities must increase their tax base by developing and implementing Local Economic Development Plans (LEDs).
  - Salga and the provincial Departments of Economic Development must report on the support provided to municipalities in terms of developing and implementing their LED strategies.
- National and provincial departments must ensure that they pay their municipal debt.

- The Department of Cooperative Governance needs to facilitate the debt payment agreements between national and provincial departments and municipalities. Further, these agreements should be enforceable or have some form of penalty, if a national or provincial department fails to abide with the terms of the agreement.
- National and provincial government need to provide appropriate support to local government to address financial constraints.
- National Treasury proposed a new Municipal Restructuring Grant that will be introduced in 2019/20 to support financial recovery plans of municipalities that are financially distressed. How will this grant funding be any different to other municipal capacity building grants that are currently operational and initiatives such as the Local Government Turnaround Strategy (LGTAS 2009) and the Back-to Basics?
- Municipalities need to implement appropriate revenue and debt management policies to ensure that the maximum revenues are collected to improve cash flow, which in turn will enable them to pay their creditors. The withholding of equitable share transfers is not an appropriate response and results in third parties being affected, namely, the municipal residents end up being punished and not municipal officials that may have acted negligently.
- The Department of Cooperative Governance in collaboration with Salga and provincial Treasuries should do a review of the revenue and debt management policies of all municipalities, particularly those that fail to collect revenue in line with their fiscal capability. The aim of the review should be to determine whether the policies and systems are appropriate.
- Accountability by the municipal administration needs to be improved by ensuring that a municipality fulfils its fiscal capacity and is sanctioned appropriately when it fails to do so.

- This requires effective oversight by the relevant authorities, such as Municipal Councils, Salga, National Treasury and provincial Treasuries, the national Department of Cooperative Governance and provincial departments, Provincial Legislature and the National Council of Provinces.

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## **7. Intergovernmental Fiscal Relations Review: Fiscal Allocation for the Developmental Local Government Focusing on Inadequate Funding for Municipal Health Services**

### **7.1. Executive Summary**

Amongst the objects of local government is to promote safe and healthy environment. The delivery of Municipal Health Services (MHS) is one such vehicle which local government can use to realise this object however with the current challenges experienced in the sector mainly as a result of inadequate funding or lack thereof this might not be realised.

The situation as it has a potential of compromising the quality of life through emergence of preventable diseases and therefore require urgent intervention.

One such intervention is an increased allocation of municipal health services which can be achieved through the review of the current funding arrangement.

Despite this underlying challenge Local government remain the sphere of government better positioned to deliver equitable and sustainable provision of municipal health services.

It is therefore recommended that national treasury objectively look at proposals on the increased allocation of municipal health services to assist municipalities to exercise their executive authority.

## 7.2. Introduction

Local government is currently experiencing challenges relating to the delivery of municipal services. One such service is municipal health services which can be defined as the health services delivered by local government and include Water quality monitoring, Food control, Waste management, Health surveillance of premises, Surveillance and prevention of communicable diseases, excluding immunizations, Vector control, Environmental pollution control, Disposal of the dead, and Chemical safety .

The challenges ranges from staffing, training and development of environmental health practitioners, equipment and office space however inadequate funding or lack thereof has been identified as a major challenge hindering the delivery of municipal health service by municipalities. This is largely due to the current local government equitable share funding formula which SALGA is advocating for its review to ensure sustainable and equitable provision of municipal health services.

## 7.3. Background

Historically, the services were rendered by local municipalities and provincial health departments with minimal services outside the cities and main towns. The Cabinet took a decision in October 2002 for Municipal Health Service to be devolved to the District Municipalities and the implementation date was supposed to be on 1<sup>st</sup> July 2004. In the Government Notice No. 826 dated 13 June 2003, the Minister of Local Government and Housing entrusted the delivery of MHS to Metro and District Municipalities. This necessitated the transfer of staff from local municipalities to district municipalities and from provinces to districts municipalities facilitated by the national Department of Health. The devolution was done without prior assessment by the Financial and Fiscal Commission on



the financial implications as per the provision of section 9(4) of the Municipal Systems Act (Act No 32 of 2000).

Given the above, the process of transferring of staff from both provinces and local municipalities to districts and metropolitan municipalities did not progress as much as it was anticipated because many districts did not have adequate funding or capacity to deliver municipal health services, mainly due to their limited revenue base. By the end of 2017 over 82% of all municipalities required by National Health Act to provide municipal health services had completed the devolution process with all metros having finalised the devolution process while only 79,5 % of the district municipalities had finalised the devolution process. The few remaining DMs are in the final stages of the completion of the devolution of MHS, with outstanding issues largely relating to funding still to be resolved.

#### **7.4. Legislative and Policy Framework**

Municipal Health Services (MHS) is a functional area of Local Government in terms Schedule 4(Part B) of the Constitution of South Africa (Act 108 of 1996.

Section 156 (1) of the constitution further state that A municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and any other matter assigned to it by national or provincial legislation while Municipal Structures Act, 1998 (Act No 117 OF 1998), section 84(1) (i) allocates the responsibility of delivering Municipal Health Services to District Municipalities (Category C) and not Local Municipalities (Category B).

Also Section 32(1) of the National Health Act 2003 (Act 61 of 2003) determines that every Metropolitan and district municipality must render appropriate and effective Municipal Health Services in their respective areas.

## 7.5. Institutional Arrangements and Role Players

While the delivery of municipal health services rests with local government different both the provincial and national sphere of government have a role to play towards the delivery of health services. Departments such as Health, Environmental Affairs, National Treasury among other department have an active role to play in the delivery of municipal health services by local government. Chapter 3, Sections 40 and 41 of the constitution of the republic of South Africa in particular relates to cooperative government & adherence to the principles of this sections by all spheres of government.

Section 154. (1) of the constitution provides for both the national government and provincial governments to by legislative and other measures support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. Also Section 155 ( 7 ) states that the national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

## 7.6. Key Challenges Relating to the Delivery of Municipal Health Services

Funding remain a major challenge faced by municipalities in the delivery of Municipal Health Services. Municipal Health Services is funded through municipal revenue and equitable share allocation under the community services component. The Financial and Fiscal Commission (FFC) recommended in 2001 that eight services including Municipal Health Services be funded through the LGES. Local government equitable share is divided among the country's 257 municipalities, using a formula (the horizontal division) to ensure objectivity.

The current equitable share allocation to district and metropolitan municipalities for municipal health and related services for the 2017/18 financial year is R 8.79 per household per month will be increased to R 9.31 in the 2018/19 financial year. The current funding arrangement has the following limitations:

- The equitable share formula provides for municipal health and related services however there is no clear explanation on which services are considered to be related to municipal health and as a result municipalities channel the funds to other essential services which may not be necessarily related to municipal health services at the expense of municipal health services.
- Municipalities are expected to fund most of their own administrative costs and cross-subsidies some services for indigent residents. Given the varied levels of poverty across South Africa, the formula does not expect all municipalities to be able to generate similar amounts of own revenue. A revenue adjustment factor is applied to the institutional and community services components of the formula to ensure that these funds assist municipalities that are least likely to be able to fund these functions from their own revenue however given the current economic climate almost all municipalities are no longer able to raise their own revenue.
- Based on this index, municipalities were supposed to be ranked according to their per capita revenue-raising potential. The top 10% of municipalities have a revenue adjustment factor of zero, which means that they do not receive an allocation from the institutional and community services components. 25% of municipalities with the lowest scores have a revenue adjustment factor of 100%, which means that they should receive their full allocation from the institutional and community services components. Municipalities between the bottom 25% and top 10% have a revenue adjustment factor applied on a sliding scale, so that those with higher percentage per capita revenue-raising potential receive a lower revenue adjustment factor and those with less potential receive a larger revenue adjustment factor.

Despite the above narrative, none of the municipalities are having the revenue adjustment factor of 100% and therefore no municipality is currently receiving

full allocation on institutional and community services components despite majority of municipalities no longer able to raise revenue. Furthermore none of the municipalities have a revenue adjustment factor of 90% and above while Eight (8) municipalities are having a revenue adjustment factor of zero which means they do not receive an allocation from the institutional and community services component with 7 other municipalities having a revenue adjustment factor of 25 and below.

- Furthermore the municipal health services allocation is not ring-fenced, the revenue adjustment factor add the institutional and community services components allocation together get added to get a total which get added to the total basic services component. Municipalities prioritise other basic services and councillor remuneration over municipal health services.

## **7.7. Implications of the Current Funding Arrangement to Local Government**

Inadequate funding of municipal health services has negative implication on the delivery of municipal health services by local government. The current funding arrangement has led to amongst others the backlog in the appointment of environmental health practitioners, failure to appoint environmental health graduate to do community services and emergence of foodborne outbreaks.

### **7.7.1. Backlog in the appointment of environmental health practitioners**

The National Environmental Health Policy (2003) advocates for the conformance of WHO guidelines which advocates for the appointment of at least 1(one) Environmental Health Practitioner for every ten thousands population 1:10 000 for provision of environmental health services or municipal health services in the case of Local Government. These are the officials tasked with the responsibility of delivery of municipal health services in line with the norm and standards for environmental health.

Not a single municipality in the country comply to this staffing provision largely because of budget constraints. Currently the total number of EHP's employed by local government is 1807. In 2017 South Africa's population was sitting at over 56 000 000, which means the required number of EHP's was about 5600 and therefore the shortfall was sitting at over 3700. By October 2017 only 32% of the required EHP's were employed by local government to render Municipal Health Services.

The table below reflect the provincial distribution of Local Government EHP's and the shortfall thereof.

<b>PROVINCE</b>	<b>MUNICIPAL EHPS</b>	<b>TOTAL NUMBER REQUIRED PER PROVINCE</b>	<b>SHORTFALL</b>	<b>VACANCY RATE (%)</b>
Eastern cape	243	699	456	65,2
Free State	88	283	195	68.9
Gauteng	530	1340	810	60.4
KwaZulu Natal	286	1106	820	74.1
Limpopo	129	580	451	77.7
Mpumalanga	83	433	350	80.8
North West	74	374	300	80.2
Northern Cape	53	119	66	55.5
Western Cape	321	628	307	48.9
<b>Total</b>	<b>1807</b>	<b>5562</b>	<b>3755</b>	<b>68%(Average)</b>

### 7.7.2. Community services for environmental health practitioners

The Minister of Health has on 24 April 2017, in terms of the Regulations relating to performance of Community Service by persons registering in terms of the above-mentioned Acts listed all public health districts as well as public health facilities within the said health districts in the Public Health Sector for the purposes of performing such community service.

A public health facility may also include a health service area or a health establishment in terms of the National Health Act, 2003, (Act 63 of 2003) under the control of a local, district and/or metropolitan municipality/ private health service provider, including any other area as may be determined by any Government Department for the purposes of placement of environmental health practitioners only. Currently municipalities are unable to fund community services posts due to limited budget. A total of 618 Environmental Health Graduates applied for 2018 intake, only 170 has been allocated while 448 remain unallocated.

### 7.7.3. Emergence of foodborne illnesses.

The country is currently facing the largest listeriosis outbreak in history which to date has resulted in 1 019 laboratory confirmed cases and 199 fatalities. Local Government and in particular environmental health practitioners appointed by municipalities play a leading and significant role in the prevention of forborne and waterborne diseases, which compromise the quality of life.

## 7.8. Recommendations

Given the above limitations of the current funding arrangements and their implications to the delivery of municipal health services by local government, it is

therefore recommended that the National Treasury consider the following proposals:

- a) Review the LGES vertical formula and its underlying assumptions
- b) Do away with the revenue adjustment factor on the community services component considering other variables such as district municipalities' s limited revenue base and macro-economic factors
- c) Municipal health services allocation be ring-fenced to ensure that it get used for its intended purposes
- d) Introduction of conditional grant for funding community services by local government

## 8. Municipal Finance

### 8.1. Introduction and Background

The South African Local Government Association (SALGA) is an organization mandated by the Constitution to assist in the comprehensive transformation of local government in South Africa from pre-1994 regime to the new dispensation under the country's first democratically elected government. Section 163 of the Constitution envisages an important role for organized local government and provides that an Act of Parliament must cater for the recognition of national and provincial organizations representing municipalities, and determine procedures by which local government may consult the national and provincial government, designate representatives to participate in the NCOP and nominate persons to the Finance and Fiscal Commission.

The SALGA 2017-2022 Strategic and Annual Performance Plan is a guiding document that the association intends to consult over the next five years in order to effectively execute its mandate.

Goal 3: Financial Sustainability of Local Government and Greater Fiscal Equity provides the following principles;

Goal Statement: Improvement of financial health of municipalities through:

- A revised local government fiscal framework,
- Effective revenue management and enhancement
- Access to alternative/innovative funding sources
- Sound financial management

Strategic Objectives:

- To develop and support the implementation of financial strategies for the long-term sustainability and viability of local government
- To support innovative revenue enhancement strategies for local government
- To strengthen financial management systems and controls



### 8.1.1. Macro view on Local Government Fiscal Architecture and Equitable Share (LGES)

In the 2018 budget, National Treasury is expecting an improved economic outlook for the country, and has revised higher its projections for economic growth. The government now sees the South African economy growing by an average of 1.65% during 2018-19 compared to an estimate of only 1.3% reported in October 2017 during the Medium-Term Budget Policy Statement (MTBPS). Similarly, the South African Reserve Bank (SARB) revised upward its economic growth projections to 1.5% for 2018-19 in its January monetary policy statement. These upward adjustments are premised partly on a perceived improvement in business and investor confidence over the past few months.

It is envisaged that this growth performance will contribute towards the state's plans for radical socio-economic transformation. Other measures introduced included a planned R2.1 billion fund shared between several ministries and aimed at boosting small- and medium-sized enterprises (SMEs) during their start-up phase. This will add to some R1.4 billion in private sector commitments toward a business-led fund that will aim to support high-potential SMEs.

In order to boost economic growth over the medium- to long-term, six special economic zones (SEZs) were approved to mainly encourage investment in manufacturing and tradable services; sectors that encourage exports, job creation and economic growth, Industrialization incentives worth R18.8 billion over the medium term will also help in realizing government's desire to see the manufacturing sector lead the job creation agenda that is envisioned over the next five years.

While drafting the medium-term plans that were released in October last year, the National Treasury was experiencing a challenging period both from an economic as well as political perspective. The outlook for both was uncertain towards the end of last year and the beginning of 2018, thereby constricting the ability of fiscal planners to plot a trajectory for the budget deficit. The results of the MTBPS were disappointing: the deficit was planned to plateau instead of shrink. National Treasury appeared to be in a holding pattern until there was more certainty about the country's political outlook.

Moving to February 2018, the Budget Speech was delivered in a much more constructive political environment and an improved outlook for the economy. As a result, NT was able to reintroduce into their plans a long-held commitment to narrow the fiscal deficit over the next three years. From a large shortfall of R204.3 billion in the 2017/18 financial year, the deficit is planned to narrow to R180.5 billion in the coming 2018/19 year. The 2017/18 budget deficit reached an equivalent of 4.3% of GDP and it is anticipated that this will be followed by a notable decline to 3.6% of GDP in the 2018/19 and 2019/20 fiscal years. Both expenditure and revenue is expected to rise in these periods, in nominal terms and as percentage of GDP.

The Budget Review of 2018 showed progress in the area of rising public debt levels, with National Treasury planning for gross public debt as percentage of GDP to peak at 56.2% during the 2022/2023 financial year. This debt ratio is also anticipated to rise more slowly over the next few years compared to recent history. The turnaround in public debt is facilitated by departmental budget cuts of R85.7bn over the next 3 years, with allocations to all layers of government.

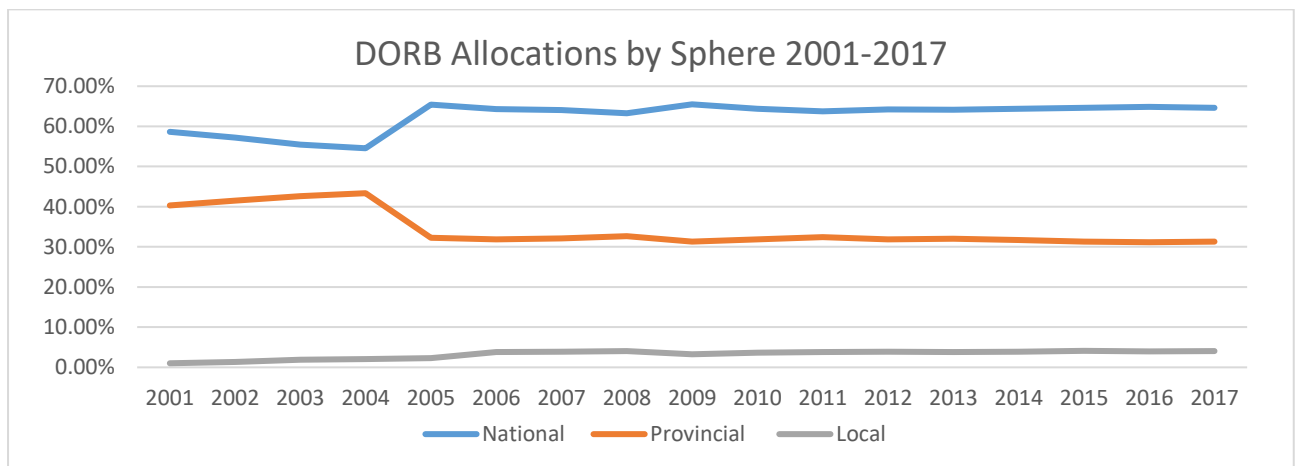
NT however admitted that the income and expenditure measures needed to narrow the fiscal deficit and limit growth in public debt “will cause economic discomfort, but they are necessary to protect the integrity of the public finances”. These are however deemed to be important steps towards improving the country’s fiscal dynamics and, in turn, the sovereign creditworthiness.

The national treasury announced that local government will be allocated approximately 9,2% of the total budget of around R1.2 trillion, 43% going to provincial government and the remaining 48% to national government. The equitable share of resources by all spheres of government could improve service delivery and ensure growth prospects for the country as a whole. However, the sharing of these scarce resources shows that local government, despite being the constitutional conduit for service delivery closest to the communities of our country, still receive, and by quite some margin, the smallest share of the national fiscus.

The discussion on the adequacy of the funding of local government has been around for many years without great strides being made towards a resolution. Though

nominally the allocations to municipalities have increased in real terms over the past to recent period, LG still receives conservatively 9,2% of Nationally collected revenue.

The local government white paper makes certain presumptions about instruments available to fund municipalities and their proportionate contribution which affect the LGES. More than 15 years after the dispensation of a democratic local government, what the sector should be asking itself is; are these assumptions about own revenue sources still realistic, is the Local Government Business Model realistic and guarantee sustainability and viability of the sector? Evidence point to the reality that most municipalities defined by B2B as falling in quadrant 3 are entirely dependent on the national transfers for their viability.



Over the past 15 years the following trends as per Schedule 1 of the DORA could be observed:

- LG transfer represents equitable share allocations that plateau at 4%-5% if the Conditional grant portion of allocations are taken out of the equation;
- It is clear that LG allocations were never reviewed holistically, let alone being put on par with other spheres in terms of the responsibilities allocated to municipalities. This is further complicated by the unfunded mandates/unresolved allocation of powers and functions; and
- The assumptions underpinning the formula for LG allocations have also not been reviewed for some time and might prove to be outdated.

Quite a number of municipalities are in a negative financial health condition. This reflects a multiplicity of complex issues, not only managerial practices in these municipalities. For example, even some of the municipalities that have been getting clean audit outcomes also find themselves in a financially distressed condition.

As indicated, the 5% ES allocation to LG must be understood in the context of the division of nationally raised revenue that is allocated to all spheres. The argument about 'LG Own Raised Revenue' assumption is misinformed at best. The recently released Poverty Trends in South Africa report, titled "An examination of absolute poverty between 2006 and 2015" indicates among other things that:

- SA is experiencing an increasing rise in unemployment
- More than 30-million South Africans are languishing in poverty
- Three out of five black South Africans are languishing in poverty
- Due to very low incomes amongst black South Africans, saving was almost impossible
- Poor families spend a significant amount of their earnings on food

Stats SA's most recent release of its Non-financial census of municipalities (NFCM) report shows an increase in the number of indigent households across the country.

- South Africa's municipalities registered 3,56 million indigent households in 2016, the highest number on record since figures were first published by Stats SA in 2004.
- 2 in every 10 households in South Africa were classified as indigent in 2016.
- 114 616 more consumer units received free basic water in 2016 compared to 2015
- 99 332 more consumer units received free basic electricity in 2016 compared to 2015

- and 225 098 more consumer units received free basic sewerage and sanitation in 2016 compared to 2015.
- In the case of free basic solid waste management, there were 476 812 more consumer units that received the services in 2016 than in 2015.

Therefore, the fiscal framework has to be consistent with the developmental imperatives of our government. As such recent reflections by StatsSA and other research bodies must be taken into account in dealing with poverty and other challenges encountered at municipal level. This includes the distorted revenue raising potential which calls for an overhaul of the current system.

For the reasons stated above SALGA will collaborate with the FFC in a review of the LGES vertical formula, the re-modelling of the LGES to reflect the cost of services to provide different scenarios to prove the (in) adequacy of the current allocations a, consider other variables and macro-economic factors and make recommendations on the phasing in of a potentially new formula – dealing with both vertical and horizontal division of revenues

The Budget Forum held in September 2017 endorsed the establishment of a Technical Budget Forum (TBF) to serve as a technical committee to support the Budget Forum. The Technical Budget Forum will fulfil a role that is similar to the Technical Committee of Finance (TCF) that supports the Budget Council. The mandate of the Technical Budget Forum will be based on the mandate of the Budget Forum and its role will include the following:

- Coordinating work on issues related to the local government fiscal framework;
- Monitoring the implementation of resolutions of Budget Forum meetings;
- Coordinating discussions on policy proposals that have implications for the local government fiscal framework in preparing for Budget Forum meetings;
- Coordinating responses to municipal financial performance challenges; and

- Reviewing research relevant to the challenges facing local government finances.

Therefore all work proposed in terms of the LGES re-modelling and proposals which will follow around dealing with historical Debt owed to municipalities and curbing future growth in debt will be canvassed at the TBF on a quarterly basis as a starting point.

### 8.1.2. Debt owed to Municipalities

Local government is a key component of South Africa's three-sphere system of government. Municipalities are constitutionally mandated to provide basic services to local communities. Basic services include electricity, refuse removal, water and sanitation. Such services are pivotal in sustaining and developing local communities and regional economies.

In order to fund such key basic services, municipalities are constitutionally assigned a range of own revenue instruments. This includes the imposition of a range of taxes (property tax, surcharges and other local taxes), user charges for services rendered by municipalities and a range of other local licenses and fees. Although local government in South Africa also receives intergovernmental transfers from national and, to a lesser extent, provincial government, own revenue instruments remain a critical component of the municipal financing framework in the support of sustainable service delivery.

The design of South Africa's local government fiscal system places an emphasis on revenues generated locally to fund the bulk of municipalities' service delivery obligations. Therefore, it is important that revenues are enhanced to ensure a sustained delivery of municipal basic services. The non-payment by a municipality's residential and non-residential customers for municipal services and taxes is known as municipal consumer debt and is defined as, "...the non-payment of property rates, fees/charges for services provided by municipalities and various other financial obligations to municipalities" (FFC, 2011:45). Municipal consumer debt poses a potential challenge that threatens the fiscal and financial position of

municipalities and can ultimately impact on the sustainable delivery of services.

Overall, debt owed to local government has increased substantially in recent years. This compromises a municipality’s fiscal position and thus increases the risk of financial distress. Figure 1 illustrates the issue of perennially increasing debt owed to local government in the country for the period 2004-2014.

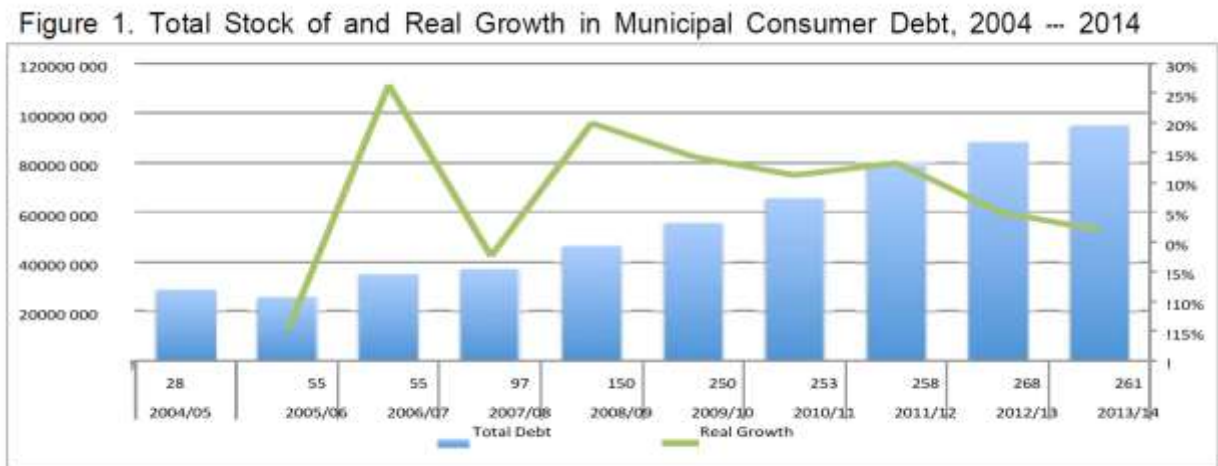


Figure 1 illustrates a constant annual increase in the total debt owed by consumers of municipal services to municipalities. In 2004, reporting on debt owed to municipalities was very poor, with only 28 municipalities disclosing such information. Therefore, the initial increases in the total debt levels were likely due to an increase in the number of municipalities reporting on consumer debt. However, with the same number of municipalities (55) reporting in 2005/06 and 2006/07, the debt levels increased significantly by 26% in real terms. The total debt stock owed to municipalities continued to increase and was close to R100 billion in 2013/14. This was a significant amount of lost municipal revenues, considering that it equates to around 40% of total operating expenditure for that year. Essentially, municipalities could have spent 40% more on services to communities had it recovered its outstanding debt.

The current numbers as reported to and consolidated by National Treasury below shows that as at December 2017 debt amounted to a staggering R138 billion.

Debtors Age Analysis as at 2nd Quarter Ended 31 December 2017

R thousands	0 - 30 Days		31 - 60 Days		61 - 90 Days		Over 90 Days		Total		Actual Bad Debts Written Off to Debtors		Impairment -Bad Debts to Council Policy	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Trade and Other Receivables from Exchange Transactions - Water	3 517 948	8.9%	1 629 282	4.1%	1 489 008	3.8%	32 969 671	83.2%	39 605 909	28.7%	660 520	1.7%	3 758 850	9.5%
Trade and Other Receivables from Exchange Transactions - Electricity	4 924 311	27.3%	1 371 589	7.6%	812 177	4.5%	10 949 449	60.6%	18 057 526	13.1%	20 307	0.1%	1 516 109	8.4%
Receivables from Non-exchange Transactions - Property Rates	4 303 317	14.8%	1 170 724	4.0%	1 117 934	3.8%	22 530 131	77.4%	29 122 106	21.1%	52 548	0.2%	3 278 425	11.3%
Receivables from Exchange Transactions - Waste Water Management	1 111 041	8.4%	535 440	4.0%	539 980	4.1%	11 077 180	83.5%	13 263 641	9.6%	41 850	0.3%	953 936	7.2%
Receivables from Exchange Transactions - Waste Management	821 053	7.7%	359 376	3.4%	372 694	3.5%	9 058 823	85.4%	10 611 947	7.7%	29 565	0.3%	776 385	7.3%
Receivables from Exchange Transactions - Property Rental Debtors	113 838	5.0%	37 971	1.7%	23 187	1.0%	2 120 807	92.4%	2 295 803	1.7%	4 889	0.2%	148 966	6.5%
Interest on Arrear Debtor Accounts	388 039	3.0%	288 939	2.3%	377 208	2.9%	11 789 289	91.8%	12 843 475	9.3%	40 771	0.3%	899 045	7.0%
Recoverable unauthorised, irregular or fruitless and wasteful Expenditure	13	100.0%	-	-	-	-	-	-	13	-	-	-	-	-
Other	166 858	1.4%	466 663	3.8%	90 361	0.7%	11 651 654	94.2%	12 375 537	9.0%	7 615	0.1%	576 679	4.7%
<b>Total</b>	<b>15 346 418</b>	<b>11.1%</b>	<b>5 859 984</b>	<b>4.2%</b>	<b>4 822 550</b>	<b>3.5%</b>	<b>112 147 004</b>	<b>81.2%</b>	<b>138 175 955</b>	<b>100.0%</b>	<b>858 064</b>	<b>0.6%</b>	<b>11 908 396</b>	<b>8.6%</b>
<b>Debtors Age Analysis By Customer Group</b>														
Organs of State	702 848	9.5%	354 184	4.8%	216 023	2.9%	6 120 871	82.8%	7 393 926	5.4%	(1 066)	(0.0%)	526 056	7.1%
Commercial	5 330 071	25.0%	1 460 927	6.9%	862 276	4.1%	13 661 676	64.1%	21 314 950	15.4%	72 086	0.3%	1 835 891	8.6%
Households	8 398 547	8.5%	3 623 527	3.7%	3 510 709	3.5%	83 697 428	84.4%	99 230 211	71.8%	185 326	0.2%	9 346 518	9.4%
Other	914 952	8.9%	421 346	4.1%	233 541	2.3%	8 667 029	84.7%	10 236 868	7.4%	601 718	5.9%	199 931	2.0%
<b>Total</b>	<b>15 346 418</b>	<b>11.1%</b>	<b>5 859 984</b>	<b>4.2%</b>	<b>4 822 550</b>	<b>3.5%</b>	<b>112 147 004</b>	<b>81.2%</b>	<b>138 175 955</b>	<b>100.0%</b>	<b>858 064</b>	<b>0.6%</b>	<b>11 908 396</b>	<b>8.6%</b>

Municipal customers are generally classified into one of four categories: commercial (businesses), domestic (households), public (organs of state) and other customers<sup>1</sup>. By far the largest levels of non-payment are with respect to households. In 2013/14, households owed municipalities close to R60 billion in unpaid debt. In December 2017 this debt accumulated to an amount of R99 billion. Such a trend suggests that issues of inability or possibly unwillingness to pay for local services on the part of households are likely. This is because households are more likely to be impacted by high levels of poverty and prone to social unrest.

Over the period reviewed, there was also a sharp increase in debt owed by businesses. This occurred after the financial crisis in 2009/10, highlighting this sector's vulnerability to economic cycles. The current economic climate has largely contributed to this category of debt increasing to R21 billion.



Debt owed by organs of state has also increased quite significantly. The extent of non-payment by this category is particularly concerning as it is indicative of a possible breakdown in the system of cooperative government that underpins South Africa's intergovernmental system. Measures have been put in place to improve payment by other spheres of government for municipal services. These include:

- Provincial Debt Management Steering Committees in a number of provinces to resolve disputed accounts
- The inclusion of a property rate 'grant' to provinces for payment of property rates; and
- Other intergovernmental platforms established to deal with the intergovernmental debt issues

Despite the aforementioned interventions, the problem of non-payment from other organs of state persists with a selection of key Sector departments, both nationally and provincially not supporting interventions driven by amongst other the Department of Public Works and the Intergovernmental Debt clearing project.

Consumer debt owed to municipalities is usually categorised in terms of the number of days that the debt has been outstanding from the due date for payment stated in a municipal bill. These usually range in multiples of 30 days from the due date for payment in the municipal bill. Once the debt becomes outstanding, municipalities should ideally begin processes to collect the outstanding debt. If the debt still remains uncollected for a certain period following the full implementation of credit control processes, municipalities should consider the debt irrecoverable and write it off their books. This period when a debt gets classified as irrecoverable and is written off, is governed by the municipality's debt management or debt write-off policy as per Section 96 of the Municipal Systems Act. In addition, outstanding/uncollectable debt can also be written off via the Prescription Act of 1969.

However, there needs to be a balance between ensuring that municipalities make concerted and reasonable efforts to collect the outstanding debt and not simply

write off debt arbitrarily. Many municipalities also have the tendency of not writing off debt as per their “debt management” or “debt write-off” policy or have simply not implemented their full credit control policy. As a result, such debt continues to reflect on their books and artificially inflates the level of debt owed, as such debt is likely irrecoverable. In fact, the current stock of consumer debt would not be as exorbitant if debt was appropriately collected or subsequently written off if assumed irrecoverable. Currently municipal household debt older than 90 days alone has escalated to R83 billion.

There are however cases where a municipality may not be able to recover amounts owing to them. These types of debts are referred to as irrecoverable or bad debts. Sound accounting procedure requires that when an entity (in this case municipality), realises that it is unlikely to recover amounts owing in respect of water/electricity/property rates, it should write off the bad debt from its books. Currently in South Africa, municipalities determine when a debt is considered bad. Part of the challenge is that at times municipalities do not write off these irrecoverable amounts, thereby artificially inflating the extent of non-payment (FFC, 2011). One of the reasons bad debt cannot simply be written off is due to municipalities not undertaking the full credit control processes required to cover such debt.

Whereas one would want to enforce correct accounting procedure and write off irrecoverable debts, there are also moral hazard considerations that need to be factored in when writing off debts too soon. In this sense, the aspects that need to be considered when writing off of irrecoverable amounts too quickly, are akin to what policy makers need to consider when undertaking amnesty programmes. The provision of amnesty is a strategy employed by governments where, for a limited period, a predetermined group of taxpayers pay a defined amount in exchange for forgiveness for non-payment. Extending this offer to taxpayers offers the state the ability to bring a short-term infusion of revenue into state coffers. There are however disadvantages to utilising this strategy, namely:

- It can undermine tax morale as honest taxpayers may feel upset

- It can signal a weak government that is unable to enforce payment
- Anticipation of further write-offs can affect future compliance
- Costs associated with behaving dishonestly decrease and guilt are removed, thus making non-payment OK (Torgler, et al, 2003).

Taken the above into account and the staggering growth of debts owed to municipalities, the potential effects of toxic debts on the financial position of municipalities and their subsequent credit ratings as well as the potential effect on sovereign credit ratings SALGA propose the consideration of the following which may bring about potential avenues to deal with not only historical debt but also curb future growth in debt and increase municipal revenue collection:

## **8.2. Initiation of a Bill to Repeal Household Debt**

The growing levels of household consumer debt per year suggest that poverty and affordability is likely progressively putting pressure on these customers. Municipalities are failing to recover outstanding debt and are also failing to write-off such debts. Across the different categories of municipalities, the non-payment by households for municipal services is most prominent. SALGA therefore proposes an investigation into the merit of the drafting of a bill to repeal household debt and placement of such a bill in the wider legislative context governing municipalities and consumers. Considering the Bill also assess the legislative environment that may have an impact on and potentially pose difficulties in the adoption of such a bill and the potential legal impact of such a Bill on standard Debt Management and Credit control policies adopted by municipalities, the impact on all relevant stakeholders including but not limited to Consumers, Department of Energy, Department of Water Affairs, Eskom, Water Boards, NERSA and other role players. Potential trade-offs (cost/benefit) between municipalities and consumers will be considered; e.g. the installation of pre-paid meters in exchange for write offs of debt as well as funding requirements explored for the necessary infrastructure financing of such projects. The investigation will also assess the impact of such a bill on the duties of the Accounting officer as set out in the legislation governing municipalities including but not limited to the Municipal Finance Management Act, Municipal Systems Act and Municipal Structures Act.

Lastly, SALGA will propose a framework for the Bill to Repeal Household debt as per National Treasury S71 classification.

### **8.3. Potential Amendment to the Tax Administration Act to curb the growth in current and future debt**

SALGA will also Investigate the possibility and merit of a legal amendment of the Tax Administration Act, wherein consumers (taxpayers) that are due tax refunds by SARS are obliged to produce a current, paid up (to date) municipal account and in instances where monies are owed to municipalities such amounts may be offset and paid over by SARS to the relevant Municipality. Again the legislative environment that may have an impact on and potentially pose difficulties in the adoption of such an amendment will be explored.

### **8.4. Potential Amendment to Municipal Systems Act Section 10, Schedule 2**

According to Section 10 of Schedule 2 of the Municipal Systems Act, no municipal employee may be in arrears with the municipality for any payment. The provision further stipulates that the municipality is allowed to deduct outstanding amounts from salaries to cover such arrears. In order to improve on the punitive measures afforded to municipalities to collect outstanding revenue, a proposal to extend the provision of this Act to include all public sector employees needs to be explored. Work is currently underway to establish the practicality of such an amendment and if such an extension is possible, which piece of legislation should govern its implementation (e.g. consideration of the Public Administration Management Act) as well as the capacity required to monitor and implement such a provision.

### **8.5. Potential Amendment of SCM Regulations and Procurement Framework**

SALGA will initiate lobbying to amend SCM Regulations and the Preferential Procurement Framework to require that no municipality, provincial and national government department, state entity and any other organ of state transact with any entity whose directors and the entity itself are not up to date with their municipal rates

and tariffs. SALGA's position is that a tariffs/rates clearance certificate has to be made a compulsory requirement in bid submission documents similar to a tax clearance certificate from SARS.

#### **8.6. Establishment of a District Collection Agency**

SALGA's research on Billing and credit control practices (2016) found potential benefits of centralising or developing a shared credit control system. Therefore, the initial research recommended the establishment of a multijurisdictional municipal service district (provided for in terms of Section 87 of the Municipal Systems Act). The establishment of such agencies can form the precursor for the consideration of a national collection agency. In order to thus address the issue of municipal billing practices and the general subject of municipal consumer debt SALGA is in the process of finalising a feasibility analysis on the viability of such an agency, propose a working model for a pilot district revenue collection agency and possibly building towards a nationally based collection agency and producing a full set of recommendations as to the feasibility of implementing a district level debt collection agency including critical factors for consideration.

#### **8.7. The Financial and Fiscal repercussions of ESKOM's role in the electricity distribution industry on Local Government**

Although electricity distribution is constitutionally a municipal competency, Eskom still plays a huge role in electricity distribution in South Africa. This is a result of historical legacy issues and sees Eskom distributing 212 107 GWh or 66% of total electricity distributed to customers in the 2011/12 financial year (NERSA, 2012). Municipalities only distribute 96 537 GWh or 30% of total electricity distributed even though they deliver to 85% of total customers compared to the 15% of customers that are served by Eskom. Although Eskom serves fewer customers, these statistics indicate that Eskom customers are relatively higher electricity users, driven mainly by the energy intensive mines and industries (NERSA, 2012).

The fragmented electricity distribution industry in the country creates various issues from operational, technical, institutional and fiscal perspectives. This includes issues around customer confusion over service providers, thus blurring the lines of accountability, and different tariffs for customers in the same municipality (National Treasury, 2011). Municipalities carry the brunt of this fragmented system. Section 229 of the Constitution empowers municipalities to apply surcharges on the fees they charge for services rendered while municipalities also make a minimal profit from such tariffs. The fact that Eskom provides electricity in many areas in the country, particularly to high-energy users, results in foregone revenue that is constitutionally entitled to local government via electricity tariffs and surcharges.

The loss of revenue due to Eskom's role in the electricity distribution industry could potentially be significant, given that revenues generated from electricity sales and surcharges currently constitutes approximately 33% of total municipal operating revenues (National Treasury, 2017). Municipalities currently collect over R100 billion from electricity tariffs and surcharges yet they distribute substantially less electricity to customers relative to Eskom. This is potentially a massive loss of municipal revenues from electricity sales in Eskom distribution areas. Although the situation is a bit more complex, given that Eskom owns the assets and runs the operations of delivering services to their customers, the fact that Eskom delivers on a constitutionally assigned municipal mandate compromises the functional authority and fiscal powers of local government.

The disconnection of electricity is an important credit control tool that municipalities use to induce payment for services. This not only applies to revenues owed to municipalities for electricity, but also other services such as water and refuse removal as well as municipal taxes. In Eskom distribution areas, municipalities cannot disconnect electricity services for non-payment of other municipal services, even though municipalities are legally allowed to do so. This constitutes another indirect loss of revenues associated with Eskom's involvement in the electricity distribution industry and is a contributing factor to the large levels of outstanding debt owed to municipalities (SALGA, 2016).

It is apparent that Eskom's involvement in the electricity distribution industry has direct and indirect impacts on the revenue potential of local government. However, the extent of this potential revenue loss is currently unknown. Furthermore, it is also unclear as to whether the financial positions and revenue generation capacity would improve if municipalities had access to Eskom's electricity distribution customers, thus potentially making certain municipalities financially viable.

The work currently underway by SALGA aims to quantify the direct and indirect impacts of Eskom's participation in the electricity distribution industry on South African local government to ascertain whether the financial standing and revenue potential of municipalities is hampered by the inability to operationally and fiscally control the distribution of electricity in Eskom distribution areas

#### **8.8. Access to SARS Customer Database to improve Municipal data integrity for Revenue purposes and debt collection**

Municipalities are continuously striving to enhance revenue collection. Improvements to systems and processes of some municipalities have impacted positively on their revenue collection rates. However, certain shortcomings still exist which could be bridged by cooperation with national government departments and agencies that maintain databases on the personal information of citizens that are ultimately customers of municipalities. As the collecting agent of national government's tax revenue, SARS has established a credible database on taxpayers and cooperation in terms of information sharing will further enhance customer verification for revenue and debt collection processes in municipalities. This initiative is currently spearheaded by SALGA with the first pilot municipality for data exchange gearing towards testing phase.

##### **8.8.1. Municipal Infrastructure Financing**

Funding for local government capital infrastructure in South Africa is limited, considering the constitutional mandate to provide basic infrastructure services to communities. Given the limited resources in the form of grant funding and own

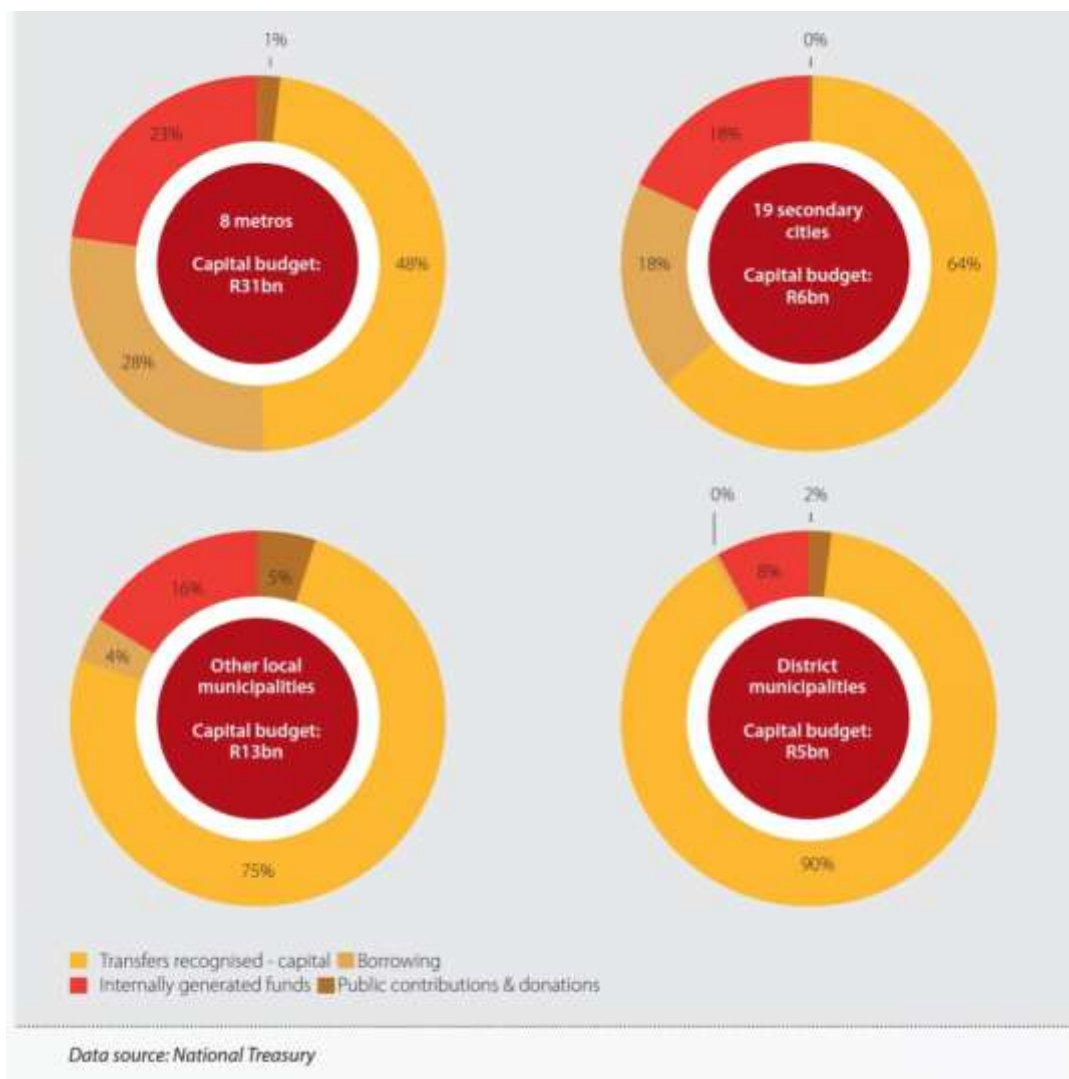
revenue, municipalities have to find innovative streams of investing in infrastructure and augmenting capital budget deficits in order to accelerate the eradication of infrastructure backlogs and to fulfil their developmental role.

National Treasury is in the process of revising the Municipal Borrowing Policy Framework. Research undertaken by the department has indicated that municipalities with strong balance sheet positions and cash flows are not leveraging these strong borrowing capabilities. Municipalities have been borrowing less than they should due to large scale infrastructure grants from central government. This trend of grant funding is shifting and requires a mindset shift in funding municipal infrastructure. The Minister of Finance in his 2018 Budget Speech announced that municipal infrastructure grants will be reduced by R 3,5 Billion in the medium term. This will have a knock on effect on the access of funding to invest in municipal infrastructure.

The imminent rapid urbanization has led to programmes that urban municipalities (metropolitan and secondary cities) have to undertake as envisioned in the Integrated Urban Development Framework (IUDF). The areas aligned to the IUDF in terms of this conference are Policy Lever 4: Integrated Urban Infrastructure and Policy Lever 9: Sustainable Finance.

#### **8.8.2. Sources of capital expenditure funding per group of municipalities**





The figure above depicts the funding mix for capital expenditure per group of municipalities for the 2014/15 financial year (source: Municipal borrowing Bulletin Issue 2 September 2016). It demonstrates that across all municipal groups grant funding is the main source of capital infrastructure funding.

### 8.9. The Municipal Infrastructure Finance 2018/19 Strategic Output

1. To host the Municipal Innovative Infrastructure Financing whose objectives and outcomes will set the agenda for how SALGA supports municipalities to better explore innovative infrastructure financing.

2. To facilitate a shared learning platform for municipalities to better interpret the Division of Revenue Bill infrastructure grants frameworks and therefore spend better.
3. To identify repairs and maintenance best practice scenarios to support municipalities to better deal with their non-revenue water and electricity supplies.

#### **8.9.1. Strengthening Financial Management**

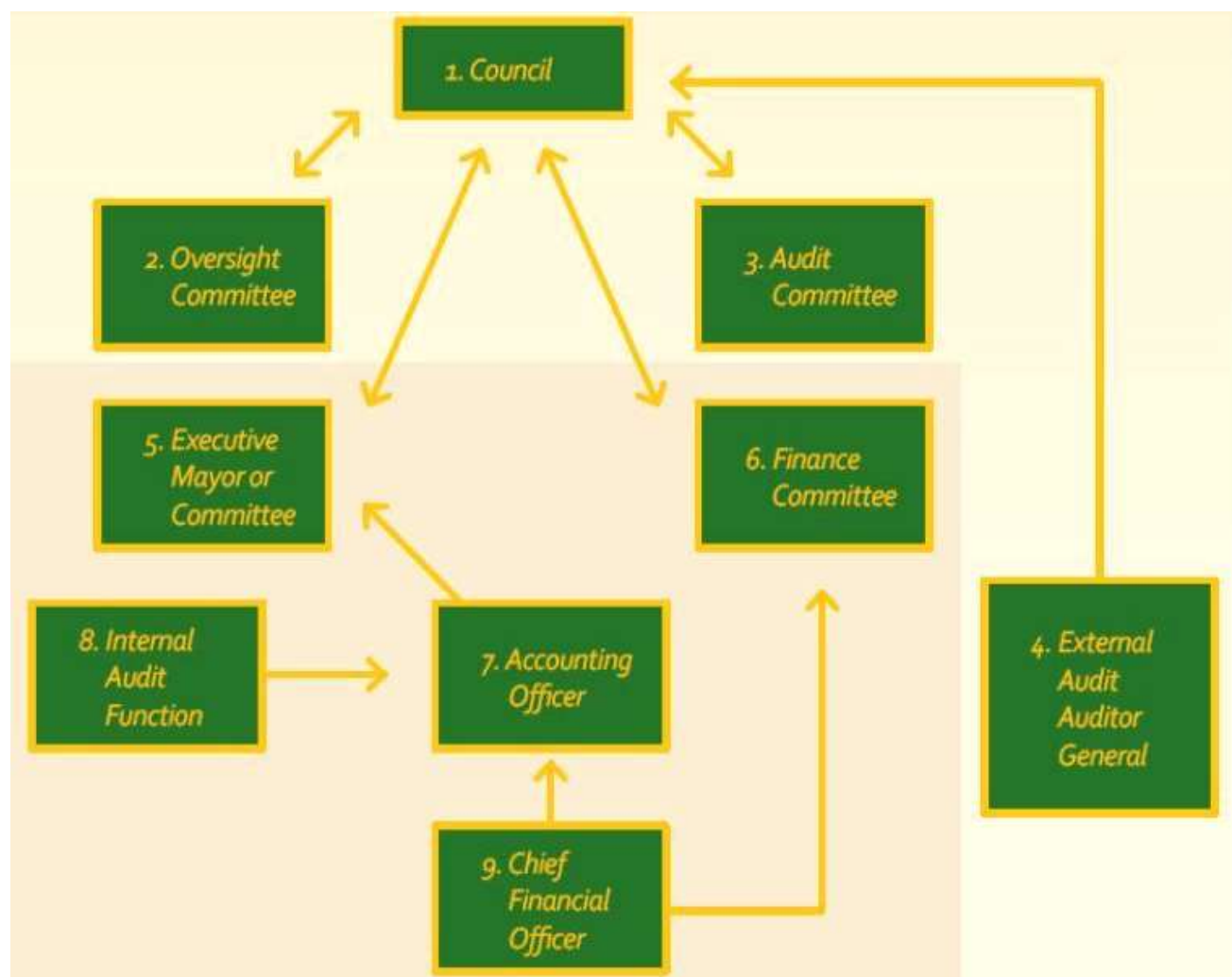
Strong financial management is one of the key ingredients required in the recipe for a well-functioning municipality as it provides stability and predictability with regards to finances. This coupled with strong accountability by leadership and appropriate consequence management will result in a well-functioning municipality which can provide excellent service delivery.

#### **8.10. Fiscal Governance Framework**

Each municipality has a Council where decisions are made, as well as municipal officials and staff who implement the municipality's responsibilities.

	<b>Responsible for</b>	<b>Oversight over</b>	<b>Accountable to</b>
<b>Council</b>	Approving policy and budget	Mayor	Community
<b>Mayor</b>	Policy, budgets, outcomes, management of/oversight over municipal manager	Municipal manager	Council; public
<b>Municipal manager</b>	Outputs and implementation	Administration	Mayor; council; public
<b>Chief financial officer</b>	Outputs	Financial management	Municipal manager

## Structures for Financial Governance



The MFMA sets out the requirements, accountability parameters, processes, management of the different financial cycles, timelines and oversight for effective financial management. It sets out reporting parameters and timelines as well the audit requirements.

MFMA reforms include ensuring transparency and accountability for the fiscal and financial affairs of municipalities and municipal entities through in-year and annual reporting. Real transparency and accountability can only be achieved where there is a clear link between the strategic objectives agreed with the community in the Integrated Development Plan (IDP) and:

- the Budget;

- Service Delivery and Budget Implementation Plan (SDBIP);
- Service Delivery Agreement with any municipal entity;
- performance agreements of senior management and officials;
- in-year reports (MFMA sections 71 and 72);
- the annual financial statements (AFS);
- annual performance report;
- the annual report.

Compliance with the MFMA and the related Treasury Regulations from a PERFORMANCE PERSPECTIVE rather than a blunt COMPLIANCE PERSPECTIVE is necessary in order to derive the intended accountability objectives of the MFMA. It will also assist in driving effectiveness and efficiency in Local Government rather than just doing activities for the sake of compliance.

The Auditor-General South Africa (AGSA) is the Supreme Audit Institution in South Africa. It is led by the Auditor-General (AG). The AG checks the spending of public money by looking at whether it has been used ideally and for the purposes intended.

The AGs audits examines 3 areas:

- Fair presentation and absence of significant misstatements in financial statements
- Reliable and credible performance information for predetermined objectives
- Compliance with all laws and regulations governing financial matters

The AG issues 5 types of audit opinions:

- **Unqualified with no findings** or “**Clean**” audit opinion: the best audit opinion that can be achieved and the one that all municipalities should aspire to.
- **Unqualified with findings** audit opinion: Indicates that financial management basics are in place and working efficiently however there may be some compliance issues or performance information issues that need to be addressed in order for the municipality to attain a clean audit opinion

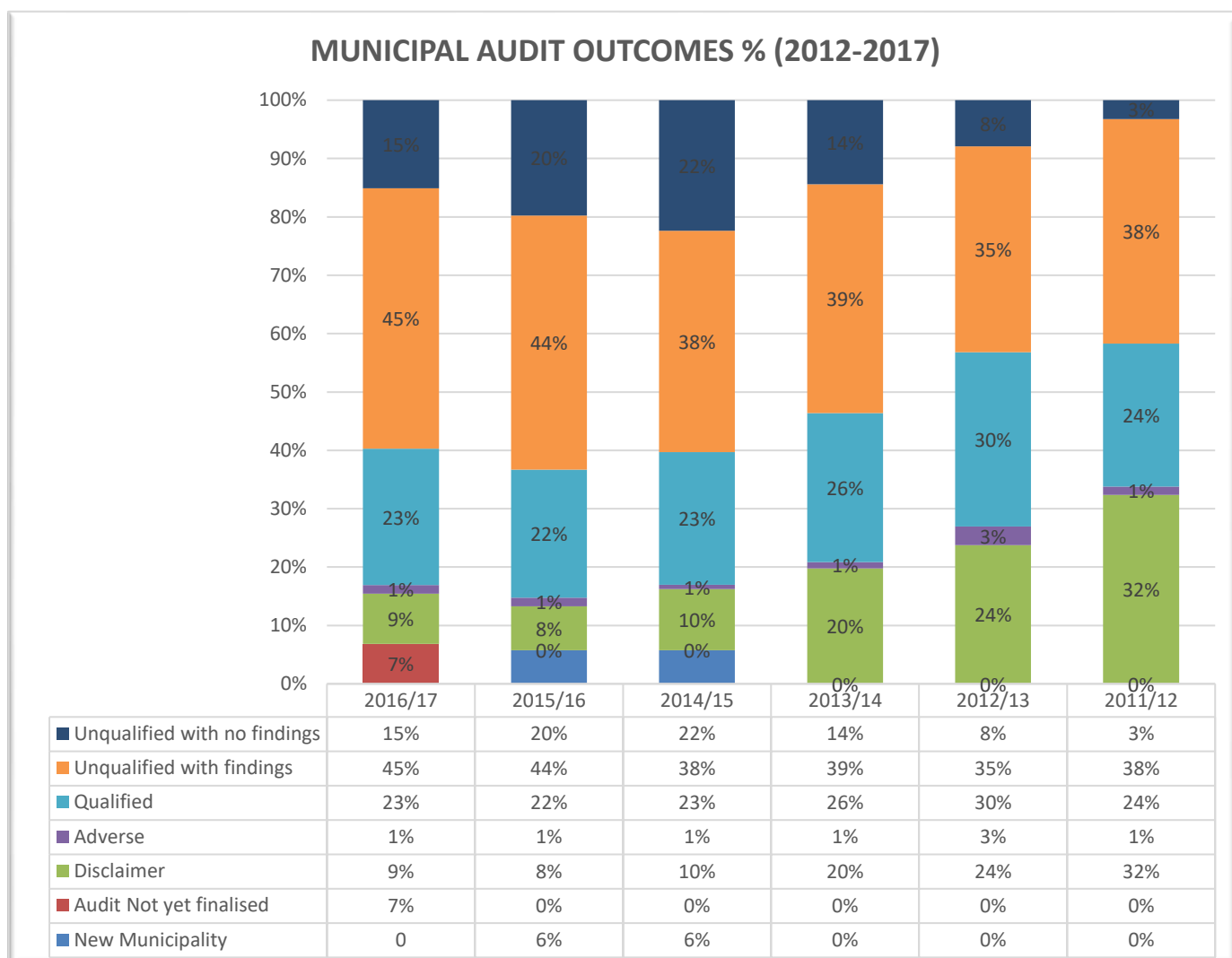
- **Qualified** audit opinion: Indicates that there are some errors in the financial reporting which are material and this coupled with compliance matters as well as performance information matters has resulted in the audit opinion being qualified.
- **Adverse** audit opinion: The errors identified during the audit are so pervasive and fundamental that an adverse opinion has to be issued.
- **Disclaimer** of audit opinion: The lack of information or the errors or misstatements are fundamental, pervasive and cannot be properly quantified which leads to a disclaimer of an audit opinion. This is arguably the worst audit opinion that can be attained.

Annually the AG releases a General Report on the Local Government Audit Outcomes a few months after the finalisation of the audit cycle. The AG report on the state of local government is one important yardstick to track accomplishments and setbacks with the transformation of this important sphere of our government system.

Over the last 5 years the AG General Report has reported on similar risk areas. These relate to the quality of submitted financial statements, quality of performance reports, supply chain management, asset management, human resource management, information technology controls and financial health. In addressing these risk areas SALGA is mindful of the fact that it is the root causes which relate to the slow response by political leadership in addressing the root causes, lack of consequences for poor performance and transgressions, key positions vacant and key officials lacking appropriate competencies that need to be tackled aggressively.

A key focus of the AGs General Report relates to the issue of Unauthorised, Irregular and Fruitless & Wasteful (UIF) Expenditure. Good financial management includes, amongst others, preventing unauthorised, irregular or fruitless and wasteful expenditure.

## 8.11. Audit Outcomes: Year 2011/12 – Year 2016/17 Table:



It has to be borne in mind that the AG's report focuses on the twelve months gone by. By the time it is presented, the situation could have regressed, stagnated or ameliorated. However, in shaping a post audit response, it is a good departure point to consider past audit results and compare trends over a number of years. Through this approach, gaps could be identified on critical areas that still warrant attention and support. This approach could also provide indicators on the achievements made by various stakeholders in supporting municipalities perform better.

Issues such as internal controls have to be dealt with through a number of ways, including strengthening capacity. SALGA has a programme of municipal audit support

called the Municipal Audit Support Programme (MASP) which focuses on leadership, governance, financial management and institutional capacity,” he said.

There are four pillars under the Municipal Audit Support Programme (MASP):

- a) The institutional capacity pillar focuses on vacancies, competencies and performance management systems;
- b) The financial management pillar focuses on supply chain management as well as expenditure/asset/receivables management and financial, compliance and performance reports;
- c) The leadership pillar covers both political and administration, executive coaching, councillor induction and on-going training, senior management induction programme, embedding and reinforcing councillor handbook, ongoing technical support and consequence management framework linked to appropriate regulations; and
- d) The governance pillar addresses internal audit, oversight and ICT.

We believe that through SALGA’s MASP, Municipalities can improve internal controls, financial management, governance and enhance the capacity of their human resources which will in turn result in improved audit outcomes.

One of fundamental contributing factors to poor audit outcomes is the lack of basic financial management process disciplines. The non-performance or inconsistent and inaccurate performance of the basic record keeping, recording, reconciling, reporting and monitoring is the key root cause to poor quality Annual Financial Statements. Knowledge, skills, discipline and appropriate management oversight are key factors that need to be considered as part of the basic financial management discipline.

The other tool to deal with poor performing municipalities is consequence management. This will ensure that where there are the same officials who are repeat offenders when it comes to unauthorised, irregular and fruitless expenditures, appropriate action to deal with them in terms of the applicable financial misconduct regulations can be accelerated.



Currently there are a number of municipalities where there is good amount of progress that has been registered in terms of consequence management. SALGA will be supporting those municipalities so that this does not drag for long.

However, one of the problems with consequence management is that people get suspended, and cases tend to be prolonged.

SALGA will help the municipalities to accelerate the processes to take offenders to disciplinary hearings, reach finality, dismiss culprits from the system and attract people who can take local government forward.

### **8.12. Consequence and Accountability Framework**

SALGA has developed a draft consequence and accountability framework.

It is envisaged that the Consequences and Accountability Framework should not only highlight how the failure in performance by all or any of the components of a municipality affects the community served by the municipality, but what the consequences for non-performance should be, in order to improve accountability in all its forms.

At the heart of the framework will be the incentivisation (through remuneration and other means) of accountable and people-centered governance of municipal institutions and spaces. Importantly, the pre-determined objectives set out for categories or types of municipalities will primarily be set against the constitutional objects and key legislative imperatives. This should also inform a review of the legislative imperatives to be truly differentiated across the 278 (or whatever number) municipalities.

The development and implementation of the Consequences and Accountability Framework for local government should lay the basis for the kind of developmental and people-centered behavior the White Paper envisioned. It will result in a total reorientation from compliance to developmental local government and a much needed “serving people” approach.

This Framework, if supported, will be fully developed by SALGA, in consultation with the CoGTA and other key stakeholders, during the current financial year (national/provincial) and will be recommended for implementation in the 2018-19 municipal financial year.

Once developed for local government, the model should be extended across the national and provincial sphere of government, including its support and monitoring (dependency) role in local government.