

# Executive Summary

South Africa has one of the most progressive legislative and policy frameworks for water services in the world, which includes a constitutional right to water and a national Free Basic Water policy. Within this framework, water is conceived of as a social good and a vital part of the broader developmental project. However, as highlighted in this report, when it comes to implementation at the local government level, where water services are located, the reality is quite different.

The reasons are diverse but key among them is that, having devolved the responsibility for water services delivery to local government in 2000, national government has steadily decreased financial and technical support. All the while, municipalities are under considerable pressure, in terms both of internal accounting mechanisms and national government fiscal oversight, to become financially self-sufficient and to recover service-related costs from all areas, including poor communities. This means that at the municipal level it is cost-recovery, rather than social or developmental benefit, that largely determines water services delivery. At the same time, this report demonstrates that political will at the local level is important, manifesting in variances between municipalities with similar levels of resources. As a consequence of this decentralised and largely unregulated model, water services delivery is very

uneven. While progress has been made in some areas, for many South Africans access to sufficient water and sanitation remains a pipedream.

This report presents the findings of a survey of water services across 15 municipalities conducted by the Centre for Applied Legal Studies (CALs), the Centre on Housing Rights and Evictions (COHRE) and the Norwegian Centre for Human Rights (NCHR), between November 2007 and July 2008. The research findings are presented as a set of nine cross-cutting 'fault lines', which reflect systemic obstacles to the provision of universal access to water services across South Africa. The nine fault lines identified and elaborated on in this report are:

- Eliminating Backlogs and Improving Levels of Service
- Free Basic Services (FBS)
- Indigent Policy as the FBS Targeting Mechanism
- Tariffs
- Credit Control Enforcement – Water Disconnections and Restriction Devices
- Financial and Technical Assistance
- Water Quality
- Water Demand Management (WDM)
- Public Participation

## Water Services Fault Lines

An Assessment of South Africa's Water and Sanitation Provision across 15 Municipalities



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## Eliminating Backlogs and Improving Levels of Service

Eliminating backlogs, meaning extending water services to those with none, and improving levels of service, meaning providing increasingly better levels of service to those with rudimentary access, are vital aspects of water services provision across South Africa. The latter objective is required by the Constitution which requires the progressive realisation of the right of access to sufficient water within available resources. Notwithstanding an obvious problem with the accuracy of data, it is evident that, fourteen years after the advent of democracy, there are still many people – mostly in rural areas – who still have to rely on rivers for their water supply and buckets as a form of sanitation. At current rates, the Department of Water Affairs and Forestry (DWAF) estimates that backlogs in water will only be eliminated in 2011 and backlogs in sanitation will only be eliminated in 2031. Even these figures appear optimistic for a number of municipalities in this survey, and many discrepancies in backlog figures were revealed in our investigation.

Moreover, there is a large group of people, such as those living in informal settlements, who are stuck at the bottom of the 'water ladder' with only rudimentary water services and no progressive realisation of water-related rights. Numerous informal settlements have been connected with a basic water supply and sanitation facility within 200 metres, but they must wait for slum upgrading and housing programmes to materialise before they can have water in the yard or home. Yet many housing and upgrading programmes are stalled or have not yet commenced. In the case of sanitation, it is arguable that the 'ladder' has been shortened. There is a strong emphasis on providing Ventilated Improved Pit (VIP) and dry toilets instead of water-borne sanitation, even though these options have not turned out to be necessarily more affordable in practice.

This fault line is both the most challenging and the easiest to conclude: There is a clear and urgent need to provide everyone with access to sufficient and appropriate water and sanitation provision. Ensuring

adequate access to water services promotes human development and health and contributes to freeing the social and economic potential of every person. It also advances gender equality because, in the absence of adequate water services, women bear the burden of fetching and carrying water from rivers. There can be no more pressing priority for South Africa, suggesting that all resources, financial and technical, should be focused on eradicating water services backlogs and improving levels of service.

## Free Basic Services (FBS)

At present FBS – Free Basic Water (FBW) and Free Basic Sanitation (FBSan) – are provided in an ad hoc manner by municipalities, with widely varying compliance with national standards. Some municipalities do not supply FBS at all and some supply only the minimum FBW amount without any FBSan. The lack of any real national monitoring or enforcement of the implementation of DWAF's FBW policy at the local level, as well as the absence of a FBSan policy, is highly problematic. There is clearly an urgent need for DWAF to formulate a FBSan policy and to monitor and enforce it. Linked to the goals of eradicating backlogs and improving levels of service, such a policy should determine what kinds of sanitation services are deemed appropriate for particular environments and municipalities should be encouraged to provide the best possible sanitation services with the best possible FBSan.

In relation to FBW, DWAF needs to follow up on claims made in its 2002 FBW Implementation Strategy to identify and provide the highest level of support to those municipalities that could not implement the national FBW policy by July 2003. This was over five years ago and yet in some municipalities poor people still cannot access even the minimal FBW amount. While national policy is in place, there is as yet no clear enforcement of the policy or national assistance to implement at the local level.

There is also a need for DWAF to oversee and, if necessary, assist municipalities to move away from the very minimal amounts of FBW, towards a more internationally recognised standard. International experts, as well as DWAF itself, have all confirmed that 50 litres per person per day is the *minimum* amount of water needed to sustain a healthy and dignified life. In order to ensure that household allocation of water corresponds with household size, a housing size census should be undertaken every couple of years. Furthermore, there should be non-burdensome special representation mechanisms in place, advertised widely, for input in the interim period as well as for vulnerable groups like people living with HIV/AIDS. Finally, access to FBS should not be linked to the compulsory installation of water restriction devices that limit access to water to unacceptable amounts or in unacceptable ways.

## Indigent Policy as the FBS Targeting Mechanism

The majority of municipalities in our survey provide FBS only to those households that are registered for their indigent policy. Using the indigent policy as a means of allocating FBS to poor households is deeply flawed and generally fails to achieve the desired poverty-alleviation ends since the poor are under-represented on the register. The most vulnerable societal groupings (women, child-headed households, and the unemployed), are frequently not aware of the indigent policy or register and/or do not register for fear of attracting adverse official attention. The process for qualifying also differs vastly across municipalities, suggesting incoherent objectives and methodologies, and is typically quite onerous and exclusionary.

An alternative method of providing FBS to those in need is that of geographic targeting. Geographic targeting entails identifying poor areas for the allocation of FBS. It requires municipalities to seek out those who *do not* qualify, as opposed to placing the onus and burden on those who *do* qualify to register with the

municipality. In South Africa, this method is quite attractive as apartheid geography segregating racial groups is still largely present. A greater allocation of FBW could thus be automatically allocated to known areas of poverty, including certain buildings in the inner city. In order to avoid rich people in these areas benefitting unfairly, efforts could be focused at weeding out undeserving recipients. However, geographic targeting is less workable though in municipalities with overwhelmingly poor populations.

The most ideal method of allocating FBS, and one that makes more sense in overwhelmingly poor municipalities, as well as generally, is that of universal allocation. Regardless of type of municipality, universal allocation is not only the most effective way of ensuring that all deserving people receive the critical benefit of FBS, but it has the additional benefit of not requiring complicated processes and administration to identify qualifying households from non-qualifying households. Universal allocation has a further benefit of countermanding the otherwise negative segmentation of water services (whereby water services become stratified, with rich and poor households receiving fundamentally different services). In South African municipalities, universal allocation could be effected through an appropriate amount of water calculated per person per day (starting at 50 litres per person per day but incorporating an additional amount for sanitation where there is water-borne sanitation) worked out across a suburb's average number of persons per household. In municipalities with richer water users, universal targeting could be afforded through steep tariffs at the luxury end of the water services spectrum, ensuring that those who use excessive amounts of water and can afford to pay, cross-subsidise the poor. In uniformly poor municipalities cross-subsidies would have to come from national government.

## Tariffs

The setting of tariffs should be an exercise in striking an appropriate balance between providing *affordable* water

and sanitation services, and ensuring the *sustainability* (in economic and environmental terms) of rendering such services. Every municipality's tariff structures should be based on and reflect this logic. However, such logic was not evident across the municipalities in our survey, which reflected widely varying tariff rates for similar-situated resource bases and population profiles.

The glaring disparity across the current tariff landscape is cause for concern, suggesting a role for greater national standardisation, albeit ensuring local appropriateness. The first step would be for DWAF to assist municipalities to determine (a) the actual costs of providing water and sanitation services, (b) how much revenue they are receiving from these services, (c) how much poor households can afford to spend on water and sanitation services and (d) how many richer users exist and how much they can afford to pay to cross-subsidise poorer users (this involves studies of elasticity of demand of rich water users i.e. at what charge will high-end users start to decrease their water consumption). Another recommendation is for DWAF to monitor water and sanitation tariffs in a similar manner to which it monitors water quality, with an obvious emphasis on accuracy, efficiency, enforcement and equity. Accurate data on tariffs is vital to assist with studies into implementing progressive and affordable tariff structures.

## Credit Control Enforcement – Water Disconnections and Restriction Devices

Excessive emphasis on cost-recovery encourages strict credit control enforcement for non-payment by the poor. Although more research is needed to confirm this, there appears to be a worrying trend to impose harsh credit control measures on low-income residents, while higher-income residents, businesses and government departments are afforded far more leniency in terms of non-payment of accounts. One municipality bucked the trend and only threatened large users with disconnection. But the more general practice is that, while government institutions (and high-end domestic users not canvassed in this research) get away with using water on credit and not paying

bills, poor water users are frequently disconnected or restricted to the free basic amount through flow-restrictors or prepayment water meters.

From a developmental, as well as a legal, perspective, total water disconnections are wholly unacceptable. Likewise, the imposition of prepayment water meters, which disconnect water automatically, and flow-restrictors, which drastically reduce flow rates, are not acceptable. Rather, water disconnection to poor households should be governed by considerations of equity, to ensure that people who are unable to pay for water do not have their health and dignity compromised by a municipality disconnecting their water supply. In a number of countries, including Spain and Germany, water disconnection is not permitted unless the water company can prove that it has no other means to obtain payment of its bill. In England and Wales, water disconnection was prohibited by law in 1999 while in France families with children and disabled persons may not be disconnected and poor people can make use of temporary moratoriums for payment and seek financial assistance from local social services. In many municipalities, French mayors have decided neither to disconnect poor people, nor to allow water utilities to do it.

South African municipalities need to develop a principled approach to water disconnection and restriction, emphasising equity and human rights considerations. Within such an approach, poor and vulnerable people should not be left without water and credit control enforcement should be focused on the rich, rather than on the poor. This suggests a role for DWAF in regulating, monitoring and enforcing guidelines and safeguards across municipalities. In addition, ways must be found to prevent water debt in the first place. This includes subsidising water services, including operations and maintenance costs, to poor households and communities, whether through steeper tariffs for luxury consumption within a municipality and/or greater transfers from national government.

## Financial and Technical Assistance

From our research it is apparent that current Municipal Infrastructure Grant (MIG) and Equitable Share (ES) funding allocations are insufficient to ensure universal access to adequate water and sanitation, particularly in uniformly poor municipalities with limited potential to secure revenue from internal tariff cross-subsidies. A frequent casualty of this reality is proper attention to the maintenance of infrastructure, meaning that municipalities face chronic problems of faulty piping etc., which adversely affects their quality of service as well as their long-term finances (while savings can be made in the short-term by neglecting maintenance, in the medium- and long-term such neglect leads to higher costs). A further exacerbating factor is municipalities' inability to attract the requisite skilled personnel to carry out key functions. It is clear that if water services are to be prioritised as they should be, additional funding from national government must be made available to ensure the necessary financial, technical and human resources reach the municipal level, where water services delivery occurs.

## Water Quality

In many countries, water quality is managed by the health, rather than the water, department. In South Africa there has been a somewhat unsatisfactory division of responsibility between health and water departments but, until recently, DWAF has been relatively successful at ensuring high water quality standards across the country. However, there is evidence that DWAF's system of water quality management is under strain and requires urgent attention to avert further water contamination and related deaths.

DWAF needs to address the deteriorating water quality in dams and to ensure uniform compliance with water quality standards across municipalities. We fear that the new certification scheme, especially if

focused merely at naming and shaming non-complying municipalities, will not address the root causes of the problem, which relate to insufficient financial and technical assistance, as well as human capacity, at the local government level.

## Water Demand Management (WDM)

It is clear from our research that water leaks and inferior water infrastructure need to be addressed as a matter of priority. Furthermore, water demand audits that provide an analysis of assets and promote engagement with communities need to be undertaken by municipalities in order to understand the complex relationship between long-term supply and demand. Such information needs to form the basis of FBS and tariff structures in a way that satisfies 'green' and 'red' objectives. DWAF as the national regulator could intervene to assist under-capacitated municipalities to develop appropriate WDM strategies, which ensure that poor households have access to enough water to sustain a healthy and dignified life, and that large consumers like industry, agriculture and hedonistic residential consumers are penalised for their excessive consumption. Water conservation education should be undertaken with the ultimate goal to ensure access to adequate and safe water for all and to curb hedonistic water consumption.

## Public Participation

Public participation is a key tenet of democratic governance and the legal and policy set up for post-apartheid water services. Although we did not focus on public participation from an end-user/community perspective, it is evident from our research that the current forums of public participation – ward councils and Integrated Development Plan (IDP) and Water Service Development Plan (WSDP) processes – are failing to adequately incorporate input from communities, and particularly from marginalised and

poor communities. There is a clear need to rethink public participation so as to actively incorporate public input.

More progressive methods to facilitate public participation are used in eThekweni and City of Cape Town, where both municipalities have ostensibly recognised the problems associated with ward committees and opted for more inclusive and participative methods such as the *Raising the Citizens' Voice Project*. While there are valid criticisms of the actual inclusive participation aspect of these initiatives, they are undoubtedly an improvement.

## Recommendations

Based on our findings across the nine fault lines, we identify the pressing need for:

1. Greater financial and technical support to municipalities, including funds and deployment of personnel. This is especially for poor municipalities that are under-spending and not reducing their backlogs quickly enough and those which have limited potential to raise internal revenue through cross-subsidisation with rich water users.
2. Prioritisation of efforts to eradicate all backlogs and advance levels of service, including
  - finalising and implementing an appropriate Free Basic Sanitation (FBSan) policy, and
  - implementing an adequate *per person per day* Free Basic Water (FBW) allocation across all municipalities, starting with a national minimum amount of 50 litres per person per day.
3. Abandonment of using the indigent policy and register to allocate FBS and, instead, utilisation of universal allocation of FBS or geographic targeting. This may require research into ways to effectively cross-subsidise across bands of domestic water users, including an investigation of elasticity of demand at the different levels of consumption.
4. National regulation of all water tariffs to ensure
  - o equitable reflection of social and environmental justice objectives, and
  - o a price cap for the first tariff block/s following the FBW block across all municipalities i.e. to ensure uniformly low tariffs for low consumption and to get away from the situation in which poor people in the poorest municipalities often have to pay higher prices for water than in richer municipalities,
  - o as well as research into consumption, costs and affordability of water services across low-income households.
5. National regulation of credit control practices to ensure
  - o fair enforcement between different classes of water users, including the establishment of pro-poor policies on disconnections, and
  - o prohibition of prepayment water meters and other pernicious water restriction devices in poor communities.
6. More effective national regulation of water quality control.