

# **The South African water sector: Municipal Dysfunction, Resistance, and Future Pathways**

A report for the Alternative World Water Forum

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Photo: Masixole Feni

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## **List of Acronyms**

DWS - Department of Water and Sanitation  
ES - Equitable Share  
FBS - Free Basic Services  
FBSP - Free Basic Services Policy  
FBWP - Free Basic Water Policy  
FBW - Free Basic Water  
LGFF – Local Governance Fiscal Framework  
MIG – Municipal Infrastructure Grant  
NT - National Treasury  
NWA - National Water Act 36 of 1998  
PARI - Public Affairs Research Institute  
RHIG – Rural Households Infrastructure Grant  
SALGA - South African Local Government Association  
SERI – Socio Economics Rights Institute  
WMD- Water Management Device  
Water Services Act - Water Services Act 108 of 1997  
UPM - Unemployed People’s Movement  
USDG – Urban Settlements Development Grant  
WSA - Water Services Authority  
WSP - Water Services Provider

# 1. Introduction

In South Africa, local government is envisaged as a critical site of redistribution. This vision is laid out in the 1998 White Paper on Local Government, which imagined an entirely new kind of municipality, focused on the delivery of services to all South Africans to address historical injustices and reduce poverty and inequality. However, more than two decades later, local government has become a site of systemic dysfunction. The financial and infrastructural state of municipalities is deeply troubling. According to the South African Auditor General, in June 2021, over 25% of municipalities were at risk of complete operational collapse, the majority invested minimally in infrastructural repair and maintenance, and were faced with irrecoverable debt<sup>i</sup>.

The reasons for this state of crisis include a governance failure, capacity constraints, and the deterioration of financial viability. However, this explanation does not go far enough in accounting for the flaws and inappropriateness inherent in the post-apartheid municipal operating model. This mischaracterization, resulting in a produced crisis, is well captured by Zama Ndlovu as follows:

*“The post-Apartheid government has continuously used human rights language to frame its interventions. But its chosen municipal delivery model has not addressed the injustices of our past. Today’s municipalities are contributing towards a deepening of inequality, both through their intended model of provisioning and their ethical and governance failures”<sup>ii</sup>.*

This report forms part of the Alternative World Water Forum, an activist driven initiative, established as a counter to the World Water Forum taking place in Senegal in March 2022. This study will attempt to unpack the influence and impact of privatization and commercialization principles on the South African water sector. The focus will be placed on the drivers of institutional and infrastructural dysfunction, which manifests as a persistent inequality in water access. The systemic dimensions to municipal governance failure will be centred, as this was envisaged as a critical site of redistribution. Thereafter, community responses and future pathways toward more just provisioning are considered<sup>iii</sup>.

## 2. Context and Policies

Colonial and apartheid relations in South Africa cumulatively contributed to racialized land and resource dispossession and appropriation. At the onset of the colonial period, Dutch law was drawn on in authorizing the colonial State to control the use of public water. This practice was replaced in the 19th century by the English riparian doctrine, permitting property owners to access and use water from the river adjoining their property. Consequently, with the introduction of the Water Act of 1956, the apartheid regime prioritized the commercial agricultural sector, and the economic interests of mining and industry<sup>iv</sup> v. At the local level in the sphere of domestic water provisioning, segregationist policy supported provisioning in designated ‘white areas’, with ‘black local authorities’ only established in 1982. The latter faced the challenge of a limited tax base, powers, and capacity to execute their mandate; pushing rent and service rate increases to generate revenue<sup>vi</sup>. This context ignited township resistance, including rent and service boycotts, serving as a central force in undermining the apartheid state<sup>vii</sup>.

In the post-94 period, there was a strong expectation that the state would prioritize socio-economic rights as part of a transformative project. To this end, a range of laws and policies have been advanced to address historical inequalities. Indeed, contemporary South Africa is perceived as having one of the most progressive Constitutions in the world<sup>viii</sup>. It aims to facilitate a fundamental transformation in response to the injustice of the country’s colonial and apartheid history. This includes a constitutional right to access sufficient water, captured in Section 27(1)(b) of the Constitution. The right forms part of a set of justiciable socio-economic rights concerned to realise a just and equitable society<sup>ix</sup>.

Furthermore, the main pieces of legislation governing water are the Water Services Act 108 of 1997 (Water Services Act) and the National Water Act 36 of 1998 (National Water Act). These identify the state as responsible for the sustainable management of water resources, for the benefit of all in accordance with the constitution. One of the main objectives of the Water Services Act is to provide for the right of access to basic water supply and basic sanitation<sup>x</sup><sup>xi</sup>. The Department of Water and Sanitation is the custodian of South Africa’s water resources and water services and designated as the main regulating body. In terms of delivery however, municipalities have service provision as a core function, envisaged as part of a redistributive effort. This vision is laid out in the 1998 White Paper on Local Government, which imagined an entirely new kind of municipality, with radically different obligations and functions, focused on the delivery of services to all South Africans. Universal access to services, to address historical injustices, is considered one of the most important roles of local government and understood as critical to reducing poverty and inequality<sup>xii</sup>. Importantly, the 1998 White Paper recognizes that accessibility

is determined both by physical as well as economic access, requiring that affordability is built into municipal tariffs<sup>xiii</sup>.

According to the White Paper on Local Government (1998);

*“South Africa has been given a rare and historic opportunity to transform local government to meet the challenges of the next century. ...the existing local government system will be radically transformed... (into) a system of local government which is centrally concerned with working with local citizens and communities to find sustainable ways to meet their needs and improve the quality of their lives.”*

In terms of infrastructural access, at the end of apartheid 12-14 million South Africans (of a population of 40 million) were without access to safe water. In response, there has been more than R1,3 billion worth of infrastructural investment to support universal access to services as critical to reducing poverty and inequality. These advances have been viewed as one of the successes, of the post-apartheid state. According to the Stats SA's Community Survey of 2016, approximately 85,5 per cent of households now have access to piped water, and the ruling party continues to present these impressive figures on campaign trails<sup>xiv</sup>.

However, it is increasingly clear that these figures are contradictory, inflated, fail to account for qualitative difference, and are in fact eroding materially as infrastructure continues to fall into disrepair. To begin with, regarding qualitative difference and access, it is significant that post 1994 claims of provisioning have always concealed significant variegation. For one, infrastructure alone does not guarantee access. Instead, services that are unaffordable cannot be accessed, thereby eroding their claimed contribution to poverty reduction<sup>xv</sup>. Furthermore, connection in rural areas and informal settlements is variable, with significant consequences for women, children, and persons with disabilities. For example, in informal settlements, most households rely either on water tankers or poorly maintained communal taps, that serve multiple households and result in long queues<sup>xvi</sup>. Even in the case of formal housing, access is shaped by ability to pay, infrastructural breakdown, and technologies that restrict access (more on this below).

Adding to these persistent qualitative differences, is a worsening state of infrastructural collapse and disrepair. In late 2019 the Department of Water & Sanitation released a Master Plan revealing that more than 5.3-million households and 21-million people don't have clean water, despite money being spent on dams and pipelines to deliver water to 95% of the population. The shocking implication is that, despite significant investment in new infrastructure, many places are worse today than in 1994. “Twenty-six years later and after an investment of more than R1.3 billion in water resources and water services

infrastructure, the percentage of the population currently receiving reliable water services is lower than it was in 1994. While more homes have access to basic water supply now than in 1994, as a percentage of all homes fewer households have water now than at the end of apartheid<sup>xvii</sup>. Leaving the state with a R898-billion bill this decade. The reasons for this collapse are manifold, and include corruption and mismanagement, poor planning, skills shortages, population growth, and underinvestment in repair and maintenance<sup>xviii</sup>. According to the Master Plan (2019), water leaks are currently over 30%; almost half of the wastewater treatment plants are in critical condition; and a further 11% are dysfunctional. Access to water is the worst in rural areas with households in the Eastern Cape (49%) and Limpopo (53%) with the worst levels of household access<sup>xix</sup>. Ultimately, the existing infrastructural network of dams, pipelines and reticulations - worth R1.3-trillion<sup>xx</sup> in total – are falling into disrepair and collapse.



Photo: Ihsaan Haffejee<sup>xxi</sup>

### 3. Municipal water governance: A site of dysfunction

The post-apartheid vision for local government was as a critical site of redistribution. However, more than two decades later, local government has become a site of systemic dysfunction. This report focuses on the drivers of this institutional and infrastructural dysfunction, which manifests as a persistent inequality in water access. Thereafter, community responses and future pathways toward more just provisioning are considered.

#### 3.1. The Municipal Operating Model: Service Delivery and Revenue Generation

The post-apartheid state placed local government at the center of basic service provision for all, understood as a transformative function. At the same time, it was assumed that municipalities would raise own revenue in supporting their efforts to fulfil this developmental mandate. Fundamental to these twin goals of service delivery and revenue collection, was the local government fiscal framework (LGFF). A core assumption of the LGFF, and linked White Paper, is that own revenue – in the form of property rates and service charges – would be sufficient to finance 73 per cent of all local government operating expenditure<sup>xxii</sup>. This is supplemented by a small national transfer, with “less than 9% of the national budget devoted to local government and, on average, only 30% of local government budgets comes from the national fiscus”<sup>xxiii</sup>. These national transfers include the equitable share allocation and conditional grants<sup>xxiv</sup> (more on this below).

Hence, a foundational assumption of the municipal operating model is the view that local government can simultaneously offer affordable services and generate own revenue - through service tariffs and property taxes – to remain financially viable. In other words, it was assumed that municipal tariffs could be set at levels that ensure affordable household access and municipal financial viability. This twin goal was presented as a win-win fiscal approach. “The White Paper did not see any conflict between these ... the clear assumption was that there was a point of convergence in tariff setting at which both goals could be achieved”<sup>xxv</sup>.

However, as explained by Ruiters (2018), “Municipal governance problems in South Africa derive in part from the larger political economy, which produced local government as a third sphere of government, but largely self-financed through selling services and collecting property rates”<sup>xxvi</sup>. The consequence is that municipalities have increasingly prioritized cost recovery on basic service provision (electricity, water and sanitation) because these make up one of the main sources of own revenue<sup>xxvii</sup>. However, this effort is being advanced in a context of extreme poverty and inequality, where over 12 million

people are unemployed, by the expanded definition, and 2.1 million job losses occurred during the covid pandemic<sup>xxviii</sup>.

The consequence of the fiscal model is that municipalities are governed by a commitment to fiscal prudence, rather than prioritizing equitable provision as central to the developmental mandate. The result is that economic considerations overshadow equity commitments<sup>xxix</sup>, where “The geographies of revenue, despite their purported intention to be pro-poor and pro-urban in nature, reflect contrary consequences”<sup>xxx</sup>. In the case of Cape Town, for example, the establishment of the unicity in 2000 advanced a more progressive notion of ‘one city, one tax base’. The intention was to utilize revenue collection as a redistributive instrument. However, in practice, there has been a continuation of uneven and racialized provisioning of service access, informed by the prioritization of cost recovery and property rates. Property tax is illustrative of this dynamic. Contributing to almost one quarter of municipal revenue in Cape Town, this incentivizes political efforts to maintain and grow property market value in wealthier parts of the city<sup>xxxi</sup>. The consequence is the emergence of a ‘real estate state’<sup>xxxii</sup> that through prioritizing state finances simultaneously prioritizes and rewards wealthy, largely white, rates-payers. Drawing an explicit link “between the generosity of the ratepayer and the ability of the municipality to provide free services for the poor ... municipal bureaucrats have openly stigmatised the black poor as dependent ‘lazy communities’ having a ‘culture of non-payment’, with an implicit comparison to whites who are the norm of civic mindedness”<sup>xxxiii</sup>.

In contrast, however, it can be argued that bureaucratic practices and instruments concerned with growing property rates (and increased service rates) can more aptly be termed a ‘culture of non-collection’<sup>xxxiv</sup>. That is, City officials driven by the priority of sound fiscal practice, mobilise planning instruments in service of increased rates collection, perpetuating neo apartheid geographies. Whilst the imperative to generate own revenue is fundamental to informing regressive forms of state practice, national transfers are not devoid of challenges either.

### **A few points are important to consider here:**

- i. In terms of capital grants for infrastructure development, the Municipal Infrastructure Grant (MIG) has been replaced by the Urban Settlements Development Grant (USDG) in cities and the Rural Households Infrastructure Grant (RHIG) in rural areas. The USDG for example, is aimed at supporting more integrated planning of bulk infrastructure to low-cost housing developments in well-located areas near social and economic facilities and opportunities. However, a key concern relates to the under or misspending of these allocations. The MIG funds have historically been under and/or misspent by most municipalities,

raising questions about how these new grant mechanisms would be any different<sup>xxxv</sup>.

- ii. A significant national transfer is the equitable share allocation. The ES is offered to municipalities to fund free basic service (FBS) provision (more on this below). “There is an annual allocation in the national budget to each municipality in respect of these services, which forms part of the local government discretionary equitable share allocation ... Each year the number of households funded for free basic services in the national budget has increased: increasing over the past six years alone from 8.7 million in the 2014/15 financial year, to 10.36 million in 2020/21”<sup>xxxvi</sup>. However, significantly, there is a massive differential between the value of the national transfer and the provision of FBS at municipal level (discussed in detail later). The reasons for this are unclear, but one significant aspect that impacts on the use of the grant as intended, is that the ES allocation is an unconditional grant. This means that municipalities have full autonomy to spend these funds as they wish. There is mounting evidence that municipalities are redirecting these funds as part of general revenue. The marked difference between the value of the national transfer and the actual provision of FBS brings into question the material effect on the ground in relation to the scale of the need (more on this below).
- iii. A final point – beyond transfers and rates collection – relates to the threat of private sector borrowing as a prioritized revenue source moving forward. For example, in Cape Town, Cirolia & Robbins (2021) suggest that “the National Treasury is increasingly pressurizing the City of Cape Town to expand its borrowing and reduce its dependency on grants”. This pressure is likely to increase as South Africa moves into a deeper recession and austerity is embraced more absolutely within the National Treasury. The pressure to borrow poses real risks to municipal autonomy, with conditionalities and a focus on returns for international lenders. These threaten to “orient the money, time, and skills of City staff towards imposed priorities, potentially reflecting a technocratic, rather than a democratic, approach to City financing.”<sup>xxxvii</sup>.

This movement towards private sector borrowing and development finance, increases the likelihood of private capture of policy and infrastructural directions, where “*there is an increasing urgency especially in Treasury on how to offset the costs of covid, of state capture, and of general dysfunctionality and inefficiencies in the system ... yet, capital comes at a cost, and that cost is borne by government, which is then pushed on to users ... these projects are mostly for new infrastructure, and what we need is to repair existing infrastructures*”<sup>xxxviii</sup>.

## 3.2. 'Progressive Tools' and 'Regressive Ends'

Ultimately, the assumptions of the municipal fiscal framework emerge as fundamentally flawed, with consequences for municipal viability, spatial inequality, and everyday life-making. Local government is defined by an 'impossibility' of balancing competing commitments, "to manage poverty and deprivation in a racially inflected capitalist society marked by massive inequalities and increasingly precarious livelihoods for the large majority of the population<sup>xxxix</sup>. The consequence for South African water governance is a contested and co-evolutionary relation between neoliberal and human-rights-to-water oriented transformations<sup>xl</sup>. This is starkly reflected in the Free Basic Water policy and associated mechanisms.

### 3.2.1. The Free Basic Water Policy

To begin with it is important to recognize that FBW did not exist in the immediate post 94 period. Instead, tariffs were set to support full cost recovery, with non-payment resulting in service disconnection (McDonald 2002; Ruiters, 2018). It was only in 2001, following growing criticism and a severe cholera epidemic in Kwazulu Natal in 2000<sup>xli</sup>, that there was a shift toward the introduction of the Free Basic Water (FBW) policy in 2001. In terms of the policy, concretized in the 'Free Basic Water Implementation Strategy' in August 2002, poor households should be allocated a free basic quantity of potable water, identified as 6kl per household per month. The allocation is primarily financed through the Equitable Share (ES) allocation from National Treasury (discussed above), with further support through cross-subsidies, from municipal rising block water tariffs.

Presented as pro-poor, in truth FBW is Janus-faced. It is both a lifeline and a technology of control. Ruiters (2016) explains these apparently contradictory tendencies by arguing that the FBW policy was developed to be integral to, rather than in opposition to commercialization practices<sup>xlii</sup>. For one, the "less poor find themselves under more pressure to pay more and pay regularly. The poor, on the other hand, while not paying for services at all would have to be restricted to a 'basic lifestyle'"<sup>xliii</sup>. Loftus refers to this as the paradox of FBW, where an intended universal minimal quantity of water has become the maximum accessed by many of the poor. At the same time, 'the less poor' are made to pay in support of municipal cost recovery. This is done "through setting a high price for the second tariff block ... and relatively high prices for the blocks thereafter"<sup>xliv</sup>. Ultimately, beyond the introduction of a lifeline amount, cost recovery continues to be prioritized through shifting the cost upward most immediately onto the next tariff block, as corporatized municipalities treat citizens as customers. Alongside this regressive translation of a supposedly progressive instrument, "To add insult to injury ... there

appears to be a trend to be more lenient in respect of businesses and especially government institutions that fail to pay their municipal accounts”<sup>xlv</sup>.

### 3.2.2. Means-tested indigency policies

The determination on beneficiary allocation is managed and restricted through the deployment of means-tested indigency policies. Within such frameworks, registration as ‘indigent’ is a criterion for access to Free Basic Services (FBS). However, there are widespread problems with the implementation of indigency policies. One of these is an ad hoc definition of poverty and significant variation amongst municipalities, to determine beneficiary qualification. Furthermore, the application process is “typically very onerous, requiring numerous documents, and is perceived by potential recipients as stigmatizing ... women, child-headed households and the unemployed, are often not aware of the policy or do not register for fear of attracting adverse official attention”<sup>xlvi</sup>. Furthermore, the registration is generally effective for a limited period, requiring reapplication. “Municipalities have made the application process as unpalatable and time consuming as possible for residents. The state appropriates time”<sup>xlvii</sup>. The net effect is a mechanism that is significantly under-representative of those in need.

### 3.2.3. Technologies of control

Furthermore, FBW allocations are mediated and controlled through technological devices, including prepaid meters, water management devices, and water restrictors. In a study tracing the history of prepaid meters in South Africa, Von Schnitzler (2008) argues that the technology has been portrayed as an instrument, ‘aiding’ residents to calculate water consumption. However, the impact of these devices is to transform homes and families into ‘spaces of calculability’, forcing poor residents to subject their daily consumption patterns to intense scrutiny<sup>xlviii</sup>. A second instrument is the Water Management Device, similarly used to control water access by automatically cutting off once the daily FBW limit has been reached. “Despite continued efforts to portray the WMD as a significant instrument for sustainable development and responsible water usage, the harsh realities of living with the instrument are well documented, earning it the names ‘Weapon of Mass Destruction’ and *ufudo*, isiXhosa for tortoise. So named because these devices ‘hide in their shell and we can’t see what’s going on inside.’”<sup>xlix</sup>. A third technological instrument, in use in the period following the introduction of FBW, is the flow-restricting disc. These limit water supply to a trickle flow of 6 000 litres (6kl) per household per month and resulted in a huge protest campaign, ‘ditch the disc’ in the early 2000’s. However, in 2021, the City of Cape Town announced the discontinuation of the WMD and return to flow restricting discs.

The use of these devices is often portrayed as part of efforts to advance responsible citizenship and the solution to debt management. However, in the context of household poverty they further entrench poverty, function to individualize a systemic struggle, reinforce a disconnect between the state and citizens, and lend support to fiscal priorities over the human right to water for all.

In reflecting on the lived impact of these devices that restrict water access, Faeza Meyer from the African Water Commons Collective (AWCC), explains,

*“These are the devices that we are fighting ... if you come into our communities, you can actually smell from a distance ... there is a water management device in this household. You come into people’s households and there’s washing standing ... they explain I can only wash today but I can only rinse tomorrow, I can’t do both. People are making critical decisions about whether their kids must wash their hands or flush the toilet. These are health risks ... the issues in our communities is deep and becoming deeper”<sup>li</sup>.*

Notwithstanding the positive contributions of the Mazibuko litigation of 2009 (for details refer to Dugard, 2016), the constitutional court ruling - concerned with the reasonableness of the FBW allocation and the lawfulness of the prepayment meter on poverty-stricken households - ultimately bolstered municipalities in the continued use of these devices, arguing that these remain consistent with constitutional commitments. Commenting on the judgment, Dugard (2016) argues that it “for the moment, legal tactics should focus on litigation to ensure that government minimum standards are met and that there are no nonprocedural disconnections of water supply”<sup>li</sup>.



*Faeza Meyer, founding member of the AWCC<sup>li</sup>*

### 3.2.4. Equitable Share (ES) Allocation

Finally, in assessing the apparently ‘progressive’ contribution of FBW and associated mechanisms, it is necessary to return to the equitable share (ES) allocation. As mentioned, this is the main national transfer that funds Free Basic Services. A report by Tracy Ledger (2021a) on behalf of the Public Affairs Research Institute (PARI), shows that there is a glaring difference between the number of households funded for FBS through the ES grant, and the those receiving the services. Details can be found in the report, but a few key take-aways are as follows<sup>liii</sup>:

- i. The total number of indigent households registered by local municipalities declined by almost 20 per cent from 2015 to 2019. This is despite increases in poverty and in the number of households funded for FBS in the national budget over the same period
- ii. not all registered indigent households are receiving all free basic services
- iii. In the national fiscal year 2019/20 a total of 10.1 million households were funded for free basic services, but fewer than one quarter received these from their municipality.
- iv. The data also indicates significant differences across municipalities in respect of the delivery of free services.
- v. This situation is still more troubling when one considers that the sufficiency of the FBW allocation – to those who receive it - is itself questionable. This is because it is lower than the international recommendations of 50l per person per day; fails to account for backyard dwellings on a single stand; and fails to account for water uses beyond drinking and cooking<sup>liv</sup>.

What emerges from the above discussion is that efforts guided by a stated progressive agenda are in practice resulting in questionable and/or deeply regressive ends. This is because they are developed as integral to, rather than in opposition to municipal corporatization and water commodification. Ultimately, as municipalities struggle to generate own revenue the costs are being transferred to poor households. The above, brings into question the efficacy of FBS in contributing to a transformative and redistributive agenda, as revenue is given primacy over water as a human right for all. “Millions of poor households are required to pay for all services that they receive from their municipality, the costs of which directly reduce the disposable income that they have for other essential expenditure, such as food”<sup>lv</sup>. This is in a context of an increasing cost of municipal services - well above inflation over the last decade - with the implication that the average cost of basic services for a poor household (of four) in 2020 exceeded a quarter of total monthly income. The tragic outcome is that “The envisaged win-win has become a lose-lose reality”<sup>lvi</sup>.

This suggests an endemic crisis, a slow violence, that is literally “budgeted for via line items in spreadsheets. State violence is inevitable when impoverishment is criminalised by commodifying access to land, housing, water and electricity”<sup>lvii</sup>. A recent special issue (Issue 78) of the progressive magazine, *Amandla* (October, 2021) offers insights into this system failure, profiling the emergent crisis in Nelson Mandela Bay; Mbizana in the Eastern Cape, and Gauteng. Others could be added to this list of crisis prone municipalities, including the Makana Local Municipality, the City of Cape Town, and more.

### 3.3. Intersecting challenges: deepening crisis

The flawed assumptions in the municipal operating model and contradictory efforts to mitigate these are clearly at the heart of system failure. However, there are additional (though related) aspects to consider. These dynamics coalesce in producing institutional and material crisis across municipalities. In this section I touch on these intersecting municipal challenges. However, it is important to note that these dynamics are not equally present everywhere, and therefore manifest in different material challenges. For example, in almost all municipalities in the Eastern Cape, the emergent water crisis is defined by “no clean water or simply no water at all in working class or rural areas”<sup>lviii</sup>. Whereas in Gauteng, “City-dwellers ... across race and class, are left frustrated by their struggle to access water”, with incomplete and competing accounts about the reasons for this<sup>lix</sup>.

#### 3.3.1. Declining municipal finance

As already outlined, the municipal finance operating model is unsustainable, and a foundational reason for crisis prone municipalities. The details of the model and contradictory tendencies have already been discussed. However, there are a few additional points to make, specifically on the state of budgets, to offer a more complete picture of the implications of the model for municipal operations and continuation.

In this case, the statistics are revealing. At the beginning of the 2019/2020 financial year, 126 municipalities, more than half of the total, adopted unfunded budgets. This number was reduced to 66 following an intervention by National Treasury, but it remains clear that municipal finances are unsustainable. There are growing levels of outstanding debt owed to municipalities (over R230 billion at the end of December 2020), with the majority (72%) owed by households. “The Auditor-General estimates that no more than 60 per cent of that debt can ever be recovered, given the assessed ability of households to pay”<sup>lx</sup>. The reasons for the household non-payment are due to an inability to pay, in the context of precarious employment and unemployment. This is a structural challenge that

cannot be resolved through efforts toward ‘responsible citizenship’ with associated instruments of control.

At the same, municipalities themselves owe money to utilities like Eskom and Rand Water for “bulk” purchases. According to Galvin (2021), “municipalities owed R7.3 billion to water boards at the end of 2017. The boards were in turn in debt to the Department of Water and Sanitation (DWS) for R11 billion”. One consequence of these multi-scalar debt burdens is that municipalities intensify cost recovery practices to generate revenue, to pay creditors further up the chain. “This is where the corporatisation of services comes in ... [yet] paying for water becomes impossible. They [people] either try to depend on free basic water, or they use more than that and go into debt”<sup>lxi</sup>. A further consequence of declining municipal finances and debt burdens, is that infrastructures are not extended, repaired and maintained. This is reflected both in the absence of bulk infrastructure (extension) by the DWS and in collapsing municipal infrastructure, as municipalities neglect to repair and maintain infrastructure, which is meant to be funded out of services revenue. The knock-on effect of this infrastructural neglect is a decline in the quality of municipal services. Essentially this reflects a spiral of low investment, low-cost recovery, low service quality<sup>lxii</sup>. This decline is not uniform, with differences between water systems by geographical area and embedded in Apartheid geographies.

“The bottom line is that the convergence point assumed in the White Paper — at which tariffs will be low enough to ensure universal affordable access to quality services, and high enough to ensure local government financial viability — does not exist. Our local government fiscal framework represents a policy choice that should never have been made, because it wasn’t ever a choice that existed in the real world”<sup>lxiii</sup>. Ultimately the financial imperative, in the context fiscal precarity, has trumped equity commitments in the provision of municipal services. Ironically, the operating model is deepening poverty and inequality<sup>lxiv</sup>.

### 3.3.2. Austerity as multi-scalar

A related aspect in the story of municipal financial unsustainability, is the intensification of national austerity, spear-headed by the National Treasury. Analysts working around Budget Justice in the country have argued that current budget practices are cutting back on resources available for the delivery of basic rights and that the government is in violation of its constitutional obligations. Furthermore, South Africa’s turn to the International Monetary Fund to finance part of the expenditure and shortfalls arising from the economic crisis, and fallout from the covid pandemic, has prompted concerns that the Treasury are trying to use the crisis to justify the further imposition of austerity<sup>lxv</sup>.

Alongside, national austerity, political analyst Ayabonga Cawe, argues for the importance of paying attention to austerity practices at different scales, including at a local government level. The point is to argue for the importance of paying attention to localized manifestations of austerity, even when national transfers have occurred<sup>lxvi</sup>. This becomes necessary to fully comprehend the practices that inform austerity and the material effects.

One localized manifestation of austerity politics is evidenced in chronic under-spending by municipalities on water-related budgets. According to Dugard (2016), “this systemic municipal under-spending has in effect meant that South Africa has ‘missed a generation of capital investment’ in water services<sup>lxvii</sup>. This has serious material effects and requires urgent attention to fully comprehend the reasons for under or mis-spending, which may include capacity constraints and corruption. Another potent illustration of the importance of tracing austerity practices, as multi-scalar, is the clear disjuncture between the ES allocation and FBS provision (outlined earlier). The reasons for this are complex and require a far more careful unpacking, and include municipal redirecting of funds into the general budget revenue<sup>lxviii</sup>, as well as mis-spending once the money lands at the local scale. What becomes clear, is that to fully comprehend the challenge and to conceive of alternative more just politics, it is necessary to grasp austerity politics and practices, and implications, at different scales.

### 3.3.3. Management, Outsourcing and corruption

In terms of authority to undertake water services, municipalities function as a Water Services Authority (WSA), assuming operational responsibility for providing water services to end users. They may also function as Water Services Providers (WSPs) or enter into a contract with external provider, including a private water provider. In South Africa, whilst the state has largely dominated governance, there is a substantial industry dedicated to the outsourcing of municipal delivery, resulting in the hollowing out of the state<sup>lxix</sup>. According to Glen Robbins, “state dominated governance is combined with a multi-billion (Rand) industry to outsource everything from system design, supplies/inputs, operations, repair/maintenance, construction, scientific services, even connections and cut-offs”<sup>lxx</sup>.

In Gauteng, for example, municipalities rely on water utilities - primarily Rand Water – to develop and maintain infrastructure. This relationship raises a range of challenges and uncertainties related to staff capacity, political corruption, proper utilization of funds, accountability. These all cumulatively impact on delivery outcomes<sup>lxxi</sup>. Another consequence of the centrality of private actors in water delivery, is that they explicitly operate within a profit-motive and this deepens the commodification of services still further, eroding the recognition of water as essential to life.

Outsourcing has also been accompanied by corruption, where “the tender system in municipalities has become the main opportunity for accumulation by local elites”<sup>lxxii</sup>. In March 2020, Corruption Watch and the Water Integrity Network released a report entitled “Money down the drain: Corruption in South Africa’s water sector”, which explores the extent of systemic corruption, through procurement contracts, in the water sector<sup>lxxiii</sup>. The Makana Municipality in the Eastern Cape offers a troubling illustration of the consequences of municipal corruption and resource capture, especially around the award of municipal tenders. “The 2019/20 Auditor-General’s report into Makana municipality found that the municipality ... wasted over R900 million on irregular and unauthorised expenditure; and was being investigated by the police for financial misconduct. Tenders were awarded but there were “under achievements” on the projects. This is a town that does not have a single playground in any area”<sup>lxxiv</sup>. There is a clear relationship between outsourcing, corruption, and under or mis-spending (the localized manifestation of austerity, that Ayabonga Cawe (2021) speaks of).

#### 3.3.4. Absent Regulation

Another underlying reason for worsening water governance relates to the failure to effectively regulate water services. Part of the challenge is that DWS is technically insolvent, and under the past tenure of Minister Nomvula Mokonyane, came to be “mired in institutional challenges, including financial mismanagement, escalating debt, capacity constraints and an ensuing deterioration of infrastructure owing to lack of maintenance and investment”<sup>lxxv</sup>. The master plan says that a “serious shortage in technical skills” has meant the department “continues to over-rely on consultants in key strategic areas, including planning and programme management”<sup>lxxvi</sup>.

In sum, from the preceding discussion it is indisputable that the current model for providing basic services is failing to meaningfully respond to historical inequality and to deliver on the constitutional vision, and associated policies and legislation. Instead, what emerges is a tragic story of municipal failure and a cycle of dysfunction, that is manifested in low quality services, service restrictions, disconnections, and infrastructural disrepair and collapse.

*“This is not just a result of corruption. It is also an outcome of systematic under-funding of local government, budget cuts and the outsourcing of services to profit-making business interests ... Another major cause of this crisis is the deployment of incompetent political appointees”<sup>lxxvii</sup>.*

## 4. Resisting dispossession and claiming water rights

In this context of systemic dysfunction, what is required are efforts to resist this dispossession of the majority, claim water rights, and reimagine and remake the system through different mechanisms. This section briefly considers the ways in which communities are doing this work through engaging in a range of “invented and invited” spaces<sup>lxxviii</sup>. In so doing, I draw extensively on the excellent report “Claiming water rights in South Africa”, by the Socio-Economic Rights Institute (SERI)<sup>lxxix</sup>. Through focusing on four case studies, the report considers the range of actors claiming their water rights and the mechanisms they are drawing on.

The report is a comprehensive resource to the consideration on pathways forward, and my objective is not to repeat the findings here. However, I will raise a few key points, that make clear that communities are actively reimagining and remaking spaces, drawing on a range of mechanisms. These include engagement with a host of government officials and entities, resistance in the form of protest, litigation, and practices of self-provisioning. The cases presented raise both questions and possibilities for advancing more just futures, including the following:

- i. Illustrates the significance of public interest litigation as a tool to hold the state to account<sup>lxxx</sup>.
- ii. Raises questions around accessing private resources in advancing the fulfilment of constitutional rights.
- iii. Illustrates how expropriation in terms of the Housing Act can be utilised as a tool to widen access to urban land and services.
- iv. Illustrates the importance of multiple strategies – community organization, protest, self-supply, litigation - to the struggle for tenure security, services and ultimately a dignified life<sup>lxxxii</sup>.
- v. Shows the potential of a cross-class coalition of residents to undertake the labour of repairing infrastructure in order to ensure access to water

As with the case of Marikana in Cape Town, the case of the Makana Local Municipality is interesting as an example of the mobilization of a range of strategies, that move between invited and invented spaces. I briefly sketch the highlights of the Makana case below, including more recent developments, as a more detailed reflection on the “hope, frustration, courage and resilience”<sup>lxxxii</sup>, that these struggles entail. This serves as a segue to the concluding remarks and recommendations for this report.

## **The case of the Makana Local Municipality**

The Makana Local Municipality is in the Eastern Cape Province and home to the University Currently Known as Rhodes (UCKR), located in the town of Makhanda (previously Grahamstown). Today, Makana is bankrupt and in crisis. Over the last few years, the town of Makhanda has been faced with missing municipal funds, corruption, dysfunctional infrastructure, and a water crisis<sup>lxxxiii</sup>. The latter is a result of ageing and neglected infrastructure, municipal corruption, and a severe drought. Unfortunately, whilst severe, Makana, is one illustration of systemic municipal collapse across the country.

In response to this state of municipal collapse, the Unemployed Peoples Movement (UPM), applied to have the municipal council dissolved in 2019, under Section 139 of the constitution. “Section 139 provides that when a municipality cannot or will not carry out its constitutional obligations ... the provincial executive committee may impose a recovery plan, dissolve the council, or take other steps to make sure that the council can deliver services”<sup>lxxxiv</sup>. For the first time in South Africa, on 14<sup>th</sup> January 2020, the court ordered the dissolution of the council, based on failing in its constitutional duty to provide services to residents. The court decision is significant for demonstrating what is possible. It is also striking because of the sustained and collaborative engagement between a wide range of people and organizations in pushing for the intervention. These have included social movements, informal settlement residents, residents of the suburbs, unions, and the University<sup>lxxxv</sup>. “The judgment appears to indicate strongly that if social movements or residents’ associations provide weighty and compelling evidence to the courts that shows municipalities have failed to deliver services in line with the Constitution, then the municipalities will have to respond to that evidence in court, instead of simply ignoring it”<sup>lxxxvi</sup>.

However, the ANC-run council decided to appeal against the ruling in early 2020, and the council is yet to be dissolved. Therefore, the story also illustrates the limits of provincial interventions in municipal affairs. Soon after the 2020 ruling, the covid pandemic hit and has exacerbated an existing water crisis. However, litigation has not been drawn on as the only strategy, and the struggle continues. In May 2021 there was a three-day shutdown in Makhanda, initiated by taxi operators. In November 2021, The Makana Citizens Front (MCF), including the leader of the Unemployed People’s Movement (UPM), Ayanda Kota, participated in local government elections, and managed to secure 18.10% of the vote.

Yet, within this context of struggle, members of the UPM have found that activism can come at a cost. On 29 May 2020, Ayanda Kota went into hiding after being warned of a plan to assassinate him<sup>lxxxvii</sup>. This is no idle threat, when viewed within a context of state sponsored repression of popular movements<sup>lxxxviii</sup>. Referred to by activists as ‘the politic of blood’, political assassinations have become a routine feature of political contestation under ANC rule<sup>lxxxix</sup>.

These practices have been concentrated in KwaZulu-Natal, but increasingly spread to other provinces, including the Eastern Cape<sup>xc</sup>. This ‘politic of blood’, was most recently evidenced in the murder of Ayanda Sgila, the deputy chairperson of the eKhenana occupation of the Abahlali baseMjondolo (AbM) on March 8<sup>th</sup> 2022, by four gunmen allegedly linked to the local chief connected to the ANC. Alongside an escalation in political repression, state violence through formal instruments and authorities is also an established reality in South Africa<sup>xci</sup>. Through efforts to maintain spatial order and control, “police officers and other armed forces available to the state often kill people during armed evictions and disconnections from self-organised access to municipal services”<sup>xcii</sup>. Ultimately, what emerges is that the ANC has handled “the self-organisation of the black working class outside of the ruling party as a criminal matter rather than as an opportunity to deepen democracy and build popular power”<sup>xciii</sup>.

It is clear from the case of the Makana Local Municipality that the struggle for more just futures is necessary, but also dangerous and exhausting work. It entails experimentation, commitment, embodied risks, and learning to move strategically between invited and invented spaces. At times making claims on the state to deliver on services and infrastructure as a socio-economic right, and at other times engaging in modes of bottom-up repair and maintenance that de-centre the state.



Shutdown of Makhanda in May 2021

Photo: Anna Majavu<sup>xciiv</sup>

## 5. Concluding remarks and recommendations

This short report attempted to unpack the influence and impact of privatization and commercialization principles on the South African water sector. The focus was placed on the drivers of institutional and infrastructural dysfunction, which manifest as a persistent inequality in water access. The systemic dimensions to municipal governance failure were examined, and this was followed by a brief reflection on community responses. What becomes clear from this exploration is that South African municipalities are currently in a state of dysfunction. The reasons for this collapse and unfolding crisis, can partly be attributed to corruption, but this is not the whole story. Instead, the municipal operating model is contributing to a deepening and continuation of structural exclusion<sup>xcv</sup>. This operating model refers to the assumption that local government can function both as a site for redistribution and actively operate as a corporatized entity, responsible for the bulk of revenue generation. This is taking place within a contemporary context of high unemployment, and a colonial and apartheid history. Despite a fundamentally transformative mandate, the net effect is in fact continued and deepening household poverty and inequality<sup>xcvi</sup>.

The functions of municipalities are critical for social reproduction - as the everyday work of life-making – including care and infrastructural access<sup>xcvii</sup>. A consequence of failing municipal governance is the intensification of a crisis of social reproduction, with gendered and racialized dimensions, and experienced both at the household and wider societal scale through the collapse of essential infrastructures. The current path is failing and systemically violent. Ultimately, it is essential to disrupt the spiral of dysfunction, through a rethinking and remaking of the system of public services. Communities across the country are already beginning this work. Engaging in a wide range of relations and mechanisms that move between invited and invented spaces, including litigation, protest, self-provisioning, and political contestation.

In terms of the way forward, it is essential to challenge the conservative fiscal apparatus and advance toward more meaningful democratic practice. To begin with, there is a need for a comprehensive grasp of the scale of the existing challenge in qualitative terms. In this case, ‘human rights-oriented research’<sup>xcviii</sup> becomes important. This work should focus on capturing for example, the qualitative needs of households, the gendered dimensions of access, the impact of FBW and water restrictions, the financial impact of tariffs to access water for the poor, and the financial position of municipalities including funding needs and spending practices.

Beyond this, there is a need to rethink and remake the models for provisioning public goods, and orient this explicitly toward life-making as opposed to revenue or profit-

making. In very concrete terms, in advancing affordable access, PARI proposes that the cost of basic services be contextualised against the background of poverty and food insecurity in South Africa. Referred to as a Food First approach, it is vital as it recognizes that cost recovery on basic services and enforcing a ‘culture of cost recovery’, implies that households are forced to sacrifice food expenditure. This is deeply regressive and runs counter to any socio-economic goals<sup>xcix</sup>. In contrast, the alternative approach acknowledges the intersection between features of social reproduction and attempts to think through public service provisioning in a more holistic way.

Finally, it is important to strengthen democratic participation efforts that challenge the dominance of exclusionary technocratic expertise. This would require remaking multiple spaces: from restructuring National Treasury to learning from examples of community self-organizing, solidarity economies, and localized practices of repair and maintenance that are already unfolding.

There are ways to think and act to move forward towards more just futures for all. In the words of Alana Potter, International Coordinator at ‘End Water Poverty’,

*“until government takes human beings seriously and sits them down and goes, ‘this thing is broken ... it’s about respect and dignity. What we are missing is ... mechanisms for public facilitation and engagement and co-production in solving water and other basic services crises is missing ... the more things fail and the more unaccountable or criminalizing the state becomes, the more the anger ramps up. Then we’ve got a situation where even the work that is being done is vandalized ... that kind of oppositionality is what makes frontline defenders vulnerable to repressive action from the state and digs in a problem ... it takes all of us mobilizing ... coalitions ... this is not just the struggle of the poor anymore. The combination of different tactics, and municipalities taking communities much more seriously, and taking community engagement seriously, going back to the roots of what democratic local governance is about. That is my sense of hope ... At the same time a far braver intergovernmental relations world... and working out a re-design of the municipal fiscal system, understanding that services are primarily there as a poverty reduction... socio-economic transformation agenda, then plan from there out”<sup>c</sup>.*

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## Endnotes

<sup>i</sup> Ndlovu, 2021

<sup>ii</sup> Ibid: 17

<sup>iii</sup> The report is based largely on desktop analysis and interviews of a few key informants, listed in the acknowledgements of the paper. It is also informed by an ongoing scholarly engagement and analysis of the policy, instruments, and lived impacts of South African water governance – with a focus on the Western Cape Province – by the report author, over the last 15 years. This engagement began with a Masters dissertation on water struggles in Tafelsig, Cape Town, against water restrictors in 2006. This was followed by an examination of a drought crisis and desalination adoption in the Garden Route Municipality in 2011. Most recently the author has examined the management of the Cape Town ‘Day Zero’ crisis, and the covid-crisis, in relation to service provisioning and impacts on the urban dispossessed. This work has included engagement with social movements in the City of Cape Town, advocating for housing and water justice, including the African Water Commons Collective (AWCC), and Reclaim the City (RTC).

<sup>iv</sup> Tewari, 2005:442

<sup>v</sup> Significantly, this alliance between State and commercial interests had developed at a much earlier period, at the time of the discovery of gold in 1886, with consequent legislation granting preferential water rights to mining operations (Turton et al., 2006).

<sup>vi</sup> Van Donk and Pieterse, 2006

<sup>vii</sup> Ibid

<sup>viii</sup> Chamberlain et.al, 2020

<sup>ix</sup> Ibid

<sup>x</sup> basic water services as the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene (Dugard, 2016: 325).

<sup>xi</sup> Dugard, 2016: 325

<sup>xii</sup> Ledger, 2021a

<sup>xiii</sup> Ibid

<sup>xiv</sup> Chamberlain et.al, 2020; Kings, 2020

<sup>xv</sup> Ledger, 2021b

<sup>xvi</sup> Rodina, 2016; Dugard, 2016

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- xvii Chamberlain et.al, 2020: 6
- xviii Kings, 2020; Chamberlain et.al, 2020; Department of Water & Sanitation, 2019
- xix *ibid*
- xx This total value of South Africa’s water infrastructure includes 500 dams, 290 000km of pipelines and five-million taps
- xxi 1 November 2021: A resident of Barcelona in Etwatwa, Ekurhuleni, shuns voting in order to get water after going without it for days: <https://www.newframe.com/mixed-emotions-as-voters-cast-ballots-or-stay-away/>
- xxii Operating expenditure includes staff costs, office accommodation, payments to bulk services providers, all other non-capital costs associated with delivering services, and infrastructure maintenance (Ledger, 2021b)
- xxiii Amandla editorial, 2021
- xxiv Ledger, 2021b
- xxv *ibid*
- xxvi Ruiters, 2018: 180
- xxvii Dugard, 2016: 346
- xxviii Institute for Economic Justice, 2022
- xxix Millington & Scheba, 2021
- xxx Cirolia & Robbins, 2021: 401
- xxxi *ibid*: 413
- xxxii Stein, 2019
- xxxiii Ruiters, 2007; Makhubu, 2013 in Ruiters, 2018: 178
- xxxiv Cirolia & Robbins, 2021
- xxxv Dugard, 2016; Cawe, 2021
- xxxvi Ledger, 2021a: 10
- xxxvii Cirolia and Robbins, 2021: 412
- xxxviii Extract from an interview with Alana Potter, 23<sup>rd</sup> February 2022
- xxxix Hart, 2014: 5
- xl Yates & Harris, 2018
- xli linked by many to the policy of full cost recovery
- xlii Ruiters, 2016; Millington & Scheba, 2021
- xliii Ruiters, 2018: 172
- xliv Dugard, 2016: 344
- xlvi *Ibid*: 340
- xlvi *Ibid*: 342
- xlvi Ruiters, 2018: 176
- xlvi Von Schnitzler, 2008
- xlix Scheba et.al, 2021
- l Extract from an interview with Faeza Meyer & Ebrahiem Fourie, 8th March 2022
- li Dugard, 2016: 335
- lii Source: <http://www.blueplanet.net>
- liii Ledger, 2021a: 10-11
- liv Chamberlain et.al, 2020; Ledger, 2021a
- lv Ledger, 2021a: 14
- lvi *ibid*
- lvii New Frame Editorial, 2 April 2021, [Long Read | Senzeni Na? : New Frame](#)
- lviii Amandla correspondent, 2021: 19

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- lix Galvin, 2021: 20
- lx Ledger, 2021a: 22
- lxi Galvin, 2021: 21
- lxii Dugard, 2016; Pieterse, 2014
- lxiii Ledger, 2021a: 24
- lxiv *ibid*: 25
- lxv Coleman, 2020
- lxvi Cawe, 2021; Kalla & Cawe, 2021
- lxvii Dugard, 2016: 351
- lxviii Part of the reason for this may be that the transfer is insufficient to cover the costs of free basic service provision, particularly in poor municipalities that are struggling with household payment for services in general.
- lxix Kalla & Cawe, 2021
- lxx Personal communication, 24 February 2022
- lxxi Galvin, 2021
- lxxii Amandla editorial, 2021
- lxxiii Chamberlain et.al, 2020
- lxxiv Majavu, October 2021
- lxxv SAWC, 2017 in Millington & Scheba, 2021
- lxxvi Kings, 2020
- lxxvii Amandla Editorial, 2021
- lxxviii MirafTAB, 2004; Chamberlain et.al, 2020
- lxxix Chamberlain et.al, 2020
- lxxx *Ibid*: 6
- lxxxi *Ibid*: 7
- lxxxii *Ibid*: 29)
- lxxxiii Wesso & Benson, 2020
- lxxxiv Majavu, January 2020
- lxxxv Chamberlain et.al, 2020; Wesso & Benson, 2020
- lxxxvi Majavu, January 2020
- lxxxvii Chamberlain et.al, 2020; Wesso & Benson, 2020; Majavu, 2020; Tricontinental, 2020)
- lxxxviii Benson et.al, 2019
- lxxxix Tricontinental, 2020
- xc Majavu, 2020; Tricontinental, 2020; New Frame Editorial, 2021
- xcI McMichael, 2020; Tricontinental, 2020; New Frame Editorial, 2021; Gillespie et.al, 2021
- xcii New Frame Editorial, 2021
- xciii New Frame Editorial, 2021
- xciv Source: <https://www.newframe.com/makhanda-residents-create-a-blueprint-for-autonomy/>
- xcv Kalla & Cawe, 2021
- xcvi Millington & Scheba, 2021; Ledger, 2021a
- xcvii Kalla & Cawe, 2021; Fraser, 2014
- xcviii Dugard, 2016
- xcix refer to Ledger, 2021a and 2021b for details
- <sup>c</sup> Extract from an interview with Alana Potter, 23<sup>rd</sup> February 2022