

**Cooperative Government in South Africa:  
Examining enforcement mechanisms for Municipalities  
to comply with South Africa's water regulatory framework.**

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## ABSTRACT

There is overwhelming evidence that South Africa's rivers are heavily polluted, a situation which is attributable to a large degree to poorly functioning and inefficiently managed waste water treatment works in municipalities. The evidence suggests, furthermore, that municipalities often do not comply with their constitutional obligation to provide water services in a sustainable manner and promote a safe and healthy environment. Such non-compliance infringes on people's constitutionally guaranteed rights to a pollution-free environment and equitable access to sufficient and safe water.

The problem is that municipalities are not properly managing the waste water treatment works (WWTWs) and not regulating industrial discharge into these works in accordance with the prescribed national norms and standards.

The National Water Act 36 of 1998 and other related Acts provide for legal and informal enforcement mechanisms that criminalise acts of pollution. However, none of them have been effective in enforcing municipal compliance with the national norms and standards of effluent management. There are two main reasons for this. First, the constitutional structure does not allow the Minister responsible for water management to exercise direct supervision of the municipalities despite the functional relationship the Department of Water and Sanitation has with municipalities in respect of water. Secondly, the Constitution (1996) instructs the spheres of government to avoid legal processes and cooperate with one another by intervening to execute the function if the sphere responsible for the function lacks capacity.

This thesis explores the possible use of two statutory instruments of cooperative government and intergovernmental relations as strategies to complement and support the conventional enforcement measures in the water sector: the establishment of water intergovernmental forums; and the use of implementation protocols to supervise municipalities that chronically lack capacity as a way of

providing targeted support and monitoring to facilitate an effective compliance and enforcement regime in the water sector.



## KEYWORDS

Cooperative government, enforcement, compliance, Intergovernmental Relations Forum, municipalities, implementation protocol, National Water Act, Intergovernmental Relations Framework Act, Water Services Act, water resources



## DECLARATION

I declare that this research is my original work and I have duly acknowledged and referenced all the research work I have used. I hereby submit this mini-thesis to the University of the Western Cape and it has not been submitted to any other university or institution.

Signature..... Date.....

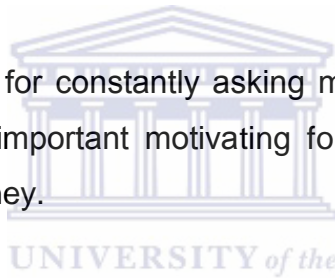


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## List of Acronyms and Abbreviations

BDS / GDS	Blue Drop System / Green Drop System
CEG	Cooperative Environmental Governance
CMAs	Catchment Management Agencies
DIFs	District Intergovernmental Forums
EIA	Environmental Impact Assessments
IGRF Act	Intergovernmental Relations Framework Act (No. 13 of 2005)
IMSI Bill	Intergovernmental Monitoring, Support and Intervention Bill
IWRM	Integrated Water Resources Management
MuSSA	Municipal Services Strategic Self-Assessment
NEMA	National Environmental Management Act (No. 107 of 1998)
NCOP	National Council of Provinces
NWA	National Water Act (No. 38 of 1998)
NWRS1	National Water Resources Strategy (1 <sup>st</sup> edition), 2004
NWRS2	National Water Resources Strategy (2 <sup>nd</sup> edition), 2013
PLC	Provincial Liaison Committee
SALGA	South African Local Government Association
SANS 214	South African National Standards
SDGs	Sustainable Development Goals
USEPA	United States Environmental Protection Agency
WCF	Water Care Forum
WCECF	Western Cape Environmental Crime Forum
WUAs	Water User Associations
WSA	Water Services Act (No.108 of 1997)
WSAs	Water Services Authorities
WSDPs	Water Services Development Plans
WSIGRF	Water Sector Intergovernmental Relations Forum
WSLG	Water Sector Leadership Group
WSPs	Water Service Providers

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# CHAPTER 1:

## INTRODUCTION

### 1.1 Background

The Department of Water and Sanitation (DWS) is responsible for ensuring that all South African citizens have equal and sustainable access to water and to the use of water resources.<sup>1</sup> It is primarily responsible for the prevention of pollution of water resources,<sup>2</sup> mandated to set and enforce norms and standards for drinking water quality and waste water quality or effluent discharge. Municipalities have a constitutional obligation to provide water services in an equitable and sustainable manner and to promote a healthy and safe environment, among other responsibilities.<sup>3</sup> Muller's practical explanation of the intergovernmental division of this function is that national government manages water in the river and municipalities manage water in the pipe.<sup>4</sup> It is therefore the responsibility of both national and local government to ensure that all citizens have access to water equitably and sustainably.<sup>5</sup> Municipalities are required to manage the Waste Water Treatment Works (WWTWs) according to national norms and standards prescribed by the DWS. Poor management of WWTWs by municipalities is one of the main

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<sup>1</sup> Preamble to the National Water Act (1998).

<sup>2</sup> Craigie, Snijman & Fourie (2009) 83.

<sup>3</sup> Section 152, Constitution, Act No 108 of 1996 (especially section 152(b) & (d)).

<sup>4</sup> Muller (2009) 243.

<sup>5</sup> Muller (2009) 245.

sources of pollution of water resources, especially rivers. The pollution of fresh water resources threatens citizens' equitable and sustainable access to water. In order to solve this problem, better enforcement of national standards will be required, along with improved cooperative governance and intergovernmental relations in the water sector. The latter entails getting the DWS and municipalities to agree on processes and procedures to manage the WWTWs and other water resources for the benefit of all in the present and in the future.

## 1.2 Problem Statement

The DWS, in its capacity as the custodian of water resources,<sup>6</sup> is mandated by the National Water Act 36 of 1998 (the NWA) to ensure that water resources 'are protected, used, developed, conserved, managed and controlled' to prevent pollution and their degradation, among other goals.<sup>7</sup> The NWA makes pollution of water resources a punishable offence and any person who contravenes the provisions of section 151(1) of the Act is guilty of a criminal offence.<sup>8</sup>

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<sup>6</sup> Preamble to the Water Services Act (1997), 'confirming the National Government's role as custodian of the nation's water resources.'

<sup>7</sup> Section 2(h) NWA (1998).

<sup>8</sup> Section 151 NWA (1998) states that (1) No person may - (a) use water otherwise than as permitted under this Act; (b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act; (c) fail to comply with any condition attached to a permitted water use under this Act; (d) fail to comply with a directive issued under section 19, 20, 53 or 118; (e) unlawfully and intentionally or negligently tamper or interfere with any waterwork or any seal or measuring device attached to a waterwork.

Municipalities operate and manage 821<sup>9</sup> of 1155 WWTWs in the country and a significant number is reported as not complying with the water laws and regulations, in particular, the national norms and standards of effluent discharge. Out of the 821 WWTWs that are managed by municipalities, 14% are reported to be in a good and/or excellent condition while 56% are in a very poor and/or critical state. This is an indication that the majority of WWTWs are not managed in accordance with the national norms and standards provided in terms of the Water Services Act 108 of 1998 (the WSA).<sup>10</sup>

To enforce compliance with these standards, the NWA empowers the DWS to issue directives in terms of sections 19, 20, 53 and 118 of the NWA and to approach the courts should such directives and other provisions specified in the NWA not be complied with.<sup>11</sup> Neither directives nor court action have proved to be effective mechanisms for ensuring that municipalities comply; enforcement is made more difficult still because of the constitutional requirement that the spheres of government must exhaust all cooperative government processes and avoid legal proceedings against one another.<sup>12</sup> In other words, the DWS is required by the Constitution to adopt a cooperative-governance approach and apply the principles of intergovernmental relations when forcing the organs of state,<sup>13</sup> like municipalities, to comply with water laws and regulations.

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<sup>9</sup> According to the 2011 Green Drop report, municipalities manage 821 WWTWs in 156 municipalities. The rest of the WWTWs are managed by national government (the Department of Public Works).

<sup>10</sup> Section 9 WSA (1997).

<sup>11</sup> Section 151(2) NWA (1998).

<sup>12</sup> Section 41(1)(h)(vi): Constitution .

<sup>13</sup> As defined in section 239 of the Constitution.

The Intergovernmental Relations Framework Act<sup>14</sup> (the IGRF Act), which gives effect to the principles of cooperative government and intergovernmental relations, provides for the organs of state to enter into implementation protocols to effectively implement a policy or provide a service that is dependent on different levels of government.<sup>15</sup> The problem is that DWS has not utilised the IGRF Act to buttress enforcement actions against municipalities to comply with norms and standards for the management of waste water quality.

### **1.3 Significance of the Problem**

The protection and sustainable management of water resources is critical not only for basic human health but also for securing sufficient water for present and future generations. Water of good quality is necessary for domestic, environmental, industrial, recreational and agricultural uses. Preventing pollution also saves on water treatment costs and the rehabilitation of the environment. At a practical level, domestic users and the farming community are severely affected when rivers and other water resources are polluted. The agricultural sector is the biggest water user and is usually subjected to stringent conditions in terms of water use. It then becomes the responsibility of government to provide an assurance of the security and quality of the water supply for the benefit of the country's health, economic and food production needs. Thus, the challenge of non-compliance by municipalities with

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<sup>14</sup> Act 13 of 2005.

<sup>15</sup> Section 35(1) of the IGRF Act 13 of 2005 provides that 'where the implementation of a policy, the exercise of a statutory power, the performance of a statutory function or the provision of a service depends on the participation of organs of state in different governments, those organs of state must co-ordinate their actions in such a manner as may be appropriate or required in the circumstances, and may do so by entering into an implementation protocol.'

the prescribed national norms and standards of effluent discharge requires urgent attention.

The Rio+20 United Nations Conference in 2012 identified Sustainable Development Goals (SDGs) as a post-2015 development agenda to succeed the Millennium Development Goals (MDGs).<sup>16</sup> During the debate on water and sanitation, the conference recognised the key role that ecosystems<sup>17</sup> play in maintaining water quantity and quality, and pledged to support particular nations in protecting and sustainably managing their ecosystems.<sup>18</sup> At a post Rio+20 South African workshop,<sup>19</sup> the water sector panel identified the quality of drinking water and wastewater quality management, among other things, as priority concerns to be listed on the post-2015 sustainable development agenda for South Africa.

#### 1.4 Research Questions



This thesis addresses three questions:

- (1) Are municipalities complying with national standards of effluent discharge?

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<sup>16</sup> RIO+20 United Nations Conference on Sustainable Development held in Rio de Janeiro, Brazil, 20-22 June 2012. A Post-2015 Development Agenda is a process led by the UN that aims to help define the future global development framework that will succeed the UN Millennium Development Goals (MDGs).

<sup>17</sup> Defined by Wikipedia as 'a community of living organisms (plants, animals and microbes) in conjunction with the nonliving components of their environments (like air, water and mineral soil) interacting as a system.'

<sup>18</sup> Clause 122, under resolution for Water and Sanitation, Rio+20 conference (2012).

<sup>19</sup> Held in Durban, 19-20 February 2013.

- (2) How can the DWS effectively resolve non-enforcement in relation to municipalities?
- (3) How can the IGRF Act be used to assist the DWS in ensuring that municipalities comply with the NWA and related regulations?

## 1.5 Argument

Regarding the first issue, the thesis will draw on extensive statistical data to show that there is widespread and persistent non-compliance by municipalities with norms and standards for managing waste water or effluent discharge. Regarding the second, it is argued that there has been seriously inadequate enforcement by the DWS, but due to the fact that the intergovernmental structure of the sector hampers enforcement, alternative measures to encourage cooperation between the DWS and local government need to be explored. In respect of the third issue, this thesis argues that the IGRF Act can assist the DWS in enforcing compliance with the NWA and regulations thereof. This would entail establishing a water-sector intergovernmental relations (IGR) structure and using implementation protocols provided in section 35 of the IGRF Act as a mechanism to support compliance by municipalities by means of a more hands-on approach to coordination and supervision.

## 1.6 Literature review

Not much has been written on the subject of compliance in the water sector, which has largely been examined in the context of compliance with environmental sustainability. Although consideration of the principle of sustainability would involve water issues as part of specific environmental management acts (SEMAs), there is a need to address compliance with the implementation of the water-specific laws and regulations. A distinctive feature of this thesis is that it deals with compliance by *governmental* institutions (municipalities) with *governmental* laws and regulations. The underlying principle is that if the government is to enforce compliance with the rules, it needs to lead by example and be compliant itself.



The polluter-pays principle prescribed by national legislation<sup>20</sup> and its corresponding legal prescripts for compliance and enforcement has not proven to be practically feasible in forcing municipalities to comply with nationally prescribed norms and standards for effluent discharge. In other words, the administrative process of issuing directives and the criminal option that allows for approaching the courts for recourse, respectively accorded the Minister, may not be appropriate in the case of organs of state in the context of institutionalised cooperative governance such as South Africa.<sup>21</sup>

This thesis examines the applicability of the constitutional provisions of cooperative government and intergovernmental relations as a measure to coordinate compliance and enforcement within government. It proposes a cooperative water governance (CWG) approach by establishing a water sector intergovernmental structure where the DWS and local government will enter into implementation protocols and agree on processes and procedures to manage the WWTWs. One of the advantages of the implementation protocols is that not only non-compliance by the regulated municipalities, but also non-enforcement by the regulator (the DWS) gets addressed.

Algotsson and Murombo<sup>22</sup> examine municipal accountability in relation to environmental rights, focusing on water pollution caused by the discharge of untreated effluent into rivers. They argue that the enforcement measures are not effective enough to get municipalities to account for failure to provide water services in a sustainable manner. They maintain that the limitation of the principle of

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<sup>20</sup> Section 19 NWA (1998) and s 2 NEMA (1998).

<sup>21</sup> Section 53 NWA (1998).

<sup>22</sup> Algotsson and Murombo, (2009) 29.

cooperative government integrated planning could facilitate the necessary convergence between water services, further to which they suggest strengthening the principle of participation to promote the involvement of the public and thereby heighten accountability in the decision-making process.<sup>23</sup> However, they also caution that this should be well coordinated as it may prove disastrous otherwise.

In their edited study, Paterson and Kotzé<sup>24</sup> argue for alternative approaches to compliance and enforcement in managing ongoing environmental degradation.<sup>25</sup> The study examines compliance and enforcement measures in relation to both the private and public sectors. It highlights voluntary approaches as more effective than those traditional administrative and judicial approaches mentioned above and argues for reduced regulations or none at all. This thesis focuses on compliance and enforcement in the public sector and emphasises the use of cooperative government and intergovernmental relations principles as alternative measures to resolve non-compliance and non-enforcement by organs of state.

Eddy<sup>26</sup> argues that addressing non-compliance by state organs through cooperative government is a double standards approach and that all non-compliant water users should face the consequences as prescribed in the law. She investigates the effectiveness of the implementation of the NWA in regulating the discharge of waste water, in particular the sewage effluent discharged into the environment. She concludes that the implementation of the NWA regulations fall short and its effectiveness is dependent, inter alia, on subjecting all water users to the same rules.

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<sup>23</sup> Algotsson and Murombo(2009) 3.

<sup>24</sup> Paterson & Kotzé (2009).

<sup>25</sup> Lehmann (2009) 294.

<sup>26</sup> Eddy (2003) 104.

This is a logical argument but not a prudent one from the point of view of utilising public resources efficiently and in a transparent manner. It may also have implications in the form of increased tariffs for the provision of basic services which would in turn militate against the government's objective of ensuring equitable and sustainable access to basic services by all. The organs of state are constitutionally required to foster friendly relations among themselves, preserve the peace, national unity and protect the state's resources.<sup>27</sup>

This thesis follows Hofmeyr<sup>28</sup> in emphasising effective intergovernmental relations as a crucial mechanism for addressing failing municipal water supply services. She identifies supervision, intervention and judicial action as three measures available for use by provincial government to address the challenge of failing municipal water supply services. She argues that such measures are intrusive in nature and may encroach on the autonomy of local government.<sup>29</sup> Intergovernmental alternative dispute resolution measures are preferred as a response for the benefit of 'millions of South Africans who have the right to an environment not detrimental to their health or well-being and the right of access to sufficient water.'<sup>30</sup>

The approach of using cooperative governance and applying the principles of intergovernmental relations in forcing the organs of state to comply has been adopted as an international practice. The United States Environmental Protection Agency (USEPA)<sup>31</sup> established an International Network for Environmental

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<sup>27</sup> Section 41, Constitution (1996) & INECE (1992) 3.

<sup>28</sup> Hofmeyr (2012).

<sup>29</sup> Hofmeyr (2012) 109.

<sup>30</sup> Hofmeyr (2012) 110-11.

<sup>31</sup> Regarded as highly knowledgeable in the area of environmental management

Compliance and Enforcement (INECE) for dealing with compliance and enforcement by organs of state.<sup>32</sup> INECE compiled a list of principles which avoid sanctions, civil and criminal processes but which promote and encourage alternative compliance and enforcement processes especially applicable to organs of state.

A report by the Centre for Environmental Rights (CER) identifies cooperative governance as one of the areas to improve in order to make a positive impact on water governance in South Africa.<sup>33</sup> This recommendation is supported but it is taken further to suggest the adoption of practical and implementable protocols that address specific service delivery areas with clear outcomes, timeframes and allocation of roles to parties participating in the protocol.

The signing of implementation protocols is proposed against the backdrop of various reviews that have been conducted and that found some weaknesses with the existing IGR structures and/or service delivery forums. According to a Presidential Ten-Year Review on intergovernmental relations in South Africa, the IGR forums should have in place agreed systems and procedures for effective implementation of policies.<sup>34</sup> The National Development Plan (NDP) argues that the numerous IGR forums which have been established within and across spheres focus more on coordination of joint programmes instead of designing processes and procedures to improve performance.<sup>35</sup> Addressing the National Council of Provinces (NCOP) in Parliament during the debate on Local Government policy review, the Deputy Minister of the Department of Cooperative Governance and Traditional Affairs (the DM of CoGTA)

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<sup>32</sup> INECE *Principles of Environmental enforcement* (1992) 8, 14.

<sup>33</sup> Fourie M (2012) 2.

<sup>34</sup> Layman T A *Ten Year Review* (2003) 23.

<sup>35</sup> National Development Plan (2011) 386-7.

stated that the area of intergovernmental relations has been identified as critical to facilitate an effective and responsive government. He highlighted some interventions by government to strengthen cooperative governance and intergovernmental relations (IGR) structures for effective coordination of the government's programme of action.<sup>36</sup>

## **1.7 Structure of the thesis**

This chapter has presented the outline of the research problem and its significance, and identified the research questions that will be responded to. Chapter 2 presents the legal and institutional framework for water regulation in South Africa. It discusses the water regulatory framework in the context of fundamental water policy principles of efficiency, sustainability and equity, demonstrating the relationship and convergence in the management of water services provision and water resources. It outlines the water sector institutional framework and the related constitutional obligations to implement such principles in a manner consistent with prescribed human rights values.<sup>37</sup> Chapter 3 demonstrates that municipalities do not comply with national norms and standards of effluent discharge. It argues that municipalities do not adhere to their legal obligation to provide water services in an equitable and sustainable manner and to promote a healthy and safe environment. However, municipalities alone cannot be blamed for non-compliance as it is the responsibility of all the spheres of government to ensure efficient water services provision that complies with national norms and standards.

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<sup>36</sup> Deputy Minister in the Department of Cooperative Governance and Traditional Affairs (CoGTA) Deputy Minister RSA Parliament (2013).

<sup>37</sup> Contained in ss 24, 25, 26, 27 and 29 of the Constitution (1996).

Chapter 4 discusses different approaches to resolve non-enforcement of organs of state that do not comply with water policy and its regulations. The cooperative government approach as provided for in the IGRF Act<sup>38</sup> is discussed as one of the alternative and preferred mechanism to enforce compliance. A motivation is given that specifically the Implementation Protocol provided for in section 35 of the Act not only assists the DWS with non-enforcement but helps to regulate intergovernmental relations.<sup>39</sup> Lastly, the existing IGR structures are examined in terms of how they can be strengthened through using implementation protocols in order to resolve the challenge of non-compliance and non-enforcement. This mini-thesis concludes by arguing that although the IGRF Act is not mandatory, it does encourage a strengthened cooperative governance process. Thus it remains a solution for the effective implementation of policy and legislation at all spheres of government.

## 1.8 Methodology

This research project is a desk-based study that focuses on the analysis of primary and secondary sources. It relies on government reports to ascertain the extent of non-compliance with the water laws by municipalities and what the DWS has done to enforce compliance. Statistical evidence has been presented and analysed to illustrate the extent of non-compliance by municipalities and available enforcement measures which can be used to resolve challenges of compliance and enforcement. Secondary material of how experts and other authors have dealt with the subject of cooperative governance as a response to organs of state in general not complying with the laws has been examined. The Constitution (1996), the National Water Act 36 of 1998, the Water Services Act 108 of 1997 and the National Environmental

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<sup>38</sup> Act 13 of 2005.

<sup>39</sup> Chapter 3, IGRF Act (2005).

Management Act (NEMA) 107 of 1998 have been used as a basis for water regulatory framework in South Africa.



## CHAPTER 2:

# LEGAL AND INSTITUTIONAL FRAMEWORK FOR WATER REGULATION IN SOUTH AFRICA

### 2.1 Introduction

The post-1994 water law reform framework in South Africa identified efficiency, equity and sustainability as fundamental guiding principles for the protection, use, development, conservation, management and control of water resources.<sup>40</sup> The framework promotes an approach of integrated water resources management (IWRM) which requires a balance in terms of quantity and quality to guarantee the reliability of water.<sup>41</sup> Managing this balance necessitates a close working relationship between water services provision and water resources management.<sup>42</sup>

This chapter discusses the water regulatory framework in South Africa in the context of the abovementioned fundamental water policy principles of efficiency, equity and sustainability. Such principles derive from and give effect to the constitutional values

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<sup>40</sup> *White Paper on Water Policy: South Africa* (1997) and section 2 NWA (1998)

<sup>41</sup> Principle 7, Annexure 1 to the *White Paper on Water Policy: South Africa* (1997): 'The objective of managing the quantity, quality and reliability of the nation's water resources is to achieve optimum, long term, environmentally sustainable social and economic benefit for society from their use.'

<sup>42</sup> Principle 26, Annexure 1 to the national Water Policy (1997): 'Water services shall be regulated in a manner which is consistent with and supportive of the aims and approaches of the broader local government framework.'



that promote the right to a pollution-free environment and to safe and adequate water.<sup>43</sup> The roles of water services within the water regulatory framework are discussed as well as how these are executed in the context of cooperative government and intergovernmental relations as provided for by the Constitution.<sup>44</sup>

## 2.2 Legal Framework for Water Regulation in South Africa

The Water Services Act 108 of 1997 and the National Water Act 36 of 1998 are the two key pieces of legislation that regulate the water sector in South Africa. The National Environmental Management Act 107 of 1998 (NEMA) is a further significant regulatory instrument contributing to the legal framework for water regulation. NEMA requires the process of environmental impact assessment (EIA) to always precede the development of water infrastructure projects for better management of water and environmental sustainability.<sup>45</sup> National water policy reinforces the principle of sustainability in NEMA by requiring water resource development and supply activities to be managed in a manner that is consistent with the broader national approaches to environmental management.<sup>46</sup>

These three pieces of legislation constitute the legal framework for water regulation in South Africa, giving effect to the constitutional values contained in the Bill of Rights of

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<sup>43</sup> Sections 24 and 27 of the Constitution. Principle 1, Annexure 1 to the National Water Policy (1997): 'While taking cognisance of existing uses, the water law will actively promote the values enshrined in the Bill of Rights.'

<sup>44</sup> Section 41 Constitution.

<sup>45</sup> Strategic Framework for Water Services (2003).

<sup>46</sup> Principle 17 to the White Paper on Water Policy (1997).

the Constitution.<sup>47</sup> There is thus an important and close relationship between chapters 2 (the Bill of Rights) and 3 (cooperative government) of the Constitution which is necessary for effective and sustainable service delivery.<sup>48</sup>

### **2.2.1 Constitution of the Republic of South Africa, 1996**

The Bill of Rights in the Constitution guarantees basic human rights to all people of South Africa. Among other things, it affords everyone the right to live in an environment that is not harmful to health and well-being and to have access to sufficient water, extending these benefits to future generations.<sup>49</sup> The Constitution sets out the objectives of local government, including to provide water services in a sustainable manner and to promote a safe and healthy environment.<sup>50</sup>

The local government legislation<sup>51</sup> gives effect to this constitutional imperative and it provides for municipalities to promote a safe and healthy environment in their localities and cooperate with other spheres of government for the realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution.<sup>52</sup> In the Grootboom case the Constitutional Court ruled that the state is obliged to give

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<sup>47</sup> Chapter Two of the Constitution described as a human rights charter that protects the civil, political and socio-economic rights of all people in South Africa.

<sup>48</sup> Especially sections 24 and 27, Constitution .

<sup>49</sup> Levy & Tapscott (2001) 9.

<sup>50</sup> Section 152.

<sup>51</sup> Section 2(4)(i) & (j), Local Government: Municipal Systems Act 32 (2000) MSA .

<sup>52</sup> These are the rights to pollution-free environment, property, housing, health care, food, water, social security and education.

effect to rights provided for in sections 24 and 27 of the Constitution as it is an obligation that courts can, and in appropriate circumstances, must enforce.<sup>53</sup> The Constitution<sup>54</sup> mandates national and provincial governments to support and strengthen the capacity of municipalities in the execution of their functions and for all the spheres to take collective accountability for service delivery.<sup>55</sup>

### **2.2.2 Water Services Act 108 of 1997**

The Water Services Act (WSA) is the principal regulatory framework for water services institutions, which are mainly municipalities, giving effect to the Bill of Rights by providing for access to basic water supply and sanitation services necessary to secure sufficient water and an environment not harmful to human health or well-being.<sup>56</sup> In order to achieve this objective, the WSA requires water services institutions to promote effective water resource management.<sup>57</sup> Municipalities have a duty to protect the quality of water resources and ensure their sustainability in the interests of all water users,<sup>58</sup> thus managing water in an integrated manner.<sup>59</sup> In order



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<sup>53</sup> Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA - (2004), paragraph 94: Judge Yacoob said “I am conscious that it is an extremely difficult task for the state to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the state is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the state to give effect to them. This is an obligation that courts can, and in appropriate circumstances, must enforce”.

<sup>54</sup> 154(1) Constitution (1996).

<sup>55</sup> Section 41, especially (1)(c), Constitution (1996) and s 4, IGRF Act (2005).

<sup>56</sup> Section 2 WSA (1997), giving effect to sections 24 & 27 Constitution.

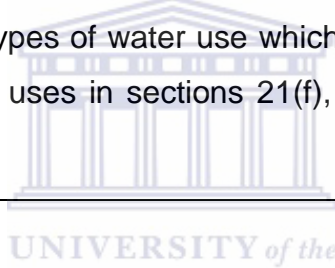
<sup>57</sup> Section 2(j), WSA (1997).

<sup>58</sup> Water users include domestic (consumption) users and industrial/agricultural users.

to ensure that water services are managed in a manner that balances quantity, quality and reliability, section 9 of the Act empowers the Minister to prescribe compulsory national norms and standards relating to the provision of water services.<sup>60</sup>

### **2.2.3 National Water Act 36 of 1998**

The National Water Act (NWA) gives effect to the post-1994 water law reforms and is a key piece of legislation to facilitate principles of efficiency, equity and sustainability within the water sector. The reforms introduced by the NWA require equitable allocation of water to all water users and it places importance on managing the effects of water use on the land, especially the water environment and/or resource. The NWA<sup>61</sup> identifies eleven types of water use which may have a detrimental effect on the water resource. Water uses in sections 21(f), (g) & (f),<sup>62</sup> which relate to the



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<sup>59</sup> Principle 15, National Water Policy of South Africa (1997): 'Water quality and quantity are interdependent and shall be managed in an integrated manner which is consistent with the broader environmental management approaches.'

<sup>60</sup> Sections 9(1) and 3(g), WSA (1997): 'The Minister may from time to time prescribe compulsory national standards relating to—(a) the provision of water services; (b) the quality of water taken from or discharged into any water services or water resource system; (c) the effective and sustainable use of water resources for water services; (d) the nature, operation, sustainability, operational efficiency and economic viability of water services; (e) requirements for persons who install and operate water services works; and (f) the construction and functioning of water services works and consumer installations.'

<sup>61</sup> Section 21(a)-(k).

<sup>62</sup> Section 21 defines water use as including (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit; (g) disposing of waste in a

management of Waste Water Treatment Works (WWTWs), are the main focus of this mini-thesis.

The NWA replaced the Water Act 54 of 1956 (Water Act) which focused on the management of surface water supply and quantity, giving priority to the agricultural and industrial sectors. The common element in these two pieces of legislation is that they regulate water use through the issuing of permits and water use licences, respectively. They also set norms and standards to regulate the discharge of waste water or effluent.<sup>63</sup> To achieve the reforms as guided by the principles of equity and sustainability, the NWA must authorise water use with conditions in order to regulate the use, flow and control of all water in the country.<sup>64</sup> The post-1994 reforms, one of which is the promotion of the 'polluter pays' principle, are said to be a global trend in the water sector. The reforms aim to emphasise government control over all water resources to achieve the 'best possible water use in the interest of the public'.<sup>65</sup> Any contravention of the provisions of the NWA is a punishable offence.

#### **2.2.4 National Environmental Management Act 107 of 1998**

The National Environmental Management Act 107 of 1998 (NEMA) is a national environmental management framework legislation which defines the environment as

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manner which may detrimentally impact on a water resource; (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process.

<sup>63</sup> NWRS2 (2013) 70.

<sup>64</sup> Section 3, NWA (1998).

<sup>65</sup> Thompson (2006) 139.

including land and water resources.<sup>66</sup> NEMA is consistent with the NWA as it seeks to prevent pollution and ecological degradation, among other things. It states that everyone has the right to have the environment protected for the benefit of present and future generations.<sup>67</sup> Pollution is defined as any emission from an activity related to the provision of services that can have an adverse effect on human health or the well-being of the ecosystem in the present or in the future.<sup>68</sup> Similar to the WSA and the NWA, NEMA prescribes national norms and standards for environmental governance to achieve social, environmental and economic sustainability.<sup>69</sup> Similar to the NWA, NEMA promotes a 'polluter pays' principle for the rehabilitation of the environment.<sup>70</sup>

### **2.2.5 Other relevant pieces of legislation**

Compliance with South Africa's water regulatory laws is broad and complex and is not limited to the implementation of the abovementioned water and environmental legislation and related policies. The Water Stewardship Institute outlines a number of functions that impact and are impacted by such water regulatory policies and regulations. The Biodiversity Act<sup>71</sup> deals with the protection of water resources. The

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<sup>66</sup> Definition xi(i) NEMA (1998): 'environment means the surroundings within which humans exist and that are made up of land, water and atmosphere of the earth.'

<sup>67</sup> Preamble to the NEMA Act (1009).

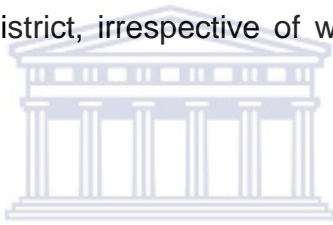
<sup>68</sup> Definition xxiv, NEMA (1997).

<sup>69</sup> Section 2(3) NEMA (1998).

<sup>70</sup> Sections 1, 2 and 28 NEMA (1998).

<sup>71</sup> National Environmental Management: Biodiversity Act 10 of 2004).

Waste Act<sup>72</sup> seeks to prevent and regulate waste discharge by setting norms and standards and issuing waste licences with conditions. The objective of the Integrated Coastal Management Act (ICM Act)<sup>73</sup> is to protect and preserve the coastal zone, which is defined as including estuaries and wetlands, the latter classified and defined as water resources in terms of the NWA.<sup>74</sup> The Mineral and Petroleum Resource Development Act (MPRDA)<sup>75</sup> provides for possible recovery of water rehabilitation costs and consultation with the department responsible for water management before issuing a closure certificate. The National Health Act<sup>76</sup> empowers a Health Officer, working with a municipality, to investigate any action believed to have violated a right to a pollution-free environment and that has caused pollution detrimental to health.<sup>77</sup> The Health Act<sup>78</sup> provides for duties and powers of municipalities and these include a requirement for a local authority to 'prevent the pollution of any water intended for the use of the inhabitants of its district, irrespective of whether such water is obtained



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<sup>72</sup> National Environmental Management: Waste Act 59 of 2008.

<sup>73</sup> National Environmental Management: Integrated Coastal Management Act 24 of 2008.

<sup>74</sup> Definitions (ix) & (xxix) NWA (1998): 'estuary' means a partially or fully enclosed body of water - (a) which is open to the sea permanently or periodically; and (b) within which the sea water can be diluted, to an extent that is measurable, with fresh water drained from land; a 'wetland' means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

<sup>75</sup> Act 28 of 2002.

<sup>76</sup> Act 61 of 2003.

<sup>77</sup> Sections 83(1)(a) & (b) and 83(3) National Health Act 61 Of 2003.

<sup>78</sup> Section 20(1)(c), Health Act 63 (1997).

from sources within or outside its district, or to purify such water which has become so polluted’.

All the above pieces of legislation make non-compliance a punishable criminal offence. Penalties could take the form of a fine or imprisonment, irrespective of whether the non-compliant party is the government or from the private sector.<sup>79</sup>

### **2.3 Institutional framework for water regulation in South Africa**

Achieving the objective of managing water in an efficient, equitable and sustainable manner depends on the effective management of the entire water value chain. Considering Muller’s explanation above, good governance of the water value chain is managing water from the river to the pipe and back to the river. It entails integrated water planning, water use efficiency and effective water institutions, among other things.<sup>80</sup> The alignment of municipal integrated development plans (IDP) with the water services development plans (WSDPs) is the basis for effective management of the water value chain. The WSDPs are water management plans which facilitate the participation of local government in the national water development programme as a constitutional requirement.<sup>81</sup>

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<sup>79</sup> Sections 22, 23 and 24(5) of Water Act (1956); s 151(2) of NWA (1998); s 82(1)(g) of WSA (1997); ss32- 34 of NEMA (1998); s 112 of Systems Act (2000); ss83 & 89(2)of the National Health Act (2003); s57 of Health Act (1977); ss102&102 of Biodiversity Act (2004); ss79&80 of Integrated Coastal Management Act (2008); ss67&68 of Waste Act (2008) and ss98&99 of MPRDA (2002).

<sup>80</sup> NWRS2 (2013) 102.

<sup>81</sup> Section 24(2) Systems Act (2000): ‘Municipalities must participate in national and provincial development programmes as required in section 153(b) of the Constitution.’



The mandate to ensure water availability and to provide water services is a national and local government competence, respectively. The provincial sphere has no specifically assigned role in water management. However, in terms of the Constitution and the provision of NEMA, environmental management and pollution control are concurrent functional areas of national and provincial competence.<sup>82</sup>

The DWS is therefore forced to explore alternative compliance enforcement tools and approaches. One such approach would be to strengthen cooperative government and establish water-sector intergovernmental relations forums conducted by means of Implementation Protocols, as provided for in section 35 of the IGRF Act.

### **2.3.1 National government and the water value chain**

National government has a constitutional mandate in terms of sections 154(1) and 155(7) to support and regulate local government, respectively in order for the local sphere to effectively perform its functions as listed under parts B of schedules 4 and 5, particularly related to water and sanitation services. It has a regulatory function to protect the country's water resources through prescribing national norms and standards for water use which include effluent discharge for waste water treatment collector systems.<sup>83</sup> It has an obligation to support local government to implement the WSDPs and promote effective water resource management, water conservation and demand.<sup>84</sup> As the regulator, the DWS has oversight responsibility of the contractual relationships between water services authorities and water services providers and

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<sup>82</sup> Schedule 4, Part A of the Constitution (1996) and Preamble to NEMA (1998).

<sup>83</sup> Sections 21(e) and (f) of NWA (1998) are relevant in this thesis.

<sup>84</sup> Section 2(j) WSA (1997).

intermediaries.<sup>85</sup> This is necessary to ensure compliance with protecting water resources in the interests of all consumers.<sup>86</sup>

### 2.3.2 Local government and the water value chain

Local government has a constitutional mandate to provide basic service delivery needs, central to which is water provision.<sup>87</sup> It is responsible for the promotion of a safe and healthy environment, part of which is the efficient management of waste water and effluent discharge.<sup>88</sup> It is mandated to provide water and sanitation services limited to potable water supply systems, domestic waste water and sewage disposal systems, refuse removal, refuse dumps and solid waste disposal.<sup>89</sup> Solid waste includes sludge from a waste water treatment plant, from a water supply treatment plant or air pollution control resulting from industrial, commercial, mining and agricultural operations.<sup>90</sup>



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<sup>85</sup> Section 8 of NWRS2.

<sup>86</sup> Section 4(2)(i) WSA (1997) promotion of a safe and healthy environment in the municipality; s 9(1) WSA (1997): 'The Minister may from time to time prescribe compulsory national standards relating to (a) the provision of water services, (b) the quality of water taken from or discharged into any water services or water resource system'. NWRS2 (2013) 16.

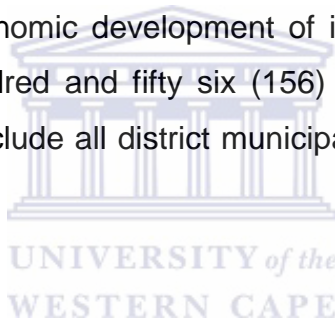
<sup>87</sup> Sections 152(1)(b)&(d) and 152(2) Constitution .

<sup>88</sup> Section 4(2)(i) Systems Act SYSTEMS ACT (2000).

<sup>89</sup> Schedules 4B & 5B, Constitution (1996).

<sup>90</sup> Available at <http://www.dec.ny.gov/chemical/8732.html> (accessed 12 November 2014).

Local government, through the designated Water Services Authorities (WSAs),<sup>91</sup> has the power to determine and regulate local water policies, norms and standards and make by-laws.<sup>92</sup> De Visser calls this a principled approach that allows local government its constitutional obligation to regulate the detail of schedule 4B functions.<sup>93</sup> A water services authority is any municipality, including a district or local municipality, responsible for ensuring access to water services in terms of the Local Government: Structures Act 117 of 1998 (the Structures Act).<sup>94</sup> or the ministerial authorisation using the same Act.<sup>95</sup> WSAs may perform the function of a water service provider but their core function is to plan, set and regulate local policies and by-laws that conform to national legislation, norms and standards.<sup>96</sup> While a Local municipality must be expressly designated, the Structures Act automatically designates all district municipalities as WSAs to achieve the integrated, sustainable and equitable social and economic development of its area as a whole.<sup>97</sup> To date there are a total of one hundred and fifty six (156) WSAs managing waste water treatment plants and these include all district municipalities and the designated local municipalities.



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<sup>91</sup> The WSAs are municipalities determined in terms of Local Government: Municipal Structures Act 118 of 1998 (Structures Act) or Ministerial authorisation.

<sup>92</sup> Sections 11 & 21 Water Services Act (1997) and Local Government Municipal Structures Act (1998).

<sup>93</sup> De Visser (2004) 170, acknowledging the provisions of the WSA, especially sections 11(2)(g) and 11(6).

<sup>94</sup> Section 84.

<sup>95</sup> Section 84(3) Structures Act (1998) and Strategic Framework for Water Services (2003) 11-12.

<sup>96</sup> Chapters 3–5 WSA (1997).

<sup>97</sup> Section 83(3) Structures Act (1998).

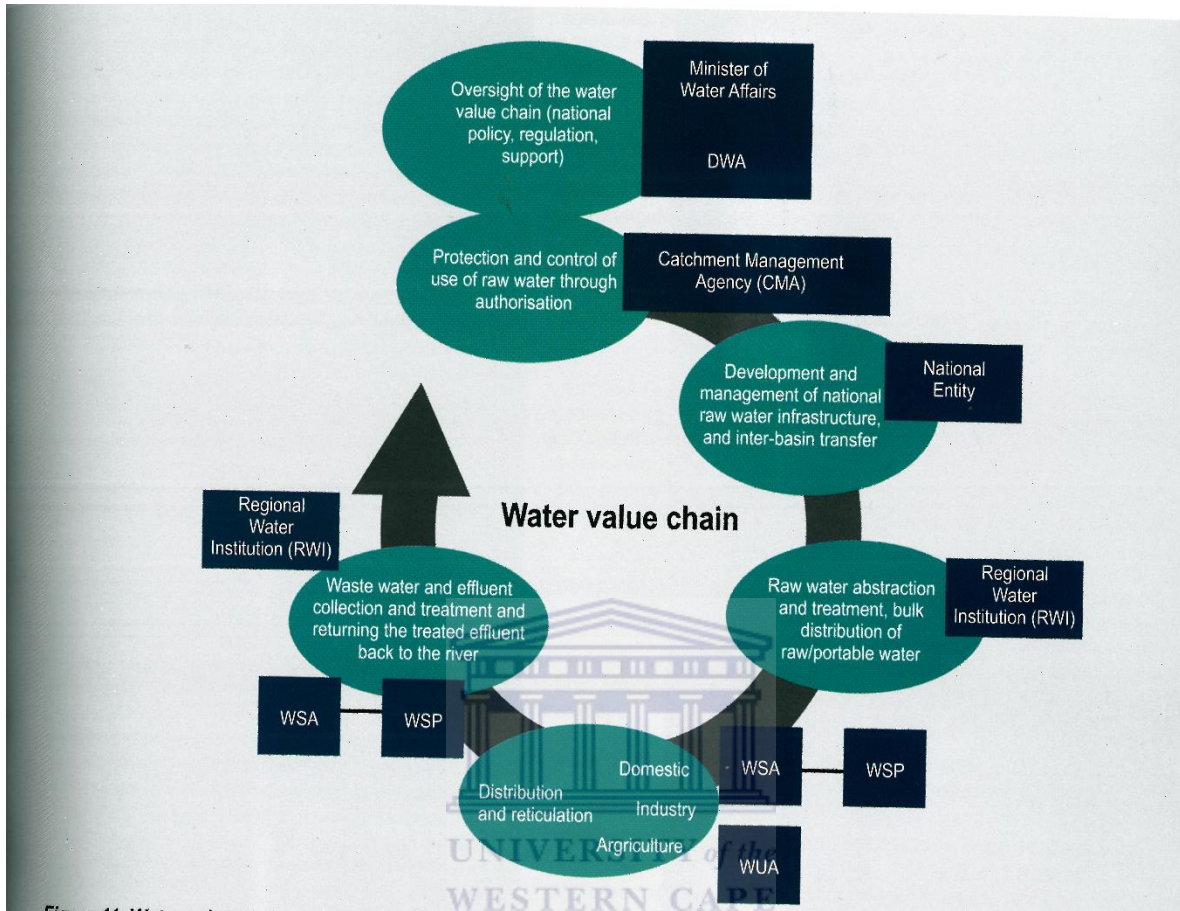
The water value chain, appearing as figure 1 below, reflects the functions of national government overseeing water services and water resources management. It is important to note that the institutions that have the mandate to manage water are at local government level. Thus, the implementation of policy and legislation is coordinated at local government level for the realisation of national priorities.<sup>98</sup>



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<sup>98</sup> Section 4(b)&(c) IGRF Act (2005)

Figure 1: The water value chain



Source: NWRS2, 2013, figure 11, page 62

## 2.4 Conclusion

This chapter has outlined an extensive legal framework for water regulation in South Africa, discussing this in relation to the post-1994 principles of equity and sustainability. The chapter further demonstrated that there is a relationship between the management of water services and water resources, with the WSA and NWA being the two main pieces of legislation which regulate water services and water resources, respectively. The latter two pieces of legislation give effect to the constitutional values that guarantee equal access to safe and adequate water and to

a pollution-free environment. In terms of the Constitution with respect to the water value chain, the institutions that are responsible for managing water are at local and national levels of government. However, the post-1994 water sector reforms identified water as the catalyst for sustainable socio-economic development as it affects and is affected by various other service delivery areas of government. Therefore using the principles of cooperative governance and intergovernmental relations is inevitable in the water management regime. The next chapter examines the extent to which municipalities comply with their legal obligation to provide water services in an equitable and sustainable manner.



# CHAPTER 3:

## COMPLIANCE BY MUNICIPALITIES WITH THE WATER LAWS AND REGULATIONS

### 3.1 Introduction

As indicated in the previous chapter, the local government sphere is an integral part of the water value chain, charged with the responsibility to manage water services and waste water in an environmentally responsible and sustainable manner.<sup>99</sup> It has an obligation to promote water resource protection and a safe and healthy environment, which involves the efficient management of waste water and/or effluent discharge.<sup>100</sup> Efficient management of waste water discharges, among other things, requires the water services authority (WSAs) to regulate individuals and companies discharging into WWTWs through the enactment and enforcement of by-laws that conform to the national norms and standards of effluent discharge.<sup>101</sup>

This chapter focuses on the extent to which municipalities, in operating and managing the WWTWs, comply with nationally prescribed norms and standards for managing effluent discharge. To this effect, the chapter draws on statistical data from the 2013 national Green Drop assessment report and 2013 Municipal Strategic Self-

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<sup>99</sup> National Water Services Regulation Strategy (2010) 10.

<sup>100</sup> Section 4(2)(i) Systems Act (2000).

<sup>101</sup> Section 9, WSA (1997).

Assessment (MuSSA) report.<sup>102</sup> The latter are the two programmes used by the DWS to monitor municipalities in terms of compliance requirements relating to waste water treatment works and institutional performance. The assessment of compliance is limited to general norms and standards and does not deal with compliance with specific technical requirements. It looks at the overall compliance with norms and standards by municipalities as well as the other spheres of government play their respective roles in ensuring equitable access to water services and water resources by all citizens.<sup>103</sup>

### 3.2 Compliance

Compliance is a state of adherence to a particular set of legal requirements, and it occurs when such requirements are met and desired changes are achieved.<sup>104</sup> Municipal compliance with regard to waste water management is about meeting the prescribed national norms and standards for effluent discharge.<sup>105</sup> In 2003 Cabinet approved a Strategic Framework for Water Services (SFWS), which is a review of the 1997 White Paper on Water Policy and sets out the vision, goals and targets for the

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<sup>102</sup> Both these reports were published in 2013 by the then DWA.

<sup>103</sup> Preamble to the WSA: 'although municipalities have authority to administer water supply services and sanitation services, all spheres of Government have a duty, within the limits of physical and financial feasibility, to work towards this object'. Fourie M (2012) 9: 'lack of access to services should not be attributed to failure by local government to implement policies but to lack of meaningful cooperative governance across government.'

<sup>104</sup> DWA Enforcement Manual; Principles of enforcement.

<sup>105</sup> Section 26 Local Government Municipal Systems Act (2000); Smith (2009) 9.



water sector.<sup>106</sup> The SFWS set the goals for the sector as including the regulation of water services to ensure access to adequate, safe, affordable and sustainable water services for all. The National Water Services Regulation Strategy (NWSRS)<sup>107</sup> prescribed ten key performance measures (see footnote 108 below) for the WSAs to monitor.<sup>108</sup> The regulation strategy prioritised the quality of national drinking water and waste water (effluent) as key risk areas needing urgent attention to protect health and the environment.<sup>109</sup> This thesis focuses on the fourth and tenth performance measures relating to waste water quality management<sup>110</sup> and institutional effectiveness. These are relevant for the Green Drop audit and the MuSSA processes which are the programmes used by the DWS to monitor compliance by municipalities with the relevant prescripts of managing the effluent discharge and institutional performance.



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<sup>106</sup> SFWS (2003) 3-5.

<sup>107</sup> Approved in 2010 by the Department of Water Affairs.

<sup>108</sup> NWSRS (2010) 34 – 35 lists following Performance measures: 1.Access to basic water supply services; 2.Access to basic sanitation services; 3.Drinking water quality; **4**.Impact on the environment; 5.Strategic asset management; 6.Water demand management; 7.Basic sanitation services; 8. Customer service standards; 9.Financial performance and **10**. Institutional effectiveness.

<sup>109</sup> NWSRS (2010).

<sup>110</sup> SFWS (2003) 7 and Annexure 2 to SFWS.

### **3.2.1 Municipalities must comply with requirements for purification of waste water or effluent**

Municipalities are expected to comply with Regulation 991<sup>111</sup> which requires the purification of waste water or effluent produced by or resulting from the use of water for industrial purposes. The regulation prescribes that

(1) any person using for industrial purposes water, including sea water brought ashore, shall (a) purify or otherwise treat the water so used and any effluent produced by or resulting from such use, in accordance with such requirements as the Minister may from time to time, after consultation with the South African Bureau of Standards mentioned in the Standards Act 30 of 1982 prescribe by notice in the *Gazette* generally or in relation to water used for any particular industrial purpose, or in relation to water or effluent to be disposed of by discharging it into any particular public stream or into the sea, or in relation to water or effluent to be disposed of in any particular area.

The regulation is relevant for the implementation of the NWA, which requires authorisation in the form of a Water Use Licence (WUL). A WUL (a permit in terms of the 1956 Water Act) prescribes conditions for the three water uses:

- (a) Section 21(f) for discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- (b) Section 21(g) for disposing of waste and waste water in a manner which may detrimentally impact on the water resource, whether it is a surface or groundwater stream;
- (c) Section 21(h) for disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process.

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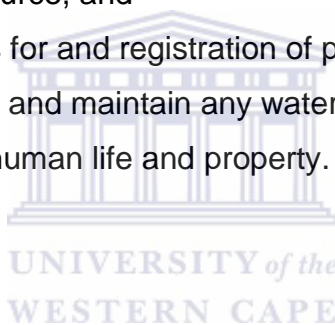
<sup>111</sup> Published in GN 2834 of 1984.

### **3.2.2 Municipalities must comply with regulations relating to compulsory national standards for process controllers and water services works**

Regulation 17<sup>112</sup> prescribes compulsory national standards for Process Controllers and Water Services Works.<sup>113</sup> It prescribes national norms and standards for the construction, enlargement, registration, operation and functioning of water services works waste water treatment works (WWTWs). It thus gives effect to section 26(1)(e) and (f) of the NWA<sup>114</sup> for:

(e) regulating the design, construction, installation, operation and maintenance of any waterworks, where it is necessary or desirable to monitor any water use or to protect a water resource, and

(f) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any waterworks, in order to protect the public and to safeguard human life and property.



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<sup>112</sup> GN 36958 of 2013 (Regulation 17). Regulation 17 defines a “process controller” as any natural person who has achieved the relevant competencies to effectively operate a unit process at a water services work or who is qualified and authorised to design and supervise the construction, installation, operation and maintenance of any water services work and who is employed by either a water services institution, a water services work owner, or a company actively involved with the treatment and professional monitoring of water services works or water containing waste in some way or the other.

<sup>113</sup> Definition (xxviii), NWA (1998) “waterwork includes any borehole, structure, earthwork or equipment installed or used for or in connection with water use”. In the context of this thesis a water services works refers to a water treatments works (WTWs) and a waste water treatment works (WWTWs).

<sup>114</sup> Section 26(f) NWA (1998).

The new regulations seek to streamline and professionalise the operations of WWTWs by promoting skills and the education of those people who are entrusted with protecting the nation's water resources and providing the public with safe drinking water. The latter view is consistent with that of Smith,<sup>115</sup> who argues for giving priority to strengthening the capacity of Process Controllers, who are responsible for the day-to-day management of the WWTWs. He maintains that technical compliance would be addressed by paying attention to practical challenges such as technical skills, finances and institutional realignment.<sup>116</sup> In this respect, Regulation 17 is an effective response. Having a suitably qualified Process Controller is a critical requirement for compliant WWTWs.

### **3.3 Municipalities do not comply with national norms and standards of effluent discharge**

In terms of the NWA a water resource should be protected from water use activities which affect the quantity, quality of water as well as the environment surrounding the water resource.<sup>117</sup> Such water use activities include those listed in section 21(a) to (k) of the NWA; the relevant ones for this thesis are (f), (g) and (h),<sup>118</sup> which concern any

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<sup>115</sup> Smith (2009) 3 and 16. Is it not comer between separate pages instead of 'and'?

<sup>116</sup> Smith (2009) 13.

<sup>117</sup> NWSRS (2010).

<sup>118</sup> '(e) engaging in a controlled activity identified as such in section 37(1) or declared under section 38(1); (f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit; (g) disposing of waste in a manner which may detrimentally impact on a water resource; (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process.'

activity that involves discharging waste water into a river and has a major impact on the water environment. The then Minister of Water and Environmental Affairs, Minister Sonjica, responding to a parliamentary question<sup>119</sup> in 2009, explained that the discharges of treated sewage (largely by municipalities) into water courses<sup>120</sup> can only take place with a permit or licence, issued in terms of the NWA. Such a permit will generally stipulate the required quality of the discharged effluent, and will require regular testing of that effluent with submission of the results to the Department of Water Affairs as the regulator. In her reply, Minister Sonjica reported that out of 821 WWTWs managed by the municipalities, 503 WWTWs (see **Appendix A**) were non-compliant with the effluent discharge standards<sup>121</sup> and were operating without water use authorisations.

Figure 2 and Table 1 below show the extent of non-compliance of WWTWs per province during 2008/2009 financial year. These statistics were captured during the initial stages of the establishment of the regulatory section of the then Department of Water Affairs to provide baseline information for the development of the regulations for the water sector. Both the figurative and tabular presentations reflect the authorisation and/or the compliant status of WWTWs per province, with a breakdown of different types and/or categories of authorisation. The WWTWs that are authorised

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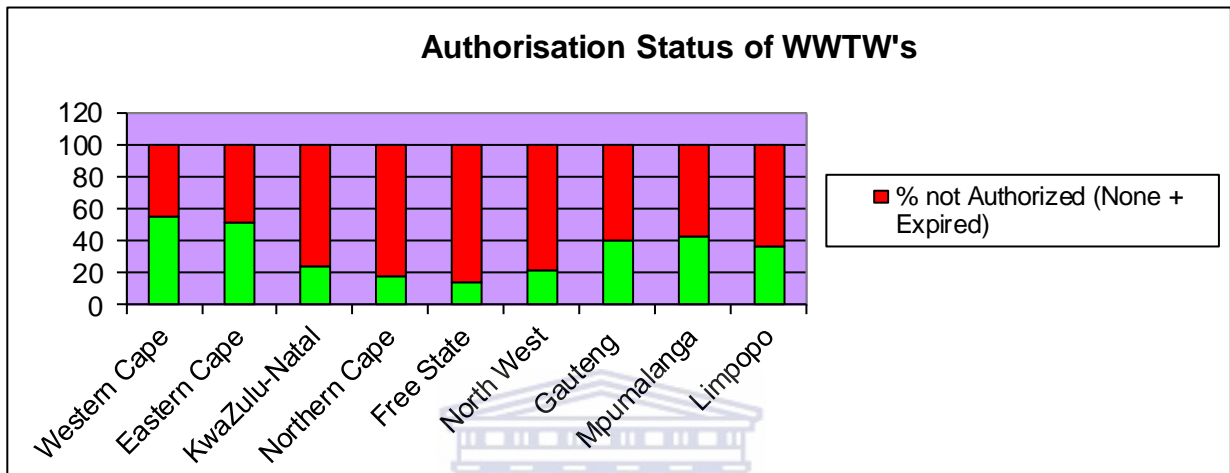
<sup>119</sup> Parliamentary question No. 1550 for written reply in the National Assembly, in 2009. Attached as Appendix A

<sup>120</sup> In terms of definition 1(xxiv), NWA (1998) a "watercourse" means - (a) a river or spring; (b) a natural channel in which water flows regularly or intermittently; (c) a wetland, lake or dam into which, or from which, water flows; and (d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks.

<sup>121</sup> As per Regulation 991 of 1984.

are those that operate with valid water use licences, while those that are unauthorised operate without them or with licences that have expired. Of a total of 1,293 WWTWs, only 468 (36%) operate legally under one of the authorisation types.

Figure 2: Authorisation of Waste Water Treatment Works



Source: Smith L (2009) 14 (main source: DWAF, 2008a: 15)

Figure 2 is a comparison of provincial WWTWs that shows the majority of waste water plants that are not authorised or with expired authorisation, which translates to high levels of non-compliance. This was during the initial stages of the establishment of the regulatory section of the then Department of Water Affairs in 2009. It provided baseline information towards the establishment of regulations for the water sector.

Table 1: Inventory of Waste Water Treatment Works authorisations

Authorisation Type	WC	EC	KZN	NC	FS	NW	GP	MP	Lim	Total
None	73	96	168	60	106	43	29	60	53	688
Exemption	2	69	23	23	38	10	23	24	0	212
Permit	77	12	29	10	5	3	1	1	0	138
GA	50	56	7	0	5	1	9	15	17	160
Licence	16	3	5	4	7	9	19	17	15	95
<b>TOTAL WWTWs</b>	<b>218</b>	<b>236</b>	<b>232</b>	<b>97</b>	<b>161</b>	<b>66</b>	<b>81</b>	<b>117</b>	<b>85</b>	<b>1293</b>
Authorisation issued	145	140	64	37	55	23	52	57	32	605
Authorisation expired	24	19	9	19	31	9	19	6	1	137
Authorisation still valid	121	121	55	18	24	14	33	51	31	468
<b>TOTAL</b>	<b>WC</b>	<b>EC</b>	<b>KZ N</b>	<b>NC</b>	<b>FS</b>	<b>NW</b>	<b>GP</b>	<b>MP</b>	<b>Lim</b>	<b>Total</b>
% Authorised	56	51	24	19	15	21	41	44	36	36%
% not Authorised = (no WUL + Expired	44	49	76	81	85	79	59	56	64	64%

Source: Smith L (2009) 14 (main source: DWAF, 2008a: 15)

The situation is dire if 64% of 1293 WWTWs operate without any water use authorisation or with a licence that has expired. As can be seen in the table, above it may be that the licence has expired or the works does not comply with the conditions of the licence. Replying to a Parliamentary question,<sup>122</sup> the Minister responsible for water affairs gave various reasons for municipalities not operating with the requisite water use licence. She said some municipalities simply do not apply for one, some do not meet the standard required for a licence and some do not have the capacity to complete the water use application form. Looking at the above table, the Minister was essentially telling the nation that the majority of waste water facilities are not even at the level of completing forms in terms of the skills they possess. The Minister was also implying that her Department was incapable of assisting the municipalities to complete the forms, as this is a kind of support expected from national government in terms of section 151(4) of the Constitution. It should, however, also be noted that the 36% waste water plant that are recorded to be authorised and having a water use licences may not necessarily be compliant with the conditions of licence.

The high levels of non-compliance could also be attributed to possible lack of inadequate or poor compliance monitoring and support expected from the DWS and/or a relevant sector department. This is a very unhealthy situation and definitely a cause for concern.

A recent study by the University of Stellenbosch<sup>123</sup> on the impacts that the polluted rivers have on food safety and human health reported that many South African rivers

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<sup>122</sup> Question No 323 on 28 September 2009.

<sup>123</sup> TJ Britz, GO Sigge, N Huisamen, T Kikine, A Ackermann, M Lötter, C Lamprecht and M Kidd (2013). Reference to other published reports of Barnes and Taylor (2004); Germs et al (2004); Griesel and Jagals (2002); Olaniran *et al* (2009); Paulse *et al* (2009).



are unsuitable for irrigation of fresh produce. The study explains that this is mainly due to unacceptably high levels of faecal contamination<sup>124</sup> that exceed the guideline limits set by the DWAF (1996) and World Health Organisation (WHO in 1989) for the irrigation of fresh produce. The study identifies informal settlements and the inability of municipalities to manage their waste water treatment works as primary sources of this pollution.

The same conclusion was reached during the development of the second edition of National Water Resources Strategy (NWRS2). The NWRS2 concluded that, among other things, water resources experience ongoing pollution from various sources such as poor land use practices and effluent discharged from malfunctioning municipal waste water treatment works, resulting in ongoing problems with drinking water quality in a number of towns.<sup>125</sup>

A general observation has been that the majority of WWTWs operate above their design capacity, leading to non-compliance with waste water discharge standards, thereafter damaging the water environment.<sup>126</sup> This affects the security of supply, increasing pressure on the limited freshwater resources and raises the costs of water treatment and environmental rehabilitation.

An integrated urban management approach is necessary for the urban water supply, which, according to Smith,<sup>127</sup> is the fastest growing sector of national water use. The

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<sup>124</sup> Pollution of water by human waste not suitable for especially for irrigation by the agricultural sector

<sup>125</sup> NWRS2 (2013) 37 and 72.

<sup>126</sup> NWRS2 (2013) 40 and NWSRS (2010) 13.

<sup>127</sup> Smith (2009) 5.

design capacity of many waste water works needs to be reviewed and resources allocated to their expansion in order to manage the demand for water that is increasing more rapidly than the population growth rate. Smith<sup>128</sup> argues that the growing population has implications for waste water volumes rising significantly and this has implications both for water supply and waste water management, making provision of water more complex. This is evidenced by studies of water quality that identify informal settlements as significant contributors to the pollution of water resources. This further affects the primary task of municipalities providing safe, reliable and affordable water services and in a manner that promotes public health and does not pollute the environment.<sup>129</sup>

Failing to balance water demand and projected water services in relation to population growth patterns is an indication of a failure to plan in terms of the water services development plans (WSDPs) as a means to integrate water plans with all other plans, especially the Integrated Development Plans (IDPs). The IDP should facilitate the integration of government programmes for better implementation at local government level.<sup>130</sup> The alignment of the WSDP and IDP is meant to facilitate integration of urban planning and water management<sup>131</sup> which is necessary for the efficient management of waste water and effluent discharge. The WSDPs require the WSAs to indicate the status of existing water use, future projection of industrial water use, the extent of effluent disposed, as well as cost implications.<sup>132</sup>

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<sup>128</sup> Smith (2009) 5.

<sup>129</sup> Smith (2009) 9.

<sup>130</sup> De Visser (2004) 219.

<sup>131</sup> Stockholm International Water Institute (SIWI) (2013).

<sup>132</sup> Sections 12, 18, 13(e) & (f) WSA (1997); NWRS2 (2013) 77 and 79; SFWS (2003) 43.

There is a view that the development of water services policy has outpaced the institutional capacity to implement it on the ground. The argument being advanced is that both the NWRS (a blueprint for water resources management) and the NWA set out ambitious policy standards that are appropriate for a developed world context.<sup>133</sup> The NWA and the NWRS are beyond the capacity of South Africa's municipalities or the local government sphere. Powell makes reference to the review of the first term of local government (2000 to 2005) which pointed to a serious discrepancy between national policy objectives and the capacity of local government.<sup>134</sup> This review attributed failure by local government to lack of support by national government to help municipalities discharge their responsibilities, among other things.<sup>135</sup>

Again, the review of the impact of the IGRF Act in 2008 noted failure by municipalities in their core service delivery obligations provided for in sections 152 and 153 of the Constitution.<sup>136</sup> This is a serious case of non-compliance and, if anything, any readjustment would have to start at the level of the Constitution. In his address during a policy debate to the National Council of Provinces,<sup>137</sup> the Deputy Minister of CoGTA acknowledged that capability and effectiveness remain two critical challenges

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<sup>133</sup> Smith (2009) and Hofmeyr (2012).

<sup>134</sup> Powell (2012) 19.

<sup>135</sup> Powell (2012) 19.

<sup>136</sup> The Implementation of the Intergovernmental Relations Framework Act: An inaugural report (2005/06 – 2006/07) 49-50.

<sup>137</sup> Parliament RSA 8 October 2013.

for the state to address.<sup>138</sup> He said that challenges of capacity constraints and weaknesses in governance and institutional performance inhibit improvement in performance and service delivery. If municipalities fail to plan in terms of the WSDPs and/or IDPs, which appears to be the case, it could be an indication that national government is failing in terms of its constitutional mandate to support and strengthen the capacity of municipalities to manage their own affairs. The latter situation, in turn, compromises the ability of municipalities to execute their functions.<sup>139</sup>

Before tampering with the Constitution, Smith suggests that two things be examined.<sup>140</sup> One is the possible reassessment of the capabilities of municipalities to determine if they cope with their functions as WSAs and water service providers. The second is whether the policies can be practically implemented whether the compliance they demand from municipalities is unrealistic. One could also add if spheres use the integrated planning approach as one of the critical requirements in delivering basic services for sustainable development. The National Spatial Development Perspective, Provincial Growth and Development Strategies and municipal Integrated Development Plans (IDPs) are the key planning tools that all spheres are expected to align with across government.<sup>141</sup>

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<sup>138</sup> COGTA DM referred to the issues highlighted by the 2009 study on the State of Local Government, and the 2010 study commissioned on the State of Local Government Human Resources Development.

<sup>139</sup> Sections 151(4) and 154(1), Constitution (1996).

<sup>140</sup> Smith (2009) 13-16.

<sup>141</sup> DWAF Guide, (2005) 41, s153, Constitution, National Development Plan (2011) chap 5.

The Deputy Minister of the Department of Cooperative Government and Traditional Affairs (CoGTA) spoke cautiously about the capability and effectiveness of the state and the challenges of capacity constraints and weaknesses that inhibit an improvement in performance and service delivery. One would support the latter sentiment that is concerned about the capacity of the state instead of the inefficiencies of one sphere of government. Despite all the tools available for support, the national and provincial departments responsible for local government are failing in their crucial role of ensuring that there is co-ordination between departments around matters affecting local government.<sup>142</sup>

### **3.3.1 Statistical evidence of non-compliance by municipalities and government**

The Green Drop certification programme and the municipal strategic self-assessment (MuSSA) initiative are the two processes which the DWS uses to track and or monitor progress with compliance of municipalities in relation to water services provision. These will be discussed in this section.

#### **3.3.1.1 The Green Drop audit report<sup>143</sup>**

In an effort to manage water quality in South Africa, the then DWA, (now DWS) instituted the Blue Drop (BD) and Green Drop (GD) certification programmes to give assurance to the South African public about the good management of drinking water

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<sup>142</sup> De Visser (2000) 22.

<sup>143</sup> Institutions that have been identified to own and manage waste water systems that reside in critical state and display exceptional poor performance are indicated with a 'Purple Drop' in the Green Drop Report 2013. Such WSIs are required to provide the DWA with a Corrective Action Plan within 30 days of notice of these results (Green Drop scores <30%).

quality and waste water quality, respectively. These are incentive-based water quality regulation programmes aimed at helping municipalities comply with the prescribed norms and standards for the protection of consumers and water resources.

The DWS uses the GD certification programme to provide the regulatory support to municipalities and facilitate the provision of safe and reliable water services in a manner that promotes public health and does not pollute the environment.<sup>144</sup> The GD is an incentive-based regulatory support mechanism that encourages effective and efficient management of waste water treatment and effluent discharge, and ensures efficient implementation of regulations at local government level. Promoting transparency, providing reliable and consistent information to the public on waste water treatment and effluent discharge is necessary in the context of a democracy like South Africa. The WSA<sup>145</sup> and SFWS require municipalities to provide information concerning the provision of water services. This information is then made available to all government spheres and citizens for the assurance of an adequate and safe water supply. In 2008, the DWS embarked on a Green Drop audit process to receive and manage the information supplied on a monthly basis by the water services authorities, and to monitor the accuracy and reliability of this information.<sup>146</sup> The Green Drop certification programme is thus an initiative to promote good performance in the treatment of effluent and the management of effluent discharge quality.<sup>147</sup>

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<sup>144</sup> NWRS2 (2013) 70 and Smith (2009) 9.

<sup>145</sup> Sections 23 and 69.

<sup>146</sup> NWSRS (2010) 13 .

<sup>147</sup> NWSRS (2010) 31.

As Table 2 below reflects, the purpose of the DG certification programme is to identify and develop core competencies required for the sector to sustainably improve the level of waste water management.<sup>148</sup>

*Table 2: Core competencies evaluated in relation to WWTWs and respective weighting*

No.	Key Performance Area	Weight
1.	Process Control & Maintenance Skills	10%
2.	Monitoring Programme	15%
3.	Submission of Results	5%
<b>4.</b>	<b>Effluent Quality Compliance</b>	<b>30%</b>
5	Risk Management	15%
6	Local Regulation	5%
7.	Treatment Capacity	5%
8.	Asset Management	15%

*Source: 2013 Green Drop Surveillance Report, DWA*

The effluent quality compliance stands out as a priority core competence and its risk out-weighs and doubles all other core competences. Hence it is prioritised in the regulation strategy of the DWS (2010 NWSRS).

The BD and DG water quality certification programmes were implemented in 2009 when the DWS started focusing on its regulatory function. As noted above, the statistics reflecting the poor state of waste water treatment systems served as a baseline for subsequent monitoring by the DWS. It was noted in 2010 that pollution from waste water treatment plants managed by both municipalities and the private

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<sup>148</sup> Green Drop Surveillance Report (2013/14) 1.

sector has become a major concern in South Africa as most WWTWs had exceeded their design capacity and were overloaded.<sup>149</sup>

According to the Green Drop reports<sup>150</sup> the performance of municipalities in managing the waste water works has been declining over the years. Out of a total of 821 WWTWs managed by 156 municipalities, in 2009 / 2010 financial year 444 WWTWs in 98 municipalities were assessed and 49% of these scored less than 50%. In 2010/2011 financial year 821 WWTWs in 56 municipalities were assessed and 44% scored less than 50% indicating a drop in performance compared to the 2009/2010 results. In 2012/13 all waste water systems managed by government (Local Government and the Department of Public Works) were assessed and a performance of WWTWs declined dramatically to less than 30% GD scores. Out of a total of 942 WWTWs, 352 scored less than 30% (see tables 3 and 4 below)

Tables 3 and 4 below, taken and adapted from the 2013-2014 Green Drop report, show that there is no coordination between local government and national government (Department of Public Works). However, Table 3 shows that plants managed by WSAs are more closely monitored and have performed better than plants managed by the Department of Public Works, which are reflected in Table 4.

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<sup>149</sup> NWRS2 (2013) 40.

<sup>150</sup> 2009/2010; 2010/2011 and 2013/14 financial years



Table 3: Provinces/WSAs with Green Drop scores below 30%

Province	Number WWTW with <30% score	Percentage of WWTW with <30% score
Gauteng	None	0%
Western Cape	9	5.7%
KwaZulu-Natal	32	22.7%
Eastern Cape	34	27.4%
Free State	46	49.5%
Northern Cape	33	41.8%
Limpopo	32	55.2%
North West	21	56.8%
Mpumalanga	41	53.9%
<b>National overview</b>	<b>248</b>	<b>30.1%</b>

Source: 2013/14 Green Drop Surveillance Report dated 25 September 2013.

Table 4 below reflects serious mismanagement by the Department of Public Works. Looking at the two tables, it can also be concluded that there is lack of coordination between national and local government which adversely affects service delivery.

Table 4: DPW-managed WWTW with Green Drop scores below 30%

DPW Regions and Cities	Number of WWTWs with <30% score	Percentage of WWTWs with <30% score
North West (Mmabatho)	All 10 plants	100%
Gauteng (Johannesburg)	1 plant	100%
Gauteng (Pretoria)	All 8 plants	100%
Eastern Cape (Umtata)	All 18 plants	100%
Eastern Cape (Port Elizabeth)	All 11 plants	100%
Free State (Bloemfontein)	All 8 plants	100%
Limpopo (Polokwane)	All 17 plants	100%
Northern Cape (Kimberly)	4 of 6 plants	67%
KwaZulu-Natal (North and South)	16 of 19 plants	84%
Mpumalanga (Nelspruit)	8 of 11 plants	73%
Western Cape (Cape Town)	3 of 12 plants	25%
<b>DPW National Overview</b>	<b>104 of 121 plants</b>	<b>86%</b>

Source: 2013/14 Green Drop Surveillance Report dated 25 September 2013.

The 30 per cent Green Drop score is an indication of non-compliance with the regulatory requirements and these plants are at a 'critical risk' rating<sup>151</sup> and as such qualify for regulatory surveillance ) in accordance the WSA.<sup>152</sup>

### **3.3.1.2 Municipal Strategic Self-Assessment (MuSSA) Report**

The Municipal Strategic Self-Assessment programme is a process that was initiated by the then Department of Water Affairs and Forestry (DWAFF) in 2006 to determine the overall business health of a municipality. The programme entails tracking current and likely future performance as well as identifying key areas of vulnerability in a municipality. The MuSSA report serves as a source of information on municipal performance and a guide for municipalities to effectively plan and appropriately direct resources to targeted key performance areas such as the management of effluent discharge in the WWTWs. The MuSSA process facilitates for the DWS and the sector to provide more effective support to local government. The 2013 MuSSA process identified sixteen key business health attributes through which to track performance of municipalities.<sup>153</sup> An important aspect of the MuSSA process is that municipalities

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<sup>151</sup> 90-100%: Excellent situation, maintain via continued improvement; 80-<90%: Good, improve where gaps identified to move to excellent; 50-<80%: Fair, ample room for improvement; 31-<50%: Very poor, need targeted intervention towards gradual sustainable improvement; 0-<31%: Critical state, need urgent intervention for all aspects of the waste water services business.

<sup>152</sup> Sections 62 and 63, Water Services Act (1997) on Monitoring and intervention of water services authorities.

<sup>153</sup> 1. Water Services Development Planning; 2. Management Skill Level; 3. Staff Skill Levels; 4. Technical Staff Capacity; 5. Water Resource Management; 6. Water Conservation and Demand Management; 7. Drinking Water Safety and Blue Drop Status; 8. Waste water/Environmental

assess themselves and determine their own level of performance,<sup>154</sup> and this should make it easy to determine appropriate support programmes.<sup>155</sup>

*Table 5: Vulnerability indexes of key business health attributes nationally*

No.	Key Business Health Attribute	Vulnerability Index <sup>156</sup>
<b>1.</b>	<b>Water Services Development Planning</b>	<b>70%</b>
2.	Management Skill Level	80%
3.	Staff Skill Levels	90%
4.	Technical Staff Capacity	65%
5.	Water Resource Management	85%
6.	Water Conservation and Demand Management	70%
7.	Drinking Water Safety and Blue Drop Status	85%
<b>8.</b>	<b>Waste water / Environmental Safety / Green Drop</b>	<b>85%</b>
9.	Infrastructure Asset Management	25%
10.	Operation and Maintenance of Assets	75%
11..	Financial Management	70%
12.	Revenue Collection	60%
13.	Information Management	90%
14	Organisational Performance	100%
15.	Water Service Quality	70%

Safety/Green Drop; 9. Infrastructure Asset Management; 10. Operation and Maintenance of Assets; 11. Financial Management; 12. Revenue Collection; 13. Information Management; 14. Organisational Performance; 15. Water Service Quality and 16. Customer Care.

<sup>154</sup> In terms of Chapter 6 of the Local Government: Municipal Systems Act (2000), municipalities are expected to establish, develop, audit, review and report on their respective internal performance management systems.

<sup>155</sup> SFWS (2003) 60.

<sup>156</sup> Very high vulnerability index: 0-50%; high vulnerability index: 50-60%; medium vulnerability index: 60-75%; low vulnerability index: 75-100%.

16.	Customer Care	80%
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Source: 2012 Municipal Services Strategic Assessment (MuSSA) for South Africa dated 2013

The two critical business health attributes that are of interest for this research are water services development planning (WSDP) and the waste water / environmental safety (listed as the first and eighth attributes) as these relate specifically to the management of waste water treatment works. Although the scores of 70 per cent and 85 per cent equate to a low vulnerability index (see footnote 155 below), these are not satisfactory national scores for an area of water quality which threatens both human life and the life of the ecosystem.



Table 6: Municipal Vulnerability Index performance per province<sup>157</sup>

Province	Total no. of WSAs	Very High vulnerability		High vulnerability		Moderate vulnerability		Low vulnerability	
		No. of WSAs	%	No. of WSAs	%	No. of WSAs	%	No. of WSAs	%
EC	16	8	50%	4	25%	3	19%	1	6%
FS	20	10	50%	7	35%	3	15%	0	0%
GP	10	1	10%	6	60%	3	30%	0	0%
KZN	14	3	21%	7	50%	4	29%	0	0%
Limpopo	11	7	64%	4	36%	0	0%	0	0%
MP	18	12	67%	3	17%	3	17%	0	0%
NC	27	16	59%	10	37%	0	0%	1	4%
NW	11	9	82%	1	9%	1	9%	0	0%
WC	25	4	16%	8	32%	10	40%	3	12%
<b>TOTAL</b>	<b>152</b>	<b>70</b>	<b>46%</b>	<b>50</b>	<b>33%</b>	<b>27</b>	<b>18%</b>	<b>5</b>	<b>3%</b>

Source: 2012 Municipal Services Strategic Assessment (MuSSA) for South Africa

<sup>157</sup> Table 3 is taken and adapted from Figure 1 of MuSSA “Spider-Diagram” output indicating vulnerability and Table 4 is taken from the MuSSA report (dated March 2013).

Table 6 above reflects very high vulnerability indexes of the majority of the WWTWs, that is, 120 of 152 WWTWs are within the categories of very high and high vulnerability index, which is an indication that the risk has significantly increased.

If one looks at municipal compliance and institutional performance between 2009/2010 and the 2013/14 financial years, one sees no improvement. Rather, what emerges is a worsening situation with regard to municipalities performing their constitutional functions. The latter situation prevails despite the many interventions that have been effected through section 139 of the Constitution. Thompson<sup>158</sup> argues that intervention should not only be in terms of allocation of resources but through a coordinated and cooperative approach to monitoring the local sphere that should bring about the successful implementation of government policy.

### **3.4 Ensuring compliance and promoting performance**

Thompson<sup>159</sup> argues that the mere existence of the law does not ensure compliance but consists of provisions which impose obligations or prohibitions or entrust certain powers in individuals and organisations. In the context of cooperative governance, the role of national and provincial governments is not only to ensure that the local government sphere complies but it is also for them to comply with their respective mandates of water services provision as per the WSA. It is both a constitutional and legislative mandate for the provincial and national spheres to support the local sphere, to ensure compliance and promote performance.<sup>160</sup> This point is also

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<sup>158</sup> Thompson (2006) 257.

<sup>159</sup> Thompson (2006) 257.

<sup>160</sup> NWSRS (2010) 18.

emphasised by De Visser<sup>161</sup> who argues that despite the competency of the two spheres to enact legislation to be implemented at local government level, they are still expected to comply with section 154(1) of the Constitution with regard to supporting the local government sphere, lest they be found guilty of compromising the ability of municipalities to comply.<sup>162</sup> The cooperative governance support by the provincial and national government spheres to local government should ensure that local government is self-regulating and accountable, among other things.<sup>163</sup>

National and provincial governments are expected to balance their mandates to support local government and regulate their functions to realise policy objectives and comply with norms and standards.<sup>164</sup> The regulatory approach should avoid mechanisms that may be unconstitutional and undermine the institutional integrity of local government.<sup>165</sup> Monitoring is a constitutionally and legislatively prescribed mechanism that should be used for support and regulatory functions without undermining the institutional integrity of local government.<sup>166</sup> Monitoring other spheres and intervening when there is a failure to perform a function is an integral part of cooperative government and intergovernmental relations.<sup>167</sup> It is an essential

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<sup>161</sup> De Visser J (2000) 13.

<sup>162</sup> Section 151(4), Constitution (4). What is (4) for?

<sup>163</sup> Powell (2001) 265.

<sup>164</sup> SFWS (2003) 50.

<sup>165</sup> De Visser (2004) 175-6.

<sup>166</sup> SFWS (2003) 50 and NWSRS (2010).

<sup>167</sup> DWAF Guide on IGRF Act (2005) 44.

tool of effective support and regulation as it helps to identify instances where interventions are needed to protect the public interest.<sup>168</sup>

The WSA<sup>169</sup> provides for the National and provincial governments to monitor all water services institutions to ensure compliance with prescribed norms and standards for water service provision and tariffs for improved water sector performance. This support is important because if it is not provided, the entire management of the water value chain is affected. The water sector planning at the level of water services authorities has implications for water service providers and intermediaries.<sup>170</sup> In terms of the Local Government: Municipal Systems Act (Systems Act),<sup>171</sup> CoGTA and National Treasury have a coordinating role to play to ensure that service delivery and the fiscal plans of municipalities are aligned with those of national and provincial sector departments. The Minister responsible for local government is empowered by the Systems Act<sup>172</sup> to make regulations or issue guidelines to put in place mechanisms and procedures for the coordination and integration of sectoral requirements and the manner in which municipalities must comply.

A sustainable approach to ensuring compliance by municipalities is to strengthen government-wide support to municipalities and not only focus on municipal performance. Eddy's<sup>173</sup> approach of taking away the regulation of industrial

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<sup>168</sup> SFWS (2003) 59.

<sup>169</sup> Section 62(1), WSA (1997); National Water Services Regulation Strategy (2010) 33.

<sup>170</sup> Thompson (2006) 715, 718.

<sup>171</sup> Systems Act (2000).

<sup>172</sup> Section 94(1)(h) Systems Act (2000).

<sup>173</sup> Eddy (2003) 103.



dischargers from municipalities and for these to be regulated at national government level is not sustainable. This approach is not in the interest of sustainable service delivery, nor does it strengthen cooperative governance. It is an approach that contradicts the constitutional provision for provincial and national government to support and strengthen the capacity of municipalities to manage their own affairs and exercise their own powers and functions.<sup>174</sup>

An initiative by CoGTA to develop the Intergovernmental Monitoring, Support and Intervention Bill<sup>175</sup> (IMSI Bill) will go a long way in improving compliance by municipalities. The focus of the IMSI Bill is not only on local government, it also addresses capacity challenges of national and provincial spheres in supporting, monitoring and intervening in municipalities.<sup>176</sup> The Deputy Minister of CoGTA announced plans to strengthen municipal planning support through the development and implementation of the Revised IDP Framework. The IMSI initiative will guide sector integration and facilitate mechanisms linking planning, budgeting, implementation, monitoring and reporting for integrated planning and reporting. This will further strengthen the local sphere of government. Establishing national IDP support teams constituted of national and provincial sector departments to focus on giving support to municipalities is also envisioned. As already alluded to above, further barriers to compliance are caused by lack of financial resources and different

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<sup>174</sup> Section 154(1), Constitution (1996).

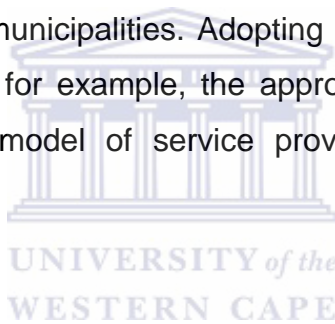
<sup>175</sup> Scheduled to be tabled in Parliament during the course of the 205/16 financial year.

<sup>176</sup> IMSI guidelines (2014) 9 and Version 1.3 National guidelines on provincial support, monitoring and intervention (2014).

departments demanding different deliverables, the latter as a result of uncoordinated planning and reporting processes.<sup>177</sup>

To return to Thompson's argument, all three spheres have an obligation imposed by the law for the successful implementation of South Africa's water regulatory laws and regulations. Compliance by all spheres of government in relation to their respective responsibilities would facilitate compliance by municipalities.<sup>178</sup>

This thesis supports a view that sees the key objective of any intergovernmental relations mechanism as informed by, among other things, the need to support local government and for government to work as a single unit.<sup>179</sup> The duty to monitor and regulate the water management function needs to be informed by the compliance requirements expected from municipalities. Adopting the integrated approach would be much more prudent than, for example, the approach suggested by Smith<sup>180</sup> of reviewing the decentralised model of service provision mandated by the 1996 Constitution.



### **3.5 Conclusion**

This chapter's examination of statistical data on municipal compliance brought to light consistent and significant non-compliance by municipalities with national norms and standards of effluent discharge. Many municipalities do not adhere to their legal

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<sup>177</sup> Creative financing arrangements.

<sup>178</sup> Thompson (2006) 257.

<sup>179</sup> DWAF Guide.

<sup>180</sup> (2009) 16.

obligation to provide water services in an equitable and sustainable manner, and are failing in their duty to promote a healthy, safe and pollution free environment.

As highlighted above, the WSA and the NWA are the two key pieces of legislation that regulate water in South Africa. They both acknowledge and provide for different spheres of government as well as other stakeholders to participate in the management of water services and water resources, respectively. The preamble to the WSA acknowledges the role of all spheres of government to cooperatively ensure the provision of water supply and sanitation services in an equitable and sustainable manner. The NWA requirement to set up institutions to decentralise the water resources management function is an indication that cooperation between different spheres of government and their respective entities is inevitable. Both national and provincial spheres of government have the constitutional and legislative obligation to monitor performance of local government, provide support and strengthen its capacity to execute its functions. There are statutory mechanisms provided by the Constitution and legislation which the national and provincial spheres of government are mandated to use in facilitating municipal compliance. One of the ways would be to ensure that policies with corresponding regulations are practical and implementable at local government level. This could be achieved through coordinated and integrated planning and reporting: and the alignment of the IDPs and WSDPs would provide such coordination.

Addressing the challenge of non-compliance in local government implementation is not the responsibility of municipalities alone, but one which all three spheres of government should share. The next chapter examines the different support and regulatory mechanisms that the DWS uses to enforce compliance by municipalities. Cooperative government will also be examined as one of the mechanisms to be used in this regard.

# **CHAPTER 4:**

## **MECHANISMS FOR ENFORCING COMPLIANCE BY MUNICIPALITIES**

### **4.1 Introduction**

How should DWS address the problem of enforcing compliance by municipalities with national prescribed norms and standards for the management of waste water quality or effluent discharge? This chapter explores the different enforcement mechanisms that can be used to ensure compliance by municipalities with national norms and standards for the management of effluent discharge. There are legally prescribed, punitive measures that criminalise the act of pollution, and they apply to all polluters irrespective of the person or facility responsible for it. The Constitution and legislation also provide punitive actions which the national government can take against non-compliant municipalities. In addition, there are less punitive non-legal measures that can be used to encourage cooperation by municipalities.

### **4.2 Enforcement**

Enforcement is a set of actions the regulator takes in response to detected non-compliance and to demand that the transgressor, in this case the polluter, presents a corrective action that ensures the rehabilitation and further protection of a water

resource in question and the affected consumers.<sup>181</sup> Both the national and local government spheres have the responsibility to enforce regulations within the water sector. The decentralised regulatory authority of local government complements that of national government.<sup>182</sup> The DWS enforces regulations in relation to the different water uses provided for in Section 21(a)-(k) of the NWA, while local government enforces regulations concerning all aspects of water services provision through by-laws<sup>183</sup> as well as socio-economic regulation, such as investments and the setting of tariffs.<sup>184</sup>

There are consequences and remedies when a user and a consumer fails to comply with, respectively, water use conditions and water services contractual obligations. For instance, municipalities have the power to cut off the water and/or reduce the flow if there is failure by the consumer to comply with conditions set for the provision of water services.<sup>185</sup> As indicated in Chapter 2 above (in footnote 79 above), the two key pieces of legislation for water management (the NWA and WSA) and consistently with the other Acts of Parliament, make non-compliance by all water users, including all organs of state,<sup>186</sup> a criminal offence. Section 151(2) of the NWA provides that any

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<sup>181</sup> DWAF Enforcement Manual (2010) 6.

<sup>182</sup> Pillay (2009) 146.

<sup>183</sup> SFWS (2003) para 7.4.

<sup>184</sup> Section 10 WSA (1997); SFWS (2003) 53.

<sup>185</sup> Section 112(g) WSA (1997), Section 21(2)(a) WSA (1997).

<sup>186</sup> Section 156, NWA (1998), 'This Act binds all organs of state.' and Section 83 WSA (1997) 'This Act binds the State and its organs.'

person who is responsible for pollution, contravenes or fails to comply with authorisation<sup>187</sup>

is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

The promulgation of the NWA followed that of the WSA, and the latter provision reiterates the sentiments of section 82 of the WSA, which make pollution of a water resource a punishable offence in terms of which a polluter qualifies for prosecution and conviction. Although the 1956 Water Act was notorious for not allocating water equitably, was biased towards agriculture and industry, and did not pay attention to the impact of human activities on water resources, it did make pollution, contraventions or failure to comply with the provisions of the Act a punishable offence. The Health Act<sup>188</sup> 63 of 1977 and the National Health Act 61 of 2003 impose criminal sanctions on a municipality that fails to provide safe potable water to citizens and for violating a constitutional right to a pollution-free environment or engaging in activities that affect the health of people.<sup>189</sup>

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<sup>187</sup> Authorisation includes a Water Use Licence, Existing Lawful Use (ELU), General Authorisation (GA).

<sup>188</sup> Section 57 Health Act (1977) also specifies term of imprisonment and amount of fines to be paid.

<sup>189</sup> Section 20(c) Health Act (1977) provides for Local Authorities to prevent the pollution of any water intended for the use of the inhabitants of its district, irrespective of whether such water is obtained from sources within or outside its district, or to purify such water which has become so polluted. Section 83(1) (a), (b) & (c) are outlined as reasonable grounds for criminalisation and prosecution.

More importantly, these punitive measures for non-compliance were endorsed by local government legislation<sup>190</sup> which makes non-compliance by municipalities with municipal by-laws, regulations and all other legislation administered by municipalities a prosecutable offence.<sup>191</sup>

### **4.3. Statutory mechanisms for enforcing compliance by municipalities**

Both national and local government legislation prescribe some remedies to apply when municipalities fail in their provision of basic services. The NWA and the WSA empower the Minister to use criminal, administrative and civil measures to direct all water users to discontinue activities that transgress the provisions of the water sector regulations.<sup>192</sup> The Constitution and local government legislation also prescribe a number of mechanisms to force municipalities to comply with their service-delivery mandate.

#### **4.3.1 Criminal measures**

As indicated above, section 151(2) of the NWA makes it an offence to pollute the water resources, making reference especially to section 19 of the NWA. It is also a criminal offence to fail to comply with directives issued in terms of sections 20 (on Control of emergency incidents), 53 (on contravention of the provisions of NWA or failure to comply with authorisation conditions) and 118 (on control measures for dam with safety risk). Although the criminalisation of pollution and contraventions in the NWA, WSA and the Health Act is not based on stiff fines, the civil order (section 153

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<sup>190</sup> Section 112, Systems Act (2000).

<sup>191</sup> Section 112, SYSTEMS ACT (2000) .

<sup>192</sup> Sections 153 and 74, NWA (1998) & Thompson (2006) 272.

of the NWA and section 82 of the WSA) requires the accused to pay the actual costs of rehabilitating the water environment.<sup>193</sup> The main aim of criminal prosecution is to force the the polluter to rehabilitate the water environment in question, whether in cash or kind, and to commit to reversing the possible violations of the rights of the affected communities by an act of pollution. The polluter-pays and/or prosecution enforcement tool can be very expensive for both the polluter and the regulator as the latter has to take responsibility to the rehabilitation in the event that the polluter is not able to do so. The polluter or the transgressor then pays back. On the positive side, it can be a highly effective enforcement tool, given its value as a deterrent. If convicted and prosecuted, a person can have his or her authorisation cancelled, and he or she can be suspended and blacklisted for a period of time.<sup>194</sup>

#### **4.3.2 Administrative measures**

The NWA, WSA and NEMA afford public authorities power to use administrative enforcement measures to enforce compliance without approaching the courts or use the litigation process.<sup>195</sup> The responsible authority communicates non-compliance using monitoring reports, site visit inspection reports and directives to alert the water services authorities (WSAs) of detected or looming non-compliance. The administrative measures allow for the recipient of the non-compliance notice or directive an opportunity to rectify the violation or put measures in place to prevent a potential violation. These measures are always in the spirit of cooperative governance and are popular in the DWS system of enforcement. If there is no

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<sup>193</sup> Algotsson and Murombo, (2009) 25.

<sup>194</sup> DWA Enforcement Manual (2010) 7.

<sup>195</sup> Algotsson and Murombo, (2009) 24.



response or the response to notices and directives is inadequate, the DWS or any other department whose regulations have been contravened, can escalate the matter for prosecution and this would trigger a section 151(2) prosecution process.

#### **4.3.3 Civil measures**

The Minister responsible for water management is empowered by the NWA<sup>196</sup> to apply for a high court mandatory interdict, to either direct a person to stop polluting or order a person to clean up the effects of pollution. These are applicable in situations that need urgent interventions.<sup>197</sup>

#### **4.3.4 Measures to stop funding**

The Constitution and the Municipal Finance Management Act 56 of 2003 (MFMA) make non-compliance to the prescribed finance measures punishable. National Treasury may stop the transfer of funds where municipalities consistently commit a serious breach of financial management measures.<sup>198</sup> The Systems Act requires a cabinet member to initiate legislation making it the responsibility of a municipality to build its capacity and provide sufficient funding. Providing funding can also be a sanction, as the WSA<sup>199</sup> empowers the Minister to refuse financial assistance to a

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<sup>196</sup> Section 155.

<sup>197</sup> DWA Enforcement Manual (2010).

<sup>198</sup> Sections 216(2) Constitution (1996); 38 & 39, MFMA (2003).

<sup>199</sup> Section 65(2).

water services institution which fails to comply with its constitutional or any obligations in terms of any law.

An attempted prosecution of Stellenbosch local municipality is a case in point. Stellenbosch local municipality was allocated Regional Bulk Infrastructure Grant (RBIG) funding, but the funds had to be withdrawn after they were not utilised over a financial year. The municipality ignored complaints dating back in 1993 about the quality of water from the polluted Eerste river not being suitable for irrigation as well as incidents of diarrhea among the population. The many directives from the then DWA were also ignored until the department sought relief and used section 53(2)(b) of the NWA to request the National Prosecuting Authority (NPA) to prosecute.<sup>200</sup> The NPA turned down the request for prosecution and instructed the DWA and Stellenbosch local municipality to resolve the issue using cooperative government processes.

Although the national and provincial spheres have a constitutional obligation to support and capacitate municipalities, this does not absolve local government from complying with their service provision functions in an efficient manner.<sup>201</sup> Although the process of stopping the funds is clearly spelt out in section 216 of the Constitution, it may lead to a dispute and disrupt the provision of services. The Constitution instructs the spheres to avoid courts and exhaust the processes of cooperative government to resolve the dispute. In the case of a dispute involving local government and/or a municipality, the provisions of the MFMA<sup>202</sup> are applicable.

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<sup>200</sup> Cape Times 3 May 2013.

<sup>201</sup> Algotsson and Murombo, (2009) 20.

<sup>202</sup> Section 44, MFMA (2003).

#### 4.4 Non-statutory mechanisms for enforcing compliance by municipalities

A fundamental characteristic of all enforcement programmes is that there is no one-size-fits-all solution to compliance and enforcement challenges. The appropriate approach is to adopt and use an optimal mix of enforcement tools to suit specific conditions for an efficient and effective enforcement regime.<sup>203</sup> The prescribed enforcement measures that have been unpacked above are not enforceable on municipalities. The enforcement principles therefore require innovative measures that encourage compliance, or readiness to comply, on the part of the regulated. The appropriate approach for municipalities is thus to explore alternative measures that promote compliance.<sup>204</sup>

The United States Environmental Protection Agency (USEPA)<sup>205</sup> established an International Network for Environmental Compliance and Enforcement (INECE) for the purpose of dealing with compliance and enforcement by organs of state.<sup>206</sup> INECE compiled a list of principles which avoid sanctions, civil and criminal processes but which promote and encourage alternative compliance and enforcement processes especially applicable to organs of state. Such informal, alternative measures do not have enforcement as their primary objective; the focus is instead on better management of water resources for sustainable provision of water services.

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<sup>203</sup> JG Nel & JA Wessels (2010) 5.

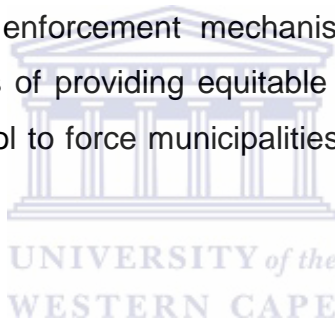
<sup>204</sup> NWRS2 (2013) 70-74 Regulation of the water sector.

<sup>205</sup> Regarded as leading in the area of environmental management, Eddy (2003)

<sup>206</sup> INECE Principles of Environmental enforcement (1992) 8 and 14.

Eddy argues that this approach is not consistent with the principles of enforcement, which require taking a similar approach in similar circumstances to achieve similar ends. The reality is that transgression by a government entity is not different from that of a private person, but the variables that inform decision-making certainly are, and require a degree of discretion.<sup>207</sup> The use of alternative enforcement measures also encourages the private sector to partner and cooperate with the state,<sup>208</sup> especially so because it saves costs and also benefits both the state and individuals.<sup>209</sup> The alternative enforcement measures have been extensively used with about 300 negotiated environmental compliance agreements in Europe; 30,000 pollution control agreements entered into in Japan, and over 40 voluntary programmes administered at the federal level in the United States of America.<sup>210</sup>

The application of statutory enforcement mechanisms to municipalities has far-reaching implications in terms of providing equitable access to basic services. The avoidance of litigation as a tool to force municipalities to comply is aimed at serving the public interest.



#### **4.4.1 Common Law measures**

The common law provides tried and trusted remedies that can be resorted to in the event of failure of legally prescribed remedies.<sup>211</sup> The basis of the common-law-

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<sup>207</sup> DWS enforcement manual (2010) 8

<sup>208</sup> Lehmann (2009) 269.

<sup>209</sup> Paterson & Kotzé (2009) 7.

<sup>210</sup> Lehman (2009) 272.

<sup>211</sup> Algotsson and Murombo, (2009) 25.

based measures is the duty of care principle provided for by NEMA. It requires a person responsible for pollution to take responsibility for the return of the degraded or polluted environment to its original state.<sup>212</sup> NEMA and the NWA also provide for the responsible authority to take measures it considers necessary to remedy the situation.<sup>213</sup>

The duty of care provision allows any person to use sections 28(12) and 28(7) of NEMA for a court order forcing a person who, respectively, has caused pollution or degradation of the environment or the responsible authority, to take corrective measures to rehabilitate the environment and to compensate the affected communities, if any. In this case, it is not only the municipality that is seen to be non-compliant but the responsible authority as well. The common law measures allow the members of the public, as individuals or as civic groups, to seek relief using section 28(12) of NEMA. The NWA has decentralised water resource management providing for the establishment of Catchment Management Agencies (CMAs) which in turn have a duty to facilitate the establishment of Water forums such as Water Users Associations (WUAs) and catchment management forums.<sup>214</sup> Consistent with the vision of developmental local government framework for communities to find sustainable solutions to their needs and improve the quality of their lives, such forums have a duty to monitor and report non-compliant facilities or individuals. This increases public awareness and puts pressure on the regulated facilities (in this context, the municipalities) to comply.

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<sup>212</sup> Sections 19(2)(e) NWA (1998), 2 and 28 NEMA (1998).

<sup>213</sup> Section 19(4) NWA (1998) and section 28(7) NEMA (1998).

<sup>214</sup> Established in terms of chaps 7 and 8, NWA (1998).

#### **4.4.2 Incentive-based measures**

According to the White Paper on water policy,<sup>215</sup> the use of economic incentives and penalties should be used as an option for water quality management. The Green Drop and Blue Drop certification programmes were developed by the then DWA to facilitate an incentive-based regulatory approach in an attempt to encourage municipalities to comply with norms and standards to manage the WWTWs. Through the Blue Drop Green and Drop programme, municipalities are encouraged and assisted to comply with regulations that aim to improve the quality of drinking water and waste water, respectively. These operate on a system of incentives and penalties as a way of encouragement. The Green Drop system approach focuses on sustainable water pollution management and prevention of possibly irreversible environmental degradation resulting from pollution.<sup>216</sup> The statistical evidence of municipal non-compliance, in Chapter 3 above, is based on the Green Drop scores, which indicate failure by municipalities to comply with Green Drop requirements. As a name-and-shame measurer, the Blue/Green Drop certification programmes have not assisted or encouraged the water services authorities to comply.



#### **4.5 Barriers to enforcement**

From 2009, the aim of the DWS has been to streamline its constitutional support obligations local government based on section 154(1) and focus more on its authority to regulate municipalities in terms of section 155(7) of the Constitution. The DWS believes that the regulatory role in terms of section 155(7) is its 'core business' in

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<sup>215</sup> Principle 16 of Annexure 1 to the White paper on water policy (1997).

<sup>216</sup> NWSRS (2010) 13.

protecting the water resources and it does not have to provide evidence of its support prior to taking punitive action in instances of municipal non-compliance.<sup>217</sup>

This change of focus has been effected through the process of updating the National Water Resources Strategy (NWRS), which sets out strategies, objectives, plans, guidelines and procedures for water resources management.<sup>218</sup> The NWRS1<sup>219</sup> established the water sector Skills Development Task Team for sector skills development training and education. This was the mandate of the WSLG to facilitate development and support for the water sector.<sup>220</sup> The NWRS2 shifted focus from supporting to giving more emphasis to regulating the water sector, assuming a stronger enforcement stance. However, given the challenges outlined above of deteriorating levels of compliance, streamlining support for a stronger enforcement role is not yet feasible, one can argue, for both the municipalities and the DWS.<sup>221</sup>

It is also particularly difficult for the DWS to enforce compliance by municipalities as it has no direct relationship with the water services authorities outside sections 154(1) and 155(7) of the Constitution to support and regulate.<sup>222</sup> Powell's argument for the need to re-examine and reshape intergovernmental policy in the wake of the

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<sup>217</sup> NWSRS (2010).

<sup>218</sup> Chapter 2 Part 1, Constitution .

<sup>219</sup> NWRS1 is the first edition published in 2004.

<sup>220</sup> NWRS2 97, 99. NWRS2 is the second edition published in 2013.

<sup>221</sup> Smith (2009) 5.

<sup>222</sup> A contradictory situation of support and regulation.

promulgation of local government laws succeeding the water laws<sup>223</sup> is especially relevant insofar as this will involve intervening in local government to resolve water-related service delivery challenges. The WSA and the Constitution outline a process of when and how intervention should happen if a water services authority is unable to perform its functions.<sup>224</sup> Such powers are given to the MECs for local government while the Minister responsible for water management only assumes responsibility if the MEC has unjustifiably failed to intervene or has failed to intervene effectively.<sup>225</sup>

One would support a proposal to review section 63 of the WSA on intervention and improve its effectiveness by allowing the Minister responsible for water to intervene directly to resolve water-related challenges. Considering the high priority given to access to basic services, it makes practical sense for the Minister responsible for water management to have the power to directly respond to particular challenges and not wait for the provincial government to fail.<sup>226</sup> As it appears in the water value chain (Figure 1), the provincial government sphere is not part of the water value chain and would not add any value in the process of intervention for resolving water management issues. Steytler's view that the administrative role of provincial government does not add value and unnecessarily drags processes<sup>227</sup> is especially true in matters of water governance. The key responsibilities of water governance lie with national and local governments and should not be unnecessarily widely shared

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<sup>223</sup> Powell (2001) 266.

<sup>224</sup> Section 63 (1997) and s 139, (1996).

<sup>225</sup> Section 63(2)(a) & (b) (1997).

<sup>226</sup> Section 63(2)(b)(i) & (ii) WSA (1997); s139(1)(b)(i), Constitution.

<sup>227</sup> Steytler (2007) 433.



to avoid prolonged consultation and consensus-seeking processes which sometimes lead to accountability getting obscured.<sup>228</sup>

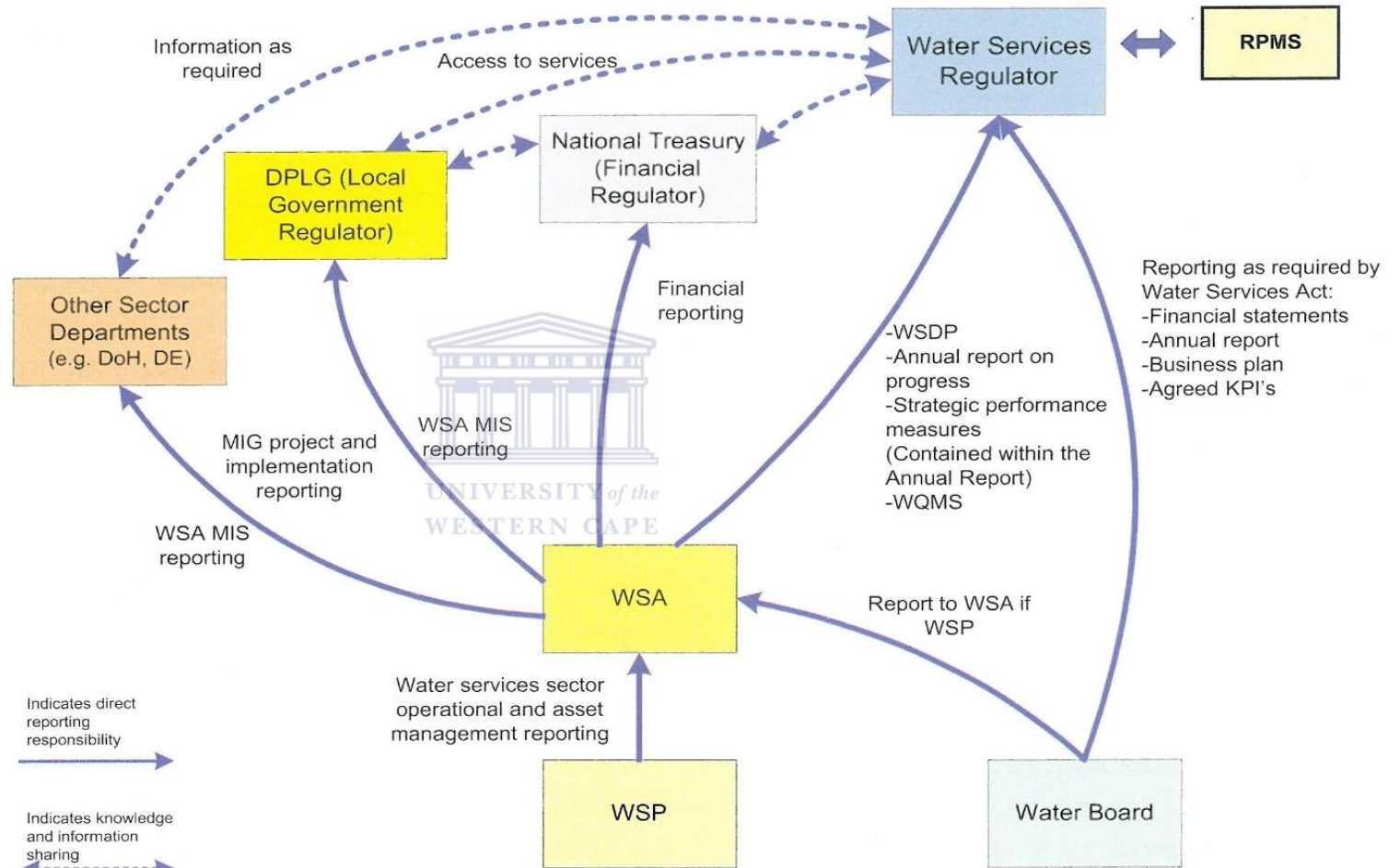
Figure 3 below further illustrates this point. The provincial government sphere is not even part of the accountability process of local government and does not get the statutory reports from the local government to the national sphere. The key regulatory stakeholders are national departments, including CoGTA for local government regulation, the DWS for water services regulation, and the National Treasury for financial regulation.



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<sup>228</sup> Steytler (2007) 428.

Figure 3: Regulatory reporting lines and information-sharing for water services sector



Source: National Water Services Regulation Strategy (2010) page 36

The process to designate water services authorities is another policy gap that needs to be reviewed as it is important for the Minister responsible for water to have a role. Currently, the role to identify and designate municipalities as water services authorities is the prerogative of the national and provincial departments responsible for local government. If the DWS is responsible for setting and regulating national norms and standards for water services, it makes sense to have a role in determining the criteria to assess the capabilities of municipalities to be WSAs. This is one of the twelve policy proposals towards the amendment of the NWA and WSA that were approved by Cabinet at the end of 2013. The DWS proposes to provide technical input in the criteria being used to designate and appoint local municipalities as WSAs.<sup>229</sup> This may be encroaching on the institutional integrity of local government which, according to De Visser, should be avoided.<sup>230</sup> However, it is a necessary approach for better coordination and cooperation for effective participation of local government in water management programmes.<sup>231</sup>

The IDP process is key to making sure that there is coordination of implementation at local government level. Algotsson and Murombo<sup>232</sup> raise a valid point when they argue that lack of corresponding statutory sanction for the process of IDP is a serious

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<sup>229</sup> Smith (2009) 16; DWA proposals for water legislation amendments approved by Cabinet in December 2013.

<sup>230</sup> De Visser (2004) 170 makes a distinction between regulatory powers affecting local government institutions and regulatory powers affecting local government functions. Section 41(1)(e) & (g), Constitution (1996).

<sup>231</sup> Powell (2001) 266.

<sup>232</sup> (2009) 21.

policy gap. This hinders the effective management of the WSDP process, which is crucial to integrated water resource management.

The above policy gaps confirm the argument that the NWA provides little in the way of regulatory procedures, standards and tools, describing the NWA as an enabling piece of legislation that provides no tools for enforcement.<sup>233</sup> The Minister of CoGTA announced the possibility of drafting legislation that forces municipalities to comply with existing laws and regulations.<sup>234</sup> The Minister can do this by invoking the provisions of the Systems Act<sup>235</sup> which empower the Minister responsible for local government to make regulations for the coordination and integration of sectoral requirements and the manner in which municipalities must comply. Another more prudent approach would be for the Minister to coordinate with other relevant sector departments and force all spheres of government to comply with the IGRF legislation and agree on collaborative processes and procedures to streamline governance.<sup>236</sup>

#### **4.6 Conclusion**

A wide array of enforcement measures are available to the state, but significant policy gaps and limitations hamper their enforcement. The fact that the Minister responsible for the management of water does not have discretion to respond directly and with immediate effect to water-related crisis situations is one such obstacle. The absence of a statutory relationship also makes it difficult to effectively facilitate the alignment of municipal integrated development plans (IDP) with the water services

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<sup>233</sup> Karodia & Weston.

<sup>234</sup> Minister Pravin Gordhan in the Media briefing in Parliament, 18 July 2014.

<sup>235</sup> Section 94(1)(h), Systems Act (2000).

<sup>236</sup> Murray (2001) 77.

development plans (WSDPs) as the basis for effective management of the water value-chain. To maintain this focus, a direct line of communication between the DWS and municipalities is necessary.

Neither the statutory nor the informal enforcement measures have proven to be useful and effective tools in enforcing compliance by municipalities. The next chapter examines how the principles of cooperative government and intergovernmental relations could be used, not as enforcement mechanisms but as measures to address problems that make enforcement necessary before they become a crisis.



## **CHAPTER 5:**

# **TOWARDS ENHANCING COOPERATIVE GOVERNANCE IN THE WATER SECTOR**

### **5.1 Introduction**

The onus to protect water resources and ensure the constitutional rights of people to a pollution-free environment rests on all spheres of government. The Constitution and legislation provide for provincial government to rehabilitate the environmental degradation (including a water resource which is a receiving environment) caused by the act of pollution, should a municipality fail to do so. If the provincial government also fails, national government or the responsible authority is required to assume responsibility to the extent necessary to maintain essential national standards or meet established minimum standards.

This chapter explores the principles of cooperative government in terms of how they can assist the DWS to effectively monitor and strengthen its enforcement programme in relation to municipalities and other organs of state. In particular, the intergovernmental relations forums and the Implementation Protocols are examined as measures that can facilitate an effective compliance and enforcement programme for municipalities.

## 5.2. Cooperative government

The Constitution describes South Africa as constituted of national, provincial and local spheres of government which are distinctive, interdependent and interrelated.<sup>237</sup> Each sphere is politically autonomous but is expected to cooperate with the other spheres and exercise its autonomy to the benefit of all citizens and the country.<sup>238</sup> The elements of distinctiveness, interdependence and interrelatedness emphasise cooperation in terms of functional responsibilities of spheres rather than the degree of political autonomy.<sup>239</sup> The three spheres of government are constitutionally mandated to observe and apply the principles of cooperative government and intergovernmental relations in executing their respective public functions.<sup>240</sup>

As already indicated in Chapter 2, national government (the DWS) has a concurrent and/or an overlapping water management functional relationship with local government and concurrent competence with provincial governments for the management of the environment and pollution. To ensure that local government (water services authorities) is able to provide access to clean, potable water for domestic, agricultural and industrial use,<sup>241</sup> national government (DWS) must develop water infrastructure resources to meet water supply (and sanitation) services.<sup>242</sup> Both

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<sup>237</sup> Section 40, Constitution .

<sup>238</sup> De Visser (2004) 214.

<sup>239</sup> Powell (2001) 258.

<sup>240</sup> Section 40, Constitution .

<sup>241</sup> NWRS2 (2013) 4.

<sup>242</sup> NWRS2 (2013) 7.

the national and provincial government spheres have a duty to support local government for municipalities to effectively perform their functions and manage their own affairs.<sup>243</sup> It is therefore inevitable that the three spheres should cooperate to ensure that service delivery is not compromised by local government not complying with national norms and standards for policy implementation. This demands intergovernmental relations structures or processes that are strategically positioned to enable government, as a collective, to respond to service delivery challenges.

The IGRF Act requires all spheres of government to facilitate coordination in the implementation of policy and legislation for effective provision of services and to efficiently monitor the implementation of policy and legislation.<sup>244</sup>

### **5.3. Monitoring and intervention for compliance**

Section 62 of the WSA provides for the monitoring of all water services institutions by the National and provincial spheres to ensure compliance with prescribed norms and standards for improved water sector performance.<sup>245</sup> Effective monitoring helps to identify the nature of non-compliance challenge in order to have relevant and effective intervention measures. For instance, the basis for non-compliance with norms and standards for effluent discharge could be lack of integrated water development planning. In this case, non-compliance with the prescripts of integrated

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<sup>243</sup> Section 154(1), Constitution provides for municipalities in co-operative government: 'The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.'

<sup>244</sup> Section 4, IGRF Act (2005).

<sup>245</sup> See also the NWSRS (2010) 33.



planning would no doubt lead to non-compliance with managing the waste water infrastructure. Any intervention that does not give regard to the root cause of non-compliance may not have the intended outcomes. For instance, any intervention to coordinate cooperative government initiative with a view to implement government policy, would not be sustainable if it does not address the resources which would be required.<sup>246</sup>

Section 139 of the Constitution provides for both national and provincial government to intervene, in this context, to force municipalities to execute their water services provision function. The intervention of national government after the provincial government has failed may be too late especially for water related crises. Both the national and provincial governments should intervene at the level of planning to ensure that the water services development plans (WSDPs) address the challenges of waste water quality management by the WSAs.

The Intergovernmental Monitoring, Support and Interventions (IMSI) Bill of 2013 is an initiative to strengthen interventions by provinces and national government in municipalities that need assistance. The legislation emphasises the need for early warning systems and targeted support before an invocation of an intervention.<sup>247</sup> It is through effective monitoring that early warning of non-compliance can be detected for early support or for an appropriate enforcement mechanism.

The IGRF Act provides a framework for all spheres of government to coordinate and monitor the implementation of policy and legislation, and to promote the alignment of national, provincial and local plans and expenditures for the realisation of national

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<sup>246</sup> Thompson (2006).

<sup>247</sup> IMSI Bill (2013) Chapter 3.

priorities.<sup>248</sup> It provides for intergovernmental relations forums and implementation protocols as mechanisms to do this.

#### 5.4 Intergovernmental forums

Intergovernmental Relations (IGR) in the South African context refers to the interaction of the different spheres of government.<sup>249</sup> These include multiple formal and informal processes, channels, structures and institutional arrangements for bilateral and multilateral interaction between the spheres of government.<sup>250</sup> Although the formal structures are legislatively provided and happen at the level of the executive, their resolutions are not binding. Many of the informal intergovernmental interactions, which are mostly partner institutions in the form of programmes and project coordination workshops and meetings,<sup>251</sup> happen at technical level. The formal structures at executive level could have resolutions endorsed through political processes, while the informal structures, which the water sector IGR forums happen to be part of, do not have this opportunity. The IGRF Act and other legal processes provide for the following forums

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<sup>248</sup> Section 4, IGRF Act (2005).

<sup>249</sup> Chapter 2 of the IGRF Act (2005).

<sup>250</sup> DWAF Guidelines (2003).

<sup>251</sup> Powell (2001) 263.

## **5.4.1 National Intergovernmental forums**

### **5.4.1.1 President's Co-ordinating Council (PCC)**

The PCC is convened by the Presidency and serves as a Presidential consultative forum to discuss service delivery issues with the Premiers, selected Ministers and the South African Local Government Association (SALGA). The PCC focuses on overarching intergovernmental relations issues without giving attention to sector-specific matters.<sup>252</sup>

### **5.4.1.2 Cabinet ministers and members of the executive provincial councils (MINMEC)**

The MINMEC serves as a consultative forum for the Minister responsible for a functional area, the provincial MECs and SALGA representing local government. The MINMEC meetings focus on municipal services, of which water services is only one part, and water resources issues would not be fully discussed, if at all.<sup>253</sup>

### **5.4.1.3 The Budget Council and Budget Forum**

These are convened by the National Treasury for national government to consult and discuss fiscal matters with provincial and local governments. This forum should also discuss the cessation or ring-fencing of funds as a punitive measure to non-compliant municipalities.<sup>254</sup> The Minister responsible for water management ideally should be part of this forum to sensitise the budgeting process about the necessity of making

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<sup>252</sup> DWAF Guide.

<sup>253</sup> DWAF Guide.

<sup>254</sup> Public Finance Management; Division of Revenue Acts & Section 63, WSA (1997).

sure there are adequate resources for the water management at local government level.

#### **5.4.1.4 Council of Education Ministers**

This is a statutory body established to oversee and manage the education system and related programmes. Such related programmes would be water and sanitation, among others. Water and sanitation issues are critical in schools and the water sector is always called upon for any water and sanitation challenges in schools as well as in the health sector. The participation of the Minister responsible for water management would be useful in facilitating that this forum considers allocating funding for water and sanitation as one of its priorities.

#### **5.4.1.5 Integrated authorisation**

In his address on the occasion of opening the fifth session of Parliament in 2014,<sup>255</sup> the President Zuma announced a process to harmonise the authorisation of water use licence applications (WULA), the Environmental Impact Assessments (EIAs) and the prospecting and mining licences, by the relevant authorities. The NWA was amended<sup>256</sup> to effect this harmonisation. In support of Craigie, Snijman and Fourie,<sup>257</sup> it would make sense if the same departments would also institutionalise the joint monitoring of compliance with the implementation of the conditions of licence for a cumulative impact of the enforcement programme.

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<sup>255</sup> In May 2014.

<sup>256</sup> National Water Act 27 of 2014.

<sup>257</sup> (2009) 87-88.

Other than the latter forum, the Minister responsible for water does not participate in the PCC and the MINMEC meetings and has no statutory forum to interact with municipalities. The Minister only attends the PCC and MINMEC meetings by invitation to report or respond to specific water-related issues that may have a bearing on other infrastructure development programmes such as the area of human settlements or agriculture.<sup>258</sup> There is no formal recourse for the Minister responsible for water to intervene directly when municipalities do not respond efficiently to water sector policy implementation.<sup>259</sup> The following informal structures have been established within the water sector.

#### **5.4.1.6 The Water Sector Leadership Group (WSLG)**

The WSLG is purely a technical national forum established to guide the water services sector in order to promote sector collaboration and strengthen the coordination) of water services and water resources regulation.

#### **5.4.2. The Provincial Intergovernmental Forums**

##### **5.4.2.1 The Premier's Co-ordinating Forum (PCFs)**

The PCF serves to promote and facilitate intergovernmental relations between a province and its municipalities. The DWS is represented at the PCF but it encounters the same frustration where the discussions are not focused on water service delivery and water resources management.

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<sup>258</sup> DWAF Guide (2005).

<sup>259</sup> DWAF Guide (2005) 46.

#### **5.4.2.2 The Provincial Liaison Committees (PLCs)**

The PLCs are forums between the DWS and relevant provincial departments established to identify priority challenges as experienced by municipalities with regards to water services policy implementation. Municipalities are represented by SALGA. The PLCs and PSTTs also fall in the category of informal, technical forums whose resolutions might not have political endorsement.

#### **5.4.2.3 Western Cape Environmental Crime Forum (WCECF)**

WCECF is an initiative of the Western Cape Provincial Minister of Local Government, Environmental Affairs and Development Planning. According to the Minister,<sup>260</sup> the forum is a collaborative engagement with relevant key stakeholders with the aim, inter alia, to improve the effectiveness of the enforcement of compliance with environmental laws and give effect to the constitutional imperative of co-operative governance. This is an important forum as it is a coordinated voice for the protection of the environment and, by implication, of water resources.

#### **5.4.3. Local Intergovernmental Forums**

Encouraging cooperation within the local government sphere for municipalities to share best practice should benefit not only waste water management but the broader service delivery system. The District Intergovernmental Forums (DIFs) and the intermunicipality forums established in terms of Chapter 2 of the IGRF Act<sup>261</sup> are probably the most important forums that should be encouraged and supported for effective service delivery by government.

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<sup>260</sup> Media statement of 15 March 2011.

<sup>261</sup> Part 4, sections 24 to 29.

#### **5.4.3.1 District Intergovernmental Forums**

The (DIFs)<sup>262</sup> are Mayoral Forums established to facilitate inter-sphere cooperation and promote cooperative governance between a district municipality and its local municipalities. If utilised to their full extent, the DIFs are the most important forums for service delivery because the District municipalities, as water services authorities, are responsible for local policy making (by-laws) and are the regulators. They have the responsibility to coordinate integrated planning and reporting as well as policy implementation. The DIFs should be recognised as consultative forums which provide efficient response for the implementation of national and provincial development programmes. The processes and discussions happening within the DIFs or any local intergovernmental forum could provide a basis for sound enforcement.

#### **5.4.3.2 Intermunicipality forums**

These are consultative forums for municipalities to discuss by-laws and implementation challenges.<sup>263</sup> They are important forums for municipalities to share best practice.<sup>264</sup> These are ideal forums for sector Departments to provide targeted support to local government at community level. Creating awareness around national legislation, norms and standards as well as educating communities on their by-laws would go a long way in creating a stronger cooperative government.

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<sup>262</sup> Section 24, IGRF Act (2005).

<sup>263</sup> Section 28, IGRF Act (2005).

<sup>264</sup> Section 29, IGRF Act (2005).

#### **5.4.3.3 DWS / Municipal Bilateral forums**

The Bilateral forums are convened by the DWS and take place between the DWS and the District Municipalities, including metropolitan municipalities and are aimed at identifying support needs of municipalities. Attendance and participation of municipalities is very poor and the forums do not have structured programmes for support as per the intended outcome. These are an unnecessary duplication and do not add value to solving water management challenges caused by the malfunctioning WWTWs. A prudent approach would be for sector departments to participate in local government forums, like the DIFs and intermunicipality forums, to integrate and strengthen policy implementation processes. Bojanala Platinum District Municipality, in the North West Province, has involved sector departments as early as 2005.<sup>265</sup>

#### **5.4.3.4 The Western Cape Water Care Forum (WCWCF)**

This serves as a platform for the DWS to interact with local government and the water sector in the province with regards to water management. It is utilised as a vehicle to support municipalities with the implementation of water laws and regulations. It is meant to facilitate the Blue Drop and Green Drop audit processes. The forum is specifically designed to encourage municipalities to discuss and share best practices with the implementation of water sector regulations.

Encouraging inter-sphere cooperation is an internationally recognised standard practice. In the Netherlands, the Inspectorate for Environmental Protection is an agency of central government established in partnership with the union of Netherlands municipalities to encourage municipal cooperation for prudent and efficient use of resources. This, among other things, led the Netherlands municipal

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<sup>265</sup> DWAF Guide (2005) 33.



councils to consider compliance and enforcement reports of municipalities which have been endorsed by the Inspectorate, a national body. In South Africa, inter-sphere cooperation is institutionalised, and the South African Local Government Association (SALGA) is assigned to facilitate intra- and inter-sphere relations.<sup>266</sup> The question is whether SALGA complies with this statutory function.

#### **5.4.4. The current IGR forums and processes have no impact**

Reflecting on the existing intergovernmental relations forums, Levy and Tapscott argue that there is poor coordination and integration because of lack of capacity and high levels of inefficiency in government rather than a problem of procedure.<sup>267</sup> More than ten years after this observation, there is still evidence of poor intergovernmental coordination and integration and it would seem it is more a problem of not having processes and procedures in place to manage the IGR forums, than lack of capacity.

A study conducted by the then national Department of Provincial and Local Government (DPLG) in 1999 found that MINMECs were ineffective for the purpose for which they were established. This can, among other things, be attributed to lack of clear processes and procedures, no targeted outcomes and timeframes for service delivery. They fit the description of being informal, less stable and uncoordinated partner institutions.<sup>268</sup> The NEMA advocates that the law should establish not only

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<sup>266</sup> Section 3(3) of Systems Act (2000) provides that 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 solutions for problems relating to local government generally and (d) facilitate compliance with the principles of co-operative government and intergovernmental relations.

<sup>267</sup> Levy & Tapscott (2001) 19.

<sup>268</sup> Levy (2001) 90-1.

institutions but also procedures to facilitate and promote cooperative government and intergovernmental relations.<sup>269</sup> It is processes, procedures and systems that should determine the level of capacity and efficiency needed to manage a service delivery programme.

The initiative of signing Service Delivery Agreements (SDAs) between the different national departments in 2009 was a good attempt to implement the principles of cooperative governance and intergovernmental relations. However, it did not seem to be an initiative that fully recognised the role and input of local government in service delivery. The focus of the Presidential Monitoring and Evaluation was the signing of the SDAs among departments, signing performance agreements by Ministers and monitoring the performance of the executive. The process did not consider that real service delivery can only be quantified at local government level.

The enforcement protocol initiated by the DWS in an effort to facilitate compliance by municipalities through cooperative government efforts<sup>270</sup> has not achieved the desired outcomes. DWS's enforcement protocol, appearing at Figure 4 below, falls short in terms of being a cooperative governance mechanism to enforce compliance as it does not address the role of local government. It merely makes the statement that 'cooperating with other sectors and spheres of government is the key feature of the enforcement protocol'.<sup>271</sup> The limitation of DWS's protocol is that it was never discussed with and agreed upon by municipalities. It is thus in contradiction with the constitutional principle that requires consultation using agreed or accepted

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<sup>269</sup> Preamble to NEMA (1998).

<sup>270</sup> NWSRS (2010) 53-54.

<sup>271</sup> NWSRS(2010) 54.

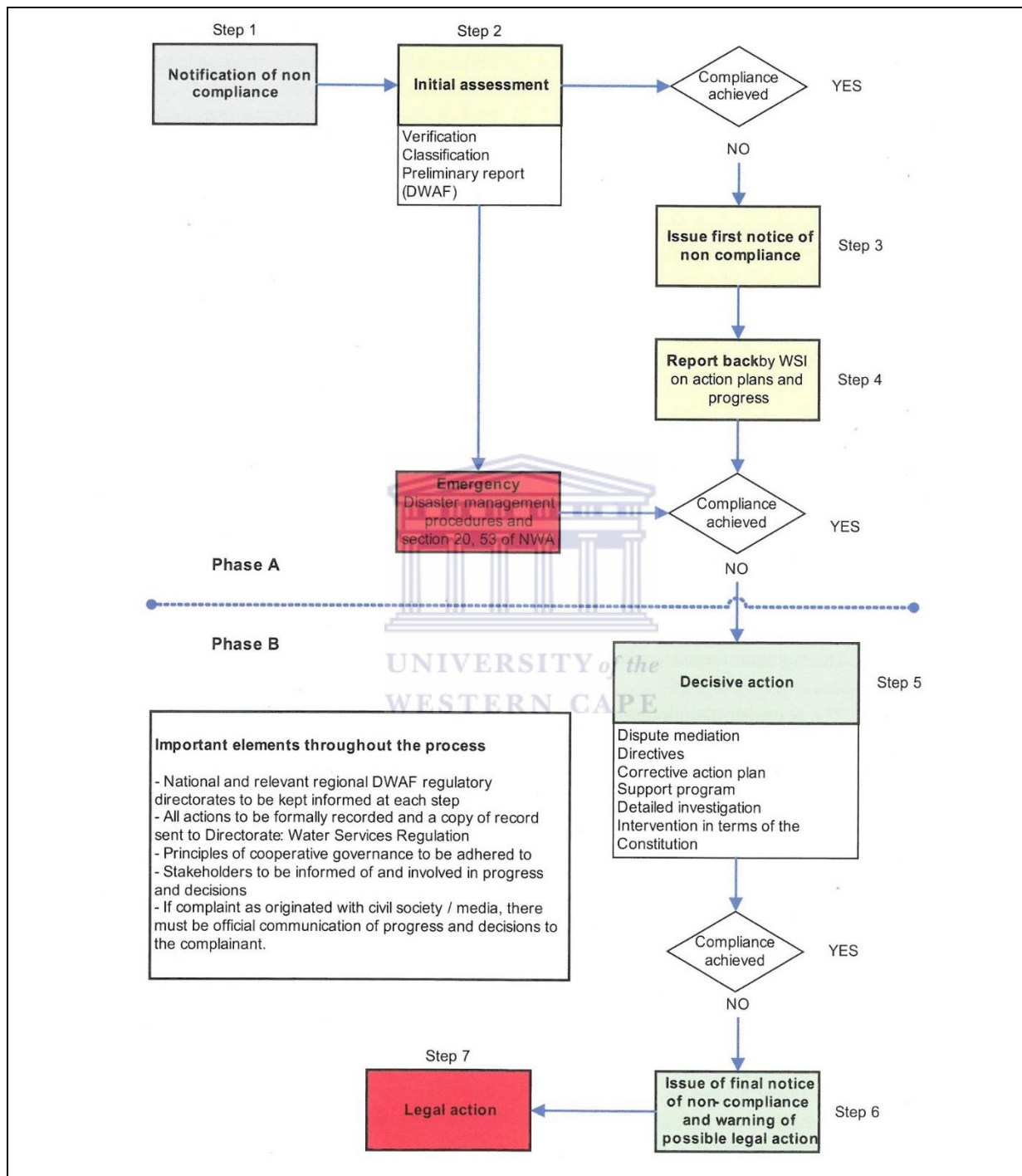
procedures for initiatives that affect the legal status and power of local government.<sup>272</sup> If anything, the DWS's enforcement protocol is useful only as an internal business process to guide the DWS in responding to emergency pollution.



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<sup>272</sup> Sections 151(4) and 154(2) of the Constitution , 5(b) IGRF Act (2005).

Figure 4: DWA's Generic Enforcement Protocol of the Department of Water and Sanitation



Source: National Water Services Regulation Strategy (2010), page 53

According to Levy,<sup>273</sup> the early IGR forums were appropriate for communication of policy and projection of government vision but did not encourage debate, align and monitor policy at different levels of government. The introduction of a government-wide integrated planning process requires coordination of national and provincial government programmes at local government level. According to Powell, this would introduce a new set of government structures that would influence a new pattern of intergovernmental relations.<sup>274</sup> For instance, the change of focus by the DWS from streamlining its support function to being a strong regulator or an enforcer would demand a different pattern of IGR forum and/or interaction that is regulation-based.

There is general acknowledgment that intergovernmental relations are always dynamic and evolve with changing socio-economic and political relations.<sup>275</sup> The effectiveness of a compliance and enforcement program depends largely on the extent to which the regulation being enforced is a priority at different levels of government. There is no doubt that regulating in pursuit of acceptable levels of water quality is a priority at all levels of government and is beneficial to the public. It is a constitutionally required intervention to maintain national security and essential minimum standards in the interest of the country.<sup>276</sup> Waste water quality management does not seem to be dealt with as a national priority, particularly by local government, even though it falls within its core mandate. It is not understood as one of the important pre-requisites for the provision of water in a sustainable manner and for promoting safe and healthy environment. This is evidenced by either the

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<sup>273</sup> Levy (2001) 87.

<sup>274</sup> Powell (2001) 266.

<sup>275</sup> Levy & Tapscott (2001) 19.

<sup>276</sup> Section 44(2), Constitution .

inadequate or no budgeting for the management of WWTWs and not having adequately qualified process controllers.

The effectiveness of coordination and monitoring of the implementation of a policy depends largely on the Minister responsible for the functional area in question. The Act empowers any cabinet minister to establish a national intergovernmental forum to promote and facilitate intergovernmental relations in the functional area of his or her responsibility.<sup>277</sup> Cabinet ministers are not limited in terms of exploring other mechanisms beyond those indicated in the Act. This gives the Minister responsible for the management of water room to further explore mechanisms for improving cooperation with municipalities and within the water sector.

The review of the impact of the IGRF Act in 2008 by the then DPLG recommended, among other things, the implementation of an intergovernmental relations system which promotes the use of implementation protocols, especially in areas where there may not be dedicated statutory IGR forums.<sup>278</sup> Following the review, the DPLG published an Implementation Protocol Guide as part of the IGR toolkit in order to promote integrated planning towards service delivery and better management of IGR forums.<sup>279</sup> As has been demonstrated above, the water responsibility cuts across all spheres, it affects and is affected by other functions within the national and across the local government sphere. As such it may not have dedicated IGR forums but may identify areas of cooperation within and across spheres and utilise the

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<sup>277</sup> Section 9, IGRF Act (2005).

<sup>278</sup> DPLG The Implementation of the Intergovernmental Relations Framework Act: An inaugural report DPLG (2005/06 – 2006/07) 60.

<sup>279</sup> The implementation of the intergovernmental relations framework act: an inaugural report – (2005/06 – 2006/07) 42 [Building good practice in integrated service delivery].

Implementation Protocols to establish strategic relationships with municipalities for targeted monitoring and to facilitate compliance.<sup>280</sup>

## **5.5. Using the mechanisms of the IGRF Act more effectively**

The IGRF Act provides a legal framework to ensure coherence in governance at all spheres and in all sectors. It provides tools for government to cooperate in solving challenges of governance and to conduct intergovernmental relations in the spirit of the Constitution.<sup>281</sup> The IGRF Act can help solve the challenge of enforcement by establishing water sector intergovernmental forums, by using implementation protocols to resolve water related service delivery challenges and by managing the intervention regime through the proposed IMSI legislation.

### **5.5.1. Water sector intergovernmental forums**

Various reviews of the intergovernmental relations process reveal that there has not been any progress with the cooperative government and intergovernmental relations structures. All the reviews point to lack of processes and procedures in managing the intergovernmental forums, which weakens cooperative government. The government has acknowledged this, and according to the CoGTA Deputy Minister, framework plans are in place to strengthen cooperative governance. Cooperative Water Governance forums (WGFs) could be established to promote compliance in the same manner. NEMA envisages the promotion of Cooperative Environmental Governance

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<sup>280</sup> DWAF Guide (undated) 10 and 41.

<sup>281</sup> Preamble to the IGRF Act (2005)

(CEG) between the spheres of government.<sup>282</sup> According to Kotzé<sup>283</sup> the CEG is a strategy to address governance inefficiencies caused by fragmentation.

### 5.5.2. Implementation Protocol

The Implementation Protocol is a memorandum of understanding that constitutes a formal agreement or a code of conduct and is binding on all the parties involved.<sup>284</sup> It facilitates commitment from all parties involved to comply with the rules of the protocol consequently comply with the regulations. Du Plessis<sup>285</sup> describes the implementation protocol as an approach similar to the law of contract, one which is not always negative but can be used as a valuable measure for compliance and enforcement.

The IGRF Act<sup>286</sup> provides for the establishment of intergovernmental structures that will be actualised in terms of the Implementation Protocol to monitor policy Implementation. Implementation protocols would be suitable for the municipalities and the DWS to use for managing the implementation of the water value chain, the effectiveness of which depends on the strength of the relationship of the two spheres.

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<sup>282</sup> Section 35(1) NEMA (1998): 'The Minister and every MEC and municipality, may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act.'

<sup>283</sup> Kotzé (2009) 124.

<sup>284</sup> Section 35(4)(b).

<sup>285</sup> Du Plessis (2009) 23.

<sup>286</sup> Section 35(1).



If the WWTWs are a priority risk, they should also be treated as a national priority which must be managed with clear processes and procedures. The importance of the implementation protocol is that it forces the parties involved to expressly agree on where to find the resources and how to utilise them. The source and use of resources has never been expressly discussed when coordinating a programme, and this has been one of the greatest weaknesses crippling government programmes. The protocols present the forums with an opportunity to agree on the source of funding, the outcomes and assigning roles and responsibilities.<sup>287</sup> Documenting and signing of the implementation protocol as well as the inclusion of the dispute resolution mechanism makes for a water-tight service delivery commitment by all spheres of government and parties to the protocol.<sup>288</sup>

As the challenges of non-compliance are diverse, signing protocols with different municipalities for targeted intervention support would be the right approach for the management of WWTWs. Targeted intervention based on signed commitments by various municipalities will provide the Minister responsible for water affairs with a statutory mechanism to formalise the relationship between the DWS and municipalities. The absence of a formalised relationship compromises the effective implementation of water sector policies and laws at local government level. In support of targeted protocols, Levy points out that the proliferation of IGR institutions is a universal experience in most federal political systems.<sup>289</sup> These arise in response to

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<sup>287</sup> DWAF Guide (2003) 34.

<sup>288</sup> DWAF Guide (2003) 37-8.

<sup>289</sup> Levy (2001) 90-2, quoting DS Write (1988: 467), an American authority on state federal governments.

specific situations and could also develop pragmatically and not necessarily as a constitutional requirement.<sup>290</sup>

It would be prudent for the DWS to identify, prioritise and sign strategic implementation protocols with municipalities at senior administration or political levels for the urgency that the management of WWTWs deserves. The respective forums should be constituted and managed by officials from municipalities and not be represented by SALGA, as is currently happening in MINMECs and many other forums. Steytler<sup>291</sup> also cautions that representation of local government by organised local government puts municipalities in a disadvantaged position as discussions are usually not based and considered on challenges as faced by the municipalities. This approach ensures that local government is self-regulating and accountable.<sup>292</sup> The Minister should use the power to gazette and issue regulations and guidelines regarding the implementation protocols to institutionalise the cooperative relationship between the municipalities and the DWS.<sup>293</sup> The review of the IGRF Act referred to recommended that all three spheres should continue to improve the quality of intergovernmental planning, among other things, for the cumulative impact of government strategies. As has been stated above, the intergovernmental planning process, coordinated at the level of the IDP, has no statutory sanction except to rely on provincial governments endorsing the plans. The Implementation Protocol approach would be the appropriate mechanism to achieve this vision of integrated planning and reporting. The protocol may also be useful in

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<sup>290</sup> Watts (2008).

<sup>291</sup> (2007) 429-30.

<sup>292</sup> Powell (2001)265.

<sup>293</sup> Section 47(1)(d) IGRF Act (2005).

examining why the CEG strategy has not been able to address the challenges of fragmentation.<sup>294</sup>

### **5.5.3. Intergovernmental Monitoring, Support and Intervention (IMSI) legislation**

During the occasion of the release of the Inaugural Report on the implementation of the Intergovernmental Relations Framework Act, the then Minister of DPLG, Minister Mufamadi said that government priority was to ensure that the provincial and national spheres have the necessary capacity to play their part in cooperative government and to discharge their responsibilities to monitor, support and regulate local government.<sup>295</sup>

The proposed IMSI Bill of 2013 is modelled to a degree around the principles of the Implementation Protocol. The Bill aims to assist national and provincial governments to comply with its constitutional obligations to support, supervise and build capacity of the local sphere for the latter to competently execute its statutory functions. It proposes a need for targeted monitoring, oversight and support mechanisms before the invocation of an intervention. It provides for the early detection of performance failures so as to cut down on interventions which have not had any effect so far and may be disruptive to service delivery processes.

## **5.6 Conclusion**

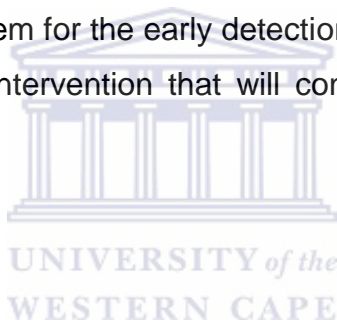
As indicated above, the intergovernmental structures prescribed by the IGRF Act do not have the executive decision-making powers for binding and enforceable

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<sup>294</sup> Kotzé (2009) 124.

<sup>295</sup> Foreword by the Minister, Inaugural Report (2005/06 – 2006/07).

resolutions and as such do not seem to have succeeded in cohering with policy implementation and service delivery. The informal nature of the water sector forums offers some flexibility to have coordination mechanisms that are appropriate to specific policy implementation needs but the resolutions are also neither binding nor enforceable. The significance of water in the service delivery system of government demands some measure of certainty of how the water function is coordinated between the national and local spheres of government. The prescribed enforcement measures have not been able to facilitate compliance in order to guarantee this certainty. The IGRF Act offers some scope to embark on alternative measures to support and promote compliance in the water sector. This allows for the establishment of water sector intergovernmental forums, the signing and adoption of implementation protocols for targeted intervention as well as the intervention (IMSI) Bill. The close monitoring system for the early detection of challenges as proposed by the IMSI Bill is an effective intervention that will contribute to the sustainability of service delivery.



## **CHAPTER 6:**

### **CONCLUSION**

This thesis addressed three questions. The first was whether municipalities, in operating and managing the WWTWs, are complying with nationally prescribed norms and standards for managing effluent discharge. The WSA as the key legislation regulating the water services sector clearly spells out that all spheres of government are responsible to ensure all people have equal access to water and sanitation services. The statistical evidence from government reports, research papers, complaints from the agricultural sector, industry and consumers which was examined showed that there are high levels of non-compliance by municipalities. . A range of factors were identified as reasons for municipalities failing to manage waste water and effluent discharge as part of their constitutional mandate. These included a lack of capacity and accountability on the part of municipalities, but also, given the intergovernmental structure of the water sector under the constitution and legislation, significant failures by the other two spheres to oversee and support local government in providing basic services.

The problem of non-compliance by municipalities should be understood and addressed in the context of the overall system of cooperative government, which requires national and provincial spheres of government to comply with their obligations to monitor the performance of local government, intervene to correct failures, provide support and strengthen local capacity to execute water delivery functions. There is a growing body of literature supporting this view that while local government must take responsibility for failures, the challenges with service delivery are in part due to failings in meaningful cooperative governance across government. The second question was what effective enforcement measures could be utilised by the DWS to improve enforcement and compliance by municipalities. The constitution and national legislation provide a wide array of enforcement measures, which were

critically examined. The key finding was one of the most important factors constraining enforcement was the fact that the intergovernmental arrangement of water functions (the structure of the sector) made it difficult for the DWS to employ enforcement measures such as criminal, administrative and common law-based on municipalities. Despite the clearly identified problem and evidence of water resources being polluted, the DWS has not been able to effectively enforce compliance by municipalities in terms of national norms and standards and related regulations. A cooperative governance approach was identified as a need to improve compliance and enforcement, specifically better utilisation of mechanisms to monitor that such tools are used effectively by all spheres for a coordinated response to challenges of water quality management. Improving cooperative government in the water sector was a key mechanism to address the problem of non-compliance by the local government and non-enforcement by national government.

The final question was how the IGRF Act could be used to assist the DWS to improve compliance and enforcement through promoting better coordination of intergovernmental relations and oversight of compliance with the NWA and its regulations. This thesis examined all the existing formal and informal intergovernmental relations structures provided for in the IGRF Act in all spheres and all sectors. The area of cooperative governance has been extensively reviewed, with all reviews pointing to the need to coordinate and strengthen cooperative government to achieve the intended strategic objective of government. The principles of cooperative government and intergovernmental relations are constitutionally provided to enable government in all spheres to work together in an integrated manner and coordinate their actions for efficient implementation of policy and effective provision of services.

The integrated development of planning and reporting is one of the key statutory tools which has regrettably failed to bring the intended efficiency in the service delivery programme of government. The IGRF Act provides the water sector with tools to enhance cooperative governance for effective management service delivery

and, in the context of this thesis, the management of the water value chain. Following on the trend of cooperative environmental governance (CEG), this thesis has argued for the water sector cooperative arrangements in the form of three approaches, namely, intergovernmental forums, implementation protocols and a strengthened monitoring programme for support and management of intervention provided for by the Intergovernmental Monitoring, Support and Intervention (IMSI) Bill.

Implementation protocols set a good foundation for a smooth implementation of the provisions of the IMSI Bill. The IMSI Bill compliments the IGRF Act in that it seeks to strengthen and facilitate that all spheres of government execute their respective roles for meaningful cooperative governance. Consequently, its intention to monitor for early warnings in order to avoid interventions helps to prevent the problem of enforcement from arising.



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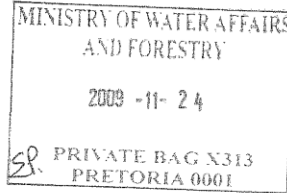
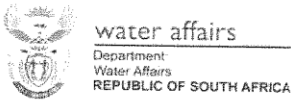
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# APPENDIX A

A reply to a Parliamentary question on the list of waste water treatment plants that do not comply with national norms and standards and operating without the DWS' authorisation.

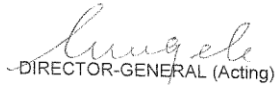


Enquiries: W. Mosefowa  
Telephone: 012-336-7541  
Reference: 16/1/1/1

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

NATIONAL ASSEMBLY: QUESTION 1550 FOR WRITTEN REPLY

A draft reply to the above-mentioned question asked by Mrs A T Lovemore (DA), is attached for your consideration, please.

  
DIRECTOR-GENERAL (Acting)

DATE: 17.11.09



UNIVERSITY of the  
WESTERN CAPE

  
DRAFT REPLY APPROVED/AMENDED

  
MS B P SONJICA, MP  
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE: 24-11-2009

NATIONAL ASSEMBLY

FOR WRITTEN REPLY

QUESTION NO 1550

DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 09 OCTOBER 2009  
(INTERNAL QUESTION PAPER NO 20)

1550. Mrs A T Lovemore (DA) to ask the Minister of Water and Environmental Affairs:

- (1) With reference to her reply to question 323 on 18 September 2009, which wastewater treatment works are operating without departmental authorisation;
- (2) what measures are in place to ensure that discharges have no negative impact on the receiving environment;
- (3) what action is taken when works continue to operate in spite of (a) not complying with infrastructural requirements and (b) not having adequate capacity to process the wastewater volume and load;
- (4) what action is taken in cases where the municipality has demonstrated an incapacity to compile the required application and authorization documents?

NW1956E

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UNIVERSITY of the  
WESTERN CAPE

REPLY:

- (1) The Waste Water Treatment Works (WWTW) operating without authorizations are attached as Annexure 1.
- (2) My Department has set monitoring points upstream and downstream from all discharge sites and monitors them on a monthly basis. All Water Users are required to submit the monitoring results monthly however; My Department conducts regular monitoring to ensure protection of Water Resources. All Waste Water Treatment Works have to comply with the effluent discharge standards as set in Government Notice (GN) 991 of 18 May 1984.
- (3)(a) The owners of Waste Water Treatment Works (WWTW) are advised about the infrastructural requirements, such as layout and design and optimal operation and maintenance of the treatment works.
- (3)(b) My Department advises owners of the WWTW to upgrade the system or to construct another bigger facility that will be able to handle more volume, load and quantity.
- (4) My Department does assist all municipalities which do not have capacity to compile Water Use applications and authorisation documents.

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**ANNEXURE 1**

<b>MUNICIPALITY</b>	<b>NAME OF WWTW</b>	<b>RESPONSIBLE AUTHORITY</b>
<b>WESTERN CAPE REGION</b>		
Cederberg Municipality	Algeria WWTW	Cederberg Municipality
Matzikama Municipality	Koekenaap WWTW	Matzikama Municipality
West Coast District Municipality	Bitterfontein WWTW	West Coast District Municipality
Cederberg Municipality	Graafwater WWTW	Cederberg Municipality
Matzikama Municipality	Vanrhynsdorp WWTW	Matzikama Municipality
Nieuwoudville Municipality	Nieuwoudville WWTW	Nieuwoudville Municipality
Drakenstein Municipality	Paardeberg Prison WWTW	Dept.of Public Works
Stellenbosch Municipality	Paarl - Hermon WWTW	Winelands D.C.
Boland District Municipality	Drakenstein WWTW	Boland District Municipality
Stellenbosch Municipality	La Motte State Forestry (SAFCOL)) WWTW	Stellenbosch Municipality
Beaufort West Municipality	Noupoort Resort WWTW	Beaufort West Municipality
Berg River Municipality	Piketberg - Elandsbaai WWTW	Municipality of Piketberg
Berg River Municipality	Eendekuil WWTW	Piketberg Transitional Council
	Voorberg Prison WWTW	Dept.of Public Works
Saldanha Bay Municipality	Paternoster WWTW	Paternoster Municipality
City of Cape Town	Ronderberg Flats - Yzerfontein	City of Cape Town
City of Cape Town	Hunters Valley Equestrian Estate	City of Cape Town
Swartland Municipality	Malmesbury Riverlands WWTW	Malmesbury Municipality
Swartland Municipality	Malmesbury - Kalbaskraal WWTW	Malmesbury Municipality
Swartland Municipality	Chatsworth WWTW	Swartland Municipality
Swartland Municipality	Koringberg WWTW	Swartland Municipality
City of Cape Town	Millers Point - Resort WWTW	Cape Metropolitan Council
City of Cape Town	Fisantekraal WWTW	Cape Metropolitan Council
Stellenbosch Local Municipalities	Spier Properties (Pty) Ltd WWTW	Spier Properties (Pty) Ltd
Stellenbosch Local Municipalities	Spier Properties (Pty) Ltd - Chef Training School WWTW	Spier Properties (Pty) Ltd
Boland District Municipality - Winelands District Council	Raithby WWTW	Boland District Municipality
City of Cape Town (Boland District Municipality - Winelands District Council)	Klipheuwel WWTW	City of Cape Town
Berg River Municipality	Redelinghuys Oxidation Ponds	Berg River Municipality
Knysna Municipality	Karatara Dorp WWTW	Knysna Municipality
Knysna Municipality	Sanparks Diepwalle WWTW	MTO (Mountain to Ocean)
Knysna Municipality	Sanparks Haskerville WWTW	MTO (Mountain to Ocean)
Knysna Municipality	Kruisfontein WWTW	MTO (Mountain to Ocean)
Knysna Municipality	Springveld WWTW	MTO (Mountain to Ocean)
Knysna Municipality	Souskyn Vallei WWTW	MTO (Mountain to Ocean)
Langeberg Municipality	Heidelberg WWTW	Heideberg Municipality
Hermanus Municipality	Hawston WWTW	Hermanus Municipality
Overstrand Municipality	Pearly Beach WWTW	Overstrand Municipality
Overstrand Municipality	Bredasdorp - Waenhuiskrans WWTW	Waenhuiskrans Local Council
Overberg District Municipality	Uilenkraalsmond WWTW	Overberg District Municipality

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Overberg District Municipality	Buffeljags River WWTW	Swellendam Municipality
Cape Agulhas (Overberg District) Municipality	Elim WWTW	Cape Agulhas Municipality
Cape Agulhas Municipality	Struisbaai WWTW	Struisbaai Municipality
Breede Valley Municipality	Goudini Spa WWTW	Breede Valley Municipality
Witzenberg Municipality	Umzingisi School Goudini WWTW	Witzenberg Municipality
Breede River/Winelands Municipality	McGregor WWTW	McGregor Municipality
Elgin Municipality	Molteno Brothers	Elgin Municipality
Theewaterskloof Municipality	Hottentots Holland Nature Reserve (Nuweberg)	Hottentots Holland Nature Reserve
City of Cape Town	De Hoop Nature Reserve	Cape Nature Conservation
Wolseley Municipality	Dwars River Prison - Wolseley	Dept. of correctional Services
Boland District Municipality	Breede River	Breede River District Council
Theewaterskloof Municipality	Genadendal	Genadendal Local Transitional Council
Swellendam Local Municipality	Buffelsjagsrivier Prison	Buffelsjagsrivier Prison
Langeberg Municipality	Heidelberg Witsand/Port Beaufort P/R	Heidelberg Municipality
<b>EASTERN CAPE REGION</b>		
Ntabankulu Local Municipality	Ntabankulu	O.R.Tambo District Municipality
Inqguza Hill Local Municipality	Flagstaff	O.R.Tambo District Municipality
Port St Johns Local Municipality	PSJ	O.R.Tambo District Municipality
Nyandeni Local Municipality - Libode	Libode	O.R.Tambo District Municipality
Mbizana Local Municipality - Bizana	Bizana	Ukhahlamba District Municipality
Elundini Local Municipality	Ugie	Ukhahlamba District Municipality
Elundini Local Municipality	Mt Fletcher	Alfred Nzo District Municipality
Umzimvubu Local Municipality	Maluti	Amathole District Municipality
Mbhashe Local Municipality - Elliotdale	Elliotdale	Dept of Education
Engcobo Local Municipality	Nyanga S.S	Dept of Education
Mbizana Local Municipality - Bizana	Nompumalanga & Vukuzenzele	Dept of Public Works
King Sabatha dalindyebo Local Municipality	Mthatha Prison	Dept of Public Works
Elundini Local Municipality	Mt Fletcher Prison	Dept of Public Works
Inqguza Hill Local Municipality	Lusikisiki Prison	Dept of Public Works
Inqguza Hill Local Municipality	Flagstaff Prison	Dept of Public Works
Mbashe Local Municipality	Elliotdale Prison	Dept of Public Works
King Sabatha dalindyebo Local Municipality	Mqanduli Prison	Dept of Public Works
Ntabankulu Local Municipality	Ntabankulu Prison	Dept of Health
Nyandeni Local Municipality	Canzibe Hospital	Dept of Health
Mbashe Local Municipality	Madwaleni Hospital	Dept of Health
Mbashe Local Municipality	Elliotdale Health Centre	Mbashe Local Municipality
Cacadu District Municipality	St. Francis bay WWTW	Koukamma
Cacadu District Municipality	Coldstream Tekroever WWTW	Koukamma
Cacadu District Municipality	Lottering, Plankiesdorp RBC	Koukamma
Cacadu District Municipality	Storms River West Tekroever	Koukamma

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
	WWTW	
Cacadu District Municipality	Woodlands Tekrover WWTW	Koukamma Local Municipality
Cacadu District Municipality	Sandrift Tekrover WWTW	Koukamma Local Municipality
Cacadu District Municipality	Sandrift, Blikkiesdorp RBC	Koukamma Local Municipality
Cacadu District Municipality	Kwaaibrand RBC	Koukamma Local Municipality
Cacadu District Municipality	Clarkson evaporation ponds	MTO Forestry
Cacadu District Municipality	Lottering package plant	Protea Hotels
Koukamma Local Municipality	Tsitsikamma Village Inn discharge	Public Works
Koukamma Local Municipality	Die Blaar RBC (Clarkson)	Public Works
Koukamma Local Municipality	Storms River police station p/plant	SANPARKS
Koukamma Local Municipality	Goesabos RBC - Storms River	SANPARKS
Koukamma Local Municipality	Storms River RBC - main gate	SANPARKS
Koukamma Local Municipality	Storms River RBC - restaurant	SANPARKS
Koukamma Local Municipality	Storms River RBC - pool	SANPARKS
Koukamma Local Municipality	Storms River RBC - oseanettes	SATSA
Koukamma Local Municipality	Khoisan package plant	SATSA
Cacadu District Municipality	Krakeel evaporation ponds	Koukamma Local Municipality
Cacadu District Municipality	Misgund Tekrover works	Kouga Local Municipality
Cacadu District Municipality	Patensie (No WWTW)	Kouga Local Municipality
Cacadu District Municipality	Loerie oxidation ponds	Baviaans
Cacadu District Municipality	Steytlerville evaporation ponds	Cacadu District municipality
Cacadu District Municipality	Rietbron oxidation ponds	Eden District Municipality
Eden District Municipality	Haarlem oxidation ponds	Eden District Municipality
Eden District Municipality	Murraysburg	Eden District Municipality
Eden District Municipality	Nelspoort	Kouga Local municipality
Cacadu District Municipality	Patensie Prison WWTW	NMBM
Cacadu District Municipality	Rocklands WwTW (Uitenhage)	Hi Tech Automotive
Cacadu District Municipality	Hi Tech Automotive package plant	Sumcay Camp committee
Cacadu District Municipality	Sumcay Ponds	Camdebo Local Municipality
Cacadu District Municipality	Nieu-Bethesda ASP and ponds	Camdebo Local Municipality
Cacadu District Municipality	Jansenville Bucket disposal site	Ikwezi Local Municipality
Cacadu District Municipality	New sewage ponds	Ikwezi Local Municipality
Cacadu District Municipality	Kirkwood new WWTW - activated sludge	Blue Crane Route
Cacadu District Municipality	Pearston ponds	Alicedale Municipality
Cacadu District Municipality	Alicedale evaporation ponds	Nxuba Municipality
Amatole District Municipality	Adelaide Activated Sludge WWTW	Nkonkobe Municipality
Amatole District Municipality	Seymour Package Plant	Makana Municipality
Cacadu District Municipality	Rini Oxidation Ponds	Amatola Forestry Company
Amatola forestry company	Hogsback Package Plant	Amatola forestry company
Amathole District Municipality	Uitkeer Evaporation Ponds	Amathole District Municipality
Mbashe Local Municipality	Willowvale	Amathole District Municipality
Mnquma Local Municipality	Centane	Amathole District Municipality
Mnquma Local Municipality	Nqamakwe	Amathole District Municipality
Great Kei Local Municipality	Chintsa East	Amathole District Municipality
Great Kei Local Municipality	Kei Mouth	Buffalo City Local Municipality
Buffalo City Local Municipality	Kidd's Beach	Isidenge Forestry
Amahlathi Local Municipality	Isidenge	Amathole District Municipality
Amahlathi Local Municipality	Amabele	Amathole District Municipality
Nkonkobe Local Municipality	Hogsback	Dept of Social Development

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Nqgushwa Local Municipality	Ekuphumleni Old Age Home	Dept of Health
Mnquma Local Municipality	Nqamakwe Hospital	Dept of Health
Intsika Yethu Local Municipality	Cofimvaba Hospital	Dept of Health
Mbashe Local Municipality	Willowvale Hospital	Dept of Health
Emalahleni Local Municipality	Glen Grey Hospital	Dept of Correctional Services
Intsika Yethu Local Municipality	Cofimvaba Prison	Dept of Correctional Services
Mbashe Local Municipality	Willowvale Prison	Dept of Correctional Services
Nkonkobe Local Municipality	Middledrift Prison	Dept Education
Nkonkobe Local Municipality	Phandulwazi High School	Dept Education
Nkonkobe Local Municipality	Fort Cox College	Dept Education
Amahlathi Local Municipality	St Matthews High School	Dept Education
Emalahleni Local Municipality	Mt Arthur Girls High	Dept Education
Emalahleni Local Municipality	Free Mantle High	Dept Education
Mnquma Local Municipality	Butterworth College	Mr. Frans van der Vyver
Buffalo City Local Municipality	East London Abattoir	Mr. E. Bahlman
Buffalo City Local Municipality	Hanover Cold Storage Abattoir	Mr. Kevin Canny
Buffalo City Local Municipality	Tandaia Poultry Abattoir	Mr. Mike Romer
Amahlathi Local Municipality	Amatola Abattoir	Mr. G. Lovemore
Amahlathi Local Municipality	ANCA Poultry Abattoir	Mr. Richard Ntame
Amahlathi Local Municipality	Phakamani Mawethu Poultry	Mr. S.A. Buchler
Amahlathi Local Municipality	Tyndall Poultry Abattoir	Mr. Henri Smith
Lukhanji Local Municipality	Meat Traders Abattoir	Mr. A.K Mager
Lukhanji Local Municipality	Peace Abattoir	Mr. E.C Bernard
Lukhanji Local Municipality	Taka Abattoir	Mr. Ettiene Haggart
Inkwanca Local Municipality	Sterkstroom Abattoir	Mr. A.T van Heerden
Inkwanca Local Municipality	Post Chalmers (Cradock)	Mr. P. Cilliers
Inkwanca Local Municipality	De Wiige Abattoir (Cradock)	Mr. N.J van Niekerk
Emalahleni Local Municipality	Xhalanga Abattoir	Mr. M.A Andrews
Emalahleni Local Municipality	Andrews Abattoir	Mr. M.A Andrews
<b>KWAZULU-NATAL REGION</b>		
Hibiscus Coast Municipality	Eden Wilds	Hibiscus Coast Municipality
Umuziwabantu Municipality	Harding	Umuziwabantu Municipality
Richmond Municipality	Richmond	Richmond Municipality
Ububhlubezwe Municipality	Ixopo	Ububhlubezwe Municipality
Ethekwini Metro	Umlazi (ref. to as Isipingo)	Ethekwini Metro
Ethekwini Metro	Glenwood Road	Ethekwini Metro
Ethekwini Metro	Hillcrest	Ethekwini Metro
Ethekwini Metro	Umkomaas	Ethekwini Metro
Kwasani Municipality	Underberg	Municipality
Uthungulu District Municipality	Catherine Booth Hospital WWTW	Kwasani Municipality
Uthungulu District Municipality	Gingindhlovu Aer-ponds WWTW	Uthungulu District Municipality
Uthungulu District Municipality	Oceanview WWTW	Uthungulu District Municipality
Uthungulu District Municipality	King Dinuzulu WWTW	Uthungulu District Municipality
Uthungulu District Municipality	Melmoth Ox-ponds	Uthungulu District Municipality
Zululand District Municipality	St Mary's Magawaza Hospital WWTW	Dept. of Public works
Zululand District Municipality	Ulundi WWTW	Zululand District Municipality
Zululand District Municipality	Nkonjeni Hospital Ox-ponds WWTW	Dept. of Public works
Zululand District Municipality	St. Francis Hospital Ox-ponds WWTW	Dept. of Public works
Zululand District Municipality	Ceza Hospital WWTW	Dept. of Public works

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Zululand District Municipality	Nongoma WWTW	Municipality
Uthungulu District Municipality	Mtunzini WWTW	Municipality
Uthungulu District Municipality	Mtunzini Prison WWTW	Dept. of Public works
Mhlathuze Local Municipality	Vulendhela WWTW	Municipality
Mhlathuze Local Municipality	Esikhawini WWTW	Municipality
Mhlathuze Local Municipality	Ngwelezana WWTW	Municipality
Mhlathuze Local Municipality	Nseleni WWTW	Municipality
Umkhanyakude District Municipality	Matubatuba WWTW	Municipality
Umkhanyakude District Municipality	Matubatuba 121 Battalion WWTW	Dept. of Public works
Umkhanyakude District Municipality	St Lucia Ox-ponds	Municipality
Zululand District Municipality	Hlabisa Hospital WWTW	Dept. of Public works
Umkhanyakude District Municipality	Bethesda Hospital WWTW	Dept. of Public works
Umkhanyakude District Municipality	Mseleni Hospital WWTW	Dept. of Public works
Umkhanyakude District Municipality	Mosvold Hospital WWTW	Dept. of Public works
Umkhanyakude District Municipality	Manguzi Hospital WWTW	Dept. of Public works
Umkhanyakude District Municipality	Jozini WWTW	Municipality
Umkhanyakude District Municipality	Hluhluwe WWTW	Municipality
Uthukela District Municipality	Ezakheni WWTW	Thukela District Municipality- (TDM)
Uthukela District Municipality	Wan Hoop Hlalanathi WWTW	Wan Hoop Hlalanathi Lodge
Uthukela District Municipality	Royal National Park Hotel WWTW	Royal National Park Hotel
Uthukela District Municipality	Mount Aux Source Hotel WWTW	Mount Aux Source Hotel
Uthukela District Municipality	Ladysmith WWTW	Thukela District Municipality
Uthukela District Municipality	Colenso WWTW	Thukela District Municipality
Uthukela District Municipality	Bergville WWTW	Thukela District Municipality
Newcastle Local Municipality	Osizweni WWTW	Thukela Water
Amajuba District Municipality	Waterval Prison WWTW	Public Works
Newcastle Local Municipality	Madadeni WWTW	Thukela Water
Ncome Prison	Ncome Prison WWTW	Public Works
Cathedral Peak Hotel	Cathedral Peak Hotel WWTW	Hotel
Uthukela District Municipality	Winterton WWTW	Uthukela District Municipality
Uthukela District Municipality	Estcourt WWTW	Uthukela District Municipality
Grey town Municipality	Kranskop WWTW	Public Works
Umzinyathi District Municipality	Northfield WWTW	Public Works
Umgungundlovu District Municipality	Mooi River WWTW	Municipality
Abaqulusi Municipality	Vryheid Coronation WWTW	Abaqulusi Municipality
Abaqulusi Municipality	Hlobane No 2 ODS	Abaqulusi Municipality
Abaqulusi Municipality	Mondlo WWTW	Abaqulusi Municipality
Abaqulusi Municipality	Stilwater Hotel WWTW	Stilwater Hotel
Zululand District Municipality	Vryheid WWTW	Zululand District Municipality
eDumbe Municipality	PaulPietersburg package unit	eDumbe Municipality
Umzinyathi Municipality	Nqutu WWTW	Umzinyathi Municipality
Msukwalgwa Municipality	Lothair Oxidation Ponds	Msukwalgwa Municipality

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Mkhondo Municipality	Amsterdam WWTW	Mkhondo Municipality
Mkhondo Municipality	Piet Retief WWTW no 1 (old)	Mkhondo Municipality
Mkhondo Municipality	Piet Retief WWTW no 2 (new)	Mkhondo Municipality
Ilembe District Municipality	Shakaskraal WWTW	Ilembe District Municipality
Ilembe District Municipality	Melville WWTW	Ilembe District Municipality
Ilembe District Municipality	Umvoti Shell Ultra City WWTW	Shell
Ilembe District Municipality	Darnall WWTW	Ilembe District Municipality
Ilembe District Municipality	Zinkwazi Caravan Park WWTW	Zinkwazi Caravan Park
Ilembe District Municipality	Sundumbile WWTW	Ilembe District Municipality
Ilembe District Municipality	Mandeni WWTW	Ilembe District Municipality
Ilembe District Municipality	Tugela WWTW	Ilembe District Municipality
Umgungundlovu District Municipality	Appelbosch Hospital WWTW	Dept. of Public Works
Ilembe District Municipality	Montebello Hospital WWTW	Dept. of Public Works
Umzinyathi District Municipality	Kranskop Prison WWTW	Dept. of Public Works
Ilembe District Municipality	Untunjambili Hospital WWTW	Dept. of Public Works
Ilembe District Municipality	Maphumulo Hospital WWTW	Dept. of Public Works
Ilembe District Municipality	KwaSiza Bantu Mission WWTW	Mission
<b>NORTHERN CAPE REGION</b>		
Nama Khoi Municipality	Concordia	Nama Khoi Municipality
Karoo Hoogland Municipality	Sutherland	Karoo Hoogland Municipality
Kamiesberg Municipality	Kharkams	Kamiesberg Municipality
Richtersveld Local Municipality	Alexanderbaai	Alexkor
Dikgatlong Local Municipality	Barkly West Wastewater Treatment Works	Frances Baard District Municipality
Ga-segonyana Local Municipality	Kuruman Wastewater Treatment Works	Kgalagadi District Municipality
Magareng Local Municipality	Warrenton Wastewater Treatment Works	Frances Baard District Municipality
Kgalagadi District Municipality	Van Zylsrus Oxidation Pond	Kgalagadi District Municipality
Ga-segonyana Local Municipality	Mothibstad Wastewater Treatment Works	Kgalagadi District Municipality
Gamagara Local Municipality	Kathu Wastewater Treatment Works	Kgalagadi District Municipality
Gamagara Local Municipality	Dibeng Oxidation Ponds	Kgalagadi District Municipality
Gamagara Local Municipality	Dingleton Wastewater Treatment Works	Kgalagadi District Municipality
Gamagara Local Municipality	Oliphantshoek Oxidation Ponds	Kgalagadi District Municipality
Tsantsebane Local Municipality	Postmasburg Wastewater Treatment Works	Siyanda District Municipality
Tsantsebane Local Municipality	Jenn Haven Oxidation Ponds	Siyanda District Municipality
Tsantsebane Local Municipality	Danielskuil Oxidation Ponds	Siyanda District Municipality
Lekwa Teemane Municipality	Bloemhof – Waste Water Treatment	Bophirima District Municipality
Tokologo Local Municipality	Boshof Oxidation Ponds	Lejweleputswa
Moiopo District municipality	Bray Oxidation Ponds	Bophirima District Municipality
Lekwa Teemane Local Municipality	Christiana Oxidation Ponds	Bophirima District Municipality
Tswaing Local Municipality	Dellareyville Oxidation Ponds	Central District Municipality
Pokwane Local Municipality	Hartswater Wastewater Treatment Works	Frances Baard
Tokologo Municipality	Hertzogville Oxidation Ponds	Lejweleputswa

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Pokwane Local Municipality	Jan Kempdorp Oxidation Ponds	Frances Baard
Ratlou Municipality	Madibogo Oxidation Ponds	Central District Municipality
Greater Taung District Municipality	Magogong Oxidation Ponds	Bophirima District Municipality
Kagisano Local Municipality	Morokweng Oxidation Ponds	Bophirima District Municipality
Tswaing Local municipality	Ottosdal Wastewater Treatment Works	Central District Municipality
Pokwane Local Municipality	Pampierstad Wastewater Treatment Works	Frances Baard District Municipality
Molopo District Municipality	Pomfret Oxidation Ponds	Bophirima District Municipality
Greater Taung District Municipality	Pudumoe Oxidation Ponds	Bophirima District Municipality
Greater Taung District Municipality	Reivillo Oxidation Ponds	Bophirima District Municipality
Tswaing	Sannieshof Oxidation Ponds	Central District Municipality
Ratlou Local Municipality	Setlagole Oxidation Ponds	Central District Municipality
Mamusa Local Municipality	Schweizer Reneke Wastewater Treatment Works	Bophirima District Municipality
Naledi Local Municipality	Stella Oxidation Ponds	Bophirima District Municipality
Greater Taung District Municipality	Taung Oxidation Ponds	Bophirima District Municipality
Kagisano Local Municipality	Tosca Oxidation Ponds	Bophirima District Municipality
Naledi Local Municipality	Vryburg Wastewater Treatment Works	Bophirima District Municipality
<b>FREE STATE REGION</b>		
Moqhaka Local Municipality	Viljoenskroon	Moqhaka Local Municipality
Nqwathe Local Municipality	Edenville	Nqwathe Local Municipality
Masilonyana Local Municipality	Soutpan	Masilonyana Local Municipality
Masilonyana Local Municipality	Verkeerdevlei	Masilonyana Local Municipality
Masilonyana Local Municipality	Winburg	Masilonyana Local Municipality
Matjhabeng Local Municipality	Phomolong	Matjhabeng Local Municipality
Mangaung Local Municipality	Bloemfontein (Welvaart)	Mangaung Local Municipality
Mantsopa Local Municipality	Hobhouse	Mantsopa Local Municipality
Mantsopa Local Municipality	Ladybrand	Mantsopa Local Municipality
Mantsopa Local Municipality	Tweespruit	Mantsopa Local Municipality
Mantsopa Local Municipality	Thaba Patswa	Mantsopa Local Municipality
Mantsopa Local Municipality	Excelsior	Mantsopa Local Municipality
	Van Stadensrus	
Naledi Local Municipality		Naledi Local Municipality
Dihlabeng Local Municipality	Rosendal	Dihlabeng Local Municipality
Dihlabeng Local Municipality	Fouriesburg	Dihlabeng Local Municipality
Dihlabeng Local Municipality	Clarens	Dihlabeng Local Municipality

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Dihlabeng Local Municipality	Golden Gate National Park	Dihlabeng Local Municipality
Nketoana Local Municipality	Arlington NEW PLANT	Nketoana Local Municipality
Setsoto Local Municipality	Ciocolan	Setsoto Local Municipality
Setsoto Local Municipality	Ficksburg	Setsoto Local Municipality
Setsoto Local Municipality	Marquard	Setsoto Local Municipality
Setsoto Local Municipality	Paul Roux	Setsoto Local Municipality
Kopanong Local Municipality	Gariep Dam	Kopanong Local Municipality
Kopanong Local Municipality	Springfontein	Kopanong Local Municipality
Kopanong Local Municipality	Trompsburg - Old	Kopanong Local Municipality
Letsemeng Local Municipality	Luckhoff	Letsemeng Local Municipality
Letsemeng Local Municipality	Oppermansgronde	Letsemeng Local Municipality
Mohokare Local Municipality	Zastron	Mohokare Local Municipality
Rhenosterburg Local Municipality	Phillipstown	Rhenosterburg Local Municipality
Rhenosterburg Local Municipality	Vanderkloof	Rhenosterburg Local Municipality
Rhenosterburg Local Municipality	Petrusville	Rhenosterburg Local Municipality
Thembelihle Local Municipality	Hopetown	Thembelihle Local Municipality
Thembelihle Local Municipality	Orania	Thembelihle Local Municipality
Umsobomvui Local Municipality	Noupoort	Umsobomvui Local Municipality
Umsobomvui Local Municipality	Narvalsport	Umsobomvui Local Municipality
Umsobomvui Local Municipality	Colesberg	Umsobomvui Local Municipality
Emthanjeni Local Municipality	Dordrecht	Emthanjeni Local Municipality
Emthanjeni Local Municipality	Hanover	Emthanjeni Local Municipality
Inkwanca Local Municipality	Molteno	Inkwanca Local Municipality
Xhariep Local Municipality	Oviston	Xhariep Local Municipality
Maletswai Local Municipality	Jamestown	Maletswai Local Municipality
Senqu Local Municipality	Barkley East	Senqu Local Municipality
City of Motlasana	Hartbeesfontein	City of Motlasana
City of Motlasana	Coligny	City of Motlasana
Maquassi Hills Local Municipality	Makwassie	Maquassi Hills Local Municipality
Maquassi Hills Local Municipality	Leeudoringstad	Maquassi Hills Local Municipality
Ventersdorp Local Municipality	Ventersdorp	Ventersdorp Local Municipality
<b>NORTH WEST REGION</b>		
Madibeng Municipality	Brits WWTW	Madibeng Municipality
Madibeng Municipality	Lethabile WWTW	Madibeng Municipality
Madibeng Municipality	Mothutlung WWTW	Madibeng Municipality
Madibeng Municipality	Rietfontein WWTW	Madibeng Municipality
Madibeng Municipality	Mooinooi WWTW	Madibeng Municipality
Rustenburg Municipality	Monakato WWTW	Rustenburg Municipality
Royal Bafokeng Administration	Thekwane WWTW	Royal Bafokeng Administration
Royal Bafokeng Administration	Phokeng WWTW	Royal Bafokeng Administration
Kgetleng Municipality	Koster oxidation ponds	Kgetleng Municipality
Kgetleng Municipality	Swartruggens WWTW	Kgetleng Municipality
Moses Kotane	Sun City	Moses Kotane
Moses Kotane	Mogwase WWTW	Moses Kotane



MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Thabazimbi Municipality	Northam oxidation ponds system	Thabazimbi Municipality
Thabazimbi Municipality	Thabazimbi WWTW	Thabazimbi Municipality
Mafikeng Local Municipality	Mmabatho WWTW	Mafikeng Local Municipality
Mafikeng Local Municipality	Mafikeng WWTW	Mafikeng Local Municipality
Ditsobotla Local Municipality	Lichtenburg WWTW	Ditsobotla Local Municipality
Ramotshere Moiloa Municipality	Groot marico: Septic tank system	Ramotshere Moiloa Municipality
Ramotshere Moiloa Municipality	Zeerust WWTW	Ramotshere Moiloa Municipality
Ramotshere Moiloa Municipality	Lehurutshe oxidation ponds	Ramotshere Moiloa Municipality
<b>GAUTENG REGION</b>		
Dipaleseng Local Municipality	Grundling	Dipaleseng Local Municipality
Dipaleseng Local Municipality	Grootvlei	Dipaleseng Local Municipality
Lekwa Local Municipality	Standerton	Lekwa Local Municipality
Lekwa Local Municipality	Grootdraai	DWA
Ekurhuleni Metro	Dekama	ERWAT
Ekurhuleni Metro	Vlaakplaas	ERWAT
Ekurhuleni Metro	Welgedatch	ERWAT
Midvaal Local Municipality	Meyerton	Midvaal Local Municipality
Mafube Local Municipality	Frankfort	Mafube Local Municipality
Mafube Local Municipality	Namahadi	Mafube Local Municipality
Phumelela Local Municipality	Vrede	Phumelela Local Municipality
Maluti A phofung Local Municipality	Kestel	Maluti A phofung Local Municipality
Maluti A phofung Local Municipality	Tshiame	Maluti A phofung Local Municipality
Maluti A phofung Local Municipality	Elands	Maluti A phofung Local Municipality
Maluti A phofung Local Municipality	Phuthaditjaba	Maluti A phofung Local Municipality
City of Tshwane	Klipgat	City of Tshwane
City of Johannesburg	Mooderfontein	Johannesburg Water
City of Tshwane	Babelegi	City of Tshwane
City of Tshwane	Temba	City of Tshwane
<b>MPUMALANGA REGION</b>		
Emalaheni Local Municipality	Kriel WWTW	Emalaheni Local Municipality
Emalaheni Local Municipality	Riverview WWTW	Emalaheni Local Municipality
Emalaheni Local Municipality	Klipspruit WWTW	Emalaheni Local Municipality
Emalaheni Local Municipality	Naaupoort WWTW	Emalaheni Local Municipality
Emalaheni Local Municipality	Ferrobank WWTW	Emalaheni Local Municipality
Emalaheni Local Municipality	Rietspruit WWTW	Emalaheni Local Municipality
Emalaheni Local Municipality	Wilge WWTW	Emalaheni Local Municipality
Emalaheni Local Municipality	Phola WWTW	Emalaheni Local Municipality
Govern Mbeki Municipality	Leandra WWTW	Govern Mbeki Municipality
Govern Mbeki Municipality	Trichard WWTW	Govern Mbeki Municipality
Govern Mbeki Municipality	Kinroos WWTW	Govern Mbeki Municipality
Kungwini Municipality	Ekandustria WWTW	Kungwini Municipality
Kungwini Municipality	Kangala WWTW	Kungwini Municipality
Delmas Municipality	New Boteng Extension WWTW	Delmas Municipality
Delmas Municipality	Delmas WWTW	Delmas Municipality
Elias Motsoaledi/Groblersdal Municipality	Groblersdal WWTW	Elias Motsoaledi/Groblersdal Municipality
Greater Marble Hall	Marble Hall WWTW	Greater Marble Hall
Elias Motsoaledi/Groblersdal	Dennilton/ Philadelphia Sewage	Elias Motsoaledi/Groblersdal

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Municipality		Municipality
Nokeng Tsa Taemane Municipality	Rayton WWTW	Nokeng Tsa Taemane Municipality
Steve Tshwete Local Municipality	Kwazamokuhle WWTW	Steve Tshwete Local Municipality
Steve Tshwete Local Municipality	Komati WWTW	Steve Tshwete Local Municipality
Steve Tshwete Local Municipality	Blinkpan WWTW	Steve Tshwete Local Municipality
Capricorn District Municipality	Roedtan WWTW	Capricorn District Municipality
Makhuduthamaga Local Municipality	Jane Furse Evaporation Ponds	Makhuduthamaga Local Municipality
Sekhukhune District Municipality	Tompi Seleka Oxidation Ponds	Sekhukhune District Municipality
Sekhukhune District Municipality	Phokwane Seleka Oxidation Ponds	Sekhukhune District Municipality
Greater Tubatse Municipality	Steeipoot WWTW	Greater Tubatse Municipality
Greater Tubatse Municipality	Penge WWTW	Greater Tubatse Municipality
Ba-Phalaborwa Local Municipality	Namakgale WWTW	Ba-Phalaborwa Local Municipality
Ba-Phalaborwa Local Municipality	Lulekani WWTW	Ba-Phalaborwa Local Municipality
Dept. of Public Works	Pilgrim Rest WWTW	Dept. of Public Works
Albert Lithuli public works	Breyton old Tonga hospital	Albert Lithuli public works
Nkomazi Municipality	TSB: Komati mill	Nkomazi Municipality
Zululand District Municipality	Amsterdam/Thandeka	USUTU CATCHMENT
Zululand District Municipality	Lothair/Silindile	Caltex star stop
Caltex star stop	Caltex star stop	Mbombela Municipality
Mbombela Municipality	Kabokweni	Mbombela Municipality
Nkomazi Municipality	Komatipoort TLC	Emakhazeni Municipality
Emakhazeni Municipality	Machadodorp TLC	Leopard creek
Leopard creek	Leopard creek	Nkomazi Municipality
Nkomazi Municipality	Malelane municipality	Mbombela Municipality
Mbombela Municipality	rocky drift	Caltex star stop
<b>LIMPOPO REGION</b>		
Thulamela Local Municipality	Thohoyandou WWTW	Thulamela Local Municipality
Thulamela Local Municipality	Madzivhandila WWTW	Thulamela Local Municipality
Thulamela Local Municipality	Tshifulanani oxidation ponds	Thulamela Local Municipality
Thulamela Local Municipality	Mhinga oxidation ponds	Thulamela Local Municipality
Thulamela Local Municipality	Vuwani oxidation ponds	Thulamela Local Municipality
Thulamela Local Municipality	Tshitereke oxidation ponds	Thulamela Local Municipality
Thulamela Local Municipality	Matatshe Central prison oxidation	Thulamela Local Municipality
Thulamela Local Municipality	Vuwani Military base WWTW	Thulamela Local Municipality
Makhado Local Municipality	Elim WWTW	Makhado Local Municipality
Makhado Local Municipality	Waterval WWTW	Makhado Local Municipality
Makhado Local Municipality	Vieifontein oxidation ponds	Makhado Local Municipality
Makhado Local Municipality	Lemana oxidation ponds	Makhado Local Municipality
Polokwane Municipality	Seshego WWTW	Polokwane Municipality
Polokwane Municipality	Botlokwa oxidation ponds	Polokwane Municipality
Polokwane Municipality	Mankweng WWTW	Polokwane Municipality
Blouberg Municipality	Bochum sewage ponds	Blouberg Municipality
Molemole Municipality	Nthabiseng WWTW	Molemole Municipality
Aganang Municipality	Knobel oxidation ponds	Aganang Municipality
Mogalakwena Local Municipality	Sekgagapeng Oxidation Ponds	Mogalakwena Local Municipality
Mogalakwena Local Municipality	Masehlaneng Oxidation Ponds	Mogalakwena Local Municipality
Mogalakwena Local Municipality	George Masebe Oxidation Ponds	Mogalakwena Local Municipality

MUNICIPALITY	NAME OF WWTW	RESPONSIBLE AUTHORITY
Mutale Local Municipality	Tshilamba Oxidation Ponds	Mutale Local Municipality
Mutale Local Municipality	Masisi Septic Tanks	Mutale Local Municipality
Mutale Local Municipality	Tshikonde Oxidation Ponds	Mutale Local Municipality
Mutale Local Municipality	Makuya Septic	Mutale Local Municipality
Mutale Local Municipality	Makuya Multi Purpose Community Centre	Mutale Local Municipality
Thulamela Local Municipality	Malamulele WWTW	Thulamela Local Municipality
Makhado Local Municipality	Dzanani Oxidation Ponds	Makhado Local Municipality
Makhado Local Municipality	Siloam Oxidation Ponds	Makhado Local Municipality
Makhado Local Municipality	Makhado WWTW	Makhado Local Municipality
Makhado Local Municipality	Musina Oxidation Ponds	Makhado Local Municipality
Makhado Local Municipality	Nancifield Oxidation Ponds	Makhado Local Municipality
Makhado Local Municipality	Beitbridge WWTW	Makhado Local Municipality
Modimolle Local municipality	Vaal water ponds	Modimolle Local municipality
Lephalale Municipality	Nelson's kop	Eskom

