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DECLARATION

I, Lucille Tracy Damon, do hereby declare that ‘Municipal regulation of food and waste pickers on landfill sites in South Africa: what should municipalities (dis)allow?’ is my original work and I have properly acknowledged all the sources which I have used by means of references. I further testify that it has not been submitted for another degree or to any other institution of higher learning.

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Dedication

I dedicate this paper to my mother and fiancé. Thank you for always believing in me and my dreams.



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Abbreviations

BBC	Buy-back Centre
DEA	Department of Environmental Affairs
IDP	Integrated Development Plan
EIP	Environmental Implementation Plan
IP&WM Policy	White Paper on Integrated Pollution and Waste Management for South Africa GN 2097 (2000)
ISWM	Integrated Solid Waste Management (Belo Horizonte)
IWMP	Integrated Waste Management Plan
KKPKP	Kagad Kach Patra Kashtakari Pachayat
LG	Local Government
MEC	Member of the Executive Council
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MRF	Material Recovery Facility
MSW	Municipal Solid Waste
NEMA	National Environmental Management Act 107 of 1998
NEMWA	National Environmental Management: Waste Act 59 of 2008
NPSW	National Policy on Solid Waste (Brazil)
NWMS	National Waste Management Strategy
PMC	Pune Municipal Corporation
S@S	Separation at Source
SWaCH	Solid Waste Collection and Handling co-operative
SWMR	Solid Waste Management Rules (India)

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CHAPTER 1: Introduction

1.1 Problem statement

The unemployment rate in South Africa is alarmingly high. In the year 2018, the unemployment rate was recorded at 27.2%.¹ Many people are forced to do desperate, and even dangerous things in order to sustain themselves. This includes people going into landfills to collect recyclable materials to sell and look for a meal. Collecting and retailing recyclable waste has become an informal source of income for thousands of people in South Africa.² Waste pickers are individuals whose survival largely depends on collecting, sorting and selling recyclable waste.³ Waste pickers are defined as people who “collect, sort and sell reusable and recyclable materials”.⁴ They embark on waste picking as a means of survival. Given the fact that informal waste management is not regulated by the government, waste pickers are left vulnerable to exploitation and hazardous working environments. Waste pickers are denied access to landfills by either private companies, where municipalities have outsourced this function, or by municipalities themselves. Depending on the management of the landfill, waste pickers could also potentially be faced with crime on landfills with gangsters robbing them of their recyclables and/or hard earned money.⁵

There are numerous consequences attached to waste picking activities. Waste pickers are exposed to health issues as the nature of the work that waste pickers are involved in exposes them to

¹ Statistics South Africa ‘Quality labour force survey – QLFS Q2:2018’ available at <http://www.statssa.gov.za/?p=11361> (accessed 26 March 2019).

² Blaauw PF, Viljoen JMM, Schenck CJ et al ‘To “spot” and “point”’: Managing waste pickers’ access to landfill waste in the North-West province’ (2015) 12 *AfricaGrowth Agenda* 18.

³ Schenck CJ, Blaauw PF & Viljoen MM ‘The socio-economic differences between landfill and street waste pickers in the Free State province of South Africa’ (2016) 33(4) *Development Southern Africa* 533.

⁴ Department: Environmental Affairs (DEA) ‘Report on the determination of the extent and role of waste picking in South Africa’ (2012) 10.

⁵ Schenck CJ, Blaauw PF, Swart EC et al ‘The management of South Africa’s landfills and waste pickers on them: Impacting lives and livelihoods’ (2018) 36(1) *Development Southern Africa* 10.

potential diseases.⁶ Crime also poses a risk on certain landfills. Some waste pickers reported being robbed and raped by young men.⁷ The use of heavy machinery in landfill operations poses a safety risk to waste pickers and could become a risk factor when salvaging on landfill sites.⁸ A most severe consequence of waste picking on landfills not being regulated, is death. On the 14th of March 2018, a waste picker was killed in Pietermaritzburg when she became caught in a trash compactor vehicle.⁹

Section 151(2) of the Constitution of the Republic of South Africa¹⁰ (hereafter referred to as the Constitution) vests executive and legislative authority of a municipality in its Municipal Council. This executive and legislative authority is complemented by a right to make by-laws to regulate matters.¹¹ Section 151(3) further states that a municipality has the right to govern, on its own initiative, the local government affairs of its community subject to national and provincial legislation. The significance of this lies in the fact that these powers of local government cannot be removed or amended by ordinary statutes or provincial acts.¹² These powers cannot be changed but for an amendment to the Constitution itself.¹³ In terms of Schedule 5B of the Constitution, local government is responsible for refuse removal, refuse dumps and solid waste disposal. Mandated by the Constitution to perform the aforementioned functions, local government must ensure that the functions are performed efficiently and effectively. LG should regulate how and

⁶ Mothiba MP *A study on working conditions and health status of waste pickers working at landfill sites in the City of Tshwane Metropolitan Municipality* (Master of Science thesis, University of South Africa, 2016) 2.

⁷ Schenck CJ, Blaauw PF, Viljoen JMM et al 'Social work and food security: case study on the nutritional capabilities of the landfill waste pickers in South Africa' (2017) 61(4) *International Social Work* 6.

⁸ Mothiba (2016) 2.

⁹ News24 'Waste picker killed after getting caught in a trash compactor' available at <https://www.news24.com/SouthAfrica/News/waste-picker-killed-after-getting-caught-in-trash-compactor-20180322> (accessed 22 July 2018).

¹⁰ Constitution of the Republic of South Africa, 1996.

¹¹ S 156(2) Constitution.

¹² De Visser J *Developmental local government: a case study of South Africa* (2005) 79.

¹³ De Visser (2005) 79.

when duties are to be carried out in terms of its aforementioned functions. Waste pickers perform their waste picking activities on landfill sites. Local government should regulate what happens on these refuse dumps in terms of waste picking activities. They cannot simply turn a blind eye. By virtue of the aforementioned competencies being listed in Schedule 5B of the Constitution, it is a local government function and local government may regulate matters listed therein. However, there is no legislation or regulations in relation to waste picking in South Africa. The roles and responsibilities of each sphere of government will be discussed in greater detail in the research paper.

With regard to the functional areas listed in Schedule 4 of the Constitution, national and provincial governments have concurrent legislative and executive authority.¹⁴ In terms of Schedule 4, national and provincial governments are responsible for the environment. Giving effect to its power, the national government enacted the National Environment Management: Waste Act¹⁵ (NEMWA) to set minimum norms and standards pertaining to the environment and also to outline what the responsibilities of all three spheres of government are.

1.2 Significance of the problem

The need for waste picking to be regulated is becoming crucial as the risks and consequences associated with waste picking on landfill sites are severe. There are numerous consequences relating to waste pickers' activities not being regulated. Waste pickers will remain vulnerable to the decisions taken by municipalities without taking into consideration the effect that their decisions have on waste pickers' livelihoods. Waste pickers will also continue to be exploited by "third parties" such as Buy-back Centres (BBCs), they will continue to be exposed to crime on

¹⁴ De Visser J "Concurrency in South Africa" in N Steytler (ed) *Concurrent Powers in Federal Systems: Meaning, Making and Managing* (2017) 224.

¹⁵ National Environmental Management: Waste Act 59 of 2008 (NEMWA).

landfills as anyone can access most of the open landfills in South Africa. (BBCs are workshops where waste recyclers can sell their waste.)¹⁶ Another consequence of not having regulations in place with regard to waste picking is that waste pickers will continue to work in appalling conditions as they are not provided with a proper facility to separate their waste. They are also not provided with basic sanitation and most of them have no access to shade and water.¹⁷

The unemployment rate of youth is at 54.70%,¹⁸ and moreover the unemployment rate of 27.2% remains alarmingly high. This percentage amounts to 6.14 million¹⁹ people not being able to sustain themselves as they do not have funds at their disposal to even buy a meal. A large amount of the aforementioned group of people then turn to waste picking as a means of survival. Should the amount of people who engage in waste activities increase yearly, this will create a challenge for municipalities in controlling the number of people on landfill sites and on the roads. Furthermore, this means that waste pickers currently performing waste picking activities on landfill sites and on the streets will have access to less recyclable materials.

Food (in)security remains a concern in South Africa. Research undertaken in 2016 revealed that 19.9% of households in the country ran out of money to buy food in the past twelve months prior to the survey.²⁰ Further to this, it was found that 13.3% of the population had skipped a meal in the past twelve months prior to the survey.²¹ These statistics are alarming to say the least. Waste pickers also enter landfills with the hope of finding a meal. Schenck submits that 50% of the waste

¹⁶ Viljoen JMM, Schenck CJ & Blaauw PF 'The role and linkages of buy back- centres in the recycling industry: Pretoria and Bloemfontein (South Africa)' (2012) 12(1) *Acta Commercii* 2.

¹⁷ Schenck et al (2018) 5.

¹⁸ Trading Economics 'South Africa youth unemployment rate: 2019' available at <https://tradingeconomics.com/south-africa/youth-unemployment-rate> (accessed 26 March 2019).

¹⁹ Trading Economics 'South Africa unemployment rate' available at <https://tradingeconomics.com/south-africa/unemployment-rate> (accessed on 26 March 2019).

²⁰ Statistics South Africa 'Statistical release: community survey 2016' available at www.statssa.gov.za/?page_id=737&id=1 (accessed 24 June 2018).

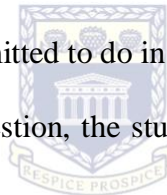
²¹ Statistics South Africa 'Statistical release: community survey 2016' available at www.statssa.gov.za/?page_id=737&id=1 (accessed 24 June 2018).

pickers interviewed from ten landfills in South Africa, confirmed that they were dependent on the food they accessed on the landfills.²² The risks attached to eating recovered food from landfills are, *inter alia*, stomach infections and parasites.²³ Recovering food from landfills could also potentially expose waste pickers to food poisoning which may cause diarrhoea, parasite infection and nausea.²⁴ There is evidence that waste pickers get food from waste picking activities, but the risk of disease is very high. By no means does salvaging food from landfill sites improve food security.²⁵

1.3 Research Question

This study seeks to answer the following question: What should municipalities do to regulate food and waste pickers and what are they permitted to do in terms of the Constitution?

In an attempt to answer the research question, the study will seek to answer the following sub-questions:



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- 1) What is the *status quo* with regard to the role, regulation and rights of food and waste pickers?
- 2) Do municipalities have the power to regulate the role and rights of waste pickers?
- 3) Can government improve on that *status quo* through the regulation of the role and rights of waste pickers?
- 4) If yes, what should these regulations/policies entail?

²² Schenck et al (2018) 5.

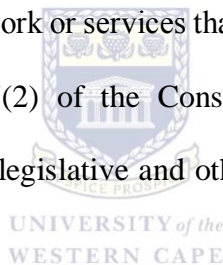
²³ Mothiba (2016) 20.

²⁴ Mothiba (2016) 20.

²⁵ DST NRF Centre of Excellence in Food Security 'Annual report 2016' available at <https://foodsecurity.ac.za/wp-content/uploads/2018/04/DST-NRF-Annual-Report-2016-spread.pdf> (accessed on 28 November 2018).

1.4 Argument

The research paper argues that in the absence of any policies and regulations regulating waste pickers and their activities, they will continue to be vulnerable, exploited and unprotected in performing their daily waste picking activities. In South Africa we have a multilevel government and all three spheres of government must work together in order to respect, protect, promote and fulfil the rights in the Bill of Rights.²⁶ A number of rights of waste pickers are being taken into account by virtue of there being no regulations in place, such as; their human dignity,²⁷ equality,²⁸ environment,²⁹ right to have access to sufficient food and water,³⁰ and the right of every child not to be required or permitted to perform work or services that are inappropriate for that child's age.³¹ By virtue of these rights, section 27(2) of the Constitution imposes an obligation on the government to put in place reasonable legislative and other measures to achieve the progressive realisation of these rights.



1.5 Literature review

Samson reflects on the best practices of two developing countries, namely Brazil and India, in relation to municipalities' management of waste picking activities.³² Samson acknowledges that the work of waste pickers is largely unrecognised, and when waste pickers are not treated as invisible, they are harassed by police, security, municipal officials and residents who accuse them of "stealing garbage" and allege that they are responsible for crime in the area.³³ In Pune, India, the municipality has made door-to-door collection the responsibility of a co-operative which

²⁶ S 7(2) Constitution.

²⁷ S 10 Constitution.

²⁸ S 9 Constitution.

²⁹ S 24 Constitution.

³⁰ S 27 Constitution.

³¹ S 28(1)(f)(i) Constitution.

³² Samson M *Refusing to be cast aside: Waste pickers organising around the world* (2009).

³³ Samson (2009) 50.

receives support from the municipality but is independently controlled by its members.³⁴ The waste picker co-operative receives payment directly from the municipality and is accountable to them.³⁵ In terms of a few memoranda of understanding negotiated by the municipal council with the co-operative, the council provides the waste pickers with spaces for segregation and in some cases with cycle rickshaws.³⁶ The author argues that the project has had profound effects for the waste pickers, dramatically improving the quality of life for them and their families.³⁷

A bit closer to home, the next part of the literature review will focus on two landfills in South Africa which are getting it right in certain aspects. Blaauw et al conducted a case study on two landfill sites in Potchefstroom and Vryburg and looked at the successful approaches by the landfills in facilitating the successful integration of informal waste pickers.³⁸

The authors noted that the waste pickers on the Potchefstroom and Vryburg landfill sites have been accommodated through friendly policies.³⁹ The focus is to integrate the waste pickers into the waste management system in a controlled manner.⁴⁰ The authors argue that several factors are important for the successful management of the waste picking activities which includes the support from management on the sites.⁴¹

With respect to the health aspect in waste picking, a number of authors⁴² have noted that informal waste pickers are exposed to increased risks as basic principles of occupational health and safety

³⁴ Samson (2009) 50.

³⁵ Samson (2009) 50-51.

³⁶ Samson (2009) 52.

³⁷ Samson (2009) 52.

³⁸ Blaauw et al (2015) 18.

³⁹ Blaauw et al (2015) 19.

⁴⁰ Blaauw et al (2015) 19.

⁴¹ Blaauw et al (2015) 19.

⁴² Schenck CJ et al (2018). See also: Langenhoven B & Dyssel M 'The recycling industry and subsistence waste collectors: a case study of Mitchell's Plain' (2007) 18(1) *Urban Forum* 114-132; Wilson DC, Velis C & Cheeseman C 'Role of informal sector recycling in waste management in developing countries' (2005) 30 *Habitat International* 797-808.

are disregarded.⁴³ A number of authors argue that working on a landfill poses a number of health risks, such as being cut by needles, glass and tins as they are exposed to these objects without wearing gloves or protective clothing.⁴⁴

A number of authors have also done research on the crime aspect on landfill sites. In an article by Schenck et al, the authors note that on certain landfills, due to the lack of supervision, gangsters are present who steal the earnings from, in particular, the women.⁴⁵ Some waste pickers also shared stories being robbed and raped by young men.⁴⁶

There is vast literature on the policy aspect of waste picking.⁴⁷ Schenck et al submits that most of the studies suggested that the waste pickers' functioning is challenged by the fact that they are not recognised and that if recognition were given to the waste pickers, their functioning could be enhanced.⁴⁸ They could perform their activities without being harassed by the police and municipal officials on landfill sites who perceive them to be a nuisance. The need for inclusionary policies and practices towards waste pickers in the waste management plans of municipalities are becoming critical.⁴⁹ Most of the authors are in agreement with the fact that affected stakeholders, such as waste pickers, should be involved in the decision-making process of making policies because it affects them.

⁴³ Wilson DC, Velis C & Cheeseman C 'Role of informal sector recycling in waste management in developing countries' (2005) 30 *Habitat International* 803.

⁴⁴ Schenck et al (2018) 4.

⁴⁵ Schenck et al (2018) 4.

⁴⁶ Schenck et al (2017) 6.

⁴⁷ Schenck R, Blaauw D & Viljoen K 'Enabling factors for the existence of waste pickers: a systematic review' (2016) 52(1) *Social Work* 35-53; Godfrey L & Scott D & Trois C 'Caught between the global economy and local bureaucracy: the barriers to good waste management practice in South Africa' (2013) 31(3) *Waste Management & Research* 295-305; Schenck CJ et al (2018) 80-98; Viljoen K, Blaauw PF & Schenck R 'Sometimes you don't make enough to buy food' – an analysis of South Africa street waste pickers' income' (2016) *The Journal of Economic & Financial Sciences* 1-29; Guerrero LA, Maas G & Hogland W 'Solid waste management challenges for cities in developing countries' (2013) 33(1) *Waste Management* 220-232; Wilson et al (2005) 797-808; Schenck et al (2017) 571-586; Schenck et al (2016) 532-547.

⁴⁸ Schenck et al (2016) 43.

⁴⁹ Schenck et al (2018) 2.

There is a gap in the literature on waste pickers' activities on landfills. Most of the literature focuses on the socio-economic aspect of waste pickers' activities. Some authors touch on the policy-making power of municipalities and other governmental departments but there is no literature that focuses mainly on the legal aspect of waste pickers' activities on landfill sites. In addition, there is no research done on the roles of the different spheres of government in South Africa and their responsibilities in relation to what they ought to allow and disallow in respect of waste pickers' activities on landfills. If the spheres of government fail to perform in terms of their constitutional mandates, what are the consequences thereof and who may hold them responsible? The aim of the research paper is to attempt to answer this question and fill the gap in the literature.

1.6 Substantiating the argument

This study will be divided into five chapters. Chapter one is an introductory chapter which consists of the problem statement, significance of the problem, research question, argument, literature review and methodology that is going to be used in the research paper. Chapter two will provide a constitutional framework and the powers of all three spheres of government in South Africa to regulate waste pickers but will focus extensively on the power of local government to regulate waste picking activities. Chapter three will focus on the legislative framework relating to waste management in South Africa. Chapter four will conduct a comparative analysis on how two cities in developing countries has integrated waste pickers into their waste management system. This chapter will further focus on the *status quo* with regard to the role, regulation and rights of food and waste pickers in South Africa. Chapter five will provide conclusions and recommendations.

1.7 Methodology

This research will be a desktop study. For chapter 2, the focus is on the primary source which is the Constitution. In chapter 2, the paper draws on primary sources such as legislation, as well as

secondary sources such as journal articles, books and chapters in books in relation to the spheres of government's role in waste management. For chapter 4, the paper draws on constitutions and legislation from two other countries, as well as journal articles, books and chapters in books as it relates to the drawing of important lessons from other third world countries and comparing it to South Africa in terms of waste management. This chapter will provide a comparative analysis. Chapter 5 will provide recommendations and conclusions.



CHAPTER 2: Waste management in South Africa: A constitutional framework

2.1 Introduction

Citizens have the right to a clean and safe environment,⁵⁰ the right to human dignity,⁵¹ equality,⁵² the right to have access to sufficient food and water⁵³ and the right of every child not to be required or permitted to perform work or services that are inappropriate for that child's age.⁵⁴ The government, which includes national, provincial and local government must respect, protect, promote and fulfil these rights.⁵⁵ All spheres of government are required to work together in fulfilling these rights. This chapter will set out a constitutional framework with regard to the management of waste in South Africa. Furthermore, this chapter will seek to delineate the responsibilities of the three spheres of government in relation to waste management as each sphere of government has a role to play in the regulation of waste management in South Africa. As will be discussed below, adherence to principles of co-operative government by the spheres is vital as they need to work with one another in mutual trust and good faith in performing their constitutional responsibilities. Moreover, they need to work together to eradicate issues that are infringing upon waste pickers rights as aforementioned. Waste pickers too, have the right to be treated equally, the right to their dignity, the right to a clean and safe environment and the right to have access to sufficient food and water. Woolman and Bishop correctly argue that "everyone" in section 24 of

⁵⁰ S 24 Constitution.

⁵¹ S 10 Constitution.

⁵² S 9 Constitution.

⁵³ S 27 Constitution.

⁵⁴ S 28(1)(f)(i) Constitution.

⁵⁵ S 7(2) Constitution.

the Constitution, acknowledges that the right is to be enjoyed by all people in South Africa, citizens and non-citizens alike.⁵⁶

2.2 The status of local government

Prior to 1996, local government (LG) was regarded as a subordinate tier of government.⁵⁷ However, with the adoption of the 1996 Constitution, LG is now a fully recognised autonomous sphere of government, consisting of wall-to-wall municipalities. The importance of the autonomy of local government was acknowledged in *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*⁵⁸ where Kriegler J remarked as follows:

“The constitutional status of a local government is thus materially different to what it was when Parliament was supreme, when not only the powers but the very existence of local government depended entirely on superior legislatures. The institution of elected local government could then have been terminated at any time and its functions entrusted to administrators appointed by the central or provincial governments. That is no longer the position. Local governments have a place in the constitutional order, have to be established by the competent authority, and are entitled to certain powers, including the power to make by-laws and impose rates”.⁵⁹

Municipal Councils, as prescribed by section 151(2) of the Constitution, are vested with both legislative and executive authority in respect of matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution and any matter assigned to it by national or provincial

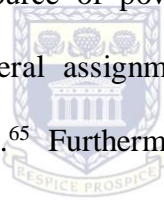
⁵⁶ Van Der Linde M & Basson E “Environment” in Woolman S & Bishop M *Constitutional law of South Africa* (2008) 2nd ed ch 50 pg 11.

⁵⁷ Steytler N & De Visser J *Local government law of South Africa* (2009) 1-26.

⁵⁸ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BLCR (CC).

⁵⁹ *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BLCR (CC) para 38.

legislation.⁶⁰ This executive and legislative authority is complemented by a right to make by-laws to regulate matters.⁶¹ LG derives legislative and executive power over matters listed in the Constitution, pertaining to LG, from the Constitution itself; it has original powers, listed in Schedules 4B and 5B of the Constitution.⁶² The significance of original powers of LG lies in the fact that these powers cannot be removed or amended by ordinary statutes or provincial acts.⁶³ The only way these powers can be amended would be to amend the Constitution itself. In agreement with De Visser,⁶⁴ this is probably the most critical and fundamental feature of local government's institutional integrity. The secondary source of power for local government is assignment. Assignment can take the form of general assignments to local government or individual assignments to particular municipalities.⁶⁵ Furthermore, the Constitution establishes a firm subsidiarity principle by making the assignment of a Schedule 4A and 5A matter to a municipality by national and provincial government compulsory if the matter would be most effectively administered locally and the municipality has the capacity to administer it.⁶⁶ A distinction must be made between original powers and assigned powers and the Constitutional Court in *City of Cape Town v Robertson*⁶⁷ summed it up perfectly when it stated that "a municipality's power may derive from the Constitution or from legislation of a competent authority or from its own laws".⁶⁸ A municipality performing an assigned function takes full responsibility for exercising the powers incidental to the function.⁶⁹ In terms of incidental powers, a municipality has the right to exercise



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⁶⁰ S 156(1) Constitution.

⁶¹ S 156(2) Constitution.

⁶² De Visser (2005) 79.

⁶³ De Visser (2005) 79.

⁶⁴ De Visser (2005) 79.

⁶⁵ De Visser (2005) 79.

⁶⁶ De Visser (2005) 79.

⁶⁷ *City of Cape Town v Robertson* 2005 (3) BCLR 199 (CC).

⁶⁸ *City of Cape Town v Robertson* 2005 (3) BCLR 199 (CC) at para 60.

⁶⁹ De Visser J & May A 'Paper I: Developmental local government: determining appropriate functions and powers (2007) *Community Law Centre: University of the Western Cape* 16.

any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.⁷⁰ In the event of it being held that ‘refuse removal, refuse dumps and solid waste disposal’ is not wide enough to encompass the administration of the legislation dealing with the management of waste pickers on refuse dumps, it is submitted that this function is reasonably necessary for the effective performance and management of refuse dumps in terms of section 156(5) of the Constitution.

Established throughout the country as a whole, LG consists of three municipal categories namely, Category A, B and C that co-exists alongside the national and provincial government.⁷¹ Category A (also referred to as a Metropolitan municipality), exercises exclusive municipal executive and legislative authority in its area.⁷² Category B (also known as a local municipality), shares municipal executive and legislative authority in its own area with a category C municipality within whose area it falls.⁷³ Category C (referred to as a district municipality), exercises executive and legislative authority in an area that includes more than one municipality.⁷⁴ The Municipal Structures Act (Structures Act)⁷⁵ imposes different functions on the various categories of municipalities. Whereas, metropolitan municipalities are responsible for providing all the services in respect of Schedule 4B and 5B, section 154(3)(c) of the Constitution states that subject to section 229, national legislation must make provision for an appropriate division of powers and functions between municipalities when an area that comprises both local and district municipalities. Giving effect to the aforementioned constitutional provision, section 84 of the Structures Act makes provision for the division of powers between local and district municipalities.

⁷⁰ S 156(5) Constitution.

⁷¹ S 40(1) Constitution.

⁷² S 155(1)(a) Constitution.

⁷³ S 155(1)(b) Constitution.

⁷⁴ S 155(1)(c) Constitution.

⁷⁵ Municipal Structures Act 117 of 1998 (Structures Act).

Responsible for various essential services, including: electricity, water, sanitation, refuse removal and cleansing services, local government must realise the following developmental objectives:

- To provide democratic and accountable government for local communities;
- To ensure the provision of services to communities in a sustainable manner;
- To promote social and economic development;
- To promote a safe and healthy environment; and
- To encourage the involvement of communities and community organisations in the matters of local government.⁷⁶

The proper regulation of waste pickers will contribute to the achievement of these objectives. Waste pickers' contribution to a cleaner and healthier environment is invaluable as they recycle approximately 80-90% of postconsumer paper and packaging in South Africa.⁷⁷ Ngcobo J in *Fuel Retailers Association of South Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province v Others* held that "it is immediately apparent from section 24 is the explicit recognition of the obligation to promote justifiable economic and social development. Economic and social development is essential to the wellbeing of human beings But development cannot subsist upon a deteriorating environmental base".⁷⁸ With this in mind, it is important for LG to realise the important role which waste pickers play in conserving the environment. The economic and social status of waste pickers will also improve if they are integrated into the waste management system and afforded the

⁷⁶ S 152(1) Constitution.

⁷⁷ Godfrey L, Strydom W & Phukubye R 'Integrating the informal sector into the South African waste and recycling economy in the context of Extended Producer Responsibility' *CSIR Briefing Note* (2016) 1.

⁷⁸ *Fuel Retailers Association of South Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province v Others* 2007 (6) SA 4 (CC), 2007 (10) BCLR 1059 (CC), [2007] ZACC 13 paras 44-45.

recognition by municipalities that they rightfully deserve. The next section will unpack the responsibilities of local government with regards to their role in waste management in South Africa.

2.2.1 Local government's role and responsibility in relation to waste management

Municipalities are responsible for refuse removal, refuse dumps and solid waste disposal in terms of Schedule 5B of the Constitution.⁷⁹ However, municipalities are not restricted to only the aforementioned functions in terms of carrying out their mandate to protect the environment. In terms of Schedule 5B of the Constitution,⁸⁰ municipalities are responsible for cleansing and municipal roads. Waste pickers execute their activities on both landfill sites and curbsides. It was reported that waste pickers rummage through garbage on the curbside intended for the municipal trucks to collect and consequently leave the streets in a mess.⁸¹ Should the function of managing refuse removal and solid waste disposal not be carried out effectively, it may have a negative consequence of roads being strewn with litter.

Refuse removal, refuse dumps and solid waste disposal are regarded as essential basic municipal services.⁸² Basic municipal services is defined as a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.⁸³ In *Joseph and Others v City of Johannesburg and Others*⁸⁴ the Constitutional Court was confronted with the application of the right to basic municipal services.

⁷⁹ Sch 5 Part B Constitution, 1996.

⁸⁰ Sch 5 Part B Constitution, 1996.

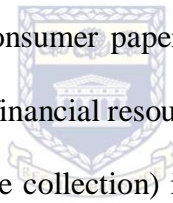
⁸¹ Peres TS *Stigma management in waste management: an investigation into the interactions of 'waste pickers' on the streets of Cape Town and the consequences for agency* (doctor of philosophy dissertation, University of Cape Town, 2016) 4.

⁸² *Kenton on Sea Ratepayers Association and Others v Ndlambe Local Municipality and Others* (4341/2014) [2016] ZAECGHC 45 para 2.

⁸³ S 1 Local Government: Municipal Systems Act 32 of 2000 (Systems Act).

⁸⁴ *Joseph and Others v City of Johannesburg and Others* 2010 (3) BCLR 212 (CC).

Skweyiya J explained the right to a basic municipal service as “the provision of basic services as a cardinal function, if not the most important function, of every municipal government...the central mandate of local government is to develop a service delivery capacity in order to meet the basic needs of all inhabitants of South Africa”.⁸⁵ Local government has a responsibility to provide basic services to all citizens in their jurisdiction, but moreover, they must make provision of these services especially to the poor and disadvantaged.⁸⁶ Waste pickers assist municipalities in providing the basic service of refuse removal without receiving any acknowledgement, protection or payment for their services. It could be said that they are exploited by municipalities as they recycle approximately 80-90% of postconsumer paper and packaging in South Africa⁸⁷ which results in municipalities saving valuable financial resources.



Refuse removal (also referred to as refuse collection) is defined as the collection of rubbish and waste, usually in a rubbish or refuse truck, before final disposal.⁸⁸ In terms of the Cambridge dictionary, “refuse dump” is defined as a place where a town’s rubbish is put.⁸⁹ The Court in *Kenton on Sea Ratepayers Association and Others v Ndlambe Local Municipality and Others*⁹⁰ acknowledged that a municipality has a duty of ensuring that landfill sites are well maintained.

In relation to waste management, metropolitan municipalities are responsible for providing services relating to refuse removal, refuse dumps and solid waste disposal as stipulated in Schedule 5B of the Constitution. District municipalities are responsible for solid waste disposal sites, in so far as it relates to the determination of a waste disposal strategy, the regulation of waste disposal,

⁸⁵ *Joseph and Others v City of Johannesburg and Others* 2010 (3) BCLR 212 (CC) para 38.

⁸⁶ Preamble Systems Act.

⁸⁷ Godfrey et al (2016) 1.

⁸⁸ Collins Dictionary ‘Definition of refuse collection’ available at <https://www.collinsdictionary.com/dictionary/english/refuse-collection> (accessed on 2 March 2019).

⁸⁹ Cambridge Dictionary ‘Definition of refuse dump’ available at <https://dictionary.cambridge.org/dictionary/english/refuse-dump> (accessed on 2 March 2019).

⁹⁰ *Kenton on Sea Ratepayers Association and Others v Ndlambe Local Municipality and Others* (4341/2014) [2016] ZAECGHC 45.

the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.⁹¹ In terms of section 84(2) of the Structures Act, local municipalities have the functions and powers in Schedule 4 Part B and Schedule 5 Part B as listed in the Constitution, excluding those functions and powers vested in terms of section 84(1) in the district municipality in whose area it falls. This translates to local municipalities having the powers and functions of collecting refuse and of the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities within their area that are exclusively used for refuse collected within their local municipal area.⁹²

LG's autonomy is not without boundaries since their functions and powers are subject to section 151(3) of the Constitution, which states as follows: 'A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution'.⁹³ The next section will focus on the regulatory powers of national and provincial government.

2.2.2 National and provincial: Power to regulate

While municipalities have the right to govern, on its own initiative, the local government affairs of its community, this right and the powers that emanates from it, is subject to national and provincial legislation.⁹³ The national government, subject to section 44 of the Constitution, and the provincial governments have the legislative and executive authority to see to the effective

⁹¹ S 84(1)(e) Structures Act.

⁹² SALGA 'The role of a municipality as a service authority for waste management: Waste summit' available at <http://sawic.environment.gov.za/documents/3932.pdf> (accessed on 2 March 2019).

⁹³ S 151(3) Constitution.

performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority.⁹⁴

Each sphere performs supervisory functions over the others, to varying degrees.⁹⁵ National and provincial governments may regulate municipal competencies only within this framework of respect for municipal autonomy, support and oversight.⁹⁶ These framework powers permit national and provincial governments to create “norms and guidelines for the exercise of a power or the performance of a function”.⁹⁷ Municipalities should stay within these norms and guidelines, however, if a national or provincial government passes a law on a local government competency and this law goes further than the creation of norms and guidelines, a conflicting by-law would prevail over the national or provincial law.⁹⁸ As will be recommended in the final chapter, if the national government creates a framework that establishes norms and guidelines whereby the inclusion of waste pickers has to be facilitated with the co-operation of municipalities, municipalities may not deviate from these guidelines but should instead, adhere to it and comply with them. If a municipality fails to perform in terms of its constitutional or legislative function, the national and/or provincial government may intervene. Supervision and interventions will be discussed in the section that follows.

Supervision includes four activities: regulation, monitoring, support and intervention.⁹⁹ Regulation entails the setting of frameworks within which local autonomy should be responsibly exercised.¹⁰⁰

Monitoring is necessary to ensure that legislative frameworks are complied with and to indicate

⁹⁴ S 155(7) Constitution.

⁹⁵ Steytler & De Visser (2009) 15-5.

⁹⁶ De Visser J and May A “Functions and powers of South Africa’s provinces and municipalities”, in Nico Steytler and Yash Pal Ghai (eds) *Kenya-South Africa Dialogue on Devolution* (2015) 160.

⁹⁷ *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others* 2014 (4) SA 437 (CC) para 22.

⁹⁸ S 151(4) and 156(3). See further De Visser & May (2015) 160.

⁹⁹ Steytler & De Visser (2009) 15-5.

¹⁰⁰ Steytler & De Visser (2009) 15-5.

when support is required.¹⁰¹ Intervention refers to the competence of the national and provincial government to direct activities and outcomes in municipalities.¹⁰² Intervention can be described as the most extreme form of supervision as it is used as a corrective measure when municipalities fail to govern.¹⁰³ The Municipal Finance Management Act (MFMA)¹⁰⁴ and section 139 of the Constitution makes provision for four types of provincial interventions in local government: Regular interventions in terms of section 139(1) of the Constitution; intervention procedures in the case of serious financial problems in terms of the MFMA; intervention in response to a municipality that has budgetary problems; and intervention in response to a municipality experiencing a crisis in its financial affairs.¹⁰⁵

The following examples will be discussed to illustrate how certain municipalities often fail to perform in terms of their constitutional function of providing refuse removal services. Based on these examples, the national and/or provincial government could have intervened as the respective municipalities were in breach of their constitutional function of providing refuse removal services. An extreme case of a municipality not performing this function is the Witzenberg municipality in the Western Cape province. In 2017, it was reported that the residents, despite paying for the service, have not had their refuse collected for five years.¹⁰⁶ In another instance, the City of Ekurhuleni in Gauteng Province only provided the service of collecting residents' refuse after the residents threatened the municipality that they would dump their rubbish at the civic centre if not

¹⁰¹ Steytler & De Visser (2009) 15-5.

¹⁰² Steytler & De Visser (2009) 15-5.

¹⁰³ Steytler & De Visser (2009) 15-18(2).

¹⁰⁴ Local Government: Municipal Finance Management Act 56 of 2003 (MFMA).

¹⁰⁵ S 139 Constitution. See further s 136 MFMA.

¹⁰⁶ News24 'Wolseley residents complain of no refuse collection for 5 years' available at <https://www.news24.com/SouthAfrica/News/wolseley-residents-complain-of-no-refuse-collection-for-5-years-20171010> (accessed on 4 March 2019).

collected.¹⁰⁷ In light of the aforementioned examples, the provincial and/or national government could intervene as municipalities are failing to provide essential basic services efficiently and effectively.

2.3 National and provincial government:

2.3.1 Co-operative government

As will be seen in the next chapter, all spheres of government have a role to play in waste management in South Africa. This section will set out the principles of co-operative government which requires the spheres to act in good faith with one another in carrying out their respective functions relating to waste management.

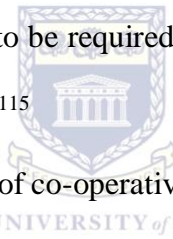
Chapter 3 of the Constitution binds all spheres of government and organs of state in each sphere of government to the basic principles of co-operative government and intergovernmental relations. Each sphere must preserve the peace and unity of the Republic. They must also secure the well-being of all citizens and be loyal to them and to the Constitution. The spheres are also required to respect the constitutional status, powers and functions of government in the other spheres and exercise their powers in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. The spheres are required to act in good faith with one another by assisting and supporting one another and co-ordinating their actions and legislation with one another.

The three spheres of government are “distinctive, interdependent and interrelated”.¹⁰⁸ The “distinctive” element refers to the autonomy enjoyed by both the provincial government and local

¹⁰⁷ News24 ‘Fed-up residents at wits’ end with refuse removal woes’ available at <https://kempionexpress.co.za/179254/fed-up-residents-at-wits-end-with-refuse-removal-woes/> (accessed on 9 March 2019).

¹⁰⁸ S 40(1) Constitution.

government.¹⁰⁹ “Interdependent” refers to the fact that each sphere must exercise its autonomy for the common good of the country by cooperating with other spheres.¹¹⁰ The term “interrelated” refers to the fact that spheres are not independent from each other in the exercise of their autonomy.¹¹¹ In terms of section 7(2) of the Constitution, the state must respect, protect, promote and fulfil the rights in the Bill of Rights. It is inferred that the ‘state’ refers to all spheres of government. In light of this, all spheres of government must give effect to section 24 of the Constitution that deals with the right to an environment that is not harmful (discussion follows in para 3.2), the right to human dignity,¹¹² equality,¹¹³ the right to have access to sufficient food and water¹¹⁴ and the right of every child not to be required or permitted to perform work or services that are inappropriate for that child’s age.¹¹⁵



In light of the abovementioned principles of co-operative government, the national, provincial and local government need to work together in fulfilling their constitutional mandates with regard to waste management. All spheres should co-operate with one another in the inclusion of waste pickers into the waste management system, while adhering to the principles of co-operative government.

2.4 Conclusion

This chapter outlined the roles and responsibilities of the spheres of government in relation to waste management. Moreover, the chapter focused on the roles and responsibilities of local government in relation to waste management extensively, as they are at the coalface of service

¹⁰⁹ Steytler N "Republic of South Africa" in John Kincaid & Alan Tarr (eds) *Constitutional Origins, Structure, and Change in Federal Countries* (2005) 319.

¹¹⁰ Steytler (2005) 319.

¹¹¹ Steytler & De Visser (2009) 15-5. See further *Independent Electoral Commission v Langeberg Municipality* 2001 (9) BCLR 883 (CC) para 26.

¹¹² S 10 Constitution.

¹¹³ S 9 Constitution.

¹¹⁴ S 27 Constitution.

¹¹⁵ S 28(1)(f)(i) Constitution.

delivery. The findings of the chapter were also that certain municipalities do not perform the function of refuse removal effectively and in instances like these, it is submitted that the national and/or provincial government should support municipalities when they fail to deliver basic services to the public, and possibly intervene if necessary. With reference to this constitutional framework, the next chapter will discuss the legislative and policy framework that governs waste management in South Africa.



CHAPTER 3: An overview of waste management in South Africa

3.1 Introduction

The previous chapter discussed the constitutional provisions applicable to waste management in South Africa as well the roles of each of the spheres of government. It further detailed how the provincial and/or national governments can intervene when municipalities fail to perform in terms of their function to provide refuse removal services and the management of landfill sites. This chapter will provide an overview on what waste management entails. The chapter will also provide an insight into how various policy instruments have shaped the waste sector over the past thirty years. It will further provide a *status quo* on waste pickers in South Africa.

As indicated earlier, the increase of people turning to the informal sector to make a living is on the rise.¹¹⁶ A startling figure of more than 2.5 million people in South Africa operate as either workers or business owners in the informal sector.¹¹⁷ Waste pickers occupy a large space in the informal sector in South Africa (between 2% - 8.6% of the workforce). A study undertaken by the Department of Environmental Affairs in 2012 estimated the total number of waste pickers in South Africa to be 62,147.¹¹⁸ However, Godfrey argues that this number may be conservative.¹¹⁹ Godfrey's argument is based on research undertaken by Ramusch & Lange where they argue that informal waste pickers account for 0.6% of the population.¹²⁰ If this applies to South Africa, then there could be approximately 215,000 informal waste pickers trying to earn a livelihood in South

¹¹⁶ Mail & Guardian 'Sa unemployment on the rise - Stats SA' available at <https://mg.co.za/article/2018-10-30-sa-unemployment-on-the-rise-stats-sa> (accessed on 07 April 2019).

¹¹⁷ Business Day 'SA's informal sector needs initiatives with clout to create jobs' available at [Business Day 'SA's informal sector needs initiatives with clout to create jobs'](#) (accessed on 20 November 2018).

¹¹⁸ Department: Environmental Affairs (DEA) 'Report on the determination of the extent and role of waste picking in South Africa' (2012) 17.

¹¹⁹ Godfrey et al 'Co-operatives as a development mechanism to support job creation and sustainable waste management in South Africa' (2017) *Sustainability Science* 1.

¹²⁰ Ramusch R & Lange U 'Role and size of informal sector in waste management - a review' (2013) 166(WR2) *Waste and Resource Management* 72.

Africa.¹²¹ Waste pickers play a pivotal role in the waste management sector in their efforts to recycle materials obtained from streets and landfill sites.

3.2 An overview of waste and recycling in South Africa

In terms of chapter 2 of the Constitution,¹²² all rights contained therein should be respected, protected, promoted and fulfilled by the state.¹²³ Section 24 of the Constitution states that ‘everyone has the right – (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that – (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.’¹²⁴ The importance of this right was highlighted by the Court in *Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd v Save the Vaal Environment and Others*¹²⁵ where it was held that ‘our Constitution, by including environmental rights as fundamental justiciable human rights, by necessary implication requires that environmental considerations be accorded appropriate recognition and respect in the administrative process in our country’.¹²⁶ The importance of this submission by the Court will be seen throughout the chapter where the various legislative and policy instruments applicable to waste management will be outlined.

The sections to follow will provide an overview of older legislation, such as the Environment Conservation Act¹²⁷ (Conservation Act) and how it focuses mainly on how to deal with waste after

¹²¹ Godfrey et al (2017).

¹²² Constitution, 1996.

¹²³ S 7(2) Constitution.

¹²⁴ S 24 Constitution.

¹²⁵ *Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd Save the Vaal Environment and Others* 1999 (2) SA 709 (SCA).

¹²⁶ *Director: Mineral Development, Gauteng Region and Sasol Mining (Pty) Ltd Save the Vaal Environment and Others* 1999 (2) SA 709 (SCA) at para 20.

¹²⁷ Environment Conservation Act 73 of 1989.

it had been disposed of. The chapter will provide an overview on how legislation has evolved over the years. The focus shifted from dealing with ‘end of pipe’ disposal, to reducing, minimising and recycling. A clear shift in thinking can be seen in the policy instruments. The shift is vital when it comes to acknowledging the role that waste pickers play in the waste management system. Although policy instruments may focus on recycling and prevention of waste at landfill sites, it needs to be clear that waste pickers are responsible for recycling approximately 80-90% of postconsumer paper and packaging in South Africa¹²⁸ and they need to be engaged and consulted as stakeholders when developing legislation relating to recycling.

3.2.1 The Environment Conservation Act

In 1989, the Conservation Act was enacted. The Conservation Act provided the first legal definition of waste.¹²⁹ Waste was defined as “any matter, whether gaseous, liquid or solid or any combination thereof, originating from any residential, commercial or industrial area or agricultural area identified by the Minister as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity”.¹³⁰ The Conservation Act set out the requirements for waste management,¹³¹ however, it largely focused on the permitting, control and waste management of landfill sites.¹³² The Minister did however have the power to make regulations on the reduction of waste,¹³³ and the utilisation of waste by way of recovery, re-use or processing of waste.¹³⁴ Godfrey is of the view that this instrument was never utilised as only limited waste policy and regulation emerged between 1989 and 2007.¹³⁵

¹²⁸ Godfrey et al (2016).

¹²⁹ Godfrey L & Oelofse S ‘Historical review and waste management in South Africa’ (2017) 6(57) *Resources* 2.

¹³⁰ S 1(xxii) Conservation Act.

¹³¹ S 20 Conservation Act.

¹³² Godfrey & Oelofse (2017) 2.

¹³³ S 24(d) Conservation Act.

¹³⁴ S 24(e) Conservation Act.

¹³⁵ Godfrey & Oelofse (2017) 2.

3.2.2 The White Paper on Integrated Pollution and Waste Management

In the year 2000, the White Paper on Integrated Pollution and Waste Management¹³⁶ (IP&WM policy) for South Africa was published. Pollution prevention, waste minimisation, institutional integration and the involvement of all sectors of society in pollution and waste management are only a few of the important aspects listed in the IP&WM.¹³⁷ A key focus of the IP&WM policy was to move away from dealing with waste after it had been generated and instead, look at ways to prevent pollution and look at waste minimisation practices.¹³⁸ The IP&WM acknowledged that previous policies focused predominantly on so-called “end of pipe” treatment.¹³⁹ The IP&WM policy highlighted the importance of preventing pollution and waste and avoiding environment degradation.¹⁴⁰ All spheres of government must act in accordance with the requirements of cooperative government when performing the functions stipulated in the IP&WM.¹⁴¹



3.2.3 The National Environmental Management Act

Pursuant to the state’s constitutional responsibility to take legislative measures to safeguard the environmental right held by all citizens, the National Environmental Management Act¹⁴² (NEMA) was enacted in 1998. NEMA covers the broad environmental management principles which form the basis for all other subsidiary environmental legislation. NEMA provides that every national and provincial department in exercising functions which may affect the environment, must prepare an environmental implementation plan (EIP) every four years.¹⁴³ The object of the EIP is, *inter alia*, to coordinate and harmonise the environmental policies, plans, programmes and decisions of

¹³⁶ Department of Environmental Affairs and Tourism (DEAT): White Paper on Integrated Pollution and Waste Management for South Africa GN 2097 (2000) (IP&WM).

¹³⁷ IP&WM (2000) 10.

¹³⁸ IP&WM (2000) 10.

¹³⁹ IP&WM (2000) 5.

¹⁴⁰ IP&WM (2000) 5.

¹⁴¹ IP&WM (2000) 45. See also para 2.3.

¹⁴² National Environmental Management Act 107 of 1998 (NEMA).

¹⁴³ S11(1) NEMA.

the various national departments, provincial and local spheres of government that exercise functions that may affect the environment.¹⁴⁴ The specific content that the EIP needs to contain is provided in section 13 of NEMA. NEMA furthermore provides for conflict management processes that must be followed in the event of a dispute arising between the Minister, Member of the Executive Council (MEC) or Municipal Council in the exercise of any of its functions which may significantly affect the environment.¹⁴⁵

3.2.4 The Polokwane Declaration on Waste Management

At a National Waste Summit (the first of its kind) hosted by the Department of Environmental Affairs and Tourism (DEAT) in 2011, representatives of government at the national, provincial and local level, civil society and business community committed themselves to signing the Polokwane Declaration. They committed to achieving a 50% reduction in the volume of waste generated and 25% reduction in volumes of landfilled waste by 2012 and a zero-waste plan by 2022.¹⁴⁶ A key focus area of the Polokwane Declaration is to stabilise waste generation.¹⁴⁷ The vision of the Polokwane Declaration is to ‘implement a waste management system which contributes to sustainable development and a measurable improvement in the quality of life, by harnessing the energy and commitment of all South Africans for the effective reduction of waste.’¹⁴⁸ Parties to the Polokwane Declaration acknowledged that a significant amount of effort would need to be put in to achieve the set targets. Taiwo et al argues that the Polokwane Declaration is ambiguous and inconsistent in that it often leads to confusion and different

¹⁴⁴ S 12(a) NEMA.

¹⁴⁵ S 17(a) NEMA.

¹⁴⁶ Taiwo O, Otieno F & Venter C ‘Towards attaining the Polokwane waste reduction goals – where are we?’ (2008) 53 *SSB/TRP/MDM* 25.

¹⁴⁷ Polokwane Declaration on Waste Management, 2001.

¹⁴⁸ Polokwane Declaration on Waste Management, 2001.

interpretations.¹⁴⁹ Taiwo et al further argues that the first goal of the Declaration ‘to stabilise waste generation’ is not qualified by a specified amount and that a reasonable interpretation of ‘stabilise’ means to stop the growth in waste generation.¹⁵⁰ It is submitted that the goals set in the Declaration in 2001 were a bit too ambitious as the targets have not been met. In agreement with Taiwo et al, it is further submitted that in order for the targets to be met, alternative waste management options need to be found to ensure that the environment is not compromised.¹⁵¹ Furthermore, the public needs to adopt a different approach towards the manner in which waste is treated. In order for the aforementioned to be achieved, educational programmes conducted by government are crucial to its success.

3.2.5 The National Environmental Management: Waste Act

The National Environmental Management: Waste Act¹⁵² (NEMWA) is a subsidiary act of the NEMA. NEMWA regulates the management of waste within South Africa and also defines the roles and responsibilities of the national, provincial and local spheres of government. Some of the objectives of the NEMWA include the following:

“minimising the utilisation of natural resources, preventing and minimising the generation of waste, reducing, re-using, recycling and recovering waste, treating and safely disposing of waste as a last resort, preventing pollution and environmental degradation, protecting the environment while promoting justifiable economic and social development, promoting and ensuring the effective delivery of waste services, achieving integrated waste management reporting and planning and generally, to give effect to section 24 of the

¹⁴⁹ Taiwo et al (2008) 27.

¹⁵⁰ Taiwo et al (2008) 27.

¹⁵¹ Taiwo et al (2008) 30.

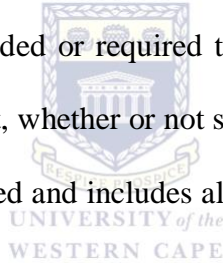
¹⁵² National Environmental Management: Waste Act 59 of 2008 (NEMWA).

Constitution in order to secure an environment that is not harmful to health and well-being”.¹⁵³

“The most significant aspect of the NEMWA is that it adopts an internationally recognised waste hierarchy which states that waste must first be avoided; where it cannot be avoided it must be reduced, reused, recycled or recovered and only be disposed of if there is nothing else that could be done with it”.¹⁵⁴ The reality is that this hierarchical system is not being adhered to as most of the waste is being disposed of at landfills.¹⁵⁵

In terms of NEMWA, waste is defined as:

- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to this Act; or
- (b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the *Gazette*, but any waste or portion of waste referred to in paragraphs (a) and (b), ceases to be waste –
 - (i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;
 - (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered;



¹⁵³ S 2 NEMWA.

¹⁵⁴ Department: Environmental Affairs ‘Waste Act made easy: A user friendly guide to the National Environmental Management: Waste Act No 59 of 2008’ (2011) 11.

¹⁵⁵ Department: Environmental Affairs ‘Waste Act made easy: A user friendly guide to the National Environmental Management: Waste Act No 59 of 2008’ (2011) 11.

- (iii) where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or
- (iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.¹⁵⁶

Chapter two of NEMWA gives the Minister of Environmental Affairs the power to develop and publish for implementation, a National Waste Management Strategy (NWMS). The NWMS outlines the priorities of the country in terms of ensuring that waste is minimised in an environmentally sound manner.¹⁵⁷ The Minister however, cannot develop a strategy in isolation but must follow a consultative process.¹⁵⁸ The NEMWA gives the Minister the power to set minimum norms and standards pertaining to the classification of waste,¹⁵⁹ planning for and provision of waste management services,¹⁶⁰ and the storage, treatment and disposal of waste, including the planning and operation of waste treatment and waste disposal facilities.¹⁶¹ Furthermore, the Minister may also set national norms and standards for the minimisation, re-use, recycling and recovery of waste, including the separation of waste at the point of generation,¹⁶² extended producer responsibility,¹⁶³ the regionalisation of waste management services,¹⁶⁴ and the remediation of contaminated land and soil quality.¹⁶⁵

The relevant MEC, within his or her jurisdiction, must ensure the implementation of the NWMS.¹⁶⁶

Furthermore, the relevant MEC may by notice in the *Gazette* set provincial norms and standards

¹⁵⁶ S 1 NEMWA.

¹⁵⁷ S 3 NWMS.

¹⁵⁸ S 6(6) NEMWA.

¹⁵⁹ S 7(1)(a) NEMWA.

¹⁶⁰ S 7 (1)(b) NEMWA.

¹⁶¹ S 7(1)(c) NEMWA.

¹⁶² S 7(2)(a) NEMWA.

¹⁶³ S 7(2)(b) NEMWA.

¹⁶⁴ S 7(2)(c) NEMWA.

¹⁶⁵ S 7(2)(d) NEMWA.

¹⁶⁶ S 8(1) NEMWA.

that are not in conflict with national norms and standards.¹⁶⁷ The norms and standards should provide for the planning and provisions of waste management services, the regionalisation of waste management services within the province, minimisation, re-use, recycling and recovery of waste, with the exception of standards that may have national implications or that may have significant impact on the national economy, and treatment and disposal of waste, including the planning and operation of waste treatment and waste disposal facilities, licenced by provincial authorities.¹⁶⁸ Provincial governments should also prepare a Provincial Integrated Waste Management Plan (hereafter referred to as IWMP) and an annual performance report on its implementation.¹⁶⁹

Municipalities may also set norms and standards for the separation, compacting and storage of solid waste that is collected as part of the municipal service,¹⁷⁰ for the management of solid waste that is disposed of by the municipality or at a waste disposal facility owned by the municipality¹⁷¹ and for matters related to the control of litter.¹⁷² Municipalities must adhere to all national and provincial norms and standards when setting their own.¹⁷³

The DEA as well as provincial departments responsible for waste management are required to develop Integrated Waste Management Plans (IWMPs).¹⁷⁴ The IWMPs outlines how each of the departments is going to deal with waste and it also identifies required resources.¹⁷⁵ The NEMWA also requires municipalities to develop IWMPs.¹⁷⁶ It can be argued that IWMPs developed at

¹⁶⁷ S 8(2) NEMWA.

¹⁶⁸ S 8(3) NEMWA.

¹⁶⁹ NWMS (2012) 54.

¹⁷⁰ S 9(3)(a) NEMWA.

¹⁷¹ S 9(3)(b) NEMWA.

¹⁷² S 9(3)(d) NEMWA.

¹⁷³ S 9(2)(a) NEMWA.

¹⁷⁴ S 11(1) NEMWA.

¹⁷⁵ Department: Environmental Affairs 'Waste Act made easy: A user friendly guide to the National Environmental Management: Waste Act No 59 of 2008' (2011) 24.

¹⁷⁶ S 11(4) NEMWA.

municipal level are of particular importance as waste services are provided at a local level.¹⁷⁷ After developing the plan, municipalities must submit it to the provincial department responsible for environmental management for endorsement.¹⁷⁸ The endorsed IWMP must be included in a municipality's integrated development plan (IDP).¹⁷⁹ It is argued that the submitting of IWMPs to the provincial government for 'endorsement' exceeds the regulatory power of the provincial government in terms of section 155(7) of the Constitution (as previously discussed in chapter 2). It is important to note that provincial legislation on Schedule 4, Part B matters must be limited to framework legislation that does not extend to the details of local government matters (see para 2.2.2).¹⁸⁰ It is submitted that proper oversight mechanisms should be in place to ensure that municipalities' IWMPs comply with national government's legislative framework, however, the word 'endorsement' as contained in the Act should be amended to 'support' or 'supervise'. Furthermore, the NEMWA deals with financial provisions, waste management measures, licencing of waste management activities, compliance and enforcement powers, as well as general matters.

3.2.6 The National Waste Management Strategy

The NWMS must be created and published in terms of NEMWA.¹⁸¹ The NWMS binds all organs of state of all spheres of government.¹⁸² The purpose of the NWMS is to achieve the objects of the NEMWA.¹⁸³ The goals are as follows:

¹⁷⁷ In terms of Part B of Schedule 5B of the Constitution, local government is responsible for refuse removal, refuse dumps and solid waste disposal. See also chapter 2 of this research paper.

¹⁷⁸ S 11(4)(a)(i) NEMWA.

¹⁷⁹ S 11(4)(a)(ii) NEMWA.

¹⁸⁰ De Visser (2005) 131.

¹⁸¹ Para 5 NWMS.

¹⁸² S 6(3)(a) NEMWA.

¹⁸³ Para 1.1 NWMS.

“to promote waste minimisation, re-use, recycling and recovery of waste; to ensure the effective and efficient delivery of waste services; to grow the contribution of the waste sector to the green economy; to ensure that people are aware of the impact of waste on their health, well-being and the environment; to achieve integrated waste management planning; to ensure sound budgeting and financial management for waste services; to provide measures to remediate contaminated land; and to establish effective compliance with and enforcement of NEMWA”.¹⁸⁴

The NWMS elaborates on how it seeks to achieve the aforementioned goals by stipulating in detail, what measures need to be implemented towards making it a reality. The NWMS follows the waste management hierarchy approach, which consists of; waste avoidance and reduction, re-use, recycling, recovery and lastly, treatment and disposal of waste.¹⁸⁵ The NWMS furthermore describes the regulatory and economic instruments that will give effect to the strategy set out in section 2 of the NEMWA.

In terms of the NWMS, Municipalities are required to work with the recycling industry and other stakeholders to extend recycling at municipal level.¹⁸⁶ Local government is also required to provide additional bins/bags for separation at-source (hereafter referred to as S@S), and are responsible for diverting organic waste from landfill and composting it.¹⁸⁷ They should facilitate local solutions such as Material Recovery Facilities (hereafter referred to as MRFs) and BBCs, rather than provide the entire recycling infrastructure themselves.¹⁸⁸ Local standards must be aligned with any provincial and national standards where these exist.¹⁸⁹

¹⁸⁴ S 2 NEMWA.

¹⁸⁵ Para 2.3 NWMS.

¹⁸⁶ National Environment Management: Waste Act 59 of 2008 National Waste Management Strategy (2012) (NWMS) 57.

¹⁸⁷ NWMS (2012) 57.

¹⁸⁸ NWMS (2012) 57.

¹⁸⁹ NWMS (2012) 57.

Chapter 4 of the NWMS deals with the mechanisms necessary to implement the NWMS. It furthermore sets out the roles of the private sector, civil society and government. The NWMS reiterates the constitutional provision regarding cooperative government, which requires the spheres of government and organs of state to exercise their powers and functions in a mutually supportive and cooperative manner.¹⁹⁰ Overall, the NWMS seeks to give effect to the goals set out in the NEMWA and elaborates in detail what the responsibilities of all stakeholders are and how the goals can be achieved.

As legislation in terms of waste management has evolved, so has its priorities it seems. Waste minimisation comes to the fore in current waste management legislation. Key to waste minimisation, is recycling, and key to recycling, are waste pickers. The important role that waste pickers play in the waste management system is undervalued and unrecognised by all three spheres of government as they fail to acknowledge the contribution made by waste pickers in their policy instruments. No mention is made of waste pickers in any of the policy instruments, yet they are responsible for saving municipalities valuable financial resources by recycling approximately 80-90% of postconsumer paper and packaging in South Africa.¹⁹¹ The next section of the research will elaborate on what the term ‘recycling’ means and what the advantages are.

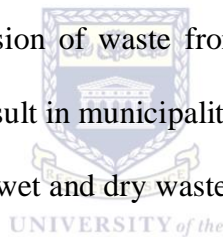
3.3 The advantages of recycling

As can be seen from the above, there is a strong focus on waste minimisation in more recent legislation and policies. An important aspect of minimising waste, is recycling. The concept ‘recycle’ can be defined as “a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that

¹⁹⁰ Para 4.5 NWMS.

¹⁹¹ Godfrey et al (2016).

separated material as a product or raw material”.¹⁹² There are great benefits attached to recycling waste. Firstly, it protects the environment. For example, while many trees are cut down each day, recycled paper manufactured from specific trees is continually utilised to reduce deforestation.¹⁹³ Secondly, recycling minimises pollution as it entails a process whereby certain waste products are turned into new products.¹⁹⁴ This results in less waste being disposed of at landfills. There are various other benefits of recycling which includes but is not limited to the following: The conservation of natural resources, reduction in global warming, sustainable use of resources, contribution to job creation and reduction in energy consumption are some of the other benefits of recycling as well.¹⁹⁵ Lastly, the diversion of waste from landfill sites serves as an important advantage of recycling as this would result in municipalities saving valuable financial resources. It is important to differentiate between wet and dry waste as the income earned for the respective types of waste, differs. Wet waste (also known as biodegradable), includes the following: kitchen waste including food waste of all kinds, cooked and uncooked, including eggshells and bones; flower and fruit waste including juice peels and house-plant waste; garden sweeping or yard waste consisting of green/dry leaves; sanitary wastes; green waste from vegetable & fruit vendors/shops; and waste from food & tea stalls/shops etc.¹⁹⁶ Dry waste (also known as non-biodegradable) includes the following: all kinds of paper and plastic; cardboard and cartons; containers of all kinds excluding those containing hazardous material; packaging of all kinds; glass of all kinds; metals of all kinds; rags and rubber; ashes; foils, wrappings, pouches, sachets and tetra packs (rinsed);



¹⁹² S 1 NEMWA.

¹⁹³ Conserve Energy Future ‘Advantages and disadvantages of recycling’ available at <https://www.conserve-energy-future.com/advantages-and-disadvantages-of-recycling.php> (accessed on 30 November 2018).

¹⁹⁴ Study.Com ‘How does recycling help reduce pollution?’ available at <https://study.com/academy/answer/how-does-recycling-help-reduce-pollution.html> accessed on 30 November 2018).

¹⁹⁵ Conserve Energy Future ‘Advantages and disadvantages of recycling’ available at <https://www.conserve-energy-future.com/advantages-and-disadvantages-of-recycling.php> (accessed on 30 November 2018).

¹⁹⁶ Agarwal R, Chaudhary M & Singh J ‘Waste management initiatives in India for human well being’ (2015) *European Scientific Journal* 107.

discarded electronic items from offices, cassettes, computer diskettes, printer cartridges and electronic parts; and discarded clothing, furniture and equipment.¹⁹⁷ Not all dry waste is valuable.

Waste pickers only recycle waste which can be resold and/or which they can use.

Waste pickers' activities enabled municipalities to save between R309.2 million and R748.8 million on airspace in 2014 by diverting recyclables away from landfill.¹⁹⁸ Landfill airspace can be defined as the volume of space on a landfill site which is permitted for the disposal of municipal solid waste (MSW). This space is initially occupied by air which will eventually be displaced by the disposed waste — hence the term “landfill airspace”.¹⁹⁹ The benefits for municipalities of saving financial resources are important as they could spend it on the delivery of other services to the public. The overall backlog in the provision of solid waste services is around two million households, with approximately 900,000 households not receiving any service.²⁰⁰ Municipalities could spend financial resources which they saved, on the provision of solid waste services to those households which are not currently receiving the service. It should be reiterated that “refuse removal” is a basic service which all citizens are entitled to and municipalities should strive within their power to provide the service.

In terms of the Systems Act,²⁰¹ the Minister responsible for Local Government may make regulations or issue guidelines to incentivise and penalise municipalities to encourage the recycling of waste. It is submitted that the Minister should use these legislative powers to motivate

¹⁹⁷ Agarwal et al (2015) 108.

¹⁹⁸ Godfrey et al (2016) 1.

¹⁹⁹ Swana Products 'Landfill Airspace Utilization: Measurement and Management' available at <https://swana.org/Products/ProductDetail.aspx?pc=ARF05LFAIR> (accessed on 09 February 2019).

²⁰⁰ Department: Environmental Affairs 'Chapter 13 – Waste management - For the waste sector in South Africa this means care must be given to raw material use, product design, resource efficiency, waste prevention, and minimization where avoidance is impossible' available at https://www.environment.gov.za/sites/default/files/reports/environmentoutlook_chapter13.pdf (accessed on 2 May 2019).

²⁰¹ S 86A(e) of Systems Act.

municipalities to recycle. It is further submitted that non-compliant municipalities should be penalised for not recycling and compliant municipalities should be incentivised for their efforts in recycling. Proper oversight mechanisms should be put in place to ensure compliance and to support struggling municipalities. It is argued that municipalities should initiate recycling programs in their respective jurisdictions and engage with waste pickers and buy-back centres as they are the main stakeholders in the informal recycling industry and contribute immensely to recycling at the present moment.

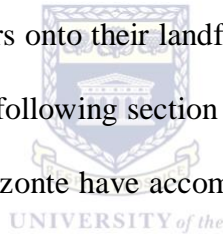
3.4 Conclusion

This chapter focused on the various policy instruments that shaped the waste sector over the past three decades. A shift from focusing on end of pipe disposal of waste towards recycling is prevalent in the policy instruments implemented from the late 1990s. However, it is submitted that the various policies fail to recognise and acknowledge the vital role that waste pickers play in the waste management system. Waste pickers add great value to the to the waste management system but yet they are not acknowledged. It is argued that they should be included in legislation pertaining to recycling as they are the main stakeholders. It is further argued that they should be consulted in the drafting of the aforementioned legislation as they are most affected. The next chapter will conduct a comparative study on two cities in developing countries, as well as two landfill sites in South Africa, where waste pickers have been formally integrated into the waste management system.

CHAPTER 4: A comparative analysis of the inclusion of waste pickers in developing countries

4.1 Introduction

The previous chapter focused on the powers of municipalities in relation to their role in waste management and how the national and provincial spheres may intervene when it is necessary to do so. This chapter will provide an overview of how two cities in other middle-income countries, namely, Brazil and India, incorporate waste pickers into their waste management system. Two landfill sites in particular will be examined, namely, one in Pune, India and one in Belo Horizonte, Brazil. It will furthermore examine two landfill sites in the North-West province of South Africa to assess their inclusion of waste pickers onto their landfills and what lessons can be learnt from their approaches, in South Africa. The following section of the research paper will focus on how local authorities in Pune and Belo Horizonte have accommodated waste pickers on landfill sites and what best practices can be drawn by South African municipalities.



4.2 Constitutional framework for local authorities in India

Similar to South Africa, the Indian government consists of the central government, state governments²⁰² and municipalities.²⁰³ Municipalities are self-governing institutions in rural and urban areas.²⁰⁴ However, the autonomy of local government is not guaranteed as the state government has the authority to decide on whether or not to assign functions and powers to local authorities in terms of legislation. The central government has assigned the function of managing landfill sites to the local authorities in India.²⁰⁵

²⁰² S 1 The Constitution of India, 1950 (Indian Constitution).

²⁰³ Art 243Q Indian Constitution.

²⁰⁴ Saxena R & Abrol A “The impact of the BRICS Partnership on Indian Federalism” in Steytler N *The Brics partnership: challenges and prospects for multilevel government* (2018) 32.

²⁰⁵ India Solid Waste Management Rules, 2016 (ISWM) s 15.

The establishment of municipalities is dealt with in section 243Q of the Constitution of India (Indian Constitution).²⁰⁶ Local government is a state function.²⁰⁷ Powers, authority and responsibility for local bodies are devolved by the state under Articles 243g and 243w of the Constitution.²⁰⁸ The Indian Constitution does not afford local authorities the power to make its own decisions concerning the imposition of taxes. Contrary to the South African Constitution, the Indian Constitution provides that the legislature of a state may authorise local authorities to levy, collect and appropriate taxes.²⁰⁹ Moreover, local authorities do not have original powers as in the case of the South African Constitution. The legislature of a state may endow municipalities with “such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities”.²¹⁰ The aforementioned provisions were quoted to highlight the fact that local authorities do not derive their powers from the Indian Constitution, but rather from delegated authority. Delegated powers could be taken away at any time, whereas original powers derived from the Constitution itself could not be taken away without amending the Constitution itself. The Indian Constitution contains no provisions relating the role of local authorities in solid waste management. The central government is responsible to protect and improve the environment.²¹¹

4.2.1 Legislative framework for solid waste management in India

As mentioned before, the central government is responsible to protect and improve the environment.²¹² Linked to this responsibility is the management of landfill sites. Waste pickers

²⁰⁶ Indian Constitution.

²⁰⁷ Commonwealth Local Government Forum ‘The local government system in India’ available at http://www.clgf.org.uk/default/assets/File/Country_profiles/India.pdf (accessed on 26 March 2019).

²⁰⁸ Commonwealth Local Government Forum ‘The local government system in India’ available at http://www.clgf.org.uk/default/assets/File/Country_profiles/India.pdf (accessed on 26 March 2019).

²⁰⁹ Art 243H(a) Indian Constitution.

²¹⁰ Art 243W(a) Indian Constitution.

²¹¹ Art 48A Indian Constitution.

²¹² Art 48A Indian Constitution.

perform their daily waste picking activities on landfill sites. The central government is required to implement policies which regulate how waste picking activities are to be managed on landfill sites as waste pickers perform their waste picking activities on landfill sites. Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.²¹³ Pursuant to the power of the central government to legislate,²¹⁴ the Environmental Protection Act²¹⁵ (EPA) was enacted. The EPA is the principal Act which extends to the whole of India with the aim of regulating solid waste management. Various other subsidiary legislation has been enacted to regulate solid waste management, namely, the Hazardous Wastes Rules,²¹⁶ Bio-medical Waste Rules,²¹⁷ the Plastic Waste Rules,²¹⁸ E-Waste Rules,²¹⁹ the Batteries Rules,²²⁰ and the Solid Waste Management Rules.²²¹ For purposes of this research, only the Solid Waste Management Rules (SWMR) will be discussed.



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4.2.2 The role of local authorities in solid waste management

The power to manage landfill sites is assigned to local authorities in terms of the SWMR. Analogous to local government in South Africa, local authorities in India are required to prepare a solid waste management plan as per state policy.²²² It is interesting to note that the SWMR recognises waste pickers and their activities and even goes as far as to include a definition of waste pickers.²²³ Waste pickers are defined as “a person or group of persons informally engaged in collection and recovery of reusable and recyclable solid waste from the source of waste generation

²¹³ Art 245(1) Indian Constitution.

²¹⁴ Art 245(1) Indian Constitution.

²¹⁵ Environmental Protection Act, 1986 (EPA).

²¹⁶ Hazardous Waste Rules, 2008.

²¹⁷ Bio-Medical Waste Rules, 1998.

²¹⁸ Plastic Waste Rules, 2011.

²¹⁹ E-Waste Rules, 2011.

²²⁰ Batteries Rules, 2001.

²²¹ Solid Waste Management Rules, 2016 (SWMR).

²²² S 15 SWMR.

²²³ S 1 SWMR.

the streets, bins, material recovery facilities, processing and waste disposal facilities for sale to recyclers directly or through intermediaries to earn their livelihood”.²²⁴ It is submitted that it is not very often that you find a definition of waste pickers in legislation or regulations. The fact that waste pickers are included in the definition reflects a sense of recognition of the waste pickers in the SWMR and the waste management system, contrary to the position in South Africa. In addition, it gives the impression that the national government in India acknowledges the contribution made by waste pickers to the waste management system.

The SWMR requires authorities to establish a system to recognise organisations of waste pickers and to promote and establish a system for integration of these authorised waste pickers to facilitate their participation in solid waste management including door-to-door collection of waste.²²⁵ Local authorities are required to provide waste pickers with identity cards.²²⁶ An important aspect regarding the restoration of the dignity of waste pickers, is that the local authorities are required to set up material recovery facilities or secondary storage facilities with sufficient space for sorting recovered materials to enable informal or authorised waste pickers to separate recyclables from the waste and provide easy access to waste pickers for collection of segregated recyclable waste.²²⁷ Most importantly, local authorities are required to provide training on solid waste management to waste pickers.²²⁸ This is expected to help waste pickers in identifying what types of waste is most detrimental to their health, and what categories of waste holds the most value.

²²⁴ S 1 SWMR.

²²⁵ S 15(c) SWMR.

²²⁶ S 15(d) SWMR.

²²⁷ S 15(h) SWMR.

²²⁸ S 15(l) SWMR.

4.2.3 The *status quo* of waste pickers in Pune, India

The SWMR is a good example of what a policy instrument, directed at recognising and integrating waste pickers needs to contain. However, waste pickers in Pune were not always recognised by municipalities. The working conditions of waste pickers only improved after a large number of protests arranged by the Kagad Kach Patra Kashtakari Pachayat (KKPKP).²²⁹ KKPKP is a trade union and organises more than 10,000 waste pickers.²³⁰ Its advocacy for basic rights for the workers led to the formation of the Solid Waste Collection and Handling co-operative (SWaCH).²³¹ SWaCH formally came into existence in August 2007.²³² In 2007, the “steering committee” (appointed by the Municipal Commissioner in 2006 to assist in overseeing the restructuring of the waste management system)²³³ approved the formation of a co-operative of waste pickers to perform door-to-door collection.²³⁴ In terms of the SWaCH’s mandate allocated to it by a municipal resolution by the council of the Pune local authority, it is responsible for door-to-door collection of waste in the entire city and is allowed to charge a fee of 0.02USD for the collection of waste per month per household.²³⁵ In terms of this new arrangement, the council agreed to support the co-operative for a period of five years.²³⁶ SWaCH is in the business of providing door-to-door collection services to Pune’s various property types and ensures that their

²²⁹ The News Minute ‘Unpaid and undervalued, how India’s waste pickers fight apathy to keep our cities clean’ available at <https://www.thenewsminute.com/article/oppressed-and-unrecognised-life-waste-pickers-crucial-india-sanitation-72426> (accessed on 14 November 2018).

²³⁰ Circulate News ‘Meeting India’s waste pickers’ available at <https://medium.com/circulateneews/meeting-indias-waste-pickers-3079cb092054> (accessed on 25 November 2018).

²³¹ Circulate News ‘Meeting India’s waste pickers’ available at <https://medium.com/circulateneews/meeting-indias-waste-pickers-3079cb092054> (accessed on 25 November 2018).

²³² Chikarmane P ‘Integrating waste pickers into municipal solid waste management in Pune, India’ (2012) 8 *Women in Informal Employment Organizing, Cambridge* 7.

²³³ Samson (2009) 58.

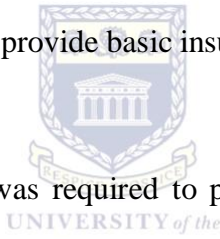
²³⁴ Samson (2009) 58.

²³⁵ Samson (2009) 58.

²³⁶ Samson (2009) 58.

services are regular and reliable.²³⁷ Services rendered by SWaCH assist local authorities by diverting waste to landfills. Their services in addition, helped to achieve the formal integration of waste pickers into the municipal waste management system.²³⁸

Waste pickers started receiving identity cards from the municipality in recognition of the work they were doing.²³⁹ It is submitted that receiving identity cards from the municipality was a good way of identifying waste pickers when they performed door-to-door collections. In 2003, the Pune municipal corporation (PMC) agreed to provide basic insurance health cover to waste pickers and their families.²⁴⁰



For a period of five years, the PMC was required to provide the co-operative with funds for handcart maintenance, uniforms, gloves, insurance and other necessary services.²⁴¹ In terms of this arrangement, waste pickers had a right to the recyclable waste and retained the income earned from its sale.²⁴² The PMC also benefits from this arrangement as the co-operative is directly accountable to the local citizens for providing the service.²⁴³ Various other benefits accrue to the PMC when they choose to not collect the waste themselves ie; saving on transportation costs;²⁴⁴ and they will save on air space as the waste is being recycled by waste pickers.²⁴⁵ The formation of SWaCH has

²³⁷ Circulate News 'Meeting India's waste pickers' available at <https://medium.com/circulatenews/meeting-indias-waste-pickers-3079cb092054> (accessed on 25 November 2018).

²³⁸ Samson (2009) 58.

²³⁹ The News Minute 'Unpaid and undervalued, how India's waste pickers fight apathy to keep our cities clean' available at <https://www.thenewsminute.com/article/oppressed-and-unrecognised-life-waste-pickers-crucial-india-s-sanitation-72426> (accessed on 14 November 2018).

²⁴⁰ The News Minute 'Unpaid and undervalued, how India's waste pickers fight apathy to keep our cities clean' available at <https://www.thenewsminute.com/article/oppressed-and-unrecognised-life-waste-pickers-crucial-india-s-sanitation-72426> (accessed on 14 November 2018).

²⁴¹ Samson (2009) 59.

²⁴² Samson (2009) 59.

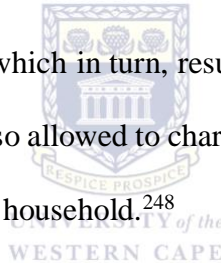
²⁴³ Samson (2009) 59.

²⁴⁴ SNTD Womens' University & Chintan Environmental Research and Action Group 'Recycling livelihoods: integration of the informal recycling sector in solid waste management in India' (2008) *Recycling Livelihoods* 49.

²⁴⁵ Landfill airspace can be defined as the volume of space on a landfill site which is permitted for the disposal of municipal solid waste (MSW). This space is initially occupied by air which will eventually be displaced by the disposed waste — hence the term "landfill airspace." Definition found on Swana Products 'Landfill Airspace Utilization: Measurement and Management' available at <https://swana.org/Products/ProductDetail.aspx?pc=ARF05LFAIR> (accessed on 09 February 2019).

helped improve the waste pickers' income, their working conditions and their status in the community.²⁴⁶

The integration of waste pickers in Pune did not only benefit the municipality, but also waste pickers by integrating them into the waste management system. The working conditions for waste pickers in Pune have improved as they do not have to perform their activities on landfill sites where they are exposed to hazardous working conditions. Instead, they have access to MRFs where the waste is segregated which allows them to recycle the items which holds the most value for them. They are entitled to retain the income earned for the sale of their recyclable waste. In addition, waste pickers also have access to perform the door-to-door collection of waste which results in them having access to more dry waste which in turn, results in an increase in their earnings.²⁴⁷ In addition, as aforementioned, they are also allowed to charge households for providing the door-to-door service at 0.02USD per month per household.²⁴⁸



4.3 The case of Belo Horizonte, Brazil

This section of the research will focus on how local authorities in Belo Horizonte, Brazil have accommodated waste pickers on landfill sites and what lessons can be learnt by municipalities in South Africa.

4.3.1 Constitutional framework for local authorities in Brazil

The Federative Republic of Brazil comprises three tiers of government, namely, the union, the states and the federal districts and municipalities.²⁴⁹ In terms of Article 23, clause VI of the Brazilian Constitution, all tiers of government are responsible for the protection of the environment

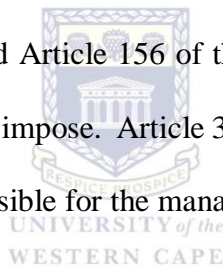
²⁴⁶ Samson (2009) 59.

²⁴⁷ The News Minute 'Unpaid and undervalued, how India's waste pickers fight apathy to keep our cities clean' available at <https://www.thenewsminute.com/article/oppressed-and-unrecognised-life-waste-pickers-crucial-india-s-sanitation-72426> (accessed on 14 November 2018).

²⁴⁸ Samson (2009) 58.

²⁴⁹ Constitution of the Federative Republic of Brazil, 2000 (Brazilian Constitution).

and to fight pollution in any of its forms. All tiers also exercise concurrent legislative power in terms of protecting the environment and to fight pollution.²⁵⁰ In terms of exercising its concurrent legislative powers, the union is limited to the establishment of general rules.²⁵¹ If there is no federal law with respect to general rules, the States shall exercise full legislative powers to provide for their own peculiarities.²⁵² The Brazilian Constitution emphasises the autonomy of the local authority in Article 18. Municipalities have the constitutional power to legislate,²⁵³ furthermore, Article 30 of the Brazilian Constitution lists in detail what powers municipalities possess. In comparison with municipalities in South Africa, municipalities in Brazil have the constitutional power to raise their own revenue²⁵⁴ and Article 156 of the Brazilian Constitution explicitly lists what taxes municipalities are entitled to impose. Article 30 clause V, of the Brazilian Constitution stipulates that municipalities are responsible for the management of solid waste services.²⁵⁵



4.3.2 Legislative framework for waste management in Brazil

The National Policy on Solid Waste (NPSW)²⁵⁶ is a national policy framework used in Brazil. The NPSW makes provision for incentivising the creation and development of cooperatives of waste pickers collecting recyclable material.²⁵⁷ Municipalities are required to adopt an Integrated Waste Management Plan and must include proposed actions in relation to the arranging of programs targeted at facilitating the participation of waste pickers collecting reusable and recyclable material.²⁵⁸ An important provision in this policy instrument is Article 42, clause III which states

²⁵⁰ Art 24 clause VI Brazilian Constitution.

²⁵¹ Art 24 para 1 Brazilian Constitution.

²⁵² Art 24 para 3 Brazilian Constitution.

²⁵³ Art 30 clause I Brazilian Constitution.

²⁵⁴ Art 30 clause III Brazilian Constitution.

²⁵⁵ Global Alliance of Waste Pickers 'Law report Brazil: Waste pickers in Brazil' available at <http://globalrec.org/law-report/brazil/> (accessed on 17 November 2018).

²⁵⁶ National Policy on Solid Waste Law 12,305, of 2 August 2010 (NPSW).

²⁵⁷ Art 8 clause IV NPSW.

²⁵⁸ Art 19 clause XI NPSW.

that “the government could institute measures and induce credit lines to meet, on a priority basis, the following initiatives: ...implementation of infrastructure and equipment acquisition for cooperatives or other forms of association of *catadores* (waste pickers) of reusable materials formed by low-income individuals”. The aforementioned provision indicates that the government is not bound to supply the equipment and infrastructure needed for waste pickers to perform their duties. The provision reads as an option for the government to decide whether it will assist or not. There is recognition in the national policy with regards to the inclusion of waste pickers in waste management strategies. Facilitating the inclusion is compulsory, but rendering specific assistance seems to be voluntary.

4.3.3 The *status quo* of waste pickers in Belo Horizonte, Brazil

The status of waste pickers in Belo Horizonte, a city in Brazil, has improved significantly over the years. This section of the paper will focus on how waste pickers acquired their current status of recognition and the how the various processes regarding their integration were facilitated.

Brazil is one of the world’s most progressive countries in integrating waste pickers in solid waste management systems, and Belo Horizonte has led the way.²⁵⁹ Waste pickers, however, did not always have the recognition by the government that they enjoy today. In the 1990s waste pickers, similar to the case in Pune, took to the streets and protested against the exclusion by municipalities.²⁶⁰ Belo Horizonte also during the 1990s, was faced with a major problem due to increasing levels of waste.²⁶¹ In addressing the problem, it partnered with the cooperatives of local

²⁵⁹ Dias SM ‘Recycling in Belo Horizonte, Brazil – An overview of inclusive programming’ (2011) *WIEGO* 1.

²⁶⁰ Centre for Public Impact ‘Integrated solid waste management in Belo Horizonte, Brazil’ available at <https://www.centreforpublicimpact.org/case-study/integrated-waste-management-brazil/> (accessed on 16 November 2018).

²⁶¹ Centre for Public Impact ‘Integrated solid waste management in Belo Horizonte, Brazil’ available at <https://www.centreforpublicimpact.org/case-study/integrated-waste-management-brazil/> (accessed on 16 November 2018).

catadores.²⁶² The first association of *catadores*, Asmare, a cooperative, was formed in 1990 in Belo Horizonte.²⁶³ Asmare played a pivotal role in the mobilisation of waste pickers.²⁶⁴ Asmare had the duty of running the warehouses where the waste pickers could sort and sell the recyclables.²⁶⁵ Asmare also had to provide data on its waste picking activities to the municipality for monitoring purposes.²⁶⁶

Belo Horizonte introduced its Integrated Solid Waste Management (ISWM) model in 1993.²⁶⁷ The ISWM acknowledges the contribution made by waste pickers in the waste pickers' recycling efforts.²⁶⁸ All three levels of government in Brazil have committed to the social inclusion of residents.²⁶⁹ The integration of the informal recycling sector in SWM systems is a good example of this.²⁷⁰ For example, Belo Horizonte had introduced legislation that made recycling, social inclusion, job creation and income generation the four main pillars of SWM.²⁷¹

Local authorities in Belo Horizonte also adopted the door-to-door approach, similar to the case of Pune but their waste collection trucks were responsible for this collection and not the waste pickers themselves. The door-to-door collection refers to the 'collection of solid waste from the door step of households, shops, commercial establishments, offices, institutional or any other non-residential premises and includes collection of such waste from the entry gate or a designated location on the

²⁶² Centre for Public Impact 'Integrated solid waste management in Belo Horizonte, Brazil' available at <https://www.centreforpublicimpact.org/case-study/integrated-waste-management-brazil/> (accessed on 16 November 2018).

²⁶³ Samson (2009) 52.

²⁶⁴ Samson (2009) 53.

²⁶⁵ Samson (2009) 53.

²⁶⁶ Samson (2009) 53.

²⁶⁷ Centre for Public Impact 'Integrated solid waste management in Belo Horizonte, Brazil' available at <https://www.centreforpublicimpact.org/case-study/integrated-waste-management-brazil/> (accessed on 16 November 2018).

²⁶⁸ Centre for Public Impact 'Integrated solid waste management in Belo Horizonte, Brazil' available at <https://www.centreforpublicimpact.org/case-study/integrated-waste-management-brazil/> (accessed on 16 November 2018).

²⁶⁹ Dias (2011) 2.

²⁷⁰ Dias (2011) 2.

²⁷¹ Dias (2011) 2.

ground floor in a housing society, multi storied building or apartments, large residential, commercial or institutional complex or premises'.²⁷² Subsequent to collecting the waste, the collection trucks then deliver the waste to waste picking cooperatives for the waste to be sorted and processed.²⁷³

An incentive known as the Recycling Bonus was implemented by the state government of Minas Gerais (Belo Horizonte is the capital of the state of Minas Gerais) and passed into law in June 2012.²⁷⁴ According to this law, the quantity and kind of recyclables collected and sold by each waste picker cooperative will determine the amount of money the latter will receive and subsequently distribute to individual members.²⁷⁵ This incentive scheme serves as an important tool to promote recycling and to incentivise waste pickers in their daily activities. Waste pickers have acknowledged that their lives have improved over the last twenty years due to the city's approach to integration.²⁷⁶ Not only do the waste pickers in Belo Horizonte have access to MRFs where they sort and store their waste, but they also have access to a better income as they get paid by co-operatives for the waste they recycle and sell. In addition, they also have access to door-to-door collection of waste which is a much safer and healthier working environment when compared to landfill sites.

Pune and Belo Horizonte have made great strides regarding the inclusivity of waste pickers into their waste management systems. Part of the success of including waste pickers into the waste management system in Belo Horizonte, was based on how well-run the co-operatives were. The converse is true of South Africa. The failure rate of co-operatives in South Africa is a major

²⁷² S 3 para 18 SWMR.

²⁷³ Centre for Public Impact 'Integrated solid waste management in Belo Horizonte, Brazil' available at <https://www.centreforpublicimpact.org/case-study/integrated-waste-management-brazil/> (accessed on 16 November 2018).

²⁷⁴ Dias SM 'Waste pickers and cities' (2016) 28(2) *Environment and Urbanization* 6.

²⁷⁵ Dias (2016) 6.

²⁷⁶ Dias (2016) 6.

challenge. Between 2009 and 2015, there was a failure rate of 88% of registered co-operatives.²⁷⁷ Other alternatives should be looked at in the South African context.

In South Africa, there are also a number of municipalities that include waste pickers into their waste management system. The next section will provide a *status quo* of waste pickers in South Africa. It will further focus on how two municipalities in the North-West province of South Africa, have integrated waste pickers into their waste management system.

4.4 A case study on two landfill sites in the North-West province of South Africa

4.4.1 The status quo of waste pickers on landfill sites in South Africa

Only a handful of municipalities accommodate waste pickers' activities on landfill sites. An example of a municipality accommodating waste pickers is where a municipality built a material recovery facility (MRF) next to the landfill site where waste is delivered onto a hard surface.²⁷⁸

This enables the waste pickers to receive, collect and separate the waste.

Another positive from this MRF next to the landfill is that there is a building located on the landfill where waste pickers can store their waste and it provides shade, toilets and water to waste pickers.²⁷⁹ Having access to these facilities can go a long way to restoring the dignity of waste pickers. Many other landfill sites have very little, to no patience for waste pickers and they are treated as a nuisance. Government even previously attempted to ban the practice of waste picking.²⁸⁰ Samson argues that waste pickers are treated as expendable nuisances whom authorities and many residents accuse of marring the image of the city.²⁸¹

²⁷⁷ Thaba SC & Mbohwa C 'The nature, role and status of cooperatives in South African context' (2015) Vol II WCECS October 21-23.

²⁷⁸ Schenck et al (2018) 4.

²⁷⁹ Schenck et al (2018) 4.

²⁸⁰ Infrastructure News 'Waste pickers: Nuisance or necessary?' available at <http://www.infrastructurenews.com/2014/02/13/waste-pickers-nuisance-or-necessary/> (accessed on 15 February 2019).

²⁸¹ Samson (2009) 1.

As mentioned before in the first chapter, waste pickers are exposed to numerous obstacles as well as health risks when performing their activities on landfill sites. The view of the Department of Environmental Affairs (DEA) regarding the exploitation of waste pickers, is that waste pickers are exploited by agents as they have to accept the low prices that are offered for their recyclables.²⁸² However, Viljoen notes that little research exists in South Africa on BBCs and their linkage with the formal and informal sector.²⁸³ It is submitted that more research needs to be conducted on BBCs and their linkage with the formal and informal sector as this will provide accurate statistics on the reality of the situation and whether BBCs are indeed exploiting waste pickers.

The next section of the research will look at how two landfill sites in the North-West province have accommodated waste pickers.



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4.4.2 The Potchefstroom and Vryburg landfill sites in the North-West province of South Africa

This section of the research paper will look at how two landfill sites in the North-West province, namely, the Potchefstroom landfill site (which falls under the J B Marks local municipality) and the Vryburg landfill site (which falls under the Naledi local municipality), and how they have accommodated informal waste pickers and what other municipalities can learn from this practice.

At the Potchefstroom and Vryburg landfill sites in the North-West province of South Africa, the focus is to integrate the waste pickers into the waste management system in a controlled manner.²⁸⁴

Access to the Potchefstroom landfill site is strictly managed as waste pickers are required to submit a copy of their identity document to the security guard at the Potchefstroom landfill site.²⁸⁵ Another

²⁸² Department of Environmental Affairs and Tourism 'National Waste Management Strategy Implementation South Africa: Recycling – Waste stream analysis and prioritisation for recycling' (2005) 16.

²⁸³ Viljoen et al (2012) 2.

²⁸⁴ Blaauw et al (2015) 19.

²⁸⁵ Blaauw et al (2015) 19.

requirement is that waste pickers are obligated to sign an undertaking where they agree to abide by the landfill site's rules.²⁸⁶ Waste pickers are only allowed to collect waste at a designated area on the landfill daily.²⁸⁷ The rationale behind this is to avoid any injuries that could occur on the landfill site.²⁸⁸ At the Vryburg landfill site, only waste pickers wearing protective clothing are allowed on the landfill site.²⁸⁹ Both landfill sites are also properly fenced, which helps with the injury risk, safety management and access control.²⁹⁰

BBCs play a crucial role in facilitating the recycling potential of these informal sector participants.²⁹¹ Blaauw et al argues that having the BBCs present on these landfill sites is an important factor as the waste pickers do not have to incur additional costs to transport their waste to BBCs.²⁹² BBCs provide waste pickers with large bags on the aforementioned landfill sites and collect the waste from the pickers where they transport the waste back to their premises and weigh each waste picker's waste at their premises.²⁹³

The J B Marks and Naledi local municipalities managing the landfill sites in Potchefstroom and Vryburg respectively, have made great strides in terms of accommodating waste pickers. However, many challenges and shortcomings still remain. For example, while men and women are equally represented on the Vryburg landfill site,²⁹⁴ only men are allowed on the Potchefstroom landfill site for security reasons.²⁹⁵ The exclusion of women on this landfill site is unjust as it infringes on their

²⁸⁶ Blaauw et al (2015) 19.

²⁸⁷ Blaauw et al (2015) 19.

²⁸⁸ Blaauw et al (2015) 19.

²⁸⁹ Blaauw et al (2015) 19.

²⁹⁰ Blaauw et al (2015) 19.

²⁹¹ Viljoen et al (2012) 2.

²⁹² Blaauw et al (2015) 19.

²⁹³ Blaauw et al (2015) 19.

²⁹⁴ Blaauw et al (2015) 19.

²⁹⁵ Blaauw et al (2015) 19.

right to be treated equally²⁹⁶ and to choose their trade.²⁹⁷ Men and women should be treated equally. If the exclusion of women is due to security reasons, the municipality should implement stricter security measures.

4.5 Conclusion

This chapter focused on the best practices of two municipalities in developing countries. The chapter further discussed how two landfill sites in South Africa have accommodated and integrated waste pickers into their waste management systems. Important lessons can be drawn from the manner in which municipalities in Pune and Belo Horizonte manage waste picking activities on their landfill sites. Similar to the status of waste pickers in Pune, municipalities in the city of Belo Horizonte, Brazil also recognised waste pickers in their waste management system. The only difference between the two cities are the varying degrees of recognition and integration. Pune is a good example of where waste pickers are acknowledged in its SWMR. The successful integration of waste pickers into the formal waste management system in Pune and Belo Horizonte was based on the fact that the national government had enacted legislation and included waste pickers in its legislation.

In South Africa, a few municipalities have also made great strides in accommodating waste pickers to perform their waste picking activities on landfill sites. However, it is submitted that what they are doing is not enough. It is submitted that women and men should be treated equally. It must be emphasised that waste pickers recycle approximately 80-90% of postconsumer paper and packaging in South Africa²⁹⁸ and save municipalities millions in the process, yet they do not benefit

²⁹⁶ S 9 Constitution.

²⁹⁷ S 22 Constitution.

²⁹⁸ Godfrey et al (2016) 1.

in any way. All municipalities should strive to include waste pickers into their waste management system as it could mutually benefit both parties.



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CHAPTER 5: Conclusion

5.1 Introduction

The primary objective of the research paper was to highlight the importance of the role of waste pickers in the waste management system in South Africa. In particular, the paper sought to establish if there is any legislation that facilitates the inclusion of waste pickers into the waste management system. Chapter two provided a delineation of the roles of the three spheres of government in relation to waste management, however, the chapter mainly focused on the role of local government as it is at this level where the function of refuse removal, the management of refuse dumps and solid waste disposal is performed.

Chapter three focused on the various legislative and policy instruments applicable to waste management in South Africa.

Chapter four drew on legislation, policies and literature from other developing countries to determine how they managed to successfully integrate waste pickers into their waste management systems. The chapter further looked at how two local municipalities accommodate waste pickers on their landfill sites.

The purpose of this chapter is to furnish the major findings of this study and to present some proposals towards the integration of waste pickers into the formal waste management system. It will begin with a discussion of the major findings.

5.2 Recommendations and answering the research question

The main question this study sought to answer is “What should municipalities do to regulate food and waste pickers and what are they permitted to do in terms of the Constitution?” In an attempt to answer the research question, the study further sought to answer the following sub-questions: “What is the *status quo* with regard to the role, regulation and rights of food and waste pickers?”

Do municipalities have the power to regulate the role and rights of waste pickers? Can government improve on that *status quo* through the regulation of the role and rights of waste pickers? If yes, what should these regulations/policies entail”? Recommendations and possible answers will be provided for in this section of the research paper.

As can be seen throughout the paper, waste pickers are not acknowledged or recognised in any legislative and policy instruments by the various spheres of government. Their working conditions are less than decent as they find themselves on landfill sites trying to access recyclable materials to sell and earn a livelihood for themselves. The following recommendations are proffered as possible solutions for the improvement of waste pickers’ working conditions, safety and socio-economic circumstances.

5.2.1 National and provincial government: Duty of support

As discussed in chapter 2, the national and provincial government have a constitutional duty to support and monitor local government in performing their functions. As previously argued, in the event of it being held that ‘refuse removal, refuse dumps and solid waste disposal’ is not wide enough to encompass the administration of the legislation dealing with the management of waste pickers on refuse dumps, it is submitted that this function is reasonably necessary for the effective performance and management of landfill sites in terms of section 156(5) of the Constitution. This would mean that if municipalities fail to manage waste pickers and their activities effectively, the provincial and/or provincial government should support municipalities and if necessary. Provincial and/or national government could also intervene if and where necessary. It is further submitted that applicable legislation should be amended, specifically the NEMA and NEMWA insofar as to include the regulation of waste pickers and their activities.

5.2.2 Local government: Autonomy to create by-laws and policies that integrate waste pickers into the waste management system

Using their autonomy for the benefit of waste pickers, it submitted that LG should include waste pickers in their by-laws, policies and systems in relation to waste management as waste pickers (employed or self- employed) form an integral part of the waste sector. The following recommendations are proffered as to how municipalities could integrate waste pickers.

5.2.2.1 Code of conduct

It is recommended that the main stakeholders (waste pickers, municipalities, waste picking co-operatives and BBCs) should engage in the creation of a code of conduct as all aforementioned parties will be affected by the code of conduct. The proposed code of conduct should prescribe rules regarding working hours and the manner in which all parties involved on landfill sites should conduct themselves when performing their operations, amongst other things.

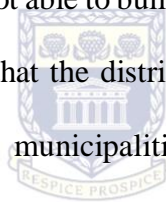
5.2.2.2 Policy to facilitate integration process

It is recommended that all major stakeholders should contribute toward the creation of a policy in which the integration process of waste pickers will be outlined. This should be a participatory process. It is further suggested that all stakeholders should set realistic targets, and agree on specific timelines for the implementation of these targets. To ensure the successful integration of waste pickers, it is suggested that proper oversight mechanisms should be put in place. It is recommended that a drafting committee should be appointed to create the policy. The drafting committee should comprise of all major stakeholders to ensure fairness and furthermore to ensure that all stakeholders are represented and heard. It is submitted that an oversight committee should be appointed to ensure that the drafting committee complies with timelines. It is further recommended that the policy framework should include certain minimum entitlements for waste

pickers, including but not limited to: basic health insurance, protective clothing to perform waste picking activities and basic training and education on waste picking activities.

5.2.2.3 Material Recovery Facility

Based on the research conducted, it is evident that having MRFs present on landfill sites improved waste pickers' working conditions as they had access to basic amenities such as running water and toilet facilities. It is submitted that having the proper infrastructure in place for waste pickers to perform their functions is important as having a place to store and sort the waste is critical in their functioning. It is recommended that municipalities should strive within their power, to create structures such as MRFs on landfill sites where waste pickers can perform their activities. In the instances where local municipalities are not able to build a MRF due to financial constraints and/or not having the capacity, it is submitted that the district municipalities within which these local municipalities fall, should support local municipalities in the building of MRFs within their jurisdiction. As mentioned in chapter 4, having access to these type of facilities can go a long way in restoring waste pickers' right to dignity. It is submitted that further research on the value of MRFs should be done. While having access to MRFs may allow for waste pickers to perform their activities in a more dignified manner, there is no evidence that their income was increased.



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5.2.2.4 Incentive scheme

As mentioned before in chapter three, the Systems Act,²⁹⁹ provides the Minister responsible for Local Government with the power to make regulations or issue guidelines to incentivise and penalise municipalities to encourage the recycling of waste. Giving effect to the aforementioned legislative provision, it is submitted that the national government should set realistic targets for municipalities to achieve and furthermore, support municipalities that might not necessarily have

²⁹⁹ S 86A(e) of Systems Act.

the capacity to achieve their targets for recycling. It is argued that proper mechanisms should be put in place to not only monitor the performance of municipalities on a monthly basis, but to support municipalities struggling to achieve their respective targets. It is submitted that municipalities that have achieved their target, should be incentivised for doing so on a monthly basis. Conversely, municipalities that fail to meet their target, should be penalised. It is argued that the funds municipalities will receive for recycling, should be allocated to waste pickers as they recycle 80-90% of postconsumer paper and packaging. The details of how the allocation of funds to waste pickers should take place should be determined by all stakeholders.

It is further submitted that waste pickers, waste picking co-operatives and municipalities should work together in establishing regulations and policies concerning recycling as they are the main stakeholders and as such, they should be given an opportunity to add value to the drafting of regulations as they draw on their experience. It is argued that the power given to the Minister of Local Government to make regulations regarding incentivising and penalising municipalities to encourage the recycling of waste is misplaced. It is submitted that the Minister of Environmental Affairs will be in a better position to make such regulations or issue guidelines pertaining to recycling as he or she deals with waste related laws and policies on a daily basis.

5.2.2.5 Implementation and enforcement of S@S policies

Bearing the cost implications in mind, it is suggested that municipalities should strive to implement Separation at Source within their respective jurisdictions. It is recommended that S@S policies should be included in their IWMPs and should be monitored and enforced. Furthermore, municipalities should consider providing various types of bags for the different types of recyclable materials to encourage S@S. It is argued that households participating in S@S should be incentivised by municipalities, conversely, households not participating in S@S should be

penalised. Giving households a rebate on their municipal rates accounts could serve as an example of how to incentivise households for participating in S@S. The various colours of bags will serve as an indication of what type of waste is in the bags. It is submitted that these bags should be taken to a drop-off centre or MRF where waste pickers will be able to easily identify what the contents are. It is argued that this will save waste pickers time as they do not have to rummage through all bags to find items of value. It is further argued that this is also a more hygienic option for waste pickers.

5.3 Major findings of the study

The main findings of chapter two is that the original powers of local government are not without limitations. The national and provincial spheres of government play an important supervisory function over the local sphere to ensure that services are provided effectively and efficiently. In addition, the national and provincial spheres should intervene if the local sphere does not execute its constitutional and legislative functions satisfactorily and to the detriment of its residents. Examples were however presented illustrating how the LG failed to perform its function of providing refuse collection services efficiently and it is argued that the national and provincial spheres did nothing to rectify the situation. This is a clear indication that proper oversight measures are not in place.

Chapter three outlined the legislative and policy instruments in relation to waste management. It is important to note that none of the legislative and policy instruments afford waste pickers the recognition that they deserve as the main contributors in the informal waste management sector. Commendably, the focus has shifted from ‘end of pipe’ disposal to minimising waste. However, in reality, it is argued that these policies and strategies are not executed as 90% of waste still end up on landfill sites. Again, it is argued that proper oversight mechanisms are not in place to monitor

the execution of the policies and strategies. Waste pickers contribute a great amount to the environment by recycling, as well as to the municipalities as municipalities save valuable financial resources as well as airspace. Both aforementioned factors are invaluable and yet waste pickers are not recognised or rewarded for their contributions thereto.

The inclusion of the waste pickers into the waste management of the municipalities is a complex issue and should be collaboratively planned and implemented. There is not an easy answer and all decisions have unintended consequences and should be critically planned and implemented to the benefit of all. All spheres of government should work together towards the integration of waste pickers into the waste management system in South Africa.



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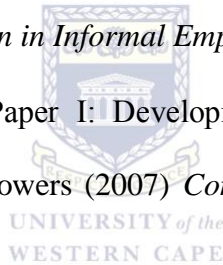
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