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## ***Viewpoint* – The South African Water Sector: Municipal Dysfunction, Resistance and Future Pathways**

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**ABSTRACT:** In South Africa, local government is envisaged as a critical site of redistribution. This vision is laid out in the 1998 White Paper on Local Government. It imagined an entirely new kind of municipality, one that was focused on the delivery of services to all South Africans and was aimed at addressing historical injustices and reducing poverty and inequality. Now, however, more than two decades later, local government has become a site of systemic dysfunction. The financial and infrastructural state of municipalities is deeply troubling. This paper will unpack the influence and impact of privatisation and commercialisation principles on the South African water sector. The focus will be placed on the drivers of institutional and infrastructural dysfunction as they manifest themselves in the form of persistent inequality in water access. The systemic dimensions to municipal governance failure will be centred, as local government was envisioned as a critical site of redistribution. Thereafter, community responses and future pathways toward more just provisioning are considered.

**KEYWORDS:** South African water governance, cost recovery, service delivery, water rights, community resistance

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### **INTRODUCTION**

In South Africa, local government is envisaged as a critical site of redistribution. This vision is laid out in the 1998 White Paper on Local Government. It imagined an entirely new kind of municipality, one that was focused on the delivery of services to all South Africans and was aimed at addressing historical injustices and reducing poverty and inequality. Now, however, more than two decades later, local government has become a site of systemic dysfunction. The financial and infrastructural state of municipalities is deeply troubling. According to South Africa's Auditor General, in June 2021 over 25% of municipalities were at risk of complete operational collapse; the majority of municipalities had invested minimally in infrastructural repair and maintenance and were being faced with irrecoverable debt (Ndlovu, 2021).

This state of crisis has been attributed to governance failure, capacity constraints, and the corrosion of financial viability. This does not go far enough, however, in accounting for the flaws and inappropriateness inherent in the operating model of post-apartheid municipal governance structures. Zama Ndlovu aptly captures the way in which the causes of the current crisis have not been accurately diagnosed:

The post-Apartheid government has continuously used human rights language to frame its interventions. But its chosen municipal delivery model has not addressed the injustices of our past. Today's municipalities are contributing towards a deepening of inequality, both through their intended model of provisioning and their ethical and governance failures (Ndlovu, 2021: 17).

This paper reflects on the influence and impact of privatisation and commercialisation principles within the South African water sector. It focuses on the drivers of institutional and infrastructural dysfunction, which manifest as persistent inequality of water access.

The paper is based largely on desktop analyses and interviews with a few key informants (these are listed in the Acknowledgements). It is also informed by an ongoing scholarly engagement and analysis of policy instruments and of the lived impacts of South African water governance over the past 15 years. Engagement with this topic began with a master's dissertation on the 2006 struggles against water restrictions in Tafelsig, Cape Town. This was followed by an examination of a drought crisis in the Garden Route District Municipality in 2011 and the subsequent adoption of desalination there. Most recently, the author has examined the management of the Cape Town 'Day Zero' crisis and the COVID-19 crisis in relation to service provisioning and impacts on the urban dispossessed. This work has included engagement with social movements in the City of Cape Town that are advocating for housing and water justice; these include the African Water Commons Collective (AWCC) and Reclaim the City (RTC).

## CONTEXT AND POLICIES

Colonial and apartheid relations in South Africa cumulatively contributed to racialised land and resource dispossession and appropriation. At the onset of the colonial period, Dutch law was used as a basis for authorising the colonial state's control of public water. This practice was replaced in the 19th century by the English riparian doctrine, which permitted property owners to access and use water from the river adjoining their property. Consequently, with the introduction of the Water Act of 1956, the apartheid regime prioritised the commercial agricultural sector and the economic interests of mining and industry (Tewari, 2005: 442). This alliance between state and commercial interests had in fact been developed much earlier: at the time of the discovery of gold in 1886, legislation was put in place which granted preferential water rights to mining operations (Turton et al., 2006). At the local level in the sphere of domestic water provisioning, segregationist policy supported provisioning in designated 'white areas', while it was not until 1982 that 'black local authorities' were established. The latter faced the challenge of a limited tax base, minimal power, and a weak capacity to execute their mandate; they were thus pushed to increase rent and service rates in order to generate revenue (van Donk and Pieterse, 2006). This ignited resistance in the townships, which included rent and service boycotts; these served as a central force in undermining the apartheid state (ibid).

In the post-1994 period, there was a strong expectation that the state would prioritise socio-economic rights as part of a transformative project. To this end, a range of laws and policies were advanced to address historical inequalities. Indeed, contemporary South Africa is perceived as having one of the most progressive constitutions in the world (Chamberlain et al., 2020). It aims to facilitate a fundamental transformation in response to the injustice of the country's colonial and apartheid history. This includes a constitutional right to access sufficient water, which is captured in Section 27(1)(b) of the Constitution. This right forms part of a set of justiciable socio-economic rights aimed at the realisation of a just and equitable society (ibid).

The main pieces of legislation governing water are the Water Services Act 108 of 1997 (Water Services Act) and the National Water Act 36 of 1998 (National Water Act). These identify the state as being responsible for the sustainable management of water resources for the benefit of all, in accordance with the Constitution. One of the main objectives of the Water Services Act is to provide access to basic water supply and basic sanitation (Dugard, 2016: 325).<sup>1</sup> The Department of Water and Sanitation is the custodian of South Africa's water resources and water services and is designated as the main regulating

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<sup>1</sup> Basic water services are defined as the prescribed minimum standard of water supply services that is necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene (Dugard, 2016: 325).

body. In terms of delivery, however, municipalities have service provision as a core function, which is envisaged as part of a redistributive effort. This vision is laid out in the 1998 White Paper on Local Government, which imagined an entirely new kind of municipality that would have radically different obligations and functions and would be focused on the delivery of services to all South Africans. Addressing historical injustices through universal access to services is considered to be one of the most important roles of local government and is understood as being critical to the reduction of poverty and inequality (Dugard, 2016: 325). Importantly, the 1998 White Paper recognises that accessibility is determined both by physical and economic access; it thus requires that affordability be built into municipal tariffs (Ledger, 2021a).

According to the 1998 *White Paper on Local Government*:

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

When apartheid ended, 12 to 14 million South Africans (out of a population of 40 million) were without access to safe water. In response to this situation and critical to reducing poverty and inequality, more than R1.3 billion has been invested in infrastructure to support universal access to services. These advances have been viewed as one of the successes of the post-apartheid state. By 2016, according to Stats SA's Community Survey (Republic of South Africa, 2016), approximately 85.5% of households had access to piped water and the ruling party continues to present these impressive figures on campaign trails (ibid).

It is increasingly clear, however, that these figures are contradictory and inflated, and that they fail to reflect differences in quality of access; the impressive statistics are, in fact, rapidly eroding as infrastructure continues to fall into disrepair. Indeed, claims of provisioning since 1994 have consistently concealed significant variability in access (Rodina, 2016; Dugard, 2016; Chamberlain et al., 2020; Ledger, 2021b). Access to water is not guaranteed simply by the presence of infrastructure and the unaffordability of services undermines their claimed contribution to poverty reduction. Connection in rural areas and informal settlements is also variable, which has significant consequences for women, children and persons with disabilities. In informal settlements, for example, most households rely either on water tankers or on poorly maintained communal taps that serve multiple households and result in long queues. Even in the case of formal housing, access is shaped by ability to pay, infrastructural breakdown, and technologies that restrict access (more on this below).

Adding to these persistent qualitative differences is a worsening state of infrastructural collapse and disrepair. In late 2019, the Department of Water and Sanitation released a Master Plan revealing that more than 5.3 million households and 21 million people do not have clean water, despite money being spent on dams and pipelines to deliver water to 95% of the population. The shocking implication is that, despite significant investment in new infrastructure, many places are worse off today than they were in 1994. As summed up by Chamberlain et al. (2020: 6):

Twenty-six years later and after an investment of more than R1.3 billion in water resources and water services infrastructure, the percentage of the population currently receiving reliable water services is lower than it was in 1994. While more homes have access to basic water supply now than in 1994, as a percentage of all homes fewer households have water now than at the end of apartheid.

The state has accumulated a R898 billion deficit over the last decade. The reasons for this collapse are manifold; they include corruption and mismanagement, poor planning, skills shortages, population growth, and underinvestment in repair and maintenance (Kings, 2020; Chamberlain et al., 2020; Republic of South Africa, Department of Water and Sanitation, 2019). According to the Master Plan, over 30% of water is currently being lost through leakage, almost half of the wastewater treatment plants are in

critical condition, and a further 11% are dysfunctional (Republic of South Africa, Department of Water and Sanitation, 2019). Access to water, including household access, is poorest in rural areas of the Eastern Cape (49%) and Limpopo (53%) (ibid). The existing infrastructural network of dams, pipelines and reticulations (valued at R1.3 trillion)<sup>2</sup> – is falling into disrepair and collapse.

Figure 1. After going without water for days, a resident of Barcelona in Etwatwa, Ekurhuleni, opts to collect water instead of vote.



Source: Photo by Ihsaan Haffejee, 1 November 2021 (Nyoka, 2022).

### MUNICIPAL WATER GOVERNANCE: A SITE OF DYSFUNCTION

The post-apartheid state placed local government at the centre of basic service provision for all, understanding it as a transformative function. It was assumed at the same time that municipalities would raise their own revenue to support their efforts to fulfil this developmental mandate. Fundamental to these twin goals of service delivery and revenue collection was the local government fiscal framework (LGFF). A core assumption of the LGFF, and the linked White Paper, is that own revenue – in the form of property rates and service charges – would be sufficient to finance 73% of all local government operating expenditures.<sup>3</sup> This is supplemented by a small national transfer, with "less than 9% of the national budget devoted to local government and, on average, only 30% of local government budgets com[ing] from the national fiscus" (*Amandla!*, 2021: 2-3). These national transfers include equitable share allocations and conditional grants (Ledger, 2021b) (more on this below). A foundational assumption of the municipal operating model is thus the view that local governments can simultaneously offer affordable services and generate their own revenue (through service tariffs and property taxes) to remain financially viable. It was assumed, in other words, that municipal tariffs could be set at levels that would ensure affordable household access and municipal financial viability. This twin goal was presented as a win-win fiscal approach. "The White Paper did not see any conflict between these (...), the clear assumption was that there was a point of convergence in tariff setting at which both goals could be achieved" (ibid).

As explained by Ruiters (2018: 180), however, Municipal governance problems in South Africa derive in part from the larger political economy, which produced local government as a third sphere of government, but largely self-financed through selling services and collecting property rates". This is

<sup>2</sup> This total valuing of South Africa's water infrastructure includes 500 dams, 290,000 km of pipelines, and five million taps.

<sup>3</sup> Operating expenditure includes staff costs, office accommodation, payments to bulk service providers, all other non-capital costs associated with delivering services, and infrastructure maintenance (Ledger, 2021b).

located within a global emphasis on fiscal austerity and promotion of market environmentalism as part of an effort to prioritise neoliberal market-based solutions and monetary valuations within resource governance and provisioning (Bakker, 2014). The consequence is that municipalities have increasingly prioritised cost recovery on basic service provision (electricity, water and sanitation) because these make up one of the main sources of own revenue (Dugard, 2016: 346). This effort, however, is being advanced in a context of extreme poverty and inequality, where over 12 million people are unemployed (by the expanded definition) and where 2.1 million job losses occurred during the COVID-19 pandemic (Institute for Economic Justice, 2022).

The consequence of the fiscal model is that municipalities are governed by a commitment to fiscal prudence, rather than to prioritising equitable provision as central to the developmental mandate. The result is that economic considerations overshadow equity commitments (Millington and Scheba, 2021) and "the geographies of revenue, despite their purported intention to be pro-poor and pro-urban in nature, reflect contrary consequences" (Cirolia and Robbins, 2021: 401). In the case of Cape Town, for example, the establishment of the 'Unicity' in 2000 advanced a more progressive notion of 'one city, one tax base'. The intention was to utilise revenue collection as a redistributive instrument; however, in practice, there has been a continuation of uneven and racialised provisioning of service access, which has been shaped by the prioritising of cost recovery and property rates. Property tax is illustrative of this dynamic. Contributing almost one-quarter of municipal revenue in Cape Town, it incentivises political efforts to maintain and grow property market values in wealthier parts of the city (ibid: 413). The consequence is the emergence of a "real estate state" (Stein, 2019), one which, through prioritising state finances, simultaneously prioritises and rewards wealthy, largely white, ratepayers. Makhubu (2013; quoted in Ruiters, 2018: 178) draws an explicit link

between the generosity of the ratepayer and the ability of the municipality to provide free services for the poor (...). [M]unicipal bureaucrats have openly stigmatised the black poor as dependent "lazy communities" having a "culture of non-payment", with an implicit comparison to whites who are the norm of civic mindedness.

In contrast, however, it can be argued that bureaucratic practices and instruments concerned with growing property rates (and increased service rates) can more aptly be termed a "culture of non-collection" (Cirolia and Robbins, 2021). That is, city officials who are driven by the priority of sound fiscal practice mobilise planning instruments in service of increased rate collection, which perpetuates neo-apartheid geographies. While the imperative to generate own revenue is fundamental to informing regressive forms of state practice, national transfers are not devoid of challenges either.

A few points are important to consider here:

1. In terms of capital grants for infrastructure development, the Municipal Infrastructure Grant (MIG) has been replaced by the Urban Settlements Development Grant (USDG) in cities and the Rural Households Infrastructure Grant (RHIG) in rural areas. The USDG, for example, is aimed at supporting more integrated planning of bulk infrastructure to low-cost housing developments in well-located areas near social and economic facilities and opportunities. A key concern, however, relates to the under- or misspending of these allocations. The MIG funds have historically been underspent and/or misspent by most municipalities, raising questions about how these new grant mechanisms would be any different (Dugard, 2016; Cawe, 2021).
2. A significant national transfer is the equitable share (ES) allocation. The ES is offered to municipalities to fund the provision of free basic services (FBS). To quote from Ledger (2021a: 10):

There is an annual allocation in the national budget to each municipality in respect of these services, which forms part of the local government discretionary equitable share allocation (...). Each year the

number of households funded for free basic services in the national budget has increased: increasing over the past six years alone from 8.7 million in the 2014/15 financial year, to 10.36 million in 2020/21.

3. Significantly, however, there is a massive differential between the value of the national transfer and the provision of FBS at the municipal level (discussed in detail later). The reasons for this are unclear, but one notable aspect that impacts on the grant being used as intended is that it is unconditional; this means that municipalities have full autonomy to spend these funds as they wish. There is mounting evidence that municipalities are redirecting these funds as part of general revenue. The marked difference between the value of the national transfer and the actual provision of FBS brings into question the material effect on the ground in relation to the scale of the need.
4. Finally, beyond transfers and rate collection, there is a growing movement toward private sector borrowing as a prioritised future revenue source. In Cape Town, for example, Cirolia and Robbins (2021) suggest that, "the National Treasury is increasingly pressurizing the City of Cape Town to expand its borrowing and reduce its dependency on grants". This pressure is likely to increase as South Africa moves into a deeper recession and as austerity is embraced more absolutely within the National Treasury. The pressure to borrow poses real risks to municipal autonomy, since international lenders are prone to imposing conditionalities and have a focus on returns. These threaten to "orient the money, time, and skills of City staff towards imposed priorities, potentially reflecting a technocratic, rather than a democratic, approach to City financing" (Cirolia and Robbins, 2021: 412). This is likely to increase the likelihood of private capture of policy and infrastructural directions, especially where there is a growing urgency to address state-level corruption and to offset accumulated debt and the more recent costs incurred through COVID-19. The risk to be taken seriously in the face of this movement is that, "capital comes at a cost, and that cost is borne by government, which is then pushed on to users (...). [T]hese projects are mostly for new infrastructure, and what we need is to repair existing infrastructures" (Extract from an interview with Alana Potter, 23 February 2022).

### **'Progressive tools' and 'regressive ends'**

Ultimately, post-apartheid, local government was envisioned as a critical site of redistribution. Now, however, more than two decades later, local government has become a site of systemic dysfunction and contradiction. The assumptions of the municipal fiscal framework emerge as fundamentally flawed, with consequences for municipal viability, spatial inequality, and everyday life-making. Local government is defined by the "impossibility" of balancing its competing commitments "to manage poverty and deprivation in a racially inflected capitalist society marked by massive inequalities and increasingly precarious livelihoods for the large majority of the population" (Hart, 2014: 5). The consequence for South African water governance is a contested and co-evolutionary relationship between neoliberal transformations and transformations oriented around the human right to water (Yates and Harris, 2018), thus contributing to a persistent inequality in water access. This contested relationship is starkly reflected in the Free Basic Water policy and associated mechanisms, which are briefly unpacked below.

#### *The Free Basic Water (FBW) policy*

It is important to begin by recognising that FBW did not exist in the immediate post-1994 period; instead, tariffs were set to support full cost recovery, with non-payment resulting in service disconnection (McDonald & Pape, 2002; Ruiters, 2018). It was only in 2001, following growing criticism and a severe cholera epidemic in KwaZulu-Natal, that there was a shift toward the introduction of the FBW policy. In terms of the policy, concretised in the form of the Free Basic Water Implementation Strategy in August 2002, poor households should be allocated a free basic quantity of potable water, identified as 6000 litres

(6kl) per household per month. The allocation is primarily financed through the ES allocation from the National Treasury, with further support through cross-subsidies from municipal rising block water tariffs.

Presented as pro-poor, in truth the FBW policy is Janus-faced.<sup>4</sup> It is both a lifeline and a technology of control. Ruiters explains these apparently contradictory tendencies by arguing that the FBW policy was developed to be integral to, rather than in opposition to, commercialisation practices (Ruiters, 2016; Millington and Scheba, 2021). According to Ruiters (2018: 172), the "less poor find themselves under more pressure to pay more and pay regularly. The poor, on the other hand, while not paying for services at all would have to be restricted to a 'basic lifestyle'". Loftus (2005) refers to this as the paradox of FBW, where an intended universal minimal quantity of water has become the maximum accessed by many of the poor and, at the same time, the 'less poor' are made to pay in support of municipal cost recovery. This is done "through setting a high price for the second tariff block (...) and relatively high prices for the blocks thereafter" (Dugard, 2016: 344). Ultimately, beyond the introduction of a lifeline amount, cost recovery continues to be prioritised through shifting the cost upward most immediately onto the next tariff block, as corporatised municipalities treat citizens as customers. Alongside this regressive translation of a supposedly progressive instrument, Dugard goes on to say that, "[t]o add insult to injury (...), there appears to be a trend to be more lenient in respect of businesses and especially government institutions that fail to pay their municipal accounts" (ibid: 340).

### *Means-tested indigency policies*

The determination of beneficiary allocation is managed and restricted through the deployment of means-tested indigency policies. Within such frameworks, registration as an 'indigent' is a criterion for access to FBS; however, there are widespread problems with the implementation of such policies, including an ad hoc definition of poverty and significant variation among municipalities in the determining of beneficiaries (Wilson and Pereira, 2012; Tissington, 2013). The application process is also "typically very onerous, requiring numerous documents, and is perceived by potential recipients as stigmatizing (...). [W]omen, child-headed households and the unemployed, are often not aware of the policy or do not register for fear of attracting adverse official attention" (Dugard, 2016: 342). In addition to these problems, the registration is generally effective for only a limited period, requiring reapplication. "Municipalities have made the application process as unpalatable and time consuming as possible for residents. The state appropriates time" (Ruiters, 2018: 176). The net effect is a mechanism that is significantly under-representative of those in need.

### *Technologies of control*

FBW allocations are mediated and controlled through technological devices, including prepaid meters, water management devices (WMDs), and water restrictors. In a study tracing the history of prepaid meters in South Africa, von Schnitzler (2008) argues that the technology has been portrayed as an instrument that 'aids' residents in calculating their water consumption but that, in fact, the impact of these devices is to transform homes and families into "spaces of calculability", forcing poor residents to subject their daily consumption patterns to intense scrutiny (ibid). The second instrument mentioned above, the water management device, is similarly used to control water access by automatically cutting off once the daily FBW limit has been reached (Khunou, 2018). As Scheba et al. (2021) comment,

Despite continued efforts to portray the WMD as a significant instrument for sustainable development and responsible water usage, the harsh realities of living with the instrument are well documented, earning it

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<sup>4</sup> Janus-faced refers to having two faces, one looking forward, one looking backward, as the Roman deity Janus. It suggests being contrasting and duplicitous.

the names 'Weapon of Mass Destruction' and ufudo, isiXhosa for tortoise. So named because these devices hide in their shell and we can't see what's going on inside

A third technological instrument, in use in the period following the introduction of FBW, is the flow-restricting disc. This limits water supply to a trickle of 6kl per household per month and resulted in a huge protest campaign in the early 2000s that went under the name of 'Ditch the Disc'. In 2021, however, the City of Cape Town announced the discontinuation of the use of water management devices and the return to flow-restricting discs.

The use of these devices is often portrayed as part of an effort to advance responsible citizenship and solve debt management. In the context of household poverty, however, they further entrench poverty, function to individualise a systemic struggle, reinforce a disconnect between the state and its citizens, and lend support to fiscal priorities over the universal human right to water.

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

These are the devices that we are fighting (...). [I]f you come into our communities, you can actually smell from a distance (...) [that] there is a water management device in this household. You come into people's households and there's washing standing (...). [T]hey explain I can only wash today but I can only rinse tomorrow, I can't do both. People are making critical decisions about whether their kids must wash their hands or flush the toilet. These are health risks (...). [T]he issues in our communities [are] deep and becoming deeper (Extract from an interview with Faeza Meyer and Ebrahiem Fourie, 8 March 2022).

The Mazibuko litigation of 2009 resulted in a ruling by the constitutional court regarding the reasonableness of the FBW allocation and the lawfulness of the use of prepayment meters in poverty-stricken households (for details refer to Dugard, 2016). The positive contributions of the litigation notwithstanding, the ruling ultimately bolstered municipalities in their continued use of these devices, arguing that their use remained consistent with constitutional commitments.

Commenting on the judgment, Dugard argues that, "for the moment, legal tactics should focus on litigation to ensure that government minimum standards are met and that there are no nonprocedural disconnections of water supply" (ibid: 335).

Figure 2. No to water meters.



Source: Faeza Meyer, founding member of the African Water Commons Collective.<sup>5</sup>

<sup>5</sup> [www.blueplanetproject.net/index.php/new-packaging-same-deal-city-of-cape-towns-new-proposal-to-replace-water-management-devices-with-the-drip-system-will-further-water-apartheid/](http://www.blueplanetproject.net/index.php/new-packaging-same-deal-city-of-cape-towns-new-proposal-to-replace-water-management-devices-with-the-drip-system-will-further-water-apartheid/)



### *Equitable share allocation*

Finally, in assessing the apparently 'progressive' contribution of FBW and the associated mechanisms, it is necessary to return to the ES allocation. As mentioned, this is the main national transfer that funds FBS. A report by Tracy Ledger (2021a) on behalf of the Public Affairs Research Institute (PARI) shows that there is a glaring difference between the number of households funded for FBS through the ES grant and the number who are receiving the services. Details can be found in the report, but key takeaways include:

1. The total number of indigent households registered by local municipalities declined by almost 20% from 2015 to 2019. This is despite increases in poverty and in the number of households funded for FBS in the national budget over the same period.
2. Nationally, in the fiscal year 2019/2020, a total of 10.1 million households were funded for free basic services, but fewer than one-quarter of that number received FBS from their municipality.
3. The data indicates significant differences across municipalities in terms of the delivery of free basic services.
4. This situation is still more troubling when one considers that the sufficiency of the FBW allocation – even to those who do receive it – is itself questionable because: it is lower than the international recommendation of 50 litres per person per day, it fails to account for backyard dwellings on a single stand, and it fails to account for water uses beyond drinking and cooking (Chamberlain et al., 2020; Ledger, 2021a: 10-11).

What emerges from the above discussion is that efforts that are being guided by an ostensibly progressive agenda are in practice resulting in questionable and/or deeply regressive ends. This is because they are being developed as integral to, rather than in opposition to, municipal corporatisation and water commodification. In other words, these instruments are located within, rather than outside of, the context of a largely self-financed municipal entity that prioritises cost recovery on basic service provision and rate collection for financial viability (Ruiters, 2018; Dugard, 2016). Ultimately, as municipalities struggle to generate own revenue, the costs are being transferred to poor households. This brings into question the efficacy of FBS in contributing to a transformative and redistributive agenda, as revenue is given primacy over an orientation that prioritises water as a human right for all and as millions of poor households are being required to pay for all services that they receive from their municipality. The implication is that households face impossible choices, with the cost of services impacting on "the disposable income that they have for other essential expenditure, such as food" (Ledger, 2021a: 14).

All of this is in the context of an increasing cost of municipal services, which has been well above inflation over the last decade; indeed, in 2020, the average cost of basic services for a poor household (of four) exceeded a quarter of total monthly income. The tragic outcome is that "the envisaged win-win has become a lose-lose reality" (ibid).

This suggests an endemic crisis, a slow violence, that is literally being budgeted for in the form of municipal accounting. In this context, the state emerges as a perpetrator of violence, since "impoverishment is criminalised by commodifying access to land, housing, water and electricity" (New Frame, 2021a).

### **Intersecting challenges: Deepening crisis**

At the heart of system failure are the flawed assumptions in the municipal operating model and the contradictory efforts to mitigate them. There are, however, related dynamics that coalesce in producing institutional and material crises across municipalities. Below I touch on these intersecting municipal challenges in order to deepen the preceding reflection. It is important to note, however, that these dynamics are not equally present everywhere and that they therefore manifest in different material challenges. In almost all municipalities in the Eastern Cape, for example, the emergent water crisis is

defined as, "no clean water or simply no water at all in working class or rural areas" (Amandla!, 2021: 19). In Gauteng, on the other hand, "city-dwellers (...) across race and class, are left frustrated by their struggle to access water", with incomplete and competing accounts of the reasons for this (Galvin, 2021: 20).

### **Declining municipal finances**

As already outlined, the municipal finance operating model is unsustainable and is a foundational reason for the current crisis-prone condition of municipalities. The details of the model and its contradictory tendencies have already been discussed. There are, however, a few additional points to make which can offer a more complete picture of the implications of the model for municipal operation and continuation; these focus specifically on the state of budgets.

In this case, the statistics are revealing. At the beginning of the 2019/2020 financial year, 126 municipalities – more than half of the total – adopted unfunded budgets. This number was reduced to 66 following an intervention by the National Treasury, but it remains clear that municipal finances are unsustainable. There are growing levels of outstanding debt owed to municipalities (over R230 billion at the end of December 2020), with the majority (72%) owed by households. "The Auditor-General estimates that no more than 60 per cent of that debt can ever be recovered, given the assessed ability of households to pay" (Ledger, 2021a: 22). The reasons for household non-payment include an inability to pay in the context of unemployment and precarious employment. This is a structural challenge that cannot be resolved through efforts toward 'responsible citizenship' with associated instruments of control.

At the same time, municipalities themselves owe money to utilities like Eskom and Rand Water for 'bulk' purchases. According to Galvin (2021), "municipalities owed R7.3 billion to water boards at the end of 2017. The boards were in turn in debt to the Department of Water and Sanitation (DWS) for R11 billion". One consequence of these multiscalar debt burdens is that municipalities intensify cost recovery practices to generate revenue that is needed to pay creditors further up the chain. A further consequence of declining municipal finances and debt burdens is that infrastructure is not extended, repaired or maintained. This is reflected in the absence of bulk infrastructure (including extensions) by the DWS; it is also evident in the collapsing municipal infrastructure as municipalities neglect to do repairs and maintenance, an activity that is meant to be funded out of service revenue. The knock-on effect of this infrastructural neglect is a decline in the quality of municipal services, as it reflects a spiral of low investment, low cost recovery, and poor quality of service (Dugard, 2016; Pieterse, 2014). This decline is not uniform, with differences between water systems by geographical area and embedded in apartheid geographies.

Ultimately, it is the financial imperative – in the context of fiscal precarity – that has trumped equity commitments in the provision of municipal services. Ironically, the municipal operating model is itself deepening poverty and inequality (Ledger, 2021a: 25).

### *Austerity as multiscalar*

A related aspect of the story of municipal financial unsustainability and collapse is the intensification of national austerity, spearheaded by the National Treasury. Analysts working on budget justice in the country have argued that current budget practices are cutting back on resources available for the delivery of basic rights and that the government is in violation of its constitutional obligations. Additionally, concerns that the Treasury is trying to use the crisis to justify the further imposition of austerity have been fuelled by South Africa's turn to the International Monetary Fund to help finance the shortfalls arising from the economic crisis and from the fallout of the COVID-19 pandemic (Coleman, 2020).

Political analyst Ayabonga Cawe argues that, in addition to considering national austerity measures, it is important to pay attention to austerity practices at different scales, including at the local government

level. Cawe emphasises the need to pay attention to localised manifestations of austerity even when national transfers have occurred (Cawe, 2021; Kalla and Cawe, 2021), and argues that this attention to multiple fiscal levels is necessary to fully comprehend the practices that inform austerity and its material effects.

One localised manifestation of austerity politics is evidenced in the chronic underspending by municipalities on water-related budgets. According to Dugard (2016), "this systemic municipal underspending has in effect meant that South Africa has 'missed a generation of capital investment' in water services" (Dugard, 2016: 351). This has serious material effects and urgent attention is required to fully comprehend the reasons for under- or misspending, which may include capacity constraints and corruption. Another potent illustration of the importance of tracing the multi-scalar nature of austerity practices, is the clear disjuncture between ES allocation and FBS provision (outlined earlier). The reasons for this are complex; they include municipal redirecting of funds into general budget revenue, as well as misspending once the money lands at the local level.<sup>6</sup> What becomes clear is that to fully comprehend the challenge and to conceive of an alternative and more just politics, it is necessary to grasp austerity politics, practices and implications as they manifest at different scales.

### *Management, outsourcing and corruption*

Municipalities function as a Water Services Authority, assuming operational responsibility for providing water services to end users. They may also function as Water Services Providers (WSPs) or may enter into a contract with an external provider, including a private water provider. In South Africa, while the state has largely dominated governance, there is a substantial industry dedicated to the outsourcing of municipal delivery, resulting in the hollowing out of the state (Kalla and Cawe, 2021). According to Glen Robbins, "state dominated governance is combined with a multi-billion [Rand] industry to outsource everything from system design, supplies/inputs, operations, repair/maintenance, construction, scientific services, even connections and cut-offs" (Personal communication, 24 February 2022).

In Gauteng, for example, municipalities rely on water utilities – primarily Rand Water – to develop and maintain infrastructure. This relationship raises a range of challenges and uncertainties related to staff capacity, political corruption, proper utilisation of funds, and accountability; cumulatively, these all impact on delivery outcomes (Galvin, 2021). Another consequence of the centrality of private actors to water delivery is that they explicitly operate within a profit motive. This further deepens the commodification of services, eroding the recognition of water as essential to life.

Outsourcing has also been accompanied by corruption, whereby "the tender system in municipalities has become the main opportunity for accumulation by local elites" (Amandla! 2021: 2-3). In March 2020, Corruption Watch and the Water Integrity Network released a report entitled *Money down the drain: Corruption in South Africa's water sector*, which explores the extent of systemic corruption in the water sector through procurement contracts (Chamberlain et al., 2020). The Makana Municipality in the Eastern Cape offers a troubling illustration of the consequences of municipal corruption and resource capture, especially around the awarding of municipal tenders:

The 2019/20 Auditor-General's report into Makana municipality found that the municipality (...) wasted over R900 million on irregular and unauthorised expenditure; and was being investigated by the police for financial misconduct. Tenders were awarded but there were "under achievements" on the projects. This is a town that does not have a single playground in any area (Majavu, 2021e).

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<sup>6</sup> Part of the reason for the disjuncture between ES allocation and FBS provision may be that the transfer is insufficient to cover the costs of the latter, particularly in poor municipalities that are already struggling with household payment for services. Other reasons, however, include the redirecting of funds as a result of political rivalries and corrupt municipalities and the difficulty of tracing where funds land and how they are utilised.

There is a clear relationship between outsourcing, corruption and under- or misspending – the localised manifestation of austerity of which Ayabonga Cawe (2021) speaks.

### *Absent regulation*

Another underlying reason for worsening water governance relates to the failure to effectively regulate water services. Part of the challenge is that the DWS is technically insolvent. Under the tenure of then Minister Nomvula Mokonyane, it came to be "mired in institutional challenges, including financial mismanagement, escalating debt, capacity constraints and an ensuing deterioration of infrastructure owing to lack of maintenance and investment" (SAWC, 2017 in Millington and Scheba, 2021). According to the Master Plan, a "serious shortage in technical skills" has meant that the department "continues to over-rely on consultants in key strategic areas, including planning and programme management" (Kings, 2020).

The preceding discussion clearly indicates that the current model for providing basic services is failing to meaningfully respond to historical inequalities and is not delivering on the constitutional vision or on the associated policies and legislation. What emerges instead is a tragic story of municipal failure and a cycle of dysfunction that is manifested in low-quality services, service restrictions, disconnections, and infrastructural disrepair and collapse. As stated in *Amandla!* (2021: 2-3), "This is not just a result of corruption. It is also an outcome of systematic under-funding of local government, budget cuts and the outsourcing of services to profit-making business interests (...). Another major cause of this crisis is the deployment of incompetent political appointees".

### **RESISTING DISPOSSESSION AND CLAIMING WATER RIGHTS**

In the context of this systemic dysfunction, efforts are required to resist the dispossession of the majority, claim water rights, and reimagine and remake the system through different mechanisms. Communities across South Africa are already doing this work through engaging in a range of "invented and invited" spaces (Miraftab, 2004; Chamberlain et al., 2020). A recent report entitled "Claiming water rights in South Africa" by the Socio-Economic Rights Institute (SERI) (Chamberlain et al., 2020) offers an excellent view into the range of practices that are being deployed. By focusing on four case studies, the report considers the range of actors who are claiming their water rights and the mechanisms on which they are drawing.

I will not repeat the findings here; however, I will raise a few key points that make clear that communities are actively reimagining and remaking spaces through drawing on a range of mechanisms. The cases presented raise both questions and possibilities for advancing more just futures. They include the following:

1. Using public interest litigation as a tool to hold the state to account (ibid: 6);
2. Advancing the fulfilment of constitutional rights through accessing private resources;
3. Using expropriation under the Housing Act as a tool to widen access to urban land and services;
4. Using multiple strategies to advance the struggle for tenure security, services and ultimately a dignified life (ibid: 7); strategies can include community organisation, protest, self-supply and litigation;
5. Developing a cross-class coalition of residents to undertake infrastructure repair and thereby ensure access to water.

The case of the Makana Local Municipality is an interesting example of the mobilisation of a range of strategies that move between invited and invented spaces; they include engagement with a host of government officials and entities, and resistance in the form of protest, litigation, and practices of self-provisioning. Below, I briefly sketch the highlights of the Makana case, opening up a reflection on to the

"hope, frustration, courage and resilience" (ibid: 29) that these struggles entail. This serves as a segue to the paper's concluding remarks and recommendations.

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

The Makana Local Municipality is in the Eastern Cape Province. It is home to the University Currently Known as Rhodes, which is located in the town of Makhanda (formerly Grahamstown). Today, the Makana Local Municipality is bankrupt and in crisis. Over the last few years, the town of Makhanda has been faced with missing municipal funds, corruption, dysfunctional infrastructure, and a water crisis (Wesso and Benson, 2020). The latter is a result of ageing and neglected infrastructure, municipal corruption, and a severe drought. Unfortunately, Makana is only a more-severe example of the systemic municipal collapse that is occurring across the country.

In 2019, in response to this state of municipal collapse, the Unemployed Peoples Movement (UPM) applied to have the municipal council dissolved under Section 139 of the Constitution. "Section 139 provides that when a municipality cannot or will not carry out its constitutional obligations (...) the provincial executive committee may impose a recovery plan, dissolve the council, or take other steps to make sure that the council can deliver services" (Majavu, 2020a). On 14 January 2020, in the first such ruling in South Africa, the court ordered the dissolution of the council on the basis of its failure to carry out its constitutional duty to provide services to residents. The court decision is significant in its demonstration of what is possible. It is also striking because of its sustained and collaborative engagement between a wide range of people and organisations in pushing for the intervention. They included social movements, informal settlement residents, residents of the suburbs, members of unions, and faculty, staff and students of the university (Chamberlain et al., 2020; Wesso and Benson, 2020). "The judgment appears to indicate strongly that if social movements or residents' associations provide weighty and compelling evidence to the courts that shows municipalities have failed to deliver services in line with the Constitution, then the municipalities will have to respond to that evidence in court, instead of simply ignoring it" (Majavu, 2020a).

In early 2020, however, the ANC-run council decided to appeal against the ruling and the council is yet to be dissolved. The story thus also illustrates the limits of provincial interventions in municipal affairs. Soon after the 2020 ruling, the COVID-19 pandemic hit, exacerbating the existing water crisis. Litigation has not been the only strategy employed, however, and the struggle continues. In May 2021, there was a three-day shutdown in Makhanda, initiated by taxi operators. In November 2021, the Makana Citizens Front, including the leader of the UPM, Ayanda Kota, participated in local government elections, and managed to secure 18.1% of the vote.

Within this context of struggle, however, members of the UPM have found that activism can come at a cost. On 29 May 2020, Ayanda Kota went into hiding after being warned of a plan to assassinate him (Chamberlain et al., 2020; Wesso and Benson, 2020; Majavu, 2020c; Tricontinental, 2020). This was no idle threat when viewed in the context of state-sponsored repression of popular movements (Benson et al., 2019). Referred to by activists as the "politic of blood", political assassinations have become a routine feature of political contestation under ANC rule (ibid). These practices have been concentrated in KwaZulu-Natal, but have increasingly spread to other provinces including the Eastern Cape (Majavu, 2020c; Tricontinental, 2020; New Frame, 2021b). This politic of blood was most recently evidenced in the 8 March 2022 murder of Ayanda Sgila, the deputy chairperson of the eKhenana occupation of the Abahlali baseMjondolo (AbM); the assassination was carried out by four gunmen allegedly linked to the local ANC-affiliated chief. Alongside an escalation in political repression, state violence through formal instruments and authorities is also an established reality in South Africa (McMichael, 2020; Tricontinental, 2020; New Frame, 2021b; Gillespie et al., 2021). Through efforts to maintain spatial order and control, "police officers and other armed forces available to the state often kill people during armed evictions and disconnections from self-organised access to municipal services" (New Frame, 2021b). Ultimately, what

emerges is that the ANC has handled "the self-organisation of the black working class outside of the ruling party as a criminal matter rather than as an opportunity to deepen democracy and build popular power" (ibid).

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

Figure 3. Shutdown of Makhanda in May 2021.



Source: Photo by Anna Majavu (Majavu, 2021a).

### CONCLUDING REMARKS AND RECOMMENDATIONS

This paper has attempted to unpack the influence and impact of privatisation and commercialisation principles on the South African water sector. The focus was placed on the drivers of institutional and infrastructural dysfunction, which manifest as a persistent inequality in water access. The systemic dimensions of municipal governance failure were examined, followed by a brief reflection on community responses. What becomes clear from this exploration is that South African municipalities are currently in a state of dysfunction. The reasons for this collapse and unfolding crisis can be partly attributed to corruption, but this is not the whole story; instead, the municipal operating model is contributing to a deepening and continuation of structural exclusion (Kalla and Cawe, 2021). This operating model is based on the assumption that local government can both function as a site for redistribution and actively operate as a corporatised entity that is responsible for the bulk of revenue generation. This is taking place within a contemporary context of high unemployment and a history of colonialism and apartheid. Despite a fundamentally transformative mandate, the net effect is in fact continued and deepening household poverty and inequality (Millington and Scheba, 2021; Ledger, 2021a).

Functional municipalities are critical for social reproduction, that is, for the everyday work of life-making that includes care and infrastructural access (Kalla and Cawe, 2021; Fraser, 2014). A consequence of failing municipal governance is the intensification of a crisis of social reproduction, with gendered and racialised dimensions; this is experienced both at the household and wider societal scale through the collapse of essential infrastructures. The current trajectory is one of failure and systemic violence. It is essential to disrupt the spiral of dysfunction through a rethinking and remaking of the system of public services. Communities across the country are already beginning this work. They are engaging in a wide range of relations and mechanisms that move between invited and invented spaces, and which include litigation, protest, self-provisioning and political contestation.

In terms of the way forward, it is essential to challenge the conservative fiscal apparatus and to advance toward more meaningful democratic practice. To begin with, there is a need for a comprehensive grasp of the scale of the existing challenge in qualitative terms. In this case, "human rights-oriented research" (Dugard, 2016) becomes important. This work should focus on capturing, for example, the qualitative needs of households, the gendered dimensions of access, the impact of FBW and water restrictions, the financial impact of tariffs on access to water by the poor, and the financial position of municipalities including funding needs and spending practices.

Beyond this, there is a need to rethink and remake the models for provisioning public goods and to orient this explicitly toward life-making as opposed to revenue- or profit-making. In very concrete terms with regard to advancing affordable access, PARI proposes that the cost of basic services be contextualised against the background of poverty and food insecurity in South Africa. Referred to as a Food First approach, it is vital as it recognises that cost recovery on basic services and enforcing a 'culture of cost recovery', implies that households are forced to sacrifice food expenditure. This is deeply regressive and runs counter to any socio-economic goals. In contrast, the alternative approach acknowledges the intersection between features of social reproduction and attempts to think through public service provisioning in a more holistic way.

Finally, it is important to strengthen the democratic participation that challenges the dominance of exclusionary technocratic expertise. This requires remaking multiple spaces, from restructuring the National Treasury to learning from already-unfolding examples of community self-organising, solidarity economies, and localised practices of repair and maintenance.

There are ways to think and act which can advance more just futures for all. In the words of Alana Potter, International Coordinator at End Water Poverty:

[U]ntil government takes human beings seriously and sits them down and goes, "this thing is broken" (...) it's about respect and dignity. What we are missing is (...) mechanisms for public facilitation and engagement and co-production in solving water and other basic services crises is missing (...). [T]he more things fail and the more unaccountable or criminalizing the state becomes, the more the anger ramps up (...) The combination of different tactics, and municipalities taking communities much more seriously, and taking community engagement seriously, going back to the roots of what democratic local governance is about. That is my sense of hope (Extract from an interview with Alana Potter, 23 February 2022).

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