

INSTITUTIONAL AND POLICY MAPPING OF THE WATER SECTOR IN SOUTH AFRICA

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OVERVIEW

The urban water landscape of South Africa

South Africa has a complex water governance landscape, both with considerable successes, and ongoing challenges, in achieving sustainable, adequate and equitable water access and governance. With a specific focus on Cape Town, this policy brief provides background on the **history and institutions of importance for water governance, and also identifies key legislation enacted since 1994**. The report includes a diagram of different levels of water authorities and mandates, offering an ‘institutional map’ of the urban water sector of Cape Town (dated 2015).

Water supply and distribution schemes in South Africa were historically created to serve predominantly white populations during colonial and apartheid eras. Capital investments in pipes, dams and other water-related infrastructure were differentially affected during apartheid in different areas, with homelands, townships and informal settlements receiving much less funding and generally lower quality of water services (Goldin 2010). This resulted in **highly differentiated access to water services** in South Africa, by race and income, as well as a highly fragmented water management system (Herrfahrdt-Pähle 2010) as well as undemocratic participatory engagement—challenges that all persist today. One historical legacy exacerbating this institutional fragmentation was the shift from 6 municipalities into one Unicity of Cape Town in 2000, which created further challenges for equitable and unified service delivery (Smith & Hanson 2003).

With the adoption of the first democratic constitution of South Africa (1996), **vast political reforms** were undertaken, affecting all dimensions of governance across the country. The new democratic government and constitution established national institutional mandates for the provision and governance of water resources, as well as water services (Republic of South Africa (RSA) 1996). In terms of water services, the South African constitution (1996) includes the guarantee for water (and sanitation), stating that “**everyone has the right to access sufficient food and water**” (Section

27b). Sub- section (2) further adds that “[t]he state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.” (RSA 1996). The Water Services Act 108 of 1997 mandates specific standards for water and sanitation services and outlines a national regulatory framework for the provision of these services (RSA 1997).

In 2001, following a wide spread cholera outbreak in KwaZulu-Natal, and resultant legal challenges related to water cut-offs, the national government implemented the Free Basic Water (FBW) policy modeled after a pilot project in Durban (Bond & Dugard 2008; Miroso & Harris 2012). The FBW policy requires that every municipality must provide a minimum of 25 liters of water per person per day, or 6000 liters per household of eight per month, free of charge, and within 200 meters of the home (Department of Water Affairs and Forestry (DWAFF) 2002; see Rodina 2016 for a diagram on the actualization of FBW). The policy has been since revised once in 2007, acknowledging ongoing affordability and capacity challenges across different municipalities (DWAFF 2007). The revised policy does not change the amount of free basic water (which remain 25l/p/d), but it states a commitment by the government to support an increase to 50 l/p/d, left to the discretion of local municipalities, again to act within their resources.¹The main focus of the 2007 FBW revision is “ensuring that there is increased access to water infrastructure by the poor while maintaining access through sustainable operational arrangements that should include appropriate subsidy targeting mechanisms to minimize ‘leakage’ of subsidies intended for the poor to wealthy consumers” (*ibid*, p. 4).

The government of South Africa aims to **ensure affordable, reliable access to sufficient safe water and hygienic sanitation to all South Africans before 2030** (RSA 2012)². Furthermore, South Africa has policy commitments to inclusive participatory governance for water and other resources. For instance, the Water Act (1998) mandates the establishment of catchment management areas, with a specific requirement to “to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area” (Section 80e). The Water Services Framework strategy mandates that water services development plans must adopt consultative and participatory processes to include the views of all important stakeholders and ensure adequate participation by women (DWAFF 2003, p. 42). Lastly, the Constitution grants everyone access to courts, which have been a successful avenue for protecting and extending the rights of the most vulnerable. Examples include the Mazibuko case that challenged the unlawful installation of pre-paid meters in Phiri, Soweto, albeit with limited success (Dugard 2013).

¹ It is important to note that Cape Town is indeed subsidizing up to 10.5 kiloliters of free basic water for households who qualify as indigent as per Cape Town’s Indigent Policy adopted in 2003. This additional allotment requires that the household install a Water Management Device.

² Reference is frequently made to “improved drinking waters sources” which is defined as one that, by the nature of its construction, adequately protects the source from outside contamination, e.g. piped household water connection located inside the user’s dwelling, plot or yard, public taps or standpipes, tube wells or boreholes, protected dug wells, protected springs, rainwater collection (UNICEF 2015).

While efforts to address the uneven distribution of water supplies have been taken, and some progress has been made, there are considerable ongoing obstacles to the achievement of sustainable, universal and adequate access to water and sanitation.

Table 1: Access to improved sources of drinking water

| Access to piped water | South Africa | City of Cape Town | Suburb Khayelitsha |
|--------------------------------|---------------------|--------------------------|---------------------------|
| Inside dwelling | 46.3% | 75% | 34.6% |
| Inside yard | 27.1% | 12% | 27.3% |
| Outside yard < 200 m | 11.7% | 9.3% | 28.1% |
| Outside yard > 200 m | 6.2% | 2.7% | 9.2% |
| No access | 8.8% | 0.7% | 0.8% |

Source: South Africa Statistics, Census 2011

Table 2: Access to sanitation facilities

| Access to toilet facilities | South Africa | City of Cape Town | Suburb Khayelitsha |
|------------------------------------|---------------------|--------------------------|---------------------------|
| Flush toilet | 60% | 90.2% | 75.8% |
| Chemical toilet | 3% | 1.2% | 3.4% |
| Pit toilet | 28% | 0.4% | 1.2% |
| Bucket toilet | 2% | 4.5% | 6.6% |
| No access | 5% | 2.7% | 10% |

Source: South Africa Statistics, Census 2011

Other important themes that affect water systems across the country, and Cape Town, include: urbanization, water consumption patterns, and projected increases in

hydrologic variability. With climate change, it is expected that the western part of the country, including Cape Town, will become drier overall, with higher frequency of extreme events, such as floods, storms and droughts (Department of Water and Sanitation (DWS) 2015). Average per capita consumption across the country is estimated at 235 liters per person per day, with significant variations within cities and especially in townships (Department of Water Affairs (DWA) 2013). Efforts to address increasing per capita consumption are ongoing, and are using a number of different approaches, from pricing schemes to metering. Investment in water supply and sanitation infrastructure is also in evidence in Cape Town, and elsewhere, to address deficiencies in water services and sanitation infrastructure, again, most notably in informal settlements and former townships (DWS 2015).

In Cape Town, considerable investment is going into water conservation and demand management programs, including the Water Conservation and Demand Management strategy (WCWDM), installing demand management devices and projects such as the Integrated Water Leaks Project. These efforts have been behind the ‘success’ of the city in terms of reducing demand (e.g. the City of Cape Town received the C40 Cities award at COP21 in Paris for its WCWDM strategy) Nonetheless, such efforts, such as Water Management Devices (e.g. “smart” water meters), have also been heavily criticized for technical flaws, as well as their focus on impoverished households and related justice concerns (Wilson & Pereira 2012).

INSTITUTIONAL HISTORY AND TRAJECTORY

Before 1994, the Department of Water Affairs (DWA) (former Department of Irrigation) established by the Water Act of 1956, was responsible for management of all water resources in South Africa. This national water department has been frequently renamed, and is currently called the Department of Water and Sanitation (DWS). After the creation of the Republic of South Africa in 1961 and the passage of apartheid legislation (such as the Group Areas Act no 41 of 1950, among others), the provision of water and water services increasingly followed segregated policies that separated white, black, and coloured communities (official categories of the apartheid regime). The Department of Bantu Administration and Development was tasked with water provision to the so-called homelands (black communities), but ultimately remaining under the control of DWA (Findlater et al 2007).

With the new constitution and democratic government in the mid-1990s, new legislative frameworks related to water were put into place, with specific goals of redressing past injustices, as well as attending to issues of trust and power and engagement of marginalized communities (Goldin 2010; Tissington 2010; Piper & von Lieres 2015).

Key Post-Apartheid Water Governance Policies and Legislation

- The **White Paper on Water Supply and Sanitation** (DWA 1994) addresses inequity in water resource allocation and water supply development.
- The **Constitution of the Republic of South Africa of 1996** states that “everyone

has the right to have access to sufficient [food and] water” and that “Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations” (Bill of Rights, Constitution of the Republic of South Africa, Section 27 (1)(b) and Section 24 (a) and (b), 1996).

- The **White Paper on a National Water Policy 1997** defines water as a public trust (DWA 2014a). The three fundamental principles for managing water resources are: equity, (environmental) sustainability and efficiency (South Africa Yearbook 2014).
- The **Water Services Act** defined the role of Department of Water Affairs and Forestry (DWAFF), now the Department of Water and Sanitation (DWS), as regulator, the role of Water Boards as bulk providers and the role of municipalities as service providers (Water and Sanitation Project (WSP) 2011).
- Two notable regulatory frameworks that help to give substance to the right of access to FBW under the Water Services Act are: **Guidelines for Compulsory National Standards**, and **Norms & Standards for Water Services Tariffs** (DWAFF 2002).
- The **National Water Act** redefines water rights in South Africa (away from riparian system of the Water Act of 1956) and established a new framework to mandate and regulate water resources (WSP 2011). It promotes the integrated management of water resources (IWRM)
- The **National Environmental Management Act** (1998) “makes provision for cooperative environmental governance by establishing principles for decision-making on matters affecting the environment” (South Africa Yearbook 2014).
- The **White Paper on a Basic Household Sanitation** (2001) focuses on the “challenges of addressing service backlogs in low density rural areas.” It favours a demand responsive approach (“households are equipped to maintain and service their toilets themselves”) as opposed to the supply-driven approach of the free basic water policy (South African Local Government Association (SALGA) 2008).
- The **Strategic Framework for Water Services** (2003) implemented free basic water. The City of Cape Town added two conditions: The communal tap/standpipe has to be within 200 metres of a household and there should not be more than 25 households sharing one tap (City of Cape Town 2014).
- In a review the South African government decided that to ensure financial viability, free basic water would not be provided to everybody, but only to indigent households (DWA 2014). Moreover, the framework attempts to reaffirm the constitutional responsibility of the municipality to provide water supply and sanitation services as assigned under the Municipal Systems Act (MSA) 2000 and ensure the “progressive realisation” of this right to water (DWA 2014a).
- The **Water Allocation Reform Strategy** (WARS) (2008) aims to readdress past inequity in water allocation. In 2024 “60% of allocable water should be in the hands of black people of which half should be in black women’s hands” (DWAFF 2008).
- The **National Water Resource Strategy** (NWRS) 2 (2013) ensures that water resources are protected and conserved for the long term, but also contribute to the attainment of the social and economic goals of the country” (NWRS2, 2013).

INSTITUTIONAL FRAMEWORK

National Level:

- The **Department of Water and Sanitation** (DWS) is responsible for water sector policy, support and regulating (DWA 2014a).

Regional Level:

- **Catchment Management Agencies** (CMAs) undertake water resource management at a regional or catchment level and involve local communities, within the framework of the national water resource strategy (DWA 2014a). At present, only two of nine gazetted CMAs in South Africa are functioning (Mehta et al. 2014). Where CMAs are not established, the national government undertakes management functions through DWS regional offices (DWA 2014a).
- **Water Boards** [to be consolidated into **Regional Water Utilities** (RWUs)] provide water services (bulk potable and bulk waste water) to other water services institutions within their respective service areas (DWA 2014a).
- **Regional Water Utilities** (RWUs) manage regional water resources as well as regional bulk and wastewater infrastructure in terms of a mandate from DWS (DWA 2014b).
- Regional **Water and Sanitation Forums**, and more localized **Catchment Management Forums** (CMFs) are additional important spaces for civic engagement in water governance (Environmental Monitoring Group 2016).

Local Level:

- **Municipalities** are **Water Service Authorities** (WSA) and responsible for ensuring provision of water services within their area of jurisdiction regulated by the Department of Cooperative Governance and Traditional Affairs (CoGTA) (NWPR, 2014). For Cape Town, the City of Cape Town serves as the Water Service Authority (WSA) as well as a Water Service Provider (WSP) (City of Cape Town 2014).
- **Water Service Providers** (can be public, private or mixed entities or municipal government itself) (WSPs) provide water and/or sanitation services for municipalities and perform contractual duties as specified by the WSA (DWS 2015).
- **Water User Associations** (WUA) are “co- operative associations of individual water users who wish to undertake water related activities for their mutual benefit” on local level (DWA 2014a).

Multi-level, NGOs and Private Sector:

- **Transboundary Partnerships**, e.g. Komati Basin Water Authority (KOBWA), are working on transboundary water resources management and development.
- **National NGOs and Stakeholders** can be separated into two notable groups: those that focus on service delivery (e.g. the Mvula Trust), and those involved in holding the state accountable and deepening democracy (e.g. the South Africa Water Caucus). These groups work towards promoting water and sanitation

- projects, e.g. community-based approaches for water services (WSP 2002).
- The **Private Sector**, e.g. Rand Water, is involved, e.g. through the Strategic Water Partner Network – South Africa (SWPN-SA).
 - **Donor Organizations**, e.g. the European Union (EU), are promoting water and sanitation projects, with some limited funding support (WSP 2011).

The above text, and institutional map below, are intended to help make sense of the complex and evolving water governance landscape of South Africa (and of Cape Town in the Western Cape in particular). As issues of water access, and participatory governance, are often a function of the specific legal frameworks, and institutions, gaining an appreciation of the institutional and legislative context provides useful background and starting points to consider what might be needed to improve, extend, or modify the governance context, particularly in ways that might serve equity, sustainability, redress, or related goals. At several key points, we have also provided some key sources for more critical perspectives on what is working at present, or not.

The map below provides a glimpse of water governance institutions and factors salient when the research was conducted (in 2015, primarily conducted by PoWG DAAD Rise intern, Thessa Beck). Things are changing, particularly departments within the city of Cape Town are currently being reorganized, and as such, this map should be considered a snap shot of interest for 2015. Unfortunately, there is not a single source where one can access updates, but the references here should offer key starting points for anyone seeking to update this discussion.

INSTITUTIONAL MAP:

Figure 1 below graphically represents some of the key institutions in the water sector for South Africa (compiled by Thessa Beck).

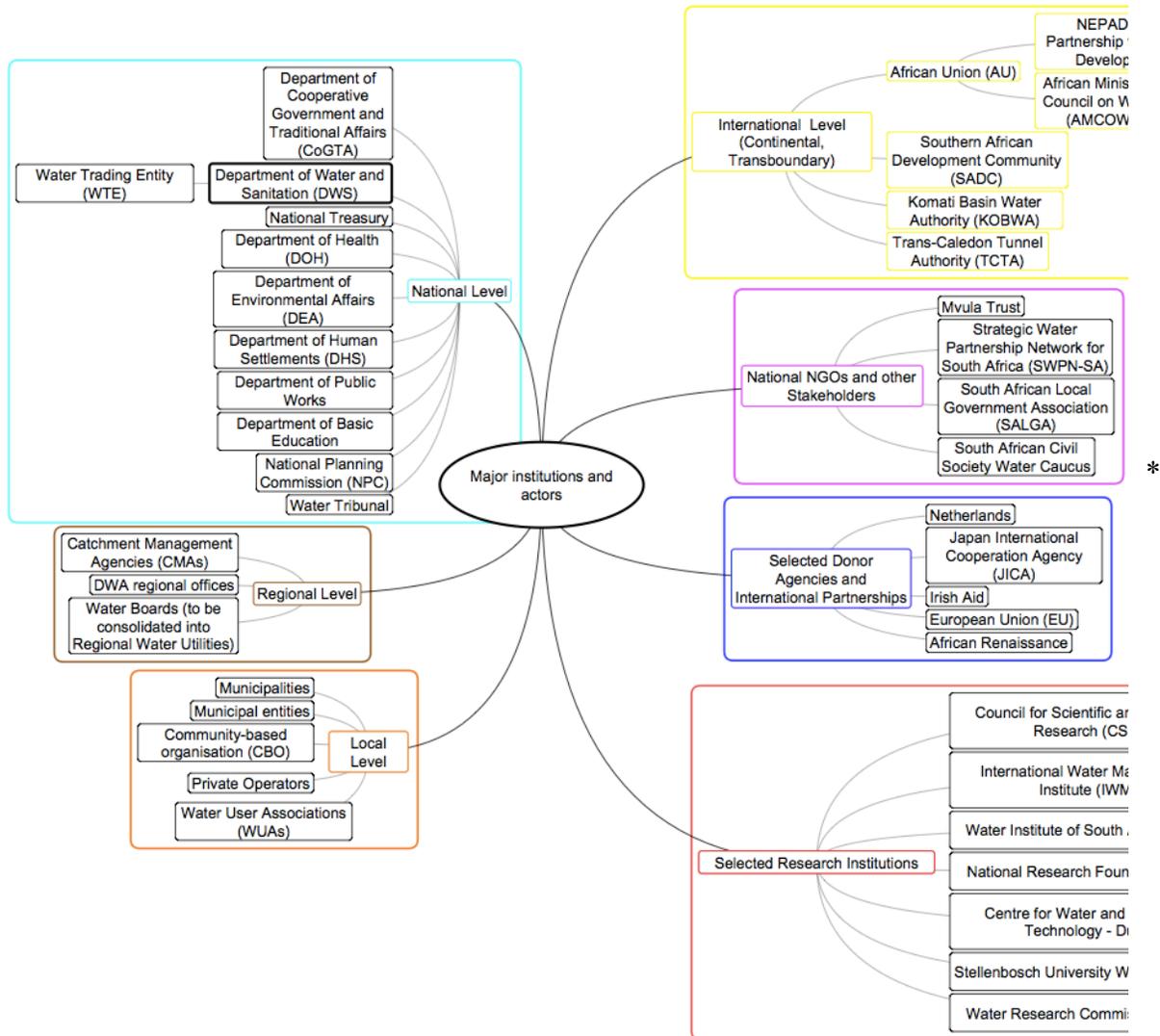


Figure 1: Map of the Water Sector of South Africa

**Should be listed as the South African Water Caucus*

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