



GOVERNMENT OF WATER



1st SPHERE OF GOVERNMENT: NATIONAL GOVERNMENT



LEGISLATURE: Parliament

Laws and policies are approved by Parliament; Parliament is made up of:

1. National Assembly – elected political parties choose representatives to sit in parliament
 2. National Council of Province (NCOP) – members elected to represent provincial and local government. NCOP debates and votes on any law affecting provincial or local government
- The Legislature is responsible for monitoring the work of the Executive, ‘representing’ the public approving the National Budget.
 - They are also supposed to ensure public participation.
 - Portfolio Committees are appointed to oversee and monitor the work and but gets of different government departments.

JUDICIARY:

The Judiciary is independent of government because it interprets the Law, it does not make or implement it. It upholds and enforces the Constitution and Laws of the country.

EXECUTIVE: Cabinet

Is made up of the President and Cabinet Ministers, who are responsible for implementing the laws and policies decided on by Parliament.

- Each Cabinet Minister is the political head of a government department.
- The Administrative arm of National Government is headed by Director Generals of government departments and staff.
- They are responsible for implementing laws and policies and are accountable to the Executive.

What does this mean for Water Governance at a National Level?

- National Government through the Department of Water and Sanitation is responsible for the management and protection of fresh water resources and for the maintenance of bulk water supplies.
- The Constitution enshrines the right to have access to sufficient water and the duty of National and Provincial Government to monitor performance of local government.
- The Water Services Act also recognises that it is the duty of all spheres of Government to ensure water service delivery.

2nd SPHERE OF GOVERNMENT: PROVINCIAL GOVERNMENT



LEGISLATURE: Provincial Parliament

Each Province has a Provincial Parliament.

- Political parties elected in National Elections every 5 years appoint members of the Provincial Parliament.
- The Provincial Parliament is responsible for approving some provincial laws, the provincial budget, develop a provincial growth and development strategy (PGDS) and Spatial Development Framework (SDF).
- The Provincial Government and Department of Local Government are responsible for the management of provincial affairs and the coordination, monitoring and support of municipalities in each province.

JUDICIARY:

The Judiciary is independent of government because it interprets the Law, it does not make or implement it. It upholds and enforces the Constitution and Laws of the country.

EXECUTIVE: Provincial Executive Council

Is made up of the Premier of the province elected by party members in the Provincial Parliament, and members appointed by the Premier and are responsible for Provincial departments.

- The Administrative arm of Provincial Government are the Provincial Departments headed by Director Generals, Directors, Head of Departments etc. and run by public servants.
- Most public servants are employed at a provincial level.

What does this mean for Water Governance at a Provincial Level?

- Whilst water management is not a direct provincial function, the Department of Water Affairs' provincial offices should intervene in municipal water affairs if a municipality is not providing water and sanitation services as they should by law.
- Provinces also participate in water sector planning with national and local government, normally through the provincial department covering environmental affairs.

3rd SPHERE OF GOVERNMENT: LOCAL GOVERNMENT



LEGISLATURE: Municipal Council

- Provinces are broken into districts: Metropolitan Municipalities, District, Municipalities (DM) and Local Municipalities (LM).
- DMs are responsible for coordinating activities between LMs and supporting the development of strategic plans. They can also take on responsibilities relating to water and sanitation services where capacity is limited at a local level.
- Each Municipality has a Municipal Council made up of members elected in local council elections. Municipal Councils pass by-laws, yearly budgets, development plans and service delivery for their area.
- The job of municipalities includes:
 - o Delivery of: electricity, water for household use, sewage and sanitation services and refuse removal.
 - o Other responsibilities include maintaining storm water drainage, firefighting, municipal health services, promoting tourism, taking decisions around land use, maintaining municipal roads, licencing municipal public transport, street trading, overseeing standards of abattoirs, fresh food markets, parks and recreation facilities, libraries, and other facilities.

JUDICIARY:

The Judiciary is independent of government because it interprets the Law, it does not make or implement it. It upholds and enforces the Constitution and Laws of the country.

EXECUTIVE: Local Council

The Mayor and either the Executive Council (Elected by the Council) or Mayoral Committee (Appointed by the Mayor), are responsible for coordinating and overseeing the work of the Municipality.

- The Administrative arm of Local Government are the municipalities headed by the municipal manager and other staff, who must implement the plans of the Local Council.

What does this mean for Water Governance at a Local Level?

- Municipalities are responsible for providing water and sanitation services - potable water supply, domestic waste water and sewage disposal systems.
- Municipalities, as “Water Service Authorities”, are responsible for ensuring access to water services, while the actual provision of water services is the responsibility of the Water Service Authority or a sub-contractor.
- Municipalities get the money and support for water delivery from water tariffs and through legislated funds: Municipal Infrastructure Grant, Local Government Equitable Share Grant, and the Local Government Municipal Finance Management Act.

THE LAWS THAT GOVERN OUR WATER



The laws listed below sound really good on paper but experience has shown that the only way to ensure our rights are realised is to:

- (1) know what they are;
- (2) monitor their enforcement;
- (3) hold those who are responsible for implementing these rights accountable.

REPUBLIC OF SOUTH AFRICA CONSTITUTION (ACT 108 OF 1996)

Our Constitution is the supreme law of the land and establishes the human right to access adequate and sustainable water supply and services. It says that the state must work towards ensuring we have these rights. The laws, policies and plans developed in the Legislature in all three spheres - national, provincial and local government - must abide by the principles of equal benefit of the law, equal access to a healthy environment and to the just administration these rights - ensuring no unequal benefit to the provision of water and sanitation.

SECTION 27 states:

27. (1) Everyone has the right to have access to:

- (a) health care services, including reproductive health care;
- (b) sufficient food and water; and
- (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.¹

WATER LAWS

There are a number of Acts – laws – and policies that govern the management and distribution of water in our country. These are the laws that give the National Government the responsibility to look after and manage fresh water resources, and give municipalities the role of providing water and sanitation services. Below are the main water laws:

💧 National Water Policy of 1997

- This policy redefined ownership and allocation of water as under the Apartheid Government the Water Act of 1956 restricted the majority of South Africans' access to water, and made a distinction between private and public water.
- The National Water Policy changed this by declaring that all water irrespective of where it is in the hydrological cycle is public water, and that the National Government acts as a public trustee of water.

💧 National Water Act of 1998 (Act 36 Of 1998)

- The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account:
 - o promoting equitable access to water;
 - o redressing the results of past racial and gender discrimination;
 - o promoting the efficient, sustainable and beneficial use of water in the public interest;
 - o facilitating social and economic development; protecting aquatic and associated ecosystems and their biological diversity.
- The Act provides for cost recovery on services rendered by the National Department of Water and Sanitation to water users.
- Instituted on two pillars:² sustainability and equity, it required the establishment of a National Water Resource Strategy (NWRS) to set out a national framework for managing water resources.



💧 Amendments to this Act

- The National Water Amendment Act No. 45 of 1999
- The Water Amendment Act, No. 27 of 2014

💧 Water Service Act of 1997 (Act 108 of 1997)

- This Act ensures the right of access to basic water supply and sanitation
- It provides the regulatory framework and establishment of water services institutions such as water boards and water service providers.
- It outlines the authority of local governments – municipalities, to deliver water and sanitation services, and the national and provincial governments' role is to support their capacity to do this.

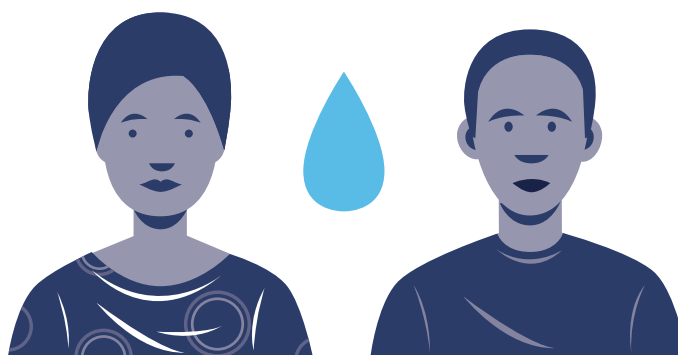
💧 Proposed amendments to these Acts

- The Water and Sanitation Bill has been open for public comment and is proposing, amongst other things, to merge the National Water Act and the Water Services Act.
- EMG has made submission on this Bill, please contact us for more information.
- Provincial and local governments have their own laws and policies relating to water management and services, but they all have to correspond with the Constitution.
- A by-law is a law that is passed by the Council of a municipality to regulate the affairs and the services it provides within its area of jurisdiction.
- You will need to check with your local municipality for details on by-laws relating to water and sanitation in your area.

¹ Constitution of The Republic of South Africa, 1996

² National Water Policies and Water Services at the extremes: What Challenges must be faced in bridging the gap? Learning from the South Africa Experience Fidelis A. FOLIFAC

CIVIL SOCIETY AND PUBLIC PARTICIPATION IN WATER GOVERNANCE



Civil society plays a critical role in protecting our water resources – oceans, dams, wetlands and rivers - and our right to safe clean water for basic human needs like drinking, cooking, washing, sanitation, food growing, economic livelihood activities and recreation. Government has a legal obligation in this sector by the National Environmental Management Act, to include civil society in environmental decision making process, including the management of water.

CIVIL SOCIETY IS :

You • Anyone who wants to protect water in the public interest – and does something about it - water activists • Community food gardeners • Small scale farmers • Traditional / spiritual healers • Organised workers • Street committees • Environment clubs • Non-governmental organisations • Academics • networks working for water and environmental justice – [like the South African Water Caucus](#)

WHAT CAN WE DO AS WATER ACTIVISTS WHEN OUR RIGHTS TO ACCESS WATER AND DECENT SANITATION ARE VIOLATED?



Legislature

Because this is where laws are passed and where delivery is supposed to be monitored it's important to keep an eye on laws - Bills - that are being developed and find out about how and where you can make submissions.

- Participate whenever possible in forums designed for public participation like Portfolio Committees, attend open sessions of National, Provincial and Local Municipalities.
- Protest against bills, laws and issues you do not agree with.
- Write letters and try to meet local, provincial and even national representatives, run campaigns and organise protests if officials are not listening.

Executive

Cabinet, the Provincial Executive and Local Council are responsible for implementation through the administration.

- At this level you need to know the laws, policies and plans of government, know what they promise to do so you know when and how they are breaking their promises.
- Watch and keep records of everything they do not do, participate wherever possible in public forums debates etc., write letters, run campaigns and protest.

Judiciary

Going to Court and using litigation is expensive and time consuming unless you are able to get that is free (Pro-Bono) legal assistance.

- Sometimes it is the only way to hold government to account.
- The Judiciary in the form of Courts, are responsible for enforcing the law so if government is not fulfilling its obligations, this can sometimes be an option to follow.

It's also important to look at the structure of Government as a whole:

- Does the system work for all groups of people in South Africa, where they can easily participate in governing processes?
- Does it make sense that government is structured the way it is or are there other ways of governing a society that could be more democratic and give people more power?

See EMG's Fact Sheet: [Why does the Water Sector Need Civil Society?](#)

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ACTION 24

Active Citizens for Responsive Legislatures



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