



Partners for Water and Sanitation

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**South Africa: Review of Local and Provincial
Government systems – PAWS contribution to the
response**

Submitted by:

**Martin Griffiths, Sue Nowak, Rodney Anderson, Andrew
Southall, David Sutherland and Amina Ismail**

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Partners for Water and Sanitation (PAWS) is a non-profit organisation that offers UK expertise and advice to devise appropriate in-country solutions to challenges in the water and sanitation sector. Support is provided for free by volunteers from at least 44 PAWS partner organisations and individuals, including water companies, government agencies, non-government organisations and independent consultants.

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South Africa: Review of Local and Provincial Government systems –

PAWS contribution to the response.

1 Introduction

The Department of Provincial and Local Government for South Africa (dplg) published a consultation paper entitled '*Policy Process on the System of Provincial and Local Government, Background: Policy questions, process and participation*' in 2008.

Partners for Water and Sanitation (PAWS) are pleased to assist with the request for input into this consultation. The PAWS partners have significant experience in policy and process in government and associated agencies in Europe and Africa.

We have been advised that the comments made will be integrated into a formal response by the Department of Water Affairs and Forestry (DWAF) to the Department of Provincial and Local Government (dplg). Our comments are based on our experience of undertaking similar policy changes in Europe, and supplemented with country-specific inputs from the PAWS South Africa office. In this way comments make generic points known to be critical to the smooth running of administrations influencing the provision of water and sewage services and ensuring environmental protection. We hope that if these points are taken up we will be able to assist in developing more specific policy and processes to improve the water and environmental capability at all levels to allow the key outcomes to be delivered for the people of South Africa.

2 Response to the consultation

2.1 Overview

The consultation is well crafted and we are impressed with its readability and the way that it sets out the processes and questions. It should enable engagement of a wide range of organisations and the public. The co-ordinated and complementary working of all levels of government is crucial to the timely and efficient development of essential water and environmental policy. A close and effective relationship with each tier of government must be developed by water and environmental specialists who can assist in transferring knowledge and building capacity.

2.2 Clarity of roles

The consultation sets out the broad responsibilities and scope of government at each level. This three tier system is common across the world, with differing national, provincial or local emphases in different countries. This can work well provided that there is clarity of roles and a will for individual departments and officers to work together to meet essential outcomes for society.

The municipal water and sanitation function, for instance, has to be performed by water service authorities. However, the National Health Act 2003 (Act 61 of 2003) includes water quality monitoring and environmental pollution control in its definition of municipal health. Since municipal health is, in terms of the Municipal Structures Act 1998 (Act 117 of 1998), a district municipality function, these areas of competence will fall within the duties of municipal or environmental health officers. Where a district municipality has also been authorised as a water service authority, there will be overlaps in its water and sanitation, and municipal health functions. This can be resolved with an internal agreement on differentiation of responsibilities between the two departments. However, where a local municipality has been authorised as a water service authority, there is no guidance on what aspects of water quality monitoring and pollution control are to be retained by the district municipal health function and what is the responsibility of the local municipality water and sanitation function. Clarity must be provided for local and district municipalities where there is uncertainty in the existing policy and legal framework. For a more detailed discussion on the overlaps and grey areas between the municipal functions as allocated by the Constitution of South Africa 1996 (Act 108 of 1996) Schedule 4 Part B and Schedule 5 Part B and the municipal health function as defined in the National Health Act, refer to Cameron, R. and Ismail, A.O. (2006).

It is important that roles are complementary rather than competitive. The decision making process needs to be transparent and easily understood, with clear accountabilities and responsibility for specific issues. For example, with the provision of infrastructure in order to meet agreed standards of water supply, the roles of the three tiers in the decision making process must be clear. We would recommend drawing up a proposed framework and then considering in detail the pertinent issues raised. A number of case studies could then be used to test the proposed system and to write clear guidance to inform the process. These could include the development and introduction of permitting systems, demand management and water resource allocation. Additional regulation or formal guidance may be necessary to facilitate action.

By testing the system in this way procedures can be developed and organisations and individuals will learn to work together. It will facilitate the development and sharing of best practice in between and across spheres of government. Twinning or buddying to share skills and experiences at the local level, promote lessons learnt and mitigate risks should be encouraged. However, when sharing best practice, adequate capacity must be in place to ensure uptake and institutional learning. More sustainable capacity building will be achieved if appropriate staff are available to be trained, relevant programmes and projects have been planned, and the necessary structures and systems are in place to effect the required actions.

2.3 Strategic Plans

With regard to provision of water infrastructure and environmental protection it is essential to develop a strategic plan and for all levels of government to agree on implementation details, including timetables and a clear indication of who will do what.

The need for national strategic plans for the sustainable management of water resources, both quantity and quality, is clear and plans have been developed. Integrating these plans, as is currently being undertaken with the Strategic Framework for Water for Sustainable Growth and Development initiative, in an efficient and effective way will be essential. Necessary changes to government arrangements and clarity at all levels will be needed to ensure that they are implemented in a consistent and equitable way.

Some water services development plans are already in place and are being implemented with variable success across the country. The implementation of these plans should be reviewed, taking into account the three tiers of government to gain a clear understanding of roles, responsibilities and delivery capability. The implementation of the national strategic plans needs to be adjusted in the light of what is achievable and developed in consultation with citizens and business stakeholders. Where plans are aspirational this should be clear and plans should be amended in the light of experience. Plans should be framed in such a way that it is possible to assess progress on achieving the strategy

2.4 Phased implementation

The consultation is ambitious and sets out a vision for the future governance of South Africa. To achieve all of these objectives in a short time frame will be difficult and carry considerable risk. DWAF would be keen to work with government departments at all levels to reduce risks and to develop a phased implementation plan to achieve agreed outcomes and not to jeopardise existing services or protection. The phasing would include setting up key departments and interfaces at each level, and ensuring that appropriate competence and training is available to allow decision making and technical development to take place.

2.5 Competence at each level

Governance frameworks such as these can only operate if there is sufficient competence at each level. Competences will be different at each level, but are equally important, and must be complementary to provide the overall level of competence needed to undertake essential tasks.

A competency framework needs to be agreed for each tier of government. This must be communicated in plain language so that it is clear to all employees within each tier how they can demonstrate the required competencies, and what is expected of them more generally. There are core competencies that are needed across all tiers of Government, e.g., leadership, stakeholder engagement, delivering results, etc. Others will be more specific and technical in nature.

A competency framework can contribute to objective setting for employees each year, and for measuring achievements. Any assessment system needs to be kept simple and linked to the core duties necessary to deliver the outcomes. With regard to individual objectives these need to cover a range of contributions including softer indicators such as contribution to team performance, personal development and attitude, as well as specific technical contributions.

2.6 Capacity Building

Competences are closely linked to capacity building and time and resources must be set aside to allow this to be developed in a structured and prioritised way. Responsibilities can only be assumed once competence is in place in the organisation and managers are sure that they can deliver the tasks and services required.

A high level of specialist management and technical competence is required to set up and manage the provision of water and sewerage systems, allocate resources and protect the environment. There are very few areas of Provincial or Local Government competencies that currently hold sufficient expertise to drive this forward. Much of the necessary technical knowledge lies within DWAF which should be asked to show leadership and assist in developing the necessary capacity. Already, the two departments are collaborating well in provinces like Gauteng on issues of infrastructure development and maintenance; this co-operation can be extended to address other common priorities such as capacity building.

Support for municipalities can be provided in the provincial and district municipality spheres. The Local Government Municipal Systems Act (Act 32 of 2000) provides for provinces to assist municipalities with its integrated development planning. This should ideally include an assessment of its capacity to deliver on the plan. Provincial dplg may consequently be best placed to co-ordinate capacity building. Section 83(3)(c) of the Municipal Structures Act (Act 117 of 1998) requires district municipalities to capacitate local municipalities where the latter are unable to perform their functions. Provincial authorities and district municipalities will have to be capacitated themselves to undertake these responsibilities.

It is important for each level to be able to communicate well and understand sufficient technical detail to commission technical or scientific work between government levels, or with external agents or consultants. This 'intelligent client' role must be developed where necessary to ensure that they know what to ask for and what to look out for when proposals are submitted, how to control the work and how to get the result that they want. It is essential to ensure that clear communication takes place over general and technical issues. Ongoing and frequent dialogue will be important to develop these critical interfaces. Incentives must also be provided for government officials to take up opportunities for professional development, including membership and engagement in professional bodies. These options must be identified and included in municipal workplace skills development plans.

It may not be possible or necessary to have the same competence and capability at all levels or across all provincial or local government. In many cases, especially in areas of technical expertise, critical mass is important to make progress. It is important to recognise that one size does not fit all and that some delivery can best be achieved through collaboration of neighbouring municipalities rather than all replicating technical structures. Shared centres of excellence or shared service centres should be considered.

Shared service centres providing a number of capabilities might be considered. These are widely used in the private sector, but are less developed in the public sector, although their use may be even more beneficial. Shared services providing IT infrastructure, laboratory services, central permitting, or other technical services should be considered and are widely used. Other less technical services such as finance, billing and payroll are extensively used by UK agencies and government and may provide cost savings and other efficiencies, especially if skills are short.

With regard to the water and environment sector, PAWS programme partners will be pleased to work with DWAF and provincial and local government to ensure key skills and competencies are available.

2.7 Appropriate and adequate funding

The proposals can only work if funding is available and sufficient certainty about future funding is in place. Whenever possible we would recommend a long term approach to allocation of funds to allow sustainable development and consolidation of each tier. However, we recognise that the realities of public sector finance tend to mitigate against such long term commitments. Within these constraints we would recommend that ten year provisional allocations with five year reviews will be advantageous in order to make progress with water infrastructure and similar services.

The flow of funds from central, provincial and local government should be as clear as possible. It would be logical for this to flow from properly costed strategic plans with allocations to allow each level of government to take their part. Initial allocations may be refined following the development of detailed business plans aimed at delivering agreed outcomes. As certainty increases, budgets can be allocated accordingly. Reviews of budgets would be on the delivery of infrastructure and service, and on key societal and environmental indicators.

Funding can come from a number of sources and robust funding models must be investigated to support the proposed government structure and its activity. Some municipalities must serve a large proportion of indigent households unable to pay for water and sanitation services. The Equitable Share needs to be revised so that increased costs of providing infrastructure in rural areas are factored in. The Municipal Infrastructure Grant, although targeted to provide infrastructure for previously disadvantaged communities, does not allow for maintenance of new or old infrastructure. This bears dire consequences for sustainability of water and sanitation service delivery.

Although a Polluter Pays principle is in place it would require that DWAF prosecute itself or its municipal counterparts where there is non-compliance. DWAF is still an implementer of projects and in order to remove any conflict of interest the regulatory function must be separated from the implementation function. DWAF has accordingly prepared the South African National Water Resources Infrastructure Agency Limited Bill to enable it to transfer its implementation role but retain its regulator role. Further, as discussed in the next section, regulation cannot be implemented without an element of support. The Gauteng dplg and DWAF are leading by example with their joint assessment of wastewater treatment works in the province, with a view to identify where municipalities require assistance to comply and where penalties must be imposed.

2.8 Regulation

To achieve outcomes a clear regulatory framework is essential for government, industry and the public. Regulation should be proportionate, risk based and transparent. It can be carried out at the appropriate government level to optimise outcomes. Regulatory accountability must be clear with permits, such as the DWAF Water Use Licence Authorisations, issued to provide the appropriate level of protection. Monitoring and enforcement must take place and results placed in the public domain.

Independence in regulation is essential and PAWS partners have significant knowledge and expertise in this area of work, based on undertaking a broad range of regulatory activities in the UK to meet environmental needs. The UK Environment Agency for England and Wales have previously worked with the Department of Environmental Affairs and Tourism to capacitate the Environment Management Inspectors (EMIs) or "Green Scorpions". Consideration should be given to extending or applying this initiative to the new government arrangements.

Regulatory capabilities tend to be generic in nature and require technical, regulatory and enforcement skills. It is essential to develop this capability if we are to achieve real outcomes for society. The enforcement of regulations is essential if any regulatory body is to have any influence, but this should include both penalties and incentives.

2.9 Cross Cutting Issues

Many of the issues of modern society are complex or cross cutting. Water provides key examples where public health is the fundamental outcome from provision of clean drinking water and sewage disposal. Environmental issues are also interrelated, impacting on public health and well being. In addition, environmental issues cross political boundaries and the concepts of integrated river basin management, or catchment management as it is referred to in South Africa, provide opportunities to optimise this.

Conversely, many government departments tend to be focussed at single issues and may not provide adequate context or sensitivity to other related problems. Local government has political boundaries that may or may not reflect the geography of the natural environment.

These issues are not the easiest to solve but must be taken into account in the development of the governance structure. There are a number of good examples of best practice around the world that work to overcome these issues.

PAWS would be happy to support the development of workable and progressive policy and processes, to optimise capability and working relationships.

2.10 Outcome based targets

Setting targets is important to give each level of government a clear sense of direction and to be able to measure progress. Targets should be outcome based and reflect actions that each level can influence. The target system needs to be incremental as there is no point in setting targets that are unattainable by the worst performers. Meeting these targets and out-performance needs to be linked to positive reinforcement, for example additional funding to be spent at the discretion of the municipality to provide access to specialist advice or resources for the area.

Setting targets that drive correct behaviour and achieve agreed outcomes is particularly difficult. Collecting, interpreting and providing management information from organisations can be complex and models such as corporate scorecards have been developed for all levels of UK government and its agents. Scorecards are in place in all spheres of the South African governance system; however targets are often blindly pursued at the expense of compromising sustainability. For example, black economic empowerment targets are met with little attention given to increasing appointees' competency levels. Also, service delivery targets to extend services to all citizens have been attained with almost no consideration for infrastructure maintenance and the consequent deterioration in water quality.

The adoption of effective and proportionate management systems will be important. With regard to water and sewerage systems core parameters are relatively straightforward to set and monitor and will be critical to assess the effectiveness of the service provided.

PAWS would be happy to assist in the development of specific targets, within our areas of expertise.

2.11 Monitoring

Delivery of policy must be monitored to ensure that the intended effects are taking place, and reviewed where they seem to be falling short. National Government should agree a set of indicators with municipalities. These should not be overly onerous or numerous and should add value to municipalities through allowing them to benchmark themselves against comparable types of area (size, rural/urban split, and socio economic complexion). As far as possible they should mirror information that is already collected for other regulatory purposes, for example drinking water quality. National Government must supply feedback to municipalities and also use the information to help refine policies and their implementation on the ground.

Monitoring programmes should seek to report on both processes (how and how effectively policy is implemented) and outcomes (what the achievements are and whether they meet targets).

Real outcomes in society (e.g. a reduction in water borne disease) or in the environment (e.g. improvement in water quality) must be monitored and integrated into the overall information base, such as the Government Wide Monitoring and Evaluation System. In many cases these indicators may be monitored by a number of government bodies or agencies and it is important to ensure that data is available for all in a format that allows assimilation and interpretation to form a wider picture.

2.12 Development Planning

The sustainable development of cities, towns and villages is critical for public housing, businesses and wealth creation. Urban and rural development plans must be closely aligned with the provision of water and sewerage services and environmental protection, with strong linkages between processes developed. There are a number of best practice models available for achieving this balance and these should be integrated as appropriate with the emerging structures arising from this consultation.

2.13 Water Demand Management

There is a pressing case to ensure that Water Demand Management is considered from a national perspective, working towards national methodologies with a specific best practice focus on different situations.

Development of these methods could be given a priority status and used to test the model at each level of government, using the expertise in DWAF to establish policy and process within the new structures. The developing process could be used to develop training and competence to allow the demand management process to operate effectively.

2.14 Benefit Assessment

The developing model for government must take into account the benefits to society of good governance, good environment and good water infrastructure. Too often the costs are easier to measure than the benefits to society. For this reason we would suggest a proportionate assessment process for all key decision making. This may be in the form of policy impact assessments or environmental impact assessments.

A number of models exist and PAWS partners would be pleased to have the opportunity to develop options.

2.15 Transparency

Transparency and public accountability is essential at all levels of government. In many respects this follows from clarity of role and clear decision making. All policy and decision documents should be placed in the public domain. State of the Environment reports, monitoring information, performance statistics and permits must be freely available in a comprehensible form.

The tendering process for contracts and services needs to be a matter of public record. Municipalities should receive support from national government to ensure that they are equipped to secure contracts on the basis of best value, rather than least cost. There needs to be clear guidance which has been tested with users.

Councillors need to be accountable to local people and should declare and avoid personal conflicts of interest. They must declare where there are personal and business conflicts, both on assuming office and during their period of office. Penalties for withholding information should be loss of office.

2.16 Public engagement

All opportunities to engage the public in the decision making process must be taken. Considerable strides have already been made in some sectors and some best practice examples exist. Engagement provides the partnership and ownership that is especially important in water service provision and environmental protection. For this to be most effective, time must be spent with communities to ensure that an appropriate level of understanding is in place, to allow balanced and constructive debate. This needs specific competencies and skills at all levels of government, for which social sciences and communications training will be required where necessary.

Public engagement requires significant commitment of time and resources. Unless Government structures at all tiers working with society are realistic about this from the outset, at best there will be disappointment but at worst the whole venture will be counter-productive. It is essential to be:

- (a) Clear about what you want out of the exercise; and
- (b) Prepared to devote the necessary resources and time.

PAWS partners have significant experience in public participation in SA, including using innovative methods such as action learning to break down traditional and cultural barriers so that stakeholders can take joint ownership of catchment management processes. PAWS partners have also worked in Europe on the Water Framework Directive and in fisheries management. This involved innovative styles of engagement among the people affected, many of who had previously felt disenfranchised.

Some excellent practice in engaging local communities through the system of ward committees, as eyes and ears of the local community, is already in place. Further involvement might be achieved through devolving some elements of public spend to the local level, particularly for choices about community support schemes, neighbourhood improvements etc. Training opportunities in return for public participation might be successful as an inducement to become involved. Further consideration must be given to nurturing and engaging the civil society sector, such as churches, charities and trade unions on issues.

The principle of democratic governance has been entrenched in law and statutory processes and structures have been put in place. The public, however, appear to be unaware of these mechanisms and do not fully utilise them. Public participation institutions must therefore have the responsibility of making the public aware of the available procedures and structures for public input. Public participation mechanisms themselves will benefit greatly from support and strengthening. Ward committees in particular must be capacitated in administrative and governance systems to effectively and efficiently fulfil their role as a key interface with civil society. Ward committees must also formally engage with relevant decision making structures, at least in local government, so that stakeholder voices are heard and feedback provided.

PAWS would be pleased to continue the work supporting public participation, to share experience with municipalities and government departments.

2.17 Local Government Association

Local governments, by their constitution and nature are dispersed and often geographically remote. It is often difficult for them to develop a common voice or share expertise.

In the UK a strong Local Government Association, inclusive of the County Councils, assists in this process. This is a national body with a relatively small core executive team with offices near to Whitehall, enabling it to interact on a day to day level with central government departments. It provides position papers and national negotiation capability on behalf of its members, which include most of the Local Authorities and County Councils. It usually uses experts from within the membership and provides development opportunities for individuals who want national experience. It is funded from contributions from its members.

It is a vital requirement for national government to develop policies that will work on the ground. There needs to be a formal engagement process by central government with those whose job it is to implement national policies, during the development stage, to ensure that they can be delivered on the ground. Gathering the views of municipalities is best done through an organisation that represents them. A collective view can be more powerfully fed back to central Government.

2.18 Need for legislative backing and accountability

A number of the concepts above require a level of certainty and precision in order for them to work. Working together for a common end is necessary, but a clear statutory basis for action will be essential. There will be conflict over water allocation, charging systems and regulatory action. Some will need testing in the courts; but a clear and unambiguous legal framework will help.

References

Cameron, R. and Ismail, A.O. (2006). Environmental Health in the West Coast: The Decentralisation Quandary. Journal of Public Administration, Vol 41 no 2 June 2006. South African Association of Public Administration and Management