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To: Pedro Arrojo-Agudo, UN Special Rapporteur on the human rights to water and sanitation
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Call for Input for Non-State Actors - Democratic water governance under a human rights-based approach

1. Introduction

The background and objectives set out in [call for inputs from non-state actors](#) states as follows.

Background

In the context of the United Nations Water Conference 2026 conveyed by the United Nations General Assembly ([resolution A/RES/77/334](#)), and following the priorities established by the Special Rapporteur in his first report ([A/HRC/48/50](#)) in which he identified democratic water governance as a key factor for the effective realization of the human rights to safe drinking water and sanitation, the Special Rapporteur aims to focus his thematic reports in 2025 and 2026 on clarifying and developing the necessary measures to advance democratic water governance under a sustainable, human rights-based approach, and at different scales.

For that purpose, the Special Rapporteur will focus his 2025 report to the General Assembly on the challenges of water management and governance on the ground, attending the local, sub-regional, and national levels. His report in 2026 will then focus on global water governance, the challenges to be faced and reforms to be promoted at the United Nations.

Non-state actors, including water operators, civil society organizations (global, regional, and local), community-based organizations, Indigenous Peoples, peasants, women, youth, academia, individuals, and others, are asked to kindly contribute to this Call for Input.

Objectives

- Defining democratic water governance under a sustainable human rights-based approach and its key elements.
- Clarifying objectives, criteria, strategies, and management tools necessary for democratic water governance.
- Addressing challenges to democratic water governance, in particular those in relation to the commodification and financialization of water, the sustainable management of freshwater ecosystems, the management of water and sanitation services, and water rights.



- Compiling good practices at different levels (local, sub-regional, national and in transboundary basins) that promote democratic water governance and illustrate its principles.
- Providing recommendations to States, at national regional and local levels, to enhance democratic water governance under a sustainable human rights-based approach.

2. Our submission

We welcome the opportunity to submit comments on the key questions and inputs sought in the Call for Input for Non-State Actors - Democratic water governance under a human rights-based approach.

A. Actors

- *Please identify your organisation and briefly describe the type of activities that your organisation develops.*

The [Equality Collective](#) is a community-law organisation based in the Nqileni Village on the Wild Coast in the Amathole district of the Eastern Cape province in South Africa. The Wild Coast was formerly the Transkei Bantustan, one of 10 [homelands](#), each established for a specific 'tribe' or ethnic group, by the Apartheid Government, to remove Black people from the political system. The Transkei and other so-called homelands only became part of South Africa again after the first democratic elections were held in 1994.

Established in response to the lived experience of rural communities with no direct access to social justice organisations, we have been working—since 2020— in collaboration with community and traditional leaders, researchers, like-minded organisations, and government, to build collaboration and to support evidence-informed advocacy campaigns to strengthen democratic governance, community-municipal partnership and socio-economic equality.

B. Management of freshwater ecosystems

- *In the country in which your organisation is based, or works in, do state laws regulate surface water and groundwater as public domain goods, or do property rights take precedence over certain parts of them? When public institutions are responsible for managing ecosystems: a) Do they manage each ecosystem as a whole (for example a river basin or an aquifer)? b) Are there beneficiary and people participation bodies or any other form of public participation in the planning and management of these ecosystems? If so, which actors are involved? What kind of participation and what impacts does it have? In practice, do participation mechanisms work effectively, and are their inputs taken into account and implemented?*

The [Constitution of the Republic of South Africa](#) took effect on 4 February 1997, a few years after our first democratic elections in April 1994. National policies and legislation were subsequently drafted and promulgated to give effect to the Constitution in a wave of comprehensive legal reform that gave rise to democratic governance in all state institutions, plans, policies, regulations, financing mechanisms, strategies and practices.

Two key water laws were developed: The [National Water Act](#) (36 of 1998), which set out the provisions governing water resources protection, conservation, management and control of water resources (a national government responsibility), and the [Water Services Act](#) (108 of 1997), which set out the provisions relevant to the governance and delivery of water services to domestic consumers (a local government responsibility).

Prior to 1998, the 1956 National Water Act applied riparian (private property ownership) rights to water. Given that only white people were able to own land, water rights were racially defined. In a radical departure, the National Water Act (NWA) recognised water as a public good, a natural resource that belongs to all people in South Africa, that must be equitably distributed in a manner that redresses systemic race and gender discrimination.

In terms of the NWA, water is first allocated to the Reserve (for ecological health and basic human needs) before any other water use in the National Water Resources Strategy.

The NWA made provision to recognise historical allocations by including a legacy clause¹ to protect water rights that were authorised under any law in force before the NWA came into effect. Their retention was intended as a temporary measure to smooth the transition and avoid disrupting economic activities reliant on large volumes of water, without immediately requiring users to apply for water use licences. Ultimately the NWA envisaged the conversion of these old-order water rights to temporary, conditional entitlements to use water in the form of water use licences. However, many of these old order rights remain in place to today. The process of verifying these rights and converting them to water use licences has proven technically, administratively and legally challenging.

- *Are there water user communities or associations that have powers for the community or collective management of surface or groundwater. Such as irrigation communities, community-based institutions in rural areas or among Indigenous Peoples?*

Unlike the 1956 apartheid-era Act that adopted an authoritarian approach, the NWA, in line with integrated water resources management (IWRM) principles, made provision for the establishment of Catchment Management Agencies and Water User Associations (WUAs) as mechanisms for participatory management of water resources at the local level.

Established by approval of the Minister of the Department of Water and Sanitation (the public trustee of the nation's water resources), WUAs are intended to operate as "cooperative

¹ Part 3: Existing lawful uses.

associations of individual water users who wish to undertake water-related activities at a localised scale for their mutual benefit”².

The WUA model was designed to broaden the range of interests served by these institutions beyond predominantly commercial farmers who were the primary beneficiaries of old-order Irrigation Boards. These Irrigation Boards were required to transform into WUAs, although the process remains incomplete, and some Irrigation Boards still exist.

In January 2024, the Department of Water and Sanitation (DWS) [proposed amendments](#) to the NWA to improve the diversity of WUA membership and to introduce progressive measures to ensure that WUAs align with the developmental and transformational objectives of the NWA and the Constitution, by expanding WUA operational areas beyond irrigation schemes and introducing more equitable and inclusive approaches to voting and composition of management committees.

Expanding WUA areas of operation beyond the boundaries of the proclaimed irrigation districts along natural hydrological boundaries (e.g. catchments) would allow the management units to be determined by the natural flow of water rather than administrative boundaries. Membership could be expanded accordingly to include all authorised water users, such as municipalities, in the broader area of operation. This provides the opportunity to move beyond the historical focus on irrigation infrastructure and approach managing water as a resource shared across sectors.

- *Do legislation or policies recognise the rights of nature in any instance (e.g. legal personhood of a river to ensure its protection)? If so, how do you assess this recognition?*

The NWA ensures that water for the Reserve is first set aside before any other water use. The Reserve comprises a) water required for the ecological health of water resources, called “the Ecological Reserve” and b) The Basic Human Needs Reserve (BHNR), which sets aside sufficient water to meet everyone’s basic needs for water for drinking, food preparation and personal hygiene.

Although the NWA does not explicitly mention water for production, to water crops or livestock for example, the National Water Resources Strategy (NWRS) sets out the prioritisation of water allocation as follows: i) The Reserve (basic human needs + ecological reserve); ii) water for international agreements; iii) water for poverty eradication (including racial and gender inequality); iv) water for strategic purposes and v) water for economic development. [Research](#) recommends a redefinition of the BHNR to address water to realise the constitutional right to food. By elevating micro-scale water uses defined as Schedule 1 use in the NWA³, the rights of communities using water for food and other small-and-micro-scale subsistence will be addressed.

² Preamble to Chapter 8.

³ Chapter 4, Part 1.

The NWA contains three sets of Resource Directed Measures to protect aquatic ecosystems to secure ecologically sustainable development and use of water resources:

1. A system for classifying water resources (rivers, springs, wetlands, lakes, surface water, estuaries, and aquifers) into management classes, which in turn determine the balance between the use and protection of individual water resources. The system uses social, economic, and environmental criteria to identify which resources need protecting and which will be heavily used to accommodate social and economic needs.
2. The Ecological Reserve, which prescribes the minimum amount of water required to maintain the functioning of aquatic ecosystems, will vary according to the management class of the resource.
3. Associated with the management class of a water resource are a set of Resource Quality Objectives, which set out the quantity (including variability over time) and quality of water, assurance of instream flow, and character and condition of instream and riparian habitat and biota.

The Ecological Reserve compels that sufficient water is set aside for the sustained functioning of the ecosystems that comprise the resource base, before any other use. A complex set of methods for determining present ecological state, desired future state and recommended flow requirements is applied to determine the Resource Directed Measures.

C. Water rights and water tenure

- *If available waters and aquatic ecosystems are in the public domain, what is the duration of water permits? What conditions must be met for permit renewal or review? Do these usage rights establish a maximum of allowable use that varies according to availability, or are the rights fixed to use specific volumes of water? Does the legislation allow the transfer of water permits including leasing, trading, selling, temporarily transferring, or bequeathing them to a successor upon death? In practice, are there any relevant irregularities that you would like to inform about?*

Water permits, in the form of water use licences, are temporary entitlements to use water for a maximum of 40 years. A licence may only be reviewed at the intervals stipulated in the licence. On reviewing a licence, the regulator may amend any condition of the licence, other than the period, if (a) it is necessary or desirable to prevent deterioration or further deterioration of the quality of the water resource; (b) there is insufficient water in the water resource to accommodate all authorised water uses after allowing for the Reserve and international obligations; or (c) it is necessary or desirable to accommodate demands brought about by changes in socio-economic circumstances, and it is in the public interest to meet those demands. Such amendments may only be made if the conditions of other licences for similar water use from the same water resource in the same vicinity have also been amended in an equitable manner through a general review process.

The NWA currently permits the temporary and permanent transfer of water use authorisations. However, since 1998, many instances of water trading have emerged that have undesirable unintended consequences. One such consequence is that trading allows water allocation to take place without the consent of the Minister, rather than unused water being returned to the Minister for her, in her capacity as custodian, to make the decision about where this water can best be allocated. A further consequence is that water, because it is a scarce good, becomes commodified, and water traders use it to make profit, to the detriment of users.

The DWS therefore adopted a [policy position](#) in 2014 that there shall be no form of temporary or permanent trading between authorised water users, requiring any holder of an entitlement no longer using water to surrender this use to the public trust. The position provided that the Minister's discretion to approve water use will be guided by the needs and requirements of the transformation and development objectives of the state. This position strengthened the 'use-it or lose-it' principle.

The policy position is included but not yet legislated in the NWA amendments and water trading remains permissible. Draft amendments to the NWA have been proposed that seek to prohibit only permanent trading i.e. selling water rights to someone else. They do not prohibit the temporary transfer for operational reasons, which is a common occurrence in agriculture. These amendments have yet to be considered by Parliament.

- *If any, what are the initiatives to promote and protect water rights among people living in impoverished rural areas? How are they implemented in practice?*

Although the NWA does not include explicitly mention water for production, to water crops or livestock for example, the National Water Resources Strategy (NWRS) sets out the prioritisation of water allocation as follows: i) The Reserve (basic human needs + ecological reserve); ii) water for international agreements; iii) water for poverty eradication (including racial and gender inequality); iv) water for strategic purposes and v) water for economic development. [Research](#) recommends a redefinition of the BHNR to address water to realise the constitutional right to food. By elevating micro-scale water uses defined as Schedule 1 use in the NWA⁴, the rights of communities using water for food and other small-and-micro-scale subsistence will be addressed.

D. Water and sanitation services

- *In the context in which your organisation is based on, or works in, who is responsible for managing water and sanitation services and the owning and overseeing of the associated infrastructure? Are these responsibilities municipal, regional or national? Do private companies own any of the infrastructure and services? Are there management concession contracts to private or joint ventures? If so, what is their duration and what are the main characteristics of these contracts?*

⁴ Chapter 4, Part 1.

National legislation such as the Water Services Act, the Municipal Systems Act, the Municipal Structures Act and others, give effect to [Schedule 4B of the Constitution](#), in which “water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems” are set out as local government matters. The provision of water and sanitation services to all consumers living in their jurisdiction is the responsibility of metropolitan and district municipalities, except where local municipalities are authorised with the powers and functions for water services. There are 144 (out of 257 total) municipalities with the authority for water services, called Water Services Authorities.

Because the Constitution provides for three “distinctive, interdependent and interrelated”⁵ spheres of government (national, provincial and local), oversight of local government Water Services Authorities is through a co-operative governance framework that enjoins organs of state to “cooperate with one another in mutual trust and good faith” through the Department of Co-operative Governance (CoGTA), National Treasury and the local government association (SALGA). The [Intergovernmental Relations Framework \(IGR\) Act](#) establishes forums such as the President’s Coordinating Council and Minister and Members of Executive Councils (MINMEC) to facilitate coordination.

Section 154 of the Constitution further requires national and provincial governments to “support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.” Various capacity-building and support programmes have been implemented through the National Treasury, CoGTA and SALGA in the 25 years since democratic local government was established. The efficacy of these programmes depends on several factors, including the willingness of municipalities to receive support.

In the face of a struggling economy and resource limitations, several Presidential interventions focus on creating a more enabling environment for private sector investment and partnership. Relevant examples include fast tracking the issuing of water use licenses to private actors; potentially engaging private entities as water services providers in municipalities where water services provision has failed, and legal amendments to ensure that the water services authority and provision functions are accounted for separately in keeping with the Water Services Act. Operation Vulindlela for example has supported DWS to streamline the water use license application system and clear the backlog of applications. It is estimated that the turnaround of the water use license system unlocked R24.4 billion of investment in 2022 and R32.1 billion in 2023.

Operation Vulindlela has also supported several regulatory and legislative changes, including the National Water Resources Infrastructure Agency Bill, which will establish an independent agency to design, plan, finance, and manage bulk water resources, and revised the Raw Water Pricing Strategy. The reinstatement of the [Blue, Green, and No Drop](#) water quality monitoring system has undoubtedly improved public transparency in regard to water and

⁵ Chapter 3.

wastewater treatment quality and stimulated intervention by national government where municipalities fail to meet minimum norms and standards.

Many of these actions have unlocked sticking points in the implementation of laws, policies and plans, but some, including the assumption that reducing regulation will create a more enabling environment for the private sector, which will in turn strengthen the economy and reduce poverty and inequality, may have unintended consequences.

An economic framing of the value of water may inadvertently undermine its social value. In the face of water crises, businesses are increasingly moving to groundwater abstraction. There is a risk that communities and emerging farmers who depend on groundwater will find it over abstracted, as is [reported to](#) be the case in Nelson Mandela Bay, where manufacturers are depleting aquifers that downstream communities rely on for drinking water, food production and watering livestock.

Important questions must be asked, such as: How will small water users be protected? Will the establishment of the National Water Resource Infrastructure Agency take account of small water users? Will Presidential interventions also enforce less comfortable regulations like the [polluter pays principle](#), or will its focus on fostering an investor-friendly water use regulatory environment further compound groundwater crises and surface water pollution in downstream communities? Will increasing raw water costs drive-up bulk water services costs, which will in turn be rolled into the already crippling debt that municipalities carry, further compounding their financial viability, and forcing them to increase consumer costs?

- *How are water and sanitation services organised in urban areas and rural areas; Indigenous territories, and impoverished rural and urban areas? Are these services public, private, community-based, public-private partnerships, public-public partnerships, public-communitarian partnerships?*

Water Services Authorities (WSAs) are responsible to regulate, plan, develop water and sanitation services infrastructure, finance (from tariffs, transfers and property rates) and to ensure that institutional arrangements are in place for water services provision. To make decisions about water services provision arrangements, WSAs need to take the steps set out in [Section 78 of the Municipal Systems Act](#) (32 of 2000). This legislation, strongly influenced by municipal unions, makes it arduous for municipalities to contract out water services provision (including O&M, customer relations, tariff collection, business planning and so on) to an external entity. As a result, South Africa has very few private water services providers. Most municipalities undertake this function themselves.

Because any entity that is not a municipality, including CBOs and private companies, is considered an 'external' mechanism and therefore subject to the criteria set out in section 78(3), there are few, if any, CBOs contracted as water services providers in the country. That does not mean however that CBOs don't self-organise to provide water services where municipal services fail, for a myriad of reasons. This practice is informally prevalent in rural and informal settlements.

- *In rural areas where community management is in place, are public-communitarian partnerships legally recognised and supported in any way by State actors, in terms of funds, technical support, capacity development, etc.? If so, is this partnership effective in practice?*

Community management is not *de jure* in place through water services provider contracts in rural or urban areas. There are clear mechanisms in place for public participation in municipal planning and budgeting through Integrated Development Planning (IDP) processes set out in the Municipal Systems Act (2000), which directs municipalities to ensure that it uses IDP processes as a form of public participation in its affairs, and in national [legislative and parliamentary processes](#). There are also civil society initiatives and research to formalise [water and sanitation community forums](#).

- *How are water and sanitation services financed? For instance, tariffs, public funds, investments from the private sector or from useries, foreign investments including development cooperation funds, etc? Are tariffs based strictly on cost recovery, or do the State provide subsidies? If subsidies are in place, what mechanisms are used, and how are they implemented? Are they non-repayable, are they for all or only for certain users, does the tariff system induce cross-subsidies from luxury to basic uses, e.g. through block tariffs and increasing costs?*

The municipal fiscal framework makes provision for transfers from National Treasury to municipalities for basic services infrastructure development (through the Municipal Infrastructure Grant) and to provide Free Basic Services to indigent consumers through the Equitable Share grant, determined by poverty headcount.

The framework was premised on the [1998 Local Government White Paper](#), which envisaged that 90% of municipal operational costs could be recovered from consumers through tariffs for trading services. In the current reality, consumers are far poorer than we imagined, and bulk costs (of water and electricity) are far higher than we anticipated. In addition, according to SALGA, the assumption that bulk services costs are recoverable does not hold true, the projections are inaccurate, and the historic debt is beyond the reach of municipalities. The 1998 White Paper will be revised in the year ahead.

Many consumers simply cannot afford to pay. Municipal services are increasingly expensive, inflation is high, and unemployment is extremely high. The burden of differentiating who can and cannot afford to pay is currently rolled onto poor consumers because indigent registration processes are onerous and exclusionary. They are also administratively expensive to run. Using indigent registers as a free basic services targeting tool is not a requirement of CoGTA's 2005 National Indigent Policy Framework and Guidelines, they are too narrow a tool, and there is a significant under-estimation of indigency. Adopting wider targeting methods such as universal free basic water (often applied in rural areas); household income targeting; property value targeting; service level targeting; consumption threshold targeting, or geographical

targeting, will better enable municipalities to identify and target collectable debt from households that can afford to pay. We need a more holistic understanding of affordability.⁶

E. Institutional frameworks, policies and legislation

- *What are the main challenges or gaps you have encountered in relation to legal and institutional frameworks? For example, this could include a lack of legal or regulatory frameworks, limited participation or recognition of people as rights holders, or poor coordination among administrative structures.*

Municipalities across South Africa are in a financial and operational crisis, and the local government system requires urgent reform. Out of a total of 257 municipalities, 170 (66%) are classified by National Treasury as being in financial distress. The 2023/4 Auditor General of South Africa (AGSA) report⁷ notes that 66 out of 257 are dysfunctional. As a result, many municipalities are failing to deliver basic services such as water and sanitation, electricity, roads and waste collection.

- *Are the responsibilities of the service beneficiaries, such as fees payments, clearly established and accepted? Is their effective participation in the management of the services ensured?*
- *On what issues does institutional capacity need to be improved at local and/or national level? For example, technical assistance, capacity building, funding, etc.*
- *Are there legal frameworks, policies, plans and effective mechanisms to ensure transparency, accountability and participation of neighbours and users of water and sanitation services? If so, how are these implemented in practice? What are the main gaps for their effective implementation?*
- *Has your organisation encountered obstacles in relation to access to information, participation, transparency, accountability, and non-discrimination? If so, please describe the case.*
- *Could you provide good examples of transparency, access to information, meaningful public participation, accountability, and non-discrimination in water and/or environmental governance?*
- *In your view, to what extent is public investment effective in targeting key areas for reducing inequalities and promoting access to water and sanitation among vulnerable groups? What are the priority areas that require investment? What type of investment do you deem most appropriate and why (public, private, mixed, international funds, etc)?*

⁶ See for example https://www.seri-sa.org/images/Targeting_the_Poor_Nov13.pdf, and https://www.seri-sa.org/images/SERI_Turning_Off_the_Tap.pdf

⁷ See all AGSA reports [here](#).



- *Are you aware of cases where private initiatives promoting commercial and industrial interests over water, including privatisation processes of services, have negatively affected the availability, accessibility, affordability, safety, or acceptability of drinking water and sanitation services? If so, please describe them briefly.*
- *Are you aware of cases in which private initiatives promoting commercial and financial interests over water, including privatisation processes of services, have jeopardised access to information and public participation in water governance at the local or national level? If so, please describe them briefly.*
- *Has your organisation been involved in, or is aware of, judicial cases or litigation related to private investments or privatisation of services that have negatively impacted the sustainability of freshwater ecosystems or the human rights to water and sanitation? Are you aware of any judicial cases that have resulted in compensation and reparation?*

Section 139 of the Constitution enables a provincial intervention in a municipality failing to fulfil its constitutional obligations, one of which is the provision of sufficient water. These interventions are not proving effective because the binding constraints within municipalities are structural and systemic. The DWS can also use section 63 of the Water Services Act to intervene where municipalities fail, but this has only recently been implemented and has generally not achieved the desired results. Many communities and the DWS have launched litigation against municipalities for failing to fulfil their obligation to provide water and for failing to manage wastewater effectively, and although positive judgments and orders are obtained, the underlying issues cannot be addressed without financial and institutional reform.

It is essential that CoGTA and National Treasury's accountability in their role to provide oversight and leadership of intergovernmental relations is strengthened, alongside the basis for cooperative governance, and that the fiscal framework is revised, along with the 1998 White Paper, to address the binding constraints that municipalities face. The question must be asked whether fiscal gaps are being addressed equitably given that different municipalities have vastly different abilities to generate revenue from tariffs and property rates as a result of the spatial legacy of apartheid, in which wealthier consumers are concentrated in metropolitan municipalities, and poor consumers are concentrated in rural municipal areas.

F. Good practices under a human rights-based approach

- *Please provide examples or describe any good practices in relation to water governance that your organisation is involved in or is aware of. Examples may include: a) Good practices involving access to information and participation in drinking water and sanitation management and/or environmental matters; b) Good practices or initiatives contributing to enhance transparency, accountability, and non-discrimination in water governance and/or environmental matters, including water observatories, participatory bodies and regulatory agencies.*

The Bill of Rights in our Constitution is a cornerstone of democracy in South Africa. It enshrines the rights of everyone living in its jurisdiction, affirms the democratic values of human dignity, equality and freedom, and makes it clear that the state must respect, protect, promote and fulfil human rights.

Equality Collective works with local community volunteers in a remote rural district to monitor, report, publish and hold evidence-based municipal accountability on water reliability in the Mncwasa rural bulk water scheme which serves more than 30,000 people. In partnership with the Amathole District Municipality, we have unlocked an additional R21.5 million in public funding for our water scheme over the next 3 years, and we have stopped the appointment of an unqualified chief financial officer. When we started monitoring water availability in August 2022, water reached only 41% of reservoirs. By January 2025, 91% had water, 95% in December, 99% in November and 90% in October 2024. We are currently expanding our work to two new areas.

The South African government provides several opportunities to participate in water resources management, although in practice, the processes are imperfect:

- The country has been divided into six Water Management Area, each under the jurisdiction of a Catchment Management Agency (CMA). CMAs are established by the Minister of the DWS under the NWA with the aim of decentralising management of water resources to enhance involvement of local communities.
- Catchment Management Forums are voluntary, non-statutory associations of diverse stakeholders with a common interest in water resource-related matters in a particular catchment. While diverse in their functioning and focus, generally their purpose is to facilitate coherent participation of stakeholders in decision making about water resources management, and support CMAs. They are implicitly enabled by the NWA and at last count there were 81 active forums in the country.
- Water User Associations (covered under Question B.)
- Public participation in policy formulation is rooted in constitutional democratic principles, to ensure that government decisions reflect the will and needs of the people.
- *What is your assessment of concrete cases of community-based management of water and sanitation services?*

As noted in this submission, the community-based management model is curtailed by legislative requirements for the appointment of water services providers. There are however examples of [supported self-supply](#) in the Vhembe district of the Limpopo province, among others. *De facto* self-supply and community-based management is not uncommon in informal and rural areas, and even in small towns⁸.

⁸ See for example <https://www.seri-sa.org/index.php/more-news/1071-publication-seri-launches-final-case-study-documenting-experiences-of-self-supply-in-harrismith-from-the-claiming-water-rights-in-south-africa-research-series-17-november-2020>

- *Good practices promoting water sovereignty among Indigenous Peoples*

The interpretation of the phrase Indigenous Peoples in an African context may differ from the way it is understood on other continents. In line with the [Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples](#), any African can consider themselves indigenous to the continent.

While the Constitution recognises the co-existence of statutory and customary law, including traditional leadership structures and courts, the NWA is silent on the application of customary law to the management of water resources. Work has been done in South Africa and other countries on innovative hybrid approaches that acknowledge legal pluralism in the form of both statutory and customary mechanisms for regulating water use. One example is the concept of collective water use licences issued for communal areas in which there are many small-scale users, rather than authorising each user individually. Water use entitlements could be considered collectively held under such an arrangement, enabling the users to share the water between themselves according to appropriate and accepted local arrangements based on customary practices, more formal arrangements or both. However, this has yet to be tested and piloted in South Africa.

- *Can you give examples of laws and standards that promote a human rights-based approach to water and sanitation management, ensuring equity and inclusivity in water governance, particularly for vulnerable groups?*

Section 27 (1)(b) sets out the right to sufficient, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right.

- *Any other good practices involving water governance at the community, local, sub-regional or national level that you would like to share.*

The NWA makes provision for “compulsory licencing” to enable water to be re-allocated in areas where demand exceeds available supply, or where it is necessary to bring about more equitable sharing of water among existing and new users. It is an area-wide mechanism for converting old-order water rights into temporary water use licences under the NWA, in the process serving a redistributive purpose by freeing up water in fully allocated catchments to redress historical inequalities. To date, compulsory licencing has only been undertaken in three catchments. It has proven to be time-consuming and complex to implement, with limited success in meeting the objectives set for redistribution of water to historically disadvantaged groups. However, measures are being explored to simplify the process and expedite its implementation and enhance its redistributive outcomes.

3. Key points

3.1 Water Resources Management



- The NWA currently permits the temporary and permanent transfer of water use authorisations. However, since 1998, **many instances of water trading** have emerged that have **undesirable unintended consequences**. One such consequence is that trading allows water allocation to take place without the consent of the Minister, rather than unused water being returned to the Minister, so that, as the public custodian, she can decide where this water can best be allocated. A further consequence is that water, because it is a scarce good, becomes commodified, and water traders use it to make profit, to the detriment of other users.
- The DWS therefore adopted a policy position in 2014 that there shall be no form of temporary or permanent trading between authorised water users, requiring any holder of an entitlement no longer using water to surrender this use to the public trust. The position provided that **the Minister’s discretion to approve water use will be guided by the needs and requirements of the transformation and developmental objectives of the state**. This position strengthened the ‘use-it or lose-it’ principle.
- The policy position is included but not yet legislated in the NWA amendments and water trading remains permissible. Draft amendments to the NWA have been proposed that seek to prohibit only permanent trading i.e. selling water rights to someone else. They do not prohibit the temporary transfer for operational reasons, which is a common occurrence in agriculture. These amendments have yet to be considered by Parliament.
- Although the NWA does not include explicitly mention **water for production**, to water crops or livestock for example, the **National Water Resources Strategy (NWRS)** sets out the prioritisation of water allocation as follows: i) The Reserve (basic human needs + ecological reserve); ii) water for international agreements; iii) **water for poverty eradication (including racial and gender inequality)**; iv) water for strategic purposes and v) water for economic development. The BHNR should be redefined to include water to realise a constitutional right to food. By **including water for micro-scale production** in Schedule 1 (BHNR) uses, **the needs for water for food gardens and other climate resilient and food security actions, will be elevated and secured**.
- The NWA makes provision for “**compulsory licencing**” to enable **water to be re-allocated in areas where demand exceeds available supply, or where it is necessary to bring about more equitable sharing of water among existing and new users**. It is **an area-wide mechanism for converting old-order water rights into temporary water use licences under the NWA, in the process serving a redistributive purpose by freeing up water in fully allocated catchments to redress historical inequalities**. To date, compulsory licencing has only been undertaken in three catchments. It has proven to be time-consuming and complex to implement, with limited success in meeting the objectives set for redistribution of water to historically disadvantaged groups. However, **measures are being explored to simplify the process and expedite its implementation and enhance its redistributive outcomes**.

3.2 Water Services



- In the face of a struggling economy and resource limitations, several **Presidential and national interventions focus on creating a more enabling environment for private sector investment and partnership.**
- Many of these actions have unlocked sticking points in the implementation of laws, policies and plans, but some, including the assumption that reducing regulation will create a more enabling environment for the private sector, which will in turn strengthen the economy and reduce poverty and inequality, may have **unintended consequences.**
- **An economic framing of the value of water may inadvertently undermine its social value.** In the face of water crises, businesses are increasingly moving to groundwater abstraction. **There is a risk that communities and emerging farmers who depend on groundwater will find it over abstracted**, as is reported to be the case in Nelson Mandela Bay, where manufacturers are depleting aquifers that downstream communities rely on for drinking water, food production and watering livestock.
- Important **questions must be asked**, such as:
 - How will small and micro scale water users be protected?
 - Will the establishment of the National Water Resource Infrastructure Agency take account of small and micro-scale water users?
 - Will Presidential interventions also enforce regulations like the polluter pays principle, or will its focus on fostering an investor-friendly water use regulatory environment further compound groundwater crises and surface water pollution in downstream communities?
 - Will increasing raw water costs drive-up bulk water services costs, which will in turn be rolled into the already crippling debt that municipalities carry, further compounding their financial difficulties, and forcing them to increase consumer costs?
- **Municipalities across South Africa are in a financial and operational crisis**, and the **local government system requires urgent reform.** Out of a total of 257 municipalities, 170 (66%) are in financial distress according to the National Treasury. The 2023/4 Auditor General of South Africa (AGSA) report notes that 66 out of 257 are dysfunctional. As a result, many municipalities are failing to deliver basic services such as water and sanitation, electricity, roads and waste collection.
- The **municipal fiscal framework** was premised on the 1998 Local Government White Paper, which envisaged that 90% of municipal operational costs could be recovered from consumers through tariffs for trading services. In the current reality, consumers are far poorer than we imagined, and bulk costs (of water and electricity) are far higher than we anticipated. In addition, according to SALGA, the assumption that bulk services costs are recoverable does not hold true, the projections are inaccurate, and the historic debt is beyond the reach of municipalities. The 1998 White Paper will be revised in the year ahead.
- **Many consumers simply cannot afford to pay.** Municipal services are increasingly expensive, inflation is high, and [unemployment is at 32.9%](#). The burden of differentiating who can and cannot afford to pay is currently rolled onto poor consumers **because** indigent registration processes are onerous and exclusionary. They are also administratively

expensive to run. Using indigent registers as a free basic services targeting tool is not a requirement of CoGTA's 2005 National Indigent Policy Framework and Guidelines, they are too narrow a tool, and there is a significant under-estimation of indigency. **Adopting wider targeting methods such as universal free basic water** (applied in most rural areas); household income targeting; property value targeting; service level targeting; consumption threshold targeting, or geographical targeting, will better **enable municipalities to identify and target collectable debt from households that can afford to pay. We need a more holistic understanding of affordability.**

- It is essential that **CoGTA and National Treasury's accountability in their role to provide oversight and leadership of intergovernmental relations is strengthened**, and that the **fiscal framework is revised**, along with the 1998 White Paper, **to address the binding constraints that municipalities face**. The question must be asked whether fiscal gaps are being addressed equitably given that different municipalities have vastly different abilities to generate revenue from tariffs and property rates because of the spatial legacy of apartheid, in which wealthier consumers are concentrated in metropolitan municipalities, and poor consumers are concentrated in rural municipal jurisdictions.
- While a **community-based management model** is curtailed by legislative requirements for the appointment of water services providers, there are examples of community-based implementation through Water and Sanitation Community Forums in the Vhembe district of the Limpopo province among others. *De facto* self-supply and elements of community-based management occur in urban formal and informal areas as well as rural areas.