

The Significance of the South African Municipal Water Bylaws in Fostering the Right to Clean Water

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Abstract

The article examines the effectiveness of municipal water bylaws as a potential tool for providing and delivering portable water to the local community in South Africa. It explores the differences between policy objectives and actual outcomes in local government, identifying weaknesses in both the legal rules and the implementation capacity at this level. It considers the importance of financial stability and community involvement in effective water governance within the local sphere. The ultimate goal of this article is to offer information that may be used to enhance municipal water ordinances, which will enhance the delivery of water services and safeguard public health in the South African local government. To this end, the article looks at the legal remedies stemming from the failure of entities tasked with providing water services. The article provides a clear and succinct explanation of municipal water bylaws, effective management and supply of drinkable water, ecological usage and water conservation, the significance of their existence and the role they play in securing the constitutional right to enough water as outlined in the Constitution. Methodologically, a literature review approach was deployed and used. Contents of germane documents in the study area were applied in order to show how bylaws can be used effectively as a catalyst for providing and delivering potable drinking water in the local government system in South Africa.

Keywords: clean water, municipal bylaws, access, legal frameworks, South Africa.

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1. Introduction

Water bylaws can be a useful tool for protecting water infrastructure and reducing pollution, allowing municipalities to provide communities with enough drinking water.³ Water is a critical resource that must be harnessed to ensure that water

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³ DeFries, Kaila, "Sustainable Management of Municipal Drinking Water Services: A Case Study of Daly City, CA" (2024). *EMPA Capstones*. 60. <https://digitalcommons.law.ggu.edu/capstones/60>.

sources are effectively and efficiently utilised and preserved for the delivery of water to communities. This valued resource is increasingly being threatened as a result of various human activities, particularly at the local level of the government. In order to ensure that the government provides and delivers more water of high quality for domestic purposes and economic activities, there is a need for effective and efficient implementation of municipal water bylaws.

The main goal of water regulations is to keep people in check concerning water utilisation and their general approach towards the environment.⁴ The government has put in place many interventions, such as investing in water infrastructure, promoting water conservation,⁵ improving water resource management, addressing water pollution, investing in research and innovation and community engagement to ensure that lack of adequate service delivery is a thing of the past.⁶ However, it is up to members of the community to conduct themselves in a manner that does not make it difficult for the government to perform its duties.⁷ One of the major setbacks that the government is facing, which hinders the smooth delivery of drinking water, is the destruction of government infrastructure that is used to provide water to communities during service delivery protests.⁸ Alexander⁹ describes a violent protest against poor delivery of services as a poor people's insurrection. Alexander suggests that when the municipality fails to provide services like refuse removal and hygienic environment maintenance, there is a likelihood that people will resort to violent protests.

Police brutality has increased during service delivery protests in South Africa, and the police force's intervention frequently results in serious injuries and, in some cases, even the demise of protesters.¹⁰ In criminal proceedings, a lack of water delivery protest could result in the crime of public violence and perpetrators may be sentenced if found guilty to a maximum period of three years of direct imprisonment by a court of law. Water is constitutionally guaranteed in South Africa.¹¹ Legislation has been enacted to ensure a seamless supply of sufficient water.¹² Provision of portable water

⁴ World Health Organization. (2022). *Guidelines for drinking-water quality: incorporating the first and second addenda*. World Health Organization.

⁵ Moglia, M., Cook, S., & Tapsuwan, S. (2018). Promoting water conservation: where to from here?. *Water*, 10(11), 1510.

⁶ Siddique, I. (2021). Sustainable Water Management in Urban Areas: Integrating Innovative Technologies and Practices to Address Water Scarcity and Pollution. *The Pharmaceutical and Chemical Journal*, 8(1), 172-178.

⁷ Nalbandian, J. (2008). *Facilitating community, enabling democracy: New roles for local government managers*. In Nancy C. Roberts (ed.), *The age of direct citizen participation* (pp. 49-62). Routledge.

⁸ Ndasana, M., Vallabh, D., & Mxunyelwa, S. (2022). Understanding the Service delivery protests in South Africa: A case study of Duncan Village. *Africa's Public Service Delivery and Performance Review*, 10(1), 644.

⁹ Alexander, P. (2010). Rebellion of the poor: South Africa's service delivery protests—a preliminary analysis. *Review of African political economy*, 37(123), 25-40.

¹⁰ Hlongwane, P. (2023). Police's behaviour in response to handling of protestations in South Africa. *International Journal of Research in Business & Social Science*, 12.

¹¹ Soyapi, C. B. (2017). Water security and the right to water in Southern Africa: an overview. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 20(1).

¹² Keluh, B. S. (2021). *Municipal Service Partnerships as a legal mechanism for realising the right to have*

also encompasses preventative measures such as pollution prevention and control, sustainable water resource management,¹³ ecosystem protection community participation and awareness and institutional frameworks and enforcement set forth to safeguard water sources play a pertinent role in addressing many challenges that the government might encounter when attempting to fulfil the constitutional rights to have a supply of secure and adequate potable drinking water.¹⁴

2. Purpose of Municipal Water Bylaws

Potable drinking water is defined as follows: firstly, it must be safe, meaning that it contains no toxins or other health risks;¹⁵ secondly, it must be drinkable, meaning that it has no unpleasant flavors, odors, or colors;¹⁶ thirdly, it must be within a reasonable temperature range; and lastly, it must be treated, meaning that it must have undergone quality standards and is free of contaminants.¹⁷ Protecting water sources and ensuring that every community in South Africa has access to potable drinking water is one of the main goals of water regulations.¹⁸ These are localized rules that translate national water policies and legislation into practical regulations for the day-to-day management of water services within a specific community.¹⁹ Water bylaws are essential to guarantee that adequate drinking water is available to everybody and aim to protect water sources such as dams and lakes and water infrastructure to ensure order, fairness, sustainability, and public health in the provision and use of this vital resource.²⁰

Accessibility, availability, minimisation of environmental degradation, waste management and quality control of potable drinking water are essential to ensure the sustainable provision of this crucial resource.²¹ The article also considers the effectiveness of post-apartheid water bylaws in facilitating the delivery of potable

access to sufficient water in South Africa (Doctoral dissertation, North-West University (South Africa)), https://repository.nwu.ac.za/bitstream/handle/10394/37942/Keluh_BS.pdf?sequence=1&isAllowed=y.

¹³ Makanda, K., Nzama, S., & Kanyerere, T. (2022). Assessing the role of water resources protection practice for sustainable water resources management: a review. *Water*, 14(19), 3153.

¹⁴ Ibid.

¹⁵ Bhagwat, Vinod R.. "Safety of Water Used in Food Production." *Food Safety and Human Health* (2019): 219–247. doi:10.1016/B978-0-12-816333-7.00009-6.

¹⁶ Dietrich, A. M., & Burlingame, G. A. (2020). A review: the challenge, consensus, and confusion of describing odors and tastes in drinking water. *Science of the Total Environment*, 713, 135061.

¹⁷ Thatai, S., Verma, R., Khurana, P., Goel, P., & Kumar, D. (2019). Water quality standards, its pollution and treatment methods. *A new generation material graphene: applications in water technology*, 21-42.

¹⁸ Edokpayi, J. N., Rogawski, E. T., Kahler, D. M., Hill, C. L., Reynolds, C., Nyathi, E., ... & Dillingham, R. (2018). Challenges to sustainable safe drinking water: A case study of water quality and use across seasons in rural communities in Limpopo Province, South Africa. *Water*, 10(2), 159.

¹⁹ Rogers, P., & Hall, A. W. (2003). *Effective water governance* (Vol. 7). Stockholm: Global water partnership, <https://www.gwp.org/globalassets/global/toolbox/publications/background-papers/07-effective-water-governance-2003-english.pdf>

²⁰ World Health Organization. (2022). *Guidelines for drinking-water quality: incorporating the first and second addenda*. World Health Organization.

²¹ Obaideen, K., Shehata, N., Sayed, E. T., Abdelkareem, M. A., Mahmoud, M. S., & Olabi, A. G. (2022). The role of wastewater treatment in achieving sustainable development goals (SDGs) and sustainability guideline. *Energy Nexus*, 7, 100112, <https://doi.org/10.1016/j.nexus.2022.100112>.

drinking water at the municipal level in South Africa.²² It focuses on analysing the competence of local government to regularly provide communities with access to potable, clean drinking water. In the words of Van Beek and Arriens,²³ water security refers to a sufficient amount of water for human requirements in terms of both quantity and quality like drinking and subsistence. According to Gabru,²⁴ those with both land and economic power have always had an advantage in accessing water resources in South Africa. Pienaar and Van der Schyff,²⁵ argues that a comprehensive reform of legislation on water access such as the National Water Act which introduced the concept of water licences, shifting from rights being tied to land ownership to a system of use entitlement, the Water Services Act which focuses on the provision of water services, including water supply and sanitation primarily by the municipality, and the National Environmental Management Act which provides the overarching framework for environmental management in South Africa, including provisions related to water pollution and environmental impact assessments was necessary to meet socio-economic needs as prescribed in the constitution. Bylaws are a form of law, and more accurately, a form of legislation, issued by municipal councils, rather than provincial and national governments.²⁶ Local government consists of municipalities established by section 155 of the Constitution, which mandates the local government to provide democratic and responsible governance to communities, ensure long-term service delivery, promote social and economic prosperity, and stimulate community participation in local government.²⁷ This is in line with Gleick's²⁸ belief that meeting basic requirements for citizens should be a priority for states. Upon the establishment of a municipality and after the composition and election of municipal managers, a municipality may create and implement bylaws to guarantee the effective handling of subjects under its purview.²⁹ It is therefore the mandate of the municipality concerned to ascertain that bylaws are published on time in the provincial gazette, with the option to publish in local newspapers, or use other means to draw the community's attention to the contents of the bylaws in order to satisfy provisions of section 162 of the Constitution of the republic of South Africa, 1996 (Constitution) which deals with the publication of

²² Adom, R. K., & Simatele, M. D. (2021). Analysis of public policies and programmes towards water security in post-apartheid South Africa. *Water Policy*, 23(3), 503-520.

²³ Van Beek, E., & Arriens, W. L. (2014). *Water security: Putting the concept into practice* (p. 55). Stockholm: Global Water Partnership.

²⁴ Gabru, N. (2005). Some comments on water rights in South Africa. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 8(1).

²⁵ Pienaar, G. J., & Van der Schyff, E. (2007). The reform of water rights in South Africa. *Law, Environment and Development Journal* 3, 179.

²⁶ De Villiers, N. F., Van As, H. J., & Botha, J. C. (2020). The enforceability of the by-laws of district municipalities on local municipalities: The case of solid waste disposal. *Stellenbosch Law Review*, 31(2), 315-343.

²⁷ Madumo, O.S. & Koma, S.B. 2019, 'Local government reform in South Africa : the quest for review and repositioning of municipal administration', *Journal of Reviews on Global Economics*, vol. 8, pp. 581-590, <http://hdl.handle.net/2263/77982>.

²⁸ Gleick, P. H. (2019). Water as a weapon and casualty of conflict: Freshwater and international humanitarian law. *Water Resources Management*, 33(5), 1737-1751.

²⁹ Section 156(2) of Act 108 of 1996.

municipal by-laws which states that a municipal by-law may only be enforced after it has been published in the official gazette of the relevant province.³⁰ Section 21 of the Water Services Act³¹ (WSA) provides for water bylaws by giving relevant water authorities the right to make bylaws, define conditions under which water services can be provided, and provide the minister responsible permission to establish ordinances to be used as a guideline for water service agencies while the National Water Act (NWA)³² specifies water use and authorised uses of water³³ in South Africa. Each municipality must draft its water bylaws, which will regulate water within its authority. An example of a water bylaw may be a law that prevents unauthorised use of water.³⁴ It is mandatory to conduct a thorough analysis on institutions such as the Department of Water and Sanitation which is responsible for overseeing water resource management,³⁵ performing audits, probing instances of non-compliance and issues regarding drinking water quality, and setting regulatory standards and Government owned Water Boards responsible for managing regional bulk water distribution in ensuring water accessibility to the public and purifying water to potable standards.³⁶ Additionally, central to the delivery of portable water is the need to ensure the strengthening of financial sustainability, improving infrastructure and maintaining water infrastructure,³⁷ strengthening community engagement and participation, promoting good governance and accountability and addressing climate change to improve the delivery of water services by local government.³⁸

3. Background to the study

Before 1994, South African legislation on water access was governed by Roman-Dutch law, which gave authority to the state to allocate water resources.³⁹ An average annual rainfall of 40%, which is below the global average, puts South Africa

³⁰ De Visser, J., & Poswa, X. (2019). Municipal law making under SPLUMA: A survey of fifteen "first generation" municipal planning by-laws. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 22(1).

³¹ Act 108 of 1997.

³² Act 36 of 1998.

³³ See section 21 and section 22 respectively of Act 36 of 1998.

³⁴ Water amendment bylaw, 2018. City of Cape Town from https://resource.capetown.gov.za/document-centre/Documents/Procedures,%20guidelines%20and%20regulations/Water%20By-law%20_summary_guideline_%20A5.pdf (accessed 28 April 2022).

³⁵ Makanda, K., Nzama, S., & Kanyerere, T. (2022). Assessing the role of water resources protection practice for sustainable water resources management: a review. *Water*, 14(19), 3153.

³⁶ Bartram, J. (2009). *Water safety plan manual: step-by-step risk management for drinking-water suppliers*. World Health Organization.

³⁷ Thomson, P. (2021). Remote monitoring of rural water systems: A pathway to improved performance and sustainability?. *Wiley Interdisciplinary Reviews: Water*, 8(2), e1502.

³⁸ Granata, F., & Di Nunno, F. (2025). Financing the Future of Water: Unlocking Investment, Innovation, and Governance for Resilient Infrastructure in a Changing Climate. *Earth Systems and Environment*, 1-25.

³⁹ Msibi, M. I., & Dlamini, P. Z. (2011). Water allocation reform in South Africa: History, processes and prospects for future implementation. *Water Research Commission Report, 11*, <https://www.wrc.org.za/wp-content/uploads/mdocs/1855-1-121.pdf>.

among the world's 30 driest countries,⁴⁰ however, those who reside near water resources, such as smallholder livestock farmers, communities, and those reliant on water resources, are still guaranteed rights to access, which undermines efforts to preserve these resources for the benefit of all.⁴¹ Historically, access to water in South Africa, like other socio-economic rights such as the right to education and housing, was associated with race and was also tied to land ownership⁴² which primarily benefited white South Africans since they held the majority of the land, meaning that those without land, primarily black South Africans, had limited access to water. The new constitution that was adopted in 1996 guarantees everyone access to water, contrary to apartheid laws that perpetuated the apartheid government's agenda.⁴³

The WSA, in particular, regulated the management, preservation, and use of water for residential, commercial, and agricultural uses.⁴⁴ Although the WSA was good, it did not replace the Riparian system, which was a mechanism for distributing water to individuals who own land along its path and is usufructuary, which means that the landowner has the right to utilize the water and its surface but does not actually own the water.⁴⁵ Section 6 of the WSA distinguished between particular and universal water regarding private and public water ownership, while Section 7 contains instructions about the use of public water by authorized individuals for specific purposes. Section 23 of the WSA states that the owner of the property where water was located was allowed to use and enjoy it exclusively, but they were not allowed to contaminate it.⁴⁶ In the case of *Ackerman v. Dutch Company* (1763), the land and title were purchased by Mr. Ackerman, a merchant, from Jan Gintsenberg, who was a fire master. Gintsenberg and the governor, Ryk Tuibagh, established a confidential arrangement that permitted Gintsenberg to obtain water from the company's wooden trough that crossed a portion of his property. Ackerman began baling what he needed from the river as he was unable to use the business's water for his personal use. He clashed with his neighbours as a result, and they asked him to cease such actions. Ackerman petitioned the council, claiming that without water to irrigate his field, he could not make a living from his garden. He asked the council to allow him to take water from the river and use it to irrigate his farm. The council authorised the use of water as a luxury rather than a

⁴⁰ Ibid.

⁴¹ Makaya, E., Rohse, M., Day, R., Vogel, C., Mehta, L., McEwen, L., ... & Van Loon, A. F. (2020). Water governance challenges in rural South Africa: Exploring institutional coordination in drought management. *Water policy*, 22(4), 519-540.

⁴² Tewari, D. D. (2009). A detailed analysis of the evolution of water rights in South Africa: An account of three and a half centuries from 1652 AD to the present. *Water SA*, 35(5).

⁴³ Magaziner, A. L. (2007). The trickle-down effect: The Phiri water rights application and evaluating, understanding, and enforcing the South African constitutional right to water. *North Carolina Journal of International Law*, 33, 509.

⁴⁴ Shoushtarian, F., & Negahban-Azar, M. (2020). Worldwide regulations and guidelines for agricultural water reuse: a critical review. *Water*, 12(4), 971.

⁴⁵ Marais, C., & Wannenburgh, A. M. (2008). Restoration of water resources (natural capital) through the clearing of invasive alien plants from riparian areas in South Africa—costs and water benefits. *South African Journal of Botany*, 74(3), 526-537.

⁴⁶ Section 23 of Act 54 of 1956.

legal entitlement after closely examining the report on Ackerman's situation.⁴⁷ The WSA was later introduced to pontificate about past injustices and inequities regarding the supply of water. The NWA was also enacted to fundamentally reform laws pertaining to water resources, repeal some of them in order to address issues related to the provision of water in South Africa. In the case of *Stellenbosch Town Council v Lower Owners of the Stellenbosch River* [1905] TS 744, the Stellenbosch Town Council, as the plaintiff, sought to establish its rights to use water from the Stellenbosch River for municipal purposes. The Lower Owners of the Stellenbosch River, as defendants, were riparian owners who opposed the Town Council's claims. The dispute was centred on whether the water usage practices of the Stellenbosch Town Council restricted the Lower Owners' ability to use the river's water, since the Lower Owners were claiming that their rights were being violated. The Transvaal Supreme Court ruled that Stellenbosch Town Council had the right to use the water from the Stellenbosch River for municipal purposes.

The court further ruled that the Town Council's rights were based on the principle of reasonable use and that its use of the water did not interfere with the rights of Lower Owners. The court also held that the Town Council's rights were not limited to the amount of water required for domestic purposes but extended to industrial and commercial uses. The judgment established the principle that municipalities have the right to use water for public purposes, subject to the limitation of reasonable use. This case established the reasonable use criterion in connection to water rights, and the ruling made it clear how much water a municipality might use for public reasons. Municipalities in the local sphere of government are given powers to pass bylaws that will ensure the lawful use and fair distribution of water such as the NWA and the WSA to preserve water sources and prevent discrimination on water distribution among black and white people in South Africa, as it was the case during the apartheid era.⁴⁸ Kemerink et al⁴⁹ indicate that the NWA was embraced, enacted, and put into practice to address socio-economic disparities within communities. As a result, it is a strong weapon that can be used to address disparities and imbalances from the previous regime. The author correctly identifies the fundamental aim of the NWA to address socio-economic disparities rooted in historical injustices through the strategic management and allocation of water resources and that it is a powerful piece of legislation with the potential to be a "strong weapon" for change. However, an in-depth discussion must acknowledge the complexities of implementation, the multifaceted nature of socio-economic disparities, and the need for robust monitoring and evaluation to determine its actual impact. Although the NWA offers an essential legal framework, its efficacy depends on how consistently and fairly it is applied within a broader sociopolitical and economic context. Although the metaphor of a "strong weapon" has a powerful effect, it should be balanced with a realistic awareness of the difficulties and the requirement

⁴⁷ Hall CG and Burger AP (1974), *Hall on water rights in South Africa* (4th edn.) Juta, Cape Town. pp. 14-15.

⁴⁸ Section 156(2) of Act 108 of 1996.

⁴⁹ Kemerink, J. S., Ahlers, R., & Van der Zaag, P. (2011). Contested water rights in post-apartheid South Africa: The struggle for water at catchment level. *Water SA*, 37(4), 585-594.

for an all-encompassing strategy to address water allocation inequality.

4. Literature review

Water is an invaluable asset that serves a vital part in every aspect of our lives therefore, the local government must draft and pass bylaws according to section 156(2) of the Constitution, which regulates the use and supply of water and water services. Thompson⁵⁰ argues that the right to appropriate water is consequential in that it forces the state to fulfil its obligations. The court indicated in the case of *Mazibuko & Others v City of Johannesburg & Others* 2010 (3) BCLR 239 (CC) para 1, that life is found in water, and nothing thrives in its absence. Water is needed for human consumption, cooking, washing and growing food, thus without it, we shall perish. Ibrahim Harun⁵¹ indicates that South Africa was among the first to incorporate the right to water into their Constitution, given that water is a valuable resource and is required for the achievement of other rights, there is justification for a lot of attention being given to rights guaranteed in the Constitution.

Krishnakumar et al⁵² state that concerns regarding social, ecological and security ramifications of water scarcity are widespread, and that there are many challenges in supplying the growing demand for drinkable water as freshwater supplies are running low because of prolonged droughts, population growth and deteriorating water infrastructure. Mabhaudi et al⁵³ postulates that climate change and population increase are to blame for the growing disparity between water supply and demand. This goes to demonstrate that municipal water bylaws play a crucial part in the effective delivery of potable drinking water to communities in South Africa. According to Ranngu and Makenzi,⁵⁴ the delivery of water in the country is marked by both successes and setbacks. They also allude to several issues that impede the efficient provision of sufficient, reasonably priced and clean water to South African communities and state that a smooth water supply to communities is hugely impacted by a few challenges that South Africa is facing, which include a lack of infrastructure and the effects of climate change. Soyapi⁵⁵ postulates that water security is the ability to obtain enough water in

⁵⁰ Thompson, H. (2006). *Water law: a practical approach to resource management and the provision of services*. Juta and Company Ltd., p. 75.

⁵¹ Harun, I. (2010). The impact of privatisation of water supply and services on the fulfilment of human water rights in selected developing countries, *Magister Philosophiae*, <https://uwcscholar.uwc.ac.za/items/95432064-989b-4e57-9072-75be01e396ed>.

⁵² Krishnakumar, A., Das, R., & Puthalath, S. (2017). Assessment of the quality of water resources in coastal urban lands of two small catchment rivers, Southwest India. *Management of Environmental Quality: An International Journal*, 28(3), 444-459.

⁵³ Mabhaudhi, T., Mpandeli, S., Madhlopa, A., Modi, A. T., Backeberg, G., & Nhamo, L. (2016). Southern Africa's water-energy nexus: Towards regional integration and development. *Water*, 8(6), 235.

⁵⁴ Ranngu, J. E., & Mukonza, R. M. (2020). An examination of the challenges of quality water provision in Madibeng local municipality, North West province. *TD: The Journal for Transdisciplinary Research in Southern Africa*, 16(1), 1-8.

⁵⁵ Soyapi, C. B. (2017). Water security and the right to water in Southern Africa: an overview. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 20(1).

a suitable amount and quality to meet certain human needs, such as drinking and supporting livelihoods.

In their article on water and sanitation provision in eThekweni municipality, Sutherland, et al⁵⁶ suggests that over the past 20 years, national and local governments have taken turns in providing water and sanitation, and that in 2000, following the new dispensation, new local institutions were created for water service provision, most of the functions were transferred to the local sphere of governance, which means that the responsibility of government to provide water to the public was originally vested in national government, however, after 1994 democratic elections, the responsibility was transferred to the local level of governance, as a result the responsibility to ensure an efficient water service now rests with local government. Section 27(2) of the Constitution provides that, for each of these rights to be gradually realised, the state must implement appropriate laws and additional actions within its resource constraints, this was reiterated by the court in the case of *Minister of Health v Treatment Action Campaign* (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002) where the court indicated that there is a demand on the state to guarantee access to social security, food, water, health care, housing, land, and education. The State must enact suitable laws and take actions within its power to guarantee the progressive realisation of these socioeconomic rights, which are guaranteed by the Constitution. This is a challenging assignment given our past. Nevertheless, it is a constitutional responsibility placed upon the state. The Court also ruled that the State does not have to use all its resources or act quickly to fulfil the rights of people who cannot support themselves and their dependents, such as the rights to social security, adequate food and water, housing and medical care. This means that although the government is responsible for providing water to South Africans, it is only required to do it in a way that is realistic and sustainable, and that is not based on people's standards and or expectations. Engvist and Ziervogel⁵⁷ give an overview of water governance and justice in Cape Town and refer to primary laws governing water use in South Africa, which are the WSA⁵⁸ and the NWA. While the latter outlines what water-related services individuals should receive and by whom, the former describes how water from a certain source may be collected and used. As May and Daly⁵⁹ submit that in contrast to air and soil, water requires administration and control. This goes to show the level of significance and impact that water has in our lives.

Therefore, the fundamental purpose of this study is to analyse the relevance of water regulations, to look at the function of the local sphere of government as specified in Chapter 7 of the Constitution regarding the provision of water and its structures, and

⁵⁶ Sutherland, C., Hordijk, M., Lewis, B., Meyer, C., & Buthelezi, S. (2014). Water and sanitation provision in eThekweni Municipality: a spatially differentiated approach. *Environment and Urbanization*, 26(2), 469-488.

⁵⁷ Engvist, J. P., & Ziervogel, G. (2019). Water governance and justice in Cape Town: An overview. *Wiley Interdisciplinary Reviews: Water*, 6(4), e1354.

⁵⁸ Act 108 of 1997.

⁵⁹ May, J. R., & Daly, E. (2015). *Global environmental constitutionalism*. Cambridge University Press, p. 134.

to outline local government's impact or authority in drafting bylaws to promote development, effective service delivery and maintaining peace and order in communities. The study examines water infrastructure, the aspect of municipal financial mismanagement that occurs when municipal managers misuse funds within municipalities by engaging in fruitless and wasteful expenditure, which causes water shortages and poor service delivery through the inability to maintain water infrastructure and the negative impact that this has on the community.

The article also looks at significant roles of the water ordinances in maintaining an effective water supply in South Africa. To determine factors affecting rural water supply in the municipality. To assess applicable legislative frameworks in the municipality that address the supply, usage and administration of potable drinking water. To provide recommendations to aid in water conservation and the easing of water scarcity.

This article seeks to analyse whether, using the bylaws, the institutions in charge of supplying water to the public are complying or not in the quest of ensuring they fulfil their mandate, how and to what extent municipal water bylaws effectively bind and regulate the use of water and water service providers in South Africa, and how does the enactment of water bylaws contribute to the effectiveness of water supply and delivery in South Africa. What might be the reasons behind South Africa's inefficient rural water supply and delivery system, and any recommendations can be made in this study to improve and strengthen the potable water supply and delivery at the local municipalities.

Essentially, water is an indispensable resource without which life cannot be sustained. The responsibility of providing water to citizens, as enshrined in section 27(1)(b) and sub-section (2) of the Constitution, rests with the government. The local sphere of government plays a vital role in ensuring that water use and water providers are regulated through the passing of municipal water bylaws. After the review of various legal articles and a discussion of the *S v Mostert* case, it is evident that there is a serious challenge in South Africa with respect to access to water, therefore, the NWA and the WSA form an integral part of this study to emphasise the importance of water bylaws. Local government is mandated to draft bylaws for the benefit of the community as outlined in section 156(2) of the Constitution. The objectives and aims outlined in this study act as a guide in addressing issues that hinder the effectiveness of the supply of potable drinking water in South Africa. It is abundantly clear that the South African legislation relating to the provision of water has greatly improved since the apartheid era. This is evidenced by many case laws that have been entertained in our South African courts where the provisions of the Constitution in section 27(1)(b) were highlighted. It is safe to state at this stage that the government played a crucial role in ensuring that water bylaws are not only developed but also enforced to ensure that the provisions of section 27(1)(b) of the Constitution are upheld. Although there is still a long way to go to ensure an effective delivery of drinking water and to see to it that pronouncements made in the Constitution about sufficient water provision are guaranteed, the government's efforts to ensure the same is noticeable. This study critically analyses the effectiveness of municipal water bylaws for the delivery of

potable drinking water in the local sphere of government in South Africa. The article is essential as it outlines and examines issues that hinder the effectiveness of the water supply and suggests solutions thereto. The significance of the local sphere of government and its functions is outlined regarding the promulgation of water bylaws and necessary probable solutions are put forward to help mitigate the issue of water scarcity in the communities.

5. Consequences for Non-complying with Water Bylaws

Municipal councils' water bylaws play an important role in guaranteeing legitimate water use under Section 22 of the NWA, which deals with the permissibility of water use in South Africa.⁶⁰ The water authorities in South Africa tasked with the duty to enable a smooth provision of safe drinking water all work together to provide citizens with clean water and efficient water services.⁶¹ The NWA prescribes that everyone is entitled to a minimal supply of water and sanitary facilities⁶² and that every organisation that provides water services must take appropriate action to fulfil this obligation.⁶³ The Constitution also guarantees everyone the right to enough water and sanitation.⁶⁴ However, there are water bylaws put in place to regulate South Africa's water use.⁶⁵ Factors such as dilapidated water infrastructure, irregular use of municipal funds, water pollution, criminal activities and noncompliance with water ordinances continue to hinder a smooth provision of potable drinking water in the local sphere of government.⁶⁶ In the case between *S v Mostert* 2010(2) SA 586 (SCA),⁶⁷ what transpired in this case was that a pump station was erected in the Lomati River by Mr. Mostert and his son, who farmed sugar cane, to draw water from the river without a permit or the proper water abstraction meter. After learning of this, the Lomati Irrigation Board filed criminal complaints, which led to their arrest and arraignment in the magistrate's court on seven criminal charges, including theft and violating NWA section 151 (1)(e) by willfully or carelessly tampering or interfering with the waterworks without the act's required permission. According to NWA section 151(2), the first

⁶⁰ Qumbu, B. B. (2019). *The role of courts in promoting water security in South Africa* (Doctoral dissertation, North-West University (South Africa)), <https://dspace.nwu.ac.za/bitstream/handle/10394/35565/BB%20QUMBU%2028370333.pdf?sequence=1&isAllowed=y>.

⁶¹ Hove, J., D'Ambruoso, L., Mabetha, D., Van Der Merwe, M., Byass, P., Kahn, K., ... & Twine, R. (2019). 'Water is life': developing community participation for clean water in rural South Africa. *BMJ global health*, 4(3).

⁶² Section 3(1) of Act 36 of 1998.

⁶³ Ibid, Section 3(2).

⁶⁴ Cooper, N. J. (2016). *Covenants, Constitution & Commons: International, constitutional and community responses to achieve access to sufficient water for everyone* (Doctoral dissertation, University of Sheffield).

⁶⁵ Madigele, P. K. (2018). South Africa's water regulatory and policy framework: A new institutional economic review. *Sustainable Water Resources Management*, 4(1), 129-141.

⁶⁶ Mbana, Z. (2023). *The Challenges of Sustainable Access to Potable Water in the Democratic South Africa: The Case of Madiba and Ngabeni Rural Areas, Eastern Cape* (Master's thesis, University of Johannesburg (South Africa)), <https://ujcontent.uj.ac.za/esploro/outputs/graduate/The-challenges-of-sustainable-access-to/9942604107691>.

⁶⁷ *S v. Mostert* 2010(2) SA 586 (SCA).

appellant was found guilty on all charges, and the second appellant was found guilty on six of the seven charges. As a result, they were both sentenced to pay a fine or face imprisonment. Only the conviction of the NWA remained after the appellant's conviction and imprisonment on the seven charges were overturned on appeal by the High Court. The appellants also asked the High Court⁶⁸ to allow them to appeal the remaining two convictions on their sentence and the state was allowed to contest the High Court's decision on the charges of theft and fraud on legal grounds. The question of whether it is possible to steal water from a river was brought before the Supreme Court of Appeal. Whether the NWA superseded common law in aspects pertaining to water and if the Lomati Irrigation Board had authority over the Lomati River.

Due to their deliberate misrepresentation of actual water abstraction data by hiding the second water pump and failing to disclose its usage, the Court determined that the appellants were guilty of fraud. Furthermore, the appellants were duly accused and convicted of violating section 151 of the NWA⁶⁹ for taking water illegally from the river and failing to report it to the Lomati Irrigation Board. The Appeal Court found that the High Court was lenient in its sentencing in this regard and sustained the sentence in this regard, even though convictions for theft were set aside and convictions for fraud were combined for sentencing purposes by the High Court. This case indicates that although there are water bylaws put in place to regulate water use and functions, some people still go against the provisions of these laws and thereby defeat their entire purpose.⁷⁰ The government needs to strengthen compliance and enforcement of water laws. To achieve this, the government needs to enlist the support and intervention of the community through constructive and meaningful community engagement,⁷¹ implementation and stringent enforcement of bylaws in order to safeguard water sources and infrastructure.⁷²

6. Conclusion

To promote water supply, local water ordinances are essential, yet frequently misused. These local laws give their jurisdictions the framework they need to manage water resources when they are properly drafted and implemented. Water conservation, demand management, infrastructure upkeep, tariff structures, and water pollution prevention can all be outlined in detail by them. The sustainability and fair distribution of water resources can also be promoted by bylaws, which provide local governments the authority to take targeted action against unauthorized connections and water waste. However, the efficacy of these bylaws is occasionally hindered by their inability to be

⁶⁸ *Mostert v. the State* (338/2009) [2009] ZAS(A171) (1 December 2009).

⁶⁹ Act 38 of 1998.

⁷⁰ Jury, W. A., & Vaux Jr, H. J. (2007). The emerging global water crisis: managing scarcity and conflict between water users. *Advances in agronomy*, 95, 1-76.

⁷¹ De Weger, E., Van Vooren, N., Luijkx, K. G., Baan, C. A., & Drewes, H. W. (2018). Achieving successful community engagement: a rapid realist review. *BMC health services research*, 18, 1-18.

⁷² Foster, G. K. (2018). Community Participation in Development. *Vanderbilt Journal of Transnational Law* 51, 39.

enforced, their poor conformity with national laws, and the lack of public awareness and involvement in their creation and execution.

South Africa comes from a terrible past that discriminated and segregated black people and those who do not have ownership of land from having an outpouring availability of enough water and decent sanitation. The authors of the Constitution had a mammoth task to ensure that unfair discrimination and segregation were eliminated in the new democratic dispensation when drafting the Constitution. Section 27(1)(b) of the Constitution makes it abundantly evident that the laws protect and uphold everyone's right to fair access to reasonably priced, potable drinking water and legal scholars have also given their inputs on the importance of a sufficient water supply and have demonstrated the need thereof. The Constitution assigns a responsibility to the government to ensure that citizens in South Africa are provided with sufficient water supply as water is in essence a commodity that people cannot live without, hence the government is tasked to ensure this right is fulfilled, and to establish strategies and interventions to mitigate the challenge of water shortages in the local sphere of government, however, access to safe drinking water is still a major and extremely worrying problem in local towns. Many communities in South Africa still struggle with inconsistent water supplies, low water quality, and a complete lack of access despite constitutional protections and national commitments. These issues are complex and result from several causes, such as outdated and badly maintained infrastructure, insufficient funding for water distribution and treatment systems, a lack of qualified personnel in municipal water departments, the effects of drought and climate change, and cases of corruption and poor management. This lack of access has far-reaching effects on social fairness, economic development, and public health, which feeds cycles of poverty and inequality in local communities.

Municipalities must employ competent people in positions of power and develop proactive interventions in the event of a crisis. An examination of the local government's statutory and regulatory framework regarding drinking water access demonstrates a thorough, if frequently disjointed and unevenly implemented system. A comprehensive framework for managing water resources and providing services is provided by water laws, while the Constitution guarantees the right to adequate water access. Nevertheless, there are major obstacles in converting these national directives into practical local action. Different degrees of municipal competence and political will, along with the separation of powers and responsibilities between the federal, provincial, and local governments, frequently result in disparities in standards for service delivery, enforcement, and regulation. To guarantee efficient execution and accountability at the local level, the regulatory environment must be better coordinated and made clearer because it can be complicated and occasionally overlap. In South African towns, attaining universal access to adequate drinking water necessitates a coordinated and integrated strategy. This involves enhancing local governments' ability to create, carry out, and enforce efficient water ordinances that are suited to their unique circumstances. At the same time, tackling the structural issues preventing access calls for more infrastructure spending, more accountability and governance, better training for the water industry, and proactive steps to lessen the effects of climate change. In the end, a

stronger, more coordinated, and more successfully executed regulatory and statutory legislative framework at the local level of government, bolstered by strong political will and active community participation, is necessary to realize the constitutional right to water for all South Africans. Only by making such a thorough effort will South Africa be able to guarantee a fair and sustainable water future for all its citizens.

7. Recommendations

It must be a priority of the South African government to provide an equitable allocation of potable drinking water to South African citizens for the purposes of development and economic growth. This means that the government must guarantee that the infrastructure utilised to supply water to the public is continuously maintained. Priority can also be directed to water reuse, desalting, ground water utilisation and harvesting, safeguarding water sources and demand management methods such as water audits, leak detection, smart metering and consumer education to promote effective water usage, collecting rainwater, as well as importing of water-intensive commodities. However, such priorities will never be achieved without the proper administration and efficient management within municipalities, without eradicating factors such as corruption and financial mismanagement, which contribute negatively towards the smooth running of municipalities and the uninterrupted water provision and allocation at the municipal level of government. Interventions such as the implementation of water tanker projects, which is a temporary measure to satisfy the constitutional provision of access to adequate water, may also be utilised. The government engaging with companies in the private sector, such as Coca-Cola Beverages South Africa, can assist in eradicating the shortage of water in rural communities.

Municipalities have a duty under the Constitution to ensure service delivery, however, such a duty requires municipalities to be competent and capable of ensuring delivery. The government needs to ensure that those elected in positions of power within municipalities are competent, qualified and skilled enough to be elected, as well as ensuring that municipalities are adequately funded to resolve any financial issues which may pose a threat to the smooth running of a municipality. Municipalities should be financially independent to fulfil their constitutional obligations, therefore, issues of financial mismanagement within municipalities must be taken seriously and perpetrators should face consequences accordingly in terms of the law by holding them criminally liable and imposing maximum sentences as a deterrence.

Water bylaws, which are the laws governing the use and provision of water, are there, but the problem is that there is a lack of implementation of these bylaws, thereby hampering water provision, access and delivery of water in the country. The government must strengthen the implementation and enforcement of existing bylaws, increase investment in water infrastructure and conservation measures, promote public awareness and education on water issues and encourage stakeholder collaboration and community involvement.

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