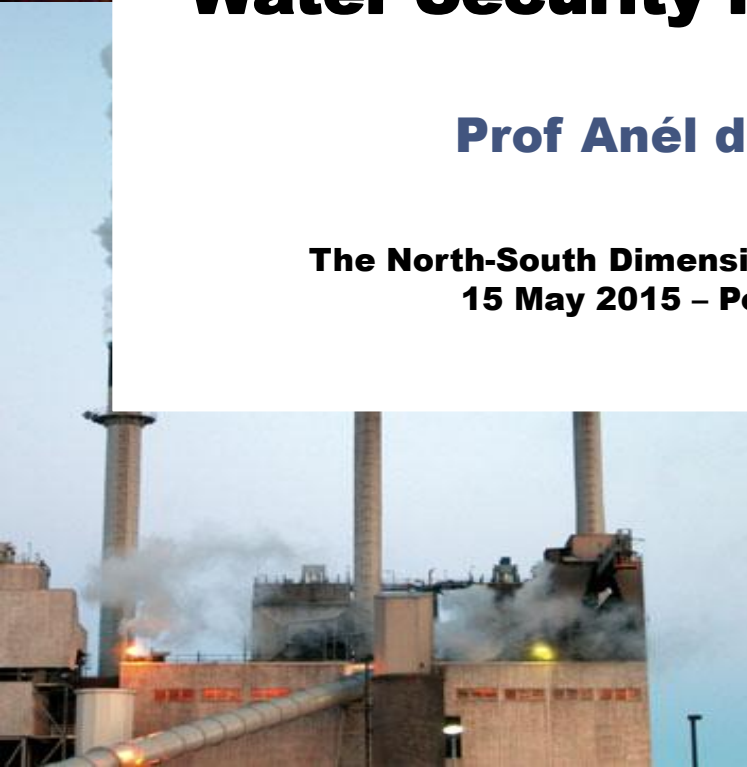




The Role of Local Government in Water Security in South Africa

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**The North-South Dimensions of Water Security
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Water security = the capacity of a population to safeguard sustainable access to adequate quantities of acceptable quality water for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability.

(UN-Water, 2013)



Local authorities across the world has a critical role in water security – by now, a given.



“Urbanization brings opportunities for **more efficient water management** and **improved access to drinking water and sanitation**. At the same time, problems are often magnified in cities, and are currently outpacing our ability to devise solutions.”

Ban Ki-moon, UN Secretary General



Existing international literature

- Trends in global sustainability studies toward emphasis on the local (governance) level – also with respect to water security
- Growing focus on the notion of “sustainable cities” and the role of local authorities in achieving global ideals
- Law and governance researchers make a strong case for a much improved level of ‘success’ in international negotiations / deliberations between ‘cities’ of the world as opposed to ‘(national) governments’ of the world

Existing international literature

- See eg research on the matter: Simon Curtis, Helmut Phillip Aust, Sofie Bouteligier, Michele Acuto, Saskia Sassen, Monika Zimmermann, Michele Betsill and Harriet Bulkeley
- Various international institutions further contextualise with specific reference the local government in specifically climate change adaptation and water security



United Nations
Department of Economic
and Social Affairs

I.C.L.E.I.
Local
Governments
for Sustainability



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UN HABITAT
FOR A BETTER URBAN FUTURE

C40
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UCLG

The Global Network of Cities,
Local and Regional Governments

Why?

1. Local government is acknowledged as 'role player' / 'actor' in water governance in a (global) multi-layered governance system
 - * "Cities" make far more progress in international relations context than national governments (matter of politics)
2. The principle of subsidiarity as part of an approach to governance efficiency
3. Bearers of 'water rights' live and work in 'localities' – be it rural or urban
4. The proximity of real water security issues and economies of scale from a governance perspective
5. Typical matters of local government form a direct part of the critical "nexus" – water security; energy security and food security

Water services
provision

Sanitation services

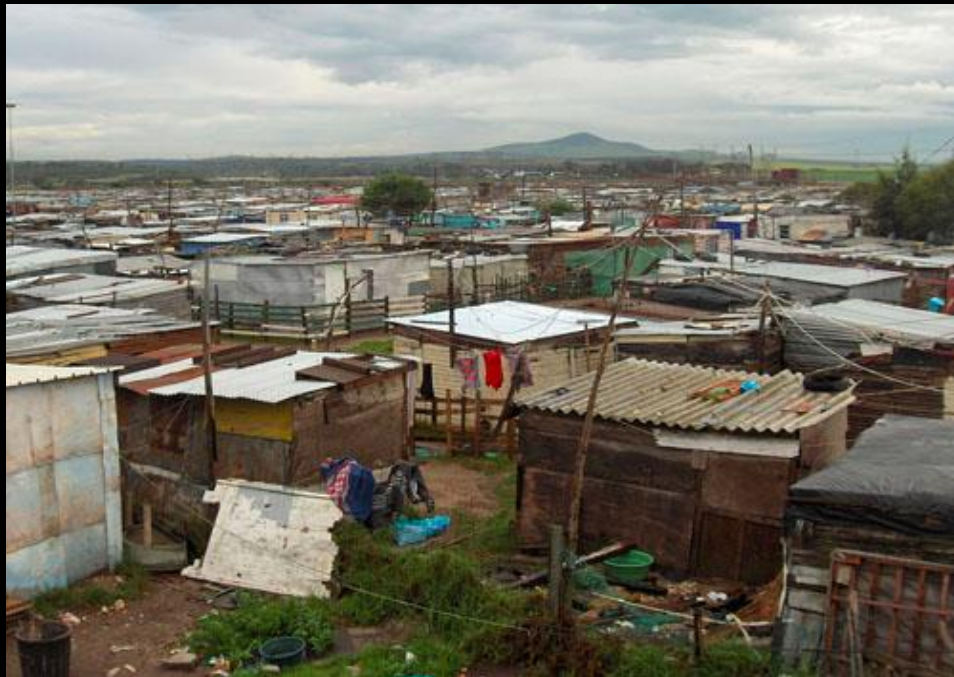
Waste-water
management

Disaster management & storm-
water management

Electricity provision



In **South Africa**, role of the approximately 270 municipalities in water security may on average be even more significant than elsewhere in the world when viewed from a **constitutional law perspective**, the post-apartheid **legal status of local government** and the **water-scarce features** of the country



OUTLINE

- Legal status of SA local government after 1996
- Local government in SA's pursuit of sustainability
- Powers, functions and duties of local government relevant to water security
- Specific local government instrumentation for water use and water services management
- Some concerns, fears and challenges: local governance in SA
- Response measures and remedies
- Observations

Legal Status 1996+

- Most significant changes in government with the adoption of a the 1996 Constitution at **local government level**
- **Autonomous “sphere” of government** – no hierarchical divide between national, provincial and local government spheres – all inter-related
- Service delivery arm of government has been re-engineered to become **“developmental local government”**
- **“Wall to wall”/ “coast to coast”** local government across the country
 - Metropolitan; district and local municipalities
- **Autonomous legislative and executive authority**
- Every municipality is a **legal person** in own right ie has legal personality

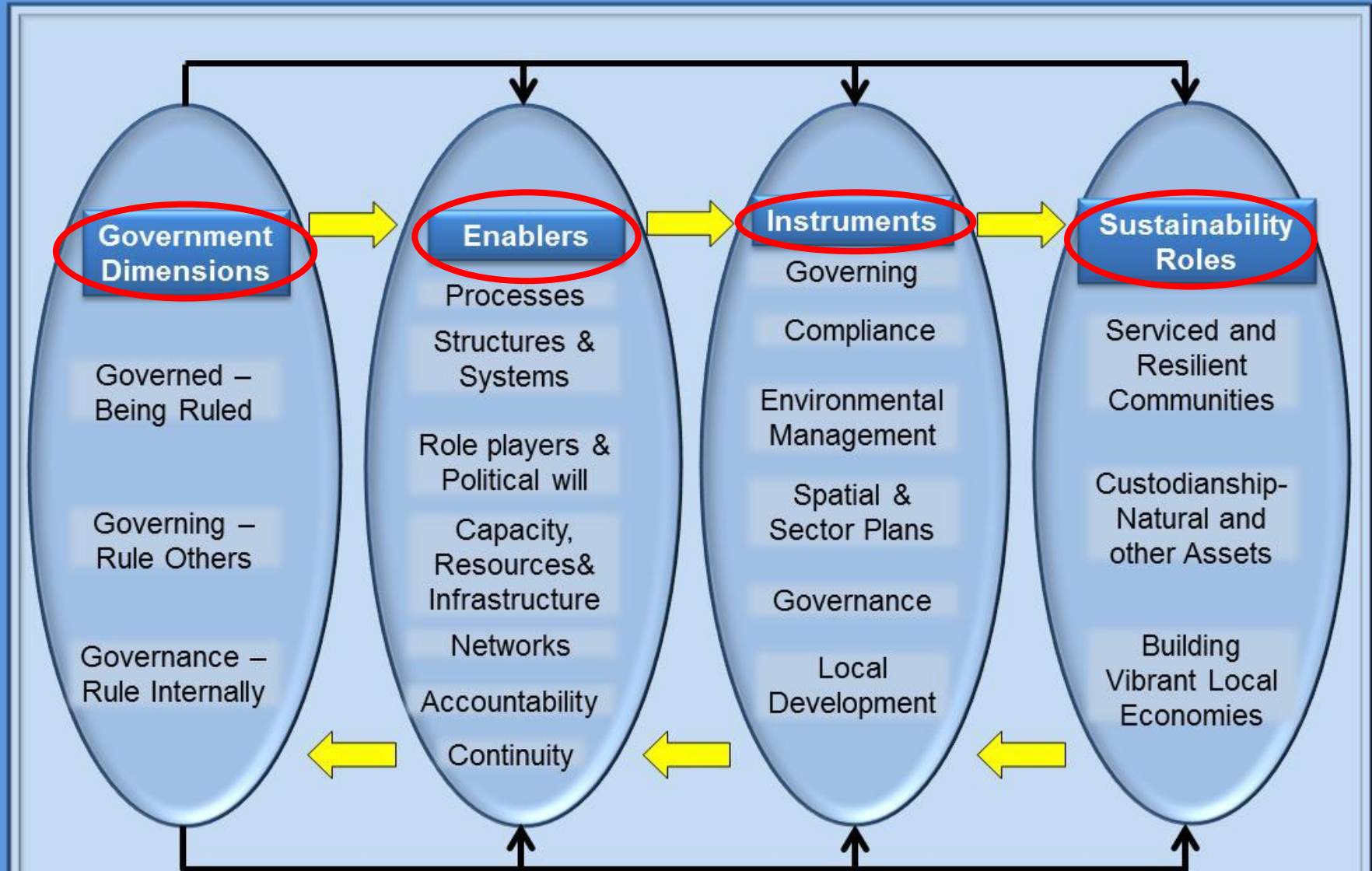
Local government in SA's pursuit of sustainability

Local government is *as* responsible for the pursuit of sustainability as national and provincial government (ie co-responsible)

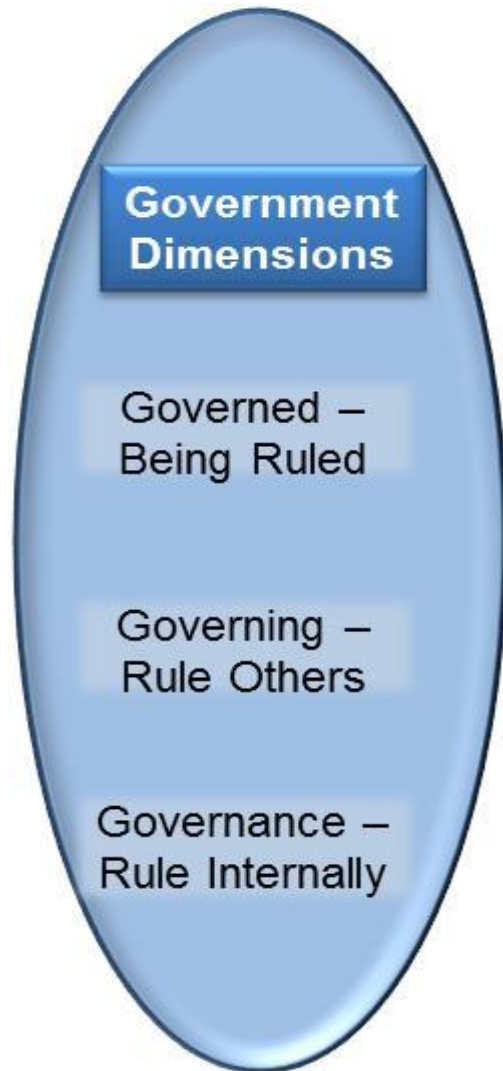
- Section 24 of the Constitution read with section 7(2)
- Chapter 7 of the Constitution devoted to local government – “sustainable service delivery” and a “safe and healthy” environment
- Section 27(1)(b) of the Constitution read with national water legislation and national local government legislation (eg Local Government: Municipal Systems Act)
- Inclusive understanding of natural resources and specifically water being held in ‘public trust’ for present and future generations

The Local Government Sustainability Interface: Key Elements for Environmental Action

Sustainability and Environmental Management for Local Government in South Africa



Dimensions of local government useful in understanding its role in water security



Three dimensions; different implications:

- Bound by national & provincial law and policies and measures of national and provincial authorities (being 'governed')
- Powers and mandates by virtue of which 'to govern' in local area of jurisdiction
- Local 'government' governance – how office bearers of municipality direct, control and rule itself in accordance with principles of good governance

Powers, functions and duties relevant to water security

- **Principle of subsidiarity** entrenched in SA Constitution – very broad approach to local government powers, functions and duties:

“S 156(4) Translated” – The national and provincial government **must** assign to a municipality, by assignment and by agreement, and subject to any conditions, the administration of a water security matter if that matter would most effectively be administered locally and the municipality has the capacity to administer it.

- In addition, **Schedules 4B and 5B LG functions** in the Constitution:

Electricity regulation, Municipal planning, Municipal health services, Municipal public works, Stormwater management systems, Water and sanitation services; Control of public nuisances, Solid waste disposal and Pounds

- Additional powers, functions and duties in related **sector legislation (primary and secondary)** eg planning legislation, water legislation, waste legislation, regulations eg.

Existing local government instrumentation for water use and water services management

- Local government at the coalface of the **need to protect water resources** and **need for people to develop** – conflict
- Furthermore, as natural water cycle suggests, **artificial divide between water resource protection & water services provision not possible** – local government primarily responsible for the latter
- Instrumentation developed at **national and provincial level**:
 - **Norms and standards** eg Minimum Standard for Basic Water Supply Services; Interruption in the Provision of Water Service; Water and Effluent Balance Analysis; Repair of Leaks; Consumer Installations other than Meters and Tariffs for Water Services
 - So-called “**water ladder**” provided in the Strategic Framework for Water Services – first basic water and sanitation service then moving up to ‘intermediate level of services’ (tap in each yard) and further to higher levels of service

Existing local government instrumentation for water use and water services management

- Instrumentation developed at national and provincial level:
 - Incentive-based regulation using **certification schemes** –
 - **Blue Drop** Certification Programme for drinking water quality management by municipalities
 - **Green Drop** Certification Programme for waste-water quality management by municipalities



green drop

CERTIFICATION

waste water service
REGULATION



blue drop

CERTIFICATION

drinking water quality
REGULATION

Existing local government instrumentation for water use and water services management

- Instrumentation to be developed by each and **every municipality**:
 - A **water services development plan** – a strategic plan to be developed in consultation with consumers who have a right to comment and have their comments considered. Must contain following elements:
 - Socio-economic profile of the community; Service level profile; Water resource profile; Water conservation and demand management; Water services infrastructure; Water balance; Institutional arrangements; Consumer service profile; Financial profile; and List of projects
 - **Water services bylaws** – conditions for provision of water services, technical conditions, standard of services, verification of metres, acceptable levels of error, procedures for arbitration, conditions for discharge of waste, etc.

Some concerns, fears and challenges

- **State of local governance in general** a matter of great concern - for several years already – adoption of 2009 “Local Government Turnaround Strategy”, a prominent focus area in each and every State of the Nation Address by the State President etc.
- **Very few clean financial audit reports** – significant number of officially reported cases of corruption
- **Widespread civil protests / community unrest** as a result of poor service delivery – including water services delivery
- **Communities withholding municipal rates and taxes** – taking service delivery into their own hands

Some concerns, fears and challenges

- **More and more privatisation / outsourcing of municipal services** due to incapacity of municipalities – price and liability implications
- South African Human Rights Commission (**SAHRC**) investigations
- Auditor-General (**AG**) investigations
- **Growing number of court cases** against municipalities
 - Organs of state (eg provincial departments) against municipalities
 - Corporates / semi-state institutions against municipalities – eg Eskom
 - Local communities against municipalities

Some concerns, fears and challenges

- **Great difficulty with effective and constructive cooperative governance** and intergovernmental relations amongst the different public role-players in water governance specifically:
 - Water Services Authorities
 - Water Services Providers
 - Water Services Intermediaries
 - Catchment Management Agencies
 - Provincial and national departments responsible for water affairs (protection of the “Reserve”)
 - Provincial and national departments responsible for water services infrastructure support (water services delivery)

Response measures and remedies

- **Provincial intervention** in local government – mandatory and voluntary
 - Municipalities being put ‘under administration’ etc
- **Enforcement of the actual realisation of constitutional rights and legislative duties** – more and more cases before the higher and Constitutional Courts
 - Communities
 - NGOs
 - Inter-governmental (despite Constitution and initially the NEMA being against intergovernmental litigation)
 - Note very wide legal standing in SA!

Response measures and remedies

- Changes in court's **interpretation of municipal liability** – municipal officials now also being held personally liable especially in cases of contempt of court (progressive step from side of the bench)
- Increased use of '**structural interdicts**' (court orders) as judicial remedies in matters of municipal non-compliance / non-performance
- SA's Auditor-General the first national auditing authority in the world to now conduct **environmental law compliance audits** alongside financial audits in local government

In conclusion

- Water security cannot happen in and by itself – must be pursued and effected by different actors – including **state governments**
- Speaking about **water security in SA context cannot happen in a scientific / legal vacuum** – state of specifically “local governance” and changing a poor or inadequate state of governance, critical
- **Current (poor) state of local governance is of great concern** given the constitutionally and legally entrenched duties of municipalities with respect to the water security, energy security and food security nexus (see C Bosman presentation)

In conclusion

- Any future **research agenda** concerning water security – be it in the North/South or both **MUST question the strengths and focus on weaknesses of existing governance structures and the actual adoption and use of innovative governance instrumentation**
- In SA: **role of local government in each of the dimensions of water security** and that which currently hampers ‘good local governance’ is a matter in critical need of further discussion and research



Thank you