

STRENGTHENING ACCOUNTABILITY AND RESPONSIVENESS IN MUNICIPALITIES – THE ROLE OF IGR

**A MATTER OF SOUND FINANCIAL
MANAGEMENT, TRANSPARENCY
AND SUSTAINABILITY**

KEY CHALLENGES, GAPS AND OPPORTUNITIES
FROM THE ABS PROJECT

Summary Policy Brief
June 2018



ABOUT THE ABS PROJECT

In order to improve accountability and to ensure that communities' democratic rights go beyond a simple vote towards active political participation and engagement, efforts need to be made to capacitate and enable citizens to do so. In 2016-2018, Afesis-Corplan, the Built Environment Support Group (BESG), the Heinrich Böll Foundation (HBF) Southern Africa Office, Isandla Institute and PlanAct have jointly implemented a project entitled "Accounting for basic services: Tackling the inadequate use of resources by municipalities and building a rights-based approach to service delivery" – referred to as the ABS Project. The ABS Project contributes to these efforts by assisting in improving the understanding of the complex framework that finances local government in the country. The project has been supported by the EU Delegation to South Africa.

The ABS Project aims to strengthen community engagement with local government to ensure equitable, just and effective use of municipal funds. While doing so, it hopes to expand the use of budget analysis and social accountability tools as key approaches to engaging communities, fostering responsive governance and strengthening accountability. By engaging in their local municipal affairs, communities and their organisations can develop an understanding of where and on what money is being spent, and to evaluate if government's priorities adequately address their needs. By doing so communities are better able to voice their concerns and needs, in order to keep government accountable.

Planned outcomes of the project include: the support of 6 rural and urban communities in strengthening political voice; holding their municipalities to account for effective and equitable spending of their finances; and, crystallising lessons for policy and practice. The communities are: KwaZenzele (Lesedi LM), Masakhane (Emalahleni LM), Chris Hani (Buffalo City Metropolitan Municipality), Glenmore (Ngqushwa LM), Mpolweni (Umgungudlovu DM) and Kwa-Nxamalala (Msunduzi LM).

In furtherance of these outcomes, the ABS Project has developed a number of policy briefs, focusing on key issues that have been identified during the course of the project. The purpose of these briefs is to highlight the issue identified (e.g. inadequate access to basic services), outline the policy and institutional context (including the legal framework, municipal policies, intergovernmental relations, roles and responsibilities), identify challenges, gaps and opportunities, and make recommendations for policy and practice/uptake of policy. Ultimately, through the policy briefs, the ABS Project seeks to raise the profile of issues identified in the project communities and connect these into broader policy debates, with the intention to develop clear recommendations towards improving local democratic policies and practices.

ABOUT THIS POLICY BRIEF

While the issues identified and the experiences of the communities with the municipalities differ significantly across the ABS Project, some common themes can be identified. In their attempts to engage the municipality on key issues identified, some of the communities experienced their municipality as either impenetrable, indifferent or even hostile. This summary policy brief focuses on the role of intergovernmental relations in strengthening accountability and responsiveness in municipalities; it is accompanied by a more detailed policy brief, which elaborates on the information and analysis presented.



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ACRONYMS

ABS	Accounting for Basic Services Project
CoGTA	Cooperative Governance and Traditional Affairs (the ministry which includes the Department of Cooperative Governance)
DM	district municipality
DPME	Department of Performance Monitoring and Evaluation
ES	equitable share (national)
FBS	free basic services
FFC	Fiscal and Financial Commission
GGLN	Good Governance Learning Network
IGR	intergovernmental relations
IDP	Integrated Development Plan
LM	local municipality
LGES	Local Government Equitable Share
LGFF	Local Government Fiscal Framework
MTREF	Medium Term Revenue and Expenditure Framework
MTSF	Medium Term Strategic Framework
NDohS	National Department of Human Settlements
SPLUMA	Spatial Planning and Land Use Management Act
SACN	South African Cities Network
SALGA	South African Local Government Association
SERI	Socio-Economic Rights Institute
SAHRC	South African Human Rights Commission

1. INTRODUCTION

Accountability is the cornerstone of development and good governance. Citizens are also increasingly demanding more responsiveness, as well as direct and meaningful engagement in accountability systems. Effective local government accountability, responsiveness and transparency is not an end itself, but rather represents the means to support better decision-making and more effective budgeting, which in turns leads to better development outcomes.

The **supply side of accountability**, also known as public accountability, is the hallmark of and a *sine qua non* for good governance.¹ Supply side measures to improve downward financial accountability include strong public financial management; standards for control on intergovernmental transfers (i.e. good audit reports, submission of financial statements); publication of budgets and good internal audit systems – with publicly available audit findings, clear rules for responsible local borrowing (including rules regarding defaults), public access to borrowing information; and clearly defined rules regarding hard budget constraints for local governments.

Demand side accountability, also known as social accountability, refers to a broad range of actions and mechanisms beyond voting that citizens can use to hold the state and providers of public services accountable. Demand side measures for financial accountability include publicly accessible local government financial information (including budgets, end-of-year financial statements and periodic implementation progress reports during fiscal year); public involvement in budgetary process through participatory budgeting practices; gender-sensitive planning, budgeting, and resource allocation, independent budget analysis and participatory public expenditure tracking programs that monitor budget execution and leakage of funds.

In a well-functioning local government budget and managerial structure, a municipality is subject to accountability to its citizens, accountability to public agencies and accountability to higher-level governments. These kinds of accountability are referred to as:

- **Bottom up accountability** by the local government to local citizens;
- **Horizontal accountability** by the municipality to various public institutions of accountability; and
- **Vertical accountability** by the municipality to provincial and national government.

To make this all work there must be mechanisms (formal systems, institutions, laws, regulations, as well as the informal day-to-day practice of government) in place such that two things occur: political leaders and bureaucrats become answerable to the citizenry for their actions and the citizenry takes on and accepts responsibility for the collective actions that governments make on their behalf.

As the sphere of local government that enables people's most direct interaction with government, municipalities play a critical role in upholding the integrity of the state and accountability, sustainability, and the promotion of social and economic development. However, despite its increasing anti-corruption efforts, government is perceived as being riddled with corruption at every sphere, and local government is perceived as the most corrupt of all. The lack of public trust and confidence (so called 'trust deficit') in local government is a major challenge and is undermined by a lack of accountability, real or perceived, to communities.

2. POLICY AND INSTITUTIONAL FRAMEWORK INFORMING MUNICIPAL ACCOUNTABILITY AND RESPONSIVENESS

South Africa has a complex intergovernmental system that comprises of nine provinces and 257 municipalities, with functions often shared concurrently and resources divided according to agreed fiscal principles and formulas; this means that the lines of accountability (responsibility being shared in many instances) is often blurred as one component of the State is dependent on another. While cooperative governance provides many strengths in a developing context, one of the challenges with the above system of accountability is around the ability and capacity of communities and civil society organisations to hold their local governments accountable.

The White Paper on Local Government (1998) put forward a vision of developmental local government, one which is committed to working with citizens, groups and communities in meeting the social, economic and material needs of communities in a holistic way. The White Paper states that local government “must focus its efforts and resources on improving the quality of life of communities, especially those members and groups within communities that are most often marginalised or excluded, such as women and very poor people. Municipalities should develop strategies and mechanisms (including, but not limited to, participative planning) to continuously engage with citizens, business and community groups”. Section 16 of the Municipal Systems Act gives expression to these policy ideals by providing specific provisions for, among others, the monitoring and review of the Integrated Development Plan (IDP), performance plans and actual performance, as well as preparation of the budget.

The constitutional framework imposes an obligation on national government and provincial governments, by legislative and other measures, to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. Critically, the Constitution obliges a municipal council to conduct its business in an open manner, and may close its sittings, or those of its committees, only when it is reasonable to do so, with regard to the nature of the business being transacted; it further obliges municipalities to publish by-laws and ‘must’ ensure that information is accessible to the public.

An integral element of intergovernmental relations is the monitoring and support of local government by both national and provincial spheres of government. Provincial supervision, monitoring and support of local government is a constitutional obligation in terms of section 154(1) and section 155(6) and (7) of the Constitution to strengthen municipal performance and accountability. To give effect to these obligations, the provincial departments for local government were established with the specific mandate to oversee and support municipalities to perform their functions in responding, and being accountable to communities.

Municipalities fulfil their duties within a regulatory and supervisory framework. In cases of failure to fulfil its constitutional or legislative obligations, the Constitution obliges provincial (and national) government to step in. The power of intervention is vested in the Provincial Executive, which implies that an intervention ought to be triggered by its reporting and monitoring system of municipalities in the province, which also informs its support programmes to local government.

Key mechanisms for strengthening accountability are mainly found in the set of legislation governing local government that give effect to the Constitutional objects highlighted above. At municipal level, the Municipal Finance Management Act (MFMA), together with the Municipal Structures Act (1998), the Municipal Systems Act (2000), the Municipal Property Rates Act (2004) and the Municipal Fiscal Powers and Functions Act (2007), sets out frameworks and key requirements for municipal operations, planning, budgeting, governance and accountability.¹

The local government fiscal framework is complex, characterised by multiple fiscal accountability connections. For infrastructure delivery, accountabilities range from service recipients to the national government, and in between these two extremes are local and provincial governments, service providers, middlemen, politicians, civil society, independent institutions, etc. As indirect grants are not municipalities' own revenue, municipalities may not always focus on performance. For basic service provision, revenue is mainly derived from the unconditional grant (LGES) basic services component, which again promotes upward or non-accountability since it can be used as municipalities see fit and they are not accountable to national government for how it is used and nor are they accountable to communities since there is no direct fiscal-services link.

3. THE REALITIES OF MUNICIPAL ACCOUNTABILITY, RESPONSIVENESS AND INTERGOVERNMENTAL WEAKNESSES – KEY CHALLENGES, GAPS AND OPPORTUNITIES

Representing the focal point of service delivery, an efficient and effective local government is the most crucial component of realising the goals and objectives of the Constitution, particularly in relation to the realisation of basic socio-economic rights. There is clearly a demanding policy agenda, complex and multiple reporting demands and a weakening of institutional abilities in many municipalities (and across the State generally).

WHAT IS EXPECTED IN TERMS OF MUNICIPALITIES BEING ACCOUNTABLE FOR PROGRAMMES, BUDGETS AND ACTIVITIES TO THEIR COMMUNITIES AND HOW HAS THAT PLAYED OUT IN PRACTICE?

A few general observations can be made based on the practice experienced during this project, some of which is outlined in the previous two briefs, supported by a wealth of evidence over the last two decades:

First, while the principle of direct downward accountability is embedded in the local government policy and regulatory framework, in practice this has been narrowed down to consultation and more formulaic engagements with communities. There is an expressed intent in local government policy and legislation for communities to have a direct say in planning, budgets, and to review performance, but the practice is very different.

- Once these policies or programmes and budgets are adopted, however, there is actually limited, if any, accountability to communities through regular reporting and in-year monitoring of the implementation of projects and programmes.
- Local communities may be consulted, as legislation necessitates, but they are not routinely equipped with relevant information and insights to participate in a deliberative process of determining priorities and trade-offs. There is also usually a lack of feedback to communities, once consultative processes have run their course.
- Mechanisms to monitor the use of funds or evaluate the impact of programs are generally weak or non-existent. Our system does not have community-based monitoring and built in accountability mechanisms.
- The most relied upon report in the country for the state of local government and, in particular, municipalities is the Auditor-General's report, and by the time it is published, it is significantly dated by almost a year. Even in the face of a catastrophic report, it does not lead to mandatory interventions for dysfunctional municipalities in terms of section 139 of the Constitution, either for failing its executive obligations or for financial failures, nor does it in fact present an opportunity to communities to call their elected representatives to account.

ACCOUNTING		
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Second, there is a *blatant disregard by many municipalities for the legal provisions around openness and transparency with regard to access to information*, which is meant to enhance accountability and transparency. This situation makes it very difficult for anyone, not least citizens and community organisations, to hold their municipality to account.

- Access to information poses a significant challenge to effective service delivery, and the lack thereof prevents poor people from participating meaningfully in developmental processes. Many cases that ended up in court were of complainants having to use the Promotion of Access to Information Act to access information that should be in the public domain.
- Although laws and policies are mostly accessible, actual development plans and projects are not. Even in instances where information such as budgets is available publicly, it is in a manner that is not easily relatable to communities, and information on resource allocation, in particular, is rarely presented in a way that affords ordinary people the opportunity to make informed decisions on policy positions.
- The first and second policy briefs lamented the difficulty in obtaining what should be publically available documents (in that case municipal indigent policies), while a scan of many municipalities websites suggest those websites may as well not exist; this suggests many councils are unaccountable and wish to remain so, knowing there are no consequences for failure to comply with the legal requirements.

Thirdly, there is a need for an honest conversation about whether the current governance model conducive to inclusive governance and accountability. The 257 municipalities comprising South African local government are governed by a comprehensive and standardised legislative framework, which places significant emphasis on community and people-centred approaches and processes. In fact, the definition of a municipality expressly includes the community, council and administration. However:

- Social accountability (when citizens hold public officials to account) is almost entirely lacking in monitoring municipal spending patterns, exposing wrong doing, and activating investigations into abuse and misuse of resources. Accountability is minimal, as community consultation happens only before the IDP and Budget is developed, not when it is in place and as projects are implemented.
- While wall-to-wall municipalities is a novel idea, in that, in theory, every community has a democratically elected representative, its effectiveness in deepening democracy and strengthening accountability and responsiveness to the needs of communities is highly questionable.
- The two-tier system with many local municipalities in a strong district, needs to be reconsidered, as ever escalating governance and administrative costs are having a significant impact on many municipalities' ability to operate as a going concern; this is the case particularly in those district municipalities that provide bulk services in the district, such as uMgungundlovu. The current model is cost-intensive and unsustainable, with the number of municipalities unable to meet their financial obligations only likely to increase year-on-year. Economies of scale was a key motivation for the establishment of district municipalities, and their importance and prevalence now cannot be underestimated nor overstated.



NEED FOR ACTIVE CITIZENRY AND COMMITMENT TO GENUINE COMMUNITY PARTICIPATION AND CO-PRODUCTION

An important check on local government is communities' demanding transparent and accountable management of municipal affairs, which in turn requires an active and informed citizenry. Communities have a vital role to play in the promotion of transparency and accountability at local level, but to date the lack of genuine commitment to community participation and 'co-production' has resulted in a significant lack of trust in elected representatives.

On the one hand, it is the responsibility of citizens to engage with government on its policies and programmes in an informed manner, and to use the legal provisions (in the Municipal Systems Act, for example) to demand greater accountability. On the other hand, for active citizenry to become a reality, municipalities must engage citizens (as well as their civic formations and business) in their own spaces and platforms of choice on a regular basis, whilst creating space in its structures (such as section 79 committees) for community oversight and engagement.

Working with communities in monitoring the implementation of projects and programmes will go a long way in addressing the trust deficit. By gearing state resources to local developmental needs, municipalities demonstrate their commitment to genuine public participation, rather than merely paying lip service to good and inclusive governance.

SUSTAINABILITY OF THE CURRENT FUNDING MODEL FOR LOCAL GOVERNMENT – FUNDING DEPENDENCIES AND BLATANT MISMANAGEMENT UNDERMINES ACCOUNTABILITY

The Auditor-General's 2018 local government audit outcomes confirms recent reports by SALGA indicating that some 112 municipalities (out of 257) don't have the money to carry out service delivery plans for the current financial year due to unfunded municipal budgets.² The AG's report³ painted a dismal picture of the state of municipalities, most of which are barely a going concern. Municipalities' level of non-compliance with proper financial controls is at its highest in five years. Municipalities are not paying their debts because they don't have the money to do so, owing Eskom and water boards billions. The AG indicated that 31% of municipalities conceded that they might not be able to continue operating.

The AG was of the view that many municipalities are in fact just showing a blatant disregard for financial controls and advice. Accountability continues to fail in local government, with glaring governance, leadership and oversight lapses at municipal level, contributing immensely to undesirable audit results.

Strengthening the whip on local government is therefore necessary, but care should be taken to also look at the underlying causes of systemic and institutional failure. Equally, sound financial management and a partnership-orientated business model (partnering with business to raise the funds necessary for development projects) must be strengthened.

Local government accountability for infrastructure delivery and spending is complicated by the fact that most infrastructure is funded through direct and indirect conditional grants, rather than own revenues. Accountability for the performance of conditional grants, flows from municipalities to national or provincial departments, with very limited accountability to communities, largely due to the apparent absence of a commitment to genuine community participation and collaboration.



² SALGA, Rio Nolutshungu interview in response to wage negotiations, SALGA Facebook page, 17 May 2018.

³ Published on 23 May 2018.

Thus, accountability only flows in an upward direction, to other spheres of government. The proliferation of indirect grants distorts effective accountability within the transfer system, since 'poorer' municipalities tend to focus more on upward accountability, being (as they are) almost entirely reliant on national government for funding. The lack of public trust and confidence in local government is a key contributing factor, with municipalities seemingly reluctant to create any expectations among their communities. Of course, this only increases the trust deficit.

One suggestion is to build greater accountability through an improved fiscal-services link. Municipalities that rely heavily on government transfers and those that have large indigent populations receiving free basic services need to strengthen the fiscal services relationship. Suggestions have been made⁴ that communities must pay something towards the services they receive to build greater accountability towards them by the municipality. The argument is that when residents pay for services (no matter how little), it empowers them, because if the municipality does not provide the service, it will not generate revenue. Residents who do not pay for services can only hold the municipality accountable in indirect ways such as through service delivery protests or by electing new politicians every five years.⁵ However, as experienced in uMgungundlovu, asking residents to pay for services is not an easy transition, nonetheless, it must be encouraged as much as possible.

While improving the fiscal-services link is necessary, expecting local government to raise substantial own revenue may be unrealistic in the majority of the country's municipalities, and should certainly not be a key assumption informing the division of revenue formula.

⁴ National Treasury, 2011a: 48

⁵ National Treasury, 2011a: 45

THE ROLE OF NATIONAL AND PROVINCIAL GOVERNMENT IN STRENGTHENING LOCAL GOVERNMENT AND ENSURING GREATER ACCOUNTABILITY TO COMMUNITIES

National and provincial government's role in strengthening local government can be summed up as supervision, monitoring and support. National government primarily plays a regulatory and oversight role, while provinces are tasked with monitoring and supporting municipalities in their jurisdiction. In practice, municipalities also play a facilitative role in assisting provinces to fulfil their mandate.

As evidenced in the KwaZenzele informal settlement in Lesedi, as well as the SAHRC report ⁶, the unduly complex IGR arrangements in place and fragmentation of responsibilities in the human settlements terrain makes it very difficult for municipalities to account to communities on what to expect, as they are entirely reliant on provincial government to deliver on their end.

- Provincial governments' failure (in some instances, such as in the case of Lesedi) to effectively allocate and transfer resources required for municipalities to implement projects ultimately means municipalities fail communities. Provinces are often blamed for promising to fund municipal projects, which leads to municipalities making promises to communities, even implementing projects using other funds, in the expectation that provinces will fulfil their commitments and refund them. Hence it is difficult for municipalities to plan with communities, or indeed to report or respond to their concerns, when funding to implement projects is not a certainty.⁷
- It is clear after more than 20 years of practice, that the cumbersome and fragmented housing delivery machinery significantly hampers the state's progress in realising the rights to shelter and services to informal settlements, and ultimately integrating human settlements, and that provinces are an unaccountable cog in the wheel. Over-complexity and too many layers of decision making, administration and bureaucracy has hampered effective service delivery.

In reality, provincial governments see themselves as competitors, and not overseers and supporters of, local government. There is no starker evidence of this than in the integrated human settlements terrain. In some instances, provincial departments develop and deliver housing projects directly within the jurisdiction of municipalities without following due process (including public participation, consultation and agreement with and from the municipality in terms of planning, etc). As a result, there is often a disjuncture between expectations relating to access to adequate housing, which places considerable legal and financial obligations on municipalities with respect to housing provision, while programme planning and funding remains controlled at a provincial level.

The fact that municipalities do not have control of the most important facet of the built environment, in itself, is a major policy shortcoming and one that rears its head repeatedly and most especially in the case of housing provision. It is clear that greater policy control and more adequate financing and tools need to be provided to local government in order to assist it in meeting its obligations, and account to communities directly on integrating their human settlements.



⁶ SAHRC report, page 65.

⁷ See page 50 of State of Local Government Report 2011, GGLN, Intergovernmental Relations and the Voices of the Marginalised, Malachia Mathoho, Planact.

4. THE NEED FOR CONSEQUENCE MANAGEMENT AND INCENTIVISED PERFORMANCE

One of the key responsibilities of municipalities is to ensure that their developmental outputs reflect the needs and diversity of the people residing within their jurisdiction. However, noting the various challenges currently being experienced, this can only be done if more stringent measures are put in place to hold local government leaders and officials to account as currently, accountability to communities is generally absent between elections.

A combination of measures, such as withholding transfers or reducing unconditional allocations, firmer implementation of the code of conduct for municipal councillors and officials and withholding performance-related increases and bonuses (when service delivery fails) will need to be enforced and reinforced.⁸ Above all else, there is a need to strengthen consequence management and incentivise performance-based outcomes.

It is now essential that a 'Consequence and Incentives Management Directive' be developed and inculcated in the culture of municipal governance. Nothing will enhance accountability and responsiveness more than enforcing (particularly financial) consequences for non-performance and removing councils, councillors and officials who show blatant disregard for the law. Equally, incentives for good performance and the right kind of governance behaviour should attract rewards and greater autonomy in running the municipal affairs.

This directive could be driven by CoGTA as part of its monitoring and oversight role of the sector, in partnership with National Treasury since it is responsible for sound financial management. Once developed for local government, the model could be extended across the national and provincial sphere of government, including its support and monitoring (dependency) role in local government.

The full Consequence and Incentives Management Directive must clearly set out the responsibility of each political office and role player in terms of governance, financial management, service delivery and intergovernmental relations. The consequences of failure in each respect, and rewards for good performance, will have to be highlighted and proposals made on how the regulatory environment needs to be changed to give effect to the Consequence and Incentives Management Directive.

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⁸ (missing footnote)

5. RECOMMENDATIONS

The following are the key set of recommendations for policy makers and practitioners to ensure that municipal accountability and responsiveness is strengthened, and that IGR and responsibilities are much more clearly delineated so as to promote accountability. Ultimately, these will contribute to addressing the 'trust deficit' and lack of public confidence in local government.

A Consequence and Incentives Management Directive should be developed and implemented by National Treasury and CoGTA, which should entail, *inter alia*:

- A combination of measures, such as withholding transfers, firmer implementation of the code of conduct for municipal councillors and officials and withholding performance bonuses when service delivery fails, will need to be reinforced, as well as mandatory interventions for certain kinds of failure (such as disclaimers and adverse audit opinions).
- Rewards set out for greater levels of performance which could include the maximum of the upper limit salary increases, more periodic audit assessments and in general greater autonomy in running the municipal affairs, including more unconditional funding.
- Consequence management should focus on and start with the leadership level in municipalities, especially among the mayoral or executive committee, as well as the municipal manager and senior managers.

Strengthen social accountability, which can be achieved through:

- Community monitoring groups, which track expenditures, report on municipal under-spending and check that public funds are disbursed for intended purposes. While, for example, Municipal Public Accounts Committees in theory are open to public engagement and scrutiny, and municipalities have a legal responsibility⁹ to ensure that communities are adequately informed and capacitated to participate, practice indicates that this is not the case.
- Community monitoring groups made up of individuals elected by communities and chosen based on their expertise in different areas of service delivery.
- Greater community involvement in project implementation, monitoring and oversight – for example, representatives of community groups sit directly on section 79 committees to strengthen accountability and oversight.

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⁹ Section 16, (b) and (c) of the Municipal Systems Act, 32 of 2000

Review the assumptions informing the local government funding model and the governance model

- Expecting local government to raise substantial own revenue may be unrealistic in the majority of the country's municipalities, and should not be a key assumption informing the division of revenue formula.
- A much more differentiated model should be explored, with a completely different funding logic and model applied to metros and 'secondary cities', and a different funding model altogether needs to be applied for the remaining 200 or so municipalities. The current model is cost-intensive and unsustainable, with the number of municipalities failing to meet their financial obligations only likely to increase year-on-year.

At IGR level, review the role of provinces in housing delivery and ensure direct accountability for integrating human settlements

- Housing should be fully assigned as a local government competency to ensure municipalities have full control and funding for human settlements which would enable them to be much more responsive to community needs and fully accountable to communities, as they would control all levers of the delivery chain.
- Resuscitate the accreditation process and reinstate the assignments to the metros and other 'ready' municipalities which was due to take place in 2014.

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This policy brief was produced by Accounting For Basic Services Project.

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