

THE REALITIES OF FREE BASIC SERVICES AND INDIGENCY:

HUMAN RIGHTS, DIGNITY AND FINANCIAL SUSTAINABILITY

KEY CHALLENGES, GAPS AND OPPORTUNITIES
FROM THE POLICIES AND PRACTICES IN THREE
LOCAL COMMUNITIES

Summary Policy Brief
May 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. One of these themes is that poor communities are not very well informed about their rights, nor how the Council is ensuring that basic rights to water and sanitation are addressed. Furthermore, the fact that the equitable share is an unconditional allocation has complicated communities' efforts to determine whether their Council is using the funds efficiently and in the interest of poor households. This summary policy brief focuses on the realities of free basic services and indigency, and draws on examples from three municipalities (Lesedi LM, Emalahleni LM and uMshwathi LM) where the ABS Project has been implemented. It is accompanied by a more detailed policy brief, which elaborates on the information and analysis presented.



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ACRONYMS

FBS	free basic services
IGR	intergovernmental relations
IDP	Integrated Development Plan
LM	local municipality
DM	district municipality
LGES	Local Government Equitable Share
LGFF	Local Government Fiscal Framework
CoGTA	Cooperative Governance and Traditional Affairs (the Ministry which includes the Department of Cooperative Governance)
dplg	Department of Provincial and Local Government (now CoGTA)
SALGA	South African Local Government Association
SERI	Socio-Economic Rights Institute
MTREF	Medium Term Revenue and Expenditure Framework
RDP	Reconstruction and Development Programme



LOCAL GOVERNMENT'S RESPONSIBILITY TO PROVIDE BASIC SERVICES TO INDIGENT HOUSEHOLDS

The transformation of South Africa from a society rooted in discrimination and disparity to a constitutional democracy founded upon freedom, dignity and equality continues to pose particularly profound challenges at local government level. It is here that acute imbalances in personal wealth, physical infrastructure and the provision of services are often most patent. As a result, a large part of the burden of addressing this disparity falls upon local government, as it is the provider of primary services which are essential to the dignity of everyone who lives in their area of jurisdiction.

The Constitution highlights the right of all citizens to have access to basic levels of services. This principle is underpinned by the National Indigent Policy, which says that municipalities must provide free basic services (FBS) to indigent people in a sustainable manner. The Indigent Policy's aim is therefore to alleviate poverty in disadvantaged communities by providing free basic water (at least 6 kilolitres per month), free basic electricity (at least 50 kWh per month), and subsidised sewerage and sanitation as well as solid waste management (up to R50 per month or 100% subsidy to indigent households).

FISCAL FRAMEWORK SUPPORTING FBS PROVISION

To aid municipalities with FBS provision, the municipality receives annual allocations from the equitable share. Local government equitable share allocations are unconditional and it is the choice of municipalities how they allocate the funds in their budgets in order to meet their constitutional and legislative mandates and responsibilities.

While access to (free) basic services has been increasing at a good rate over the last two decades, so has the rather significant backlog. In 2016, municipalities identified 3.6 million indigent households as earning less than R3 500 per month. Of these 3.6 million households, only around 2 million were benefiting from indigent support for basic services, which means that a high percentage (about 30%) of indigent households are not enjoying access to free basic services (particularly water and sanitation), despite the constitutional and policy imperatives.

Exacerbating the challenge is the reality that South Africans are increasingly unable to afford to pay for municipal services and the vast majority of municipalities are thus unable to raise a substantial portion of 'own revenue'. A declining revenue base and increasing cost of services has put municipalities in deep financial distress, meaning less resources to execute their developmental mandate and having to make painful choices between competing priorities, often at the expense of the poor.

While costs of services and wage bills continue to increase, and the unemployment rate goes up (lowering residents' ability to pay for municipal services), the allocations to local government over the MTEF period for 2018 to 2020 are declining. While R3.4 billion has been reallocated to the local government equitable share to address provision of free basic services, this reallocation was the result of cuts in investment in municipal infrastructure. For the 2018/2019 financial year, indirect grants to municipalities will decline by 16.1% in real terms, relative to the 5.1% reduction to provincial government.



These cuts will affect key grants that aid infrastructure development such as the municipal infrastructure grant (MIG), which will see a cut of R5.6 billion over the next three years. Although it is recognised that the government deficit must be addressed, cuts to local government inevitably punish the poor. Austerity budgeting is by its very nature a harsh short-term intervention with even harsher negative longer term impacts.

For these municipalities to continue improving the quality of services provided to their citizens, they need to generate the required revenue, but the reality is that they are faced with serious development backlogs and poverty which limits their ability to raise substantial own revenue. The current challenge facing these municipalities is thus managing the gap between cost drivers and tariffs levied, as any shortfall must be made up by either operational efficiency gains or service level reductions. Almost inevitably, the latter prevails at the expense of the poor, and a greater portion of the equitable share is used for operations, as opposed to poverty relief.

MUNICIPAL INDIGENT POLICIES AND THEIR IMPLICATIONS

A sound FBS and Indigent Policy is the foundation of a fair and equitable solution to bring relief to the many millions of poor residents of municipalities. Unfortunately, the manner in which municipal indigent policies and their requirements are framed as well as applied, has left many behind, with too many households not accessing the basic necessities and rights promised by the Constitution. Means tests are not required by FBS policy, so a truly developmental municipality could choose to make access universal to all its inhabitants or spend 100% of its equitable share allocations for the purpose for which they were intended. Given the financial pressure on municipalities, there is an obvious reluctance to do so.

While the indigent policies of municipalities differ, they all have more or less the same objectives, among them to determine a level of affordability for the supply of free basic services and to regulate the access of households to free basic services. In regulating access, the key question is whether indigent policies frame the requirements for qualification in a way which excludes many of the very poor and indigent.

By their nature, many poor/indigent households will not have the necessary documentation (e.g. proof of income, etc.) or ownership/tenure rights required by most policies. By framing FBS requirements in this manner, municipalities are able to divert funding channelled for the poor towards other operational requirements as only those who meet the criteria qualify for FBS. The more financially strained the municipality is, the more likely it is to use the equitable share for operational expenditure and therefore frame their indigent policies in fairly strict and exclusive terms, such that the bulk of the equitable share allocation can sustain its operations. One can argue that this is the perverse incentive inherent in the unconditional nature of the equitable share.

The examples from three local municipalities (LMs) – Lesedi LM, Emalahleni LM and uMshwathi LM – where the ABS project has been implemented are illustrative. The Lesedi LM Indigent Management Policy covers a wide range of indigent benefits and essentially provides a subsidy for the full range of basic services to qualifying households, but very few households in fact successfully meet the eligibility criteria.



In Lesedi LM, only 2 400 households in the municipality are registered as indigent and qualify to receive the 50kwh free electricity, 6kl water, free sanitation services and once a week refuse removal. Yet, 21 628 of the households in Lesedi have a total household income of less than two old age pensions (effectively the indigent according to the local government equitable share [LGES]), and a total of 16 021 households are classified as poor (have a combined income of not more than R3 745 thousand per month). For 2017/18, Lesedi allocated over R90m for basic services, yet the total cost of FBS it provided to formally registered indigent households was R16.1million. This means that potentially 14 000 households eligible for, and in need of, free basic services according to Lesedi's own policies, are not registered as indigent and therefore do not have access to basic services, despite the LGES catering for 21 628 'indigent' households. R74m of a possible R90m – or 82% of the funds intended for those in need – are not spent as such. By the LGES definition, 19 200 households identified by national government as qualifying, are not receiving the services intended for them. More than 80% of those that the LGES classifies as indigent are therefore missing out due to the municipality's criteria, and while it may not be a deliberate attempt at exclusion, that is its real effect.

For Emalahleni, while the LGES caters for over 65 000 households as effectively indigent, the municipality's budget provides that to only 10 500 households recognised as indigent. The 2017/18 Budget proposed that of the equitable share (ES) allocation, only R38m goes to indigent applications, and the rest to operational expenditure, compared to a basic services allocation of over R300m for 2017/18, meaning that just over 10% of the ES allocation intended for those recognised as indigent is actually spent on them. In both cases, it suggests that for every 10 households classified and funded as indigent by the LGES, less than three qualify as registered indigent households on the municipal database. As a recent report by the Socio-Economic Rights Institute (SERI) indicates¹, this figure is generally true across the spectrum.

Meanwhile, the backlog in uMshwathi Municipality indicates that 10 749 households (46%) still do not have access to piped water and 7 875 households (33%) do not have water within a distance of 200 meters. Furthermore, approximately 19 045 households have no access to decent sanitation and 11 734 households do not have access to legal electricity connection.

The marginalisation of the poor from the core administrative or institutional systems and resources of government is one of the key dimensions of persistent and chronic poverty. It is greatly disappointing therefore, that those most unlikely to be able to do so are required to go to such lengths to justify why they should get access to basic services.



¹ SERI Report "Targeting the poor? An Analysis of FBS and Municipal Indigent Policies in South Africa", 2014

KEY CHALLENGES AND OPPORTUNITIES

Some of the exclusionary practices to adequate provision of free basic services include:

- Indigent policies that are often more concerned with eliminating fraud than with making sure that basic services get to those most in need. This approach is outdated, and is certainly not developmental, as it sees the poor as recipients of charity rather than people with basic rights.
- Conditions for receiving free basic services which are problematic. For example, with the exception of communal service points, applicants must own the property where the services are provided. The implication is that the most vulnerable households who do not own property (or have the necessary paperwork to prove it) are excluded.
- Cost of living increases often exceed household income increases, while the income bands to qualify for assistance have remained largely static (typically R3500-R3750), meaning that many households who are indigent or in desperate need of assistance do not qualify in terms of prescribed income bands. This exclusion is the rather cruel outcome of a rigid compliance based approach (rather than a developmental one) and serves to exacerbate poverty and inequality, rather than diminish it.

Could municipalities rather be more inclusive to make sure people in need are not left out? Means tests are not required in terms of FBS policy, so a truly developmental municipality could choose to make access universal or spend 100% of the ES allocations for the purpose for which they were intended. Given the financial pressure on municipalities, there is an obvious reluctance to do so.

THE CONUNDRUM FOR LOCAL GOVERNMENT – BALANCING THE DEVELOPMENTAL MANDATE, GRANT DEPENDENCE AND FINANCIAL SUSTAINABILITY

While municipalities do receive grants to fund free basic services, it is an unconditional grant, which means it can be spent as municipalities see fit and there is very little accountability or oversight of this component. Treasury plays a key role in providing for these services in the LGES in trying to ensure sound budgeting and sustainability, but CoGTA has thus far played no role in monitoring and oversight of how municipalities have implemented FBS in their own policies and expenditure patterns. Yet, while local government has a degree of autonomy, CoGTA does have an important monitoring and oversight responsibility in ensuring, for example, that municipal policies and practices give effect to their constitutional mandates and realise the rights of the poor, rather than framing policies in exclusionary terms that run counter to the progressive realisation of socio-economic rights, which is the State's obligation.

Has the time come to consider ring-fencing the ES basic services component to ensure that the funding provided for FBS is exclusively utilised to provide these critical services to 'indigent' (as classified in the LGES) households? If this is the case, perhaps a more inclusive and less stringent approach will have to be taken by municipalities in their policies and implementation, however this will stretch the budgets and potentially jeopardise the functionality of many municipalities reliant on the equitable share to fund their operational requirements.



At present, allocation of funds to indigent peoples is fully left to the discretion of municipalities and in many cases, less than 50% (and sometimes even up to 80%) of the funds intended for the indigent doesn't reach them. At the very least, there should be an acceptable norm for the percentage of money intended for the poor and that which is actually expended on them. For example, at least 75% of the LGES allocation (which is based on indigent households) could be ring fenced for the indigent and that will go some way to encourage more inclusive indigent policies and subsidies. In this scenario, CoGTA could play an important role in ensuring accountability and setting norms and standards for the FBS and Indigent Policy.

Pursuing such an option would mean that local government would have to be more appropriately funded to fulfil its developmental role. As mentioned below, a comprehensive review of the funding model for local government is necessary, as inadequate finances have put extreme pressure on municipalities, resulting in the poor being increasingly short-changed.

The reality is that the majority of municipalities do not raise a substantial portion of own revenue and the larger municipalities skew this figure significantly. The aggregated figure thus looks much better than is realistically the case across the sector. Of course, it is also true that the majority of the poor and indigent reside in the larger urban municipalities. Implementing cost-reflective tariffs is important and necessary, but this may have the consequence of creating more indigent and non-paying residents given the socio-economic realities in most municipalities.

While strengthening the whip on local government is necessary to ensure maximum efficiency, so is ensuring that local government has a sustainable financial system and appropriate fiscal framework in place which is conducive to accelerating service delivery. Continuing to plan based on projected economic growth and job creation numbers that do not materialise will only exacerbate the situation and further result in marginalisation of the poor, as municipalities inevitably divert more of the ES allocations to fund operational expenditure.

HOW CAN THE POOR BE INCLUDED AS RIGHTS-HOLDERS RATHER THAN BE SEEN AS MERE RECIPIENTS OF SERVICES? OPPORTUNITIES FOR A TRULY DEVELOPMENT APPROACH

The desperate need for housing and security of tenure are some of the biggest challenges facing the country. The legal and fiscal framework, as well as increasing pressures of being at the forefront of service delivery and having to do much more with much less, has perhaps had the unintended consequence of Councils adopting a 'bare minimum' compliance approach, viewing collaborative engagement and co-production with communities as a legal necessity or even irritation, rather than an imperative empowering tool for the poor and marginalised.

Municipal documents often talk of 'participatory process aimed at empowering the poor and marginalised', rhetorical political enthusiasm for participation or inclusiveness is not matched by practice. Contrary to the White Paper principles, communities have often been the passive recipients of development rather than collaborators in it. The Lesedi Indigent Management Policy is a case in point: while it boasts about its coverage of a wide range of indigent benefits in subsidising the full range of basic services to qualifying households, very few households (only 15%) have been able to qualify to benefit from the policy.



The exclusion of disadvantaged groups from the focus of municipal policies suggests the manifestation of a worrying practice of becoming inward-focused, rather than being development orientated. In particular with FBS, municipalities, for example, have a duty to discuss with communities what kind of water, electricity and sanitation (levels of service) is appropriate in each case, but seemingly, the preoccupation with 'delivery' and 'getting the job done' has usurped the participatory, collaborative or co-productive elements of its mandate. For example, the ABS Project could not obtain the indigent policies of Emalahleni or uMshwathi, despite this being one of the more crucial policies (upon which the LGES is largely based) which one would expect should, at the very least, be published on the website as soon as it is adopted or updated by Council. This lack of access to the information in itself is quite revealing since the availability of information and transparency ought to be the foundations of local democracy. Furthermore, there could be an easy, multilingual guide on the website with categories such as a 'do you qualify?' test, 'how to apply' or 'what to bring along' for prospective indigent applicants to understand. Such accessibility embraces an approach which sees communities as partners in their own development. After all, by definition, the community is a vital part of a municipality, necessitating inclusiveness and transparency as the prevailing culture.

Given the poor economic growth rates since 2009 and the consequent increasing unemployment rates, more and more South Africans are unable to afford to pay for municipal services and the vast majority of municipalities do not raise a substantial portion of 'own revenue'. A declining revenue base (income), increasing populations and indigency, compounded by shrinking fiscal allocations has increasingly put municipalities in deep financial distress, meaning less resources to execute the developmental mandate and having to make painful choices between competing priorities, often at the expense of the poor.

The current crisis may in fact offer a golden opportunity for municipalities to become truly developmental in collaborating with communities in finding workable, cost effective and innovative solutions to mounting challenges, as demonstrated by Polokwane in its approach to the issue. Nationally, Polokwane was the municipality that reported the largest increase (from 30 700 to 91 338 consumer units) in households receiving free basic solid waste management over the five-year period (2008 to 2012).² This triple increase was due to the awareness campaigns that were run in villages, leading to more residents reporting and being assisted to register for free basic services at the municipality. This is a good example of a simple approach leading to significant increases in coverage and realisation of rights.

It is important to note that a glance at Polokwane's budget and profile indicates that it has no less socio-economic or resource challenges to contend with, but despite that (or perhaps because of it), the municipality chose to take an inclusive (i.e. developmental) approach to ensure that it serves those whom it is intended to. It has in fact taken an approach that empowers poor and marginalised communities, and places reliance on mobilising the energies of those communities.

It could be argued that the growing burden on municipalities in fact necessitates the very developmental, people-centred (and driven), collaborative approach envisioned in the White Paper and constitutional mandate, as was the case in Polokwane. If Polokwane Municipality can do it with such aplomb and simplicity, there is no reason that it should not be the prevailing standard.



² 2016 Community Survey

RECOMMENDATIONS

The following are the key set of recommendations for policy makers and practitioners to ensure that the constitutional rights, policy intent and fiscal allocations to the poor are in fact much more progressively realised.

1. Councils must do more to ensure that coverage of FBS goes a lot further than is presently the case.

It is simply unacceptable that up to 80% of LGES basic services funding does not go to the poor or indigent, as defined, due to the stringent criteria or eligibility requirements expected by most municipalities, or because of administrative incapacity to reach those most in need. It is incumbent on municipalities to take the steps necessary to ensure that those for whom provision is made, can, in fact, access their basic rights, and not to see it as an easy opportunity to use the funds for general operations (since not many will qualify based on the criteria set).

RECOMMENDATIONS INCLUDE:

- Writing a policy requiring people to register and setting fairly inclusive requirements
- Undertaking constant awareness campaigns and indigent registration drives to ensure that those who do qualify are not left behind for 'administrative' shortcomings.
- Assisting communities to meet the criteria, and not merely setting criteria and then judging applications at arms-length. Where applicants do not have the paperwork or supporting documentation readily at hand, municipal officials must assist the indigent to obtain them and meet the criteria.
- Renewing efforts at reconnecting communities with their municipalities, in particular involving communities in budget and fiscal planning. The onus is on the municipality to open as many avenues for engagement as possible, develop materials to assist communities to understand the planning and budget process and invite proposals to inform difficult fiscal and policy choices.

2. CoGTA should execute the roles assigned to it to further the realisation of rights. CoGTA has an important monitoring and oversight responsibility over municipalities and has to play a greater role in ensuring that municipal policies not only comply with legal requirements, but in fact seeks to further the real policy intent (universal or at least reasonable and fair access).

3. Determine a minimum norm for the percentage of local government equitable share allocations that must go to poor households.

To date, the local government equitable share allocation is largely allocated towards the operation costs of municipalities, including staff salaries, rather than the delivery of basic services to indigent households.



Setting minimum norms and standards for the percentage of ES allocations that must go to poor households is another key role CoGTA could potentially be playing, thus taking the action mentioned in the National Policy to ensure that indeed all do have acceptable access to basic municipal services. Not enough has been done to date. There has to be an acceptable norm such that at least 75% of the money intended for the poor (allocated for FBS in the LGES) actually reaches them in municipal revenue and expenditure budgets.

4. Strengthen the link between Community Survey or Census data and FBS allocation.

There has to be a greater link between statistical data and the FBS allocation. Even if these are not accurate and are based on estimates, the bottom line is that funding is allocated based on those numbers and so should provision of services. If the Community Survey records 14 000 households in a particular municipality as being indigent and that is used in the LGES allocations, then those same households should be able to access FBS without 'further proof or administrative paperwork' being required. The retort may always be 'it's not that simple', but it is that additional burden of proof which disqualifies so many otherwise qualifying households (in terms of LGES or Census / Community Survey definitions or income bands), to the extent that up to 8 out of 10 households do not receive the FBS intended and budgeted or allocated for them.

5. Initiate a policy review and debate to consider universal access to FBS and how this could be achieved.

While the funding implications may be prohibitive given the macro economic and fiscal climate, perhaps Treasury could consider assessing the cost implications of conducting indigency assessments, and recommend appropriate tariff structures to ensure cross subsidisation.

6. Engage in a comprehensive review of the local government fiscal framework

A comprehensive review of the local government fiscal framework should systematically re-assess the appropriateness of the baselines which underpin the vertical division of revenue to ensure local government is receiving revenue adequate for funding its broader development mandate, not just free basic services.

The vertical division of revenue must be re-evaluated against the increase in demand for basic services by poor households that are reported in the 2011 Census and 2016 Community Survey, as well as studies into the variation in the costs of providing basic services in municipalities with different topologies and human settlement densities.

Given the resource constraints, which will remain a reality for at least the medium term, government as a whole, and local government in particular, critically need to rethink the approach on how to make inclusive development and collaborative governance a reality, otherwise the poor and marginalised will remain mere spectators of democracy and development.

As much as anything else, it requires a change in attitude, approach, and the development of an institutional culture of collaboration and co-production. The development of such a culture is vital for the sustainability of the institution of local government and the enhancement of vibrant democracy and the realisation of rights.



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