



Examining the right to have access to sufficient water in Sebokeng, South Africa

P Dube



orcid.org/0000-0002-6738-1237

Mini dissertation accepted in partial fulfilment of the
requirements for the degree *Master of Laws in Environmental
Law and Governance* at the North-West University

Supervisor: Prof G Viljoen

Graduation: July 2026

DEDICATION

First, I dedicate this thesis to God, the Father, for granting me the strength, wisdom and perseverance to complete this journey, and for surrounding me with people who became a source of help and support during this time.

I dedicate this work to my daughters, Tyanna and Tiffany, and my late son, Tyrone, who were my source of inspiration whenever I needed courage and motivation to continue.

To my husband, Professor Kaitano Dube, thank you for your immense support, encouragement and guidance, and even for the moments of strictness that kept me focused. Your inspiration, mentorship, time and contribution throughout this journey are beyond measure.

To my parents, Emason Chimunhu and Pretty Ndlovu, words cannot fully express my gratitude for the love, sacrifice and support you have poured into my life and this achievement. You have truly been a blessing and a pillar of strength.

To my sisters, Chantel and Charity Chimunhu, thank you for your love, motivation and encouragement. Your words of support echoed in my heart and gave me strength during the most difficult times.

To the rest of my family, thank you all for your immense support and encouragement. This achievement would not have been possible without each of you carrying me through the tough moments.

I also dedicate this thesis to my friends for their unwavering support. Each of you stood by me during the toughest times and became a shoulder to lean on when I felt overwhelmed. Your support is deeply appreciated and will never be forgotten.

Lastly, I dedicate this thesis to the residents of Emfuleni Local Municipality, who have endured water and sanitation service challenges for many years. It is my sincere hope that this study will, in some way, contribute to the positive change and justice the community deserves.

ACKNOWLEDGEMENTS

I want to express my sincere gratitude to my supervisor, Professor Germanie Viljoen, for her invaluable guidance, support and encouragement throughout this journey. Her expertise and constructive feedback were pivotal in shaping this dissertation. As a mentor, she strengthened my academic abilities and enhanced my capacity to approach challenges with determination and confidence. I am deeply grateful for her willingness to share her insight, knowledge and time so generously. Without her support, this work would not have been possible.

I also wish to extend a special note of thanks to the NWU Postgraduate Bursary Scheme and the NWU Faculty Bursary for their financial support throughout my studies.

ABSTRACT

Water is a fundamental human right and a constitutionally protected right in South Africa. Section 27 (1)(b) of the *Constitution of the Republic of South Africa, 1996* (Constitution), guarantees that everyone has the right to have access to sufficient water. Since the promulgation of the Constitution, the legislature has adopted progressive laws to give effect to the constitutional water rights. These include, among others, the *Water Services Act* 108 of 1997 and the *National Water Act* 36 of 1998. Nevertheless, despite these legislative interventions, the realisation of this right remains uneven across social groups in South Africa. Research indicates that this challenge is deeply rooted in South Africa's political legacy. Historically, water governance in the country has been characterised by structural inequality, stemming from apartheid-era spatial planning and discriminatory service provision that benefitted a select and privileged minority.

Sebokeng, within the Emfuleni Local Municipality in Sedibeng District of Gauteng, exemplifies the enduring effects of these historical injustices. Predominantly low-income, the community is marked by high unemployment rates, persistent socioeconomic inequality, and severe infrastructural neglect, all of which continue to constrain access to sufficient water.

This study critically examined the progressive realisation of the constitutional right to access sufficient water in Sebokeng, South Africa. The study situated this right within international and regional human rights commitments, and proceeds to: 1) provide a historical and theoretical account of South Africa's water governance framework; 2) identify and analyse a number of challenges in the realisation of the constitutional water right in Sebokeng and examine the regulatory and institutional barriers to the effective implementation; and 3) explore mechanisms to strengthen the existing legal and governance framework to progressively realise the right to have access to sufficient water in Sebokeng, South Africa.

Key terms

Access, Constitution, human rights, local municipality, Sebokeng

LIST OF ABBREVIATIONS

UN	United Nations
WASH	Water, Sanitation and Hygiene
WHO	World Health Organisation
UNICEF	United Nations Children's Emergency Funds
SDGs	Sustainable Development Goals of 2015
AMCOW	African Ministers Council on Water
SADC	Southern African Development Community
NWA	National Water Act 36 of 1998
RISDP	Regional Indicative Strategic Development Plan
WSA	Water Services Act 108 of 1997
DWS	Department of Water and Sanitation
Stats SA	Statistics South Africa
WSDP	Water Services Development Plan
IDP	Integrated Development Plans
ELM	Emfuleni Local Municipality
MFMA	Municipal Finance Management Act 56 of 2003
MISA	Municipal Infrastructure Support Agency's
FBW	Free Basic Water
SAHRC	South African Human Rights Commission
AGSA	Auditor-General South Africa

TABLE OF CONTENTS

DEDICATION.....	I
ACKNOWLEDGEMENTS	II
ABSTRACT	III
LIST OF ABBREVIATIONS	IV
CHAPTER 1 INTRODUCTION	1
<i>1.1 Background.....</i>	<i>1</i>
<i>1.2 Problem statement.....</i>	<i>2</i>
1.2.1 Emfuleni Local Municipality: Sebokeng.....	3
1.2.2 The Multi-level Regulatory Framework.....	3
1.2.2.1 International and Regional Commitments	4
1.2.2.2 National Commitments.....	8
<i>1.3 Research question.....</i>	<i>8</i>
<i>1.4 Aim and objectives of the study.....</i>	<i>8</i>
<i>1.5 Methodology.....</i>	<i>9</i>
<i>1.6 Framework.....</i>	<i>10</i>
CHAPTER 2 THE REGULATORY FRAMEWORK GOVERNING THE RIGHT OF ACCESS TO SUFFICIENT WATER IN SOUTH AFRICA: SEBOKENG FOCUSED	12
<i>2.1 Introduction</i>	<i>12</i>
<i>2.2 Historical Perspectives on Water Governance in South Africa.....</i>	<i>13</i>
2.2.1 Water Governance under the preceding political dispensation.....	14
2.2.2 Democratic Transition and Constitutional Reform	15

2.3	<i>The Legal and Policy Framework Governing the Right of Access to Water</i>	17
2.3.1	The Constitution of 1996	19
2.3.2	The National Water Act 36 of 1998	19
2.3.3	The Water Services Act 108 of 1997	20
2.3.4	The Local Government: Municipal Systems Act 32 of 2000	21
2.3.5	Municipal By-laws and Local Implementation in Emfuleni	22
2.4	<i>The Constitutional Obligation of Accountability</i>	23
2.4.1	Local government obligation	23
2.4.2	The Legal and Policy Basis for Infrastructure Obligations	25
2.5	<i>Bridging Sebokeng's Contemporary Crisis with History</i>	26
2.6	<i>Current State of Infrastructure in Sebokeng</i>	26
2.7	<i>Statutory Requirements for Monitoring and Evaluation</i>	27
2.8	<i>The Gap Between Legal Entitlements and Social Reality: The Case of Sebokeng</i>	28
2.8.1	The Paradox of a Progressive Legal Framework	30
2.8.2	Governance and Institutional Fragmentation	31
2.8.3	Infrastructure Decay and Financial Mismanagement	32
2.8.4	Concluding Remarks: The Paradox of Water Governance	33
 CHAPTER 3 LEGAL, INSTITUTIONAL AND STRUCTURAL CHALLENGES THAT HINDER THE PROGRESSIVE REALISATION OF THE CONSTITUTIONAL WATER RIGHT IN SEBOKENG		 34
3.1	<i>Introduction</i>	34

3.2	<i>Contextual Overview of Water Services Delivery in Sebokeng</i>	35
3.2.1	Historical and Institutional Background	35
3.2.2	Socioeconomic Context and Infrastructure.....	36
3.2.3	The Institutional Role of the Emfuleni Local Municipality	37
3.2.4	Governance and Capacity Constraints.....	38
3.3	<i>Infrastructural Challenges and Service Reliability</i>	39
3.3.1	Ageing Infrastructure and Historical Neglect	39
3.3.2	Leakages, Water Losses, and Service Interruptions	40
3.3.3	Sewage Contamination and Environmental Degradation	41
3.3.4	Legal Evaluation of Municipal Obligations.....	42
3.3.5	Consequences and Emerging Interventions.....	42
3.4	<i>Administrative and Governance Failures</i>	43
3.4.1	Weak Institutional Capacity and Administrative Instability	43
3.4.2	Poor Budgeting and Financial Mismanagement.....	44
3.4.3	Corruption and Maladministration	45
3.4.4	Weak Intergovernmental Coordination.....	46
3.4.5	Limited Technical Capacity	47
3.4.6	Implications for Co-operative Governance	48
3.5	<i>Socioeconomic Barriers to Water Access</i>	48
3.5.1	Poverty and Unemployment in Sebokeng	49
3.5.2	Informal Settlements and Service Exclusion	49
3.5.3	Affordability and Tariff Structures.....	50

3.5.4	Socioeconomic Rights and the Principle of Progressive Realisation	51
3.6	<i>Evaluating Implementation Against Legal Benchmarks</i>	53
3.6.1	Equality and Non-Discrimination	53
3.6.2	Accountability and Good Governance	54
3.6.3	Environmental and Financial Sustainability	55
3.6.4	Cooperative Governance and Institutional Integration	56
3.6.5	The Gap Between Legal Commitments and Lived Realities	56
3.7	<i>Chapter Summary</i>	57
CHAPTER 4 LEGAL AND GOVERNANCE MECHANISMS AIMED AT IMPROVING THE REALISATION OF THE WATER RIGHT		59
4.1	<i>Introduction</i>	59
4.2	<i>Infrastructure Development in Sebokeng</i>	61
4.2.1	Sustainable Infrastructure Renewal	62
4.2.2	Infrastructure Failure, and the Crisis of Water Service Delivery in Sebokeng	63
4.3	<i>Monitoring and the Evaluation of Water Service Delivery</i>	64
4.3.1	Current Weaknesses in Emfuleni's Monitoring Systems	64
4.3.2	Strengthening Monitoring and Evaluation Mechanisms	65
4.4	<i>Accountability and Community Engagement</i>	67
4.4.1	Barriers to Accountability in Sebokeng	68
4.4.2	Opportunities for Strengthening Accountability	69
4.4.3	Self-Governance, Community Participation, and Accountability in Water Access Governance in Sebokeng	71

4.5	<i>Towards a Holistic Model for Realising Water Rights in Sebokeng</i>	71
4.5.1	Integration of Infrastructure Reform and Oversight	72
4.5.2	Embedding Accountability into Service Delivery.....	72
4.5.3	Multi-Sphere Cooperation and Resource Alignment	73
4.5.4	Linking Water Rights to Broader Socioeconomic Rights	73
4.5.5	Township Development in Water Governance	74
4.5.6	Realising the Constitutional Right to Water in Sebokeng Through Integrated Infrastructure and Multi-Level Governance	74
4.6	<i>Chapter Summary</i>	75
CHAPTER 5 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS		77
5.1	<i>Introduction</i>	77
5.2	<i>Summary of Key Findings</i>	78
5.2.1	Historical and Structural Continuities	78
5.2.2	Strengths of the Legal Framework	78
5.2.3	Implementation Gaps and Institutional Weakness.....	79
5.2.4	Persistent water-related challenges in Sebokeng.....	79
5.2.4	Infrastructure Collapse.....	79
5.2.5	Governance Deficits and Corruption	80
5.2.6	Socioeconomic and Environmental Barriers.....	80
5.3	<i>Evaluation of South Africa's Legal and Regulatory Framework</i>	81
5.3.1	Adequacy in Law	81
5.3.2	Deficiency in Practice.....	81

5.4	<i>The Extent to Which the Constitutional Right of Access to Sufficient Water is Realised in Sebokeng</i>	82
5.5	<i>Conclusions</i>	83
5.6	<i>Recommendations</i>	84
5.6.1	Legal and Policy Reform.....	84
5.6.2	Institutional Strengthening	85
5.6.3	Infrastructure Development and Financing.....	85
5.6.4	Socioeconomic and Community Measures	86
5.6.5	Monitoring and Evaluation	86
5.7	<i>Final Reflection</i>	86
	Bibliography	88
	Annexures A Language editing	94

CHAPTER 1 INTRODUCTION

1.1 Background

Water is a critical natural resource that sustains life, supports human health, and preserves the environment.¹ It directly and indirectly shapes the well-being of communities by underpinning food security, energy production, and even social and cultural life.² Given its fundamental role, the right to water is firmly anchored within international human rights instruments and domestic law.

In the year 2002, the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) clarified in General Comment No 15 that the right to water is implicit in the International Covenant on Economic, Social and Cultural Rights, affirming it is “indispensable for leading a life in human dignity” and a prerequisite for the realisation of other rights. This position was reinforced on 28 July 2010, when the UN General Assembly formally recognised access to safe and clean water as a fundamental human right, entitling everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.³ It is essential to note that access to water is crucial for the realisation of related rights, including the rights to health, food, and an adequate standard of living.⁴ Together, these international human rights instruments therefore impose a legal obligation on states to ensure equitable access to water, particularly for marginalised and impoverished communities.⁵

Despite its undeniable importance and legal status as a human right, access to water remains a significant challenge in many parts of the world.⁶ According to a report on

-
- 1 Khadse, Labhasetwar and Wate 2012 *Journal of Environmental Science & Engineering* 577–591; McNabb and Swenson 2023 *Springer Nature Journal* 3–28.
 - 2 Santos, Carvalho and Martins *Sustainable Water Management: Understanding the Socioeconomic and Cultural Dimensions* 15–17.
 - 3 Hall et al 2013 *Science and Engineering ethics* 849.
 - 4 Gleick 1998 *Water Policy* 488.
 - 5 Hall et al 2013 *Science and Engineering ethics* 849.
 - 6 Hall et al 2013 *Science and Engineering ethics* 849.

Water, Sanitation and Hygiene (WASH) by the World Health Organisation (WHO) and United Nations Children's Emergency Fund (UNICEF) in 2023, approximately 2.2 billion people worldwide lack access to safe drinking water.⁷ This challenge of inadequate access is particularly evident in water-scarce countries like South Africa, which ranks among the 40 driest nations globally and is considered water-stressed.⁸

In South Africa, the challenge of access to water is compounded by the dual pressures of water scarcity and water insecurity. Water scarcity, where demand exceeds the available supply, reduces the physical availability of water resources.⁹ At the same time, water security, understood as the reliable availability of water in adequate quantity and acceptable quality for health, livelihoods, ecosystems, and economic activities, remains fragile across many regions.¹⁰ Weak institutional capacity,¹¹ poor and deteriorating infrastructure,¹² and fragmented governance¹³ continue to undermine efforts to secure access to water. These challenges are further intensified by rapid population growth, particularly in urban and peri-urban areas.¹⁴ They are also shaped by the enduring legacy of apartheid-era policies, which systematically restricted access to water for black South Africans by tying water rights to land ownership.¹⁵ Together, these structural and contemporary pressures continue to entrench inequality in water access.

1.2 Problem statement

The *Constitution of the Republic of South Africa*, 1996 (the Constitution), expressly recognises access to water as a fundamental human right in its Bill of Rights. Section 27(1)(b) thereof provides that everyone has the right to have access to sufficient water,

7 United Nations Children's Fund (UNICEF), *State of the World's Drinking Water: An Urgent Call to Action to Accelerate Progress on Ensuring Safe Drinking Water for All* (2022), available at <https://data.unicef.org/resources/state-of-the-worlds-drinking-water>.

8 Du Plessis 2023 Springer International Publishing 41–65.

9 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*.

10 UN-Water (2013) *Water Security and the Global Water Agenda: A UN-Water Analytical Brief* 1.

11 UN-Water (2013) *Water Security and the Global Water Agenda: A UN-Water Analytical Brief* 1.

12 Endter-Wada and Li 2015 *Journal of the American Water Resources Association* 10.

13 Endter-Wada and Li 2015 *Journal of the American Water Resources Association* 10.

14 Molobela and Sinha 2011, *African Journal of Environmental and Technology*, 994.

15 Tarantino *South African Water Rights and the Legacies of Apartheid* 5.

while Section 27(2) obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. However, despite this constitutional guarantee, access to sufficient water is not necessarily the norm at the grassroots level.

1.2.1 Emfuleni Local Municipality: Sebokeng

This study focused on Sebokeng, a township in Emfuleni Local Municipality in Gauteng, South Africa, as a case study to explore the challenges surrounding the realisation of the right of access to sufficient water. Sebokeng is approximately 60 kilometres south of Johannesburg, near the banks of the Vaal River.¹⁶ Located on the edges of Vanderbijlpark, a leading industrial centre of South Africa,¹⁷ Sebokeng is primarily a low-income residential zone with high levels of unemployment, with a large percentage of people living in poverty.¹⁸

Sebokeng frequently experiences prolonged water shortages,¹⁹ which are exacerbated by municipal mismanagement and financial constraints that also impact water service delivery.²⁰ It is emblematic of many urban and peri-urban communities that continue to face inadequate and unreliable access to water despite the state's constitutional and statutory obligations.²¹

1.2.2 The Multi-level Regulatory Framework

In South Africa, the regulatory framework for the right to access sufficient water operates on multiple levels to ensure equitable water security and manage water-scarce resources.²² At the international and regional levels, treaties and agreements set broad

16 Chaskalson 2007 Taylor & Francis 103.

17 Moja and Mnisi 2013 Journal of Environmental Chemistry and Ecotoxicology 228.

18 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public-private partnership: IMIESA 24.

19 Sindane and Modley 2022 Taylor & Francis 1569.

20 Sindane and Modley 2022 Taylor & Francis 1569.

21 Sindane and Modley 2022 Taylor & Francis 1569.

22 Eckstein 2009 Heinonline 414.

principles, standards and goals for water rights and governance. The national legal framework translates these international commitments into enforceable statutes, actionable policies and administrative practices tailored to the specific needs of the country. Moreover, local governance structures provide water services within their jurisdictions.²³

1.2.2.1 International and Regional Commitments

Although it may be argued that international and African regional law may not directly regulate the local water realities of Sebokeng, understanding this broader legal framework is essential for situating South Africa's domestic obligations and for analysing the law governing access to sufficient water. International and regional commitments provide the normative foundation for national water laws and policies, reinforcing the state's duty to ensure equitable and sustainable access for all.

As referred to above, at the global level, the UN recognises the right to water as a fundamental human right, as affirmed by the UN General Assembly Resolution A/RES/64/292 of 2010.²⁴ Additionally, the UN adopted the 17 Sustainable Development Goals of 2015 (SDGs).²⁵ SDG 6 specifically aims to ensure the availability of clean water and sanitation for all by 2030. SDG 6 contains eight targets that are important for South Africa because of the ongoing inequalities in access to drinking water, and pollution of freshwater resources, and the structural pressures of being a water-scarce nation, which have a direct impact on environmental protection, health, dignity, and the progressive realisation of Section 27 of the Constitution.²⁶

Recent national data indicate that, despite gradual improvements in access, substantial gaps persist. In 2023, only 45.2% of households had piped water inside the dwelling, while others continued to rely on yard connections, communal taps, or neighbouring

23 Kidd 2019 *Journal of Law and Environment in Africa* 420.

24 United Nations: Resolution A/RES/64/292: The human right to water and sanitation 2010.

25 United Nations: Resolution A/RES/64/292: The human right to water and sanitation 2010.

26 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation

sources.²⁷ This underscores the ongoing importance of Target 6.1 on safe and affordable drinking water.²⁸ Target 6.2 is significant because of persistent disparities in access to sanitation and hygiene, particularly in poorer and vulnerable communities.²⁹ Target 6.3 is essential as South Africa continues to face water quality issues associated with sewage pollution, insufficient wastewater treatment, and extensive contamination of water resources.³⁰ Target 6.4 is crucial due to South Africa's water scarcity, necessitating enhancements in water-use efficiency and the assurance of sustainable withdrawals across all sectors.³¹ Target 6.5 is significant as integrated water resources management is essential for coordinated planning, regulation, and catchment governance.³² Target 6.6 is pertinent because it emphasises safeguarding rivers, wetlands, aquifers, and other ecosystems to ensure enduring water security.³³ Target 6.a is significant because South Africa still needs investment, technical ability, and institutional strengthening in the water sector.³⁴ Target 6.b emphasises the need for community engagement and accountability in improving water and sanitation governance, especially at the municipal level.³⁵ These targets provide practical guidance and direction for the progressive realisation of the right to access sufficient water in South Africa.

On the African continent, the African Union's Agenda 2063, specifically Goal 7, underscores the importance of water security and commits member states, including South Africa, to promote equitable access to safe water and sanitation to their

27 Statistics South Africa (2024) *General Household Survey 2023*. Pretoria.

28 United Nations Goal 6: Ensure availability and sustainable management of water and sanitation for all. New York: United Nations.

29 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation.

30 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation.

31 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation.

32 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation.

33 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation.

34 United Nations Goal 6: Ensure availability and sustainable management of water and sanitation for all. New York.

35 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation

population.³⁶ Complementing this vision, the African Ministers Council on Water (AMCOW) promotes cooperation, water security, economic development, and poverty eradication among ratifying states across the continent through effective water resource management and the provision of reliable water services.³⁷ AMCOW also facilitates information exchange and supports the development of regional strategies and policies to address Africa's unique water challenges.³⁸ Several African Union instruments reinforce these objectives. The *African Water Vision 2025* calls for the implementation of Integrated Water Resources Management plans to tackle the continent's water challenges in a coordinated and sustainable manner.³⁹ The *Irrigation Development and Agricultural Water Management Strategy* outlines four developmental pathways to improve water control, modernise irrigation schemes, and promote unconventional water use.⁴⁰ Likewise, the *Continental Africa Water Investment Programme* serves as a key mechanism for guiding water investment priorities, tracking progress and identifying barriers to achieving water security and overcoming water scarcity.⁴¹ These African frameworks offer a regional lens through which the water governance challenges in Sebokeng can be understood. It highlights the expectation that African states, including South Africa, should adopt a coordinated, well-resourced, and future-oriented approach to water management on the continent. It also provides a valuable benchmark for assessing Emfuleni Local Municipality's challenges⁴² and identifying pathways to strengthen water security in communities like Sebokeng and other similar communities.⁴³

At the subregional level, the Southern African Development Community (SADC) has drafted the *Regional Indicative Strategic Development Plan (RISDP) 2020-2030* to guide the region's integration agenda.⁴⁴ Strategic Objective 3 of the RISDP commits member

36 AU, 'Goals & Priority Areas of Agenda 2063 | African Union', 2015.

37 AU, 'Goals & Priority Areas of Agenda 2063 | African Union', 2015.

38 AU, 'Goals & Priority Areas of Agenda 2063 | African Union', 2015..

39 Amani et al 2015 Springer 26.

40 Dirwai et al 2024 Environmental Research Letters 10.

41 Aydin 2022 Elsevier 177.

42 See chapter 3 below.

43 See chapter 4 below.

44 SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030.

states to expand access to funding for water infrastructure programmes and ensure service delivery for all SADC citizens.⁴⁵ One of the key interventions in the RISDP is an increase in access to affordable, clean water through the implementation of the SADC Regional Water Supply and Sanitation Programme.⁴⁶ The purpose of the Regional Water Supply Programme is to establish a collaborative regional framework for effective planning and management of water supply.⁴⁷ The programme was established to enable the SADC member states to accelerate and improve the provision of Water Supply at the country level in order to meet the Southern Africa Water Vision⁴⁸ , which entails the SADC's desirable future.⁴⁹ The people of SADC desire sustainable and equitable access to water, which is of sufficient quantity and quality to meet basic human needs, with priority over all other water uses.⁵⁰

Together, these international and regional frameworks play a critical role in evaluating how effectively South Africa interprets and realises the right of access to sufficient water in vulnerable communities such as Sebokeng.⁵¹ They establish an interpretative framework but also a benchmark that allows for an objective assessment of whether national, provincial and local authorities meet internationally recognised human rights and development standards.⁵² Importantly, they also provide tools for measuring compliance and exposing gaps between the legal obligation to realise the right of access to water in South Africa and the realities of how those laws are implemented at the local government level in Sebokeng.⁵³

45 SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030.

46 SADC Regional Indicative Strategic Development Plan (RISDP) 2020-2030.

47 Support to SADC Regional Water Supply and Sanitation Programme Appraisal Report 2009

48 Support to SADC Regional Water Supply and Sanitation Programme Appraisal Report 2009.

49 Southern African Vision for Water, Life and Environment in the 21st Century Report 1999.

50 Southern African Vision for Water, Life and Environment in the 21st Century Report 1999.

51 United Nations: Resolution A/RES/64/292: The human right to water and sanitation 2010.

52 Article 11 and 12 of the United Nations Economic and Social Council *General Comment No. 15: The Right to Water* 2002.

53 African Union: Africa Water Vision 2025: Equitable and Sustainable Use of Water for Socioeconomic Development 2000.

1.2.2.2 National Commitments

As indicated above, South Africa's Constitution guarantees everyone the right to have access to sufficient water. Section 27(2) of the Constitution further provides that the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.⁵⁴ In terms of these obligations, as will be argued in Chapter 2 below, the *National Water Act* (NWA) and the *Water Services Act* (WSA) were subsequently promulgated. The Acts are further operationalised by cooperative government in the sense that the national government oversees the water governance, formulates policy, and allocates resources to municipalities.⁵⁵

1.3 Research question

How and to what extent is the constitutional right of access to sufficient water realised in Sebokeng, South Africa?

1.4 Aim and objectives of the study

The main aim of this study was to critically examine the interpretation and implementation challenges of the constitutional right of Sebokeng residents to have access to sufficient water, as guaranteed under Section 27(1)(b) of the Constitution, and to determine whether the existing legal and institutional framework gives adequate effect to this right in practice. To achieve this, the study analysed South Africa's constitutional, legal, and policy frameworks governing the right to water, evaluated the governance structures and institutional arrangements responsible for implementation, and assessed the infrastructural, administrative, and socioeconomic factors that shape water service delivery in Sebokeng. It further identified the key barriers that prevent the community from enjoying this right in their daily lives and ultimately examined how Emfuleni Local

54 Heynes and Brand 2009 CHR 162.

55 Kidd 2019 *Journal of Law and Environment in Africa* 411.

Municipality, as the water services authority, can more effectively fulfil its constitutional obligations.

1.5 Methodology

The main aim of this study was to critically examine the extent to which the constitutional right of access to sufficient water is realised in Sebokeng, South Africa.

To reach this aim, this study set the following subsidiary objectives:

- To critically examine the regulatory framework for the right to access sufficient water in South Africa with a focus area on Sebokeng;
- To determine whether the current provision of water services in Sebokeng complies with section 27(1)(b) of the Constitution and related water legislation;
- To identify and discuss possible legal and institutional barriers that may hinder the full realisation of the right to sufficient water; and
- To propose mechanisms for strengthening accountability mechanisms in enforcing and realising the right to access sufficient water in Sebokeng.

This study adopted a literature study, supplemented by limited sociolegal analysis, to examine the realisation of the constitutional right of access to water in Sebokeng. While the introductory chapter outlined broader international and regional legal frameworks, it contextualised the national constitutional, legislative and governance framework applicable to Sebokeng to outline and define the problem statement.

The primary methodological approach was doctrinal. The study analysed and interpreted binding legal sources to determine the normative content, scope and enforceability of the constitutional water right. Primary sources included the Constitution, the NWA and the WSA. To identify the current realities of water access in Sebokeng, the study relied on data drawn from secondary sources such as the 2022 Census Report, Municipal service delivery reports and other published datasets. Using both primary and secondary sources, the study identified legal, institutional and structural barriers that hinder the full

realisation of the constitutional water right and recommends mechanisms to strengthen the constitutional water right in Sebokeng, South Africa.

1.6 Framework

Chapter 1 provides the introduction and background of the study. It sets out the problem statement, research objectives, research question and the methodology used. It also contextualises and justifies Sebokeng as a case study. Sebokeng serves as a pertinent case study since it depicts the lived experiences of numerous South African communities, where residents persistently have difficulties in obtaining sufficient water, despite the constitutional guarantee provided in Section 27(1)(b). The area has experienced persistent water shortages, infrastructural deficiencies, service delivery issues, and socioeconomic fragility, rendering it a suitable location for examining the disparity between the legal recognition of the right to water and its actual fulfilment. Its selection subsequently enables the study to analyse, in a specific and localised setting, the legal, institutional and governance impediments that prevent the effective realisation of the right of access to sufficient water.

Chapter 2 provides the theoretical framework on which the study is built. It examines how apartheid policies, including tariff resistance, have influenced the current challenges to access to water. This historical perspective is closely linked to the constitutional right of access to sufficient water since Section 27 must be viewed not just as a forward-looking promise, but also as a transformative right aimed at redressing the structural disparities produced by apartheid. It critically examines the regulatory framework for the right to access sufficient water in Sebokeng. It also analyses and interprets binding legal sources to determine the normative content, scope, and enforceability of the constitutional water right.

Building on the insights provided by Chapter 2, Chapter 3 evaluates how and to what extent Emfuleni Local Municipality implements the national and local regulatory framework that flesh out the constitutional water right. It continues to identify legal,

institutional and structural barriers that hinder the full realisation of the right to have access to sufficient water in Sebokeng.

Based on the constitutional framework and identified barriers, Chapter 4 outlines legal and governance mechanisms to improve the realisation of access to water rights. The chapter specifically discusses mechanisms such as strengthening municipal accountability and monitoring mechanisms, improved infrastructure planning and budgeting, enhanced community participation, and clearer enforcement of constitutional obligations.

Chapter 5 summarises the research findings and answers the research question. measured against the standards of reasonableness and progressive realisation in terms of Section 27 of the Constitution. The chapter further assesses the extent to which existing governance mechanisms translate constitutional obligations into practical outcomes at the municipal level. In light of the identified legal, institutional and structural challenges, the chapter suggests recommendations for legislative reform aimed at strengthening both the legal guarantee and the practical implementation of the right to access sufficient water in South Africa, with particular reference to Sebokeng.

CHAPTER 2 THE REGULATORY FRAMEWORK GOVERNING THE RIGHT OF ACCESS TO SUFFICIENT WATER IN SOUTH AFRICA: SEBOKENG FOCUSED

2.1 Introduction

This chapter examines the regulatory and institutional framework governing the constitutional right of access to sufficient water in South Africa, with a particular focus on Sebokeng. It seeks to analyse the history and development of water insecurity in the area and assess how the country's legal and policy frameworks have evolved from exclusionary,⁵⁶ racially discriminatory systems toward a rights-based governance regime grounded in the principles of human dignity, justice, and sustainability.⁵⁷

Against this brief historical background, this chapter turns to the current legal and regulatory architecture governing water access in South Africa. The analysis focuses on key legislative instruments, including the Constitution, the NWA, WSA and the MSA. Together, these frameworks establish the legal foundation for interpreting the content of the constitutional right to access sufficient water and for setting a benchmark for reasonableness and progressive realisation of the right. equitable water allocation, service provision, and local governance. Yet, as this chapter demonstrates, the persistence of water insecurity in Sebokeng underscores a profound gap between the legal order and the lived social realities of affected communities.

This chapter progresses as follows: The first part provides a concise historical overview of water governance in South Africa, tracing the roots of inequality from the Apartheid period to the democratic period. This part specifically investigates the lingering effects of water access on the chosen case study, namely Sebokeng. To further understand these legal and governance challenges, Part 2 of the chapter examines the principal constitutional, legislative and policy instruments that give effect to the right of access to sufficient water in South Africa, but situating it within the country's multi-level governance water governance framework. Part Three sets out the current realities of water access in Sebokeng. This discussion helps identify practical challenges such as infrastructure decay, intermittent supply, affordability concerns and inequality

56 Kaziboni 2024 Springer Nature 52.

57 UNISA (2025) *Master of Laws Study Guide on Environmental Governance*. Pretoria: University of South Africa.

in Sebokeng, which provides the foundation for examining the challenges to which the constitutional right to access sufficient water is realised in Chapter 3 below.

2.2 Historical Perspectives on Water Governance in South Africa

A historical overview of water governance in South Africa is essential for understanding the Constitutional, legal and institutional challenges and also interpreting the rationale for Section 27, its meaning and content that continue to shape the rights of water access in South Africa and in particular, Sebokeng.⁵⁸ Firstly, history exposes the roots of present-day inequalities and apartheid-era legislation that were deliberately and poorly structured, infrastructure investment, and spatial development designed along racial lines. In particular, the Group Areas Act entrenched legally enforced residential inequality by restricting Black communities to peripheral townships that received little public investment and assigning well-served urban areas to White populations.⁵⁹ This Statutory provision resulted in systematic under-development of Black townships like Sebokeng.⁶⁰ Examining this history clarifies how post-1994 legal reforms in the Constitution, NWA and WSA were designed to dismantle these previous injustices by reforming water as a human right and a public resource held in trust for the nation.⁶¹ This historical context could explain, to some extent, the persistent water challenges in Sebokeng. This can explain why limited infrastructure, spatial marginalisation, chronic service backlogs, and institutional fragility persist.⁶² Analysing the historical framework strengthens the contemporary legal assessment by helping determine whether current laws adequately address the structural deficits created by previous discriminatory systems.⁶³

The governance of water in South Africa has long been characterised by deep inequalities in access to water, its distribution, and contestation over tariffs and service delivery.⁶⁴ In the apartheid period, access to water and other basic municipal services was racially stratified, with Black townships such as Sebokeng deliberately underserved and deprived of investment in

58 Turton 2008. *African Security Review*, 17(3), 93

59 Group Areas Act 41 of 1950.

60 Thompson 2001. *A History of South Africa*. 3rd ed. New Haven: Yale University 192.

61 Thompson 2001. *A History of South Africa*. 3rd ed. New Haven: Yale University 190

62 Muller 2016. *International Journal of Water Resources Development*, 792.

63 van der Walt 2005. *South African Law Journal*, 17

64 Simmons 2020 *The Reproduction of Apartheid in Water Service Delivery: An Examination of South Africa's free Basic Water Policy* 9.

infrastructure.⁶⁵ This institutional neglect entrenched inequalities that continue to shape patterns of water insecurity today. The historical marginalisation of Sebokeng has left a legacy of deteriorating infrastructure,⁶⁶ administrative fragility,⁶⁷ and recurrent service interruptions,⁶⁸ which are conditions that continue to frustrate the realisation of the constitutional promise of sufficient water for all.

2.2.1 Water Governance under the preceding political dispensation

The colonial history of South Africa is linked to the systematic marginalisation of Black Africans from the seventeenth century onwards. Since the inception of the Dutch settlement at the Cape in 1652, colonial development has been characterised by the dispossession of indigenous people, notably the Khoikhoi and San, from their land, grazing territories, and access to natural resources, especially water.⁶⁹ This dynamic intensified under British governance, which strengthened private property systems and riparian water rights in a manner that benefitted white settlers and commercial agricultural interests, while depriving the African majority of secure land tenure and direct access to water resources.⁷⁰ The implementation of the Natives Land Act of 1913 further entrenched this exclusion by restricting Africans to a minimal proportion of land and maintaining racially unequal access to land and water resources.⁷¹ The colonial and segregationist roots ultimately influenced apartheid-era disparities and highlight the necessity for post-1994 water legislation to seek equitable access to water and rectify the consequences of historical racial discrimination.⁷² During the apartheid era, water was governed as a racially exclusive economic commodity rather than a universal human right, a view entrenched by laws like the Water Act 54 of 1956, read together with the Native Land Act.⁷³ The Water Act deepened these injustices and inequalities by setting aside the most productive water resources for agriculture and industry, which were predominantly white-owned and controlled, while urban township populations were

65 Mocwagae, Exploring the Qwa Qwa Water Crisis for Effective Planning in Post-apartheid South Africa 56.

66 Templehoff 2021 African Journal 115.

67 Templehoff 2021 African Journal 115.

68 Templehoff 2021 African Journal 116.

69 Dellapenna, Gupta The Evolution of the Law and the Politics of Water 87.

70 Dellapenna, Gupta The Evolution of the Law and the Politics of Water 89.

71 M Cebekhulu, M Mbatha et al Taylor and Francis 1.

72 M Cebekhulu, M Mbatha et al Taylor and Francis 2.

73 Dellapenna and Gupta The Evolution of the Law and the Politics of Water 89.

poorly resourced with limited access to water.⁷⁴ These legislative frameworks systematically disadvantaged Black communities, denied them equitable access to water resources, and often confined them to townships with limited water infrastructure.⁷⁵ This administrative system disregarded the impoverished realities of township dwellers.⁷⁶

The apartheid system led to the fragmentation of the townships, which were neglected and poorly funded, aside from the suburbs, which received better service and maintenance.

2.2.2 Democratic Transition and Constitutional Reform

The 1994 democratic transition represented a departure from South Africa's racially discriminatory political system and ushered in a transformative constitutional order based on human dignity, equality, freedom, accountability, and social justice.⁷⁷ The Constitution serves as a normative framework dedicated to advancing substantive equality, reconstructing unequal social and economic relations, and rectifying historical injustices.⁷⁸ The Constitution reconceptualised access to water as a justiciable socioeconomic right rather than a privilege or market-based entitlement. Section 27(1)(b) of the Constitution guarantees everyone the right to have access to sufficient water.⁷⁹ Section 27(2) imposes a duty on the State to take reasonable legislative and other measures, within available resources, to achieve the progressive realisation of this right to everyone.⁸⁰ Section 27(2), read with section 8 of the Constitution, furthermore, places a positive duty on all three spheres of government, the National, Provincial and Local government, to respect, protect, promote and fulfil the constitutional water right.⁸¹ It follows that the regulatory framework is to be implemented and interpreted by the government as a whole, as shaped by Chapter 3 of the Constitution, which establishes the principle of cooperative government. This Constitutional reorientation reflects a commitment to redressing historical inequities in access to basic services, especially in marginalised townships such as Sebokeng, which were undeveloped

74 Dellapenna and Gupta The Evolution of the Law and the Politics of Water 90.

75 Unfried et al 2021 Journal of Environmental Economics and Management Vol 113

76 Schreiner, B. & Van Koppen, B. (2019) "Reforming Water Rights in South Africa." Water Policy Journal, 21(2).

77 The Constitution.

78 Klare 1998 South African Journal on Human Rights 146.

79 The Constitution.

80 The Constitution.

81 Du Plessis 2010. Journal of European Community & International Environmental Law 318.

and deliberately excluded from sustained infrastructure investment under apartheid spatial planning.⁸²

The constitutional provisions changed the status of water from discretionary to a public service and enforceable socioeconomic right. South Africa started to comply with the emerging international standards expressed in the United Nations General Assembly 64/292 (2010) and the ICESCR General Comment 15 on Access to Water and Sanitation.⁸³

Further laws put these rights into action. Water is a public trust resource as per the NWA.⁸⁴ Section 40(1) of the Constitution provides that the three spheres of government are distinctive, interdependent and interrelated.⁸⁵ This distinction is significant as it defines constitutionally separate structures with specific powers that are relevant to the water sector. In fact, in the context of cooperative governance, the three spheres are expected to coordinate, support, and assist one another in fulfilling their mandates effectively.⁸⁶ Accordingly, South Africa's water governance system operates across multiple spheres of government, involving institutions with intersecting mandates.⁸⁷ This multilayered arrangement is often fragmented, with overlapping responsibilities and inconsistent coordination, which contributes to confusion about where accountability lies when water services fail.

Section 155(6)-(7) of the Constitution mandates the provincial sphere of government to monitor, support and regulate municipalities.⁸⁸ Provinces thus play a critical oversight role at the interface between national water policymaking and local implementation. They are responsible for evaluating whether local municipalities have adequate institutional capacity and financial stability to fulfil their water service delivery obligations.⁸⁹ They also play a supportive role for municipalities facing water governance issues, administrative failures and oversight in ensuring local governments comply with National norms and standards provided under the NWA and WSA.⁹⁰

82 White Paper on Transforming Public Service Delivery (Batho Pele) (1997) 10.

83 United Nations (2010) General Assembly Resolution 64/292: The Human Right to Water and Sanitation. New York: United Nations.

84 Section 3(1) of the National Water Act.

85 Ntoyapi, South Africa "trapped" in a perpetual developmental state 8.

86 Steytler, & De Visser, 2014 LexisNexis, 1-7.

87 Department of Water and Sanitation National Water Policy Review. Pretoria:2013.

88 Section 155 of the Constitution.

89 Department of Water and Sanitation (DWS). 2013. National Water Policy Review 12.

90 Department of Water and Sanitation (DWS). 2013. National Water Policy Review 12.

Section 139 provides for the Provincial executives to intervene in municipal water-related failures when municipalities are unable or unwilling to fulfil their executive obligations.

Municipalities have rights and obligations to provide affordable and sustainable water as per the WSA.⁹¹ These laws were intended to alleviate as well as redress historical injustices in the process of equitable distribution of resources, environmental sustainability, and participatory governance.⁹²

Regardless of the detailed structure given, the application of the Levers of Change Model has been very uneven and variable, focusing particularly on the municipality level. In Sebokeng, the absence of investment has become coupled with the poor civic administration and management,⁹³ which has been the reason for the denial of the lived experiences of the constitutional promises. The practical versus theoretical aspect of the reform is what this research paper is about. Relatively rigid legal frameworks with strong institutional equilibrium will not resolve deeply embedded structural inequities, particularly institutional imbalance and accountability deficit.

2.3 The Legal and Policy Framework Governing the Right of Access to Water

The constitutional right to access sufficient water, together with the state's obligation to progressively realise this right, forms the basis upon which South Africa's water legislation and policies have been developed.⁹⁴ These provisions establish a legal framework aimed at ensuring equitable access to water for all citizens.

At the statutory level, this constitutional right is implemented through several key legislative instruments. The NWA governs the management, protection, and sustainable use of water resources, marking a decisive shift from apartheid-era allocation systems to a unified, equitable approach.⁹⁵ The WSA regulates the provision of water and sanitation services and imposes obligations on Water Services Authorities, mainly municipalities, to ensure efficient, affordable,

91 Water Service Act 108 of 1997.

92 Joy, Kulkarni et al, *Re-politicising water governance: exploring water re-allocation in terms of justice International Journal of Justice and sustainability* 956.

93 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 24.

94 The Constitution.

95 National Water Act.

and sustainable delivery.⁹⁶ The (MSA) complements this framework by assigning planning and administrative responsibilities to municipalities, particularly through Integrated Development Plans (IDPs).⁹⁷

Recent legislative reforms, including the Draft National Water Resources Infrastructure Agency Bill (2023) and the Draft National Water Bill (2024), aim to strengthen accountability, investment, and institutional management in the sector.⁹⁸ These reforms seek to consolidate infrastructure oversight and address persistent challenges such as service backlogs, underfunding, and maintenance failures that undermine the realisation of the constitutional right to water.

Judicial interpretation has also clarified both the content and the mandate of the right to water. In *Residents of Bon Vista Mansions v Southern Metropolitan Local Council*, the High Court confirmed that access to water is a constitutionally protected right that local authorities must uphold.⁹⁹ In *Mazibuko v City of Johannesburg and Others*, the Constitutional Court further explained that while the state has discretion over policy design, it must adopt reasonable measures to progressively realise access to sufficient water.¹⁰⁰ In *Mshengu and Others v Msunduzi Local Municipality and Others*, the KwaZulu-Natal High Court held that municipalities are the primary duty-bearers for implementing water services, reaffirming their central role in giving effect to Section 27(1)(b).¹⁰¹

Policy instruments such as the National Water Resource Strategy (NWRS II, 2013) and the National Development Plan (NDP) 2030 articulate South Africa's long-term vision for equitable, sustainable, and efficient water use.¹⁰² Municipal water by-laws, including those of Emfuleni Local Municipality, localise these principles by regulating tariff structures, water conservation, and service delivery standards.¹⁰³ Despite this extensive legal and policy framework, gaps in implementation persist in historically marginalised communities such as Sebokeng.

96 ` Water Service Act.

97 Municipal Systems Act.

98 Draft National Water Bill 2024; Draft Water Resources Infrastructure Agency Bill 2023.

99 Residents of Bon Vista Mansions v Southern Metropolitan Local Council 2002 (6) BCLR 625 (W)

100 Mazibuko v City of Johannesburg and Others 2009 (3) SA 592 (CC).

101 *Mshengu and Others v Msunduzi Local Municipality and Others* (2019) ZAKZPHC 79.

102 National Water Resource Strategy II (2013).

103 National Development Plan 2030; Emfuleni Local Municipality Water Services By-laws (2014).

2.3.1 *The Constitution of 1996*

The 1996 Constitution of the Republic of South Africa is the starting point of all legislation that followed and is the highest law of the land.. It recognises access to sufficient water as a fundamental socio-economic right and imposes a positive obligation on the state to progressively realise this right through reasonable legislative and other measures, within available resources. This formulation embodies a substantive and procedural burden on the State to make water available, safe, affordable, and accessible to construct transparent processes for the delivery and control of these mechanisms.¹⁰⁴

These duties have been further clarified through judicial interpretation. In *Mazibuko v. City of Johannesburg*, the Constitutional Court ruled that the right to water does not mandate unlimited supply but requires the State to adopt reasonable policies to supply water increasingly.¹⁰⁵ The case confirmed that socio-economic rights are justiciable and that municipalities are required to operate within a standard of reasonableness, transparency, and fairness.¹⁰⁶ The ruling is still relevant for Sebokeng, where residents' access is limited not by the absence of rights but by the absence of reasonable implementation.

2.3.2 *The National Water Act 36 of 1998*

The NWA serves as the foundational document for the management of resources in the Republic of South Africa. It repealed the Water Act of 1956 in a manner that was still racially discriminatory and brought a South African statute in line with constitutional provisions and international standards of integrated water resource management (IWRM). Section 3(1) states that "the national government, acting through the Minister of Water and Sanitation, is the public trustee of the nation's water resources, which exercises custodianship of the water resources on behalf of all the people of the country."¹⁰⁷ It is also responsible for ensuring that water is protected, used, developed, conserved, managed, and controlled in a manner that is both sustainable and equitable.¹⁰⁸ This shifts markedly from the riparian and proprietary doctrines of the past and

104 UNISA (2025) Master of Laws Study Guide on Environmental Governance. Pretoria: University of South Africa.

105 *Mazibuko v City of Johannesburg* 2009 (2) SA 1 (CC).

106 *Mazibuko v City of Johannesburg* 2009 (2) SA 1 (CC).

107 National Water Act.

108 National Water Act.

redefines water as a common heritage held in trust.¹⁰⁹ The goals of the Act include fair distribution, sustainable use, the conservation of ecosystems, and the promotion of socio-economic development.¹¹⁰ It stipulates that water use should be beneficial and environmentally responsible,¹¹¹ thus linking the themes of social equity and ecological sustainability. The NWA provides for the decentralisation of decision-making and participatory governance through the licensing and water-use authorisations, catchment management agencies, and water-user associations.¹¹²

In theory, the framework is designed to address historical injustices, but in practice, the implementation is piecemeal. According to the literature, many catchment management organizations still confront capacity problems, such as insufficient financial resources and antiquated data-collection technologies, which impair efficient water administration and planning.¹¹³ For communities such as Sebokeng, literature suggests that the intended benefits resulting from equitable water resource redistribution, as well as pollution control, are diminished due to poor enforcement, limited capacity, and overlapping spheres of jurisdiction between the local authorities and the Department of Water and Sanitation.¹¹⁴ As such, while the NWA successfully redefined ownership, the issue of accessibility remains.

2.3.3 The Water Services Act 108 of 1997

The WSA complements the NWA. It seeks to give effect to the constitutional right to sufficient water by emphasising water service delivery instead of resource management. Section 3(1) states that “everyone has a right of access to basic water supply and sanitation”¹¹⁵ and Section 11 places a statutory obligation on every water-services authority to “ensure efficient, affordable,

109 Department of Water Affairs and Forestry. (2001). *Free Basic Water policy: Implementation strategy*. Government Printer.

110 National Water Act.

111 National Water Act.

112 National Water Act.

113 Department of Water and Sanitation, 2013 *National Water Resource Strategy 2* Department of Water Affairs 36–40.

114 Muller, 2018 ‘Lessons from South Africa on the Management and Development of Water Resources for Inclusive and Sustainable Growth’ *Water Policy*, 242–245.

115 Section 3 of Water Service Act

economical and sustainable access.”¹¹⁶ This changes the provision of municipal services from a discretionary administrative function to a duty that is legally binding.

The Act also establishes key planning instruments such as the WSDP, which requires municipalities to evaluate, project, and plan demand and infrastructure upgrades. It also requires the establishment of water services providers and sets national minimums and standards to ensure a continuous, dependable, and quality supply.¹¹⁷ The Act gave legislative effect to the Free Basic Water Policy (2001), which guarantees a minimum of six kilolitres per household per month (approximately 25 litres per person per day) to every household at zero cost.¹¹⁸

Though progress has been made, the effectiveness of the WSA in Sebokeng is undermined by financial insolvency, a low level of technical capacity, and inadequate maintenance of the service systems by Emfuleni Local Municipality.¹¹⁹ Chronic non-payment,¹²⁰ vandalism of service infrastructure,¹²¹ and political meddling do great damage to the systems of service continuity that the Act hopes to have in place. Consequently, the residents have to rely on emergency water tankers, which is inconsistent with the ideals set out in the WSA of sustainable access to water.

2.3.4 The Local Government: Municipal Systems Act 32 of 2000

The Municipal Systems Act 32 of 2000 functions as the legal and administrative framework for the delivery of local government services.¹²² In Section 4(2)(f), the Act instructs local authorities to “provide services in a financially and environmentally sustainable manner,”¹²³ while section 73 defines the minimum performance criteria as service accessibility and affordability, quality, accountability, and environmental soundness.¹²⁴ The WSA states that each local authority is to

116 Section 11 of Water Service Act

117 Water Service Act.

118 Free Basic Water Policy 2001.

119 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.

120 Free Basic Water Policy 2001.

121 Free Basic Water Policy 2001.

122 Municipal Systems Act 32 of 2000.

123 Municipal Systems Act 32 of 2000.

124 Section 73 of the Municipal System Act.

develop an Integrated Development Plan (IDP), which is its principal strategic planning document and one that is to be aligned with the WSDP.¹²⁵

It is through these mechanisms that the MSA certifies that the local government incorporates the provision of water services into the overall socioeconomic planning of the region.¹²⁶ In Emfuleni, however, the IDPs and WSDPs' have come under fire for being anachronistic, wishful, and fumbled. Lack of effective monitoring,¹²⁷ and insufficient engagement of the public¹²⁸ have diminished the elements of responsibility. As a result, the shortcomings of water services in Sebokeng are in need of both technical and managerial elements, and demonstrate the failure in planning as required by law under the MSA.

2.3.5 Municipal By-laws and Local Implementation in Emfuleni

At the most local level, municipalities implement water and sanitation by-laws, translating the national legislation into enforceable provisions for residents and service providers. The Emfuleni Water and Sanitation By-law (2004) promulgated under Section 156(2) of the Constitution and Section 21 of the WSA regulates the connection of water, metering, tariffs, and misuse of water and restrictions thereon.¹²⁹ Chapter 3(3)(a)(i) commits the municipality to ensuring the provision of water services.¹³⁰ These by-laws articulate localised constitutional rights by permitting citizens to demand the service in law and litigate for administrative inaction.¹³¹

The by-laws, however, remain unenforced in Sebokeng. Corruption, unqualified staff, and infrastructure decay contribute to the effectiveness of numerous municipal commitments being negated.¹³² The audits of the municipality (2021-2024) outlined the ongoing irregular expenses

125 Water Service Act.

126 Gutas, *The impact of Intergovernmental Fiscal Allocations on South African Water Board Performance: A Case of Amatola Water Board* 10.

127 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.

128 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.

129 Section 21 of Water Service Act read together with Section 156(2) of the Constitution.

130 Water Service Act.

131 Moses, A Critical Analysis of the Role and Effect of Public Participation in the creation and Enforcement of Municipal By-Law in South Africa 3.

132 Moses, A Critical Analysis of the Role and Effect of Public Participation in the creation and Enforcement of Municipal By-Law in South Africa 3.

and non-compliance of Emfuleni water services.¹³³ These contraventions impose local law and breach the constitutional provisions of reasonableness, accountability, and responsiveness in Section 195.

2.4 The Constitutional Obligation of Accountability

The accountability concerning water services stems directly from constitutional underpinnings. Section water is recognised as a right in 27(1)(b), and in Section 27(2), the government is compelled to take reasonable steps to achieve the right.¹³⁴ Therefore, municipalities, as the execution arm of government, need to show how they are meeting such obligations. The accountability of not just poor performance but even the misuse of resources is a breach of the obligations under the WSA and MSA, as well as a constitutional breach, which is at the core of the constitutional democracy.¹³⁵

The scope of accountability goes beyond the internal management of the municipality as it is also accountability to the provincial and national governments, the courts, and the general public. The Constitution, in Section 139, gives provincial governments the right to intervene in a municipality that does not fulfil its obligations, while judicial review provides a mechanism for residents to challenge unreasonable or unlawful actions.¹³⁶ Certain institutions, like the South African Human Rights Commission, have the responsibility of monitoring the abuse of rights to take action against the abuse of power by State agencies.¹³⁷

2.4.1 Local government obligation

Local government is responsible for water supply and its systems as set out in Schedule 4B of the Constitution.¹³⁸ This mandate is further fleshed out by the WSA.¹³⁹ The WSA states that local government must ensure that all consumers in its jurisdiction progressively access water services

133 Auditor-General of South Africa (2022) Report on the Emfuleni Local Municipality.

134 Section 27 of the Constitution.

135 Section 11 of the Water Service Act, Section 6 of the Municipal Systems Act.

136 Section 139 of the Constitution.

137 South African Human Rights Commission (SAHRC) 2021 *Report on the State of Water and Sanitation in South Africa* (Johannesburg: SAHRC) 42.

138 Du Plessis AA 2015 PELJ 1853.

139 Kidd 2019 Journal of Law and Environment in Africa 411.

economically, efficiently, affordably, and sustainably.¹⁴⁰ Accordingly, the local government is mandated to ensure that the right to access water services for household and domestic use is realised.¹⁴¹ The *Local Government: Municipal Systems Act* was promulgated specifically to ensure universal access to essential services that are affordable to all.¹⁴²

Within this regulatory context, Emfuleni Local Municipality and Sedibeng District Municipality, as the local governing authorities in the area, are responsible for ensuring access to water in Sebokeng. The municipality, in executing its responsibilities, may promulgate local bylaws. Accordingly, Emfuleni Local Municipality promulgated the Water and Sanitation by-law as set out in terms of section 1 of the *Municipal Systems Act* and the WSA.¹⁴³ Chapter 3(3)(a)(i) of the Emfuleni Municipality Water Service By-Law commits to ensuring the provision of water services in its jurisdiction.¹⁴⁴

Local government carries direct constitutional responsibility for water service delivery. However, it is essential to differentiate between Local and district municipalities, as Sebokeng falls under both Emfuleni Local Municipality and Sedibeng District Municipality. Local Municipalities are responsible for the direct provision of basic services like water and sanitation, manage operational water infrastructure and deliver services to households.¹⁴⁵ In Sebokeng, this executive mandate lies with Emfuleni Local Municipality, which functions as the water services authority in terms of the Water Services Act.¹⁴⁶

District municipalities, in contrast, do not provide water services directly. They play a more strategic and supportive role, focusing on regional development planning, integrated infrastructure coordination and capacity-building across the local municipalities within their jurisdiction.¹⁴⁷ They facilitate coordinated development across the district and help align service-delivery efforts between municipalities, but they do not have any direct operational responsibility

140 Kidd 2019 Journal of Law and Environment in Africa 415.

141 Kidd 2019 Journal of Law and Environment in Africa 415.

142 Section 1 of the Local Government: Municipal Systems Act 32 of 2000 21.

143 Xaba, *A Critical Assessment of the Causes and Impacts of Water Pollution- the case of the Vaal River in Emfuleni Local Municipality* 45.

144 Emfuleni Local Municipality water services by-laws.

145 Steytler & De Visser 2014. Local Government Law of South Africa. LexisNexis, 2.

146 Water Services Act 108.

147 De Visser. 2009. Developmental Local Government: A Case Study. Juta, 92.

over water systems.¹⁴⁸ This distinction is important because water governance in Sebokeng depends on the quality of coordination between the two spheres of local government.

2.4.2 The Legal and Policy Basis for Infrastructure Obligations

The Constitution's Section 27(2) puts an obligation on the state to "reasonably legislate and undertake other measures, according to available resources," and "achieve the progressive realisation" of the right of access to adequate and sufficient water.¹⁴⁹ This obligation is not passive; it goes beyond the recognition of rights. The State is obliged to provide the relevant infrastructure to give effect to the guarantee under the Constitution.¹⁵⁰

According to NWA, the national government is the custodian of the nation's water resources with a mandate to ensure sustainable management of these resources.¹⁵¹ The mandate places the burden of ensuring that infrastructure is maintained in a manner that does not compromise equitable access. The WSA further strengthens the nexus between rights and infrastructure. Section 3 of the Act provides for the right of access to a basic water supply and adequate sanitation, while Section 11 mandates water services authorities to render the services in an efficient, cost-effective, and sustainable manner.¹⁵² Given the lack of this critical infrastructure, the legal obligation to provide reliable access to water remains largely unmet in many municipalities in South Africa.

These problems are further aided by the MSA, which obliges municipalities to prepare Integrated Development Plans and Water Services Development Plans.¹⁵³ These documents are expected to not only detail the service delivery goals of the municipality, but also outline the funding strategies, construction, and maintenance of the necessary infrastructure to achieve these goals. The dilapidated condition of the water supply and sanitation facilities in some municipalities in

148 Parnell & Pieterse, 2010. The Politics of Urban Governance in South Africa. Urban Forum, 21(2): 162.

149 Section 27 of the Constitution.

150 Currie I & De Waal J 2019 *The Bill of Rights Handbook* 7 ed (Cape Town: Juta) 575.

151 Section 3 of the National Water Act.

152 Section 3 and 11 Water Services Act.

153 Section 23 and 26 Municipal Systems Act.

South Africa could be a consequence of these processes being inadequately planned.¹⁵⁴ This is a striking example of the defect in modern administrative practices.

2.5 Bridging Sebokeng's Contemporary Crisis with History

The development of water governance in South Africa reflects a transition from the exclusion of the community to inclusion in the post-apartheid era. Each of these stages shaped Sebokeng differently. Despite South Africa's democratic transition, unequal socio-political relations continue to affect water access, as market-oriented approaches to water governance have, in some instances, reinforced historical inequalities rooted in the apartheid era,¹⁵⁵ which have been compounded by present-day realities often characterised by misgovernance.

Section 3 of the NWA states that water belongs to the people,¹⁵⁶ and yet water access and water poverty still persist and, in some instances, are worsening. This is despite the adoption of sustainable and progressive laws made since 1992. If anything, water supply and access are becoming a complex matter with climate change and government failure and corruption playing a central role. Grasping this lineage is vital to furthering the study which is focused on the more contemporary aspects of water governance, legal frameworks, and the institutional arrangements.

2.6 Current State of Infrastructure in Sebokeng

Sebokeng's sanitation-related pipelines frequently burst and are stagnant with raw sewage, which flows into the highly polluted Vaal River.¹⁵⁷ The lack of sanitation and the long, uninterrupted water supply of days inflicted on the population leads them to acquire water from tankers or even unsafe sources, which is the direct social and health impact of failing infrastructure.¹⁵⁸

The lack of adequate infrastructure in Sebokeng is a culmination of several factors that have shaped the township's life, including apartheid and post-apartheid factors. Amongst these has

154 Emfuleni Local Municipality 2024 *Integrated Development Plan 2024/2025* (Vanderbijlpark: ELM) 54.

155 Dellapenna and Gupta *The Evolution of the Law and the Politics of Water* 91.

156 Dellapenna and Gupta *The Evolution of the Law and the Politics of Water* 91

157 Sanitation 2023 *National Water and Sanitation Master Plan* (Pretoria: DWS) 29.

158 Tempelhoff et al 2019 *The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19)* (Potchefstroom: North-West University) 15.

been the rapid growth in population, which goes above the envisaged infrastructure limits.¹⁵⁹ It suffers from a mass population burden due to spending decades without investments in the design of systems.¹⁶⁰ This leads to mismatched legal frameworks.¹⁶¹ The Free Basic Water policy of 2001 assumes functional infrastructure exists for the provision of the six kilolitres per household per month.¹⁶² In Sebokeng, the unreliability of infrastructure means this policy remains mostly aspirational.¹⁶³ The inability of the ELM to maintain or grow its systems infrastructure denies residents the actual usefulness of this policy, showing how a lack of infrastructure results in failure by municipalities to meet their constitutional mandates.¹⁶⁴

2.7 Statutory Requirements for Monitoring and Evaluation

In South Africa, the law includes specific allocations outlining the diverse monitoring service delivery. Public consultation by the WSA clarifies why certain requests are to restate cover, including assessing service delivery when there are outlined provisions and Water Services Development areas to be re-stated.¹⁶⁵ Section 12 of the WSA Act requires the authorities to prepare Water Services Development Plans (WSDPs).¹⁶⁶ The plans must have estimates of supply, demand, strategies to make them, and ways to monitor or restate the robust WSA.¹⁶⁷ Municipal revenue must include the expenditure on service delivery free in the operational budget, and thereafter, the budget must be restricted to only expenditure on water operational and supporting services.¹⁶⁸

-
- 159 Beavon K 2004 *Johannesburg: The Making and Shaping of the City* (Pretoria: UNISA Press) 168.
 - 160 Stats SA 2022 45.
 - 161 Department of Water Affairs and Forestry 2001 *Free Basic Water Implementation Strategy* (Pretoria: DWAF).
 - 162 Department of Water Affairs and Forestry 2001 *Free Basic Water Implementation Strategy* (Pretoria: DWAF).
 - 163 Public Protector South Africa 2024 12.
 - 164 Auditor-General South Africa 2022 Consolidated General Report on Local Government Audit Outcomes: MFMA 2021–22 (Pretoria: AGSA) 33.
 - 165 Muller, M. 2016. 'The evolution and performance of national water policy in South Africa.' *Brookings Global Working Paper Series*, (95): 15.
 - 166 Section 12 of WSA.
 - 167 Section 12 of WSA.
 - 168 Section 23 -26 of the Municipal Systems Act.

The national government, as outlined in Section 139 of the Constitution, still retains the oversight functions associated with local frameworks.¹⁶⁹ This section allows for the province to intervene when a municipality fails to meet its obligations. The national level institutions, such as the DWS and the Auditor-General of South Africa, have a responsibility to gather information and assess the performance and gaps in the delivery of water services.¹⁷⁰ Such legal provisions, in principle, ensure a strong system of checks and balances to hold the municipality of Emfuleni accountable for effective service delivery.¹⁷¹

As a whole, legal instruments in South Africa aim to provide access to adequate water. The South African Constitution outlines the normative and moral basis; the NWA deals with the management of resources in a sustainable manner; the WSA and MSA turn the management principles into actionable municipal responsibilities, and local by-laws localise the enforcement of those responsibilities. A progressive legal framework is in place. However, as the Sebokeng case demonstrates, the instruments will only be effective to the extent that there is some level of governance, fiscal, and institutional capacity at the municipal level.

2.8 The Gap Between Legal Entitlements and Social Reality: The Case of Sebokeng

South Africa has established one of the most advanced constitutional and legislative frameworks for realising the right of access to sufficient water. The Constitution, together with the National Water Act, the Water Services Act, and the Municipal Systems Act, provides a robust foundation for equitable, sustainable, and participatory water governance.¹⁷² These instruments embody the transformative vision of Section 27(1)(b) of the Constitution, which guarantees everyone the right to have access to sufficient water.¹⁷³

169 Section 139 of the Constitution.

170 South African Human Rights Commission (SAHRC). 2021. *Report on the State of Water and Sanitation in South Africa*. Johannesburg: SAHRC

171 Steytler N & De Visser J 2021 *Local Government Law of South Africa* 2 ed (Cape Town: LexisNexis) 242.

172 National Water Act; Water Services Act; Municipal Systems Act.

173 The Constitution.

Despite this progressive framework, the reality in many parts of South Africa and townships in Emfuleni, Sebokeng, reveals a persistent disconnect between legal entitlements and social experience.¹⁷⁴ The township, shaped by apartheid-era segregation and spatial marginalisation, continues to suffer from chronic water insecurity.¹⁷⁵ Ageing and poorly maintained infrastructure, frequent water pipe bursts, and recurring sewage spillages have become defining features of everyday life.¹⁷⁶ In many respects, the growth in population in the area and poor governance have worsened the fortunes of water and sanitation in the area.¹⁷⁷ These infrastructural deficiencies undermine the constitutional promise of dignity and sufficiency, leaving residents trapped in a cycle of unreliable service delivery.

The roots of this crisis lie in weak governance, poor planning, and institutional fragmentation.¹⁷⁸ Emfuleni Local Municipality, tasked with providing water services, has repeatedly been cited for administrative instability, inadequate technical capacity, and financial mismanagement.¹⁷⁹ The Auditor-General's reports and the Department of Water and Sanitation's Blue and Green Drop assessments highlight systemic failures in maintenance, monitoring, and compliance with statutory obligations.¹⁸⁰ These shortcomings illustrate how governance decay at the local government level obstructs the realisation of socioeconomic rights, despite the presence of an enabling legal framework.

Additionally, poor socioeconomic conditions continue to amplify township residents' water access and availability challenges.¹⁸¹ High unemployment, pervasive poverty, and substandard housing conditions limit residents' ability to secure alternative water sources or engage in cost-sharing mechanisms for infrastructure maintenance.¹⁸² Lack of education and advocacy will hamper the

-
- 174 J Dugard. (2014) *Urban basic services: Rights, reality and resistance*. Oxford University Press 90.
 - 175 P. Bond, (2000) *Cities of Gold, Townships of Coal: Essays on South Africa's New Urban Crisis* : Africa World Press, 67.
 - 176 Department of Water and Sanitation (2023) *National Water and Sanitation Master Plan: Volume 1 Call to Action*. Pretoria 41.
 - 177 Auditor-General South Africa (2022) *Consolidated General Report on Local Government Audit Outcomes*. Pretoria: 66.
 - 178 Department of Water and Sanitation (2023) *National Water and Sanitation Master Plan*. Pretoria 34
 - 179 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.
 - 180 Auditor-General of South Africa (2022). *Local Government Audit Outcomes (2020-2021)*. Pretoria.
 - 181 Statistic South Africa (2022). *General Household Survey*. Pretoria: Stats SA
 - 182 Emfuleni Local Municipality. (2023-2024). *Integrated Development Plan (IDP) Vanderbijlpark*.

capability of residents to hold municipal officials and political representatives to account. This state of affairs has worsened the fortunes of water and other service delivery to local municipalities in South Africa, and more so, Emfuleni Municipality.¹⁸³ As a result, many residents depend entirely on failing municipal systems, reflecting the deep intersection between poverty and environmental injustice. The case of Sebokeng, therefore, exemplifies how the existence of law does not automatically translate into effective service delivery.¹⁸⁴

2.8.1 The Paradox of a Progressive Legal Framework

South African water rights law emanates from transformative constitutionalism and other international commitments made through international and regional agreements,¹⁸⁵ which entail the active realisation of socioeconomic rights through legislation, policy and institutional frameworks.¹⁸⁶ The country's laws and jurisprudence have positively transformed from colonial exclusion to recognition of water as a public trust and human entitlement with a view to fostering sustainable development.¹⁸⁷ The NWA was the first to give a rights-based approach and sustain the environment, and the WSA imposed a primary legal obligation on local government to deliver effective and affordable services.¹⁸⁸

In theory, these laws should give a paradigm shift from water as a privilege to a justiciable socio-economic right for all people. However, the case in Sebokeng shows that the ambition of the legislation has not yet been delivered consistently because the residents of this township still face access to water challenges.

The progressive realisation clause under Section 27(2) of the Constitution provides a degree of flexibility but acknowledges the resource limitations of the State that delivers services. Municipalities such as Emfuleni often claim financial distress and technical incompetence in order to justify their lack of service delivery.¹⁸⁹ Ultimately, this results in conditional constitutional

183 Department of Cooperative Governance (2021) *State of Local Government Report*. Pretoria 45.

184 Department of Water and Sanitation (2023). National Water and Sanitation Master Plan. Pretoria 42.

185 Brand, Daniel and Court, Socio-economic rights and Transformative Politics 42.

186 Brand and Court, Socio-economic rights and Transformative 114.

187 Van der Schyff and Viljoen 2008 *Journal for Transdisciplinary Research in Southern Africa* 344.

188 National Water Act; Water Services Act;

189 Auditor-General South Africa (2022) Consolidated General Report on the Local Government Audit Outcomes 2020–21. Pretoria. 77.

rights and makes them ineffective as they cannot be claimed. The Constitutional Court in *Mazibuko v City of Johannesburg* held the right to water focuses on reasonable policy integration and not on delivery, but this ability of the State to defer service delivery negatively impacts local government¹⁹⁰ because it then justifies delays, interruptions or lack of services to planning processes and budget constraints weakening accountability by framing failures to administrative or resource challenges rather than constitutional violations. The legislative framework targets socioeconomic transformation, and the country's bureaucracy and administrative systems seek to undermine this goal.¹⁹¹

2.8.2 Governance and Institutional Fragmentation

One of Sebokeng's greatest challenges in realising water rights is the fragmentation of governance. While the Constitution requires cooperative government, the coordination of the Department of Water and Sanitation, the Gauteng provincial government,¹⁹² and Emfuleni Local Municipality remains inadequate. The three spheres of government often act independently,¹⁹³ which creates overlapping jurisdictions and vague accountability.

The National Water Act places management of the resource within the national sphere, and the Water Services Act assigns provision of the services to local government.¹⁹⁴ The lack of effective oversight between these spheres creates a situation in which the absence of managerial action in the National and Provincial spheres results in performance failure if left unaddressed.¹⁹⁵ In Sebokeng, the lack of action has created a chronic implementation vacuum. When the water supply fails, residents are stuck between national entities claiming local responsibility and local officials citing national budgetary delays. Thus, the principle of cooperative governance exists more in theory than in practice.

190 *Mazibuko v City of Johannesburg* 2009 (2) SA 1 (CC).

191 Brand and Court, Socio-economic rights and Transformative Politics 114.

192 Xaba, *A Critical Assessment of the Causes and Impacts of Water Pollution – The Case of the Vaal River in Emfuleni Local Municipality* 66.

193 Xaba, *A Critical Assessment of the Causes and Impacts of Water Pollution – The Case of the Vaal River in Emfuleni Local Municipality* 53.

194 National Water Act; Water Services Act;

195 Schreiner, B. & Van Koppen, B. (2019) "Reforming Water Rights in South Africa." *Water Policy Journal*, 21(2).

Compounding this is the accumulated debt at the municipal level. The Auditor-General (2022) report on Emfuleni Municipality cites irregular expenditure, lack of financial oversight, and neglect of infrastructure maintenance.¹⁹⁶ These contraventions are a direct violation of the Constitution, Section 195 (1), which speaks to the lack of transparency, accountability, and inefficiency in the use of public resources.¹⁹⁷ Sebokeng residents are constitutionally entitled to a sufficient and accessible supply of water, but this right is illusory due to institutional ineptitude and corruption.

2.8.3 Infrastructure Decay and Financial Mismanagement

The legal framework believes in the existence of functional infrastructure and fiscal sustainability,¹⁹⁸ but in Sebokeng, the reality is degraded water systems and municipal insolvency. The constitutional and statutory mandates, though well-crafted, rely on municipal institutions to have the technical and financial means to fulfil them. In Sebokeng, the institutional absence is evident in water loss, waste, and service interruptions. The physical prerequisites for realising the right to water are conspicuously absent.¹⁹⁹

Under WSA Section 11, municipalities must provide adequate, efficient, affordable, and sustainable services.²⁰⁰ In the case of Emfuleni, statutory obligations are breached because the municipality does not maintain or replace ageing and broken infrastructure. Furthermore, under the MSA Section 73, the provision of services must also be economically, environmentally, and socially sustainable.²⁰¹ If not, it breaches administrative law and Section 27(1)(b) of the Constitution.

In Emfuleni Municipality, unsustainable consumer spending and corruption within the procurement of public goods have created a cycle of deterioration.²⁰² Poor oversight leads to the

196 Auditor-General of South Africa (2022) Report on the Emfuleni Local Municipality

197 The Constitution.

198 Brand and Court, *Socio-economic rights and Transformative Politics* 115.

199 UNISA (2025) Master of Laws Study Guide on Environmental Governance. Pretoria: University of South Africa.

200 Section 11 of Water Service Act.

201 Section 73 of Municipal System Act.

202 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 24.

collapse of infrastructure necessary for maintaining a municipality,²⁰³ which in turn leads to greater insolvency as revenue collection dwindles. In this case, legal mandates cannot replace a lack of institutional integrity.

2.8.4 Concluding Remarks: The Paradox of Water Governance

South Africa's water governance framework reveals a persistent paradox: a nation with one of the world's most comprehensive water laws continues to struggle with fragmented institutional capacity and weak implementation. The Constitution and the accompanying legislative instruments, the NWA, WSA, and MSA, establish an ambitious and rights-based legal structure intended to guarantee universal access to sufficient water. Yet, in practice, this promise remains largely unfulfilled in communities such as Sebokeng, where deteriorating infrastructure, administrative inefficiency, and fiscal mismanagement combine to perpetuate water insecurity.

This contradiction highlights that robust laws alone are insufficient to secure meaningful access. The effectiveness of South Africa's constitutional commitments depends on coherent governance, fiscal accountability, and inclusive community participation. Without these elements, the right to sufficient water risks remaining aspirational rather than realised. The Sebokeng experience illustrates that legal norms must be reinforced by practical mechanisms for monitoring, evaluation, and intergovernmental coordination at the local level to achieve equity and sustainability.

This concluding section thus underscores the persistent paradox where comprehensive water legislation coexists with weak institutional capacity and policy incoherence. It lays the foundation for Chapter 3, which extends this critique by analysing governance structures, administrative failures, and socioeconomic deprivation within Emfuleni Local Municipality. The next chapter, therefore, examines how local governance mediates the relationship between law and policy, translating—or failing to translate—the constitutional vision of water as a fundamental right into lived reality.

203 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.

CHAPTER 3 LEGAL, INSTITUTIONAL AND STRUCTURAL CHALLENGES THAT HINDER THE PROGRESSIVE REALISATION OF THE CONSTITUTIONAL WATER RIGHT IN SEBOKENG

3.1 Introduction

Building on the preceding chapter's analysis of the legal and regulatory framework governing the right of access to sufficient water in South Africa, this chapter shifts from the normative to the practical dimension. It identifies the role of the *Emfuleni Local Municipality (ELM)* in implementing national and local regulatory frameworks in Sebokeng and investigates the administrative, infrastructural, and socioeconomic barriers that hinder the realisation of the right to water as guaranteed under Section 27(1)(b) of the *Constitution*.

This chapter positions Sebokeng within the broader national and municipal policy landscape and provides a critical analysis of the practical challenges that impede the progressive realisation of the constitutional right to water. The evaluation employs a benchmarking approach, using the legal and policy obligations established in Chapter 2; specifically, the NWA, the WSA, and the MSA, as the primary standards against which the municipality's performance is measured. In doing so, the analysis assesses whether Emfuleni's policies, plans, and practices align with the duties imposed by law and whether the lived realities of Sebokeng residents reflect the fulfilment of these obligations. Three categories of challenges are examined in detail, namely 1) Infrastructural challenges, 2) Administrative and Governance Failures, as well as 3) Socioeconomic constraints.

Through this analysis, the chapter aims to demonstrate how constitutional and statutory mandates are diluted by systemic governance failures and resource limitations at the municipal level. It underscores that access to water is not only a *legal right* but also a *lived experience*; one that depends on effective infrastructure, accountable administration, and a socioeconomic environment conducive to equitable service delivery.

3.2 Contextual Overview of Water Services Delivery in Sebokeng

Sebokeng is within the ELM in Sedibeng District of Gauteng Province. Established in 1965 under apartheid spatial planning, it served as a segregated township for Black South Africans who resisted exploitative service tariffs and were forcibly relocated from nearby white urban centres.²⁰⁴ The settlement's spatial design reflected apartheid's political economy: peripheral location, inadequate infrastructure, and chronic under-investment in municipal services. These historical patterns have persisted into the democratic era, producing enduring inequalities in access to water and sanitation services.²⁰⁵

Today, Sebokeng forms one of the largest townships in Gauteng, with an estimated population exceeding 200 000 people, most of whom depend on municipal supply systems for domestic and commercial water use.²⁰⁶ The community's socio economic profile is characterised by high unemployment—reported at over 50 percent among youth—limited formal housing, and widespread poverty.²⁰⁷ These structural constraints intensify residents' vulnerability to water insecurity and service interruptions.

3.2.1 Historical and Institutional Background

Water service delivery in Sebokeng cannot be understood without acknowledging the institutional evolution of ELM as a local government authority. Following the 1998 promulgation of the WSA, ELM was designated as the Water Services Authority responsible for ensuring the provision of efficient, affordable, and sustainable water and sanitation services within its jurisdiction.²⁰⁸ This designation placed ELM at the centre of

204 Rueedi *The Vaal uprising of 1984 & The Struggle for Freedom in South Africa 2*.

205 Tempelhoff, et al. (2019). *The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality* (2018–19).

206 Statistics South Africa, 2022.

207 Emfuleni Local Municipality, 2024. *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

208 Department of Water and Sanitation (2025). *Major progress in addressing Emfuleni water and sanitation challenges*. Pretoria: DWS.

implementing national water policy objectives articulated in the NWA, which promotes equity, sustainability, and efficiency in resource use.²⁰⁹

However, despite these statutory responsibilities, successive audits and investigative reports reveal that ELM has struggled to meet the constitutional requirement under Section 27(1)(b) of the Constitution to provide everyone with access to sufficient water.²¹⁰ The municipality's institutional weaknesses include financial mismanagement, poor planning, and declining technical capacity.²¹¹ Between 2018 and 2024, ELM was repeatedly cited by the Auditor-General for irregular and wasteful expenditure, resulting in the erosion of its service-delivery capabilities.²¹²

3.2.2 Socioeconomic Context and Infrastructure

The legacy of apartheid-era underdevelopment continues to shape Sebokeng's physical and social landscape. While formal areas enjoy near-universal access to piped water, informal settlements remain underserved and depend on communal taps or tanker deliveries.²¹³ Infrastructural decay is widespread: decades-old asbestos and steel pipelines frequently burst, causing major water losses and service disruptions.²¹⁴ The municipality's 2024/25 Integrated Development Plan acknowledges a backlog of pipe replacements and a lack of funds for preventative maintenance.²¹⁵

Furthermore, Sebokeng lies within the Vaal River catchment, a critical water source for Gauteng's industrial and residential zones. Poor maintenance of wastewater infrastructure has led to recurring sewage spills into the Vaal River and its tributaries, prompting

209 Department of Water and Sanitation (2025). Major progress in addressing Emfuleni water and sanitation challenges. Pretoria: DWS.

210 Public Protector (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector.

211 Public Protector (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector

212 Auditor-General of South Africa. (2022). Consolidated general report on local government audit outcomes: MFMA 2021-22. Pretoria: AGSA.

213 Emfuleni Local Municipality (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM

214 McKenzie et al (2007) 'Hidden benefits of public-private partnerships: the case of water pressure management in Sebokeng', *Journal for Transdisciplinary Research in Southern Africa*, 3.

215 Emfuleni Local Municipality (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

interventions by the national Department of Water and Sanitation and the South African Human Rights Commission.²¹⁶ These events underscore how local infrastructure failure in Sebokeng has broader environmental and human-rights implications.

3.2.3 The Institutional Role of the Emfuleni Local Municipality

ELM occupies a pivotal but contested role in Sebokeng's water-governance landscape. As a Category B municipality, it bears primary responsibility for the delivery of basic services, yet its operational capacity has been undermined by persistent administrative instability and political interference.²¹⁷ The Public Protector's Report of 2024 on ELM confirmed chronic delays in repairing leaks and responding to community complaints in Sebokeng Zone 3, citing non-compliance with performance-management systems and a failure to uphold the *Batho Pele* principles of accountability and transparency.²¹⁸

ELM's internal fragmentation is exacerbated by a weak relationship with the Sedibeng District Municipality and provincial authorities. Cooperative governance mechanisms intended under Section 41 of the Constitution have often collapsed in practice, producing duplication of roles and budgetary inefficiencies.²¹⁹ In 2025, the DWS intervened under the WSA to stabilise operations and provide technical support to ELM, acknowledging that local capacity alone was insufficient to sustain the water network.²²⁰

Despite these interventions, ELM's governance model remains reactive rather than preventative. The 2025 Municipal Overview identifies revenue collection challenges,

216 Tempelhoff et al. (2019). The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19). North-West University: CuDyWat Research Report. Public Protector (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector.

217 Emfuleni Local Municipality (2025). *Chapter 1: Municipal Overview – Water Services*. Vanderbijlpark: ELM.

218 Public Protector (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector

219 Tempelhoff et al. (2019). The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19). North-West University: CuDyWat Research Report.

220 Department of Water and Sanitation (2025). Major progress in addressing Emfuleni water and sanitation challenges. Pretoria: DWS.

vandalism, and ageing infrastructure as the primary obstacles to effective service delivery.²²¹ Meanwhile, civil-society organisations and local activists continue to demand greater accountability, citing systemic neglect and inequitable service allocation.²²²

3.2.4 Governance and Capacity Constraints

Governance failures in Sebokeng are symptomatic of deeper structural constraints facing local government across South Africa. ELM's institutional challenges, ranging from insufficient technical staff to weak financial management systems, directly affect its ability to plan, implement, and monitor water-service projects.²²³ The 2024 Integrated Development Plan lists fewer than 15 qualified engineers in the entire Infrastructure Services Department, a shortfall that hampers long-term infrastructure renewal.²²⁴

Furthermore, ELM's debt burden and limited revenue base constrain its fiscal capacity to invest in infrastructure upgrades. As of 2023, the municipality owed millions to bulk suppliers such as Rand Water, leading to threats of supply restrictions.²²⁵ The resulting liquidity crisis has translated into inconsistent maintenance schedules and protracted response times to service breakdowns.

The cumulative effect of these governance and capacity constraints is the normalisation of water insecurity in Sebokeng. Residents frequently experience low pressure, rationing, and prolonged interruptions, conditions that violate both constitutional guarantees and the Water Services Regulations of 2001, which define "reasonable access" as a continuous supply of potable water within 200 metres of a household.²²⁶

221 Emfuleni Local Municipality (2025). *Chapter 1: Municipal Overview – Water Services*. Vanderbijlpark: ELM.

222 Mubangizi (2022) *African Journal of Development Studies* 41.

223 Tempelhoff et al. (2019). *The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19)*. North-West University: CuDyWat Research Report.

224 Emfuleni Local Municipality (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

225 Emfuleni Local Municipality (2023). *Spatial Development Framework 2023–2024*. Vanderbijlpark: ELM

226 Department of Water and Sanitation. (2023). *National Water and Sanitation Master Plan*. Pretoria: Department of Water and Sanitation.

Sebokeng's experience reveals how the intersection of historical inequality, failing infrastructure, and weak municipal governance undermines the right of access to sufficient water. While ELM holds the statutory authority to ensure equitable service delivery, its persistent capacity deficits and institutional fragility have rendered this mandate largely ineffective. National interventions and policy frameworks have provided temporary relief but have not yet addressed the systemic governance weaknesses at the local level. Understanding this context is essential to appreciate the analysis that follows in subsequent sections, which examines how governance failures and capacity constraints translate into service-delivery breakdowns and the erosion of socioeconomic rights in Sebokeng.

3.3 Infrastructural Challenges and Service Reliability

The deteriorating condition of Sebokeng's water infrastructure reflects decades of neglect, chronic under-investment, and weak maintenance practices that continue to compromise both service reliability and the constitutional right of access to sufficient water.²²⁷ The township's reticulation network, designed during apartheid to serve a smaller and racially segregated population, has become structurally inadequate for the current demand.²²⁸ Persistent leakages, pipe bursts, and sewage spillages have become defining features of daily life, highlighting how infrastructural decay directly undermines the realisation of socio-economic rights.²²⁹

3.3.1 Ageing Infrastructure and Historical Neglect

A large proportion of Sebokeng's water pipelines consists of ageing steel and asbestos cement pipes installed more than five decades ago.²³⁰ These materials are highly

227 Tempelhoff, Jaka & Mahabir et al. (2019). *The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19)*. North-West University: CuDyWat Research Report.

228 Mphahlele T. (2018). *Urban Water Challenges in Post-Apartheid Townships*. Johannesburg: Wits University Press.

229 Mphahlele T. (2018). *Urban Water Challenges in Post-Apartheid Townships*. Johannesburg: Wits University Press.

230 McKenzie, Wegelin, Mohajane & Shabalala. (2007). "Hidden benefits of public-private partnerships:

susceptible to corrosion, leading to frequent ruptures and significant physical water losses. The municipality's own records estimate non-revenue water losses at more than 45 percent—well above the national benchmark of 30 percent established in the National Water and Sanitation Master Plan.²³¹ Such high loss rates increase operational costs and undermine the sustainability of the network.

The historical under-investment in township infrastructure, inherited from apartheid spatial planning, continues to constrain Sebokeng's ability to achieve post-1994 service-delivery goals.²³² The WSA imposes a statutory duty on Water Services Authorities—such as the ELM to ensure efficient, affordable, and sustainable service provision. Section 11(1) specifically requires municipalities to maintain and extend infrastructure to ensure a continuous and effective supply.²³³ However, the Auditor-General of South Africa found that ELM had failed to implement a preventive maintenance plan, instead responding reactively to failures after they occurred.²³⁴ This approach contradicts the MSA, which calls for proactive planning and lifecycle management of infrastructure assets.²³⁵

3.3.2 Leakages, Water Losses, and Service Interruptions

Water leakages are among the most visible signs of infrastructural collapse. Field investigations by the Public Protector documented thousands of unreported leaks, particularly in Zones 3, 6, 7 and 10, leading to extensive water losses and pressure drops across Sebokeng.²³⁶ Residents regularly experience water rationing lasting several days due to emergency repairs or electricity failures at pumping stations.²³⁷ These service

The case of water pressure management in Sebokeng." *Journal for Transdisciplinary Research in Southern Africa*, 4.

231 Department of Water and Sanitation. (2023). *National Water and Sanitation Master Plan*. Pretoria: DWS.

232 Mphahlele T. (2018). *Urban Water Challenges in Post-Apartheid Townships*. Johannesburg: Wits University Press.

233 Water Services Act.

234 Auditor-General of South Africa. (2022). Consolidated general report on local government audit outcomes: MFMA 2021–22. Pretoria: AGSA.

235 Municipal Systems Act

236 Public Protector. (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector.

237 Emfuleni Local Municipality. (2025). *Chapter 1: Municipal Overview – Water Services*.

interruptions force households to store water in unsterilised containers, increasing the risk of bacterial contamination and outbreaks of water-borne diseases.²³⁸

The Constitution guarantees everyone the right of access to sufficient water (Section 27(1)(b)).²³⁹ The *Mazibuko v City of Johannesburg and Others* case clarified that this right obliges municipalities to provide a level of service consistent with human dignity.²⁴⁰ Yet, Sebokeng's chronic interruptions and rationing violate this principle. According to the Gauteng City-Region Observatory, Emfuleni reported the highest incidence of water interruptions in the province, with poor households being most affected.²⁴¹ This pattern reflects non-compliance with the WSA and poor asset-management practices contrary to the Municipal Finance Management Act 56 of 2003 (MFMA), which was enacted to promote transparency, accountability and good governance in the management of municipality finances.²⁴²

3.3.3 Sewage Contamination and Environmental Degradation

The collapse of sanitation infrastructure has compounded Sebokeng's water crisis. Frequent blockages and equipment failures have led to raw sewage overflows into stormwater drains and streets, polluting both surface and groundwater sources.²⁴³ The Green Drop Report (2023) rated Emfuleni's wastewater facilities among the poorest performing nationally.²⁴⁴ These failures violate Section 19 of the *NWA*, which places a duty on responsible institutions to prevent water pollution.²⁴⁵

-
- 238 Vanderbijlpark: ELM.
Green Drop Report. (2023). Assessment of Wastewater Treatment Works in South Africa. Pretoria: DWS.
- 239 The Constitution.
- 240 *Mazibuko v City of Johannesburg and Others* (2009 3 SA 592 (CC)).
- 241 Gauteng City-Region Observatory (GCRO). (2022). *Water Interruptions in Gauteng: Map of the Month*. Johannesburg: GCRO.
- 242 Municipal Finance Management Act 56 of 2003
- 243 Tempelhoff et al. (2019). *The Anthropocene and the Hydrosphere*. North-West University.
- 244 Green Drop Report. (2023). Assessment of Wastewater Treatment Works in South Africa. Pretoria: DWS.
- 245 National Water Act.

In *Mshengu and Others v Msunduzi Local Municipality and Others* the court reaffirmed that local governments have a direct constitutional and statutory duty to maintain water and sanitation infrastructure to safeguard public health and dignity.²⁴⁶ Emfuleni's recurring sewer spillages breach these duties and infringe upon the environmental rights guaranteed under Section 24 of the *Constitution*.²⁴⁷

3.3.4 Legal Evaluation of Municipal Obligations

A comparative analysis of ELM's infrastructural performance against its statutory duties reveals persistent non-compliance. Section 73(1)(c) of the *MSA* requires municipalities to ensure that services are "regular, reliable, equitable, and sustainable."²⁴⁸ However, evidence from the *Public Protector's Report (2024)* shows that community complaints about water leaks and prolonged outages often remain unresolved for months, violating the principle of administrative accountability.²⁴⁹

From a constitutional perspective, such failures undermine the progressive realisation of socio-economic rights as required by Section 27(2) of the *Constitution*.²⁵⁰ The *Mazibuko* judgment held that "reasonableness" in government action requires integrated planning and implementation.²⁵¹ Yet, Emfuleni's disjointed approach, underfunding, and limited technical capacity demonstrate the absence of such reasonableness.²⁵²

3.3.5 Consequences and Emerging Interventions

The cumulative impact of infrastructural decay, leakages, and contamination has entrenched a cycle of crisis management. Public trust in ELM has eroded, protests have increased, and the municipality's legitimacy continues to decline.²⁵³ In 2025, the *DWS*

246 *Mshengu and Others v Msunduzi Local Municipality and Others* (2019 ZAKZPHC 79).

247 The Constitution.

248 Municipal Systems Act.

249 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

250 The Constitution.

251 *Mazibuko v City of Johannesburg and Others* (2009 3 SA 592 (CC)).

252 Auditor-General of South Africa. (2022). *Consolidated general report*. Pretoria: AGSA.

253 The Star. (2025). "DA reports Emfuleni Municipality to SAHRC over severe service delivery failures."

intervened under Section 63 of the *WSA* to stabilise operations, fund leak-detection programmes, and refurbish wastewater facilities.²⁵⁴ Although this intervention produced short-term relief, structural governance weaknesses remain entrenched, necessitating long-term institutional reform and infrastructure reinvestment.²⁵⁵

In conclusion, Sebokeng’s water infrastructure challenges are the cumulative result of historical neglect, fiscal mismanagement, and institutional incapacity within the Emfuleni Local Municipality. The municipality’s inability to meet its legal obligations to provide continuous, safe, and reliable water reveals a persistent gap between constitutional ideals and lived realities. Without sustainable infrastructure renewal, improved technical capacity, and enhanced accountability, Sebokeng’s residents will continue to face conditions that violate their rights to health, dignity, and sufficient water.²⁵⁶

3.4 Administrative and Governance Failures

The governance challenges confronting Sebokeng’s water services delivery are deeply rooted in administrative inefficiencies, weak institutional capacity, and pervasive financial mismanagement within the ELM. Despite possessing a robust legislative framework under the *Constitution*, the *MSA*, and the *MFMA*, the municipality’s governance and administrative systems have failed to translate legal mandates into effective water-service delivery.²⁵⁷

3.4.1 Weak Institutional Capacity and Administrative Instability

ELM’s institutional structure has been characterised by frequent leadership changes, inadequate staffing, and a shortage of technical expertise.²⁵⁸ The *Public Protector (2024)*

-
- 254 *The Star*, 18 May.
 - 254 Department of Water and Sanitation. (2025). Major progress in addressing Emfuleni water and sanitation challenges. Pretoria: DWS.
 - 255 Emfuleni Local Municipality. (2025). *Chapter 1: Municipal Overview – Water Services*. Vanderbijlpark: ELM.
 - 256 Tempelhoff et al. (2019). *The Anthropocene and the Hydrosphere*. North-West University.
 - 257 Municipal Systems Act
 - 258 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM

highlighted that the municipality had no permanent executive manager for infrastructure for several years, resulting in erratic decision-making and delayed implementation of water-related projects.²⁵⁹ Similarly, the *Auditor-General of South Africa (2022)* reported a high vacancy rate in key technical departments and a reliance on acting officials with limited authority to enforce accountability.²⁶⁰ This instability has weakened administrative coherence and created an environment where project continuity and institutional learning are virtually non-existent.

Furthermore, the *MSA*, Section 38(a), requires municipalities to establish performance-management systems capable of monitoring and evaluating service delivery.²⁶¹ ELM's failure to develop such systems contravenes this legal obligation, thereby impairing its ability to assess the efficiency of its water infrastructure programmes. The lack of routine performance audits, coupled with limited internal oversight, has led to an erosion of accountability and the normalisation of underperformance.²⁶²

3.4.2 Poor Budgeting and Financial Mismanagement

Financial mismanagement remains one of ELM's most significant governance failures.²⁶³ Audit reports over several financial years reveal consistent patterns of irregular, wasteful, and unauthorised expenditure.²⁶⁴ According to the *Auditor-General (2022)*, ELM incurred over R1 billion in irregular expenditure between 2020 and 2022, largely due to non-compliance with supply-chain management regulations and weak financial controls.²⁶⁵ These fiscal irregularities have severely constrained the municipality's ability to invest in

259 Public Protector. (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector.

260 Auditor-General of South Africa. (2022). Consolidated general report on local government audit outcomes: MFMA 2021-22. Pretoria: AGSA

261 Municipal Systems Act

262 Public Protector. (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector.

263 Auditor-General of South Africa. (2022). *Consolidated general report*. Pretoria: AGSA.

264 Municipal Finance Management Act.

265 Auditor-General of South Africa. (2022). *Consolidated general report*. Pretoria: AGSA.

the maintenance and upgrading of water infrastructure, directly contributing to Sebokeng's persistent water shortages and leakages.

The *MFMA* explicitly aims to promote sound and sustainable financial management by ensuring that municipalities implement transparent budgeting, expenditure, and reporting processes.²⁶⁶ However, ELM's chronic failure to adhere to these principles has undermined the fiscal discipline necessary for effective service delivery. The *Public Protector (2024)* found that budget allocations for water services were frequently reallocated to cover operational shortfalls in other departments, reflecting a lack of prioritisation for essential infrastructure.²⁶⁷

In addition, poor revenue collection exacerbates financial instability. ELM's debt to bulk water supplier *Rand Water* exceeded R2 billion by mid-2024, leading to supply restrictions that further compromised water reliability in Sebokeng.²⁶⁸ The municipality's inability to manage its finances sustainably represents not merely administrative weakness but a direct breach of the constitutional requirement under Section 195(1)(b) for accountable and transparent public administration.²⁶⁹

3.4.3 Corruption and Maladministration

Instances of corruption and maladministration within ELM have further weakened institutional integrity and diverted resources intended for water service delivery.²⁷⁰ Investigations by the *Public Protector* and provincial *Co-operative Governance and Traditional Affairs Department (COGTA)* have uncovered cases of procurement fraud, unauthorised contracting, and inflated payments to service providers.²⁷¹ These

266 Municipal Finance Management Act.

267 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

268 Emfuleni Local Municipality. (2023). *Spatial Development Framework 2023–2024*. Vanderbijlpark: ELM.

269 The Constitution.

270 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

271 Gauteng COGTA. (2024). *Municipal Governance Oversight Report*. Johannesburg: Gauteng Provincial Government.

governance failures contravene Section 217 of the *Constitution*, which mandates that all public procurement be fair, equitable, transparent, competitive, and cost-effective.²⁷²

Corruption also erodes public trust and undermines citizen participation, both of which are key to cooperative governance and local democracy.²⁷³ The *MSA*, in Section 16(1), obliges municipalities to develop a culture of community consultation and accountability, yet Sebokeng residents frequently report limited access to information and minimal involvement in decision-making on water-related projects.²⁷⁴ This failure to engage communities not only breaches statutory obligations but also perpetuates alienation and social unrest, as reflected in repeated service-delivery protests across the Sedibeng District.²⁷⁵

3.4.4 Weak Intergovernmental Coordination

The failure of cooperative governance mechanisms essential for synchronising national, provincial, and municipal efforts has amplified Sebokeng's water challenges.²⁷⁶ As discussed in Chapter 2, Section 41(1)(h) of the *Constitution* requires all spheres of government to "co-operate with one another in mutual trust and good faith."²⁷⁷ However, in practice, coordination between the *DWS*, *Sedibeng District Municipality*, and *ELM* has been inconsistent and fragmented.²⁷⁸

The *Department of Water and Sanitation (2025)* intervention under Section 63 of the *WSA* exemplifies this breakdown: the national government had to assume certain water-service functions due to *ELM*'s incapacity to manage its infrastructure.²⁷⁹ While the

272 Section 217 of the Constitution.

273 Municipal Systems Act.

274 Section 16 of the Municipal System Act.

275 The Star. (2025). "DA reports Emfuleni municipality to SAHRC over severe service delivery failures." *The Star*, 18 May.

276 Department of Water and Sanitation. (2025). Major progress in addressing Emfuleni water and sanitation challenges. Pretoria: DWS.

277 Section 2 of the Constitution.

278 Tempelhoff, Jaka & Mahabir et al. (2019). The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19). North-West University.

279 Section 63 of Water Services Act.

intervention achieved limited technical improvements, it underscored the municipality's dependency on external actors and its inability to meet constitutional mandates independently.²⁸⁰

Furthermore, intergovernmental forums such as Sedibeng District Technical Water Committee, intended to coordinate planning and monitoring, have been irregular or inactive since 2022.²⁸¹ This institutional fragmentation undermines the integrated approach to water resource management envisioned in the *NWA* and contradicts the cooperative governance framework described in Chapter 2.²⁸²

3.4.5 Limited Technical Capacity

A critical impediment to effective governance in Sebokeng is the shortage of technical expertise within ELM's Infrastructure Services Department.²⁸³ The *Emfuleni Local Municipality Integrated Development Plan (2024/25)* acknowledges that the department operates with fewer than 15 qualified engineers and technicians, insufficient to manage the extensive network of pipelines, pumping stations, and treatment facilities.²⁸⁴ Limited technical capacity affects the municipality's ability to plan, monitor, and maintain infrastructure efficiently, resulting in reactive maintenance practices and escalating operational costs.²⁸⁵

The lack of institutional learning and knowledge transfer further compounds this weakness. Capacity-building initiatives, such as the Municipal Infrastructure Support Agency's (MISA) training programmes, have not been consistently implemented in ELM due to poor coordination and inadequate funding.²⁸⁶ Consequently, the municipality

280 Department of Water and Sanitation. (2025). Major progress in addressing Emfuleni water and sanitation challenges. Pretoria: DWS.

281 Emfuleni Local Municipality. (2025). *Chapter 1: Municipal Overview – Water Services*. Vanderbijlpark: ELM

282 National Water Act.

283 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

284 Ibid

285 Auditor-General of South Africa. (2022). *Consolidated general report*. Pretoria: AGSA.

286 Municipal Infrastructure Support Agency (MISA). (2023). *Capacity-Building Programme Report*. Pretoria: MISA.

remains reliant on external consultants whose contracts are often irregularly awarded, perpetuating dependency and fiscal leakage.²⁸⁷

3.4.6 Implications for Co-operative Governance

The convergence of these governance failures, financial mismanagement, corruption, weak coordination, and limited technical capacity directly undermines the constitutional principle of cooperative governance that underpins South Africa's intergovernmental system.²⁸⁸ As outlined in Chapter 2, cooperative governance requires all spheres of government to coordinate their actions and align their functions for the delivery of services in an integrated and efficient manner.²⁸⁹ ELM's fragmentation and institutional paralysis demonstrate a collapse of this principle at the local level.

In Sebokeng, the failure of local governance has forced national departments to intervene repeatedly, eroding municipal autonomy and exposing structural weaknesses in decentralised service delivery.²⁹⁰ The persistence of these failures underscores the urgent need for governance reform, improved financial oversight, and enhanced technical capacity to restore the cooperative model envisioned by the *Constitution*.

3.5 Socioeconomic Barriers to Water Access

The socio-economic circumstances of Sebokeng's residents continue to hinder the practical realisation of the constitutional right of access to sufficient water. Although the *Constitution* and the *WSA* recognise everyone's entitlement to water, implementation remains profoundly influenced by socioeconomic realities such as poverty, unemployment, informality, and the affordability of tariffs.²⁹¹ These factors combine to nullify constitutional guarantees for those already disadvantaged, producing a cycle in

287 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

288 The Constitution

289 See Chapter 1 discussion on co-operative governance.

290 Department of Water and Sanitation. (2025). Major progress in addressing Emfuleni water and sanitation challenges. Pretoria: DWS.

291 Water Services Act

which deprivation itself becomes a barrier to the enjoyment of socioeconomic rights.²⁹² Sebokeng thus exemplifies how persistent inequality and structural poverty undermine the progressive realisation of water rights.

3.5.1 Poverty and Unemployment in Sebokeng

Sebokeng's historical evolution as an apartheid-era township, coupled with continued economic marginalisation, has resulted in entrenched poverty and chronic unemployment.²⁹³ According to the *General Household Survey (2022)*, more than 60 percent of households in the ELM earn below the national lower-bound poverty line, while youth unemployment exceeds 55 percent.²⁹⁴ Many residents depend on social grants or informal employment, leaving them unable to meet even subsidised municipal charges.²⁹⁵

Although Section 27(1)(b) of the *Constitution* entitles all individuals to sufficient water, those unable to pay beyond the basic *Free Basic Water (FBW)* allocation are frequently subjected to flow restrictions or disconnections.²⁹⁶ The *WSA* obliges municipalities to provide affordable services, but affordability should be assessed relative to prevailing household income levels.²⁹⁷ In Sebokeng, where incomes are minimal and irregular, this principle is largely theoretical. Consequently, access to water remains contingent on purchasing power rather than constitutional entitlement, contradicting the *Mazibuko v City of Johannesburg* ruling that water must be "sufficient for health and dignity."²⁹⁸

3.5.2 Informal Settlements and Service Exclusion

The proliferation of informal settlements around Sebokeng exacerbates water-access inequities.²⁹⁹ Lacking formal tenure and reticulated infrastructure, these communities

292 Tempelhoff et al. (2019). *The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19)*. North-West University.

293 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

294 Statistics SA 2022.

295 Statistics SA 2022.

296 Municipal Systems Act.

297 Water Services Act

298 *Mazibuko v City of Johannesburg and Others*.

299 Emfuleni Local Municipality. (2025). *Chapter 1: Municipal Overview – Water Services*.

depend on communal standpipes, water tankers, or unprotected sources.³⁰⁰ The *Emfuleni Integrated Development Plan (2024)* notes that nearly a third of the municipality's population resides in such settlements, where water delivery is inconsistent and often dependent on ad-hoc emergency interventions.³⁰¹ The absence of secure tenure discourages municipal investment in permanent infrastructure, perpetuating spatial inequality.³⁰²

Section 27(1)(b) of the *Constitution* guarantees universal access, while Section 3(1) of the *WSA* obliges municipalities to ensure at least basic services for all residents within their jurisdiction.³⁰³ Denying informal settlements formal water connections, therefore, constitutes a violation of both constitutional equality (Section 9) and administrative justice.³⁰⁴ Reliance on tankers may offer temporary relief, but fails to meet the standard of "progressive realisation" demanded by Section 27(2). This exclusion highlights the enduring link between informality, infrastructural neglect, and social marginalisation.

3.5.3 Affordability and Tariff Structures

Tariff design presents another significant socio-economic barrier.³⁰⁵ ELM utilises a block tariff system intended to promote equity and conservation by providing 6 kilolitres of FBW per household and charging higher rates for increased consumption.³⁰⁶ In practice, however, the system penalises large, low-income households, particularly extended families living under one roof, whose water use naturally exceeds the basic threshold.³⁰⁷

-
- 300 Vanderbijlpark: ELM. Public Protector. (2024). Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3. Pretoria: Office of the Public Protector.
 - 301 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.
 - 302 Tempelhoff J et al. (2019). *The Anthropocene and the Hydrosphere*. North-West University.
 - 303 Water Services Act
 - 304 Section 27 of The Constitution
 - 305 Department of Water and Sanitation. (2023). *National Water and Sanitation Master Plan*. Pretoria: DWS.
 - 306 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.
 - 307 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

Consequently, the poor pay a disproportionately higher share of income for water than middle-income users.³⁰⁸

While the *MSA* obliges municipalities to ensure fair and transparent tariff setting,³⁰⁹ ELM's indigent-register audits (2024) reveal widespread exclusion of qualifying households from FBW subsidies.³¹⁰ Meter inaccuracies and billing errors further exacerbate distrust, with residents frequently charged for water not delivered due to leakages or outages.³¹¹ The *Public Protector (2024)* criticised these practices as inconsistent with Section 95(e) of the *MSA*, which requires municipalities to maintain accurate accounts and respond to consumer complaints.³¹² The inequity of tariffs thus undermines the constitutional commitment to equality and fairness in resource distribution.

3.5.4 Socioeconomic Rights and the Principle of Progressive Realisation

The constitutional framework acknowledges that socio-economic rights are subject to progressive realisation within available resources.³¹³ However, this principle cannot justify governmental inaction in the face of structural deprivation. The *Mazibuko* judgement affirmed that "reasonableness" in state action must be assessed contextually, taking into account the conditions of vulnerable groups.³¹⁴ In Sebokeng, reasonable measures should include increasing the FBW allocation for large indigent households, waiving tariffs for severely impoverished families, and accelerating service provision to informal

308 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

309 Municipal Systems Act

310 Auditor-General of South Africa. (2022). Consolidated general report on local government audit outcomes: MFMA 2021–22. Pretoria: AGSA.

311 Auditor-General of South Africa. (2022). Consolidated general report on local government audit outcomes: MFMA 2021–22. Pretoria: AGSA.

312 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

313 Brand 2005 'Introduction to socio-economic rights in the South African Constitution' ESR Review 3

314 *Mazibuko v City of Johannesburg and Others*.

settlements.³¹⁵ Failure to adopt such measures amounts to constitutional neglect rather than mere administrative deficiency.³¹⁶

Section 152(1)(b) of the *Constitution* mandates local government to ensure the sustainable provision of services, while Section 152(1)(c) requires it to promote social and economic development.³¹⁷ When tariff structures and service boundaries disproportionately burden the poor and perpetuate inequality, they offend not only Section 27 but also these broader constitutional objectives.³¹⁸ The case of Sebokeng illustrates that without redistributive interventions sensitive to socio-economic realities, legislative compliance remains hollow.³¹⁹

The socioeconomic landscape of Sebokeng magnifies the infrastructural and governance crises discussed earlier. Persistent poverty, informal housing, and unaffordable tariffs combine to exclude large segments of the population from the enjoyment of the constitutional right to water.³²⁰ The inability to pay for services, the lack of infrastructure in informal areas, and inequitable billing practices perpetuate both dependency and distrust in municipal governance.³²¹ These realities expose the gulf between constitutional ideals and lived experience, reaffirming that the right of access to sufficient water is not merely a question of legal entitlement but of socioeconomic justice.³²² The next section, therefore, synthesises these infrastructural, administrative, and socioeconomic dimensions to illustrate how their convergence produces the persistent gap between law and reality in Sebokeng.

315 Department of Water and Sanitation. (2025). Major Progress in Addressing Emfuleni Water and Sanitation Challenges. Pretoria: DWS.

316 Bilchitz, D. (2010). The Necessity for a Concept of Dignity as a Basis for Socio-Economic Rights. *South African Journal on Human Rights*, 26(1): 19

317 Section 152 of the Constitution.

318 Section 27 of the Constitution.

319 Tempelhoff et al. (2019). *The Anthropocene and the Hydrosphere*. North-West University.

320 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

321 Emfuleni Local Municipality. (2025). *Chapter 1: Municipal Overview – Water Services*. Vanderbijlpark: ELM.

322 Pieterse, (2007). Eating Socio-Economic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited. *Human Rights Quarterly*, 29(3): 799.

3.6 Evaluating Implementation Against Legal Benchmarks

The constitutional, legislative, and policy framework governing water provision in South Africa establishes clear obligations for municipalities to ensure access to sufficient, safe, and reliable water for all citizens.³²³ The preceding analysis of Sebokeng reveals a persistent and systemic disjuncture between these normative standards and the actual delivery of water services.³²⁴ This section evaluates the performance of the ELM against the key legal benchmarks of equality, accountability, sustainability, and cooperative governance, as set out in the *Constitution*, the *WSA*, the *MSA*, and the *NWA*, alongside relevant policy instruments such as the *National Water and Sanitation Master Plan (DWS, 2023)*.

3.6.1 Equality and Non-Discrimination

Equality lies at the heart of the constitutional and legislative framework for water governance. Section 9 of the *Constitution* enshrines the right to equality, while Section 27(1)(b) guarantees the right to sufficient water without discrimination.³²⁵ In practice, Sebokeng's residents experience differential treatment in water access, primarily determined by geography and income.³²⁶ Communities in informal settlements or low-income areas receive intermittent supply, depend on tanker deliveries, or lack access to basic sanitation, while wealthier areas within the municipality enjoy more consistent services.³²⁷

This disparity violates the principle of substantive equality, which requires state action to redress historical disadvantage rather than reinforce it.³²⁸ Section 3 of the *WSA* mandates municipalities to provide equitable access to water services, yet Emfuleni's resource

323 Currie, I. & De Waal, J. (2019). *The Bill of Rights Handbook*, 7th ed. Cape Town: Juta.

324 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

325 Section 9 & 27 of the Constitution.

326 Stats SA. (2022)

327 Emfuleni Local Municipality. (2025). *Chapter 1: Municipal Overview – Water Services*. Vanderbijlpark: ELM.

328 Liebenberg, S. (2010). *Socio-Economic Rights: Adjudication under a Transformative Constitution*. Cape Town: Juta.

allocation and infrastructure investment patterns reveal continuing inequality.³²⁹ The *Public Protector's Report (2024)* on Sebokeng's water crisis confirms that the municipality's failure to prioritise infrastructure maintenance in historically marginalised zones constitutes indirect discrimination.³³⁰ These outcomes are inconsistent with both the *Constitutional Court's* reasoning in *Grootboom*, which demands reasonableness in state action, and with the transformative purpose of South Africa's Bill of Rights.³³¹

3.6.2 Accountability and Good Governance

Accountability and transparency are fundamental governance principles under Sections 41 and 195 of the *Constitution* and are reinforced by the *MFMA*.³³² The *Auditor-General (2022)* repeatedly highlighted ELM's non-compliance with financial management provisions, citing irregular expenditure exceeding R1 billion, poor record keeping, and a lack of consequence management.³³³ Such failures undermine public accountability and erode the institutional integrity necessary for effective service delivery.

Section 16(1) of the *MSA* obliges municipalities to develop a culture of participatory governance.³³⁴ However, public consultation processes in Sebokeng are often symbolic rather than substantive, with residents excluded from decision-making around tariffs, budget prioritisation, and infrastructure projects.³³⁵ This failure to engage communities meaningfully contradicts the cooperative governance principles outlined in Chapter 2 and breaches constitutional standards of responsiveness and openness.³³⁶

329 Water Service Act.

330 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

331 *Government of the Republic of South Africa v Grootboom* (2000 (11) BCLR 1169 (CC)).

332 Municipal Finance Management Act.

333 Auditor-General of South Africa. (2022). Consolidated General Report on Local Government Audit Outcomes: MFMA 2021–22. Pretoria: AGSA.

334 Section 16 of the Municipal System Act.

335 Masiya, et al (2019). 'Assessing public participation in municipalities: Evidence from South Africa.' *Administratio Publica*, 27(3): 68.

336 Masiya, et al (2019). 'Assessing public participation in municipalities: Evidence from South Africa.' *Administratio Publica*, 27(3): 68.

Moreover, the absence of transparent performance-management systems within ELM violates Section 38(a) of the *MSA*, which requires municipalities to monitor and evaluate service delivery.³³⁷ The cumulative effect of these lapses is institutional opacity, fiscal inefficiency, and the weakening of democratic oversight mechanisms that are essential to the progressive realisation of socioeconomic rights.³³⁸

3.6.3 Environmental and Financial Sustainability

Sustainability is an integral benchmark of constitutional governance, embedded in Section 24 of the *Constitution* and reinforced by the *NWA*, which promotes the sustainable use of water resources.³³⁹ However, Sebokeng’s deteriorating water infrastructure and high levels of non-revenue water (estimated above 50%) indicate an unsustainable pattern of resource management.³⁴⁰ Leakages, unaccounted-for losses, and pollution of the Vaal River system reflect both technical and managerial failures.³⁴¹

Financial sustainability is equally compromised. The municipality’s escalating debt to *Rand Water* and its inability to maintain infrastructure funding cycles demonstrate fiscal fragility inconsistent with the objectives of the *MFMA*.³⁴² The *Department of Water and Sanitation (2025)* reported that Emfuleni’s dependence on national bailouts and technical interventions undermines local autonomy and long-term resilience.³⁴³ Sustainable service delivery requires not only adequate funding but also robust governance mechanisms to ensure maintenance, rehabilitation, and equitable allocation of water resources.³⁴⁴

337 Section 38 of the Municipal Systems Act.

338 Auditor-General of South Africa. (2022). *Consolidated General Report*. Pretoria: AGSA.

339 National Water Act.

340 Department of Water and Sanitation. (2023). *National Water and Sanitation Master Plan*. Pretoria: DWS.

341 Tempelhoff et al. (2019). *The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19)*. North-West University.

342 Municipal Finance Management Act.

343 Department of Water and Sanitation. (2025). *Major Progress in Addressing Emfuleni Water and Sanitation Challenges*. Pretoria: DWS.

344 Department of Water and Sanitation. (2025). *Major Progress in Addressing Emfuleni Water and Sanitation Challenges*. Pretoria: DWS.

3.6.4 Cooperative Governance and Institutional Integration

As discussed in Chapter 2, South Africa's governance model relies on cooperative governance under Section 41(1)(h) of the *Constitution*, which mandates coordination, mutual trust, and collaboration among national, provincial, and local spheres.³⁴⁵ In Sebokeng, however, the fragmentation between these spheres has impeded coherent policy execution. The *Department of Water and Sanitation's* 2025 intervention under Section 63 of the *WSA* transferred certain functions from Emfuleni to national authorities, demonstrating municipal incapacity but also the fragility of intergovernmental support structures.³⁴⁶

This intervention achieved only temporary stability, revealing that structural reform, not ad hoc national oversight, is necessary for long-term improvement.³⁴⁷ Weak coordination between the *Sedibeng District Municipality*, *Rand Water*, and ELM continues to delay infrastructure rehabilitation projects and disrupt integrated planning.³⁴⁸ The lack of cooperative alignment directly contradicts the constitutional principle of intergovernmental harmony and undermines the *National Water and Sanitation Master Plan's* objective of integrated water resource management.³⁴⁹

3.6.5 The Gap Between Legal Commitments and Lived Realities

The cumulative evidence from Sebokeng exposes the persistent gap between South Africa's strong legal commitments and the daily lived realities of water insecurity.³⁵⁰ Despite an exemplary legal framework hailed as one of the most progressive globally, its translation into practice remains obstructed by weak governance, financial

345 Section 41 of the Constitution.

346 Water Services Act.

347 Water Services Act.

348 Emfuleni Local Municipality. (2024). *Integrated Development Plan 2024/2025*. Vanderbijlpark: ELM.

349 Department of Water and Sanitation. (2023). *National Water and Sanitation Master Plan*. Pretoria: DWS.

350 Public Protector. (2024). *Report on Emfuleni Local Municipality*. Pretoria: Office of the Public Protector.

mismanagement, infrastructural decay, and socio-economic exclusion.³⁵¹ The situation in Sebokeng is emblematic of what Liebenberg (2010) calls “constitutional under-fulfilment,” where the state’s formal compliance masks substantive failure to realise rights.³⁵²

To close this gap, local authorities must adopt a rights-based governance approach that integrates legal compliance with participatory decision-making, transparent financial management, and proactive investment in infrastructure.³⁵³ Without such alignment, the constitutional promise of equality, accountability, and sustainability in water provision will remain unfulfilled.³⁵⁴ The lessons from Sebokeng underscore that achieving the *progressive realisation* of the right to sufficient water demands not only sound laws but also effective, inclusive, and ethical governance at the local level.

3.7 Chapter Summary

This chapter has revealed that despite South Africa’s extensive constitutional and legislative framework guaranteeing the right of access to sufficient water, the practical fulfilment of this right in Sebokeng remains elusive. The *Constitution*, *WSA*, *NWA*, and *MSA* collectively impose clear duties on municipalities to ensure reliable, safe, and equitable water provision. However, the ELM continues to face significant obstacles in meeting these obligations. Ageing and poorly maintained infrastructure, frequent leakages, and sewage contamination have weakened service reliability and compromised water quality, violating both statutory and constitutional standards of sustainability and continuous access.

Governance and administrative weaknesses have exacerbated these challenges. Persistent financial mismanagement, weak institutional capacity, and limited public

351 Tempelhoff et al. (2019). *The Anthropocene and the Hydrosphere*. North-West University.

352 Liebenberg, S. (2010). *Socio-Economic Rights: Adjudication under a Transformative Constitution*. Cape Town: Juta

353 Bilchitz, D. (2007). *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights*. Oxford: Oxford University Press.

354 Department of Water and Sanitation. (2023). *National Water and Sanitation Master Plan*. Pretoria: DWS.

accountability have eroded ELM's ability to uphold its constitutional and legislative responsibilities. Public consultation processes often remain symbolic, with minimal community influence over budgeting, tariffs, or service-delivery priorities. This failure to engage residents meaningfully contravenes the cooperative governance principles enshrined in Sections 41 and 195 of the *Constitution* and undermines local democratic participation. Moreover, poor coordination between municipal, provincial, and national authorities has weakened policy coherence and implementation, exposing the fragility of intergovernmental support systems intended to facilitate equitable service provision.

Socio-economic deprivation compounds these systemic shortcomings. High unemployment, widespread poverty, and the proliferation of informal settlements have entrenched inequality in water access. Many households cannot afford municipal tariffs, while others in informal areas remain excluded from basic infrastructure altogether. Consequently, the gap between South Africa's legal commitments and Sebokeng's lived experience persists. The Sebokeng case underscores that the challenge lies not in the absence of law or policy but in the failure to operationalise existing frameworks through accountable governance, sustainable infrastructure management, and socially responsive implementation.

The preceding chapter thus illustrated the persistent discrepancy between South Africa's constitutional and legal obligations to ensure sufficient access to water and the lived reality of the Sebokeng community. Despite the existence of a robust legal framework, Sebokeng continues to experience chronic water insecurity rooted in ageing infrastructure, weak administration, and enduring socioeconomic constraints. The situation reflects a failure of implementation rather than a deficiency in law. Building on this foundation, the next chapter seeks to identify practical mechanisms for strengthening infrastructure development, monitoring, and accountability systems to enhance the realisation of the constitutional right of access to sufficient water. In doing so, it aims to bridge the gap between normative legal standards and implementation realities, translating South Africa's constitutional and statutory commitments into tangible improvements in water access for the residents of Sebokeng.

CHAPTER 4LEGAL AND GOVERNANCE MECHANISMS AIMED AT IMPROVING THE REALISATION OF THE WATER RIGHT

4.1 Introduction

The preceding chapter illustrated the persistent discrepancy between South Africa's constitutional mandate and legal obligations to ensure sufficient access to water and the lived reality of the Sebokeng community. Despite the existence of a robust constitutional and legislative framework, Sebokeng continues to experience chronic water insecurity-related challenges. Ageing infrastructure,³⁵⁵ weak administration,³⁵⁶ and socioeconomic³⁵⁷ constraints have collectively undermined the practical realisation of the right to water in several municipalities in South Africa.³⁵⁸ The situation in Sebokeng thus reflects not an absence of law or policy, but rather a failure to effectively implement and operationalise the legal mechanisms already in place.³⁵⁹

This chapter builds on that explanatory framework and seeks to identify and examine legal and governance mechanisms aimed at improving the realisation of the constitutional water right, then strengthening infrastructure development, monitoring, and accountability to enhance the realisation of the constitutional right of access to sufficient water. By doing so, the chapter aims to bridge the gap between legal norms and implementation realities, translating constitutional and statutory commitments into tangible improvements in water access for the people of Sebokeng.³⁶⁰

355 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.

356 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.

357 McKenzie and Wegelin 2005 Sebokeng Evaton Leakage reduction: a public- private partnership: IMIESA 26.

358 Auditor-General South Africa 2022 Consolidated General Report on Local Government Audit Outcomes: MFMA 2021–22 (Pretoria: AGSA); Public Protector South Africa 2024 Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3 (Pretoria: Office of the Public Protector).

359 Liebenberg S 2010 Socio-Economic Rights: Adjudication under a Transformative Constitution (Cape Town: Juta) 142.

360 Department of Water and Sanitation 2023 *National Water and Sanitation Master Plan* (Pretoria: 59

The discussion is divided into three parts. First, the chapter examines infrastructure deficiencies as a central barrier to access to water. Guaranteed constitutional access to water is meaningless in the absence of reliable pipelines, treatment facilities, and distribution systems.³⁶¹ Special attention is given to the legal and policy responsibilities of ELM and the infrastructural renewal opportunities that are sustainable and resilient to evolving pressures such as climate change and urbanisation.³⁶²

The second part of the chapter addresses the lack of effective oversight on the use of water and the civil mechanisms that are necessary to make water rights a reality. The MSA, the Water Services Development Plans, and the auditing regime provide in principle for accountability mechanisms, but in reality, these systems are poorly enforced.³⁶³ Effective monitoring and transparent reporting through Water Services Development Plans and local audits remain essential for aligning municipal performance with constitutional obligations of responsiveness and transparency.³⁶⁴ The Sebokeng residents' outcome focus promises popular outcomes of the monitored commitments, and this is fundamental to improving.

The last part of this chapter explores accountability as both a constitutional obligation and a participatory process. The constitutional obligation for accountability, openness, and responsiveness means that the community is entitled to an explanation of why the municipal officials are losing accountability and why there is a failure to provide services, and the community is also obliged to participate in the processes of governance.³⁶⁵ It is now recognised that improved accountability requires a change in the internal governance

-
- DWS); Constitution of the Republic of South Africa 1996 s 27.
 - 361 Tempelhoff et al 2019 *The Anthropocene and the Hydrosphere: A Case Study of Sanitation Governance in Emfuleni Local Municipality (2018–19)* (Potchefstroom: North-West University 15.
 - 362 Department of Water and Sanitation 2023 *National Water and Sanitation Master Plan* (Pretoria: DWS).
 - 363 Steytler N & De Visser J 2021 *Local Government Law of South Africa* 2 ed (Cape Town: LexisNexis) 237; Auditor-General South Africa 2022.
 - 364 Masiya T, Davids Y D & Mangai M S 2019 'Assessing public participation in municipalities: Evidence from South Africa' *Administratio Publica* 27(3) 65 , 72.
 - 365 Steytler, N. & De Visser, J. (2021). *Local Government Law of South Africa*, 2nd ed. Cape Town: LexisNexis. 264.

as well as the external governance, such as civil society, the Chapter 9 institutions, and the courts.³⁶⁶

Ultimately, this chapter argues that the realisation of water rights in Sebokeng requires an integrated, systemic approach; one that combines infrastructural investment, effective monitoring, and participatory accountability. Addressing these dimensions in isolation is insufficient. Rather, a holistic approach, grounded in constitutional principles and responsive to the socio-economic realities of affected communities, is essential for sustainable progress. By adopting such an approach, Sebokeng can serve not only as a case study of rights failure but also as a platform for developing innovative, locally grounded models for improved water governance in South Africa.³⁶⁷

4.2 Infrastructure Development in Sebokeng

The most fundamental aspect of governance of any water system is the physical operational infrastructure and its viability.³⁶⁸ The infrastructure neglect in some South African municipalities is most vividly shown in the destruction of pipelines and the neglect of sewage and water treatment facilities.³⁶⁹ Such infrastructure renders municipalities incapable of meeting their constitutional mandate of providing a safe and reliable water supply.³⁷⁰ Misgovernance and corruption in South Africa resulted in an infrastructure emergency. To construct and dismantle the constitutional provisions, the state has legal and policy obligations to provide relevant infrastructure sustainably, and the practical ways to comply with these obligations.³⁷¹

366 Public Protector South Africa 2024 op 11; Steytler & De Visser 2021 op 264.

367 Liebenberg S 2010; Department of Water and Sanitation 2023.

368 Ruiters and Matji, 2015 African Journals 661.

369 J Tempelhoff 2021 North West University 28.

370 The Constitution.

371 Liebenberg S 2010 Socio-Economic Rights: Adjudication under a Transformative Constitution (Cape Town: Juta) 144.

4.2.1 Sustainable Infrastructure Renewal

The constitutional principle of progressive realisation requires the realisation of existing infrastructure, plus the investment to anticipate future needs.³⁷² In the case of Sebokeng, this means a multi-pronged approach to infrastructure that combines rehabilitation, innovation, and resilience.

System rehabilitation and upgrades: The immediate goal is the repair and replacement of the pipelines and treatment plants that have deteriorated to the point of being unusable, resulting in severe water leakages.³⁷³ Investment in high-quality, advanced treatment systems is necessary, not only to cleanse the Vaal River, but to restore the people to health, thereby reclaiming the environmental integrity that has been so damaged.³⁷⁴

The municipality is still lagging behind in terms of modernising its services, including water supply and delivery technology. The municipality lacks advanced multi-faceted instrumentation and control systems for water management, such as smart meters, remote leak monitoring, and automated pressure control, which could enhance the operational efficiency and water savings.³⁷⁵ This is most necessary in Sebokeng, where high levels of leakage and illegal abstractions result in significant water loss.³⁷⁶

The provincial and local governments are lagging behind in ensuring their infrastructure is climate change resilient. South Africa may experience changes in rainfall, and more extreme and more frequent droughts due to climate change.³⁷⁷ Infrastructure planning must, therefore, include resilience elements such as rainwater harvesting and

372 Liebenberg S 2010 145.

373 Department of Water and Sanitation 2023 31.

374 Department of Water and Sanitation 2023 31.

375 Schreiner, B. & van Koppen, B. 2020. Smart technologies for water management in South Africa: Opportunities and risks. *Water SA*, 46(4): 596.

376 McKenzie R, Wegelin W, Mohajane P & Shabalala S 2007 'Hidden benefits of public-private partnerships: the case of water pressure management in Sebokeng' *Journal for Transdisciplinary Research in Southern Africa* 3(2) 325.

377 Department of Environmental Affairs (2013) Long-Term Adaptation Scenarios Flagship Research Programme for South Africa 19.

groundwater recharge systems, and other diversified supply sources.³⁷⁸ It is also a constitutional obligation to ensure reasonable measures are taken for long-term sustainable repair and access.

National Support alongside Public-Private Collaborations: Infrastructure reform, in the context of the ELM's financial problems, is a challenge that cannot be solved by the municipality alone. Collaborations with private businesses, national government agencies, and state-owned enterprises can help bring the needed funds and skills.³⁷⁹ Unfortunately, the history of such partnerships, lacking adequate measures for transparency and accountability, is littered with corruption and maladministration.³⁸⁰

4.2.2 Infrastructure Failure, and the Crisis of Water Service Delivery in Sebokeng

The disrepair of the infrastructure in Sebokeng is a case in point of the broken promises of the Constitution in the provision of services in the country. Given the legal framework in place, it is the Government's obligation to ensure that there is infrastructure in place to guarantee access to sufficient water, but the decades of neglect, lack of investment, and poor planning have led to the collapse of the systems in the township.³⁸¹ Sufficient plumbing infrastructure can be achieved through a combination of renewal, creativity, and innovation in finance, all strong and sophisticated, that uphold social responsibility.³⁸² These gaps can be bridged only through structural methods of delivering water, without which every monitoring system and accountability framework will be ineffective and irrelevant.³⁸³

378 Ziervogel, G. 2019. Building resilience in South African urban water systems: Climate adaptation pathways. *Climate and Development*, 11(8): 651–663.

379 Steytler N & De Visser J 2021 *Local Government Law of South Africa* 2 ed (Cape Town: LexisNexis) 238.

380 Auditor-General South Africa 2022.

381 Emfuleni Local Municipality 2024 57.

382 Department of Water and Sanitation 2023 50.

383 Liebenberg S 2010 147.

4.3 Monitoring and the Evaluation of Water Service Delivery

The development of physical infrastructure, while necessary, by itself is insufficient to fulfil the constitutional right to enough water. Infrastructure must be monitored, evaluated, and maintained, and the systems of governance must ensure accountability and responsiveness.³⁸⁴ Monitoring and evaluation are not 'just' technical tasks, they are utterly M&E are not "just" technical tasks and are utterly critical to constitutional governance. Section 195 provides for the public administration to be accountable, transparent, and responsive to the people's needs.³⁸⁵ In Sebokeng, the lack of robust, proactive monitoring has led to infrastructure and service delivery failures being ignored and left unattended until it is too late, when nothing can be done.³⁸⁶ Strengthening the M&E frameworks is thus crucial to aligning the practice with the law.³⁸⁷

4.3.1 Current Weaknesses in Emfuleni's Monitoring Systems

The legal frameworks in place have, however, no impact on the monitoring and evaluation system of the ELM IDPs and WSDPs, which still remains severely lacking.³⁸⁸ Strategies are poorly crafted, and the IDPs and WSDPs are often treated as compliance documents.³⁸⁹ The baseline targets are set, and the performance targets are almost never reached. There are a multitude of reasonable explanations for the persistent shortfalls.³⁹⁰ These reports on Emfuleni service delivery that are prepared for oversight by other Provinces or the National level are usually stale and in the absence of supporting documentation that is current.³⁹¹

384 Liebenberg S 2010 152.

385 Section 95 of the Constitution.

386 Public Protector South Africa 2024 Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3 (Pretoria: Office of the Public Protector) 9.

387 Auditor-General South Africa 2022 Consolidated General Report on Local Government Audit Outcomes: MFMA 2021–22 (Pretoria: AGSA) 32.

388 Emfuleni Local Municipality 2024 *Integrated Development Plan 2024/2025* (Vanderbijlpark: ELM) 55.

389 Emfuleni Local Municipality 2024 *Integrated Development Plan 2024/2025* (Vanderbijlpark: ELM) 55.

390 Auditor-General South Africa 2022 33.

391 McKenzie R, Wegelin W, Mohajane P & Shabalala S 2007 'Hidden benefits of public-private

The oversight of non-revenue water is arguably the most severe weakness in Sebokeng, arising due to both physical losses (leakages and bursts) and administrative losses (billing discrepancies and theft).³⁹² Targeted efforts to increase efficiency can never be implemented without first accurately assessing the volume of water losses.³⁹³ Similarly, the monitoring of water quality is inadequate, even though the WSA mandates the protective measures to be taken to ensure water is safe for human consumption.

Enforcement of municipal by-laws is very much at the discretion of the rule follower and operates to the detriment of accountability. Compliance is very much in question for the water and sanitation by-laws implemented by Emfuleni Local Municipality, as violations are recorded, but do not face the indicated penalties. The services collapse without the residents having a history of constructing their own remedy. This is a result of the weakness of the regulations in the county, which is also the cause for the absence of reliable and timely early-warning systems for the deteriorating water infrastructure, culminating in an unprecedented period of emergency.³⁹⁴

4.3.2 Strengthening Monitoring and Evaluation Mechanisms

For Sebokeng, the monitoring and evaluation mechanisms can be defended on a systemic basis, founded on the integrity of the constitution and statutory requirements. Several mechanisms can be identified, such as:

Achieving Service Delivery Objectives

Municipalities must establish clear and provable service delivery objectives, including acceptable turnaround times for responding to and repairing damaged pipes, as well as

partnerships: the case of water pressure management in Sebokeng' *Journal for Transdisciplinary Research in Southern Africa* 3(2): 325.

392 McKenzie, R., Wegelin, W., Mohajane, P. & Shabalala, S. 2007. 'Hidden benefits of public-private partnerships: The case of water pressure management in Sebokeng.' *Journal for Transdisciplinary Research in Southern Africa*, 3(2): 328.

393 McKenzie, R., Wegelin, W., Mohajane, P. & Shabalala, S. 2007. 'Hidden benefits of public-private partnerships: The case of water pressure management in Sebokeng.' *Journal for Transdisciplinary Research in Southern Africa*, 3(2): 328.

394 Department of Water and Sanitation 2023 36.

acceptable criteria for supplying water to households.³⁹⁵ These targets must remain available to enable communities to keep their authorities accountable.³⁹⁶

Community based Framework

Service delivery recipients, such as the citizens of Sebokeng, must be actively involved participants rather than passive observers.³⁹⁷ Community development frameworks, ward councils, and other civic entities should engage in service failure reporting, service delivery validation, and rectifying inconsistencies between municipal evaluations and the service user's experience.³⁹⁸ Such active participation carries out the provisions of Section 152(1)(e) of the Constitution, which requires municipal governments to promote public participation.³⁹⁹

Data Monitoring Sources

Monitoring achievements is based on 'factual' information.⁴⁰⁰ Municipalities need to combine information from Statistics South Africa, the national census, and other commercial and public sector partnerships to assess the water situation in Sebokeng.⁴⁰¹ This integration would strengthen the evidence base for policy decisions and increase transparency in performance evaluation.⁴⁰²

Public Reporting and Audit Compliance

Accountability is gained through the demonstration of responsibility within the transparent processes of governance.⁴⁰³ Municipal managers should be mandated to prepare and submit periodic and user-friendly reports on water service delivery, supply interferences, service delivery and responsiveness, service level compliance, and the

395 Auditor-General South Africa 2022 35.

396 Steytler & De Visser 2021LexisNexis 247.

397 Masiya, Davids & Mangai 2019 'Assessing public participation in municipalities: Evidence from South Africa' *Administratio Publica* 27(3): 70.

398 Masiya, Davids & Mangai 2019 'Assessing public participation in municipalities: Evidence from South Africa' *Administratio Publica* 27(3): 72

399 Section 152 of the Constitution.

400 Department of Water and Sanitation 2023 48.

401 Stats SA 2022 51.

402 Department of Water and Sanitation 2023 49.

403 Municipal Finance Management Act 71.

maintenance backlog.⁴⁰⁴ These reports must also undergo external verification to assess their independence and reliability, reinforcing accountability in line with Section 195 of the *Constitution*.⁴⁰⁵

As part of these reforms, monitoring and evaluation would in Sebokeng become more than just a governance technique for improving accountability and service delivery for the region.⁴⁰⁶

Monitoring and evaluation focus on the responsiveness and accountability embedded in the constitution.⁴⁰⁷ The monitoring and evaluation system in Sebokeng is a critical gap in service provision that has contributed to the stagnation of water services.⁴⁰⁸ There is a lag in the application of robust monitoring frameworks, coupled with clear gaps that would dictate transparent, community-driven, data-collated, and independent evaluation.⁴⁰⁹ The primary violation is under-invested infrastructure, whereby there is a gross disparity in investment and accessibility for households. The next part focuses on the relationship between community monitoring and participation to ensure the sustainability of democratic practices through proactive monitoring and governance.⁴¹⁰

4.4 Accountability and Community Engagement

Responsibility is the bedrock of governance. In the Constitution, public administration is “accountable, responsive and transparent” to the needs of the people under Section 195.⁴¹¹ Section 152(1)(e) puts an obligation on municipalities similar to local government to “encourage public participation.”⁴¹² In the case of Sebokeng, where there is water insecurity in spite of a comprehensive legal framework, the availability of accountability

404 Municipal Finance Management Act 71.

405 Section 195 of the Constitution.

406 Liebenberg S 2010 153.

407 The Constitution.

408 Emfuleni Local Municipality 2024 58.

409 Public Protector South Africa 2024 13.

410 Steytler & De Visser 2021 250.

411 Section 195 of the Constitution.

412 Section 195 of the Constitution.

mechanisms is critical in ensuring that the rights are not only enshrined in the law but also respected in daily life. Public participation is an effective tool to supplement accountability. It enables citizens to engage in the decision-making processes.”⁴¹³

4.4.1 *Barriers to Accountability in Sebokeng*

Even though constitutional provisions are made, the level of accountability in Emfuleni Local Municipality is still lacking. Funds intended for infrastructure upgrades have been diverted due to corruption and maladministration in procurement processes, and irregular expenditure has been ignored for years.⁴¹⁴ Reports of financial misconduct by the Auditor-General have seldom been used to impose sanctions on officials, resulting in an untethered culture of impunity.⁴¹⁵

Provincial and national government oversight has also been lacking. Interventions under section 139 of the Constitution have been very cursory and reactionary, providing a temporary solution without addressing the root issue.⁴¹⁶ This has resulted in the Sebokeng population being trapped in a perpetual cycle of service delivery failure, without a fail-safe solution.

At the local level, accountability is hampered by a lack of information and decision-making power. Residents have little to no chance to influence policies that affect them, as municipal meetings are poorly publicised, and little to no consultation is done.⁴¹⁷ The consequence is an increasing deficit of trust between the community and the local government.⁴¹⁸

413 Masiya T, Davids Y D & Mangai M S 2019 'Assessing public participation in municipalities: Evidence from South Africa' *Administratio Publica* 27(3): 65–84.

414 Public Protector South Africa 2024 Report on Emfuleni Local Municipality: Delay in Water Supply to the Community of Sebokeng Zone 3 (Pretoria: PPSA) 12.

415 Auditor-General South Africa (AGSA) 2022 Consolidated General Report on Local Government Audit Outcomes: MFMA 2021–22 (Pretoria: AGSA) 33.

416 Gauteng COGTA 2023 *Municipal Governance Support Report* (Johannesburg: Gauteng Provincial Government) 18.

417 Emfuleni Local Municipality 2024 *Integrated Development Plan 2024/25* (Vanderbijlpark: ELM) 55.

418 SAHRC 2021 40.

4.4.2 Opportunities for Strengthening Accountability

The governance and service delivery shortcomings identified in this study present important areas for reform. Addressing these shortcomings requires a more transparent, responsive, and participatory approach to governance within Emfuleni. The following mechanisms could assist in strengthening accountability:

The use of public hearings, ward committees, and citizen forums can improve community participation in municipal governance. In water service delivery, these participatory methods allow citizens to voice service-related issues, participate in local planning processes, and hold municipal authorities accountable.⁴¹⁹ Their importance emanates from the fact that they put Section 152(1)(e) of the Constitution into practice, which compels local governments to foster the participation of communities and community organisations in local government affairs.⁴²⁰ They also provide a forum for community concerns to be integrated into planning documents such as the Integrated Development Plan (IDP) and the Water Services Development Plan (WSDP).⁴²¹ Meaningful public participation, therefore, strengthens the legitimacy of municipal decision-making and develops a stronger feeling of shared responsibility in water administration.⁴²²

The socioeconomic litigation remains one of the most powerful tools. Socioeconomic rights litigation continues to be one of the most important legal methods for enforcing constitutional rights in South Africa. The case law of *Mazibuko v City of Johannesburg*, for instance, illustrates the responsibility of municipalities to take reasonable steps to give effect to water rights.⁴²³ Sebokeng community could pursue litigation as an important accountability mechanism in cases when persistent failures in water service delivery persist despite repeated complaints, official inactivity, and continuous harm to people. In such cases, aggrieved people of the community may seek a court order compelling

419 Municipal Systems Act chapter 4; Masiya et al 2019 71.

420 The Constitution.

421 Local Government: Municipal Systems Act.

422 S 152(1)(e) of the Constitution.

423 *Mazibuko v City of Johannesburg and Others*.

Emfuleni Local Municipality to comply with its constitutional and statutory obligations, as well as to take reasonable steps toward the gradual realisation of the right to enough water.

The South African Human Rights Commission may play an essential supervisory role when municipalities are alleged to have violated the rights to water and sanitation.⁴²⁴ According to Section 184 of the Constitution, the Commission has the authority to investigate, monitor, and report on human rights violations, and may give findings and recommendations to the appropriate municipality.⁴²⁵ In the case of Emfuleni, such oversight may force the municipality to account for repeated shortcomings in water and sanitation service delivery and respond to suggestions targeted at resolving such failings. Financial and administrative accountability is also strengthened through the oversight of the Auditor-General, whose powers under the Public Audit Act include identifying material irregularities, issuing remedial action, and, in appropriate circumstances, referral to another public body for investigation.⁴²⁶ Rather than referring vaguely to jail, it is more correct to remark that frequent or substantial governance failings may result in administrative, disciplinary, civil, or criminal repercussions if permitted by law and substantiated by facts.⁴²⁷

Advocacy by the local population is complemented by the work of NGOs, religious organisations, and community-based advocacy groups that focus on voicing the concerns of the local population.⁴²⁸ The engagements of civil society with the communities may widen the civil monitoring net, enhance grassroots education on civil rights, and galvanise the public towards advocacy on civic issues. Civil society can also facilitate access for the local population to the national level oversight arms of the state.⁴²⁹

424 SAHRC 2021 42.

425 South African Human Rights Commission, 2014. Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa. Johannesburg: SAHRC.

426 Public Audit Act 25 of 2004.

427 Auditor-General South Africa 2022 34.

428 Tempelhoff et al 2019 *The Anthropocene and the Hydrosphere* (NWU CuDyWat Report) 20.

429 Tempelhoff et al 2019 *The Anthropocene and the Hydrosphere* (NWU CuDyWat Report) 20.

4.4.3 Self-Governance, Community Participation, and Accountability in Water Access Governance in Sebokeng

The emphasis on self-governance by the community and their fiduciary responsibilities is critical when dealing with the issue of access to water, especially in Sebokeng.⁴³⁰ Mechanisms that are devoid of self-governance, on the other hand, can lead to failure in enforcing relevant sections of the constitution and statutes governing water access, which in turn leads to oversight in the governance system.⁴³¹ The same can also be said of the lack of self-governance, which can lead to a lack of community, which in turn leads to top-down governance that loses touch with the people being served.⁴³² Emfuleni can work towards improving the trust, which is sorely lacking between the community and the municipality, by improving the civil society partnerships and the other Chapter 9 institutions and enhancing the participatory governance and judicial processes to provide practical remedies at the civic level to enhance accountability issues to meet the expectations of the people on the governance system in the municipality.⁴³³

4.5 Towards a Holistic Model for Realising Water Rights in Sebokeng

The previous sections of this chapter dissected infrastructure development, monitoring and evaluation, and accountability in isolation, even though they are interconnected facets of water governance. Each component is indeed important in its own right. However, they are weighted in terms of their impact until they are configured within a coherent, holistic model.⁴³⁴ The duty to fulfil the right of access to sufficient water, as described in Section 27(1)(b), is of constitutional importance, and as such cannot be implemented through singular actions.⁴³⁵ Rather, there needs to be a coherent system in

430 Section 152 and 195 of the Constitution.

431 Masiya, Davids & Mangai, 2019. 'Assessing public participation in municipalities: Evidence from South Africa.' *Administratio Publica*, 27(3): 69.

432 Masiya, Davids & Mangai, 2019. 'Assessing public participation in municipalities: Evidence from South Africa.' *Administratio Publica*, 27(3): 69.

433 Steytler & De Visser 2021 270.

434 Muller, M. 2018. *Water governance in South Africa: A process of reform or revolution?* *International Journal of Water Resources Development*, 34(6): 733.

435 Section 27 of the Constitution.

which infrastructure renewal is coupled with stringent oversight and is underpinned by accountable governance. The case of Sebokeng demonstrates why this approach is urgently needed.⁴³⁶

4.5.1 Integration of Infrastructure Reform and Oversight

Sebokeng renewal plan has to be tied to meticulous and effective management of the area. Investments in outdated and unsafe pipelines to new technology and treatment plants require attention to strict monitoring and unethical practices. Monitoring systems and mechanisms must be as effective as self-assessing benchmarks.⁴³⁷ Independent audits do not just assess monetary metrics, but also how the improvements make strides within the borders of the constitution.⁴³⁸ Incorporation makes sure the area is not being looked at as a once-off project, but rather a project of endless sustainability, maintenance, and continuous assessment.⁴³⁹

4.5.2 Embedding Accountability into Service Delivery

Fulfilling the role of accountability is the infrastructure and monitoring infrastructure. In the absence of accountability, the entire investment in infrastructure is likely to be sapped by corruption, maladministration or neglect, and the reports of monitoring stand the chance of being empty formalistic processes.⁴⁴⁰ The compliance enforcement component is covered by the mechanisms of the accountability oversight institution, Chapter 9 community. For the purpose of Sebokeng, accountability is internalised when municipal officials are held responsible for service outages, the service failures, accountability

436 SAHRC (South African Human Rights Commission). 2021. *Report on the State of Water and Sanitation in South Africa*. Johannesburg: SAHRC, 39.

437 Auditor-General South Africa (AGSA). 2022. *MFMA Consolidated General Report 2021–22*. Pretoria: AGSA, 35

438 Public Protector South Africa. 2024. Report on Emfuleni Local Municipality: Water Supply Failures in Sebokeng Zone 3. Pretoria: PPSA, 12.

439 Department of Water and Sanitation (DWS). 2023. *National Water and Sanitation Master Plan*. Pretoria: DWS.

440 AGSA 2022, 34.

oversight mechanisms are applied, and the communities are vested with the power to control and participate in governance.⁴⁴¹

4.5.3 Multi-Sphere Cooperation and Resource Alignment

In Sebokeng, the experience with these principles and the cooperative across the three does not work. Constitution Section 40 is the first to identify the three, namely the nascent one, which comprises the national, provincial and local.⁴⁴² The Sebokeng experience disproves this, and these principles are: operative subdivided into the three Spheres.⁴⁴³ The infrastructure of water rights, for instance, is the local government planned the site serviced, Dud Hat in KZN. The provincial in charge, Chapter 139, oversees the national, providing the implementation of civil works and the technical division.⁴⁴⁴

4.5.4 Linking Water Rights to Broader Socioeconomic Rights

Water access in Sebokeng is connected to other socio-economic rights. Access to water also relates to access to health care, adequate housing, and a favourable state of the environment.⁴⁴⁵ A holistic model, therefore, needs to ensure that infrastructure improvements encompass sanitation, that monitoring includes environmental aspects, and that accountability frameworks align with other development priorities.⁴⁴⁶ Focusing water governance on socioeconomic contexts enables the Sebokeng interventions to also address Section 27(1)(b) and fulfil other social justice obligations.⁴⁴⁷

441 Masiya, Davids, Mangai, 2019. 'Assessing public participation in municipalities.' *Administratio Publica*, 27(3): 68.

442 Section 40 of the Constitution.

443 Steytler, & De Visser, 2021 LexisNexis 257.

444 DWS 2023, section 139 of the Constitution.

445 Section 24,26,27 of the Constitution.

446 DWS 2023, 24.

447 SAHRC 2021 39–40. *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC).

4.5.5 Township Development in Water Governance

South African townships, Sebokeng in particular, suffer from a multitude of interrelating issues such as inadequate and poorly managed infrastructure, socioeconomic vulnerability, and poor accountability.⁴⁴⁸ As such, any attempt to develop Sebokeng town must also formulate a model that advances a township as a self-contained and holistic socioeconomic unit. Townships serve as a barometer of democracy in action, and a failure to resolve such a township model risks deepening the notion that rights are illusory, aspirational, and hence, are neither guaranteed nor enforced.⁴⁴⁹ Sebokeng serves as a challenge and an opportunity. It is a benchmark of the South African constitutional treaty.⁴⁵⁰

4.5.6 Realising the Constitutional Right to Water in Sebokeng Through Integrated Infrastructure and Multi-Level Governance

The realisation of Sebokeng's constitutional right to adequate water requires more than just the formal recognition of the right in Section 27(1)(b) of the Constitution; it also requires a coordinated and progressive system of infrastructure development, institutional integration, and service consolidation capable of putting that right into practice.⁴⁵¹ Water governance cannot be viewed as a solely technical or administrative issue. It is a constitutional and developmental commitment that needs accountable local government, responsive management, intergovernmental collaboration, and ongoing investment in water-service infrastructure.⁴⁵² In order to effectively realise water rights, legal duties, policy frameworks, budgetary priorities, and institutional responsibilities must all be aligned, as well as meaningful community participation in local government processes.⁴⁵³ In this sense, the right to access sufficient water is part of a larger

448 Tempelhoff, Jaka, & Mahabir, et al. 2019. *The Anthropocene and the Hydrosphere*. NWU CuDyWat Research Report, 16.

449 Masiya et al 2019, 72.

450 Public Protector 2024, 12.

451 Muller 2018, 739.

452 Department of Water and Sanitation (2018) *National Water and Sanitation Master Plan*.

453 Local Government: Municipal Systems Act

continuum of socioeconomic rights, and its fulfilment is dependent on whether constitutional commitments are translated into actual changes in inhabitants' daily lives.⁴⁵⁴ With such an advanced approach, the town of Sebokeng can shift from a constitutional failure to a town demonstrating how government legal commitments can bed themselves in the daily lifeworld of the people.⁴⁵⁵

4.6 Chapter Summary

This chapter has sought to operationalise the constitutional and statutory obligations governing the right of access to sufficient water in Sebokeng by examining three interdependent dimensions: infrastructure development, monitoring and evaluation, and accountability. Chapter 3 demonstrated the extent to which infrastructural decay, weak administration, and socio-economic vulnerability hinder the realisation of Section 27(1)(b) of the Constitution. Building on those insights, the present chapter identifies strategies to overcome these systemic barriers through governance reform, improved institutional coordination, and targeted investment aligned with legislative and policy mandates.

A central finding is that infrastructure development is foundational to the fulfilment of water rights. Without properly functioning pipes, treatment works, and distribution networks, the constitutional guarantee of access to sufficient water remains abstract. The condition of Sebokeng's infrastructure reflects decades of neglect and underscores the urgency of rehabilitation, upgrades, and climate-resilient planning across all spheres of government. At the same time, infrastructure alone cannot secure rights unless it is embedded within robust systems of monitoring and evaluation. Although the legal framework—particularly Integrated Development Plans, Water Services Development Plans, and municipal performance management systems—provides mechanisms for oversight, Emfuleni's implementation has been consistently weak. Strengthening these

454 *Grootboom* 2000 para 24.

455 Steytler & De Visser 2021, 270.

systems requires not only technical reforms but also meaningful community participation, interdisciplinary expertise, and transparent data-driven processes.

The chapter also illustrated that accountability and community engagement are indispensable to effective water governance. Participation must function as both a democratic right and an oversight tool capable of constraining maladministration and aligning service delivery practices with constitutional obligations. Yet in Sebokeng, the distance between constitutional promises and lived realities remains wide. Civil society, community-based organisations, and independent oversight bodies therefore play a crucial role in ensuring that reforms reflect residents' needs and that institutional failures are not allowed to persist unchallenged.

These three components, infrastructure, monitoring, and accountability, must be understood as mutually reinforcing rather than standalone interventions. Sebokeng exemplifies the risks of fragmented governance as well as the transformative potential of coordinated, transparent, and participatory management. The township further highlights the intimate connection between infrastructure and socioeconomic rights: inadequate access to water and sanitation is not merely a service delivery failure but a profound governance deficit undermining the constitutional project.

In conclusion, the Sebokeng case study demonstrates that the progressive realisation of the right to access sufficient water is both achievable and constitutionally required, provided existing governance frameworks are implemented effectively. Strengthened intergovernmental cooperation, deliberate investment in infrastructure, and community-centred accountability mechanisms are essential to ensuring that constitutional rights translate into tangible improvements in daily life. Having examined the practical mechanisms required to operationalise water rights in Sebokeng, the next chapter draws these insights together. Chapter 5 evaluates whether South Africa's legal and institutional framework is, in its current form, sufficient to protect the right of access to adequate water and assesses how effectively these obligations translate into lived realities on the ground.

CHAPTER 5 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The preceding chapters provided an overview of the constitutional, legislative, and governance frameworks that regulate the right of access to sufficient water, while also exploring the socio-economic conditions in Sebokeng that influence the realisation of this right..⁴⁵⁶ Chapter 1 located the study within South Africa's deepening water insecurity. Chapter 2 analysed the legal and policy framework, demonstrating that South Africa possesses a progressive and constitutionally grounded water governance regime.⁴⁵⁷ Chapter 3 examined Sebokeng's lived realities, revealing how governance failures, infrastructural collapse, and socio-economic marginalisation undermine Section 27(1)(b) of the Constitution.⁴⁵⁸ Chapter 4 then proposed practical mechanisms for operationalising water rights, emphasising infrastructure renewal, monitoring and evaluation, and stronger accountability.⁴⁵⁹

This chapter synthesises the findings and evaluates whether the legal and regulatory system adequately protects the right of access to water in Sebokeng. It concludes that while South Africa's normative framework is strong, the gap between legal design and practical execution remains profound. Sebokeng exemplifies the post-apartheid socio-economic rights paradox: a Constitution that is transformative, but an administration that is weak and incapable of translating rights into lived realities.⁴⁶⁰

456 The Constitution.

457 Water Services Act; National Water Act; Municipal Systems Act.

458 Auditor-General South Africa. 2022. Consolidated General Report on Local Government Audit Outcomes. Pretoria: AGSA.

459 Department of Water and Sanitation. 2023. *National Water and Sanitation Master Plan*.

460 Liebenberg, S. 2010.

5.2 Summary of Key Findings

5.2.1 Historical and Structural Continuities

Sebokeng's water insecurity is rooted in historical patterns of exclusion under colonial and apartheid rule. The Water Act entrenched riparian rights that benefited white landowners and denied Black communities access to an equitable water supply.⁴⁶¹ These discriminatory planning regimes produced structurally under-developed townships, including Sebokeng, established in 1965 as a site of resistance to exploitative tariffs.⁴⁶² The democratic transition repealed apartheid statutes, but municipalities like Emfuleni inherited decayed, inadequate and poorly maintained infrastructure.⁴⁶³ The present water and sanitation failures are therefore the ongoing manifestation of structural underdevelopment, not isolated administrative lapses.⁴⁶⁴

5.2.2 Strengths of the Legal Framework

South Africa's legal architecture governing water is normatively robust. The Constitution guarantees the right of access to sufficient water under Section 27(1)(b) and obliges the state to take reasonable measures to achieve its progressive realisation under section 27(2).⁴⁶⁵ The NWA reframes water as a national resource held in public trust.⁴⁶⁶ The WSA sets out the duties of water services authorities and grants everyone a right to basic water supply.⁴⁶⁷ The MSA prescribes planning, governance and community participation obligations necessary for effective service delivery.⁴⁶⁸ These frameworks align with

461 Water Act (repealed); Kidd, M. 2011. *Environmental Law*. Cape Town: Juta

462 Beavon, K. 2004. Johannesburg: The Making and Shaping of the City. Pretoria: UNISA Press.

463 Tissington, K. 2011. Basic Sanitation in South Africa: A Guide to Legislation, Policy and Practice. Johannesburg: SERI.

464 Department of Water and Sanitation. 2018. *Vaal River Intervention Report*.

465 Section 27 of the Constitution.

466 Section 3 of the Constitution.

467 Water Services Act.

468 Municipal Systems Act.

international standards such as UNGA Resolution 64/292, ICESCR General Comment 15 and African Water Vision 2025.⁴⁶⁹

5.2.3 Implementation Gaps and Institutional Weakness

Despite the strong legal framework, Sebokeng experiences deep implementation gaps. Cooperative governance, required by Section 40 of the Constitution, is weak and uncoordinated.⁴⁷⁰ The Department of Water and Sanitation's oversight is inconsistent, and provincial interventions under Section 139 have been reactive and ineffective.⁴⁷¹ Emfuleni Local Municipality suffers from financial instability, poor management, and persistent non-compliance with basic governance norms.⁴⁷² These structural weaknesses render the legal framework functionally ineffective in practice.⁴⁷³

5.2.4 Persistent water-related challenges in Sebokeng

Despite South Africa's progressive constitutional and statutory framework governing the right to access sufficient water, residents of Sebokeng continue to experience chronic water shortages, unreliable supply, and poor water quality, revealing a clear disjuncture between legal commitments and actual service delivery.⁴⁷⁴ These failures are not isolated incidents but reflect deep structural and historical inequalities inherited from apartheid-era underdevelopment.⁴⁷⁵

5.2.4 Infrastructure Collapse

Sebokeng's systemic failings are most starkly portrayed by the collapse of its infrastructure. The combination of ageing pipelines, leaking reticulation systems, and

469 United Nations General Assembly. 2010. Resolution 64/292.

470 Section 40 & 41 of the Constitution.

471 Select Committee on CoGTA. 2021. *Report on Emfuleni Intervention*. Parliament of South Africa.

472 Auditor-General South Africa. 2021. *Local Government Audit Outcomes*. Pretoria: AGSA.

473 Department of Water and Sanitation. 2022. *Blue Drop and Green Drop Reports*. Pretoria: DWS.

474 South African Human Rights Commission (SAHRC). 2018. *Report on the State of Water and Sanitation in South Africa* 36.

475 Bond, 2014. Elite Transition: From Apartheid to Neoliberalism in South Africa 114.

obsolete sewage works has resulted in service interruptions, environmental degradation, and unlawful sewage inflows into the Vaal River. The circumstances in Sebokeng undermine the environmental protections envisaged by section 24 of the Constitution and frustrate the objectives of the National Water Act, thereby reflecting broader systemic failures in municipal water governance. Infrastructure neglect contravenes the municipality's WSA Section 11, and MSA Section 73 duties, and thus the residents of Sebokeng are denied sustained water security, despite living adjacent to the Vaal River—one of South Africa's greatest water resources.⁴⁷⁶

5.2.5 Governance Deficits and Corruption

Service delivery is further constrained by pervasive governance failures such as financial mismanagement, maladministration, and corruption, resulting in a sustained and systemic degradation of the public service. Auditors have repeatedly pointed to the significant irregular expenditure and procurement problems in Emfuleni.⁴⁷⁷ This portrays a clear breach of the Constitution's public administration principles within Section 195, especially those of accountability, transparency, and responsiveness. The collapse of accountability from provincial and national regulators is also a large contributor to the prevailing impunity.⁴⁷⁸ The provincial 139 constitutional interventions remain reactive and politically controlled, focusing on the short-term rather than sustainable transformation.⁴⁷⁹

5.2.6 Socioeconomic and Environmental Barriers

Institutional weakness is compounded by socio-economic deprivation. In Sebokeng, high unemployment and poverty levels make the Free Basic Water Policy (2001) irrelevant since most households exceed the 6-kilolitre allowance, oftentimes due to multi-family

476 Section 73 of the Municipal Systems Act; Section 11 of Water Services Act.

477 Auditor-General South Africa. 2020. *Audit Report: Emfuleni Local Municipality*. Pretoria.

478 South African Human Rights Commission. 2018. *Report on the Vaal River Crisis*. Johannesburg: SAHRC.

479 GCIS 2020 State of Local Government Report. Pretoria.

occupancy.⁴⁸⁰ Tariff structures punish larger low-income households, failing to meet the equality principle enshrined in Section 9 of the Constitution. The neglected informal settlements lack connection to reticulated systems. Residents depend on dangerous, unregulated sources of water.⁴⁸¹

5.3 Evaluation of South Africa's Legal and Regulatory Framework

5.3.1 Adequacy in Law

Doctrinally, South Africa's water law is comprehensive and constitutionally sound on all fronts. The law takes into account the sustainable use of the environment, equitable distribution, and the participation of the governed, and meets international human rights standards. The law incorporates the spirit of transformative constitutionalism. South African courts, in the cases of *Mazibuko v City of Johannesburg*⁴⁸² and *Residents of Bon Vista Mansions v Southern Metropolitan Local Council*⁴⁸³ have confirmed the justiciability of socio-economic rights and the reasonableness standard in state action.

In this case, it is not the adequacy of legal design that poses a problem, but rather the operationalisation of that design. Legal instruments are coherent, perhaps even progressive. However, the implementation of these instruments is dependent on the absence or presence of administrative capacity, fiscal compliance, and accountability on the political level, particularly in Sebokeng.

5.3.2 Deficiency in Practice

In practice, there is a failure of regulatory frameworks to produce a measurable result. The findings indicate the presence of a deeply entrenched institutional fragmentation syndrome, wherein no clear lines of accountability are established.⁴⁸⁴

480 DWS 2019 Free Basic Water Implementation Review Report. Pretoria: DWS.

481 Stats SA 2022.

482 *Mazibuko v City of Johannesburg*.

483 *Residents of Bon Vista Mansions v Southern Metropolitan Local Council*.

484 Phago & Malan, 2018. "Service Delivery, Corruption and Governance in Municipalities." *Administratio Publica*.

There is a further gap in accountability due to the absence of active civic engagement in oversight, performance frameworks, and monitoring. The municipality is also limited in its planning, repairing, and expanding of services due to resource constraints, both financially and in human capital.⁴⁸⁵ The legal obligation, in administrative practice, is a mismatch, and Sebokeng is a watermark example of rights without remedies.

5.4 The Extent to Which the Constitutional Right of Access to Sufficient Water is Realised in Sebokeng

This study finds that the constitutional right of access to sufficient water in Sebokeng is realised only to a limited and uneven extent. Although South Africa has an extensive constitutional, legislative and policy framework that recognises water as a justiciable socio-economic right and places clear obligations on the state to progressively realise that right, the lived reality in Sebokeng reveals a substantial gap between legal entitlement and practical enjoyment. Sebokeng was justified as a suitable case study in Chapter 1, which also placed the issue within the larger framework of human rights and governance. Even though the post-1994 legal framework was intended to address those injustices, Chapter 2 showed that Sebokeng's current water insecurity is rooted in historical patterns of spatial inequality and exclusion from the apartheid era. Because of aging infrastructure, frequent water outages, sewage spills, low municipal capacity, bad financial management, corruption, and socioeconomic vulnerability, Chapter 3 showed that the right is still not fully realised in practice. Although there are legal and governance tools to enhance service, accountability, and involvement, Chapter 4 further demonstrated that these mechanisms have not yet been applied with sufficient effectiveness, coordination, or consistency. As a result, the study comes to the conclusion that while Sebokeng's constitutional right to sufficient water is strongly acknowledged in law, it is only partially enforced in practice. Sustained infrastructure renewal, greater institutional accountability,

485 Fuo, 2014. "Local Government and the Right to Water." *Local Government Bulletin* 16(2).

improved intergovernmental coordination, and significant community involvement are necessary for the full realization of this right.

5.5 Conclusions

The research finds that while South Africa's legal and regulatory frameworks are responsive to the normative needs of the right to water, this right remains unprotected in Sebokeng due to ongoing gaps in implementation. The following conclusions crystallise:

Historical Continuity: The neglect of Sebokeng's water infrastructure in the colonial and apartheid eras has had lasting consequences.⁴⁸⁶ This demonstrates the need to legally and structurally transform the status quo to achieve substantive equality.

Legal Sufficiency: The right to water is firmly articulated in the South African Constitution, and subsequent legislation has assigned the duties and responsibilities of institutions aligned with international law.⁴⁸⁷

Implementation Failure: The mismanagement and corruption of cadaver municipal governance in Emfuleni have left these laws in a state of progressive paralysis.⁴⁸⁸

Institutional Fragmentation: The principle of cooperative governance is undermined by policy silence and failure in intergovernmental relations.⁴⁸⁹

Socioeconomic Exclusion: Poverty, informal housing, and unaffordable tariffs negate the practical exercise of rights and normative disorders.⁴⁹⁰

486 Beavon, 2004. Johannesburg: The Making and Shaping of the City.

487 Liebenberg, S. 2010. *Socio-Economic Rights*.

488 Auditor-General South Africa. 2021. *Local Government Audit Outcomes*.

489 Select Committee on CoGTA. 2021. *Report on Emfuleni Intervention*.

490 Stats SA. 2022.

Environmental Degradation: The neglect of wastewater infrastructure and the pollution of the Vaal River constitute a violation of the right to a healthy environment.⁴⁹¹

In these circumstances, the legal framework remains more than normatively sufficient, but the operational reality is inadequate. The right to water in Sebokeng is almost entirely a function of weak governance and economic vulnerability.

5.6 Recommendations

Bridging the gap between constitutional promises and lived experiences requires the following recommendations, based on the findings under the legal, institutional, and policy domains.

5.6.1 Legal and Policy Reform

- At the national level, legislation should be introduced to legally set and standardise minimum service delivery requirements, and to impose legally actionable consequences for persistent delivery failures.
- The WSA should be amended to include a requirement for periodic independent audits of municipalities' water delivery and the publication of annual reports on the realisation of water rights.
- Enforceable rights and obligations contained in the Constitution should be included in the performance contracts of senior municipal officials, particularly municipal managers, directors responsible for technical services, and other officials with oversight of water service delivery., thus making the progressive realisation of Section 27 measurable and actionable.
- Regarding strengthening the enforcement of Chapter 4 of the Constitution, the DWS should be mandated to integrate water quality monitoring enforcement with sanctioning defiant municipalities.

491 SAHRC. 2018. Vaal River Report.

5.6.2 Institutional Strengthening

- The establishment of the Water Rights Commission will encourage independent oversight and the execution of work plans, the investigation of maladministration in water governance, and the mediation of intergovernmental conflicts over water governance.
- To strengthen cooperative governance, joint planning forums involving all three spheres of government should be established.
- Municipal managers and officials should be targeted for additional training in water governance and maintenance, financial management, the engineering cycle, and the formative and summative monitoring of data systems.
- Corruption should be averted through proactive measures, such as the public disclosure of water service contracts and procurement agreements, tender awards, , as well as service delivery expenditure reports, to encourage active citizen oversight, in line with socio-economic rights enshrined in the South African Constitution.

5.6.3 Infrastructure Development and Financing

- Rehabilitation of Sebokeng's existing infrastructure should be considered first, and later, conditional performance-based infrastructure grants can be given.
- Ageing centralised plants can be complemented with climate-resilient technology and self-sufficient, decentralised, and portable water-treatment systems.
- Investment can be mobilised with strict public oversight, and community public-private partnerships (PPPs) under accountability will keep control.
- Enhancing community ownership of infrastructure systems can be achieved with self-sustaining eco-community models that employ community members, integrate piped systems repair, monitor, and report systems.

5.6.4 Socioeconomic and Community Measures

- For densely populated households and informal settlements, the actual consumption of Free Basic Water should be expanded.
- Reform tariff structures to ensure cross-subsidisation that benefits low-income users while municipal solvency is not compromised.
- Section 152 of the Constitution and the MSA should be publicised to increase public awareness of citizens' rights and responsibilities, encouraging community participation in monitoring service delivery, conducting service oversight, , and collect grievances.
- Enhanced awareness of water rights and focused civic education will create community accountability and foster ownership of sustainable water use.

5.6.5 Monitoring and Evaluation

- Implement evidence-based, Governance Scorecard, monitoring compliance with the law, infrastructure accountability and community citizen satisfaction every year.
- Equate performance to funding, conditional grants, and service delivery will be the prerequisites municipalities will need to complete to receive their funds.
- Encourage mechanisms such as Civil society organisations, public-interest law clinics, and legal aid institutions to strengthen support mechanisms for communities seeking to challenge violations of socio-economic rights, particularly in cases where judicial oversight may be necessary to secure compliance with constitutional obligations.

5.7 Final Reflection

While Sebokeng shows the consequences and lack of respect and fulfillment of the constitutionally entrenched rights, it is important to highlight the need for governance to

address the realities of the situation.⁴⁹² The continued challenges in accessing sufficient water in Sebokeng are not primarily the result of gaps in the legal framework, but rather shortcomings in the implementation and enforcement of existing constitutional and legislative obligations. Despite the constitutional guarantee contained in section 27(1)(b) and the comprehensive regulatory framework established by the National Water Act and the Water Services Act, persistent governance failures, infrastructure deficiencies, limited institutional capacity, and weak accountability mechanisms continue to undermine the realisation of the right to water.

The need to provide water services is not only a technical issue; it is also a matter of constitutional rights that, in the case of South Africa, holds a moral claim on democracy's legitimacy. With the systematic implementation of the recommendations outlined in this paper, Sebokeng will ideally be transformed from a case of neglect to a case of positive governance in water provision. In doing so, it will comply with the constitutional principles in both spirit and letter.

492 McGraw, J. 2011 Transformative Constitutionalism and Water Services *SAJHR*, 27(1).

Bibliography

Primary Legal Sources

Constitution of the Republic of South Africa, 1996

Draft National Water Resources Infrastructure Agency Bill (2023)

Draft National Water Bill (2024)

Emfuleni Municipality Water and Sanitation By-Law (2004)

Free Basic Water Policy (2001) (FBWP)

National Water Act 36 of 1998 (NWA)

Interim Protection of Informal Land Rights Act 31 of 1996

Local Government: Municipal Systems Act 32 of 2000 (MSA)

Municipal Finance Management Act 56 of 2003 (MFMA)

Municipal Structures Act 117 of 1998 (MSA)

Municipal Systems Act 32 of 2000 (MSA)

Natives Land Act 27 of 1913

National Environmental Management Act 107 of 1998 (NEMA)

Water Services Act 108 of 1997 (WSA)

Water Act 54 of 1956 (WST)

International and Regional Instruments

United Nations General Assembly Resolution 64/292 (2010) — Recognition of the Human Right to Water and Sanitation

International Covenant on Economic, Social and Cultural Rights (ICESCR), General Comment No. 15 (UN, 2010)

African Union Agenda 2063 – Goal 7 on Water Security

African Water Vision 2025

African Union Irrigation Development and Agricultural Water Management Strategy

Continental Africa Water Investment Programme

Southern African Development Community (SADC) Regional Indicative Strategic Development Plan (RISDP) 2020–2030

SADC Regional Water Supply and Sanitation Programme

Case Law

Mazibuko v City of Johannesburg 2009 (2) SA 1 (CC)

Residents of Bon Vista Mansions v Southern Metropolitan Local Council 2002 (6) BCLR 625 (W)

Sustainable Environment and Others v Minister of Water Affairs and Others (High Court)

Mshengu and Others v Msunduzi Local Municipality and Others (2019) ZAKZPHC

Government of the Republic of South Africa v Grootboom (2000 (11) BCLR 1169 (CC)

Secondary Academic and Policy Sources

Auditor-General of South Africa (2022) Report on the Emfuleni Local Municipality

Mocwagae K, Exploring the Qwa Qwa Water Crisis for Effective Planning in Post-apartheid South Africa (LLD Dissertation, University of Free State, 2020)

Buccus, I., Hemson, D., Hicks, J. & Piper, L. 2008. Public participatory spaces and the management of water in South Africa. Development Update.

Department of Water and Sanitation (DWS) (2023) National Water and Sanitation Annual Report

Department of Water Affairs and Forestry (DWAF) (1998) National Water Act Implementation Framework

Gaventa, J. & Barrett, G. 2012. Mapping the outcomes of citizen engagement. *World Development*

Greene, M. 2020. Urban water inequalities in post-apartheid South Africa. *Water Research*

Hooper, M. 2019. Infrastructure collapse and urban inequality in Gauteng. *South African Geographical Journal*

Kotzé, L. 2010. *Environmental Governance in South Africa: Reform, Rights and Responsibilities*

Masiya, T., Davids, Y.D. & Mangai, M.S. 2019. Assessing public participation in municipalities: Evidence from South Africa. *Administratio Publica*,

Minguzzi, M. The Spirit of Water (Firenze University Press, 2021)

Mocwagae K, Exploring the Qwa Qwa Water Crisis for Effective Planning in Post-apartheid South Africa (LLD Dissertation, University of Free State, 2020)

Municipalities of South Africa Database (2022) Municipal Profiles – Emfuleni Local Municipality

Muller, M. 2018. Water governance in South Africa: A process of reform or revolution? *International Journal of Water Resources Development*

Ruiters, G. & Matji, M. 2016. Water systems failures in South African municipalities: A governance crisis. *Development Southern Africa*

Simmons E The Reproduction of Apartheid in Water Service Delivery: An Examination of South Africa's Free Basic Water Policy (Master's Dissertation, University of Ottawa, 2020)

Schreiner, B. & Van Koppen, B. (2019). Transforming South Africa's Water Law and Policy: Equity and Sustainability

Statistics South Africa (STATSSA) (2022) National Census Report 2022.

Sutherland, C., Hordijk, M. & Lewis, B. 2021. Water and sanitation inequality in South African townships. *Environment & Urbanization*.

Stewart, R. 2022. Realising socio-economic rights in South African municipalities. *South African Law Journal*,

Steytler, N. & De Visser, J. 2021. *Local Government Law of South Africa*. 2nd ed. Cape Town: LexisNexis.

Tarantino R South African Water Rights and the Legacies of Apartheid (Honours thesis, Bridgewater State University, 2019)

Tempelhoff, J.W.N., Jaka, H. & Mahabir, S. et al. 2019. *The Anthropocene and the Hydrosphere*. North-West University (CuDyWat Research Unit Research Report).

Turton, A. & Meissner, R. (2022) Historical Perspectives on South African Water Governance

Thompson, L. (2020). History of Colonial Law and Resource Dispossession in South Africa

UNISA (2025). Study Guide on Environmental Law and Governance

Van Koppen, B. & Schreiner, B. (2021) Water Governance and Equity in South Africa

Government and Policy Documents

Department of Water and Sanitation (DWS) (2023) National Water and Sanitation Master Plan

National Water Resource Strategy II (2013)
National Development Plan (2030)

Auditor-General (2022) Municipal Audit Outcomes: Gauteng Province – Emfuleni

Department of Cooperative Governance and Traditional Affairs (COGTA) (2023) Municipal Intervention Report under section 139 of the Constitution

Auditor-General South Africa (AGSA). 2020. *MFMA Consolidated General Report 2019–20*. Pretoria: AGSA

Auditor-General South Africa (AGSA). 2021. *MFMA Consolidated General Report 2020–21*. Pretoria: AGSA

Auditor-General South Africa (AGSA). 2022. *MFMA Consolidated General Report 2021–22*. Pretoria: AGSA

Department of Cooperative Governance and Traditional Affairs (COGTA). 2023. *Provincial Governance Support Report*. Johannesburg: Gauteng Provincial Government.

Department of Water and Sanitation (DWS). 2018. *No Drop Report: Performance of Municipal Water Supply Systems*. Pretoria: DWS.

Department of Water and Sanitation (DWS). 2023. *National Water and Sanitation Master Plan*. Pretoria: DWS.

Emfuleni Local Municipality (ELM). 2021. *Water Services Development Plan 2021–2026*. Vanderbijlpark: ELM.

Emfuleni Local Municipality (ELM). 2024. *Integrated Development Plan (IDP) 2024/25*. Vanderbijlpark: ELM.

Gauteng Department of Cooperative Governance (GCOGTA). 2020. *Municipal Support and Intervention Report*. Johannesburg: GCOGTA

Public Protector South Africa (PPSA). 2024. *Report on Maladministration Relating to Water Supply Failures in Sebokeng Zone 3*. Pretoria: PPSA

South African Human Rights Commission (SAHRC). 2018. *Vaal River System Report: Sewage Spillage Investigation*. Johannesburg: SAHRC.

South African Human Rights Commission (SAHRC). 2021. *Report on the State of Water and Sanitation in South Africa*. Johannesburg: SAHRC

Conceptual and Theoretical Sources

UNISA (2025) Transformative Constitutionalism and Human Rights Implementation in South Africa

Schreiner & Van Koppen (2019) Transformative Water Law and Policy

Turton & Meissner (2022) Hydro-politics and Governance Evolution

DWAF (1998) Integrated Water Resource Management Principles

Department of Cooperative Governance (DCOG). 2020. *District Development Model Policy Framework*. Pretoria: DCOG

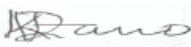
Department of Water Affairs & Forestry (DWAF). 2003. *Strategic Framework for Water Services*. Pretoria: DWAF.

Department of Water Affairs & Forestry (DWAF). 2004. *Free Basic Water Implementation Strategy*. Pretoria: DWAF.

National Planning Commission (NPC). 2012. *National Development Plan 2030*. Pretoria: The Presidency

South African Local Government Association (SALGA). 2021. *Municipal Water Services Support Strategy*. Pretoria: SALGA.

Annexures A Language editing

<i>Independent Editor</i>		kufazano@gmail.com +27631434276
		SATI SOUTH AFRICAN TRANSLATORS' INSTITUTE
CERTIFICATE OF EDITING		
This confirms that I edited substantively the document below, including a Reference list. The document was returned to the author with various tracked changes to correct errors and clarify meaning.		
TITLE: Examining the right to have access to sufficient water in Sebokeng, South Africa		
AUTHOR : Peculiar Dube		
STUDENT NUMBER: 36385247		
Note: The edited work described here may not be identical to that submitted. The authors, at their sole discretion, have the prerogative to accept, delete, or change amendments made by the editor before submission.		
DATE: 22 March 2026		
EDITOR'S COMMENT		
The author was advised to effect suggested corrections regarding subject-verb agreement, punctuation and overall academic writing style, to name a few.		
 Signature		
Dr Kufakunesu Zano, PhD in English. A member of the South African Translators' Institute, Ref 1000686, South Africa 2026		