



**NATIONAL CONFERENCE ON LOCAL
GOVERNMENT ACCOUNTABILITY, SERVICE
DELIVERY AND HUMAN RIGHTS**



31 August – 1 September 2022 Johannesburg, South Africa



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

National Conference: Local Government Accountability, Service Delivery, and Human Rights

31 August – 1 September 2022

Johannesburg, South Africa

CONTENTS

List of Acronyms	4
EXECUTIVE SUMMARY	5
1. INTRODUCTION AND BACKGROUND	7
1.1 Introduction	7
1.2 Background	8
1.3 Conference Objectives	12
1.4 Conference Structure	12
1.5 SAHRC Chairperson Introductory Remarks	13
1.5.1 The State of Local Government in South Africa	14
Emerging issues and analysis	15
2. PLENARY SESSIONS	16
2.1 An Integrated Monitoring System on Local Government	16
Summary of discussion	17
Key emerging issues and analysis	20
2.2 Good Governance, Accountability, and Transparency for Local Governments	20
Session overview and objectives	21
Summary of discussion	21
Key emerging issues and analysis	26
2.3 The Role of National and Provincial Government in Supporting Local Sphere of Government and A Focus on Section 139 Interventions	27
Session overview and objectives	27
Key emerging issues and analysis	31
3. REFLECTIONS BY HIS EXCELLENCY, THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	31
Response to the President's Reflections	33
Key emerging issues and analysis	34
4. BREAKAWAY SESSIONS	34
4.1 SESSION 1: MUNICIPAL INFRASTRUCTURE	35
Background	35
Session overview and outcomes	36
Summary of discussions	36
4.2 SESSION 2: PROMOTION OF A SAFE AND HEALTHY ENVIRONMENT: CLIMATE CHANGE AND HUMAN RIGHTS	37
Background	37

Session overview and outcomes	38
4.3 SESSION 3: COMMUNITY INVOLVEMENT IN MATTERS OF LOCAL GOVERNMENT	40
Background	40
Session overview and outcomes	41
Summary of discussion	41
4.4 SESSION 4: STRENGTHENING THE LOCAL SPHERE OF GOVERNMENT TO DELIVER ON MUNICIPAL BASIC SERVICES	42
Session overview and outcomes	42
Summary of discussion	43
5. WAY FORWARD	45
6. CONCLUSION	47

List of Acronyms

AGSA	Auditor-General of South Africa
COGTA	Cooperative Governance and Traditional Affairs
DCoG	Department of Cooperative Governance
DDM	District Development Model
DPME	Department of Planning, Monitoring and Evaluation
ECSA	Engineering Council of South Africa
GWME	Government-Wide Monitoring and Evaluation System
KZN	KwaZulu-Natal
LGWP	Local Government White Paper
MEC	Member of the Executive Council
MI	Material Irregularities
MIG	Municipal Infrastructure Grant
NCOP	National Council of Provinces
NDP	National Development Plan
NHRI	National Human Rights Institution
NMRF	National Mechanism for Reporting and Follow-up
NRTD	National Recommendations and Tracking Database
PAA	Public Audit Act
PPP	Public-Private Partnerships
SAHRC	South African Human Rights Commission
SALGA	South African Local Government Association
STATSSA	Statistics South Africa

EXECUTIVE SUMMARY

This report details the proceedings of the National Conference on Local Government Accountability, Service Delivery, and Human Rights (conference) hosted by the South African Human Rights Commission (Commission/SAHRC) from 31 August to 1 September 2022, for stakeholders to collectively deliberate on the critical issues and challenges faced by the local government sphere. The conference was undertaken in the wake of damning reports of poor governance, weak institutional capacity, poor financial management, corruption and political instability in municipalities, and mounting protests against the provision of services.

The overall aim of the conference was to co-create, with a broad cross-section of stakeholders, practical and sustainable solutions to address the systemic challenges faced by the local government sphere, which impede the fulfilment of their fiduciary duties to ensure access to basic services for citizens, and thus the attainment of, in particular, socio-economic rights.

The Commission has been receiving an increasing number of complaints detailing social discontent with the performance of local governments, and the resultant deprivation of human rights. Service delivery related complaints have been consistently in the top five human rights complaints lodged with the Commission in the last few years. The complaints include the poor provision of community services such as water and housing, sewage spills, wastewater treatment challenges, non-collection of refuse, and unattended potholes on roads. The substantial number of challenges in service delivery has seen an increase in protest actions at the municipal level.

Monitoring the extent to which, and measures that government has taken towards the realisation of the rights in the Bill of rights, especially concerning housing, health care, food, water, social security, education and the environment is critical for accountability. The creation of an integrated monitoring system that is compatible, unified, and consistent across the international, regional, national, and provincial governments, the SAHRC, and Parliament has been identified by the White Paper on Local Government (WPLG) of 1998 as one of the solutions to strengthening local government accountability and service delivery in municipalities. The SAHRC is constitutionally

mandated to report annually on the extent to which the organs of state have advanced the rights in the Bill of Rights.

The Auditor-General South Africa (AGSA) produces annual audit reports which consistently paint a picture of regression, worrying trends of the lack of financial skills and accountability, and leadership instabilities in local municipalities. Irregular and fruitless expenditure remain high, together with a concerning culture of non-performance; lack of accountability; negligence; and general non-adherence to legislative prescripts persist.

A key component to strengthening financial accountability in local government lies in implementing the 2019 amendments to the Public Audit Act (PAA). With the amendments, any non-compliance with, or contravention of, legislation, or fraud and theft, or a breach of a fiduciary duty identified during an audit performed under the Act, which results in a material financial loss, the misuse of public funds, or substantial harm to a public sector institution or the general public, may lead to the issuance of certificates of debt in the names of those charged with overseeing public resources. In the long-term, this may be a vital component of public accountability.

The adoption of anti-corruption strategies to combat corruption which is the cause of financial mismanagement in local government is also critical. Of concern, recommendations to investigate corruption in local government are not being implemented, and there have been alarming acts of violence against municipal council officials and other entities during fraud investigations, misconduct, and maladministration.

Priority should be given to finalising the Intergovernmental Monitoring, Support, and Interventions Bill, 2022, which aims to ensure consistency and normalise the conditions in the implementation of Section 139 of the Constitution.

The community, private actors, academics all play a crucial role in fostering accountability, good governance and transparency. The multiple channels in existence through which these actors may engage with local government must be strengthened. Lastly cooperation across the different sectors that oversee and support local government in fulfilling its mandate must be encouraged.

1. INTRODUCTION AND BACKGROUND

1.1 Introduction

The Commission is a National Human Rights Institution (NHRI) established under Chapter 9 of the Constitution of the Republic of South Africa 1996 (Constitution) to support and strengthen constitutional democracy. It operates in terms of the Principles Relating to the Status of National Institutions (Paris Principles) adopted by the United Nations General Assembly Resolution 48/134 in 1993. In terms of section 184(1) of the Constitution, the Commission is mandated to promote respect for human rights and a culture of human rights; promote the protection, development, and attainment of human rights; and monitor and assess the observance of human rights in the Republic.

The Commission's constitutional mandate is further elaborated in the South African Human Rights Commission Act 40 of 2013 (SAHRC Act). The SAHRC Act details the powers and functions of the Commission, under Section 13, which include the competencies to make recommendations to all organs of state regarding the fulfilment of human rights; review government policies on human rights and make recommendations accordingly; undertake studies on human rights issues; and monitor the implementation of and compliance with international human rights norms.

The human rights envisaged in section 184(1), and expressed in the Bill of Rights, are discharged, and realised at the local sphere of government. Local municipalities are vested with the fiduciary duty of interacting directly with citizens in the delivery of basic services such as water, refuse removal, sanitation, and electricity intrinsically necessary for the realisation of basic rights in the Bill of Rights. The local sphere of government derives its mandate from overarching provisions of the Constitution and related legislative and policy frameworks namely:

- Sections 152(1), 153, and 154 of the Constitution
- Local Government: Municipal Structures Act, 117 of 1998
- Municipal Structures Amendment Act, 3 of 2021

- Local Government: Municipal Systems Act, 32 of 2002
- Municipal Finance Management Act, 56 of 2003
- White Paper on Local Government (WPLG) of 1998
- National Development Plan (NDP)

The local sphere of government also plays a crucial role in the translation and connection of national commitments to the goals and targets set out in international agreements that South Africa is a party.

In the execution of its mandate, however, the SAHRC has over the years noted with increasing concern a myriad of systemic challenges in the local sphere of government that hinders the attainment and enjoyment of human rights by citizens. Recognising that the current state and trajectory of municipalities represent a significant threat to constitutional democracy, the SAHRC convened a national conference to deliberate on Local Government Accountability, Service Delivery, and Human Rights. The conference sought to deliberate on the critical issues and challenges faced at local government to enhance human rights-based service delivery.

1.2 Background

South Africa is for the greater part a unitary state¹ with quasi-federal² characteristics, as provided for in section 40 of the Constitution. The South African system of governance comprises three distinctive yet interdependent, and interrelated spheres of government, namely, national, provincial, and local. The local sphere of government is autonomous and consists of municipalities. It is the sphere closest to the people and best positioned to understand and appropriately respond to the needs and aspirations of communities. The local sphere of government is also an important enabler of economic growth and development through the provision of reliable water supply, sanitation, energy, refuse services, roads, and infrastructure maintenance. There are

¹ A unitary state is a system of co-operative governance, where provinces carry out the directives of the central government and have limited powers to act on their own.

² A federal government system is less centralised and allows provinces to enjoy some powers, such as making their own laws.

257 municipalities at present which are divided into eight metropolitan municipalities, 44 district municipalities, and 205 local municipalities.³

The post-1994 local sphere of government was established largely to fasttrack the undoing of colonial and apartheid legacies, particularly the impact of apartheid spatial geography as experienced directly by communities. This was always to be a challenging task. The democratic government inherited a local government system that was fragmented, racially divided, and had a massive backlog of service delivery. The WPLG noted that ‘municipalities face great challenges in promoting human rights and meeting human needs, addressing past backlogs and spatial distortions, and planning for a sustainable future.’ As South Africa approaches thirty (30) years since the dawn of democracy, it appears that local government is largely failing to meet expectations.

The 2021 State of Local Government Report by the Department of Cooperative Governance (DCoG) states that 64 out of 257 municipalities across the country are dysfunctional, 111 are at medium risk, and only 16 are stable.⁴ The dysfunction is rooted in poor governance, weak institutional capacity, poor financial management, corruption, and political instability.

The SAHRC continues to receive a myriad of economic and social rights-related complaints, which have consistently remained in the top five human rights complaints reported.⁵ The SAHRC provincial offices have over the years received and investigated service delivery complaints against various local municipalities and provincial government departments. The complaints include, amongst others, failure by municipalities to provide services, such as water and housing, sewage spillages, sewage treatment challenges, non-collection of refuse, and potholes on the roads. Notwithstanding the several findings and recommendations made by the SAHRC

³ *Local government municipalities*, available at <https://www.gov.za/about-government/government-system/local-government> accessed on 25 September 2022.

⁴ Department of Cooperative Governance 2021, *State of Local Government Report*, available at <https://pmg.org.za/committee-meeting/33432/> accessed on 12 September 2022.

⁵ SAHRC, *Annual Trends Analysis Report*, (2019-2020) available at https://www.sahrc.org.za/home/21/files/SAHRC%20TAR%202019-2020_FINAL.pdf, accessed on 18 September 2022.

directed to government, the material conditions in municipalities have not changed much and continue to deteriorate.⁶

As a result of the myriad of service delivery challenges, there has been a spike in protest-related action, which is linked to dissatisfaction with ineffective service delivery at the municipal level.⁷ Related research indicates that the number of service delivery protests taking place in South Africa has increased significantly since 2004 and has generally become violent.⁸ The Alexandra Township total shutdown in 2019 is one of many examples. Residents of Alexandra Township took to the streets of Alexandra Township and surrounding suburbs to protest the continued non-provision of services. Residents blocked streets with burned tires and rocks to protest severe overcrowding, inadequate service delivery, rampant crime and illegal land occupations.⁹ The SAHRC Gauteng provincial office together with the Office of the Public Protector conducted a joint inquiry into the shutdown. The top five grievances which often lead to service delivery protests are generally identified as poor housing, water, and sanitation, political representation, and access to electricity.¹⁰ Thus, there is a correlation between failures of service delivery at the local sphere of government on the one hand, and protest action on the other.

The Expert Panel Report into the July 2021 unrest, which was commissioned by the President of the Republic, highlighted the conditions of weak state institutions; high rates of unemployment, particularly amongst the youth; high levels of poverty and inequality; poor spatial planning, overcrowded and unsuitable living conditions, the continued emergence of informal settlements in crowded urban spaces; and rampant

⁶ Govt has not responded to SAHRC report on human rights violations in Alex, available at <https://www.702.co.za/articles/438863/govt-has-not-responded-to-sahrc-report-on-human-rights-violations-in-alex> accessed on 18 September 2022.

⁷ SAHRC, *Access to housing, local governance, and service delivery*, (2015) available at <https://www.sahrc.org.za/home/21/files/Access%20to%20Housing%202015.pdf> accessed on 18 September 2022.

⁸ Research shows sharp increase in service delivery protests, available at <https://mg.co.za/article/2014-02-12-research-shows-sharp-increase-in-service-delivery-protests/> accessed on 31 August 2022.

⁹ *Final report of the Gauteng Provincial inquiry into the Alexandra Township total shutdown 09 July 2021*, available at <https://www.sahrc.org.za/home/21/files/Alexandra%20Inquiry%20Report%2009%20July%202021.pdf> accessed on 31 August 2022.

¹⁰ Johan Burger, *The reasons behind service delivery protests in South Africa*, available at <http://www.issafrica.org/iss-today/the-reasons-behind-service-delivery-protests-in-south-africa> accessed on 31 August 2022.

corruption at various levels of government as some of the factors that fanned the unrest.¹¹

The AGSA as a constitutional institution, produces annual audit reports on all government departments, public entities, municipalities, and public institutions. The AGSA's 2020/2021 report of the audit outcomes for local government, showed that only 41 municipalities, which represents 16% of municipalities received clean audits, despite R1.26 billion having been spent on financial consultants.¹² The results continue to show worrying trends of the lack of financial skill and accountability in local municipalities, with the AGSA lamenting that 75% of municipalities were not able to submit quality financial statements for auditing.

The outcomes report showed that over the five year term of local government, only 61 municipalities out of the total of 257 had a better audit outcome in 2020-21 than in 2016-17. The report notes that at the 2020-21 year-end, the balance of irregular expenditure that had accumulated over many years and had not been dealt with totaled R119,07 billion, unauthorised expenditure stood at R86,46 billion, while fruitless and wasteful expenditure amounted to R11,04 billion.

Consequently, the AGSA has since called for a review of the mandatory minimum skills and qualifications required for all key financial management positions in local municipalities.¹³ The AGSA reports highlight a concerning culture of non-performance; lack of accountability; negligence; and general non-adherence to legislative prescripts.

It is against this backdrop that the SAHRC sought through a national conference to facilitate the vital conversation needed to reflect on the importance of local government and how it may be fortified to carry the mantle as both promoter and protector of human rights.

¹¹ *Report of the expert panel into the July 2021 civil unrest – 29 November 2021*, available at <https://www.thepresidency.gov.za/content/report-expert-panel-july-2021-civil-unrest> accessed on 2 September 2022.

¹² *Consolidated general report on local government audit outcomes MFMA 2020-21*, available at https://www.agsa.co.za/Portals/0/Reports/MFMA/2020-21/FINAL_MFMA%202020-21%20GR_15%20June_2022%20tabling.pdf?ver=2022-06-15-095648-557 accessed on 2 September 2022.

¹³ *Ibid.*

1.3 Conference Objectives

The overarching goal of the conference was to co-create, with a broad cross-section of stakeholders, practical and sustainable solutions to address the systemic challenges facing local government that impede it from fulfilling its fiduciary duties to ensure access to basic services for citizens.

The specific conference objectives were to:

- a. Provide a platform for collective deliberation on the key systemic challenges facing local government.
- b. Interrogate the roles and responsibilities of the different spheres of government, and government entities, in supporting the local sphere of government.
- c. Explore the role of various actors in holding the local sphere of government accountable.
- d. Deliberate on practical solutions to address and tackle the deteriorating state of service delivery within the local sphere of government.
- e. Consider methods for effective monitoring of service delivery, ensuring accountability, engagement, non-discrimination, and transparency in service delivery.
- f. Consider strategies for policy shifts towards a pro-poor, developmental local government sphere; and
- g. Strengthen old and establish new partnerships across sectors.

1.4 Conference Structure

The first day of the conference comprised the opening remarks by the Chairperson of the SAHRC, Adv Bongani Majola, and plenary discussions under the following headings:

Plenary 1: Towards an Integrated Monitoring System on Local Government.

Plenary 2: Towards Good Governance, Accountability, and Transparency for Local Governments

Plenary 3: The Role of the National and Provincial Government in Supporting the Local Sphere of Government and a Focus on Section 139 Interventions.

The second day opened with Reflections by President Matamela Cyril Ramaphosa, followed by the following breakaway sessions:

Session 1: Municipal Infrastructure.

Session 2: Promotion of a Safe and Healthy Environment: Climate Change and Human Rights.

Session 3: The Role of Communities in holding Local Government Accountable

Session 4: Strengthening the local sphere of government to deliver municipal basic services (i.e. Human Settlements, Water, and Sanitation).

The conference was structured to optimise experience sharing, interaction, and participation among delegates. The combination of keynote presentations, theme-based plenary sessions and breakaway sessions, feedback sessions, and roundtable discussions ensured that experts and scheduled speakers had an opportunity to make their respective submissions and receive feedback from participants. In addition, it also allowed critical conversations across the various thematic areas.

1.5 SAHRC Chairperson Introductory Remarks

Speaker:

- **Adv Bongani Majola** – Chairperson of the SAHRC

Moderator:

- **Dr Harlan Cloete** – Research fellow in the Department of Public Administration and Management at the University of the Free State

Session overview and objectives

The opening session set the tone for the conference by broadly setting out the state of local governance in the country, in particular reflecting on the role of local government in enabling service delivery, how local government is currently performing, as well as the critical challenges facing this sphere of government in meeting its responsibilities.

1.5.1 The State of Local Government in South Africa

Adv Bongani Majola in his opening remarks set out the broad context of the state of local governance in the country. He reflected on the role of local government; how municipalities as part of the sphere of local government are currently performing as well as the challenges facing this sphere of government in meeting its responsibilities.

He emphasised that local government is at the coalface of service delivery and plays a crucial role in the realisation of socio-economic rights set out in the Bill of Rights. The current state and trajectory of local government presents a significant threat to constitutional democracy and human rights. It places at risk the legitimacy and credibility of the state in the eyes of the populace. Several reports¹⁴ have documented local government's continued failure to ensure access to basic services at local level including access to water, refuse removal, sanitation, housing, education, and electricity. These failures are evident through the increased number of service delivery complaints that the SAHRC has received.¹⁵ Service delivery-related complaints consistently remain in the top five human rights complaints lodged with the Commission. In 2021, according to the SAHRC Annual Trends Analysis Report, service delivery-related complaints were the second-highest complaints recorded.

¹⁴ *State of Local Government in South Africa: Overview Report National State of Local Government Assessments Working Documents COGTA 2009*, available at https://www.gov.za/sites/default/files/gcis_document/201409/state-local-gov-rpt1.pdf accessed on 1 October 2022.

¹⁵ SAHRC, *Annual Trends Analysis Report, (2019-2020)* available at https://www.sahrc.org.za/home/21/files/SAHRC%20TAR%202019-2020_FINAL.pdf accessed on 18 September 2022.

Adv Majola attributed the crisis in service delivery at local government to poor governance, weak institutional capacity, poor financial management, corruption, political instability, and maladministration.¹⁶ He also acknowledged that the post-apartheid government inherited a local government system that was fragmented, racially divided, and with a massive backlog of service delivery which has contributed to the ongoing crisis.

Adv Majola noted that the capacity of municipalities to implement government policies and programs, deliver services and manage finances was tremendously weakened by weak leadership in strategic management including corporate governance, political considerations in appointments of senior managers without required qualifications, and a shortage of skills to implement financial management. The Provincial COGTA skills audit report published this year found that 298 of KwaZulu-Natal (KZN)'s 1944 councillors cannot read or write, and others have no formal education is indicative of this.¹⁷ The lack of skilled personnel has resulted in a high dependency on expensive consultants. AGSA reported that over the past five years, South African municipalities have spent about R5.3 billion on consultancies with 70% of municipalities using consultancies every year. It was reported that basic financial functions that should be conducted internally were outsourced to consultants. Repeated adverse audit findings and gross mismanagement of funds indicated the incompetence in financial management skills at local government resulting in extreme weak budgets, credit controls, and unreliable financial reports.

He added that the recent 2022 floods in KZN demonstrated that municipalities do not have disaster management plans to mitigate climate-related emergencies.

Emerging issues and analysis

- The recognition and acknowledgment that local government is the coalface of service delivery and plays a crucial role in the realisation of socio-economic rights set out in the Bill of Rights has not translated into the adoption of urgent

¹⁶ Reports from the AGSA, National Treasury, Local Government point to this.

¹⁷ *KZN councillors want to be taught how to read and write*, available at <https://www.citizen.co.za/witness/news/kzn-councillors-want-to-be-taught-how-to-read-and-write/> accessed on 18 September 2022.

and drastic steps required to resolve the critical issues and challenges faced by local government.

- Although some of the challenges experienced by municipalities are legacy-related issues, the progress made toward the establishment of efficient municipalities post apartheid has thus far been unsatisfactory.
- The continued deterioration of conditions in municipalities despite several findings and recommendations made by the SAHRC, AGSA, and other bodies indicates the unresponsiveness of municipalities and failure to action recommendations and findings. Novel approaches are needed to ensure greater compliance by municipalities.
- There is a need to develop a robust anti-corruption strategy to reduce corruption and improve ethical practices in the local government sphere.

2. PLENARY SESSIONS

2.1 An Integrated Monitoring System on Local Government

“Accountability is a fundamental human rights principle and enabler of the enjoyment of human rights, it is the cornerstone of the human rights framework. It is not an opt-in or optional proposition but a legal imperative on states” – Ms Abigail Noko, Regional Representative, United Nations High Commissioner for Human Rights

Panelists:

- **Ms Pinky Sharon Kekana** – Deputy Minister in the Presidency: Planning, Monitoring, and Evaluation
- **Ms Philile Ntuli** – Commissioner of the South African Human Rights Commission
- **Ms Abigail Noko** – Regional Representative, United Nations High Commissioner for Human Rights

Moderator:

- **Dr Harlan Cloete** – Research Fellow in the Department of Public Administration and Management at the University of the Free State

Session overview and objectives

This session sought to evaluate the country's current monitoring and evaluation system and deliberate on how to build a more efficient, effective, and integrated monitoring system. The key questions which panelists reflected on included (i) the state of existing government monitoring systems; (ii) the utility and performance of these systems; (iii) the value, normativity and localisation of international monitoring mechanisms concerning human rights.

Summary of discussion

The Constitution in section 155(7) gives National and Provincial governments the power to monitor the performance of municipalities in the execution of their fiduciary duties. The Constitution further obliges National and Provincial governments to provide the necessary support to municipalities identified to be underperforming.

The WPLG envisions the creation of an integrated and comprehensive framework for monitoring the service delivery performance of the government across all its spheres. The national government has introduced the Government-Wide Monitoring and Evaluation (GWME) System.

Deputy Minister in the Presidency, Ms Pinky Kekana in her presentation provided an overview of the Department of Planning, Monitoring and Evaluation (DPME) in monitoring various aspects of local government performance, the importance of monitoring and evaluation (M&E) in identifying factors contributing to poor service delivery and performance, how GWME has begun to transform the M&E landscape in government, and the decisive steps government has taken to address the challenges of service delivery challenges municipalities.

Consistent monitoring and evaluation influences service delivery in municipalities. Since its inception, GWME has made major contributions to the mapping of policy priorities, resource allocation, programme implementation, critical decision-making, and evaluation of efforts in all government programmes. Prior to the adoption of the GWME, the M&E of government programmes was neither systematic nor standardised.

The DPME monitors the performance of municipalities. It has incrementally contributed towards fostering a culture of monitoring and evaluation in municipalities. The SAHRC assists the DPME in discharging its monitoring mandate by conducting investigations into alleged human rights violations at the local government level. Deputy Minister Kekana expressed concern that the work of the DPME continues to be undermined by its lack of enactment. Therefore, state departments are not required to act on or comply with DPME findings and directives. Based on the outcomes of the M&E process, the national government is in the process of implementing the District Development Model (DDM) to help municipalities fulfill their mandate. Through the DDM, 44 districts and 8 metros across the country have been identified to receive support to accelerate service delivery and economic development.

The SAHRC Commissioner, Ms Philile Ntuli, in her presentation examined the state's obligations to make human rights effective, which implies the notion of an integrated human rights monitoring system or framework and the approach, mechanisms, and monitoring systems developed by SAHRC.

The state has an obligation to respect, protect and fulfil socio-economic rights. As a Chapter 9 institution, the SAHRC is constitutionally obliged to report annually on the extent to which the organs of state have advanced the rights in the Bill of Rights, including socio-economic rights. Monitoring of socio-economic rights includes monitoring the exercise of the right and also the process underlying that exercise.

The Commission has faced several challenges in discharging its monitoring mandate. The first challenge relates to finding an adequate methodology to monitor the progressive realisation of socio-economic and other human rights. The second is the lack of cooperation amongst the relevant organs of the state. Many of the organs of the state, particularly at the local government level, often avoid cooperating with the Commission on its monitoring mandate. This is despite their constitutional obligation

to assist the Commission in carrying out its mandate. Many do not respond to questionnaires sent to them, and those who do reply, often reply late, and at times either do not answer all the questions asked or give poor or inadequate answers.

An integrated system could create links between different institutions with legal obligations to monitor government's compliance with its constitutional and legislative obligations concerning the protection and realisation of progressive socio-economic rights.

In her presentation, the Regional Representative of the United Nations High Commissioner for Human Rights, Ms Abigail Noko discussed accountability as a human rights obligation and gave an overview of the National Monitoring and Reporting Mechanism (NMRF). National mechanisms for reporting and following up on human rights play an important role in ensuring accountability. The NMRF on human rights obligations is an emerging best practice in the integration of human rights monitoring. It is a permanent national public mechanism with representatives from all levels of government, including the NHRI. Its mandate is to report and engage with international and regional human rights mechanisms by coordinating, tracking, and following-up on the implementation of recommendations made by human rights mechanisms. An important feature of the mechanism is the National Recommendations and Tracking Database (NRTD), a shared digital database or central repository for members of the NMRF to manage information and facilitate coordination in one central location. The advantages of adopting the NMRF lie in particular in its ability to establish links between human rights mechanisms and action plans, and to facilitate better coordination across government institutions.

The NMRF, if adopted, can be integrated into the existing GWME system. The GWME will lead monitoring under the NMRF and NRTD database as an overarching policy framework monitoring various government programmes. Data from the GWME will be used to improve reporting under the NMRF as many recommendations are aimed at service delivery and other matters relevant to local government. The recommendations from human rights organisations, if implemented, will result in the responsible provision of service delivery to the people and ensure that basic socio-economic rights are met in the local government sphere.

The inputs from the panelists were further enriched by contributions from the participants. A participant expressed concern about what she perceived to be a widespread and intensification of 'audit culture' in government. She argued that the development of increasingly sophisticated M&E mechanisms creates burdensome reporting requirements for municipalities that prevent them from fulfilling their functions. The establishment of these mechanisms are also resources intensive. Ms Noko cautioned against perceiving accountability as a burden, declaring that it is a burden if is solely viewed as a checkbox exercise and not properly coordinated. The notion is not to create duplicative processes, but a single process that serves multiple purposes. Another participant highlighted that for government to effectively monitor the implementation of human rights at the local government level, local government need to report more frequently and consistently on the progress made in realising these rights.

Key emerging issues and analysis

- The consensus that emerged from the session was that the development and implementation of an integrated monitoring system will help strengthen accountability at the local government level.
- The use of inconsistent monitoring and assessment methods leads to poor diagnosis and inconsistent outcomes, and undermines the acquisition of a solid evidence base for planning, decision-making, and budget allocation.
- More needs to be done towards infusing a culture of M&E in municipalities and ensuring its institutionalisation.
- There is greater scope for the SAHRC and other institutions to assist the DPME in fulfilling its monitoring mandate.

2.2 Good Governance, Accountability, and Transparency for Local Governments

“Repeated disclaimers are not just a technical auditing term. Every one of these repeated disclaimed audit opinions represents the lived reality

of ordinary citizens who are not receiving the goods and services public institutions are mandated to deliver” – Mr Dumisani Cebekhulu, Acting Head of Portfolio: Regularity Audit at the AGSA.

Panelists:

- **Mr Dumisani Cebekhulu** – Acting Head of Portfolio: Regularity Audit at the AGSA
- **Dr Patience Mbava** – Chairperson of the Financial and Fiscal Commission
- **Dr Harlan Cloete** – Research Fellow in the Department of Public Administration and Management at the University of the Free State

Moderator:

- **Mr Lukhona Mnguni** – Head of Policy and Research at the Rivonia Circle

Session overview and objectives

The session considered whether the recent amendments to the Public Audit Act (PAA) have the potential to usher in a new era of accountability at a local government level, the role of collaboration between the AGSA, Chapter 9 institutions, communities, and private actors, and which role-players are fundamental to the enhancement of accountability, good governance, and transparency in local government.

Summary of discussion

The government must, and with transparency, demonstrate how public finances have been managed. The Municipal Finance Management Act (56 of 2003) regulates financial management in municipalities and other institutions in the local sphere of government to ensure that all revenue, expenditure, assets, and liabilities of these governments are managed efficiently and effectively.

To enhance financial accountability in local government, the AGSA conducts regular audits of municipalities and municipal entities and reports the findings to Parliament.

Chairperson of the Financial and Fiscal Commission, Dr Patience Mbava weighed in on the potential of the recently adopted amendments to the PAA to strengthen

accountability at local government level, and the role played by Chapter 9 institutions communities and private actors in fostering accountability, good governance, and transparency of local government.

Three key amendments were made to the PAA effective 1 April 2019, that are of paramount significance in enhancing accountability. These amendments are as follows.

- i. The Act allows the AGSA the ability to take binding remedial action when material irregularities (MI) recommendations are not implemented.
- ii. The AGSA may refer MIs to the relevant public organisations for further investigations.
- iii. Issue debt certificates for failure to implement remedial action.

According to Dr Mbava, if implemented, these amendments will assist in fostering responsible financial management systems in local government and strengthen the AGSA's ability to track the implementation following findings of MIs – as well as to take extra punitive and other measures to enforce these recommendations.

The AGSA, unlike previously, may now hold the municipal manager personally liable if the individual is found to be in breach of their fiduciary duty during the audit. As of 15 October 2021, the AGSA had issued 237 MIs to the non-compliant municipalities. In 2021, the AG issued its first remedial actions to (1) the accounting officers and/or authorities of the Passenger Rail Agency of South Africa, (2) the Department of Defence, and (3) the Free State Department of Human Settlements.

Notwithstanding the value of the latest amendments, there are aspects of the PAA that could benefit from further enhancement. While the AGSA now has the power to issue a certificate of debt to local managers and/or accountants after a determination of a material and/or financial loss, misuse, or loss of public funds, the AGSA cannot however hold the National Minister of COGTA, provincial MECs, and others who exercised an oversight role accountable. The existing amendments address the issue of mismanagement but not the root causes.

Chapter 9 institutions play a collaborative role in enhancing accountability. The SAHRC can collaborate with the AGSA in the following specific ways to improve the accountability of municipalities.

- The SAHRC and AGSA can continue to collaborate in investigating service delivery violations. Examples of previous collaborations between Chapter 9 institutions were highlighted as follows: investigation of the Chris Hani District Municipality (water and sanitation services in Cradock, Middelburg, and Komani) and Msunduzi Local Municipality (New England Road landfill site) service delivery matters.
- AGSA may refer MIs related to human rights violations to the SAHRC for further investigation.
- AGSA and SAHRC can share knowledge about problematic municipalities for further assessment.

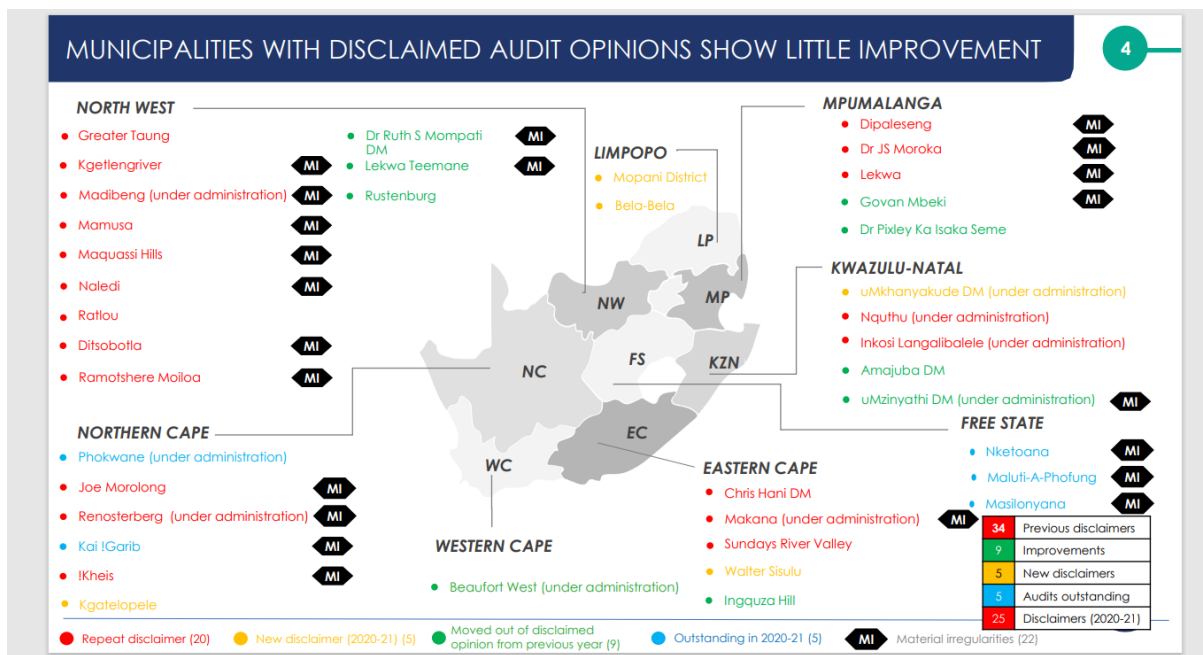
Amongst the ideas shared to enhance the role of communities and private actors in promoting accountability, good governance and transparency were that communities and private actors have the right to voice their concerns and participate in holding their local government accountable. It was highlighted that channels exist through which stakeholders can voice their concerns. However, recurring protests, riots, and unrest are an indication that communities feel their voices are not being consistently heard, recognised, and addressed. According to reports, a total of 909 protest actions occurred over a period of six months from 1 August 2020 to 31 January 2021.

Furthermore, the media, along with civil society, play a crucial role in holding municipalities accountable. Through unbiased reporting on the current situation in municipalities, the media make a decisive contribution to fostering more transparency and accountability in the local government sphere.

Dr Cloete in his presentation suggested a number of ways academia can contribute to strengthening the sphere of local government. The academia can continue to provide critical thought-provoking inputs on various issues faced by municipalities. He suggested that municipalities should use the Governance Implementation Questions (5IQ) Framework adopted by British civil servant Michael Barber (2015) to increase their accountability to the public.

Acting Portfolio Manager, Compliance Audit at AGSA Mr Dumisani Cebekhulu summarised the results of the local government audit for the fiscal year ended 30 June 2021 and the status of MIs as of 15 April 2022.

The presentation highlighted the following:



- The AGSA's audit report indicates a continuous decline and regressive trend in the audit results of municipalities. Local government audit results have deteriorated over the past five years, resulting in a lack of confidence by communities in the ability of local government to provide basic services.
- Only 41 of the 257 municipalities managed to get a clean audit. This means less than a fifth of the local government's budget for 2021 estimated at R509 billion was appropriately used by municipalities. Approximately 25 municipalities received disclaimer opinions. These audit results indicate that, unfortunately, citizens are not sufficiently receiving basic services.
- Irregular expenditure not addressed in 2021 amounted to R119 billion, unauthorised expenditure was R86 billion, and fruitless and wasteful expenditure was R11 billion.
- AGSA identified breaches and fraud that resulted in significant financial losses estimated at R3.9 billion, causing significant harm to both municipalities and the public. No action was taken to address 81% of these matters until AGSA issued notifications.

AGSA found 128 potential supply chain management fraud and corruption incidents and made recommendations for further investigation. However, the majority of the municipalities do not thoroughly investigate these incidents. In other cases, no

investigations were conducted, and the results of those investigations were never reported. Investigations often lasted more than three months, and sanctions were not imposed, or recommendations based on the investigation findings were not implemented after the investigation.

There have been disturbing incidents of violence against municipal employees conducting investigations and officials from the AGSA's office. For example, the Buffalo City Municipal Mayor was shot nine times while trying to implement the AGSA's recommendation to investigate past contracts. Over the last few years, 89 council workers have reportedly been killed justifying the disclosure of security details.

Some external auditors are under witness protection programs due to threats of violence against them.

The report indicated that 60% of audited municipalities submitted poor-quality performance reports, thereby hampering the capability of the AGSA to accurately assess their performance. The most frequent findings that emerged from the reports produced by the municipalities were that the achievements reported were unreliable and incorrect, or that there was no evidence to support the performance. The indicators and targets against which achievements were reported were not relevant to the original commitments of the performance plans and therefore could not be measured. Another challenge was the lack of credible data. The data collected for the performance reports relied heavily on manual processes, resulting in a lack of credible data and information, which impacted AGSA's ability to work properly.

Financial reporting, inadequate service delivery, poor planning and performance management, leadership instability, poor oversight by the council, a lack of consequence management, and lack of action to address systemic issues were factors contributing to the poor audit results.

During the discussions, several questions were raised, and contributions were made by participants. The role of community media in promoting accountability at local government and community empowerment was highlighted. A question was raised about whether a mechanism to monitor Public-Private Partnerships (PPP) existed. It was recommended that the academia should assume positions in local government and provide intellectual support to the work of municipalities. Another suggestion was that the academia should provide training to municipalities. The efficiency of the

equitable share model was questioned. A participant argued that the equitable share model was ineffective and resulted in municipalities remaining under-capacitated to provide communities with basic services. It was suggested that funds should be allocated to municipalities with the poorest communities. It was further suggested that socio-economic rights funding must not be reversed. Although socio-economic funding can be reduced, for a brief time until sufficient resources are available, it should not be fully withdrawn.

Key emerging issues and analysis

- There is very weak state monitoring and supervision of the operations of local government activities. Strong supervision involves a mixture of incentives, rewards, and sanctions to ensure proper consequence management, particularly for significant and persistent failures. Unfortunately, consequence management in local government is currently pitiable, leading to a culture of poor performance.
- Poor financial performance within local government has been attributed to irregular expenditure, leadership instability, lack of oversight by councils, and lack of consequence management, all of which have negatively impacted service delivery in the local government sphere.
- The PAA amendments have strengthened the AGSA's powers to take appropriate remedial action; and issue a certificate of debt as required when an accounting officer or accounting authority has failed to comply with remedial action.
- There is a need to educate and empower other stakeholders i.e., civil society, media, the private sector, and the community to hold municipalities accountable for service delivery.
- Monitoring institutions need accurate and credible information to provide the necessary oversight to local government. Lack of information due to inadequate data collection and collation structures in municipalities undermines monitoring.
- The funding model for Chapter 9 institutions needs to be restructured to protect and promote the independence of these organisations and individuals (whistle-blowers) to enable them to effectively conduct their mandate.

2.3 The Role of National and Provincial Government in Supporting Local Sphere of Government and A Focus on Section 139 Interventions

“We need the courage to turn our backs on old or failed, borrowed, untested formulas, to reimagine the future of local government” – Mr Bheke Stofile, President of South African Local Government Association.

Panellists:

- **Ms Thembi Nkadimeng** – Deputy Minister of Cooperative Governance and Traditional Affairs
- **Mr Amos Masondo** – Chairperson of the National Council of Provinces, MP
- **Mr Bheke Stofile** – the President of the South African Local Government Association,
- **Mr Buang Jones** – Gauteng Provincial Manager of the South African Human Rights Commission

Moderator:

- **Mr Lukhona Mnguni** – Head of Policy and Research at the Rivonia Circle

Session overview and objectives

The final panel of the conference sought to discuss the role of the National and Provincial governments in supporting the local sphere of government to deliver services with a particular focus on section 139 Interventions. The session specifically interrogated the utility of section 139 interventions, the successes, and challenges in the execution of section 139 interventions, the prevalence of abuse of section 139 interventions for political reasons, areas of improvement, and opportunities to enhance the impact of section 139 and explored the Emfuleni Local Municipality as a case study.

Summary of discussion

The Constitution ascribes provinces with powers to intervene in local government. These steps are defined in section 139(1) of the Constitution as the issuing of the directive in terms of section 139(1)(a); the assumption of responsibility in terms of section 139(1)(b); and the dissolution of the council in terms of section 139(1)(c).

Current trends indicate that national and provincial government interventions in the local sphere of government have become more common in South Africa. Section 139 of the Constitution has been invoked approximately 196 times by provincial governments across municipalities since 1998 to date, with an average of 8 invocations of section 139 of the Constitution in municipalities across the country.

The fundamental issues that emerged from the discussion are summarised below.

2.3.1 The utility of section 139 Interventions

The panel stressed that interventions, as defined in section 139 of the Constitution should serve as a last resort against the consequences of institutional and financial failures and should only be invoked when all efforts to help the municipality have been exhausted and no significant improvements in the municipal performance are observed. Mr Amos Masondo opined that over the years the national and provincial governments have failed in their constitutional obligation under section 154(1) of the Constitution to support and strengthen the ability of municipalities to administer their affairs, exercise their powers, and perform their duties. Local government stakeholders tend to confuse the obligation of the national and provincial government to support municipalities under section 154 of the Constitution with the obligation to intervene in terms of section 139 of the Constitution. Interventions are necessitated by poor governance, financial mismanagement, and a poor lack of service delivery.

The panellists concurred that the interventions could have been avoided if effective early provincial warning systems were in place, leading to adequate monitoring, and support.

It was agreed that more needs to be done to strengthen oversight structures to extract accountability in a meaningful and beneficial manner within this sphere of government.

2.3.2 Challenges and successes in the execution of section 139 interventions

Challenges in implementing Section 139 interventions were identified and debated during this discussion.

National Council of Provinces (NCOP) indicated the following:

- There is no uniform procedure, with the necessary checks and balances when interventions are made by provinces. The procedures followed by provinces in executing interventions continue to differ significantly depending on how the province subjectively interprets Section 139 of the Constitution. The exercise has ranged from interventions that occur without prior directives and interventions that "relieve" council members of all their functions.
- Lack of knowledgeable personnel executing Section 139 interventions as provinces tend to appoint one person as an administrator without accompanying experts, based on the diagnosis of the challenges encountered at the municipality, where qualified financial or human resources experts are required. The administrator must rely on municipal personnel who are sceptical and very reluctant to cooperate with the administrator in conducting of Section 139 interventions.
- Resistance and obstructive tendencies by municipal councils and municipal staff to an extent of non-cooperation and illegal activities such as destroying records and giving illegal instructions to other municipal officials against the functions of the administrator.
- Lack of communication between local citizens and the municipalities often means that communities are not informed when Section 139 interventions are invoked, and particularly when their municipal council is about to be dissolved.

A robust debate on the effectiveness of these interventions was implored. It was argued that municipalities emerging from Section 139 interventions were in a worse state than before.

Mr Jones cited the Emfuleni Local Municipality as an example where interventions have failed. In 2018, the Gauteng Executive Council decided to conduct a section 139 intervention in the Emfuleni Local Municipality. The intervention by the provincial government in terms of 139 1(a) had no rehabilitative effect. The municipality is now in a weaker position with creditors surging to over R3 billion. Emfuleni was placed under Provincial Administration 139 1(b) more than two years ago and again had no rehabilitative effect. The amount owed to creditors rose to over R6 billion.

If not implemented properly, the interventions will damage notions of inter-sphere cooperation which are based on promoting friendly relationships and are inherently nurturing and supportive, by weakening a municipality's ability to manage its affairs.

2.3.3 Prevalence of abuse of section 139 interventions for political reasons

In certain circumstances, interventions have been politicised. The municipality of Overberg is an example where of the Municipal Council was perceived as a political tool to deal with the errant municipal council of the opposition party in that province.

2.3.4 Improvement and opportunities to enhance the impact of section 139 interventions

In response to gaps identified, the DCoG is currently developing the Intergovernmental Monitoring, Support, and Interventions Bill, 2022, which aims to standardise and normalise the conditions in the implementation of section 139 of the Constitution as a measure to normalise distressed municipalities. Opportunities to improve the impact of section 139 interventions were identified as follows:

- Advocacy interventions (training for municipal officials; new councillors, Mayors and speakers, and other political officials and communities).
- Implementation of findings and recommendations; Better and more efficient implementation of human rights obligations.
- Creation of forums for constructive interaction (IGR effectiveness).

A participant inquired during the discussion whether it was not possible to dissociate administrative from technical operations at local government, as technical decisions are made by decision-makers who do not have the appropriate technical qualifications. Another participant suggested revising the decentralisation model due to the inefficiency of decentralisation and going back to the centralisation model.

Key emerging issues and analysis

- It is difficult to recruit qualified personnel for local government as the budget for senior management vacancies does not match the salary range of the market, resulting in high staff turnover and a politicised working environment.
- Most enforcement measures in section 139 are inadequate unless reinforcements are provided for operations and interventions.
- The Provincial and National spheres of government should utilise more of section 154 of the Constitution and strengthen monitoring and support measures to municipalities.

3. REFLECTIONS BY HIS EXCELLENCY, THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

President Cyril Ramaphosa addressed the National Conference on Local Governance on 1 September 2022. In his speech, President Ramaphosa first highlighted the significance of the conference, and stated that the conference was an important initiative to deal with pertinent issues of accountability, service delivery, and human rights in the local government sphere across South Africa. The President stated that he anticipated the conference would enable the country to move past the prognosis of the issues to find solutions, and effective implementation of these solutions, and called upon delegates to come up with solutions and proposals that could be propagated across the local government spectrum in South Africa.

The President emphasised that the local government is one of the most important custodians of the socio-economic rights of all South Africans, which are guaranteed in

the country's Bill of Rights. In his address on service delivery, the President underscored that efficient and affordable delivery of public services does mark the distinction between living with dignity, as proclaimed in the Constitution, and living in misery and deprivation. He argued that people's quality of life, the prosperity of businesses, economic growth, and the guarantee of human dignity to the South African people depended on the work of local government to distribute basic services efficiently and equitably, education, water, sanitation, health, and electrification.

While acknowledging the devastating impact brought forth by systemic failures in local government, the President expressed concern about recent reports that revealed that about two-thirds of municipalities in the country were unable to deliver basic services including the inability to build, upgrade clinics and hospitals, bearing testimony to unsatisfactory and unclean audits at the local government level.

The President reflected on the failure in municipalities and identified contributory factors, including, non-adherence to legislative provisions, politicking, poor governance, lack of accountability, and "super" corruption that led to instability in municipalities – resulting in the erosion of service provision to the citizens. He specifically called this a "crisis," which threatens economic growth and investment, undermines the constitutional promise of human dignity, and threatens the post-apartheid era. Such is the case, he argued, because local government serves as a cardinal pillar of government as the former operates where people live, where businesses invest, and in a sphere where human rights need to be actualised.

Regarding the apparent increase in "protesting about service delivery," the President acknowledged that such protests are a barometer of public dissatisfaction with the lack of service delivery. The disruption of services to ordinary citizens, leading to civic protests. He noted a pattern in which public servants go on to protest for an increase in their wages while vandalising public infrastructure such as pipes; the disruption of services to ordinary citizens, leading to civic protests. He bemoaned such tendencies and categorically stated that no matter how big or small people's grievances, including the obvious unemployment rates, no one has the right to resort to arson, looting, violence, and/or damage public property.

Among other evident effects, the President pointed out that the failures in local governments were widening the trust gap between the government and citizens,

noting that, unless all the failures were remedied, the country ran the risk that the people would be disillusioned with democracy itself. The signs of disillusionment were already emerging, through the levels of voter apathy at the recent elections.

While local government was to blame, the President further noted that non-payment of services by residents and businesses also escalates the inefficiency of municipalities to provide services in the desired manner. In this regard, the President called on the need to address the non-payment problems while analysing the financing architecture of local government.

Consequently, the President expressed confidence that the conference would consider and present practical recommendations to help municipalities and their residents to entrench a culture of payment for services and ownership of public property among the citizens which will in turn eliminate cases of theft, and vandalism of public infrastructure and promote collaboration between the residents and their municipalities.

The President called on municipalities to be open and transparent about their commitments, to constantly engage and consult various stakeholders, and to communicate in a manner that is considerate of the local needs – extending this to the need for municipalities to develop and implement robust customer service and feedback management systems, plan and implement regular outreach programs with communities, and continuously work with local structures in a manner aimed at further developing the capacity of local structures.

The President reiterated the need to have all people who are deployed to municipalities recommit themselves to the South African Constitutional promise of human dignity, and the need to root out all those who indulge in corruption, particularly in the local government spaces.

Response to the President's Reflections

Ms Ntuli highlighted that the SAHRC's role is not only to hold the government accountable but to usher in the transformation of mindsets in a manner that approaches issues of poor service delivery as a violation of human rights. At the core

of the regression of local government are repeated practices that have become habitual. A culture of non-compliance, non-responsiveness, and corruption has established itself. Ms Ntuli noted that until consequence management is implemented and those responsible for non-delivery are held accountable for the consequences of their actions, there will be no progress.

Key emerging issues and analysis

- Many of the coalition governments that were formed after the 2016 local government elections became unstable. The municipal councils of some municipalities have been paralysed because of deadlocks in the council that made it difficult for the council to pass decisions, adopt budgets, and appoint office bearers and municipal managers. The inability of the council to make these important decisions often adversely affects the delivery of services to communities.¹⁸ There is need to further strengthen the framework for coalitions in local government.
- Only a few municipalities had clean audits, but people's lives in the municipalities do not match the results of the audits. In addition to financial audits, social audits should be introduced to assess whether people's lives have changed.

4. BREAKAWAY SESSIONS

Four breakaway sessions were held to discuss in-depth specific sub-themes and to present recommendations for solutions and approaches aimed at supporting the challenges faced in the local government sphere.

The recommendations that emerged from these sessions are summarised in Annexure A.

¹⁸A framework for coalition in local government, available at <https://dullahomarinstitute.org.za/multilevel-govt/publications/04112021-a-framework-for-coalitions-in-local-government-1.pdf> accessed on 3 November 2022.

4.1 SESSION 1: MUNICIPAL INFRASTRUCTURE

Facilitator:

- **Mr Lance Joel** – Acting Chief Executive Officer, South African Local Government Association

Panelists:

- **Mr Ntandazo Vimba** – Chief Executive Officer, Municipal Infrastructure Support Agent
- **Ms Refilwe Buthelezi** – President of the Engineering Council of South Africa (ECSA)
- **Mr Chucheka Mhlongo** – General Manager: Infrastructure Finance, Development Bank of Southern Africa (DBSA)
- **Mr Gundo Maswime** – Lecturer, University of Cape Town

Background

Municipalities not only face critical challenges in infrastructure maintenance and management, but available funds are also often not used to address this problem. For example, in the 2018/2018 fiscal year, only 4 municipalities (1.5%) spent their allocated infrastructure budgets, 88 municipalities spent 1% and 8% of their allocated budgets on repairs and maintenance, while 112 spent nothing. Currently, only about 2% of municipal budgets were spent on infrastructure maintenance, a big drop from the norm which is 8%. As a result, and more recently, there have been growing calls for a structured approach to infrastructure management across municipalities.

The Commission sought to discuss the direct impact of infrastructure on service delivery and human rights. Critical questions relate to budget spending and public capital spending decline; administrative capacity and governance in municipalities, and explorations on how to ensure the provision of relevant infrastructure.

Session overview and outcomes

This session was informed by the imperative need to address the direct impact of infrastructure on service delivery and human rights. Critical questions discussed related to the review of budget expenditure and public capital expenditure decline across municipalities. The role of administrative capacity, governance, and the state of infrastructure in municipalities. The provision of relevant infrastructure, especially water infrastructure.

Summary of discussions

Capacity for infrastructure development requires professional input at every stage of the project lifecycle. It also requires professional input during operation and maintenance. Investing in basic infrastructure can help to reduce inequality and poverty. Collectively, planning and service delivery must be approached together to ensure respect for the human rights of citizens' access to sustainable basic services. Infrastructure has increased enormously in recent years, but the demand for infrastructure remains significant. There are four major sources of funding capital for municipal infrastructure: government grants, public contributions and donations, internally generated funds, and loans. Contingent grant transfers have declined in recent years and this trend is expected to continue. Most municipalities do not qualify for loans due to a lack of, or a low revenue base. Revenues from services that municipalities are providing to consumers are significantly declining as citizens manage their consumption. However, a framework must be developed on how to extend credit to municipalities that do not have a revenue base.

The national treasury recently published a report on the capacity of the state and the professionalisation of public service. The report notes that the challenge is not the skills of the bureaucrats but the environment within which they operate, which works against their ability to optimise their talent.

The breakaway session on Municipal infrastructure highlighted four challenges faced by municipalities, namely: lack of leadership (politically and administratively), financial unsustainability, the lack of processes systems, and the lack of necessary

infrastructure to deliver services. The session focused on the inability of municipalities to maintain existing infrastructure, which influences the ability of local government to deliver services. Without infrastructure, the municipalities are not able to deliver the services.

There were fourteen suggestions proposed in the session, which have been detailed in Appendix 1.

4.2 SESSION 2: PROMOTION OF A SAFE AND HEALTHY ENVIRONMENT: CLIMATE CHANGE AND HUMAN RIGHTS

Facilitator

- **Dr Yvette Abrahams** – Director, San and Khoi Centre, University of Cape Town

Panellists:

- **Mr Jonas Ben Sibanyoni** – Commissioner of the South African Human Rights Commission
- **Mr Bobby Peek** – Commissioner: Presidential Expert Panel on Climate Change
- **Ms Leslé Jansen** – Chief Executive Officer, Resource Africa
- **Mr Lloyd Lotz** – Chief Director: Constitutional Development – Department of Justice and Constitutional Development
- **Ms Barbara Creecy** – Minister of Forestry and Fisheries and Environmental Affairs
- **Mr Charles Simane** – Researcher and Organiser, Cooperative and Policy Alternative Centre

Background

Section 24 of the Constitution provides for the right to a healthy and clean environment. The High Court has recently ruled that section 24(a) of the Constitution is immediately realisable, in certain circumstances, and that climate change and greenhouse gas

emissions impact on the right to a safe and healthy environment.¹⁹ Legislation and policies have been adopted to augment this right, such as the National Environmental Management Act, 107 of 1998, and the National Environmental Management: Waste Act, 59 of 2008, amongst others. Despite these legislative and policy prescripts, the SAHRC continues to receive complaints relating to sewerage spillages and pollution of strategic water resources. The Green and Blue Drop Reports highlight the poor state of water-related infrastructure.²⁰ The Green Drop report found that a total of 334, or 39% of municipal wastewater systems were identified to be in a critical state in 2021, compared with 248, or 29%, in 2013. This clearly exposes regression in the state of the wastewater systems. The SAHRC has also noted that access to waste removal services remains highly skewed in favour of affluent and urban communities, and at the expense of historically marginalised, poorer, and rural communities. The recent devastating floods in the KZN province are an indication that climate change will have the greatest impact at the local level and will affect the poor disproportionately. The local sphere of government should thus build the resilience necessary to adapt and respond to inevitable climate change variables and events.

Session overview and outcomes

The conversations generated in this session sought to unpack the role of the local sphere of government in addressing and resolving the climate and energy crisis. Mechanisms are available for reporting on national and international commitments, the role of local government in a just energy transition and the government's response to climate change, as well as identifying opportunities that exist for the private sector in collaboration with local government to usher a just transition.

Climate change is the single biggest health threat facing humanity, according to the World Health Organisation. An estimated 200 environmental human rights defenders die every year, and of those, about 50% are Indigenous people.²¹ Climate changes

¹⁹ Trustees for the time being of *Groundwork Trust and Another v Minister of Environmental Affairs and Others* (39724/2019) [2022] ZAGPPHC 208 (18 March 2022).

²⁰ Green Drop National Report 2022; Blue Drop Progress Report 2022.

²¹ Last Line of Defence: The industries causing the climate crisis and attacks against land and environmental defenders 2021 available at <https://www.ohchr.org/en/stories/2022/03/environmental-human-rights-defenders-must-be-heard-and-protected>, accessed on 12 October 2022.

threaten to undo the last 50 years of progress in development, global health, and poverty reduction, and to further widen existing health inequalities between and within populations. It compounds the existing burden of disease by exacerbating barriers to accessing health services, and affects the social and environmental determinants of health, clean air, safe drinking water, sufficient food, and secure shelter. The dangers posed by climate change are not limited to the above-listed issues.

Climate change is, moreover, leading to death and illness from increasingly frequent extreme weather events such as heat waves, storms, and floods, the disruption of food systems, increases in food, water, and vector-borne diseases, and mental health issues. Climate change undermines the social determinants for good health, such as livelihoods, equality, access to health care, and social support structures. These effects of climate change disproportionately affect the most vulnerable and disadvantaged, including women, children, ethnic minorities, poor communities, migrants or displaced persons, older populations, and those with underlying health conditions.

The United Nations declares health as an environmental human right. The right to an environment that is not harmful to our health or well-being and to have our environment protected for the benefit of present and future generations through reasonable legislative and other measures. All constitutional obligations must be performed diligently and without delay, it is imperative that it should be done. The state, which includes local government, must respect, protect, and fulfil the constitutional rights of communities. The obligation to respect means that local government must refrain from interfering with the existing enjoyment of rights, their obligation to protect rights through the adoption of legislation, policies, programmes, and bylaws, the control, and regulation of products and services relating to the particular rights, compliance with certain standards for those providing the services or products that impact on a particular right, the prevention of harmful practices, the monitoring and regulation of activities and actions of any third party, in the Bill of Rights.

The recommendations made during the breakaway session have been set out in Appendix 2.

4.3 SESSION 3: COMMUNITY INVOLVEMENT IN MATTERS OF LOCAL GOVERNMENT

Facilitator

- **Mr Neeshan Balton** – Director of Ahmed Kathrada Foundation

Panellist:

- **Ms Tracy-Lynn Field** – Professor, University of Witwatersrand
- **Mr Mathole Serofo Motshekga** – Co-Chairperson of Constitutional Review Committee
- **Ms Henrike Saunders** – Researcher, South African Research Chair in Cities, Law, and Environmental Sustainability (CLES)
- **Ms Premilla Deonath** – Chairperson, Merewest Community Foundation
- **Ms Olerato Manyapelolo** – Researcher

Background

The Constitution obliges the sphere of local government to encourage the involvement of communities and community organisations in local government, thus highlighting the importance of community participation as part of participatory democracy. The notion of participatory democracy was outlined in the *Matatiele*²² and *Doctors for Life* cases.²³

Community participation is crucial to the success of municipalities and should serve to strengthen and empower communities. Importantly, community confidence in participation can only gain currency if the value of participating can be seen through tangible outcomes in response to reasonable demands being met over time. It is necessary for community organisations to improve their understanding of the local government system and how to engage with municipalities. Communities should take a share of responsibility for not using the space for community participation effectively or at all.

²² *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 (5) SA 47 (CC).

²³ *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC).

Session overview and outcomes

This session sought to explore the protest action: effects and impact, the civil society role in action research methodologies, public interest litigation as recourse for communities, and the best practice examples of positive, developmental relations between municipalities and communities.

Summary of discussion

A key aspect of the new local government system is the active engagement of communities in the planning, service delivery, and performance management of municipalities of which they are an integral part. Community protests are a result of rage and the passion for disempowerment the communities feel by being held hostage by these centralised infrastructure-heavy systems for water, sanitation, and electricity.

Local government faces the challenging task of funding the infrastructure and services needed to meet the basic needs of a growing population. The funding model for basic service provision is not working optimally.²⁴ Municipalities can apply for the Municipal Infrastructure Grant (MIG) to improve infrastructure, build new and refurbish existing infrastructure to optimal levels. Municipalities are expected to fund additional infrastructure developments through revenue generation. Most municipalities in impoverished communities cannot generate sufficient revenue.

The cultural problem within the municipal space contributes to distrust, envy, hatred and alienation. It is important to create spaces that promote empathy.

Public officials should be held accountable to ensure the effectiveness of service delivery and performance management in local governments. There is a growing consensus globally that young people are underrepresented and excluded from policymaking processes in local governments. The government should include youth in policymaking processes and political implementation.

²⁴ National Infrastructure Plan 2050 (NIP 2050) PHASE I, available at https://www.gov.za/sites/default/files/gcis_document/202203/46033gon1874.pdf, accessed on 3 November 2022.

The recommendations made during the breakaway session have been set out in Appendix 3.

4.4 SESSION 4: STRENGTHENING THE LOCAL SPHERE OF GOVERNMENT TO DELIVER ON MUNICIPAL BASIC SERVICES

Facilitator:

- **Dr Thina Nzo** – Public Affairs Research Institute

Panellist:

- **Ms Mmamoloko Kubayi** – Minister of Human Settlements
- **Mr David Mahlobo** – Deputy Minister of Water and Sanitation
- **Dr Trevor Ngwane** – Senior lecturer and Director: Centre for Sociological Research and Practice, University of Johannesburg
- **Dr Mandla Msibi** – Group Executive of Innovation and Impact Water Research Commission
- **Mr Anthony Wyngaard** – Northern Cape Acting Provincial Manager of the South African Human Rights Commission

Session overview and outcomes

The session focused on various challenges such as rapid urbanisation, population growth, and increasing demand for housing and basic services, water, and sanitation. It sought to evaluate the status of achievement of National Development Programme (NDP) and Sustainable Development Goals (SDGs) goals and aspirations towards 2030. The status of water boards: governance, maladministration, and consequence management, their rights, and responsibilities was also explored.

Summary of discussion

Rural-urban migration creates pressure on the cities, leading to informal settlements. The developed Upgrading of Informal Settlement Programme (UISP) facilitates the structured upgrading of informal settlements by assessing areas in which the informal settlement has been established to ensure that the areas are suitable for human settlement. Temporary services are provided until the municipality declares it a formal area for settlement, after which permanent services are offered such as park infrastructure, water, sanitation, and electricity.

Water boards play a significant role in providing municipalities with access to treated or untreated water. There is an enormous impact if municipalities are in default, as it affects the ability of the water boards to supply services. The Water Services Act makes a provision that water boards can restrict or discontinue the supply of water, which impacts the constitutional right for water provision. This is predicted to be a persistent problem as communities expand, especially if municipalities do not have accurate statistics for planning purposes. Municipalities are failing to account for water utilisation as other communities do not have water meters. Though infrastructure has been expanded, there are water losses from aging infrastructure due to the lack of budget for infrastructure maintenance. There was a robust debate that the utilisation of water should be measured not solely for the purpose to bill the community but for the municipalities to ensure that the communities have enough water supply in line with NDP's commitment to ensure that all South Africans have access to clean water by 2030. However, the trend towards privatisation rather than prioritising access to municipal water is detrimental to South Africa's commitment to SDG Goal 6 for clean water and sanitation for all.

Privatisation of the provision of water and electricity potentially violates the basic human right of access to water and other rights associated therefore to the services and may undermine the NDP. However, what remains crucial is the commitment to SDGs. It was dispelled as the cost of providing the service needs to be covered at affordable rates. The government however offers free basic water, which is limited to six kilolitres/six thousand litres per family per month, to support the poor. Another issue that emerged was the security of the availability of water based on the growth of the population and climate change. There are several projects in progress across the

country that address the issue of water supply and hydro, which are expected to stimulate agriculture, including projects to build wastewater treatment plants as there is a large quantum of wastewater that can be recycled.

The assurance of water supply results in customer satisfaction and as a result the ability to collect revenue. Investment in the maintenance of infrastructure is currently the largest project in urban and rural communities. As a result of the infrastructure failure, the water quality has deteriorated, due to sewer spillage. The capacity to implement has been identified as an issue as a number of the projects are not finished on time.

The water infrastructure is funded by the fiscal budget, where billions of rands have been invested over recent years. Inadequate public funding poses a challenge to execute on the demand, driven by population and economic growth and a decision has been made to partner with the private sector. Water boards are currently owed R16 billion and this will potentially impact service delivery in the future.

The digitalisation platform for human settlements will allow tracking of the application status for housing beneficiaries. The system will assist in addressing issues of manipulation, and nepotism, and improve accountability and transparency, in the provision of human settlements.

Unlawful occupation of land denies the Department of Human Settlement an opportunity to plan, budget, and provide quality services. There are circumstances wherein the community resists despite being informed of the imminent dangers. Unfortunately, this triggers the department of human settlements to indemnify itself from the unlawful settlement invasions by requesting the inhabitants to sign forms in the case investigated against the department instituted through the SAHRC. The Department of Water and Sanitation has begun to move towards decentralising or delegating water boards back to municipalities as an effort to improve capacity.

The recommendations made during the breakaway session have been summarised in Appendix 4.

5. WAY FORWARD

The following were suggested as a way forward:

i. Professionalising Local Government (Educational Qualification)

A review of the recruitment selection process at local government, wherein minimum educational qualification for public office holders (mayors and councillors) is instituted. Inevitably such an approach may have implications for democratic participation as other persons may be barred from contesting for certain offices. However, the lack of minimum qualifications for public officials will mean that critical public officials in decision-making positions cannot meaningfully perform their duties. The introduction of minimum educational requirements would not be unique to South Africa as other jurisdictions have similar requirements for public officials. For example, in the United States of America the educational requirements needed to become mayor vary by city and are generally determined by the state in which the city is located, cities require that the mayoral candidate have at least a high school diploma, while some cities require mayoral candidates to have a college degree.²⁵ Without such a requirement, problems such as skills and maladministration are unlikely to be overcome.

ii. Review Finances

Budgeting models and practice require review. In this regard, the budget increment must focus on the proper functioning of a municipality, rather than promoting the idea of an automatic increment in budget, based on the assumption that more resources are needed at the local government level. However, three issues arose in the context of financial resources. One was to avoid a one-size fits all approach, the second was integrated planning and budgeting, and the third was a review of the opportunities to

²⁵ *The Educational Requirements for Becoming a Mayor*, available at <http://leffingwellformayor.com/the-educational-requirements-for-becoming-a-mayor/> accessed on 3 November 2022.

unlock funding opportunities through loan agreements and performance-linked increases in grants. The finances and financing of local government budget formulas and allocation need to be changed. That is, the funding model of equitable share has to be reviewed.

iii. Community Participation

There is a need to strengthen and encourage the citizenry to take an active role in the affairs and governance of their local government, especially during IDP's consultations and *imbizos*. Such participation will help address community frustrations that sometimes arise due to a lack of proper information filtering to the general population, and increase citizen confidence, accountability, and cooperation.

iv. The Role of Academics and Researchers

A common sentiment shared was that a wealth of resources exists in the form of academia and research expertise. These resources however ought to adopt a practical orientation and be part of the building of solutions beyond the production of academic material.

v. Empower communities through Community Media

Community media also emerged as a powerful vehicle to communicate and empower communities more actively. This platform has historically played a role in making information accessible to communities and may be instrumental in engaging communities through familiarisation with the IDPs. The use of local languages in community media will assist local governments in engaging with communities in languages that they understand about the IDPs.

vi. Dealing with Climate Change

The issue of climate change and its consequences has caught up with the world and with us as a country. The recent floods in KZN, the Eastern Cape, and the North-West demonstrated how the sphere of local government is generally ill-equipped and incapacitated to deal with a multitude of human rights impacts that are triggered by disaster, particularly in the context of climate change.

vii. Oversight over and support to the sphere of local government

An issue that came out strongly was the need for consequence management for poor performance within the sphere of local government to ensure, in the words of the President, "that those who get involved in maleficence and corruption are rooted out". It was further suggested that under the principles of cooperative government, national and provincial support to municipalities in terms of section 154 of the Constitution should be the measure of first resort. It was also recommended that section 139 interventions should be depoliticised. Thus, the Intergovernmental Monitoring, Support, and Interventions Bill, 2022, should be fast-tracked so as to ensure clear guidelines and processes in the invocation of sections 139 and 154 of the Constitution.

6. CONCLUSION

The two-day national conference, convened by the SAHRC and CRL Rights Commission on Local Government Accountability, Service Delivery, and Human Rights, benefited from the valuable and rich inputs presented by strategically high-ranking government leaders, organisations, departments, academics, and chapter 9 institutions. The multi-sectoral and participatory approach of the conference provided participants with an important forum and opportunity to reflect collectively on the issues, factors, gaps, and challenges that have led to poor service delivery at the local government level. Service delivery protests that continue to plague municipalities are an indicator that focused attention on the local sphere of government is required. Thus, concrete, practical, implementable solutions to the challenges preventing this sphere

of government from playing a crucial role in service delivery is required. The sphere of local government is at the coalface of service delivery and must not be allowed to fail, for if it fails, the transformative and developmental vision of the Constitution will continue to remain a pipe dream for many, particularly the most vulnerable and marginalised members of society.

Therefore, through convening the conference, the SAHRC sought to reinforce the realisation of socio-economic rights and provide a platform for greater engagement on critical issues at local government.

Annexure A

SUMMARY OF / PROPOSALS FROM BREAKAWAY SESSIONS	
Break away Session 1: Municipal Infrastructure	
Appendix 1	
1.	There is a need to develop a shared understanding of the various sources of funding available for infrastructure development in the form of grants, donor funding, and debt facilities.
2.	There is an excess of seventy-five reporting requirements that municipalities must comply with deriving from different legislations and policies. It is proposed that these reporting requirements be reviewed and reduced and where possible streamlined.
3.	More opportunities should be created to learn from other municipalities on the continent, in the region, and globally.
4.	Plans set out by municipalities should be implemented.
5.	Time should be spent on raising awareness and educating communities about the real implications of destruction to public property and the disruption of service delivery-related infrastructure.
6.	Regulations should be introduced requiring engineers working for municipalities to be registered with a professional body and for the registration to be maintained for the duration of the employment. Failure to maintain the registration status should result in the termination of the employment contract. Engineers in municipalities should ideally be actively involved in the planning phase.
7.	Only suitably qualified individuals should conduct work related to engineering services in municipalities, to avoid compromise and ensure consequence management.

8.	The type, nature, and quality of the infrastructure developed must be consistent and should not differ depending on the beneficiary.
9.	The funding formulas need to be revised and responsive to demands on the ground.
10.	There is a need to reduce the red tape and bureaucratic processes to enable municipalities to address urgent infrastructure issues more quickly.
11.	Separate procurement on infrastructure from ordinary procurement and consider infrastructure procurement as an engineering function.
12.	Municipalities need to move away from the silo mentality and adopt a more inclusive approach.
13.	Facilitate planning at the local government level: plan collaboratively, clearly define roles and responsibilities, and allow those allocated with responsibilities to execute tasks.
14.	Reflect and learn lessons from infrastructure plans and processes in the build-up to the 2010 hosting of the World Cup.
Break away Session 2: Promotion of a Safe and Healthy Environment: Climate Change and Human Rights Appendix 2	
1.	There is a need to promote and generate political will around the promotion of environmental rights.
2.	SAHRC must exercise its full mandate concerning environmental rights.
3.	The state must safeguard South Africa's economic independence by developing strategies that resist global resource domination
4.	Ensure collective rights are realised.

5.	There is a need for climate justice training for public officials, particularly at the local government level, and communities.
6.	Endogenous Development Framework: there is a need to ensure that Indigenous communities are heard on economic, social, and spiritual solutions.
7.	The debt of developing nations must be written off and the money allocated to debt repayment must be used to protect the environment.
8.	Global dominance must be replaced with economic independence.
9.	SAHRC must ensure its commitment to food security and associated threats.
10.	There must be support and protection for all activists, especially human rights defenders.
11.	Activists need to manage their time more strategically to ensure resources are used optimally.
12.	Integrated development plans should work for communities and should increasingly be used as a tool for sustainable development and a just transition, particularly towards societal public goods and renewable production.
13.	Climate change training should be provided to local government authorities and communities on climate change and what it entails.
14.	There is a need to develop alternatives to mass electric transport that are safe, cost-effective, and accessible.
15.	A transition is needed towards sustainable agriculture that conserves water, uses zero fossil fuels, and provides healthy food for families.
<p>Breakaway Session 3: The Role of Communities in holding Local Government Accountable.</p> <p>Appendix 3</p>	

1.	There is a need for civic education nationwide for communities and public officials to ensure effective accountability.
2.	Public officials should be held accountable to ensure the effectiveness of service delivery and performance management in local governments.
3.	Government should involve youth in policy design and implementation.
4.	Complexities of accountability: Ward-elected councillors must clearly define their roles and responsibilities.
5.	Tools to hold local government accountable to communities include litigation and protest actions, which often manifest as staged anger and may elicit a response from the municipality, but not always a positive one.
6.	Other tools include partnerships with municipalities such as the Merebank case study and applaud officials that perform their duties.
7.	Poor communication hinders service delivery and accountability work.
8.	Introduce a monitoring project in Cape and Gauteng that will monitor the provision of services in informal settlements and will be published weekly. A public tool to shame and force action by municipalities. Potential to roll out in other areas.
9.	A case studies from Overstrand, Kroonstad, and others to be used to develop best practices.
10.	There is a need for a better quality of councillors who are not hampered by party politics.
11.	Revisit the role of ward committees.
12.	Monitor and revive local development units in municipalities.

13.	The appointment of municipal managers should be made public.
14.	There should be no recall mechanism for ward councillors.
15.	A framework for local government accountability is needed.
16.	SAHRC to bring together a collective of practitioners of best practices from municipalities and communities and share these insights.
17.	Social audits are a necessary tool to hold local governments accountable.
18.	Small towns initiative in the Cape is a good example of community. Municipality partnerships that foster accountability.
Breakaway Session 4: Strengthening the Local Sphere of Government to Deliver on Municipal Basic Services (i.e., Human Settlements, Water, and Sanitation) Appendix 4	
1.	The Ministry of Human Settlements should plan for the capacity needs and the water and sanitation requirements to support municipalities, especially given the increase in informal settlements.
2.	Once the new water infrastructure agency is in place, sufficient monitoring needs to be conducted.
3.	The new digital human settlement platform is expected to be completed by the end of the year. The system tracks the housing recipient's application status.
4.	Rural economic development through agriculture is vital as it boosts the economy in rural areas and reduces rural-urban migration which puts pressure on urban infrastructure.

5.	In cases where people are occupying land illegally, the Human Rights Commission can help the ministry by educating communities about the dangers that ensue.
6.	Problems of community destruction of infrastructure need to be addressed as it regresses the progress made in achieving the progressive realisation of access to water and other services.
7.	Government must use innovative technology to address water, sanitation, and housing problems