**AFRIFORUM: SUBMISSION ON 2015 DIVISION OF REVENUE BILL: APRIL 2015**

1. **PURPOSE OF SUBMISSION**

The purpose of this submission is to request the Select Committee on Appropriations to ensure that additional obligations are introduced on municipalities relating to budget practices and implementation and accounting for public expenditure. This will include amendments to Sections 18 and 19 of the 2015 Division of Revenue Bill.

It is the wish of AfriForum to make a further submission to the Portfolio Committee at its session scheduled for 14 April 2015.

1. **AFRIFORUM NPC**

Afriforum NPC is a non-profit company which is registered as such in terms of the Companies Act, 2008, with its registered office at Afriforum Building, corner of Union and DF Malan Streets, Kloofsig, Centurion, Gauteng.

The principal business of Afriforum NPC is the advancement and advocacy of democracy in the Republic of South Africa by stimulating civil society in participation of constitutional rights in South Africa. It is actively involved, in the promotion of democracy, the advancement of and respect for the rule of law and the principle of legality as the foundation for constitutional democracy in South Africa.

Afriforum is a community organisation as envisaged in Section 152(1) e of the Constitution and is involved in matters of Local Government and has a membership of 130 000 with a 125 branches nationwide.

Afriforum makes this submission to the Select Committee on Appropriations as a community organisation involved in matters of local government on behalf of its members who form part of the local community of municipalities nationwide and in the public interest.

1. **POINT OF DEPARTURE**

AfriForum acknowledges the supremacy of the Constitution and the rule of law and has taken due cognisance of the following constitutional principles and provisions in national legislation in preparing this submission:

* 1. The Bill of Rights[[1]](#footnote-1);
	2. Administrative action that is lawful, reasonable and procedurally fair[[2]](#footnote-2)
	3. Co-operative governance[[3]](#footnote-3);
	4. Powers of the National Assembly and the obligation to provide for mechanisms to maintain oversight of any organ of state including municipalities[[4]](#footnote-4).
	5. The status of municipalities and the prohibition on national or provincial governments of compromising or impeding a municipality's ability or right to exercise its powers or perform its functions, which powers and functions are limited to those as contained in Schedules 4B and 5B of the Constitution and those assigned to municipalities in terms of funded mandates[[5]](#footnote-5);
	6. The objects[[6]](#footnote-6) of local government with focus on:
		1. The provision of democratic and accountable government for local communities;
		2. Ensuring the provision of services to communities in a sustainable manner;
		3. The promotion of social and economic development;
		4. The promotion a safe and healthy environment;
		5. The encouragement of communities and community organisations to become involved in the matters of local government such as
			1. The establishment of official websites[[7]](#footnote-7);
			2. The publishing of prescribed information on the official website[[8]](#footnote-8); and
			3. The placement of such prescribed documents within 5 days after it became public on the official website[[9]](#footnote-9);
	7. The developmental duties of municipalities[[10]](#footnote-10);
	8. Municipalities in co-operative government[[11]](#footnote-11);
	9. Powers and functions of municipalities limited to those as contained in Schedules 4B and 5B of the Constitution and those assigned to municipalities in terms of funded mandates[[12]](#footnote-12);
	10. The publication of municipal by-laws, the enforcement thereof only after publication and the accessibility thereof to the public[[13]](#footnote-13);
	11. The basic values and principles governing public administration[[14]](#footnote-14) with focus on:
		1. A high standard of professional ethics must be promoted and maintained;
		2. Efficient, economic and effective use of resources must be promoted;
		3. Public administration must be development-oriented;
		4. Services must be provided impartially, fairly, equitably and without bias;
		5. People's needs must be responded to, and the public must be encouraged to participate in policy-making;
		6. Public administration must be accountable;
		7. Transparency must be fostered by providing the public with timely, accessible and accurate information; and
		8. Good human-resource management and career-development practices, to maximise human potential, must be cultivated;
	12. Equitable shares and allocations of revenue[[15]](#footnote-15);
	13. National, provincial and municipal budgets with focus on municipal budgets and budgetary processes which must promote[[16]](#footnote-16):
		1. Transparency;
		2. Accountability; and
		3. The effective financial management of the economy, debt and the public sector;
	14. Treasury control[[17]](#footnote-17) with focus on:
		1. The establishment of the National Treasury; and
		2. The right to withhold transfers to municipalities in terms of national legislation should legislated obligations not be met;
	15. Municipal fiscal powers and functions[[18]](#footnote-18);
	16. The diligent performance of constitutional obligations[[19]](#footnote-19);
	17. The legislated obligation of municipalities to develop a culture of municipal governance that complements formal representative government with a system of participatory governance[[20]](#footnote-20);
	18. The legislated obligation to secure sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities[[21]](#footnote-21) to:
		1. ensure transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities and municipal entities; and
		2. ensure due and proper management of municipal revenues, expenditures, assets and liabilities and the handling of their financial dealings; and finally
	19. The status[[22]](#footnote-22) of a municipal Integrated Development Plan(IDP) as the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality and which:
		1. Binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails; and
	20. Binds all other persons to the extent that those parts of the integrated development plan that impose duties or affect the rights of those persons have been passed as a by-law.
1. **CRITICAL ANALYSES OF MUNICIPAL PERFORMANCE**

AfriForum commissioned desk-type critical analyses of constitutional and legislative compliance of 21 local municipalities[[23]](#footnote-23) during the period June 2013 to date taking the following into account:

* Latest reviewed Integrated Development Plan (IDP);
* Status of the official website;
* Various performance agreements;
* Indigent Policy;
* Tariff Policy and by-laws:
* Property Rates Policy and by-laws;
* Credit Control and Debt Collection Policy; and
* Latest Annual Report including the Annual Financial Statements and the Auditor General’s report.
	1. **INTEGRATED DEVELOPMENT PLANS (IDP)**

It was found that the text of the majority of IDP’s resembled that of an election manifesto rather than being a bankable business plan. Instead of dealing with the sub-regions within a municipality individually, a tendency was observed of providing general totals which makes it difficult to determine where the real needs exist. The informative and graphic presentation by the Oudtshoorn IDP sets an example to be followed by other municipalities.

It was noted that in some instances the peremptory “SWOT” analysis as managerial tool was misunderstood whereby the “strong points” and “weak points” were regarded as the status quo and the “opportunities” and “threats” were regarded as the ideal situation. It is common managerial knowledge that the “strong points” and “weak points” refer to the internal environment of a municipality and the “opportunities” and “threats” to the external environment. Please refer to ANNEXURE 2 for an extract in respect of Cederberg Local Municipality.

It is impossible to reconcile “strong points” identified such as:

* *“Development orientated political and administrative leadership; and*
* *Political stability, no coalitions and party link to National Government*”;-

with a “weak point” such as *“New councillors and senior managers, poor organisational memory”.*

In support of the “Back-to-Basics” programme of COGTA, municipalities should endeavour to rediscover the IDP and to give effect thereto.

* + 1. **ORGANOGRAMS**

Regulation 1(a) of the Local Government: Municipal Planning and Performance Management Regulations peremptorily requires an institutional framework, which must include an organogram, required for:

* the implementation of the integrated development plan; and
* addressing the municipality's internal transformation needs, as informed by the strategies and programmes set out in the integrated development plan**.**

It was found that in the majority of analyses, that the organograms were out-dated. In addition, a percentage of up to 30% of vacancies were carried whereby the rates and tax paying public was required to pay for positions which would not be filled and thereby contributing to local inflation.

In regulations[[24]](#footnote-24) promulgated on 17 January 2014, municipal managers were required to prepare new organograms before 16 January 2015 for approval by municipal councils. To date no such revised organograms were forthcoming.

* + 1. **FINANCIAL PLAN AND STRATEGIES**

Regulation 2(3) of the Local Government: Municipal Planning and Performance Management Regulations peremptorily requires a financial plan which must at least:

* include the budget projection for at least the next three years as required by Section 26(h) of the Municipal Systems Act;
* indicate the financial resources that are available for capital project developments and operational expenditure; and
* include a financial strategy that defines sound financial management and expenditure control, as well as ways and means of increasing revenues and external funding for the municipality and its development priorities and objectives, which strategy may address the following:
	+ Revenue raising strategies;
	+ asset management strategies;
	+ financial management strategies;
	+ capital financing strategies;
	+ operational financing strategies; and
	+ strategies that would enhance cost-effectiveness.

Very few of the IDP’s of the local municipalities analysed contained any of the financial strategies listed above. It is important to note that the financial plan forms the basis for the municipality’s budget and must be read in conjunction with Chapter 4 of the Municipal Finance Management Act (Act 56 of 2003)

* + 1. **KEY PERFORMANCE INDICATORS**

Regulation 10 of the Local Government: Municipal Planning and Performance Management Regulations deals with key performance indicators. Very few of the IDP’s of the local municipalities analysed contained qualitative information relating to:

* Exact number of households receiving free basic services;
* Financial viability ratios relating to:
	+ debt coverage;
	+ outstanding service debtors to revenue
	+ cost coverage.
		1. **COMMUNITY PARTICIPATION IN RESPECT OF INTEGRATED DEVELOPMENT PLANNING AND PERFORMANCE MANAGEMENT**

Regulation 15 of the Local Government: Municipal Planning and Performance Management Regulations deals with community participation and the establishment of a municipal wide IDP Forum. In terms of Regulation 15(2), a municipality is obliged to:

* convene regular meetings of the forum to:
* discuss the process to be followed in drafting the integrated development plan;
* consult on the content of the integrated development plan;
* monitor the implementation of the integrated development plan;
* discuss the development, implementation and review of the municipality's performance management system; and
* monitor the municipality's performance in relation to the key performance indicators and performance targets set by the municipality.

The municipality must allow members of the forum at least 14 days before any meeting of the forum to consult their respective constituencies on the matters that will be discussed at such a meeting. In addition, a municipality must afford the local community at least 21 days to comment on the final draft of its integrated development plan before the plan is submitted to the council for adoption.

It is sad to report that with the majority of municipalities analysed, that there is an inability to develop a culture of municipal governance that complements formal representative government with a system of participatory governance[[25]](#footnote-25) . This inability has led to at least three court cases[[26]](#footnote-26) where the relevant courts declared that:

* *The respondent (municipality) failed to comply with its constitutional and statutory obligations to ensure meaningful and effective public participation in the preparation and adoption of its annual budget for the relevant year; and*
* *In the future the respondent is obliged to comply, inter alia, with the provisions of the Local Government; Municipal Systems Act 32 of 2000 and the Local Government; Municipal Finance Management Act 56 of 2003 when it prepares and tables an annual budget for consideration and adoption by the municipal council of the respondent*.

It has been established that in the case of Nama Khoi, Cederberg, Mkhondo and Thaba Cheu local municipalities no IDP Forum was active nor did any public participation take place with the preparation of the 2015/16 reviewed IDP and financial plan as prescribed.

* 1. **OFFICIAL WEBSITE**

The official website is one of the tools available to municipalities to encourage the constitutional imperative of community involvement in the affairs of municipalities and contribute with policy making. Attached as ANNEXURE 3.1 to 3.2 are summaries of (non)compliance in this regard by Ga-Segonyana and Cederberg LM’s.

* + 1. In respect of the Nama Khoi LM, the following information was displayed on 6 April 2015 at 16:02 on the official website <http://www.namakhoi.gov.za/> :

“Error establishing a database connection”

* + 1. It was established that the Tswaing Local Municipality in North West Province does not have an official website despite the legislative requirement being obligatory since 1 August 2004[[27]](#footnote-27). This neglect of oversight for almost 11 years by the North West Provincial Legislature needs investigation.
	1. **FREE BASIC SERVICE TO INDIGENTS**
		1. **INTRODUCTION**

Free basic services to indigents are based on the following:

* 6 kl of free water per household per month;
* 50 kWh of free electricity per household per month;
* Free sewage and refuse removal services;
* The necessary rebates in respect of assessment rates.

National Treasury foots the bill in respect of water, sewage, electricity and refuse removal based on the figures supplied by STATSA on households earning less than R 2 300 per month. Such households are required to register as indigents and the cost of the services are based on the "municipal base tariff"[[28]](#footnote-28) consisting of:

* bulk purchasing costs in respect of water and electricity reticulation services, and other municipal services;
* overhead, operation and maintenance costs;
* capital costs; and

excluding the reasonable rate of return for that municipal service.

* + 1. **SITUATION AT MKHONDO LM: LIMPOPO**

At present the amount paid by National Treasury as part of DORA funding per household is estimated at R 185 per month. According to STATSA, Mkhondo LM had a total number of 37 433 households made up as follows:

* Urban 18 729;
* Rural 18 705:-

of which 25 820 or 68% of the total households were indigent. Yet Mkhondo only had 350 households[[29]](#footnote-29) registered as indigents.

If it is assumed that 68% of the urban households are indigents as the municipality is not rendering any services in the rural areas, it would mean that some 12 735 households would qualify as indigents which would mean that the amount forthcoming from National Treasury could amount to R 28 271 700 per annum to pay for these services. In reality, the balance of the 12 380 of the potential number of indigent households were classified as being able to pay for services and included with the rest on the non-indigent households which resulted in Mkhondo accumulating a deficit in respect of uncollected services fees of R 16 696 736 in respect of 2013/14. In addition, there was an electrical distribution loss of 31% amounting to R 27 252 134 resulting in a total loss of R 43,9 million. According to the 2014 DORA[[30]](#footnote-30), Mkhondo received an equitable share of R 127 313 000 in respect of 2014/15.

* + 1. **SITUATION AT NAMA KHOI LM: NORTHERN CAPE**

According to the 2014 DORA, Nama Khoi LM (NKLM) received an amount of R 35 295 000 as equitable share. The total number of households amounted to 13 193 of which 12 010 were urban households. With an indigent percentage of 49,4, it means that some 5 932 households qualified for indigent benefits. According to the 2013/14 Annual Report, an amount of R 7 693 254 was outstanding in respect debt older than 90 days and provision was also made for an amount of R 6 724 030 in respect of bad debts. The number of registered indigents in respect of NKLM could not be obtained as Pages 59 to 81 of the 2013/14 Annual Report dealing with the matter according to the index, was missing and did not form part of the report. Despite these 22 pages being omitted from the 2013/14 Annual Report, the NKLM in exercising its oversight function adopted the incomplete 2013/14 Annual Report on 31 March 2015.

* + 1. **ABUSE OF EQUITABLE SHARE FUNDING IN RESPECT OF FREE BASIC SERVICES**

AfriForum has noted the contents under the heading of “Budgeting for revenue foregone and free basic services to indigents” as contained in National Treasury Circular 74[[31]](#footnote-31) and wishes to submit that abuse is being made of this “loophole” to abuse funding earmarked for free basic service to indigents by not giving any attention to registering poor households. In addition, services fees are increased to make up the artificial short fall in respect of trading the accounts in respect of water, electricity, sewage and refuse removal and thereby placing an additional financial burden on existing payers of services.

It is also submitted that these funds are being used to fund luxuries that are not in the public interest such as expensive mayoral vehicles, luxurious accommodation during meetings and conferences, oversees visits and overpopulated staff establishments with political advisors[[32]](#footnote-32) and mayoral representatives in wards held by opposition parties[[33]](#footnote-33) to “*show that the mayor has a face in each ward*”.

* 1. **POLICIES AND BY-LAWS**
		1. **OBLIGATORY ADOPTION OF POLICIES AND BY-LAWS**

Section 35(1)(c) of the Municipal Systems Act provides that where a municipal IDP imposes duties or affect the right of persons, that a by-law in that regard should be passed. In respect of the determination of tariffs[[34]](#footnote-34), a by-law[[35]](#footnote-35) to give effect thereto should also be adopted. In respect of the debt collection responsibility of a municipality, a policy[[36]](#footnote-36) is required and a by-law[[37]](#footnote-37) to give effect thereto. Likewise in the case of assessment rates, a policy[[38]](#footnote-38) as well as a by-law[[39]](#footnote-39) to give effect thereto is also mandatory.

* + 1. **CONFUSION BETWEEN POLICIES AND BY-LAWS**

It would appear that there is confusion between the contents of a policy and that of the by-law to give effect thereto. The constitutionality of the majority of by-laws perused is questioned as it only contains references to give effect to the policy. Some policies can be changed in accordance with delegated powers whilst the Constitution is quite clear that the adoption of by-laws is reserved[[40]](#footnote-40) for the full municipal council. In addition, the procedures as prescribed in Section 162 of the Constitution read together with the provisions of Sections 11 to 14 of the Municipal Systems Act must be followed.

This aspect has also been addressed in the Constitutional Court judgement in *Arun Property Development (Pty) Ltd v City of Cape Town (CCt 78/14) [2014] ZACC 37 (15 December 2014).*

The general inability of municipalities to collect outstanding service charges and assessment rates can be ascribed to the fact that the by-laws are not enforceable and would not pass a constitutional challenge.

Policies should be in a similar format as white papers, however, in practise it is a regurgitation of the empowering legislation.

* + 1. **NO PROMULGATED BY-LAWS**

It has been established that the Tswaing (North West) and Emakhazeni (Mpumalanga) LM’s don’t have any promulgated by-laws relating to tariffs, debt collection and property rates.

* 1. **ANNUAL REPORTS**
		1. **CONTRAST BETWEEN ANNUAL REPORT AND REPORTS OF THE AUDITOR-GENERAL**

The report of the Auditor-General must, together with the Annual Financial Statements, form part of the Annual Report. It has been observed that there is a stark difference in contents between the text of annual report and that of the report of the Auditor-General – it would appear at times that the only resemblance is the name of the relevant municipality in the heading of the report!

Some municipalities have the propensity not to make the Auditor-General’s report available on the official website and the only other source of availability is that of National Treasury.

* + 1. **COUNCILLORS IN ARREARS**

It was observed that in various municipalities that some councillors owed monies to the municipality for more than 90 days. In some instances the same councillor would be owing monies in consecutive financial years without the Speaker taking the necessary action as required in terms of the Code of Conduct for Municipal Councillors.

In addition to reporting on arrears for than 90 days, the deposits paid for services delivery by councillors should also be reported on.

* + 1. **OFFICIALS IN ARREARS**

There is no obligation to report on municipal officials owing monies for longer than 90 days. It was established that in the case of Westonaria LM (Gauteng) that officials were exempted from the payment of services deposits – this matter has since been rectified.

Consideration should be given on reporting on monies owed to the municipality for longer than 90 days as well as the necessary deposits paid by municipal officials.

* + 1. **IRREGULAR FUNCTIONS**

In the case of Oudtshoorn Local Municipality, it was observed in the 2012/13 Annual Report (P107)[[41]](#footnote-41), that the recent published census figures published by STATSA were questioned and that the municipality was planning to undertake its own count. It was indicated that EPWP funds would be used for this purpose.

* + 1. **HIGH LEGAL COSTS**

The number of court cases in which municipalities are either cited as the applicant or respondent has escalated dramatically over the past 20 years. At least 477 cases have been reported by SAFLII in respect of High Court cases and at least 132 cases in the Supreme Court of Appeal.

In the case of Mkhondo LM (Mpumalanga) it is reported in the 2013/14 Annual Financial Statements that the municipality was involved in at least 9 court cases with claims against the municipality totalling R 60,54 million.

In the situation of Madibeng LM (North West) Paphiri Business Enterprise successfully proved its claim for being under paid in the amount of R865 591-00 in the North Gauteng High Court. Despite this judgement, Madibeng appealed[[42]](#footnote-42) without success to the Supreme Court of Appeal and the Court found that the when the schedule relied upon by the high court was prepared, the municipality’s legal representatives failed to make any representations in regard to its correctness or otherwise. Such action should ordinarily be classified as fruitless and a waste of public money and no indication was given as whether any fruitless expenditure was recovered**.**

* 1. **VALUATION ROLLS**
		1. **SECOND ROUND OF VALUATION ROLLS**

For the majority of municipalities, the Municipal Property Rates Act came into operation on 1 July 2009 with a validity period of 4 to 5 years depending on circumstances. In the majority of cases, the second round of valuation rolls came into operation on 1 July 2014. As was expected, property values increased over this four to five period.

Despite prescripts from National Treasury that increases in tariffs and taxes should be limited to 6,2% per annum, municipalities did not lower the tariff-in-the-Rand to provide for such a prescribed increase with the result that property rates have sky-rocketed to a level of unaffordability without any increase in service delivery levels.

It would appear that the highest assessment rates on comparable property values is applied in Nama Khoi LM (Northern Cape) where the average assessments rates amount to ± R 1 600 per month for an average 1000m2 residential property. This matter is being further investigated and if necessary, a submission will be made to the Minister of COGTA to monitor the situation in terms of Section 82 of the Municipal Property Rates Act.

* + 1. **NO VALUATION ROLLS**

It has been established that in the case of Emakhazeni LM (Mpumalanga), there is no valid valuation roll as from 1 July 2014. It would appear that Ba-Phalaborwa LM (Limpopo) is in a similar situation.

1. **CAPACITY ASSESSMENT BY THE DEMARCATION BOARD[[43]](#footnote-43)**

Since 2001, the Municipal Demarcation Board has undertaken annual assessments of district and local municipalities. A new system has been introduced during 2011 and since then access to this information has been restricted and not publically available. It is submitted that a due and proper analysis of a municipality cannot be undertaken unless such information is made public. It also submitted that the dysfunctioning of municipalities could have been detected earlier had it not been for the withholding of this public information.

An appeal is made to ensure that the annual capacity assessments undertaken by the Municipal Demarcation Board is made public without any restrictions.

1. **NATIONAL TREASURY ANNOUNCEMENT ON THE WITHHOLDING OF A TRANCE OF EQUITABLE SHARE FUNDING**

According to a news article[[44]](#footnote-44) carried on 6 April 2014, *“Municipalities are at war with treasury blame Eskom”* (Please refer to ANNEXURE 4 for the text). The anticipated withholding of the last trance of equitable share funding for the 2014/15 financial year in respect of 60 unnamed municipalities until such time as acceptable agreements have been made with the suppliers of bulk services triggered this response.

AfriForum can only but applaud the bold step taken by the National Treasury by invoking the provisions of Section 216(2) of the Constitution. In view of the IDP of a municipality being the primary source document for all municipal planning and expenditure, additional measures are proposed below which should be introduced to ensure that municipalities meet their constitutional obligations

1. **PROPOSED AMENDMENTS TO SECTIONS 18 AND 19 OF THE 2015 DIVISION OF REVENUE BILL**

**Proposals in this regard will be tabled at the public hearing to be held on 14 April 2015**

**ANNEXURE 1: LIST OF MUNICIPALITIES WHICH WERE SUBJECTED TO THE CRITICAL ANALYSIS**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **MUNICIPALITY** | **PROVINCE** | **DATE** |
| 1 | Karoo Hoogland | NC | 7 June 2013 |
| 2 | eDumbe | KZN | 2 July 2013 |
| 3 | Sol Plaatje | NC | 24 July 2013 |
| 4 | Naledi | NW | 13 June 2013 |
| 5 | Mangaung Metropolitan Municipality | FS | 13 August 2013 |
| 6 | Nama Khoi | NC | 24 August 2013  |
| 7 | Lephalale | LIM | 4 September 2013 |
| 8 | Emalahleni[[45]](#footnote-45) | MP | 11 September 2013 |
| 9 | Madibeng[[46]](#footnote-46) | NW | 14 October 2013 |
| 10 | Kannaland | WC | 26 January 2014 |
| 11 | Tshwane Metropolitan Municipality | GT | 26 February 2014 |
| 12 | Dihlabeng | FS | 8 March 2014 |
| 13 | Tswaing | NW | 7 April 2014 |
| 14 | Thabazimbi | LIM | 22 April 2014 |
| 15 | Gariep | EC | 5 May 2014 |
| 16 | Chris Hani DM (Water services) | EC | 27 May 2014 |
| 17 | Oudtshoorn | WC | 22 June 2014 |
| 18 | Cederberg | WC | 12 July 2014 |
| 19 | Msukaligwa | MP | 12 July 2014 |
| 20 | Ga-Segonyana | NC | 20 February 2015 |
| 21 | Mkondo | MP | 25 March 2015 |

**ANNEXURE 2: CEDERBERG LOCAL MUNICIPALITY “SWOT ANALYSIS”: P 31 OF THE 2014/15 REVIEWED IDP**

|  |  |  |
| --- | --- | --- |
|  | **Positive** | **Negative** |
| **Present Situation** | **STRENGHTS:** * Development orientated political and administrative leadership
* Political stability, no coalitions and party link to National Government
* Bias towards poor marginalised communities
* Good working relationship with Sector Departments
* Senior and experienced political leadership
* Progressively aligned strategies and policies
 | **WEAKNESSES:** * High unemployment and joblessness
* Literacy and high levels of poverty
* HIV Aids and high levels of crime
* Lack of housing and mass in migration from farms and outlying towns
* Low revenue base and debt collection
* Low capacity municipality with limited resources and largely grant dependant
* Lack of economic investment due to issues of spatial development, water, low skills base etc.
* New councillors and senior managers, poor organisational memory
 |
| **Futur**e | **OPPORTUNITIES:** * National/International Corridor
* Best potato farming climate and conditions
* Ideal hunting, fishing and tourism space and climatic conditions
* Stone and sand mining
* Clanwilliam Dam Raising of dam wall
* International and National Tourism and the commercial link between Western Cape, Northern Cape and Namibia
* Wind farming and renewable energy
* Hydroponics and aqua-farming
* West Coast LED Agency
* Effectiveness and efficiency of ward committee systems
 | **THREATS:** * Low skills levels and internal capacity/ resources
* Ineffective and timeous disciplinary processes
* Lack of understanding of policies and the implementation thereof
* Dependency on grant funds to sustain service delivery
* Interdepartmental cooperation
* Fragmented IT System
 |

**ANNEXURE 3.1:** **STATUS OF THE GA-SEGONYANA LOCAL MUNICIPALITY OFFICIAL WEBSITE AS AT 19 FEBRUARY 2015** <http://www.ga-segonyana.gov.za/index2.html>

|  |  |  |
| --- | --- | --- |
| **ITEM**  | **DOCUMENT** | **COMMENTS** |
| 1 | The annual and adjustments budgets and all budget-related documents | x |
| 2 | Current IDP: 2014/15 | √ |
| 3 | Current the annual report: 2013/14 | x |
| 4 | All performance agreements required in terms of section 57 (1) (b) of the Municipal Systems Act | x |
| 5 | All service delivery agreements | x |
| 6 | All long-term borrowing contracts | x |
| 7 | All supply chain management contracts above a prescribed value | x |
| 8 | An information statement containing a list of assets over a prescribed value that have been disposed of in terms of Section 14 (2) or (4) of the MFMA during the previous quarter | x |
| 9 | Contracts having a having future budgetary implications | x |
| 10 | Public-private partnership agreements | x |
| 11 | Quarterly reports tabled in the council in terms of Section 52(d) of the MFMA | √ |
| 12 | The rates policy in terms of Section 3 to 5 of the Municipal Property Rates Act 2004 (Act 6 of 2004) (MPRA) | √ |
| 13 | Property rates By-laws in term of Section 6 of the Municipal Property Rates Act 2004 (Act 6 of 2004) (MPRA)  | x |
| 14 | The property register in terms of Section 23(4) of the MPRA | x |
| 15 | The valuation roll | x |
| 16 | The supplementary valuation roll  | x |
| 17 | The municipality’s tariff policies in terms of Section 74 of the Municipal Systems Act | √ |
| 18 | The municipality’s tariff by-laws in terms of Section 75 of the Municipal Systems Act | x |
| 19 | The promulgated fees, charges and tariffs in terms of Section 75A of the Municipal Systems Act | √ |
| 20 | The municipality’s credit control and debt collection policy in terms of Section 97 of the Municipal Systems Act | √ |
| 21 | The municipality’s credit control and debt collection by-laws in terms of Section 98 of the Municipal Systems Act | x |
| 22 | Other tariffs | x |
| 23 | Other by-laws | x |

**ANNEXURE 3.2** **STATUS OF THE CEDERBERG LOCAL MUNICIPALITY OFFICIAL WEBSITE AS AT 3 MARCH 2015**

<http://www.cederbergmunicipality.co.za/>

|  |  |  |
| --- | --- | --- |
| **ITEM**  | **DOCUMENT** | **COMMENTS** |
| 1.1 | 2014/15 annual and all budget-related documents | x |
| 1.2 | 2014/15 adjustment budget | X – reference is made in Notice 9/2015 dated 2 March 2015 that the document is available on the official website which is not the case |
| 2 | Current IDP: 2014/15 | √ |
| 3 | Current the annual report: 2013/14 | x |
| 4 | All performance agreements required in terms of section 57 (1) (b) of the Municipal Systems Act | X - the agreements available on the website expired on 30 June 2014 |
| 5 | All service delivery agreements | X -  |
| 6 | All long-term borrowing contracts | √ |
| 7 | All supply chain management contracts above a prescribed value | X – the last tender documentation was dated in July 2014 |
| 8 | An information statement containing a list of assets over a prescribed value that have been disposed of in terms of Section 14 (2) or (4) of the MFMA during the previous quarter | X – the latest report was dated March 2013 |
| 9 | Contracts having a having future budgetary implications | x |
| 10 | Public-private partnership agreements | x |
| 11 | Quarterly reports tabled in the council in terms of Section 52(d) of the MFMA | X – the latest report was dated November 2013 |
| 12 | The rates policy in terms of Section 3 to 5 of the Municipal Property Rates Act 2004 (Act 6 of 2004) (MPRA) | √ |
| 13 | Property rates By-laws in term of Section 6 of the Municipal Property Rates Act 2004 (Act 6 of 2004) (MPRA)  | x |
| 14 | The property register in terms of Section 23(4) of the MPRA | x |
| 15 | The valuation roll | √ |
| 16 | The supplementary valuation roll  | √ |
| 17 | The municipality’s tariff policies in terms of Section 74 of the Municipal Systems Act | x |
| 18 | The municipality’s tariff by-laws in terms of Section 75 of the Municipal Systems Act | x |
| 19 | The promulgated fees, charges and tariffs in terms of Section 75A of the Municipal Systems Act | x |
| 20 | The municipality’s credit control and debt collection policy in terms of Section 97 of the Municipal Systems Act | √ |
| 21 | The municipality’s credit control and debt collection by-laws in terms of Section 98 of the Municipal Systems Act | x |
| 22 | Other tariffs | x |
| 23 | Other by-laws | x |

**ANNEXURE 4: “*MUNICIPALITIES AT WAR WITH TREASURY BLAME ESKOM”***

<http://www.fin24.com/Economy/Municipalities-at-war-with-Treasury-blame-Eskom-20150406>

Municipalities at war with Treasury blame Eskom

Apr 06 2015 16:01 Carien du Plessis, City Press

Eskom electricity costs

(Shutterstock)

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Johannesburg - Municipal leaders have accused government of using municipality money that was meant to be used to deliver services to the poor to instead solve Eskom’s woes.

They are threatening to go to court after National Treasury froze the funds of 56 municipalities for owing R12.6bn on services, according to City Press.

They also said they wanted President Jacob Zuma to intervene in the dispute.

The freezing of the funds came after Eskom and the Water Board initially threatened to cut the power and water to these municipalities, but were persuaded by a national government official not to.

Treasury this week issued a press release saying it withheld the transfer of the municipalities’ equitable share – money meant to be spent solely on municipal services to the poor, such as water, electricity and refuse removal – with effect from March 20.

These municipalities “failed to honour their financial commitments in general and failed to pay Eskom and other service-delivery creditors”, Treasury said.

By the end of last year, municipalities owed Eskom R9bn, of which R4.5bn was current and the rest was arrears. They owed the Water Board R3.6bn, of which R1.3 billion was current.

The SA Local Government Association (Salga) told City Press it was illegal to withhold their equitable share money, because this turned it into a “conditional grant rather than an entitlement, as the Constitution and legislation provide for”.

Salga communications manager Karen Reyneke said Salga had written to Finance Minister Nhlanhla Nene on March 9, asking that the freezing of funds be held in abeyance until Salga and the minister had met about the issue, but that meeting hadn’t happened yet.

Salga’s national executive committee met on Thursday and resolved to request an urgent meeting with Nene and Cooperative Governance Minister Pravin Gordhan.

At this meeting, Salga hopes the matter will be resolved “within constitutional parameters” and municipalities would then be able to “fulfil [their] constitutional obligations to deliver services to the people, rather than direct our limited resources at fixing Eskom’s woes or any other particular debt, for that matter”.

Salga said Eskom’s problems should not be solved “in a knee-jerk manner” and to the detriment of the financial health of municipalities, which were supposed to serve the poorest of the poor.

“In our view, local government and these poorest municipalities are being victimised as an easy target to raise quick money to stave off the immediate cash requirements to keep Eskom a going concern,” Salga said.

Eskom has a revenue shortfall of R225bn over the next three years.

Salga said it would also write to Deputy President Cyril Ramaphosa to ask that Salga become part of the “war room” set up to address Eskom’s problems.

Treasury, however, said in its statement that section 216 (2) of the Constitution permitted it to stop the transfer of funds “to any organ of state that commits persistent and material breach of its financial obligations”.

It said failure by municipalities to pay Eskom and the Water Board within 30 days amounted to financial mismanagement.

Municipalities were informed early last month that they should enter into repayment arrangements with their creditors, prepare a financial recovery plan where relevant and obtain a council resolution to confirm the municipalities’ commitment to the process.

It said the persistent arrears “negatively impacted Eskom’s cash flow, thereby compromising the utility’s operations and financial position”.

Treasury said better revenue management would reduce debt owed to municipalities and improve service delivery.

An official from cooperative governance, who did not want to be named, said the municipalities in question only lost out on a third of their equitable share, because this was paid in three tranches.

He said the department begged Eskom not to cut electricity to the municipalities.

“I said we must first have a discussion, you can’t just cut,” he said. “We have already done the legal opinion with Treasury about that a long time ago; there is no issue of constitutionality.”

He said there had been meetings before about the servicing of debts of these municipalities, and the freezing of funds was Treasury’s final resort.

Another government official said the municipal leaders had been arrogant. “They see local government as a way of making money,” he said.

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1. Chapter 2 of the Constitution [↑](#footnote-ref-1)
2. Section 33(1) of the Constitution [↑](#footnote-ref-2)
3. Chapter 3 of the Constitution [↑](#footnote-ref-3)
4. Section 55(2)(b)(i) of the Constitution [↑](#footnote-ref-4)
5. Section 151 of the Constitution [↑](#footnote-ref-5)
6. Section 152(1) of the Constitution [↑](#footnote-ref-6)
7. Section 21B of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-7)
8. Section 75(1) of the Municipal Finance Management Act (Act 56 of 2003) [↑](#footnote-ref-8)
9. Section 75(2) of the Municipal Finance Management Act (Act 56 of 2003) [↑](#footnote-ref-9)
10. Section 153 of the Constitution [↑](#footnote-ref-10)
11. Section 154 of the Constitution [↑](#footnote-ref-11)
12. Section 156 of the Constitution [↑](#footnote-ref-12)
13. Section 162 of the Constitution [↑](#footnote-ref-13)
14. Section 195(1) of the Constitution [↑](#footnote-ref-14)
15. Section 214 of the Constitution [↑](#footnote-ref-15)
16. Section 215(1) of the Constitution [↑](#footnote-ref-16)
17. Section 216 of the Constitution [↑](#footnote-ref-17)
18. Section 229 of the Constitution [↑](#footnote-ref-18)
19. Section 237 of the Constitution [↑](#footnote-ref-19)
20. Section 16(1) of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-20)
21. Section 2 of the Municipal Finance Management Act (Act 56 of 2003) [↑](#footnote-ref-21)
22. Section 35(1) of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-22)
23. Please refer to ANNEXURE 1 for a list of the municipalities [↑](#footnote-ref-23)
24. Regulation 4(1) of the Regulations on the Appointment and Conditions of Service of Senior Managers (Notice 21 dated 17 January 2014) [↑](#footnote-ref-24)
25. Section 16(1) of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-25)
26. *South African Property Owners Association v Council of the City of Johannesburg Metropolitan Municipality and Others (648/2011) [2012] ZASCA 157 (8 November 2012)*

*Kalil N.O. and Others v Mangaung Metropolitan Municipality and Others (210/2014) [2014] ZASCA 90 (4 June 2014)*

*Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality (3751/2011) [2014] ZAECPEHC 35 (3 June 2014)* [↑](#footnote-ref-26)
27. Section 5 of the Municipal Systems Amendment Act (Act 44 of 2003) [↑](#footnote-ref-27)
28. Definitions of the Municipal Fiscal Powers and Functions Act (Act 12 of 2007) [↑](#footnote-ref-28)
29. P 51/325 of Mkhondo 2014/15 IDP: *The number of people who are classified as indigents is only 350. This was attributed to the lack of publicising of indigent renewal date. It was resolved that this has to be publicised and community has to know what is required of them in order to qualify and be kept in this list.* [↑](#footnote-ref-29)
30. Act 10 of 2014 [↑](#footnote-ref-30)
31. NT CIRCULAR 74 P15/20 Budgeting for revenue foregone and free basic services to indigents

Regardless of the guidance provided on MFMA Circular 51 in relation to budgeting for revenue foregone, it was evident during the 2014/15 budget assessment process that municipalities are struggling to distinguish between revenue foregone and transfers and grants expenditure on table A4.

The key concept in determining the difference between revenue foregone and grants expenditure, is that a rates rebate that is 'generally available to all' is in practice an adjustment to the rates tariff. Therefore, the revenue was never there to be collected (the revenue was foregone), and should therefore not be considered to be revenue in the first instance. This is why it is deducted on Table SA1 - and the net amount is reflected on Table A4.

The provision of free basic services to the indigents must be budgeted for as non-cash flow grant expenditure on Table A4 supported by Table SA21. Since the municipality will not collect any revenue from indigents and free basic services to indigents are funded through the Equitable Share, this constitutes grant expenditure. [↑](#footnote-ref-31)
32. Sol Plaatje LM [↑](#footnote-ref-32)
33. Nelson Mandela Bay Metropolitan Municipality [↑](#footnote-ref-33)
34. Section 74 of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-34)
35. Section 75 of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-35)
36. Section 96 of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-36)
37. Section 98 of the Municipal Systems Act (Act 32 of 2000) [↑](#footnote-ref-37)
38. Section 3 of the Municipal Property Rates Act (Act 6 of 2004) [↑](#footnote-ref-38)
39. Section 6 of the Municipal Property Rates Act (Act 6 of 2004) [↑](#footnote-ref-39)
40. Section 160(2)(a) of the Constitution [↑](#footnote-ref-40)
41. *Note the fact that this is per the municipality’s database, and differs from the published Stats SA 2011 figures. The reported figures in the table above are subject to certain limitations due mainly to no recent head and household count being performed by the municipality. The municipality will attempt to set money aside from the EPWP budget to undertake these counts during the upcoming year, with the goal to appoint fieldworkers to perform their own census to provide more realistic and reliable statistics.* [↑](#footnote-ref-41)
42. *The Local Municipality of Madibeng v Paphiri Business Enterprise (134/2013) [2014] ZASCA 77 (29 May 2014)* [↑](#footnote-ref-42)
43. Section 85(4) of the Municipal Structures Act (1998) provides that the Municipal Demarcation Board must consider the capacity of a district or local municipality to perform its functions and exercise its powers when determining or re-determining the boundaries. “Capacity” is defined as having reasonable financial and human resources, and infrastructure to perform each of the local government functions listed in Schedules 4B and 5B to the Constitution, read with Chapter 5 of the Local Government: Municipal Structures, 1998 (Act 17 of 1998). The Board assesses the capacity of category B and C municipalities in terms of the Local Government: Municipal Structures, 1998 (Act 17 of 1998) read with the Constitution, and more specifically Schedules 4B and 5B to the Constitution. The Board has a further legal mandate to make recommendations for adjustments to powers and functions to provincial MECs [↑](#footnote-ref-43)
44. <http://www.fin24.com/Economy/Municipalities-at-war-with-Treasury-blame-Eskom-20150406> [↑](#footnote-ref-44)
45. The analysis could not be undertaken as the official website was dysfunctional and the municipality was placed under administration [↑](#footnote-ref-45)
46. An interim report was completed, however not finalised as a result of a dysfunctional official website [↑](#footnote-ref-46)