



## SUBMISSION ON THE DRAFT WATER AND SANITATION POLICY ON PRIVATELY OWNED LAND

16 February 2023

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We, the undersigned organisations, welcome the opportunity to make a submission on the “Draft Water and Sanitation Services Policy on Privately Owned Land 2022: version 1”<sup>1</sup>.

In an effort to advocate for the rights of the rural and urban poor by supporting them in their efforts to access basic services, a group of civil society organisations decided to collaborate on a joint submission. The collective comprises organisations that have extensive experience in broader human settlement development, participatory planning, and the delivery of basic services.

In making our submission we emphasise the following entrenched constitutional rights as the critical frame of reference for our submission: Section 27 that states that everyone has a right to sufficient water and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right; section 24 that says that everyone has the right to an environment that is not harmful to their health and wellbeing, and through reasonable legislative and other measures, to an environment that prevents pollution. As acknowledged in case law we reiterate the interrelatedness of socio-economic rights and the ability to enjoy the civil and political rights of the right to dignity (section 10), equality (section 9), safety and security (section 12) and privacy (section 14) including the requirement for municipalities to provide basic services (section 153) that are essential for the safety and well-being of communities. This is particularly demonstrated in the context of informal contexts where the limitation of these rights negatively impacts the creation of safe, dignified, thriving neighbourhoods.

Our submission focuses on the following two points:

1. Clarify why the focus of the policy is only for peri-urban and rural areas (excluding, for example, informal settlements and backyard dwellers)
2. Commit to the development of a policy for water and sanitation on privately owned land in the context of informal settlements and backyard dwellers.

<sup>1</sup> As found at: <https://www.gov.za/documents/water-services-act-water-and-sanitation-services-policy-privately-owned-land-2022-draft>.

## 1. CLARIFY WHY THE FOCUS OF THE POLICY IS ONLY FOR PERI-URBAN AND RURAL AREAS

Although, in the preface of the draft policy, it states that “this policy will focus on impact-oriented outcome, namely access to a safe and potable water supply and sanitation, supported by appropriate health and hygiene practices, targeted for people living on privately owned land currently out of municipal distributing network, using water services intermediaries’ mechanisms as enshrined in the Water Services Act, 1997 (Act No. 108 of 1997).”, there is a lack of acknowledgement as to why there is an omission of the urban context. As explained above, the Constitution states that everyone, no matter where they live, has the right to water and sanitation.

We argue that the title of the draft policy on water and sanitation on privately owned land is misleading as it creates an assumption that the policy encompasses the broader scope of all land that is privately owned and yet focuses only on one aspect of water and sanitation on privately owned land; namely water and sanitation on peri-urban and rural land. Surely, the motivations (principles and legislative obligations, pp. 15-19) underpinning this policy similarly apply to those living on privately-owned land in urban areas, making their exclusion that much more questionable and subject to constitutional review.

- We submit that the content of the policy needs to explicitly state, in the introduction section, why it has excluded informal settlements and backyard dwellers, thus providing sound reasoning and validation to the concerns of those living in those environments.
- We further submit that if the intention of the policy is to focus on farm dwellers (as the policy is currently written) then the title of the draft policy for water and sanitation on privately owned land be changed to include as part of the title .... ‘in areas out of the municipal distributing network’, or ‘in peri-urban and rural areas’ or ‘in farmlands’ or other similar phrasing. By contextualising the setting of the policy in the title, it removes all confusion on who the policy directly benefits.

## 2. COMMIT TO THE DEVELOPMENT OF A POLICY FOR WATER AND SANITATION ON PRIVATELY OWNED LAND IN THE CONTEXT OF INFORMAL SETTLEMENTS AND BACKYARD DWELLERS’

### 2.1 Provision of essential services to those who live in informal contexts requires an ‘all of government approach’ with clear delineation of duties

While we acknowledge that the policy does not particularly focus on the urban context pertaining to informal settlements and backyard dwellers, we strongly believe that the current provisions in the Constitution, together with the extensive legislative framework for basic service delivery not only bind all spheres of government to collectively work towards the progressive realisation of these rights, but it creates a facilitative framework to do so, inclusive of the necessary legislative, executive and financial tools. We argue however, that without clear disaggregation of responsibility, collective responsibility can result in weak support, poor implementation and limited monitoring and oversight.

The Policy acknowledges that the Department of Water and Sanitation is mandated as the sector lead to support and regulate the provision of water services to residents living on privately owned land (at 39). It must as such, articulate a clear policy and programmatic approach to achieving this in the urban context. This includes those living in informal settlements as well as backyard residents living on privately-owned land. A recurring argument encountered at various spheres of government is that ‘service infrastructure (which often requires capital investment) cannot be provided on private land.’ Municipal officials in particular have raised the argument that the legal framework regulating the financial decision-making of municipalities, more specifically, the provisions of the Municipal Financial Management Act 56 of 2003 (MFMA), prevents municipalities from investing in the necessary infrastructure on private land that is needed to facilitate such access. Isandla Institute, commissioned a legal opinion from Senior Counsel to clarify The obligations and powers of municipal governments to provide basic services for backyard dwellers on private land. ‘ An evaluation of the provisions of the MFMA as well as other key legislation that governs local government, like the Municipal Systems Act, reveals that there is nothing (no specific provision) that prohibits the investment in infrastructure on private land for the purposes of basic service delivery. In keeping with the directives in the MFMA, we agree that while inefficient and wasteful expenditure must be avoided, municipalities must ensure coherent and sustainable service delivery to all residents, including those in urban areas who live on private land. Similarly, “Senior Counsel Opinions Regarding the Provision of State-funded Services on Private

Land in eThekweni Municipality” considers the applicable framework for extending services to those who live in informal settlements. The opinions examine the applicable framework for service provision for informal settlements on the basis of categorisation according to the permanence of a settlement and/or identification for upgrading. Following from this, the most efficient and sustainable form of infrastructure investment should be adopted. eThekweni Municipality has developed an Informal Settlement Incremental Upgrading City-Wide Strategy and Programme to institutionalise their approach.

There are many replicable lessons that can be learned from these opinions as well as the municipal strategy. We urge the Department of Water and Sanitation to examine these approaches and engage with the Department of Human Settlements as well as the Department of Cooperative Governance and Traditional Affairs to craft an appropriate national policy. This was advocated for in a joint submission by civil society organisations into the proposed New Human Settlements Policy and Human Settlements Bill.

Equally significant, is the importance of appropriate financial allocations for the roll-out of infrastructure. We recognise the call in the Policy for the current Municipal Infrastructure Grant to be extended to cover maintenance and operations. (35) We urge the Department, however, not to exclusively limit the focus to the MIG grant. The scale of need and financial resources required demands a broader and more comprehensive discussion of financial resources at a national level.

- We therefore submit that the draft policy on “Water and Sanitation Services Policy on Privately Owned Land” should include a section where the department commits to developing further policies and guidelines relating to the provision of water and sanitation services on private land associated with people living in informal settlements, backyard rental accommodation, occupied buildings and other in other contexts. The organisations making this submission are available to engage directly with the department on the proposed policy/ies.

## **2.2 Crafting appropriate indicators for the standard of reasonable programme implementation.**

While we welcome the directive of including the needs of the economically vulnerable who live on private land in Integrated Development Plans, Water Services Development Plans and bylaws (which reflect various aspects of the relationship between municipalities and water intermediaries), we are concerned that there are insufficient indicators and oversight mechanisms in place as well as enforcement mechanisms which is often necessary whenever the status quo is challenged.

## **2.3 Progressive forward-planning as opposed to reactive responses to evolving challenges**

While water scarcity has always been a problem in South Africa, in the past decade there have been a number of intervening events that have presented serious threats to the sustainability of water supply in the country. Drought, Covid-19, load-shedding and failing water infrastructure are just some of the examples that have severely impacted water supply. It is a fact, however, that these intervening events disproportionately impact economically vulnerable people who do not have access to alternate supplies of water. Climate change will only serve to exacerbate these challenges. While acknowledging the importance of environmental sustainability, the Policy does not display any commitment to the development of medium to long term contingency plans to prepare for the shocks that people in informal settings in particular will encounter in the future in the context of water supply.

This submission has been made by the following organizations

- Afesis-corplan
- Development Action Group
- Isandla Institute
- Socio-Economic Rights Institute
- Water Aid

If you need further clarity relating to our submission, have questions or require more information please contact the following person:

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## PROFILES OF CONTRIBUTING ORGANIZATIONS



### AFESIS-CORPLAN

Afesis-corplan is a developmental non-government organisation based in East London, South Africa, whose work is aimed at strengthening good local governance and improving basic service delivery. Afesis-corplan prides itself on the transformative nature of its work over the more than 30 years of its existence. We design our interventions to be catalytic in nature, working in localised settings as a way of incubating, testing and learning, such that successful interventions are replicated elsewhere and at scale, thereby achieving systemic change. [www.afesis.org.za](http://www.afesis.org.za)



### DEVELOPMENT ACTION GROUP

The Development Action Group (DAG) is a leading non-profit, nongovernmental organisation based in Cape Town, South Africa. DAG's mission is to create, implement and support community centred developments to address the economic, social, and spatial inequalities that characterise South African cities. Established in 1986 to resist apartheid spatial planning, DAG remains driven by a desire to facilitate the creation of inclusive and equitable cities for dispossessed communities through active citizenry. In doing so, DAG has been at the forefront of inclusive urban development initiatives for more than 35 years. [www.dag.org.za](http://www.dag.org.za)



### ISANDLA INSTITUTE

Isandla Institute acts as a public interest think tank, seeking to promote, and contribute to, systems and practices of urban governance that are just, equitable, inclusive, sustainable and democratic. Central to our work is the notion of urban citizenship, for current and future generations. We understand urban citizenship to be about the realisation of material outcomes necessary for dignity, well-being and inclusion; the recognition of political voice and agency; and, a responsibility or duty to act with respect towards the urban collective. We engage in policy research, knowledge sharing and dialogue facilitation, institutional support, advocacy and network politics to support urban development and transformation. [www.isandla.org](http://www.isandla.org)



### SERI-SA

The Socio-Economic Rights Institute of South Africa (SERI) is a non-profit human rights organisation. We work with communities, social movements, individuals and other non-profit organisations in South Africa and beyond to develop and implement strategies to challenge inequality and realise socio-economic rights. SERI's conviction is that it is the people who are on the receiving end of poverty and inequality who are best placed to devise and implement strategies to challenge them. We provide legal advice and representation, research services and advocacy support to our clients and partners. We act to protect and expand the political spaces in which individuals and communities organise and press for social change. [www.seri-sa.org](http://www.seri-sa.org)



### WATER AID

WaterAid is an international non-governmental organization, focused on water, sanitation and hygiene. It was set up in 1981 as a response to the UN International Drinking Water decade. As of 2018, it was operating in 34 countries dedicated to improving access to safe water, hygiene and sanitation in the world's poorest communities. It has been active over the past three decades years and has regional teams in Asia, West Africa, East Africa and Southern Africa. WaterAid works with local partners who understand local issues and provides them with skills and support to help communities set up and manage sustainable projects that meet their needs. <https://www.wateraid.org>

