

## CHAPTER 10

### METROPOLITAN COUNCILS

#### 1. INTRODUCTION

This chapter seeks to evaluate how the Metropolitan Councils (metros) complement the national and provincial governments in realizing socio-economic rights. As provided in the Constitution in terms of section 184(3), and section 7(2) of the Bill of Rights, local governments are required to take measures that respect, protect, promote and fulfil those rights.

The South African Human Rights Commission has undertaken to request information from all six metropolitan councils. Firstly, to evaluate their understanding of their constitutional obligations and secondly, to see if that understanding was duly applied to satisfy the socio-economic needs of citizens, particularly vulnerable groups, thus testifying to good governance.

This is the first time the Commission has embarked on evaluating the work of the metros; hence the responses point to shortcomings relating to the work of the respective metros, some of which are transforming their offices and operations. The first part of this chapter deals with the account of each metro's understanding of the constitutional obligations, including the meanings of the terms "access," "adequate," "sufficient," "progressive realization and responsibilities". The second part comprises the critique of the responses and recommendations.

#### 2. OBLIGATIONS

##### *Obligation to Respect*

Only four metros addressed the questions on obligations, and the responses were varied. The City of Tshwane understood respect to mean that that local government must hold these rights in high regard and ensure that its legislative, policy and other measures that it takes do not infringe on, deny or militate against these rights. Rather, it should serve to support, enhance, and preserve the objectives of these rights. The Ekurhuleni Metropolitan Municipality for the City of Germiston (EMM) gave a similar response saying the basic principle to that obligation is that the Council must recognize socio-economic rights and conduct its affairs in such a way that it does not violate any of these rights.

The eThekweni Municipality for the City of Durban (or the Durban Metropolitan Council -- DMC) gives a different perspective, saying that it is obliged to respect all the rights in Chapter 2 and not just the second generation human rights alluded to.

Meanwhile, the Nelson Mandela Metropolitan Municipality (NMMM) for the City of Port Elizabeth said that its understanding of its Constitutional obligations with regard to the terms 'respect, protect promote and fulfil' must be explained in accordance with socio-economic rights. This interpretation, according to the municipality, means that judges do not go by the literal meaning of the words or by the grammatical structure of the sentence, but also take into account the design or purpose the legislature sought

to achieve.<sup>1</sup> This approach is inevitable and must consider not only the Constitution, but the very founding principles and the purpose behind the White Paper processes that give rise to National legislation in various spheres.

Thus, when the Municipality interprets rights that pertain to the community within the Metro area, it must do so in terms of section 217 of the Constitution as well as with legislation. Further, socio-economic rights must be shown consideration and proactively protected against violation. This can be promoted by improving the quality of service through workshops and other events aimed at increasing the facilitation of empowerment. Socio-economic rights must also be monitored to ensure their protection, promotion and gradual fulfillment.

The Municipality's interpretation of the various terms used in the Constitution is that it is not possible to have an official interpretation. The best that the municipality can do is to have a policy for interpretation, which takes into account the teleological approach. All these terms must be interpreted in a way that is consistent with the Municipality fulfilling its Constitutional mandate, subject to the availability of resources.

The City of Cape Town did not respond, while the City of Johannesburg (CoJ or the Johannesburg Municipality) said, in a rather cursory manner, that its policies and actions must not impede its inhabitants from having access to socio-economic rights.

#### *Obligation to protect*

The City of Tshwane understood the obligation to protect the socio-economic rights to mean that local government must take the necessary legislative and other steps to shield these rights against any act or omission which might limit or erode the extent of the rights and to create conditions that are conducive to the realisation of the objectives of such rights.

The eThekweni Municipality said that it is obliged to protect the second generation human rights, guided by the following conditions:

- if it elects to administer a particular local government matter which it has the right to administer in terms of section 156 of the Constitution, through enacting by-laws in terms of sections 156(2) and 160(6), and directives which are compatible with such rights and its objects as set out in section 152 and consistent with any national and provincial legislation of the kind referred to in sections 155(6)(a) and (7);
- through exercising its rights in terms of any assignment under section 44(1)(a)(iii) or 104(c) of the Constitution of enacting legislation which is compatible with such rights and its objects.

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<sup>1</sup> Cited by Friedman J in *Baloro and Others v University of Bophuthatswana and Others* 1995 (4) SA 197 (B) at 241H-242A [1995 (8) BCLR 1018 at 1061H-J].

Ekurhuleni purports that matters pertaining to socio-economic rights are protected by the application of legislation, that is, acts or by-laws. The EMM is in a position to protect these rights by acting against those who may contravene legislative provisions that govern these areas.

*Obligation to promote*

The City of Tshwane said that the promotion of socio-economic rights meant that local government must create an operational framework which not only supports, enhances and encourages the actual materialisation of the objectives of the specific right, but one that also informs, educates and facilitates access of the beneficiaries to such rights.

The eThekweni Municipality maintains that the promotion of the second generation human rights alluded to should be through –

- the exercise of the local government matters which it has the right to administer in terms of section 156(1) of the Constitution in a manner consistent with its objects and any national and provincial legislation of the kind referred to in sections 155(6)(a) and (7) consistent with such rights: Provided, that the Municipality elects to exercise its right to administer the local government matter concerned;
- the exercise of powers assigned to it in terms of sections 156(4) of the Constitution in a manner consistent with the relevant agreement, its objects and any national and provincial legislation of the kind referred to in sections 155(6)(a) and (7) consistent with such rights; and
- the exercise of powers assigned in terms of sections 99 or 126 of the Constitution in a manner consistent with the relevant agreement, its objects and any applicable national and provincial legislation consistent with such rights.

Ekurhuleni Municipality promotes and fulfills these rights in terms of the development projects undertaken regarding socio-economic rights in various areas under its jurisdiction.

*Obligation to fulfill*

According to the City of Tshwane, the obligation to fulfill to mean that local government must nurture an environment which enables the beneficiaries of socio-economic rights to accomplish the aims and objectives and to enjoy the benefits inherent in such rights.

eThekweni Municipality said that it did not have full responsibility to fulfil any of the rights referred. Thus, it can fulfil none of them, but may contribute to their fulfilment where it has jurisdiction. However, it does not indicate how much responsibility it had toward achieving that goal.

Such are the responses of the three metros of Tshwane, eThekweni and Ekurhuleni. As stated above, the other metros either gave general remarks or did not respond.

Following is the account of the interpretation of other terms, namely access, adequate, sufficient, progressive realization and responsibilities.

### *Access*

According to the City of Tshwane, access to the rights contained in sections 26 and 27 of the Constitution means that local government does not have an obligation as such to provide these services to the beneficiaries, but should also provide them with “at least an opportunity to obtain such service” or “... a mode, means or vehicle to obtaining such service.”

The City of Cape Town understood access to mean that community cohesion and leadership must be promoted so that they could have the authority/capability to manage their communities. It also meant facilitating the creation of an enabling environment for women, youth, and the disabled, so as to organize themselves into sectors that will be able to engage with local government and other structures of government. This is done under the theme, ‘promotion of good governance’.

Ekurhuleni interpreted the word access in accordance with the implication of each specific right. For example, the right to health care involved the provision of basic services like hospitals and clinics, while the right to public safety meant the creation and maintenance of a safe environment within the EMM, thus ensuring that there is protection of the community’s personal rights and property. This also meant providing access to clean water, electricity and all other related infrastructural services. Further, access included providing modes of transport and roads, which ensures access to destinations within and outside the Metro.

The NMMM said that Access is interpreted to mean progressive realization as driven by reality. Thus, the availability of resources would obviously affect the way that the Municipality interpreted “access”.

The City of Johannesburg understood the term to mean that people are to be given means through legislation and other policies of government to enable them to have access to socio-economic rights.

### *Adequate*

Tshwane understood the term to mean that it has to provide shelter to its citizens. The metro said that, in terms of Section 26 of the Constitution, it was obliged to ensure that the beneficiary has “access to” housing or shelter which not only protects the him/her against the elements of nature, but which also complies with certain minimum standards which reasonably meet the needs and aspirations of the beneficiary in this respect. It is also emphasized that the term ‘adequate’ is a relative concept that could differ considerably depending on its application.

To the Ekurhuleni Municipality, adequate refers to basic, acceptable standards and sustainability. The metro did not elaborate on this point.

The Port Elizabeth Municipality looked at the term adequate solely in relation to housing and, therefore, referred to the Municipal Housing specifications for low-income groups.

The City of Johannesburg found it difficult to give a definitive and conclusive interpretation of adequate, as what is adequate at a certain time may not be at a later stage due to different circumstances. Adequate has to be looked at taking into account the particular circumstances and challenges facing the municipality, for instance, the finances of the municipality as well as the backlog in fulfilling certain rights.

To the City of Cape Town, adequate implied the full range of services relating to the need of a specific community. For example, some communities are more developed than others; this implies that the intervention required in terms of the lack of social capital is not as high as it might be in other communities.

The eThekweni Municipality said that the words “access to” and “progressively available and accessible” are not defined in the Constitution. Therefore, the only “official” interpretation can thus be that they words can mean whatever the Constitutional Court wishes them to mean. Thus, one employs the usual techniques of relying on case law as well as on dictionaries.

#### *Sufficient*

Tshwane interpreted access in relation to food and water as per section 27 of the Constitution. This section provides that local government has an obligation to provide the beneficiary with “access to a quantity of food and water which is enough to satisfy his/her hunger and to support his/her normal physical need for such nourishment”. However, this does not only imply that the local government must itself provide the food and water to the beneficiary. It also means that local government may refer the beneficiary to a welfare organization (government, community based or non-government organization), which can supply these needs to him or her on behalf of [the] local government.

For the Port Elizabeth Municipality, the term sufficient was interpreted through comparing what is being planned and by what has been achieved.

The Johannesburg City Council understood the meaning of sufficient to be that the through its policies, it must ensure that communities can access water for example, and that it has an obligation to ensure that the quality of food and water is hygienic and geared towards promoting health care.

To the City of Cape Town, sufficient meant the facilitation of an understanding of the resource (water). In terms of food this meant the facilitation of community gardens, co-operatives etc. Capacity building with regard to this is to create opportunities as well as the facilitation of life skills programmes to manage the resource.

#### *Progressive realization*

According to Tshwane metro, progressive realization of a right in section 26(2) and section 27(2) of the Constitution implies that local government has an obligation to

ensure that there is a gradual movement towards the achievement of the aims and objectives of the right in question and that those aims and objectives will be achieved after a measurable period of time. Progressive realization seeks to ensure that the said rights are actively and progressively pursued. To the Nelson Mandela Metropolitan Municipality, progressive realisation meant that the realization must be in successive stages; the same meaning was attached to the term progressively available.

To progressively realize rights, according to the Johannesburg City Council, municipalities must examine legislation, its policies, administration and other means, identify and eliminate, over time, hurdles which impede the realization of access to such rights. In view of the political history and the socio-economic status of the country, it is clear that a strategic implementation process is required to ensure that the process is progressive and irreversible.

#### *Progressively available and accessible*

To the Tshwane Municipality, section 29(1)(b) of the Constitution obliges local government to create opportunities for further education which must be qualitatively and quantitatively incremental. It means that these opportunities must not be static or passive, but they must be actively and vigorously pursued with noticeable gradual increment in the quantity of the educational ‘outlets’, in the process ensuring the quality and increased “accessibility” of further education.

### **Responsibilities**

The City of Johannesburg supplied the only response to this question. According to this metro, the constitutional mandate demands that it provide services that take care of what has been termed responsibilities. The various departments, as well as the entities formed by the Municipality, are responsible for ensuring that this mandate is fulfilled. These entities as well as the various policies adopted by the City will be discussed below.

Following below is the account of measures taken by the respective metros to realize the various economic rights they are charge with respecting, protecting, promoting and fulfilling. Five rights are being considered, namely: the right to housing, the right to education, the right to health, the right to environment, and the right to water. Each right is examined in turn.

### **3. RIGHT TO HOUSING**

#### **Policy Measures**

Only the City of Johannesburg has provided account of its policy relating to housing. Other municipalities either did not have policies or, like Tshwane, were in the process of formulating one or, like the City of Cape Town and the Nelson Mandela Metropolitan Municipality, the policy is linked to the right to water.

The City of Johannesburg has adopted a housing allocation policy whose objective is to promote good governance by facilitating equitable, fair and transparent allocation practices and processes in enabling home seekers to access housing opportunities in

the City. The policy will alleviate queue jumping and land invasion by desperate home seekers and provide them with choices based on their finances.

In terms of the Johannesburg municipality policies, the following are the category of people that are eligible for housing:

- Single parents
- The aged
- Married couples
- The disabled
- People living in backyard rooms and in shacks, and extended families
- Displaced persons and families due to relocations, institutional and hostel upgrading, and
- Special cases due to unforeseen circumstances for example, political instability, and extremely hazardous living conditions.

The general rules for eligibility for government housing subsidy as prescribed in the National Housing Subsidy Implementation manual, as well as the (Member of the Executive Council) MEC Housing directives, will apply. At the same time the municipality is aware of people that do not qualify for this subsidy but are in need of accommodation. Only those on the provincial waiting list and who actually qualify for a housing subsidy will benefit from housing opportunities within the service area of the municipality. In cases where these criteria cannot be complied with, an exemption will be sought from the MEC or Council.

There are different housing options that are offered by the Johannesburg municipality, ranging from in-situ upgrading; Greenfield developments; relocations; and backyard accommodation. To qualify for upgrading, Greenfields developments and relocation options, the beneficiaries must satisfy the following requirements:

- they must on the Council registers;
- they must be on the Provincial waiting list; and
- they must qualify in terms of the Subsidy Implementation manual.

In addition, the Greenfields developments cater for a range of income groups. The backyard accommodation and extended families options also need to be in the Provincial waiting list to qualify for a house.

The Johannesburg municipality offers rental accommodation in the form of flats or houses. For flats, the regional managers evaluate and sign leases on behalf of the municipality. In cases of minors living alone, trusteeship arrangements have to be made by the regional director on behalf of the municipality. The same procedure applies to people who rent houses.

Vacant rental stock must be reported and the information be captured at the central database of the municipality. The property should then be advertised in the newspaper with a cut-off date. If no interest is shown in the leasing of the property, then it should be put up for sale. To ensure an integrated and comprehensive allocation of housing opportunities to home seekers within the Johannesburg

municipality, it is proposed that the allocation committee attach proportionate percentages to all categories of home seekers.

There are categories of non-qualifiers in the housing allocation process, which are divided into conventional and non-conventional categories. The conventional category includes South Africans that are not in the Provincial waiting list. The possible recourse available for people who qualify in this category is that the municipality must encourage them to apply, with an option to purchase a stand. For those that do not qualify, the municipality must refer them to alternative housing options such as rental accommodation. The non-conventional category includes non-South Africans who are in the country illegally, and who are eventually deported. However, the municipality offers non-South Africans that are in the country legally alternative accommodation, either to buy or to rent.

To guarantee that the allocation process is equitable, transparent and non-prejudicial, the Johannesburg Municipality established a committee comprising representatives from Section 80 of the Housing Portfolio Committee (Chairperson and nominees), and housing officials from the Allocation Unit and Housing Facilitation officials.

The committee is tasked with ensuring that adherence to the principles and processes of allocation. Also, it would give direction in the allocation of units in housing projects. The directives will include the following:

- preference to be given to qualified persons on the Provincial Waiting List who applied in 1996 and later;
- a percentage of the units to be reserved for the disabled, aged and displaced;
- relocation of particular settlements to specific housing projects;
- to verify the approved Provincial List of beneficiaries against the allocated site number;
- the allocation committee should resolve disputes arising from allocations;
- the committee should meet bimonthly or when the need arises; and
- the Chairperson of the Section 80 Housing Portfolio Committee should convene all meetings.

The allocation of units is aimed at eliminating shacks and improving the residential areas. Area Managers would ensure that formal units are handed over to beneficiaries after the old shacks are demolished and disposed of. Development agreements must be concluded with the Regional Manager and the facilitation unit to ensure that the vacated land is put to good use. The municipality believes this measure will prevent beneficiaries renting out their old shacks and taking occupation of new units.

The Ekurhuleni and eThekweni municipalities did not provide any information on policies and programmes instituted for the realisation of the rights to have access to housing. Ekurhuleni only mentioned in its report that the right to housing is promoted and fulfilled through its developmental projects that are undertaken to provide housing, water and sewer services. Both municipalities cited the slow transformation process as a major stumbling block to policy formulation, with Ekurhuleni saying that it was also involved with integration and consolidation of municipalities, as well as their policies and by-laws.



At the time of reporting, the Tshwane Municipality was still in the process of reviewing all its existing policies and by-laws. This is done with a view to formulate municipal by-laws in relation to matters that will enable compliance with obligations relating to ensuring access, adherence to building regulations and planning with regard to housing.

Some municipalities, like City of Cape Town and the Nelson Mandela metro treat housing in relation to water supply. However, for our purpose the information on water will fall under the right to water discussed below.

#### **4. RIGHT TO EDUCATION**

##### **Policy Measures**

The Cape Town Metropolitan Council, City of Johannesburg, and Ekurhuleni Metropolitan Municipality did not report on any policy or programme pertaining to the progressive realisation of the right to education.

As part of its Integrated Development Plan (IDP), the Durban Metropolitan Council envisages getting involved in skills training and development through the Poverty Alleviation Programme to address unemployment, particularly rife among the youth. Further, the DMC came up with a transformation plan known as eThekweni Municipality Transformation Plan.<sup>2</sup> The following are some of the key goals the transformation programme intends to achieve:

1. More customer-oriented service;
2. Outcomes-led service delivery;
3. Co-ordinated and integrated service delivery; and
4. A more demographically representative and culturally sensitive organisation.

A planning programme, dubbed Long Term Development Framework in May 2001, preceded the eThekweni Municipality Transformation Plan. The programme discussed key challenges facing the city, including its vision, its development strategies, and its transformation framework. A series of workshops, composed of the Durban Metropolitan City officials, communities, business and tertiary education institutions, took place between June and December 2001.

Meanwhile, (NMMM) electrification programme saw Previously Disadvantaged Individuals (PDIs) from local communities benefiting through a tendering programme, which had skills transfer as its component. The Tshwane Metropolitan Council reported that it offered internal training and development through its Finance Division. In addition, bursaries are given to those employees who wished to further their education. Further, the Tshwane Metropolitan Council supports and actively participates in the Adult Basic Education programme and subscribes to the Skills Development Act, 1998.

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<sup>2</sup> The details of the transformation plan are captured in a draft discussion document entitled “eThekweni Municipality Transformation Plan: Implementing our Municipality’s Vision,” 25 February 2002. The draft discussion document was sent along with the municipality’s report.

Moreover, the Electricity Division of the TMC reported that it was investigating co-operation alternatives with various training institutions in Tshwane. It was also reported that the Division had put aside funds for projects in which local communities and firms with Previously Disadvantaged Individuals (PDIs) would be integrated in the Tshwane economic activities. Internally, the Electricity Division focuses on the following:

- Training of employees in technical careers using the National Qualifications Framework (NQF) as a guiding instrument;
- Marketing and promoting Electrical Engineering as a career (to this end the Division is working with both the University of Pretoria and Technikon Pretoria and actively participates in career exhibitions and other functions); and
- Development of career plans with training options for all its employees.

According to the Tshwane Metropolitan Council, the Electricity Division is struggling to find qualified PDIs with skills in electrical engineering. To this effect, the Division is planning to create at least 20 posts that would be supported by a mentorship programme.

## **5. RIGHT TO HEALTH**

The City of Johannesburg discussed the problem of HIV/AIDS under the Indigent Management Policy where the problems were outlined and the concern was raised that a higher infection rate amongst unskilled labour force, the loss of breadwinners and the increase number of aids orphans would impact negatively on a generation of children.

Ekurhuleni Municipality introduced the [No] Smoking Policy (2002). The municipality's report pointed out that several other proposed policies were not yet operational.

Although the Tshwane Municipality did not have specific policies and legislation, it had several projects. For instance, the health care division of the Social Development Department had been involved in health promotion campaigns, educational sessions, exhibitions and seminars were held at schools, businesses and community groups. A comprehensive HIV/AIDS strategy, which was approved in December 2001, was implemented through an inter-sectoral approach.

In addition, 71 functional clinics and Community Health Centres throughout Tshwane rendered Primary Health Care (PHC) services of which only 43% had a comprehensive PHC package. Most facilities delivered preventive services and treatment for communicable diseases, sexually transmitted infections (STIs) and tuberculosis (TB).

The report also mentioned that the total clinic yearly headcount for people that received treatment during 2000/2001 was 1 965 410.

The Nelson Mandela Metro, the City of Durban, and the City of Cape Town municipalities did not report any new policy, programmatic or legislative measures for the reporting period.

### **Responsibilities**

The City of Johannesburg's Department of Health monitors pollution, provides health services and regulates abattoirs. Additionally, the department provides ambulances and emergency services for disasters. It also has the Service Delivery Strategic Plans which Cholera response in conjunction with Johannesburg Water, Communicable Diseases, Tobacco products control- smoking in public places

Meanwhile, the eThekweni Municipality reported that other responsibilities are under negotiated and involve the departments of all three spheres of government. It is anticipated that further legislation or recommendations will clarify the role of local government in Primary Health Care delivery.

### **Future Goals**

The City of Johannesburg plans to table by-laws for public health by the end of 2002. With the adoption of the Integrated Development Plan [IDP] as required by Chapter 5 of Municipal Systems Act, 32 of 2000, the City aims at integrating health and other sectors like transport into a system that embraces community needs and available resources, including human skills. It also assists in assessing set community goals, and in monitoring and reassessment of the programme itself.

The eThekweni Municipality aims at building additional clinics, hospitals, and establishing more ambulance services. The report states that the municipality plans to establish an integrated and affordable PHC. The municipality reported that there also was a need for 24 hour clinic services, and better access to medication, vital information or education, appropriate AIDS centres. The Municipality also plans to create a support base for AIDS orphans and other vulnerable groups.

However, the municipality pointed to several challenges involving children. Its report revealed that of the 60-70% of all children who lived in abject in poverty, 96 5000 might die of AIDS in the next 10 years. It was also reported that 42 000 children live in residential foster care, while Sexual abuse against children has increased by 30%, and 25% children have stunted growth.

The statistics present a bleak picture, but the City of Durban said that it was determined to reverse the situation.

The City of Tshwane reported that it had a five-year plan for its Health Care department, the goals and objectives of which are summarised as follows:

**Table 1 City of Tshwane 5 Year Plan for Health Care**

Development of the District Health System in the City of Tshwane	To develop a five year work plan as part of the DIP within six months and revise it annually
	To ensure that 50% of staff are appropriately skilled by 2004
	To ensure effective and efficient financial management
	To ensure that PHC services are accessible to 50% of the community by 2004
	To ensure integration of clinic level PHC services by 2004
Improve the health status in the City of Tshwane	To improve the overall health outcomes by at least 3% by 2004. This includes TB, STI's HIV/Aids, Immunisation, etc.
Community empowerment and participation	To reach 50% of the community through health promotion campaigns by 2004
	To improve community participation in Health Care with 10% by 2004
Promote inter-sectoral collaboration	To ensure the establishment of partnerships and networks annually

The municipality said that evaluation would be done following agreements of respective managers based on the envisaged performance management system for the municipality.

## 6. RIGHT TO ENVIRONMENT

### Policy developments

The Johannesburg Metropolitan Council did not have specific policies developed during the current reporting period. However, the city has adopted a number of projects with regard to its mandate. The first is the Service Delivery Strategic Plan which entails the following:

- cholera response service delivery strategic plan;
- pest control services;
- complaint procedures; and
- reporting system for environmental health.

The second project is the Service Policy Guideline Document, which is basically a guideline for environmental health officers regarding the informal food traders and farmers markets. In addition, the Johannesburg metro has the Standard Accreditation Forms that is responsible for establishing accommodation and restaurants, amongst others.

Finally, the city has special projects involving the development of citywide uniform set of Public Health by-laws

The City of Tshwane Metropolitan Council indicated that all its activities are executed in accordance with approved policies, and legislation and by-laws, including the 1996 Constitution and the Municipal Systems Structures Act of 1998. The only other development during the current reporting period was the Treasury Management Bill.

Given their restructuring, the eThekweni and Ekurhuleni municipalities did not have any policy or legislative developments. Hence, eThekweni municipality is still operating in terms of the old legislation not yet repealed. Subsequently, issues such as noise pollution, abattoirs and gas reticulation have not been carried to any significant extent.

The Ekurhuleni Municipality, established only in December 2000, is undergoing transformation that involves integrating ten separate municipalities, each of which has previously had its own policies and by-laws. Nonetheless, parliament approved a policy on Integrated Environmental Management Strategy during the current reporting period.

The Nelson Mandela Metropolitan Municipality and the City of Cape Town developed no policies were developed during the current reporting period. Like Ekurhuleni, the Cape Town municipality cited the massive transformation that entails amalgamating different municipalities into one metropolitan council.

## **7. RIGHT TO WATER**

### **Policy Measures**

Only the municipalities of Johannesburg, Tshwane, Cape Town and Port Elizabeth provided information relating to policy developments during the reporting period. The municipalities of Tshwane and Cape Town reported on their adoption of the Free Basic Water Supply Policy which is aimed at providing households with free six kilolitres of water every month.

The Johannesburg municipality has the Basic Municipal Services Subsidy Policy through which it addresses the issue of free basic water services and free electricity supply. The Services Subsidy Supply Policy also covers free basic refuse removal and sanitation for residents who cannot afford to pay for these services.

In order to qualify, residents must satisfy one of the following criteria:

- They must be accountholders that are pensioners receiving a Government Pension; or
- An accountholder with a total family income of less than R1100; and
- HIV/AIDS breadwinners and/or their orphans.

The Nelson Mandela Metropolitan Municipality reported that while it provided water and sanitation, the supply was still insufficient. For instance, people who reside in their municipal area do have access to clean water, which is delivered through pipes from the various water treatment works. Basic service water is received via standpipes, which should be located within a distance of 200 metres of a residence. The municipality admitted, however, that there were areas where standpipes are located at a distance greater than 200 metres.

It also reported that households within the service area accessed waterborne sanitation. However, there are other areas where the bucket system is still being used, such as in squatter camps and areas marked for housing construction. The

municipality is in the process of developing plans to decrease the number of people that use the bucket system. Use of Ventilation Improved Pit latrines is not promoted due to the ground conditions and the location of the underground aquifer.

The Ekurhuleni and eThekweni municipalities did not report on policy developments.

## **8. LEGISLATIVE MEASURES<sup>3</sup>**

### **Durban Metropolitan City**

The Durban Metropolitan City referred to the following legislative pieces as the ones on which their work is based:

- Municipal Systems Act (2000)
- The Structures Act (1998)
- The Municipal Demarcation Act

The Tshwane Council reported that it had compiled a draft of Building Control by-laws that was expected to be complete by 30 April 2002. It had circulated the draft on Solid Waste by-laws, and proposed other by-laws concerning the Control of Municipal Hostels. These draft and proposed by-laws had a completion date set for 31 May 2002.

The City of Tshwane implemented the Municipal Structures Act of 1998 and the Municipal Systems Act of 2000. It said these laws were necessary for its proper and efficient function. It also indicated that all their departmental activities are executed in accordance with by-laws and approved-Council policies, comprising the following:

The Constitution (1996)  
Municipal Structures Act (1998)  
Municipal Systems Act (2000)  
Treasury Management Bill (?)  
Financial by-laws (to be promulgated in due course)

### **City of Tshwane**

The City of Tshwane municipality is still developing legislation for the realisation of the right to housing, which have been summarised in the table below. The municipality intends to review and amend, repeal or replace existing laws and other measures that hinder the provision of access to socio-economic rights. These include laws that interfere with the municipality's responsibilities (the target dates in the table have already passed.)

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<sup>3</sup> The legislative pieces listed in this section are applicable to all the municipalities. Therefore, they will not be repeated for each municipality.

**Table 2 City of Tshwane Proposed By-Laws**

<b>SUBJECT OF BY-LAWS</b>	<b>PROGRESS TO DATE</b>	<b>TARGET DATE FOR COMPLETION OF PROJECT</b>
Building Control by- laws	Compiling draft no 1	30 April 2002
Proposed by-laws on the Control of Municipal Hostels	Compiling draft no 1	31 May 2002
Proposed by-laws pertaining to the management and control of Flats-Buildings owned by The City of Tshwane Metropolitan municipality	Compiling draft no 1	31 May 2002
Proposed by-laws on the Management and control of informal settlements	Compiling draft no 1	31 May 2002

These pieces of legislation will in some ways affect access to water.

### **City of Johannesburg**

The Johannesburg municipality promulgated the following pieces of legislation toward fulfilling its housing obligations:

Municipal Structures Act  
 Municipal Systems Act  
 Prevention of Illegal Eviction from, and Unlawful Occupation of Land Act  
 National Building Regulations and Building Standards Act No. 103 of 1977  
 Accommodation Establishment by-laws  
 Housing Act  
 Development and Housing Act, No. 103 of 1985  
 Housing Consumer's Protection Measure Act  
 Rental Housing Act  
 Gauteng Housing Act  
 Development Facilitation Act  
 Town Planning and Township Ordinance  
 Water Act, No. 92 of 1993

The Nelson Mandela municipality, in respecting, protecting, promoting and fulfilling the right to housing and water enacted the following:

Section 118 of the Local Government Municipal Systems Act, 32 2 of 2000, which deals with the restraint on the transfer of immovable property has provoked an outcry and a series of court cases claiming that it is unfair. As a result, an amendment to this section is presently under consideration.

Before this act, the Local Government Municipal Structures Act 117 (1998) has guided the municipality. The Johannesburg Metropolitan Council implemented the Municipal Systems Act of 2000. Other legislation listed as having been implemented during the reporting period include the following:

- the Environment Planning Amendment Act
- the Municipal Demarcation Act of 1998
- the Occupational Health and Safety Act 85, 1993
- the Noise Regulations promulgated in terms of the Environment Conservation Act 73 of 1989
- the Health Act 63 of 1977
- the Hazardous Substances Act of 1973
- the Atmospheric Pollution Prevention Act (APPA) of 1965; and
- the Water Act

The Johannesburg Council was in the process of drafting the by-laws listed below the completion of which was expected by end of 2002:

- Waste Management By-laws
- Water Management By-laws
- Cemeteries and Crematoria
- Parks and open spaces By-laws
- Noise Control By-laws
- Water Pollution By-laws

Like the City of Johannesburg, the Tshwane Metropolitan Council had the Municipal Systems Act of 2000. There are by-laws pertaining to public amenities whose commentary stage is completed, including the Cemetery and Crematoria by-laws (which was still at the draft stage by the time of reporting) and was targeted for completion by 2 March 2002.

Other proposed by-laws were on the Management and Control of Informal Settlements whose date of completion was not provided, while by-laws on the city's finances were still to be promulgated.

Ekurhuleni Metropolitan Municipality did not provide information on legislative developments during the current reporting period. However, by-laws on water supply, solid waste and wastewater were also introduced, covering a plethora of issues such as prevention of water pollution; collection and removal of business and domestic refuse; industrial and trade refuse; garden and bulky refuse, builders refuse; special industrial, hazardous, medical and infectious refuse; landfill sites, mini disposal sites and refuse transfer stations; littering, dumping and ancillary matters; storm-water, sewage, industrial effluent; transportation of sewage by road haulage; waste food and other disposal units; disposal of sludge, compost and manure; private treatment plants including charges, access to premises and offences and penalties.

Other than the implementation of the Municipal Systems Act, 32 of 2000, the Nelson Mandela Metropolitan Municipality did not pass any new legislation. The City of



Cape Town Metropolitan Council and the eThekweni Municipality did not report any new legislation.

The Johannesburg Metropolitan Council reported that it only implemented the Municipal Systems Act of 2000.

Other municipalities did not report on the legislative developments. The Ekurhuleni Municipality reported that while it did not have legislative measures for the period in question, its by-laws were being redrafted but not approved. The municipality did not indicate when these by-laws would be approved.

The Nelson Mandela Metropolitan Council and the City of Cape Town municipalities did not explain why information regarding legislative measures.

It is further appreciated that due to the transformation process that municipalities have been undergoing in the past few years, there may be problems with regard to some of the policy and/or legislative measures, including the by-laws, which were passed prior to the amalgamation.

## 9. CRITIQUE

It is of great concern that the municipalities do not exert themselves in responding to the protocols. From their responses, it may be deduced the municipalities are not clear on their Constitutional mandate regarding the socio-economic rights.

Most of these municipalities did not furnish the Commission with satisfactory answers with regard to their constitutional mandate as elaborated in sections 27 and 152 of the Constitution. For instance, the eThekweni Municipality has tended to make reference to legal submissions which the Commission could not identify. Moreover, the information from this municipality revealed that it is slack in advancing the needs of vulnerable groups.<sup>4</sup>

### *Right to Housing*

The policy measure that the Johannesburg municipality has implemented for housing respects the right in that it will facilitate an equitable, fair and transparent allocation of resources, thus promote good governance. The policy also protects the right because it will do away with queue jumping.

By giving citizens options for financial assistance, the municipality created grounds for end user financing as it is necessary for access to housing. Accordingly, the *Grootboom* judgement concluded that a measure is reasonable if appropriate financial resources are available for its implementation.<sup>5</sup> The commitment of the Johannesburg municipality to provide housing is evidenced by requests for exemptions for those people that do not qualify in terms of the eligibility criterion. The establishment of

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<sup>4</sup> It is noted that the municipality's IDP attempts to address some of the above groups, especially children, women, the aged, the unemployed and those from rural areas).

<sup>5</sup> *Government of the Republic of South Africa and Others v Grootboom and Others*, 2000 (11) BCLR 1169 (CC) para. 39

the allocation committee protects the right to housing by eliminating corruption and misappropriation of funds.

The different housing options are reasonable because they do not limit one's choice to gain access to housing, and will cater for the financial needs of vulnerable groups. For instance, the provision of rental housing will ensure that those who cannot afford to buy houses would still have a house to live in.

While the City of Cape Town municipality did not provide information on instituted measures indicated that it adheres to basic minimum standards in the provision of services such as water. The standards are reasonable because they are in compliance with Reconstruction and Development Programme (RDP) framework.

The reports from the municipalities of Cape Town, Ekurhuleni, eThekweni, and Nelson Mandela showed that their restructuring impacts negatively on service delivery. The eThekweni Metropolitan Council also reported that the Municipal Systems Act, of 2000 and the Municipal Demarcation Act are obstacles in the execution of its constitutional mandate.

### *Right to Health*

As for the health section, the Metros did not provide the information requested on policy and legislative measures. This created problems in assessing whether the metros met their goals. However, information on future goals of the health sector indicates that the Metros are cognisant of their responsibilities and constitutional obligations. The transformation process they are presently undertaking hampers these Metros.

### *Right to Education*

In most developing countries, including South Africa, education is usually responsibility of the national and/or provincial governments and not local government. Some of the responses of the Metropolitan Councils testify to this fact. However, those Councils that do contribute to the progressive realisation of the right to education are commended. In addition, the definition of education, therefore, should be broad, so local government may have a role.

Education should not only refer to formal classroom activities. As the South African Qualifications Authority might attest, skills-based activities should be part of the of the general education system; hence such inclusion will, in turn, define the role of the municipalities. The youth need skills-based projects and programmes to make a meaningful contribution to the country's economic growth specifically in science, engineering and technology.

The NMMM and TMC are contributing to the empowerment of the PDIs through their electrification programmes that provide local communities with skills development and thus with employment through tenders. Partnerships between municipalities, learning and other institutions involved in skills development are a relevant vehicle toward bridging the gap between theory and practice. It is for this reason that the TMC must be commended for its efforts to involve the University of Pretoria and Technikon Pretoria in developing the electrical engineering area.

Tendering can provide employment to the unskilled since most government projects are labour-intensive. In turn this add to the number of the Small, Medium and Micro Enterprises (SMMEs). Great results could be achieved if these projects were merged with programmes like the Human Resource Development (HRD) Strategy for South Africa,<sup>6</sup> that also seek to further the objectives of the Skills Development Act, 1998.

The White Paper on Local Government of 1998 obliges municipalities to promote social development by providing recreational and community facilities, and deliver social welfare services. Also, the Constitution empowers municipalities to provide childcare facilities and grants to associations and – in terms of the Child Care Act, 1983<sup>7</sup> grants to associations. It is not clear if all municipalities are aware of the contribution they are expected to make toward the progressive realisation of the right to education, as only one municipality addressed itself to that effect. It is clear, however, that the right to education, specifically the provision of ECD, calls for collaboration between various spheres of government.

Such collaboration is in line with the spirit of co-operative governance encouraged by Chapter 3 of the Constitution. This is an important provision that local government should not take lightly as it appears in their responses to the questionnaires.

#### *Right to Environment*

The majority of the municipalities are presently engaged in restructuring. As a result, nothing much was achieved as far as implementing new measures is concerned. Still, some municipalities hardly reported on the programmes or projects in place.

Only the Nelson Mandela Metropolitan and the City of Cape Town municipalities reported on the delivery of electricity to some areas to curb atmospheric pollution. The Nelson Mandela Municipality reported that between mid 1992 and 30 June 2002, it spent about R100 million to service about 32 882 erven, compared to an estimated 35 696 erven in the informal/low cost housing areas serviced between 1994 to June 2002 at approximately R60, 5 million. Carried out in this manner, the process leaves out approximately 32 087 un-serviced erven, and a balance of about R96 million. This is unacceptable specially that the project has been going on since 1992.

The Nelson Mandela Metropolitan Municipality (as well as other municipalities) is still faced with a challenge of implementing sanitation measures as some households were still using the bucket system. The municipality indicated, however, that it was in the process of phasing out the bucket systems and introducing Ventilated Improved Pit (VIP) toilets.

Also of concern is the fact that most municipalities are still not catering for the needs of the vulnerable groups within their own localities. For example, there are areas which still do not have proper sanitation, including refuse removal services. This results in people being exposed to some form of unhealthy environments. This is common mostly in rural and informal settlements. Lack of electricity in most of the

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<sup>6</sup> This programme was co-released by the Departments of Education and Labour in April 2001.

<sup>7</sup> Kader Asmal, National Policy: Education White Paper Five (5) on Early Childhood Development; Meeting the challenge of early childhood development in South Africa, Pretoria, May 2001. [http://www.polity.org.za/govdocs/white\\_papers/education.html](http://www.polity.org.za/govdocs/white_papers/education.html) Site visited on 20 August 2002.

rural, informal and formal areas also poses a concern, as lack of these facilities and other energy sources results in people using coal and other forms of energy that end up in exacerbating air pollution.

Overall, it is encouraging that some municipalities are revising existing measures with a view to formulating new ones. However, in many cases, dates of completion of the revision were not provided.

## **10. RECOMMENDATIONS**

Whilst it is appreciated that the municipalities are still inadequately capacitated, and that it is their first time responding to the protocols, it is unwarrantable that they did not understand their constitutional obligations when addressing the questionnaires.

It is further appreciated that due to the transformation process that municipalities have been undergoing in the past few years, there may be problems with regard to some of the policy and/or legislative measures, including the by-laws, which were passed prior to the amalgamation.

Municipalities are still facing a huge challenge of providing services such as water supply, sanitation, and refuse removal, particularly for people with disabilities, women, and the aged in rural areas, and in informal and some formal settlements. Therefore, policies should be instituted to ensure that the needs of these vulnerable groups are catered for. As for housing, some initiatives have been taken by the national and provincial departments to ensure that these vulnerable groups benefit, and their needs are provided for in the budgets.

Municipalities must report on those measures that impede access socio-economic rights. The municipalities should also indicate what corrective measures they are taking, as a result. Equally important is that these municipalities should clearly identify those measures that were not repealed but were being implemented. It is not acceptable for municipalities, for example, the eThekhwini Municipality, to merely state that there are measures, which were redrafted without stating which parts or sections of those measures were being repealed. This makes it difficult to analyse whether or not constitutional obligations were met.

It is also recommended that the municipalities fast track the process so they may dedicate enough time to the development of measures relevant for the enhancement of their obligations.

Everything possible should be done to further the envisaged government skills development plans. This should not be viewed as the sole responsibility of the Departments of Education and Labour, but other government departments and spheres should play should be involved in skills development.

The partnership that exists between the TMC's Electrical Engineering Division and University of Pretoria and Pretoria Technikon is an innovative way to make the skills development possible. Other municipalities should follow the example of the government HRD Strategy by providing apprenticeships so the youth may gain work experience.

Sector Education and Training Authorities (SETAs), the national Department of Education, Department of Labour and other role players concerned with skills development should emulate the efforts of the TMC. Initiatives such as that of the TMC fit in very well with the government's HRD Strategy whose success depends on effective co-ordination of its strategic objectives which comprise the following:

- A solid foundation, consisting of early childhood development, general education at school, and adult education and training;
- Securing a supply of skills, within the Further and Higher Education and Training bands of the NQF, which anticipate and respond to specific skill needs in society, through state and private sector participation in lifelong learning;
- An articulated demand for skills, generated by the needs of the public and private sectors, including those required for social development opportunities, and the development of small business; and
- A vibrant research and innovation sector which supports industrial and employment growth policies.<sup>8</sup>

Local government should seriously consider the 1998 provision in order to fulfil its obligation to social development by establishing recreational community facilities.

There is a need for national legislation to define which health services are to be provided by municipal structures. Duplication of services by provincial health departments should be phased out especially the delivery of the PHC package. Clinics should be the first line of defence in the fight against AIDS and should receive sufficient funds to maintain and re-train staff. Education on HIV/AIDS prevention and its treatment should be made available to all.

## 11. CONCLUSION

It is appreciated that this is the first time the municipalities have ever engaged in this exercise. Their responses are still lacking on some aspects, but it is hoped that they will be improved in time. As we have seen, most of the municipalities are in the process of transformation, with only Tshwane Metropolitan Council having reached some semblance of stability. Nonetheless, it is important that the rest of the metropolitan councils speed up their process of restructuring so they are not impeded in their service delivery mandate.

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<sup>8</sup> Departments of Education and Labour, Human Resource Development Strategy: A Nation at Work for a Better Life for All, April 2001.

## **ABBREVIATIONS**

<b>APPA</b>	Atmospheric Pollution Prevention Act
<b>CoJ</b>	City of Johannesburg
<b>CTMC</b>	Cape Town Metropolitan City
<b>DMC</b>	Durban Metropolitan City
<b>EMM</b>	Ekurhuleni Metropolitan Municipality
<b>IDP</b>	Integrated Development Plan
<b>MEC</b>	Member of the Executive Council
<b>NQF</b>	National Qualifications Framework
<b>PDI</b>	Previously Disadvantaged Individuals
<b>PHC</b>	Primary Health Care
<b>SETAs</b>	Sector Education and Training Authorities
<b>SMMEs</b>	Small, Medium and Micro Enterprises
<b>STIs</b>	Sexually Transmitted Infections
<b>TB</b>	Tuberculosis
<b>TMC</b>	Tshwane Metropolitan Council
<b>VIPs</b>	Ventilated Improved Pit (toilets)