

The Role of Civil Society Organizations in support of Local Government:

Towards a SALGA policy

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Prepared on behalf of Mvula Trust for SALGA

By TEAM Management Solutions¹

Tel: 27 – 31 – 7670209

Email: dbarnes@teamwork.co.za

“Together Everyone Achieves More”

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Definitions and Abbreviations

Basic municipal services²	Means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment
CDW	Community development worker
Civil society³	Civil Society is that part of society that is not part of the state or of the private/business sector.
Civil Society Organisations (CSO)⁴	<p>Organisations of civil society are all formed voluntarily by citizens to strive for public, community or group benefit objectives, as opposed to private profit, and generally fall into the three categories as detailed below:</p> <ul style="list-style-type: none">• Organisations formed out of concern to assist vulnerable sectors, and the poor or disadvantaged, including those formed for self-help purposes• Organisations which are formed on the basis of a common interest in and/or to take action on a particular subject or issue• Organisations through which people engage in a common pursuit. <p>Examples of the most common types of civil society organisations (CSOs) include:</p> <ul style="list-style-type: none">• Community based organisations (CBOs)<ul style="list-style-type: none">○ Local development associations○ Project committees○ Water services providers○ Residents/Ratepayers Associations○ Clubs etc• Service delivery non governmental organisations (NGOs)• Charities• Advocacy NGOs (human rights, land, environment and other issues)• Trade Unions• Faith based organisations <p>A vibrant civil society is generally seen, and is seen by our government, as an important prerequisite for a strong and sustainable democracy in any country. CSOs play a number of important roles, such as:</p> <ul style="list-style-type: none">• Giving organised expression to the needs of citizens• Holding government and elected officials accountable• Supporting government to achieve its developmental democratic objectives.
Non Governmental Organisations (NGOs)⁵	<p>Organisations within civil society that are autonomous from government and do not operate for profit. As with civil society, NGOs are not homogenous. They range from charity organisations, those who are concerned with more narrow interests, to those who are concerned with the development process in our country.</p> <p>The NGOs which form the focus of this document are those</p>

that work in the field of development and that work with people to help them improve their social and economic situation and prospects, and who display the following key characteristics:

- Not for profit / Not self-serving
- Do not have shareholders and whose Board of Directors is a body with purely governance functions
- Independent
- Value-based
- Support government's service delivery and social development programmes
- Promote active community participation in development
- Are registered as Non Profit Organisations with the Department of Social Development.

Community-based organisation (CBO) ⁶

This is a not-for-profit organisation within a specific community, with community representatives, that provides a service to that community with the community's mandate or is representing the overall interests of the community. The office bearers or staff of a CBO are generally people who live in the community and were elected or appointed by the community or sections of the community to perform certain functions. Faith based organisations are included in the category.

Development⁷

Means sustainable development, and includes integrated social, economic, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at: (a) improving the quality of life of its members with specific reference to the poor and other disadvantaged sections of the community; and (b) ensuring that development serves present and future generations.

Environmentally sustainable⁸

In relation to the provision of a municipal service, environmentally sustainable means the provision of a municipal service in a manner aimed at ensuring that: (a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances; (b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and (c) legislation intended to protect the environment and human health and safety is complied with.

Integrated development plan (IDP) ⁹

Means a plan envisaged in section 25 of the Municipal Systems Act

ISD

Institutional and social development

Local community' or 'community', in relation to a municipality¹⁰

Means that body of persons comprising: (a) the residents of the municipality; (b) the ratepayers of the municipality; (c) any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality; and (d) visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities

	provided by the municipality, and includes, more specifically, the poor and other disadvantaged sections of such body of persons.
Meaningful involvement¹¹	is defined as including: <ul style="list-style-type: none"> • Strong awareness of and participation in planning and delivery processes by communities and CBOs; • Increased numbers of NGOs, CBOs and community members actively engaged in local level planning processes for services delivery; • Increased numbers of NGOs and CBOs contracted for delivery of services by municipalities; • Greater proportions of programme financing flowing through and being managed by NGOs and CBOs; • Increased numbers of NGOs and CBOs, constructively involved in policy review and reformulation processes at provincial and national level
WSA	Water Service Authority in terms of the Water Services Act
WSP	Water Service Provider in terms of the Water Services Act
SALGA¹²	The South African Local Government Association
Ward Committees	Ward committees were established in terms of section 73 of the Structures Act ¹³ . Their purpose is to: “enhance participatory democracy in local government” ¹⁴ . Ward Committees are not CSOs although they have CSO representatives serving on them. They are official municipal structures and as such are part of the state. They are therefore not part of civil society.

Purpose

The purpose of this document is to provide a draft contribution on the role of civil society organisations in support of local government.

This can then be discussed internally within SALGA structures and with SALGA stakeholders (including municipalities, DPLG, Civil Society, National Departments etc.) in order to come out with a clear policy statement on the role of civil society organisations in support of local government.

The policy should make clear the following:

1. that local government recognizes the important role that civil society organizations play as a partner to local government;
2. that local government is committed to collaborating with civil society organizations;
3. the value which civil society organizations can bring to the business of local government;
4. the roles which civil society organizations could play in support of the provision of municipal services provided by local government;
5. how local government can create an enabling environment for civil society organizations to fulfill their role including:
 - a. how the role of civil society organizations in local government can be strengthened;

- b. mechanisms for the constructive engagement of civil society organizations with local government;
- c. procedures for procuring services which do not disadvantage civil society organisations but promote their involvement.

Background

“Poverty eradication is still one of the biggest challenges facing our country. Within this context our government has committed itself to the World Summit on Sustainable Development Millennium Targets to eradicate poverty as well as accelerating service delivery” (Fholisani Sydney Mufamadi, Minister for Provincial and Local Government)¹⁵

For local government to meet the Millennium targets, it not only has to devote significant resources to meeting the goals, it will need to work in a manner which is based on the principles of sustainable development.

Local government is beginning to address the backlog of services, aiming to provide all South Africans with at least a basic level of service by 2013, through one of the biggest capital grants worldwide, the Municipal Infrastructure Grant. The successful implementation of this programme will not only require this grant funding to be spent on time and within budget, but also in a manner which addresses the needs of communities and involves them in the planning, implementation, operation and review of projects. The grant presents a golden opportunity to uplift and develop communities. Civil society organizations can assist local government in this as a key partner enhancing the value of the services local government provides ensuring sustainable development.

International Context of Civil Society Involvement

Partnering between government and civil society organisations (CSOs) in development is a universally recognized practice and is generally promoted by governments and international bodies alike. The United Nations and international donors have recognized the importance of partnerships between governments and civil society.

“The United Nations once dealt only with Governments. By now we know that peace and prosperity cannot be achieved without partnerships involving Governments, International Organisations, the Business Community and Civil Society. In today ‘s world we depend on each other.” (Kofi Annan, UN Secretary – General)¹⁶

The World Bank affirms this, stating:

“Partnerships between governments, businesses and civil society organizations (CSOs) are now one of the most effective ways to raise standards of living and achieve sustainable development. Civil society organizations (CSOs) play a critical role in helping to amplify the voices of the poor in the decisions that affect their lives. The World Bank recognizes the important role that CSOs play in

meeting the challenges of development and welcomes the opportunity to work with civil society.” (World Bank)¹⁷

World Trade Organisation Director-General, Mike Moore, says he welcomes scrutiny from civil society, and that their engagement with the WTO “informs us and encourages us to do better.”¹⁸

The United Nations Development Programme Human Development Report for South Africa (2003) emphasized the primacy of the role of CSOs in policy planning and implementation.

“While the state may have a comparative advantage on macro issues to lead the process of developing a national agenda, it is not always the most effective site from which to identify, analyse or seek solutions to specific problems. In addition to working closely with the private sector, the state must ensure active collaboration with civil society. Community organizations, grassroots groups and non-governmental organizations, being closer to the level of a local problem, are often much better placed to seek and implement solutions and monitor policies and programmes.” (UNDP: Human Development Report for South Africa)¹⁹

The same report also states:

“Communities are critical to the planning and decision – making processes for social infrastructure delivery. Besides being the target users of infrastructure and services, they have the local knowledge and experience to support and even direct the policy, planning and delivery processes. From the ground, they are also in a position to play crucial roles in due diligence and monitoring. At the same time, it is important that communities own their involvement and genuinely participate. This requires their empowerment. It further requires the commitment of communities to self-determination. It is also important that community involvement is seen not as an impediment, but rather as a necessary precursor to achieving intended outcomes and impact...” (UNDP: Human Development Report for South Africa)²⁰

South Africa’s Legislative and Policy Framework

In South Africa, a policy and legislative framework has been created to give expression to this core democratic value of partnership between civil society and government.

The constitution has also supported the involvement of civil society in local government. The Constitution of South Africa, the founding document of our democracy, states:

*The objects of local government are-...
to provide democratic and accountable government for local communities;...and... to encourage the involvement of communities and community organisations in the matters of local government.*²¹

This is further developed in all the local government legislation including the:

- **Municipal Systems Act** which says that “a fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management”²² and that members of the local community have the right “to contribute to the decision making processes of the municipality”²³; and
- **The Municipal Structures Act** which establishes ward committees, while not organs of civil society, were set up with the intent of engaging with civil society organizations and communities.²⁴

In giving content to the above, the State President, Thabo Mbeki, mentions in his 2005 state of the nation address that,

“The capital investment programme of government will be speeded up focusing on housing..., water and electricity. In part to facilitate this, urgent steps will be taken to strengthen the Public – Private Partnership mechanism in government in 2005. At all times these partnerships should involve local communities”²⁵

In the water and sanitation sector, which serves as an example of local government civil society partnership, there have been further developments. In pursuance of the above, the government of South Africa has approved a policy of promoting the meaningful involvement of civil society in the water services sector. This policy is formulated in the Strategic Framework for Water Services, approved by Cabinet and published in September 2003²⁶. It is also included in the financing agreements signed by the government and the European Commission for both the first and the second phases of the Masibambane (Water Services Sector Support) Programme. Other national government departments, notably the Department of Provincial and Local Government (DPLG), and organised local government (SALGA), have also committed themselves to achieving this goal.

Practice Examples

Not only has a legislative and policy environment been created, there have also been several successful partnerships between government departments (including local government) and civil society organizations. Recent examples include:

- the partnership between the Department of Social Development and Organs of Civil Society, in a campaign to root out corruption in the provision of social grants;
- the partnership between the Department of Agriculture and Land Affairs around the land reform processes in South Africa;
- Partnerships between the Department of Public Works and Civil Society Organisations on the Expanded Public Works Programme; and
- the Masimbabane (“Lets work together”) programme in the water and sanitation sector has modelled partnership between DWAF, Local Government and civil society.

The Department of Water Affairs and Forestry, as the national government department responsible for water services, has made provision in its work plan and budget for the Masibambane Programme to give effect to this political commitment on involving civil society organizations in its work.

These examples provide encouragement that it is possible for civil society organisations to play a meaningful role in partnership with local government, however in spite of these, there have been many challenges facing civil society organisations since 1994 as they have strived to fulfil their role.

Challenges over the last 10 years

Some of these challenges²⁷ can be defined as:

1. ***A shift or change in roles.*** The advent of South Africa's democratic government was accompanied by new problems and difficulties for many NGOs, who needed to redefine their roles and identities. The struggle to move from resistance to reconstruction, and to play a constructive role in development, captured the challenges NGOs had to and continue to grapple with. Some organizations were unable to adapt and had to close down, others made significant shifts in their orientation and embraced new roles. These roles include being participants in the policy-making process, becoming partners in service delivery – rather than as agents on their own – and as monitors of the delivery performance.
2. ***Shifts in funding patterns and impact thereof.*** Prior to 1994, many northern donors funded NGOs as a way in which to support the struggle for democracy. However, when the new government came to power, a number of donors reduced their level of direct funding to NGOs and CBOs and instead channelled their contributions to government departments in the form of bilateral aid. In the face of shrinking funding, many NGOs have resorted to tailoring and sometimes even compromising their values and identity in order to compete with other NGOs or private sector for government tenders. Many NGOs have developed a new client relationship with government and in some instances this has undermined their ability to play a critical role as an independent critical voice in policy and delivery debates.
3. ***Lack of capacity.*** During the same time that donor funding was being reallocated to government, more than 60% of senior staff within the NGO sector moved to government, the corporate and private sector, and more specifically into private consultancies in the form of technical and social consultants. This led to a serious capacity drain from the NGO sector, affecting its ability to play meaningful roles in policy and delivery processes.

Partly as a result of these factors, NGOs face significant barriers to meaningful participation in the delivery of services. Specifically, three barriers need to be addressed:

1. ***Complicated administration procedures with little support.*** Contracted work for government can undermine the sustainability of NGOs in that a great deal of their time and energy is spent on undertaking the necessary administrative,

management and legal requirements of accounting for the operation of a government funded service, with there frequently being very little support available to the NGO to undertake these obligations.

2. **NGOs/CBOs viewed as second-class players.** The experience of many NGOs is that they have been perceived and treated as second-class players in delivery programmes. This is largely in response to questions regarding the quality of NGO work, and a perception that the for-profit private sector is more efficient and more experienced in the "delivery" aspect of development while NGOs are too concerned with "process" and not enough about the delivery "products".
3. **Cumbersome processes for accessing funds.** Accessing funds from government departments is an enormously long and cumbersome process. This can impact negatively on NGOs and CBOs and their ability to engage in contracts or partnerships with government departments - they are unable to afford capital and resource outlays while waiting for funds and payments.

These are important considerations for development of policy for local government on how to create an enabling environment for civil society to play a meaningful role.

More specifically in the water and sanitation sector, the following pressing challenges were found:²⁸

1. **The limited number of CBOs and NGOs engaged with policy formulation, monitoring and service delivery in the water and sanitation sector.** This is due to a range of factors, including a lack of certainty of ongoing sustainable work leading to declining number of NGOs due to funding conditions, the limited emergence of new initiatives and institutions amongst civil society, as well as the barriers to entry as service providers.
2. **The limited capacity of existing CBOs and NGOs actively engaged in the water and sanitation sector.** NGOs and CBOs presently engaged in policy formulation, monitoring, education, and service delivery in the water and sanitation sector vary considerably with regard to their technical and institutional capacity to provide consistent and adequate services. This may be due to institutional problems, such as limited resources, weak management, and staff turnover, as well as contextual factors, including excessive demand on services, inappropriate financing mechanisms, and antagonistic relationships with government.
3. **The lack of awareness of CBO and NGO services amongst government departments and local municipalities.** For a range of reasons, national provincial and local government awareness of the potential value of CBO and NGO services is low. This may be due to the lack of coverage of NGOs and CBOs, or preconceived notions of NGO/CBO roles by government officials. Also, a lack of marketing and networking with service providers leads to lower profiles for the services of existing civil society institutions.
4. **The poor perception of NGO and CBO services by government departments and local municipalities.** In cases where local and provincial government are aware of NGO and CBO services, there may be a poor perception of the

added value due to previous experience with the quality and consistency of such services. While these are difficult in general to quantify and assess, these experiences may have resulted from other factors, including those detailed in this section.

5. **The barriers to entry to service provision for CBOs and NGOs due to excessively cumbersome and demanding contractual procedures by local municipalities.** CBOs and NGOs, and indeed DWAF, have identified the cumbersome and onerous procedures for contracting of service providers as a significant barrier for entry of civil society organisations in the water sector. Inappropriate security provisions, guarantees, bridging finance and contracting criteria also contribute to the overall barriers to entry, with the result that larger, established NGO and CBO agencies have significant advantages over newer institutions in terms of contracted services.
6. **The poor level of partnerships between CBOs and NGOs, and private sector delivery agents and social consultants in the water and sanitation sector.** Partnerships between civil society and private sector institutions are generally weak across the water and sanitation sector, with the resultant loss of potential for experiential learning and skill development. While this is due to a range of factors, including a lack of marketing by NGOs/CBOs and a mismatch of institutional principles and operational priorities, the absence of an accessible contracting framework contributes to a lack of potential synchronicity.
7. **The poor level of national and provincial coordination between and among civil society organisations and networks.** Inter-organisational networking and coordination within the NGO and CBO sector are generally weak, with an absence of structured relationships to link institutional roles and programmes. This may be due in part to the lack of institutional capacity at national and provincial levels to coordinate effectively, and the absence of an overall strategic focus for engagement by civil society organisations, but also to the lack of promotion of such initiatives within government programmes.
8. **The poor level of awareness and knowledge of water and sanitation planning and delivery frameworks, and support for community based engagement with these, amongst communities and local groups.** Meaningful engagement with water and sanitation programmes are hampered by the lack of engagement by local level community initiatives, due largely to a lack of support and information regarding local level planning and delivery frameworks. Compounding the issue is the lack of support provided to community led initiatives by NGOs and other CBOs due to their capacity constraints and lack of coverage. Greater awareness leads to further initiatives to broaden involvement by other parts of civil society.

Added together, these problems provide significant obstacles to broad-based, meaningful participation by civil society organisations within water and sanitation service delivery. This in itself poses problems of the sustainability, given that the overall capacity to maintain delivery infrastructure and services over the

longer-term is seriously undermined. Most of these problems apply to other sectors as well.

Towards a SALGA policy

In September 2005, Mvula Trust were requested by SALGA to draft a policy paper with respect to the potential roles which CSOs could perform in support of municipalities in the focus areas of water & sanitation, housing, infrastructure delivery, local economic development (LED) and any other potential areas identified during the policy formulation process.

Elements which were to be considered within this policy document included:

- Procurement of CSOs in terms of the local government procurement regime defined by the Municipal Finance Management Act (MFMA) and associated supply chain management regulations and Treasury prescripts/guidelines;
- Potential roles which CSOs could provide to municipalities which would add value and be relevant to both the municipalities and the CSOs (in terms of their respective mandates and constitutions);
- Political issues of civil society involvement with respect to community participation as defined in the municipal structures and systems acts, and the relationship of CSOs with the political structures envisaged in the acts (i. e. municipal ward councillors, ward committees, neighbourhood structures etc.).

This document has been drafted in response to this request and it is intended that the document will be engaged with by SALGA and its stakeholders with the intent that SALGA will then formulate a policy on the role of civil society organizations in local government.

The Value of Civil Society Involvement in Local Government

CSOs (NGOs and CBOs) are not-for-profit organisations, working from a generally strong community upliftment ethos. They are driven by widely shared values and a belief in the social change mission inherent in their work. They play a role in terms of championing the needs of the poor. Because CSOs generally have the advantage of being able to concentrate on activities relating to the needs of the poor, they are more likely to be trusted by the poor.

CSOs are different to the private sector because their approach is focused on combining service delivery with developing people and building social capital. Their approach can be described as:

- People centered,
- participatory,
- community based,
- building capacity,
- empowering,
- enhancing sustainability
- developmental, among others

Participatory development is the cornerstone of the work done by most CSOs. Within the framework of this people centered approach, communities drive and own the process, in partnership with municipalities, with the CSO playing a supportive and capacity building role.

This approach can also be described as one which puts as much emphasis on process as on product, because the process by which a service is delivered has a major bearing on the quality of the finished product, particularly with regard to the sustainability of the service. A case study of DWAF's Water Supply and Sanitation Programme in KwaZulu Natal, conducted by the Human Sciences Research Council on behalf of DWAF, indicates that where participation was more rooted in the process and where time was granted for proper participation to take place, the project proved to be more sustainable:

*"In projects where [the NGO] was instrumental in delivering water, the building of committee structures took time; when in place, however, they indeed became the mechanism for settling conflicts about resource allocation, and standards of delivery. Projects run by DWAF on the other hand, were implemented speedily with less emphasis on participatory structures, and these projects have not been as successful."*²⁹

CSOs, with their knowledge base and understanding of community dynamics and role players, are able to play an important role in implementing services, particularly in rural areas.

CSOs have developed methodologies to ensure:

- effective community participation and decision making throughout the project cycle
- detailed project preparation (scope of work and terms of reference) before tendering procedures commence and formal conditions of contract are developed
- use of low cost, affordable and appropriate technology
- entrepreneurial development (use of Small, Medium and Micro Enterprises [SMMEs] and local labour)
- targeted capacity building and training programmes
- meaningful participation of women
- the promotion of local economic development, and using projects as an entry point for broader social development
- improved health and hygiene practices
- the building of water services institutional capacity (cost recovery, operations and maintenance [O&M], regulatory capacity, monitoring, et cetera)

Government policy in support of a strong civil society, is therefore based on the following principles

- It is politically desirable to encourage a strong civil society, and CBOs in particular, in order to strengthen our democracy.
- The active involvement of empowered communities and CBOs is necessary to ensure appropriate and sustainable service delivery and other development interventions.

- Due to their value-based approach and experience in working with poor communities, CSOs are well suited to assisting government to give effect to the first two principles above. NGOs are also suited to playing an independent role in research, monitoring and evaluation.

The Potential Role of Civil Society Organisations in Local Government

In essence, civil society organizations have potentially two primary roles:

1. Facilitation/ Monitoring/ Evaluation/ Participation of Community
2. Service Delivery Role

Facilitation/ Monitoring/ Evaluation/ Voice of the Community Role of Civil Society

This role includes:

- Ensuring community participation in the service delivery of local government
- Monitoring both the process and performance of local government service delivery including:
 - That the needs of the community are taken into account?
 - That appropriate technologies are being used
 - The use of community based labor, services and supplies
 - The use of labor intensive methodology
 - Ensuring representivity of the poor, disabled, women and marginalized in all phases of projects, among others.

Service Delivery Role

The programme and project implementation role which CSOs could provide include³⁰:

- Project planning
 - feasibility studies (technical, institutional, financial, socio-economic)
 - business planning
- Project design
 - technical design (appropriate technology, cost effectiveness)
 - institutional design
 - sustainability issues (community decision-making, cost recovery, etc.)
- Institutional and Social Development
 - training and capacity building
 - community awareness and participation
 - establishing communication systems
 - community management
 - cost recovery mechanisms and community-based models for managing subsidies for free basic water
 - facilitating WSP options
 - building WSP capacity, in particular community-based WSPs
 - enhancing WSA capacity, including training of staff
- Monitoring systems and approaches, using participatory approaches
- Sanitation provision
- Local economic development

- Post implementation support
 - support to WSAs as WSPs
 - retrofit / revisiting schemes
 - programme and project assessment and evaluation

In the light of this, CSOs can fulfil any one of a range of contractual roles, namely (see Annexure 1 for details on each of these roles)³¹:

- Project Agent
- Institutional and Social Development (ISD) Consultant
- Technical Consultant
- Programme Manager
- Programme Implementing Agent (PIA)
- Implementing Agent (IA)
- Lead Service Provider in a Consortium
- Employer's / Client Representative
- Provision of Support to the Water Services Authority (contracted, seconded or as an outsourced agent)
- Support Services Agent to the Water Services Provider.

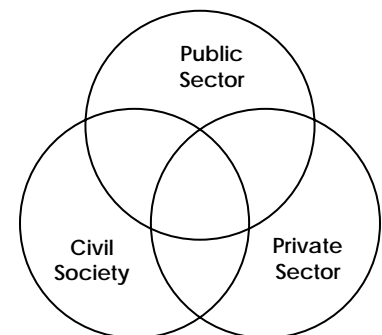
Of these roles, the following two roles provide the most opportunity for civil society organizations to add value:

- Programme Implementing Agent (PIA)
 - As Programme Implementing Agent there is opportunity to influence the design of the projects ensuring sustainable development, community participation, appropriate use of technology, use of local labor etc.
- Employer's / Client Representative
 - As an employer/ client representative, there is scope to advocate participatory community based for different approaches and to fulfil their monitoring and evaluation role.

How local government can facilitate the role of civil society organizations

Tri-Sector Partnerships

Most agree that civil society organisations should not play the role of either the public sector or the private sector. Each has a role to play and should compliment each other. Tri-sector partnerships bring together the private, public and civil society sectors in an effort to better tackle the challenge of providing services to the poor. The basic tenet underlying the partnership is that each of these sectors has something valuable to contribute, and through working together can achieve their goals more effectively.



Overlapping in roles is unavoidable, however there are specific roles which each is more suited to fulfil. Creating synergy between these three will result in better services being provided to communities in a better way.

Promoting the Role of Civil Society

Promoting the Facilitation/ Monitoring/ Evaluation/ Voice of the Community Role of Civil Society

As has been mentioned earlier in this document, there is a constitutional imperative on local government to “provide democratic and accountable government for local communities”³²

Ward Committees: The beginning of accountable and democratic government

The Municipal Structures Act³³, makes provision for the establishment of ward committees with the object to “enhance participatory democracy in local government”³⁴. These committees, play an important role, but are not the only part of providing democratic and accountable government.

Ward committees represent the community, however, they may not provide an adequate platform for the views of civil society organizations to be expressed.³⁵

As the counsellor who represents the ward in council is the chairperson of the ward committees³⁶, this often translates into ward committees fulfilling the political agenda of the individual ward counsellor concerned, which may not necessarily represent the will of the community at large³⁷. There may be a tendency for the ward committees to be used as vehicles for the council to inform “the community” of their plans rather than hear from the community what their needs are.

As was explained in the definition of civil society, civil society “is that part of society that is not part of the state or of the private/business sector”³⁸. As such ward committees are not Civil Society Organisations.

Community Development Workers (CDWs)

Again, while the intent of the CDWs is to enhance community participation, in practice, these CDWs are driven by and respond mainly to the issues raised by ward committees and the council.³⁹ It will be important to enhance the capacity of these CDWs to engage communities.

Structures for engaging civil society

For local government to, therefore, fulfil its constitutional imperative of encouraging “the involvement of communities and community organisations in the matters of local government”⁴⁰, there needs to be appropriate structures for this to take place.

The Systems Act obliges municipalities to develop a “culture of municipal governance that complements formal representative government with a system of participatory governance”⁴¹. In line with these, municipalities must develop various mechanisms to facilitate this participatory governance⁴². The table below outlines the responsibilities of municipalities in this and puts forward how an enabling environment should be created for this to happen:

Section 16 Obligations ⁴³		Creation of an enabling environment
Encourage, and create conditions for the local community to participate in the affairs of the municipality, including in-	(i) the preparation, implementation and review of its integrated development plan ⁴⁴	<ul style="list-style-type: none"> • Ensure CSOs and communities are informed of process of IDP • Ensure communities are consulted on their developmental needs⁴⁵ • Ensure communities participate in the drafting of the integrated development plans⁴⁶
	(ii) the establishment, implementation and review of its performance management system	<ul style="list-style-type: none"> • Involve CSOs and communities in implementation and review of its performance management system
	(iii) the monitoring and review of its performance, including the outcomes and impact of such performance	<ul style="list-style-type: none"> • Involve CSOs and communities in the monitoring and review of its performance, including the outcomes and impact of such performance
	(iv) the preparation of its budget	<ul style="list-style-type: none"> • Involve CSOs and communities in the preparation of its budget
	(iv) strategic decisions relating to the provision of municipal services	<ul style="list-style-type: none"> • Involve CSOs and communities in strategic decisions relating to the provision of municipal services
contribute to building the capacity of-	(i) the local community to enable it to participate in the affairs of the municipality	<ul style="list-style-type: none"> • Contract CSOs to provide capacity building to the local communities to enable them to participate in the affairs of the municipality
	(ii) councilors and staff to foster community participation	<ul style="list-style-type: none"> • Contract CSOs to provide capacity building to councilors and staff to foster community participation
Use its resources, and annually allocate funds in its budget, as may be appropriate for the purpose of implementing paragraphs (a) and (b).		<ul style="list-style-type: none"> • Allocate resources for the involvement of CSOs and communities in all of the above; • Ring fence budget allocated for these purposes for the use of NGOs and CBOs to fulfill this role

Facilitating the Role of Civil Society Organisations through enabling procurement strategies

Both the Municipal Systems Act and the Municipal Finance Management Act provide for the appointment of CSOs to participate in provision of services in a number of ways ranging from the provision of a service (consulting or non-consulting) in terms of a contract, to the provision of the service itself through a services agreement. Accordingly, the regulatory framework makes adequate provision for the engagement of CSOs in the provision of services. However, in all cases a competitive tendering process must be followed but can be specifically tailored to focus on CSOs through the eligibility criteria used in the shortlisting or tendering process.

What is needed is the understanding and recognition of the value which CSOs can contribute to assisting municipalities in their provision of municipal services through community participatory approaches, so that appropriate decisions regarding the selection of implementation mechanisms can be formulated.

In order to facilitate procurement from CSOs, consideration should therefore be given to the compilation of data bases of the services or contributions that CSOs can make to the provision of services.

Options for compiling data bases of capabilities of CSOs include at a national or provincial or district or local municipal level or a combination, which ever is most appropriate.

Consideration should also be given to the development of proforma procurement documentation to support the various procurement processes whereby CSOs may be engaged. This is important to deal with some of the challenges which CSOs face with regard to issues such as provision of construction guarantees, professional indemnity etc. Appropriate solutions to accommodate these challenges can be incorporated into procurement documentation specifically to facilitate the services of CSOs.

For more details with respect to the procurement of CSOs see Annexure 2.

General Strategies to enhance the role of civil society organisations in local government (Specifically within MIG)

The following general strategies are proposed to actively promote a greater and more meaningful role for civil society organisations in the local government and, in particular (although not limited to), the MIG programme through:

1. Awareness raising amongst all sector stakeholders of the legislative imperatives contained in the South African Constitution, Municipal Structures Act and Municipal Systems Act as well as the policy statements contained in the Strategic Framework for Water Services and the MIG Policy Framework, regarding community involvement and the role of civil society organisations more generally;
2. Supporting the Masibambane Civil Society Strategy and Civil Society Support Programme in the water and sanitation sector; and
3. Promoting greater use by municipalities of the services of CSOs, by setting the following targets:
 - a. each municipality receiving MIG grants should, by June 2006, develop a specific policy regarding the use of CSOs as service providers or contractors, which facilitates their appointment, within the legislative provisions on procurement;
 - b. each municipality receiving MIG grants should strive to ensure that at least 1% (one per cent) of the value of the work contracted out is awarded to CSOs (whether directly or through sub contracts), by the end of the 2006/7 financial year;

- c. this target should be raised progressively, so that by the end of 2008/9, municipalities should be aiming at having awarded at least 3% (three per cent) of their work to CSOs; and
 - d. municipalities should try to ensure that a variety of CSOs are used, so that diversity can be promoted.
4. Incorporate into the MIG reporting framework the following indicator, in order to be able to monitor the above commitments:
- a. per project, the total value of work undertaken by CSOs, whether through direct appointment, or through sub contracts.

Policy statement

SALGA believes that Civil Society Organisations plays an extremely important role in local government. To this end SALGA encourages municipalities to:

- Create and maintain a database of CSOs within its community which offer value added services which serve the community;
- Set up mechanisms for engaging the services of Civil Society Organisations in:
 - The preparation, implementation and review of its integrated development plan
 - the monitoring and review of its service delivery performance, including the outcomes and impact of such performance
 - the preparation of its budget
 - strategic decisions relating to the provision of municipal services
- Develop the capacity of civil society organizations and local communities to enable them to participate in the affairs of the municipality
- Develop the capacity of councillors and staff to foster community participation and the involvement of civil society organizations
- Establish funding mechanisms to facilitate the involvement of civil society organizations in the above activities, acknowledging the limited resources of civil society organizations to fulfil this mandate and the legislative imperative of local government to provide in its budget for these activities

SALGA acknowledges the important role that Civil Society organizations plays in service delivery and to this end, encourages municipalities to:

- Create and maintain a database of CSOs which offer value added service delivery expertise which will serve the community
- Establish procurement documentation and procedures within the legislative framework which will enable the efficient procurement of services from CSOs without onerous impediments

SALGA acknowledges the role civil society organizations should be playing in MIG and encourages municipalities to:

- Assist in the capacity building of CSOs to enable the CSOs to be effectively involved in MIG;
- Advocate the importance of CSO involvement and community participation in all phases of MIG projectes;
- Ring-fence 1% of MIG for contracting CSOs in the 2006/7 year budget and increase this annually by 1% to reach a target of 3% in 2008/9.
- Monitor and report on the involvement of CSO and communities in the MIG programme.

Annexures

Annexure 1: NGOs in Different Contractual Roles

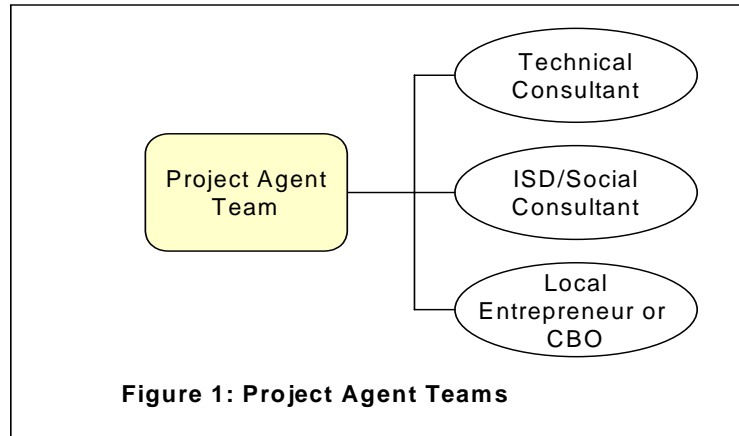
This section shows outlines 10 potential service provision roles which CSOs can perform in support of municipal service delivery. Each role is explained and portrayed diagrammatically. It is re-iterated that the role(s) that a CSO may fulfil, will, as with any institution under contract, depend upon the programme or project type, as well as the capacity, expertise and experience of the particular CSO.

CSO as Project Agent

The Project Agent (PA) is selected, appointed and paid by the local government or the Community Committee. The PA should be a professional person or company responsible for ensuring that all technical and / or social aspects of the project are addressed during implementation. The PA can also be the overall project manager for the scheme, and is responsible for guiding the Committee through the stages of needs identification, planning, design, budgeting, construction and commissioning.

The general responsibilities of the PA are to:

- assist communities in their application for projects and obtaining the local authority approval for the application
- prepare feasibility reports in consultation with the Community Committees and local authorities
- prepare the necessary designs and working drawings once the project proceeds
- obtain the requisite local authority approval for the design
- prepare detailed materials lists, schedules of labour requirements, project planning reports, works programmes (with milestones), and detailed budgets relating to the implementation plan
- assist the Community Committee in evaluating material quotations, and in managing the ordering, delivery and storage of materials and tools
- provide the Community Committee with the necessary technical and management advice necessary for successful project implementation (this support should continue until project completion, and include monitoring of progress, fund allocation and quality control)
- assist the Community Committee in maintaining appropriate financial and administrative procedures through up-to-date bookkeeping and record keeping
- compile the Operation & Maintenance plans and manual
- provide As-Built Drawings
- compile the Project Completion Certificate
- provide post project technical support, if required



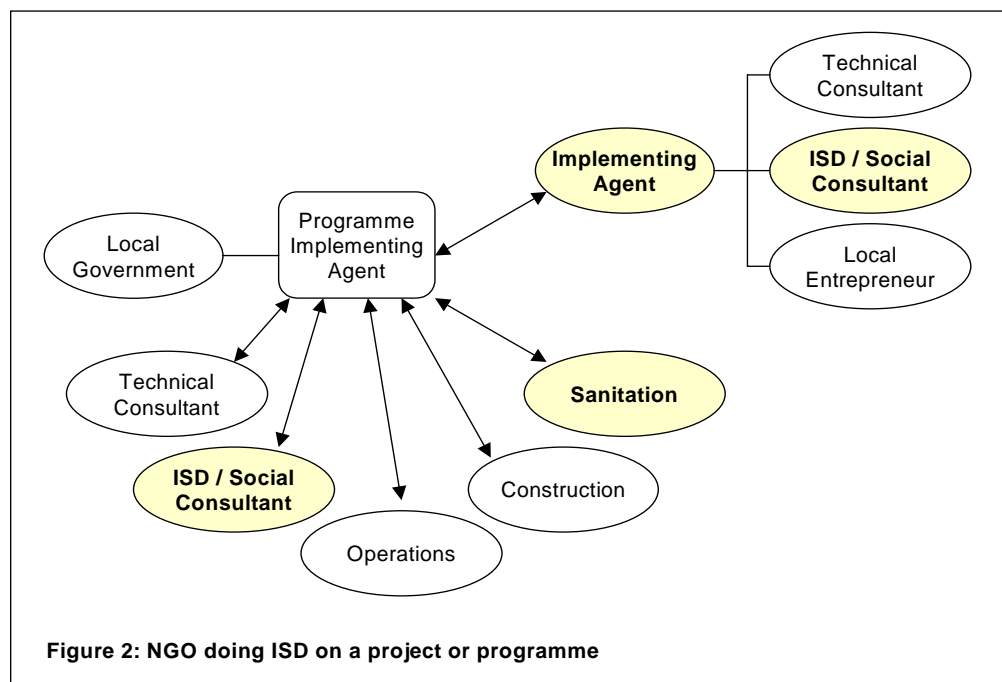
It is possible that a “Project Agent Team” is formed to deliver the tasks – and may consist of technical, Institutional and Social Development and local entrepreneurs. CSOs have the capacity to deliver any one of the functions, and some have the capacity to deliver all three.

In this contractual arrangement there may be a joint venture or MoU arrangement between the parties.

CSO as Institutional and Social Development (ISD) Service Provider

CSOs can fulfil the ISD components of a project or programme. This role applies across the board from very large schemes, to a group of projects, to small stand-alone projects. The ISD service provider is responsible for all social processes, including awareness creation, community participation at all stages of the project cycle, and capacity building and training; as well as ensuring the necessary institution building and contractual arrangements for services provision.

CSOs are well suited to take overall responsibility for all the ISD components of a programme or project. Depending on the capacity and resources of the CSO, it may fulfil all ISD components, or outsource and contract ISD / social facilitators or trainers to undertake some of the work.



In terms of fulfilling the ISD role for a programme on behalf of a Programme Implementing Agent (PIA), the CSO would develop a programmatic approach to addressing the ISD components across the various projects. In this way economies of scale can be achieved.

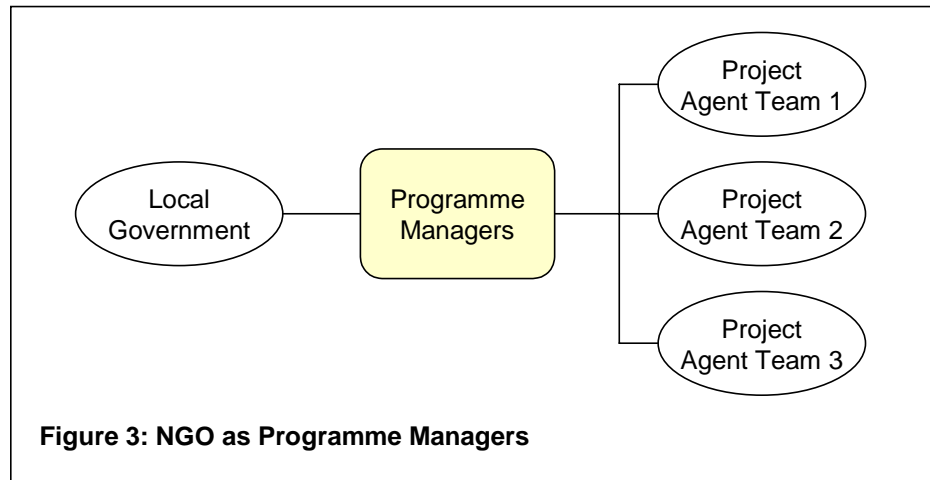
CSO as Technical Service Provider

A CSO could also fulfil the Technical service provider role. This role includes the identification of appropriate technology, technical design, monitoring of construction, and O&M mentoring.

CSO as Programme Manager

The programme manager is responsible for the coordinated management of a portfolio of projects, which will benefit from a consolidated approach. The programme is usually reflected in the management structure where individual project managers or team representatives report to a programme manager. The CSO programme manager could be responsible for a number of ISD projects (with a number of ISD project teams reporting and accounting to that structure), or a number of sanitation projects (with a number of ISD, SMMEs and contracting agents in project teams reporting and accounting to that structure).

The programme manager is also responsible for the recruitment and management of the project teams. Many CSOs have developed systems, procedures and programme management skills in order to implement sustainable projects in a demand responsive manner.

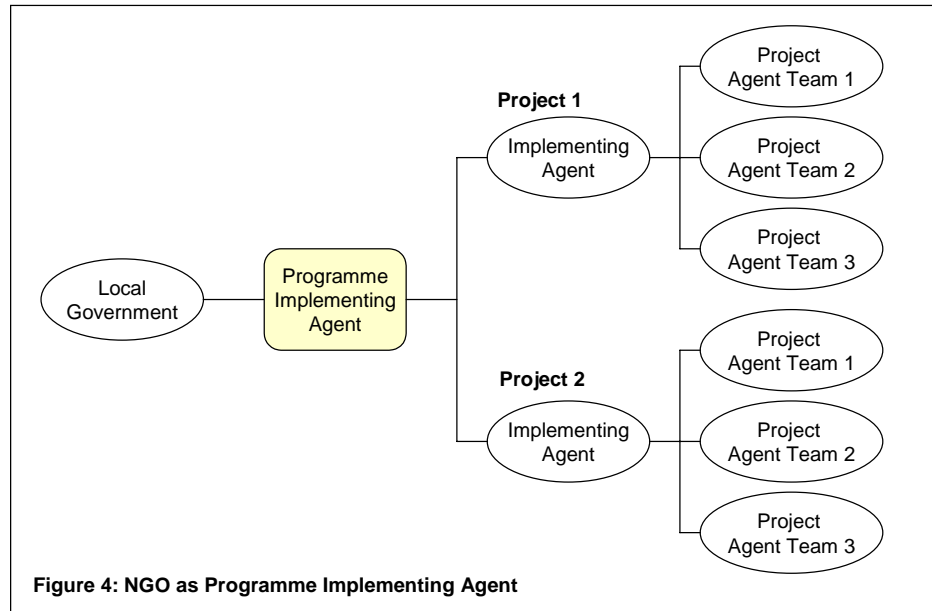


In this contractual arrangement, the Programme Manager would be responsible for the coordination, management and reporting for all Project Agents. The Project Agent Teams could consist of other NGOs, CBOs and / or the private sector.

CSO as Programme Implementing Agent (PIA)

Activities undertaken by a PIA of a programme includes the coordination of numerous projects in terms of their conceptualisation, needs identification, environmental scoping, project planning, community consultation, institutional development to ensure long term sustainability, O&M (during a defined O&M phase), transfer of the projects and mentorship following transfer for an agreed period.

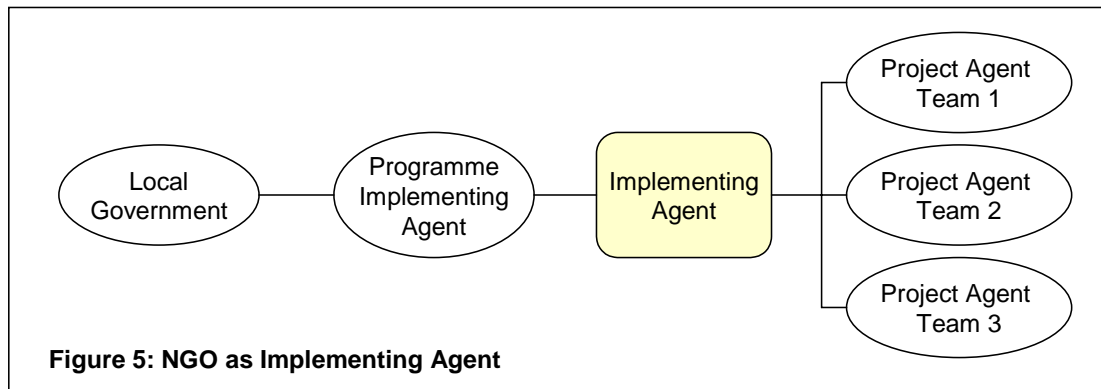
In the role of PIA, CSOs take responsibility for the overall management and implementation of programmes comprising a number of projects and implementing agents.



This contractual arrangement is well suited when a CSO is the PIA, and the IA is a community-based committee responsible for procuring all the necessary services – such as the technical and social consultants, local building contractors, local labour and materials. However, the IA could also be another CSO, a local consulting organisation, an SMME or any other appropriate entity. The PIA oversees all the IAs during their project implementation.

CSO as Implementing Agent (IA)

Activities undertaken by an IA of projects include project conceptualisation, needs identification, environmental scoping, project planning, design and construction, community consultation and social empowerment, institutional development to ensure long term sustainability, training of the community-based operators, transfer of the project, and mentorship following transfer for an agreed period.



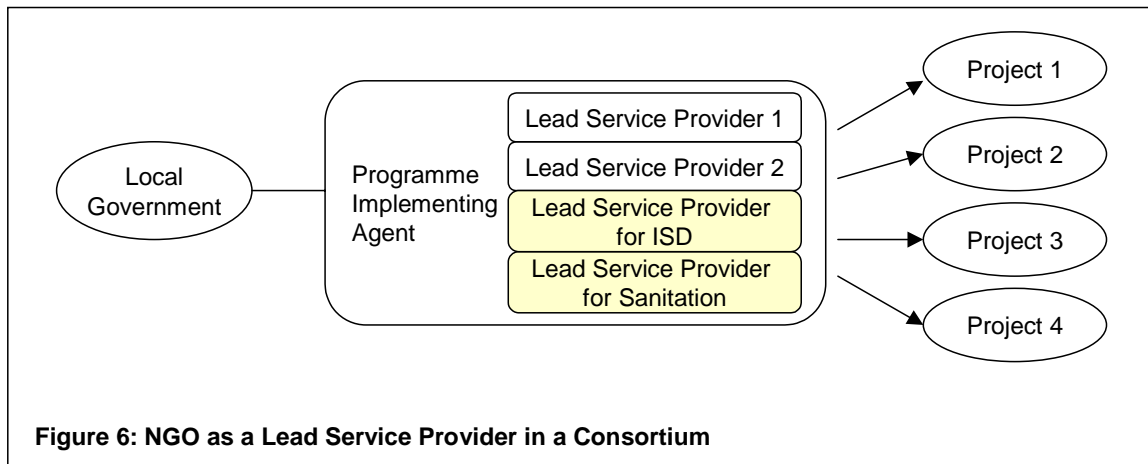
A PIA or a District or Local Municipality may contract a CSO as an IA for one or more similar type projects. The choice of a CSO for the IA role may be based on:

- the proximity of the CSO to the project(s)
- the particular expertise of the CSO, and the appropriateness of that expertise to the implementation approach required for the project(s)
- the management capacity within the CSO
- the CSO's ability to access, contract and manage expertise required

Where a CSO fulfils the IA role, it is likely that it will be responsible for implementing a number of projects. It may either utilise in-house technical and ISD capacity, or it may contract in this capacity. The CSO may also utilise a community-based committee to fulfil the procurement of services function, whereby the CSO as IA provides support to the committee.

CSO as a Lead Service Provider in a Consortium

CSOs also have an important role to play in a consortium formed to implement programmes and / or fulfil the PIA role. Such a consortium could be of the BoTT (build, operate, train and transfer) contract type, or could be any other level of consortia.



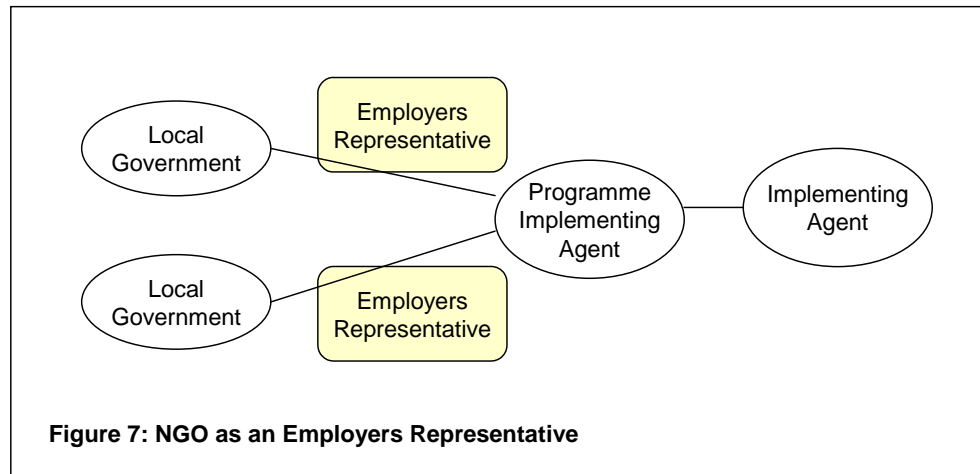
In a large consortium, designed to undertake large complex programmes and projects, a CSO within the consortium is likely to take overall responsibility for the ISD components of the contract. Within this contractual arrangement, the CSO manages the ISD and / or interventions for each project. The CSO may choose to utilise its own in-house ISD capacity or contract in this capacity.

In a smaller consortium, a CSO could fulfil the overall programme management role, or any other areas of expertise (design, operations, sanitation, *etc.*) depending upon the CSO's specific capacity.

CSO as Employer's / Client Representative

Local government (as the WSA) may contract an Employer's Representative (ER) as a regulator to administer, oversee, manage and monitor contracts, as well as deal with any issues arising from any contractual relationship. An ER is more likely to be contracted in to regulate on larger, more complex contracts requiring additional managing and monitoring capacity from a client. In such cases the ER would normally comprise a team of diverse expertise such as an overall team

leader, an ISD specialist, an O&M specialist, specialists as appropriate and a site representative. CSOs could either provide all the expertise required to fulfil the ER functions, or could fulfil any one of the specialist areas, as appropriate.



While some CSOs have the full range of specialist expertise required by the ER function, they are particularly suited to fulfilling the ISD component of the ER, since CSOs tend to have the most comprehensive understanding of ISD issues. Should CSOs be involved at this level, there will also be greater focus and emphasis placed on the sustainability of projects.

CSO as Providing Support to Water Services Authority (WSA)

Some CSOs are well equipped to support the WSA to perform its main responsibilities in terms of the Water Services Act. Some of the key areas of support could include:

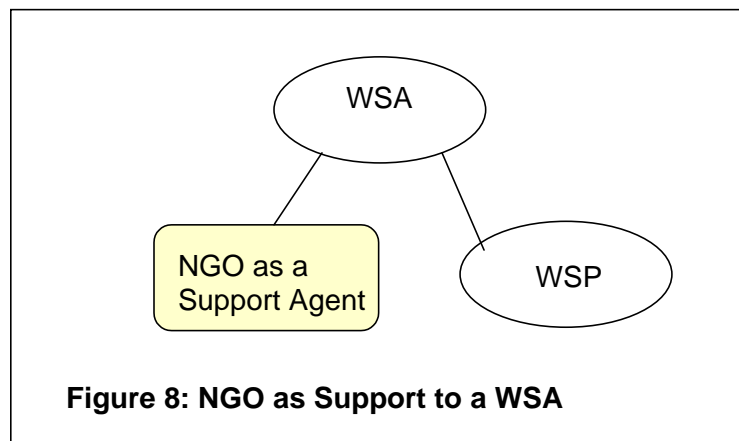
- Governance
- Planning (especially the facilitation of strategies and policies forming part of any water services development plans [WSDP])
- Contracts (especially with a community-based WSP)
- WSA awareness on water services provision including sanitation, water supply and health / hygiene promotion
- WSA understanding of its constituency's interests, translating these into services
- WSA regulatory function in the provision of water services (development of by-laws and tariffs)
- WSA as a client for channeling of funds
- Monitoring the performance of WSPs
- Resolving disputes between WSPs and consumers

CSOs also have a role to play in being contracted in by local government where local government is the WSA on functional areas such as:

- facilitating processes to identify and appoint appropriate WSPs
- training and induction around the development of bylaws
- preparing WSDPs
- developing water services policy (including project prioritisation)

- establishing and developing capacity for water services provision
- setting tariffs
- undertaking feasibility studies
- preparing programme and project business plans
- developing mechanisms to monitor water services provision (including monitoring of contracts with WSPs)
- selecting appropriate delivery mechanisms for infrastructure development
- monitoring programme and project implementation

If a CSO is not involved in the WSP contractual arrangements, it is in a position to assist the WSA in monitoring the provision of water services by the WSP. Where the WSA also fulfils the WSP function, the CSO may be contracted to assist the WSA in establishing the WSP capacity to perform its roles and responsibilities.



CSO as Support Services Agent (SSA) to Water Services Provider (WSP)

In many cases rural local government structures – the legal WSAs in terms of the Water Services Act – require a strategy and support to provide all the water services functions efficiently. For sustainable systems to be developed, the cooperation that exists between the District or Local Municipality and the village water committee (represented by community based WSPs) can be strengthened and intensified through the utilisation of a Support Services Agent (SSA) – a particularly effective role for CSOs.

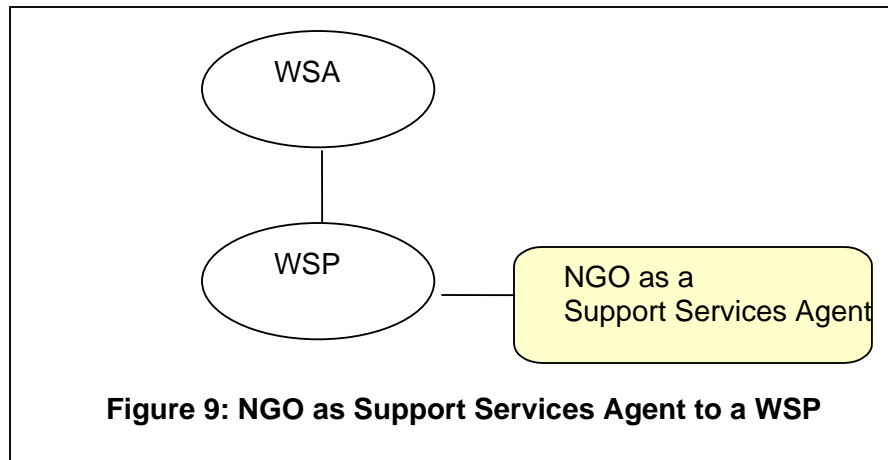
A strategy of decentralised management brings management responsibility to the lowest possible level (i.e. the community based WSPs). This means that problems are identified rapidly and addressed effectively at that level. The District or Local Municipality will then only be required to communicate with and manage the community based WSPs, and will not be involved at individual household level.

The CSO role in any SSA strategy of a District or Local Municipality area could be two fold:

1. To ensure that community-based WSPs have the necessary skills, legal status, structures, systems, capacity and ability to effectively fulfil the WSP functions within respective contract areas, and

2. To set up communication, as well as financial and other management systems and procedures between the WSA and the community based WSPs. This should include an institutionalised WSP, project specific O&M manuals, a WSP consumer charter, WSA / WSP contracts, and financial and communication procedures.

In this scenario, either the WSA or the WSP contracts a CSO to fulfil the SSA role. Since the SSA is accountable to the WSP, it is preferable that the contractual relationship is with the WSP.



Annexure 2: Available Civil Society Procurement Strategies

Introduction

Civil society organisations (CSOs) could perform a number of roles in support of municipal service delivery, such as water and sanitation, housing, infrastructure delivery, local economic development (LED) and other potential services.

A challenge in this regard is how to procure the services of CSOs in terms of legislation and also maximise the benefits of using CSOs to provide services to municipalities.

This section:

- a) reviews the regulatory framework for municipal procurement;
- b) formulates appropriate options for the procurement of CSOs; and
- c) establishes a position for inclusion in the draft policy;

2 The regulatory framework for municipal procurement

2.1 Overview of the framework

The primary pieces of legislation that govern procurement by municipalities are listed in Table 1. The detailed procedures are governed by two pieces of local government legislation:

- a) Municipal Finance Management Act; and
- b) Municipal Systems Act.

2.2 Local government: Municipal Finance Management Act

Accounting officers (municipal manager in a municipality or the chief executive officer of a municipal entity) are in terms of the Municipal Finance Management Act responsible to take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimize the likelihood of fraud, corruption, favoritism and unfair irregular practices and for implementing the supply chain management policy of the municipality or municipal entity in accordance with a prescribed regulatory framework for supply chain management, issued by the Minister of Finance.

Regulations regarding the procurement arrangements contained in the Local Government: Municipal Finance Management Act were published in May 2005. The implementation of some of the provisions of the Municipal Finance Management Act pertaining to supply chain management (sections 111, 112, 115(a) and 116(2)(c)) have been delayed in medium and low capacity municipalities until 30 June 2006 and 2007, respectively. A Municipal Supply Chain Management Model Policy has been published for adoption of municipalities and municipal entities in terms of section 111 of the Act.

Table 1: Primary pieces of legislation that regulate procurement

Act	What it does in respect of procurement / supply chain management
Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)	Provides procurement objectives and establishes government's policy for preferencing
Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000)	Establishes the manner in which preferential procurement policies are to be implemented
Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003)	Establishes a detailed regulatory framework for supply chain management.
Local Government Municipal	Establishes a framework for the establishment of service delivery

Act	What it does in respect of procurement / supply chain management
Systems Act, 2000 (Act No 32 of 2000); and	agreements involving competitive bidding processes
Construction Industry Development Board Act, 2000 (Act 38 of 2000)	Establishes a means by which the Board can promote and implement policies, programmes and projects aimed at procurement reform, standardisation and uniformity in procurement documentation, practices and procedures within the framework of the procurement policy of government. Establishes a national register of contractors (and if required, consultants and suppliers) to manage public sector procurement risk
Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).	Establishes a code of good practice to inform the: <ul style="list-style-type: none"> • development of qualification criteria for the issuing of licenses or concessions, the sale of state owned enterprises and for entering into partnerships with the private sector; and • development and implementation of a preferential procurement policy.
Prevention and Combating of Corrupt Activities Act, 2004. (Act No. 12 of 2004).	Makes corruption and related activities an offence. Establishment a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; and Places a duty on certain persons holding a position of authority to report certain corrupt transactions.

The Supply Chain Management regulations issued in terms of the MFMA constrains the manner in which accounting officers may procure. The pertinent regulations are summarized in table 2 below:

Table 2 : Summary of pertinent MFMA Supply Chain Regulations

Regulation 2(3)& (4)	The supply chain management regulations must be applied to the procurement of goods and services and the selection of contractors to provide assistance in the provision of municipal services except where: <ul style="list-style-type: none"> i) the service provider is appointed in terms of chapter 8 of the Municipal Systems Act; ii) such goods or services are procured from another organ of state or obtained under a contract secured by another organ of state; or iii) the provision of the service, or assistance with the provision of the service, is undertaken by an organ of state.
Regulation 12(1)	The procurement of goods and services must be by way of : <ul style="list-style-type: none"> i) formal written price quotations for procurements having a transaction value over R 10 000 up to R 200 000 (VAT included); ii) a competitive bidding process for procurements having a transaction value over R 200 000 (VAT included) and long term contracts.
Regulation 20	The procedures for a competitive bidding process must include the public invitation of bids.
Regulation 35	The procurement of consulting services may be undertaken in accordance with any guidelines provided by National Treasury, provided that all consultancy services which exceed R 200 000 (VAT included) and where the duration exceeds one year are procured by means of competitive bids.
Regulation 36	An accounting officer may dispense with the official procurement processes where such goods and services are available from a single service provider or where it is impossible or impractical to follow official procurement processes, provided that these deviations are reported to the next council or board meeting and it is noted in the annual financial statements
Regulation 37	Unsolicited bids may be considered only if: <ul style="list-style-type: none"> i) the product or service offered in terms of the bid is a demonstrably

- or proven unique innovative concept;
- ii) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
- iii) the person who made the bid is the sole provider of the product or service; and
- iv) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

The municipality / municipal entity must publicize its decision to pursue an unsolicited bid and invite suppliers to submit their comments regarding the proposal. Comments and responses from the unsolicited bidder must be submitted to national treasury and the relevant provincial treasury for comment. The adjudication committee that makes a final decision on the bid, must be open to the public. The accounting officer must notify the auditor general and the national and relevant treasury of the reasons, if any, for departing from the recommendations made by a treasury.

Regulation 44

No award may be made to a person

- i) who is in the service of the state¹;
- ii) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- iii) who is an advisor or consultant contracted with the municipality / municipal entity.

National Treasury have published a Supply Chain Management Practice SCM 3 (Appointment of Consultants) which advocates various methods for the appointment of consultants/service providers set down below in Table 3.

Table 3 Methods for the appointment of consultants/Service Providers

<i>Approach to appointment of consultants</i>	<i>Recommended usage of approach</i>
<p><i>Quality-based selection (QCBS)</i> Tenderers are invited to submit tenders based on a well defined scope of work. Tenders are evaluated on the basis of both the quality of the services to be rendered and the cost of the services to be provided. Where a two envelope system is used, the evaluators of the technical proposals should not have access to the financial proposals. The final contract is negotiated with the tenderer scoring the highest number of points.</p>	<p>In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone (i.e. QBS)</p>
<p><i>Quality based selection (QBS)</i></p>	<p>A complex or highly specialised assignment, for which it</p>

¹ In the service of the state is defines as

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature.

<i>Approach to appointment of consultants</i>	<i>Recommended usage of approach</i>
<p>Tenderers are requested to submit technical proposals only or to submit technical proposals and financial proposals in two envelopes.</p> <p>Where only technical proposals are called for, the tenderer with the highest ranked proposal is requested to submit a detailed financial proposal so that the contract can be negotiated.</p> <p>The final contract is thereafter negotiated.</p> <p>Tenderers may be provided with an indication of the expected input of key professionals (staff time).</p>	<p>is difficult to define the precise scope of work and consultants are expected to demonstrate innovation in their proposals.</p> <p>An assignment that has a high downstream impact and requires the best available experts.</p> <p>An assignment could be carried out in substantially different ways, hence proposals will not be comparable.</p>
<p>Least cost selection</p> <p>Tenderers are requested to submit technical proposals and financial proposals in two envelopes.</p> <p>The financial proposals of only those tenderers who obtain a quality score above a threshold are opened.</p> <p>The tenderer with the highest score based only on price and preference is selected.</p>	<p>A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.</p>
<p>Single source selection</p> <p>In this procedure, a suitable tenderer is identified and a contract is negotiated</p>	<p>A task that represents a natural continuation of previous work carried out by the firm.</p> <p>A rapid selection is essential (eg in an emergency operation).</p> <p>A very small assignment.</p> <p>An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.</p>
<p><i>Appointment from list of approved service providers</i></p>	<p>A very small assignment which does not justify the preparation and evaluation of competitive proposals</p>
<p><i>Selection based on consultant's qualifications</i></p> <p>The respondent, who has submitted an expressions of interest and possesses the most appropriate qualifications and references, is invited to submit a proposal so that the contract can be negotiated.</p>	<p>A very small assignment which does not justify the preparation and evaluation of competitive proposals</p>
<p><i>Selection under a fixed budget</i></p> <p>Tenderers are provided with the available budget and are requested to provide their best technical and financial proposals in separate envelopes.</p> <p>Proposals that exceed the budget are excluded from consideration.</p> <p>A contract is negotiated with the tenderer submitting the highest ranked technical offer.</p>	<p>A simple assignment which is precisely defined and the budget fixed.</p>

Note: in the context of the provision of services by CSOs to municipalities, in many instances these services are by nature a form of consulting services/service provision focused on community participatory approaches.

2.3 Local Government: Municipal Systems Act

The Municipal Systems Act enables municipalities to provide services through both internal and external mechanisms. Section 76 (b)(iv) permits services to be provided by entering a service delivery agreement² with a community based organisation or other non-governmental organization legally competent to enter into such an agreement.

Section 77 of the Act compels municipalities to decide upon an appropriate mechanism to provide municipal services whenever:

- preparing or reviewing its integrated development plan;

² The Municipal Services Act defines a "service delivery agreement" as an agreement between a municipality and an institution or person mentioned in section 76(b) in terms of which a municipal service is provided by that institution or person, either for its own account or on behalf of the municipality.

- a new municipal service is to be provided;
- an existing municipal service is to be significantly upgraded, extended or improved;
- a performance evaluation in terms of the Act requires a review of the delivery mechanism;
- the municipality is restructured or reorganised in terms of the Act;
- requested by the local community through mechanisms, processes and procedures established in terms of the Act; or
- instructed to do so by the provincial executive acting in terms of the Constitution.

Section 78 requires a municipality who has to decide on a mechanism to provide a municipal service in the municipality or a part of the municipality, or to review any existing mechanism, to first assess the delivery of the service by an internal mechanism (i.e. a department or administrative unit within its administration or a business entity devised by the municipality) by considering a number of prescribed issues. Having undertaken this assessment, a municipality may decide on an appropriate internal mechanism to provide the service or to explore the possibility of providing the services through an external mechanism i.e. enter into a service agreement with a municipal entity, another municipality, an organ of state, a traditional authority, a community based organization or other non-governmental organization, or any other institution, entity or person legally competent to operate a business activity. Where the provision of services by an external mechanism is contemplated, notice to this effect must be given to the local community and the different delivery options for such a mechanism must be assessed taking into account a number of prescribed issues.

Section 81(2) allows flexibility for municipalities to assign all or specific responsibilities associated with the provision of a service to a service provider in terms of a service delivery agreement.

Where a municipality decides to provide the service through a service delivery agreement (external mechanism) with any institution, entity, or natural or juristic person who is not an organ of state, it must in terms of Section 83(1) select the service provider through a process that:

- is fair, equitable, transparent, competitive and cost effective;
- allows equal and simultaneous access to tender information;
- minimises the possibility of fraud and corruption;
- makes the municipality accountable to the local community regarding progress made in the selection of a service provider and for any decisions taken in this regard ; and
- takes account of the needs for small and emerging businesses.

Section 83(2) permits a municipality to determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination in accordance with the provisions of the Preferential Procurement Policy Framework Act, as long as the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services. Section 83(4) requires that specific criteria be applied in selecting the service provider including the views of the local community and organized labour.

Section 84 requires that the final terms and conditions of the contract be negotiated with a selected service provider provided that this does not affect the tender in a manner that compromises the integrity of the tender process.

Section 81(4) permits a service delivery agreement that is concluded following a competitive bidding process to be amended by agreement between the parties only after the local community has been given reasonable notice of the intention to amend the agreement and the reasons for the proposed amendment and sufficient opportunity to make representations to the municipality. Section 81(5) expressly forbids any councillor or staff member of a municipality to share in any profits or improperly receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.

3 Options for procuring the services of CSOs

The Municipal Systems Act requires municipalities to provide services using either:

- i) an internal mechanism (i.e. department or administrative unit within its administration or a business entity established for such purpose); or
- ii) external mechanism (organ of state, community based organisation or non-governmental organisation or any institution, entity, or natural or juristic person who is not an organ of state) in terms of a service agreement.

Service agreements may be negotiated with organs of state but may only be concluded with CSOs following a competitive process which satisfies prescribed requirements. In terms of the competitive selection process, CSOs will have to compete against “*other institution, entity or person legally competent to operate a business activity*” established in the Act.

It should be noted that the Act expressly forbids any councillor or staff member of a municipality to share in any profits or improperly receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.

CSOs can also be appointed to provide services and consulting services where the municipality elects to provide services through an internal mechanism. This would usually be in terms of a competitive selection process in terms of a municipality's Supply Chain Management Policy developed in accordance with the provisions of the Municipal Finance Management Act.

Given the specific provisions of the Municipal Systems Act for the appointment of community based organisations and non-governmental organisations to provide services or assist with the provision of services, it is unlikely that CSOs will be appointed in terms of unsolicited proposals in accordance with the provisions of the Supply Chain Management Regulations issued in terms of the Municipal Finance Management Act.

The regulations do, however, prohibit the award of any contract to a CSO who has any director, manager, principal shareholder or stakeholder who is a member of any municipal council, a member of the board of directors of any municipal entity or an official of any municipality or municipal entity.

4 Possible options for the procurement of CSO services by municipalities

Both the Municipal Systems Act or the Municipal Finance Management Act provide for the appointment of CSOs to participate in provision of services in a number of ways ranging from the provision of a service (consulting or non-consulting) in terms of a contract to the provision of the service itself through a services agreement. Accordingly, the regulatory framework makes adequate provision for the engagement of CSOs in the provision of services.

What is needed is the understanding and recognition of the value which CSOs can contribute to the provision of municipal services through community based approaches, so that appropriate decisions regarding the selection of implementation mechanisms can be formulated. Consideration should therefore be given to the compilation of a data base of the services or contributions that CSOs can make to the provision of services. This will inform the decisions that are made in the provision of services.

Options for compiling data bases of capabilities of CSOs include at a national or provincial or district or local municipal level or a combination, which ever is most appropriate.

Consideration should also be given to the development of proforma procurement documentation to support the various procurement processes whereby CSOs may be engaged. This is important to deal with some of the challenges which CSOs face with regard to issues such as provision of construction guarantees, professional indemnity etc. Appropriate solutions to accommodate these challenges can be incorporated into procurement documentation specifically to facilitate the services of CSOs.

Consideration should also be given to the uniform interpretation of:

No councillor or staff member of a municipality may share in any profits or improperly receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.

This will allow CSOs to structure themselves so that they are eligible to participate in service agreement.

Annexure 3: List of People Interviewed

The team drafting this document would like to thank the following people who were interviewed as part of the drafting process:

1. Martin Rall (Mvula Trust)
2. Vinnie Naidoo (Mvula Trust)
3. Victor Thoka (RDSN)
4. Jamie De Jager (Mvula Trust)
5. Phillip Davids (Mvula Trust)
6. Graham Richards (Municipal Services Technical Task Team/ SALGA)
7. William Moraka (SALGA)
8. Bev Pretorius (WIN-SA)
9. Charles Reeve (EU)
10. Kalinga Pelpola (DWAF)
11. Vespa Mabitsi (DPLG)
12. Lucky Leseane (DPLG)
13. Malcolm Boyson (Treasury)
14. Louise Colvin (Consultant Masibambane)
15. Malcolm White (DCI)
16. Thoko Sigwaza (DWAF)

Endnotes

- ¹ Project Team comprised of: Martin Rall (MVULA Project Sponsor and Strategic Input); MVULA Senior Managers (Strategic Input and background); Dean Barnes (Project Leader); Nigel Branken (Project Manager); and Ron Watermeyer (Procurement Specialist).
- ² Municipal Systems Act, 32 of 2000 - Section 1 (Definitions)
- ³ Masibambane Civil Society Steering Committee: Masibambane Civil Society Strategy Document: June 2002, p2
- ⁴ Ibid, p2 (should this not also be ibid?)
- ⁵ Ibid, p2
- ⁶ Ibid, p2
- ⁷ Municipal Systems Act, 32 of 2000 - Section 1 (Definitions)
- ⁸ Ibid
- ⁹ Ibid
- ¹⁰ Ibid
- ¹¹ Adapted from Masibambane Water Service Sector Support Programme: Civil Society Strategy to achieve the meaningful involvement of Civil Society in the Masibambane Programme, p ii
- ¹² Established in terms of section 2 (1) (a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997)
- ¹³ Municipal Structures Act, 1998 (Act 117 of 1998)
- ¹⁴ Ibid, Section 72 (3)
- ¹⁵ DPLG: The Municipal Infrastructure Grant: 2004-2007: From programme to projects to sustainable services, p3
- ¹⁶ The Secretary-General's Address To The World Economic Forum: 'Markets For A Better World', Davos, Switzerland, 31 January 1998 - SG/SM/98/16
- ¹⁷ <http://www.worldbank.org/>
- ¹⁸ http://www.wto.org/english/news_e/pres01_e/pr240_e.htm
- ¹⁹ United Nations Development Programme (2003) South Africa Human Development Report: The Challenge of Sustainable Development in South Africa: Unlocking People's Creativity, Oxford University Press: p7
- ²⁰ Ibid: p114
- ²¹ Constitution of the Republic of South Africa, Act 108 OF 1996 - - Section 152(1)(a) and Section 152(1)(e).
- ²² Municipal Systems Act, 32 of 2000 - Preamble
- ²³ Municipal Systems Act, 32 of 2000 - Section 5(1)(a)(i)
- ²⁴ Municipal Structures Act, 1998 (Act 117 of 1998), Section 72-78
- ²⁵ Address of the President of South Africa, Thabo Mbeki, at the Second Joint sitting of the third Democratic Parliament, Cape Town, 11 February 2005
- ²⁶ DWA: Strategic Framework For Water Services, September 2003
- ²⁷ Source: Masibambane Civil Society Steering Committee: Masibambane Civil Society Strategy Document (June 2002)
- ²⁸ Masibambane Civil Society Steering Committee: Masibambane Civil Society Strategy Document (June 2002), p 3-5
- ²⁹ Quoted in: Involvement of Civil Society in the MIG Programme: *Submission to the Municipal Infrastructure Technical Task Team (MIT3)*, 21 April 2005
- ³⁰ Mvula Trust NGO Toolkit: NGO Guidelines, unpublished
- ³¹ Source: Mvula Trust NGO Toolkit: NGO Guidelines, unpublished
- ³² Constitution of the Republic of South Africa, Act 108 OF 1996 - Section 152(1)(a)).
- ³³ Municipal Structures Act, 1998 (Act 117 of 1998), Sections 72-78
- ³⁴ Ibid, Section 72 (3)

³⁵ This sentiment was expressed in a number of the interviews conducted in the drafting of this document.

³⁶ Municipal Structures Act, 1998 (Act 117 of 1998), Section 72 (3)

³⁷ This sentiment was expressed in a number of the interviews conducted in the drafting of this document.

³⁸ (see Definition on page 2)

³⁹ Ibid

⁴⁰ Constitution of the Republic of South Africa, Act 108 OF 1996 - - Section 152(1)(a) and Section 152(1)(e).

⁴¹ Municipal Systems Act, 2000 (Act 32 of 2000), Section 16(1)

⁴² Municipal Systems Act, 2000 (Act 32 of 2000), Section 16(1)(a), (b), and (c)

⁴³ Municipal Systems Act, 2000 (Act 32 of 2000), Section 16(1)(a), (b), and (c)

⁴⁴ In terms of section 28 (2) of the Municipal Systems Act, 2000 (Act 32 of 2000), communities should be consulted before planning, drafting, adoption and review of their integrated development plan

⁴⁵ This is required in terms of Section 29 (b) i of Municipal Systems Act, 2000 (Act 32 of 2000)

⁴⁶ This is required in terms of Section 29 (b) ii of Municipal Systems Act, 2000 (Act 32 of 2000)

⁴⁷ Mvula Trust NGO Toolkit: NGO Guidelines, unpublished