

Legal impediments to providing water services to informal settlements on private land



The majority of South Africa's backlogs in the provision of water and sanitation are those in informal settlements, which are concentrated in urban areas. One of the major barriers to providing services in these areas is the perception that there are legal impediments to municipalities providing water and sanitation on privately held land, particularly where the private landowner is unwilling to recognise the settlement. However, the precise legislation that prohibits this has never been identified, nor tested through the courts. There is no legislation expressly covering this scenario, nor is there directly relevant reported case law. There are also conflicting legal opinions on the issue. All of this results in legal uncertainty for municipal engineers and undermines service delivery to informal settlements.

PDG proposed this important topic to the Water Research Commission and obtained funding to undertake the research, together with Victoria Johnson and Isandla Institute, to identify any legal impediments and to propose policy measures to resolve this issue definitively. The research included a legislative review, primary research with municipalities and key informants, and a stakeholder workshop. The research found that municipalities have a powerful duty to provide basic services, regardless of the lawfulness of occupation, according to section 27 of the Constitution (amongst other Constitutional and statutory duties). It is lawful to install fixed water services in permanent or semi-permanent settlements on private land (Categories A, B1, B2). No outright legal impediments to installing fixed services were identified, although some anomalies may arise in specific cases.



The findings of the study are significant for the practice of municipal engineers and should provide them with the necessary confidence to provide these much-needed services. The resulting research report and policy brief paper also present policy recommendations to improve certainty for municipal officials.

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