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WITHHOLDING OF THE EQUITABLE SHARE

ITS EFFECTS ON MUNICIPALITIES

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1. INTRODUCTION

Local government is at the coalface of service delivery. Its proximity to the people and its mandate according to the Constitution makes it an important player in provision of services. Its sustainability and viability ensures uninterrupted service for the citizens leading to promotion of local economic development and guaranteed access to basic services.[1] Given the central role that local government plays in the delivery of basic services, especially to indigent households, municipalities must be financially viable in order to enable them to fulfil their developmental mandate.

Despite the importance of local government, poor financial management, poor audit outcomes leading to poor services has become synonymous with the sector. Governance and leadership failures continue to negatively affect the quality of services delivered to communities, coupled with serious financial challenges.[2] The 2023/24 financial results show a slight improvement in the state of local government finances and financial management, as the number of municipalities in financial distress decreased from 168 in 2022/23 to 162 (4 per cent) in 2023/24 but still indicate a poor state of financial affairs. The findings highlight persistent challenges, including the erosion of institutional capacity, weak financial management, poor cash flow and political instability, all of which continue to undermine effective governance.

Municipalities contravene the Municipal Financial Management Act (MFMA), Act No 56 of 2003 by incurring unauthorised, irregular, fruitless and wasteful expenditure (UIFW) amounting to a total of R96.4 billion in 2024. Unauthorised expenditure has an accumulated balance of R26.1 billion, irregular expenditure of R65 billion, and fruitless & wasteful expenditure amounting to R5.3 billion. in addition to this, a number of municipalities that adopted unfunded budgets decreased from 126 to 96 in 2023/24 financial year. Unfunded budgets suggest that municipalities are struggling to fund their expenses with their expected revenue, often due to and overestimating projected collection rates for property rates and service charges. Additional challenges include inefficiencies such as excessive water and electricity losses, accrued expenses, and growing debtors' books that are not timeously dealt with. This has pushed the National Treasury (NT) to invoke Section 216 of the Constitution to withhold payments from at least 75 municipalities that have persistently failed to meet financial standards.

This paper provides an overview of weaknesses in financial management of municipalities leading to the NT invoking Section 216 of the Constitution.

2. THE FINANCIAL HEALTH OF LOCAL GOVERNMENT MUNICIPALITIES

2.1. Local Government Audit Outcomes Trends

Audit outcomes of municipalities for 2020/21 to 2023/24 are generally poor, with an increase in the number of municipalities receiving a qualified audit and adverse audit opinions as well as well as an increase in number of municipalities failing to submit financial statements by the legislated date.
The Auditor-General (AG) revealed that:

- The number of municipalities with clean audits (i.e. unqualified audit opinion with no findings) declined from 41 in 2020/21 to 34 in 2022/23, increasing to 41 in 2023/24.
- The number of municipalities receiving unqualified audit opinions with findings decreased from 100 in 2020/21 to 99 in 2023/24.
- The number of municipalities receiving qualified audit opinions with findings increased from 83 in 2020/21 to 91 in 2022/23, declining to 90 in 2023/24.

[1] Local Government is responsible for the delivery of basic services such as water, electricity, sanitation and refuse removal
[2] NT. 2024

- 4 municipalities received adverse audit opinions in 2020/21, increasing to 6 in 2022/23 and 2023/24 respectively.
- The number of municipalities receiving disclaimers totalled 28 in 2020/21 and declined to 15 in 2022/23 and 11 in 2023/24.
- The number of audits not finalised by the legislated date increased from 1 in 2020/21 to 10 municipalities in 2023/24. The municipal financial year-end is 30 June of each year and therefore the cut-off date for submission to the Auditor-General is the 31 August of each year.

Table 1: Audit Outcomes of municipalities: A three-year review

Audit Outcomes	2020/21	2022/23	2023/24
Unqualified with no findings (clean)	41	34	41
Unqualified with findings	100	110	99
Qualified with findings	83	91	90
Adverse	4	6	6
Disclaimer	28	15	11
Audit not finalised at legislated date	1	1	10
Total no of municipalities	**257**	**257**	**257**

Source: Auditor-General of South Africa (2025).

2.2. Unauthorised, Irregular, Fruitless, and Wasteful Expenditure (UIFW)

Table 2 below shows the unauthorised, irregular, fruitless, and wasteful expenditure (UIFW) incurred by municipalities across the nine provinces for the period 2023/24. It also shows the municipalities that have been identified as being in crisis by the NT for the period under review.

There is evidence of persistently high levels of UIFW in municipalities across the provinces, which is indicative of weak internal controls and poor financial governance:

- Municipalities in Gauteng followed by municipalities in Mpumalanga and North West had the highest level of unauthorised expenditure
    - Gauteng's municipalities disclosed a consolidated total of R8.5 billion in unauthorised expenditure for the 2023/24 financial year, Mpumalanga and North West's municipalities disclosed a total of R4.6 billion and R3.5 billion, respectively.
- Municipalities in KwaZulu-Natal followed by municipalities in Gauteng and Eastern Cape had the highest level of irregular expenditure in 2023/24 of R5.7 billion, R5.6 billion and R5.5 billion, respectively.
- Municipalities in Gauteng and Mpumalanga had the highest level of fruitless and wasteful expenditure of R1.3 billion and R1.2 billion, respectively for 2023/24.
- The North West province followed by the Eastern Cape and KwaZulu-Natal had the highest number of municipalities that were identified as being in crisis by the NT for the period 2023/24.
    - The North West had 9 municipalities that were in crisis and Eastern Cape and KwaZulu-Natal had 8 and 7 municipalities, respectively.

Table 2: Unauthorised, Irregular, Fruitless, and Wasteful Expenditure (UIFW) incurred Municipalities according to Province in 2023/24

Province	Unauthorised expenditure R'000	Irregular expenditure R'000	Fruitless and wasteful expenditure R'000	Number of municipalities in crisis
Eastern Cape	3 306 610	5 562 870	298 418	8
Free State	3 071 110	1 113 500	519 586	6
Gauteng	8 471 100	5 628 840	1 253 420	3
KwaZulu-Natal	3 785 900	5 677 150	205 321	7
Limpopo	2 189 900	2 025 340	149 400	2
Mpumalanga	4 605 800	2 665 900	1 330 019	5
Northern Cape	1 361 130	789 700	267 937	2
North West	3 524 300	3 253 700	479 720	9
Western Cape	286 950	1 805 430	12 730	1
Total	**30 602 800**	**28 522 430**	**4 516 551**	**43**

Source: National Treasury (2025/26).

2.3. Municipalities with Unfunded Budgets (2025/26 Adopted Budgets) and in Financial Distress (2022/23-2023/24)

When municipalities adopt unfunded budgets or overspend their budgets, this shows that they are unable to budget properly and stay within the allocated budget. This malpractice not only pose an imminent threat to the sustainability of municipalities but also leads to lack of service delivery when municipalities cannot afford to pay for certain services.

The Mayor and Municipal Manager submit a budget for spending that cannot be funded or tables a budget to appease the residents by showing that the projects and services they are asking for will be delivered. In such cases, the Municipal Council must ensure financial discipline by reviewing and assessing the proposed budget to determine whether it is financially viable and sustainable[3].

Table 3 below indicates Provinces that have municipalities with adopted unfunded budgets for the period 2025/26. It also shows that the number of municipalities in financial distress[4] across the nine provinces for the period 2022/23 – 2023/24.

- 113 municipalities had adopted unfunded budgets in 2023/24, declining to 89 in 2025/26.
  - In 2025/26, the Northern Cape followed by Free State and North West had the highest number of municipalities with unfunded budgets.
- Between 2022/23 and 2023/24, the number of municipalities in financial distress across the nine provinces has decreased from 168 to 162. However, this number remains high as 63 per cent of South Africa's municipalities are financially distressed in 2023/24.
  - In 2023/24, KwaZulu-Natal and Northern Cape have the highest number of financially distressed municipalities of 30 and 27 municipalities, respectively.

[3] Auditor-General of South Africa (2023), p.28

- Between 2022/23 and 2023/24, the number financially distressed municipalities increased in the Free State and North West
- Between 2022/23 and 2023/24, the number financially distressed municipalities decreased in KwaZulu-Natal, Northern Cape and Western Cape
- Between 2022/23 and 2023/24, the number of financially distressed municipalities remained the same in Eastern Cape, Gauteng, Limpopo and Mpumalanga

Table 3: Municipalities with Unfunded Budgets (2025/26 Adopted Budgets) and in Financial Distress (2022/23-2023/24)

Province	Number of municipalities in financial distress 2022/23	Number of municipalities in financial distress 2023/24	Unfunded Budgets 2025/26
Eastern Cape	19	19	8
Free State	19	20	14
Gauteng	10	10	6
KwaZulu-Natal	31	30	5
Limpopo	15	15	8
Mpumalanga	16	16	11
Northern Cape	29	27	20
North West	16	17	14
Western Cape	13	8	3
Total	**168**	**162**	**89**

Source: National Treasury (2025/26).

2.4. Interventions to address weaknesses and financial distress: Implementing Section 216 (2) of the Constitution

Invoking Section 216(2) of the South African Constitution

"Section 216(2) of the South African Constitution permits the National Treasury to stop the transfer of funds (equitable share or grants) to any organ of state—including municipalities—that commits a serious or persistent material breach of financial management measures, such as failing to submit financial statements or mismanaging public funds."

Source: National Treasury 2015.

According to the 2026 Budget Review, the National Treasury has invoked section 216(2) of the Constitution against 75 municipalities. This intervention is a measure to restore good financial governance and financial integrity, protect public resources and ensure sustainable service delivery against persistently non-compliant municipalities[5]. A major focus in 2025 was withholding funds from municipalities owing money to water boards, with particular impact in the North West, Free State, and Gauteng provinces.

[5] National Treasury (2025) and (2026b)

Currently, 75 municipalities are affected by the enforcement of Section 216 (2) of the Constitution. The following municipalities are affected:

Table 4: List of municipalities affected by the enforcement of Section 216

EC 8 Municipalities Sundays River Valley Sakhisizwe Amathole Enoch Mgijima Inxuba Yethemba Buffalo City Nelson Mandela Makana	**KZN (8)** Mpofana Uthukela Msunduzi Ugu District Umkhanyakude uMzinyathi Amajuba Newcastle	**NC** **7 municipalities** !Kai !Garip Thembelihle Khai-Ma Phokwane Ubuntu Siyathemba Magareng	**WC** **5 municipalities** Theewaterskloof Kysna Bitou Laingsburg Beaufort West	**Gauteng (10)** Emfuleni Lesedi Sedibeng Merafong Rand West City Midvaal Mogale City West Rand City of Tshwane City of Johannesburg
Limpopo (5) Modimolle-Mookgopong Musina Mopani Sekhukhune Fetakgomo	**FS (12)** Kopanong Mohokane Matjhabeng Masilonyana Mangaung Letsemeng Nala Dihlabeng Nketoana Maluti-a-Phofung Ngwathe Mafube	**NW** **15** municipalities Kgetlengrivier Lekwa Teemane Mamusa Maquassi Hills Naledi Madibeng JB Marks Twaing Ngaka Modiri City of Matlosana Rustenberg Mahikeng Moses Kotane Moretele Dr Ruth Segomotsi Mompati	**Mpumalanga (5)** Dipaleseng Dr Pixley kaSeme Govan Mbeki Victor Khanye Dr JS Moroka	

Source: NT, 2026

National Treasury has used this against numerous municipalities, including warning eight others in 2013 and others for adopting unfunded budgets or failing to pay Eskom in 2024/25. National Treasury has invoked Section 216(2) of the Constitution against Nala Municipality in the Free State, stopping all financial transfers to the municipality because of its persistent breach of financial management prescripts and alleged mismanagement of public funds.

It is not solely punitive; it often follows a, or serves as, a warning to compel municipalities to improve financial management practices and avoid further action, as shown in 2015 when many avoided the penalty by committing to change.

2.4.1 Conditions for Invoking Section 216

Section 216 is typically only used when a municipality has repeatedly failed to address the following issues:

- **Unfunded budgets** (passing a budget it cannot actually afford).
- **Failure to pay creditors**, such as Eskom, Water Boards, or SARS, within the required timeframes.
- **Persistent audit failures**, such as not submitting annual financial statements.

2.4.2 Impact of Section 216 on Municipalities

- **Operational Crisis**: Withholding of funds which include the "equitable share" meant for basic services. This can make it impossible for a municipality to pay salaries or provide essential services.
- **Corrective Pressure**: The goal is to force the municipality to implement a "recovery plan," settle outstanding debts, and establish proper disciplinary boards for consequence management.
- **Immediate Financial Crisis:** The primary, direct impact is that municipalities are unable to access national government equitable share funds, which restricts their ability to pay for operational expenses, including staff salaries and basic services.
- **Mandatory Debt Repayment**: Withheld funds are often "top-sliced" by the National Treasury to directly pay creditors, such as Eskom or water boards, to whom the municipality owes money.
- **Operational Strain and Service Disruption:** The stoppage of funds often results in severe disruptions to basic service delivery (water, sanitation, electricity) due to the sudden lack of cash flow.
- **Enforced Accountability**: The action forces municipalities to adopt tighter revenue management, improve financial records, and comply with the Municipal Finance Management Act (MFMA) to have funds released.

2.4.3 Long-Term Consequences

- **Forced Financial Reform**: To have funds released, municipalities must implement corrective measures, such as adopting credible budget funding plans and reducing wasteful expenditure by at least 75%.
- **Increased Oversight**: Municipalities are subjected to monthly monitoring of their budget funding plans by National and Provincial Treasuries.
- **Risk of Further Intervention**: Continued non-compliance can lead to more intrusive measures under **Section 139**, including provincial or national administration of the municipality.
- **Reputational Damage**: A compromised reputation can hinder the municipality's ability to secure future loans or grants.

3. CONCLUSION

The financial performance of municipalities in SA is concerning. Municipalities showed weak financial performance leading to challenges in provision of basic services. Adverse audit opinions of most municipalities coupled with poor financial management such as incurring unathourised, irregular, fruitless and wasteful expenditure and unfunded budgets have serious consequences on viability and sustainability of municipalities.

The NT has invoked Section 216 on 75 municipalities by halting payment of the equitable share. This has devastating consequences in the short term and might lead to social unreast. However, the withholding is not permanent and is corrective. Funds are released once the municipality complies with Treasury requirements, such as establishing financial improvement plans

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Contributors

Poppie Ntaka: pntaka@parliament.gov.za
Gugu Shabalala: gshabalala@parliament.gov.za

For any comments or feedback, please email Sithabiso Buthelezi, Chief Researcher: Parliamentary Research Unit
sibuthelezi@parliament.gov.za

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