



PIETERMARITZBURG AGENCY FOR COMMUNITY SOCIAL ACTION



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## **Submission on Msunduzi Municipality's Reviewed Indigent Policy for 2012/13**

**Submitted by PACSA  
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**Re: PACSA submission on the Msunduzi Municipality's Reviewed Indigent Policy for 2012/13**

We thank you for the opportunity to make a submission on Msunduzi Municipality's Reviewed Indigent Policy for 2012/13.

PACSA's consistent position, as set out in our submission on Msunduzi Municipality's proposed 2011/12 and 2012/13 tariff submissions, is that municipal services should be affordable and available in sufficient volumes for poor households. This includes free and subsidised volumes and concessions where poor households are unable to make payment. Core to such a position is the foregrounding of dignity and justice within a developmental and transformative framework. In the light of this position we note that it is proposed that certain concessions be increased to the 2010 level which is to be welcomed. However we also note that the procedures and conditions which determine uptake are more regressive, restrictive and discriminatory in the draft policy.

We present below a specific comment on Msunduzi Municipality's draft Indigent Policy.

**SERVICE CONCESSIONS**

We welcome the following in the draft policy:

- a. The increase of free basic water to 10.2kl per month to accommodate water-borne sewage for all 'applied and automatic indigent' households
- b. The 100% scrapping of the basic charge and amperage charge for electricity for all 'applied and automatic indigent' households.
- c. The 100% scrapping of the basic charge for water for all 'applied and automatic indigent' households.
- d. Free refuse for all 'applied and automatic indigent' households.
- e. Free sewage for all 'applied and automatic indigent' households.

We welcome this for a number of reasons:

- The previous indigent policy offered universal access for households qualifying as automatic indigent households. This meant that there was no means-testing qualification – households were identified on the basis of property value and area and were provided full subsidisation of the minimum concessions. This resulted in a broadened scope of access – the 2009/10 term included 26 833 automatic indigent households on its books. Although this is only one-third of the *potential* 81 381 households which should qualify for indigent subsidies; it is much better than the current situation where less than 5% of households are actually receiving indigent concessions. **However, it is unlikely that the new policy will be able to reach the 2009/10 levels of indigent subsidisation beneficiaries and progressively increase these figures if application is based on the current proposed means-testing regime. Hence, we would recommend that universal access to indigent concessions for all households which would qualify as automatic indigents be applied. There are a number of benefits to Msunduzi Municipality in this regard:**
- 'Automatic indigents' form the highest proportion of households for whom the indigent policy is targeted. This means that this target group would incur the highest

administrative costs. By providing universal access – administrative costs would be drastically reduced.

- Because Msunduzi Municipality already has the systems in place and prerequisite data to resume service subsidies to these households; almost immediately thousands of households will start benefiting from subsidisation.
- The municipal administration can then focus on getting all other households which fall into the 'applied indigent' category onto subsidisation as quickly as possible. This section of society is much smaller than the 'automatic indigent' group. The next section will discuss this group of households.

After July 2012 subsidies for all households which before July 2012 were receiving lifeline rebates (termed 'applied indigents' under this current draft) were removed. This means that all households which previously qualified for 'applied indigent' status are currently receiving no subsidisation. These households, under the draft policy must reapply to receive subsidisation benefits. We recommend the following process in this regard:

- Immediately provide the new indigent benefits to households previously receiving lifeline rebates. Then start looking at verification and broadening the scope of access. This process will have a number of benefits to Msunduzi Municipality and households alike:
- The administration already has the systems in place and prerequisite data to resume service subsidies to these households; almost immediately these households will be provided relief.
- Because the municipality removed subsidisation from July 2012; thousands of formerly 'lifeline' households have been pushed into debt. These monies are unlikely to be recovered because such households cannot afford to pay for the full cost of services (we know this because they are 'indigent' households). Moreover, it is likely that in terms of the process, such households would be successful in justifying why they should not pay for these costs since July 2012 should they seek legal recourse. Hence the quicker the municipality can remove erroneous charges from qualifying households' bills; the quicker the municipality will be able to prevent the build-up of bad debts.
- For households, the new concessions and subsidies will bring immediate relief.

The above suggestions (and not the current indigent policy in its draft form) will then comply with the Annual Budget and Medium Term Revenue and Expenditure Framework's statement "*The subsidy for minimum service levels should not result in the creation of a complicated administration that would not be cost effective to implement.*" (2012-13/2014-15: 214).

## **2. Procedures and conditions which determine uptake**

We also note that the procedures and conditions which determine uptake have become much more regressive, restrictive and discriminatory in the draft policy. This decision, we feel, has severely curtailed the framework and latitude within which municipal indigent policies can actually be shaped to deliver on transformative outcomes. An example of adopting such an approach to the indigent policy may result in reducing the scope of access as evidenced in the Midvaal municipality. Specifically, we note that the Msunduzi draft policy is not designed for and within its socio-economic and demographic context, nor its administrative apparatus. In its current form it could come across as a cynical, parochial policy that is structured not to deliver

on its national mandate to provide a safety net for poor households, improve access to basic services, entrench the rights of nor protect and respect the dignity of poor households.

We note that the subsidy for applied and automatic indigent households has now reverted to previous offerings (before the scrapping of the indigent policy in 2010). However we are concerned that ...

### **2.1 Volumes offered insufficient and tariffs beyond minimum not structured for affordability**

Free volume allocations are not sufficient. This means that households will consume more than 10.2kl of water and 50kWh of electricity a month. Our research has found that a household with 4 and 5 members require 15.3-17.9kl of water per month and an average of 382kWh electricity per month. Because households require more than the minimum volumes provided for free; these households will then be forced into the higher tariff blocks which will have implications for dignity because of problems of affordability.

Msunduzi Municipal tariff structures above the free volumes are not structured for affordability.<sup>1</sup> The overall tariff structure must be substantially re-worked to accommodate the normal consumption levels of poor families.

### **2.2 Uptake based on assessment of previous 12 months consumption misconstrued**

The qualifying criteria which seek to exclude on the basis of average water and electricity consumption over the previous 12 months is inconsistent with contemporary social science assessment. Consumption varies. It fluctuates based on numerous variables e.g. available income, health status, climatic conditions, size of household, domestic requirements, cultural events etc. Why such criteria is used is unclear; however if it is used as an indicator of wealth then its value is fundamentally misconstrued. Consumption within marginal levels has been shown not to be a proxy of income or wealth but on the specific and contextualised basic consumption requirements of individual households. We would strongly recommend that average consumption over 12 months be removed from the qualification criteria. The municipality already has a number of suitable criteria e.g. income levels, household property value to which it can add geographic area. Average consumption is unlikely to provide a reliable proxy for qualification and moreover will result in complicated administration.

### **2.3 Application procedures are overly bureaucratic**

The current application procedures and conditions of uptake based on suspicion, onerous and restrictive means-testing coupled with intrusive surveillance means that an entire disciplinary and policing apparatus will need to be set up to enforce the procedures set out in the draft policy. This appears to be inconsistent with The Annual Budget and Medium Term Revenue and Expenditure Framework which indicates that "*The subsidy for minimum service levels should not result in the creation of a complicated administration that would not be cost effective to implement.*" (2012-13/2014-15: 214). The principle should be to ensure that monies are spent on the target group and not on policing the target group. Such a principle can be instrumentalised in existing systems which already hold much of the household information required for verification since the policy has been running since 2003 and all the municipality needs to do is put previous qualifying households back on the books. After this has been done steps can be taken to augment the scope of access whilst identifying the very marginal group of fraudulent beneficiaries for removal.

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<sup>1</sup> See Smith J (2012). Msunduzi Municipality's municipal services: identifying the roots of the affordability crisis and seeking remedies. **PACSA Affordability Series. Municipal Brief: 2/2012.** Msunduzi Municipality's municipal service tariffs. PACSA. Pietermaritzburg.

## **2.4 Debt payment arrangements unclear**

It is unclear if potential qualifying household will be liable to make arrangements to pay outstanding debt or if the debt will be scrapped on sign-on (policy is contradictory). If the former is chosen; it appears that the policy will have no monetary benefit for household. Moreover, such a decision appears strange noting that 'indigent' households are defined as not being able to "afford to pay for the minimum needs in life." Forcing households into debt, knowing that not only will recovery of such monies be elusive but that monies cannot actually be recovered "in a humanly way" appears incongruent with the general spirit of the policy.

## **2.5 Similarity between Msunduzi draft policy and the Midvaal Municipality's Indigent Support Policy**

While municipalities may use best practises of other municipalities we note with concern the similarities between the Msunduzi draft policy and the Midvaal Indigent policy. Our concern is based on the fact that in reality the Midvaal policy is counter-development in nature and based on an ideology that distinguishes between 'deserving and undeserving poor' which PACSA has consistently rejected.

The way Midvaal has chosen to interpret and misrepresent the legislation, policy and intergovernmental framework within which indigent policies are positioned, as well as leaving out certain pertinent information; when "re-written" or simply copied by the Msunduzi Municipal drafters has exposed some glaring errors, omissions and contradictions. Core to which is that it appears that the framework and latitude within which municipal indigent policies can be shaped has been misconstrued. The Midvaal Indigent Support Policy is parochial, regressive and severely limits the scope of and potential that can be sought in providing citizens with basic service subsidisation. It presents an unsuitable case for Msunduzi Municipality to reproduce.

For example: The draft policy states:

According to the Municipal Systems Act 2000, Section 74(3) and 75(2) stipulates, "A tariff policy may differentiate between different categories of users, debtors."

This section is cut short. It should read, "*A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographic areas and other matters as long as the differentiation does not amount to unfair discrimination.*"

The Municipal Systems Act 2000, Section 74(3) is important as it provides scope and procedures for differentiation to promote equity and justice.

Another example is the following:

Furthermore Chapter 7 Section 152 (b) of the constitution states:

"The objects of Local Government are:

- I. To ensure the provision of services to communities in a sustainable manner.
- II. Local Government should strive within its financial and administrative capacity to achieve this object and to deliver other related services as to cater for indigents and how they have to be catered for.
- III. Indigents are those people, property owners, due to a number of factors, who are unable to make monetary contributions towards basic services, no matter how small the amounts seem to be.
- IV. Household earnings less than the amount stated by the Financial Fiscal Commission from time to time, qualify to be registered as an indigent i.e. Pensioners, students, unemployed, disabled persons and single parents etc.

This section is cut short. Objectives are added erroneously to the constitutional objectives of local government and important constitutional objectives are omitted. This section should read: "*152. Objects of local government.- (1) The objects of local government are- (a) to provide democratic and accountable government for local communities;*

(b) to ensure the provision of services to communities in a sustainable manner;  
(c) to promote social and economic development;  
(d) to promote a safe and healthy environment; and  
(e) to encourage the involvement of communities and community organisations in the matters of local government.

(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1)."

The correct citation of the constitutional framework for local government, similarly to our example of the Municipal Systems Act above provides Msunduzi Municipality with a much better framework in which to design its Indigent Policy; as well as better guidance in terms of what local government is mandated to do and how to do it.

However, perhaps one of the most serious problems in lifting off the Midvaal policy is that indigent policies, if they are to respond to the needs of poor households within specific localities; must be designed within and for the specific contextual demographical characteristics and administrative frameworks. For example, the section headed "Criteria for the approval as Indigent are as follows:" are designed for Midvaal; not Msunduzi Municipality. A few inconsistencies are noticed, not limited to these below, but should probably be addressed (read with a-l):

- (a) specify grant (currently 2 old-age pensions)
- (b) Debt Collection Section, Finance Department – specify Msunduzi Dept.
- (c) The application form
- (d) Specify permanent committee
- (e) Reference number, (f) and (g) contradictory
- (j) treatment of bad debt (contradictory)
- (k) Figure very outdated.
- (l) contradictory ....

## **2.6 The problems of current framework of means-testing**

As stated above the Midvaal policy should not form the basis for Msunduzi's policy because it is based on an onerous, bureaucratic, invasive and stigmatising means-testing. In particular, it is not clear if the application form would stand up to the Constitutional equity clauses. However, one of the clearest indications for why Midvaal's Indigent Support Policy is not an appropriate basis for Msunduzi's indigent policy is because Midvaal's "success" in ensuring that 'indigent' households are accommodated is questionable. For example: Midvaal's 'indigent' income qualification is R3 200. Data indicates that 17% of Midvaal's 90 000 residents qualify for indigent status. This is approximately 15 300 households. However only 3 000 households are registered on the indigent policy (this is 20% of the total qualifying households). So despite the fact that Midvaal's income qualification is higher than Msunduzi's (by R800); the scope of the policy is severely limited. Why this is must be found in the exhaustive application requirements, criminal branding and restrictive conditions of service access.

In Pietermaritzburg, we don't have 15 300 potentially qualifying households but at the very minimum 81 381 households, which qualify for indigent status (earning from zero to R1 600 per month). The onerous process applied in Midvaal is not appropriate for our Msunduzi case if we are to address the current affordability crisis by substantially broadening the scope of the indigent policy. However, it appears that the Msunduzi drafters have actually reduced even this narrow scope as they have added an assault of audits, intrusive surveillance (home visits at "any reasonable time,") and threats of legal actions to the *mean-test-matrix*. Such a reproduction begs the question as to what really are Msunduzi Municipality's intentions with its indigent policy. The processes outlined in Msunduzi Municipality's draft Indigent policy do not appear to expand

the scope and extend greater subsidisation for poor households. Instead it appears the policy is more about arresting debt, containing, managing and subjugating poor households to reduce consumption volumes for those who may struggle to pay for them; making visible, penalising, humiliating; segmenting and separating. All of which sits uncomfortably with the spirit of respecting the rights and dignity of citizens.

## **2.7 The declaration is unnecessary**

The declaration may not be unlawful (although there may be issues under the Consumer Protection Act or the National Credit Act that are worth considering), but it seems inappropriate to include it in the standard application form for at least the following reasons:

- It is not necessarily the case that every applicant will already be indebted to the municipality when making the application.
- Applicants are unlikely to receive legal advice prior to making the declaration and may make the declaration when it is not warranted.
- The declaration is included, not as an optional section of the application, but as a necessary part of a competent application.
- The declaration is unnecessary, as the claims of the municipality (of indebtedness for services, etc.) are already secure under the applicable legislation.

Please see other detailed comments below:

1. This application for ~~resignation~~ (registration?) is subject to Council approval and /or whosoever is authorised to do so.

2. I acknowledge outstanding amounts owing to the Council on account number .....  
and accept that it remains an obligation from my side.

"It remains an obligation from my side" may give the inference that the debt of utilities does not prescribe. According to the Prescription Act, certain debts do not prescribe. The way in which the clause is phrased gives the inference that the municipality may want the debt for services to be payable in perpetuity (in other words not prescribe). Usually the average debt for a service prescribes after a period of time, 2-3 years. Clarity is required regarding how long the debt obligation will be valid for and in particular what the credit policy is that applies.

Requiring a customer to sign an acknowledgement of debt as a condition of uptake, is regarded by the Credit Bureau Ombudsman as "unethical practice." Bringing a garnishee order to attach a salary portion on an applicant which the municipality is already aware is 'indigent' is hugely controversial.

3. Should my monthly account exceeds the subsidy received, I am responsible to pay the balance and if I (fail?) to pay, the normal Credit Policy measures will be applicable to me.

Insert fail. Clarity regarding what "Normal Credit Control Policy" is referred too. This must be specific, currently phrased too vaguely.

4. This information is public and will be given to all interested parties both in the private and public sector including the provincial and national government as well as the Credit bureau.

Only relevant information (such as an outstanding debt) may be given to people who are legally entitled to such information such as a Credit Bureau. Such information should not be made available to all and sundry as the municipality sees fit.

We suggest, in line with the Guidelines for the Implementation of the National Indigent Policy by Municipalities (2005: 60) that the declaration should simply be that "the information supplied by the applicant is to the best of their knowledge true and correct."

### **3. General conclusion**

We would like Msunduzi Municipality to conceptualise the provision of indigent concessions more broadly as a transformative measure, and within the current context of very serious difficulties to pay. In this regard the Constitutional framing of the objectives of local government and the Municipal Systems Act are instructive. Core to the provision of basic municipal services is the principle of dignity and transformation. That is, their conception is not only to address the legacy of apartheid violence and discrimination but to free and to draw struggling citizens into having a place in society. This cannot happen if concessions are simply to warehouse the poor and to constrain. The objective must be to set free. Social development grants, including municipal subsidies and the social wage should be going into creating and bolstering the local economy otherwise they will simply move into the realm of creating long-term dependence, with very minimal impact on poverty and absolutely no chance of being transformative. If poor households are not provided substantial concessions and are forced to pay grant monies and other small incomes into debt repayments and paying for basic service consumption then such monies will not flow into the local economy. We need to make it so monies (even very little monies) are going into productive and transformative use. This will make a significant difference for the trajectory of Msunduzi Municipality and its citizens.

These conclusions are consistent with The National Framework for Municipal Indigent Policies (2007: 9) which says, *"This policy is aimed at including those currently excluded from access to basic services, through the provision of a social safety net. What poor people in South Africa have in common is the need to access affordable basic services that will facilitate their productive and health engagement in society... What poor people also have in common with other South Africans is the right to basic socio-economic and environmental rights set out in the Constitution... The indigent policy provides one of the key platforms for upholding notions of public good inherent in the Constitution."*

This means that the municipality needs to substantially broaden its scope of access to policies which provide municipal service concessions to its poor citizens. It means that it needs to look at universal access to basic municipal services within a framework of a substantially revised municipal tariff structure. It means that onerous means-testing and bureaucratic exclusion needs to be jettisoned; that households which need subsidies can access them easily. Sufficient volumes of affordable municipal services will act to immediately unlock household purses and civil energies to be invested in productive and transformative activities. Funding to pay for such subsidies is available through, for example, cross-subsidies from high-income households to low-income households; core administrative revenue of the municipality, and national grants such as the Equitable Share. For example, only 3.44% of the Equitable Share was used to fund free basic water, electricity, sanitation and refuse for the 2010/11 term. The Equitable Share should be used to fund free basic services and indigent concessions. In addition, the 2010/11 term also showed that R362 million was provided in rates rebates. Most of the rates rebates went to wealthy householders. These rates rebates to the wealthy as well as a restructuring of municipal tariffs can instead be used to subsidise sufficient volumes to poor households.

Indigent policies can be conceptualised within a framework of investing in all of our futures and we feel that Msunduzi Municipality would be better served if it chooses to adopt this latter option. It can choose to invest in its people. It can create a bright future - progressive, human, based on dignity and freeing up citizens to take command of their lives - it can design its own path on its own principles for its own people.

Should you require we would be happy to make an oral presentation of the contents of this submission and would welcome further engagement with the municipality on this submission.

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