

Guideline on multi-actor, multilevel WEF nexus governance in South Africa

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Executive statement

This Policy Paper sets out the intricate legal framework pertaining to water-energy-food (WEF) nexus governance in South Africa. It sets out the main policies, legislation and actors indicating to government role players involved in decision-making and which inter-governmental structures are available for cooperative governance.

Key messages and recommendations

- The right of access to sufficient water and food as well as access to reliable energy have not been realised in South Africa. Decision-making does not necessarily take into account the balancing act that needs to be taken in relation to the WEF. There are numerous policies, legislation and actors that could play a role in WEF decision-making, from the household level to the different spheres of government. Various cooperative governance instruments can be used to ensure that the WEF nexus receives due consideration in decision-making.
- Recommendation 1: Use existing cooperative governance structures for WEF decision-making.
- Recommendation 2: Create new structures to give effect to WEF decision-making.
- Recommendation 3: Integrate WEF decision-making in all new policies or amend existing legislation to ensure integrated decision-making.
- Recommendation 4: Involve the traditional councils and communities before decisions in relation to the WEF are taken on their behalf.
- Recommendation 5: Obtain prior and informed consent for any development from community members with informal land rights.

Context

Empirical research undertaken in the rural areas of the Matatiele Local Municipality in the Eastern Cape, Taung Local Municipality in the North-West Province and amongst the Majeng Communal Property Association in the Magareng Local Municipality indicates that households still have challenges accessing water and energy and that they found it very difficult to maintain any form of agricultural production that could assist in household food security. Most community members rely on social grants as their main source of income. Although the government has done a lot to provide water and energy, some challenges remain. As one of the research participants in the Taung area stated:

“Magalies Water is supposed to bring water to us. Sometimes, we are lucky if we receive water once in three weeks. The water is not enough to help everyone in the community, and once the truck is empty, it does not return to bring water to the rest of the community members.”

Other community members complain that they do not have access to waste facilities and that the energy supply is not reliable or insufficient. In Matatiele, community members complained that the Eskom office was in another province. Some blame the national government, some provincial government and others the local municipality. There is uncertainty regarding the role of district municipalities in service provision, which leads to blame-shifting. Traditional councils feel increasingly disempowered when it comes to helping their communities with development. It seems there is a disjunct in decision-making between and within different spheres of government and government institutions when decisions are made in relation to water, energy, and food production.

The project investigated water-energy-food (WEF) governance as a possible solution for decision-making that could strive towards social justice. In some instances, community members resort to their own rules when it comes to sharing the little water they have.

WEF nexus implementation requires decision-making about trade-offs between the (equally important) production of food and energy and the use of water. Despite growing attention for the inextricable interlinkages between water, energy and food, South African policies do not yet explicitly incorporate the WEF nexus.

“ Surprisingly, however, the consequences of pursuing nexus approaches, for example for social justice, including gender, have not often been studied. To understand the consequences of nexus governance for social justice, research on nexus challenges at the household level is crucial, yet very limited to date ”

[NRF-NWO Research Proposal, 2019; Hussien et al. 2017; Biggs et al. 2015; Terrapon-Pfaff et al. 2015).; Allwood 2013; Bocquillon 2018]

The research study determines who is or should be involved in WEF decision-making, at what levels or spheres, and with what consequences for social justice.

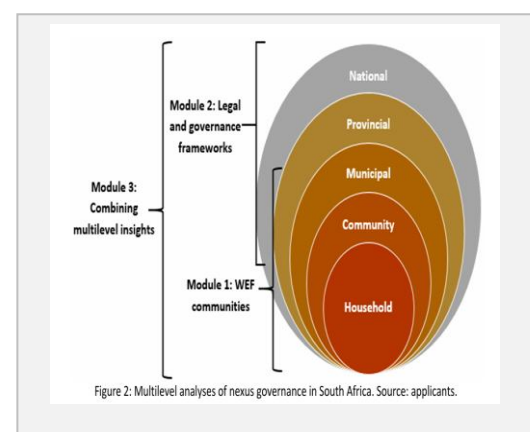
The study focused on community and bottom-up initiatives for sustainable development, introducing the concept of "WEF communities" and exploring their potential for implementing the nexus in a socially just manner. The point of departure was that WEF communities could empower communities as agents of change in South Africa's transition toward the sustainable management of

“social justice is primarily concerned with the eradication of poverty and extreme inequalities in access to material resources in order to ensure that all citizens command the resources needed to equally participate in socio-political life.”

Fuo, 2014

(renewable) energy, water and food, yet their potential for enhancing social justice depends on both household-level conditions and higher-level legal and governance frameworks.

The study consisted of three modules, one of which was to determine the legal and governance frameworks that inform WEF decision-making, taking into account the multi-actors that would participate in WEF governance.



The Legal Framework

Various policies, legislation and African customary law inform WEF decision-making (see Figure 2). Various role-players are involved (see Figure 3). The Constitution demands cooperative governance, and various inter-governmental institutions give effect thereto. Each of these structures has a specific mandate but none of them necessarily consider the water-energy-food nexus as such.

“South Africa’s (SA’s) National Development Plan 2030’s (NDP) discusses how communities can take action to improve their circumstances “to ensure equal distribution and use of water and energy: “People need to come together to work out ways to maintain a fair share of services for everyone.”

Chapter 151; Status Quo Report, 2023

The following policy documents, amongst others, relate to water, energy and food with a social justice focus:

- The National Development Plan 2030 (NDP)
- The Medium-Term Strategic Framework (MTSF)
- The 2022 draft Framework for a Just Transition in South Africa
- The 2011 National Climate Change Response White Paper
- The National Climate Change Adaptation Strategy 2019 (NCCAS)
- The 2003 Free Basic Electricity Policy
- The 2007 Free Basic Alternative Energy Policy
- The 2000 Integrated Sustainable Rural Development Strategy (ISRDS)
- The 2013 National Policy on Food and Nutrition Security (NPFNS)
- District Development Model
- Local municipal indigent policies.

The Constitution of the Republic of South Africa, 1996 (Constitution) is the overarching law in South Africa and all policies, laws and administrative measures are subject to it. Various other framework laws were promulgated to inform decision-making in line with the Constitution. The common law, African customary law and religious legal systems operate alongside the Constitution and legislation. The courts interpret the law, and the courts are bound by the decisions of higher courts either within their own jurisdiction or the decisions of the Supreme Court of Appeal and the Constitutional Court. The Constitutional Court, for example, construed a right of access to energy in the *Joseph*-decision. The legal framework pertaining to water, energy and food is illustrated in Table 1.

Table 1: WEF Legal Framework

Constitution of the Republic of South Africa
• Right of access to sufficient water and food - s 27 • Right of access to energy (<i>Constitutional court</i>) • Right to an environment that is not detrimental to one's health and well-being (s 24) • Cooperative Governance (ch 3) • National, provincial and local spheres of government • Schedules 4 and 5 • Traditional governance (ss 111 and 112)
Framework law and legislation
• Common law, African customary law and religious legal systems • Intergovernmental Relations Framework Act 13 of 2005 • Local Government: Municipal Structures Act • Local Government: Municipal Systems Act 32 of 2000 • Municipal Finance Management Act 56 of 2003 • Traditional Governance and KhoiSan Act 3 of 2019 • National Environmental Management Act 107 of 1998 • Climate Change Act 22 of 2024 • Mineral and Petroleum Resources Development Act 28 of 2002 • Communal Property Association Act 28 of 1996

• Interim Protection of Informal Land Rights Act 31 of 1996 • Protection of Administrative Justice Act 3 of 2000 • Protection of Access to Information Act 2 of 2000		
Water	Energy	Food
• National Water Act 36 of 1998 • Water Services Act 108 of 1997 • National Environmental Management: Waste Act 59 of 2008 • Municipal bylaws	• Electricity Regulation Act 4 of 2006 • National Energy Regulator Act 40 of 2004 • National Energy Act 32 of 2008 • Eskom Conversion Act 13 of 2001 • Gas Act 48 of 2001 • Petroleum Pipelines Act 60 of 2003 • Energy Policy White Paper • White Paper on Renewable Energy • Integrated Energy Plan • Integrated Resource Plan • National Forest Act 84 of 1998 • National Environmental Management: Biodiversity Act 10 of 2004 • Municipal Bylaws	• 2002 Integrated Food Security Strategy for South Africa (IFSSSA) • 2018 Draft Climate Smart Agriculture Strategic Framework for Agriculture, Forestry and Fisheries • Agricultural Pests Act 36 of 1983 • Agricultural Product Standard Act 119 of 1990 • Animal Diseases Act 35 of 1984 • Animal Health Act 7 of 2002 • Animal Identification Act 6 of 2002 • Animal Improvement Act 62 of 1998 • Animals Protection Act 71 of 1962 • Conservation of Agricultural Resources Act 43 of 1983 • Fertilizers, Farm Feeds, Seeds and Remedies Act 36 of 1947 • Meat Safety Act 40 of 2000 • Performing Animals Protection Act 24 of 1935 • Perishable Products Export Control Act 9 of 1983 • Plant Breeders' Rights Act 15 of 1976 • Plant Improvement Act 53 of 1976 • Veterinary and Para-Veterinary Professions Act 19 of 1982 • Applicable provincial legislation

Actors/Role Players

Intergovernmental governance actors

Existing intergovernmental governance structures include, for example:

- Ministries in the Presidency
- Advisory Councils in the Presidency
- President's Coordinating Council
- MINMEC
- Forum of Directors-General
- Ministerial fora
- Government clusters – see https://www.gov.za/about-government/government-system/structure-and-functions-south-african-government#gov_cluster
- Minister of Cooperative Governance and Traditional Affairs
- Minister of Human Settlements
- National and Provincial Houses of Traditional and Khoi-San Leaders
- Department of Forestry, Fisheries and the Environment and Committee for Environmental Coordination
- Intergovernmental Relations Framework Structures such as technical committees
- Newly to be established climate change structures
- Provincial housing departments



Although these structures exist, they do not necessarily have a specific mandate to consider WEF-related issues.

WEF governance-related actors

The WEF governance-related actors include:

Table 2: WEF Actors

Water	Energy	Food
Minister of Water and Sanitation Department of Water and Sanitation Catchment Management Agencies Water Use Associations Water Service Institutions Catchment management forums and partnerships Water Boards Municipalities	Minister of Electricity and Energy Department of Electricity and Energy Eskom National Energy Regulator of South Africa (NERSA) National Nuclear Regulator Municipalities Exploration and production of gas and petroleum: Minister of Mineral Resources Department of Mineral Resources	Minister of Agriculture Department of Agriculture Minister of Land Reform and Rural Development Department of Land Reform and Rural Development MECs responsible for agriculture Provincial department in relation to agriculture Traditional councils

Private actors

The private actors include, for example,

- NGOs
- Researchers
- Farmer organisations
- Communal Property Associations
- Developers
- Mining companies
- Churches
- Households
- Individuals

Study results, conclusions and recommendations

Many households in the rural communities of South Africa, does not have sufficient access to water, energy and food. Women, children and the aged especially suffer. Communities without sufficient access to water, cannot produce food as the little water that is available has to be used for household purposes. Some communities do not have access to any form of energy and rely on biomass and wood as their only source of energy. Others resort to biomass and wood as a result of the cost of electricity or the fact that the free access to energy is not enough to sustain a basic household. It seems that some government departments such as housing do have to consider water, energy and food provisioning in their decision-making while other departments act in a silo manner. A lack of sanitation and waste services or the establishment of communal waste facilities leads to water pollution. NGOs introduces innovative measures to assist rural communities. New legislation, such as the Climate Change Act, focuses on more integrated decision-making.

In order to give effect to WEF decision-making within government, the following recommendations are made:

Recommendation 1: Use existing cooperative governance structures for WEF decision-making

Use the existing structures MinMec, Committee for Environmental Cooperation, newly to be established climate change structures to make WEF decisions in an integrated rather than silo-based manner.

Recommendation 2: Create new structures to give effect to WEF decision-making

Establish new intergovernmental structures on all spheres of government and inter-spheres of government to make decisions relating to the WEF in terms of the Intergovernmental Relations Framework Act or extend the District Development Model to ensure integrated decision-making on the WEF.

Recommendation 3: Integrate WEF decision-making in all new policies or amend existing legislation to ensure integrated decision-making

Similar to climate change legislation, new policies and legislation should ensure integrated decision-making in relation to the WEF to ensure social justice within marginalised communities.

Recommendation 4: Involve the traditional councils and communities before decisions in relation to the WEF are taken on their behalf

Traditional councils and communities have expressed their interest in being involved in decisions taken on their behalf in relation to the WEF. The households and especially women should have a say on what their needs are.

Recommendation 5: Obtain prior and informed consent for any development from community members with informal land rights

Before any development (including mining) community members have to provide their prior and informed consent (*Baleni* and *Maledu* cases).

Acknowledgements

This work is based on the research supported wholly by the National Research Foundation (NRF) of South Africa and the Dutch Research Council (de Nederlandse Organisatie voor Wetenschappelijk Onderzoek - NWO) Project UID 129352. The NRF and NWO are thanked for their financial contribution.

The Research Team also wants to acknowledge all government officials, Rural Environmental Solutions, Matatiele and all its ecochamps, the Vaalharts Water Use Association and all the community fieldworkers who assisted us with the research.

References/more information

Only include a maximum of four sources where readers can find further information. Give the web addresses of publications and dates for when they were last accessed if possible.

1. Mauger R et al. 2023. Baseline Report on the Water-Energy-Food Communities Legal and Policy Frameworks in the European Union and South Africa. <https://www.wefcommunities.co.za/items>.
2. Ngarava Saul et al. 2024. A multivariate dataset on water–energy–food nexus: Multi-actor governance for social justice. *Data in Brief* <https://doi.org/10.1016/j.dib.2024.110805>
3. Fuo O 'Local government indigent policies in the pursuit of social justice in South Africa through the lenses of Fraser' (2014) 2014 Stell LR 187 <https://repository.nwu.ac.za/bitstream/handle/10394/20293/2014LocalGovernment.pdf?sequence=1>
4. Viljoen G. 2024. Public Trusteeship, the Reserve and the Water-Energy-Food Nexus: Implications for Social Justice in South Africa's Water Law. *LEAD*, 20(1): 78-95. DOI: <https://doi.org/10.25501/SOAS.00042005>
5. Viljoen G and Dube F. 2023. Realising the Right to Electricity through Off Grid Power Solutions in South Africa. *PER/PELJ*, 26. DOI <http://dx.doi.org/10.17159/17273781/2023/v26i0a15637>
6. Baloyi B. 2023. Regulation of waste disposal at local government level: contributing to the water-energy-food nexus. LLM Mini-Dissertation, North-West University.
7. Coetzee JH. 2024. Onshore unconventional natural gas in South Africa: regulating the water-energy-food nexus. LLD Thesis, North-West University and Tilburg University. https://pure.uvt.nl/ws/portalfiles/portal/100798472/Coetzee_Onshore_21-08-2024.pdf
8. Viljoen G et al. 2024. Water-Energy-Food Communities in South Africa: Exploring Multi-Actor Governance Instruments Contributing to Social Justice. *European Journal of Comparative Law and Governance*. To be published at <https://brill.com/view/journals/ejcl/ejcl-overview.xml>
9. Viljoen G. 2022. The Transformed Water Regulatory Regime of South Africa [Discussion of *South African Association for Water User Associations v Minister of Water and Sanitation* [2020] ZAGPPHC 252 (19 June 2020)]. *Stell LR*. <https://journals.co.za/doi/abs/10.47348/SLR/2022/i2a8#:~:text=The%20water%20regulatory%20framework%20changed,water%20belongs%20to%20all%20people%E2%80%9D>.
10. Viljoen G and Bosman C. 2022. Legal Options to Ensure the Protection of South Africa's Utilisable Groundwater Resources. *PER/PELJ* 25 – DOI <http://dx.doi.org/10.17159/17273781/2022/v25i0a13483>
11. Du Plessis AA (ed). 2021. *Local Government and Environmental Law*. Juta: Cape Town. https://juta.co.za/catalogue/environmental-law-and-local-government-2e_28530
12. Du Plessis W. 2022. *Energy Law South Africa* 3rd ed. Wolters Kluwer. <https://kluwerlawonline.com/EncyclopediaChapter/IEL+Energy+Law/ENER20190025>
13. *Baleni and Others v Regional Manager Eastern Cape Department of Mineral Resources and Others* 2021 (1) SA 110 (GP) <https://www.saflii.org/za/cases/ZAGPPHC/2020/485.html>
14. *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* 2019 (2) SA 1 (CC) <https://www.saflii.org/za/cases/ZACC/2018/41.html>
15. *Joseph v City of Johannesburg* 2010 (4) SA 53 (CC) <https://collections.concourt.org.za/handle/20.500.12144/3588>

Publication details: ©WEF-Nexus Project 2024.

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