

WATER LAW

Call for more practical legal training to tackle SA water management failures

New research has drawn attention to several shortfalls in the country's water law education and training programmes – and made recommendations on how to improve the situation. Article by Tony Carnie.

Unsplash



It's one thing to have great water laws. Quite another to enforce and implement them. South Africa's post democracy water law reform process was hailed internationally, yet that praise has been tempered more recently with the steady collapse of municipal tap water supplies and the increasing level of sewage pollution in rivers across the country.

A new research report commissioned by the Water Research Commission (WRC) notes that the National Water Act of

1998 and the Water Services Act of 1997 cannot be seen in isolation as these laws have since evolved to include more than 120 regulations. These laws are further influenced by many other pieces of environmental, municipal and public finance legislation, along with high levels of scientific and technical complexity.

Surprisingly, however, the researchers reported that none of the water law courses offered currently by local universities



Sewage effluent from the Northern Wastewater Treatment Works festers along the banks of Durban's uMngeni River.

specifically incorporate “water-related scientific content”. And though many water sector professionals and state officials have received legal training at university, a significant number of respondents in the WRC study had never received any formal water-specific law training – relying instead upon “on the job” training or self-study.

The project team (led by Prof Tracy-Lynn Field of the University of the Witwatersrand and researchers Basetsana Koitsioe and Kgosi Thage from the Centre for Applied Legal Studies) suggests that there is “an urgent need for investments in capacity-building to interpret, understand, and enforce water law effectively”.

One suggestion emerging from their research is the establishment of a new, multi-disciplinary training institute for water. Alternatively, universities and other sectors could collaborate to offer a new online learning course on water law. These recommendations flow from a recent series of questionnaire responses and interviews conducted with water sector stakeholders, many of who emphasized the need to make water law training “more real, practical and accessible”.

“There was a strong convergence of opinion that water law training should be more practical, such as case studies, simulations, hands-on exercises, real-world examples, problem-solving exercises, and interactive learning methods,” according to the new research report entitled *Water law reform: Themes, gaps and opportunities (WRC report no. 3115/1/23)*. It was based on feedback from a broad range of water specialists and officials in academia, government, water law administration, the legal fraternity, consultancies or social justice groups.

“A significant majority of respondents to the questionnaire (70%) had not received any formal water law training,” the report states. Other respondents also drew attention to the multifaceted nature of water law, as well as its integration with various hard sciences such as ecology, chemistry, and engineering. And yet, the researchers conclude: “None of the water law courses in legal academia teach any water-related science.”

As an example, they noted the University of Cape Town course on Environmental Law for Non-Lawyers provided a space for multidisciplinary engagement with law – but to the best of their knowledge, there was no equivalent “Water Science for

Non-Scientists course'. Former or current employees of the Department of Water and Sanitation also highlighted several "challenges", including limited staff, frequently shifting regulatory priorities, or a lack of appreciation for the importance of water law.

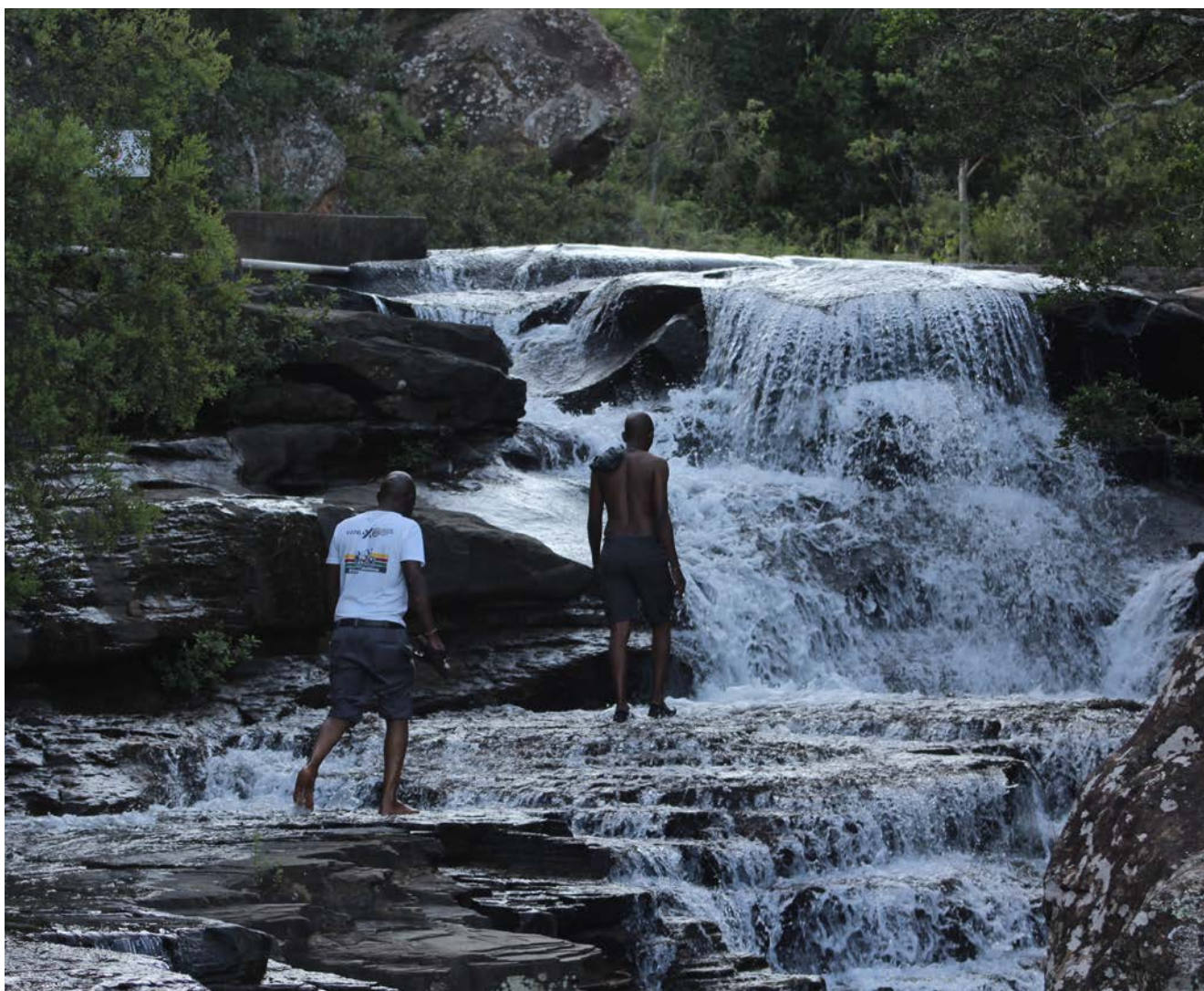
One official who took part in the research emphasised the importance of multi-disciplinary knowledge, noting that in addition to his LLB degree, he was also a registered professional engineer. At least one water department insider also raised concerns about leadership instability and low staff morale.

"So, our department has been controversial. Each and every five years we get something new," he told the researchers, "For me personally ... I wish we were in the Environmental Affairs (department). They have ministers for long, so why are we ... five years and then we change and then another person comes in - new outlook, new everything. I think if you talk to anyone on the ground, the morale is very low because this forever changes."

Another respondent noted that in terms of the National Water

Act, the Minister of Water Affairs was designated as the ultimate custodian of the nation's water resources "but actually has limited powers to intervene in water services delivery at local government level. And so we clearly ... have a huge crisis". A further complication was the degree of autonomy given to local government by the Constitution, creating legal confusion as to whether the provincial or national government should intervene in the event of failures at local government level. Another official voiced similar frustration, stating that there was often uncertainty about legal procedures to halt illegal sewage discharges from municipal wastewater treatment works.

Commenting on the quality and relevance of current academic training for future water sector stakeholders, the respondents reported mixed experiences about the state of water law training. "Some criticised university lecturers for lacking practical experience and scientific knowledge, but this criticism should be weighed against the argument that water law courses are not necessarily designed with the needs of all water law communities in mind."



Tony Carnie

Visitors explore a stretch of clear water rapids in the Royal Natal National Park. Despite the increasing complexity of water law, a WRC study suggests that there are currently only two public universities that offer a specific water law course at a Master's level.



The Amphitheatre section of the uKhahlamba-Drakensberg World Heritage site is a strategic water source – areas of high rainfall that make up just 10% of the land area of South Africa but supply nearly 50% of the surface water.

"I think that it is very hard to leave training purely to the academics," one of the respondents remarked. "Academics are incredibly important because they're thinking about these issues ... but I think it's really important to also get people in practise to contribute to training. ... So I think it's useful to have a mix because people in practise are often also quite focused and stretched and aren't necessarily thinking about the philosophical problems"

On a positive note, at least two academic programmes were singled out for praise – one a bridging law programme for scientists by former University of Cape Town Prof Loretta Feris as well as the LLM programme led by Prof Michael Kidd of the University of KwaZulu-Natal.

But there was less enthusiasm for some of the training courses provided in the government sector. "I wish there can be training more often," she said. "It is not just for the young ones that come in, but for us that's been there for some time. It does not mean we know everything. And I think this is why we also lose (court or enforcement) cases these days," suggested one official.

Several training courses for State officials were criticised as being too short or too infrequent. "You're cramming all the things when you come out there. You know you're just studying for that certificate because ... your supervisor wants that certificate. So you cannot ... have five-day courses. No, it doesn't work" lamented another official. "And really you don't always have

time to sit still with your team. ... There's always something happening. ... You don't have time to sit with new financial leads, new targets, you must move ... And I think it's the capacity issues in my section or in the department is really hampering us to understand matters because now you are tired, you must come home and you must read on this matter but you're tired, you have kids at home."

The WRC research authors acknowledge that water law expertise cannot be developed overnight, but is rather dependent on a combination of foundational training, workplace experience, further education, and informal learning. Nevertheless, they emphasise the need for more sophisticated training programmes for senior departmental officials and Environmental Management Inspectors (EMIs) to address their specific requirements.

One of the officials interviewed suggested that staff shortages, rather than inadequate training, was a major shortfall. Comparing his role to that of a firefighter, he said: "I go where it's burning."

He also lamented the fact that EMIs did not have time to follow-up on the enforcement action they initiated. "Why? Because I know we are few on the ground. So we don't have that time to follow up. ... I was glad that we could show that we have issued (directives). But where was the follow up? Why was it never escalated? ... I'm telling you, I feel like I'm just a firefighter".

EMIs and other enforcement officers faced further frustration when laying criminal charges at police stations or during subsequent legal proceedings. "The general sense across the board was that actors in the legal services community of practice (SA Police Services, prosecutors, lawyers and advocates) do not know enough about water law."

One of the WRC study respondents expressed frustration that when EMIs tried to open a docket at a police station: "They're going to tell us about crime, rape and stuff. They dunno what I'm talking about. [W]hen we had to go take the docket there, no they don't know what we're talking about."

Another respondent observed that specialist prosecutors had been "sort of riding on the wave of plea bargains and guilty pleas", with the result that when prosecutors were asked to actually present evidence in a trial where an accused does not plead guilty "they have a ton of problems".

Contrary to sentiments about becoming a water specialist through self-study and experience, others believe there is a clear need for more water-specific legal training at a foundation level. "Actually, we don't train water lawyers, we train lawyers and then somewhere down the line they learn to become water lawyers, which for me is ... maybe what's missing is actually a master's degree in water law or something of that nature - a specialisation in water law," a respondent suggested.

In response to this feedback, Field and her colleagues recommended that the Department of Water and Sanitation,

Department of Cooperative Governance and Traditional Affairs South African Local Government Association should collaborate on appointing a service provider to develop an inter-disciplinary, inclusive water services law offering for local government officials. They should also investigate and support the establishment of a multi-disciplinary training institute for water and explore the possibility of a collaborative online water law offering.

The report notes that there are currently two major private water law courses: The first offered by Carin Bosman Sustainable Solutions (CBSS) in co-operation with the Water Institute of Southern Africa (WISA), and the second presented under the auspices of the South African Institution of Civil Engineers.

Overall, however, the current water law training landscape in South Africa was characterized by limited offerings. "There are only two public academic institutions and two private providers that offer specific (master's) courses in water law."

"Opinions varied regarding the need for water law training within the legal services community, with a specific emphasis on training for prosecutors in criminal procedure and evidence rules. For water law administrators, the issue was seen as more related to political will and ethics than knowledge."

To download the WRC report, visit: <https://wrcwebsite.azurewebsites.net/wp-content/uploads/mdocs/3115%20final.pdf>



Tony Carnie

A hiker takes a break near the base of the Tugela Falls in the Royal Natal National Park. To help protect the water emanating from these areas, WRC researchers have suggested the need for a new, multi-disciplinary training institute for water-related issues.