



WITHHOLDING OF LES ALLOCATIONS:
PRESENTATION TO THE STANDING COMMITTEE ON
APPROPRIATIONS

29th July 2015

For an Equitable Sharing of National Revenue

STRUCTURE OF PRESENTATION

- Purpose and background of the Submission
- The Legal basis for the LES withdrawal
- What is at Stake?
- The Affected Municipalities
- Issues of Principle to the Commission
- Recent Developments
- Recommendations

PURPOSE OF THE SUBMISSION

- The Commission is making this submission on the basis of Section 3 (1) and (2) b (i) and (ii) of the FFC Act of 1997 as amended
- The purpose of this submission is to apprise the Committee on the views of the Commission with respect to withholding of the Local Government Equitable Share (LES) allocation by National Treasury for municipalities that have not prioritised or persistently defaulted on debt they owe to Eskom and Water Boards

BACKGROUND

- On 19 February 2015 a judgement in the Free State High Court delivered a guilty verdict on a Matjhabeng Municipality Manager for persistently non-complying with court orders
- On 6 March 2015, the National Treasury issued a circular on its intentions to withhold the LES allocations for Municipalities that are habitually defaulting on Eskom and Water Boards debts
- At the end of March LES allocations were withheld for 59 municipalities owing to debt to ESKOM and Water Board

THE LEGAL BASIS FOR THE LES WITHDRAWAL

Constitution (Section 216)

- Section 216 of the Constitution allows National Treasury to stop transfers to municipalities: Section 216 (1) of the Constitution provides that this can be done in the event of gross misconduct in the form of serious or persistent non-compliance with measures specified in the Constitution. In this case non-compliance means non-payment of the Eskom debt within 30 days

Division of Revenue Act (2015)

Section 17 and 18 of the Division of Revenue Act (DoRA) of 2015 and subsequent regulations prescribed in the MFMA

Enabling Legislation

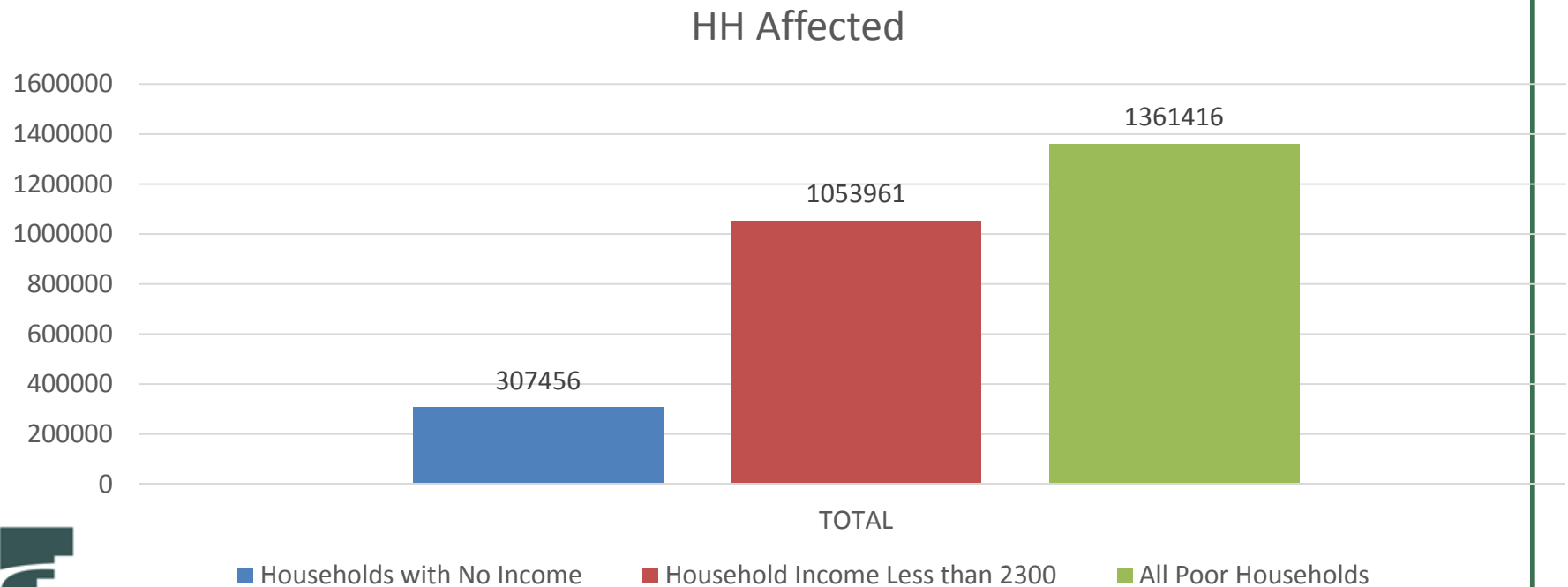
- The MFMA in Section 38-40, allows National Treasury to take punitive measures in the form of stopping allocations if there is persistent non-compliance with the Division of Revenue Act (2015)

THE LEGAL BASIS FOR THE LES WITHDRAWAL CONT'D.

- But before stopping NT
 - must give municipality opportunity to make representation
 - Inform MEC for LG
 - Consult cabinet member responsible for making transfer
- Decision to stop LES lapses after 120 days unless parliament approves/renews decision.
- Parliamentary approval should be completed within 30 days of NT stoppage decision
- Parliament may renew decision for no more than 120 days
- Before Parliament approves or renews a decision to stop the transfer of funds to a municipality—
 - The municipality must be given an opportunity to answer allegations against it, and to state its case, before a Parliamentary committee

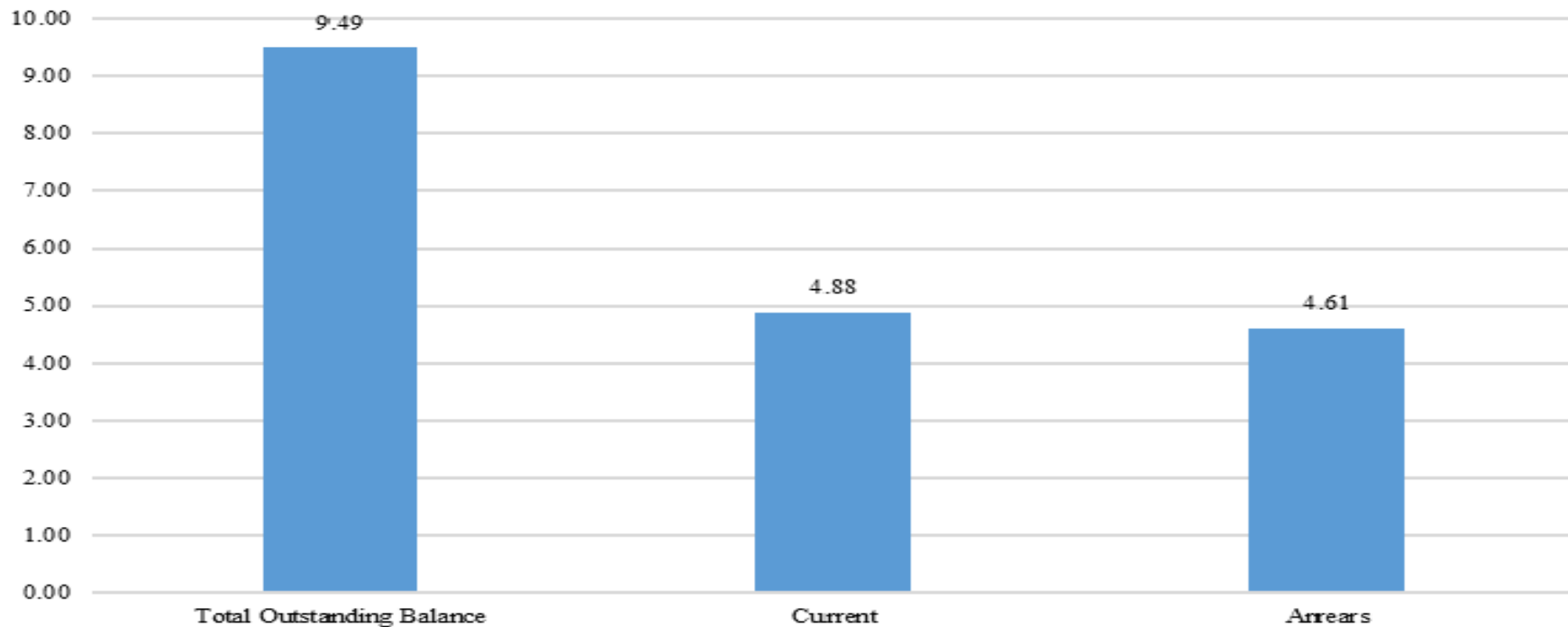
WHAT IS AT STAKE?

- What is at stake is the temporary disruptions on service delivery. The municipalities are responsible for service delivery and rely albeit differently on the LES.



WHAT IS AT STAKE? THE ESKOM AND WATER BOARDS DEBT

- Municipal debt to Eskom as at November 2014 is shown in the figure below



- Interestingly, the “current” municipality debt of R 4.88 billion for November was less than bulk electricity sales of R 5 billion for the same period

DEBT BURDEN CONT'D.

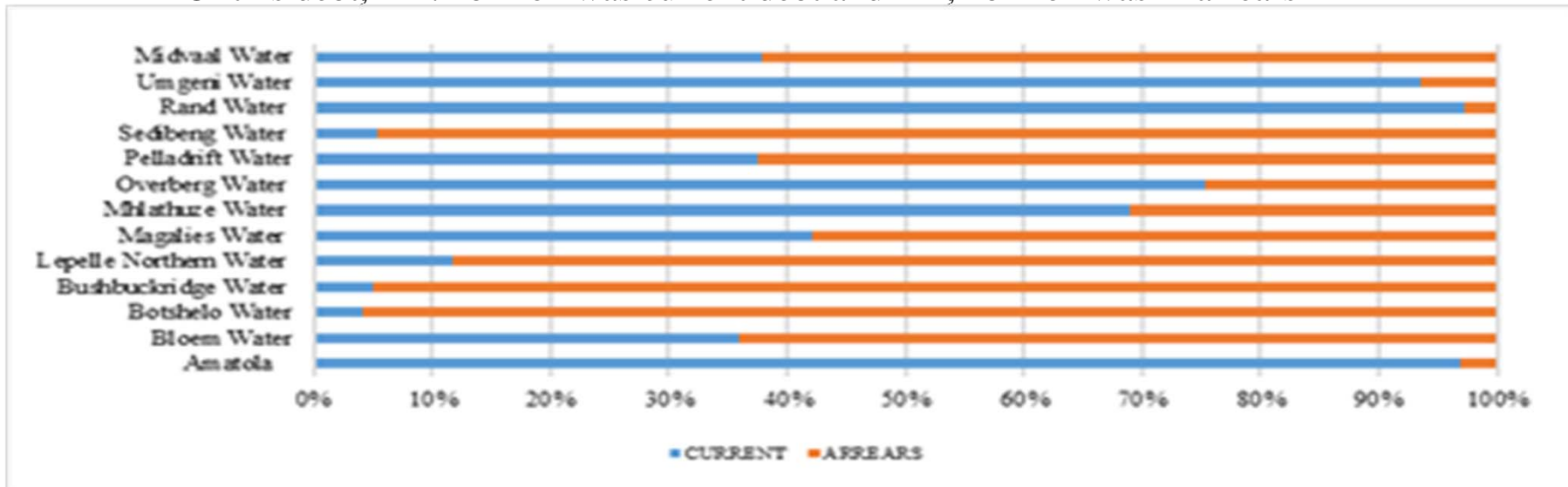
- The major debtors to Eskom were municipalities in Gauteng, Free State and Mpumalanga provinces

| | Current debt (R millions) | % Share of Current Debt | Total Arrears (R millions) | % Share of Total Arrears Debt | Total Outstanding Debt (R millions) | % Share of Outstanding Debt |
|------------------------------|------------------------------|----------------------------|-------------------------------|-------------------------------------|--|-----------------------------------|
| Eastern Cape Municipalities | 350.6 | 7.2 | 188.7 | 4.1 | 539.3 | 5.7 |
| Free State Municipalities | 242.9 | 5.0 | 1606.4 | 34.9 | 1849.3 | 19.5 |
| Gauteng Municipalities | 1933.1 | 39.6 | 213.8 | 4.6 | 2146.9 | 22.6 |
| KwaZulu Natal Municipalities | 875.5 | 17.9 | 63.5 | 1.4 | 939.0 | 9.9 |
| Limpopo Municipalities | 143.5 | 2.9 | 221.7 | 4.8 | 365.2 | 3.8 |
| Mpumalanga Municipalities | 249.1 | 5.1 | 1478.7 | 32.1 | 1727.8 | 18.2 |
| North West Municipalities | 227.2 | 4.7 | 671.6 | 14.6 | 898.8 | 9.5 |
| Northern Cape Municipalities | 79.5 | 1.6 | 142.9 | 3.1 | 222.4 | 2.3 |
| Western Cape Municipalities | 783.0 | 16.0 | 21.2 | 0.5 | 804.2 | 8.5 |
| Total | 4884.4 | 100.0 | 4608.5 | 100.0 | 9492.8 | 100.0 |

- For arrears debt, municipalities in Mpumalanga, Free State and North West top the list. Municipalities in these three provinces accounted for 82% of the total arrears

DEBT BURDEN CONT'D..

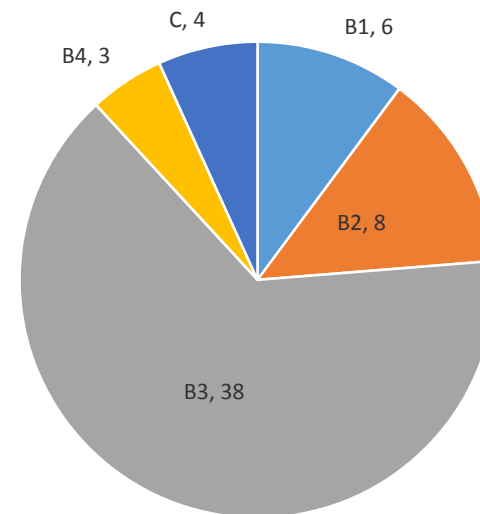
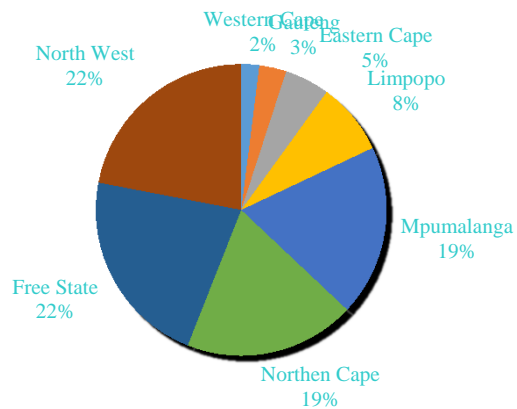
- As of February 2015 various Water Boards were owed a total of R 3.6 billion by municipalities
 - Of this debt, R 1.4 billion was current debt and R 2,2 billion was in arrears



- Sedibeng, Bushbuckridge and Botshelo Water boards were owed the largest amounts in terms of arrears debt, while Rand, Umgeni and Amatola Water boards were owed the largest amounts in terms of current debt

THE AFFECTED MUNICIPALITIES

- In total 59 municipalities are affected by the National Treasury circular
- The majority (38 or 64%) are group B3 municipalities

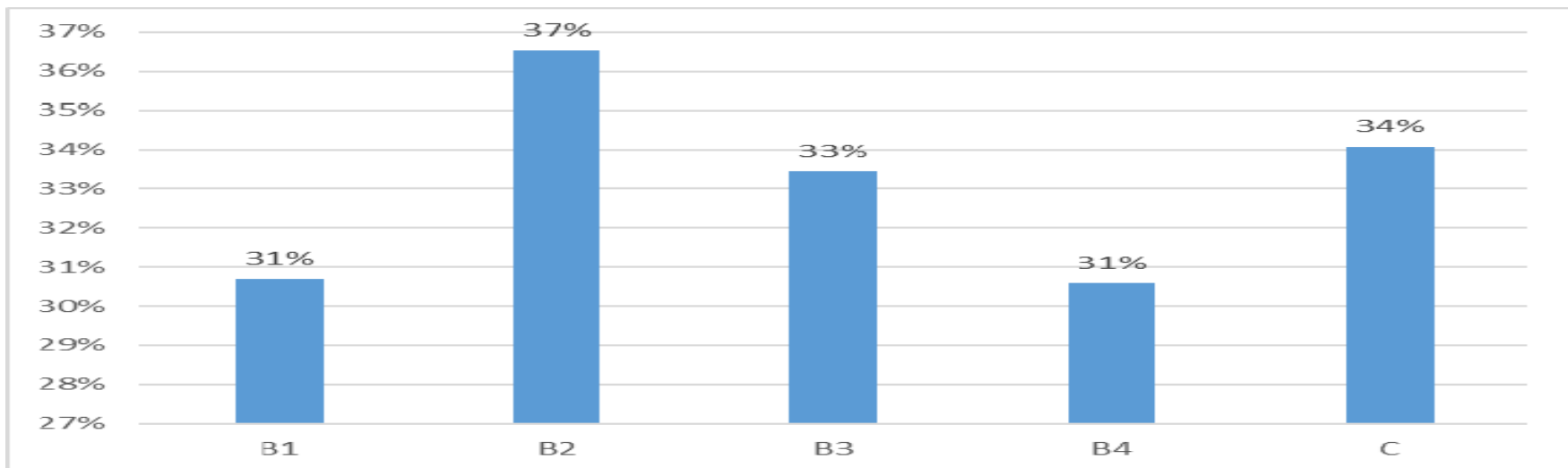


• The Free State and North West have the largest numbers of affected municipalities, (22% apiece)

THE AFFECTED MUNICIPALITIES

CONT'D.

- On average the LES allocations accounts for between 31% and 37% of their total operating revenue
 - this range masks extreme rates of LES dependency for some municipalities e.g. the ratio of the LES allocations to total operating revenue was 97% for Mopani District Municipality



- This huge LES dependency implies that the LES withholding would cripple operations and general service delivery

ISSUES OF PRINCIPLE TO THE COMMISSION

- Decision to withhold LES must be anchored in the constitution
- Decision to withhold LES must be a last resort
- Approach to debt should be fair and not one sided
- The debt issue should be resolved within the IGFR system and not in courts
- That compliance with the 30 day payment rule should not be enforced not only on municipalities alone but all government departments and entities,
- Section 154 (1) of the Constitution prescribes support should be rendered to municipalities.

ISSUES OF CONCERN TO THE COMMISSION

- Section 216 is a blunt instrument that hits the guilty and the innocent alike.
- Because there is non-clarity on the assistance/intervention rendered to affected municipalities prior to the LES withdrawal. Section 154 (1) of the Constitution prescribes support should be rendered to municipalities.
- That some of the municipalities affected by the LES stoppage are under administration. Who is accountable for the LES stoppage then?
- If National Treasury is misinterpreted as acting on behalf of government and non-government entities to collect their debt.
- That even some national and provincial government departments are not complying with the 30 day payment rule, (i.e. Section 38(1) of the PFMA (and Treasury regulations 8.2.3 (2001) and Treasury Instruction note No. 34)

RECENT DEVELOPMENTS

- As of 23 June 2015, of the 59 municipalities whose LES was withdrawn by National Treasury, 49 received full LES, 9 received part LES and 3 did not receive LES. **The total LES released thus far is about R1.8 billion.**
- Of the 9 that received part LES, 5 are from the North West 3 from Mpumalanga and 1 from the Free State as follows:
- The 3 municipalities that did not receive LES are from the Free State, Northern Cape and North West as follows:
- 47 out of 51 municipalities have signed payment agreements with Eskom to negotiate payment schedules, 4 have not.
- 11 out of 14 municipalities have signed payment agreements with various water boards, 3 have not.

OUTSTANDING BALANCE ON LES AS AT 23 JUNE 2015

| Code | 23 June 2015 Municipality Name | DoRA allocation March Tranche | equitable share released | balance outstanding |
|--------------|--|--|-------------------------------------|--------------------------------|
| FS203 | NGWATHE LOCAL MUNICIPALITY | 27 845 000 | | 27 845 000 |
| FS194 | MALUTI A PHOFUNG MUNICIPALITY | 106 209 000 | 45 156 386 | 61 052 614 |
| MP302 | MSUKALIGWA LOCAL MUNICIPALITY | 31 124 000 | 22 017 025 | 9 106 975 |
| MP314 | EMAKHAZENI LOCAL MUNICIPALITY | 11 451 000 | 10 603 000 | 848 000 |
| MP325 | BUSHBUCKRIDGE LOCAL MUNICIPALITY | 147 631 000 | 34 259 547 | 113 371 453 |
| NC075 | RENOSTERBERG LOCAL MUNICIPALITY | 1 989 000 | | 1 989 000 |
| NW374 | KGETLENGRIVIER LOCAL MUNICIPALITY | 13 540 000 | 10 890 000 | 2 650 000 |
| NW382 | TSWAING LOCAL MUNICIPALITY | 20 102 000 | 7 750 000 | 12 352 000 |
| NW383 | MAFIKENG LOCAL MUNICIPALITY | 34 922 000 | 17 461 000 | 17 461 000 |
| NW384 | DITSOBOTLA LOCAL MUNICIPALITY (including Lichtenburg) | 9 346 000 | 4 673 000 | 4 673 000 |
| NW396 | LEKWA - TEEMANE | 9 940 000 | 6 727 000 | 3 213 000 |
| NW401 | VENTERSDORP LOCAL MUNICIPALITY | 14 843 000 | | 14 843 000 |
| Total | | 428 942 000 | 159 536 958 | 269 405 042 |

RECOMMENDATIONS

- A proper diagnostics of the root cause of non-payment be done and if it is due to bad management, appropriate consequences should be rendered
 - Stricter measures should be imposed on individuals within municipalities that are responsible for continued flouting of MFMA rules.
- Municipalities must produce balanced budgets and in addition the electricity and water undertakings must be ring fenced.
- That IGFR forums dedicate sufficient time to find lasting solutions to the debt problems within the Local government sector.

RECOMMENDATIONS

- That executives for the relevant entities implement appropriate credit controls as allowed in law
- As the LES stoppage will affect the provision of basic services to poor households, the Commission would encourage that this be last resort and when proper diagnosis of the problem has been undertaken
- That National Treasury applies the same pressure to all national and provincial departments that are not complying with the 30-day payment rule
- The Commission would like to see a speedy conclusion of the work of the task team examining the intergovernmental debt.



FINANCIAL
AND FISCAL
COMMISSION

THANK YOU
