

Dancing to two tunes? Rights and market-based approaches in South Africa's water domain

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Sustainable Livelihoods in Southern Africa: Institutions, Governance and Policy Processes

Through work in southern Africa this research programme has explored the challenges of institutional, organisational and policy reform around land, water and wild resources. The case study sites have been in Zambezia Province, Mozambique, the Eastern Cape Wild Coast in South Africa and the lowveld area of southeastern Zimbabwe. Three broad themes have been explored:

- How do poor people gain access to and control over land, water and wild resources and through what institutional mechanisms?
- How do emerging institutional arrangements in the context of decentralisation affect poor people's access to land, water and wild resources? What institutional overlaps, complementarities and conflicts enable or limit access? What new governance arrangements are required to encourage a livelihoods approach?
- How do the livelihood concerns and contexts of poor people get represented in policy processes concerning land, water and wild resources in local, national and international arenas? What are the challenges for participation in the policy process?

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Summary

In recent years, there have been growing calls to institutionalise the right to water. South Africa stands out in this regard. This paper examines the Free Basic Water (FBW) policy in South Africa against the backdrop of ideological currents and its institutional, administrative and policy environment. It investigates whether there is an inherent contradiction between rights-based and market-based policy debates, how the right to water is being realised and implemented in the country's poorest areas and whether having the right to water makes a difference to poor people and their livelihoods. Drawing on empirical research, the paper argues the free basic water (FBW) policy of South Africa is a landmark achievement with respect to citizenship and socio-economic rights. However its implementation has been difficult. In part, many of its highly laudable aims can be negated either due to the lack of financing or institutional capacity, the lack of awareness of rights and accountability mechanisms to provide them and due to parallel trends towards cost recovery. Thus, in order for the right to water to be real there is the need for adequate resource commitments (both financial and institutional) and a stronger commitment to address livelihood and poverty reduction goals.



Introduction¹

Access to safe and affordable water is key to enhancing both human well-being and securing sustainable livelihoods. However, there is no clarity regarding the governance, financial and institutional structures that need to be in place in order to provide water 'for all.' At the heart of the issue lies disagreement on fundamental questions concerning rights, entitlements and the role of markets in service provision. Some analysts argue that, due to growing scarcity, water is becoming increasingly valuable and should be seen as an economic good, to be bought and sold. Only the market, they say, can establish the 'right' price that will ensure that it is not recklessly wasted (see Finger and Allouche 2002; Black 1998; Winpenny 1994). Others say that, as water is so essential for human existence, it is an inalienable human right that must be respected by the state and international development agencies (WHO 2003; Petrella 2001; Gleick 2000, 1999; Jolly 1998).

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Recently, a growing number of analysts have argued eloquently that water and sanitation are not just basic needs but fundamental human rights based on the criteria established in international declarations that protect the right to livelihood and well-being. Curiously enough, the right to water was only implicitly endorsed in the 1948 Universal Declaration of Human Rights (UNDHR), although it is explicitly mentioned in the Convention of the Rights of the Child (1989). It was only on 27 November 2002 that the United Nations Committee on Economic, Social and Cultural Rights adopted the General Comment on the right to water. The Committee stressed the state's legal responsibility in fulfilling the right and defined water as a social and cultural good and not solely an economic commodity. There are several merits in endorsing the human right to water. Clearly, the provision of free and basic water, so essential for survival, could reduce the spread of diseases, as well as improve health and well-being. It could enhance poor households' sense of dignity and independence, and reduce the drudgery of women and children who are often responsible for water collection and free up time spent on water collection (one to four hours a day) for other activities.

Still, current orthodoxies in the water domain tend to focus on the need to view water as an economic good, and there is a marked lack of official endorsement of the human right to water. Since the Dublin Statement of 1992, water has increasingly been seen as having economic value in all its competing uses. Because water is scarce, goes the logic, it must be used judiciously and its demand managed. Accordingly, efficient resource management is equated with water having a price. The underlying assumption in most discourses – especially those originating in donor countries – is that there is a congruity between viewing water as a right and as an economic good. For example, the United Nations Children's Fund (UNICEF) and the World Water Council mention economic efficiency arguments and rights-based arguments in the same breath (see Nigam and Rasheed 1998: 3–7). It is argued that even if something is a right, there is no denying the need to pay for it, as with food. As one of us has argued elsewhere (Mehta 2003) neither are 'publicness' nor 'privateness' an innate characteristic of water. Instead, water is rival in consumption and access to and control over water is rooted in local power and social relations, making it a highly contested resource (Mehta 2003). Therefore it is not a pure public good. However, merely viewing water as an economic good – as is done in dominant framings in water management – can undermine its embeddedness in the everyday social, cultural and symbolic contexts within which people all over the world live their lives. In reality, both 'publicness' and 'privateness' are created as a result of socio-political choices that are made by both policy makers and local people and depend on issues such as the allocation of resources in a society and the distribution of roles and responsibilities.

The case of South Africa demonstrates these issues very nicely. South Africa is the only country that recognises the human right to water. Its

water policies, however, have also been influenced by dominant global debates around cost recovery and several of Africa's key water privatisation experiences have taken place in South Africa. The paper examines (a) whether there is an inherent contradiction between rights-based and market-based policy debates and discourses in South Africa's water sector; (b) how the right to water is being realised and implemented in the country's poorest areas and (c) whether having the right to water makes a difference to poor people and their livelihoods. It addresses these questions by drawing on the debate of free basic water in South Africa against the backdrop of an examination of both ideological currents underpinning the water debate in South Africa and its institutional, administrative and policy environment. The paper also draws on empirical research conducted in 2002 and 2003. Interviews were conducted with NGO representatives, villagers, academics, policy makers and private sector representatives in Cape Town, Pretoria, Johannesburg and all over the Eastern Cape (at the village, district and provincial levels). The main study area is the Eastern Cape, namely the two district municipalities of Alfred Nzo (ANDM) and O R Tambo in the former Transkei. Four villages, with different water schemes, were selected for the study. The methods deployed were semi-structured interviews, participant observation at the district municipality and village levels, and an analysis of relevant policy documents.

Drawing on the case study, the paper argues the free basic water (FBW) policy of South Africa is a landmark achievement in water management debates. Still, its implementation has been difficult. In part, many of its highly laudable aims can be negated either due to lack of financing or institutional capacity. Local authorities, despite low financial and institutional capacity, have implemented the policy which has made a difference to the lives of many poor people. However in order for the policy to be more far-reaching it needs to (1) have adequate resource commitments (both financial and institutional) to deal with issues of implementation and (2) address livelihood and poverty reduction goals. In urban areas in particular, parallel trends towards cost recovery can also undermine people's right to water. These criticisms, however, should not detract from the fact that the constitutional endorsement of the right to water is in itself an amazing achievement which is unparalleled elsewhere. The challenge lies however in the long road to making the right real for poor people. The paper begins with an examination of the policy and institutional environment within which the free basic water policy is located and examines parallel trends towards cost recovery and recent experiences with water privatisation. It then goes on to examine how the policy of FBW is being interpreted and implemented in parts of the Eastern Cape. The paper then reviews village-level impacts and experiences of the FBW policy and concludes with reflections of the overall value of the FBW policy.

Cost recovery and free basic water: congruous or at loggerheads with each other?

Apartheid created the institutionalisation of resource capture of most of South Africa's water resources by a privileged minority. By contrast, vast areas of the former 'homelands' remained disconnected from water resource infrastructure. In 1994, it is estimated that 15.2 million people (12 million residing in rural areas) lacked access to a basic water supply and 20.5 million lacked basic sanitation (Muller 2002). Moreover, access to water resources was highly unequal with whites, making up 13 per cent of the population and owning 87 per cent of available land, using up to 95 per cent of water available for irrigation on large-scale farms (de Lange 1998 in van Koppen et al. 2002).

In 1994, the now world famous Department for Water Affairs and Forestry (DWAF) came into existence, integrating eleven existing departments related to water and forestry from the former Republic of South Africa (RSA) and 'homeland' areas. In 1994 DWAF's budget was triple that of the former 'RSA' budget and the personnel count rose from 7000 to some 35000 people (Schmitz and Ashton n.d). DWAF assumed a strong profile both nationally and internationally and is today considered to be one of the world's most progressive ministries on water. Nationally, these changes made it command 2.24 per cent of the national budget (as compared with 1.2 per cent). Its task was enormous. Not only did it have to overcome the past backlog but it also needed to move away from being engineering and supply dominated to assuming responsibility for retail water and sanitation service delivery.

From 1994, there was an explicit focus on issues of equity and rights, which to some extent even went against the grain of donor discourses around water. South Africa is one of the few countries that explicitly recognises the right to water, and its FBW policy goes against the grain of conventional wisdom in the water sector, which stress cost recovery mechanisms. Since early 2000, DWAF has been investigating providing a basic level of water free to all citizens. In February 2001, the government announced that it was going to provide a basic supply of 6000 litres of safe water per month to all households free of charge (based on an average household size of eight people).² The Water Services Act 108 of 1997 states that a basic level of water should be provided to those who cannot pay, and the FBW policy emanates from the legal provisions of the Act. The main source of funding for this initiative is the 'Equitable Share', a grant from the central government to local authorities. It amounts to

² This is based on the WHO recommendation for water supply sufficient to promote healthy living set at 25 litres of safe, clean water per person per day within 200 meters of homes.

about R3 billion a year, and is from national taxes for the provision of basic services.

While the government of South Africa stands alone internationally in endorsing the constitutional right to water, it must also be acknowledged that its policies have been informed by several dominant framings in water management which include an emphasis on cost recovery, a shift from the state being a provider of water-related goods and services to performing a regulatory function and that privatisation can be a means to overcome past failure of public systems to provide water to the poor. These could be called 'behind the border convergences' in water management (see Mehta 2004) since much of this cooperation is happening both behind national borders (in the form of policy harmonisation with a view to making a contribution to global challenges) as well as at the international level (in the form of pooled, joint efforts among a range of actors, largely non-state). This has led to a quasi consensus amongst multilateral and bilateral agencies around issues such as cost recovery, user fees, demand management etc. which have manifest themselves in both poor countries and middle income countries such as South Africa. For example, several authors have demonstrated the extent to which the World Bank and the International Finance Corporation (IFC) have influenced South African government thinking - away from its Reconstruction and Development Programme (RDP) commitments towards infrastructure and service for all based on entitlement and welfare - towards a cost recovery approach which can deprive poor communities of their basic rights to an adequate provision of water (Pauw 2003; Bond 2001; 2002). It is now well known that the more welfare oriented approach of the RDP gradually gave way to both pragmatism and neo-liberalism. In 1996, total cost recovery became an official policy of the government when it adopted its fiscally conservative Growth, Employment and Redistribution macro-economic policy, known as GEAR. The central features of the policy are a reduced role for the state, fiscal restraint and the promotion of privatisation. Cape Town journalist Mohammed Alliee provides a useful analogy of two boxers fighting each other in a ring. The first is the RDP which emphasises overcoming past legacies and focuses on poor people's entitlement and rights. The second is GEAR which emphasises the rolling back of the state, privatisation and cost recovery and the two positions are constantly at loggerheads with each other (Interview 15/4/2002). While some proponents of GEAR feel that the two approaches are not mutually exclusive, others argue that several contradictions play themselves out in South Africa's water sector (see Mehta 2004). Alongside the remarkable commitments to providing free water, several World Bank influenced policy changes were introduced (Pauw 2003; Bond 2001). These include "credible threat of cutting service" to non-paying consumers which has been linked by some to cholera and other gastrointestinal outbreaks (Pauw 2003; McDonald 2002). From 1997, municipalities began to witness widespread cut-offs of basic services to non-payers (ibid). While cut offs took place even during apartheid times (Barry Jackson, personal communication, 23/12/2003), the indignation is undoubtedly higher

today, not least because of the strong importance awarded to social and economic rights in South Africa's constitutions. There are controversies around the number of people who have experienced cut offs. According to the Municipal Services project, using representative national survey data from the Human Sciences Research Council (HSRC), 10 million people have experienced cut offs in recent years (McDonald 2002). This figure however is contested and has been refuted by DWAF (Kasrils 2003) and further revised by the HSRC to approximately 2 per cent of all connected households, equating to over 250,000 people. Despite DWAF admitting such numbers to be a matter of serious concern McDonald stands by the figure of 10 million and has challenged DWAF and other agencies to research a more accurate figure (Sunday Independent 2003). Whilst in urban areas cut offs have been very controversial, in rural areas, as we shall shortly see, similar mechanisms to monitor water use are absent.

As part of GEAR, the South African government also decreased grants and subsidies to local municipalities and city councils. This forced cash-strapped local authorities to turn towards privatisation or enter into partnerships in order to generate the revenue no longer provided by the national state (McKinley 2003). For example, the Consolidated Municipal Infrastructure Programme received 49 per cent of its budgeted R1.2bn for capital subsidies in 1998/9. Recurrent subsidies were planned to drop by around 10 per cent in real terms from 1.9 per cent to 1.7 per cent of national revenue after interest (Cashdan 2000). Increasingly budgets for the water sector are also being cut off from outside cash injections such as cross subsidies (Pape 2001). Whilst total transfers to local government increased by approximately 295 per cent between 1998/99 and 2003/04, from R4,188 billion to R12,390 billion, allocations to the water and sanitation operating budget dropped from 14.3 per cent of transfers to 8 per cent (National Treasury 2004: 164). Moreover at the municipal level, income collected for the water sector during the same period more than doubled. The most significant shift in collections occurred post 2001, concurrent with the institution of the FBW policy, with an increase from R5.1 billion to R9.6 billion (National Treasury 2004: 169).³

Since local government structures were incapable of dealing with past backlogs on their own, they began to privatise public water utilities by entering into service and management 'partnerships' with external agencies. These ranged from multinational water corporations to South African firms or through deploying the services of para-statal water boards

³ Data from the 2004 Budget overview, Table 7.7, indicates an increase in government transfers to local government from R4,188 billion (1998/99) to R12,390 billion (2003/04) – a 295.8% increase. Similarly from Table 7.7, 'Water and Sanitation Operating' dropped from R599 billion out of R4,188 billion (14.3% of total transfers) for 1998/99, to R1,001 billion out of R12,390 billion (8.1% of total transfers) for 2003/04. Table 7.10 of the budget overview indicates that income collected from the water sector for municipal operating budgets in 1998/99 was R4.2 billion compared with R9.6 billion in 2003/04 (a 229% increase). The majority of this increase was from 2000/01 where income increased from R5.1 billion to R9.6 billion (188%).

that make profits but usually plough them back into infrastructure development (e.g. Rand water). The role of consortia was also key. For example, Suez, which collaborated with the apartheid government in largely providing water to the white minority, formed Water and Sanitation Services Africa (WSSA). It subsequently won 'delegated management' contracts in Queenstown, Fort Beaufort and Stutterheim (all in the Eastern Cape) (Bond et al. 2001). Ruiters (in Pauw 2003) who researched water privatisation in these three towns argues that water tariffs increased up to 300 per cent between 1994 and 1999. Pauw (2003) argues that by 1996, a typical township household was paying up to 30 per cent of its income for water, sewerage and electricity. Average income in the area at the time was less than US\$60 per month, with more than 50 per cent unemployed. Those who could not pay their bills (the majority) were cut off and in Queenstown special debt collectors were appointed and a re-instatement fee was introduced that was almost twice the average township income.

In order to overcome the backlog of the apartheid era especially in the former homelands, DWAF initiated public-private partnerships, also known as Build Operate Train and Transfer (BOTT). These took place in the form of joint ventures, usually with consortia comprising big global water service providers, South African companies, foreign and local consultants and non-governmental organisations (NGOs). Today, several commentators acknowledge that BOTT schemes were problematic. As a senior bureaucrat at the provincial level said, 'BOTT was a joint venture between the government and the private sector, and we sought to eliminate bureaucracy, fast-track implementation procedures and streamline work. It has, however, worked out to be very expensive' (DWAF official, King William's Town, interview, 17 April 2002). Moreover, it did not really seek out local knowledge or understandings of water supply. Even Mike Muller (Director General of DWAF) admitted that the BOTT system, although including skills in institutional development and social communication, was no more successful than typical government led approaches at transferring schemes to sustainable community management (Muller 2002). In the Eastern Cape, kilometres of new pipelines were laid down instead of using or building on the old traditional systems (gravity feed/boreholes and pumps), and often sanitation issues were questionable (anonymous BOTT consultant, interview, 18 April 2002). As one of the consultants employed by Amanz Abantu (the BOTT consortium in the Eastern Cape) said: 'Amanz Abantu is top-down, expensive and only interested in profits. The schemes often break down because the technology is inappropriate. Unfortunately, we have brought first world technology to rural worlds. It's like giving a Rolls Royce to someone who's never seen a bicycle' (ibid). The BOTT example thus reveals the dangers of top-down expensive initiatives where the level of service provided may not be appropriate and may also call for additional financing, not really required. According to a municipal officer in Mount Ayliff BOTT schemes are extremely expensive because of the material they use which is expensive to service. We were told that a BOTT

scheme which costs R4 million could be implemented by a district municipality in the Eastern Cape for R1 million (Interview, April 18, 2002).

Budget cuts have gone hand in hand with processes of decentralisation which have been central to the South African effort to improve delivery of services and reduce poverty. (Manor 2001). Decentralisation can be understood as any move by central government to transfer powers to institutions and actors at lower levels of governance (Mawhood 1983). Two main forces drive decentralisation in South Africa. The first is the realisation that many functions can be undertaken more effectively at local levels of government and the second is that national government wants to relieve itself of fiscal pressure and administrative responsibilities. Under the Municipal Structures Amendment Act (Act 33 of 2000), for example, the national Department of Water Affairs and Forestry (DWAF) is no longer a water services authority and this power is now held by district municipalities. The function of water services provision can be performed by the municipality itself or any other public or private body such as a water board, an NGO, a community-based organisation or a private sector company with whom it contracts. On the one hand, this can devolve power to local government and authorities and give voice to ordinary citizens in decisions that affect their daily lives. On the other hand as Olver (1998) argues the fiscal squeeze at national and provincial levels sometimes lead to shedding of functions and the dumping of 'unfunded mandates' on lower levels of government. Such 'unfunded mandates' have severe negative consequences for poor rural municipalities which cannot raise enough revenue to implement these mandates which we expand on shortly.

In South Africa there is a two-tier system made up of district and local municipalities. Within this system, considerable power rests with the higher-level district municipalities that are responsible for tasks such as development planning, service delivery of water, electricity, health and so on. By contrast local municipalities are responsible for functions such as the maintenance of roads and water schemes and operate largely according to agendas and budgets set for them by the district municipalities and government departments. In 2001/2002, the 'equitable share' budget which previously was allocated by central government to district municipalities had also been allocated to local municipalities, which should strengthen their hand in dealing with other spheres of government and in setting their own programmes. 'Equitable share' budget is money allocated by the national treasury which can be used at the discretion of a local or district municipality and is determined by a redistributive formula that favours poor municipalities. From 2001/02 to 2003/04 the equitable share transferred to local government increased from R3,184 billion to R6,350 billion, contributing to approximately half of all national transfers to local government over that period (National Treasury 2004: 164). However,

commitments to the water sector during the same period dropped from 22% to 17% of total transfers to local government (ibid).⁴

Given this wider policy background how is the FBW policy implemented? How is it funded? Are there any contradictions with parallel policy directives to cost recovery? What is the local level impact? It is to these questions that we now turn by drawing on a case study of the Eastern Cape.

Implementing FBW: Experiences from the Eastern Cape

The Eastern Cape is the poorest of South Africa's nine provinces, with a predominantly rural population, high unemployment, and poor access to social services. Located on the south-eastern coast, the Eastern Cape province accounts for approximately 16% of South Africa's population. Of all equitable share allocations to the nine provinces the Eastern Cape receives between 17-18% (National Treasury 1999; 2004).⁵

There are six district municipalities in the Eastern Cape of which two are in the former Transkei (ANDM and OR Tambo District Municipalities). Currently available statistics indicate that the ANDM area has 660 villages and a population of 860,000 people. 214 villages at ANDM village have a reliable water supply whilst more than 400 villages do not have any water scheme whatsoever. ANDM is one of the poorest district municipalities in the Eastern Cape. It has 50% unemployment and has no manufacturing industry to curb the problem.⁶ It is also characterised by a huge backlog of services such as roads, water services, health facilities, electricity and others. It is primarily a large poor rural population that comprises the municipality. O R Tambo is a slightly larger municipality with a population of over 1.6 million and an unemployment rate of 51.8%.⁷ Currently

⁴ Table 7.7 of the 2004 Budget overview indicates that in 2001/02 the equitable share to local government represented R 3,184 billion out of total transfers to local government of R6,517 billion (48.9%). Similarly in 2003/04, the equitable share was R6,350 billion out of total government transfers to local government of R12,390 billion (51.3%). Contributions to the water sector during the same period include the water and sanitation operating budget and the water services project, totalling R692 and R757 billion out of total transfers of R6,517 billion (22.2%) for 2001/02, and R1,001 plus R1,102 billion out of total transfers of R12,390 billion (17%) for 2003/04.

⁵ The national budget review 1999, Table 4.2, indicates that the equitable share allocation to the Eastern Cape was R14,073 billion out of a total of R79,117 billion (17.8%) for 1998/99. The budget review 2004, Table 7.4, indicates that the revised estimate for 2003/04 was an allocation of R24,627 billion out of a total of R144,743 billion (17%) of the equitable share.

⁶ Interview with the Deputy Director, Water and Sanitation. Alfred Nzo District Municipality, 10 December 2002.

⁷ SSA (Statistics South Africa) uses a definition of unemployment as those people within the economically active population who: (a) did not work during the seven days prior to the interview, (b) want to work and are available to start work within a week

available statistics indicate that only 13.2% have acceptable access to safe water (SSA 2002).

The FBW policy was conceived by DWAF at the national level. It has largely been welcomed though some critics argue that it was an ill-thought-out, populist measure announced around the 2000 elections (for example, Jackson 2002). The now famous story is that the charismatic and dynamic Water Minister, Ronnie Kasrils, was shocked to see a woman collecting water from an untreated stream instead of using a DWAF-sponsored water scheme in the Eastern Cape. There are many interpretations of this story. One is that she could not pay the monthly fee of 10 Rand. Another was that she was using the stream because it was closer to her home than the water standpoint. Whatever the truth, the result was that the FBW policy was announced, which ostensibly took many by surprise, including some senior bureaucrats in DWAF (DWAF official, Pretoria, interview, 23 April 2002). This is because it was announced before the details had been worked out. Its implementation rests with local authorities who are designated water services authorities that include both district municipalities and local municipalities (the latter, however, have to apply to be water services authorities).

They are free to interpret it according to the resources and capacity available. As a senior member of DWAF said, 'Free Basic Water is a non-negotiable policy statement. I realise it's a huge challenge – we have the right policy and we are proud to stand by it, but it's not easy to implement. We stand alone internationally. Local authorities just can't flick a switch and make it work. But somehow we have to deal with it and do the fancy footwork' (interview, 23 April 2002).

Operationalising the policy has been difficult. After all, the mere endorsement of the principle of social justice alone cannot suffice in determining how resources are to be distributed. Instead, as Hayek argues, the distribution of resources and implementing rights-based approaches are usually at the discretion of professionals and bureaucrats in the public sector, who lack a clear directive on how to 'implement justice' (in Plant 1992: 20). This certainly echoes the experiences of officials in South Africa's Eastern Cape. Many worked in bureaucracies of the former homelands and inherited a massive backlog in 1994. They also struggle to grapple with the many political and institutional changes arising through South Africa's decentralisation process. The devolution of responsibility from the national level to district and local government has meant that whole administrative mechanisms have been radically restructured and new institutions have been created. As a DWAF official in King William's Town bemoans, 'Things are changing so much that even I can't cope.

of the interview, and (c) have taken active steps to look for work or start some form of self-employment in the four weeks prior to the interview. They differentiate between an official and expanded definition of unemployment, the expanded unemployment rate excluding criterion (c). The expanded definition has been quoted here.

There are too many policy and political changes ... for those of us working on the ground, it makes everything very uncertain' (interview 17 April 2003).

As stated earlier, implementing the policy is up to each District municipalities in a manner suitable to their conditions. Many of the poorer District Municipalities lack financial and institutional resources to implement the policy, despite Equitable Share grants. Moreover, a wide range of existing water schemes are being transferred to the municipalities since they are now the water service authority. These include BOTT and NGO run schemes where cost recovery applied and DWAF and DM schemes which only charged for operation and maintenance costs. Taking on these new schemes adds to the administrative and financial burden of district municipalities given that poor district municipalities do not employ many staff. Due to this lack of capacity, often technical and professional work is contracted out to consultants and contractors, some of whom may not necessarily have the interests of the poor at heart or be aware of local realities.

In a poster from DWAF (n.d) on water services provision, four options can be pursued by the district municipalities. Water service authorities can be the local government (Option 1), a community-based organisation (CBO) supported by the water services authority (option 2); a large organisation such as a water board (Option 3); a CBO supported by a support services agent (e.g. a private company) (Option 4).⁸ The option adopted by the ANDM is option 4. They have used the services of water committees comprising villagers and traditional leaders who can employ support service agencies (SSA) that are private companies comprising technical and social consultants. The CBO-SSA model as pursued by ANDM can be seen to foster 'pro-poor' growth due to its emphasis on skills transfer (e.g. by involving locals in water management tasks), development and locating communities at the centre of whatever is taking place in terms of decision-making. With the high unemployment in the country and with people going back to their rural villages due to AIDS etc., the ANDM is ensuring through their model that they will offer employment to the poor.

Each district municipality has to develop a Water Services Development Plan (WSDP) which addresses the short, medium and long-term plans concerning water services issues. Instead of the 6,000 litres basic level of water supply per household, ANDM had decided to allocate up to 8,400

⁸ The SSA's train the water committees, operators and the administrator, buy the equipment and material and also monitor water quality and supply which is key to prevent the spread of diseases such as cholera. All of these and others are bolstered and/ or paid for by the SSA's, which in turn claims from the ANDM. These routine checks, especially on waterborne diseases, have helped the district municipality to keep a close watch of the outbreak of cholera and other waterborne diseases.

litres per household per month. This is due to leaks discovered late or overnight which prevent users from getting 25 litres per day. The loss of water is estimated to be about 40% and ANDM felt that it was cheaper for them and less of an administrative burden to add this amount over and above the basic water supply. However, the information (regarding the 40%) is held back from the consumers since the municipality needs to cover itself in case something goes awry. Clearly, a similar discretion could be taken in instances where quantities of water are insufficient but this does beg the question whether adding in the extra 40% is a prudent and sustainable way to use finite water supplies as opposed to investing in making the system more efficient.

From Cost Recovery to Free Basic Water

Much has been made in the literature of households' willingness to pay for water (Altaf, Jamal and Whittington 1992; Whittington and Choe 1992). It is estimated that the willingness to pay is about 1 to 10% of total household spending, and usually about 5% of total consumption. But recent studies from other contexts are challenging these assumptions, and speak of linking willingness to pay to ability to pay (Ghosh and Nigam 1995; Reddy and Vandemoortele 1996). Further analyses have questioned the methods employed in 'willingness to pay' surveys highlighting the diversity of possible responses to such surveys (Merret 2002). For example, in India's water-scarce Rajasthan, Reddy (1999) shows that peoples' willingness to pay is considerably less than 5% of consumption. In the Eastern Cape some villagers told us that they found it difficult to afford to pay R5 – 10 for water when they feel that they can get it for free from the streams or rivers. Of course, they are not considering the opportunity costs on women's time or the health implications both for women and the family if the water quality is poor.

But somebody has to pay for water delivery, even for that which is ostensibly 'free'. This takes place either through the Equitable Share, cost recovery or cross-subsidisation. While cross-subsidisation is ideal, it rarely works in rural areas where water usage is not as differentiated as in urban areas. Similarly, as our case study of the Eastern Cape shows cost recovery in rural areas is also very difficult and it seems that decentralisation processes further hamper cross-subsidisation.

As critics of FBW policy such as Barry Jackson (2002) argue, monitoring and rationing the quota of free water is also very difficult. Often, it can cost more to install a water meter than to actually provide the water free (interview with DWAF official, Mount Ayliff, 23 April 2002). In some cases, the FBW policy has also made charging for water difficult. Many communities understood that they would now have to stop paying for water (Jackson 2002). Therefore, for cash-strapped district municipalities, raising the money to provide water is now becoming increasingly difficult (see also Kihato and Schmitz 2002).

How do poor municipalities such as ANDM deal with this? The ANDM has realised that it is costly to charge for water in rural areas. They have been down that 'road' in the past and they feel it was cognitively taxing and an administrative burden to try to collect tariffs. The ANDM discovered that it costs more to collect tariffs than the tariffs collected. Therefore they are now moving to implement FBW. Moreover, many of the schemes were under-utilised. For example, in one of the BOTT pre-paid schemes, it was discovered that only half the population was using the scheme since they could not afford to pay for the pre-paid cards and the rest continued to use the usual sources of water. Those using the scheme were collecting on average three litres per person per day, which means that the investment could not yield the benefits intended and millions of rand were under-utilised. Moreover, the scheme was not addressing the problems of health and freeing women from collecting water from afar. It is for this reason that ANDM moved away from the policy of cost recovery and the FBW policy is implemented in all the schemes which they have taken over, including the expensive BOTT schemes. However ANDM has not announced the policy to the entire district municipality lest they run into serious financial problems in implementing it. Thus, many people in the Eastern Cape, especially in the remote rural areas, are not even aware of the policy of free basic water.

It costs the ANDM R11.4 million to run its current programmes around water services provision. The ANDM contributes R8 million of the total cost from the equitable share budget whilst DWAF contributes R3.4 million. In April 2002, DWAF had not yet granted ANDM 'implementing agent status' and there was a lot of uncertainty about the future of several schemes. But at the end of the research period this had been complete which made things somewhat better. Still, the number of staff had not increased and the municipality still faced financial and institutional constraints in implementing the policy.

The cost of water services provision is supposed to decrease when schemes are functioning on their own with little help required from the SSAs. Costs are high in new CBO-SSA supported schemes. The initial cost when the SSA starts in the area is R3.83c per capita per month. The cost decreases to R2.33c where the WSP can do most of the work on their own. Universal service would cost the municipality around R34 million resulting in 2,400 jobs being created. But this is far from being realised as yet.

Free water or basic water?

It has been argued that FBW is difficult to realise in rural areas which encounter a massive backlog with respect to water supply and sanitation. Take ANDM, in 2003 132 villages (with a population of about 170,000 people) were being serviced with RDP schemes. By 2010 the district

municipality plans to serve 420 villages (at a population of about 540,000 people) which still only add up to 63% of the villages in the entire district.

Clearly there is a massive backlog and in terms of water supply the ANDM has to consider both the free basic water and basic water for all. In principle basic water for all takes precedence in the work of ANDM together with consideration for sanitation priorities. However there is a trade off in implementing free water for some and basic water for all. The ANDM has contracted consultants to develop business plans for priority villages within the municipality. A village with a high population size, a clinic and/ or a school is generally high in the list of priorities. However, if a priority village is next to a village with low priority, the consultants have to develop a business plan that encompasses both villages as one project because people in the next village would fail to understand why they are being bypassed whilst the other village is earmarked to get a water scheme. Indeed, failure to recognise adjacent villages could result in pipes being destroyed and water thefts. At the end of our research the ANDM wanted to ensure that their entire area of jurisdiction has business plans so that when departments such as DWAF make their financial allocation, the ANDM would simply submit the business plans against the funds which DWAF would declare for the implementation of schemes. In addition, the ANDM is also seeking to revamp rudimentary schemes that already exist in the municipality and emerging companies will be employed in the 'resuscitation' of these schemes with the support of the SSA.

In order to ensure that basic water is provided, the ANDM has introduced play-pumps as interim measures in villages which are unlikely to receive water in the near future.⁹ The play-pumps would also curb the problem of cholera which in the beginning of 2003 was a problem in other district municipalities. Play-pumps cost anything between R20,000 and R100,000 with a reservoir. Clearly despite all good intentions, district municipalities such as ANDM and OR Tando are finding it difficult to realise FBW for all. In part it is due to the massive backlog inherited in 1994 combined with both financial and institutional constraints. Amidst this uncertainty, powerful actors emerge as clear beneficiaries. The private sector and metropolitan white consultants can draft complicated contracts, win tenders and make profits out of water provision 'for all'. By contrast emerging firms run by local consultants struggle to win tenders and get jobs even though they are more familiar with the local terrain and social dynamics. The offices of Amanz'abantu, the consortium implementing BOTT schemes in the Eastern Cape, are located in an impressive brick building with a high barbed-wired fence in the small town of Mount Ayliff. By contrast, the office of the district municipality was in a camper van and temporary container since 1996. While offices were being built

⁹ Play-pumps are designed in such a way that anyone can operate them. Children, who can get on and off the wheel as they play, can turn around the horizontal wheel. The structure of the play-pump can also cater for small billboards, where adverts that are visible from a distance can be posted.

towards the end of our research, in April 2002, the official in charge of water provision for the district said: 'This was supposed to be a temporary solution. How do they expect us to provide services when we are still in tents?' (Interview, 18 April 2002).

Poverty and livelihood issues

The FBW policy was not intended to address redistribution issues, and there are other provisions in the National Water Act (for example, compulsory licensing) that deal with these. Still, we need to ask how it contributes to poverty reduction and wider social justice concerns. For example, it is intended that the 25 litres of water will be used primarily for drinking and cooking purposes. However, the poor also need to be assured of water during scarcity periods for their farming activities based on subsistence. The 25 litres a day policy largely focuses on domestic water supply, and not on wider concerns of livelihood security and how to restructure existing water-user practices. There are still remain tremendous inequalities in access to and control over land and water resources.

Trade union leaders and other advocates in South Africa argue that the South African State should grant everybody at least 50 litres of water per day per capita. This, they argue, is the only way in which poor farmers can successfully maintain their livelihoods and thus escape the trap of poverty and dependence on pension grants (Lance Veotee, interview, 15 April 2002). South Africa's National Water Act (Act 36 of 1998) specifies a national reserve for basic needs purposes that is owned by the state.¹⁰ It stipulates that water designated in the national reserve should not be used for 'commercial purposes', and this is in keeping with the overarching aim of the Act to redress the inequities of the past based on race and gender. The government also commits to guaranteeing the infrastructure to bring the water to poor people within the 25 litre limit. However, whether these provisions radically redress past inequities is questionable. For example, poor black farmers who own less than one hectare, who may use the water for 'productive purposes' and for some market-based activities linked to economic survival, are not given rights to water under this national reserve. Schedule One, which permits basic water use for domestic consumption, domestic livestock use and gardening for subsistence, is ambivalent about how the basic income needs of poor producers can be met from the national water reserve (see van Koppen, Jha and Merry 2002). In non-water stressed areas this is not such a problem since small users can be authorised to use the water for 'non-commercial' purposes without complicated registration procedures. However, in water-stressed basins this is more tricky since general authorisations are avoided and the rights of small-scale producers are not granted legal and other forms of protection. Instead, they are pitted against those of large-scale users, such

¹⁰ http://www-dwaf.pwv.gov.za/Documents/Legislature/nw_act/NWA.doc/

as mining companies, that clearly abuse limited water availability (Barbara van Koppen, personal communication, 10 January 2003).

Do enforceable social and economic rights make a difference to people's lives and livelihoods? As demonstrated above, rights-based approaches may not necessarily radically redistribute resources in a society. But do they make a difference to poor people and what are local level village experiences of FBW? For that we turn to four villages with different water schemes and levels of service delivery. Two are run by municipality, one is run by an NGO and one is a BOTT scheme. The first village, Masakala, has a population of about 4,886 and there are 87 standpipes in the village. Mvula Trust constructed the scheme in Masakala in 1997 at a cost of R1.3 million. It was a pre-paid scheme and people paid R10 for 1,000 litres of water. Prior to the scheme, people used the springs and rivers for all their water requirements. The implementation of the scheme was a relief to those who could afford to pay R10 but could not help those who did not have money. With the introduction of the FBW policy, poor people have gained access to water. Take the case of three rural women, two are pensioners and one is unemployed. Mabombo is 61 years old and is entitled to an old age pension. Before the implementation of the FBW policy, she used to collect water from the spring far from her house, and used a ten litre container to make two to three trips to the spring before sunrise. Collection from the spring was difficult for her because she had to wait for the sediments to settle before collecting. She now feels that life has improved since the introduction of the FBW policy. She does not have to wake up in the morning before the livestock make the spring water murky and can concentrate her energy on other work. She uses the FBW for washing, drinking and cooking, though she still visits the spring to wash blankets. Mathungu, 70 years old, also supports a large family with her old age pension grant. She could not afford the R10 before the implementation of the FBW policy in order to pay for water services in her village. She too no longer needs to go to the spring on a daily basis for her water tasks. Masakala is an unemployed member of the water committee. Her main complaint with the FBW are the rules on how water should be consumed. She feels that when she paid R10 a month for water she used as much as she wanted but under the FBW policy, there are limits. Occasionally she needs to pay for additional water when she is hosting a cultural event in her house.

Clearly, FBW has made a significant difference to the everyday lives of people like Mathungu, Masakala and Mabombo. For one, it frees women from the time wasted in collecting water and the health benefits are clear since they do not need to resort to unprotected streams. However, the issue of poverty alleviation raises questions because of the limits posed by the FBW policy. One limit is that the water cannot be used or is not enough for agricultural production, which could alleviate poverty in the area. The ANDM has stated categorically that it needs to prioritise on basic water largely for drinking and washing for all the villages first before upgrading schemes for agricultural production.

This issue also crops up in another village, George Moshesh. The water scheme at George Moshesh was established early in 1998 at a cost of R7 million. There are 267 communal standpipes in the village. In the past people used to pay a sum of R10 for maintenance but there were many defaulters. Their non-payment was not challenged because there was no system in place to ensure that people were paying. A key problem is that of illegal connections (600 in all) which impact negatively on water supply in villages further up the hill. Illegal connections were stopped after the introduction of FBW but problems still persist since the ward councillor and other village leaders both have and encourage the spread of unauthorised yard connections. The water from these unauthorised connections is largely used for irrigation but clearly it can cause shortages in drinking water provision for surrounding villages. ANDM cannot implement yard connections since upgrading can only take place until other villages in the district have a basic water connection.

Mkhumeni, in the OR Tambo District Municipality, has a BOTT scheme which is used by eight other villages. As discussed earlier, operation and maintenance on BOTT schemes can cost up to four times more than ordinary schemes. Three of the nine villages use electricity-powered generators to pump water and the rest use diesel. The standpipes are operated using cards. Before the scheme started operating, cards were sold at R10 which only half of the population in Mkhumeni used. The price was then increased to R36 in 2000/ 2001 when the scheme started operating.

Water at Mkhumeni is sold at R0.02c for 25 litres. People who don't own cards borrow from relatives and friends. Some continue to use rivers and other sources of water. In April 2002, the scheme was not providing any free water and people had no idea about the policy. When we returned later in the year, an undisclosed quantity of litres per household per month of free basic water was factored into people's cards. Today people still do not know how much free water they are entitled to, which makes it difficult for them to detect whether the free water factored in their cards is far or close to being finished. All they know is that the free water in their cards has been made equivalent to one cent. For people of Mkhumeni it is difficult to tell when the free water will be finished. During the period of the study, people at Mkhumeni were informed that the free water will be discontinued and the municipality to which the scheme will be transferred will decide on whether to charge for water or provide it for free. O R Tambo District Municipality uses the local municipality route in operating and maintenance of schemes as opposed to the SSA-CBO route as adopted by the Alfred Nzo District Municipality. This is being criticised by many in the water sector citing capacity as a major obstacle in undertaking the task efficiently.

The final village is Mdudwa village which is also in the OR Tambo District Municipality. The water scheme in Mdudwa is a gravity fed scheme and

was implemented in 2001. The scheme has seven standpipes of which six were working when the scheme started operating. In 2003, only three taps were working. The cost of the Mdudwa scheme was around R300 000. An application was made in 2001 for further funding to upgrade the scheme after it was realised that the spring, which the community identified as a source for one standpipe, was not strong enough to supply the reservoir for the standpipe. The Department of Local Government and Housing provided the additional funding. The upgrade costs R601 000. This upgrade will enable the tap which never worked when the scheme started operating. It is unclear how an upgrade to make one tap to work could cost twice the money that was allocated for the entire scheme. For the remaining taps which are not working, more money will have to be sourced. There is a compulsory fee at Mdudwa of R5 which every household is expected to contribute towards operation and maintenance. Most people in the village have refused to pay the fees because the standpipes closest to their households are not working. Others are not paying because they cannot afford the money and some are unhappy with the conditions of scheme and hence they refuse to pay. Since they cannot use the water to wash big items such as blankets and for water for cultural ceremonies such as funerals which require large quantities of water, people generally perceive the scheme as useless since it has not improved their livelihood and has also imposed restrictions on water use for tasks which they feel are very important. Moreover, people at Mdudwa are not aware of the FBW policy.

Discussion and conclusion

In the four villages studied FBW was being implemented differently or not at all (especially in Mdudwa where people were not even aware of their right to free water). Largely, there has not been a standardised response to FBW with water service providers (who could be private companies, water boards, district municipalities, or community-based organisations) interpreting the policy in different ways. The result is that some South African citizens still do not enjoy FBW and many are not even aware of their constitutional right to 25 free litres of water per day.

The experiences of the Eastern Cape highlight the difficulties in implementing the principles of free basic water and cost recovery in tandem. In fact, in all the villages studied both willingness and ability to pay for water services were not very high, cost recovery was limited and there were many defaulters on payment for water use. In part it was due to the poor service provided (e.g. Mdudwa). However, even in Mkhumeni with its expensive BOTT scheme, poor people found it difficult to pay R10 a month and the scheme was under-utilised with only half of the population using it. Consequently ANDM found it unrealistic to implement cost recovery and focused instead on FBW. It must however be underscored that in both ANDM and O R Tambo only 13 – 20% of

the population have access to water according to RDP standards. The rest get water from untreated streams or from interim measures such as play pumps. It is thus a massive policy trade off between thinking about free basic water for some and basic water for all.

There are allegations, some of which are true, that municipalities lack the financial and institutional capacity to implement FBW. While ANDM's water and sanitation department suffers from this malaise, it also challenges this general belief. ANDM, despite its limited capacity, has managed to put in place systems for the implementation of water schemes and for water services provisions. As the study shows, ANDM has a clear plan regarding the implementation of water schemes, on operation and maintenance and free basic water against cost recovery. Although this study was conducted over a short period of time, what was observed was an active approach in water services provision through the CBO-SSA model. The model goes beyond just the provision of water services to include jobs, health and hygiene, and skills transfer as a package. Still, we must not forget that only 132 of the 660 villages are being provided with water as per RDP standards. In O R Tambo, the two schemes we examined may not implement FBW in the future.

There is compelling evidence that some of the FBW policy intentions (health issues and freeing women from time wasted in collecting water) are being addressed and FBW has made a difference to the lives of poor people. Still, the issue of poverty reduction seems to be lagging behind especially with regards to water levels required for agricultural production purposes. Water levels for agricultural production need schemes to be upgraded and this is impossible unless there is basic water for all. Moreover contentious issues concerning water for subsistence agriculture, cultural activities and water used for washing large items such as blankets needs to be resolved. It remains to be seen how long other villages will wait before they follow the George Moshesh example of illegal connections.

The empirical material presented in this paper suggests that it is both dangerous and unrealistic to assume that cost recovery can be achieved in poor rural areas. As the village examples show when cost was an issue, a number of people continued to use their usual unprotected sources of water. Apart from health implications (e.g. risk of cholera outbreaks), the returns to investment for schemes where cost recovery applies could not be realised since people did not always use them. Moreover, decentralisation processes make cross subsidisation difficult. It is not clear whether poorer regions such as the two municipalities studied in this paper can have their work cross-subsidised from higher levels (e.g. provincial). Thus until proper financial and governance mechanisms are in place implementing FBW could be administratively difficult and pose a

financial drain on cash strapped local governments attempting to achieve FBW in rural areas.¹¹

There is also the larger question of how rights are interpreted and deployed by local people. Many people in remote rural areas such as the Eastern Cape are not aware of their constitutional right to water. Therefore they are unlikely to hold the government to account if their rights are violated. In urban areas, famous cases such as Grootbroom (named after Irene Grootbroom) have highlighted that poor people can be agents of change as they appeal to the Constitutional Court to advance their constitutional rights to basic services. In 2000, residents of Wallacedene, a large shantytown in the Cape Town area made legal history when the Constitutional Court ruled in favour of their housing rights. Today, four years on, the people behind the historic Wallacedene settlement, are still waiting for proper housing facilities since the Constitutional Court failed to specify which manifestation of the state - whether national, provincial or local - should honour the rights of the residents. This case thus highlights the difficulties around specifying duty bearers and their responsibilities in the case of implementing social and economic rights. In remote rural areas such as the Eastern Cape, the capacity of citizens to claim their constitutional rights to basic services is far lower. In part this is because of their ignorance of these rights. In part it is because the mediators of justice (e.g. courts/ lawyers/ activists) are more likely to operate in metropolitan areas rather than remote areas. Furthermore the accountability mechanisms to redress failures to provide basic rights do not seem to be in place.

These problems should not detract from the fact that constitutional endorsements to social and economic rights are very important. In acknowledging the right to water, the South African government has gone against the grain of conventional wisdoms around both questions of rights / entitlements of citizens and donor debates around water provision. In this respect, the FBW is a remarkable achievement. However this paper has shown that in order to be more effective, attention needs to be paid to the caveats presented in this paper, namely the lack of attention to poverty and livelihood questions, problematic implementation of the policy, the lack of awareness of it and the lack of accountability mechanisms to provide redress. More importantly, the impacts of behind-the-border convergences such as cost recovery and decentralisation have led to a marked lack of financial and institutional resources to achieve its laudable

¹¹ By contrast in urban areas there is the scope for greater cross-subsidisation. Allowing for FBW in privatised systems however is somewhat complicated. The tariff structure as envisaged in service contracts with private service providers was over-ridden after the announcement of FBW - while municipalities like Johannesburg can use the income from bulk consumers to fund FBW with ease for low income groups, in areas like the Dolphin Coast the lack of bulk consumers has meant that a large proportion of the government's equitable share is being used to fund FBW (Kihato and Schmitz 2002).

aims. In rural areas cost recovery is not happening and in some urban areas, the drive for cost recovery, has led to increased prices and controversial cut offs. Thus while it may be possible to dance to the two tunes of rights and markets in some urban middle class areas and big cities, in poor regions, dual commitments to both rights and markets can fail to provide the intended outcome. Having non-state actors such as the private sector or CBOs on board do not necessarily reduce the role of the state. Instead, the proliferation of new actors leads to reconfigurations in roles and responsibilities and there is still the need for local municipalities to be able to regulate or manage these new institutional configurations. It is not merely enough to devolve power and new challenging mandates such as FBW to newly created administrative units. Instead, they need to be equipped with the institutional capacity to deal with these new responsibilities.

It has been recently suggested that it is possible to just give money to the poor. Thus Handon (2004) argues that giving poor people \$1 a day could both help reduce poverty and by-pass the difficulties and politics of the aid industry. We would like to end by suggesting that in some situations (e.g. in poor localities) it is important for a basic level of water to be provide free of charge. Thus the spirit of FBW is excellent. Still, perhaps more than what the South African government is currently proposing would be ideal (i.e. between 50 – 100 litres per person per day based on the livelihood pursued). No parallel efforts towards cost recovery should exist amongst the poor. Enhancing access to water can only be the result of a conscious socio-political choice on the part of decision-makers and local people. Financial allocations to basic services such as water are also part of such choices.

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