

Major Research Paper:

The Reproduction of Apartheid in Water Service Delivery: An Examination of South Africa's Free Basic Water Policy

STUDENT NAME: Emily Simmons

STUDENT NUMBER: 6522453

COURSE NAME: Master of Arts – International Development and Globalization

DEPARTMENT: School of International Development and Global Studies

INSTITUTION: The University of Ottawa

WORD COUNT (excluding bibliography): 11,458

SUPERVISOR: Professor Delphine Nakache

DATE OF SUBMISSION: 2020-03-09

Dedicated to my father, Murray Simmons.

Table of Contents

INTRODUCTION	6
BACKGROUND	9
SECTION 1: LIMITATIONS OF THE FREE BASIC WATER POLICY	12
SEPERATION OF POWERS: NATIONAL, MUNICIPAL AND JUDICIAL GOVERNANCE.....	13
COST RECOVERY & DEMAND MANAGEMENT	17
INSUFFICIENT WATER VOLUMES	18
“THE EQUITABLE SHARE” AND CROSS-SUBSIDIZATION	20
MUNICIPAL INDIGENT REGISTERS.....	21
SECTION 2: THE REPRODUCTION OF APARTHEID IN THE WATER SECTOR.....	24
HEGEMONY & STATE CONTROL.....	24
TARGETED SURVEILANCE & MONITORING	29
NEGLECTED GENDER CONSIDERATIONS.....	32
CONCLUSION	35
BIBLIOGRAPHY	41

LIST OF ABBREVIATIONS:

ANC: African National Congress

DWAF: Department of Water Affairs and Forestry

FBW: The Free Basic Water Policy

GEAR: Growth, Employment and Redistribution Program (1996)

RDP: Reconstruction and Development Program (1994)

RSA: Republic of South Africa

WSA: Water Services Act (1997)

“In looking across the gulf that divides the rich and poor in this world, we must look beyond the cost, price and value of water to the values that govern our society. ... We do not help the poor because we are charitable. We help them because they are part of us and we are nothing without each other” (Kasrils, 2001; from Muller, 2007, p. 40).

INTRODUCTION

Upon seizing power in 1994, the democratically elected African National Congress (ANC) announced its commitment to repair the racial injustices of apartheid by re-structuring a society built upon the pillars of freedom and non-discrimination (ANC, 1994). The first step in achieving this egalitarian vision was entrenching this commitment into the country's 1996 Constitution (RSA, 1996). The next was ensuring that vital public services such as water, were no longer allocated along "racial lines" (Smith, 2012, p. 938) but were formally extended to *all* South Africans, regardless of race, gender, or socio-economic status (RSA, 1996)¹. This new Constitutional provision recognized access to water as a human right (RSA, 1996, s. 27.1b), and was intended to act as a guiding light, unshackling South Africa from a past plagued by discrimination. Not only did the new government make a public promise to finally extend formal rights to the poor, but broadcasted their commitment by stating they were ready to "roll up their sleeves and tackle the problems" (ANC, 1994) themselves in order to achieve the realization of these rights.

As representative of this optimistic claim, numerous pro-poor water policies and programs were announced, including the progressive Reconstruction and Development Program (RDP) in 1994, and its neoliberal successor, the Growth, Employment and Redistribution Strategy (GEAR) in 1996 (Nleya, 2008, p. 270). After these programs failed to meet the overarching goal of extending equitable water access to the poor in the 1990s, the Free Basic Water Policy (FBW) was introduced in early 2000s with a fresh mandate to address the previous shortfalls (Smith et al., 2005, p. 443). The FBW was praised as the ideal model for reversing the longstanding racial bias

¹ Emphasis added.

that was engrained within the country's water sector, but in the end, as is explained below, the FBW failed to meet the poor's water needs just like previous policies before it. This paper highlights a set of key reasons that explain why this failure occurred, and concludes that each are tied to the legacy left behind by apartheid and the rise of neoliberalism in water sector that took place in the 1990s. Finally, it concludes with a discussion on a new form of discrimination that crystalized during this time of societal restructuring that still exists today. Finally, this paper concludes with some recommendations on how the South African government can alleviate immediate suffering of the poor and achieve equity in water delivery over the long-term.

This paper begins with a background section that is necessary in order to understand the environment out of which the Free Basic Water Policy was developed. It demonstrates how apartheid penetrated the development and implementation phases of the FBW, and illustrates the barriers it presented for reducing poverty and inequality in the country. This section highlights the re-structuring that took place in the country during the 1990s, illustrated through the eradication of the pro-poor RDP implemented by the federal government in an attempt to alleviate poverty and discrimination in the water sector, to make way for the profit-focused structural adjustment program called the GEAR (Nyela, 2008, p. 270). The roll out of these two programs are representative of a pivotal transition from a progressive and equitable approach to service delivery under the RDP, towards more a punitive, neoliberal, "macro-economic" (Muller, 2007, p. 41) policy approach to service delivery under the GEAR (Ibid, p. 41) that compounded the ongoing struggle for water equity.

Section 1 specifically details the key reasons behind the Free Basic Water Policy's failure in achieving its intended equity goals. It begins with a high-level examination of the water governance structure that exists in South Africa, where the judiciary, federal and municipal levels

of government are discussed, as they are considered the dominant players responsible for water service delivery in the country (WSA, 1997). This section illustrates how this top-down governance structure, within the context of an overarching neoliberal agenda of the time, resulted in trickle-down policy outcomes within municipal jurisdictions that continue to limit water access for the poor. The outcomes arrived at by this decision-making apparatus include the implementation of a cost-recovery and demand management approach, insufficient water volume allocations, ineffective cross-subsidization, and the punitive use of municipal indigent registers. Of note, the term “neoliberal” is used throughout this paper in relation to the ideological shift that took place during the 1990s (Spronk, 2010, p. 157). This shift involved a pivotal focus from poverty reduction and human rights, towards a more profit-driven approach that aims to “deploy markets” (Bakker, 2007, p. 431) as a solution to social, political, or environmental problems (Ibid, p. 431) through principles of “privatization, deregulation, trade-liberalization” (Tshishonga et al., 2011, p. 54). In the context of water policy, this means that water is viewed as a commodity to be “sold at a price determined through market exchange” (Bakker, 2007, p. 450).

Section 2 analyzes what the policy failures outlined in Section 1 means for the future of a country who promised to re-structure society and protect the poor by rectifying the wrongs of injustices done under apartheid. It analyzes the hegemonic environment in which the FBW policy was developed, its push for monitoring and surveillance of the poor’s water supply and its neglect of gendered considerations that have structured an environment of water scarcity for the poor. In this section, it is shown that apartheid in South Africa never truly went away but rather, has manifested itself into a contemporary form of discrimination based on socio-economic status (Bond et al., 2008a, p. 21 & 25).

This paper concludes that discrimination in the water sector will only be eradicated through uprooting the harmful ideologies related to neoliberalism that have been infused into the country's approach to water policy. It advocates for the re-structuring of society in a way that truly places "human rights at the center" (Olowu, 2008, p. 59) of the delivery mandate, and concludes that the state must do more to facilitate meaningful opportunities for the poor to participate within key decision-making circles.

BACKGROUND

When it comes to understanding the current state of water delivery in South Africa, the lingering influence of apartheid is impossible to ignore. The discriminatory policies under the regime resulted in the entrenchment of "inequity [and] structural exploitation" (Bond et al., 2008b, p. 3), and further deepened the longstanding issues of "institutionalized poverty" (Smith et al., 2005, p. 444) and racial inequality (Rodina, 2016, p. 58 & 62). The result of these divisive policies led to a problematic situation where access to services such as water, were either insufficient or non-existent within many black communities (Smith et al., 2005, p. 443). With democratization in 1994 (Smith et al., 2005, p. 443), hope for finally putting an end to longstanding inequality pulsed through the country (Ibid, p. 444), as the African National Congress made ambitious promises to rectify the gross wrongs of the apartheid regime (ANC, 1994). Achieving this goal meant that the regime had to dismantle the discriminatory "racial, gender[ed], socio-economic and geographic" (Smith et al., 2005, p. 444) pillars off of which the apartheid regime governed, in order to make room for a more "just" system of service delivery (Ibid., p. 444) to be enjoyed by all, irrespective of skin colour or an "ability to pay" (Rodina, 2016, p. 58).

When the apartheid regime was finally dismantled in 1994, only about 59 per cent of the country's population had access to potable water (Chetty et al., 2014, p. 567). Although some

advancements were made in infrastructure following this period under the RDP, physical access to water remained scarce for poor communities due to “affordability constraints” (Smith et al., 2005, p. 462). This issue still persists today, represented by the daunting fact that less than half of the population currently have access to piped water in their homes (Makou, 2017). According to government statistics, 94 per cent of the population allegedly has access to clean water (Rademeyer, 2013). This number is disputed given issues related to deteriorating quality of available infrastructure, and the ongoing use of boreholes, streams and communal standpipes still relied upon to access a questionable water supply in lieu of a formal in-home connection (Rademeyer, 2013). It should be noted that the data is not entirely reflective of the reality on the ground, as many rural and peri-urban areas are often overlooked in official statistics due to data collection barriers (Ibid, 2013). Despite the success of bringing water infrastructure to millions of people in the country, inequality and poverty are still a rampant issue when it comes to physically accessing water due to financial restraints (Smith et al., 2005, p. 462). For example, according to the most recent Government data from 2017, approximately 55.5 per cent of the adult population were recorded as living below the upper-bound poverty line (SSA, 2017, p. 14). The persistence of extreme poverty in the country is directly connected to an economy that is riddled by “jobless growth” (Murray, 2018), and is bolstered by a serious burden of unemployment where 40 per cent of the population are excluded from the formal labour market (Bond et al., 2008b, p. 13). Based on such factors, is no surprise that affordable access remains out of reach for the poor, given the fact the level of income inequality in South Africa is considered the highest in the modern world² (Ibid, 2008b, p. 13).

² South Africa currently has a GINI co-efficient of 63. See Table 3: Inequality-adjusted Human Development Index in the UNDP Human Development Report 2019, pg. 309.

In 1994, the Reconstruction and Development (RDP) Program was introduced to address the lack of water service delivery through extending much needed infrastructure to the poor (Smith, 2010, p. 595). This program originally had good intentions for targeting the issue of restricted access in poor areas, as the core of its initial mandate was an acknowledgement of the “right of all South Africans to access clean water and adequate sanitation for the attainment of household water security” (ANC, 1994; from Smith et al., 2005, p. 444). Despite its pro-poor roots, it was no match for the looming expectations around cost-recovery that became infused within its approach, in the midst of an international trend favouring neoliberalization in the 1990s (Bond et al., 2008b, p. 13). This led to a large investment in infrastructure both for housing and for water, but given the growing expectations around cost recovery, many poor households became subject to municipal bills that they were unable to pay as the costs of delivery grew, contributing to a long-term “affordability crisis” (Smith, 2012, p. 951).

When the RDP was replaced by the GEAR in 1996 (Smith et al., 2005, p. 444), this marked a full-blown neoliberal restructuring within the country’s water sector, where privatization and commercialization of public services became the preferred solution to the country’s water crisis (Winkler, 2008, p. 4). The GEAR demonstrated a deepening of a cost-recovery-focused approach to water provision (Smith et al., 2005, p. 444), emphasized by its drive to restructure the water sector in a way that positioned “neoliberal macroeconomics” (Deedat, 2011, p. 81) as its centralizing principle. The overarching goal of the GEAR, was to “reduce the total public-sector debt” (Marais, 2012, p. 114), and maximize profit by pushing for austerity across all levels of government while increasing any available opportunities for economic growth (Ibid, p. 114). This shift towards austerity limited municipalities ability to meet equitable water goals, by placing restrictions on government spending and options for taxation (Smith et al., 2005, p. 444) which

trickled down to the local-level and ultimately reduced the ability of municipalities to invest in water service provision for fear of compounding an already existing administrative and financial burdens (Chetty et al., 2014, p. 567).

The Free Basic Water Policy came into effect in 2001 (Smith et al., 2005, p. 443) as yet another pro-poor policy under the ANC, and quickly became the symbol of a “new South African democracy” (Smith et al., 2005, 443). The policy promised to provide all households in South Africa, including previously neglected low-income households, a “lifeline supply” (Ibid, p. 443) of water to “support life and personal hygiene” (WSA, 1997, from Smith et al., 2005, p. 444). The basic amount was set at 25-liters of water per person, per day (Bond et al., 2008a, p. 12), or 6000-liters per month (Loftus, 2006, p. 1033) based on a household of eight people (Perumal, 2011, p. 20). While the concept seems equitable and straightforward at first glance, when scrutinized more closely, flaws are exposed when it comes to addressing the water needs of the poor. Though the Free Basic Water Policy trumpeted its commitment of addressing the insufficiencies of past policies, it fell short just as those before it due to a number of missteps that are highlighted in the following section.

SECTION 1: LIMITATIONS OF THE FREE BASIC WATER POLICY

This section discusses key issues as they relate to the Free Basic Water Policy. It begins with a conversation on the country’s overarching water governance structure and examines how the division of powers between the three levels of government (judicial, federal, and municipal) have contributed to the failure of realizing the Constitutional right to water for all. It should be noted that in this discussion the focus is solely on the major six metropolitan or urban “Category

A” municipalities (Beyers., 2015, p. 121) (hereby referred to as “municipalities”)³, as defined within the Section 155.1 of the Constitution as “a municipality that has exclusive municipal executive and legislative authority in its area” (RSA, s. 155.1(a), 1996). This section also includes a discussion on the judiciary to demonstrate how it neglected its overarching duty to hold other levels of government accountable and therefore enabled the federal government to impose its neoliberal will on local municipalities without sufficient protections.

SEPERATION OF POWERS: NATIONAL, MUNICIPAL AND JUDICIAL GOVERNANCE

In 1996, the Constitution brought to life a new governance structure that separated jurisdictional powers across three tiers of government: federal, provincial and municipal (Beyers, 2015, p. 121). Municipalities were formally created in South Africa in 2001 (Muller, 2007, p. 42) as part of the ANC’s greater goal to “deracialize local administration in the country” (Ibid, p. 36), but also to increase the arms reach of the governance apparatus through decentralization of responsibility over public services (Ibid, p. 36). At the time the FBW was implemented, the federal government under the Department of Water Affairs and Forestry (DWAF) remained the responsible entity for the development of overarching policy and monitoring (Ibid, p. 36) while municipalities were tasked with responsibility over policy implementation (Ibid, p. 36).

This new role of municipalities as service providers, under the command of a federal government or, “custodian of the nation’s water resources” (WSA, 1997, p. 2) was bolstered by strict “principles of co-operative government” (RSA, s.41, 1996). These principles urged each level of government to focus on their own mandates, and encouraged them “not assume any power

³ There are no references made to the provinces in this discussion, as they do not typically play a role in water service provision within Category A municipalities (Murray, 2019, personal communication). For the sake of this paper, I do not enter into such complexities as those involved in rural water service provision, but instead seek to focus on urban water delivery. See Section 151 on page 75 of the South African Constitution, for explanation of the different categories of municipalities in South Africa.

or function except those conferred on them in terms of the Constitution” (RSA, 1996, p. 21). This became engrained in Section 151 of the Constitution, which further emphasized that municipalities have, “the right to govern, on [their] own initiative the local government affairs of [their] community (RSA, 1996, s. 151(3), p. 74).

The decentralization of the water service delivery mandate was intended to ensure municipalities operated at an arm’s length from the federal government, but this left municipalities with massive administrative and financial challenges. Instead of bolstering support to these newly formed municipalities, municipal governments were tasked with the responsibility of extending both water services and infrastructure to underserved communities amidst a time of intense fiscal austerity (Hart, 2014, p. 97). Municipalities were expected to deliver on these federal promises amongst dwindling national-level funding (Dugard, 2010, p. 182) and new limitations for raising revenue following the implementation of the Growth, Employment and Redistribution Program (Chetty, 2014, p. 567). As municipal governments struggled to find the resources to fulfil their new mandates, more neoliberal approaches to service provision, such as cost-recovery, continued to arise, applying further pressure on municipalities to balance their budgets and secure profit to support in water service delivery (Dugard, 2010, p. 183). All of this was occurring amidst a new structure that lacked a “national water regulator to ensure municipal compliance with national legislation, policy, and standards” (Ibid, p. 181), ultimately leaving municipalities to fend for themselves.

The biggest problem for municipalities during this time was navigating the confines of this new policy, and figuring out how to meet their new legal obligation of providing free water across newly amalgamated jurisdictions and an influx of new residents (Smith et al., 2005, p. 444), amidst significant capacity restraints and “unfunded mandates” (Ibid., p. 444). This challenge was further

compounded as the federal government cut fiscal transfers to municipalities by 85 per cent in 1991-1998, then again by 55 per cent in 1997-2000 just in time for municipalities to implement the FBW in 2001 (McDonald, 2002, p. 17). To further complicate things, municipalities were faced with ongoing civil unrest marked by a myriad of violent service delivery protests in the country in reaction to insufficient water access (Beyers, 2015 p. 122), catalyzing an environment of insecurity and mistrust, adding to the municipal water service delivery challenge (Ruiters, 2011, p. 119).

The division of powers that enabled the federal government to hand over responsibility to municipalities without appropriate resources and support marks the beginning stages of the demise of the FBW. This issue cannot be fully comprehended without a discussion on the complicit role of the judiciary in this process, as it has acted as an enabler that allows the federal government to neglect municipalities' needs, which has further undermined the policy's potential success. The separation of powers doctrine creates limitations for reaching the goals of the FBW, related to issues of judicial-level enforcement (Ngang, 2014). There is a reluctance from courts to intervene within the sphere of governmental affairs, for fear of engaging in a type of "judicial dictatorship" (Ngang, 2014, p. 657). The logic is that any intervention that could potentially impact policy decisions would erode the legitimacy of the government in power (Ibid, p. 662). Therefore, despite the Constitutional Court asserting that the socio-economic right to water is "justiciable" (Ibid, p. 663), the judiciary remains neutral when enforcement is necessary. This critical barrier is illustrated in the following discussion on *R.v. Lindiwe Mazibuko v The City of Johannesburg and Others [October 8, 2009]*⁴, where we turn now to illustrate a tangible example of how this

⁴ Refer to *Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) (8 October 2009)* details here: <http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZACC/2009/28.html&query=mazibuko>.

separation of powers blocks the ability to achieve “egalitarian social outcomes” (Chetty, 2014, p. 563) within South Africa’s water sector.

R.v. Lindiwe Mazibuko v The City of Johannesburg and Others is one of the most famous cases when it comes to challenging the Free Basic Water Policy. This case challenged the free basic water volume provided under the FBW, and the legality of pre-paid water meters that accompanied the policy’s demand management requirements (Winkler, 2008, p. 6). The case was first heard in Johannesburg’s South Gauteng High Court, where it was concluded that the 25-liter per person volume was insufficient, and determined that 50-liters per person, per day, was considered a sufficient volume, and ordered the city to supply this new amount to Phiri residents (R.v. Mazibuko, 2009, p. 12 &13). However, this decision was overturned on appeal, and the volume was returned to 25-litres per person, per day, as was originally stipulated under the FBW. The justification for not enforcing the 50-liter benchmark was the use of the “reasonableness clause” (Iyer et al., 2017, p. 130) outlined in Section 27(2) of the Constitution, which states: “the state must take reasonable legislative and other measures progressively to realize the right of access to sufficient water, within available resources” (RSA, s.27.2, 1996). The accompanying justification that “Courts are ill-suited to adjudicate upon issues where Court orders could have multiple social and economic consequences for the community” (R.v. Mazibuko, 2009, p. 27) is troublesome, as it acts as a convenient outlet for evading meaningful policy intervention.

The judicial barrier that contributes to a lack of equitable policy outcomes becomes clear here. As demonstrated above, as long as the federal government takes “reasonable legislative and other measures, *within its available resources*, to achieve the *progressive* realization of these rights”⁵ (RSA, 1996, s. 27(2); from Iyer et al., 2017, p. 130), it is absolved from the responsibility

⁵ Emphasis added.

of addressing water shortages in places like Phiri, Soweto. Additionally, the state is also free to withhold assistance to municipalities that would otherwise aid in extending water access to the poor. This top-down and divided decision-making apparatus has resulted in the implementation of a policy that is simply incompatible with the needs of the poor, and has multiple resulting discrepancies that have contributed to “much greater inequality” (Bond et al., 2008b, p. 10), as can be seen further through the examples of cost-recovery and demand management.

COST RECOVERY & DEMAND MANAGEMENT

The Free Basic Water Policy was developed during a time that favoured a neoliberal approach to public services and as a result, cost-recovery became entrenched as a legal requirement within the *Municipal Systems Act* of 1999 (Ruiters, 2018, p. 180). An overarching theme that guides the FBW relates to the principle of “the more you use the more you pay” (Deedat, 2011, p. 81), which has resulted in devastating effects for the poor, as many households remain underserved, or not served at all, a problem that the FBW has a specific mandate to address. The following quote by the previous Director General of the Department of Water and Forestry, Mike Muller, reveals how this cost-recovery approach is not only a substantial risk for the poor, but also a risk to the post-apartheid redress efforts in South Africa (McDonald, 2002, p. 16):

“We have had to confront the fact that in a very unequal society like South Africa, a policy of cost recovery, which makes perfect sense in a more equitable society, would exclude the poor from access to that basic commodity, to which they have a right” (New York Times, *Water Tap Often Shut for the Poor*, 29 May 2003; from Ruiters, 2018, p. 172).

Under the cost-recovery umbrella of the Free Basic Water Policy, the “free” monthly 6000-liter water allocation actually turned out not to be free at all, given the underlying expectation attached that users would be ultimately responsible for covering the associated operation and maintenance costs (Peters, 2005, p. 315 & 316). The idea here is that these costs would eventually

be extracted as households exceed their initial free volume, through the implementation of what is referred to as a “progressive block tariff” (Peters, 2005, p. 316; Deedat, 2011, p. 81). This block tariff structure means that once a household consumes the first “free” block amount of 6kl, they are automatically subject to payment under the next block amount, where pricing is set in line with the intent of recovering full cost of service delivery (Peters, 2005, p. 315 & 316). As the general tariff structure follows rises by a very “steep-rising concave curve” (Dugard, 2010, p. 183), the second block amount is unaffordable for the poor (Bond et al., 2008b, p. 9 & 10), resulting in a large number of service disconnections (Dugard, 2010, p. 183), higher instances of indebtedness, and adverse exposure to illness (Ibid, p. 183). In the next section, we discuss a correlated issue regarding the insufficient water volumes allocated under the FBW, as it is directly linked to the implementation of the cost-recovery approach.

INSUFFICIENT WATER VOLUMES

The insufficient water volume provided under the FBW connects directly to the cost-recovery policy discussed above, as once this water volume is surpassed costs are then recovered through user fees for any additional consumption (Smith, 2005, p. 462). The FBW’s free water volume was set as a result of a pilot study conducted in the eThekweni township in Durban in 1998 (Loftus, 2006, p. 1034; Smith, 2012, p. 944), where households were provided with 6kl of water per month, or 25-liters per person per day based on an 8-person household (Smith, 2012, p. 946). In the Durban pilot, it was discovered that it would cost the municipality less money to provide a water drum of 220-liters of water per day, up to 6kl per month to poor families (Bond et al., 2008b, p. 8), rather than continuing to bear the financial burdens associated with extending infrastructure and repairing damages that result from restricting access. It is important to note that this 200-liter amount was established based on how much a family was able to carry from a communal standpipe

to their homes, rather than how much water they require to satisfy their individual and household-level water needs (Dugard, 2010, p. 184). Based on this rationale, it appears the determination of this volume appears to be inspired more so by costs saving, rather than by a humanitarian commitment to realizing the poor's right to water (Bond et al., 2008b, p. 8).

This 6kl amount is entrenched into the *Water Services Act* (WSA) as constituting a “basic water supply” (Iyer et al., 2017, p. 131) and states that this satisfies the “minimum standard of water supply services necessary for the sufficient quantity and quality of water...to support life and personal hygiene” (Iyer et al., 2017, p. 131). The WSA refers to a “sufficient quantity and quality” of water (WSA, 1997, s.1.3) but does not set out a specific benchmark for how much water is required to achieve these outcomes. In fact, this 25l volume is only half of the recommended 50l amount required to meet basic needs put forth by the World Health Organization (Peters, 2005, p. 316), and is an amount considered the “medium term goal” of the Reconstruction and Development Program (Ibid, 2005, p. 316). McDonald (2002) notes that this amount is equivalent to one average-sized bathtub full of water per day to satisfy the needs of an entire household (McDonald, 2002, p. 19).

In some municipalities however, the minimum amount of water required to meet the threshold of a sufficient supply hovers around 15,000-liters per household, per month (Ruiters, 2018, p. 173). It is evident then, that ambiguity remains over what volume is sufficient, but there is no question that the current 6kl monthly volume is not an appropriate benchmark to uphold dignity and meet basic water needs⁶ based on the variation in individual water requirements (Dugard, 2010, p. 185). The next section expands beyond the insufficiency of the allocated water

⁶ In footnotes: Dugard 2010, p. 185.

volume, and explores the insufficiency in funding tools available that were created to assist the poor, including cross-subsidization and the Equitable Share.

“THE EQUITABLE SHARE” AND CROSS-SUBSIDIZATION

The Free Basic Water Policy is reliant upon three outlets for funding the operation and maintenance costs associated with water delivery: the collection of user fees, the Equitable Share, and cross-subsidization (Smith, 2005, p. 461, 462).

The Equitable Share (ES) is a federal grant “that redistributes tax revenue from the central government to the provinces and municipalities, [and is] designed to help municipalities cover the costs of providing basic services” (Calucocoy et al., 2009, p. xi). The intention of this transfer is to help municipalities subsidize the costs associated with providing clean water to the poor (Ibid, p. xi). However, there are a number of discrepancies that exist within the structure of the ES, such as its insufficient funding envelope, a lack of regulatory oversight (Smith et al., 2005, p. 462) and a “poorly equated tariff structure that [provides] no cross-subsidization” (Ibid, p. 462). As a result, the funding intended to lift the financial burden off poor households is restricted, and not only leaves the poor with the responsibility over covering the costs associated with water delivery (Ibid, p. 462) but also, based on the following passage from Spronk (2010), actually results in the subsidization of the water supply for the rich:

“The historical co-existence of formal water systems supported by the state and informal water systems represents a net transfer of resources from the poor to the rich: the unconnected poor, black, or indigenous population has subsidized the public system by paying taxes or purchasing water in tankers at much higher prices, while the main beneficiaries have been the more affluent, white population who are connected to the public system” (Spronk 2010, p. 163).

The federal government, rather than addressing this issue through increasing the amount transferred to municipalities through the ES, urges municipalities to fill this gap and “provide and

price water in a way that would generate enough revenue to cover the operating and maintenance costs” (Department of Water Affairs and Forestry, 2002a; from Calucoy, et al., 2009, p. xi). This has sparked the heavy reliance on cost recovery through user fees (Smith et al., 2005, p. 465), in order to make up for the costs not provided through the Equitable Share. In addition to the inadequate funds provided under the Equitable Share, the unconditional nature of the grant (Ibid, p. 443) means that municipalities are free to invest this funding in other priorities rather than contributing this funding towards meeting the poor’s water needs (Ibid, p. 462). While acknowledging municipalities are obligated to deliver on a bundle of tasks that require differing levels of urgency, the unconditional structure of the ES means that there is an uncomfortable degree of flexibility that can lead to water delivery not being prioritized (Ibid, p. 462). The decentralized environment where there is no “national regulator” (Dugard, 2010, p. 175) to enforce investment in water services leaves room for further neglect of the poor’s water needs (Smith et al., 2005, p. 462). In addition, it also places pressure on municipalities to pursue a for-profit, rather than pro-poor schema as they are left with limited autonomy in the face of insufficient budgets to address the complex and often-competing priorities within their jurisdictional boundaries. As we conclude this section on the issue of cross-subsidization and the Equitable Share, we turn our attention to another barrier that discriminates against the poor under the FBW: municipal indigent registers.

MUNICIPAL INDIGENT REGISTERS

Indigency is a category that was conjured up by municipalities as a way to categorize the “officially defined poor” (Ruiters, 2018, p. 178). It is quantified as those bringing in less than R2500 (Ibid, p.178), equivalent to approximately CAD 227 per month, although qualifying criteria vary between municipalities as they are able to tailor the policy to their own needs (Yates et al.,

2018, p. 78). Similar to the legal requirement to implement cost recovery, municipalities are legally required under the FBW to register poor households, called “municipal indigents” (Ruiters, 2018, p. 169), on local municipal registers in order to allocate the free basic water amount (Yates et al., 2018, p. 78). The indigent policy itself only acknowledges “municipal account holders” (Ruiters, 2018, p. 173), which knowingly leaves out many vulnerable people in need of basic services, like those who occupy informal dwellings such as backyard shacks (Ibid, 173-176). This structure runs contrary to the alleged objective of the indigent register, which is to track and monitor those who demonstrate the most need in order to ensure access to the free monthly amount (Yates et al., 2018, p. 78). For those who do qualify, this contradictory process subjects poor households to another test, which requires them to prove their level of poverty is severe enough to be considered eligible (Ruiters, 2018, p. 172). This process for proving their level of poverty is reportedly extremely invasive, time consuming, and undignified (Ibid, p. 176), and thus acts as a deterrent to access. Even more troubling, this approach to provision has been cited as contributing to a much larger issue pertaining to the erosion of trust between citizens and the state (Ruiters, 2011, p. 119).

In the Municipality of Lesedi, for example, the application process entails a lengthy review period, a declaration of income, and sometimes multiple house visits to assess if the applicant is actually eligible to register as indigent (Ruiters, 2018, p. 174, 175). The municipality also requires qualifying households to re-register annually (Yates et al., 2018, p. 79), which is extremely burdensome for reasons related to additional costs related to things like transportation to and from registration offices (Ruiters, 2018, p. 175). Typically, during the initial application phase, fieldworkers are sent to patrol applicant’s homes with the motive of examining their living situation, a process commonly known as a “lifestyle audit” (Ruiters, 2018, p. 175). Once an applicant successfully passes a lifestyle audit, they are placed on their local indigent register, where

they are then subject to ongoing surveillance under the “guise [of] reducing fraud” (Ibid, p. 178) for the entirety of the time that they are receiving free services, or until they “graduate out of poverty” (Ibid, p. 178). During this process, any signs of wealth such as a car, television, or internet connection in the home, are grounds for termination of benefits, and payment of a fine (Ibid, p. 174 & 175) The applicant is only reconnected to their point of water access if they are able to pay this fine, along with the associated reconnection fee (Ibid, p. 174 & 175). To emphasize how punitive this process can be, Ruiters quotes an interviewee in a paper by Hallowes (2013), stating that: “to qualify as indigent, you have to sit on the floor” (Ibid, p. 181), referring to the punitive reality where people have been denied indigent status for owning a single chair (Ibid, p. 181).

The burdensome requirements and invasion of privacy that occurs after registering as an indigent act as a deterrent for many of the poor, potentially for reasons of wanting to “avoid adverse official attention” (Ibid, p. 176), and results in many being denied services, despite their legitimate need. Because of these punitive policies, many municipalities do not capture nearly as many indigent households as they should (Ibid, p. 176). For example, 2008 data demonstrates that out of 90,000 indigent households in the Tshwane Municipality, only 50,000 were officially registered (Ibid, p. 176). Even when registered, there is evidence that municipalities were unable to deliver these required services (Ibid, p. 176), likely due to limited administrative capacity and fiscal restraints (SSA, 2018).

In conclusion, this section reviewed some of the failures that contributed to the unfortunate demise of the Free Basic Water Policy, including governance, cost recovery and demand management, insufficient water volumes, and municipal indigent registers. However, these policy failures do not exist in a vacuum; they are depictive of a much larger issue at play when it comes to present day South Africa. These failures highlight the way in which water policy disadvantages

the poor, and discriminates based on their place within the socio-economic strata, signaling a new apartheid within the water sector that has gone from discriminating solely on race, to one that discriminates based on socio-economic status. Of course, it should be noted that the history of racial discrimination cannot be excluded from the current situation in South Africa, as those who are facing socio-economic discrimination from the state are black, resulting from the devastating effects of previous apartheid-era policy, as is discussed below.

SECTION 2: THE REPRODUCTION OF APARTHEID IN THE WATER SECTOR

This section builds off the failures identified in the previous section and discusses how apartheid is being reproduced within South Africa's water sector. This new "water apartheid" (Bond et al., 2008b, p. 3) is no longer discriminating solely on the basis of race, but is now discriminating on the basis of socio-economic status. As is shown in the following lines, this reproduction of apartheid based on socio-economic status has manifested itself through the ongoing presence of hegemony, which has contributed to increased state control within policy and decision-making spheres. The enduring presence of hegemony has resulted in the integration of punitive surveillance mechanisms used as a tool to control the water supply flowing to the poor, and has contributed to the dismissal of critical gendered considerations. It is important to preface the discussion that follows with the disclaimer that the poor have voiced concern over the FBW, as was depicted through the former discussion on *R.v. Lindiwe Mazibuko*, where the opportunity to address the critical water needs of the poor was struck down. This demonstrates how the poor are continually subjugated and excluded from critically important decision-making spheres by the state, a reality that is linked to a history of hegemonic governance.

HEGEMONY & STATE CONTROL

The state controls every aspect of life in South Africa, and the concept of “hegemony” is particularly useful here to exhibit the inescapable presence of state control within the water sector.

The concept of hegemony for the purposes of this paper can be understood as:

“the dominance of one group over another, often supported by legitimating norms and ideas. The term hegemony is today often used as shorthand to describe the relatively dominant position of a particular set of ideas and their associated tendency to become commonsensical and intuitive, thereby inhibiting the dissemination or even the articulation of alternative ideas” (Rosamond, 2016).

Key concepts that are repeatedly drawn upon to pinpoint the presence of hegemony include notions of power, dominance, exclusion, and coercion (Ruiters, 2018, p. 171) which are commonly expressed through the presence of “vertical social relations” (Olsaretti, 2016, p. 339) or established hierarchies. These aforementioned characteristics are all reflected when you delve deeper into the internal workings of the Free Basic Water Policy. Indeed, the Free Basic Water Policy demonstrates the presence of hegemony, as it exposes the stubborn entrenchment of a stark power imbalance that exists between the rich and the poor. The FBW also exposes the dominance of the state in the development and implementation phases of the policy, and through the leveraging of coercion that has been used to exclude the poor from any participation in critical decision-making spheres.

According to the definition of hegemony described above, the South African state meets the criteria as a hegemon due to its overarching domination over the water supply and associated policy. It is also hegemonic through its desire to legitimize accompanying norms and ideas in order to justify its position at the top of the hierarchy. Norms therefore are constructed by the elite, for example as can be seen through the development of the “user-pays principle” (Wilson and Pereira, 2012, p. 13) which is based on the neoliberal notion of “the more [water] you use the more you pay” (Deedat, 2011, p. 81). This measure prevents the development of any other alternatives,

contributing to an approach that frames cost-recovery and low water volumes as the only “rational” choice (Smith et al., 2005, p. 449). This therefore restricts considerations of any dissenting opinions on how water should be managed. Not only does this domination over knowledge construction delegitimize dissenting opinions, such as those of water rights activists and the poor who are active in the denouncement of the FBW, but it also limits the poor’s power to influence change by keeping them out of decision-making spheres, enabling those who make more power to control the rules of the game. As the dominant decision-making structure does not leave room for the integration of the voices of the poor, this means that the resulting policy favours the “haves” over the “have nots” (Koppen, et al., 2015, p. 460). The result is the perpetuation of a policy that contributes to the current discrimination based on socio-economic status when it comes to the water distribution. As is demonstrated within *R.v. Lindiwe Mazibuko v The City of Johannesburg and Others*, we can see clearly how the poor denied any sort of meaningful input within the policy that was deteriorating their quality of life. In the end, the decisions rendered favoured the state and its profit-motive, despite the poor’s adamant claims it was causing significant harm to their productivity, health, and dignity as demonstrated in the previous analysis on insufficient water volumes and cost-recovery mechanisms in Section 1.

The profit-driven approach that is used as a guide to regulate the country’s water supply has led to the reproduction of a number of policy outcomes that are incompatible with poverty reduction. This has structured an environment where instead of assisting the poor, they remain in a state of destitution and water scarcity, unless they assimilate with the dominant or hegemonic structure. A concrete example of this reality is reflected through the block tariff structure. The block-tariff structure favours the rich as after the first free block of water is consumed, the second and third blocks are set at manageable rates for the rich, but are completely unaffordable for poor

households (Dugard, 2010, p. 183). The second and third blocks are very steep and “taper off at the top end of consumption” (McDonald, 2002, p. 18). This means that once you enter into a threshold of “luxury consumption” (Bond et al., 2008b, p. 9) you are no longer subject to increasing blocks, but are able to “gamble with higher water consumption” (Yates et al., 2018, p. 79) as you are unlikely to face increased charges for usage past this point. As a result, the rich are incentivized to use less water, as higher usage does not necessarily mean higher municipal water bills (Dugard, 2010, p. 183 & 184). This runs contrary to the central principal of “the more you use the more you pay” (Deedat, 2011, p. 81) that was used to justify the cost-recovery approach, as it does not deter excessive water use, but promotes it, compromising the conservation efforts used to justify the implementation of cost-recovery and demand management strategies (Wilson and Pereira, 2012, p. 11). The discussion of the block tariff structure connects directly to the issue of subsidization. If the rich are empowered to use excessive amounts of water without paying in accordance with this usage, this means that the poor are not provided the necessary subsidies required to deter indebtedness and access sufficient amounts of water. In many cases, this structure actually increases inequality as it results in poor households paying absurd amounts for water services, which can total up to one third of their household budgets (Bond et al., 2008b, p. 13). When compared to the rich households who were connected to the formal water grid, the poor are actually paying more for worse service, given that many poor households did not have quality “in-home connections” (Smith et al., 2005, p. 462). Part of the issue is the fact that there is less of an incentive to charge the rich more, due to the fear of reducing “economic competitiveness” in the market (Smith et al., 2005, p. 453).

Further depiction of the hegemonic drive for profit is the negligible water volumes that were used as a coercive mechanism to “limit and control” (Loftus, 2006, p. 1036) the poor’s

consumption in order to induce payment. The free 6kl monthly volume has been crafted to provide water based on household sizes of eight people (Smith et al., 2005, p. 449) rather than individual consumers (Ibid, p. 450), which puts low-income households at higher risk in terms of access, and affordability (Ibid, p. 453). With this reality in mind, this meager 6kl threshold is discriminatory against the poor (Ibid, p. 461) as it is set at a meager rate and propels poor users into unaffordable payment blocks to extract profit from additional usage. Part of this issue is linked to the fact that in these poorer areas, the presence of multiple backyard shacks or informal dwellings are common (Ziervogel, 2019, p. 3; Ruiters, 2018, p. 176). This contributes the presence of larger household sizes which tend to be much larger than the calculated average taken into consideration within the FBW.

Hegemony is also depicted through the internal processes that led to the determination of the 6kl volume. This amount was initially justified alongside conservation claims, and the need to breakdown the “culture of non-payment” (Peters, 2005, p. 318) that exists within poor communities, but it was justified under the flawed assumption that poor households use less water than the rich do, and therefore need “less water to sustain their livelihoods” (Smith et al., 2005, p. 451). While it is true that poor settlements tend to use less water than the rich⁷ (Ziervogel, 2019, p. 3), this is due to a number of factors that do not reflect their physical water needs, but rather can be attributed to things like additional usage linked to leakage from old, ill-maintained infrastructure (Mahlanza et al., 2016, p. 369). Therefore, the idea that the poor require less water to meet their needs is skewed, as the rich use a disproportionate amount of water to fill swimming pools, water their gardens and run their water-intensive household appliances (Smith et al., 2005

⁷ Ziervogel 2019 demonstrates that poor settlements in Cape Town account for approximately 4% of municipal water, where 66% is said to be consumed within formal houses that have access to in-home connections. See (Ziervogel, 2019, p. 3).

p. 451). The fact that the rich consume excess water has nothing to do with the differing basic water needs between the rich or the poor (Ibid, 2005, p. 451). This reality has more to do with privilege and the legacy of apartheid that prioritized the formal connection of the rich to the water grid (Ibid, 2005, p. 444). The rich also consume more water given ease of access through their ability to pay water bills and access credit (Yates et al., 2018, p. 79). Therefore, the fact that the poor consume less water is more so about the persistence of hegemony, “structural exploitation” (Bond et al., 2008b, p. 3), persistent poverty and discrimination. The presence of these factors are responsible for the poor’s limited ability to access this resource, rather than a true reflection of their water needs which has been used as an excuse to justify the “negligible benefit[s]” (Ruiters, 2011, p. 122) provided under the FBW.

In sum, the dominant nature of the state apparatus results in the exclusion of the poor and thus limits opportunities to influence the overarching policy under which they are subjects. This exclusionary structure leaves far too much room for the state to pursue a neoliberal agenda without sufficient challenge, and enables the state to construct their preferred version of knowledge around what constitutes equitable water policy. The result is a set of elitist “best practices” that are infused with neoliberal ideas of the market, which prioritizes accumulate of capital over human rights. This next section dives into the state’s use of surveillance and monitoring techniques such as the use of water management devices and indigent registers, that are used as mechanisms to control the amount of water consumed by the poor.

TARGETED SURVEILLANCE & MONITORING

Water management devices and indigent registers are two key features of the Free Basic Water Policy that not only discriminate against citizens based on socio-economic status, but they also constitute punitive mechanisms of “social control” (Ruiters, 2007, p. 487) that reinforce the

hegemonic environment discussed in the previous section. While water management devices seek to manipulate the amount of water that can be accessed by the poor, indigent registers expose a clear power imbalance, as white households are not subject to the disproportionate state surveillance that accompanies being registered as an indigent.

A Water Management Device is a water-regulating device that is installed with the intention of regulating the flow of water to a single point of access, such as an in-home tap (Ziervogel, 2019, p. 4)⁸. Water Management Devices in the context of the FBW were put on households that were determined higher risk in terms of consumption or non-payment (Murray, personal communication, 2019). WMDs also include the use of the controversial pre-paid water meter that is most well-known for its use in Johannesburg (Ibid, 2019), where users are required to pay before obtaining access (Peters, 2005, p. 317). It is important to note, that the use of these devices are referenced as a form of discrimination that are known to “deepen racial and gender inequalities” (Perumal, 2011, p. 20).

When WMDs were originally rolled out, they were done so with the intent to apply to *all* households across South Africa aligning with the ANC’s public promise to uproot discrimination⁹. However, evidence demonstrates contradictory outcomes, as these devices began to appear specifically in low-income, “predominately black, suburb[s]” (Dugard, 2010, p. 189). For example, in Cape Town, out of the 240,000 WMDs that were installed over the last ten years, the majority were installed within low-income households (Yates et al., 2018, p. 79). In addition, from 1999-2001, approximately 83,000 low-income residents in Cape Town had their water cut-off, which resulted in the sparking of mass protests across the city (McDonald, 2002, p. 17). During

⁸ Explanation of WMD found in Ziervogel, 2019 footnotes.

⁹ Emphasis added.

this time of uprising, numerous evictions were taking place and water infrastructure was reportedly being ripped out of the ground by state water authorities in response to non-payment (Ibid, p. 17).

Not only does the use of WMDs expose the disproportionate targeting of the poor and the persistent discrimination that exists in the water sector under the FBW, but it also contributes to a more precarious situation for the poor than before the FBW in terms of access, as many households cannot not predict when their supply will be cut-off, and when it is, when it will be turned back on. For example, some WMDs are designed to deliver a specific volume per day and after this amount is consumed, the device is programmed to cut off water supply until the next 24-hour period begins (Yates et al., 2018, p. 79). In the Phiri Township, people have reported having their water cut off for an entire month despite implementing extreme conservation efforts like reducing toilet flushing to one time per day, and showering every other day (Dugard, 2010, p. 176). What is increasingly punitive, and frankly inhumane, is that in some townships, water that is left over cannot be carried over to the next period (Yates et al., 2018, p. 79). While most white suburban households are typically exempt from WMDs and cut offs (Dugard, 2010, p. 176-177), this underscores the differential treatment that has been absorbed from the water structure developed under apartheid which continues today.

The requirement to develop and maintain municipal indigent registers is a policy outcome that acts as a surveillance mechanism and ensures the poor remain below a certain level of poverty (Ruiters, 2011, p. 122) in order to access the free 6kl water volume. It also directly discriminates based on socio-economic status since it only registers those who are considered “municipal account holders” (Ruiters, 2018, p. 173), therefore overlooking a number of those who do not have adequate funding to go through the formal registration process with the municipalities, or do not own property, which many of the poor do not. It has been argued by Ruiters that, under a regime

characterized by austerity and cost-recovery, the indigent register acts as a tool of “social control” (Ibid, p. 182) which may act as a means to limit the amount of water consumed by the poor in order to reduce spending required by the municipality to provide this service, in the face of increasing financial pressures (Ruiters, 2018, p. 179). This connects with the aforementioned theme of hegemony, as these discriminatory aspects were made binding requirements by the policy makers under the FBW, exposing the clinging ideology of the “deserving” vs. the “undeserving” poor (Ruiters, 2018, p. 182), which determines who is truly worthy of accessing water, which is typically deduced through income levels and an ability and or willingness to pay (Ibid, p. 182).

In brief, the issue of targeted surveillance and monitoring of the poor’s water supply was described above, in order to depict the ways in which the poor continue to be discriminated against based on their ability to pay. However, there is another vital factor to consider within this discussion, and that is gender. As women tend to make up the poorest of the poor, it is necessary to look at the way the FBW perpetuates discrimination in the water sector through examining women’s water experiences, which we turn to next.

NEGLECTED GENDER CONSIDERATIONS

As neoliberalism is the central ideology inherent within the FBW, its main concern is capital accumulation. It does not see people within the spheres that it governs, but instead it sees opportunity to maximize profit. It sees taxpayers rather than people with wants and needs, and renders the human experience as invisible as it seeks to deduce the population to “de-gendered neoliberal subject[s]” (Coulter, 2009, p. 40). The fact that the FBW rests on the pillars of neoliberal thought means that the policy itself sees no gender, and thus discriminates based on both gender and socio-economic status given women’s place in the economy in South Africa where they are considered to play “secondary roles if they are considered at all” (Tshishonga et al., 2011, p. 58).

Tshishonga et al., 2011 when the authors quote Taylor, 1997 in the following passage, illustrates this phenomenon:

“However, as Taylor (1997) points out, the systemic gender and class discrimination against women through neo-liberalism positions poor women not as beneficiaries of policy but instead tends to further compound the condition of poverty in ways that are gender specific. Taylor (1997:17 see also Taylor, 1999) states “African women in particular have experienced the harsh reality that market-driven policy responds to demand backed by cash, not human need”. They perform the unpaid domestic work where there is no economic power and their gendered role as homemakers and caregivers is not counted” (Tshishonga et al., 2011, p. 58).

Of those who live in poverty in South Africa, the majority are women (Deedat, 2011, p. 80). These women typically comprise single-headed households (Tshishonga et al., 2011, p. 54), and are typically tasked with the responsibility of acting as water managers at the household level (Ibid, p. 61). Therefore, when water access is inadequate within the home, women are the ones who face the burden of seeking it out, in order to fulfil their family’s daily water needs (Murray, 2018), or paying escalating bills for overconsumption (Smith et al., 2005, p. 457).

While the Free Basic Water Policy initially committed to addressing gender discrimination, the reality on the ground is that its implementation exposed a gender-neutral approach, demonstrated most clearly through the pre-established 6kl volume. The “gender-blindness” (Tshishonga et al., 2011, p. 56) exposed during the implementation of the FBW computed to a massive shortfall for achieving equity, as women’s disproportionate burden as water managers (Ibid, p. 61) was not accounted for. Women’s lives are also impacted significantly when water is denied due to their additional roles as primary caregivers. As primary caregivers, women are mainly responsible for providing care to those who were faced critical illnesses such as HIV/AIDs, which is a common situation in South Africa (Tshishonga et al, 2011, p. 68) and “require additional water” (Dugard, 2010, p. 185) to sustain quality of care, especially if more than one family member is infected (Ibid, 185). When water isn’t sufficient to tend to those who are ill, this translates into

a deterioration of care for loved ones (Grossman et al., 2003, p. 8) and contributes not only to a reduction in dignity, but increases risk for spread of disease (Dugard, 2010, p. 185), that puts women at significant risk for negative health outcomes (Grossman et al., p. 5). In addition, the FBW does not take into account additional gendered water requirements such as flushing toilets during times of menstruation (Deedat, 2011, p. 83), or caring for children, which carry increased water requirements due to differing hygiene and cleanliness factors (Smith et al., 2005, p. 450).

The impact of this gender-blind approach on women is clearly articulated in a study by Deedat, 2011, in the Mossell Bay municipality. Women's lives in this area were devastated by the negligible water volumes and debt accumulated during the implementation of the FBW. This was due to the fact they are burdened with managing new ways to conserve water at the household level during times of scarcity, which meant that they were forced to resort to things like recycling dirty water from washing dishes and laundry to keep their gardens alive (Deedat, 2011, p. 83). Women even significantly reduced their bathing habits to "a kettle of water, regardless of one's physical state" (Ibid, p. 83), and neglected to flush toilets even during times of menstruation (Ibid, p. 83) to reduce consumption. There is also mention of the implications of water scarcity on household relationships, as arguments between spouses and children occurred around water-related matters, and heighten the risk of physical harm and abuse (Ibid, p. 85). The women that were interviewed in this case pointed out that the 6kl of water they were provided each month, only lasted them about two weeks (Ibid, p. 83). This example of the Mossell Bay municipality demonstrates the gross insufficiency of the 6kl volume, but also the burden, stress, and anxiety (Ibid, p. 85) that disproportionately effects women in relation to their role as household water managers and caregivers. These gender-specific harms could have been avoided if the policy abandoned a gender-blind neoliberal approach, and chose to implement an approach that placed

both “people and water at the center” (Wilson and Pereira, 2012, p. 1) rather than one that was simply profit-focused.

In sum, while the FBW rhetorically poises itself as “pro-poor”, the development and implementation stages unveil a hegemonic, neoliberal, profit-driven approach that predictably led to the failure of finally upholding the right to water for the poor. This hegemonic drive set the stage for a punitive environment where the poor are over-policed by municipalities, subject to punitive control mechanisms and targeted surveillance aimed at restricting their supply, and as a result are deterring them from registering as local indigents to access free water. Out of all of this, poor women are hit with a disproportionate burden, as they attempt to carry the weight for their families during times of water scarcity.

CONCLUSION

This research paper has demonstrated that while the apartheid regime was technically dismantled in 1994, its impact is still reflected through the discrimination that persists within the country’s water sector. As a result of this historic battle with discrimination, it has leaked its way into the country’s overarching structural flows. Although the current regime no longer overtly discriminates based on race, discrimination now takes place on the basis of socio-economic status. It should be acknowledged however, that this new discrimination cannot be totally separated from race, as the majority of the country’s poor are black. This demonstrates the irrefutable fact that apartheid has left a disconcerting obstacle for the country’s potential ascent towards equity.

It is clear through this work that the drive for profit is not compatible with the goal of meeting the right to water for the poor. This neoliberal approach as it currently stands will not result in the poor being better off, as the inherited system is structured in a way that continues to favour the rich white population (Bond et al., 2008a, p. 21). This is especially true in a country

like South Africa, where the historical burden of structural poverty created under apartheid is likely to be “exacerbate[d]” under the cost-recovery regime (Peters, 2005, p. 317). Despite its initial intentions, the Free Basic Water Policy has not addressed the structural failures that contribute to an environment of poverty for the majority black population, including within the hegemonic governance sphere where discrimination is translated into policy without sufficient citizen input. We know that there is a need to focus on the human aspects of water and put people over profit, but intersections of history, context, finance, politics, power, gender, racism, have all come together to create an environment where “pro poor” and human rights rhetoric reigns, and capital accumulation is free to blossom under its umbrella. This is largely attributable to the fact that striving towards better quality of life for all, does not always equate to favourable policy, as does not often equal good business. South Africa is focused, like most developed capitalist countries, on profit, and will provide human rights if it makes good business sense. We need to find a new incentive that motivates politicians to prioritize people that is not monetary, and this will take time.

As outlined in Section 1, there are a variety of short-term recommendations that can be implemented now to alleviate the suffering of the poor, and catalyze the process of real improvement in water service delivery. First, the federal government should immediately increase investments to municipalities to ensure they have the proper resources to meet the water needs of their constituents. This means, the allocated 6kl water volume must be raised (Spronk, 2010, p. 164) to account both for the needs of larger poor households (Smith et al., 2005, p. 463), and the unique needs of women who face disproportionate risk when denied a sufficient water supply (Murray, 2018). The block tariff-structure also needs to be revisited, to address the persistent unaffordability constraints for the poor, that continues to push them into state of perpetual destitution or “poverty trap” (Tshishonga et al., 2011, p. 55). According to Spronk (2010), the

block tariff structure should be restructured so the “cost curve[s] more gradually” (Spronk, 2010, p. 164) to protect the poor from high water bills and perpetual indebtedness. The issue of subsidization must also be addressed and re-structured, as the current approach is skewed and does not enable adequate funding to flow to the poor (Smith et al., 2005, p. 464). This means raising taxes for the rich to ensure optimal opportunity for cross-subsidizing the poor’s water supply (Dugard, 2010, p. 184). The unconditional nature of the Equitable Share grant must also be re-visited, by making it a “conditional grant” (Smith et al., 2005, p. 464 & 465), and raising the amount transferred to municipal governments (Ibid, p. 464). This would ensure appropriate investments are being made to extend water infrastructure and access for the most vulnerable. Finally, and most importantly, the poor must be meaningfully involved in these changes, in order to ensure this re-write is finally accounting for their needs that were overlooked during the initial development of the FBW.

While this work focused specifically on the manifestation of discrimination based on socio-economic status within the water sector, it paints a much larger picture where the broader system in place comes under alarming scrutiny. It exposes the deeply embedded structural issues that must be addressed over the long-term in order to improve the current state of water affairs in the country. The long-term recommendations I suggest here, revolve around the necessity of uprooting the structural flows that have been adopted from the apartheid regime. The system itself must be overturned before equity in the water sector can be attained, this means uprooting ideologies of the apartheid regime that are still influencing and plaguing contemporary water operations.

Toppling discriminatory ideologies is a challenge that will have to be addressed over the long-term, but nonetheless is a mandatory prerequisite to achieving equity in the water sector, and in South African society at large. Real change will only begin to catalyze by dissolving these

ideologies, including those that seek to divide the poor from the rest of society. This means revisiting the use of the municipal indigent register that deepens the divide between the rich and the poor. The criteria itself is based off of pre-determined qualifications that are established on the basis of a bureaucrat's ideas of what constitutes "poorness" and what factors lead to poverty in the first place, while being completely ignorant to the poor's reality. This prompts the need for involvement of the poor in policy discussions over the long-term to refrain from future barriers to access. Working towards the increased inclusion of the poor must occur in tandem to addressing current ideologies based on race, socio-economic status and gender, which includes challenging the frames related to the "culture of non-payment" (Nylea, 2008, p. 278) that seek to frame the poor as "lazy" (Ruiters, 2018, p. 178) or "fraudsters" (Ibid, p. 176), as it compromises the potential realization of their inherent right to water (Ibid, p. 183). This hinders on the integration of a mechanism for including the poor within key decision-making circles, as they know best the challenges they face, and can advise the government of what they need in order to alleviate suffering and achieve equitable outcomes. Decision-makers need to listen to the concerns of the poor and strive towards meaningful dialogue in order to improve the current situation. This cannot be done without an influx of reinvigorated political will on behalf of the government to address these shortfalls by working to build in new processes that include the poor in the discussions as we work towards this long-term goal.

The neoliberal ideology around water itself must also be challenged, as the contemporary view of water as an economic good has acted as a barrier to advancing real change. Bakker's idea of the "commons over commodity" (Bakker, 2007, p. 430) might be of use here, to look at new ways in which we can view this precious resource, in a way that can "transcend current capitalist and state limitations" (Bond et al., 2008b, p. 12). This would enable new conversations about

shifting views from water as a sort of “blue gold” (Spronk, 2010, p. 164) to be bought and sold on the market (Bakker, 2007, p. 450)¹⁰ to a life-sustaining resource provided and distributed to citizens by virtue of their existence, regardless of an ability to pay (Rodina, 2016, p. 58). Only then will South Africa be successful in upholding its commitment to provide services to everyone, regardless of race, gender, sex, socio-economic status, language, or ethnicity, promised in the Constitution (RSA, 1996).

As was discussed in Section 2 of this paper, the hegemonic structure in place has acted as a barrier to achieving water rights in South Africa for decades. It is therefore also increasingly clear that, in order to finally achieve equity and dismantle discrimination, the current system essentially needs to be disassembled and put back together again. This will not happen overnight, but is a necessary goal to work towards. The long-term goal of re-structuring the system is simultaneously linked with the need for a serious re-think of the current structure that dictates not only the approach to water delivery, but other vital public services as well. This means re-thinking the current governance structure and the division of responsibilities between the municipal, federal and judicial branches of government. The current top-down division of responsibilities where the federal government develops policy, and then expects municipalities to take the reins on delivery without sufficient resources, is not sustainable and compromises equity goals.

In conclusion, it is time to re-think the dominant structures that have kept poor, predominately black South African’s out of critical decision-making circles. It is time to incorporate their voices and reflect their needs within the very policy that affects their day-to-day lives. What do the poor truly need to improve their lives now and into the future? What constitutes a “sufficient” and affordable water supply based on their realities? The answers to these questions

¹⁰ In Bakker, 2007: end-notes located on page 450 re: commodification.

cannot be conjured up by the white man on their behalf as history has so clearly articulated (Ruiters, 2018, p. 183). It therefore demonstrates the need for increasing meaningful democratic participation (Wilson and Pereira, 2012, p. 16) regardless of where citizens fall along the economic strata. It is time to lift the black curtain that separates the elite from the poor, in order to accelerate real change and finally fulfil the Constitutional promise to *all*¹¹ South Africans regardless of race, gender, or socio-economic status because after all, “they are part of us and we are nothing without each other” (Kasrils, 2001; from Muller, 2007, p. 40).

¹¹ Emphasis added.

BIBLIOGRAPHY

African National Congress (ANC) (March 15, 1994). Election Manifesto. South Africa. Retrieved from: <https://www.politicsweb.co.za/documents/the-ancs-1994-election-manifesto>.

Bakker, K. (2007). The “Commons” Versus the “Commodity”: Alter-globalization, Anti Privatization and the Human Right to Water in the Global South. *Antipode*, 39(3), 430-455.

Beyers, L. (2015). Service Delivery Challenges within Municipalities in the Capricorn District of Limpopo Province. *Journal of Human Ecology*, 50(2), 121–127. <https://doi.org/10.1080/09709274.2015.11906866>.

Bond, P., & Dugard, J. (2008a). The Case of Johannesburg Water: What Really Happened at the Pre-paid “Parish Pump”. *Law, Democracy & Development*.

Bond, P., & Dugard, J. (2008b). Water, Human Rights and Social Conflict: South African Experiences. *Law, Social Justice and Global Development Journal*, 11.

Calucoy, P., Park, Minhye & Hinds, Thomas & Davison, Joseph & Cibulka, Jeramia. (2009). Improving Free Basic Water Provision in South Africa. Workshop in International Public Affairs Spring 2009. Prepared for the Financial and Fiscal Commission, Republic of South Africa.

Chetty, S., & Luiz, J. (2014). The Experience of Private Investment in the South African Water Sector: The Mbombela Concession. *Development Southern Africa*, 31(4), 563-580.

Coulter, K. (2009). Women, Poverty Policy, and the Production of Neoliberal Politics in Ontario, Canada. *Journal of Women, Politics & Policy*, 30(1), 23–45. <https://doi.org/10.1080/15544770802367788>.

Deedat, H. (2011). The Gendered Analysis of Free Basic Water Services in South Africa: An Activist's Perspective. *Agenda*, 25(2), 80-86.

Dugard, J. (2010). Can Human Rights Transcend the Commercialization of Water in South Africa? Soweto’s Legal Fight for an Equitable Water Policy. *Review of Radical Political Economics*, 42(2), 175-194.

Grossman, Anne, Johnson Nadia, and Sidhu, G. (2003). *Diverting the Flow: A Resource Guide to Gender, Rights and Privatization*. Women’s Environment & Development Organization. 1-12.

Hart, Gillian (2014). Rethinking the South African Crisis: Nationalism, Populism, and Hegemony. *Geographies of Justice and Social Transformation* 20: 95-123.

Iyer, D., & Tewari, D. (2017). An Analysis of the State’s Obligation to Provide Access to Sufficient Water: A South African Perspective. *African Journal of Legal Studies (Online)*, 10(2/3), 127-140.

Koppen, B. V., Derman, B., Schreiner, B., Durojaye, E., & Mweso, N. (2015). Fixing the Leaks in Women's Human Rights to Water: Water Is Life, 457–506. doi: 10.2307/j.ctvh8qxqc.19 in: Water is Life - Women's Human rights in National and Local Water Governance in Southern and Eastern Africa. Baltimore, Maryland: Project Muse.

Loftus, A. (2006). Reification and the Dictatorship of the Water Meter. *Antipode*, 38(5), 1023–1045. <https://doi.org/10.1111/j.1467-8330.2006.00491.x>.

Makou, Gopolang. Africa Check (December 6, 2017). #5 Facts: Water in South Africa. <https://africacheck.org/reports/5facts-water-south-africa/>.

Mahlanza, Londeka, Ziervogel G., Scott, D. (2016). Water, Rights and Poverty: an Environmental Justice Approach to Analysing Water Management Devices in Cape Town. *Urban Forum* (2016) 27:363–382. DOI 10.1007/s12132-016-9296-6.

Marais, H. (2012). *South Africa Pushed to the Limit: The Political Economy of Change*. London; New York: New York: Zed Books; Distributed in the USA exclusively by Palgrave Macmillan.

Mazibuko and Others v City of Johannesburg and Others (CCT 39/09) [2009] ZACC 28; 2010 (3) BCLR 239 (CC); 2010 (4) SA 1 (CC) (8 October 2009). Received from: <http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZACC/2009/28.html&query=mazibuko>.

McDonald, David A. (2002). No Money, No Service: South African's Poorest Citizens Lose Out Under Attempts to Recover Service Costs for Water and Power. *Alternatives*, 28(2): 16-20.

Muller, Mike (2008). Free Basic Water – A Sustainable Instrument for a Sustainable Future in South Africa. *Environment and Urbanization*. International Institute for Environment and Development, 20(1): 67-87 DOI: 10.1177/0956247808089149.

Muller, Mike. (2007). “Parish Pump Politics: The Politics of Water Supply in South Africa.” *Progress in Development Studies* 7, no. 1 (2007): 33–45. <https://doi.org/10.1177/146499340600700104>.

Murray, Adrian. (September 2018). A Crisis for Who? Social Reproduction and the Social Relations of the Cape Town Water Crisis. The Blue Planet Project: <http://www.blueplanetproject.net/index.php/a-crisis-for-who-social-reproduction-and-the-social-relations-of-the-cape-town-water-crisis/>.

Murray, Adrian. (2019, March 18). Personal Interview. The University of Ottawa.

Ngang, Carol. (2014). Judicial Enforcement of Socio-economic Rights in South Africa and the Separation of Powers Objection: The Obligation to Take ‘Other Measures’. *African Human Rights Law Journal*. 665-680.

Nleya, N. (2008). *Development Policy and Water Services in South Africa: An Urban Poverty*

Perspective. *Development Southern Africa*, 25(3), 269-281.

Olsaretti, A. (2016). Croce, Philosophy and Intellectuals: Three Aspects of Gramsci's Theory of Hegemony. *Critical Sociology*, 42(3), 337–355. <https://doi.org/10.1177/0896920514540184>.

Olowu, Oladejo (2008). Privatisation and Water Governance in Africa: Implications of a Rights Based Approach. *The Journal for Transdisciplinary Research in Southern Africa*, 4(1), e1–e36. <https://doi.org/10.4102/td.v4i1.174>.

Perumal, D., Nadarajan (2011). Women's Socio-economic [In]equality and Gender [In]justice: Feminist Reflections on the Right of Access to Water in Mazibuko and Others v City of Johannesburg and Others [2009] ZACC 28 1. *Agenda*, 25(2), 17-26.

Peters, Karen, & Oldfield, Sophie. (2005). The Paradox of 'Free Basic Water' and Cost Recovery in Grabouw: Increasing Household Debt and Municipal Financial Loss. *Urban Forum*, 16(4), 313.

Rademeyer, Julian. Claim That 94% in SA Have Access to Safe Drinking Water... Doesn't Hold Water. (April 29, 2013). Africa Check. <https://africacheck.org/reports/claim-that-94-of-south-aclaim-that-94-in-sa-have-access-to-safe-drinking-water-doesnt-hold-water/>.

Republic of South Africa (RSA). (1996) Constitution of the Republic of South Africa Act. (No. 108 of 1996 Issue No 38). Government Printers, Pretoria.

Republic of South Africa (RSA). (1997). The Water Services Act (WSA) (No. 108.1997).

Rodina, L. (2016). Human Right to Water in Khayelitsha, South Africa – Lessons From a “lived Experiences” Perspective. *Geoforum*, 72, 58–66. <https://doi.org/10.1016/j.geoforum.2016.04.003>.

Rosamond, Ben. (May 17, 2016) “Hegemony” Encyclopedia Britannica. Encyclopedia Britannica, Inc. URL: <https://www.britannica.com/topic/hegemony>. Accessed on: January 22, 2020.

Ruiters, G. (2007). Contradictions in Municipal Services in Contemporary South Africa: Disciplinary Commodification and Self-Disconnections. *Critical Social Policy*, 27(4), 487-508.

Ruiters, G. (2011). Developing or Managing the Poor: The Complexities and Contradictions of Free Basic Electricity in South Africa (2000-2006). *Africa Development*, 36(1), 119-142. Retrieved from www.jstor.org/stable/24484044.

Ruiters, G. (2018). The Moving Line Between State Benevolence and Control: Municipal Indigent Programmes in South Africa. *Journal of Asian and African Studies*, 53(2), 169–186. <https://doi.org/10.1177/0021909616667522>.

Smith, J. (2005). Free Basic Water in Msunduzi, KwaZulu-Natal: Is it Making a Difference to the Lives of Low-income Households? *Water Policy*, 7(5), 443-467.

Smith, J. (2010). How Much Water is Enough? Domestic Metered Water Consumption and Free Basic Water Volumes: The Case of Eastwood, Pietermaritzburg. *Water S.A.*, 36(5), 595-606.

Smith, J. (2012). Free Water for all the World's Poor? A Review of the Strategy of South Africa's Free Basic Water Policy. *Water Policy* 14: 937-956.

Spronk, S. (2010). Water and Sanitation Utilities in the Global South: Re-centering the Debate On "Efficiency". *Review of Radical Political Economics*, 42(2), 156-174.

Statistics South Africa. (2017). Poverty Trends in South Africa: An Examination of Absolute Poverty Between 2006 and 2015. Dr Pali Lehohla, Statistician-General. Report No. 03-10-06. <http://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>.

Statistics South Africa. (November 9th, 2018). Four Facts About Indigent Households. Republic of South Africa. <http://www.statssa.gov.za/?p=11722>.

Tshishonga, N., & Mafema, E. D. (2011). The Impact of Neo-liberalism on Water and Sanitation Provision in the Informal Settlements: Towards the Re-enforcement of Gendered Roles or Democratic Emancipation? *Agenda*, 25(2): 54-70. doi:10.1080/10130950.2011.575997.

United Nations Development Programme (UNDP) (2019). United Nations Development Report "Beyond Income, Beyond averages, Beyond Today: Inequalities in Human Development in the 21st Century".

Wilson, Jessica and Taryn Pereira. (2012). Water Demand Management's Shadow Side: Tackling Inequality and Scarcity of Water Provision in Cape Town. EMG Water and Climate Change Research Series Report 7.

Winkler, I. (2008). Judicial Enforcement of the Human Right to Water, Case Law from South Africa, Argentina and India. (Report). *Law, Social Justice and Global Development Journal*, 11.

Yates, J., & Harris, L. (2018). Hybrid Regulatory Landscapes: The Human Right to Water, Variegated Neoliberal Water Governance, and Policy Transfer in Cape Town, South Africa, and Accra, Ghana. *World Development* 110: 75-87.

Ziervogel, G., (2019). Unpacking the Cape Town Drought: Lessons Learned. Report for Cities Support Programme Undertaken by African Center for Cities. 1-28.