

When Commodification Annuls the Human Right to Water

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Abstract

This submission reviews some practical debates regarding the 'right to water', including the South African government's 'Free Basic Water' promise. Of central importance, we find, are international forces, especially the World Bank and the Paris-based water company Suez. Popular resistance to water injustice across the world, including South Africa, has taken forms ranging from direct action protests to autonomist-style reconnections to destruction of meters to a constitutional court challenge aimed at outlawing pre-paid water meters.

1. Introduction: Ambiguous rights

On March 16 2006, in Mexico City, thousands of grassroots water warriors marched against an equivalent number of establishment delegates from governments, corporations and international agencies at the World Water Forum. The activists, opposed to what they term the 'commodification' of water, were stopped a kilometer away from their establishment opponents. But as the *Associated Press* reported, 'Youths in ski masks attacked journalists and fought with police, smashing a patrol car and hurling rocks during largely peaceful Water Forum protests involving about 10,000 marchers.' The *AP* continued,

Many of the battles over water in Mexico don't involve people who would otherwise be considered radicals. Those on the front lines are residents of low-income neighbourhoods in Mexico City who get in fistfights over water-truck deliveries, or housewives who can no longer stand the stink of untreated sewage flowing beside their homes. And then there are the Indian families whose crops are ruined by the diversion of water to feed a nearby city, while their children go without safe drinking water.¹

In South Africa, there are millions who can tell stories of water 'delivery drought'. Rural areas are underserved due to lack of operating subsidies which mean that a large percentage of taps installed in the post-apartheid era are now dry. And for those lucky to be on municipal water grids, mass disconnections due to unaffordability affect more than 1.5 million South Africans each year, even the government admits.

Is a global 'human right to water' worth pursuing to correct matters? Although the 1948 Universal Declaration on Human Rights² does not explicitly mention water, by 1979 the United Nations Convention on the Elimination of All Forms of Discrimination Against Women provided for 'the provision of adequate nutritious foods and clean drinking-water'. Likewise the renowned South African Freedom Charter of 1955 does not include the word water, but by 1996 South Africa became the world's only country whose constitution

1. Stevenson, M. (2006), 'Protesters Say Water Wars Turning Deadly', *Associated Press*, 17 March.

2. The closest phrase in that document is: 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.'

provides a right to water: 'everyone has the right to an environment that is not harmful to their health or well-being... everyone has the right to have access to... sufficient water'. Have the intervening decades of struggle to codify water rights been worth the effort? Have pressures associated with globalisation and neoliberalism negated these fine words? Are water wars that have broken out across the world changing the balance of power?³

Unfortunately, South Africans' right to water has generally amounted to meaningless rhetoric, as a result of the 'access' phrase (i.e., having a tap is satisfactory even if a household cannot afford the water that should flow through it); provisos for 'incremental' and 'progressive' implementation; and the 'available resources' caveats. The landmark Constitutional Court Grootboom judgment is illustrative. When the plaintiffs' status was reviewed by the *Sunday Times* on Human Rights Day in 2004, Irene Grootboom could not be located, and her community was living in worse poverty than before the judgment:

Grootboom and 900 other applicants successfully contested their 1998 eviction from a site in Wallacedene [a small town in the Western Cape] when the Constitutional Court ruled in their favour in October 2000. Today, all that the site of Grootboom has to show for that victory is the smelly ablution block, built over a donga that had served as a latrine for the squatters who went to court... Some of the toilets and washbasins are blocked, as is the urinal in the men's half of the building. The outside washbasins are broken and useless. Inside, a burst pipe sprays a jet of water onto the wall. Although the two-year-old ablution block is foul, the people of Grootboom still use it, collecting water from the broken pipe to flush the toilets that aren't blocked.

The Grootboom victory made headlines around the world, as noted by former SA Judge Richard Goldstone, who went on to serve the International Court of Justice in The Hague. The 'uniqueness' of the Grootboom decision, Judge Goldstone told Harvard University's Kennedy School of Government, would be remembered as 'the first building block in creating a jurisprudence of socioeconomic rights'.⁴

Utterly useless as water-rights talk appears even after the foundational Grootboom judgment, South Africa's constitutional framing allows us to address two central issues: whether 'commodification' of water is trumping both the heralded jurisprudence of socioeconomic rights, and whether the main implementing mechanism, the 'Free Basic Water' to

3. Some of the key statements about these struggles are Barlow M and Clarke T (2002). *Blue Gold: The fight to stop the corporate theft of the world's water*, New York, The New Press; Friends of the Earth International (2003), *Water Justice for All: Global and local resistance to the control and commodification of water*, Amsterdam, Friends of the Earth International; Grusky, S. and M. Fiil-Flynn (2004), *Will the World Bank Back Down? Water privatisation in a climate of global protest*, Washington DC, Public Citizen; McDonald, D. and G. Ruiters (2005), *The Age of Commodity: Water privatisation in Southern Africa*, London, Earthscan; Petrella R. (2001), *The Water Manifesto: Arguments for a world water contract*, London, Zed Books; People's World Water Forum (2004), 'Declaration of the People's World Water Movement', Delhi, <http://www.citizen.org/cmep/Water/conferences/articles.cfm?ID=11053>; Polaris Institute (2003), *Global Water Grab: How corporations are planning to take control of local water services*, Ottawa; Public Citizen (2003a), *The Evian Challenge: A civil society call for the EU to withdraw its GATS water requests*, Washington; Public Citizen (2003b), *Water Privatisation Fiascos: Broken promises and social turmoil*, Washington; Shiva V (2002). *Water Wars: Privatisation, pollution and profit*. Boston, South End Press; Transnational Institute (2005), *Reclaiming Public Water*, Amsterdam; United Nations Economic and Social Council (2002), 'The Right to Water': 20/01/2003, E/C.12/2002/11. (General Comment No. 15). New York, UN; Water for All (2000-present), *Defend the Global Commons* (newsletter).

4. Schoonakker, B. (2004), 'Treated with Contempt,' *Sunday Times*, 21 March.

be supplied in the wake of a 2000 municipal election campaign promise, has been sabotaged by neoliberally-oriented municipal officials.

2. Water ideologies

To address these issues properly requires some context. There have emerged three main arguments, ideologies or discourses associated with water in South Africa and across the world. We have already reviewed, in brief, the socio-economic rights discourse, and we will later see how difficult it is to apply in a hostile economic and political context.

A second discourse, 'neoliberalism', has an important advocate in *The Economist* magazine, whose July 2003 survey on water declares this dilemma: 'Throughout history, and especially over the past century, it has been ill-governed and, above all, colossally underpriced.' Identifying this problem, naturally begets this solution: 'The best way to deal with water is to price it more sensibly,' for 'although water is special, both its provision and its use will respond to market signals.' As for the problem of delivering water to poor people, 'The best way of solving it is to treat water pretty much as a business like any other.'⁵

The third discourse, inbetween, is the often pleasing philosophy termed 'sustainable development' (or 'ecological modernisation'). It is characterised by this sort of more balanced rhetoric from the World Bank, in its 1996 guidebook *African Water Resources*: 'The strategy developed in this document is based on the principle that water is a scarce good with dimensions of economic efficiency, social equity, and environmental sustainability'.⁶

The reality, of course, is different. The Bank consistently commodifies water, and offers ideological assertions such as this cornerstone of the 'Kampala Statement' by the World Bank and African Water Utilities Partnership in 2001: 'the poor are willing and have the capacity to pay for services that are adapted to their needs... poor performance of a number of public utilities is rooted in a policy of repressed tariffs'.⁷ Moreover, according to a 2000 Bank staff manual, *Sourcebook on Community Driven Development in the Africa Region*,

Work is still needed with political leaders in some national governments to move away from the concept of free water for all... Promote increased capital cost recovery from users. An upfront cash contribution based on their willingness-to-pay is required from users to demonstrate demand and develop community capacity to administer funds and tariffs. Ensure 100% recovery of operation and maintenance costs.⁸

This is a mandate for both political manipulation and economic neoliberalism.

And as for World Bank practices, there appears no change in overall approach. Megadams continue, in spite of 1998-2001 World Commission on Dams, chaired by South African water minister Kader Asmal but soon later sabotaged by Bank staff such as South African water specialist John Briscoe.⁹ As the Commission demonstrated, the costs of corruption,

5. *The Economist*, 'Survey of Water,' 19 July 2003.

6. World Bank (1996), *African Water Resources*, Technical Paper 331, Washington, DC, p. ix.

7. The Kampala Statement was drafted at the World Bank but attempted to speak for 'a total of 270 participants drawn from government, the utilities (including the private sector), financial institutions, external support agencies, and civil society ...' Quotations are from the final E-mail version sent from the Bank on 14 March, 2001.

8. World Bank (2000), *Sourcebook on Community Driven Development in the Africa Region: Community Action Programs*, Africa Region, Washington, DC, 17 March (signatories: Calisto Madavo, Jean-Louis Sarbib), Annex 2.

9. *Mail & Guardian*, 27 April-3 May 2001.

displacement, overspending and ecological damage should have put an end to mega-dams. The Bank's notorious privatisation conditionality continues even via debt relief. And a general philosophical commitment remains to pricing water according to 'marginal cost' (operating and maintenance expenses) plus a profit markup. It is very likely that Paul Wolfowitz's reign at the Bank will fuse neoconservatism and neoliberalism.

Indeed, the fusion of neoliberal and sustainable development discourses became the hegemonic approach to water in recent years, at least since the Asian crisis of 1997-99, as the 'Washington Consensus' suffered ever worsening publicity. From that point, insufficient profit spreads resulted in a low and declining investment record in Third World water systems. There was renewed elite attention to highly-subsidised 'partnerships' (a euphemism for commodification). But the harsh reality of poverty in the Third World has left sustainable development strategies stumped.

The Bretton Woods Institutions' central coordinating and strategising role in water management deserves more consideration, not only because of their influence in South Africa, but because they are key agents in the commodification of water across Africa and the Third World. The IMF has drawn many water-related issues into its own structural adjustment programs, whether the Enhanced Structural Adjustment Facility, Poverty Reduction and Growth Facility or Poverty Reduction Strategy Program.¹⁰

The World Bank has had primary intellectual, water policy, and project promotion roles consistent with water commodification. The Bank is a regular coordinator of, and leverage-point for, donor resources. It is a catalyst for several large dam projects, a project and water sector lender, a 'Knowledge Bank' source of information, a facilitator of civil-society involvement and a promoter of a limited version of 'community participation' in water projects. The Bank is also a government policy adviser, an investor in privatised water infrastructure (through the International Finance Corporation), a host to numerous African water agencies' Water Utilities Partnership, and the main agency imposing stipulations upon water sector management via structural adjustment and debt relief conditionality. The Bank can, therefore, claim not only to have a coherent perspective and wide-ranging market-oriented framework, but also to have applied these to water projects and policies across Africa. The African Development Bank has generally followed the same patterns.

True, there are occasional disagreements amongst Bank staff. A mid-1990s debate occurred over whether retail water prices should follow a rising block tariff or instead more closely approximate the cost of production 'full cost recovery'.¹¹ The victory of the latter argument within the Bank during the late 1990s seemed to herald an era of full-fledged water commodification, at the same time the Bretton Woods Institutions were most dogmatically insistent upon similar principles in relation to macroeconomic policy: in a phrase, 'get the prices right'. Also of critical importance is the role of Bank water management in development projects such as water supply enhancement or via restructuring Riparian water law so as to end centralised administrative allocation of water, to be replaced by water trading in specially-designed markets. In virtually all such cases, the Bank has developed policies and projects that further the commodification of water.

Commodifying water entails highlighting its role mainly as an economic good, attempting to reduce cross-subsidisation that distorts the end-user price of water (tariff), promoting a

10. Grusky, S. (2001), 'IMF makes Water Privatisation Condition of Financial Support', *PSIRU* update, <http://www.psiru.org>.

11. Bond, P. (2002), *Unsustainable South Africa: Environment, Development and Social Protest*, Pietermaritzburg, University of KwaZulu-Natal Press and London, Merlin Press.

limited form of means-tested subsidisation, establishing shadow prices for water as an environmental good, solving problems associated with state control of water (inefficiencies, excessive administrative centralisation, lack of competition, unaccounted-for-water, weak billing and political interference), and in the process, fostering the conditions for water privatisation. Social disasters from such rigid neoliberal policy directives were strewn across Africa, especially when low-income people simply could not afford any state services, or when parents cut back on girls' schooling or healthcare because cost recovery became burdensome. In October 2000, the Bank was instructed by the US Congress never to impose these user-fee provisions on education and healthcare, and in 2002 a campaign by progressive NGOs in the US expanded to decommodify water as well.

The struggles against commodified water often erupt on global platforms, such as the triannual World Water Forum – at The Hague in 2000, Kyoto in 2003 and Mexico City in 2006 - and related meetings of the water establishment such as World Trade Organisation summits. There, activists have battled a series of enemies:

- the Global Water Partnership (created by the World Bank, UN Development Programme and Swedish aid);
- the Marseilles-based World Water Council (founded by Suez, Canadian aid and the Egyptian government and joined by 300 private companies, government ministries, and international organisations);
- the International Private Water Association (privatisation firms plus the World Bank, US Credit Export Agency and Overseas Private Investment Corporation and the European Bank for Reconstruction and Development);
- the World Bank itself (which in \$20 billion worth of 1990s water projects imposed privatisation as a loan condition in a third of the transactions);
- Mikhael Gorbachev's Green Cross (in ongoing dispute with Council of Canadians over global-scale water rights and property rights in the UN);
- Aquafed (a federation set up by a former Suez managing director); and
- the World Panel on Financing Infrastructure.

The latter was chaired by former IMF managing director Michel Camdessus during 2002-03, with major multilateral development banks, Citibank, Lazard Freres, the US Ex-Im Bank, private water companies (Suez, Thames Water), state elites (from Egypt, France, Ivory Coast, Mexico, and Pakistan) and two NGOs (Transparency International and WaterAid). It proposed much greater amounts of public subsidies for privatisers, via a risk insurance mechanism to safeguard companies like Suez against currency crises which devastated the firm's Argentina operations after 2001.

The United Nations has generally sided with the establishment. The UN Panel on Water declared in 1998 that 'water should be paid for as a commodity rather than be treated as an essential staple to be provided free of cost'.¹² At the UN's September 2002 World Summit on Sustainability in Johannesburg, 'Public-Private Partnerships' ('Type 2 Partnerships') were endorsed. A few weeks later, the UN formally adopted the New Partnership for Africa's Development (championed by South African president Thabo Mbeki), which calls for increased foreign investment in privatised African infrastructure.

12. *New York Times*, 22 March 1998.

By mid-2005, even Rand Water – Johannesburg’s catchment management parastatal agency –successfully bid on a joint venture with a Dutch company that will privatise the water system of Accra, Ghana, in a World Bank funded project. Moreover, a new ‘pre-paid meter’ technology that leads to self-disconnection was pioneered by Conlog, a South African firm directed by the late ANC leader Joe Modise once he retired as minister of defense in 1999. Conlog is manufacturing these devices and installing them across the African continent. Soweto activists have taken the lead in ripping out pre-paid meters – both water and electricity - and periodically marching to municipal offices to trash the hated technology, as well as preparing a court case arguing that the meters are unconstitutional, as reviewed below. There are also growing links between the Ghanaian National Coalition Against the Privatisation of Water and the Johannesburg Anti-Privatisation Forum.

Meanwhile, some water-delivery NGOs such as London-based WaterAid, members of Freshwater Action Network or South Africa’s Mvula Trust have also become bogged down in the discourse of sustainability under constraints of neoliberalism and budget cuts. The NGOs find themselves occasionally accused of betraying mass popular movement sentiments over water prices, standards and institutional delivery systems. While expanded community control is generally an objective of progressive activists, a primary concern is that decentralisation should not replace a serious state commitment to subsidising poor people’s water. Critics argue that some NGO interventions lubricate neoliberalism, because installing inadequate collective tap systems – usually without sufficient sanitation - contributes to further state shrinkage. The general trend towards private outsourcing, including some examples of NGO delivery, has been destructive, because standards are lower, prices are higher, disconnections are more common, maintenance is worse and accountability is harder to establish.

In the context of hotly contested policy and projects, the establishment water groups described above have learned rhetorical lessons about sustainability, and some might even concede that a ‘right’ to water can be useful; although micro-neoliberal pricing of water (as reviewed below) would still be a bottom-line demand. The mix of sustainability and market phrasing leaves enormous challenges for activists and analysts to transcend rights rhetorics and delve into the finer details of water systems – especially water pricing techniques that tend to exclude the poorest from access.

In turn, while microeconomic techniques have developed since 1992, when Rio and Dublin water conferences established water as an economic good, the same principle was applied in South Africa in 1994, the year of political liberation, when in the country’s first ‘democratic’ White Paper on water, the minimum price of water was set at marginal cost - i.e., the operating and maintenance expenses associated with covering the next unit of water’s production cost. As we will see, this approach to commodification soon had a lethal impact.

3. Commodification of South African water

Given that the vast majority of black people lacked access to direct household water and sanitation in 1994, the new government’s mandate was to provide water as an essential staple *free of cost* for at least a ‘lifeline’ amount to all residents was one of the African National Congress’ (ANC) first electoral promises, within the *Reconstruction and Development Program* (RDP). Such a strategy would have required a nation-wide water pricing policy with higher unit amounts for higher-volume water consumers, especially large firms, mines and (white) farmers. This was not an impossible task, but the first post-apartheid water minister, Kader Asmal,

refused to grasp the nettle. His rejoinder to the demand that he respect the promised 50 liters per day lifeline supply of water was telling:

The positions I put forward are not positions of a sell-out, but of positions that uphold the policy of the South African government and the ANC ... The RDP makes no reference to free water to the citizens of South Africa. The provision of such free water has financial implications for local government that I as a national minister must be extremely careful enforcing on local government.¹³

It took a neoliberal leap of logic to redefine the word 'lifeline' to mean, not free, but instead the equivalent of the operating and maintenance costs (i.e., full marginal-cost recovery, namely the break-even cost of supplying an additional unit of the water to the customer). Under the influence of his own neoliberal bureaucrats and the World Bank, this slippery semantic solution was applied with increasing ruthlessness during the late 1990s.

The main neoliberal criticism of a free lifeline and rising block tariff offered by Bank water official John Roome, the taskmanager of the controversial Lesotho Highlands Water Project, was that municipal privatisation contracts 'would be much harder to establish' if poor consumers had the expectation of getting something for nothing. If consumers didn't pay, Roome continued, Asmal needed a 'credible threat of cutting service.'¹⁴ This was part of Roome's advice, which the Bank's 1999 *Country Assistance Strategy* for South Africa later termed 'instrumental' in shifting South African water policy.¹⁵

Hostility to subsidies was a general phenomenon within the post-apartheid state. In 1996, Dr Chippy Olver, then deputy director-general of the Department of Constitutional Development and subsequently the director-general of the Department of Environmental Affairs and Tourism (and main manager of the 2002 World Summit on Sustainable Development) told the *Mail & Guardian* newspaper that low-income people should *not* receive lower-priced electricity than large firms, such as the energy-guzzling Alusaf aluminum smelter (they pay, on average, four times more). He remarked offhandedly, 'If we increase the price of electricity to users like Alusaf [so as to cross-subsidise low-income consumers], their products will become uncompetitive and that will affect our balance of payments.'¹⁶

Instead, the commodification of water - especially in the 1994 *Water and Sanitation White Paper* and in a 1998 *Water Pricing Policy* - was meant to generate more rational utilisation of scarce water resources, beginning with marginal-cost based pricing. The logical implications are the formal privatisation (or corporatisation) of services and the fragmentation of the public sector. Both processes were already in train in South Africa, with the French company Suez landing water contracts in small Eastern Cape provincial towns (Stutterheim, Queenstown, Fort Beaufort) even before the end of apartheid, leading to the company's capture of the massive Johannesburg water management contract in 2001. In addition, privatisation or even merely corporatisation of water led inexorably to an arm's-length, fractured relationship between the water and health departments within the state. The South African Department of Health

13. Asmal, K. (1998), 'Policy Directions of the Department of Water Affairs and Forestry', Letter to P. Bond, Pretoria, 8 May.

14. Roome, J. (1995), 'Water Pricing and Management: World Bank Presentation to the SA Water Conservation Conference', Johannesburg, South Africa, 2 October.

15. World Bank (1999), *Country Assistance Strategy: South Africa*, Washington, Appendix 2.

16. *Mail & Guardian*, 22 November 1996.

acknowledged this problem more than a year before the infamous 2000-02 cholera outbreak, which affected several hundred thousand people:

It is common knowledge that lack of water and sanitation is a common cause of cholera, diarrhea or other illnesses that afflict so many in our country and that there is a relationship between various communicable diseases, including TB, and conditions of squalor. Yet we often have not structured our institutions and service delivery systems in ways that can easily respond to these realities.¹⁷

One indication of the problem of water commodification was the rash of disconnections due to unaffordability, affecting 275,000 households in 2003 alone.¹⁸ To illustrate, water commodification at the cholera epicenter in Ngwelezane in KwaZulu-Natal province resulted in the disconnection of thousands of people from their previously free water supply in August 2000. The *Sunday Times* reported,

This week, a startling picture emerged of the sequence of events that led up to the outbreak around Ngwelezane. Authorities discovered that some areas were still receiving free water in terms of a 17-year initiative of the former KwaZulu government to deal with the 1983/4 drought.

'It was eventually noticed, and it was decided to switch off the supply', said the chief executive of the Uthungulu Regional Council, B.B. Biyela. 'The people were given sufficient warning and the supply was cut off at the beginning of August'.

The first cases indicating cholera were noticed in Matshana and Nqutshini in the second week of August. The first case confirmed was on August 19. At this point, health officials asked the Mhlathuze Water Board to reconnect the free water supplied by the former homeland government to the Nqutshini area.¹⁹

The connection fee of R51 (then US\$7) imposed by Biyela was unaffordable for thousands of people. He cut off their water supply using a 'pre-paid meter' self-disconnection strategy, thus saving a few tens of thousands of rands but costing the provincial KwaZulu-Natal health authorities and the sick people tens of millions.

What is most important here is that privatizers – whether multinational corporation Suez or even corporatising KwaZulu-Natal municipalities and water boards which are moving to full cost-recovery systems - are simply taking no responsibility for the social and personal costs of cholera, diarrhea, dysentery, TB or other Aids-opportunistic infections incurred by health clinics and the patients. A company making profits out of water sales feels no guilt when women and children suffer most. It does not repair environmental damage when women are forced to cut down trees to heat their families' food. It pays none of the local economic costs when electricity cut-offs prevent small businesses from operating, or when workers are less productive because they have lost access to even their water and sanitation.

The ability to avoid the social implications of public goods associated with water and electricity allows huge multinational corporations to make enormous profits by expanding

17. Department of Health (1999), 'Health Sector Strategic Framework, 1999-2004', *Department of Health*, Pretoria.

18. Muller, M. (2004), 'Turning on the Taps', *Mail & Guardian*, 24 June. For a lengthier study, see McDonald, D. and J. Pape (Eds)(2002), *Cost Recovery and the Crisis of Service Delivery in South Africa*, London, Zed Books and Pretoria, Human Sciences Research Council Press.

19. *Sunday Times*, 9 October 2000.

infrastructure systems just to the point where low-income people live. Usually this is a geographic decision, so that areas served by privatised services are noticeably 'cherry-picked': wealthy consumers get the services but poor people are denied access. Even before the logic of privatisation sets in, the necessary preliminary work by the neoliberal state - commercialising, delinking water from other state functions, raising tariffs, cutting off people who cannot pay their bills - all have the same effect, as Biyela proved in Ngwelezane.

As a result, the key determinant is not whether water is privately or publicly managed, but rather whether it is in the process of being commodified. At that point, men like Biyela are just as lethal in the public sector as they would be if acting as chief executive officers of a privatised water company.

4. Free water?

Finally in August 2000, when a cholera crisis emerged in poverty-stricken KwaZulu-Natal province and social protest rose to new heights, Asmal's replacement (after a 1999 cabinet reshuffle), Ronnie Kasrils, admitted that 'lifeline' should really mean 'free'. But a rapid neoliberal reaction by the Department of Trade and Industry prevented the government from paying for the cross-subsidy by charging corporations more. Still, the 2000 municipal promise is based upon a strong version of the rights discourse: 'ANC-led local government will provide all residents with a free basic amount of water, electricity and other municipal services, so as to help the poor. Those who use more than the basic amounts will pay for the extra they use.'

Two points are important: first, the promise is based on a 'universal entitlement', that basic needs should be met (regardless of income), consistent with the Constitution's Bill of Rights; and second, the ANC promise also means that those who consume more should pay more per unit after the free basic supply, which promotes 'cross-subsidies' (i.e., redistribution).

In July 2001, the free water policy became official, notwithstanding widespread sabotage by municipal and national bureaucrats responsible for administering the policy. Subsequently, there have been no new water privatisations, in large part due to the fear that cherry-picking and supply cuts will be deemed unconstitutional. Moreover, some of the major pilot cases resulted in disaster.

For example, Saur had to renegotiate its Dolphin Coast contract in mid-2001 due to lack of profits, with research showing that it regularly denies services to poor people. For similar reasons, Saur also pulled out of its Maputo, Mozambique contract in late 2001. Having been thrown out of the small town of Fort Beaufort (also known as Nkonkobe), Suez's subsidiary is responding with a lawsuit for millions of dollars in damages - much as did Bechtel in the celebrated case of the uprising against water privatisation in Cochabamba, Bolivia.

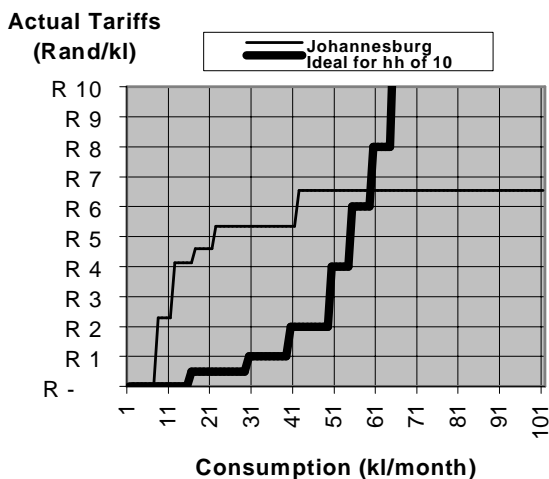
The Johannesburg Water Company, also managed by Suez, is controversially introducing pit latrines, in spite of porous soil and the spread of the E.Coli bacteria, to prevent poor people flushing their toilets. If these are unacceptable because of South Africa's dolomitic soils, Johannesburg Water offers a low-flush 'shallow sewage' system to residents of 'condominium' (single-storey) houses arranged in rows, connected to each other by sanitation pipes much closer to the surface. Given the limited role of gravity in the gradient and the mere trickle of water that flows through, community residents are required to negotiate with each other over who will physically unblock sewers every three months. Pre-paid meters are also being installed, and as we note below, may be the most important test case for water privatisation.

But most tellingly, perhaps, Johannesburg officials also sabotaged the ANC's 'free basic water' promise as early as July 2001, when revised water tariffs were issued following the December 2000 municipal

elections. Those tariffs provided a very small free lifeline, 6,000 liters per household per month, followed by a very steep, convex curve, such that the next consumption block became unaffordable, leading to even higher rates of water disconnections in many settings. The 6,000 liters represent just two toilet flushes a day for a household of eight, for those lucky enough to have flush toilets. It leaves no additional water to drink, wash with, or clean clothes or the house.

Optimally, a different strategy based upon decommodification would provide a larger free lifeline tariff, ideally on a per-person, not per-household basis, and then rise in a concave manner to penalise luxury consumption (Figure 1). Johannesburg's tariff was set by the council with help from Suez, and has an extremely high price increase for the second block of consumption. Two years later, the price of that second block was raised 32%, with a 10% overall increase, putting an enormous burden on poor households which used more than 6,000 liters each month. The rich got off with relatively small increases and a flat tariff after 40kl/hh/month, which did nothing to encourage water conservation.

Figure 1: Divergent water pricing strategies
Johannesburg (2001) v. ideal tariff for large household



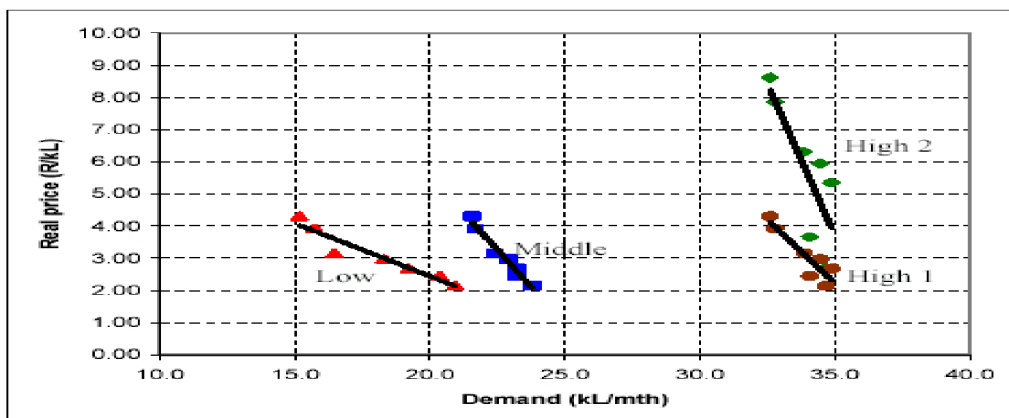
Source: Johannesburg Water (thin) and own projection (thick)

In Durban, South Africa's wealthiest municipality, a similar process has recently been measured. The 1997 consumption of water by the one third of the city's residents who have the lowest income was 22 kl/household/month. Shortly afterwards, a 'Free Basic Water' strategy was adopted (for just the first 6 kl/hh/month), but steep increases in price for the next blocks of water were imposed. By 2003, the price of the average liter of water consumed by the lowest-income third of billed residents had doubled from R2 in 1997 (about US\$0.30) to R4 (Figure 2). According to Reg Bailey, who runs Durban's water tariffs, that price increase resulted in average consumption by low-income consumers diminishing to 15 kl/household/month during the same period. (The price elasticity for water was, hence, a disturbing -0.55 – an extremely large impact for what should be a basic need, hence relatively impervious to price change.) In contrast, for middle- and high-income consumers, the price rise was a bit higher, but

the corresponding decline in average consumption was much less (the price elasticities, respectively, were -0.14 and -0.10).²⁰

In sum, although they provided the pilot case of Free Basic Water, Bailey and his colleagues established a system in the late 1990s and early 2000s that led to much greater inequality. Like the Johannesburg case, it simply goes to show that the 'devil is in the details', and that the struggle over the shape and slope of the tariff curve is indeed a proxy for class struggle. Durban's new radical social movements began major mobilisations against water apartheid during 2004-05, and some initial concessions are encouraging.

Figure 2: The impact of price increases on water consumption by different income groups, Durban, 1997-2003.



Source: Bailey and Buckley.

The sabotage via municipal pricing was condoned at the highest levels, where politicians and bureaucrats continued to find ways to 'blame the victim'. According to newspaper advertisements widely placed by Kasrils periodically beginning in December 2002,

If you cannot afford to pay for your water, you are still entitled to a free basic water supply. It is a criminal offense to connect to a public supply without the Municipality's permission since this could harm other water users. If you are unable to pay your water bill, you should make arrangements with your Municipality. Although they may not withhold the basic supply, they may restrict you to this basic amount. If you interfere with the restrictor system you can face a total cut-off because you may harm other people in the community. Also note that even if you do not receive an account, you are still responsible to ensure payment.²¹

The complicated and highly contradictory phrasing reveals the government's ambivalence on disconnections. In May 2003, after embarrassing, high-profile media revelations about disconnections, Kasrils promised in his parliamentary budget speech to 'name and shame'

20. Bailey, R. and C. Buckley (2005), 'Modelling Domestic Water Tariffs', *Powerpoint presentation to the University of KwaZulu-Natal Centre for Civil Society*, Durban, 7 November.

21. Kasrils, R. (2002), 'Concerned about water supply and sanitation... concerned about free basic water and water cut-offs?', Advertisement, *Sunday Independent*, 8 December.

municipalities that disconnected residents without a nearby standpipe backup supply or 'trickler' restrictor device (such as a washer with tiny holes inserted into the pipes, that allow merely drips). But Kasrils (2003) admitted that the three largest cities in South Africa were still disconnecting 17,800 households a month.²² One response to commodification of water, high and regressive tariffs and disconnections, was the illegal reconnection of water, as one of several strategies adopted by activists in South Africa and many other sites, as a more direct way of 'decommodifying' water.

5. Resistance

The highest profile citizens' campaign against commodified water was in Bolivia in April 2000, when the people of the third-largest city, Cochabamba, fought the US firm Bechtel, backed by the World Bank. As of two months ago, the new Bolivian water minister in Evo Morales' indigenous-led government is Abel Mamani, a neighbourhood activist veteran of another water war, in El Alto, who cut his teeth battling the French water company Suez. Mamani made five points in a speech just prior to the March 2006 World Water Forum:

- Water is a fundamental human right and a pre-requisite to the realisation of other human rights;
- Water belongs to the earth and all living beings including human beings and it is the duty of everyone to protect access to water for all forms of life and for the earth itself;
- Water is a public good and therefore its management needs to be in a sphere that is public, social, community-based, participative and not based on profit;
- Water should not be privatised and should be withdrawn from all free trade and investment agreements; and
- There should be profound change in the organisation of the World Water Forum to allow majority and decisive participation in the negotiations by the poorest and those who most need water.

Rights rhetorics have become important in Bolivia, as well as other sites where the balance of forces has shifted left. Other major battles – not always victorious - have been fought in Manila, Jakarta and Detroit. Biwater was kicked out of Dar es Salaam last year, to the regret of its advisor, the Adam Smith Institute, funded by British taxpayers. Civil society movements and governments have forced Suez to retreat from major cities ranging from Atlanta to Buenos Aires to Montevideo in recent months. The firm's bid to retain the Johannesburg Water contract for another 25 years will be considered by council in June 2006, but after mass protests in Soweto, Orange Farm and other townships, is by no means secure.

The goals of progressive civil society activists, generally, are the decommodification of water, improved access by poor people, better conditions for water workers, and more appropriate eco-management of water. The latter should include penalties for hedonistic consumption. Additional water campaigns are waged against megadams, inappropriate irrigation, fish destocking, water pollution, bulk water diversions, bottled water, abuse of water by golf courses and extractive firms like Coca Cola and Nestle, and looming water scarcity. On one crucial battleground, control of water by the World Trade Organisation,

22. Kasrils, R. (2003), 'Report on Water Cut-offs a Case of Sour Grapes among US Populists.' *Sunday Independent*, 8 June.

activists appear to have just won, by exempting water from the WTO's General Agreement on Trade in Services.

Who are the contemporary water warriors engaging in these struggles? Aside from community campaigns in cities of the Global South like Detroit or Cochabamba, strong critics of neoliberal water policies can be found in radical citizens'/consumers' organisations (especially the Council of Canadians in Ottawa and Public Citizen in Washington); trade unions (Public Services International and their affiliates); indigenous people's movements; environmental groups (led by the International Rivers Network and Friends of the Earth); and think-tanks (e.g., the PSI Research Unit at Greenwich University, Polaris in Ottawa, the TransNational Institute in Amsterdam, the Agriculture and Trade Policy Center in Minneapolis, the Municipal Services Project in South African and Canadian universities, Parivartan and the Centre for Science and the Environment in New Delhi, Food and Water Watch in Washington, and the International Forum on Globalisation in San Francisco).²³ The World Social Forum in Porto Alegre, as well as regional Social Fora, have provided spaces for water activist assemblies during the early 2000s. Email listserves such as 'water warriors', 'reclaiming public water' and 'right to water' permit information exchange and coordination. A People's World Water Forum was held in Delhi two years ago, preceded by the 2001 'Blue Planet' conference in Vancouver, as well as periodic European gatherings. Because the water movements have generated superb examples of cooperation across borders, campaigns against commodified services will continue to serve as a model for global civil society.

As the March 2006 Mexico confrontation shows, protesters are linking up with vigour. No one disputes that with at least 2.6 billion people lacking adequate sanitation and 1.1 billion lacking access to improved water sources, there is an urgent need for dramatic improvements in investment, management and affordability. Third World states shrunk during the past quarter-century of sustained structural adjustment, addled by debt payment outflows, capital flight and foreign aid cutbacks. So the resources required for water and sanitation can not often be found. Still, the primary strategy adopted by water advocates has been to defend the state as the key institution for delivering water. There are vast problems with relying on state agencies (whether national or municipal), yet in most societies it remains the institution which can best redistribute and organise resources.

As we have seen, in a setting as unequal as South Africa - with 45% unemployment and, alongside Brazil and Guatemala, the world's highest income disparities - the neoliberal policies adopted during the 1990s pushed even essential state services such as water beyond most households' ability to pay. Some of these policies were adopted before political liberation from apartheid in 1994, but many were the result of influence on Nelson Mandela's ANC by the World Bank, US AID and other global and local neoliberals during the late 1990s.

23. From the struggles have emerged inspiring leaders, intellectuals and politicians, including Accra campaigners Rudolf Amenga-Etego (who was awarded the 2004 Goldman environmental prize) and Alhassan Adam, Canadians Maude Barlow and Tony Clarke (who won the 2005 Right Livelihood Award) and writer Varda Burstein, Paris-based Danielle Mitterrand, Cochabamba movement leader Oscar Olivera, Washington-based water watchdogs Maj Fiiil-Flynn and Sara Grusky, Olivier Hoedeman and Satoko Kishimoto of 'Reclaiming Public Water' at the Transnational Institute, filmmakers Alan Snitow and Deborah Kaufman, European campaigner Ricardo Petrello, anti-dam strategists Paddy McCully and Lori Pottinger, and extraordinary Indian women like Sunita Narrain, Medha Patkar, Arundhati Roy, Vandana Shiva and Shiney Varghese. South Africans who are well-known internationally include Bryan Ashe and Lianne Greef of the SA Water Caucus, Freedom of Expression Institute lawyer Simon Delaney, Dale McKinley of the national Campaign Against Water Privatisation, Wits sociology researcher Ebrahim Harvey, Anil Naidoo (based in Ottawa), trade unionist Roger Ronnie, and Sowetans Trevor Ngwane and Virginia Setshedi.

Problems associated with the neoliberal approach to basic services often relate to the dismissive regard with which positive eco-social externalities associated with water/sanitation, energy and other services are understood by neoliberals. The failure to fully incorporate social and environmental benefits of state services is typical of commodification, because when state services undergo commercialisation, the state fragments itself as water, electricity, health and other agencies adopt arm's-length, non-integrated relationships that reduce them to mere 'profit-centers'. Service disconnections follow logically.

The first stage of resistance to the commodification of water and electricity often takes the form of a popular demand for a short-term, inexpensive flat rate applicable to all consumers. More compellingly, for medium-range policy a redistributive demand for decommodification is advanced by groups like the SA Municipal Workers Union, Rural Development Services Network, Johannesburg Anti-Privatisation Forum and Soweto Electricity Crisis Committee (SECC): a specific minimal daily amount of water (50 liters) and electricity (1 kilowatt/hour) to be supplied to each person *free*. The free services should be financed not only by subsidies from central government, but also by a rising block tariff in which the water bills for high-volume consumers and corporations rise at a more rapid rate when their usage soars to hedonistic levels. When charged at ever-higher rates, the consumption of services by hedonistic users should decline, which would be welcome. South Africa is a water-scarce country, especially in the Johannesburg area which depends upon water from socio-ecologically destructive Lesotho dams.

Can rights rhetorics support these struggles? In 2006, a crucial case will be filed that will shed light on how far constitutional and legal strategies can advance the decommodification cause. From Phiri, Soweto, Lindiwe Mazibuko and six co-plaintiffs are suing the City of Johannesburg and Johannesburg Water Pty (Ltd) for the limitations placed on free water (at 6 kl/hh/month) and for the mandatory change from a full-pressure, unmetered, uncontrolled volume water supply (at a fixed charge) to a controlled volume water supply system using a prepaid meter. Mazibuko et al argue that 'without the choice of all available water supply options' and without supplying 50 liters per person per day as a minimum free basic supply, Johannesburg has acted unconstitutionally and unlawfully.

What the South African experience these last few years shows is that commodification of water doesn't work and will be resisted, especially if combined with cutoffs of services. These services create additional social welfare in the form of public/merit goods, but only if they are not privatised, because solely the state - if it genuinely represents society - has an in-built incentive to use services like water and electricity to promote public health, gender equity, environmental protection and economic spin-offs. Not only do privatizers ignore public goods, they are also inevitably opposed to free lifeline supplies and redistributive pricing. Hence, as so many South Africans have learned these last few years, the fight against privatisation is also a fight to decommodify the basic services we all need simply to stay alive. And by winning that fight, there is a chance that the state can be won over to its logical role: serving the democratically determined needs and aspirations of that huge majority for whom the power of capital has become a profound threat to social and environmental well-being.

The socialist strategy has always entailed making profound demands - in some discourses, 'a transitional program' and in others, 'non-reformist reforms' - upon the capitalist state.²⁴ When invariably the *class power* of capital is challenged in the process, no matter how feasible the demands are in fiscal/administrative respects, the question of socialist revolution inexorably

24. Esping-Andersen, G. (1990), *The Three Worlds of Welfare Capitalism*, Princeton, Princeton University Press.

emerges. The demands for decommodification are popular, sane, logical and backed by solid democratic organisation. On behalf of capital, the state must resist, and the South African state has typically done so by deploying the rhetoric of globalisation.

Where does that leave those arguing for traditions of human rights (both civil/political and socio-economic), decommodification and socialism-from-below? In coming months and years, four sorts of tasks present themselves:

- link up the demands and campaigns for free services, medicines and universal-entitlement income grants;
- translate these from the spheres of consumption to production, beginning with creative renationalisation of privatised services, restructured municipal work, expansion of the nascent cooperative sector and establishment of state-driven local generic drug manufacturing;
- strengthen the basis for longer-term alliances between poor and working people that are in the first instance rooted in civil society and that probably within the next decade will also be taken up by a mass workers' party; and
- regionalise and internationalise these principles, strategies and tactics, just as Pretoria politicians and Johannesburg capital intensify their subimperialist ambitions across Africa.

Notwithstanding South Africa's rights-based rhetoric and various attempts to tinker with environmental management problems through technical, market-oriented solutions, two factors are obvious: the imperatives of ecological exploitation and the impossibility of more fundamental reversals of environmental degradation. In contrast, an eco-socialist perspective starts with the very ingredient missing from virtually all post-apartheid government initiatives: popular mobilisation. In this sense, the issues associated with the survival of society's oppressed communities can only be understood and tackled through an increasing convergence of green, brown, feminist, racial/ethnic justice, and class politics.

One very hopeful sign of the last point is the emergence of radical urban social movements in the largest South African cities. But linkage into related areas remains of enormous importance. While these urban social movements are bound to have an increasing impact upon South African politics, a potential split between the trade unions and the ruling party in coming years is probably the most important objective precondition for the renewal of a bottom-up socialist political program. For as neoliberal economic orthodoxy continues to prevail in so many areas of South African environment and development, and as centrist sustainable-development discourses, policies and legislation fall far short of resolving the interlocking crises, it is to more radical confrontations with powerful forces that South Africa's eco-social justice movements inexorably will be drawn, with or without juridical recognition of rights discourses.

The Human Right to Water and Sanitation (HRWAS) was recognised as a human right by the United Nations General Assembly on 28 July 2010. The HRWS has been recognized in international law through human rights treaties, declarations and other standards. Some commentators have derived the human right to water beyond the General Assembly resolution from Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, making it binding under international law. Other treaties that

Keywords: Access to water, African human rights system, extractive industries, environmental protection, human right to water

La mauvaise r gulation sur les ressources en eau, en particulier en Afrique, a affect  la disponibilit  et l'accessibilit    une eau de qualit . La communaut  internationale a,   travers une approche molle controvers e, reconnu le droit * MPhil (Pretoria), MSc (Tamale), BSc (Kumasi) and PhD candidate at. Save to Library. Download. by Samrawit Getaneh Damtew.    3. Socio Economic Rights Human rights principles and standards regarding the human right to water. Recent Global Measures in Support of Water Rights UN and other International Mechanisms. Annotated bibliography: selected treatises, articles, reports, and domestic laws.   water may also enable people to seek judicial enforcement at the local and international levels when their rights are violated. Researching the human right to water implies use of a wide variety of legal instruments and documents produced by inter-governmental and non-governmental organizations and states.