Participation, Equality and Water

The Clash of Human Rights Values and Neoliberal Principles in Durban, South Africa

Thesis submitted in partial fulfillment of the requirements of the Degree of Master of Philosophy in Culture, Environment and Sustainability.

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Oslo, 20.05.2010
Kristine☺

Abbreviations

- ANC: African National Congress
- BFRA: Bayview Flats Residents Association
- CALS: Centre for Applied Legal Studies
- CAWP: The Coalition Against Water Privatisation
- CBO: Community-based organization
- CCF: Concerned Citizens Forum
- CCG: Concerned Citizen Group
- CCS: Centre for Civil Society, University of KwaZulu-Natal
- CEDAW: The Convention for the Elimination of all Forms of Discrimination against Women
- CHAC: Chatsworth Housing Action Committee
- Cosatu: Congress of South African Trade Unions
- DPLG: Department of Provincial and Local Government
- DWA: Department of Water Affairs (former DWAF)
- DWAF: Department of Water Affairs and Forestry (former name of DWA)
- EWS: eThekwini Water and Sanitation Unit
- EXCO: Executive Committee
- FB: Free Basic
- FBW: Free Basic Water
- GEAR: Growth, Employment and Redistribution
- HRBA: Human Rights-Based Approach to development
- IBR: Institute for Black Research
- ICCPR: The International Covenant on Civil and Political Rights
- ICESCR: The International Covenant of Economic, Social, and Cultural Rights
- IDP: Integrated Development Plan
- Kl: kilo liter
- lcd: liters per capita per day
- LTDF: Long Term Development Framework
- MF: Minority Front

- MSA: The Local Government Municipal Systems Act
- NGO: Non-governmental organization
- NWA: National Water Act
- PR: Proportional Representative
- RDP: Reconstruction and Development Programme
- RSA: Republic of South Africa
- SANCO: The South African National Civic Organization
- UN: United Nations
- UNHR: Universal Declaration of Human Rights
- VAT: (TAX)
- WFRA: Westcliff Flats Residents Association
- WHO: World Health Organization
- WSA: Water Service Act
- WSAu: Water Service Authority
- WSDP: Water Service Development Plan
- WWII: World War II

Chapter 1: Introduction

Water is essential, for both humans and the environment. This renewable, though finite, resource is becoming increasingly scarce. As the resource becomes scarcer, the distribution of water becomes more important and questions of concern occur. In a world with a heavily skewed distribution of resources, means and attempts to redress these inequalities have been, are and will continue to be important objectives. This need for redistribution of resources is inherently linked to the need to alleviate countless numbers of people from poverty. This necessity, however, needs to be achieved without destroying the environment, the basis for life.

An initial assumption is that in order to create a fair distribution of water, everybody's needs and concerns should be heard and considered. Despite the assumption that all needs and interests should be heard and considered, this may not guarantee a fair and just distribution of a scarce resource. The inclusion and voicing of various interests and concerns are inherently linked to participation. Another concept important with regard to these ideas is the concept of empowerment. This is further tied to the ideas of development as freedom and capability. All of these notions are inherently related to people's ability to make decisions and influence their own lives. Through empowerment and participation, people can become the agents initiating the necessary changes, changes to improve their own opportunities and future. By enhancing people's dignity, empowerment and capabilities, their abilities to claim rights and entitlements are subsequently strengthened. This results in a larger ability to enforce their right to water, creating empowerment. This empowerment increases the ability to voice concern and interests when in competition with other interest groups.

With regard to water, I will only look at water used for basic needs; drinking, food preparation and basic hygiene. Thus, water needs, and demands of agriculture, ecosystems, industrial production and energy will not be focused on. This is caused by the role water, water access and water-security plays in development through basic health and life. It is also based on the necessity to find a way of ensuring water for all, and fulfilling the human right to water. As water is a finite resource, the priority of

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ensuring enough water for current and future human and ecological needs requires a redistribution of water.

The empirical focus of this study is South Africa, a country with large differences when it comes to economic strength and developmental level. While parts of the population live in conditions similar to western and northern standards, others are living in conditions with insufficient water and sanitation access. At the same time, the country has a progressive constitution, holding a number of socio-economic rights. While these rights are universal, the effects of these rights may be contradictory.

More specifically will the empirical focus be on the city of Durban in the eThekwini municipality. This city and the city's water administration are considered to be progressive, and was a frontrunner with regard to ensuring a basic amount of water to people in their constituency. Furthermore, in Durban, the traditionally Indian area of Chatsworth has been a location for continual opposition and resistance towards the local municipality. This continual resistance and use of a number of methods in order to gain influence has resulted in a partnership between the municipality and the area's residents organizations. -- thus making the area somewhat successful in terms of public participation and influence.

Research Questions

Based on the short background, which will be expanded in chapter three, and given the fact that water is an essential resource as well as because of its skewed distribution the following intersection of research questions will be discussed in this thesis:

> • *How has the right to water been implemented in Durban, and*
> *how has this been influenced by participatory structures in the area?*

I will answer these questions through the following three inter-related sets of questions:

1. *What role do judicial and political institutions play in ensuring redistribution of power and influence with regard to water policy and the right to water?*

2. *How effective are administrative structures in ensuring power redistribution and influence in water policy decisions and design?*

3. *What channels of influence do civil society organizations use in influencing water policy and the right to water?*

The first sub-question deals with the accessibility and the effectiveness of the judicial and the political structures for poor and marginalized as a means to voice concerns and needs. The second sub-question will focus on the power redistribution that may be achieved through establishment of local participatory structures. The third question will discuss the methods civil society and civil society organizations have at their disposal in order to influence the water context.

Theoretical Approach

An important discourse and approach in the current development discourse is the Human Rights-Based Approach to Development (HRBA). This approach is increasingly becoming mainstreamed in United Nations institutions and programs. The HRBA entails emphasizing a set of principles, which is integrated into development efforts. While the human rights have been linked to development from the emergence of the human rights-notion, HRBA did not emerge in full force until the 1990s. The approach emphasizes a holistic approach to development and to humans, and argues that development and human rights efforts need to be advanced on several important fields simultaneously as the various human rights are interrelated and interdependent.

HRBA's understanding of poverty and development is related to the concepts of freedom and capabilities. Furthermore, some of the important principles highlighted in this approach are participation and empowerment (Andreassen 2006). The HBRA's emphasis on participation will be paired with two important notions about participation. Firstly, the notion of the three different types of spaces or channels for participation: closed channels, invited channels and created/invented channels, with most focus on the two latter types of channels. The type of channel that the participation, or the voicing of concerns, appears in is linked to the power-relations in the participation and also who initiates and controls it. The second notion of participation that will be discussed is the ladder of participation. Arnstein's (1969) ladder of participation describes the 'quality' of the participation that is present and how effective the channels are to induce a change. These approaches will be further clarified in the second chapter.

Methodology

The Case

During apartheid the majority of the population was kept outside the economic, political and social structures. The first democratic election brought the African National Congress (ANC) to power in 1994. Given the country's history of exclusionary rights and citizenship, South Africa is one of few countries that has a broad inclusion of human rights in the constitution created after the end of apartheid in 1994. The country's constitution holds that the human rights should be respected, protected and fulfilled, and provides for rights to some basic socio-economic human rights, such as the *right to access food and water*, medical care and housing, as well as emphasizing equality and human dignity (RSA 1996). The resulting legal framework also stresses *participation* by communities in decision-making processes (The Local Government Municipal Systems Act *(*MSA) 2000).

eThekwini municipality[1] has traditionally been located in an area rather affluent in terms of water, but is increasingly experiencing water scarcity (Bell and Maud 2000:925). The city and the water administration, eThekwini Water and Sanitation (EWS), was the frontrunner in introducing the, later national, policy of Free Basic Water (FBW). However, while the municipality and the government's water and sanitation unit is generally assumed to progressive in terms of water policy and programs, the municipality is also subject for cost-recovery and neoliberal demands. What kind of consequences does this conflict between human rights notions and neo-liberal principles has on various constitutional objectives of equality and human dignity.

Chatsworth[2] is located to the southwest of the city center in Durban. This area has been a location for high mobilization and social movements. The Concerned Citizens Group (CCG) [3], which became the Concerned Citizens Forum (CCF) in 2001,

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[1] eThekwini municipality was formerly called the city of Durban, but as the municipal borders changed, a larger area was included. Due to the predominance of Zulus in the area, a Zulu name was chosen as the new municipality name. In this thesis the municipality and the local government will be referred to as the municipal government by use of terms such as eThekwini, Durban, the Council, local government, municipal government and the municipality. These terms will be used interchangeably.

[2] See Appendix 1 for map.

[3] In this thesis the organization will be called the Concerned Citizens Group (CCG) in order to avoid confusion. Furthermore, this organization has lately been rather withdrawn as key persons in the organizations have been either away or struggling with poor health. One of these key personalities, Fatima Meer, passed away in March

is an important civil society actor in this area. This organization, along with the constituting and smaller organizations and interests, has been important with regards to the large number of post-apartheid social protests and mobilization, especially in Durban and Durban-area.

In the Chatsworth-area, a number of public flats are located. Three areas where there are located such flats, Westcliff, Bayview and Crossmore have been going through an upgrade the last few years. This was initiated when the municipality and the communities entered a partnership with regard to this upgrade. The improvements made with regard to water are considered to be included in a "social packet", involving housing, water and electricity. The partnership in which these communities are actors deals with all these issues as part of the housing upgrade.

The residential organizations established in these areas have cooperated closely with the CCG. While they are only three of the many organizations involved in the broader and loose organizing of CCG in Durban and areas around the city, the CCG and the communities in Chatsworth have been successful in creating a partnership with the municipality and gained a position as a pilot project for similar projects in other areas of town. The interesting points are hence, how this partnership was achieved and whether the strategies are transferable to other contexts.

Fieldwork

The fieldwork in South Africa was conducted between the October 9th and December 22nd 2009. Prior to the start of my stay in South Africa received a visiting scholar position at the Center for Civil Society (CCS) under the School of Development at the University of KwaZulu-Natal[4] in Durban. The first month I was in South Africa, I lived in the area around the university, and used the period to narrow down the case, identify, and request persons for interviews. The second month I stayed in one of the flats in Westcliff, watching and talking to people in the neighborhood. This community is based on 127 blocks of public flats and the residential organization is called Westcliff Flats Residents Association (WFRA). This organization has also been

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2010. This is not to say that the mobilization and the activism in the area have ended. In Westcliff, a dedicated leader, along with the Committee, ensure a high level of mobilization and activism.

[4] KwaZulu-Natal is the province eThekwini municipality is located in.

closely involved and cooperating with CCG, due to this the WFRA and the Westcliff is the basis for the fieldwork on the civil society and activism in Chatsworth. The scope and case is limited to the interaction with regard to water between the municipality of eThekwini and Chatsworth, represented by the Westcliff community. As these two latter areas (Chatsworth and Westcliff) are closely connected in terms of action and methods, the information regarding them will be used more or less interchangeably and will be referred to as CCG. Hence, the main methods of my study are interviews and conversations, and 'participatory observation' during my stay in Chatsworth, along with a literature review.

Interviews

All interviews undertaken in the period of 22 October - 18 December 2009, during which I conducted a total of 28 interviews.[5] These interviews ranged from 30 minutes to about one and a half hours in duration. Most of the interviews involved me and the interviewee, but on three occasions interviews were conducted with several relevant persons at the same time, and a few times there were also other persons in the room, not directly participating. Most of the interviews were conducted with a tape-recorder and some of the information was gathered through 'talks' and stories.

The persons I interviewed may be 'classified' into five groups. First of all I interviewed five individuals working in eThekwini Water and Sanitation Unit (EWS). Secondly, I interviewed the members of the committee in WFRA. This involved 13 persons during ten interviews. I also interviewed 6 persons who may be 'classified' as politicians. The fourth group includes six[6] persons who were either academics or involved in relevant non-governmental organizations (NGOs), while the final group includes persons dealing with housing-issues. A further elaboration on the interviews conducted with the various groups is given next.

Selection of Interviewees and Conducting Interviews

When it comes to selection of whom to interview, "gatekeeping" may be the most relevant method and challenge in my research. As the information and the results you

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[5] See Appendix 2 for details.

[6] A seventh person was involved as he was present during one of my interviews with some politicians.

get are dependent on who you talk to; your initial contact may have decisive consequences for your further results. Secondly, I used 'snowballing', where you gain contact of further interviewees through earlier interviews (Valentine 2005:116-117).

Furthermore, interviews are rather unstructured or semi-structured; they have a conversational nature and are dialogues. The strength of this method is that it is people-sensitive and permits people to construct their own stories, accounts and experiences in their own words. The aim of the interview is to gain individual understanding, as well as the meaning and understanding these individuals have of their own lives, along with the processes influencing them (Valentine 2005:111).

With the former ideas as a guide the aim of my interviews was to make it conversational and relaxed and issues and topics were discussed as the interview progressed. As such there was a continual shift between encouraging and challenging the interviewees based on what they expressed and the 'vibes' of the interview. As some of my questions also reflect different perspectives, the flexible approach also gave answers to other questions I had, as well as helped to indicate the coherence of people's stories and perspectives.

The *eThekwini Water and Sanitation unit (EWS)* is the power-holder with regard to water policy and the design of these policies, as well as representing the municipality in such cases and issues. Here an initial interview of the Head of Department gave me references and info on relevant contact persons, indicating 'snowballing' as well as 'gatekeeping'. Hence, some doors were opened giving me more access to information, at the same time as this may had an influence on the information I received and who I talked to. These interviews were conducted at the offices of the relevant persons, and the interviews had a conversional and rather easy-going form. The topics we discussed gave me information regarding what kind of initiatives this unit has to increase public participation, in addition to the relationship with the community in Chatsworth, and perspectives on water rights and cost-recovery issues.

Secondly, the leader and committee-members in WFRA were interviewed. This organization is the main organization in the case-study area, and has had an important position in the broader mobilization and struggle in Chatsworth and CCG.

The introduction to the community and the committee-members came through the leader's close association with the CCS. The chairperson may, hence, be characterized as the 'gatekeeper'. The persons I interviewed in the community were all members or closely connected to the organization. This was/is justified by the focus on the interaction between the community and the municipality and my perception of these individuals being been more actively involved in this interaction and the determination of strategies and methods utilized. At the same time it may be argued that this creates a certain bias both in terms of the activity level of the community members in general, attitudes towards the organization, the relationship with the municipality, and evaluation of the strategies used and actions conducted.

Most of these interviews were done in people's houses, and in a few occasions in the researcher's flat. This also involved frequent interruptions of family members and neighbors passing by and at times the presence of more than the interviewee during the interview. The information gained from these interviews dealt with strategies and methods in the struggle as well as perceptions on the right to water and payments.

The third group of interviews, '*politicians*', is relevant as water and water distribution are highly political issues. These interviewees were chosen based on the perceived relevance in terms of proximity to the area and tasks in the municipality (dealing with basic needs, participation). These interviews were conducted both at offices and in other public places and provided information regarding perceptions on civil society, roles and influence.

The *academics* and the *NGOs* were both relevant, as I perceived them to be the somewhat neutral actors in this case. They could provide issues the former groups did not bring up, as well as other elements and sides to the issue. In addition, they could offer experiences regarding water, participation and the relationship between civil society and communities, and the municipality. These interviewees and NGOs were based on their work dealing with water and participation. The interviews were conducted at various locations and provided information dealing with relationships and connections between for instance national and local policy, the community and municipallity and court cases elsewhere's effect on local environment.

As the water issue in Chatsworth and Westcliff is closely related to housing issues, the final group to be interviewed was persons involved in the *housing* side of the interaction between the municipality and the community. Due to the close links between the water struggle and the housing and eviction struggle, hence, also the gains made, I also interviewed the social facilitator of the project and the supervisor of the Chatsworth project. These interviews were done in the interviewees' offices and provided information regarding the relationship between the municipality and the community.

'Participatory Observation'

In my case the access and gatekeeper to the 'field', as mentioned before, was the chairperson of WFRA working in the area. She both introduced me to the area and provided me with somewhere to stay the month I lived in Westcliff. Staying in West-cliff would be beneficial as it would give me greater insight in the life in the community, as well as making it easier to find and get access to the people I needed to interview in the area.

My participatory observational research involves mainly being present in the community, wandering around, talking to people and neighboring kids, doing my groceries at the nearby stores and weekend market, rather than gaining true insight in the lives of the people there. This is a result of the short period of time I was there.

During the stay in the community I had a feeling of being fairly able to talk to people about everyday issues and general small-talk, as well as being the 'talk of the town' and thus being new and curious giving me and others a common initial topic. Through the stay I gained more knowledge about what was going on there and greater understanding of the context (especially towards the end), than I would otherwise be able to get. However, I felt I was hardly scratching the surface of the issues and challenges related to living in the flats. Nevertheless, despite the short stay, the stay was still important to gain greater understanding of the situation. This understanding would have been hard to acquire through short trips into the area for interviews.

Reflections on the fieldwork

Challenges and Ethical Issues

Looking back, the fieldwork is fraught by a number of shortcomings and ethical issues. These shortcomings need to be acknowledged in the analysis of the data. Further, the experiences and reflections also need to be lessons learned and taken advantage of later.

The interviews were conducted either one on one, with several persons of interest present, or in presence of outsiders. This may have different implications on the answers given. On some occasions it may have created a fuller 'story' where the different participants complemented each other, at the same time as it may have operated as a check on the answers given. On other occasions, it may have influenced the interviewee and resulted in him/her giving other answers than he/she would have on a one-on-one basis.

The answers may also have been influenced and modified by the use of tape recorder. Despite that this was only used when permitted it may have made the interviewee more reserved, especially in the beginning of the interview. However, use of a tape recorder made me able to pay more attention to the person I talked to and created a more conversational flow, in addition to make the information more reliable.

Occasions where the person seems to be searching for the 'right' answer were challenging. These situations made it clear that I had not been able to communicate that there are no 'right' and 'wrong' answers and that I wanted *their* impressions and perspectives. This also indicates a mistake made and knowledge gained, in terms of doing a proper introduction of me, the research and the research's purpose and aim, duration of interview and how it would be used at a later point.

This is also linked to the problems of finding the right key in terms of the level of the questions with regard to the balance between making the questions not too abstract and not too simple (Parfitt 2005:87). Because of this challenge some of the questions may have been misunderstood or not understood in full on occasions.

The former issues may also be linked to difference in cultural background and power relations between the researcher and the interviewee. This may influence the

relationship between the two actors and influence the answers and results (Valentine 2005:124-125). Another element of this is the issue of reflexiveness and/or position-nality, the importance of reflection on the researcher's own person and how the resear-cher's character and background will shape the interaction with others in an interview, the results and answers given. Furthermore, my own background and history also influence my research, my focus and my interpretation of the world (Valentine 2005: 113) and of the answers given. Hence, as my background and view will influence both what I am looking for and what I will see, there is no doubt that some sides, elements and issues of importance are overlooked and bypassed.

This 'power relation' was also reflected in my 'ticket' home after finished research on the 'exotic others' and ability to 'escape' when in need of a break from an unfamiliar cultural context (Parfitt 2005:113-114). This was most problematic with regard to the WFRA committee members. The other persons were on the contrary more often the power holders, in terms of both gate-keeping and information provided.

Another element is the ethical issue regarding the extent to which the research is beneficial to the community and case. Hopefully, the research may provide know-ledge and insight in the dynamics of a rather successful case, where people that nor-mally may be perceived as members of the less influential group has gained important concessions and influence on their own water situation, and also how effective this influence is in reality. The next questions, consequently may be if these methods and 'gains' can be transferred to other areas and other contexts.

Limitations of the Research

Along with water, sanitation is of outmost importance with regard to health, water quality and human dignity. However, despite the fact that water and sanitation are often dealt with simultaneously, such as in Durban (eThekwini Water and Sanitation), the thesis will deal with water only. This is due to the timeframe and necessity of a more narrow scope of the thesis.

The relationship between the municipality and the community is developed due to a broader struggle, regarding housing, electricity *and* water issues, where the strate-gies and the methods used to influence one of these issues may also be viewed as utili-zed for the other issues. Thus, it may be argued that the focus of the water side of the

struggle is somewhat artificial in this context. This may be counter-argued as similar arguments can be used for all three issues with regard to human rights, drawing on rights enshrined in the Constitution, though electricity less so, as well as the methods used in the community.

Lack of information from persons with legal expertise and knowledge may be mentioned as a short-coming. In addition, more political interviewees would also have been preferable.

The information gained through interviews with EWS personnel regarding participatory structures of EWS in the municipality, was dealing with these structures on a broader basis than Chatsworth. The use of these participatory structures was not discussed with the informants in Chatsworth; on the contrary they focus on other tools and methods. It may, hence, be argued that the two approaches used by EWS and CCG, and the focus of the interviews, to a certain degree bypass each other. At the same time, it may be argued that these two approaches have influenced each other and may be complementary to each other.

Furthermore, because the research has been limited to deal with one community's interaction with the municipality, the ability to evaluate the community's ability to influence the municipality compared to other areas and communities is limited and rather speculative. At the same time, Chatsworth has 'gained' a position as a pilot with regard to the upgrading done by the municipality, a special position the community argues is won through continual struggle.

The structure of the thesis

The thesis is divided into seven chapters, where the research question regarding the implantation of the human right to water and participation's effect on redistribution in water policy decisions and the implementation of this right will be dealt with. While the national legislation and conditions are focused on, more emphasis has been put on how these structures and conditions affect the local context of Durban. Hence, the following analytical chapter (chapter 4 and 5) will in most incidences start the discussion on a national level before moving down to a more local level.

The structure of the thesis will be as follows:

Chapter 2 presents the theoretical framework. The focus in this chapter is the human rights-based approach to development. Given the focus of the thesis this theory will be combined with the human right to water discourse and participatory theory.

Chapter 3 introduces the case study. It provides a short introduction to the context of South Africa and more specifically of Durban. The chapter will also supply some information regarding the local water situation and policy in Durban. In addition, a small introduction to Chatsworth is given.

Chapter 4 will discuss the first sub-question, regarding judicial and political structures. The chapter starts at a national level and moves down to more local levels of analysis. How effective are these channels to ensure poor people a voice and influence?

Chapter 5 deals with the remaining sub-questions, starting with the participatory structures established by the water administration in Durban and followed by discussion regarding the civil society. Do civil society organizations and private individuals have any effective channel to influence the water policy in the city? How may the structures initiated by the local water and sanitation unit be redistributive in terms of water policy and water access?

Chapter 6 deals with what implications the human right to water has on local water. The questions dealt with in this chapter is whether the human rights approach so fundamentally based in the South African Constitution is effective on a local level? To what extent do these rights and principles get undermined by other structures and conditions? And finally what are the effect of this on redistribution of power and influence for poor people to take charge of their own lives?

Chapter 7 summarized the findings done in the thesis and present some conclusions based on the analysis conducted. This chapter also presents some questions which need more elaboration and which need to be further researched.

Chapter 2: Theoretical perspectives

Introduction

In this chapter I give an introduction to the Human Rights-Based Approach to Development (HRBA). Given the already mentioned emphasis of human rights in the South African constitution, this seems like an appropriate theoretical approach. The constitution contains both requirements regarding water, human dignity and equality. The resulting legislation also opens up for participation. As such, the chapter also deals with participation and the 'right to participate'. Furthermore, water as a human right is chosen due to water's essential role in life and human dignity. The discussions of a human right to water may also, due to its role, apply to a number of discussions and challenges present with regard to distribution of any scarce resource.

The chapter will begin by giving a short account of the origin of the human rights, followed by a section establishing the connection between human rights and development. This will be continued by the HRBA and a short introduction of the principles this approach consists of. The strengths and benefits of the approach will be introduced, before I present the critiques of it.

Given the thesis's emphasis on participation and water, I will continue by discussing the human rights and the links to participation. Subsequently, participation is dealt with, along with its strengths and shortcomings. At the end of the chapter the right to water is discussed, as well as its strengths and shortcomings, is looked at more closely. This emphasis is reasoned by the implications an effective participation may have on power distribution. Furthermore, this power distribution is essential in order to understand the water distribution and how the change in power relations may have implications for the water distribution.

Poverty, Development and Human Rights

Human rights became formalized in the 1940s with the creation of the United Nations (UN) and the Universal Declaration of Human Rights (UNHR) (Andreassen 2006:

309). The UNHR was followed by two human rights covenants: the International Covenant of Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The human rights discourse was highly influenced by the Cold War in the post WWII period. Indeed, human rights became a major ideological battlefield between the United States and its allies on the one hand, and the Soviet Union and its allies on the other. Hence, after the UNHR and the emerging cold war, a polarization of focus and emphasis with regard to human rights emerged, with a Western focus on political and civil rights and an Eastern focus on economic, social and cultural rights (UNDP 2007:9). The human rights were divided into two types. However, the resulting two covenants and the subsequent rights were seen as interrelated and indivisible (Hardberger 2005:337). This conflict also resulted in civil and political rights being viewed as so-called first generation rights and economic, social and cultural rights as second generation rights (Hamm 2001:1006).

This emergence and renewed importance of economic, social and cultural rights may be linked to the adoption of the Declaration of the Right to Development in 1986, where the right to development is defined as "a right to a process of improvement of well-being when all fundamental freedoms and human rights are realized" (E/CN.4/2005/49:11, para.33, quoted in Sengupta 2007:12). While the link between development and human rights has a long history, dating back to the emergence of the human rights discourse and establishment of the UN, the link has generally been ignored after the creation of the UNHR (Andreassen 2006:301-303).

However, development and human rights are inherently linked, as absence of fulfillment of human rights is a cause of poverty, at the same time as poverty may be a cause for limited realization of human rights (UNDP 2007:7). This link is further pointed out by Hamm (2001:1008) when she states that fulfillment of certain political and socio-economic minimums are a prerequisite for realization of human rights, reflecting the close relationship between human rights and development. She continues "the universality of human rights not only refers to their universal applicability but also demands universal conditions under which human rights can be realized".

With regard to development, the HRBA emerged in the 1990s (Andreassen 2006:313). HRBA is based on an understanding of poverty built on human capabilities

and freedoms (OHCHR 2004:6). As reflected in the notion of human rights as "universal legal guarantees protecting individuals and groups against action and inaction that interfere with fundamental freedoms, entitlements and human dignity" (UNDP 2007: 7). The capability approach entails a multidimensional understanding of poverty, and the approach evaluates development based on the ability of people to enjoy basic freedoms. Similarly, the HRBA deals with peoples' right to enjoy certain fundamental freedoms (OHCHR 2004:6).

Sen (1992:31) differentiates between level of achievement, or the ability to accomplish, and the freedom to achieve, the actual opportunity a person has to reach what she/he values. Accordingly, there may be inequality in terms of level of achievement and freedom to achieve. Furthermore, there is also a distinction between freedoms and the means to freedoms, and subsequent the range and extent of the freedoms and means to freedom. Resources and primary goods may be perceived as such means to freedom. This means that they are not an objective in themselves, only a means to achieve freedoms and opportunities to choose a desirable 'type' of life. These means to freedom, primary goods and resources, such as for instance water, may induce a greater freedom to achieve and subsequently decrease the gap to freedom.

However, creating a more even distribution of primary goods and resources is not guaranteed to create equality in the enjoyment of substantive freedom among people as there may be great differences in the ability to transfer the recourses and primary goods into freedom (Sen 1992:33). Hence,

> [e]quality of freedom to pursue our ends cannot be generated by equality in the distribution of primary goods. We have to examine interpersonal variations in the transformation of primary goods (and resources, more generally) into respective capabilities to pursue our ends and objectives (Sen 1992:87).

Moreover, freedoms are also linked to capabilities. Capabilities are linked to wellbeing and the freedom to seek wellbeing: "Capability is a reflection of the freedom to achieve valuable functionings" (Sen 1992:49), where functionings are "what a person is able to do or be" (Sen 2004:332). A person's capability is the number of functionings a person is able to choose from a given set functionings. This means that a "capacity set" thus stands for the actual freedom of choice a person has over alternative lives that he or she can lead" (Sen 1990:114).

However, there is a difference between what is valued and wanted in terms of functionings, and the means to reach what is valued. The focus is on a person's opportunities (Sen 2004:332), a "[c]apability reflects the alternative combinations of functionnings over which the person has freedom of effective choice" (Sen 2004:334). It matters not *what* a person chooses, but that he/she *can* effectively choose.

Freedom, further, consists of two parts, "opportunity" and "process". The latter part deals with the lack of freedom in terms of being forced to do something, though a person would do the same without someone forcing the action. The former, on the other hand deals with force being used to make people to do something they would otherwise not do. Hence there is a loss of freedom in two ways "(1) being forced with no freedom of choice, and (2) being obligated in particular to do something she would not choose to do" (Sen 2004:331).

A holistic approach to development, where the ties between development and human capabilities and enjoyment of freedoms are united, coincides with human rights as they involve a holistic perception of human beings (Hamm 2001:1010). This is further linked to the important principles of interdependence among human rights (UNDP 2007:7). The notion of capabilities and freedoms are, however, linked to income (poverty) as it may be perceived as a means to access capabilities (Sengupta 2007:7), or means to freedom.

However, after more than a decade of attempts to make human rights an integrated part of development interventions, it has only had a limited success (Andreassen 2006:299). This may be partially caused by the fact that human rights are "primarily ethical demands" (Sen 2004:319). Also the HRBA to development is not a holistic approach, but rather a set of guiding principles regarding conduct, planning and implementation of policies in development efforts. The approach is more a normative concept and a set of standards to be worked towards (Andreassen 2006:300) leading us towards the characteristics of the HRBA.

HRBA: An Overview

Poverty is linked to lack of resources. When there is a shortage of resources, fulfilling basic necessities becomes a challenge. Poverty also involves limited access to physical

and social benefits, such as for instance employment, health, participation and dignity. Human rights are a universal means to ensure protection of individuals and groups from action and inaction that influence the enjoyment of fundamental freedoms, entitlements and human dignity (UNDP 2007:7). By inducing a greater acceptance and recognition of the link between human rights and poverty reduction, HRBA may reflect a point of departure in the combined efforts of human rights and development to reach the objectives of each of them (UNDP 2007:8). The HRBA puts the realization of human rights as a target for development. Despite the general acceptance of the objective, how to realize it remains an important question. There are several approaches to this challenge, at the same time, there are also elements of a common nature: "reference to and starting from human rights treaties; non-discrimination, special focus on disadvantaged groups, explicitly women and children; participation and empowerment; [and] good governance" (Hamm 2001:1011).

The UNHR holds that all human rights are universal and international. The Declaration further states that human rights should be protected by the rule of law, thus, giving people a means to claim what is entitled (Hardberger 2005:337). This rule of law also means that states are obligated to respect, protect and fulfill, including facilitate and provide, human rights. Human rights are separated into two types: rights that require immediate fulfillment and rights that are of a more progressive nature. The state has, however, a core obligation to realize a minimum level of economic, social and cultural rights. With regard to this minimum level of rights the state has the following responsibilities:

> the obligation not to discriminate between different groups of people in the realization of the rights in question; the obligation to take steps (including devising specific strategies and programmes) targeted deliberately towards the full realization of the right in question; and the obligation to monitor progress in the realization of human rights. Accessible mechanisms of redress should be available where rights are violated (UNDP 2007:12).

Hardberger (2005:334) separates these rights into two groups which in general reflect positive and negative rights. The welfare rights are positive rights as they demand action on the behalf of the government to secure economic, social and cultural rights. Liberty rights on the other hand entails negative duties on the part of the government, as these rights obligates the state not to limit or restrict these rights, as well as ensuring

that the rights are not diminished by third parties. The type of rights has a great influence on how the states deal with the relevant rights.

Hence, the HRBA to development is often understood as:

> *a set of normative principles* to guide the way in which development is carried out; *a set of instruments* with which to develop assessments, checklists and indicators against which development efforts may be judged; *a component to be integrated into programming* (…); *the underlying justification* for development interventions aimed at strengthening institutions (Andreassen 2006:314, original emphasis).

The notion of development as a process means that there are several elements that need to be successfully reached, as well as that this development process needs to be accomplished in accordance to certain principles. Furthermore, these rights and principles cannot compensate each other, they are indivisible (Andreassen 2006: 310).

According to Darrow and Tomas (2005:498) the human rights principles are "necessary conditions to enable the actual enjoyment of rights through the development process". As such the principles are suppose to contribute to defining the objectives of the development, direct the design of policies, laws, strategies and other issues in different fields such as administrative, judicial, educational and so on, guide forming of control and monitoring indicators and be integrated into all development stages. The authors continue to argue that the use of the subsequent principles should be utilized to deal with and negative impacts of discrimination and disempowerment and to ensure and contribute to realization of human rights, rather than being a checklist and static formula (Darrow and Tomas 2005:501). A brief description of these principles is given next.

Acknowledgment of International and National Normative Framework

The first principle involves the recognition of the international and national human rights normative framework by involved agents, implying the obligations and commitments- requirements that this entail (OHCHR 2004:14-15). By identifying the rights of some people, obligations on the part of others follow (OHCHR 2004, Darrow and Tomas 2005). This involves that the approach focus on identifying rights-holders, as well as the following duty-bearers (OHCHR 2004).

Universality and Inalienability

This principle means that people have human rights inherently by being human beings. This inherited value can not be given away, nor taken away. Through this principle all people are included in the development and benefits gained. However, the principle of universality "does not require that all people's rights need to be met immediately, nor otherwise diminish the need to prioritization in accordance with a right-based situation analysis, within prevailing institutional capacities and resource constraints" (Darrow and Tomas 2005:502).

Indivisibility and Interdependence

The principle of indivisibility acknowledges that no kind of rights is more important than the others. Political, civic, social, economic and cultural rights should be given the same priority, this "principle of interdependence of rights recognizes that the realization of one right depends on or contributes to the fulfillment of another" (UNDP 2007:13). This means that efforts to realize different rights should be done simultaneously. Darrow and Tomas (2005:503), point out that human dignity "is indivisible; denying one part of it affects the whole". This does, again, not rule out the need to make priorities often based on policy choices, however, the "choice in any given situation should be to prioritize those human rights that are critical for the wider realization of human rights" (Darrow and Tomas 2005:503).

Non-Discrimination and Equality

This principle is closely linked to the notion of universality (UNDP 2007:11). Poverty is not only caused by lack of resources, but also by lack of access to resources, thus, equality in opportunity. This entails that consideration of vulnerable and marginalized groups is central (OHCHR 2004:14, UNDP 2007:11). This involves attention to women, minorities, migrants and other vulnerable groups. More importantly, and further discussed later, is the ability of the "rights based development decisions, policies, and initiatives, while seeking to empower local participants, are also expressively required to guard against simply ignoring and thus potentially reinforcing excising power imbalances" (Darrow and Tomas 2005:505). Furthermore, the human rights also emphasize the need to consider the objective of equity in more than formal

terms by treating people the same. Human rights standards imply efforts to reach substantive equality, where systematic and underlying reasons for discrimination are addressed. This means that both direct and indirect discrimination need to be considered (Darrow and Tomas 2005:505-506).

Participation

The principle of participation is closely linked to the former principles of non-discrimination and equality, and the next principle of empowerment, where "[t]he international human rights framework upholds every person's and all people's entitlement to participate in any civil, economic, social, cultural and political process in which decisions will be taken that affect their life" (UNDP 2007:11). Participation involves the inclusion of marginalized and vulnerable groups and is linked to the notion of making people the agents of development, instead of passive recipients (UNDP 2007:11). The principle of participation requires information and effective influence on the planning, implementation and monitoring of various development efforts (Hamm 2001:1019, OHCHR 2004:19-20). Participation is closely connected to the two following principles and will be further elaborated on in sections later.

Empowerment

An important principle is the empowerment of the poor. This entails that the powerless must be given an increased opportunity to determine their own decisions and control their own lives. People may be empowered through the human rights' provision of entitlements and the specific identification of rights-holders and duty-bearers, eventually shifting the power distribution in society to the advantage of the powerless (OHCHR 2004:13-14). Furthermore, by making people the agents of the development process and empower those, their ability to participate and claim rights increases (Andreassen 2006:316-317).

Accountability and Rule of Law

This brings us to the principle of accountability. Through participation the transparency of the efforts made, and ability to hold duty-bearers accountable increases (UNDP 2007:11). Embedded in the rights of some, is the duty of others, hence, "rights and obligations demand accountability" (OHCHR 2004:15). Without accountability

and means to hold actors accountable, the (human) rights are no more than nice words on a piece of paper (OHCHR 2004:16). The issue of accountability, therefore, brings issues of enforcement (UNDP 2007:13). With regard to accountability and enforcement, further, three questions emerge,

> in relation to a particular duty-holder, are there accessible, transparent and effective mechanisms of accountability? (...) looking at the jurisdiction as a whole, are there accessible, transparent and effective mechanisms of accountability within that jurisdiction? (...) [and] are the mechanisms of accountability accessible to the poor? (OHCHR 2004:16).

It also creates the need to enable the duty-bearer to uphold the obligations. The principle also involves creation of monitoring and control institutions and mechanisms (Darrow and Tomas 2005:511-514).

Progressive Realization and Non-Retrogressive

In this regard there is a difference between the negative and positive duties linked to the rights. The negative rights of political and civic rights are not an issue of progressive realization. Furthermore some social and economic rights are also subject for immediate realization, despite of constraining financial and resource availability. Darrow and Tomas (2005:515-516) argue that minimum core levels of rights should be provided all the time,

> which includes the non-discrimination requirement, an immediate obligation to take steps (including devising appropriate programs and strategies) within available resources towards the full realization of the right in question, along with obligation to monitor progress in their realization.

This means that where people do not have essential foodstuff (water), basic health care, basic shelter, those people have their rights violated and the duty-holders are not upholding their obligation.

The added-value

Human rights and development are interdependent, what consequences does this have for practical development efforts? The Draft Guidelines on a Human Rights Approach to Poverty Reduction indicate that the HRBA may contribute to the reduction of global poverty. The guidelines argue that the contribution is due to the approach's legal embedding since the fulfillment of human rights is a legal obligation (Andreassen 2006:317). The HRBA is, despite its emphasis on interdependency and interrelation

among the rights, especially concerned with the economic and social rights as important elements in development policy (Hamm 2001:1006). The strength lies in the principles and the flexibility. Contributions to poverty reductions are achieved by use of intrinsic values and basic human rights principles in planning, implementation, monitoring and evaluation of poverty reduction efforts (UNDP 2007:11).

The Declaration on Right to Development holds that every individual is both object and subject to development. People should both be receivers of development *and* participants and actors in the development process (Andreassen 2006:310). As the approach identifies right-holders and duty-carriers (most often states have this responsibility), and it being one of the strengths of the approach. One of the challenges regarding this is the deficiency of enforcement of these obligations in international law, and the scarcity of effective means towards violators (Hamm 2001:1015-1016).

Baxi (1998:138) argues that human rights emphasize on human suffering. This emphasis on human suffering and human rights has formed new criteria for legitimate power as the universality of human rights "symbolizes the universality of collective human aspiration to make power more accountable, governance progressively just, and state incrementally more ethical" (Baxi 1998:151). Moreover, Sen (2004:326-327) argues, that ethical consideration may be a law in progress as they may be turned into legal obligations and legislations. This is an important function of human rights. However, "[a] human rights approach to development does not in itself guarantee more success; but it brings important changes and options for sustainable success for development and human rights" (Hamm 2001:1012).

Besides implying important elements for the content of development, human rights also have important effects as a reference (Hamm 2001:1012). The first important reference-point deals with human rights as subject for wide consensus, where a number of important human rights treaties have been ratified by a majority of states (Hamm 2001:1013), through these the states commit to binding obligations.

Furthermore, as some core human rights have reached the status of customary international law; these laws are binding to all states independent of national ratification of the standards. Social and economic rights are not directly included in this group of core rights; however, some basic rights (such as food, water and health rights)

may be interpreted to be a subsequent part of the right to life. Hence, as the right to life is considered to be a customary law, the human rights-based approach to development is based on international validity and acceptance (Hamm 2001:1013-1014).

Secondly, the human rights-based approach to development involves a legal obligation. This means that any development policy and program needs to include respect, protection and fulfillment of human rights. Furthermore, the realization of human rights has an inherent value, and should, thus, at least in theory, be out of bounds of various (bias) interests. The obligation element also means that states and other duty-bearers are also responsible for avoiding violation of human rights, and obligated to make positive contributions to create a context respecting, protecting and fulfilling human rights (Hamm 2001:1014). By using the HRBA basic needs becomes rights and claims (Hamm 2001:1025-1026). By holding a right, a person may claim it, hence indicating a mean to obtain entitlements and rights, due to legal obligations (Hardberger 2005) and through principles, empowerment and participation.

Finally, this approach also has the ability to address power relations and inequalities in power distribution in development relations (Andreassen 2006:320). Through widening the understanding of poverty and poverty reduction strategies, the approach also deals with structures maintaining and creating structures of power, costs and benefits (Andreassen 2006:317). According to Darrow and Tomas (2005) this is a major strength of the rights. In an unequal world where the benefits of development have been unevenly distributed, it may result in the elite securing the benefits created by development. The inequality, increasing the inequality, is results of policy-decisions and political and social struggle. The objective of a redistribution of benefits is a political and a legal necessity; the human rights approach addresses power inequalities which have implications on poverty reduction (Darrow and Tomas 2005:475-489).

While human rights often are a result of social struggle, the rights in themselves are inherently conflictual; there are conflicts between rights and responsibilities, individuals, group and community interests, and between different human rights standards. Development is also conflictual as it changes the power distribution. The HRBA makes underlying structural conflict emerge and make it possible balance and change these (Darrow and Tomas 2005:491-492). The approach also ensures a legitimacy for

the participation of the poor in decision-making (Andreassen 2006:317) and accountability and control of decision-making (Sengupta 2007:12). The issue of power redistribution will be discussed regarding participation in subsequent sections of the chapter.

A critique of the HRBA

After more than a decade of attempts to make human rights an integrated part of any development effort, it has only had a limited success; the approach has been limited to the rhetoric, not action (Andreassen 2006:299-300). Hence, a challenge of the HRBA is how to *implement* and *realize* the practice and objectives (Andreassen 2006:312, Hamm 2001:1011), and avoiding the HRBA becoming "checklists" and turned into a technocratic business (Darrow and Tomas 2005:482).

Moreover, the legal obligations and framework of human rights need to be reflected in practice, this may be hampered by non-correlating objectives between states and HRBA (Hamm 2001). Another linked set of critiques is called the coherence critique. According to this critique, the duty bearers need to be indentified in order for the right to be fulfilled and be feasible (Sen 1999:230).

Hence, despite the discussion of the legitimacy of the approach, values and origin on an international level, a state's legitimacy is dependent on its ability to fulfill and reach certain objectives (Monshipouri and Welch 2001:374), the politics also need to be realistic and feasible to be put into action (Pogge 2005). Hence, important questions with regard to the human rights are what is the minimum level of human rights and how to enforce these minimum standards (Monshipouri and Welch 2001:387), who decides what a state's capabilities are and what efforts are sufficient (Hardberger 2005:336)? In addition who has the responsibility, and how and when are human rights violated (Pogge 2005)? Hence, these issues may be likened to what Sen (1999:228-229) calls the legitimacy critique. This critique deals with the 'legality' of the rights, where the ethical dimensions and claims are turned into legal rights. Sen (1999:229) continues that "it is best to see human rights as a set of ethical claims, which must not be identified with legislated legal rights"

An often mentioned critique of this approach is questions with regard to the universality of the human rights. The human rights discourse has been criticized for

being a Western discourse, pushed on other cultures and sets of values (Sen 1999, Monshipouri and Welch 2001:374). Due to this, the approach may have limited legitimacy in areas, making it difficult to implement. However, due to mainstreaming and increasing globalization, there may be a pressure on laggard-states in ratifying and committing to the human rights-obligations (Monshipouri and Welch 2001:385).

The issue of universality and Western values is also related to another set of potential challenges for the approach. As human rights have the same ideological origin as neoliberal and market based ideologies, the HRBA has made neoliberalism policy framework able to incorporate the human rights. As the hegemonic political framework continues to require policies based on market provision of services and goods and the accompanying deterioration of the state's redistributive role, "the neoliberal establishment has successfully repositioned itself with respect to the rights-based agenda by championing accountability, transparency and the role of citizen participation in demanding their rights" (Mohan and Holland 2001:183). The human rights discourse is rather quiet with regard to global capitalism as creator and maintainer of inequality; HRBA do not address the challenges of structural inequality (Mohan and Holland 2001:190-191). Baxi (1998:168), furthermore, argues that when all human rights rhetoric is removed, what would remain of the continual struggle for human rights is the symbol of powerful economic interests. However, the turn in ownership regarding property rights, may also have been important regarding the 'ownership' of the human rights; through this 'ownership' of rights peoples ability to make claims became legitimate (Syse 2005: 233-236).

Human Rights and Participation

While all human rights and the HRBA are important, and makes the basis for both participation and the human right to water, the focus of this thesis remains on participation in order to influence water policy decision. Due to this emphasis an elaboration on participation is necessary, this is followed by a closer discussion of the concept of water as a human right.

The United Nations Declaration from 1986 brings the ideas of development and the notion of rights together, which also entails the rights to an effective participation

and social justice (Gaventa 2002:2). The HRBA principle of participation implies effective access to processes, institutions and information, and feedback mechanisms. The objective is to create partnerships based on critical and active citizenship. Effective participation means an ability for people to "determine the political and economic systems under which they live" (Darrow and Tomas 2005:507).

Through the evolvement of the HRBA, the concept of citizenship came under discussion where changes occurring in both human rights and development thoughts have resulted in a redefinition of participation as a right. This notion is increasingly invoked in the HRBA (Gaventa 2002:3). Right-based development politicizes development, it also emphasizes institutional accountability and transparency being practical and action focused: "people now have a claim or entitlement on other people or institutions which, if socially-accepted or legally-defined, gives people a minimum level of expected wellbeing" (Mohan & Holland 2001:183, quoted in Holland et al. 2004:253). In this context, furthermore, citizenship as participation implies agency in the political sphere, the right to citizenship makes people able to act as agents, following the HBRA notion of people as agents. The right-based approach to development and participation consolidate each other; HRBA and effective participation enable people to confront and alter the institutions influencing their lives (Holland et al. 2004:253-256).

Citizenship

The reformulation of the citizenship concept involves citizenship as something practiced rather than something given, creating the right to participate (Gaventa 2004:29). From this follows that people cannot realize their right to water if they are not provided the right to participate to influence their own access to water. Hence, "while social rights can be seen as positive freedoms in terms of enabling citizens to realize their political and civil rights, participation as a right can be seen as a positive freedom which enables them to realize their social rights" (Gaventa 2002:5), it is a right, a "prior right", required to be able to claim of other rights (Gaventa 2004:29-30).

Simultaneously, it is important to keep in mind that equal systems and rules utilized by actors with unequal means, resources and options will not increase equity. Rather, universalism will rather maintain and reinforce marginalization and social

exclusion, while giving it a veil of equality. This contradiction is caused by two impor-
tant differences: differences in ability obtain rights, and differences in identity, recog-
nition and respect (Gaventa 2002:5). This notion of equality creating inequality may
hence be a critique of the universality principle of the HRBA.

Despite there being established several new mechanisms for increasing and im-
proving participation as a right to participate, it does not imply that the possibility for
transformation is ensured (Gaventa 2002:5). Several questions remain, which will be
introduced through the next sections of this chapter.

Channels of participation

By changing the concept of citizenship, establishing a right to participate, and turning
people into acting agents, people will be able to influence and form the political and
social rights surrounding and effecting them and their lives (Gavanta 2004:5). Through
participation and agency "citizenship is not being requested from a proscribed menu of
rights and obligations, but actively defined and claimed on the basis of strengthened
political capabilities" (Hickey & Mohan 2004:169). Agency, rights, citizenship and
capabilities are important elements in this thesis and in the HRBA because partici-
pation and influence are also closely connected to power and power-distribution.

Participation and participatory relationships involves power and power relation-
ships. These differences in power can influence the nature of the participation in a
number of ways. The relationships form the boundaries of the participatory channels
and influence who and what are included in terms of interests, discourses and identities
and what is possible to achieve in the spaces. Hence "participation as freedom is not
only the right to participate effectively in a given space, but the right to define and to
shape that space" (Gaventa 2004:34).

With regard to space or channels used for participation and influence, there is
usually a distinction between three types of spaces, in this thesis referred to as chan-
nels. The first type of space is 'closed channels', and can be recognized by participa-
tion restricted to a selected few. The second type is called invited channels. This chan-
nel is defined as spaces where people are invited to participate by the power-holder
or/and authority (Gaventa 2004:35). According to Cornwall (2004:78, original emp-

hasis) participation by the marginalized in this type of channels implies "*relocating* the poor within the prevailing order: bringing them in, finding them a place, lending them opportunities, *inviting them to participate*". According to Miraftab (2004:1) the actors in this channel is the 'right' organizations and actors, approved by the power-holders.

Finally, there is the third category of channels called invented or created channels. These channels are created and claimed by less powerful actors from or in opposition to more powerful actors (Gaventa 2004:35). The channels are claimed, chosen or informed by the marginalized, and are "sites of radical possibility'" (Cornwall 2004: 78). Invented channels, is defined as those "occupied by the grassroots and claimed by their collective action, [and] directly confront[s] the authorities and the status quo" (Miraftab 2004:1).

However, as Cornwall (2004:78) points out, the boundaries between the channels are fluid, an actor in one of the domains will also be an actor in the other, at the same time it might be questioned whether a powerful agent in one of the arenas will hold as much influence in another. Power gained in one channel may also be used to enter another channel (Gaventa 2004:39). As invited and created channels are influenced by the power relations in, and surrounding them (Gaventa 2002:7), and since these channels function in relation to each other, the environment becomes transformative (Gaventa 2004:35). Channels are often defined by the inviters and the invited, and because the existing power-relations are presented to the channel with the introduction of it, there is a risk that the channel will rather maintain the hierarchies and inequalities than challenge them. However, such power structures embedded in governmental practice and 'truths' are subject to resistance, "produc[ing] possibilities for subversion, appropriation and reconstruction" (Cornwall 2004:81).

Activities in one of the two channels of participatory citizenship do not exclude activities and utilization of the other. Often there is a constant shift between the two spheres at different points in time and using different types of methods and spaces of mobilization. With regard to the two different type of channels the difference may not be the particular set of groups they involve, as many groups shifts between the channels, but the objective of using the two latter channels is different, "in one space strategies of survival are sought within the existing system, and in the other resistance

is mounted to bring it down" (Miraftab 2004:3-4). There is an important distinction between the strategies poor take advantage of in order to gain access and resources, and the strategies the poor use in order to gain influence and input of policy design and implementation to improve redistributive equity (Holland et al. 2004:254).

Participation and discourses of participation limit the number of subject positions for the involved to bring up and the suggested solutions as well as restrict the options for agency and inclusion. Participants being classified such as citizens or clients, also influence the actors' perception of what is possible in terms of contribution, solutions, alternatives, obligations, authority and power, as well as leverage options. These roles and perceptions can be both taken advantage of and be a restricttion, the bottom line is that participants are always positioned, by themselves or others. This influence their perspectives and influence (Cornwall 2004:84).

While it is important to accommodate structures and create processes in order to include the participation of marginal actors in more formal terms, this may not be sufficient to make such actors able to participate substantially (Cornwall 2004:84). That a channel gets opened up, does not guarantee a voice (Gaventa 2002:8). This links up to the next section of the chapter regarding the ladder of participation which indicates that there may be a range of types and qualities of the participation.

Ladder of participation

Arnstein (1969: 216) defines citizens' participation as citizens' power. She points out that the have-nots define participation as a redistribution of power; citizens' power contributes to this redistribution. 'Have not' individuals and groups, at the moment located outside of political and economic processes, will through the redistribution become included in the future. Their participation will ensure important social reforms and make them able to enjoy benefits created and produced in a society. Subsequently, if there is no real influence by the less powerful in a situation, as there is no redistribution of power (Arnstein 1969:216).

With regard to participation Arnstein (1969) developed 'the ladder of participation'. [7] While the eight step ladder is a simplification it reflects the various degrees

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[7] For illustration see Appendix 3.

of participation, where the essential idea is that the ""nobodies" in several arenas are trying to become "somebodies" with enough power to make the target institutions responsive to their views, aspirations and needs" (Arnstein 1969:217). At the bottom of the participatory latter and the non-participatory classification you find manipulation and therapy. Above these you find various forms of tokenism: informing, consultation and placation, whereas on top there are three types of citizen power: partnership, delegated power and citizen control.

The category of non-participation involves a replacement of real participation with systems which make the power holders able to educate or cure the others (Arnstein 1969:217). According to Arnstein (1969:218) manipulation occurs:

> [i]n the name of citizen participation, people are placed on rubberstamp advisory committees or advisory boards for the express purpose of "educating" them or engineering their support. Instead of genuine citizen participation, the bottom rung of the ladder signifies the distortion of participation into a public relations vehicle by power holders.

Here the power holders are making the decision of what, how and to whom the education and information should be given, as well as using it to prove participation.

The second type of non-participation, therapy, involves the officials perceiving powerlessness as a mental illness. Hence, the participation is in fact 'curing' the illness and 'abnormality' instead of addressing the racism and victimization that cause their "pathologies". These ideas are often present when people gather people in order to "adjust their values to those of the larger society" (Arnstein 1969:218-219).

Various degrees of tokenism; information and consultation, involve that powerless groups are heard and have a voice. It does not, however, mean that these voices will be listened to and the powerless are short of muscles to force changes, hence, the power relations remains the same. Placation involves the powerless to be involved to advice, but the power to decide remains the same (Arnstein 1969:217).

Though informing people about their rights, responsibilities and options as citizens is an important step in regard to legitimate participation, the terms on which this information is given is often disempowering. The nature of this information is often one-way, top-down, and no contribution channel for feedback or negotiation. The information may arrive in late stages where people have few means to influence

the program in order for benefit effectively. Another important point is the nature of the information given and the language used (Arnstein 1969:219).

While consultation may be an important step in order to achieve true partici-pation, consultation gives no guarantee that concerns and point of views which are brought up are taken into consideration. There is a risk of this participation and power redistribution being rather empty, where the power-holders may claim that the citizens have been engaged and 'involved' in participation (Arnstein 1969:219).

Through placation the level of influence improves, though, tokenism is still present. This may involve selection of someone who should be included; if these individuals do not have support in the community, and/or do not have power in the formal structures they run the risk of being outplayed and bypassed. Another example may be that they allow the citizens to advise and/or make suggestions, while the power to determine the quality of the suggestions and advice is kept among the power hol-ders. The level of which the communities and people are placated depends on two elements: assistance in articulating priorities, and organizing and mobilization in com-munity to demand those priorities (Arnstein 1969:220).

The three top steps of the ladder involve various degrees of effective decision-making influence. Through partnership "power is in fact redistributed through nego-tiation between citizens and power holders" (Arnstein1969:221). This redistribution occurs as the partners through establishment of new structures for shared planning and decision-making responsibilities. When these ground-rules are changed by compro-mises and give and take, changes are no longer unilateral. Arnstein (1969: 222) points out, that this type of power is often the result of the city being forced to give up power by enraged citizens tired of former alleged forms of participation. This also follows the idea that the actors having the power usually want to keep it.

Delegated power is a result of negotiations between the citizens and the public officials where the citizens gain main decision-making authority in a project. Finally, citizen control, along with the delegated power involve that "have-not citizens obtain the majority of decision-making seats, or full managerial power" (Arnstein 1969:217).

Critique of participation:

While there are a number of critiques regarding participation, only the most relevant will be mentioned in this section or later in the thesis when appropriate. One critique occurs with regard to the relationship between individuals and social institutions, the influence of institutionalism and bias towards certain actions and characteristics. Secondly, people have a number of social roles and there is limited focus on costs resulting from participation, as well as non-participation (Cleaver 1999). It may be questioned whether participation automatically leads to empowerment.

There is also a dispute connected to the notion of 'the community', and the issue of culture (Cleaver 1999, Williams 2004b). Moreover, there is the issue of universalism, where models of participation create universalistic models of invited spaces mainstreamed into development programs and strategies (Cornwall & Brock 2005:1048). Also, when talked of participation as the need to open up new spaces, new rules and new participants, there are several issues that remain, it may in the end make it even more difficult for the marginalized and disarticulate (Cleaver 2004:274).

The participation ladder model is faced with similar critiques. The model simplifies both the powerful and the less powerful groups as homogenous and coherent and, hence overlooks the number of internal conflicts, interests- and differences and subgroups in both groups. The justification for the simplified model is that the powerful is often perceived and experienced as 'one' by the less powerful. Neither does it reflect the perception and obstacles of the two groups towards participation, nor does it mentions all the types of participation and non-participation listed, as this is only a few of a vast number of types (Arnstein 1969:217).

The Human Right to Water: brief history

Human rights are rights and claims people have due to being humans. These rights are granted without reference to judiciary laws, furthermore, if the rights are not present or realized they are still legitimate rights (Sen 2004, in Anand 2007:516). The right to water has only recently become explicit and acknowledged. Though drafters and planners of human rights treaties considered water as a fundamental right (Gleick 1998: 490), this has only been implicitly reflected through other human rights (Gleick 1998:

490, Hardberger 2005:337). Hence, in the early human rights documents the right to water is not mentioned explicitly, but it is considered to be a part of other rights such as the human right to life and the human right to have basic needs covered. This is the case for the Universal Declaration of Human Rights and the subsequent covenants of ICCPR and ICESCR. However, these documents make an important basis for establishing a more explicit right to water (Hardberger 2005:337-340).

Gleick (1998:493) argues that there has been a shift where the right to water has become more explicit. Despite the efforts made by the UN in promoting human rights in general and more recently the human right to water, there are only two human rights treaties explicitly referring to the human right to water, the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW) (1979), and the Convention of the Right of the Child (1989) (Hardberger 2005:346-347).

Additionally, important advances with regard to the right to water were made through the General Comments to United Nations Committee on Economic, Social, and Cultural Rights in 2000 and 2002. These advances were made as the General Comment No.14 from 2000 linked "the need for potable water with the right to health" (Hardberger 2005:348). Therefore, this document also places responsibility on the hands of the government to fulfill the right to health and, hence, also the protection of water resources (Hardberger 2005:348). General Comment No.15 from 2002 clarifies water as a separate right in the ICESCR, and emphasizes the essentiality of water.

Through this comment (No.15) the right is also separated into three parts: availability, quality and accessibility, all entailing different wants of compliance, as "[t]he basic premise is that water should be physically available to all people and free of economic encumbrances" (Hardberger 2005:349). The different elements of the right to water raise questions of how much, under what conditions, and of what quality, does this right entail? The right of water deals with a "basic need" of water, required for drinking, cooking and fundamental domestic uses. The notion of basic needs implies a minimum requirement (Gleik 1998:495-496). However, similar questions emerge, such as how much, of what quality, where and for whom is this basic need considered? Further questions may include who determines what the right's extent is and whose needs and interests are considered? Hence, some of the problems related to

the establishment of this right are related to the vagueness of the right, with regard to scope, extent and responsibility, indicating some of the challenges the approach is faced with.

There are several questions related to the responsibility a state has regarding the right to water, for instance, the first is linked to the source of water. Does the state only have responsibility to protect the access to water, or does it also entail delivery of water to the citizens? The General Comment No.15 holds that delivery is not necessary; however, water should be accessible nearby, and that further delivery should be achieved when possible. The access should also be non-discriminatory. The Comment requires progress towards fulfillment of the right to water, and states that "[a]ccess is a critical element to that right" (Hardberger 2005:355).

Moreover, the General Comment holds that water is essential for the right to life in human dignity. The right to water entails both freedoms and entitlements, where freedom entails to "continue to use existing sources of water and freedom from interference; and entitlements relat[es] to equality of opportunity essential to the enjoyment of the right to water" (Anand 2007:517). Through these general comments the ICCPR and ICESCR could demand action on the part of the national states, and provide minimal duties necessary to fulfill the rights everywhere (Hardberger 2005:349). Hence, the right to water entails an obligation and duty on the part of the development agents' efforts. The right to water also implies a priority of those without access to basic levels of water services, as this right is not a charity but an obligation and duty held by the state and government (Anand 2007:517).

The Strengths and Shortcomings of the Right to Water

Social wellbeing is inherently linked to environmental wellbeing, hence reflecting the close relations and interdependencies among rights. This reflects the approach holistic view on development and humans, where the ultimate objective is wellbeing and functionalities/capabilities. Through the HRBA people become the agent for development through empowerment and participation. By making water a human right, it establishes people as active agents in the development process, not only receivers. This development is based on the right-based approach's focus on empowerment, by

establishing rights and informing people of their entitlements and rights, people are empowered through greater ability to claim these rights. The establishment of water as a human right also makes it enforceable and creates a means to hold the government accountable for lack of progress in the provision of this right (Hardberger 2005:341).

Thought the right to water has not reached the level of international customary law, the absence of an explicit right makes it difficult to enforce (Hardberger 2005: 345), this despite the clarifications made in the General Comments, as these are not legally binding, but more guidelines for the states committed to the relevant treaties the comments are clarifying (Hardberger 2005:348). However, a number of these treaties, with the right to water implicitly present, have been ratified by a great number of states, hence committing to the obligations to respect, protect and fulfill human rights (Anand 2005, Hardberger 2005). This way the HRBA and the right to water has created and obligation to act on the part of the states and governments (Anand 2007: 515). Furthermore, the discussion has created a shift in the development discourse, moving perceptions of efforts from charity to an obligation and a right, empowering the agents to make independent decisions (Mehta 2005a:1).

By means of identifying the right-holders and the duty-bearers, the HRBA and the right to water provide a mean to hold actors accountable. Accountability is an important means for the powerless to hold the more powerful responsible and account-table (Mehta 2005a:1). This follows Anand's (2007:515) argument that a HRBA may be important to hold in check the legitimizing top-down approaches by an empowered state, and to "provide transparency guarantees and improve the process aspects of freedoms" (Anand 2007:515). However, Anand (2007:522) continues that though the "right to water can add to panoply of policy instruments and accountability promoting mechanisms", a formal right to water is not essential with regard to poverty reduction. Participation and accountability may be important elements in making pro-poor poli-cies, while water as a right in itself does not necessarily lead to poverty reduction (Anand 2007:520). Hence, the discussion in regard to water as a right as a means to poverty reduction and creating increased equality is not settled.

This disagreement is reflected in Hardberger's (2005:342) notion that estab-lishing water as a human right is an important step to ensure that everybody has access

to the resource. By emphasizing the human rights and the human right to water, contributions towards the reduction of poverty are made through moving poor peoples' living conditions to a higher level, more equal to the standards enjoyed by wealthier people (Hardberger 2005:344). Instead of considering the inputs and quantities of water, outcome should be regarded in terms of equality in capabilities and freedom of choice. It may be possible to design rules for distribution which consider diversity in abilities, hence, a "meaningful right to water, therefore, should provide scope for determining both just access and just allocation (or distribution)" (Anand 2007:523).

Although the rights discourse has been increasingly acknowledged in the past decade, and has become more or less mainstream, there is also a growing recognition that many poor and marginalized people and groups are not benefiting from these rights (Mehta 2005a:1). This tendency may be caused by "sins of omission" or "sins of commission" (Mehta 2005a:1). The former entails that people are denied the access to social and economic rights, while the latter involves that vulnerable and marginalized groups' rights are knowingly violated. This, hence, opposes the principle of especially considering the interests of marginalized and vulnerable groups. The right to water entails availability, quality and access.

With regard to accessibility, the access may be influenced and determined by costs and ability to pay for water and water services. Thus, affordability is an important element in the right to water. This does not mean that water should be free, but that it should be affordable for everybody (Hardberger 2005:355-356). Though the need of water for basic necessities is generally acknowledged, the priority and use beyond this need are more unclear (Anand 2007:523, Hardberger 2005:356).

Regarding a diminishing resource and a continual need to ensure people access to the resource, this will create trade-offs, where local conflicts and claims of entitlements occur among various uses of water, HRBA may constitute a means to resolve distributional disagreements based on differences in values and references (Anand 2007:511-512), it implies the universality of the right and need despite any cultural preferences and practices. This means that this right may contribute to ensure that a basic human right/requirement to water "should take precedence over other water management and investments decisions" (Gleick 1998:489)

Operationalisation

As mentioned in chapter one, this study will examine the impacts and consequences of citizens participation in the design and implementation of human right to water in South Africa. More precisely, and in regard to my case study in Durban, I will focus on a set of interrelated questions. First, I will focus on judicial and political institutions and examine how they had addressed water-related issues. Thus, how has the judiciary, as an invited channel and space, influenced the constitutional right to water? And to what extent can the poor access justice in South Africa? There have been several instances of judicial verdicts on water-related cases at national and regional levels, and I will particularly focus on whether such verdicts have made a difference to the lives of the poor in local contexts. Furthermore, what affect does the utilization of this judiciary channel have on objectives of equality and redistribution. Given that the poor are usually unable able to access this channel of participation, how beneficial for the poor are the rulings made in such cases? In addition and regarding the community in Chatsworth, I will also examine whether and how the judiciaries – through their rulings – have empowered local communities.

Moreover, I will also discuss the political channel and its implications, focusing especially on the extent to which it has been effective in holding politicians and power-holders to account both in South African in general, and in Durban more specifically. Further, what structures and conditions influence the effectiveness of these political institutions. African National Congress (ANC) has since the establishment of the new democratic government been the dominating party. Given the lack of feasible political competition, how effective is the political channel in holding both individual politicians and more general political directions to account. Additionally, while the Constitution has required a number of structures and processes to ensure accounttability as well as diversity of point of views, how influential are these structures in a context of ANC domination.

The second set of questions that this study will examine relates to the effectiveness of administrative structures in ensuring redistribution and influence in water policy and design. Here, I will focus on the participatory structures established by the local water and sanitation unit in Durban (eThekwini Water and Sanitation (EWS)). I

will provide an overview of the channels of invited participation that the EWS has created and how effective these are according to Arnstein's ladder of participation, discussed earlier in this chapter. Although these channels may be present, they may not necessarily be effective in terms of influencing policy and policy design. How do these channels of participation influence the water policy in the case study areas? Additionally, an objective of participation, as argued by Arnstein, is for it to be redistributive with regard to power and influence. Hence, I will also discuss the implications of these invited channels of participation on power redistribution and empowerment.

Civil society organizations often play a central role in ensuring and monitoring of the state's provision of basic services and respect of human rights. Hence, the third set of issues relates to the channels of influence that civil society organizations use in order to influence water policy and the right to water. While this role and strength of influence may be linked to a broader national mobilization of the civil society, this question will be mainly answered at a local level, using the Concerned Citizens Group (CCG) in Chatsworth as a case. This community has utilized a great span of different strategies and channels in order to gain access to more effective channels of participation. These advantages had not been won without a continual struggle and 'naughtiness' on the part of community, creating costs for the municipality.

The final set of issues deal with how the right to water has been implemented in Durban. The right to water is implemented through the use of the Free Basic Water (FBW) policy. However, this policy at first view appears to be a progressive and a way of guarantee people a basic level of water, while on closer investigation the enforcement of this policy may have unfortunate and disempowering effects. The introduction of this policy has also resulted in introduction of technological devises, controlling both consumption and cost-recovery of the water provided. As such some of the issues that will be discussed in this thesis are some the consequences this policy and devises have on poor people's lives. Furthermore, while this policy initially was intended to target the poor, it has now become universal. Hence, a second part of the discussion will be regarding the implications this policy may have on objectives of equality and redistribution in South Africa and more specifically in Durban. Moreover, as the implementation of the FBW policy may have implications on empowerment, how may this

influence people's ability to participate in the channels established? Further, some of the civil society organizations have political agendas, often involving opposition to municipalities being run by neoliberal principles and the subsequent results these principles have on poor people. Thus, a question is whether these civil society organizations, with their political objective, influence the implementation of the right to water at local and national level?

Civil society organizations such as the CCG have worked to gain influence and to improve the situation of marginalized groups in Chatsworth and in other similar contexts in South Africa. These organizations' relationships with state institutions at national, regional and municipal levels have been influenced by a particular political objective. Thus, how has the political perspective of CCG influenced the use of the participatory channels? Moreover, how do such organizations function as a counter-force and a challenger to power structures (and hegemonic discourses) to ensure a continual focus on human needs and human rights?

Through these questions and discussions I hope to answer my research questions regarding the implantation of the human right to water in Durban and the impacts and consequences of citizens 'participation' on power distribution and influence in the design and implementation of water policy and the right to water.

Chapter 3: The Background and Case

Introduction

Given the previous two chapters it is time to give a more extensive background of the context of South Africa, Durban and Chatsworth. This chapter will, however, only be a brief background, and is far from able to bring in and discuss all relevant elements and issues. Due to the thesis emphasis on human rights, the rights given in the South African constitution will be the point of departure. Thus, the chapter will start by presenting the legal requirements and context for participation and water at a national level. While staying at the national level, various national policies will be introduced. A final element at this level is the context of the national civil society. The second part of the chapter will introduce Durban. The section will introduce the political system, as well as some relevant policies and programs for the thesis. In the second part of this section, I will introduce the eThekwini Water and Sanitation Unit (EWS), along with the most important element of current water policy. The final section of this chapter will discuss civil society in Durban and more specifically in Chatsworth. Here the history and current context of Chatsworth will be presented, followed by a summary.

National Level: Judicial Structure

The Constitution of the Republic of South Africa

With the end of apartheid and the entry of a new democratically elected government in 1994, a new constitution was introduced in 1996. The new constitution is considered to be progressive as it enshrines a number of both political and civic rights, *and* socio-economic rights in its Bill of Rights. The rights involve the right to access housing, health care, food, *water*, social security, basic education and a clean and healthy environment. Due to commitments to international agreements and the constitution, the state is also especially responsible for ensuring that vulnerable groups have access to these socio-economic rights. It implies state responsibility in ensuring everyone access to a basic level of rights, referred to as minimum core obligations by the UN Committee on Economic, Social and Cultural Rights. The realization of these rights should be

given first priority when distributing governmental financial resources. The inclusion of socio-economic rights in the constitution means that some rights need to be realized immediately, while others' realization may have a more long-term fulfillment. This progressive realization involves that reasonable steps need to be taken according to the financial resources available to the state (Davids 2005:44-45). Ultimately, the commitments to agreements and the constitution result in the state's obligation and responsebility to "create an environment in which people can gain access to social and economic rights through their own efforts and initiatives" (Davids 2005:45). However, Narsiah (2002:7) points out that despite the fact that this Bill of Rights and the rights are "recognized as universal and cannot be applied subjectively i.e. privatized", these socio-economic rights are frequently hollowed out and violated at grassroot level.

Constitutional emphasis on local government and participation

The new Constitution emphasizes the role of local government in transformation, development and addressing social inequalities (Low et al. 2007:249, Pillay 2009). The role of local government was aimed to be representative for all people, create political alliances crossing interest-gaps, develop systems to ensure service provisions to those excluded earlier and restructure the municipal staff to become race and gender balanced (Low et al. 2007:249). In order to achieve this objective "[t]he Constitution (…) emphasized the need for the transition of the apartheid city, especially ensuring democracy and the more effective delivery of services for all citizens, with a vision of equality and a better life for all" (Maharaj and Low 2008:11).

Hence, in order to address the apartheid legacy of one of the world's most unequal societies, the post-1994 South African government integrated and emphasized grassroots participation and delivery by means of the 'developmental local government'(Nel 2004:23). The Constitution identifies the local government as a distinctive sphere and orders local government to support community- involvement and organizations in issues regarding the local government, it also ensures that local governments "give priority to the basic needs of the community, and to promote the social and economic development of the community; and participate in national and provincial development programs" (RSA 1996a:82 quoted in Nel 2004:29). This is a result of the

perspective that local governments have better knowledge to better adjust policies and programs to local needs and requirements. The decisions taken are also perceived to move closer to the citizens by decentralizing power and responsibilities (Pillay 2009:140-141). Thus, the context for participation and delivery is accordingly at the local government where the main responsibility of the municipality is to cooperate with local communities in order to meet the communities' needs and make their lives better (Nel 2004:23).

However, Heller (2001:133) argues that the creation of the 'developmental local government' has also created a situation of agreed political centralization, growth of technocratic and managerial authority and a change to marked modes of accountability instead of democratic modes. Mc Lennan (2009:33) points out that the notion of a developmental stat also involves a contradiction when focusing on economic growth and advocating redistribution and social justice.

The constitutional right to equality and dignity

Besides the inclusion of water, discussed next, the Bill of Rights also holds some other relevant rights. Section 9(2) in the constitution (RSA 1996) states, the right to equality means "the full and equal enjoyment of all rights and freedoms". The Constitution continues that this equality should be encouraged through legislation and other proce-dures intended to protect and furtherance of persons, groups of persons who have been disadvantaged by unjust discrimination. The following sections point out that "[e]very-one has inherent dignity and the right to have their dignity respected and protected", in addition to "[e]veryone has the right to life" (RSA 1996:sec.10 and 11).

The Constitutional right to access to water

With regard to water, the right to access to water is stated in the Bill of Rights, section 27 (RSA 1996):

> (1) Everyone has the right to have access to- (…) *(b)* sufficient food and water; (...)
> (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

The Constitution, section 7(2), also states that the state is obligated to respect, protect and fulfill. The *obligation to respect* entails that the state is not permitted to interfere with human rights, and violate human rights that are already present. With regard to

water this responsibility is involved when the current access to water people have is not respected and/or harmed and disconnected. The *obligation to protect* means that the state has to prevent third parties from hindering the enjoyment of human rights, and the right to water. This obligation becomes relevant for instance with regard to pollution of water sources and privatization of service delivery. The final obligation, the *obligation to fulfill* implies realization of human rights, in this thesis, fulfillment of access to water (Winkler 2007:5-6).

However, the constitution also has a limitation clause. This limitation of the section states that the entitlements in the bill of rights can only be limited "in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors" (RSA 1996:sec. 36). These relevant factors are further listed such as;

> "*(a)* the nature of the right; *(b)* the importance of the purpose of the limitation; *(c)* the nature and extent of the limitation; *(d)* the relation between the limitation and its purpose; and *(e)* less restrictive means to achieve the purpose" (RSA 1996:sec. 36).

Legislations

Based on the constitution there are several legislative documents and acts leading to decentralization of power and responsibilities to local levels. The documents also ensure participation in local government, while a few documents also have their origin in section 27 of the constitution.

Decentralization of powers, responsibilities and participation

There are a number of documents originating from the constitution, such as the *Local Government Transition Act* from 1996 (Nel 2004:30), the *Local Government White Paper,* emphasizing 'developmental local government', (Nel 2004:29) and the *Local Government Municipal Structures Act* from 1998. The latter law repeats the responsebility local government has to create economic and social development in the municipality (Nel 2004:31). It also opened up for a practice called floor crossing which allows councilors to change parties in between elections without losing their seats in government (Maharaj and Low 2008:13), in addition, to introducing ward committees as a channel for influence (Aylett 2010:108). While the effective structures resulting

from these legislations will be discussed at a later point, the discussion regarding these documents will largely be bypassed due to spatial constraints.

A key document that will be looked into more thoroughly is the *Local Government Municipal Systems Act of 2000* (MSA). This is an important document with regard to public participation and it introduces the term 'participatory governance'. The notion of participatory governance "ensures the rights of every citizen to participate in the democratic decision-process, particularly at the level of local government" (Nel 2004:23). Hence, the act encourages and supports the participation of communities in issues concerning them with regard to planning, service delivery and performance management, as well as pointing out that there is a need to make relations among councilors, officials and communities more cooperative (MSA 2000:preamble). It authorizes "the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic uplifting of communities, and ensure universal access to essential services that are affordable to all" (RSA 2000a:2 quoted in Nel 2004:31). Thus, the act ensures that municipalities prioritize basic needs of communities to make sure that all residents have access to basic services at a minimum level (Nel 2004:32).

The document directs the operationalization and conceptualization of local developmental government, and includes the requirement of 'integrated development planning' which is defined as a:

> participatory approach to integrate economic, sectoral, special, social, institutional, environmental and fiscal strategies in order to support the optimal allocation of scarce resources between sectors and geographical areas and across a population in a manner that provides sustainable growth, equity and the empowerment of the poor and the marginalized (Department of Provincial and Local Government (DPLG) 2000:15 quoted in Rogerson 2006:229).

According to the DPLG will integrated development plans (IDPs)[8] assist to the municipalities' ability to realize their mandate and responsibilities, and is a tool to gather various activities and development targets of municipalities (Rogerson 2006: 229).

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[8] This IDP process may be called an invited channel of participation and will be given further elaboration in Appendix 4.

Participation and consultation in MSA

This act is important with regard to participation, where it requires municipalities to create structures for involvement of the public in decision-making processes. The act states that municipalities are obligated to support the participation of communities, and to *consult* local communities regarding service delivery issues and options. Through the act, communities also have the right to be involved in decision making processes and access to proceedings of the municipality as these are required to be open, and it obligates the municipality to ensure that the community receives accurate information. This also involves being open and considering public input and response (Nel 2004: 32). This act also emphasizes the role of municipalities in efforts to address social and economic *differences* (McEwan 2005:973-974). Therefore, it may be argued that the act advocates creation of invited channels and to make the processes transparent and open for review. These elements are important requirements to empower the public to hold the local government accountable.

However, this *invitation* to participate is also reflected in the use of *consultation*. While it is an important step in the right direction, consultation does not guarantee that inclusion of the points of views and concerns that were presented during the consultation will be effectively and fully taken into consideration (Arnstein 1969:219).

Furthermore, Nel (2004:33) comments that despite the encouragement and legislative rights to participate in South Africa, only a limited number of communities are taking advantage of the opportunity. She further reflects a similar fear when pointing out that "it would be difficult to say whether, after consultation, their input actually has a fundamental impact on municipal decisions-making and implementation". Moreover, another limitation of the MSA and effective participation in South Africa is that there is no citizen involvement with regard to review and implementation of projects, only the planning and design phase in advance. Hence, "the absence of defined mechanisms or means of exercising and enforcing popular decision is a very real concern" (Nel 2004:33). As such, the participation runs the risk of becoming a 'rubber-stamp' without any real and effective influence and/or where the authorities are sweet-talking the requirements and participate in alleged consultation with the public.

A few other invited channels that are required by several acts, involves the *election of ward councilors,* based on geographical areas and tries to be well-linked to the specific area, and secondly *ward committees*, aimed at creating a deeper democracy by calling for civil society and interest groups to aid and cooperate with the councilor, and assist in communicating with his/her constituency (Benit-Gbaffou 2008:26-27). These channels will be discussed further in a following section.

The introduction of cost-recovery

The Municipal System Act and the Municipal Structures Act, along with a number of other documents also deal with the notion of public-private partnerships. These documents and notions ensured a space and participation of the private sector with regard to delivery of public services (Narsiah 2002:7), along with public participation.

Furthermore, as the MSA holds that municipalities have the responsibility to recover the costs of service delivery of basic services such as water. It may hence be argued that, the act amplifies the need and shift towards cost recovery policies (Winkler 2007:15-16). The overall result of the regulatory changes was a framework developing that was transactional and business-based and which was impartial to the service provider, complemented by policy decisions and policy means to legitimate this shift. The change did not maintain the demand for public participation and instead strengthened its negative side effects. On the contrary, it was the "impact of social activism at the local level, including important activism around consumption practices, that performed (…) a reinscription" of participatory rights (Morgan 2008:8).

National Water Legislation

Regarding the South African Constitution and the right to access water was subsequently followed by two water laws, the *Water Service Act (WSA)* in 1997, and *the National Water Act* (NWA) in 1998 (Winkler 2007:7). These two laws are closely connected. Because of this link, any enforcement of one will complicate and influence the enforcement of the other (Tarmann 2000:2). While the NWA is important with

regard to redistribution, the law will, along with other relevant documents, to a great extent be disregarded due to time and space constraints. [9]

The National Service Act

The National Service Act of 1997 outlines the rights and responsibilities of the entities providing the water services. In addition, it also "gives substance to the constitutional right of access to the basic water supply and basic sanitation. It requires that the Water Service Authority [(WSAu)] must take reasonable measures to realize these rights" (EWS 2004b: 11).[10] The main objective of the law is to ensure:

> (a) the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being; (b) the setting of national standards and norms and standards for tariffs in respect (WSA 1997:chap.1, sec. 2).

The law defines the minimum required level of water. This minimum is expected to ensure water of a quality and quantity to ensure life and hygiene for households, and is defined as 25 liters potable water a day for each person, or 6000 liters a month for a household (Winkler 2007:8).

Moreover, a different section of the act deals with regulations of tariffs for water services and regulation 3 argues that "[a] water services institution must consider the right of access to basic water supply (…) when determining which water services tariffs are to be subsidized" (WSA 1997 quoted in Winkler 2007:8). Despite the focus on access to water, the law also holds that the water authority may disconnect if it is reasonable and if there is a failure to comply with reasonable conditions for the provision of the services. However, this disconnection is not accepted if the non-payment is due to legitimate reasons, as "disconnection must not lead to the denial of basic services for indigent people" (Winkler 2007:9). The law also states that the providers need to ensure efficient, affordable, economical and sustainable access to water services. However, this is modified by the limitation of available resources and the need for customers to pay reasonable rates and tariffs (Winkler 2007:9-10). The law

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[9] A short introduction is, however, given in Appendix 5
[10] Water Service Authority (WSAu) and Water Boards which also is introduced in this act, are briefly elaborated on in Appendix 6.

has been implemented through the Free Basic Water (FBW) policy (Mehta 2005b:236, Winkler 2007:10), which will be presented later.

Political structures and policies

Reconstruction and Development Programme (RDP)

When ANC was democratically elected in 1994, the new government tried to move away from the apartheid legacy through the new constitution emphasizing human dignity, social justice and improvement of quality of life for everyone (Sunstein 2001: 78). On this background the ANC introduced the Reconstruction and Development Programme (RPD) in 1994 (Davids 2005:43). This document set the standard both for the new nation's focus on human rights and people based development. The document emphasized empowerment, participation, local capacity enhancement and development and redistribution. The emphasis on people-centered development implies focus on empowerment on a local level, and encourages active citizens as an integrated and important component in order to create development. The RDP perceived the local government as the most important level of democratic representation. This perspective, along with responsibility to ensure social and economic development meant that much power and responsibility were transferred to the local government. This indicates the greater burden placed on local government, increased by the financial and capacity constraints on local levels (Nel 2004: 28-29).

The new program's focus on socio-economic issues, empowerment, participation, local capability enhancement and development, and redistribution (Davids 2005:43) was mindful of the legacy of apartheid. The introduction of RDP involved revision and change of nearly all aspects of public service delivery and policy, as the focus of this approach was to deal with the inequalities created by the former apartheid system. This objective was achieved through "institutionalizing the principles of sustainability, people-driven processes, peace and security, nation-building, democratization and reconstruction and development" (Mc Lennan 2009:24), as the 6 basic principles (RDP 1994)[11]. The government aimed at a new administrative structure, and the RDP argued for an interactive state in management of development and service deli-

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[11] RDP: http://www.anc.org.za/rdp/rdpall.html, accessed 01.04.2010.

very. This approach tried to achieve universal access to services, while rebuilding the economy and changing the distribution of key resources (Mc Lennan 2009:24-26).

Short, medium and long term objectives in water delivery

The RDP presents several targets and aims for provision of water and water facilities. In 1994 the short term target was "to provide all households with a clean, safe water supply of 20-30 liters per capita per day (lcd) within 200 meters", as well as adequate sanitation systems. The medium term target was "to provide an on-site supply of 50-60 lcd of clean water" (RDP 1994)[12], while the long term goals were to ensure all South Africans access to water and sanitation. These objectives, along with housing, were perceived as necessary steps to improve health and water security (Hemson 2008:145).

At the same time, RDP argues that the essential principle is the right to access clean water and water security. The program also acknowledges the economic and environmental value of water and promotes an economically, environmentally and politically sustainable management of the resource. The RDP presents several targets and aims for provision of water and water facilities, and provides guidelines for tariffs and ensures all South Africans a lifeline of water. It also advocates block-tariff systems and cross-subsidy in urban areas to ensure access and affordability to poor citizens. The guidelines follow the decentralizing trend of the document as it argues that "at local level, local governments must be made responsible for water distribution, provision of adequate sanitation facilities and waste removal, and the financing of these services through appropriate tariff and local tax mechanisms" (RDP 1994)[13].

However, Mc Lennan (2009:26) argues that RDP promoted a central role of the state government with regard to management of development and service delivery, created by the universal service delivery promises. These were complicated by great varieties in skills and capacities among municipalities and service deliveries. She argues that "despite intentions to expand access through citizen participation, structural inequalities and established bureaucratic culture made citizens recipients of services of uneven quality" (Mc Lennan 2009:27). Simultaneously, as the RDP indicated clear guidelines to ensure basic water provision to be accessible for all.

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[12] RDP: http://www.anc.org.za/rdp/rdpall.html, accessed 01.04.2010.
[13] RDP: http://www.anc.org.za/rdp/rdpall.html, accessed 01.04.2010.

Growth, Employment and Redistribution (GEAR)

RDP did not live up to its expectations (Mc Lennan 2009:28). It became evident that the government did not have the resources to implement the RDP to the level expected at local levels (Davids 2005:44). Even though RDP was not openly challenged, it was undermined by intimidated politicians, reluctant bureaucrats and undependable private sector partners (Bond 2000:90). Narsiah (2002:5) argues that the RDP ministry was powerless from its establishment; the RDP policies and implementations were resisted by other governmental ministers competing for the same resources. It resulted in a shift from a people-centered development strategy to a neoliberal development based on the Growth, Employment and Redistribution (GEAR) strategy (Davids 2005:44).

The shift from RDP to GEAR involved a departure from the notion of universal access. In addition, the country was influenced by the global economic framework, aiming at fast economic growth with little state intervention (Mc Lennan 2009:28). Hence, the ANC and South Africa made a neoliberal shift with the formal adoption of the GEAR program in 1996, and aligned itself with neoliberal and free-market ideology. This shift also resulted in a shift in policy stands and abandonment of the basic needs oriented RDP (Narsiah 2002:5-6). With the introduction of the GEAR strategy, cost-recovery became a fully acceptable principle with regards to water and water-services (and other basic services). This shift in notions also influenced the FBW-policy, and principle of cost-recovery made profit and surplus became more important. This resulted in the need to install metering systems on people's access, and high levels of disconnections due to non-payment (Winkler 2007: 15, 20)[14].

The GEAR strategy was a macroeconomic policy packet, but contained a number of microeconomic policies (Naidoo 2006:112). The program has been unable to achieve most of its objectives and goals, and the socio-economic situation has become worse. Because of the poor performance of the program and the need to include developmental aspects, an attempt to include a developmental framework into GEAR was made in 1997, however, this effort was "doomed to failure because the priorities of a people driven development and the priorities of capital are different" (Narsiah

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[14] More recently there has been another shift towards increased focus on delivery, social security and public programs and policies, increasing the state role (Hart 2006: 13-14, Mc Lennan 2009:36).

2002:6). There is limited space in this model to include larger public spending in order to provide for South Africa's social needs (Narsiah 2002:6).

While responsibilities and powers were transferred to local level municipalities as well as requirements of participation, this structural change was influenced by the financial and capacity strains many local municipalities are faced with. The extension of responsibilities and requirements was not followed by an equal transfer of resources, finances and staff. Hence, the municipalities are struggling to make ends meet while expanding and maintaining services deliveries (Nel 2004:34).

Furthermore, "[w]ith local government thus reduced to coordinating outsourced service delivery, and the fiscal principle of cost recovery firmly entrenched, citizens have in effect been reduced to clients" (Heller 2001:145). The GEAR program involved a new approach to service delivery, where citizens are customers and able to hold service providers to account (Mc Lennan 2009:29-30). The transformative language and notions of participation and social justice have been replaced by discourses of cost-recovery and managerialism (Heller 2001:145-151).

Problems of decentralization and political domination by the ANC

According to Heller (2001:139-140), decentralization leads to enhancement of democracy if it widens the scope and depth of citizen involvement in decision making; it involves a redistribution of power. The South African legislation aims at decentralizing both democratization and services. However, while the legislation and the rhetoric may be in place to achieve decentralization, there are several elements that may work against this development.

ANC has been too concerned with developing the institutions based on technocratic concerns. This has prevented the ability to enhance local democracy and mobilize participation. The financial strains, more regulations, outsourcing and growing technocratic dominance create a marginalization of community-based and politically negotiated initiatives. Economic constraints and limited financial transfers have limited the local governments' ability to embark on developmental projects. Much of the financial revenues are ring-fenced for delivery of services (Heller 2001: 146-147).

Heller (2001:151) questions if the relations between the different levels of government have created stifling supervision rather than cooperative as it was intended, caused by the ANC determination to combine political control and technocratic notions. The party strengthened its power through its control of the state, and began to directly oppose invented channels of participation and democratic influence, such as mobilizations and protests. By so doing, the party moves away from social movement partners, or converts them into service delivery partners. Several of the party's alliances have experienced a reduction in influence and power, resulting for instance in adoption of more neoliberal strategies. Thus, despite that the ANC's pledge to democracy remains the same, the party's relationship with civil society is worsening fast, resulting in a conflicting relation with civil society, hence, limited space for mobilization. The participatory forums created during the transition have lost influence; the decisions and actions of the ANC are increasingly more unilateral (Heller 2001: 151-156). An essential point is that in the end, (democratic) decentralization involves a redistribution of power, and is a political task (Heller 2001:136).

National Water Policy: Free Basic Water (FBW)

The WSA and NWA have led to a number of policy framework documents, where these frameworks have created the design of the Free Basic Water (FBW) Strategy (EWS 2004b:19), which will be the main focus here.

FBW was first adopted at a national level in 2002[15] after a cholera epidemic (Hemson and Owusu-Ampomah 2005:522), and the requirements for the policy drew on WSA. The main objective of the policy is to ensure everybody water and to continue to move towards achieving this objective. This policy quotes water supply as 25 liters per person per day, or 6000 liters per household per month holding 8 persons, though local governments have the final judgment to go above this amount. This may result in some areas providing more, while others provide less (Sonjica 2005)[16].

While the 6kl was aimed at the poor, most households were included and consumption above 6kl was charged for. By 2002, 57 percent of the inhabitants in 214

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[15] It was introduced earlier, as it was announced during the previous to the local election in 2000 that the FBW should be introduced at a national level (Loftus 2009: 961).

[16] Sonjica 2005: http://www.info.gov.za/speeches/2005/05022410451002.htm, accessed 22.04.2010.

out of 309 municipalities reported to receive and take advantage of the FBW (Hemson and Owusu-Ampomah 2005:522). Furthermore, poverty thresholds may be determined by the local authorities.

This policy is financed through national subsidies and/or local cross-subsidies. As cost-recovery for delivery is an important point, monitoring of consumption is needed. There are several alternatives in terms of supplying the FBW, and flexibility need to be maintain in use of the different approaches; rising block-tariffs, target credits or subsidies, service level targeting. Different type of settlements and municipallities with different types of income- and service- level, may take advantage of differrent strategies (Sonjica 2005)[17]. In general the FBW has not been given to rural households, who often are more in need of basic services, simultaneously as less able to pay for them (Hemson and Owusu-Ampomah 2005:522). This will be discussed later on.

Civil Society and National Mobilization

After the end of apartheid the relationship between the state and the civil society[18] was generally characterized by a collaborative nature. This relation was made possible by the new government's effort to form an enabling political and fiscal environment.

In a context of increasing poverty and inequality, the mobilization and emergence of social movements developed during the late 1990s. According to Ballard et al. (2005:621-623) the social movements and civil society have gone through three phases. The first phase involved the apartheid struggle, including a high level of political and social mobilization from the 1970s. This activity and social mobilization influenced the transition to democracy. Much of the earlier resistance-actors of apartheid now entered the corridors of power after the election in 1994. This resulted in a 'voiceless' opposition to government, and limited skills to organize opposition. Though, the relationship between the state and the civil society changed, if they wanted to mobilize the civil society would run into trouble as the institutions and skills had disappeared (into government), indicating the second phase.

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[17] Sonjica 2005: http://www.info.gov.za/speeches/2005/05022410451002.htm, accessed 22.04.2010.
[18] This thesis operates with a rather broad definition of the civil society, including both organizations and movements located on the outside of state and the market, representing various interests and groups. This is caused by the inclusiveness of the invented channel involving both organizations and broader social movements. Additionally, while the CCG is an organization, it has also been called a social movement (Habib 2005).

The third phase, in the late 1990s, involves the emergence of the new struggles and social mobilization. These new social struggles have emerged fast in a number of areas, generally following the second election. Three linked developments fueled these events. The first struggle opposed one or several policies of government. The second struggle is linked to problems in service delivery, while the third struggle is linked as "acts of resistance emerged to challenge directly the enforcement of government policies and to resist government attempts at repression" (Ballard et al. 2005: 616).

The new rise of social mobilization is caused by a number of issues. The most important element is the high and increasing level of poverty and inequality. This involves increasing squeeze of poor people in a situation of high unemployment rates and increasing expenses for services due to cost-recovery requirements. The second issue deals with exclusion of certain groups, followed by social movements which draw on resources, skills and knowledge of individuals and/or institutions. The fourth type of issue mobilizing socially are movements resulting from the post-apartheid political environment, often dealing with a new political, economic and social order and human rights. Another element of the current nature of the relation between state and civil society "falls on a continuum between in-system collaborative interaction on the one extreme, and out-of-system adversarial on the other" (Ballard et al. 2005:629). Finally, the effect of the social mobilization in South Africa may be to ease the consolidation of democracy (Ballard et al. 2005:625-630).

Habib (2005:685) sums up the development in South Africa by characterizing the social mobilization and civil society organizations into three groups. The group of more formal NGOs has a collaborative relation with the state and has often subcontracts for various service delivery tasks. A number of accountability issues emerge with this development, such as how to hold the service delivering NGOs accountable, to whom, and how are the interests of poor and marginalized ensured? It also leads to a more service-related relation with the state, commercialization and professionalism which make the divide between profit and non-profit less clear (Habib 2005:680). The second group consists of structures opposing and challenging neoliberalism and creating a relationship ranging from adversarialism to engagement, or both. This means a more equal relation with the state and means such as lobbying, court action and

resistance to influence the state. Finally, there is the group located somewhere between the two, based on survival, and often informal with limited relation to the state. However, the borders between the types are fluid.

Regional Level: Durban, eThekwini Municipality

After the end of the apartheid era, the country was left with great inequalities among different people and social groups. This is also the case with regard to water and water distribution. These inequalities are reflected in the South African cities (Winkler 2007: 4), such as for instance Durban, one of the biggest cities in South Africa with a population of approximately three million people (Marx and Charlton 2003:3).

Despite the city-government's efforts to address the great inequality it remains, ranging from slums and informal settlements to western standards of comfort. The African population constitutes 63 percent of the whole city's population, while the Asian and the white population is 22 percent and 11 percent, in addition to a colored group which makes up 3 percent. The level of informal settlements may reflect the broader poverty challenges the city is faced with. When using a broader definition of poverty it is estimated that 690 000 people, or close to 23 percent need to be alleviated from extreme poverty, while some 510 000 people, or nearly 17 percent need improved living-conditions (Marx and Charlton 2003:3-8).

Political Circumstances

The local government in Durban has a long history with regard to public authority. This position involved an administrative elite who maintained a position, equal and at times above political and economic elites. Because of this and the experiences drawn from earlier events and local crisis, the government was able to keep its legitimacy in times of economic changes. Post-1994 it also quickly regained its notion of the connections between local government's responsibilities in terms of public services and its role as facilitator for local development (Lootvoet and Freunf 2006:261-262).

After the demarcation of the municipality's borders[19], ending in 2000, the local government of Durban had a Metropolitan Council with 200 elected representatives (Lootvoet and Freund 2006:262). At a local level there are two types of political representation, ward representatives and proportional representatives (PR). eThekwini municipality has a system of mixed representation where the proportional representation is combined with ward representation, 100 representatives are elected based on wards, and 100 are elected from PR lists (Maharaj and Low 2008:11-12). Despite these representatives, the majority of the power is left in the hands of the Executive Committee (Lootvoet & Freund 2006:262). These executive committees, or 'EXCOS', are run by key councilors from the various parties according to the share of representatives the party won in the council (Low et al. 2007:251), the leaders of the committees are members of the Executive Committee.

Ward committees are in the policy for participation indicated as the "legitimate statutory platform for community participation. The object of a Ward Committee is to enhance participatory democracy in local government" (ETM 2006:26). These bodies are supposed to be advisory, independent and impartial (ETM 2006:26). However, they have in many instances become an extension of the political system and highly political (Aylett 2010:108) and an organ to assist the ward councilor.

In recent years, the role of the ward councilor and the PR councilor has been increasingly mixed. While the PR councilors were previously not linked to any specific area, they are increasingly assigned to specific areas and wards. This may have many purposes, it may be a way to gain a foothold for a party in a ward dominated by another party or/and it may also be used to relive some of the duties given to the ward councilor by the PR councilor (Low et al. 2007:258-259).

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[19] As the *Local Government Municipal Demarcation Act of 1998* involved changing municipal borders this implied change of extent of responsibilities and duties as well as change of areas included in the economic and social development plans. Through this act rural municipalities were included into more urban local governments. The objective of this structural change was to ensure fulfillment of constitutional rights and social and economic development, integrated development and effective local governance through and in order to ensure economic efficiency (Nel 2004:31).

Policy and Plans

A number of policy initiatives are given guidelines from the national level and imple-
mented at a local level, such as IDPs[20] and FBW. The city has also developed a partici-
patory policy, which is interesting due to the issues which are non-negotiable. Accor-
ding to the policy, water and water service delivery falls in this category. What can be
discussed regarding water is *how* these services are delivered (ETM 2006:29-30).[21]

eThekwini Water and Sanitation Unit (EWS)

Participatory structures in the EWS

The unit has engaged in a number of participatory structures in order to improve the
communication and information sharing between the unit and the public. Besides
making efforts to reach people through various types of media (discussed in chapter 5),
the unit has initiated Focus Groups, utilized the Citizens' Voice project and is develop-
ing User Platforms more recently.

Wilson et al. (2008:141)[22] acknowledge that the need for improved information
exchange between EWS and the public is necessary in order for the unit to be able deal
with the service backlogs. This has involved creating mechanisms "for bringing local
knowledge to bear on finding innovative new solutions to complex and intractable pro-
blems, such as vandalism of infrastructure and consequently high non-revenue water
rates (over 30%)". As a result, a project involving *focus groups* was initiated. This
involved gathering persons (2-3 persons) from key institutions in a community, such
as clinics, schools, churches, who deal with a great variety of people every day. The
selected persons in the research were "people who live and work in the area, and have
a professional responsibility for the health and wellbeing of large numbers of commu-
nity members" (Wilson et al. 2008:143). The authors continue to acknowledge the bias
this may create towards people living and working in the area. The participation was
open and voluntary, and those who wanted got a seat in focus groups meeting quarter-
ly. The aim of the research was to create trust, invite community to engage, increase

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[20] A closer elaboration on the IDP processes in Durban is given in Appendix 7.
[21] For a brief introduction to this policy see Appendix 8.
[22] The article deals with the pilot study for the model of this focus group structure.

transparency and capacity building, and to "give the opportunity for participants to join a practical solution-oriented focus group" (Wilson et al. 2008:145).

The Citizens' Voice program originates from a pilot project in Cape Town in 2006, led by Laila Smith from the Mvula Trust[23]. The "Raising the Citizens' Voice in the Regulation of Services" was an initiative made by the National Regulator in public education. It emphasizes a bottom-up approach to water services regulation through inclusion of citizens with regard to local monitoring of water and sanitation services. The project's objective is to empower citizens through education of their rights and setting up user platforms to facilitate monthly meetings between the municipality and the community to face challenges voiced by civil society. The pilot project in Cape Town brought benefits and was scaled up and spread to other areas (de Long 2009).[24]

The initiative for Citizens' Voice made by eThekwini was self-funded and was framed and adjusted to the context in a partnership with the local Mvula Trust office in Durban (de Long 2009)[25]. The structure was, according to informants, formed on a training program based on 10 modules, which were taken from Cape Town and adjustted to the Durban context in 2007. The training was done in the beginning of 2008. Due of the problems in the implementation of the model, the structure was abandoned.

A more resent structure is the *user groups.* [26] The municipality is divided into 17 zones, each containing 5-6 wards where each ward has ward leadership, ward committees, and civil society. The new forum will be put on a zonal basis where the three main elements are the mentioned bodies. These bodies will be approached by the EWS regarding training prior to the participation.

Improvements made by the municipality

During the years after apartheid 100 000 more household have been connected to the water infrastructure. This expansion has also had an influence on the municipality's use of a number of medium-technology alternatives to full pressure of water, providing some water to people having several benefits with regard to health and time issues

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[23] The largest NGO working on water and sanitation development in South Africa: http://mvula.org.za/, accessed 10.06.2010.

[24] ICR International Water and Sanitation Centre: http://www.irc.nl/page/50474, accessed 04.03.2010.

[25] ICR International Water and Sanitation Centre: http://www.irc.nl/page/50474, accessed 04.03.2010.

[26] This forum is relatively new and under development, hence, regarding information and analysis is rather speculative.

related to water. During the development of means to provide people with some water, the municipality started forming a universal free basic water policy. The provision of some free water is possible by cross-subsidizing the low volume-usage by the high levels of consumption (Loftus 2007:47).

Free Basic Water (FBW)

The FBW was initiated in Durban before it was introduced at a national level in 2000, using Durban as a model. The policy came about as a response to prevent major out-break of disease in the city following the increasing settlements in town. This was done by providing 200 liters water in a plastic tank, where anyone not paying the rate would not get their tank refilled. However it became apparent that the managerial and bureaucratic tasks with this system were more costly than proving the water for free, hence the municipality started to provide free drinking water in 1997. The following year, the amount of water was increased to 200 liters to all households per day, repre-senting the start of FBW in Durban. In 2008 the amount of water provided was further increased to 300 liters per day per household. Nevertheless, the municipality was between 2002 and 2003, disconnecting 4000 households per week due to non-payment. A household may be able to avoid disconnections due to lack of payment for service if it agrees to install a flow limiter device, which automatically restrict the supply to the free amount provided (Loftus 2009:961-962).

eThekwini Water Policy 2008/2009

Service Levels and Tariffs

The water policy of 08/09 indicates that there are different tariffs for different type of services and connections for water. The Council consents to these tariffs once a year. Different levels of water service are offered:

- Full pressure water supply fed directly to the household from the City's supply network
- Semi pressure water supply received by the household via a roof-tank
- 300 liters of water per day available via a ground tank which is filled daily or a flow limiter - equivalent to 9 000 liters of water per month
- Standpipes that are provided to supply informal communities as a interim measure
- Water sachets or tinkered water in the case of prolonged service interruption (EWS no year:4).

The connection of water is provided at different tariffs determined by the service level provided (EWS 2008/2009:2) and are aimed at making service affordable to domestic customers (EWS no year:4).

Hence, as all 'customers' are provided the first 9kl without charge, the following consumption is charged on a rising tariff basis (EWS no year:4). The price of water is dependent on the amount of water used and the type of water connection (in a 30 days period). Households with full pressure will in addition pay fixed water charges, determined by the size of the water meter if the amount of water used is higher than 9kl. If, however, the property value is estimated to be lower than R190 000 the fixed charges are not due (EWS 2008/2009:1).[27]

If a person does not pay for his/her water in full by the due date, the amount becomes a water debt where interest rates and administrative charges are added. This will be followed by a notification of lacking payment. If this does not create a response from the customer, the water is provided through a specially designed washer. This means that the flow of water is reduced to one liter per minute. The policy continues:

> [t]his is done withstanding the high court judgement in our favour which states that anyone using more than 6kl in a 30day period and not paying for the extra consumption charges forfeits their right to access 6kl free basic water and can have their water supply disconnected (EWS 2008/2009:5).

When the outstanding amount is paid or arrangement for payment has been made, the water supply is restored. The policy provides several suggestions with regard to the payment of unpaid water services: to pay the amount in full, to agree to a credit agreement, the *debt relief scheme*, or to acknowledge debt and installation of a flow limiter (EWS 2008/2009:5-6).

The Debt Relief Scheme

The *debt relief scheme* aims at helping people that have been in debt for more than 90 days and are living on a property rated R190 000 or less (EWS 2008/2009:5). The structure is that the debt is parked off for a 20 month period, during which period the person is expected to pay their water bills in full before the due date. Subsequently, and according to an EWS officer, each month the bill is paid, 1/20th is written off the par-

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[27] The current tariffs may be found in Appendix 9.

ked debt (which is not subject to interest rates). The person can get the period extended to 24 months, and fail to pay the account for 3 months, if the new outstanding amount is paid later. However, if a person is not able to pay the bill for four consecutive months, the agreement terminates on the 1st of the fifth month (EWS 2008/2009:5-6).[28]

In Chatsworth, the people in the communities have also been offered installing a flow limiter providing a set amount of water a day, they could chose between 300l, 400l, 600l and 800l (and unlimited supply), determined by how much they could afford to pay for water a month. In addition, according to an EWS officer, the people entering the agreement were given a window of 3 months to change their mind with regard to changing the connection free of charge.

Civil Society in Durban

While Durban is heavily dependent on industry, post-apartheid and the ending of the protection of national industry led to a change from import-subsidization to export-oriented production. The opening up of the market also led to destabilization of the clothing sector, and increasing the vulnerability of the textile industry, because of increased external competition (Lootvoet & Freund 2006:259-260). Much of this clothing industry was an important income source of people in Chatsworth as seen later.

CCG and other similar organizations are dealing with the "squeeze on the poor: their inability to make a living (…) and oppose cost-recovery for services". The organization uses methods such as "illegal reconnection, court injunctions and protests (…) to expose the contradiction of council demanding payment from residents who do not have sufficient income to pay for them" (Ballard et al. 2005:626).

Civil Society in Chatsworth: CCG and WFRA

History, organization and struggle

The Group Area Act in 1959 established Chatsworth as an 'Indian' township. In order to establish what was to be called Chatsworth, 14 000 people were displaced and the development of the township commenced in 1962 with people moving in shortly there-

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[28] For further elaboration on the contract, the termination of contract and the final structure of acknowledgment of debt, see Appendix 10.

after (Desai 2000:13, Narsiah 2002:8). This area functioned as a shield between the central white areas and the peripheral black areas (Freund 2001:531).

To use the space efficiently, flat type dwellings were constructed for rent, where the Council was the owner and landlord. This type of housing was only constructed in parts of Unit Two, Bayview and Unit Three, Westcliff. 20 214 housing units have been built, divided on 405 blocks, each block containing 6 or 8 units. These blocks and units were constructed in the 9 neighborhoods of Chatsworth (Narsiah 2002:8), and were constructed for the poor (Desai 2000:4). They come in various sizes, one-, two- or three-bedroom and a kitchen. The flats often house a number of people and even several generations (Jacobsen Yarza 2008:7). Chatsworth today has a population of approximately 300 000 people of mostly Indian descent (Desai 2002:15), and it was expressed during my fieldwork that it is estimated that there are about 740 families, making about 3000 persons living in the 127 blocks of flats in Westcliff.

In the early years of the establishment of the township community structures were created as the population mobilized and established a shadow Town Council, where the people created wards and elected committees. This led to dismay in the City Hall as the community was creating a competing power structure. As a response to this mobilization the council called the leaders revolutionaries urging the poor to action and used evictions in order to create divisions and fear. The council's effort succeeded in rising fear, as the shortage of houses was dealt with through evictions of some, followed by settling of others (Desai 2000:19-22).

The area has a long history of struggle, both prior to the fall of apartheid and after the transition to democracy (Narsiah 2002). Along with the increasing threat of evictions, the area formed the Chatsworth Housing Action Committee (CHAC) in the 1980s, which began to stir up growing protests. They resisted the Council's attempts to sell the units to the tenants, as the houses had been paid off during the long tenure and no maintenance was done to the buildings (Desai 2000: 35). The growing local civic activities and organizing gave added confidence, and the protests increased in number and reflected the demand to engage from the municipality side (Desai 2002:36).

In these flatted areas the Council operates as landlord and owner. Because the Council is a public body the delivery of housing is a basic service, thus, along with this

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housing provision the package included basic services such as water, electricity, and waste removal (Narsiah 2002:8). However, as the remaining hope and faith in the new government post-1994 wore out, the continual increases of rent, evictions, disconnections of water and electricity the dreams of a better life for all turned into disillusionment, and dismay. The people in the flats viewed the Metropolitan Council as their new oppressors, as they were subject to water and electricity disconnections and evictions due to lacking payment of rates and services (Desai 2000:8).

In Unit Three, Westcliff, there was a mobilization and organization of the people living in the council flats dealing with issues such as unemployment, poverty, disconnections of services and evictions creating anger and frustration. These problems were faced by other communities in Chatsworth, such as Bayview, Woodhurst and Crossmore, and together they established the Flat Dwellers Action Committee (Jacobsen Yarza 2008:12). These organizations were already present when the Concerned Citizens Group (CCG) arrived (Narsiah 2002:12).

WFRA was formed in 1998,[29] due to similarities in situation such as female run households, and dependence on the clothing industry and grants. The challenges faced by many of the poorer people were also exacerbated by the closure and problems in the clothing and textile industry (Narsiah 2002:10-11). This industry employed tens of thousands of people in Chatsworth. In addition, grants and support systems, one of the important sources of income in the area, were cut as the government attempted to find less expensive solutions and systems (Desai 2000:10, Naidoo 2009)[30], and for redistribution purposes. All in all, this led to the formation of WFRA and later CCG.

According to Jacobsen Yarza (2008:16), the socio-economic problems have become worse after the end of apartheid in this area. In 2001 approximately 40 percent of the population in Westcliff was not economically active, and 55 percent have no income. Research done by Institute for Black Research (IBR) made on socio-economic conditions in Bayview and Westcliff, indicates that 76 percent were living below the poverty line, 58 percent were unemployed and 42 percent were maintaining themsel-

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[29] WFRA: http://chatsworthactivists.wordpress.com/, accessed 02.03.10. According to an informant was the organization formed very unofficially in 1997.
[30] Orlean Naidoo on Durban Sings, May 2009: http://www.archive.org/details/DurbanSings_965, accessed 21.05.2010.

ves on welfare grants of about R300 a month (Narsiah 2002:11). According to an interviewee in Jacobsen Yarza's (2008:16) research a newer survey showed that 86-87 percent were sustaining themselves on an income below the poverty line. Likewise, one of the persons in community said during a conversation that the household had an income of 480 rands[31] a month, based on child support grant. It was also expressed during the same conversation that the household's income was about average in terms of income level in the community.

Most of the households were also led by females or old age pensioners (Narsiah 2002:11), and accumulation of debt for unpaid services is a great challenge. Simultaneously as welfare support systems are decreased and tariffs for services increase. There are also other social problems, such as drug and alcohol abuse, domestic violence, lack of faith in the police, limited flow of income into the community, moneylenders with high interests, begging and prostitution (Jacobsen Yarza 2008:17-19).

Prior to the second national election in 1999, the CCG arrived. This group had connections to ANC and consisted of Indian leaders and aimed at securing votes for ANC as the Indian vote was regarded as important to win KwaZulu-Natal. However, the group was met with reluctance and resistance and questioned regarding evictions, water and electricity disconnections and unemployment. Upon closer investigation of the situation, the group broke off from ANC and the neoliberal policy and reformed into an organization voicing the plight of the poor in the area (Desai 2000:44). After a visit in the area a CCG member commented that "[i]t is difficult to imagine how people managed to feed themselves and their children, let alone pay rent or rates. Suddenly these thousands of rands in arrears that has been accumulated by residents made sense", because of the financial situation there was no such thing as a culture of non-payment but an *"economics of non-payment"* (Desai 2000:10). With the involvement of the CCG local leadership also occurred and reinforced itself as well as an identity was formed going across traditional racial lines as the 'poors' (Desai 2000:10).

As a response to the mobilizing in Chatsworth, the Council used methods utilized by the old apartheid-government, creating fear and division as well as demonizing the community leaders and CCG. A number of strategies were used to fight evictions;

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[31] 1 NOK = 1.18ZAR, http://www.dn.no/finans/valuta/, accessed 10.06.2010.

the bigger the protests were, the harsher the conduct of the Council became (Desai 2000:44).

With regard to the billing system, Durban has used a consolidated type. This means that rent, water and electricity are not coming on separate bills but are consolidated in one sum and one bill. Arrears were consequently calculated with regard to an order of rent, water and finally electricity. When debt was accumulating the electricity was cut first, followed by water before finally evictions. Because these services were consolidated, it follows that as one or more of these elements were subject to privatization and/or commercialization, it affects the others services (Narsiah 2002:11).

The basis for the rentals was based on historical values and costs when the flats were built in the 1960s, as many of the tenants have lived in the units for long periods of times, it may be argued that they have paid off the costs of construction and are currently cross-subsidizing others (rich people). As they are unable to pay the rent, ultimately "the inhabitants of Chatsworth [are] financing their own dislocation" (Narsiah 2002:11). With regard to water the community has currently gained separate bills for water and rent, while most people are on prepaid-meters for electricity.

Summary

Beginning with, and reflecting the thesis focus on human rights the chapter started by discussing the context of the South African constitution. This was followed by the number of documents resulting from this constitution. The second issue discussed in this chapter-part was a number of policies, how these are linked to constitutional emphasis and each other. This was followed by a short introduction of the development in the civil society, before turning to the second and part dealing with Durban. This part initiated with discussing the political structures of Durban and various local policies. As a second element of this part, I introduced the city's water and sanitation unit, their participatory structure efforts, improvements, and more general water policy. As the third and final section of the chapter I discussed civil society in and the history of Chatsworth, more specifically. This gives a general notion of the back-ground and case as I turn to the analysis in the next chapter.

Chapter 4: The Role of Courts and Elections

Introduction

This chapter focuses on the first of three sets of interrelated questions, namely, the nature and characteristics of the judicial and political structures and channels that may be used to gain influence in water policy design and implementation of the right to water.

In order to answer these, a number of issues will be presented and discussed. The two following chapters are organized according to analytic units (judicial, political, administrative and civil society), similar issues (on various geographical levels) will be discussed regarding all of them. First of all there will be an attempt to classify the various strategies (and responses) of participation and perspectives on the 'quality' of these channels of participation. In addition, I will discuss how more structural issues may influence the ability for participation at a local level, as well as the influence this may have on local water politics.

My main argument in the following two chapters is two-fold. First, while the rhetoric of participation and water as human rights is present; the effect of these is rather limited. With regard to participation, the emphasis is present and acknowledged, but the effectiveness of the participatory structures may be considered limited regarding redistribution of power and influence. Due to this it becomes important to use several channels simultaneously.

Judicial system and courts judgments

National Level

One channel which may be taken advantage of, with regard to demands of rights and accountability, is the judicial system. This structure may be called an invited space of participation. By use of this channel people can hold service delivery providers to account. This channel also creates a space for people to bring concerns and demand their rights. However, while this space creates an opportunity, it is also linked to challenges and problems.

Socio-economic rights demands

The latter statement is linked to one important challenge to the effective use of this channel. While this is an invited channel, through which people can have their cases tested, voices heard and potentially have influence on the current practice, the channel is not effectively open to all. The access to the channel is in fact constrained and limited in terms of who may take advantage of the opportunity. The access is determined by the person's or group's access to funding, thus, his/her access to the channel through legal representation. This may make the channel inaccessible, as "poor people are largely unable to take cases through the normal judicial process, which is both lengthy and costly" (Dugard 2006:266). This is enhanced by the great socio-economic differences in the country. As this channel is more accessible for affluent people than poor ones, there may be a risk that the system accommodates more affluent people's concerns, instead of the poor ones'. As such the system will have limited influence on power redistribution and future challenges inherently in the system, faced by the poor.

This problem is linked to what Bond and Dugard (2008:4) argue as the first of two reasons for why so few socio-economic rights have been brought to the Constitutional Court. Firstly, "the Court has failed to advance a pro-poor direct access practice". By giving access to only a few cases over that past years, the court has, instead of encouraging, restricted the conditions for direct access. This has disadvantaged the "Courts ability to act as an institutional voice for the poor as, increasingly, only empowered individuals and groups$^{(...)}$ have the resources to bring litigation through the judicial system to Constitutional Court" (Dugard 2006:266).

The second argument is that "the overtly tentative and deferential way in which the Constitutional Court has interpreted socio-economic rights in its first decade has further alienated potential claimants" (Bond and Dugard 2008:4). By this the Constitutional Court has rather evaluated the potential violations of human rights instead of looking at the state's positive duties and testing it towards the reasonableness and availability of resources for government projects. For this reason the cases that have been brought to court have been ruled in favor of the poor in 4 out of 5 cases, however, it has simultaneously involved little relief for the poor applicant and serves as little encouragement for others to bring their case into the justice system (Bond and Dugard

2008:4). A similar notion was pointed out by one of my informants when he commented:

> when judges give speeches to big dinners (…) where poor people are conspicuous by their absence, they always talk about poor people and how poor people should come to them and claim their rights, but when they make their rulings they always seems to rule against the poor, which seams to be contradictory.

In the end Dugard (2006:282) points out that the Constitutional Court's failure to develop a pro-poor environment, limits poors' ability to raise issues in court and also undermine the court's role in society, the public faith in the system and rule of law.

Hence, this implies that the channel has limited value for the poor due to the problems of accessing the channel and the limited effect of the rulings. Furthermore, there may be implications for HRBA-principles such as accountability and rule of law. This principle argues that states and other duty-carriers "are answerable for the observance on human rights" (UNDP2007:15). If the duty-bearers do not respect the legal norms and human rights standards, the right-holder may bring the issue to court according to the regulations and processes enshrined in the law (UNDP 2007:15). Hence, if the procedures and the rulings do not benefit the poor, the poor will turn to other spaces of participation in order to gain more effective influence and benefits.

Another point of concern that was raised by a few informants during my stay in South Africa regarding the constitutional rights and promises was likened to the feasibility of the constitution as one of NGO informants expressed:

> the promises were not realistic, we have had test cases that have showed us that, yes, it is in the constitution, but within the resources of the state. So the constitution guarantees a house, guarantees a right to a decent lifestyle, guarantees free basic services, guarantees education. None of these things are happening

Similarly another researcher observed, "I think it [the constitutional right to access water] has been a disaster actually, it drew people into a false hope that they would be, to generate social progress through the court". This may explain the somewhat limited success of poor to enforce and demand their rights in face of constrained resources. This issue of feasibility also introduces another HRBA principle regarding progressive realization when facing resource constraints, mentioned in chapter two. The principle argues that, in combination with the non-discrimination principle, that the duty-bearer

is obligated to make the rights realized according to available resources and to monitor the fulfillment of these rights.

At the same time, and as mentioned earlier, the fact that various socio-economic rights are in the Constitution also make it possible to bring it to court and gives some power to people's demands of services. This is illustrated by a statement where a NGO-interviewee said

> I think the Constitution in South Africa is progressive, I think that if it was not for that Constitution and that the right to water is enshrined in the constitution and free basic water policies, even with all the problems that goes with it, that there would be less water for communities.

Hence, the channel represents an important arena for poor to make those demands (when able to access it). The fact that the rights are in the Constitution implies that it may be tested before a court makes an important point as stated by one of my informants at a later point. At the same time, there are some major challenges, as commented by another NGO person:

> You can have the best constitution (…) The fact that we have 40 odd percent of the population living in poverty, that begs the question, you can have the best document the best legislation but if it does not meet the needs of the people, we have a problem. And I think from times to times people are having some very interesting challenges to the constitutional court and they have succeeded.

The quote also indicates the contradiction between the constitutional framework and most people's experience and challenges, the progressiveness of the constitution and the right to access to water. The channel should, thus, be complemented with other channels and means of influence.

The Constitutional right to water

While the constitution may be considered to be progressive in terms of including a number of socio-economic rights, there are some challenges in terms of making these rights accessible and influential in people's daily life. The constitution stipulates a number of rights reflecting the human rights, but there are a number or reservations and limiting clauses. This point was reflected by on informant from the community:

> if you look at our constitution, everybody thinks that we have the most progressive constitution in the world, and if anyone reads the document it shows that it is the most progressive document in itself, but within the very documents there are limitations. So the limitations actually don't make it so progressive, and that is what people don't realize.

The obligation to protect comes into play when the section 4(3)(c) in WSA is investigated. This section argues that procedures must be in place when considering disconnecttion and interruption of water service delivery, and holds that practices should "not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water service authority, that he or she is unable to pay for basic services". At the same time a following section argues that the obligation of service delivery authorities is dependent on "the right of the relevant water service authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services" (WSA quoted in Winkler 2007:9). Winkler (2007:9) argues that this combination of the apparently contradicting sections is to ensure that poor people are not denied basic services. However, this may raise another set of problematic questions and out of date definitions in terms of what defines a poor person, and lack of definetion of what reasonable measures are, whose reasonable measures they are and under what circumstances.

The obligation to protect becomes highly relevant in face of privatization of water services. Here the state is required to make sure that it meets requirements and acts according to law and human rights (Winkler 2007:9). Another point relevant for the obligations to respect and protect is the issue of affordability and rising tariffs (Winkler 2007:14) which may result in denial of people access to water due to poor peoples' inability to pay.

Based on a human rights perspective, water does not necessarily have to be free of charge. However, it is required that it is affordable. Hence, whether or not people's right to water is fulfilled is much dependent on the water service being affordable. If people use a large portion of their income to secure water supply (the international recommendations are not more than 3-5 percent of a household income) it may be perceived as unaffordable. One of the consequences of the adoption of neoliberalism and cost-recovery principles is that prices have increased in many areas. As a further result, water services have become unaffordable for many poor people in South Africa, and therefore led to a violation of the human rights to water. The high number of cutoffs in South Africa violates the human right to water since it has left people without

access to water and as poor people cannot be denied access due to inability to pay for water (Winkler 2007:18-19). The social facilitator interviewed pointed out the challenges of enforcing the constitutional rights with regard to water when he said

> Water is a limited resource, but that does not mean that we should then deny the poor and allow the rich to benefit, and that is the mixed quality of our constitution. Everybody is equal, so one has to ensure that the rich are not benefiting on the expense of the poor, simply because they cannot afford water.

The obligation to fulfill comes into play in order to ensure everybody, who currently has no or limited access, access to water. Accordingly the water service authority is responsible to make sure that all citizens within their area of operation have an "efficient, affordable, economical and sustainable access to water services" (WSA quoted in Winkler 2007:9).

The Bill of Rights does not provide any specific obligations for the state regarding socio-economic rights, the effort made needs to be 'reasonable', 'within available resources', and done 'progressively'. As a result the implementation of socio-economic rights is dependent on "practical considerations of time and finances, and by reason" (Greenstein 2006:421). The RDP argued for 50-60 liters in the medium-term, while the current level is 25 liters of water per person, per day (with 8 persons in a household) and there are no indications on upgrading to the medium-term target (Pape 2002:184). This indicates an issue regarding the reasonableness and progressive implementation of the right to access to water what qualifies as reasonable and progressive, over how long a period, determined by whom, on what criteria? Further, the terms 'adequate', 'sufficient' and 'access' open up for movement, through these phrases "the government can provide RDP housing and 6 kiloliters of free water and not be in violation of its citizens' rights" (Narsiah 2002:8).

Political issues in the Constitutional Court

When the ANC introduced the idea of floor-crossing, through the Local Government Municipal Structures Act in 1998, this was brought to Constitutional Court by one of the opposing parties. It was argued that the seat was given to the party, rather than the individual elected. However, the court judged in favor of the practice, based on the notion that any 'betrayed' voter could make their opinions known during the next election (Maharaj and Low 2008:13). This implies that the elected representatives and

the political parties would be held accountable every fifth year during the elections. This also implies the necessity of an effective challenger for political power.

As noted before, ANC is currently, and has been the dominating party. The party has also strengthened this domination. This means holding ANC or any other party accountable with effect through elections might be limited, as expressed by a scholar:

> often the outcome of the next election is fairly anticipated, unless the ANC falls apart (…) So if it is keeping itself together in one place and the opposition is not adequately organized they win the election, so elections are really not offering the real threat of loss and return to power, and in absence of that, they are not really a great mechanism to hold people to account.

Another political informant expressed similar thoughts regarding the accountability of the municipality when he said it "seems like the court case way is the only effective way at the moment, but unfortunately it is an expensive way, but it seems like it is the only way that is working at the moment".

Hence, as the channel of election may not hold much strength with regard to holding government leaders and service providers accountable, as an important principle in the HBRA, the judicial system holds an important position. As the same researcher pointed out "the constitution is important. (…) it makes a huge difference having these things stipulated in the constitution because you can take it to the constitutional court and test it". Implying the 'legal empowerment' of the people through the judicial rights the citizens have.

Regional Level

This invited space has been used at a number of occasions in different areas, dealing with different aspects of the constitutional right to access to water and the subsequent water policy. While the results have been mixed, some concessions have been given and they all put the right to the test and continually challenge the understanding and the implementation of the right to access sufficient water. This indicates some of the strength of the right being enshrined in the constitution. It implies an identification of right-holders and duty-bearers according to the principle of the recognition of the normative framework of the HRBA. Furthermore, as the Constitution recognizes the right, it may be tested and challenged in court, referring to the principle of accountability and rule of law mentioned in chapter two.

Water court cases

The civil society in South Africa has used a variety of strategies to influence water service provision. One such strategy is the use of the legal system in order to "try and ameliorate the impact of market-based service delivery on poor consumers [which] initially [has been] met with only limited success" (Morgan 2008:9). There have been a few court cases dealing with water and disconnection of water at various levels.

The first case dealing with disconnections was the case of *Manqele v. Durban Transitional Metropolitan Council* (final judgment given in 2002), where the applicant's water supply was disconnected due to non-payment. In this case the applicant argued that the disconnection was unlawful due to the consequence of Manqele being denied the basic water supply, relying on the WSA. The court, however, argued that as the WSA was not completed at that point in time, therefore also unenforceable and that the definitions of basic water supply had not yet been developed. Because of this the court ruled that there were no guiding principles to direct the ruling with regard to the relevant section Manqele argued for. The judge also ruled that this was connected to policy matters dealing with the resources available and as such outside his/her authority. However, the court argued that Manqele did not restrict the consumption to the free six kl per month, but used additional water, "[i]n the opinion of the judge, she cannot rely on the inability to pay for water services as a consequence of this behavior. Thus, the judge concluded that the disconnection had not been illegal" (Winkler 2007: 17). Hence, while the judge argued that the denial of assistance was based on technical arguments, the decision was mainly made due to the plaintiff's activity of illegal reconnection which resulted in the argument that the citizen had forfeited the right through the illegal activity (Winkler 2007:17, Morgan 2008:9, 14).

The ruling has been criticized on several accounts. Firstly, the judgment does not divide past behavior and present inability to pay. As a result the person may be covered by section 4 (3)(c) if able to establish that he/she is unable to pay for the service delivery, where a poor person cannot be cut-off due to non-payment. This does not close the options to restrict, and the judge could have ruled that the municipality was obligated to continue to provide the minimum supply (Winkler 2007:17) as adopted by the Department of Water Affairs (DWA) later trough the FBW.

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As a final note, this case, which had been going over a few years (Desai 2000), occurred in the same time period as the FBW policy was introduced, and was located in Durban, where the FBW is argued to originate from (Loftus 2009). As mentioned earlier, this was also a result of international media attention regarding the large number of disconnections of basic services. In addition, a cholera outbreak, the biggest in South African history occurred during the fall of 2000 in a KwaZulu-Natal (Deedat and Cottle 2002:81)[32]. Furthermore, according to one of my informants, there was another court case dealing with water and disconnection in Durban in the time span when FBW was introduced in Durban.

In *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* (2002), the applicants gained some concession in terms of providing some procedural protection for the person prior to disconnection (Morgan 2008:9, 14). The court case dealt with whether or not disconnected residents had claims on interim relief, during a disconnection that was perceived as a violation of the law. In this case the judge argued that the issue was linked to the obligation to respect access to water and the state's responsibility not to conduct itself in ways which harm people and their individual rights. Furthermore, the disconnection of water provision is a violation of the obligation to respect the right to water and demands constitutional justification.

This burden of proof is on the hands of the respondent who needs to illustrate that the disconnection was legal according to the constitution and WSA (Kidd 2004:127, Winkler 2007:18). The court argued that in this case the municipality had not presented sufficient evidence for a legitimate disconnection according to the WSA, hence resulting in the disconnection being an illegal restriction of the access to water. Though, the court recognized that the municipality may have been able to justify the disconnection if more time was available (Kidd 2004:127). Morgan (2008:9) argues that the result of the two cases together was:

> to provide important but purely procedural protection to citizens who paid what they could afford, and who refrained from civil society disobedience in their broader demands to the political decision-makers. The litigation had no effect on the principal issue that divided the stakeholders in the broader structural conflict: the justice or appropriateness of a cost-recovery approach to the delivery of water services.

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[32] The numbers often quoted with regard to this outbreak, and the disconnection numbers given by McDonald and Pape (2002) are questioned and rejected by the government (Hemson and Owusu-Ampomah 2005:525).

A third case, the case of *Highveldridge Residents Concerned Party v. Highveldridge TLC and Others* in 2002, deals with a submission to get interim relief, which also has the objective to reinstall water supply. Here the judge "assessed the balance of convenience and argued that any potential pecuniary losses of the respondents could not outweigh the human need and suffering that could occur due to the lack of fresh water. The judgment therefore ordered the respondents to reinstate the water supply pending the finalization of the matter" (Winkler 2007:18).

This latter case has also been important with regard to who may bring complaints to court. This case brought up sec.38 of the Constitution (Plasket 2009:260), which deals with enforcement of rights and what persons may approach the court with complaints and issues where there has been a violation of the Bill of Rights (RSA 1996).[33] Here it was argued that the people affected by the disconnection were poor and unable to take the challenge and the case to court in their own name (COHRE 2003:125, Plasket 2009:260). This, thus, reflects the exclusion of poor people to this invited channel do to limited funding and resources.

In the most recent case, that of *Lindiwe Mazibuko & Ors v The City of Johannesburg & Ors* (Phiri-case), the court was challenged with regard to the sufficiency of the 25 liters of water for each person. While the plaintiff lost, the court never presented any evidence of the amount being adequate to ensure basic needs. The World Health Organization (WHO) on the contrary holds that a daily amount of about 20 liters involves concerns regarding health issues. Furthermore, the commonly cited amount of water is 50 liters in order to cover basic human needs. In South Africa the second half of this amount is expected to be paid for and hence brings us to the issue of affordability (Bond and Dugard 2008:9).

Furthermore, the lack of evidence on the side of the respondents has been another point of critique. According to a press statement made by the Coalition Against Water Privatization (CAWP) the ruling neglects and considers irrelevant the "thousands of pages of evidence and testimony provided by the Phiri applicants". Whereas

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[33] These individuals are: *"(a)* anyone acting in their own interest; *(b)* anyone acting on behalf of another person who cannot act in their own name; *(c)* anyone acting as a member of, or in the interest of, a group or class of persons; *(d)* anyone acting in the public interest; and *(e)* an association acting in the interest of its members" (RSA 1996: sec. 38).

the court took the respondents at "their word and defers to the twisted logic (read: propaganda) of their arguments" (CAWP 2009)[34].

This case has gone through a number of rounds in the court system, with the prior reference given the most recent and final decision. The first decision gave substantial concession to the residents in the Phiri-community. The following court case decreased the impact, while the final decision 'ruined' the previous concessions given.

The case was brought to the court by The CAWP and University of the Witwatersrand Centre for Applied Legal Studies (CALS) backing five ladies from the community. The demand was for a larger amount of water in the free water supply given by the municipality, and for the municipality to abandon prepaid meters systems, which automatically disconnect the water after ended credit. While the first case judgment argued that the prepaid meters were unconstitutional and stated that the FBW supply should be 50 liters per person per day, being "the first South African case to adjudicate the constitutional right of access to sufficient water" (Bond 2010:3), the second round reduced the supply to 42 liters per day (Constitutional Court of South Africa 2009:15), however as reflected by one of the EWS officials:

> The first judgment in the Phiri-case we could see was very weak, and we already knew it was going to the constitutional court, so the second judgement was just like fiddling around the edges where they changed it from 50 to 48 or 42l, that was not the issue, *the issue was not the quantity, the issue was the right to make that decision on broad basis and what are the rights of your customers, they have the right to expect that you keep moving them towards a reasonable figure, and the reasonableness needs to be determined by the community, what can we afford, how much do we got, what can we do* (emphasis added).

I would argue that the EWS official touches on an essential point here, while the amount of water is important, the question is who is to decide what this sufficient amount is, and on what criteria it should be determined. It also reflects the vagueness of the terms reasonable and sufficiency. While the official points out that this needs to be determined by the community, questions remain regarding who is included in this decisive community, and how power is distributed among the interests involved?

At the same time, one of the NGO-informants points out the importance of keep on testing and to keep trying these rights and issues, but also to use other channels and means to raise the issues, as pointed out by one of the ladies in the community. She

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[34] CAWP: http://apf.org.za/spip.php?article373, accessed 09.06.2010.

said that during the Manqele case, the community did not rely fully on the court to make their future, but pointed out that the community had to make it for them-selves. Because of this the community continued to reconnect Christina Manqele when disconnected which according to the informant has ensured Manqele her water today. The informant further pointed out that the community used both legal and political channels to achieved success.

Thus, what was important was that CCG used the legal, political, and invented channels (the two latter discussed later), in terms of resistance, reconnections and so on, simultaneously. This indicates the flexibility of the civil society organization to use the various types of spaces and channels as mentioned in chapter two. It also reflects the mobility of the boundaries of the spaces; it indicates that a successful actor in one type of space may influence the success and actors in other types of spaces.

Civil Society and the Invited Channel of the Courts

When it comes to civil societies' influence on increasing regulatory water politics, two opposite arguments are often used. Firstly, civil society may help in forming the regu-latory framework through creating routines for procedures and institutional interaction by presenting legislative, regulatory and custom-based practices that ensure an estab-lishhed structure for the interaction of parties with differing values. Secondly, civil society is central in organizing and voicing more uncontrollable politics, disruption and protests to challenge the limits of choices about the regulatory design that are taken for granted. Hence, civil society does not only play a part with regard to forming the regulatory frameworks but also through testing the framework through activism (Morgan 2008:2) and invented channels.

According to Cox (2005:119) "[c]ivil society has become the crucial battle-ground for recovering citizen control of public life". The civil society in South Africa has used strategies such as, "legislative or constitutional restrictions on regulatory option", and secondly only to some extent "operational input (e.g. detailed documen-tation of service problems and errors)". In addition, civil society has used consultancy assistance, court cases, direct action, and finally, "international civil society network-king" (Morgan 2008:10).

Durban has a vibrant civil society which works towards its objectives by use of both invited and invented channels (Aylett 2010:99). The Chatsworth organization CCG, with central and leading persons such as Fatima Meer and Ashwin Desai, used the invited channel of the court system several times. As this organization and the constituting communities were increasingly able to create common demands, such as "[t]hey wanted their arrears to be wiped out, evictions to be stayed, water and electricity to be reconnected and the flats to be upgraded" (Desai 2000:47).

CCG brought the council to court to prevent evictions, and they argued that the Masakhane campaign[35] of the government was unconstitutional with regard to rights guaranteeing human dignity, right to shelter and access to sufficient water and food. Because of this the local government was not able to evict people without a suitable alternative at hand. As such accommodation did not exist the court produced indicts to prevent eviction, to the municipality's great frustration (Desai 2000:46-47). The community also fiercely fought any attempt to evict people from their homes. The municipality brought in police and security while the community members, mainly female, blocked and stood their ground (Desai 2000:63).

CCG and the WFRA also brought the municipality to the High Court with regard to the disconnection of the water of one of the ladies living in Westcliff, Thulisile Christina Manqele (discussed in the former section). At the same time as the court case was going on, the communities continued their mass-mobilization, and continued reconnections of water and electricity, as reflected previously.

Ballard et al. (2006:407) point out the importance of front figures for social organizations and movement in form of organizing effective campaigns, but also, and more importantly in this context, "for their ability to leverage resources from donors who are increasingly allocating money to support court cases and other actions undertaken by social movements". This was also the case with CCG when they brought Christina Manqele's case to court, as Manqele expressed during an interview:

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[35] The Masakhane campaign was a national campaign launched in 1995 in order to increase the knowledge of citizens regarding local governments' situation in terms of finances and service delivery. While the objective of the campaign was to "normalise governance and the provision of basic services at the local level", it has often been perceived as a means to get people to pay for services, at the same time as the importance of service delivery had received the same focus (Fjeldstad 2004: 542-543).

> I told you I could not manage, I had a big operation, see how I am living, no income, no food, what can I do? You refused, I need water at least, the children were not going to school because I could not afford it. The same day we went and got Fatima Meer. Everything happened on one day. The same day we went to court. (…) Fatima Meer came and Orlean and they covered me [the court case] and helped me, like one family. I get the money, I go to court, they talk Afrikaans, I cannot talk Afrikaans, not even one word, I cannot understand, they were fighting, fighting, fighting, then they sit down and ask Fatima Meer, how come the council is not giving poor people free water, they are shocked, why are poor people not given free water, they are shocked now, because they thought it was men that opened up the water, not myself. But it is myself because I need the water. And the court told them to go and open the water (…) They phoned the concilors, and said why is poor people not given water, we need to give them some free water because they cannot stay without water.

This indicates the importance of the organizations to find funds to test the case, it also indicate the accessibility of this channel for poor people. At the same time, there is a strong feeling of influence on FBW through this case in the community. As reflected by another community member during the same interview:

> From that time onwards they gave free water. (…) Because we all were standing and fighting together, if we would not have been standing together nothing should have happen. (…) Christina's court case picked up a lot of things. Because her case went to court, they realized that people are suffering. (…) that alone opened their eyes to what was really happening. And that is how we gained a lot of things

While a third person present also pointed out the influence of the media attention the case gave, there is an indication of empowerment through the use of the court case in the community and with regard to the achievements the community has made.

One of the academics I talked to commented that while the community has gained a lot, the challenge now will be to maintain it, especially in face of continually increasing prices. As mentioned by several of the persons in the EWS, with the constitutional rights follow responsibilities and obligations. While the EWS officials acknowledged the obligation to provide water for people, and the obligation to provide 200l water without charge, they also pointed out the responsibilities on the side of the user with regard to how they used the water.

If the user abuses his/her right, the water provider may disconnect the user without violation of the constitutional right. If a person is not able to pay for the consumed amount above the free, a restrictor is installed and a person's life and consumption is formed by this device. Hence, this may also reflect a control of amount of water consumed, as well as cost-recovery control. As such, the device controls the 'means to freedom' as discussed further in the next chapters. The official continued that if a

person becomes criminal, the constitutional right of the person, and the obligation held by the EWS is discharged. This is the effect and bottom line of the Manqele case, if you violate your rights by not paying for consumption above the provided right, you also forfeit your right to the basic water when disconnected, as expressed by another EWS person:

> Constitutionally, it was referred to the constitution, you use more than the free amount, and doing so you actually forfeit your right, because you have chosen to go past, you have a debt, you have a responsibility, discharge your responsibility, you knew you only got 6Kl of free water, you deliberately went past and now you are saying that you will not pay. Forget it, what defence do the city has for your lack of respect of the system, so pay the penalty, pay for the water you use, then you get your rights back, and not your unlimited rights. (...) it is only that amount, beyond that it means that we have to be extra strict with our credit members, because that is the water you have a right to, the rest you don't have right to. *Water is a unique economic good, it is a right, and a social good to a certain point, then it becomes a commodity thereafter*

Hence, the issue of affordability may be present despite policies of FBW. In many situations the prices rise quickly after the free amount, and it may also only have limited consequences and influence on luxury consumption. Ironically, this puts a greater burden on the poorer households that consume only slightly over the free basic amount (Winkler 2007:19-20). This indicates that the struggle for water rights and co-decisions power will continue, as expressed by a civil society informant reflecting on the limitations of the constitutional right:

> while it is my right to have water, and it is the government right to provide water, there are limitations, and the limitations is that you have the right to access to water, not just free running water, so if we are underresourced we should not have water and stuff like that. We have to continue to pursue our right to it, because whether the government doesn't have the money, or they don't have the will to do it for the poor that is the question. If you look at the amount on stadiums we are building[36], then the money are coming in a few years, then the poor will want to know why there are no money for water, so whether we have our priorities in place is another question.

These issues will be further discussed in the following chapters.

The council also attempted to conduct a mass-disconnection in Bayview, which was fought off by the community, "Chatsworth was fast becoming a theatre of defeat for the Metro Council" (Desai 2000:78). The community followed it up in the High Court, in the name of Bayview Flats Residents Association (BFRA) which stopped the disconnection of water. However, shortly after, the Council introduced the use of

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[36] World Cup 2010 Stadiums

water-restrictors, which ensure no consumption above the 200l free limit. Furthermore, the Council demanded that people took responsibility when they tampered with the systems. This court case ended with the tenants winning the exemption of the fixed water charges in 2000, this charge was equivalent to 10kl of consumed water (Desai 2000:78-80), a charge constituting a bigger part of the bill. Desai (2002:73) also argues that in this case "[n]o magistrate wanted to touch the matter". Moreover, according to Desai (2002:75-76) the concessions given in the latter Bayview case was necessary out of a political stand point, though not necessarily a legally stand, as water issues were becoming the central point for mobilization and dissatisfaction in Durban.

Thus, what is evident is that the civil society may take advantage of the invited spaces of the court, if they are able to find funding and resources to enter these channels. However, even though the civil society (representing and/or funding the marginalized) is able to gain access to this channel, this is not equivalent to their concerns and challenges being supported by the courts. The issue of the right to water in the court system is contaminated by the politics of this issue. While the issue is complicated by the need for available resources to maintain the service provision, great concessions in the right to water will imply a redistribution of water. In addition to a shift in decisive power regarding definitions of legitimate needs and sufficient water.

The Political Channel

Another invited space of participation is the political structures. Through this channel people may influence the political directions of the government and hold the government and the political direction to account. While this channel in theory should be able to hold the power-holders and government to account, the challenges and structures may limit this channels effectiveness.

National Level

Flawed democratic structures

The already mentioned domination of the ANC is influenced and strengthened by the electoral system. The limited effective influence through the political system may also be perceived with regard to the electoral system. When citizens elect their represent-

tatives, they elect two types, one to be ward councilor, and one person from a party list. This means that much power is in the hands of the leaders and designers of the party's PR election-list as they may move individuals up or down the list according to their wish. While the people may reject the ward councilor candidates, this option is not present with regard to PR candidates (Low et al. 2007:255). Thus, the final word and list is left in the hands of the politicians in charge of nomination, not as a result of the constituencies' will.

Moreover, Benit-Gbaffou (2008:28)[37] argues that both representatives and people involved in the ward system lack skills and training, enhanced by the confusing relationships between the forums and the system being of recent date. This, hence, follows much of what one of my NGO-informants told me, that the representatives often lack the skills and funding to be able to fulfill their role, as well as simply being overwhelmed by the task, also reflecting the general lack of skills in municipalities and administration. Despite my informant's emphasis on skills and education, Benit-Gbaffou (2008:28) argues that there is a deeper problem in terms of the power structure of local councilors and national political environment. She argues that the limited ability of participatory democracy may be caused by:

> [I)] The limited power of councilors within the City council, due to strong centralisation of decision-making and policy orientation; [II)] Their limited accountability to their constituency, due to the municipal structure itself, to the national electoral system, and to the South African local political context.

These issues may, hence, indicate a contradiction in terms of the large transfer of responsibilities and powers at the local level government (Nel 2004), but at the same time there is limited room for freedom and maneuverability in terms of policy direction and structures to hold local representatives accountable, argued to be one of the HRBA principles in chapter two.

'SchizophrenicPolitics'[38]

One of the academics I talked to pointed out that the ANC, during the liberation movement, had encompassed a large variety of organizations and ideologies. Because

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[37] This study is from Johannesburg.
[38] Ruiters (2007:489) refers to Walker (1993), who describes "the paradox or 'schizophenia' of the state that shows compassion for the poor, yet spends more effort trying to control the use/abuse of welfare and claimants' behavior". Some of these control mechanisms are various technological devices and will be discussed further in the next chapter.

ANC, a few months before the election in 1994, did not have a political manifesto, there was a lot of politicizing around this issue and eventually RDP was suggested and adopted as the manifesto. Furthermore, he continues, when in power the ANC made an alliance with SANCO and Cosatu. Because these organizations had been collaborating with the ANC during the apartheid-years the RDP was a broadly discussed document when it was adopted, and the trade union said it would break the alliance with the ANC if it was not adopted. In addition where there a number of NGOs, civil society organizations, broader liberation movements and other trade unions who had been involved and commented on RDP.

However, the document had some conservative parts, especially with regards to the economic policy. According to the same academic, when RDP was followed by GEAR, GEAR was "unveiled and viewed as non-negotiable". Cox (2005:109-110) argues that neo-liberalism is a hegemonic ideology in policy formulation, he continues:

> [t]his global hegemony has profound consequences for the relationship of political society to civil society. As the state retreats from services and social protection to the public, the public loses confidence in the integrity and competency of the political class. Political corruption is inherent in the transformation of public goods into marketable commodities; a political favour acquires a market value. The loyalty of people to their political institutions becomes more questionable as skepticism and cynicism about the motives and abilities of politicians grows.

However, as McDonald (2002) points out, cost-recovery methods are not always harmful. Water is a scarce resource and due to financial and ecological reasons, cost-recovery principles may be beneficiary to use. Use of progressive block-tariff systems simultaneously, may contribute to subsidizing the consumption of the poor, hence make implications regarding redistribution. However, in South Africa the principles of cost-recovery have been implemented in a way and by a double standard, especially regarding water and electricity, which is questionable. McDonald (2002)[39] continues, given the historical, and resulting present inequalities, cost-recovery principles have "largely been counter-productive to the goals of equity and environmental sustainability and threaten(…) to undermine post-apartheid reconstruction and development efforts in the country". Similarly, one researcher pointed out during an interview that

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[39] McDonald 2002: http://findarticles.com/p/articles/mi_hb6685/is_2_28/ai_n28907950/?tag=content;col1, accessed 24.04.2010.

South Africa essentially is a one-party state with limited pro-poor leanings, it is not interested in providing the poor with benefits and improved welfare.

Water policy challenges

There are several problems linked to the South African Water policy. These problems create limitations on the effectiveness of the efforts. One reason is that South Africa did not consider the challenge that high-volume users are not willing to subsidize low-volume users. This influences the ability of the country to create an effective redistribution of resources and reduction of poverty (Mazengia 2005:46). As reflected by one EWS officer with regard to illegal reconnections:

> you have blatant disregard for the man that is paying. Eventually, the willing horse is going to die. The people that are paying are keeping this business alive, if we were a private business we would have been bankrupt by now. (...) Because it has its legislation and its social impacts, we have to take this kind of approach, always trying to shift the goal posts to accommodate what the politicians says are the social evils of these communities, I only think it is the individual evils, rather than social and community evils...

A second problem is that the policy does not consider the great inequalities among areas due to the apartheid inheritance, where areas of no or little infrastructure needed to be provided for. The current transfers from the national government are not enough to enable municipalities to fulfill requirements and responsibilities. Thirdly, as many citizens in South Africa are in a situation where their water supply infrastructure is not improved due to the perception that people are not willing to pay, or pay very little for water provision, improvements and repairs are considered "unnecessary and too costly" (Mazengia 2005:46).

Furthermore, in many instances the transfers used in addressing the needs of the poor are also linked to administrative costs, often amplified by low density among people. This may also be followed by high user fees, resulting in unaffordable water and denial of access to the resource. In addition, the South African definition of 'poor' needs to be revised; brought up to date and adjusted to new contexts. Another problem is that the water policy neglects concentrations of low-income households and the problems municipalities have in subsidizing these areas. Moreover, while the "culture of non-payment" is blamed by the government to cause insufficient maintenance and the use of disconnection as means towards correction, the main reason for non-payment is

the inability to pay (Mazengia 2005:47). This reflects the problems of the continual inequalities, affordability and cut-offs the country is faced with.

Due to the domination of the ANC the politics becomes more unilateral and fewer opposing parties' interests and concerns are taken into account. This domination also make it difficult to hold the party and it's politics to account due to the lack of absence of effective challenger to power, as will be seen in the next parts of the paper. This lack of ability hold ANC accountable also means a reduced ability to hold them responsible for realization of human rights as mentioned in chapter two.

Regional Level

Local political structures and leadership in Durban

The political system may be called an invited channel. In addition there are a few invited channels required through the previous mentioned legislation on local level. Due to the focus on decentralization, much of this participation and involvement is expected to be conducted at local level. Durban has, according to Aylett (2010:99-100) put significant efforts into forming participatory processes to address the apartheid legacies of unequal distribution of social and economic resources.

The Domination of ANC in Durban

Heller (2001:145) argues that in Durban, because ANC have needed to make an alliance with an oppositional party, it has "blunted the power of ANC". However, Low et al. (2007:250), argues that ANC is the leading party. This leading role results in the party's ability to, a large extent, decide upon policy and resource distribution. Nevertheless, there are indications that a smaller, powerful group makes these decisions.

Chief whips in the ANC ensure voting according to party line and councilor behavior. Accordingly there tend to be meetings in order to decide and inform of a specific stand taken in a particular issue (Low et al. 2007:250), this is a similar challenge informants in EWS talked about, how councilors are told what to vote and often do not know the adopted policy. When a policy alternative is presented it "goes to the council and the others just get told we are going for [alternative] b guys, and many times they don't realize what [alternative] b actually is, they just vote for b".

The running of Durban through EXCOs has represented a challenge for ANC's power dominance in the municipality. While ANC is the dominating party it did not have enough seats in order to gain majority, initiating a number of strategies to obtain majority. One of the strategies used by the ANC to overcome this challenge was to appoint a city manager with close political affiliations. The appointment of the new city manager also created questions and concerns regarding his management style, accountability and transfer of decision-making of central areas to new institutions where the city manager exercises greater control (Maharaj and Low 2008:13-14).

This impression is reflected when the "democratic elected committees such as EXCO were merely informed about decisions taken elsewhere, and there was no space for debate and dissent" (Maharaj and Low 2008:14). This indicates that the decisions are taken in a "closed channel", reflecting the definition given in chapter two, where the decisions are made by a small, exclusive group without access and control by the other parties and stakeholders. This behavior and practice may also be questionable with regard to accountability and transparency issues, central in human rights-based approach. It also limits the other participants' and stakeholders' ability to bring forward constructive and informed inputs. This is, therefore, a concentration of power in the hands of rather powerful actors, instead of redistribution of power, which is an expressed objective and important element in effective participation and empowerment as discussed in chapter two. This may also be reflected in expressed frustration regarding general municipal procedures and lack of effective participation as pointed out by one of the political informants;

> public participation is also effective but we have noticed that with participation it is done very superficially (…) because the policy is already given to you and they expect you to give an input and then they give you the policy on the day of the input, now how do you make input?

Furthermore, this EXCO practice may also illustrate the (lack of) power of the opposetional parties, and may, hence, be a partial explanation for the perceived lack of delivery of the ward councilor in Chatsworth, by the community, as he is a Minority Front (MF) politician.

A second strategy the ANC has used to gain majority is to form alliances with other parties. Most notably is the formal alliance ANC had with MF. This alliance was

engaged as ANC gained majority through it. The alliance provided MF some influence and greater ability to deliver to their constituencies (Low et al. 2007:251-252).

Through the change of rules regarding floor-crossing, the ANC gained more votes compared to the second biggest block in the Durban council. Another consequence was that ANC no longer needed the alliance with MF to gain majority in EXCO. Though, ANC did not gain a big majority and the cooperation between ANC and MF remained. MF's influence and leverage was, nevertheless, reduced after the introduction of this method. Another point, and as noted by an interviewee earlier, the ANC dominance has also been maintained through the lack of ability to cooperate among the opposition (Low et al. 2007:252-254).

As the ANC has a powerful position in Durban, accountability through democratic elections may be limited, as this is limited the subsequent ability to influence political direction and decisions also is restricted. While the right to participate and political influence may not be violated, the effectiveness of the channel is reduced, both with regard to holding the power-holding party accountable for delivery of services and policies and with regard to power redistribution. On the contrary, it seems like it is rather a way to consolidate power among a few, or a single party, which may in consequence be regarded as discriminatory in terms of human rights as it restricts opportunity to influence to a few people.

Electoral structure and flaws

As previously mentioned the electoral system may create biases with regard to electoral lists and systems. A similar power structure may be in operation with regards to nomination for political positions and representatives. A person from civil society expressed frustration and discouragement with regard to the flaws inherent in the nomination system. She talked of supposedly neutral actors in the nomination process asking and following the recommendations of local politicians with regard to who should be given the floor and the opportunity to nominate representatives. This indicates that access to the system may be limited and dependent on having the right contacts. The politicians may be seen as 'gatekeepers' with regard to what views, arguments and perspectives that would be allowed 'into the field'. As such it may be argued that this invited channel is controlled and/or much influenced by actors already in positions to

do so. This will also influence the suggestions and solutions resolved on, and potentially make them less transformative than they could have been if it had involved true citizen power (Arnstein 1969) as argued in chapter two.

Effectiveness of ward structures

Similarly, the challenges of the ward structure are also present at local level. The first element involves a centralization of power and control in the hands of the city-mayor and the members of the executive committee (Benit-Gbaffou 2008:28), in Durban much power is also in the hands of the city manager. While beneficial in terms of giving policies and strategies a strong direction, the maintenance of much power in one small circle of people, limits the open debate regarding strategies and directions. This development requires increased lobbying and networking to gain influence and participation in decision-making. Another issue is the mentioned dominance of ANC, also relevant for Durban. This means that the political meetings are rather political party meetings, and standpoints of individual councilors and political personalities become important (Benit-Gbaffou 2008:28).

This may also be an issue with regard to Chatsworth, which traditionally and currently is a MF-area, as pointed out by one of my political informants:

> if you do not have the power and you do not have the numbers, politics is nothing. You can shout your mouth out but they will do what they want when they got the vote. You sitting with 10 percent, they are sitting with 60 percent, and 90 percent so what…

This indicates the political difficulties in holding oppositional roles in a structure dominated by one party. The resulting emphasis on individual characters may also be expressed by a couple of MF politicians I talked to when they noted that when in Council/ elected, party politics was not important, only serving people is. This may also be a result of inability to promote party politics. Moreover, one political interviewee mentioned that the current party in the ward (MF) is not in touch with the ground, while another informant in the EWS pointed out that the Chatsworth community has connection with important people and that they have done a lot of lobbying, as well as there being high level of activism in the area.

The second issue is the lack of accountability of ward councilors to their constituencies. This is related to the electoral system and practices. These problems are lin-

ked to previously mentioned challenges such as ANC dominance and problems regarding dissidence with party line. Another challenge is that political representatives tend to be accountable to the party before the citizens they represent. Secondly, voters tend to elect parties, not individuals. Poorly performing councilors may therefore be continually reelected (Benit-Gbaffou 2008:30-31). This trend may again be exaggerated by the list and PR structure. Hence, the structure of the ward council is not incentivizing to make councilors represent their areas. This may have been an issue I may have run into as an informant told me that the council as a whole was responsible for policies, while he did not understand the question regarding the ward councilor being accountable to the ward residents.[40] Another political informant also pointed out the need to consider the whole of Durban and limit consideration of "the specific area, like you can't have Chatsworth coming in and perhaps monopolising the situation".

There have been some changes in how the councilors work. The representational system has been proportional and traditional in terms of roles among councilors. Since 2000, extra councilors have been used to work in wards where commonly other parities hold the ward councilor position. This has usually been done by the ANC as they have the most PR candidates to use. This use of councilors is beneficial as the system puts large burden on the ward councilors as the only locally elected representatives in South Africa. They have large expectations linked to them by their constituencies and the following work-load, as reflected by a previous reference. At the same time, PR councilors have had problems in finding their role in the local system. Ward councilors were therefore open to PR councilors taking some of the work load. Simultaneously, some tension was created when PR councilors exaggerated the connection to the area, at times this created a feeling of replacement among the ward councilors, as it reflects the potential shift in results in future elections (Low et al. 2007:258-25), which may also create an element of competition between the councilors.

The change of the ward borders also meant that the areas within the wards became more diverse, a potential problem for the local representatives and a formal argument for use of 'second' councilors is that all groups within a ward should have a

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[40] During this interview I did not use the word accountability but responsibility. This may have caused some misunderstandings, in addition to there being more general communication challenges.

councilor they are comfortable with. At the same time it may also be a means for wea-ker political parties in the area to build up strength to the next election, more particu-larly the ANC (Low et al. 2007:260), as it has more people to utilize this way (Maharaj and Low 2008:12). One of my NGO-informants who had worked with councilors in engagement with civil society noticed a difference between ward councilors and PR councilors, as the PR councilors were "more insecure about their positions, because the ward councilors, (…) as long as they were delivering on the ground and they would [get reelected]".

The national legislation and documents did not only require establishment of wards and ward-councilors but also ward committees. Nevertheless, also the ward committee has a limited ability to hold the ward councilor accountable and/or it may be weakened by the councilor. The ward committee is hence, a means to legitimize the ward councilors' power, while at the same time a neglected means of holding him/her accountable. There is a lack of guidelines for action and lack of influence on govern-ment processes, where the "core problem lies in the power structures both within the party system and the council, much more than the lack of information and communica-tion" (Benit-Gbaffou 2008:31). This may therefore indicate a difference in intended function and the actual function of the structure.

The structure was projected as being apolitical, however, in many cases it has become an extension of the political structure (Aylett 2010:108), also reflected by a couple of the NGO. Instead of being a critical and account-holding forum, in addition to helping, it has become more of a purely assisting structure for the councilor. This structure may be reflected in the experience of one I talked to who said on one occa-sion, during a training session the ward councilor called on the committee-members for help resulting in them leaving the training.[41] A few of the people I talked to (one NGO, one political and a housing informant) also said that the ward committee was a good idea, but that it did not work in practice.

In the end, while the ward councilors are perceived as the link between citizens and the municipality and gaining a bigger role with regard to service delivery and

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[41] He was referring to a training session conducted in the neighboring city, Pietermaritzburg, which according to the same informants is in different situation than Durban. However, I might have run into similar notions/attitudes with regard to the political leadership in the ward planning an event.

implementation, they have a rather limited influence on the situation. At the same time these are subject to protests. Hence, because of the limited influence and effectiveness of formal channels citizens turn to other means in order to voice and be heard in their concerns (Benit-Gbaffou 2008:26). These invented channels will be further elaborated on in the following chapter in the section dealing with the civil society.

Summary

This chapter has looked at two of the invited types of space for participation: the judicial channel and the political channel. The chapter started by discussing the judicial context and implications of the right to water.

While the judicial channel remains important as it represents a channel that may be utilized by the poor and the marginalized in order to bring concerns and to test the human rights enshrined in the Constitution, the access to the judicial channel may form a major obstacle for poor people to bring their issues to the test. Furthermore, up to now the judicial channel has only to a limited extent provided the poor relief when these issues have been brought to court. However, at the same time small concessions have been given. This indicates some of the strength of having these rights in the Constitution. While it also needs to be pointed out that these gains were won through the judicial channel, the action and processes going on in other channels and context (for instance upcoming political election, mobilization and dissatisfaction, loss of revenues due to reconnection) were important for these concessions to be given.

The second part of the chapter looked at the politics and how they may be perceived as contradictory, in addition to how the dominance of ANC may influence the effectiveness of this channel and the ability to use this channel to hold power-holders to account.

The ANC is dominant both nationally and in Durban. This dominance makes the issue of accountability problematic as elections are not an effective channel or tool to do so. This dominance may also imply that the power to make decisions is kept within the party, or among the most central individuals in the party, hence increasing the power of a few and decreasing the influence of the many on these decisions. Thus, indicating power concentration rather than power redistribution.

Chapter 5: The Role and Impact of Public Administration and Civil Society

Introduction

This chapter will continue to discuss the structures created by the water and sanitation administration and the bureaucracies' structures of invited channels for participation. The section will address the second sub-question dealing with the effectiveness of these invited structures in changing power distribution and influence. The third subquestion will subsequently be discussed in the second part of the chapter. Here I will discuss the civil society and what kinds of channel this sector use in order to influence water and water access. Their utilization of invited and invented channels of participation, beginning at a national level before narrowing it down to a local level will be looked at more thoroughly.

Participation and Water in Durban: EWS

Improvements and challenges of infrastructure

One of the persons I Interviewed in EWS said that currently major improvements and upgrading of old and leaky pipelines have been made. In the whole of the municipality about 2000 or 3000 km worth of old asbestos lines are replaced by plastic pipes. This is also beneficial in terms of preventing illegal connections.

Furthermore, after the redefinition of the municipality's borders, extending it and including much rural areas, the extension of the infrastructure remains a challenge as the population in more rural parts of the municipality is more dispersed and because of the hilly terrain. One NGO-informant also noted that after the new government got elected, there were great expectations for expanded service delivery, thus, much effort were put into building infrastructure, while there was no consideration of the needed maintenance of the existing infrastructure. Indicating the maintenance challenge many municipalities now are faced with.

Dispersion of information, education and participation

According to Wilson et al. (2008:141) there has been limited public participation and lack of participatory structures in Durban the past 10 years or so. The participation that did exist was of a confrontational and a complaint-based nature brought forth by social movements. This has also been linked to absence of participatory structures and models opening up for constructive intervention with the municipality. More recently, a number of initiatives have been developed to increase the interaction between the public and the EWS. These initiatives may be called invited and are discussed next.

The EWS has a number of means to ensure public participation, ranging from public information to establishment of various (discussion) groups. All the various methods are utilized in order to achieve a multi-pronged strategy to ensure the dispersion of information. An informant in the EWS expressed that the unit had:

> unprovoked and not dictated by any environment and situation we have decided to out of our own volition, without being under any duress to go on the radio, to go in the printed media because we are regard only one thing, one thing only, to be important and that information dissemination and empowerment of people with information (…) we give them fact that so when they engage with us it will not be on the basis of emotions, they will be challenging us, but they will be challenging us on the true facts that we shall have given to them so that they would say, you guys you said on radio, we have seen on the print media so that this is what we [EWS] have said, but it doesn't look like you are complying with your own stipulations

The unit has utilized various means to get this information out. The unit appears on the radio, and has been doing this the last 3 years. The EWS also calls public meetings to provide information about programs and options. In addition, while I was conducting my fieldwork there was talk of an upcoming road show by the EWS, and a discussion was going on in the community regarding what could be potential questions to raise during this event.

With regard to these initiatives, and acknowledging the need for more research on this area, there is a risk of these channels become limited channels for participation. Information is an important first step to gain effective participation as it may make people familiar to rights, responsibilities and alternative strategies of action. However, it may also turn out to be largely one-way communication, from the EWS to the public with limited room to respond or come with inputs. As described in chapter two, Arnstein (1969:219) argues that in such a domain people are involved late in the process

and have few options to influence the program "for their benefit". One of the scholars interviewed expressed a similar concern:

> In this way here, 'I have made my decision, now I am going to convince you about what I did. Because I am an expert and we got all the experts' (…) that comes in with a technical speech and confuses you with all the graphs and the PowerPoint presentation, that you are more in awe of the presentation than of what he is actually saying, and then you say at the end of it: 'What he is saying must be right, as he is the expert so we go along with the decision'.

This quote also implies a more manipulative approach to participation, where the participants are "educated" (Arnstein 1969:218).

At the same time, the EWS has also established a toll free number and a call center. This is an important move to ensure a channel for both feedback and reports of leaks and so on. Most of the people I interviewed in EWS mentioned the large growth in calls and enquiries with pride and satisfaction. The EWS officers indicated that the callers were much more aware of their rights and the municipality's responsibilities. This may indicate that the information dispersion was somewhat successful, where some of the objective, as reflected in a previous quote, is to ensure that people are rightly informed and can challenge the municipality and EWS based on facts.

However, a couple of those I talked to were rather skeptical to the practice of this channel. One of the NGO informants points out that the toll free number is only free for landlines, as most South Africans have cell-phones the access to this channel may be limited. As more affluent areas have easier access to this channel, this may also influence the feedback and responses the EWS receives from the public. Karuri-Sebina et al. (2010:94) also point out that the rich and the middleclass have less problems in mobilizing resources to ensure interests, high standards of service and good governance. Poorer sections, on the other hand, "who have much more to lose in a relative sense do not have the resources to confront a largely indifferent bureaucracy that is buffeted through non-responsive structures".

A second and linked issue linked to this channel was expressed by another NGO informant as this channel in terms of a call line is a:

> complaint line, that is not participation, so everything that municipalities tended to point to, to say, 'look, we do involve communities, and community members and etc', were really nothing of the type or the scope that one would imagine that would really be participative.

Another curious point to mention with regard to the effort made to disperse information to the public is relating to the debt relief scheme. One of the EWS officers pointed out that while the unit had identified 89 000 households who qualify for the program, "4 years down the line, only 47 000 people got on the system, only a little over the half have come in and taken advantage of the system". This may imply a contradiction in the effort and the success in providing the information.

EWS has also been involved in an educational program with the transnational water company Vivendi (Veolia) Water. Customer education programs were run by EWS in a partnership with Vivendi Water. In this project the aim was to create social and political consensus in favor of reforms. The project hired local young people to work with their neighborhoods in terms of payment of bills, managing debt schedules, conservation strategies, and proper use of sanitation system and so on. Furthermore, the project was mainly technical and professional in contrast to political.

However, a change happened during the project for those involved as the middlemen between citizens and service providers, what previously was called Customer Service Agents became Community Development Officers. This shift "reflected the early inefficiency of a technical, problem-solving approach, and the realization by the partners that securing consensus in the community required a less instrumental approach and a more sensitive to developing collective political agency" (Morgan 2008: 9). This links the local development to the more technical approach at a national level (Heller 2001) as well as an academic informant who points out that EWS "got some key bureaucrats there, who run the organization in a very technocratic way". The implications of this will be discussed in the next chapter.

Invited participatory structures in EWS

These structures are established and introduced by EWS and the civil society has little influence on these structures and is *invited* to participate on voluntary basis.

Focus groups

Focus groups were, according to informants in EWS, some of the first initiatives to open up and invite participation. These groups are used to discuss strategic issues and whether the policy needs to change direction or the EWS should keep the policy as it

is. These groups are influencing the administration of 'the business'. Issues brought up and discussed in these groups are brought and discussed in focus groups in other areas, where the EWS compares and brings the conclusions back to be considered. The objective of the focus groups is to influence the policy design. The members in the 9-10 groups are based on the 'customer base' consisting of members of a community with specific characteristics and were originally non-political. It was expected that "[i]n the future, it is expected that focus groups will play an integrated role in the development of new policy, from cradle to implementation" (Wilson et al. 2008:145). This influence was also expressed by a few the persons I talked to in EWS when they pointed out that through the focus groups and public participation it became evident that the former basic level of water was inadequate, as commented;

> the 6kl is not enough, so then we had to consider that very seriously we ended up increasing it up to 9kl as we it is now, that is why you see written here free water, 9kl, so this was a result of the participation of the members of the public.

However, one person I interviewed pointed out that this raise came during the proceedings of the Phiri Case, involving Johannesburg Water, where the Head of Department in Durban is a board member.

Thus, the inclusion in this group may be argued to be somewhat exclusive as it involves people with a profession which makes them meet a great number of people. Based on Arnstein's (1969) ladder of participation discussed in chapter two it may be argued that this involves a certain level of placation. In this case some people recognized as the 'right' type, based on profession is included to participate. Furthermore, given it is based on professions dealing with the 'public wellbeing' (schools, clinics etc.) the selection of these individuals and professions are based on their ability to give qualified advices. The advices are then brought back and considered by the EWS which take make the final decision. While the effectiveness of this invited channel may be considered to remain limited, it is progress and the increase of the free amount of water may indicate some influence. Though, it is likely that this influence was assisted by events in the judicial channel and the Phiri case, indicating the mobility of participatory influence among different types of channels.

Citizens' Voice

The municipality has also tried to utilize the model of *Citizens' Voice*. According to an informant in the EWS, this included major facilitation as the participants (politicians and civil society actors) did not want to be in the same room with one-and-other. The notion was that this platform would be a forum where EWS could engage with the communities and at some point could be brought together as one big forum where general issues, policy and challenges were to be dealt with collectively.

In Durban this invited channel was initiated by the local water department and may indicate the dedication and recognition of participation as important. The Citizens' Voice involved training and discussions among various stakeholders. Contrary to the focus groups, political actors were important stakeholders in this program. The experience from the projects was that it was a very conflicting forum, with political actors and the civil society in opposition. As these two groups were hostile to each other, the result was that the training was done in two session and locations, while it was initially planned to do the training collectively. These experiences were expressed by both an informant in the EWS and an involved NGO-informant.

Even though the creation of this channel and initiative was an important step, there are some rather problematic points with regard to power redistribution, or lack thereof. With regard to invited channels, one of my NGO-informants expressed that the state has through the constitution required:

> a number of mechanisms for what they call public participation, which has really not become any more than spaces for compliance (...) because, it is on their terms. I create this space, it is my forum, and I invite you as a guest to my forum.

This quote reflects the risk linked to invited spaces and the limited power redistribution which often follow. As it is an invited space it also entails that it was created and opened by powerful actors. This also means that the 'inviters' hold a power position and may influence the channel. In addition, the channels that were created also may be used to gain access to resources/power or to reproduce already existing power structures (McEwan 2005:973-979). I will argue that that the forums created by EWS may be subject to some of the same challenges and flaws.

First of all, there is the issue of the educational side of the training, also linked to the previous mentioned information dispersion. Though education is an important

step towards effective participation, it may also be disempowering and manipulative. One of the officials in EWS expressed that through the training you got:

> informed councilors and informed civil society, talking about it on the same foundation as we say. If they wanted to argue with each other they now understood what they were arguing about. In fact, it took away much of the disagreements, and when we want to move forward, now that is the case, now we want to change it.

As this quote indicates, it may improve the cooperation as all involved have the same understanding. At the same time, it may be argued that EWS has been the main designer of this information and education, and may put emphasis on some points over others. Hence, the EWS may emphasize one discourse or set of ideas over others. Therefore, as Dryzek (2005:9) argues, discourses are linked to political power, this power and power distribution is illustrated when some actors get others to accept their discourse. Discourses in themselves can also "embody power in the way they condition the perceptions and values of those subject to them, such the some interests are advanced, other suppressed". Moreover, discourses are central for how we define problems, understand the problem and the solutions to the issue (Dryzek 2005:9-11). Furthermore, if we add this to Arnstein's (1969:218) notion of manipulation, there is the risk that this type of participation becomes disempowering. This 'setting-the-agenda concern' was also reflected on by another NGO-informant:

> training allows for municipalities to sort of bring in its agenda, very subtly at best, and not so subtly at worst (...) it doesn't sound like it [Citizens' Voice] was introduced very well in Durban, the training was really short and the CCS crowd complained that the training was focusing on how to get poor people to reduce their consumption of water, you know how to save water, where often, municipal officials, and I still hold that a lot of them are well intentioned...

The same informant continues to point out that the Citizens' Voice initiative is still important, as it is something; it gives people a channel to access. The informant also reflects that this gives civil society a dual role, both as participants and as watch-dogs regarding the content and the quality of the training, and in relation to who is included.

The government does not oppose participation and it has created channels and forums where the citizens have the opportunity to participation, such as through the IDP planning and the various EWS forums. Conversely, by creating invited channels the government acquires a moral authority as advocators and protectors of participation, and questions the need to act outside of the established channels. By creating

invited channels the government may gain a position to call for the civil society to conduct itself responsibly, and to avoid use of extremism, radicalism and militancy. As such the government attempts to criminalize actions conducted outside the invited forums and channels, hence also outside government's control, "[i]f the participation being claimed by the government is strictly of the invited kind, then participation is being conducted on the state's terms rather than the terms of the community" (Ballard 2008:19). As a result, there is a risk that the invited channels of participation are also created in order to develop a certain relationship, or a 'good community', rather than information exchange and communication between the actors involved. Ballard (2008: 19) continues that civil society:

> is invited to act in a partnership with the government in a consensus-oriented model, and is not encouraged to engage the government critically. Potentially oppositional civil society is domesticated and brought under control or simply denied recognition as civil society.

Hence, it ensures hegemony through consent and coercion (Ballard 2008). It may also be argued that through this process the participants are educated into the existing order and power structure, as mentioned in chapter two, thus also into prevailing and continued power structures. As such it may turn to be rather disempowering as people are not allowed any effective power or influence.

Further, this also follows a critique often voiced with regard to participation. There is a risk that participation may bind people more tightly to structures of power they are not able to question (in a development process). Participation has become an important element in legitimizing power (Williams 2004b:563-564).

The forum also ran into challenges similar to those mentioned at the political level, where this participatory channel became subject to party politics and competetion. There was (is) a great need to build a relationship among the various groups and actors. The civil society was considered a challenger and a competitor to the political elected councilors. This is reflected in the already mentioned difference in confidence between PR councilors and ward councilors. In addition, an impression I got from an informant in EWS was that some actors from civil society, when educated and empowered, they would challenge formally elected structures.

Another indicator of EWS maintaining power in the participatory structure is that they made the decision to abandon the forum. This was based on a context that the forum did not achieve the set objectives, and also the indication that they had the agenda-setting power in the forum. The aim was, according to the involved NGO informant, to create "policy experts" to discus broad policy issues with. An officer in EWS, also expressed this as he noted that the point of the forum was not to be a "bitching session" but to discuss strategic issues regarding water policy. The point was that these forums were to influence the water policy similar to that of the focus groups so the purpose was for the EWS to bring issues to the discussion which were given to the civil society in advance. The aim of the structure was to "hone in, for our sake we wanted to table, the high water losses and how as civil society we can work together to address these things".

This indicates the purpose of the project and perhaps the power structures in the invited channel. The EWS have the main agenda-setting role, while it sounded like the civil society's opportunity to bring issues is an add-on part of the forum and not the main purpose of it. It may, hence be argued that the partners in the forum are not equal. The participation process is initiated in order for people to help EWS improve the service. While this is a valid point, it only to a limited degree allows people to bring issues and concerns, even if these issues are at a rather personal level which was the main problem in the forum. Hence, only a limited power transfer may occur as the ability to influence water policy and water situations may be rather restricted. Issues not initially brought into the table by the EWS may not, or only briefly, be discussed.

Another point the informer mentioned was that the discussion went out of control; "what we wanted really these platforms appropriated strategically and their numbers wanted wiggled down to where you could sit people around the table and you can have this dialogue. But at 50 or 60 it is virtually impossible". This may indicate several issues. In order to gain some constructive output *some* framework is necessary, at the same time it indicate the EWS's loss of control of the forum, which may also be linked to the decision to halt the project. It was abandoned due to lacking success from EWS point of view, irrespective of benefits perceived by anyone else.

Regarding water, there seems to be a rather limited form of participation. The form of participation may be called consultation or placation. According to Arnstein (1969:219-220), this involves that there is no guarantee that perspectives introduced in the sessions are taken into account or that the experts make the final decision.

New user platforms[42]

This model, which is under development, is linked to the Citizens' Voice program. The Citizens' Voice model is modified into new *user platforms* which are going to ensure participation. The participation is initiated on a zonal basis. At this point 5-7[43] out of 17 zones[44] in this model have gone through training. According to informants in EWS, in these platforms ward councilors, ward committee members, ordinary members of the public and civil society are present.

These groups also meet regularly and various issues are discussed. Initially in this process, there is a training session, in order for people to "have the same format", at this training the participants are educated on the legal environment, what current policies are and information about the institution and contact numbers and so on. The objective of this forum is to discuss broad policy issues. The groups that are trained then need report back to back to their own groups. Furthermore, the number of members is limited to two representatives from each of the three groups: ward councilors, ward committee members and civil society[45]. The issues are discussed in the local groups before the conclusions are brought back to the forum.

The civil society was late given the notice of this shift in arrangement late in the process, as an NGO informer said

> we had heard rumors about this since July-August, you [EWS] never informed anyone about this in writing, or anything about the new change and we said as we have some expectations amongst the communities because we were still in contact with them they then said we would come, but they said 'but we have contacted civil society in Durban we have contacted SANCO (…) what they were trying to say was that they have chosen SANCO as their one stop NGO and other communities said that is not the case

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[42] This model is under current development and try-outs; hence, it was more difficult to get a hold of the formal structures of this model.

[43] A couple interviewees said 7 zones were done, while another said 5

[44] In the municipality there are 17 zones each containing 5-6 wards (Interview 19.11.2009)

[45] I am not quite sure if the 3 groups of representation are for each zone or each ward, but the questions remain the same.

This reflects several potential issues with the new structures. First of all, it indicates that EWS may be reluctant to share information, hence maintaining a certain power position. Though, this may also be due to the novelty of the structure. Secondly, the fact that they limit the numbers of participants is also potentially problematic, as it may only lead to the same competition and concerning question regarding participation on a lower level. The quote also reflects a frequent critique of the participation, as it may neglect the diversity of the civil society and the subsequent heterogeneity of interests and concerns. At the same time, it should be pointed out that this structure is made more localized and placed to a more local level with smaller units. Establishing the participatory platforms at a level closer to the ground and the specific areas was pointed out and wanted by the civil society. However, the informant also expresses concern regarding the risk of the process and participation becoming a rubberstamp.

Development projects

According with the developmental state, developmental projects and improvements are required to involve some local participation (Nel 2004). This entails that a certain portion of the workforce is local and that there are initial processes where the community can participate and come with inputs on the project. Despite this, I would argue that the framework is already determined and that EWS maintains the ultimate power as they may chose to pull out if the community is not cooperating. It was reflected by an EWS officer that given a set of alternatives and processes the community could chose what they wanted. According to the informant there is a process where EWS and the community decide what to do within the given framework to find a solution but;

> we sit sometimes 2 months, sometimes the community put in such obstacles, we [EWS] are not ready to work with you, thank you, we will come back later and see where you have gone off, usually they come running after us saying, no no no, let's withdraw our silly objections.

Hence, while these are important channels for people to influence their own lives as they actually are involved and get to influence the possible options and make a choice within the given framework. It also increases the understanding and knowledge regarding the project and, as the same EWS officer pointed out, may make the project go faster and easier.

However, this may move the responsibility for the project from EWS to the community leaders who are elected and involved as the steering committee. This is linked to one critique of participation; by taking development to a community level, there is a risk of bypassing political structures and going beyond public scrutiny and accountability (Williams 2004a:93).

Influence on the council

An issue with regard to the technical democratic transition based on bureaucratic laws and rules is that this has limited the public participation. This puts great power in the hands of bureaucrats instead of elected representatives, illustrating a neglected issue: the "accountability of bureaucrats to elected councils" (Manor 2001:12 quoted in Low and Maharaj 2008:16). This is illustrated in the bureaucrat's power in designing policies, approved by the council, as it was stated with regard to policy alternatives:

> to make those ideas they [council] rely on us [EWS] to bring them those ideas and we rely on our work with communities to develop those ideas. So the way it works, we write reports which are policy proposals, which go to the politicians.

Durban ultimately needs is participatory structures to ensure accountability, transparency and to limit the bureaucratic structure and power (Low and Maharaj 2008:16)

Participation and power redistribution in EWS structures

While the structures formed by the EWS to create participation are important steps in the right direction, the effectiveness of these participatory structures are curtailed. If the objective of participation is to redistribute power and influence according to Arnstein's ladder of participation, this will require greater influence by the participants than currently, as much of the final decisive power is left in the hands of the EWS.

Civil Society

As seen earlier the civil society has taken advantage of the invited channels of the justice system as well as invited channels formed by the administration (exemplified by the EW structures). What has been argued is that these channels, along with the political channel faced with challenges regarding accountability, may only involve power redistribution to a certain level. There is also the risk of the structures becoming disempowering and manipulative in terms of effective participation only apparently

being achieved. As mentioned in the former chapters, what goes on in the various invited channels are influenced by the other invited channels and the invented channels created by the people who experience limited influence in the invited ones. The turn to and use of these invented channels along with invited channels will be discussed next.

National Level

Civil society, invented channels and resistance

Creation of local democratic government is a turbulent experience, this involves a constant and favorable political direction to be identified, simultaneously as there is a need to strike a balance between building institutional structures and participation at local level (Heller 2001:133). The MSA, while encouraging the participation of civil society, NGOs and the private sector locally, has no defined mechanisms for such involvement. Hence, the participation of these groups is neither fully encouraged nor discouraged and excluded, though the power of decision-making and implementation "is left very firmly in the hands of the local government" (Nel 2004:33).

Benit-Gbaffou (2008:31)[46] argues that "in spite of the participation and decentralization rhetoric, there is no real power vested at local level". Participation is perceived as a nuisance, not taken seriously, a source of arguments and contest and a waste of time and money by people in positions and running projects. When it comes to peoples' most effective means of influence their own situation, Benit-Gbaffou (2008: 27) argues that it is *not* the formal and invited channels for participation.

In a general context where civil society works 'bottoms-up' the marginalized can raise their objections and seek options. In a top-down context, however, the interests of states and corporations direct the evolvement of the civil society "towards making it an agency for stabilizing the social and political *status quo*. These dominant hegemonic forces penetrate and co-opt elements of popular movements" (Cox 2005: 108-109, original emphasis). Cheru (2005:74) states that "those in power and privilege not only ignore the demands of the poor for fundamental changes, but they actually hate the poor", consequently "the poor take matters in their own hands since they

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[46] Based on case study work from Johannesburg.

know from experience that "the oppressors never make change, only the oppressed do" (Freire 1971 quoted in Cheru 2005:76).

Though civil society may in some sense represent a challenge to democracy (Whitehead 1997:105), it may also represent the opposite. Through civil society and invented channels a more honest form of participation may occur. It may be less const-rained and more open, as one academic informant pointed out. It may be more repre-sentative of poor peoples' interests than the political system is currently. Civil society may also gain a closer relation with municipal officials, and thus bypassing normal structures. This may have some democratic challenges linked to it as that civil society group has more weight in the system compared to other areas. At the same time, ques-tions regarding the representativeness of the group will rise, as it may represent only a narrow interest or group (Whitehead 1997:105-106). Furthermore, it may also create issues in terms of accountability (Low et al. 2007:262). These challenges of the civil society are linked to the HRBA principles of accountability and equality mentioned in chapter two as it also implies that people who are involved in a successful civil society organization will have more influence than other people.

Invited and ineffective invited channels of participation

Citizen participation (McEwan 2005:974) and full citizen control (Arnstein 1969) involve a transfer and change in control and access to resources and regulatory struc-tures to groups and persons that previously were denied such access and power. As such, participation is not only a means but also an end in order to achieve objectives of deeper democracy and empowered citizens in South Africa. While invited channels and spaces, that have been opened up and created, are intended to be empowering, they may turn out to be disempowering as people are simply relocated within the current power structure.

While there is a recognition of the challenges and constraints regarding direct participation of the constituents of the local government, there are obligations to design clear guidelines with regard to who is going to participate, representing whom, regarding what issue, in what structural process and with what influence. Here the role of civil society organizations is emphasized in order to ensure diversity, styles and cultures of participation, support the inclusion of disadvantaged and marginalized

groups, and obtain gender equity (McEwan 2005:974). Though designing the policies, these policies are difficult to implement at local levels, thus also illustrating the difficulties in realizing meaningful and effective participation. One of the scholars I talked to expressed the following notion regarding invited channels;

> you get to say or to claim that we have consulted with the people, and maybe some valuable information is transferred in some ways but you are not exactly saying to the citizens of Durban how is it that you want to structure major resource allocation which to me is a political question, how do you allocate money, how do you structure water delivery (…) my hunch is that they would not be much more than focus groups that get to have a little bit of input, they are not given any real power what so ever.

Often the processes of participation are initiated out of requirement and obligation, rather than acknowledging the importance of the activity itself (McEwan 2005:979, Karuri-Sebina et al. 2010:94), this was an impression expressed by several of my informants where the service delivery officers conducted participation processes out of requirement, rather than recognition of the importance of the process, as expressed by an NGO-informant:

> [It] is just not a priority for them, so one of the things we were trying to do, show them that (...) that it is not actually an option, participation is not an add-on option, that the whole system of the water and sanitation is not going to function without real participation, and that the sustainability issue all the problem that are being faced are in fact being undermined by this critical element. They see it more as a luxury...

Hence, as Heller (2001) pointed out that decentralization is a political project involving redistribution of power. The main concern of Arnstein (1969) is also that effective participation involves a redistribution of power. This may be achieved by use of (requirements and) invited channels, however, "simply creating these new spaces might not be enough to empower citizens or bring about greater participation in decision-making and resource distribution" (McEwan 2005:975).

Regional Level: Civil Society and Means of Influence

Use of Invited and Invented Channels in Chatsworth

The local political structures in Durban have created a situation of organizations outside of the party-structure being created in order to represent "the interests and views of the poor and the disadvantaged (….)[as] limited participatory opportunities (…) were chiefly influenced by consultants, and tokenistic" (Maharaj and Low 2008:15). One such organization was the CCG, created to support and empower flat dwellers

struggling with payment of rent, electricity and water (Maharaj and Low 2008:15). Organizing in Chatsworth, the organization grew fast and eventually gained enough strength to articulate important challenges and demands to the municipality (Dwyer 2004:10). This indicates the advantage of having someone resourceful coming into the areas which was pointed out by several of the persons I talked to. This has also been beneficial for the community as it has created a level of publicity, as pointed out by one researcher; "To have a high profile civic group supported by academics makes them [the city] nervous".

Several of the community-informants I talked to, expressed that the reason for mobilizing and organizing was the situation they were in, where they lived in fear of evictions, disconnections and so on. Dwyer (2004:15) calls this a "defensive and survivalist basis upon which people mobilize, encourage and identify with and through each other". This, hence, triggers a will of action. Moreover, one element often present in mobilization in CCG was the community and the notion of being in the same situation (Dwyer 2004:15-16). This is also reflected in what one of my informants said; "We were ganging up with Bayview and Crossmore, Meerbank, and that is how we really made it (...) it is nice, one for all and all for one, that is our motto".

A second element is the use of the municipality, council and councilor as 'the others' (Dwyer 2004:17) becoming the representatives for the communities' problems and oppression. This is also reflected in Jacobsen Yarza's (2008) work where the state is framed as the 'enemy'. This opposition and skepticism towards the political system and representatives may also be reflected in the following statement made by one of the ladies in the community; "there is no ward councilor, we have one, he sits on the backside and does nothing, we don't get a ward councilor walking down this road, he knows pathways, we have never ever seen him".

In 1999 the community started using new tools in the struggle towards the municipality, beginning with protests outside the houses of local councilors. In addition, through social events and festivals political issues were integrated, as well as building a community identity (Desai 2000:47) and mobilizing (Dwyer 2004:24). This strategy is similarly reflected in the regular Wednesday meetings in Westcliff, where the

community members were repeatedly encouraged to take responsibility for their environment. WFRA also organizes social festivities to create a community feeling.

The community and the municipality met several times in court. At one point while facing each other in court, the community decided to protest outside the deputy mayor's house before the group continued to the rent office in Chatsworth centre. People were chanting, police arrived and gave orders to the crowd to move or be removed. As the police stood half way outside and inside the building someone shut the doors and created a standoff. Eventually the deputy mayor acknowledged a "moratorium on evictions "until the end of the month", during which time, Council, whilst committed to cost-recovery, would "look into the matter further"" (Desai 2000:67). One of the participants present stated that they did not believe him, but they had *made their stand* (Desai 2000).

The period between 1999 and 2002 was the years with the highest level of activity. This was also when the CCG was very actively involved in the communities. This early period of activities and mobilization is viewed as an important period in the Chatsworth struggle and is perceived as an important point of departure for the post-apartheid struggles in South Africa (Desai 2002:7). Despite a less active CCG currently, the communities, especially Westcliff, maintain a high level of activity (Jacobsen Yarza 2008:15-16).

With the presence of CCG, local leadership also developed. Dwyer (2004:14) points out that the leadership of some of the ladies involved in the CCG has played central roles and are also the areas' and organizations' face outwards, as well as representing the core of the organization. In addition, these ladies are the organizers and leaders in the communities. This is something I ran into where the leadership in the organization was praised and several informant said that the area and the development would not have been achieved without the leader and the leader's effort, as expressed by one informant;

> If it was not for them, I don't know what would have happen to us, maybe we would have been evicted, sometimes we should not have water, what would we do, it is through them we are living nicely a little bit, and we must thank them.

The CCG was also invited to in work with Housing Liaison Working Group, but the participation ended as it became clear that the Housing Liaison Working Group was

not working for the benefit of poor communities and CCG walked out. Despite this and frequent confrontations between the CCG, the municipality and the police:

> the CCG played an important role in galvanizing the community to strategically engage the Council. *These were not simply fragmented happenings, but strategic interventions and insinuations directed at winning material benefits and forcing the Council to re-think its policy* (Narsiah 2002:12, emphasis added).

The continual disconnection and lack of affordable and suitable alternatives also forces people to illegally reconnect their own water. The use of reconnections has been a strategy in the struggle as people would reconnect as soon as the council troops had disconnected and left, in the most extreme cases people would replace removed pipes with their own (Desai 2000:79). The area also became a no-go area for municipality technical support and representatives, and the organization gained an effective control over space, reflected by a scholar, which is also reflected in a civil society informant commenting that the community continually counter-acted the municipality's actions in the area. At the same time this strategy to ensure payment and cost-recovery of the Durban Metro was "creating mass lawlessness by sheer scale of its acts of oppression, which are bound to breed resistance" (Desai 2000:79).

Thus, the municipality responded to the organization and demands through means similar to those used by the apartheid government; criminalizing and stigmatization, random use of force, blaming the victim, and rising costs of services. The city manager was also critical to civil society organizations who wanted a change and who were not associated with either the ruling party or the opposition. The city manager raised a number of concerns. Firstly, the tension between the civil society and the elected representatives, and consequently that political parties were not present or included in the civil society organizations' meetings, he also questioned the representativeness of some of these groups in the communities as well as the communities' involvement and organizing. Finally he also expressed opinions that some of these organizations used methods used during the struggle against apartheid, not realizing that times had changed. He also was critical to the lack of critical intervention with the post-apartheid local government, "which was exactly what some of the new (and old) social movements were attempting" (Low and Maharaj 2008:15).

The attempts made by the local ANC to limit the militancy were easily avoided. The communities moved the objectives and targets of the interactions, thus changing the demands for accepting the title deeds of ownership of the units[47], such as requiring upgrading, debt written off, and the creation of body corporate. The ANC and its economic conservatism were not able to follow this flexibility (Desai 2002:44). In addition, as Dwyer (2004:20) points out, a movement is in constant development and is continually changed; this also means that the organization takes advantage of the resources and strengths they have at hand. The CCG has shown great flexibility and variety in use of various strategies, both of invited and invented nature.

Fantu Cheru (2005:77) tells about a village getting their water cut-off, resulting in disruption and resistance by the village through sabotage of electricity delivery and opening sections of the dikes in order for water to reach the village. He continues:

> [w]ith operating cost running high, the government has no choice but to accommodate the demands of the community by allowing the peasants (…) to have water for their farms at scheduled hours. Call it tax evasion, bootlegging or stealing; these activities represent a defence of self and community.

This conduct, hence, has clear similarities with Chatsworth's strategy of collective refusal of payment, simultaneously as they continually reconnected water access when being disconnected by the municipality, creating high costs and few revenues for the municipal services in the area. As such, the municipality acknowledged need for intervention reflected by a central person in the community:

> we drove them to an end where they realized they were not winning. So it was the sense of mobilizing and resenting that drove the municipality to really think we should maybe engage. But also there was political motivation behind it as well, obviously the ANC wanted peoples' votes as well.

This was also acknowledged by an EWS person as he expressed "we realized that to keep up fighting was not working, and the other side was also getting tired, so we decided to come together, so we now can solve this problem together". Thus, it may be argued that through the use of invented channels the community forced the municipality to open more effective invited channels. Chatsworth is currently involved in a partnership with the municipality which, according to Arnstein (1969:221), involves some redistribution of power and involve a degree of effective participation.

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[47] The improvements made with regard to water, and the struggle in general, is part of a bigger packet dealing with water, housing and electricity. The housing issue and evictions was an important element in the struggle.

The concessions given by the municipality after the water court cases were also linked to the fact that the local election drew nearer. The CCG and the community groups took advantage of this context and political channel by discussing and determining to vote for independent candidates, this allowed the organizations to continue to work outside the political system and structure. While in other wards, the CCG advocated no-vote (Desai 2002:76, 79-80). This may also be linked to the fact that Chatsworth have been an area politically dominated by one of the oppositional parties (MF), pointed out by informants.

When the High Court ordered Manqele's water to be disconnected again in 2001, the arena of battle shifted from the court back to Chatsworth. This shift and the maturing of the organization led to a phase of more direct and innovative methods. The nature of the methods was a passive, militant resistance. The mayor, however, "questioned the role of pressure groups, saying that apart from highlighting issues, they did not solve problems (Desai 2002:117).

The CCG and Chatsworth had the benefit of making the news (Dwyer 2004:10) and gaining publicity as several of the persons in the community I talked to pointed out, such as in one occasion it was "[o]ne hell of a march, it was on international television", which also led to other areas hearing about CCG and Chatsworth and making contact. As well as the people in Chatsworth discovering that other areas deals with similar challenges (Dwyer 2004:11) as previous quotes indicate.

During the formation of the CCG organization, there were regular meetings so people from different areas and groups would come together where activities were, stories were told, identity was built and strategies were discussed and planned. An important element was the feeling of being "part of something bigger" (Dwyer 2004: 11). Similar strategies and objective may be reflected in the WFRA's weekly meeting creating a feeling of belonging and community. CCG has been involved in arranging solidarity marches, rallies and memorandums with and in support of the challenges and struggles other areas in the country were faced with. In addition linkages were developed to other areas in Durban where they were struggling with similar issues. The CCG eventually got a coordinating role with regard to protests, rallies, and other acti-

vities (Dwyer 2004:2, 10, 12)[48]. However, according to Siwisa (2008) the cooperation and gathering of similar struggles, may have been followed by an ambivalent feeling in other areas. The inclusion of the other areas and groups were limited and there was a feeling of "crowd renting" (Siwisa 2008:932)[49], meaning they were contacted and included when needed.

The CCG was also involved in the R10 campaign in 2002 (Dwyer 2004:37), where the members marched to the rent office in town waving fake R10 notes. This reflected the demand for affordable rates and voiced the concern that this was all they could afford, as well as creating toitoi[50] and demonstration at the World Social Forum in Durban in 2001 (Jacobsen Yarza 2008:76, Desai 2002).

The knowledge brought to the community through the process was also with regard to use of legal strategies as strategies. This also created publicity, ensured both external support and linkages being created to other similar issues and struggles. Most effectively it showed the contradiction between the rhetoric and the actual policy of the government with regard to the poor (Desai 2002:72-73). Cheru (2005:79) indicates that a result of resistance may be a challenge to the national state and demands for a more genuine democracy as citizens "become more and more aware of what they want and how they might attain it, they have entered into political action and organizations to demand an accounting from those who govern". This may be reflected through a couple of statements, the first coming from an official in EWS,

> Chatsworth is unique compared to many other areas who are faced with water-challenges and service problems, [because] they [other areas] are not able to respond in the same way, they are not able to articulate their demands in the same way because they cannot mobilize people and network in the same way,

and the second from a community member; "we are not stupid as we used to be", indicating a certain level of empowerment. McEwan (2005) also point out the importance of duration. A point also made by one of the academic informants when he said that with regard to the duration of groups such as CCG and WFRA, the city will regard these as continual problems and some concessions will be necessary. These conces-

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[48] As a coordinating body and network some core activists were involved, these had access to various kinds of resources and means of communication as well as functioned as a communication center between the various groups (Dwyer 2004: 12). Dwyer (2004:21) points out there are different kinds of leaderships involved, leadership in CCG and leadership in the community.

[49] Based on a study done on a township outside of Durban.

[50] Phrase used for creating noise, protesting, burning tires etc.

sions were also aided by the high profile of the group as well as the ceaseless mobilization of the groups.

This, hence, may be linked to an often quoted critique of participation. The participatory approach often focus on personal reform on behalf of political struggle, where the point of transformation happens suddenly and revolutionary. Hence it neglects the fact that in reality it may more often be the case that these revelations come as part of a longer relationship and project for change, as well as that there may be resistance involved (Williams 2004a:92-94). Williams (2004b:565-572), hence, points out that the change in power relations will create new spaces for resistance, where the 'weapons of the weak' may induce and support people's assumed support and compliance and self-interested participation. Empowerment and change in power structures are results of long-term processes, including political struggles.

Invented channels and influence

Social movements, including the CCG, viewed ANC not to address the socio-economic problems and lack of service delivery. Ultimately the tension between CCG and the government was caused by the GEAR policy and its consequences on CCG participants (Dwyer 2004:9). Furthermore, in order for social movements to have a lasting influence opportunities need to be seen, taken and "given a physical expression" (Dwyer 2004:19). The local areas resisting a regulatory shift towards increased marketization and cost-recovery were often areas struggling with affordability and the following non-payment of services. According to Morgan (2008:8) these problems were occurring all over the country, where the end of apartheid was followed by:

> Cost-recovery principles applied to previously underserviced areas, even in diluted form, raised tariffs very significantly from the low base flat rate that was charged (but not paid) under apartheid. Townships residents boycotted payment, and in relation to water, employed a wide mixture of strategies to disrupt the politic of the government, including marches, protests, payment boycotts, illegal reconnections, political, educational and test case constitutional litigation.

The strategies used by different organizations and groups were dependent on local political contexts and the characteristics of the group, the contrast between empowering people and creating 'good' citizens also limited the ability to engage in a constructive way (Morgan 2008:8-9).

The government has responded to the activities of CCG and Chatsworth by pointing out the engaging in limited constructive interaction and the lack of program of the organization. However, the organization has on the contrary been engaged through various channels. First of all they have had a representative in local elections, taking municipality to court appealing to the constitutional rights, and bringing and winning cases in tribunals for rent. All of these means are means of interacting with the state proactively and by use of the structures in a constitutional democracy. Thus, the organization has taken advantage of the political channels that were created after the apartheid era and add to the creation of liberal democracy, despite the skepticism to the limitations of this system. The organization also has the ability to put demands on the government officials in public (Dwyer 2004:25).

Invited spaces may be characterized as potentially a more passive participation and tokenistic. In South Africa, and as a "response to the institutionalization of notions of empowerment and citizenship (…) alternative spaces of participation are being shaped by groups, organisations and activists that have particular consequences for the nature of empowerment and practice of citizenship" (McEwan 2005:979). This involved collective activities on other arenas, apart from or in opposition towards the state. By using these channels the organizations avoid assimilation or co-optation, bureaucratic problems and politically based resistance (McEwan 2005:979). This may be reflected in the community leader's attitude and her resistance towards the political system and interest in taking advantage of the channels outside the state, as she pointed out, they have achieved so much outside of the political system.

McEwan (2005:980) points out an important point with regards to invited and invented channels. The borders between the two channels are fluid and what happens in one of them influences the other one. She continues that the inability of the state to create effective invited channels opens up the possibilities for establishing and using alternative and invented channels for influence and participation. These new types of channels are often a result of people being faced with similar challenges and concerns (McEwan 2005:980).

This is also the case for Chatsworth, where the organization started when the community was faced with increasing oppression, evictions and cut-offs.

Furthermore, resistance based on rights to socio-economic rights has occurred all over the country, and are increasingly organized around common interests and challenges, locally, nationally and internationally. These invented channels have also create a space for people to discuss and maintain different stand-points, thus creating a political freedom and citizenship. These channels are where poor people have the opportunity to resist, challenge situations and form alternatives. At the same time, alternative channels may be exclusive, and are often dependent on oppositional processes to create an identity and common objectives (McEwan 2005:980).

These invented channels are important in order to make demands of rights and citizenship. The government, however, tends to respond to such channels by delegitimizing them, because they do not concur with the invited channels, and are thus perceived as a threat and/or irrelevant. Nevertheless, the channels also have limitations

> [c]itizens require sufficient knowledge to be able to play by the rules, to articulate a position and to define a view; participants depend upon the prospect of being listened to and taken seriously. Without these prerequisites, alternative spaces of citizen participation and action are limited in what they can achieve (McEwan 2005:981).

Finally, all these spaces of participation; invited and invented channels influence each other and are not insulated from one another. As such and as they all have both challenges and strengths it is important to use all of them concurrently in order to gain effective influence and ensure power redistribution shaping water access and water policy.

Summary

In this chapter the local participatory structure in EWS has been discussed, as well as channels used by the civil society. What may be perceived as the case is that while the rhetoric of human rights and participation is present, the effective implementation is challenged and lacking. With regard to participation structures, the final decision-power is maintained. At the same time, civil society organizations have some influence when they use a number of different types of channels for participation.

Chapter 6: The Clash of the Human Right to Water with Neoliberal Principles

Introduction

In this chapter I will look at how the right to water operates as a local level. An argument I will be trying to make is with regard to the problem of confusions between human- and market rights. As both notions are based on liberal thoughts, the similarities between the two may cause problems. While the customer and market rights and human rights are not mutual excluding (Greenstein 2006:417), there is a risk that the distinction between them is less clear than what would be beneficial. The argument is that when water (and the right to water) is commodified, the end-users (and the water) also become subject to other rights and principles. In addition, by turning water into a commodity, making it subject to market-based principles, the access, and the subsequent benefits of accessing water (such as for instance health and dignity), will be defined by people's affordability and capital strength. As such it may be argued that it is inherently discriminatory against people with weak financial strength. This is due to the implications the increasing prices have on poor people's freedom, an important element in the human rights notion.

Furthermore, this is also linked to the use and emphasis on different discourses between government and civil society. While the state uses and emphasizes a human rights-based approach to water and service delivery, the neoliberal principles and structures limit the effect of these good intentions. Furthermore, as civil society often operates on a basis of a human rights discourse they may pose a counter hegemonic direction to the state's cost-recovery concerns and focus. The civil society may use the human rights focus as a point of departure in their continual challenge and monitoring of the state's service delivery.

Moreover, the strengthening of effective participation may be one way of redirecting the focus and emphasis to human needs and human rights, rather than neoliberal principles. This may be a means to make the constitutional right more effective,

and create a notion of a citizenship based on equal human rights, rather than on affordability and economic strength.

Commodification of water in Durban

As argued in chapter three, the introduction of GEAR introduced a neoliberal shift in service delivery in South Africa. This policy also argued that the "delivery of a service must be self-sustaining" (Deedat and Cottle 2002:82), simultaneously the national transfers were decreased putting pressure on municipalities to find solutions to the economic squeeze they were increasingly situated in. While the national legislation holds that water remains the 'property' of the South African people, with the state as the steward, the service delivery has been either privatized or sub-contracted by a few municipalities. This tendency has, however, decreased along with the international trend of decreasing water privatization in developing countries, due to the various challenges (Bakker 2007:440). Furthermore, in South Africa privatization has not happened since the introduction of the FBW (Winkler 2007:15). Even though, privatization in form of transfer of ownership is not happening, commodification is. Commodification involves an adoption of neoliberal and commercial principles in resource management (Bakker 2007:435).

Muller[51] (2008:75) argues that water and water supply is generally a local concern. Hence, the national level can only provide guidelines and norms, while the final decision and tariff level is left to the local government authority. Thus, the service institution needs to consider the right to access to water when deciding what water service tariffs that should be subsidized. He continues that "the regulations did not prescribe a free amount, recognizing that no service can be provided without funding and that if no source of funding could be identified for a zero tariff it would be inappropriate to impose one". This is based on both economic and sustainability issues due to large additional costs of making more water available, and focusing on reducing wasteful and inefficient use.

When the FBW was introduced in Durban initially, it was based on cost-efficiency rather than human rights and basic needs. The Head of EWS has expressed that the

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[51] Former Minister of Water Affairs.

costs of collecting the revenues was equivalent to providing the water with out charges to the relevant communities (Bond and Dugard 2008:8). This reflects that the cost-recovery principles and financial considerations may have been a bigger influence in the introduction of the FBW in Durban in 1998 than objectives of human rights and providing for human needs. Similar reasons are reflected by Hemson and Owusu-Ampomah (2005:527) when they point out that the one of the strongest arguments for introducing free basic services was that it would comparatively reduce the loss in revenues as vandalism and maintenance costs would be reduced. Likewise, this was expressed by one of the EWS officials when pointing out the FBW origins:

> we were doing that, and when we did it, it was not linked to anything about rights and those kind of things, we did it purely out of an administrative point of view, it cost us more in billing and not recovering, so the FBW was kept to that level, purely on the economics, it made sense to give the first 6kl free, rather than write out bills and the whole administrative process so for us that was a no brainer in that sense, we give the fixed 6kl free it was only when the regulations came in that we started saying, it is now FBW for everybody, we now have to start targeting reaching people in informal settlements and making sure that everybody got access so that is in place. We have taken it further with increasing the FBW.

Several of the other persons I talked to, emphasized the FBW as a human right but at the same time pointing out the subsequent obligations coming with that right, as previous quotes indicate. Hence, while they often emphasized a human rights approach and the human right to water, the implementation may indicate a more neoliberal guidance. The strategy of commodification has resulted in an increase in cost of water for domestic consumers where there has been a water tariff increase of 19,195 percent per annum since 1996. Moreover, the water tariffs increased by 33.54 percent in 2001, and all together the increase in water tariffs since 1995 is 183.81 percent. This increase in tariff levels has happen simultaneously as EWS has become more efficient in operations (Narsiah 2002:10). This commodification and the following need of control of the consumption in order to ensure cost-recovery has resulted in introduction of a number of controlling devices.

Technocratic management and control

The introduction of FBW in Durban and South Africa has received international recognition. This recognition is also due to the number, and use of low-tech solutions. While

this has had important implications for the water security of low-income households, it has also had a more disempowering component to it (Loftus 2009:961).

This disempowerment is linked to the increasing pressure on the price by the semi-commercial bulk water provider, Umgeni Water[52], along with the requirements to secure adequate cross-subsidies in order to afford FBW. These two elements combined have created pressure on the municipalities' need to obtain cost-recovery for services provided, hence also the requirement of households paying for their consumption (Loftus 2009:962).

If the household is not able to pay, disconnections may be avoided by agreeing to installation of flow-limiter devices. These means are introduced as an alternative to downright disconnection. The shift may also have been influenced by and/or being a consequence of the Manqele case (Loftus 2009:962). As reflected on disconnections by one of the persons in EWS:

> in the context where we apply it, it is completely appropriate, it needs to be done as a rule and the understanding of the legislation is that, we do not disconnection for non-payment, stating that, you get a restricted supply, where you still have access to FBW. The only time we disconnect is when a person is illegally using and connected up to water and I think it is absolutely our prerogative and right, it is our duty to remove it, because that individual or that group of individuals compromise the success of the service overall to the majority.

This quote also reflects another issue the municipality has to deal with, the responsebility towards the greater majority to ensure service. Furthermore, while this practice in Durban ensures a minimum lifeline, there are several problems connected to the flow-limiter devices. In addition, policies were introduced which suspended payment of arrears if the device was installed. These technologies became means to control household consumption. This has been strengthened by the use of a block tariff structure. While this policy appears to be a progressive policy both socially and environmentally as it targets luxury consumption, the policy has had the biggest implications for large, low-income households with leaky plumbing (Loftus 2009:962). As a consequence, when unable to pay the bill the households are given the alternatives of paying the bills in full before getting full supply reinstalled or suspension of payment and installment of a flow-limiter.

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[52] A brief elaboration on this bulk water provider, Umgeni Water, and its relationship to the city is given in Appendix 11.

With regard to the previous emphasis on education of people in the use of water, this system may also be reflected in the means of integrating people into the system. This 'education', with regard to participation and determining the training involved, may also be reflected in the Debt Relief Scheme, where some of the objective is to change the behavior of the people. By initiating this scheme the municipality gains paying customers and revenues from previously non-paying areas. As pointed out by an academic informant, while the community get their debt written off and they also get re-integrated into the payment system. This may also be disempowering as expressed by the researcher:

> you are caught in a kind of a legal bind because you signed a legal document. And they make you very aware that you signed a legal document (…) strategies they use to make you accept the whole system, to make you part of the system, so that we now view us selves as agents of the system, so we become implicated in making the system to work.

Loftus (2009:963) continues that the household may receive an unreliable device and that this may have serious implications on the water they are able to access during a month. The EWS policy (2008/2009:2), however, claims that the devices are rarely faulty. The whole situation may be linked to the increasingly technical and managerial approach to service delivery. It should be mentioned that one of the NGO-informants pointed out that the Head of EWS has acknowledged that 'technical solutions cannot solve social problems'. Furthermore, another NGO-informant noted that Durban was still lucky as the Head of EWS was continually trying, thinking and being innovative, indicating a commitment to the people and the challenges in the municipality.

Greenstein (2006:417-418) points out that the role of citizens and customers can both be present, however, a "citizen is entitled to gain access to essential goods and services as a matter of right; a customer must pay for them" (Greenstein 2006:417-418). Whereas the municipality provides the basic water, the issue of cost recovery and the following restrictions to gain credit control may undermine the principles of the human rights and the human right to water through issues of affordability.

The Free Basic Water contradiction

Though South Africa is one of few countries that acknowledge socioeconomic rights and the right to water, this right and policy has been difficult to realize due to the

opposition of strong (international) trends towards cost recovery in regard to water, and since the changes needed are immense both in terms of policy and institutions (Mehta 2005b:237). As such, in 1995 the Development Bank of Southern Africa promoted a World Bank approach to service delivery where the "the levels of services were linked to affordability" (Narsiah 2008:32). This did not support universal full service provision, but resulted in basic needs being defined by economy. As poorer sections of the population, and the following ability to afford the full services, occupy specific geographical areas, these areas will be in line for a lower level of service. At the same time, "they would be liable for the full costs of services because service were now treated as trading services" (Narsiah 2008:32). Because the human needs became second-level arguments and financial viability the important criteria, basic needs were re-conceptualized as business needs opening up for the use of rising block tariffs. This approach was adopted by the eThekwini municipality (Narsiah 2008:32).

While the FBW policy has become a national program, each municipality is responsible for providing the service. The national government has the regulatory responsibility and "use it to require that all municipalities should endeavor to provide this minimum amount free of charge" (Winkler 2007:11). The system is financed through a rising block tariff system, and cross subsidization, where high volume-users pay more and cross-subsidize the low-volume-usage. The municipality also gets transfers from the national government through the 'equitable share', based on calculations of the percentage of poor people living in the municipality (Winkler 2007:11-12).

Whereas the FBW appears to be based on a notion of human rights and basic needs, cost-recovery and neoliberal principles weaken the effect of this approach. When a person has consumed the free amount of water, the cost recovery mechanisms kick in through the fixed charges. These charges pay for the free amount consumed before crossing the threshold and entering into the block tariff system. This system may be problematic for poorer households, as they tend to be big, resulting in a higher consumption and ultimately subsidizing smaller, more affluent households (Narsiah 2008: 33). The Chatsworth flats were exempted from the fixed charge after bringing the council to court. The exception is also part of the water policy.

Besides being calculated on a household basis, discriminating against big households, the provision provided may not be enough in many situations (Winkler 2007: 21-22). The response of Muller (2008:76) to critics' suggestions of providing basic water on individual-person basis and penalizing luxury consumption is that it would involve more water than needed for basic health and urban, predominantly non-poor, citizens would benefit more than poor rural people. Administration of individual amounts would be to complex and easy to abuse as well as eroding the financial base due to reduced cross-subsidization and requiring bigger national transfers. While pointing to some important issues with regard to finding financial capacity to extend and strengthen the service, the question emerging is who has the right to determine how much water basic human and health needs entails, as well as what and whose criteria is the definition based on?

This indicates another critique, the critique regarding the amount of FBW. The response to the critique is that as 6000l per month is 200 liters per day. This practice also means that a household may contain 8 persons (the census of 2001 indicated that 93.96 % of South African households had 8 persons or less) and the FBW should provide each of them 25lcd. Muller (2008:82) further argues that "the definition of a basic supply as 25 lcd was supported by recent recommendations of the World Health Organization (WHO) (…) It identified a basic level of access (unlikely to exceed 20 lcd) and an intermediate level of access (50lcd)", before pointing out the emphasis on improve access to water in order to guarantee the basic supply to be accessed as the main priority. On the contrary, another source points out that WHO "recommend[s a] minimum of 50 liters per person per day for basic needs and healthy existence" (McDonald 2002)[53], a minimum level also quoted by Gleick (1998).

The challenge of insufficient water is also reinforced by the technical devices used, as reflected by a civil society informant:

> the fact that some people are still unemployed, and it [the restrictor system] is not very friendly because for it is not a carryover system, if you don't consume the amount today it is not carried over to tomorrow, when people are trying to budget and cut down on water they obviously cut down on washing days, you know maximum usage and they try to reserve it for one day of the week, and if we had the carry over system

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[53] While the first source from 2008 gave a WHO source from 2003, the second number came from a source from 2002.

> it would help for them for the one day a week where you prepare more food or do more consumption, so it will actually allow people to really go and use that one day, but it is not because it is no carry over system so when people have maximum amount of work for use of water they find themselves cut off before the day ends and that is problematic. The other big issue is the fact that basic free water is not enough for everybody, the free basic amount is not enough for everybody, if you get a large household, and I would say a household of more than 5 people, or more than 4 people, then they obviously will use more than the free basic

At the same time a few of those I talked to during the fieldwork in South Africa called for the poor to stay and consume within their means. However, as the quote shows the lack of transfer of less consumption one day to the next means that it is in fact very difficult to juggle with the means accessible. Because of this it may be argued that there is a certain level of deprivation of freedom. A person with a restrictor is not free to choose when he/she want to consume the 200l he/she is entitled. In order to gain from the amount of water the person has to consume the provided water every day. Hence, the time of water consumption in a week is not determined the person but by structure and a technical device, indicating a lack of freedom of process.

Similarly, the freedom aspects of opportunity may be violated as the water access and the water level may have implication on the persons' ability to use water for basic drinking, sanitation, cooking and cleaning (Sen 2004). This way, the amount of water may have implications on the ability to achieve freedom, as water may be perceived as a means to freedom (Sen 1992).

In addition the quote also illustrates the need to use the full amount in order to get the whole benefit of the system. This is linked to the issue of transfer, if a person do not use, or use less than the provided 200l of water each day, the unused amount of the 200l of provided water and the subsequent subsidies are lost for later use.

At the same time, one of the NGO-informants said that the context "is not unique to Chatsworth it is the solution that is unique to Chatsworth" referring to the cooperation between the community and the municipality/EWS. As the same person said out earlier during the interview:

> the innovations they are doing in Chatsworth are great, it is a result of the community struggle that those are being achieved, because if you take into account that they negotiated the option of how much water they can have up to a limit, so that unlimited water and it goes back again to those water usage, we got to keep live within our means and if that choice of being able to have that extra water as a safety net.

This way, by giving the person a choice of how much water he/she can access during a day (the basic, 400 liters, 600 liters, 900 liters and unlimited) according to the persons means and resources and providing a small leverage for unexpected incidences, the freedom is increased. However, at the same time, this freedom is dependent and determined by the person's resources. As such, a richer person will have greater freedom and capacity than a poor person, thus, potentially having implications for equity and inequality.

This indicates another challenge, the fact that the distribution of the burden has been skewed, which has implications for the HRBA principles of non-discrimination and equality. While the prices on the lower level bulks of water have been too high for the poorer section in town, the prince increase to reduce luxury consumption has been insufficient (Winkler 2007:19-20). At the same time, while there is need for some sort of payment, the willingness to do so has decreased after the introduction of FBW (Mehta 2005b:243). However, as noted by one academic, Durban municipality has given some concessions and is going in the right direction in terms of the bulk tariffs.[54]

However, with regard to the distribution of costs and benefits, subsidies transferred nationally should not be mixed with local cross-subsidies aimed at conservation and sustainability of the tariff policy. The FBW is one element of the tariff policy. Accordingly, the "equitable share" is to ensure that poor people get FBW, while the many non-poor households which benefit from the FBW do so through a stepped tariff system financed through cross-subsidies from high-volume households' consumption. Hence, the tariff policy is to influence efficiency and wastage, target luxury consumption of non-poor, and rewards modest non-poor users (Muller 2008:80-81).

Mehta (2005b:239) also argues that FBW is not a strategy for redistribution, whereas elements in the NWA deal with such issues. FBW and the subsequent cross-subsidization imply fairness, not equity, but because of the great racial inequalities in South Africa the use of the tariff block system has no basis in reality. It is questionable whether this system can address racial inequalities. Assuming that poor people do not consume more than the given amount of free water also imply that these people do

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[54] See illustration in Appendix 12.

not get the advantage of the full amount of free water, "[r]eduction in water use leads to a smaller subsidy" (Narsiah 2008:33), as mentioned earlier.

The critique of the amount of water provided is valid, and the provision of only 25 liters per person per day is not sufficient. Further, while the demand to increase the amount to 50 liters a day is important, it should be pointed out that many people in South Africa lack access to water all together. Thus, the primary objective should be to provide these people with the current minimum standards (Winkler 2007:22). This was also pointed out by an NGO-informant:

> The amount of water issue is important in policy, but the whole water policy for the whole country has so many things that have not been achieved, and there is so many people that don't even have existing amount of water per day, that for me it was a really important struggle but I also want to keep up the struggle to try to get what we are suppose to be getting.

Winkler (2007:12) goes on pointing out that while FBW was initially a means to ensure poor people water, the managerial challenges turned the policy into something covering the whole population, resulting in a cover-rate that is higher among non-poor population than among the poor actually needing it. I would argue that this initial and the final result have different implications for issues of equality. As water is a primary good and a means to freedom, the access to this means is different (depending on financial strength and infrastructure). Though important to make it accessible, by making this accessible for all, the relative means to freedom and opportunity will not necessarily be improved for those most in need of it. Equal structures in an unequal context do not create increased equality due to the already existing inequalities in opportunities and capabilities to take advantage of the provided resources and/or primary goods. Primary goods, such as water, are only a means to an end: increased capabilities and opportunities to choose more freely how a person wants to live (Sen 1992) as reflected in chapter two.

Creation of second-class citizens

As indicated by the previous section, "[o]ne final perversity in service delivery is around the following awkward principle: to those who have shall be given" (Hemson & Owusu-Ampomah 2005:516). Due to various reasons the richer areas have access to services earlier and of higher level. The poorest income areas and informal areas have

low quality service, while high income areas have full service of piped water. This difference is caused by the geography of groups of people, and more broadly by peoples' ability to pay for services (Hemson and Owusu-Ampomah 2005:516-517, Narsiah 2008:32). Hence, as one of the researchers pointed out:

> different infrastructure is provided to different groups and there is a geographical dimension to that. The upper income areas have a different type of infrastructure compared to lower income areas. Poor areas have cheaper infrastructure, it cost the council much less to roll out.

This also follows his notion of people having different value according to what service level they are offered.

When the system of FBW was first introduced in Durban the first block of payment after the FB amount involved a steep jump upwards which resulted in reduction of consumption by low-income consumers while the reduction of consumption of middle- and high income classes was much less, hence, it may be argued that the system created more inequality (Bond and Dugard 2008:10). The Durban Municipality has adopted an approach where "levels of services were linked to affordability" (Narsiah 2008:32). This turned the determining criteria for delivery of service to be financial viability rather than the human needs involved.

At the same time as making water unaffordable, "the sabotage via municipal pricing was condoned at the highest levels, where politicians and bureaucrats continued to find ways to blame the victim" (Bond and Dugard 2008:11). This notion is linked to the idea of citizens behaving and respecting rights and obligations, thus, behaving as honorable citizens. The idea of unacceptable behavior is reflected with regard to response to illegal reconnections, where most of the informants I talked to in EWS and politicians viewed it as theft. Therefore there is a risk "you have taken an act of desperation and criminalized it" as an NGO informant expressed it. Another person pointed out similarly "the good citizens are ones who pay their account on time. That is a good citizen". This notion of 'good citizens' was also something I ran into in conversations with EWS informants; "when it comes to restricting you it is a warning sign you have surely gone beyond the borders of being the disciplined citizen so could you just come forward and honor your obligation".

The idea of honoring your obligations also brings us back to the issue of living within your accessible means. According to Ruiters (2005) this is a way for power-holders to 'place' people into the system. At the same time this 'placing' will be continually contested by the people through invented channels. He argues that

> new procedures for municipal services involve re-regulating the poor, new ways of dividing up populations (into can pay, can't pay and won't pay) and by new spaces of consumption (defined levels of service for defined populations) and specific modes of consumption for specific areas (Ruiters 2005:6).

This meant that people "would be right-sized to services commensurate with their estimate in 'market power'" (Ruiters 2005:10). One of the problems with FBW in Durban is that it is only beneficial for those able to limit their consumption, the system and tariffs penalize those going above the basic but not luxury consumption. A result has been that the consumption in the lower sections has decreased. The policy of FBW and the technical devices used to control consumption is an important element in the 'placing' of people. Ruiters (2005:12) argues that by actively reducing the living standards and consumption of people through racial divisions and the notion of low third world standards on services, it:

> has important consequences for reinforcing powerlessness and knowing one's place. Market power has become the new boundary. The apparently 'voluntary' unequal development may well be a key feature of new ways to make the victim responsible for choosing lower services.

The point is that as technology educates, they socialize people into the right 'culture' and behavior (Ruiters 2005:15). This is also the challenge with the participatory channels, where the participants may have limited ability to influence the agenda and are educated into the 'right' attitude. Similarly, this education may contribute to maintaining current power structures and, thus, have the same disempowering result as ineffective invited channels discussed in earlier chapters.

Hence, my questions and reservations with regards to the result is that it creates a valuation of people based on their financial strength rather than their inherent value as humans beings, this, moreover, results in poor people being worth less than rich people in the 'eyes' of the service delivery provider as they are not able to avoid the restricting technologies or/and receive a lower service. At the same time this comes

back to the previously mentioned issues of fulfilling the rights and service delivery progressively and to reach to goal of everybody receiving some potable water.

However, from a human rights perspective I would argue that it is a violation of the non-discrimination principle. It is discriminatory as it restricts and limits the poor people's opportunity, both in terms of structures guiding the water consumption and in terms of the amount of water provided. In the cases of too large households or other reasons for need of more water, such as sickness, the structures and amount of water may also have implications for people's dignity. It may be put bluntly that a poor family has 9000 liters worth of dignity every month. I would also argue that the 'range of opportunity' created by the water situation may have implications on people's ability to move up in living standards and closing in on the gap to freedom.

It should be mentioned, however, that a number of the informants in EWS and political interviewees pointed out that the council/municipality is approachable. However, I am not sure how many people take advantage of the options available such as the example of the debt relief scheme. This, again, brings us back to the provision and dispersion of information to the public. Though, having the knowledge of the systems and the options may not be equivalent to being able to take advantage of it. A few of the NGO informants pointed out that the government sometimes is rather reluctant in providing 'transport-money' and 'lunch-money', meaning that if they wanted people to participate, EWS needs to make it possible for poor people to do so, due to the implications on time, work and costs of participating. Similarly, a frequent topic brought up during the Wednesdays-meetings in the community was the contradiction of having a water bill of R5, while the transport to town and the billing-centre was R12. Therefore, knowing the options may not necessarily mean that people take advantage of them, as other issues and problems make the options less effectively accessible for poor people.

Furthermore, as argued previously the situation may be rather disempowering, and the participatory structures may only have limited effect, there is a great risk that the power structures and power distribution are maintained. This creates questions regarding the effort to reach objectives of redistribution and equity, along with

questions regarding the effectiveness of participation, and what and whose view should be guiding. As expressed by McDonald (2002):

> For with the acceptance of water as a commodity comes the dilemma of what to do with the idea of water as a basic human right. In other words, if we are willing to use monetary value as our sole guiding principle for water extraction, treatment and distribution, on what grounds do we make moral decisions about how much water is enough and who is consuming too much?

Civil society and water access in Chatsworth

Habib (2005:682-683) argues that there are two types of civil society responses to the social conditions of increasing inequality and poverty, failure of the RDP and introducetion of GEAR. The first is based on survival, people organizing, creating networks and associations in order to be able to deal with the ruin caused by neoliberalism. These are "survivalist responses of poor and marginalized people who have had no alternative in the face of a retreating state that refuses to meet its socioeconomic obligations to its citizenry".

The second group of civil society mobilization is a response to the influence and results of neoliberalism. Habib (2005:683) continues to classify CCG as such a organization. As an organization more focused on the effects of neoliberalism, CCG (and similar organizations) have political objectives in terms of opposing the state implementation of neoliberal principles. As such, "they implicitly launch a fundamental challenge to the hegemonic political and socioeconomic discourse that defines the status quo" (Habib 2005:683).

While the leadership of the organizations (CCG and WFRA) may be aligned with this anti-neoliberal policy objective, I am not as convinced that the community in general is as political minded. On the contrary, my impression is leaning towards a more survivalist reason for organizing, where the everyday struggle, hardships and access to services are in focus. At the same time, the continuous mobilization and organization may have induced a greater political consciousness. This is not necessarily related to political ambitions and confidence in local political structures, but rather in a broader reluctance towards the state and that "everything has a price tag now, even water", as it was said by one of the ladies in the community.

The community members are often invited to go to seminar and events at the University. It may be expected that the community members becomes more conscious of their human right and the right to water. Hence, while there initially may have been a difference in reasons for participating in the organization between the leadership and the community, these differences may decrease over time and with increased knowledge and empowerment of the community. The level of politic objectives and agenda may also partially be a result of the close relations to various educational institutions in Durban and academic persons, as mentioned by a few of the informants.

Greenstein (2006:425)[55], argues that the language used by politically motivated civil society organizations, such as the CCG, refers to the constitutional rights and human rights. These references are used when the organizations disapproves the state more repressive actions, such as cut-offs and evictions. Therefore;

> [t]he language of rights used by activists is thus not restricted to those rights explicitly included in the Bill of Rights of the Constitution , and is part of a more diffused discourse combining notions of natural rights, social entitlements, and political demands.

This may not make much difference for the people on the ground, but it has implications for legal and political contexts. Greenstein (2006:425-426) continues that the use of the right discourse is a means to strengthen social mobilization and to legitimize public action. It is used as an educational and rhetorical power-tool, rather than a legal argument. However, legal strategies may be used in order to raise consciousness and awareness, important for political objectives and aims. It forms support of the issue and gives legitimacy for direct action and mobilizations, hence, the "focus on rights, from this perspective, serves political struggle though it may be of little interest on its own" (Greenstein 2006:429). This focus and struggle to realize human rights is some of the strength of these political civil society organizations. With this focus the organizations becomes watchdogs and monitor the state's effort to realize human rights, the right to water and honor their responsibility as duty-bearers. The 'rights-talk' may also strengthen their claims, similarly to what was mentioned in chapter two, as the moral rights-claim may with time become legal rights and claims.

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[55] Greestein (2006) writes on social movements and mobilization for social rights and entitlements in South Africa.

Legitimacy is essential. It may turn illegal actions, such as reconnection of water, into civic action done by the community. They are technically violating a law, but are morally right. The actions are given legitimacy by a higher moral order than local authorities and providers and encourage people to action despite the involved risks, as well as justifying the actions. These strategies are challenged by a couple of important points. Firstly, the current government gained power through democratic elections. This is counter-argued by activists as a government reinforcing and maintaining the former inequalities through neo-liberal policies and principles. The second challenge deals with the issue of using illegal strategies to affirm legal rights (Greenstein 2006:429-430).

This rights-notion was reflected as most of the persons I talked to, they pointed out that water is a right and essential to live. While some held that water should be free, usually based on it being God's gift, many also acknowledged that people who could afford it need to pay, and that water should not be abused, as said by one lady:

> There are some people [who] can afford to pay and are paying, the ones that cannot afford to pay at the time are now starting to pay as well, it is not like people are refusing, people are actually turning back and are saying, right we are going to pay for services as well, *but they must not kill us with it* (emphasis added).

This quote illustrates both the knowledge of the obligation to pay for service, but also that poor people unable to afford it should be exempted. At the same time, most of the informants expressed concerns regarding how to make ends meet at the end of the day. A few mentioned how people turn to prostitution and other activities to make money:

> if you are poor it is hard, you are thinking, you check, what can I do, sit at home and thinking where can I get the money[56]. Therefore there are more prostitution, young girls, big girls, even old ladies, because they need the money (…) prostitution, not as much in factory work, they need something, unemployment (…) they say everything is freedom, no freedom, I cannot see freedom, it is hard, hard, hard. Lot of people no employment, no job, nothing…

This one reflection points out the few options poor people may have. Because water (and everything else) is too expensive the consequences bring us to the affordability element of FBW, hence, the actual access to water and the human right to water, as well as the human rights notion of freedom, opportunity and capability. The constant strains that many of the people in this community face may have implications for the

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[56] Especially a problem prior to Christmas, and wanting something extra in that occasion

freedom and options of the persons: limited funds may result in securing some needs and/or services on the cost of others.

In several countries subject for water privatization, including areas in South Africa, the companies or the government have abandoned the attempts due to controversies and angry communities, or because they have not be able to make the expected profits maintaining the same contract. Dramatic increases in prices and same level of service have been loudly rejected by poor consumers, "pressing elected officials to demand equitable service and lower prices from foreign firms. By 2004, one-third of the contracts in Africa have been nullified due to mass-based political actions, which is part of a larger trend" (Goldman 2007:796). Hence, the introduction of the basic water (and basic electricity) in 2001 was a result of the pressure coming from the grassroot level regarding more affordable service delivery. The provision of a lifeline of basic services was, hence, a great victory for the marginalized. However, in a context of dominating neoliberal principles, these gains are not secured (Pape 2002:184), as pointed out earlier. As I have argued, the limited affect of invited channels has made people turn to invented channels, at the same time as the use of invented channels have fostered more effective invited channels.

Summary

The former and this chapter have attempted to present an analysis of the situation of participation and water in Durban, and how this is influenced by a number of structures and issues. The previous chapter discussed the participatory channels established by the water and sanitation sector in Durban, and discussed the civil society and the strategies these organizations use to gain influence. This chapter continued to discuss the effect of the human right to water at a local level in Durban and furthermore Chatsworth.

When it comes to water, the rhetoric of the human right to water is present but the effectiveness of the right is constrained by other structures, principles and interests. This results in an unfortunate situation where inequality is increased, contrary to objecttives of equality and non-discrimination as principles in the South African Constitution and HRBA.

Chapter 7: Conclusion

An important point which must not be forgotten is the fact that South Africa has come a long way since the end of apartheid. At the same time, the country and its citizens have major challenges to deal with, often closely connected to inequality and needs of redistribution. The distorted distribution is largely an inheritance from the previous apartheid era, where a majority of the population was excluded from various privyleges, services and goods. When the country elected its first government democratically in 1994, much emphasis was placed on redistribution, equality, development and ensuring that citizens had their basic needs and services covered. This emphasis was also reflected in the new constitution adopted in 1996, with a number of progressive and human rights enshrined in the document. However, while the intentions were valid, they are continually competing with other notions and interests.

The judicial channel

The human rights enshrined in the constitution are important as it makes it possible to test them and to continually make efforts to enforce and fulfill the rights. At the same time, the rights have been criticized with regard to feasibility and the number of limitations that are included, making the rights and the fulfillment of them vague and indecisive. It has also created great expectations to this channel of influence, while the channels pro-poor leanings may have been limited, especially in terms of immediate relief and creating incentives for more cases being brought into this channel.

The channel is also rather exclusive as the access to the channel is determined by the ability to get hold of finances to pay for legal representation; this may have consequences with regard to what type and whose cases are being processed. There is a risk that those most in need of an effective channel to influence their own situation may be excluded due to lack of funds and that their interests consequently are not given priority in competition with others' interests.

While there have been a few cases that have focused on socio-economic rights, and more specifically the right to access water, these have only made limited progress.

While the cases have given concessions to the poor, the obligation of the state remains rather vague. Regarding the most recent Phiri case, is which perceived as a landmark case,[57] the first round in the judicial system gave the applicants important and big concessions. However, these concessions were limited during later rounds, and the final case gave the respondent full support, thereby greatly diminishing the value of concessions won by the applicants earlier. This final judgment has led critics to question the function of the constitutional right to access water, as well as arguing that the HRBA is flawed (Bond 2010).

The ruling in the Manqele case was somewhat made on the basis that the issues dealt with were too political. This may indicate that the court system avoid issues and cases dealing with challenges too politically explosive. This would undermine the effectiveness of the constitutional right and the ability of the court system to hold the government to account. Furthermore, if the courts do not ensure the realization of the human rights, who will?

The civil society has been vital in continually testing and trying the constitutionnal rights. Also the civil society in Chatsworth has taken advantage of this channel on several occasions. The high profile of this group and area and supportive resourceful persons, have also made it possible to gather funds for these trials. However, this civil society organization has, while taking advantage of the court route, always combined this channel with a number of other means and methods.

In conclusion, while the judiciary represents an important channel to continually test rights and cases, the accessibility and the benefits for the marginalized may be perceived as restricted. As such the channel's affect on objectives of redistribution and on redistribution of influence on water policy and the right to water is slow and limited.

The political channel

In effective terms South Africa is a one-party state, dominated by the ANC. The ANC domination has implications for the ability to hold the government to account through political elections. This domination has furthermore been enhanced by structural chal-

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[57] South Africa Constitutional Court: http://www.constitutionalcourt.org.za/site/thecourt/history.htm#cases, accessed 19.05.2010.

lenges and systems. These flaws of the structure have implications for the effectiveness of this channel in terms of people having effective influence on policy design and decisions made.

Furthermore, the shift in development policy to GEAR has had important consequences in terms of values and emphasis. It may be argued that the shift has included a turn from focus on human rights and basic needs, to economic growth needs and cost-recovery principles. This has also had implications for the water policy as the resulting emphasis of water providers as self-sustainable has created an increased need of cost recovery, coupled with insufficient transfers from the state. This focus on cost-recovery has on many occasions resulted in increased prices for water; along with a high unemployment rate and an inability to pay, this has consequences for many poor people's access to water due to affordability.

If the political channel has a limited ability to hold the politicians and the political directions to account, due to lack of competition for political power, this may have consequences for what will be the range of possible political directions people may chose from. As such the overall political direction the municipality and the state are run by may have unfortunate consequences for marginalized groups without the groups being able to hold the municipality and the state to account. At the same time, it needs to be acknowledged that the ANC is the democratically elected party, despite the consequences of the party's politics.

Moreover, ANC is also the dominating party in Durban, due to the dominance of this party and the problems with regard to structures at local government level and wards, there are major challenges in terms of holding the representatives accountable. Because of this challenge, the effectiveness of this channel may also be limited. As this channel of participation is limited in terms of effective influence, there is a risk of power being concentrated rather than redistributed to the marginalized most in need of a clearer voice in the competition with other interests and perceptions.

The 'invited' channels

EWS has initiated a number of participatory structures to accommodate people's voice. A part of this strategy has been to disperse information through various media

and establishment of various structures where people may be involved such as the focus groups, the citizens' voice and the new user platforms. These initiatives indicate that there is an important focus on this element; at the same time they are invited channels which face a number of challenges to be effective.

The EWS participatory structures are, along with the judicial- and political channel, an invited channel. While these may involve an important space for people to access and use in order to influence their own life they may also be rather limited. As they are invited, they have been formed by someone. This creator holds a power position in terms of the ability to invite and exclude persons and groups from the forum and structure. It may also imply expectations regarding behavior and issues that are discussed and brought up.

The EWS structures have also involved a certain level of education when entering these channels. There may be a risk that, despite good intention, the education focuses on some issues and notions rather than on others. Thus, through this education the people may learn the 'right' ideas and behavior, and the structures therefore run the risk of being manipulative and disempowering. Furthermore, anyone who opposes this specific education or standpoints held by the 'inviters' may also be excluded from the forum, or chose not to access it. This will, hence, have implications on the range of ideas and standpoints reflected and present in the forum. For instance, the civil society organizations involved in the forum, as it was expressed in chapter five, may feel that the forum tries to get poor people to use less water. If so, the civil society organizations, who oppose this focus as unfair and wrong, may choose to walk out of the forum if they do not think it is beneficial to their work and/or objective. Thus, the actors who remain in the forum may be more supportive of the approach and views expressed by the channel-inventor. As such the forum becomes a platform for consent rather than a platform for critical debate and dialogue.

While it has been claimed that these forums, especially the focus groups, have affected the water policy in Durban positively, it may be argued that this effects was not a result purely of these channels, but also of events and utilization of other types of participatory channels. Furthermore, it is important that these channels are established. However, it may also be argued that they have an advisory function, whereas the final

decision is left in the hands of the EWS. Hence, according to Arnstein's ladder of participation this is a limited type of participation, though potentially important steps in the right direction. As such, the power redistribution caused by this type of participation may also be expected to be hampered.

Civil society and 'invented' channels

While civil society organizations may have some questionable features in terms of democratic principles, they may also hold some important positions and powers. These groups and movements may be important with regard to challenging and holding power-holders to account. However, as many invited channels may be rather limited in terms of effective power redistribution, civil society may turn to other means and channels. Invented channels may be exclusive and restrictive, but they may also open up for a more honest and diverse interaction. These are channels opened up and created by people and may involve a more equal position for the actors involved.

According to Arnstein redistribution of power requires a more effective participation and 'radical' form of participation. This participation will, accordingly, achieve a change in distribution of citizen power. If the objective of participation is to address inequalities and redistribute resources in South Africa, radical participatory forms may be required, these types of participation may be found in invented channels.

The CCG in Chatsworth have used a range of methods and channels in order to gain the influence and the partnership they have with the municipality today. The organization has taken the municipality to court on several occasions, dealing with issues ranging from water disconnections and evictions. They have also taken advantage of the political elections to make statements and stands. They have also used the invented channel to organize protests and provided the municipality with memorandums. The invented channel in this area has also involved mobilization and resistance, involving reconnections of water and collective refusal to pay water charges. The use of all these channels simultaneously eventually made the municipality realize they were not winning and that a more effective invited and participatory channel was required. It may be argued, therefore, that the use of invented channels induced the creation of more effective invited channels.

Water as a human right

With the human right to water, comes the responsibility to realize this right. In South Africa, this right is expressed in the constitutional right to access to water. The responsebility for the realization is in the hands of the state. At the same time, the citizens also have a responsibility not to abuse the right, in an increasingly water-scarce country, wasteful use of water needs to be discouraged.

With the shift to GEAR, a neoliberal policy highly influenced by notions of water as an economic good, was introduced. This has resulted in an increasingly commodification of water in South Africa and Durban. This commodification has also resulted in economic principles becoming increasingly guiding and influential, such as cost recovery principles. This development has also led to a water context for poor people increasingly determined by technological measures. These technical devices control and limit consumption of water to the basic amount, a basic amount that may not always be enough.

The constitutional right to water and the subsequent water legislations have been operationalized in the FBW policy. However, this policy is fraught with challenges. The FBW policy along with the technical devices may have some unfortunate consequences for objectives of equality. There may become a divide between those who are able to afford their water consumption and avoid restrictors, and those not able to, who will have their water limited to the basic 9000l a month. If the model of choosing restriction level (400l, 600l etc.) is expanded to other areas in the city, this will imply a level of freedom in terms of choosing what level of service a household wants and/or can afford. It was expressed by an informant in the EWS that the Chatsworth system, the system compact model, involving housing, electricity and water upgrading, "is a model that we will use throughout the city, in all the areas that we still need to go into".

However, there will still be a divide between those with enough financial strength to avoid such controlling measures and those who cannot. While the human right to water does not imply that water has to be free of charge, it has to be affordable; thus, the right to water may be violated in many cases. The right also implies that people need to be provided some water. This way at least in Chatsworth people are

given a basic amount, hence the right is not violated. While the constitution calls for access to sufficient water, the basic amount is set to be 25l per person per day.

The right to water may have been ensured to the most basic extent, however, this basic amount may not be enough to not ensure human rights to *heath* and *dignity*. These rights may only be realized with sufficient water, as they are not, the defined right to water, the amount of 25 liters of water per person per day is *not* sufficient. As water may be perceived as a means to freedom, where freedom is the objective, water and water access are not the objectives in them selves. They represent the means to achieve the objective of freedom, the freedom to live a life *with* dignity *and* good health.

Hence, the provided water is in most cases not sufficient; the questions of what is a sufficient amount of water, who determines it and on what criteria, remain. As it was expressed by an EWS official: *"Water is a unique economic good, it is a right, and a social good to a certain point, then it becomes a commodity thereafter".* The question regarding the threshold of sufficient water also becomes a question of when does a human right turn into an economic right, based on and determined by principles of financial strength. Another remaining question is, hence, to what level will the neo-liberal structure and principles undermine good intentions, expressed values and objectives of redistribution, human rights and a people-centered development in South Africa? While the expressed notion is to operate on a HRBA, the structure seems to be dependent and 'controlled' by the need to be self-sustaining', following neoliberal principles and values. The question is, thus, whether these developments will create a basis for other principles and values which undermine participatory structures put in place to ensure power redistribution, as well as human rights values and ideals.

CCG and water access

The CCG, opposing privatization and cost-recovery on basic services, operates on the notion of water as a human right, emphasizing the issues of redistribution and social justice. These groups may ensure a continual focus on everyday struggles and hardships as well as human rights and human dignity. Much indicates that, based on the experience of Chatsworth, use of both invented and invited channels is necessary in

order to be able to influence the water situation and context that influences the lives of people in communities. At the same time, other events are also influential in this context. With regard to CCG and similar groups another question that remains is whether these organizations' emphasis on human rights and basic needs may function as a balance and counter-weight to the ideas and principles of cost-recovery and profit. The question is how such notions and discourses can function most effectively as a counter-hegemonic ideology and force to the neoliberal ideology and discourse.

The away ahead

As mentioned earlier, South Africa has come a long way in a short time and the changes required to obtain redistribution and a more equal society will take time. Furthermore, the challenges of the state and the municipality in Durban in finding a balance between financial needs and constraints and objectives and responsibilities for providing citizens with a basic coverage of human needs and human rights, are challenges any welfare state deals with. Civil society organizations plays an important role in this regard, they are important as watchdogs and in monitoring of the state to ensure that the state works towards the realization of human rights of all kinds. At the same time it is important to point out that civil society is never homogeneous and there will be interests in support, and in opposition to the national and local policy. What is important is that these are all allowed to the floor in order for us to have a diverse and critical dialogue. Consequently, better solutions may be identified. Thus, and as mentioned, a question that needs more elaboration is whether the diversity in the civil society and the subsequent emphasis on a myriad of discourses and ideologies may function as a counter-hegemonic force to the current strength of neoliberalism and the dominant focus on profit.

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Appendix 1: Map of Chatsworth
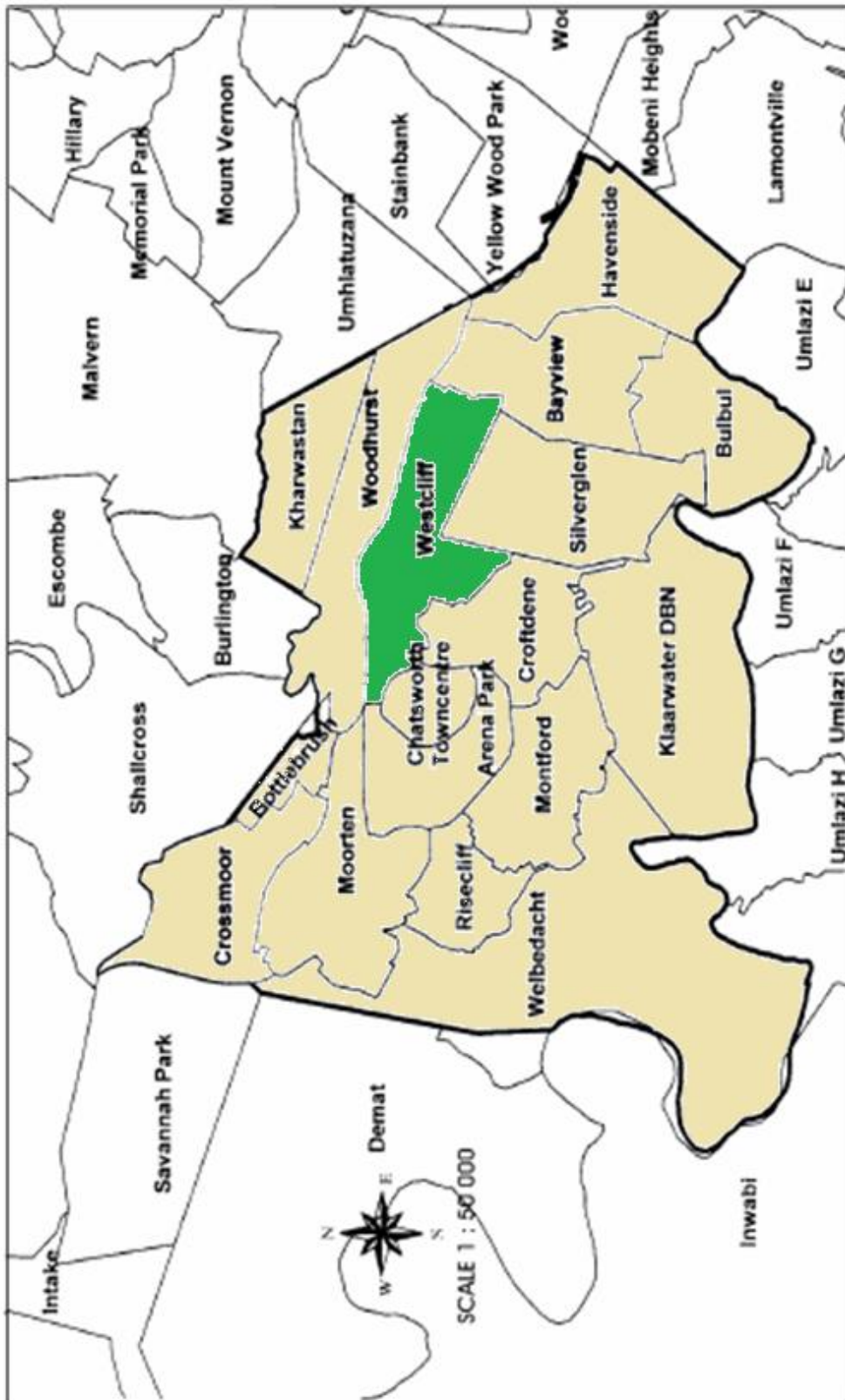
Map: Chatsworth

(Source: Narsiah 2002: 10)

Appendix 2: List of interviews

Department of water and sanitation

Neil Macleod: Head, water and sanitation, 09.11.09

Michael Singh: Deputy Head, Customer Services, 07.12.09

Mandla Malakoana: Project Executive, 19.11.09

Teddy Gouden: involved in the participation programs, 19.11.09

Staylin Joseph: involved in the work and interaction with Chatsworth, 12.11.09

Westcliff Flats Residents Association (WFRA):

Orlean Naidoo: chairperson, 09.12.09 + 'talks'

Committee member, 29.11.09

Committee member, 28.11.09

Committee member, 25.11.09

Committee member, 09.12.09

Committee member and spouse, 10.12.09

Christina Manqele, 03.12.09

Committee member, 04.12.09

Committee member, 04.12.09

Committee members, 03.12.09

Academics and NGOs:

Richard Ballard: Scholar UKZN, 11.11.09

Patrick Bond: Scholar UKZN, 30.11.09

Sagie Narsiah: Scholar UKZN, 20.11.09

Rama Naidu: Executive director, Democracy Development Programme, 27.11.09

Mary Galvin: Coordinator The Water Dialogues, South Africa, 30.10.09

Bryan Ashe: SA Water Caucus, now Durban Water Caucus (??), 18.12.09

Politicians

Nunkumar Rajaram: Ward councilor, 23.11.09

Dudu Mokoena: Manager of vulnerable groups in the Community Participation and Action Support Unit, 18.11.09

Gavin Pillay: community worker from the municipality, 18.11.09

Oliver Meth: community scholar from CCS (Center for Civil Society, UKZN), 18.11.09

(The three persons Mokoena, Pillay and Meth was present during the same interview)

Jairaj Singh: PR councilor in neighbouring ward, 22.10.2009

Praggie Padayachee: Deputy chairperson, Health, Safety & Social Service Committee, 12.11.09

Raj Pather: Secretary of the ward committee, 09.12.09

Housing

Sayed Iqbal Mohamed: Organization for Civic Rights, social facilitator for upgrading project, 17.11.09

Vis Moodley: Supervisor, upgrading project, 26.11.09
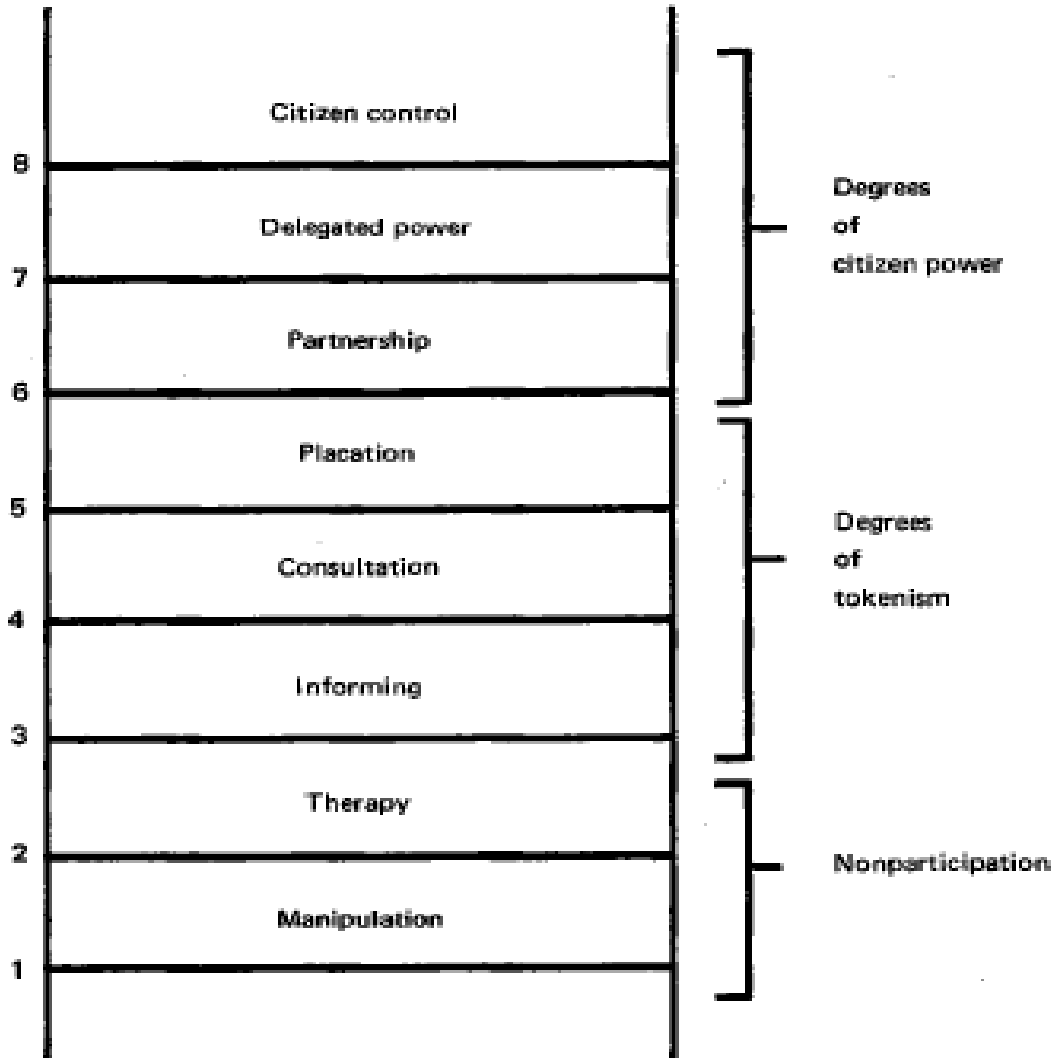
Appendix 3: Ladder of participation

FIGURE 2   *Eight Rungs on a Ladder of Citizen Participation*

(Source: Arnstein 1969: 217).

Appendix 4: Integrated Development Plans (IDPs)

Several of the previously mentioned legislative documents require local governments to conduct IDP processes. This process includes a broad consultation among communities and stakeholders, and co-ordinates and ensures that local resources, capacity and finances are aligned with national obligations (Nel 2004:32). This is a medium term framework and establishes a framework for the councilors' activities in a five-year period in a municipality (Ballard et al. 2008:3). While these channels are suppose to ensure citizens an option for influence, Heller (2001:146-147) argues that these channels have been led by the state, are prescriptive and have not opened up for creative, in depth, innovative and knowledge transfers. IDPs have, however, "allowed for a sophisticated degree of interdepartmental coordination, planning action, and technical input, but only as deliberated within a fairly small circle of experts and politicians".

The IDPs also require development of a Water Service Development Plan (WSDP). Section 12 in WSA requires all water authorities to develop such a plan. Furthermore, the water authority has to, during the development of this plan, make reasonable efforts to notify the public and invite them to comment on draft versions. This invitation goes to users, potential users, commercial consumers, before it is sent to the DWA and neighboring water authorities (EWS 2004a:1).

Appendix 5: The National Water Act

The National Water Act of 1998 (NWA) directs how the national water resources are protected, utilized, developed, conserved, managed and controlled. Through this legislation the municipality acquires the water that is needed to provide the services required by their customers. The law also determines how used and treated water is returned to the water resources (EWS 2004b:11).The NWA, hence, "codifies the government's framework for water resource management. In its section 2, it outlines the purpose of the act stressing the factors of meeting basic needs, promoting equitable access and redressing historical discrimination" (Winkler 2007:7).

Appendix 6: Water boards and authorities

The WSA provides guidelines for and definition of water service authorities and water boards. WSAu is defined as any municipality responsible for providing access to water services (WSA 1997:definitions (xx)), and the water service authority "has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services" (WSA 1997:sec. 11). At the same time this obligation is dependent on available resources, requirements for allocation of resources to be equitable, regulations to ensure equitable access to water service, the obligation of the water-user to pay reasonable prices, the need to conserve water, the terrain and geography of the jurisdiction and the right of the water service authority to restrict or stop water supply if the reasonable conditions are not complied with. The water board on the other hand has as the "primary activity (…) to provide water services to other water service institutions within its service area" (WSA 1997:sec. 29).

Appendix 7: IDP processes in Durban

According to the national legislation and local government acts (Nel 2004), the city of Durban started a substantial effort in order to formulate the municipality's IDPs. In the design of this plan, individual citizens, NGOs and community-based organization (CBOs) were encouraged to partake. This process' objective is to establish clear targets for municipal development and goals, and is linked to the budgeting and performance monitoring of municipal officials. Hence, the "[p]ublic participation in the drafting and revision of the IDPs could potentially place real power in the hands of municipal residents and stakeholder groups" (Aylett 2010:106).

Prior to the first IDP for Durban, published in 2002, a big and intensive program of consultation was run in all city wards. Despite the great effort the results were reserved. While the intention was to create an effective participatory process, this was, in the end, constrained by structures also aiming at increasing the efficiency in reaching the municipality's developmental objectives (Aylett 2010:106). Ballard et al. (2008:5) continue that:

> the post-July 2002 view of development had a more consultative (rather than participative), politically driven and strategic view of the city's overall development needs. A complex process of participation, consultation, informal influence and political consultation informed the tenor and content of the LTDF [Long Term Development Framework, not discussed in this thesis] and IDP.

Hence, while the there was a will and substantial resources and efforts were put in the process, there was a disagreement regarding roles and determination between councilors and officials in terms of strategic agendas and distribution of funds (Ballard et al. 2008:5).

The IDP was not only used to get inputs from the communities, it was also used to modify expectations and aid communities to "rearticulate their needs" (Ballard et al. 2008:5). This way the interaction was not one way, as the invited channel in this occasion may be perceived as trying to form and modify the communities' expectations and demands. At the same time, by participating in participatory processes in general the communities may acquire skills and knowledge regarding planning logic and improve their ability to articulate needs to city planners. The participatory processes may also be beneficial for the municipality as it may provide information, induce coordinative and integrated action, as well as create and manage bureaucratic structures maintaining participatory structures and transform the inputs to constructive outputs. In terms of these elements the state maintains a central part, as these structures will "inevitably reflect the interests of the state, they also define an important part of the planning process" (Aylett 2010:107).

As a part of the IDPs the water authorities are also required to develop water service development plan (WSDPs). The WSDP is one of several supporting document to the IDPs, in order to identify the city's stakeholder's needs and vision for the future, "[t]he directives formulated by the public were then translated into strategy and written into the IDP and in turn transformed into plans and associated actions for the WSDP" (EWS 2004b: 8). The WSA gives the municipality the responsibility to develop a plan and progressively realize water services, and ultimately realize the basic right. This plan is developed in a WSDP and progress is reported back each year to both national and provincial government (EWS 2004b:11).

Appendix 8: Participatory policy in Durban

The participation policy was adopted by the council in 2006. The policy deals with public policy and attempts to strengthen democracy and holds that:

> community participation is an open and accountable process through which individuals and groups within selected communities can exchange views and influence decision-making. It is a democratic process of engaging people, deciding, planning, and playing an active part in the development and operation of services that affect their lives (ETM 2006:2).

The policy aims at ensuring effective participation and includes a number of activities such as creating ward committees and planning (ETM 2006:2). The policy is guided by the Municipal Structures Act (1998) and the Municipal Systems Act (2000) (ETM 2006:8). The policy indicates that structures such as ward committees, sector forums, ward forums, zonal stakeholder forums, regional stakeholder networks, citywide stakeholder forums and citywide sector networks should be used to ensure participation. In addition, methods and use of structures such as izimbiz[58], public hearings, indaba[59], conferences, workshops and road shows should be utilized to create participation (ETM 2006:16-17).

Despite the emphasis on participation and negotiations, the municipality distinguishes between issues that are negotiable and non-negotiable. The non-negotiable are issues related to delivery of basic services, including water. The provision of water and other basic services is considered to be a given based on Chapter 7 in the Constitution, any negotiation with regard to water would therefore revolve around *how* these services should be delivered (ETM 2006:24-25). The policy indicates also the various responsibilities and duties of a community/civil society and a community member, as well as the following responsibilities and duties of the service provider (ETM 2006:29-32).

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[58] Izimbizo: public meeting (Karuri-Sebina et al. 2010:94).
[59] Idaba: big meeting or conference.

Appendix 9: Water tariffs in Durban Municipality

Table 1: Current Water Tariffs in Durban Municipality (2008/2009):

Monthly consumption	Ground tank low pressure excl. VAT	Roof tank Semi pressure Excl VAT	Domestic Full pressure Excl VAT	Industrial commercial and other users Excl VAT
0kl-9kl	Nil	Nil	Nil	Nil
greater than 9kl up to 25kl	-	R5,25	R7,70	-
greater than 25kl up to 30kl	-	R7,18	R10,26	-
greater than 30kl up to 45kl	-	R15,84	R15,84	-
greater than 45kl	-	R17,42	R17,42	-
consumption- per kilolitre	-	-	-	R7,92
Fixed charges greater than 9kl	-	-	R69,30	Varies with connection and sizes

(EWS 2008/2009: 1)

Appendix 10: Water policy in Durban Municipality

Further elaboration and details on the EWS policy structures beginning with more info in the debt relief scheme, followed by acknowledgment of debt.

The Contract

When the agreement is made, the 'customer' has a choice when it comes to service 'level', either stay on full supply, or install a flow limiter which limits the provided amount of water to 300 liters a day. As a consequence of installing a flow limiter, the person will not have an outstanding amount to pay at the end of the month, but still having their debt written off (EWS 2008/2009:5-6).

Termination of Contract

However, if the connection has been tampered with during the agreement period, the contract is ended and the debt that remains will be payable, along with accumulated interest and fees for another water connection. On the other hand, if the council is notified of tampering by the customer before it is detected, the contract remains valid (EWS 2008/2009: 5-6). According to one of the personnel in EWS, the aim of this project is to induce habits of payment, creating a "culture of payment". According to various informants in EWS the system has resulted in increased payment levels in areas previously fraught with non-payment, in addition, millions of rands have been written off.

Acknowledgment of Debt

The *acknowledgment of debt* involves installation of flow limiter and a 15 minute lesson. Here the debt will not accumulate any more interest charges and the device will be taken off when the arrears are paid in full and the fee for removal of the flow limiter is paid. In this section temporary relief is also included. With regard to the educational element in this program, it involved informing the 'customer' of how to manage on 300l of water daily. If, during the period of acknowledgment of debt, the meter has been tampered with and an amount above 300l per day is consumed, discovered by the Council before notification by the 'customer', the supply of water will be disconnected permanently. This disconnection will remain until the outstanding amount has been paid in full, including new water connection costs and interest rates accumulating due to the remaining debt (EWS 2008/2009: 6).

When a previously mentioned washer is installed, a card is left behind informing the 'customer' of consequences following tampering with the washer. Though the flow is low, the device will allow a usage of 360liters a during a 6 hour period. On the contrary if a flow limiter is requested this will provide a normal flow but cut off after 300l is consumed. When a washer is installed the interest rates continue to accumulate on the outstanding amount. The washer is only used when there is a lacking response from the 'customer' regarding arrears, and is aimed at forcing people to respond and arrange for a solution to the situation. Other 'customers' are expected to pay their debt in full, or sign a credit agreement within 14 days after

they have been notified of their arrears. If this is not done, the water supply is totally disconnected. Following this there is a fee for reconnection of the supply (EWS 2008/2009: 7).

If there is an illegal connection the person is charged an amount of R147.5 (including VAT) for each time, however, if the customer has been reconnected three times or more, the water connection to the property is removed. In the case of disconnections, policy suggests that the 'customer' has three options to get the connection back (EWS 2008/2009: 7).

Several of the persons I talked to also talked about an '*amnesty period policy',* this implies that the persons who come forth and admit illegal connections and tampering will not be charged and/or held accountable.

Appendix 11: Umgeni Water Board

As indicated earlier the neoliberal policy brought in with the GEAR policy is a culmination of earlier and apartheid tendencies. This is also relevant with regard to water and the water supply system. According to Loftus (2007:49) the shift and establishment of Umgeni Water Board in 1983 was an important event. This meant that the Durban Municipality had to get all its water supply from this body. While the municipality had built much of the necessary infrastructure for requiring bulk-water supply for the city, the apartheid government decided that this infrastructure should be sold to the newly established water board, holding the position as the bulk-water supplier for Durban, Pietermaritzburg and KwaZulu-Bantustan. The relationship between the water board and the municipality was marked by conflicts from the beginning, starting with the municipality selling the infrastructure to the board overpriced, resulting in the board increasing the prices for the bulk-water the following years (Loftus 2007:49).

Furthermore, this body is a semi-commercial business and was able to enter the private market after apartheid. However, due to poor decisions and losses abroad, the costs, were transferred to the secure revenue source, sale of bulk-water to municipalities, despite it being ring-fenced from commercial sides of the body (Loftus 2007: 49). eThekwini municipality constitutes 85% of Umgeni's bulk-water custom

(Loftus 2006:1034). The link to this board had direct effects on people in townships and informal settlements. It was estimated that the water bills were 30% higher than without the water board. Secondly, because the municipality is subject to harder cost-recovery demands, there is an increased risk that people will experience disconnections and restrictions due to non-payment. Because of this there is also an increase in the power of technical devices restricting and limiting water consumption (Loftus 2007:49).

Appendix 12: Tariff-changes in Durban Municipality

Table 2: Current Water Tariffs in Durban Municipality (2008/2009):

Monthly consumption	Ground tank low pressure excl. VAT	Roof tank Semi pressure Excl VAT	Domestic Full pressure Excl VAT	Industrial commercial and other users Excl VAT
0kl-9kl	Nil	Nil	Nil	Nil
greater than 9kl up to 25kl	-	R5,25	R7,70	-
greater than 25kl up to 30kl	-	R7,18	R10,26	-
greater than 30kl up to 45kl	-	R15,84	R15,84	-
greater than 45kl	-	R17,42	R17,42	-
consumption- per kilolitre	-	-	-	R7,92
Fixed charges greater than 9kl	-	-	R69,30	Varies with connection and sizes

(EWS 2008/2009: 1)

Table 3: Water Tariffs 2003:

Monthly consumption	Ground tank low pressure excl. VAT	Roof tank Semi pressure Excl VAT	Domestic Full pressure Excl VAT	Industrial commercial and other users Excl VAT
0kl-6kl	Nil	Nil	Nil	R5,02
From 6kl -30kl	-	R3,34	R5,02	R5,02
greater than 30kl	-	R10,04	R10,04	R5,02

Table 4: Water Tariffs 2006/2008:

Monthly consumption	Ground tank low pressure excl. VAT	Roof tank Semi pressure Excl VAT	Domestic Full pressure Excl VAT	Industrial commercial and other users Excl VAT
0kl-6kl	Nil	Nil	Nil	R7,21
From 6kl -30kl	-	R4,78	R7,21	R7,21
greater than 30kl	-	R14,42	R14,42	R7,21

(Source: Water policy 03, 07/08 and 08/09[60])

The previous tables of tariffs indicate the different price-bulks depending on what service level that is used. The following illustration indicate the changes that has been made in the price-bulks from 2003, illustrating the prices from the policies of 2003, 2007/2008 and 2008/2009. The tariffs are separated into two illustrations, one dealing with roof tank tariffs and one indicating full pressure tariffs (as they have in Chatsworth).

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[60] Durban municipal webpage:
http://www.durban.gov.za/durban/services/water_and_sanitation/policies_and_guidelines/ethekwini_water_policy, accessed 04.03.2010.
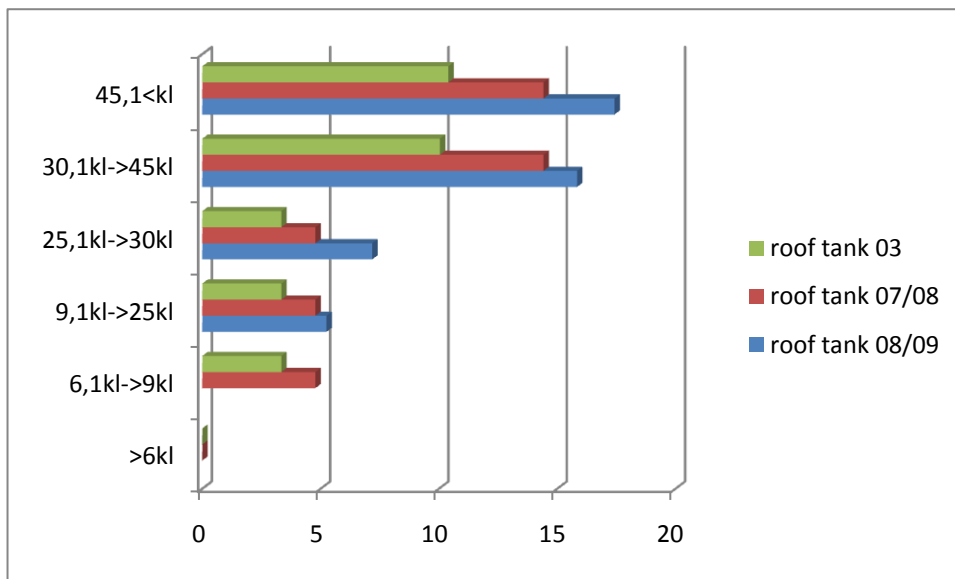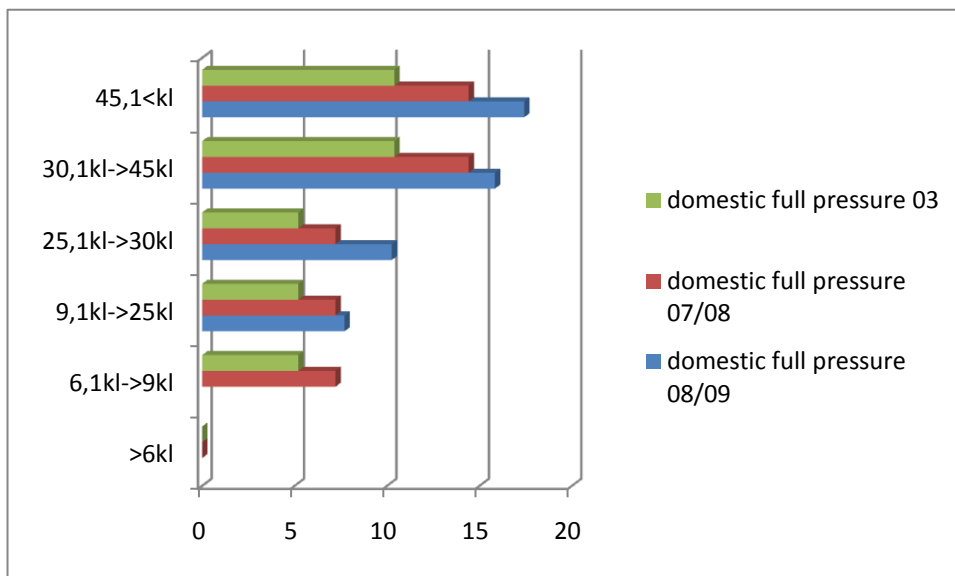
Figure 1: Roof Tank Tariff- change:

Figure 2: Full Pressure Tariff- change:

(Source: Water policy 03, 07/08 and 08/09[61])

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[61] Durban municipal webpage:
http://www.durban.gov.za/durban/services/water_and_sanitation/policies_and_guidelines/ethekwini_water_polic
y, accessed 04.03.2010.

Based on purely the tariffs, there seems to be a movement in the right direction where excessive use is increasingly more expensive (punishing luxury consumption). The change in prices above 30kl is big with regard to roof tank tariffs but also significant in terms of full pressure tariffs. While the FBW remains free of charge, the price bulk above the new amount of 9kl a month has increased compared to the compared to previous years. This means that while people get more free water before they start to pay, the change in price above it may not be much different. Given these tariffs a household would be spending the following based on the amount of water it is consuming (excluding the fixed charges).

Table 5: Exemplified consumption costs

Tariffs in the first recovery bulk (fixed charges not included)	Consumption of 12kl	Consumption of 15kl	Consumption of 20kl	Consumption of 24kl
08/09: (xkl-9kl)*R7,70	R23.1	R46,2	R84,7	R115,5
07/08: (xkl-6kl)*R7,21	R43,26	R64,89	R100,94	R129,78
03: (xkl-6kl)*R5,2	R31,2	R46,8	R72,8	R93.6