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Poor Water Service Delivery: An Exposition of the Plight of the Phiri Community in Soweto, South Africa

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ABSTRACT In South Africa, a lot of people are unable to access clean water despite the fact that the Constitution provides that everyone is entitled to have access to adequate clean water. Although, generally, water resource is scarce in South Africa, a lot of strategic interventions have been put in place to ensure that people have access to adequate clean water. The problem is that those who have the responsibility to provide the water have continuously been delivering poor water services to the people. At times, deliberate artificial scarcity is caused with the aim of making demands greater than the water supplied. This has caused desperate situation to the extent that people in the Phiri community in Soweto have approached the court to enforce their rights of access to adequate clean water. The paper explores various fundamental issues considered by the court and the notable pronouncements of the judges with regard to the right to access clean water, the issue of pre-paid water meters, the free basic water policy and their impacts on access to adequate clean water. The paper also considers why it is necessary to encourage people to register under the Indigent Persons Policy

INTRODUCTION

It is important to point out from the outset that water is the spring of life and very important to human livelihood (Pejan 2004). However, the current state of lack of access to adequate clean water as guaranteed in section 27(1)(b) in the Bill of Rights, South African Constitution of 1996 is a major concern to South Africa. Poor communities in majority of the townships (these are informal settlements in South Africa where the majority of the poorest of the poor live) do not have access to adequate water services (Smith 2003) unlike those who are living in the hybrid areas and the suburbs (in South Africa, surburbs are the well planned areas with adequate infrastructure and availablility of ample social economics goods and services where the elites and the affluents live) (Miraftab 2004).

In South Africa, the State is the custodian of all water resources by virtue of section 3(1) of the National Water Act 36 of 1998 which reads:

"as the public trustee of the nation's water resources the National Government, acting through the Minister must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate".

The State regulates the way water is distributed among various users (Perre 2002). It goes without saying that water is a basic necessity for which existence of life for humans, animals and plants is dependant.This resource, mandatorily should be available and accessible to all (Dash 2006). For instance, failure to make water available as mandated by the Constitution led to the Phiri Township in Soweto, Johannesburg to approach the court to enforce their right of access to adequate clean water. The Constitutional Court of South Africa in the case of Lindiwe Mazibuko and Others v City of Johannesburg and Others (3) BCLR 239 (2010) proactively intervened and decided that the people are entitled to water as mandated by the Constitution hence compelling implementation. The court, by virtue of this decision enforced socio-economic right to water. The court's decision was not a surprise as there is a vibrant judicial activism regarding the enforcement of socio-economic rights in South Africa (Brennan 2009). The South African courts are not only obliged to adjudicate socio-economic rights but also have the responsibility to do so (Wesson 2004). This was well articulated in the case of Fose v Minister of Safety and Security (3) SA 786 (1997) where the court observed that:

"when the legal process does establish that an infringement of an entrenched right has oc-

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curred, it [must] be effectively vindicated. The courts have particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies to achieve this goal."

The above observation of the court was reinforced in the case of Soobramoney v Minister of Health, KwaZulu-Natal (1) SA 765 (1998) where it was held that socio-economic rights are the State's responsibility and are judicially enforceable (Christiansen 2006). Anyone who is denied this right can approach the court in order to compel implementation because it is a constitutional entitlement (Christiansen 2006). Similarly, in the case of The Government of the Republic of South Africa and Others v Grootboom and Others SA 46 (2001), the court concluded that any determination of socio-economic rights must be made having regard to the needs of the most vulnerable group that is entitled to protection of the right in question. The most vulnerable groups contemplated by the court are the previously disadvantaged poor people living in rural remote areas, townships, squalors in the cities, homeless and people living with disabilities that are unable to cater for themselves and have no social care providers.

The issue on whether to provide a basic amount of water free of charge to all citizens has constantly been controversial and generates heated debates among the beneficiaries, the government and the service providers (Muller 2008). In most of the cases, fees are attached for the services provided through the use of different devices made available by the service providers, one of which is prepaid water metre usually installed in poor homes (von Schnitzler 2008). But the stark reality is that, there is serious abject poverty rampant in most of the communities in South Africa making it impossible for majority of the poor people to pay for these services hence denying them the right to enjoy access to water. This is a huge dilemma because water metre contradicts the policy on free basic water. The problem is likely to continue because the private companies and other entrepreneurs that are providing this basic social amenity will continue to charge fees in order to sustain their businesses. They are driven by profits to be made when they provide the distribution of water services to the people. Consequently, they are not eager to implement the free basic water policy except it is subsidised by the government. If government fails to do so, the implication is that it will continue to be impossible for the poor to have access to clean adequate water (Gowlland-Gualtieri 2007).

There are still people who live in remote rural mountainous isolated areas where they cannot access water because the requisite infrastructures to provide water are not available. These people have become ingenious in improvising to fend for themselves and find alternative sources of water from rivers and streams that are used for all purposes such as drinking, cooking, bathing and many more. More often than not, in the process they become vulnerable to the risk of diseases like cholera, typhoid and dysentery. Till date, the issue of payment for water services is not an option but a must. Anyone who desires this constitutionally guaranteed right to adequate clean water have to pay for it. There have been various debates on whether the poor who are indigent to the extent that majority of them are living below the poverty line and struggle to eat one meal in a day should pay for water services. It is against this backdrop that the plaintiff in Mazibuko's case approached the court to interpret the content and context of the right of access to water by the poor thereby compelling the government through the court to implement various government policies ancillary and intergral part of the provisions of the Constitution which mandate compliance.

Background

The first attempt to codify water law in South Africa was through the Union Irrigation and Conservation of Water Act 8 of 1912 which was promulgated after the formation of the Union of South Africa in 1910 (Tewari 2005). This law introduced Water Courts which dealt with water allocation between riparian owners (Turton et al. 2004). "These are the people who have the legal rights of the owner of land on a river bank, such as fishing or irrigation. It also relates to people who inhabit the banks of a natural course of water. Riparian zones are ecologically diverse and contribute to the health of other aquatic ecosystems by filtering out pollutants and preventing erosion" (Butler 1985). In 1956 the Water Act was promulgated distinguishing between public water and private water (Stein 2002). This law was applicable to territories of the former national states and self-governing territories with

the exception of the Republic of Bophuthatswana (Thompson 2006). The National Water Act (NWA) 3 of 1998 was passed into law in 1998. The most important change it brought was to remove private ownership of water, now water is considered as a resource common to all (Tewari 2005). By virtue of section 3 of the NWA, the State is now entrusted with the nation's water resources entrusting the Minister of Water and Environmental Affairs as the trustee (Pejan et al. 2007).

The position of the NWA is a reflection of section 27 of the Constitution of South Africa which guarantees everyone the right to access adequate water (Magaziner 2007). Pursuant to section 24 of the Constitution, the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development is also guaranteed (Puvimanasinghe 2000). Sections 24 and 27 of the Constitution read together with section 3 of the NWA mandates that the government "must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate" guarantee the right of access to water (Francis 2005). This places an obligation on the State to ensure that everyone in South Africa enjoys this right (Pejan 2004).

MAZIBUKO'S CASE IN CONTEXT

In this case, the Constitutional Court delivered a judgment on a matter concerning the right of access to water entrenched in section 27 of the Constitution, which provides that "everyone has the right to sufficient water." This case is about the lawfulness or unlawfulness of Operation Gcin'amanzi (Tsi Zulu people's word in South Africa meaning-Operation Conserve Water), a project the City of Johannesburg piloted in Phiri in early 2004 to address the severe problem of water losses which caused water scarcity and non-payment for water services in Soweto. The project involved re-laying water pipes to improve water supply and reduce water losses, and installing pre-paid meters to charge consumers for use of water in excess of the 6 kilolitre per household monthly free basic water allowance.

Firstly, The plaintiffs were residents of Phiri in Soweto and instituted an action in court to challenge the City of Johannesburg's Free Basic Water policy in terms of which 6 kilolitres of water are provided monthly for free to all households in Johannesburg and, secondly, the unlawfulness of the installation of pre-paid water meters in Phiri.

The court gave judgement in favour of the plaintiffs and found that the installation of pre-paid water meters in Phiri was unlawful and unfair. It also held that the City's Free Basic Water policy was unreasonable and therefore unlawful. It ruled that the City should provide 50 litres of free basic water daily to the applicants and the residents of Phiri (du Plessis 2010).

Consequent upon this, the defendat appealled the decision in the case of City of Johannesburg and Others v Mazibuko and Others, (3) SA 592 (SCA) (2009), the Supreme Court of Appeal varied the order of the High Court and held that 42 litres of water per day would be sufficient water within the meaning of the Constitution, and directed the City to reformulate its policy in light of this conclusion (Wesson 2011). The Supreme Court of Appeal also held that installation of the pre-paid water meters was unlawful on the ground that the City's By-laws did not make provision for them in these circumstances (Dugard 2008). The Court gave the City two years to rectify the By-laws. The Supreme Court of Appeal did not consider whether the manner in which the meters were installed was fair.

Consequent upon this, the applicants applied to the Constitutional Court for leave to appeal against the judgment of the Supreme Court of Appeal and, in effect, sought reinstatement of the High Court order. All the respondents also sought leave to cross appeal the order of the Supreme Court of Appeal. In the Constitutional Court the parties including the applicants, accepted that the old system of water supply to Soweto was unsustainable and had to be changed. The applicants however asserted that the City's policy and the manner in which it was implemented was unlawful, unreasonable, unfair and in breach of their constitutional right to sufficient water.

Once the City had opted for Operation Gcina'manzi, "there was extensive consultation with communities about what the project would entail and how it would be implemented. The

initial implementation in early 2004 caused dissatisfaction amongst residents." After eighteen months when the case has been pending in court, the vast majority of the residents had accepted pre-paid water meters (Dugard et al. 2010). According to a survey the city undertook, there was overwhelming support and people were satisfied with the new system because the amount of water unaccounted for in Soweto had been successfully curtailed.

The City also offered an explanation on the Free Basic Water policy which is constantly being reviewed since it was adopted. In particular, the City sought to ensure that those with the lowest incomes were provided not only with an additional free water allowance, but also with assistance regarding the charges levied for other services provided by the City, such as electricity, refuse removal and sanitation (Paul 2013). The City accepted that it was under a continued obligation to take measures progressively to achieve the right of access to sufficient water.

The Constitutional Court held that the obligation placed on the government by section 27, is an obligation to take reasonable legislative and other measures to seek the progressive realisation of the right. In relation to the Free Basic Water policy, therefore, the question was whether it was a reasonable policy (Flynn and Chirwa 2005). The Court noted that it was implicit in the concept of progressive realisation that it would take time before everyone has access to sufficient water (Davis 2008).

The Constitutional Court concluded, in contrast to the High Court and the Supreme Court of Appeal, that it is not appropriate for a court to give a quantified content to what constitutes sufficient water because this is a matter best addressed in the first place by the government. It pointed out that the national government had adopted regulations which stipulate that a basic water supply constitutes 25 litres per person daily; or 6 kilolitres per household monthly upon which the City's Free Basic Water policy is based (Stewart 2009).

On pre-paid water meters, the Court held contrary to the High Court and the Supreme Court of Appeal that the national legislation and the City's own by-laws authorise the latter to introduce pre-paid water meters as part of Operation Gcin'amanzi. The Court concluded that the installation of the meters was neither unfair nor discriminatory (du-Plessis 2010).

The Court affirmed the democratic value of litigation on social and economic rights. It noted that the applicants' case required the City to account comprehensively for the policies it had adopted and establish that they are reasonable. During the litigation, and perhaps because of it, the City repeatedly reviewed and revised its policies to ensure that they promote the progressive achievement of the right of access to sufficient water.

Eventually the Court thus upheld the appeal by the City and Johannesburg Water and the Minister. The orders of the High Court and Supreme Court of Appeal respectively were, therefore, set aside.

ISSUES ARISING FROM THE JUDGEMENT

The case disclosed three contentious issues namely; whether the City's policy in relation to the supply of free basic water, and particularly, its decision to supply 6 kilolitres of free water each month to every account holder in the city (the Free Basic Water policy) is in conflict with section 27 of the Constitution or section 11 of the Water Services Act (Williams 2011). Whether the installation of pre-paid water meters by the first and second respondents in Phiri was lawful. These issues have serious consequences on the right to adequate water as they determine the amount of money to be paid in order to access water services (Williams 2009). The issue of human dignity and equality also feautured prominently and reflected throughout the judgement. The plight of the Phiri community attracted concerns and the court observed that lack of water is a threat to life and undermined human dignity.

COMMENTS

With regard to Prepaid Meters

In both the High Court and Supreme Court of Appeal, the court held that the introduction of prepaid meters in Phiri was unlawful and unfair. In the High Court it was pointed out that introduction of pre-paid meters was an administrative action as provided for in section 33 of the Constitution and due to the fact that the City's By-laws did not make provision for such , it was unlawful to install the prepaid meters (Dugard

2008). The court also went further to point out that due to the fact that these meters were prepaid, when the free amount of water allocated per household was exhausted it resulted in the halting of service until the residents purchased credit and this was held to be an unlawful and unreasonable discontinuation of water supply as provided for by section 4(3) of the Water Services Act or section 9C and 11 of the By-laws (Dugard 2008).

It was also held that the installation of prepaid meters in Phiri was discriminatory as the residents were not given the option of credit meters which are used in other areas especially white neighbourhoods (Dugard 2010).

However, in the Constitutional Court, the decision of the lower courts that installation of pre-paid meters in Phiri was discriminatory was dismissed. It was held that national legislation and the City's own By-laws authorised the latter to introduce prepaid meters as part of Operation Gcin'amanzi.

Heleba (2009) agrees with the decision of the Constitutional Court, that it was not unfair or discriminatory to install pre-paid meters. Heleba also agreed with the issue raised by the court that when prepaid water consumers' water supply got cut off, this was not to be regarded as a disconnection but merely a suspension of services pending further payment by the consumer. However, Gowlland-Gualtieri's (2009) view was in contradiction to Heleba's, the reason being that he asserted that the problem with installation of pre-paid meters was that due to their complexity, unreliability and faulty nature, they affect the right of access to water to the individuals concerned. Furthermore, he also observed that by using prepaid water meters, the indigent's right of access to water is seriously affected because of lack of funds to access the necessary service.

It was also contended that pre-paid meters decrease the demand for water, not because the people are no longer in need of water but due to the fact that they cannot afford it (Earle et al. 2005). They look for alternative sources of water which more often than not are not healthy sources. The tragic incident of of cholera outbreak in Kwazulu-Natal after installation of prepaid meters in the year 2000 present a very good example of the adverse effect of sourcing water by the indigents through unhygienic sources (Cottle and Deedat 2004). The inability for many households in the Madlebe Community to buy the plastic cards and units in order to access water led them to fetch water from a nearby stream, which was later discovered to contain cholera bacteria (Gowlland-Gualtieri 2009). This violated the people's right to namely; human dignity in terms of section 10 of the constitution, the right to a safe environment in terms of section 24 of the constitution, and their right to health care and water in terms of section 27 of the constitution. It is also in violation of section 7(2) of the Constitution which places an obligation on the State to respect, protect, promote and fulfil the rights in the Bill of Rights (Dickson 1998). In the case of Mazibuko, in our considered opinions, all these rights were blatantly violated because the applicants could not afford to buy the units to enable them access water due to the installation of prepaid water meters by the city of Johannesburg.

Shortcomings in the Use of Prepaid Meters

Prepaid meters remove procedural protections and consumer safe guards which are avenues available to a person whose water supply gets cut off (Holland 2005). The only option open to the affected consumer is to buy more units because the consumer does not have the ability to complain about billing costs (Hansen 2005). Section 4(3)(c) of the Water Services Act 108 of 1997 stipulate that the procedures for the limitation or discontinuation of water services must 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 services authority. However, in the case Mazibuko, the Constitutional Court made already precarious situation worse by stating that when the water supply gets cut off it is not a disconnection but a mere suspension of services which does not qualify as an administrative action thereby not necessitating a hearing. The court should have been more inclined in finding methods that give more protection to the realisation of the right of access to water and not to leave the people whose rights should be protected feeling desolate. In this regard, Sachs's pronouncement is quiet unfortunate, he expressed the view that in a society founded on human rights, equality and freedom, it cannot be presupposed that the greatest good for the many can be achieved at the cost of intolerable

hardship for the few, particularly if, by a reasonable application of judicial and administrative statecraft, such human distress could be avoided.

Pre-paid meters also have a negative social impact on our communities as they lead to the increase of crimes like theft and assault as those who run out of units resort to stealing water from their neighbours which result in fights (Dugard 2010). This could have serious consequences as people can inflict injuries on each other and kill each other. It also hinders the realisation of gender equality efforts as the female members of the family will spend a large part of their day searching for water for the family often walking very long distances in order to fetch water for domestic uses.

The fact is that the City encouraged the installation of pre-paid meters only in those communities with people who cannot afford to pay for the services. This is a serious violation of constitutionally guaranteed rights of access to water, human dignity and safe environment as the focus is on collecting revenue than providing clean water to the people in blatant violation of section 2 of the Constitution which provides that "the Constitution is the supreme law of the Republic, law or conduct inconsistence with it is invalid, and the obligations imposed by it must be fulfilled." (Kerr 1997). The State's conduct is inconsistent with the provisions of the Bill Rights (McCaffrey and Neville 2009).

FREE BASIC WATER POLICY

In the High Court it was held that the amount of free basic water per person each day should be increased to 50 litres. On appeal the Supreme Court of Appeal held that 42 litres of water each day would be sufficient water within the meaning of the Constitution and directed the City to reformulate its policy in light of this conclusion. The Constitutional Court did not pronounce on the amount of water that should be provided for free to each person per household, instead it considered whether the City's Free Basic Water Policy was reasonable. It found the City's policy to be reasonable (Stewart 2009).

However, scholars like Stewart and Horsten (2009), totally disagreed with the provision of the Free Basic Water Policy which mandated provision of 25 litres of clean water per person each day. They argued that this is not sufficient to cover a person's daily needs considering the fact that in some cases, households could have more than thirteen people living under one roof which meant it would not be possible for each of these people to get that 25 litres per day thereby denying them their right of access to water.

Stewart and Horsten (2009) look at the sustainability of providing the free water in the city. They criticised the High Court and Supreme Court of Appeal for failing to consider this in their findings. They also criticised the Supreme Court of Appeal for setting a limit on the amount of Free Basic Water per person to 42 litres each day as this is contrary to the purport of section 27 which provides for the progressive realisation of the right. They argued that such a situation will not encourage the state to continue working towards finding ways to enable these indigent people to enjoy their right of access to water without any limits like the more privileged who can get as much water as they want as long as they can pay the bill at the end of the month (Heleba 2009).

The Constitutional Court held that 6 kilolitres of free water per household was reasonable as it was not written down anywhere how much water was supposed to be provided (Harvey 2009). The City had come up with the measures and applied them consistently. It was pointed out that it was practically impossible to provide everyone with enough water due to their varied needs. In the Phiri situation the court erred in finding the policy reasonable because before the installation of pre-paid meters they were billed R68.40 each month per household based on the assumption that each household consumed 20 kilolitres each month. However, this was found not to be the case, an average of 67 kilolitres per household each month was consumed. In light of the statistics, the Government formulated the Free Basic Water Policy which gave 6 kilolitres for free. It then makes one wonders how this policy was found to be reasonable because the statistics showed that the average of 67 kilolitres was being consumed but only 6 kilolitres was agreed upon to be free water. Such a difference is too wide for these households to be expected to somehow manage and adjust. The free water is way below the deemed consumption amount that was previously in place. The court should have considered the expert witnesses' submissions which were presented in the lower courts that led to the judgment in favour of increasing the amount of free water.

On Shortcomings of the Free Basic Water Policy

The Free Basic Water Policy was established on the premises that the wealthy will cross subsidise the poor, however the problem with this is that in rural areas, the poorest of the poor people require high volume of water to meet their domestic and other water needs (Bond 2010). As a result, the cost of providing water services becomes unbearable by the supposedly wealthy people. Due to this national funding remains the main source of funding the provision of free water (Gowlland-Gualtieri 2009). It is also unreasonable in our view to reduce the amount of free water for fear of the fact that if it is increased then certain households with fewer people would benefit more than the others. As it stands, those households with more people than others are being castigated for having larger family and hence denying them the right to access sufficient water.

There is need for the government's Free Basic Water Policy to be reviewed. Presently, it is largely commercial based with the State trying to ensure that they realise revenue from the supply of water contrary to the provision of the constitution. The amount of free basic water needs to be increased to at least half the people's actual consumption or at least be the same as the amount of water that was deemed to be the consumption amount per family each month.

On Discrimination Based on Means

The other concern that was raised in this case was that of discrimination. The residents of Phiri felt that they were being unfairly discriminated because they were poor. They felt that the fact that credit meters were not made available to them was discrimination based on means.

In this regard we agree with the court's position, this contention was ill-informed. There is need to put in place measures that will dissuade people from wasting water. Evidence presented in the court showed that people waste water unnecessary and great volumes of water were unaccounted for in Soweto. Undoubtedly, the installation of pre-paid meters will curtail wasteful tendencies because one can only use the amount of water already paid for. However, having access to credit meters would mean that the people will have unlimited access to water but this could encourage wastefulness. As indicated earlier, had the amount of free water been higher than the 6 kilolitres this would have worked, because the people would have access to sufficient water still.

The Indigent Registration Policy is an approach which puts a burden on citizens to prove that they are indeed in need. This policy is well placed as it enables the Government to assist those who are in dire need of services as opposed to providing free services to those who are able to pay for such services. This approach is used in various aspects of service delivery for example, the realisation of the right to housing as well as provisions of social grants. It enables government to come up with strategies and necessary funding to assist people in realising their socio-economic rights. Those who registered as indigents got their arrears in water, electricity and sanitation written off and an extra 4 kilolitres of free water added to their 6 kilolitres allowance. In order to make people benefit from the policy and abate the under inclusiveness that currently exists, the Government should consider providing representatives to visit to these households', educate the policy to them and assist people with their applications for registration. This will also reduce any unnecessary paper work (Malzbender et al. 2005).

CONCLUSION

The right of access to water is a constitutionally entrenched right which should be protected and promoted at all times. Water is a basic necessity that human beings and animals alike need for their survival. The courts are supposed to ensure that this right is realised by everyone and should be willing to place any policy that negatively affects a person's right of access to water by the government under a microscope and scrutinize its reasonableness. There are still a lot of people who are unable to enjoy this right due to lack of service delivery. To testify to the effect that these people have become desperate, people are now syphoning water from the main stream water pipelines to their own homes through illegal connections. These illegal connections are causing huge loss of clean water as these pipes are not properly secured. This has resulted to loss of water and revenue as the illegal connections were not done professionally thus resulting in leakages and

contamination of water. The municipality needs to put in place the necessary infrastructures in place to enable people staying in villages enjoy their right of access to water.

It is obvious the Free Basic Water Policy is failing to effectively supply people with adequate clean water as the amount is way below what is reasonably used by each household each day. There is a need to look at ways to improve this situation in order to enable the people implement their rights and promote harmony in the communities. The government needs to increase the amount of free basic water supplied to each household especially in the indigent communities in order to enable such communities to have access to adequate clean water.

The government's efforts should be applauded for trying to alleviate the burden on those who are in serious need of assistance by coming up with the Indigent Registration Policy. A lot still has to be done in order to ensure that more households are registered under the policyand therefore assisted.

RECOMMENDATIONS

The Government needs to increase the amount of water that is given as free basic water especially in indigent communities as highlighted above. This can be done by considering factors like the average number of people per household in each home, the need to enable each person to access their 25 litres allocation each day, the needs of the people in these communities in relation to their activities that require water as well as the number of children headed families, families with disabled persons and those affected by HIV/AIDS.

Registration under the Indigent Registration Policy must be encouraged in order for the Government to be able to assess whether it is doing enough to assist the people who need assistance the most. It should be showcased as a government initiative aimed to improve the quality of lives of the people under a different name so that those that have to register do not feel victimised. It would also be innovative of the City to introduce the policy to the needy in their respective communities and educate them about it by sending their representatives to facilitate the registration as people might not be able to visit the respective offices to register due to lack of transport fares.

REFERENCES

Bond P 2010. Water, health, and the commodification debate. *Review of Radical Political Economics*, 42(4):445-464.

Brennan M 2009. To adjudicate and enforce socio-economic rights: South Africa proves that domestic courts are a viable option. *Queens University of Technology Law Justice Journal*, 9(1): 16-34.

Butler LL 1985. Allocating consumptive water rights in a riparian jurisdiction: Defining the relationship between public and private interests. *University of Pittesburg Law Review*, 47: 95-104.

Christiansen C 2006. Adjudicating non-justiciable rights: Socio-economic rights and the South African constitutional court. *Columbia Human Rights Law Review*, 38: 321-361.

Cottle E, Deedat H 2004 .[PDF] The Cholera Outbreak, A 2000-2002 Case Study of the Source of the Outbreak in the Madlebe Tribal Authority Areas, uThungulu Region, KwaZulu-Natal. From <http: // www.nuclearenergy.org/documents/cholera.pdf.> (Retrieved on 19 December 2012).

[PDF]Dash SP 2006. Water: A Human Rights Perspective. From <http: //www.ielrc.org/activities/workshop_0612/content/d0604.pdf.> (Retrieved on 17 July, 2012).

Davis DM 2008. Socio-economic rights: Do they deliver the goods? *International Journal of Constitutional Law*, 6(3): 687-711.

Dickson B 1998. Protecting human rights through a constitutional court: The case of South Africa, Brice. *Fordham Law Review*, 66: 531-541.

du Plessis A 2010. A government in deep water? Some thoughts on the state's duties in relation to water arising from South Africa's Bill of Rights. *Review of European Community and International Environmental Law*, 19(3): 316-327.

Dugard J 2008. Rights, regulation and resistance: The Phiri Water campaign. *South African Journal on Human Rights*, 24: 593-604.

Dugard J 2010. Can human rights transcend the commercialization of water in South Africa? Soweto's legal fight for an equitable water policy. *Review of Radical Political Economics*, 42(2): 175-194.

Dugard J, Handmaker J, Berkhout R 2010. Civic Action and Legal Mobilisation: The Phiri Water Meters Case. From hivos.net. http: //After+eighteen+ months+ when+the+ca se+has+been+ pending+ in+ court%2C+the+vast+majority+of+ the+ residents+ had+accepted+pre. (Retrieved 4 April 2013).

Earle A, Goldin J, Kgomotso P 2005. Domestic Water Provision in the Democratic South Africa, changes and challenges. From <http: //www.awiru.co.za/pdf/3Domestic%20water%20provision%20in%20SA%20-%20changes%20and%20challenges.pdf.> (Retrieved 4 June 2013).

Flynn S, Chirwa DM 2005. *The Constitutional Implications of Commercializing Water in South Africa*. London, UK: Earthscan Publishers.

Francis R 2005. Water Justice in South Africa: Natural Resources Policy at the Intersection of Human Rights, Economics, and Political Power. From <http: //www.law.bepress.com.> (Retrieved on 6 June 2012).

Gowlland-Gualtieri A 2007. South Africa's Water Law and Policy Framework Implications for the Right to Water. IELRC Working Paper. From <http:// www.ielrc.org/content/w0703.pdf> (Retrived on 28 November 2011).

Hansen M 2005. The Struggle for Water in Johannesburg. From <http: //www.lumes. l u.se/database/alumni/04.05/theses/melissa_hansen.pdf.> (Retrieved on 4 April 2012).

Harvey E 2009. The Commodification of Water in Soweto and its Implications for Social Justice. From <http: //hdl.handle.net/10539/6615.> (Retrieved 4 July 2013).

Heleba S 2009. The right of access to sufficient water and the Constitutional Court's judgment in Mazibuko. *Economic and Social Rights Review,* 10(4): 12-23.

Holland ACS 2005. *The Water Business: Corporations Versus People*. Dhaka, Bangladesh: The University Press, Motijheel.

Jacobs I 2012. A community in the Orange: The development of a multi-level water governance framework in the Orange-Senqu River basin in Southern Africa. *International Environmental Agreements: Politics, Law and Economics*, 5: 87-210.

Kerr AJ 1997. Bill of Rights in the New Constitution and Customary Law, *African Law Journal*, 114: 346351.

Magaziner AL 2007. Trickle down effect: The Phiri Water Rights application and evaluating, understanding, and enforcing the South African constitutional right to water. *North Carolina Journal of International Law and Commercial Regulation*, 33: 509-602.

Malzbender D, Goldin J, Turton A, Earle A 2005. Traditional Water Governance and South Africa's National Water, Act-Tension or Cooperation? *International Workshop on African Water Laws: Plural Legislative Frameworks for Rural Water, Management in Africa*, 26-28 January 2005, Johannesburg, South Africa.

Mbazira C 2007. Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights: The Role of Judicial Remedies. From <http: //etd.uwc.ac.za/usrfiles/modules/etd/docs/etd_gen8 Srv25Nme4_ 5739_12547 51338. pdf.> (Retrieved 22 October 2012).

McCaffrey SC, Neville KJ 2009. Small capacity and big responsibilities: Financial and legal implications of a human right to water for developing countries. *The Georgetown International Environmental Law Review*, 21: 679-688.

Miraftab F 2004. Neoliberalism and casualization of public sector services: The case of waste collection services in Cape Town, South Africa. *International Journal of Urban and Regional Research*, 28(4): 874-892.

Muller M 2008. Free basic water-a sustainable instrument for a sustainable future in South Africa. *Environment and Urbanization*, 20(1): 67-87.

Pejan R 2004. Right to water: The road to justiciability. *George Washington International Law Review*, 36: 1181-1192.

Pejan R, Norberg A, du Toit D, Pollard S 2007. The Development of a Framework for Understanding Human Rights-based Approaches and Integrating them into Water Resources Management in South Africa. From <http: //www.award.org.za/file_uploads/file/wr-04c-d003.pdf.> (Retrieved on 4 September 2012).

Paul TE 2013. Plugging the democracy drain in the struggle for universal access to safe drinking water, *Indiana Journal of Global Legal Studies*, 20(1): 469-503.

Perre SR 2002.Water policies and smallholding irrigation schemes in South Africa: A history and new institutional challenges. *Water Policy*, 4(3): 283-300.

Puvimanasinghe SF 2000. Development, environment and the human dimension: Reflections on the role of law and policy in the third world, with particular reference to South Asia *Sri Lanka Journal of International Law*, 12: 35-46.

Smith L 2003. Access to Water for the Urban Poor in Cape Town: Where Equity Meets Cost Recovery. From http: //usj.sagepub.com/content/40/8/1517. short. (Retrieved 22 January 2014).

Stein R 2002. South African New Democratic Water Legislation: National Government's Role as Public Trustee in Dam Building and Management Activities. From <https: //litigation-essentials. lexisnexis. com/webcd/app?action=documentdis playand crawlid=1anddoctype=citeanddocid=83 +tex.+ l.+rev.+2167 andsrctype=smiandsrcid=3b15 andkey= e62d26af81980ee0c520540d78ead85c.? (Retrieved on 16 August 2012).

Stein R 2002. Water Sector Reforms in Southern Africa: Some Case Studies. From <http: //www. cava. nri.org/projects/waterlaw/AWLworkshop/malzbender-db.pdf.> (Retrieved on 16 September 2012).

Stewart, L 2009. Adjudicating socio-economic rights under a transformative constitution. *Penniyslvanian State International Law Review*, 28: 487-499.

Stewart L, Horsten D 2009. The role of sustainability in the adjudication of the right to access to adequate water. *South Africa Public Law*, 24: 486-505.

Tewari DD 2005. A brief historical analysis of water rights in South Africa. *Water International*, 30(4): 438-445.

Tewari D 2009. A detailed analysis of evolution of water rights in South Africa: An account of three and a half centuries from 1652 AD to present. *Water Journal*, 35: 693-710.

Thompson H 2006. *Water Law: A Practical Approach to Resource Management and the Provision of Services*. Cape Town, South Africa: Juta Publishers.

Turton R, Messner R, Mampane M, Seremo A 2004. Hidropolitical History of South Africa's Internation River Basins in Water Research Commission Report No. 1220/1/04. Water Research Commission Gezina. From <http: //www.bing.com/search?q=Water+ Research+ Commission+ Gezina.and src= ie9trandadlt=strict.> (Retrieved on 16 August 2012).

von-Schnitzler A 2008. The power of water: Landscape, water and the state in Southern and Eastern Africa, citizenship prepaid: Water, calculability, and techno-politics in South Africa. *Journal of Southern African Studies*, 34(4): 899-917.

Wesson M 2004. Grootboom and beyond: Reassessing the socio-economic jurisprudence of the South African Constitutional Court. *South African Journal on Human Rights*, 20: 284-295.

Wesson M 2011. Reasonableness in retreat? The judgment of the South African Constitutional Court in Mazibuko v City of Johnnesburg. *Human Rights Law Review*, 11 (2): 390-405.

Williams LA 2009. The justiciability of water rights: Mazibuko v. City of Johannesburg. *Forum for Development Studies*, 36(1): 5-48.

Williams LA 2011. The justiciability of water rights: Mazibuko v. City of Johannesburg. *Williamette Journal of International Law and Dispute Resolution*, 18: 211-222.