

Duplicate

HSRC RESEARCH OUTPUTS

3321

Regulating the regulators?

**Civil society and poverty alleviation in
South Africa**

David Hemson

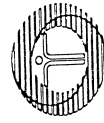
Human Sciences Research Council

Conference: "Poverty Reduction through Better Regulation"
February 21 – 23, 2005, Rosebank, Johannesburg

A vibrant and durable democracy needs a strong civil society. Government is committed to promoting the active involvement of civil society in the provision of sustainable and affordable water services, in research and in other related activities.

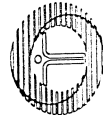
Strategic Framework for Water Services,

3.8 The role of civil society



What form of regulation?

- Rises from separation between service provision and public authority; need for control in public interest
- *Classic* regulation: form of laws and regulations through public administration and political representation
- Generally no exposure of failure in public/private service; things gradually improve
- No conception of interaction with civil society or public discussion of issues.
- “Naming and shaming has to be used with care.” UK regulator
- Orthodox alternatives: no intervention, information and education, self-regulation, and incentive-based structures.
- Is regulation compromised and ineffective?



Pro-poor regulation?

- Argued that better transactions and regulation would serve the interests both of the businesses and the poor.
- Studies conclude that the current regulation is not achieving stated objectives, few contracts are explicitly pro-poor and the authors provide 24 guiding principles to remedy this.
- Of the contracts examined in a number of international contexts, none have been found to have pro-poor legal provisions and there are limits to the contractual inclusion of those not connected (Barbara Evans 30 November 2001).
- The remedies, however, appear to be unlikely to be adopted, for a variety of reasons such as uncertainty of tenure in informal settlements, the fact that adequate standards for water quality imply higher water tariffs, etc.
- Pro-poor regulation has to be applied through democratic regulation and community/consumer representation.



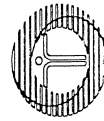
Who regulates?

- Numerous references to the involvement of civil society in public policy although *not* in regulation;
- Civil society is generally critical and alienated from the processes of regulation
- ‘Developmental regulation’; both support and compliance – problems such as school infrastructure, bucket toilets, etc
- Periodic explosions: Lack of development forums shown in Free State; open revolt against poor service delivery
- Long tradition of public participation by civil society in South Africa
- Relatively mature NGO sector, active CBOs, and vigorous and often militant social movements;
- Participation not be smooth and procedural and has often taken the form of protests.
- Civil society advocates argue that although there is recognition of peoples participation in public decision making, the reality is that there are not open fora between state and civil organisations.
- What form of regulation to involve civil society?



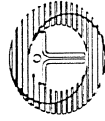
Democratic regulation

- Democratic regulation arisen from US experience and attempt to exert public authority over mixture of public and private service providers;
- Unique: wide open to the public. There are no secret meetings, no secret documents.
- Any and all citizens and groups are invited to take part: individuals, industrial customers, government agencies, consumer groups, trade unions, the utility itself, even its competitors.
- Everyone affected by the outcome has a right to make their case openly, to ask questions of government and utilities, to read all financial and operating records in detail.
- “It is an extraordinary exercise in democracy -- and it works.” Palast, Oppenheim, and Macgregor. *Democracy and Regulation: How the Public Can Govern Essential Services*



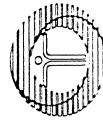
Regulation by democracy

- Dependent on strength of democratic processes
- Democratic regulation, it is argued, *promotes* democracy, which is a prize far more valuable to civil society alone than the economic benefits democracy engenders.
- But it also *requires* deep, extensive and fully functioning democratic practices, including regulation through public hearings, open access to key information, and social pricing.



Steps in price-setting case

- Public filing by utility and deposit for review at designated locations.
- Notices of formal participation filed by anyone affected.
- Public hearing for statements by anyone.
- Procedural meeting to set schedule and other matters.
- Formal written questions to utility by all participants
- Conduct independent research and negotiation.
- Filings by parties (e.g. expert testimony and counter-proposals).
- Discovery by utility and other participants concerning filings by parties.
- Public hearings for cross-examination by all participants of filings and discovery responses filed by utilities and all other participants.
- Written briefs and reply briefs summarizing evidence and arguments and responding to others, filed by utility and all parties.
- In some places, tentative decision or proposed order circulated by judge or commission, followed by another round of briefs and reply briefs.
- Sometimes, oral argument.
- Decision (order).
- Post-order motions to clarify or reconsider (if any).
- Filing by utility to comply with order; e.g., new tariff sheets.
- Appeal (if any).



Voice and gender

- What methods can be adopted to strengthen representation of poorest?
- Community mobilisation, cooperation with CBOs; open access to community initiatives;
- Proposals for Water Forums nationally and locally;
- “Every effort must be made to ensure the adequate and meaningful participation of women in consultation forums”, *Strategic Framework*
- Gender dimensions raised in rural communities with 50% rule; how is this to be continued with local government management?



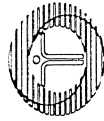
“Reinventing” accountability

- An increasing commitment to expand voice and accountability in budgetary processes e.g. Brazil.
- Practical experiments in citizen-led accountability struggles;
- Inform officials about public perceptions of government behavior.
- Limitations: rarely include obligations on officials to supply answers, accounts, or other information—or respond to corruption or poor performance.
- Major difficulties in regulation in Dolphin Coast; no access to key documents or support from Public Protector
- Perspective that voice regulation needs to be strengthened to have greater impact.
- In SA no provision for civil society in Strategic Framework section on regulation.



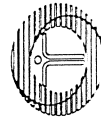
Water forums

- Exploration of hybrid forms of communication and accountability either in partnership with state organizations or through independent action
- Protest action, may take civil society-initiated public hearings, people's courts, and commissioned reports that mimic official state proceedings.
- Search for forms of open representation to allow issues to be raised, explored and resolved
- Some tension between political representatives and representation of civic groups on open forum
- Advantage of open access to resolve issues through public hearings
- Complaints that civic groups raise issues generally and repetitively
- Now research by civic groups; well prepared documentation of people's case



The largely unrepresented

- Communities not adequately represented; particularly remote rural communities with poor communication and inadequate ways of getting voice heard;
- Urban slums: near centres of administration but poorly served.
- Households affected by HIV/AIDS, one patient with advanced AIDS needs at least 200 litres per day;
- Larger families; poorer, lower income per capita, and much greater demands on water;
- Poorest: sometimes but not routinely represented by NGOs and CBOs – very complex question of indigency issue which could be matter of community representation



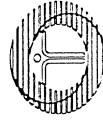
What key issues to regulate?

- Full access to water services (10m still unserved)
- Full access to sanitation (18m to go)
- Basic service: 25 litres per person per day
- Continuous provision of water 24 hours a day
- Flow of 10 litres per minute
- Water quality, SABS Minimum Allowable Level
- Interruptions to water supply
- Cut-offs for non-payment
- Free Basic Water not necessarily 6kl
- Formulation of comprehensive social security policy to include indigency policy
- Management of financial resources to advantage of poor
- Some 18 measures provided in *Strategic Framework*
- Should be Strategic Assessment available--DWAFF regulation

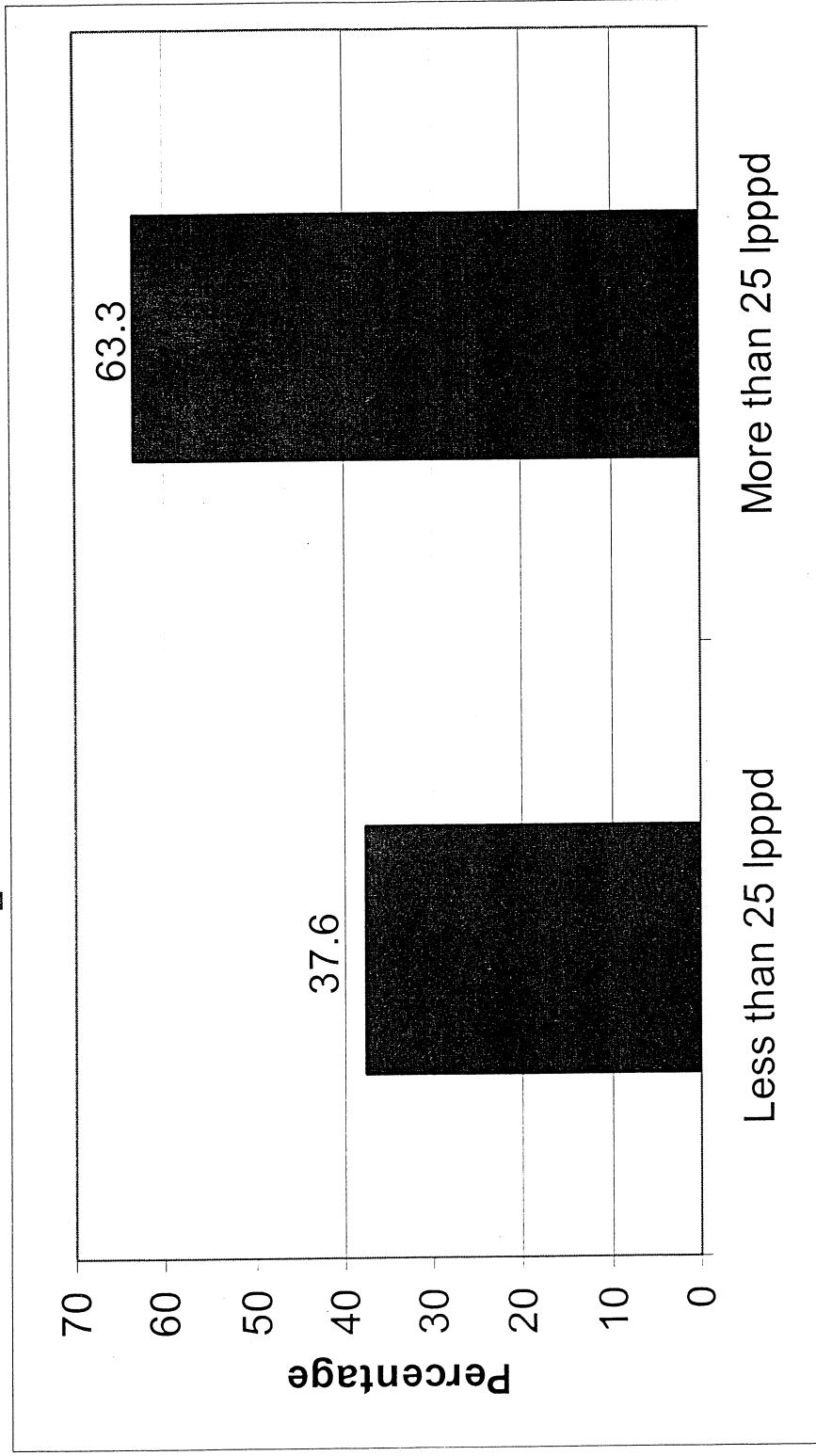


Rural water quality

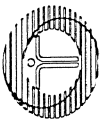
- Study of potable (clean drinking water) found high level of contamination
- Rural Eastern Cape: 50% below microbial maximum allowable level;
- Rural Western Cape: 62% below maximum allowable level;
- Water quality dependent on efficient operation, management, and monitoring of rural services.
- Mackintosh and Colvin, Environmental geology (2003)



Consumption of water

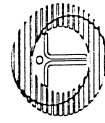


About 38% of population not receiving a bucket of water a day.
HSRC survey 2004.



Free basic water

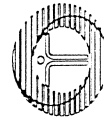
'Inverse equity': of those getting FBW only 50% are poor.



Integrated Rural and Regional Development

Some conclusions

- Need for development of democratic regulation; engagement of public officials with civil society and improved political representation
- Interests of the poor (and thus of effective regulation) depends on the *open disclosure* of basic information on water services and the public availability of research findings
- Need public responses to grievances and demands, and public hearings on key questions
- Civil society committed to participation in forms of policy debate and in fact regulation
- Exploration of possibilities of formal and civil/democratic regulation; DWAF to carry out policy on civil society
- Encourage research into effectiveness and equity of services with community groups and local government
- Prioritise issues, document, research, debate and resolve



Acknowledgement

This paper draws, in part, on research being conducted for the Water Research Council titled

“Developing an appropriate tool: Voice, measure and intervention in ensuring the sustainability of municipal water services to the poor”

and the WRC’s support is duly acknowledged. The views expressed here are, however, those of the contributor.

