

Factors affecting the effectiveness of pro-poor urban water service delivery in post-apartheid South Africa

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Abstract

The birth of democracy in 1994 resulted in a massive law reform process which brought much optimism in South African water resource governance structure. These reforms have included a pro-poor oriented water service delivery system to redress the inequalities experienced by the poor during the apartheid regime. However, although a lot of financial resources have been used to improve water security amongst the poor, water access amongst the poor still remains a substantial developmental challenge. Social protests over water access have reached unprecedented levels in the post-apartheid era. The broad objective of the paper is to identify and assess pro-poor interventions in water service delivery in urban areas. Given the plurality of pro-poor mechanisms to ensure access to water, a special focus is made on the Free Basic Water policy to illustrate how the manner in which policies are formulated and implemented can affect service delivery. The role that municipalities play in water governance and how this subsequently impacts on the effectiveness of these policies and mechanisms is interrogated. The paper finds that the municipality as the sphere of government tasked with urban water service delivery lacks financial independence and is in itself fraught with various operational challenges. Supply side oriented reforms and neoliberal policies are also criticised for not taking cognisance of the needs of the poor, particularly as envisaged under a democratic developmental state.

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Introduction

The primary principle of the post apartheid water policy framework is the right to clean water – ‘water security for all’ (Reconstruction and Development Programme (RDP) cited in ANC 1994, p.28). The principle puts water as a human right and emphasizes the need for all South Africans to have equitable access to the resource. To uphold this right, the 1994 democratic government in South Africa engaged in a massive law reform process in water resource management (Kapfudzaruwa & Sowman 2009). The objective of the reform process was to involve water users in water governance and service delivery as a way of addressing water insecurities for the previously disadvantaged communities (Schreiner *et al* 2004). South Africa’s water insecurities are exacerbated by a growing demand for water in light of population growth, climate change, urbanization, economic development, and other related factors. If appropriate policies and institutions that enhance equal access to the resource are not put in place, the scarcity of water could further exacerbate social inequities in South Africa. Therefore, effective management of pro-poor water service delivery calls for good governance of water resources. For example, there is need to manage the resource via a process that takes an integrated approach and accommodates the voices of the vulnerable or poor communities. South Africa’s water policy environment is generally characterized by progressive reforms that are aimed at developing and implementing policies and plans to ensure secure access to water by vulnerable population groups which could include women, children and the disabled. One example of such reforms is the 2001 Free Basic Water (FBW) policy.

According to the International Federation of Red Cross and Red Crescent Societies (IFRC n.d), vulnerability could be defined as ‘the diminished capacity of an individual or group to anticipate, cope with, resist and recover from the impact of a natural or man-made hazard’. Therefore, vulnerable groups are groups of people who are at risk of social exclusion and poverty compared to other people. Poverty is one of the persistent challenges for the water sector, manifesting itself in the inability of vulnerable communities to pay for water services. Since the advent of democracy, therefore, the South African government has been striving to implement pro-poor interventions and development strategies in the water sector. These pro-poor reforms have been guided by the desire to manage resources more sustainably while promoting equitable access to them (IFAD 2007). After apartheid, the new democratic government injected significant levels of capital and public resources into service delivery and ambitious targets for rapidly improved access to water and sanitation were set (World Bank 2010(b)). Despite this investment, water insecurities amongst the urban poor still persist.

This paper is motivated by these water insecurities amongst vulnerable population groups despite a series of pro-poor reforms in South Africa's water sector. Pro-poor mechanisms are defined to include measures that could deal with different aspects of protection or security for the most vulnerable groups in society such as the unemployed, poor, destitute and marginalised (Ducrot 2011). These include protection of the most vulnerable groups against further exclusion by more advantaged groups through water or land grabbing; giving the more vulnerable a specific voice so that their concerns can effectively be taken into account; provision of a security net to avoid further exclusion or overcome specific localized difficulty; and the facilitation of some kind of redistribution mechanisms to help the most vulnerable to overcome their situation (Ducrot 2011).

This paper will therefore, attempt to explore and understand factors affecting water service delivery with a broad objective of identifying and assessing pro-poor mechanisms as reflected in the legal and policy framework. The urban institutional framework of water will be analysed paying particular attention to the challenges municipalities face and how these impact on service delivery. In South Africa, municipalities face a myriad of implementation challenges as reflected in the increase in the incidence of service delivery protests. The paper identifies the over-emphasis on supply-side interventions in water management over water demand management as well as lack of financial independence amongst municipalities; policy formulation and implementation challenges of the FBW policy as negatively affecting the effectiveness of pro-poor policies and mechanisms. The principal argument of the paper is that the 'very institute' that is tasked with service delivery is fraught with operational challenges; and that supply-side interventions in water management do not take into consideration the needs of the poor. Most importantly, is the need to note that the poor are a heterogeneous group and thus the extent to which water policies alleviate poverty is conditional on the extent to which such policies are cognisant of this and are able to cater for the different needs of different categories of the poor.

Overview of South Africa's urban water policy environment

In South Africa, water services delivery in urban areas is framed by the provisions of inter alia, the Constitution (Act 108 of 1996); National Water Act (Act 36 of 1998); The Water Services Act (Act 108 of 1997); the Public Finance and Management Act (Act 1 of 1999) and the Municipal Finance Management Act (Act 56 of 2003). The introductory remarks of the Constitution highlight the government's main objective as the need to "redress imbalances of the past regarding water resource allocation and management whilst still respecting all citizens' constitutional rights" (Glazewski 2005 cited in Kapfudzaurwa & Sowman 2009, p.685). The National Water Act of 1998 builds on this foundation and is intended to both reverse the wrongs of the past and conserve scarce water resources for sustainable development and usage. The national government,

through the Department of Water Affairs (DWA) is the custodian of South Africa's water resources. DWA is primarily responsible for the formulation and implementation of policy governing the sector. While striving to ensure that all South Africans progressively gain access to water, the department also tries to promote effective and efficient resource management to ensure sustainable socio-economic development.

South Africa's water policy environment is influenced by the global policy on Integrated Water Resource Management (IWRM). The Global Water Partnership: Technical Advisory Committee (2000, p.22) defines IWRM as 'a process, which promotes the co-ordinated development and management of water, land and related resources, in order to maximise the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems'. In that regard, South Africa devised a National Water Resource Strategy (NWRS) and undertook a series of institutional and legal reforms from 2000 so as to make water resources use more equitable, efficient and sustainable (Kapfudzaurwa & Sowman 2009). The NWRS aims to address, among other, the challenge of security of supply. It seeks to incorporate the components of IWRM including equitable and sustainable distribution of water to all South Africans in both policy and practice. As part of its stated commitment to IWRM, the DWA is increasingly turning toward multiple use strategies combining surface water, groundwater, waste water, and a variety of harvesting and delivery techniques. Yet, despite these strategies, water insecurities persist among the vulnerable population groups in South Africa. While concepts such as equity, efficiency, sustainability and reliable administrative services are dominant in South Africa's policy documents, these are largely not reflected on the ground. Therefore, there is a need to analyse the implementation stage of the water policy cycle and socio-political factors that might reduce the effectiveness of these reforms. In particular, given the plurality of policies and mechanisms, there is still need for empirical and theoretical understanding of ways and linkages in which institutions (formal and informal) interact in water resources management.

The urban water resources management is one of the long-standing functions of local government authorities. According to the Constitution, and the Water Services Act of 1997, the Water Services Authorities or municipalities are responsible for the provision of water and sanitation in urban areas. This implies a stronger focus on decentralisation initiatives in natural resource governance. According to Satge & Kleinbooi (2001), decentralisation refers to the redistribution of power and authority over decision making and management functions between central, regional and local levels of governance and other actors, including traditional institutions, or user associations together with other organisations of civil society and the private sector. The advantage of decentralisation is that local institutions 'have a greater sensitivity to local circumstances and are better able to respond to local needs because they are nearer to local

communities and have mandated responsibility and accountability to the whole local population' (Agrawal & Ribot 1999 cited in Kleinbooi *et al* 2011, p.9). Although local authorities have the responsibility to manage and construct social infrastructure at the local level, they are still dependent on the central government for the financing of their activities (UN-Habitat 2002).

In addition to municipalities being in charge of water distribution and sanitation either directly or indirectly through municipally owned enterprises or private companies, government owned water boards are in charge of operating bulk water supply infrastructure and some wastewater systems (Segal 2009). However, municipalities are able to delegate this responsibility to a water services provider for a defined period. For example, in 2001 the City of Johannesburg created Johannesburg Water, a legally and financially independent company wholly owned by the municipality as a way of efficiently and effectively managing water resources.

Efficient and effective resource management calls for a balance between cost recovery and equitable provision of water. According to Siphuma (2013), within South Africa, there has always been a tension between the goals of increased cost recovery enshrined in the 1997 Water Services Act on the one hand; and on the other hand, the developing aspect of the country as reflected in for example the 2001 FBW policy. While cost recovery speaks to a neoliberal approach to water service delivery, access to free water touches on the concept of developmental state in South Africa. These contradictions are difficult to reconcile in practice, because communities consist of different groups of people, for example, those who can afford to pay for water services, those who cannot pay for water services and those who would not pay even if they can afford. It therefore becomes difficult to manage these scenarios, and this often leads to situations where some residents complain that they are paying more while others do not pay. The other problem is to do with separating those who afford from those who cannot afford. South Africa is moving towards a developmental state where the needs of the people should ideally be prioritized over the cost benefit analysis of water provision and paid services. This, however, becomes a complicated policy challenge for the government, particularly in terms of implementation as the country seems to portray a more neoliberal policy outlook.

Neoliberal policies in the water sector include privatisation. Peter (2010) argues that many problems can be traced back to post-apartheid government policies that can be described as 'neoliberal'. Privatisation of local services opens up new opportunities for private accumulation through various interactive platforms between councillors, water user authorities and service providers, for example in the water supply chain management system. This is further compounded by the structure of the South African governance system. The African National Congress (ANC)'s policy of 'deployment' combined with its political hegemony can imply that councillors are more concerned

about having the support of the party than advancing the interests and needs of their electorate (Peter 2010). These interactions are often top down approaches, which undermine grassroots participation in policy formulation and design. In their deliberations, there will be no clear planning, implementation schedules as well as no monitoring and evaluation system that takes into cognisance the needs of the poor.

The birth of democracy was expected to make the new government responsive to the socio-economic needs of previously underprivileged groups. However, over the years they have been allegations of politicians promising better water services, particularly as a way of garnering public votes but in most cases fail to implement the promises. In order to ensure that there is sustainable socio-economic transformation in a society; democracy needs to be coupled with good governance mechanisms. Peter (2010) argues that the basic premise for addressing the glaring inequities between the poor and the wealthy is the need for democratic institutions that will give voice to the vulnerable groups in the society. However, whether democracy is a panacea of all socio-economic ills the country is facing needs to be interrogated; for example can the post 1994 water reform really be the driver to reduce poverty and achieve equity. An effective reform process would be the one where decision makers are accountable to the residents taking into cognisance different socio-economic conditions of the residents concerned and putting effective political and administrative systems in place. This speaks to good water governance whereby these systems would help provide optimal support to citizens in leading safe and productive lives free from the ills of social protests. In the South African context, some argue that the social protests reflect disappointment with the fruits of democracy (Peter 2010) while other feel that these protests are a demonstration that the people of South Africa are now empowered enough to fight for their constitutional rights (Tapela 2012).

The demerit of privatisation in relation to service delivery is that the role of the state in the provision of these services is likely to be compromised. For example, their role has been taken over by private services providers over which states have no direct control or have failed to exercise adequate control (Mwebe 2005). Although privatisation advantages such as progress when it comes to production and delivery of utility services should be acknowledged, however, the same advantage has a negative bearing towards the poor who cannot afford to pay for these services. Privatisation breeds the environment where the rich or those who afford can pay their way to proper service delivery while the sticks will be on those who can't afford these services. Mwebe (2005, p.41) argues that in South Africa's privatisation process the 'full cost recovery' model and the introduction of 'pre-paid metres' have led to disconnections of water to those who are unable to pay, and thereby reducing access. In the context of privatisation, the government still bears the ultimate responsibility of ensuring progressive realisation of the rights because practise has shown that private actors do

not normally expand their resources to the poor especially when it's going to affect their profit margins (Nnadozie 2011).

Supply-side interventions in water management fail to take into account the specific demands of vulnerable groups

Most scholars recommend water demand management (WDM) - a relatively new management philosophy in the Southern African Region (Kansiime 2002; Rahm *et al* 2006; Swatuk and Rahm 2004; Swatuk and Mazvimavi 2010; Brown 2010). According to Vairavamoorthy *et al* (2008), WDM is the adaptation and implementation of a strategy or policies by a water institution or authority to influence the water demand and usage to meet a number of objectives, such as social equity, environmental protection and sustainability of water supply services. Generally, WDM is a management approach that aims to conserve water by controlling demand from consumers. The possible WDM measures include rainwater collection, re-use especially for irrigation of fodder, progressive pricing policy, and water efficient appliances in households, industries and agriculture, development industries of non-water borne sanitation systems and consumer education (Goldblatt *et al* 1999). In South Africa, growing water demand on the one hand and shrinking water resource base on the other, makes WDM an attractive policy option. This is mainly because most of the causes of insecurity are demand driven, including for example population growth, urbanization, economic development, among other factors. However, the failure to implement water demand management measures is often blamed on the "lack of political will", or on ineffective forms of governance. As the Global Water Partnership's Framework for Action (GWP 2000) stated, that water crisis is often a crisis of governance.

The Department of Water Affairs' National Water Policy Review (n.d) postulates that WDM should not be seen as an end but rather as a means to an end. The review further adds that in order to realise the full benefits of demand management there is need to broaden the scope of its understanding from a narrow dimension that ties demand management to tariff increases or advocacy work and move to a broader understanding of the term which speaks to sustainable implementation and development of water usage strategies. Such a broad definition would underscore the economic value and financial cost of water as a scarce resource. In a similar vein, the draft water conservation and demand management national strategic framework (1999) emphasizes more on economic efficiency, societal responsibility through efficient use of public funds and sustainability of the demand management approaches to reduce the consumption of water. In South African municipalities, wastewater is being generated for possible reuse and there are water restrictions throughout the country. Other WDM measures include, use of tariffs, private water connections and rainwater harvesting. Although some of these WDM measures are considered in the South African policy

circle, the government's approach when it comes to the actual implementation of these measures is argued to be flawed. The government allegedly considers water needs as requirements to be met rather than demands that may be variable and controllable (Centre for Applied Research 2010).

Taking water needs as requirements to be met drives the government to focus more on large water development schemes and supply as compared to demand management. The construction of the capital intensive Mgeni River System², among other dam constructions in the country shows policy interest in supply oriented efforts in South Africa. According to Segal (2009, p.1), South Africa 'developed an internationally recognised competence in building and operating large dams, tunnels and pipelines for storing water and for transferring it from areas of surplus to areas of shortage'.

The focus on supply side approach despite a new discourse on demand management comes with few explanations. Swatuk & Rahm (2004) note that the primary reason why governments are reluctant in controlling demand is that such policies could upset the political status quo. There are some allegations that the ANC assumes a 'paterfamilias' status within the country. Therefore, although the party may reprimand in some instances it however prefers to buy favour through a patrimonial approach to public goods (Swatuk & Rahm 2004). Arguably, in politics, politicians tend to avoid upsetting their constituencies. This makes the government prefer providing water in relatively low prices in an effort to gain their votes. More so, it is always hard to embrace change: demand management is still maturing in South Africa and to shift away from supply side interventions, is a risk the government does not seem willing to take, at least for now. However, pressure from civil society and international organisations could probably see the government focusing more on controlling demand.

With this as a background, this paper hypothesized that *supply-side interventions in water management fail to take into account the specific demands of vulnerable groups and as a result contribute to water insecurities amongst these groups*. Existing literature and observations support this hypothesis. This is evidenced by the idea that once one focuses on supply than demand, they risk neglecting the exact needs of different groups within the country and within districts. For example, building the Mgeni dam is a large development scheme that has obvious benefits. However this is not the challenge faced by the poor. The poor face the challenge of connecting water into their private yards and it is this that needs to be addressed. Building a dam is a broad project which has chances of missing the salient features that are important. The emphasis on water needs to be met could make policy players ignorant of the exact water needs for the poor. For example, the policy players could rely on national statistics of water needs

² The Mgeni River system is a massive dam construction of more than R2billion, meant to support the eThekweni Metropolitan Municipality where millions of people are expected to benefit.

provided by research institutions or other agents. Making conclusions based on national statistics fail to acknowledge the uniqueness of each district and of the different groups within those areas.

The supply-side approach to water management is structure-oriented; investments in water projects are combined with engineering and technical expertise to capture, store and deliver water and to make systems operate effectively (Bromley 1989). Concentrating on supply side or structural interventions makes it likely that the solutions will be more technical, top down and not responsive to the needs of the people. Non-structural approaches (or a combination of both structural and non-structural approaches) are often preferred because they take into consideration the social aspects of water management. A non-structural approach encompasses demand management, scientific research; education and persuasion to coordinate how humans use water (Bromley 1989). Overall, South Africa's emphasis on supply-side interventions fall short on engaging with the affected populations, examine their demand for water and provide to their needs. As a result, water insecurities persist.

Analysis of challenges faced by municipalities in water service provision

Although the responsibility for the management of water resources falls within the jurisdiction of the Department of Water Affairs, water service delivery at a local level is the prerogative of the municipality. Meissner et al (2013) argues that the water services delivery implementation framework is facing challenges in the poorer contexts. Nemeroff (2005) & World Bank (2010(c)) note that, to address apartheid water injustices, service delivery has been characterised by a strong focus to deliver as quickly as possible with a number of accelerated programmes in place. For example, the Cooperative Governance and Traditional Affairs (CoGTA), the department responsible for the efficient functioning of local government introduced the Municipal Infrastructure Support Agency (MISA) to support municipalities and water service providers to carry out their mandates (Nemeroff 2005). MISA, together with the South African Local Government Association (SALGA) are tasked with ensuring that municipalities have technical know-how of the infrastructure management and delivery of services. Specifically, MISA is meant to aid the local government officials in planning, designing and maintenance of water infrastructure (Tapela 2012). The problem is that, although the idea of assisting is good, however, in practise it proves to be difficult to maintain a culture of efficient collaboration in relation to infrastructure management. Lack of financial resources to sustain such developments in the municipality has been identified as a constraint. As a result, priority shifts from being that of maintaining infrastructure to trying to ensure that everyone has access to basic water.

Limited and overlapping jurisdictions among concerned agencies such as government and private entities involved in water policy making prevents smooth and rational policy implementation. In theory, the relationship between the Water Services Authority and the Water Services Provider is regulated by a service delivery agreement (Van der Merwe 2004). In the few cases where these agreements exist for example, between the Water Services Authority and another municipality, municipal entity, water board, or private company; the outputs are not necessarily specified, and engagement with citizens about desirable outputs or feedback on performance is limited (Velleman 2011). Moreover, in most municipalities, the distinction between the Water Services Authority and the Water Services Provider is blurred, and no service delivery agreement defining their relationship specifying outputs or outcomes exists. Going forward there is need for municipalities and service providers to plan and implement water and sanitation systems which respond to the reality of the lives of the urban poor.

Many scholars point out that political constraints, coupled with bureaucratic managerial weaknesses, hinder efforts towards sustainable natural resource management (Dovers 2001; Swatuk & Rahm 2004; Rahm *et al* 2006; Manzungu 2004; OECD 2008). Allegedly, in South Africa “water policies are talked about but not implemented.” According to the World Bank (2010(a)) many municipalities are ineffective or dysfunctional and characterized by political in-fighting, inappropriate appointments, and corruption. The other challenges facing water governance in South Africa include the human resource capacity. Allegedly, expertise needed for local government decision making is lacking. Dovers (2001) argue that such incapacities make the rational implementation of even very basic policies very difficult. The belief is that with inadequate information or statistics, administrators make policy decisions blindly. Swatuk & Rahm (2004) argue that this problem affects the ability of the government and NGOs to attract external monies for projects as donors frequently require some measurement of project outcomes before approving a project. Moreover, although in some instances financial resources will be available, the inability of departments to spend their budgets is a reflection of the capacity challenge and poor planning and implementation in the financial administration of the specified government departments (Lornahoza *et al* 2013). Other pointed challenges are cultural and political or power relations. For example, culturally there seems to be a strong perception amongst the public and government officials that water is infinite in the country. The professional culture of local government officials mostly those trained in the engineering sector has oriented them to provide a product rather than to think about water as a central component in the management of an ecosystem sustainably.

Lack of operational and financial independence limits service delivery by municipalities. According to Chitiga *et al*, cited in the recent Financial and Fiscal Commission Conference held in August 2014, there is a need for municipalities to have operational

and financial independence. They argue that ‘the ability to raise their own revenues offers municipalities a valuable degree of freedom that allows them to implement programmes of their own choice and size as experience indicates that revenue autonomy tend to bring about significant higher benefits than costs’ (Ensor 2014). The main argument was that South Africa’s system of concurrent powers between the three spheres of government gives rise to duplication, wasteful use of resources and avoidance of responsibility for delivery outcomes.

The contestations within the Free Basic Water Policy

A pro-poor oriented water governance system puts in place various institutions and policies meant to manage water resources effectively for the benefit of vulnerable groups (UNHABITAT 2005). One notable policy in South Africa is the Free Basic Water (FBW) policy. The water supply and sanitation sector has, since the end of apartheid, been characterized by a strong government commitment to increase access to services. In July 2001 FBW became a national policy through a revised tariff structure that included at least six kilolitres of free water per month. The policy was being implemented gradually within the means of each municipality. Free basic water policy and indigent policies implemented by many municipalities provide some relief which may be inadequate in case of large households (Siphuma 2013). Blanc (2006) questions the effectiveness of the FBW policy as an adequate answer to the challenges facing South Africa. Blanc further observes that within the specific South African context, it would seem that the six kilolitres of free water policy is more of a social compromise based on a political decision, rather than a solution grounded on technical rationale.

The practicalities of implementing a free water policy run counter to the logic of providing free water, even for low volume consumption. According to Kasrils (2001) the FBW policy takes into account the standard amount of a ‘basic’ level of water supply. That is a level sufficient to promote healthy living, and is based on international practices and norms that recommend 25 litres per person per day. The capacity of municipalities to implement the FBW policy varies because each municipality has different constraints. As stated in the Department of Water Affairs website, better capacitated and largely urban municipalities have generally been successful in implementing free basic water strategies locally, while poorly capacitated and largely rural municipalities are still struggling with implementation (DWA n.d).

According to Muller (2009), some of the challenges faced in implementing the FBW policy are:

- *Financial*: how the municipalities can finance service provision in an equitable and sustainable manner.

- *Institutional*: how to acquire the necessary organisational capacity as well as individual competencies.
- *Socio-political*: how to enable positive collaboration between and amongst water governance actors including the citizens.
- *Technical*: how to develop and maintain proper infrastructure needed in delivering the service to the poor.

Another challenge is the measurement of poverty at different levels. For example, the poverty definition provided by national policy is a broad and all-encompassing one. Municipalities have decided on local poverty indicators and subsequently identify households that are poor. Due to cost differences across the country and due to other local issues (such as seasonal unemployment in some areas), specific local poverty indicators will be more appropriate than national indicators (DWA 2013).

One notable socio-economic right case that speaks to the inadequateness of the free basic water policy is the *Lindiwe Mazibuko vs City of Johannesburg* case. The litigants of the case were against the use of prepaid water metres and the set amount of free water provided to each household on a monthly basis (Langford & Russel 2008). Lindiwe Mazibuko and the rest of the litigants were from the Phiri community in Soweto. The Phiri community are classified as a poor community that mirror the inequality legacy left by the apartheid system (Southern African Legal Information Institute, SAFLII n.d). The right that was under interpretation was the right of access to water, as entrenched in section 27 of the Constitution, which provides that everyone has the right to sufficient water.

In discussing the dynamics surrounding the judgement of the case, Langford & Russel (2008, p.77) note that “to deny the applicants the right to water is to deny them the right to lead a dignified human existence”. However, as other socio-economic rights judgements, the Court held that the right of access to water has only to be progressively realised. Accordingly, progressive realisation recognises that the policies formulated by the state need to be regularly reviewed and revised to ensure that the realisation of socio-economic rights improves over time (SAFLII n.d). Thus, the Constitution does not require the state, upon demand, to provide every person with sufficient water regardless of available resources. Rather, it requires the state to take reasonable legislative and other measures progressively to realise the achievement of the right of access to sufficient water within available resources. The FBW policy was extended from 6kl a month to 9kl in 2009 (Nash 2012). Although this symbolises improvements in the access to water for citizens, however, the heterogeneity nature of poor groups undermines this improvement as the family size of the vulnerable groups differ.

However, this does not negate the positive strides that the young democratic government has taken in the last twenty year journey towards effective service delivery.

In the Mazibuko case, the Constitutional court ruled in favour of the City of Johannesburg. According to Dugard (2007), the outcome of the case shows how conservative the courts are when it comes to socio-economic rights judgments. Dugard argues that the courts tend to ignore the arguments raised by the poor litigants which largely serve the litigants needs. The problem with the FBW policy is that it is fluid, because it emphasises on progressive realisation of access to water. This fluid nature makes it very hard to pin down a service provider when there are allegations of insecure water access from the vulnerable groups. Moreover, in practice, municipality service delivery efficiency is not measured on impact, for example, how many people are they reaching out to efficiently. It is also important to note that within a metropolitan area, there is a mix of residents: 'those who pay, those who don't pay and those who won't pay'. The problem with this is that national government's allocation of funds is not ring fenced. For example, this implies that there is no public guarantee from national government that the funds given to municipalities for the free basic water services will be used for that purpose. They are therefore exposed to issues of maladministration.

The court case also led to some other flexible developments on prepaid meters. For example,

The court case led to the development of a more social practice concerning prepaid meters. For example, the minimum amount can be increased from 6 m³ per month to 10 or even 15 m³ per month depending on the level of poverty and size of a household. Also, new prepaid meters still deliver a minimum amount of 40 liter per hour under low pressure after service is cut off. Furthermore, 1000 liter of "emergency water" can be used four times per year, for example to extinguish fires, even if bills should not have been paid. 2000 liter of additional water can be granted by local authorities on demand for special needs. However, not all residents are aware of these fairly complex mechanisms (Anon n.d).

The above shows the complex nature of governing a scarce resource in the context of a maturing democracy. According to Dahl (1989) the rise of governance goes along with a transformation of democracy. A basic definition of democracy by Abraham Lincoln is 'government of the people, by the people and for the people'. A government of the people generally invites them to belong and identify with the present system and culture. The notion 'by the people' indicates that government officials take into account the interests of the individuals or groups that brought them to power. According to Scharpf (1999) participation of citizens speaks to 'input-legitimacy' of political systems. By contrast government 'for the people' refers to 'output legitimacy', in other words the notion that government should govern in a way that is profitable for the collective wellbeing of the people. Democracy is therefore, characterized by structures and

processes in which collectively binding decisions are made by responsive actors in the interest of those citizens who authorized them to rule in their place (Benz and Papadopoulos 2006).

Going forward, a concept of democracy adequate for the evaluation of governance should also take into account the functional and institutional differentiation between those who govern, as representatives, and those who are governed. Hence not only do the intrinsic values of democracy matter, but 'our approval of democratic institutions is equally conditional on their delivering the beneficial effects associated with democratic decision-making' (Castiglione 2000). This underscores the importance of service delivery analysis. Crous (2004) defines service delivery as the implementation of laws and the actual provision of services and products that constitutes governance. With regards to the Mazibuko case above, there is need for information sharing and transparency between municipalities and the people they serve. As it stands now, municipalities allegedly define 'the boundaries of what is and what is not negotiable and is under no obligation to act upon the outcomes of the participatory processes' (Nash 2012, p.9). There is need for participatory measures in policy formulation and implementation of pre-paid meters so that the needs of the vulnerable groups are taken in, right from the beginning. Lack of participation and information sharing at the local level has contributed to social protests over poor water service delivery. According to Bond & Dugard (2008), South Africa's 'water apartheid' came to the fore in August 2002 as a result of a defiant protest march during the World Summit on Sustainable Development (WSSD). Since then, insufficient and inequitable water and sanitation services have featured among key factors in a majority of social protests that have burgeoned in post-apartheid South Africa since 2004 (Tapela 2012).

Conclusion

The demise of apartheid saw the new government setting up very ambitious targets for rapidly improved access to water and sanitation. An unintended consequence for addressing distributive justice is that it has undermined citizens' and users' voice and power to shape policies and hold service providers accountable in spite of people centred, inclusive and democratic vision of the sector. Despite pro-poor conservation and development strategies in South Africa, access to water amongst the urban vulnerable groups continues to remain a substantial developmental challenge. The creation of democracy in South Africa is not a sufficient condition for development as demonstrated by the challenges the country faces, twenty years after the political settlement. Poverty accompanied by increased polarization of urban societies and growing disparities in the living conditions of deprived households is still evident.

The factors that affect the effectiveness of pro-poor water service delivery are centred on the very institute that is tasked to deliver the resources. The municipalities are fraught with a lot of operational and financial challenges. The paper supports calls for the government to provide the municipalities with financial independence. This will ensure that they become in charge of the management of the areas within their jurisdictions and be held accountable when they do not deliver. At the moment accountability for poor service delivery across different tiers of government is poor. This is also because the policies that municipalities are supposed to implement are not properly constituted and articulated. The free basic water policy is fluid in nature. The Constitution's emphasis for socio-economic rights to be progressively realised makes it difficult to pin down any institute as responsible for service delivery failure as they can easily make reference to the constitution, which protects them by the notion of 'progressive realisation. In addition, funds that are allocated to local government are not ring fenced to ensure the poor have access to water.

Other problems are linked to supply vs. demand side oriented reforms as well as neoliberal policies vs. the developmental state agenda that South Africa intends to pursue. These policy contradictions create problems when it comes to implementation. This paper sees this as a dilemma that needs to be interrogated further. While a neoclassical policy such as privatisation is argued to attract private investments in the country, it could adversely affect the poor who cannot afford to pay for the services. Thus, there is need for government to continually seek a balance between accommodating the poor while satisfying neoliberal demands in as far as they promote economic development.

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