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Exploring the Tensions within Post-Apartheid South African Water Policies

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Introduction

The provision of good quality basic services to everyone was one of the main objectives of the anti-apartheid struggle as well as one of the key strategies identified by the African National Congress (ANC) to address the legacies of the apartheid regime and to complete the process of democratization in the country (ANC 1994, Makgetla 2004, Mehta 2004). However, access to water and sanitation in South Africa is still characterized by many failures and tensions. For instance, many households struggle to get access to water and sanitation services because they cannot afford them and thus have to rely on a basic provision of water, while others are not even guaranteed such a basic provision.

One of the major contradictions that has emerged during the last few years involves the presence of a human rights framework, embedded in the constitutional right to water (RSA 2009 [1996]) and in the Free Basic Water (FBW) policy of 2001, which is challenged by the adoption of neoliberal policies. Although the Constitution states that everyone should have access to sufficient water and the FBW policy translated this mandate into a free provision of 25 litres per person per day, it seems that since the introduction of neoliberalism in the country by the ANC economic and financial considerations have prevailed over history. Thus, the residents of historically poor and black areas have been severely affected by neoliberal reforms in the water sector (McDonald 2002).

During apartheid, access to water was regulated by different legal systems, according to the policy of racial segregation and the principle of separate government which inspired it. Therefore, for this period, it is possible to identify at least three formal systems of laws and regulations, namely one for the white minority inhabiting the country, one for the black population living in the townships and one for the so-called Homelands or *Bantustans*. In general terms, while white residents were able to access good quality and highly subsidized services, the rest of the population had to rely on poor quality services through infrastructures which were not maintained by the state (Flynn and Chirwa 2005, McDonald 2002). Even where townships were provided with services at low cost¹ (or, for that matter, free of charge during the payment boycotts of the 1980s and early 1990s), this was not intended to benefit black residents, rather to avoid protests and the rise of political activism at the margins of the cities.

The aim of this paper is to show some aspects of multiplicity that still persist in the provision of state-run water and sanitation services. This will be related to the process of decentralization which started immediately after the end of apartheid, coupled with the adoption of neoliberal reforms which brought the restructuring of municipalities according to the so-called New Public Management (NPM) approach. Therefore, I will focus on the dynamics and tensions between the national and local level of government in the shaping of water and

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sanitation regulatory regimes. Moreover, in order to explore issues of inclusion and exclusion, I intend to ask whether the effects of the post-apartheid water reforms ended up reproducing past inequalities.

The paper is structured as follows. The first section will focus on the process of decentralization in South Africa and on those failures (i.e. administrative, financial, political) which had an impact on the provision of water and sanitation services. The second section will explain how and why neoliberal reforms at the local level exacerbated an already difficult situation in service delivery. The third section will explore the issue of reproduction of past inequalities in accessing water and sanitation services, by focusing on two illustrative cases, namely water management devices and informal settlements. In the conclusion I will sum up the major points of my argument and make some remarks on the notion of citizenship in post-apartheid South Africa and on some recent developments in the delivery of basic services.

This paper draws on an extensive literature review and on a period of fieldwork in Cape Town (July - August 2009, based at the Community Law Centre (CLC) of the University of the Western Cape), which I carried out in order to collect data for my Master's thesis at the International Institute of Social Studies (ISS), in The Hague. Due to the requirements of a Master's programme, during my fieldwork I was able to conduct a limited number of semi-structured interviews. The respondents were selected by means of snowballing sampling in order to get different perspectives on access to water and sanitation in Cape Town (but also in other municipalities, according to the respondent's knowledge and experience). I interviewed academics, Non Governmental Organizations (NGOs) members, representatives of Civil Society Organization (CSOs), trade unionists, activists and residents. By means of those interviews, I aimed to collect not only factual information, but also attitudes and perceptions about progresses and failures in service delivery.

1. Decentralization and its failures: which effects on water and sanitation?

Over the last two decades, decentralization has emerged as one of the major reforms promoted within the framework of "good governance" in developing countries. Although it has come with great expectations, especially in terms of enhanced democracy, this process also entails some risks, which have been identified by the literature as political, administrative and financial (Bardhan and Mookherjee 2006, Hadiz 2004).

The case of South Africa illustrates some of the failures associated with decentralization and their possible influence on delivery of services. Before addressing this issue in more detail, I will briefly sketch the different stages through which decentralization was realized in this country. The South African context is rather peculiar in that the apartheid regime which ruled the country from 1948 to 1994 may be seen as a radical form of decentralization, albeit its scope was not enhancing democracy, but rather securing the control of the majority of the (black) population by the (white) central government. This objective was pursued with the creation of independent states (*Bantustan*) based on the principle of racial segregation and the appointment of Black Local Authorities which governed by means of corruption and coercion (Wittenberg 2003).

The dismantling of the apartheid structures of local government and the progressive democratization of the latter started with the Local Government Transition Act of 1993, figured

among the objectives of the Reconstruction and Development Programme (RDP) of 1994 and were finalized in the Municipal Structures Act of 1998. These developments resulted in the creation of three distinct types of municipalities, namely metropolitan municipalities, which have exclusive legislative and executive authorities over their areas, and district and local councils, which are interdependent. Parallel to the transformation of local government, the issue of democratic decentralization was discussed and agreed upon during the negotiations of the new Constitution of the country, the final version of which was issued in 1996. The Constitution introduced decentralization, where it described the status and objectives of municipalities (Sections 151 and 152) and established the principle of cooperative governance (Section 154), which states there are three spheres of government in South Africa (national, provincial and local) and these are distinctive, interdependent and interrelated. The process of decentralization was then accomplished by means of legal and policy documents, in particular the Local Government White Paper of 1998 and the Municipal System Act of 2000. Also, with reference to water and sanitation services delivery it is important to recall the Strategic Framework for Water Services: Water is Life, Sanitation is Dignity of 2003.

Following decentralization reforms, municipalities were made responsible for the provision of water and sanitation services (together with other basic services) to local communities. The Strategic Framework for Water Services (DWAF 2003: 6) states in fact that:

It is now possible for local government to assume full responsibility for ensuring water and sanitation services as provided for in the Constitution of the Republic of South Africa (Act 108 of 1996). This means that the role of the Department of Water Affairs and Forestry (DWAF) will change from being a direct provider to being a sector leader, supporter and regulator.

Thus, municipalities were nominated Water Services Authorities (WSA), meaning that they had the executive authority to provide water services within their area of jurisdiction either by providing the services themselves or by making a contract with an external Water Services Provider (WSP). Indeed, as early as 1998 municipalities were allowed to choose among different delivery mechanisms (already an element of multiplicity) which included: building on existing capacity, corporatization, public-public partnerships, partnerships with Community-Based Organizations (CBOs) and NGOs, contracting out, leases and concessions (public-private partnerships), transfers of ownership (privatization) (DPCD 1998: 75).

With reference to the financial instruments that municipalities can employ to secure the provision of basic services to their population, it is possible to distinguish between two main sources of funding. First, municipalities have to raise local revenue, especially through property taxation and user fees. Second, the Constitution entitles local government to intergovernmental transfers in order to help it provide basic services and perform the functions that it has been allocated (*Ibid.*: 85). Furthermore, municipalities can receive additional grants from other spheres of government, which in the case of water services take the form of the Equitable Share (ES) and the Municipal Infrastructure Grant (MIG).

The ES is a Constitution-based unconditional grant from national to local government aimed at funding the operation and maintenance costs of municipalities, while the MIG is a conditional grant approved in 2003² aimed at addressing the basic services backlogs across the country and financing the capital costs of extending infrastructures to poor households.

The major failures within the process of decentralization in South Africa which had an impact on the provision of water and sanitation services may be referred to using the categories mentioned above, namely administrative, financial and political. Evidence for these failures has been provided by some extensive research carried out in the past few years. For instance, I draw on the findings of the work done by the Centre for Applied Legal Studies (CALS), the Centre on Housing Rights and Evictions (COHRE) and the Norwegian Centre for Human Rights (NCHR), which assessed water and sanitation services provision across 15 municipalities in 7 provinces between 2007 and 2008 (Tissington et al. 2008). My research also uses the study of local government performance regarding service delivery which was conducted across 18 municipalities in the provinces of Eastern and Western Cape by Koelble and LiPuma (2010). My conclusions are also informed by the information on these issues that I collected during my own period of fieldwork in 2009.

1.1 Administrative failures

There is a high degree of consensus that one of the major problems with the provision of water and sanitation services is the lack of administrative and technical skills on the part of municipal officials and councillors. This lack has been further described in the research mentioned above as follows: a low educational level (often even illiteracy) among civil servants, which hinders the management of municipal finances and drawing up budgets; a limited understanding of the functions of local government and even in cases such as the municipal councillors, a limited understanding of their own role, which in turn has a negative impact on enhancing public participation; the shortage of engineers and technicians in public offices, which is caused by the fact that the low wages within the public sector seem not to be able to attract skilled personnel from the private sector; the fact that in order to compensate for the lack of skills, municipalities frequently have to hire external consultants (sometimes former civil servants that were appointed during the apartheid regime) at very high wages; and the fact that, in order not to lose personnel to the private sector, municipalities assign a very high percentage of their expenditure to pay their officials, with the consequence that very little is left for improving service delivery and also that some positions in the municipal offices may remain vacant due to a lack of funds.

In the course of my interviews with NGOs and trade unions representatives, the “capacity issue” came up quite often. When talking about the preliminary results of a research on different institutional arrangements for the delivery of water, one of the respondents said (NGO member, personal communication, 22 July 2009):

One of the big conclusions that is emerging is that the other factors are so much more important in terms of if water services are working or not than whether they have contracted to the private party or a public party or doing it themselves...There are these contextual issues, capacity issues that seem to be playing a stronger role than the institutional approach per se...This Water Services Authority/Water Services Provider, this split between these two functions is not working on the ground at all, there's no municipality that seems to, you know, have that figured out.. The financial information in most municipalities is completely inexistent, they don't know actually how much it costs to give water to people...Political interference in some areas...Lack of understanding of roles and responsibilities...

Another respondent, referring to the municipality of Cape Town said (representative of CSO, personal communication, 24 July 2009):

The Equitable Share...the city council is failing to decide how to spread the money...It [Cape Town] is making a lot of revenue... they're failing to say how to take this money back to communities, how is that to benefit them...they're failing to do that...I think it's an issue of capacity and a lot of political red tape...You know, you want to build houses, no the council is not capable of that, it has got a new priority, they want to build a stadium, you know, no no no the new mayor is against all these things, he doesn't want a new stadium, he wants a car...So you know, they can't say their approach is straight and that makes it is failing to deliver...

And then one respondent, talking about the lack of skills at the municipal level said (trade unionist, personal communication, 4 August 2009):

One of the reasons, real reasons why the water and sanitation infrastructure is so underdeveloped 15 years after freedom is because there aren't engineers at the municipal level. There's a huge shortage of civil engineers, water engineers, all the highly technical people required not only to build the infrastructure but to maintain the infrastructure...It's a huge huge real problem...It's also a self-created problem...Well if there was political priority, we've been learning from Gautrain,³ not just the amount of money that it costs, but there weren't the engineers so they were brought in from Europe...

1.2 Financial failures

Financial failures appear to be particularly important in our analysis because of their connections with the neoliberal reforms that will be discussed later. The financial problems faced by municipalities when dealing with service delivery refer both to the collection of internal revenue and to the receipt of intergovernmental funds.

With reference to the first issue, the research from Tissington et al. and Koelble and LiPuma have shown that due to the high levels of poverty and unemployment⁴ that persist in the country many municipalities are unable to raise sufficient internal revenue from user fees for basic services. For instance, in the case of water and sanitation services, tariffs have become unaffordable for poor households since the end of apartheid. As a consequence such households have to rely - if and where this is actually possible - on only a minimum amount of water provided for free by the municipality. The situation is exacerbated in uniformly poor municipalities where the lack of rich users hinders the collection of revenue to fund the operation and maintenance (let alone the improvement) of basic services. Thus poorer municipalities have become dependent on national grants, nevertheless the two instruments of intergovernmental funding in the water sector, namely the MIG and the ES, have also raised some issues of concern.

The problems with the MIG seem, once again, to be related to the lack of capacity at the local level. As the MIG is a conditional grant, the application process, the budget of funds and the conditions which must be met before becoming eligible or obtaining a renewal often require competence that goes beyond those of many municipalities. Furthermore, Tissington et al. also stress that poorer municipalities which obtain and spend the grant often find that the funds it provides are not sufficient to meet the needs of the residents (2008: 58). While in regards to the ES, although Koelble and LiPuma point to its advantages for being a form of cross-subsidization from wealthy to poor areas of the country, Tissington et al. highlight some of its shortcomings. For instance, they note that the calculation of the ES is based on definitions (e.g. that of household) which do not correspond to the reality on the ground, thus making the allocated funds insufficient (*Ibid.*). Moreover, they report that because it is unconditional, the

allocation of the ES is less regulated and less transparent, so that water services departments within a municipality may receive very little of it (Tissington et al. 2008: 59). In my own research, the issue of finances for water and sanitation services delivery was addressed in the following way (academics, personal communication, 10 August 2009):

[...] water is one of three sources of municipal revenue (along with electricity and rates), that is, there is a tendency to view water as a revenue stream, to assist in balancing the books, rather than as a public good. Moreover, in some very poor municipalities, particularly in rural areas, there are no high-end users to cross-subsidise low-end users, meaning that, often, the poorest people in the poorest municipalities pay much more for water than the poorest people in the richest municipalities. Although the Equitable Share is meant to redress such imbalances, it is insufficient to meet the water delivery needs of very poor municipalities and it is not ring-fenced, that is, there is no requirement for it to be spent on water services.

While another respondent focused on the internal tensions when it comes to allocate resources (trade unionist, personal communication, 4 August 2009):

Water was a very political issue from the start, water is covered by the RDP...I have no doubt it's a very low priority...Now that is not to say that money hasn't been spent on water but it's a very low priority...Just to quote two sets of figures in terms of low priority, 2006 figures, what it would cost to eliminate the water and sanitation backlog? Bearing in mind that the figures are all wrong, now put it aside...It was 14 billion for water and 14 billion for sanitation, 28 billion to eliminate all the water and sanitation backlogs. Now, that is almost the same amount as Gautrain [...] that's a real problem [traffic] but it's a tiny percentage of the population that has this problem. The cost of Gautrain is 28 billion, it's three or four times if not more the national amount spent by the nation on commuter rail nationally. In order to meet the real needs of a tiny percentage of the south African elite a vast amount of public money has been spent on this railway line...Now where is the priority in that? I'm saying if you want a clear, concrete example of A the fact that we can afford whatever it is and B the low priority given to water and sanitation, that's it.

1.3 Political failures

The report by Tissington et al. does not address the third failure, i.e. the political, and thus leaves it out of the major "fault lines" in water and sanitation services delivery. Similarly, the topic was only marginally touched upon during my interviews, with short comments like «political interference in some areas», «political red tape» particularly in regards to the situation within the housing departments, but none of the respondents elaborated further.

However, Koelble and LiPuma, as well as other authors (Cameron 2003, Tapscott 2007, Wittenberg 2003), also point to this aspect as an explanation for the poor service delivery by municipalities. Koelble and LiPuma in particular emphasize that in the Eastern Cape, where the political competition is almost absent given the very high levels of support for the ANC, there are more possibilities for a particular group of individuals to dominate a council for a long period of time and to create patronage relationships (2010: 584). They also refer to a study by Atkinson (2007), which describes the growing malpractice of municipalities quite extensively, both as it was perceived by citizens and also as discussed in media and government reports, in terms of corruption, nepotism and self-enrichment.

In that same study, Atkinson reported the following data taken from a Public Service Accountability Monitor (PSAM)⁵ survey of public officials' perceptions and experiences of corruption in the Eastern Cape (Atkinson 2007: 43; originally published in Allen et al. 2005):⁶

- 48% of officials believed that it was wrong but understandable to receive gifts in return for something that is part of their job;
- 27% reported witnessing political patronage (awarding jobs or contracts to political allies);
- 33% felt they witnessed nepotism (awarding jobs or contracts to relatives);
- 29% said they had witnessed the theft of public resources;
- 23% said that “all” or “most” of their fellow government officials in the province were involved in corruption;
- 41% expressed the fear that syndicates would intimidate them if they reported corruption.

It also is worthy to note that the former Director General of DWAF, Mike Muller, stated that poor water services delivery in South Africa derived from the fact that following decentralization a political approach had prevailed over a technical one in water management, thus the availability of new financial resources at the local level had increased opportunities for rent seeking, rather than increasing the well-being of the poor (Muller 2007). He also coined the expression “parish pump politics” to refer to «the way in which local power and social relations impact on water-supply systems» (*Ibid.*: 40).

What emerges from the analysis of the failures within the process of decentralization is a climate of tension between the national and the local level of government and a serious debate about who is primarily responsible for poor services delivery. Actually, there seems to be a growing consensus in the literature on the fact that both these levels of government should take responsibility for the current situation, as Atkinson (2007: 53) puts it:

the blame cannot be placed solely at the door of municipalities, for the intergovernmental system has largely failed to support local government adequately. Powers, functions and capacity-building responsibilities remain poorly defined. [...] Municipal actors are visible, local, and vulnerable; and they may be paying the price for inept policies and programmes at national, provincial and district level.

Also, one of my respondents said (academics, personal communication, 10 August 2009):

The reality is that pro-poor national policies are all good and well, however without support from national government there is no way municipalities can deliver and implement. The failures lie with both; however in many (mostly rural and poor) municipalities there is a definite failure on the part of national government to financially assist municipalities in water services provision. Support to, and regulation of, municipalities is sorely lacking, and national government has not been able to address this adequately or get this aspect right...

Still, the prioritization of political objectives and the consequent allocation of resources which take place at the national level of government is striking, especially when we think of recent ventures like the Gautrain or the Football World Cup which remind us of South Africa's wealth. To use the words of one of my interviewees: «we usually forget that South Africa is not a poor, but a rich country which has the resources to do whatever it wants».⁷

2. Neoliberal reforms at the municipal level: which effects on water and sanitation?

I will now argue that the problems associated with the process of decentralization were made worse by the adoption of neoliberal reforms by the central government and the consequent restructuring of municipalities according to the so-called New Public Management approach (NPM).

NPM can be defined as a broad set of reforms aimed at applying a management culture and orientation to the public sector and demanding that it be accountable for results (Manning 2001: 298-299). In particular, these reforms offer some organizational choices characterized by decentralized authority and a variety of service delivery mechanisms, where public agencies, private actors and even Civil Society representatives compete for the contract to deliver services. Where service delivery remains a public function, it can be performed by semi-autonomous agencies (a phenomenon also known as corporatization, see McDonald and Smith 2004) which focus on the production of quality services (the core business), leaving policy making and other minor functions to other offices. The market orientation of NPM is clear in its emphasis on competition and cost recovery. Cost recovery refers to a situation where the tariffs for basic services cover the full or partial cost of providing the service. For a service like water, this means that a customer will be charged the short-run marginal cost of receiving the service plus a portion of the long-run cost of operating and maintaining the infrastructure. As McDonald (2002) has explained thoroughly, cost recovery can be effective only if the following conditions are respected: the service provider must be able to measure accurately how much service is consumed by every single customer (hence, water meters); there must be a clear pricing system and the service provider must be able to collect payments; there must be punitive measures for those consumers who do not pay their bill (in the case of water, cut offs, legal actions, attachment of assets, eviction, but also water management devices like trickle valves and pre-paid meters).

Evidence for the adoption of NPM reforms in the South African water and sanitation sector can be derived by several legal and policy documents. In 1997, the Water Services Act and the White Paper on a National Water Policy for South Africa introduced the principle of cost recovery and insisted on the financial sustainability of water services. The Water Services Act also introduced the categories of WSA and WSP, opening up the possibility for private services providers to enter into a contract with municipalities, whereas the White Paper already envisaged the development of demand management tools and pre-paid meters for the purpose of water conservation.

Then, in 1998, the White Paper on Local Government, issued by the then Department of Provincial Affairs and Constitutional Development (DPCD), listed financial sustainability among the new principles for service delivery (together with accessibility, affordability, accountability and others) and offered the possibility of choosing from among different delivery mechanisms, as I have already mentioned. In particular, the White Paper (DPCD 1998: 76) introduced the idea of corporatization as the

separation of service delivery units from the Council. [...] Service units which are corporatized may be “ringfenced” or have their budgets separated from the rest of the municipal budget. They will be managed as operationally autonomous units. Corporatization allows Council to set policy and service standards and hold the unit to account against those standards. It also offers greater

autonomy and flexibility to the management of the service unit to introduce commercial management practices to the delivery system.

Moreover, in the section about municipal finances, the White Paper stated clearly that municipalities have to ensure that their budgets are balanced (meaning that income should cover expenditure) and that no “bailouts” would be provided in cases of over expenditure (DPCD 1998: 85). The stress on financial viability is then reinforced by a paragraph on cost recovery and one on credit control (*Ibid.*: 89).

The Municipal Systems Act of 2000 mandated that municipalities promote a culture of performance management and administer their affairs in an economical, effective, efficient and accountable manner (RSA 2000: 24). Chapter 8 of the Act, on municipal services, reiterated and systematized the principles introduced in 1998 with regard to tariffs and provision of services, while credit control and debt collection were treated extensively in Chapter 9.

The Strategic Framework for Water Services: Water is Life, Sanitation is Dignity issued by DWAF in 2003 referred to financial sustainability and viability of the water services sector as the third key objective of the reform it intended to promote (after ensuring provision and improving performance). Then, like the previous documents, it contained a section on tariffs based on cost recovery (DWAF 2003: 33) and one on credit control policies (*Ibid.*: 36).

Why then were the problems of water and sanitation services delivery, already explained in terms of failures within the process of decentralization, made worse by the adoption of neoliberal reforms? The answer is twofold. On the one hand, although equity concerns were always present in the abovementioned documents, budget concerns have, in reality, become the new priority for municipalities. As a consequence, a commercial approach to water and sanitation services (that is, as I have already noted, viewing these services as a source of revenue for the municipality, instead of public services) has prevailed. This brought about the creation of a “water ladder”, where better services are associated with higher tariffs, which the poor find very difficult to climb. This is a first manifestation of multiplicity at the grassroots level, which takes place within municipalities. I will come back to this in the next section, where I will focus on the supposing reproduction of inequalities in contemporary South Africa.

On the other hand, and here I come to the issue of multiplicity with regard to water regulatory regimes throughout the country, the new responsibilities assigned to municipalities (already lacking on many fronts) coupled with severe fiscal restraints have resulted in an extremely uneven implementation of the water and sanitation policies, and especially of their pro-poor elements. As one of my respondents has clearly illustrated (academics, personal communication, 10 August 2009):

While some municipalities are trying their best to provide FBW and provide water in a pro-poor way; others are wholly focused on recovering costs and have a profound anti-poor attitude, probably due to frustrations felt in terms of financial and technical constraints and pressure to implement pro-poor strategies without the necessary support.

The case of Free Basic Water (FBW) is indeed exemplar in this regard. Let’s recall that the Free Basic Services (FBS) policy (FBW plus Free Basic Sanitation, FBSan) was introduced in 2001 as a first attempt to provide a clear interpretation of the constitutional wording “sufficient water” and to solve a situation where poor areas were finally reached by infrastructure, but people were unable to afford the cost of services. This policy therefore set out

that every household in the country receive a basic amount of water (that is, 25 litres per person per day) free of charge (DWAF 2001a, 2001b). While the definition of FBW is quite straightforward (at least on paper), that of FBSan is more vague⁸ and in fact Tissington et al. report that currently it only is employed in an ad hoc manner (2008: 31).

According to a report published by the Department of Cooperative Governance and Traditional Affairs (COGTA) in 2009, more than 80% of households in the country had access to water at a basic level of service, while around 67% of households had access to a basic level of sanitation (COGTA 2009a: 9).⁹ Thus, a first element to be noted is that the FBS policy is neither applied universally nor consistently. For instance, Tissington et al. (2008: 31) refer to rural and under-resourced municipalities as those which are generally unable to provide FBW.

A second point to note is that where FBS are actually offered to citizens, the differences in their implementation are interesting. Again, Tissington et al. have provided a lot of evidence to support this. According to their findings, FBW is normally delivered in one of the following ways: a universal provision of 6 kilolitres of water per household per month free of charge; a provision of 6kl of water per month free of charge only to those households registered as indigent (again, with a great variance in terms of the criteria for eligibility); a provision of more than 6kl of water per month free of charge to indigent households (thus including a component for water-borne sanitation). In Cape Town, for instance, where I have conducted my interviews, the municipality provides every household with 6kl of free water per month, while registered indigents receive 10,2kl of free water per month plus a grant of 30 Rands.¹⁰

3. Reproducing past inequalities?

What emerges from the data presented above is a multiplicity of regimes which regulate access to water throughout the country, especially where municipalities allocate FBW in different ways. This is both reflected in and serves to increase the already existing variability within a single municipality.

The possibility of differentiating between different users of water services, types and geographical areas was in fact already provided for in the Water Services Act of 1997 and then reaffirmed in the Norms and Standards published in 2001 (RSA 1997, DWAF 2001a). Whereas in 2003, DWAF introduced the notion of water ladder where the first step corresponds to the provision of basic water and sanitation services (25 litres per capita per day, although with a clear commitment on the part of the national government to raise the basic amount to 50 litres) and the second step to an intermediate level of service such as a tap in the yard (DWAF 2003). Now, even though these documents state that such differentiation must not result in unfair discrimination and providing different levels of services may be seen as a sensible strategy for the realization of socio-economic rights, as it depends on the availability of resources, it still seems appropriate to ask whether and to what extent this policy ended up with reproducing past inequalities and how it dealt with dynamics of social exclusion.

Regarding this issue, an interesting study has been published by Smith and Hanson in 2003. The research question that directed their work was «how has corporatization (via cost recovery, underinvestment in infrastructure and water cut-offs) affected equity in access to water in township communities?» (Smith and Hanson 2003: 1524). In order to answer this question, the authors selected four townships (both African and Coloured) within the

municipalities of Tygerberg and Cape Town and then three areas within each township which corresponded with three different levels of water services: basic (communal standpipe within 200 meters from the household); intermediate (yard tap); full-metered (in-house connection) (Smith and Hanson 2003: 1523).¹¹ Then, by means of semi-structured interviews, the authors investigated households' access to water from 1997 to 2001, which was a period of intense restructuring of local government. According to their findings, the basic needs approach adopted by the two municipalities recreated the historical inequalities produced by the apartheid legislation. This was evident in a number of patterns. First, municipalities were under-investing in new infrastructures in townships, so that there was considerable difference in the level of access to water and sanitation services between formal and informal settlements, where the first consumed in average 23kl of water per household per month, while the second only 1,8kl. Second, households in townships were accumulating significant arrears which dated back to the apartheid period, resulting in widespread cut offs of water services from 1998 to 2001 (16.964 in Cape Town and 142.922 in Tygerberg). Third, municipalities operated under the assumption that every household was equally able to pay, thus neglecting the different needs and possibilities of historically disadvantaged areas.

Now, what is relevant for the purpose of this paper is to ask what has changed since 2001. I will answer this question by focusing on two major issues, namely water management devices and informal settlements.

3.1 Water management devices

Since 2001, municipalities throughout the country have generally abandoned the practice of water cut-offs for two main reasons. First, with the implementation of the FBW policy water disconnections would have been a major contradiction (indeed, where these are still enforced, they do not affect the provision of basic water). Second, water cut-offs proved ineffective as a credit control strategy, both because they did not motivate households to pay for their debts (on the contrary, illegal reconnections were common) and because they were too costly for the municipality (both in terms of billing and the necessary staff to cut off and then reconnect the water). As a consequence, water departments have resorted to water management devices which range from relatively simple tools like flow restrictors to more technical appliances like Pre-Paid Meters (PPMs). Yet, these devices have raised some issues of concern.

First, their very functioning, where flow restrictors limit the flow rate to even 1 litre per minute while PPMs contain automatic shut-off valves which interrupt the provision of water as soon as the credit runs out, raises the question of whether they still allow for acceptable levels of consumption. Apart from the issue of emergencies, which is clearly not taken into consideration, it is questionable whether these devices comply with a number of legal provisions, for instance those referring to the minimum flow rate (i.e. 10 litres per minute) and to the conditions for disconnections (i.e. notice of intention, opportunity to make representations) (DWAF 1997, 2001b).

Second, when considering the reproduction of past inequalities, it is important to look at the spatial location of these devices and the conditions for their installation. Indeed, water management devices are installed only in low-income areas (i.e. townships), while they are usually not present in higher-income areas (i.e. wealthy suburbs) (Mazibuko 2008, Tissington et al. 2008). Municipalities justify this by arguing that the greatest losses of water (both physically

and financially) take place in poor areas (*Mazibuko* 2009, NGO member, personal communication, 22 July 2009). However, such an argument fails to take into consideration the historical reasons for such losses, both in terms of underinvestment in infrastructure and in terms of the origins of the arrears¹² accumulated by households in the townships. Moreover, Tissington et al. have noticed that credit control is not immediately enforced when it comes to high-income areas, businesses and government departments, although the last owe a lot of money for water services (Tissington et al. 2008: 56).

Finally, the installation of water management devices is often one of the conditions to register as indigent with the municipality and receive the FBW (*Ibid.*: 33). This means that poor households are forced not to exceed the basic amount of services, otherwise they would be punished by means of the devices.

One of my respondents gave me the following picture of the use of these devices (academic and representative of CSO, personal communication, 5 August 2009):

If you're one or two people in a house and you be very minimal then chances are that 6kl would actually last, but if you go beyond that, if you go to more sophisticated domestic uses, you know, as you start getting more people in a household, then chances are that 6kl are only going to last two weeks [...] to give you an example in the case of Soweto Phiri, if you take the 6kl and a pre-paid system, I interviewed people where they would fill a bath then the father would have a bath, then the mother would bath in the same water after the father, then the two adult sons would bath after in the same water, and then the sister would bath in the same water. Then they don't drain the water. The water is put in buckets and used to flush the toilet. So you ask what sense of hygiene or, apart from hygiene, what sense of humanity or integrity does that give you when actually five or six people have to bath in somebody else's water? You start questioning how is that people that are genuinely poor and who cannot afford the cost of water are asked to live their life in such a inhumane way...

The fact that poor households are forced to employ the most extreme remedies to conserve water and thus restrain themselves from consuming even the basic amount for fear of being suddenly cut off was mentioned also in another interview (NGO member, personal communication, 22 July 2009).

Now, it is quite interesting that in a context of intense debate about the installation of PPMs,¹³ the city of Cape Town introduced a new system in 2008. Although this system works in a very similar way to PPMs, any resemblance between the two has been denied. The new devices function in the following way: the municipality asks the household how much they are able and willing to spend on water, then this amount is converted into litres of water and divided by 30 days. In this way, the meter (which switches on at 5am and switches off at 9pm) automatically disconnects as soon as the daily limit has been reached (academic and representative of CSO, personal communication, 5 August 2009). Even though users do not pay for water in advance, the automatic disconnection makes these devices similar to PPMs, especially for poor households which cannot afford to pay for extra water. Eventually, the daily limit and the interruption of service during the night make the new devices even more insidious. At the time of my fieldwork, the data on the installation of these devices in Cape Town ranged from 7.500 (Tissington et al. 2008: 55) to 30.000 (representative of CSO, personal communication, 24 July 2009) and only in poor areas.

3.2 Informal settlements

With regard to informal settlements, very little has changed since the study by Smith and Hanson. The housing backlog and the continuous inflow of internal (and now also external) migrants who move to urban areas in search of jobs and better opportunities still force millions of households in South Africa¹⁴ to live in shack settlements, where poor quality municipal infrastructures, coupled with risks of flood and fire make living conditions particularly difficult. As these areas are overcrowded, where infrastructures are in place, they are overused and their quality is compromised. Moreover, as noted by Tissington et al. (2008: 28), since municipalities do not want to make investments in what they consider temporary settlements, the possibility of improving access to water and sanitation (climbing the ladder) for informal residents is actually bound to the housing delivery process.

Informal settlements do not qualify for the FBS policy, since they do not have in-house connections. Therefore, they are provided with a number of standpipes and buckets for sanitation purposes. In 2009, the official policy of Cape Town was to install one communal tap for every 25 households,¹⁵ however it seems very difficult to estimate how many people live in these areas. In fact, in the course of a series of interviews in an informal settlement in Khayelitsha (QQ Section, Site B), I found that about three hundred people relied on a single tap and that no sanitation system was in place.

Apart from the clear implications of sharing access with so many people, like for instance the long queues to fill buckets, my respondents raised other issues of concern (informal residents, personal communication, 5 August 2009). First, residents complained about the poor sanitation conditions of the area, in general and concerning the location of the tap, given the absence of both toilet systems and refuse collection. Second, they reported that in the past the tap had failed to work and that it had taken almost two months to have it fixed. Therefore, during this period residents were forced to walk quite far from their homes in search of alternative sources of water. Third, a family explained that sometimes they go and ask for water and toilets from a formal house nearby and then, depending on the mood of the owners, they might be asked to pay for what they consume. Similarly, another respondent told me that it could cost up to R200 per month to rent a toilet, but it might also happen that the owner of the latter decide to lock the door at night, so that the tenant cannot access it when necessary.

In describing the relationship between neighbors served by different levels of services (i.e. informal vs. formal), these last two accounts seem to confirm a pattern that was already pointed out in Smith and Hanson, where they say that «These fine-scaled inequalities in the distribution of infrastructure services have generated distrust and conflict within communities» (2003: 1529).

Conclusion

This paper has shown that the provision of water and sanitation services in South Africa, although being uniformly regulated at the national level, is still characterized by fragmented practices at the grassroots level. Multiplicity has been identified in three main instances: the possibility for municipalities to choose among various service delivery mechanisms; the uneven implementation of the FBW and FBSan policies; and the establishment of a water ladder that allows for different levels of service to different users. The persistence of differences in the way

people have access to water and sanitation services has been explained in terms of failures associated with the process of decentralization, made worse by the fiscal restraints imposed by neoliberal reforms at the local level. Furthermore, the paper has argued that the water policies implemented by the ANC have not solved inequality, rather they seem to reproduce those differences on which the apartheid system was founded, albeit now the criterion for discrimination is income rather than race.

This opens up the possibility for reflecting on the notion of citizenship in post-apartheid South Africa, as the commitments of one of the most progressive Constitutions in the world are not met on the ground. The case of water and sanitation services seems in fact to support the hypothesis that the poor are second-class citizens who lack a number of socio-economic entitlements. Moreover, and this is a serious issue of concern, poor residents have been depicted by authorities as “irresponsible” citizens (Naidoo 2007) who refuse to pay for services and cannot be trusted, so that they only receive via pre-paid systems. The fact that poor residents get into arrears now for having protested against the apartheid regime in the ‘80s is illustrative in this regard. What was perceived at the time as an active and “responsible” form of citizenship fighting against an unjust regime is now translated into “criminal” behavior.

The widespread local protests against poor service delivery which have inflamed the country since 2004 (Alexander 2010, Atkinson 2007, Sinwell 2011), seem only to have confirmed this attitude on the part of the government (at any level). In response to these protests, the state has in fact employed the rhetoric of African values like *Ubuntu* (where communal interests prevail over individual ones) to ask residents to take part in the restructuring of local government by obeying some common set of values, for instance volunteerism and community service or that rights come with responsibilities. In its Local Government Turnaround Strategy, COGTA expressly stated that: «A good citizenship campaign will be designed and launched, at the core of which is Ubuntu» (2009b: 22).

A very interesting analysis of the marketisation of *Ubuntu* in contemporary South Africa has recently been offered by McDonald (2010). According to this author, the rhetoric of *Ubuntu* has been employed, among other things, in public policy in order to support and justify neoliberal reforms. As he puts it (*Ibid.*: 146):

From housing to health care to waste management, there has been a downloading of the fiscal and physical responsibility of post-apartheid work on to the backs of low-income households in the name of “community”. [...] “Togetherness” – and the manual labour typically associated with it – is a virtue of the poor, it would seem.

A clear example of asking the poor to contribute to the provision of basic services by means of free manual labor is a case brought before the Western Cape High Court in 2010 by a group of informal residents of Silvertown in Khayelitsha. The case was about the installation of open toilets as part of the official Upgrading of Informal Settlements Programme (UISP) agreed upon in 2005. Indeed, the City of Cape Town claimed that they reached an agreement with the residents, according to which the installation of individual toilets (as opposed to communal ones) would have come with the commitment on the part of residents to enclose the toilets themselves (*Beja* 2011).¹⁶

The new targets set by COGTA for 2014 are: «All households to have access to at least clean piped water 200 metres from household; all households to have access to at least a VIP on

site; [...] All existing informal settlements to be formalized with land-use plans for economic and social facilities and with provision of permanent basic services» (COGTA 2009b: 6). This seems to be a long and contested process. Furthermore, when considering a concrete example of upgrading of informal settlements, like that described in the *Beja* case, it will require more research to assess whether the solutions envisaged will translate the rights of the poor into concrete entitlements and whether their status as full citizens will be recognized.

Notes

- 1- See the description of the so-called “deemed consumption” system in Bond and Dugard 2008.
- 2- After the merger of the Consolidated Municipal Infrastructure Programme, the Local Economic Development Fund (both managed by the Department of Provincial and Local Government, DPLG), the Water Services Capital Grant (managed by DWAF), the Community Based Public Works Programme (managed by Public Works), the Building for Sports and Recreation Programme (Sport and Recreation SA) and the Urban Transport Grant (Department of Transport).
- 3- The Gautrain is a rapid rail network which will connect the cities of Pretoria and Johannesburg in the Gauteng Province plus OR Tambo International Airport in Johannesburg and Sandton. The system is expected to be fully operative on July 1st 2011.
- 4- Alexander (2010: 32) reports that in September 2009, in the wake of the global financial crisis, unemployment in South Africa increased to 31.1%.
- 5- PSAM is a programme of the Centre for Social Accountability, an independent institute affiliated to Rhodes University. It aims to monitor the progressive realization of public service delivery by using various social accountability monitoring tools (<http://www.psam.org.za/>).
- 6- These data are reported also in Koelble and LiPuma (2010: 585).
- 7- International statistics rank South Africa among middle-income countries with a GDP of 238 billion US Dollars (UNDP 2009).
- 8- DWAF used the following wording: «a toilet which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents the entry and exit of flies and other disease-carrying pests» (2001b: 4).
- 9- In the report, a basic level of water service is intended as a standpipe within 200 metres from the household, while a basic level of sanitation service refers to a ventilated improved latrine (VIP) per household. These definitions however do not apply to informal settlements.
- 10- In Cape Town, people can apply for the indigent policy if they meet at least one of the following criteria: either owning a property whose value does not exceed R199.000 or earning a total income of R1700 or less per month.
- 11- Thus, this study is important in revealing the degree of variability with reference to access to water both among different areas of a city (i.e. white suburbs as opposed to townships) and within townships.
- 12- The issue of arrears is extremely complex. According to Smith and Hanson (2003: 1536), the high levels of arrears in the townships derive from the payment boycotts of the 1980s and early 1990s and from errors occurring in billing during the integration of former Black Local Authorities (BLA) into municipalities.
- 13- Remember that PPMs were one of the issues discussed in the *Mazibuko* case together with the amount of FBW (see *Mazibuko* 2008, 2009).
- 14- In 2009 1.9 million households in South Africa, corresponding to almost the 25% of total households, lived in informal dwellings (SACN 2011: 49).
- 15- These data derive from a matrix which was built in 2007 and 2008 during the fieldwork which preceded the publication of the report by Tissington et al. (2008). I received a copy of this unpublished material from the Community Law Centre in Cape Town, during my own period of fieldwork.

16- In his decision, the judge ruled that the provision of open toilets violated a number of constitutional rights of the applicants and any agreement which might have been entered into between the parts to be unlawful.

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