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Citizenship and the right to water: Lessons from South Africa's Free Basic Water policy

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Needs, rights and commodities

Water is uniquely and fundamentally essential for all aspects of life, well-being and productivity. It is also the lifeblood of ecosystems, essential for many eco-hydrological functions. For poor people, access to clean and affordable water is a prerequisite for achieving a minimum standard of health and undertaking productive activities. However, it is estimated that 1.1 billion people lack access to safe water, and almost 2.5 billion people – 40 per cent of the world's population – lack access to adequate sanitation (Neto and Tropp 2000, p. 227).

Recently, a growing number of analysts have argued eloquently that water and sanitation are not just basic needs but fundamental human rights based on the criteria established in international declarations that protect the right to livelihood and well-being.¹ Curiously enough, the right to water was only implicitly endorsed in the 1948 Universal Declaration of Human Rights (UNDHR), although it is explicitly mentioned in the Convention of the Rights of the Child (1989).² It was only on 27 November 2002 that the United Nations Committee on Economic, Social and Cultural Rights adopted the General Comment on the right to water.³ The Committee stressed the state's legal responsibility in fulfilling the right and defined water as a social and cultural good and not solely an economic commodity. There are several merits in endorsing the human right to water. Clearly, the provision of free and basic water, so essential for survival, could reduce the spread of diseases, as well as improve health and well-being. It could enhance poor households' sense of dignity and independence, reduce the drudgery of women and children who are responsible for water

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collection, and it could free time spent on water collection (one to four hours a day) for other activities.

Still, current orthodoxies in the water domain tend to focus on the need to view water as an economic good, and there is a marked lack of official endorsement of the human right to water.⁴ Since the Dublin Statement of 1992,⁵ water has increasingly been seen as having economic value in all its competing uses. Because water is scarce, goes the logic, it must be used judiciously and its demand must be managed. Accordingly, efficient resource management is equated with water having a price. The underlying assumption in most discourses – especially those originating in donor countries – is that there is a congruity between viewing water as a right and viewing it as an economic good. For example, the United Nations Children's Fund (UNICEF) and the World Water Council mention economic efficiency arguments and rights-based arguments in the same breath (see Nigam and Rasheed 1998, pp. 3–7). It is argued that even if something is a right, there is no denying the need to pay for it, as with food.

South Africa is one of the few countries that explicitly recognizes the right to water, and its Free Basic Water (FBW) policy goes against the grain of conventional wisdom in the water sector, which stresses cost recovery mechanisms. Since early 2000, the Department for Water Affairs and Forestry (DWAF) has been investigating providing a basic level of water free to all citizens. In February 2001, the government announced that it was going to provide a basic supply of 6,000 litres of safe water per month to all households free of charge (based on an average household size of eight people). This ties in with DWAF's overall mission to redress the inequalities of the past, overcome the backlog that it inherited in 1994 (around twelve to fourteen million people without access to water) and create universal access to water across the country. The Water Services Act 108 of 1997 states that a basic level of water should be provided to those who cannot pay, and the FBW policy emanates from the legal provisions of this Act.⁶ The main source of funding for this initiative is the Equitable Share, a grant from central government to local authorities. It amounts to about 3 billion rands a year, and is from national taxes for the provision of basic services.

This chapter uses the case of water and South Africa's FBW policy to examine several challenges confronting contemporary understandings of citizenship and rights. These include universalism versus particularism, resource constraints in implementing rights, and questions of enforceability and justiciability, particularly with respect to social and economic rights. Over the past century, citizenship has increasingly

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been seen as encompassing social and economic rights, often known as positive rights. Advocacy for positive rights, such as access to water, food and shelter, marks a sharp change from the negative or liberal understanding of rights that underpins notions of liberal democracy. Neo-liberal traditions have viewed negative civil and political rights as essential to understanding what, for example, constitutes citizenship. But these traditions have been reluctant to award the same widespread attention to social and economic rights because such rights have strong links to social justice and imply moving away from the neo-liberal notion that people's socio-economic status is determined by the market (Plant 1998, pp. 57–8). In fact, the distinction between negative and positive rights is highly problematic because both involve state intervention and commitments for their protection. In terms of the way poor people experience rights, both are interrelated and indivisible.

Still, the distinction between civil and political rights on the one hand, and economic and social rights on the other, tends to persist. In part, this has to do with historical reasons stemming from the Cold War period, when, for ideological reasons, Western nations focused largely on civil and political rights. Consequently, social and economic rights continue to be viewed as 'second generation' rights. It is also telling that the International Covenant on Economic, Social and Cultural Rights (ICESCR) uses much weaker language than the International Covenant on Civil and Political Rights (ICCPR). It calls on states to take measures towards the progressive achievement of social and economic rights. This could suggest that there is a hierarchy in the realization of rights; that is, some are realized more gradually than others, thus weakening the imperative to see some as rights. It also has fewer signatories than the ICCPR, and the USA has not endorsed this covenant.

The South African case illustrates these contradictions nicely. Despite being the only country in the world that explicitly acknowledges the constitutional right to water, the massive policy and institutional changes needed, in parallel with strong trends towards cost recovery in the water sector, have made this policy difficult to realize. This underscores the need to look at how rights go hand in hand with political choices around responsibilities and resources. This chapter argues that even though implementing universal rights standards has been rather contradictory in the water domain, there is still value in institutionalizing access to water as a human right and viewing the right to water as an entitlement of both national and global citizenship. The right to water in principle provides justiciable components to local claims and struggles around water. Finally, universal rights language can be used as