

**Do human rights make a difference to poor and vulnerable people? Accountability
for the right to water in South Africa ¹**

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To what extent is accountability key to realising rights? In struggles over access to water, conflicts between market- and rights-based frameworks imply distinct strategies of accountability. The former implies consumers holding service providers to account. In this understanding, citizens are consumers and accountability is exercised through the implied contract, mediated by the market, between customer and water utility, even if the state remains responsible for regulating private service providers to ensure they meet the needs of the poor. Rights-based frameworks assume that accountability claims will be pursued through and mediated by the state. This confers upon the state the power to both respect and deny rights, the consequences of which are explored below.

In the past decade, the rights discourse has gained currency in international development. A human rights approach to development is seen as moving away from looking at charity or handouts to empowerment and securing firm rights to ‘the requirements, freedoms and choices necessary for life and development in dignity’ (Hausermann 1998). Despite the fact that support for the human rights movement has been growing considerably and a

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human rights approach to development is now fairly mainstream, there is a growing acknowledgement that many of the world's poor and marginalised have yet to enjoy the benefits of these rights. There are many possible reasons for this.

First, *sins of omission* may deny citizens access to social and economic rights. It is well known that poor states may not prioritise the provision of education, water and housing for all. Also, many developing countries lack the resources to make good the rights that allow all citizens to live a life of dignity, or the institutional capacity to establish these rights. Conversely, citizens may not be aware of their rights and may not have the capacity to mobilise around them. Second, *sins of commission* may deprive people of rights. The rights of vulnerable people may knowingly be put at risk or even violated for a variety of reasons. For example, freedom of speech and the right to protest are severely restricted under dictatorships. Moreover, as this chapter demonstrates, states and global players may introduce macroeconomic policies that violate basic rights in the name of development or growth. It is, however, the lack of mechanisms of accountability and poor regulation on the part of states that allow both sins of omission and commission to flourish, preventing economic and social rights from becoming real.

Accountability is usually seen as the means through which the less powerful can hold more powerful actors to account (Goetz and Jenkins 2004). Traditionally, it is governments that are mainly responsible for protecting people's rights, but there is an increasing need to hold private sector and global actors to account for policies and

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programmes that have a far-reaching impact on the rights and well-being of poor and vulnerable people. Diffuse and unclear rules of accountability for global players and non-state players are problematic when most human rights declarations focus on states as the primary deliverers and protectors of rights.

Rights claiming is a way to demand accountability from powerful players. But, as this chapter demonstrates, accountability is an issue that is still missing from many human rights debates. For the Millennium Development Goals and other processes to be successful, attention must be paid to several contradictions and questions. Do paradoxical outcomes arise from a dual commitment to markets and rights, compromising people's basic rights while making it difficult to enforce accountability mechanisms? Can poor institutional capacity and low resource allocation impede the realisation of economic and social rights? Do the necessary accountability mechanisms exist to hold the powerful to account? Is there an ambiguity about responsibilities and duty bearers when economic and social rights are violated?

This chapter focuses on these issues and questions by examining the right to water in South Africa.² In 2002, the UN Economic, Social and Cultural Council gave a lot of prominence to the right to water through its General Comment No. 15, which applies an

² The Centre on Housing Rights and Evictions (COHRE) in Geneva, which has done extensive research on the right to water, clearly lays down the legal basis for the right to water (COHRE 2004). At the 1977 United National Water Conference, the Mar del Plata Declaration recognised that all peoples 'have the right to have access to drinking water in quantities and of a quality equal to their basic needs'. It has subsequently been recognised explicitly in several legally binding treaties, such as the Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (CEDAW), the Convention on the Rights of the Child (1989) and, more recently, in the General Comment 15.

authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), ratified by 148 states. The Comment, not a legally binding document, stated explicitly that the right to water is a human right and that responsibility for the provision of sufficient, safe, affordable water to everyone, without discrimination, rests with the state. States are thus clearly responsible for progressively realising the right to water.

Here I examine both the ideological currents underpinning the water debate in South Africa and its institutional, administrative and policy environment in order to understand the importance of accountability in realising the right to water. The chapter draws on empirical research conducted in 2002 and 2003. Interviews were conducted with NGO representatives, villagers, academics, policy makers and private sector representatives in Cape Town, Pretoria, Johannesburg and in the Eastern Cape province of South Africa.

Dancing to the two tunes of rights and markets?

South Africa is the only country that recognises the human right to water at both the constitutional and policy level. Moreover, its Free Basic Water (FBW) policy goes against the grain of conventional wisdom in the water sector, which stresses cost recovery mechanisms and shies away from endorsing the human right to water (Mehta 2003). Since early 2000, the Department for Water Affairs and Forestry 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). 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 the Act. The main source of funding for this initiative is the Municipal Infrastructure Grant, a conditional capital grant for the provision of infrastructure, and the Equitable Share Grant, an unconditional grant from the central government to local authorities intended for operational expenditure. The latter amounts to about R7.5 billion a year [currency conversion], and is from national taxes for the provision of basic services.³

While the government of South Africa stands alone internationally in endorsing the constitutional right to water, its policies have been informed by several dominant water management frameworks, which include an emphasis on cost recovery as well as a shift in the role of the state from direct provider of water-related goods and services to a more regulatory function, with privatisation seen as the means to overcome the past failure of public systems to provide water to the poor. Government policies draw on a quasi-consensus amongst multilateral and bilateral agencies on issues such as cost recovery, user fees, and demand management, manifested in both poor countries and middle-income settings like South Africa. For example, several authors have demonstrated the extent to which the World Bank and the International Finance Corporation (IFC) have shifted South African government thinking away from its Reconstruction and Development Programme (RDP) commitments in infrastructure and service provision, based on entitlement and welfare, towards a cost-recovery approach that can deprive poor

³ DWAF official, personal communication by email, 16 May 2005.

communities of their basic right to an adequate provision of water (Pauw 2003; Bond 2001; 2002). In 1996 total cost recovery became an official policy of the government when it adopted its fiscally conservative Growth, Employment and Redistribution macroeconomic policy (GEAR). The central features of the policy are a reduced role for the state, fiscal restraint and the promotion of privatisation.

Thus, alongside the remarkable commitments to providing free water, several policy changes were introduced under World Bank influence (Pauw 2003; Bond 2001). These include the 'credible threat of cutting service' to non-paying consumers, a move which has been linked by some to cholera and other gastrointestinal outbreaks (Pauw 2003; McDonald 2002). From 1997 municipalities began to witness widespread cut-offs of basic services to non-payers (*ibid.*). As the cost-recovery principle was applied, households that used more than the basic amount, and found themselves unable to pay, faced disconnections. In the case of *Manquele v Durban Transitional Metropolitan Council* 2001 JOL 8956 (D), the High Court found that the City Council had a right to disconnect the water supply of the applicant, Mrs Manquele, because she chose not to limit herself to the water supply provided to her free of charge. However, commentators argue that by completely disconnecting her water supply the municipality deprived Mrs Manquele even of the free basic amount; this was problematic, since the right to a basic level of water supply exists notwithstanding the ability to pay (Community Law Centre 2002). While cut-offs took place even during apartheid times (when non-payment for services was a form of political resistance),⁴ the level of public indignation is

⁴ Barry Jackson, personal communication, 23 December 2003.

undoubtedly higher today, not least because of the strong importance attached to economic and social rights in South Africa's constitution.

There are controversies over the number of people who have experienced cut-offs. According to the Municipal Services Project, using representative national survey data from the Human Sciences Research Council (HSRC), ten million people have experienced cut-offs in recent years (McDonald 2002). This figure is contested, however, and has been refuted by the Department for Water Affairs and Forestry (DWAF) (Kasrils 2003) and further revised by the HSRC to approximately 2 per cent of all connected households, or over 250,000 people. Despite DWAF's admission that such numbers are a matter of serious concern, McDonald stands by the figure of ten million and has challenged DWAF and other agencies to research a more accurate figure (*Sunday Independent* 2003). DWAF maintains, nevertheless, that under certain conditions cut-offs are permissible on the legal basis of the Strategic Framework for Water Services.⁵

As part of GEAR, the South African government also reduced grants and subsidies to local municipalities and city councils. This forced cash-strapped local authorities to turn towards privatisation as well as to enter into partnerships in order to generate the revenue no longer provided by the national state (McKinley 2003). Since local government structures were incapable of dealing with past backlogs on their own, they began to privatise public water utilities by entering into service and management partnerships with external agencies. These ranged from multinational water corporations to South African

firms. The role of consortia was also key. For example, Suez, which collaborated with the apartheid government in providing water largely to the white minority, formed Water and Sanitation Services Africa (WSSA). It subsequently won ‘delegated management’ contracts in Queenstown, Fort Beaufort and Stutterheim (all in the Eastern Cape) (Bond *et al.* 2001). Ruiters (in Pauw 2003), who researched water privatisation in these three towns, argues that water tariffs increased up to 300 per cent between 1994 and 1999. Pauw (2003) argues that by 1996 a typical township household was paying up to 30 per cent of its income for water, sewerage and electricity. Average income in the area at the time was less than US\$60 per month, with more than 50 per cent unemployed. Those who could not pay their bills (the majority) were cut off and in Queenstown special debt collectors were appointed and a reinstatement fee was introduced that was almost twice the average township income.

Implementing FBW: experiences from the Eastern Cape

The Eastern Cape is the poorest of South Africa’s nine provinces, with a predominantly rural population, high unemployment, and poor access to social services. Located on the south-eastern coast, the Eastern Cape province accounts for approximately 16 per cent of South Africa’s population. Of all Equitable Share Grants to the nine provinces, the Eastern Cape receives 17–18 per cent (National Treasury 1999; 2004). Research was conducted in two district municipalities in the former Transkei.⁶ The Alfred Nzo District Municipality (ANDM) is one of the poorest district municipalities in the Eastern Cape. It

⁵ DWAF official, personal communication by email, 16 May 2005.

has 50 per cent unemployment and no manufacturing industry to curb the problem.⁷ Across ANDM's large, poor rural population, 214 villages have a reliable water supply, whilst more than 400 villages do not have any water scheme whatsoever. ANDM is one of the poorest district municipalities in the Eastern Cape. The O. R. Tambo District Municipality is slightly larger, with a population of over 1.6 million and an unemployment rate of 51.8 per cent. Currently available statistics indicate that only 13.2 per cent have acceptable access to safe water (SSA 2002).

The FBW policy was conceived by DWAF at the national level, but its implementation rests with local authorities, including district and local municipalities, who are designated water services authorities (local municipalities, however, have to apply to be water services authorities). Although they are free to interpret it according to the resources and capacity available, operationalising the policy has been difficult. After all, the mere endorsement of the principle of social justice does not determine how resources are to be distributed. Instead, the distribution of resources and the implementation of rights-based approaches are usually at the discretion of professionals and bureaucrats in the public sector, who lack a clear directive on how to 'implement justice' (Plant 1992: 20). This certainly echoes the experiences of officials in South Africa's Eastern Cape. Many worked in bureaucracies of the former homelands and inherited a massive backlog in

⁶ See Mehta and Ntshona (2004) for more details.

⁷ Interview with the Deputy Director, Water and Sanitation, Alfred Nzo District Municipality, 10 December 2002.

1994. They also struggle to grapple with the many political and institutional changes arising through South Africa's decentralisation process.⁸

Many of the poorer district municipalities lack financial and institutional resources to implement the policy, despite Equitable Share Grants. Monitoring and rationing the quota of free water is also very difficult. Often, it can cost more to install a water meter than to provide the water free.⁹ In some cases, the FBW policy has also made charging for water difficult. Many communities understood that they would now stop paying for water (Jackson 2002), making it increasingly difficult for cash-strapped district municipalities to raise the money required.

How do poor municipalities such as ANDM raise the money to ensure water delivery?

The ANDM authorities believe that it is too costly to charge for water in rural areas. They have been down that road in the past and find it an administrative burden to try to collect tariffs. Moreover, many of the schemes were underutilised – Build–Operate–Train–Transfer (BOTT) schemes, for example, which relied on expensive technology and outside experts rather than local knowledge and expertise. Existing pre-paid schemes were highly underutilised and most people continued to use natural sources of water such as untreated streams. Those using the pre-paid scheme were only collecting an average of three litres of water per person per day, which meant that a million-rand investment could

⁸ Budget cuts have gone hand in hand with decentralisation in South Africa (Manor 2001). The function of water services provision is now performed by the municipality itself or by other public or private bodies. While this process devolves power to local authorities and gives more voice to ordinary citizens, it can also lead to shedding of functions and the dumping of 'unfunded mandates' on lower levels of government, which poor rural municipalities are not able to implement (Olver 1998).

not yield the benefits intended and remained underutilised. Moreover, the scheme was not addressing the problems of health and the need to free women from long-distance water collection. It is for this reason that ANDM moved away from the policy of cost recovery and is now implementing the FBW policy. ANDM has not announced the policy to the entire district municipality, however, lest serious financial problems arise in implementing it. Thus many people in the Eastern Cape, especially in the remote rural areas, are not even aware of the policy of FBW.

Free water or basic water?

It has been argued that FBW is difficult to realise in rural areas dogged by a massive backlog with respect to water supply and sanitation. In ANDM in 2003, 132 villages (with a population of about 170,000 people) were being serviced with basic schemes. By 2010 the district municipality plans to serve 420 villages (a population of about 540,000 people), still only 63 per cent of the villages in the entire district.

Clearly a long road lies ahead in ensuring water for all. ANDM has to consider both the free basic water policy as well as basic water for all. In principle, basic water for all takes precedence in the work of ANDM, together with sanitation priorities. However, there is a trade-off in implementing free water for some and basic water for all. ANDM has contracted consultants to develop business plans for priority villages within the municipality. A village with a high population size, a clinic and/or a school is generally high on the list of priorities. However, if a priority village is next to a village with low

⁹ Interview with DWAF official, Mount Ayliff, 23.04.2002.

priority, the consultants have to develop a business plan that encompasses both villages as one project, because people in the next village would fail to understand why they are being bypassed whilst the other village is earmarked to get a water scheme. Indeed, failure to recognise adjacent villages could result in pipes being destroyed and water thefts.

In order to ensure that basic water is provided, ANDM has introduced play pumps as interim measures in villages unlikely to receive water in the near future.¹⁰ The play pumps are also supposed to curb the problem of cholera, which in the beginning of 2003 was a problem in other district municipalities. Play pumps cost anything between R20,000 and R100,000 with a reservoir [\[currency conversion?\]](#). Thus, despite good intentions, district municipalities such as ANDM and O. R. Tambo are finding it difficult to realise FBW for all. In part this delay is due to the legacy inherited in 1994, combined with both financial and institutional constraints. At the time of writing, 55.2 per cent of the country's poor population was being served by FBW (DWAF 2005). In 2003, two years after the policy had been announced, only 50 per cent of the communities had implemented FBW (COSATU 2003).

Livelihood and poverty reduction impacts

The FBW policy was not intended to address redistribution issues, and there are other provisions in the National Water Act (for example, compulsory licensing) that deal with

¹⁰ Play pumps are designed in such a way that anyone can operate them. Children, who can get on and off the wheel as they play, can turn the horizontal wheel.

these. Still, we need to ask how it contributes to poverty reduction and wider social justice concerns. For example, it is intended that the 25 litres of water will be used primarily for drinking and cooking purposes. However, the poor also need to be assured of water during scarcity periods for their farming activities based on subsistence. The 25 litres a day policy largely applies to domestic water supply, and not to wider concerns of livelihood security and how to restructure existing water-user practices.

While the Committee on Economic and Social Rights does not lay down particular standards on how much water should be provided, it states that water supply must be sufficient for personal and domestic use, correspondent to WHO standards stipulating a minimum of 50–100 litres per day with an absolute minimum of 20 litres per day (COHRE 2004: 8). Thus South Africa is providing close to the absolute minimum.¹¹ This is why trade union leaders and other advocates argue that the South African state should grant everybody at least 50 litres of water per day *per capita*. This, they argue, is the only way in which poor farmers can successfully maintain their livelihoods and thus escape the trap of poverty and dependence on pensions.

Do enforceable social and economic rights make a difference to people's lives and livelihoods? As demonstrated above, rights-based approaches may not necessarily radically redistribute resources in a society. But do they make a difference to poor people, and what are local-level village experiences of FBW? I draw on Zolile Ntshona's interviews in two villages in the Eastern Cape (see Mehta and Ntshona 2004) to show

how the daily lives of three rural women, of which two are pensioners and one is unemployed, have been affected by FBW. Mabombo is 61 years old and is entitled to an old age pension. Before the implementation of the FBW policy, she used to collect water from the spring far from her house, and used a ten-litre container to make two or three trips to the spring before sunrise. Collection from the spring was difficult for her because she had to wait for the sediments to settle before pure water emerged. She now feels that life has improved. She does not have to wake up in the morning before the livestock make the spring water murky and can concentrate her energy on other work. She uses the FBW for washing, drinking and cooking, though she still visits the spring to wash blankets. Mathungu, 70 years old, also supports a large family with her old age pension grant. She could not afford the R10 [currency conversion] to pay for water services in her village before the implementation of the FBW policy. She, too, no longer needs to make arduous trips to the spring on a daily basis. Masakala is an unemployed member of the water committee. Her main complaints under the FBW regime are the rules for water use. She feels that when she paid R10 a month for water she used as much as she wanted, but since the FBW policy there are restrictions, and she occasionally needs to pay for additional water.

Clearly, FBW has made a significant difference to the everyday lives of people like Mathungu, Masakala and Mabombo. For one thing, it frees women from the time taken to collect water and the health benefits are clear, since they do not need to resort to unprotected streams. However, the issue of poverty alleviation raises questions because

¹¹ Of course what counts as 'sufficient water' is controversial. It is known that people can also survive on

of the restrictions imposed by the FBW policy. For example, water cannot be used or is not enough for agricultural production, which could alleviate poverty in the area. The ANDM has stated categorically that it needs to prioritise basic water provision largely for drinking and washing for all the villages first, before upgrading schemes for agricultural production.

In Mdudwa village, a gravity-fed scheme was implemented in 2001. The scheme has seven standpipes, of which six were working when the scheme started operating. In 2003, only three taps were still in operation. There is a compulsory fee of R5 at Mdudwa, which every household is expected to contribute towards operation and maintenance. Most people in the village have refused to pay the fee because the standpipes closest to their households are not working, while others are not paying because they cannot afford to pay. Still others do not want to pay because they are unhappy with the conditions of the scheme. For instance, the communities require large amounts of water for cultural purposes, such as the practice of washing blankets for funerals and other ceremonies. The scheme does not provide enough water for these activities. Therefore, since the scheme has not improved people's livelihoods and has also imposed restrictions on water use for activities which are important to them, people generally perceive it as useless. Finally, there are also many people in Mdudwa who are not aware of the FBW policy.

Lessons from South Africa's Free Basic Water policy

10 litres of water a day (Mehta 2005).

The South African government stands alone in recognising the constitutional right to water. This is a great achievement. Yet, despite the existence of a constitutional right to water and related policies, millions in South Africa are either not aware of or not given access to this right. Thus, a right conceived at the national level is still to be realised on the ground in many parts of the country. The South African case highlights several lessons about rights as an accountability strategy in this regard.

Realising rights in practice

The FBW policy has not been implemented in a standardised way. Water service providers (who could be private companies, water boards, district municipalities or community-based organisations) interpret the policy in different ways. In some areas, the right to water has also been hindered by market processes such as cost recovery, leading to controversial cut-offs. This chapter has demonstrated that economic and social rights fail to be realised owing to sins of omission (the lack of funds and institutional capacity) and sins of commission (where rights are knowingly put at risk). The most persistent stumbling block to realising the right to water are sins of omission, as outlined in the section on the Eastern Cape. These include capacity problems on the part of local authorities and financial constraints. But one may also argue that cut-offs and high payments are sins of commission that put poor and vulnerable people's right to water at risk. The result is that some South African citizens still do not enjoy FBW and many are not even aware of their constitutional right to 25 free litres of water per day. Thus there is very uneven access to the right to water in South Africa.

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The South African case highlights the difficulty in apportioning blame for rights violations and identifying who bears obligations and responsibilities to realise rights. This is a generic feature of the contemporary world, in which processes of economic globalisation have led to the proliferation of service provision by actors other than the state. As we saw in Chapter 2 of this book, this confuses lines of accountability, as channels of representation and redress central to accountability fail to keep pace with dispersed responsibilities.

Linking rights and poverty reduction

The FBW has certainly made a difference to the lives of poor people by addressing health issues and freeing women from time taken in collecting water. Still, the issue of poverty reduction seems to be lagging behind, especially with regards to water required for agricultural production purposes. The contentious issues concerning water for subsistence agriculture and cultural activities need to be resolved. The General Comment provides that states are required to ensure each person has access to sufficient, safe, acceptable, accessible and affordable water for personal and domestic use, and this is what the 25 litres per day per person achieves. But the Committee also states that while priority must be given to water for personal and domestic use, it is also important to recognise the need for water to meet the most essential aspects of each of the other relevant human rights (rights to livelihood, food, etcetera), for which the 25 litres do not suffice.

One reason why rights often do not make a great difference to poor people is because there is a marked lack of political will on the part of powerful stakeholders to enforce

them in practice. The South African case highlights problems that arise when adequate financial resources are not provided to realise rights to water and when contradictions arise from market-based approaches. However, promoting the human right to water can only be the result of a conscious socio-political choice on the part of decision makers and local people. Continued attempts to mobilise around this right by communities and activists may provide governments with the mandate to stand by that right – for which they can subsequently be held to account, and which they can be pressured to enforce in an equitable manner.

Market dynamics versus rights

The discussion has highlighted the difficulty of implementing the principles of free basic water and cost recovery in tandem. The Committee clearly states that water should be affordable and not reduce a person's capacity to access other essential goods such as food and housing. This normally means that water must be subsidised for poor communities and provided free where necessary. This is the spirit of the FBW policy. But, the chapter has also demonstrated how cost recovery and privatisation dominate South Africa's water domain. Thus water is often unaffordable and cut-offs have contradicted and violated people's basic right to water. In rural areas such as the Eastern Cape, both willingness and ability to pay for water services were not very high, cost recovery was limited and there were many defaulters on payment for water use. There is thus a massive policy trade-off between thinking about free basic water for some and basic water for all. It is thus both dangerous and unrealistic to assume that cost recovery can be achieved amongst poor communities. When cost was an issue, a number of people continued to use

unprotected sources of water. Apart from health implications, the returns on investment for schemes where cost recovery applies could not be realised, since people did not always use them. It is compounded by the inherent tensions between rights-based and market-based frameworks, which assume and require different types of accountability politics. At times, though, markets may compromise social and economic rights since they ‘can systematically deprive some individuals in order to achieve the collective benefits of efficiency’ (Donnelly 1999: 628). Thus cost recovery and macroeconomic policies can have a direct negative impact on the right to water.

The politics of claiming rights and demanding accountabilities

Finally, how people demand accountability when their economic and social rights are violated is linked to the larger question of how rights are interpreted and deployed by local people. In urban areas, famous cases such as Grootboom (named after Irene Grootboom) have highlighted how poor people can be agents of change as they appeal to the Constitutional Court to advance their constitutional rights to basic services. In 2000, residents of Wallacedene, a large shantytown in the Cape Town area, made legal history when the Constitutional Court ruled in favour of their housing rights. Today, four years on, the people behind the historic Wallacedene settlement are still waiting for proper housing facilities. In fact, as one commentator argues, the only concrete building that the residents have is a stinking ablution block with broken pipes and inadequate sanitation (Schoonakev 2004). Since the Constitutional Court failed to specify which manifestation of the state – national, provincial or local – should honour the rights of the residents, there is a lack of clarity on where the locus of responsibility lies with regard to the

implementation of the Grootboom judgement. The Constitutional Court also did not play any role in supervising or overseeing the implementation of the various orders, and the South Africa Human Rights Commission is only playing a monitoring role. Residents are angry because they now do not know where to turn. This highlights the difficulty of specifying duty bearers and their responsibilities in implementing economic and social rights.

In remote rural areas such as the Eastern Cape, the capacity of citizens to claim their constitutional rights to basic services is far lower than in the cities. Many people are not aware of their constitutional right to water. Therefore, they are less likely to hold the government to account if their rights are violated. In part this is because of their ignorance of these rights, and in part it is because the mediators of justice (courts, lawyers, activists) are more likely to operate in metropolitan areas than in remote rural ones.

These problems should not detract from the fact that constitutional endorsements to social and economic rights are very important. In acknowledging the right to water, the South African government has gone against the grain of conventional wisdoms, both on questions of the rights and entitlements of citizens and as reflected in donor debates on water provision. In this respect, the FBW is a remarkable achievement. Defending the constitutional right to water, poor people have successfully moved the courts to grant interim relief from disconnections. However, in order for rights to be more effective, attention needs to be paid to the caveats presented here: the lack of attention to poverty

and livelihood questions; the problematic implementation of the policy; the lack of awareness; and the variable levels of accountability mechanisms to provide redress.

Implications for accountability

With the inclusion of new private actors, states are not merely enforcers of rights, but increasingly act as regulators and facilitators of rights (INTRAC 2003). Unfortunately, the General Comment and other such instruments do not explicitly identify private actors as accountable and responsible. Ironically, too, rights are denied at the ‘behest of powers beyond the state itself’ (INTRAC 2003: 3). For example, International Monetary Fund (IMF) and World Bank policies oblige states to curtail basic services and impose charges that exclude large numbers of vulnerable people. In this sense, global pressures have led to the state assuming a schizophrenic role as both the enforcer and violator of rights. Only the state can properly regulate the behaviour of markets and ensure that economic actors operate in a fair and transparent manner; only the state can provide adequate social protection to those who suffer insecurity and a loss of rights (ICHRP 2004: 60). But governments also become violators of rights by enforcing policies and programmes such as privatisation and structural adjustment that can erode people’s rights. Protective provisions do exist. For example, under the Water Service Act no disconnections can take place on the grounds of inability to pay. But the onus of proving ability lies with the water user and will depend on the user’s ability to access legal advice and representation – a minimal resource in many communities (COHRE 2004: 54). Thus links between ordinary citizens and their representatives in South Africa have become obscured through

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policy shifts towards GEAR and orthodox forms of neoliberal economic globalisation. This makes tracking processes of accountability difficult across these multiple scales.

This should not detract from the fact that rights do and should matter. The right to water is internationally recognised by both developing and industrialised countries as defined in General Comment 15. It includes clearly defined and realisable obligations, and thus forms the basis of concrete negotiations between the state, the communities concerned and civil society advocates. Moreover, the right to water in principle provides justiciable components to local claims and struggles around water and can also be used as a countervailing force against the commodification of water, which can impinge on poor people's rights. That few people in South Africa or around the world are demanding compliance and answerability on the right to water is another matter. But local struggles to realise the right to water are on the rise and the demand for accountability from water providers and those responsible for protecting this right will also therefore increase. If human rights are really to make a difference, we can only hope that more attention will be paid to the accountability mechanisms through which compliance and answerability become an indispensable aspect of the human rights regime.

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