

Free Basic Water and Economic Development: CAN THEY CO-EXIST?

DD Tewari discusses water rights issues and their underlying ethical basis, especially with respect to the justifiability of human rights to water use in South Africa and how this has stimulated economic development.

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Rights are an integral part of human existence, and can be defined as a claim or refer to a legal title. The incorporation of rights into social choice and political morality has been a familiar theme in the Western world. Government institutions have adopted different viewpoints or ethical theories to address the social need and demands of the people they serve.

Water, a natural resource, has been subjected to laws of demand and supply. As urbanisation and industrialisation has progressed, water has become scarce and more stringent laws to regulate water supplies have been enacted by countries in general. In South Africa, water rights have changed dramatically during the past three hundred years. In the democratic South Africa the structure of water rights has been redesigned with the adoption of a new progressive constitution, which safeguards the individual's human right to basic water.

ETHICAL BASIS OF HUMAN RIGHTS TO WATER AND TRADE-OFF WITH OTHER WATER RIGHTS

Rights have become a new instrument to engender development in the world. The United Nations (UN) and many governments of the world have proclaimed the rights of individuals to ensure ethical standards are upheld. In the context of water, the UN Committee on Economic, Social and Cultural Rights has elevated the issue of individual rights to water in General Comment No 5 – a non-legally binding document – to which nation states have responded differently.

The divergence of opinion in ascertaining human or individual rights to water use should be seen in the light of the various economic and social roles that water performs in society. Being a scarce resource, water commands a market and hence

a price, which means it is exchanged between a buyer and a seller – a contractual right. When water as a resource is owned by individuals who are granted rights by the State to abstract water from a water source it is known as property right. Finding the balance among these three forms of rights – human, property and contractual – forms the backbone of a new era of water management that we are contending today.

WATER AND THE TYPES OF RIGHTS

A property right is granted by the government to an individual as a legal claim to access to water. There has been a trend to formalise property rights structure in some countries, such as Brazil, Chile, and South Africa. The programme has been initiated by the World Bank. The main objective of this formalisation scheme is to provide security and certainty of legal title of rights-holders

so that they can defend themselves in court if challenged, trade their right or use them as collateral for raising finance.

The contract between the seller and buyer of water is another legal right. Water services are generally supplied in exchange for payment, and are necessary for financing water facilities. The World Panel on Financing Water Infrastructure Report of 2003 discusses the ways and means of financing water facilities and the focus is on creating an enabling environment which will make water affordable to all. In the South African context, the National Water Act of 1998 promotes equitable access to water and ensures that water institutions have appropriate community, racial and gender representation.

The human right to water emanates from Articles 1 and 2 of the International Covenant on Economic and Social Rights (ICESCR) which refer to the right to an adequate standard of living and highest attainable standard of health for all people. Consistent to this, the General Comment No 15 (GC 15) infers that water of acceptable quality for personal and domestic use be assured to individuals as a basic human right. This General Comment calls for a progressive realisation of the human right to water in the world while acknowledging constraints of available resources. The South African Constitution has created a justiciable human right to water and is one of only eight countries (as of 2004) who have made constitutional provisions to protect access to water.

ENGENDERING ECONOMIC DEVELOPMENT THROUGH THE RIGHTS-BASED APPROACH

The privatisation of water has been the hallmark of the new water policy regime. The new paradigm of water demand management which came into being in the 1990s has called for the management of water through efficient pricing. The direct translation of this has been the rapid privatisation initiative of water across the world.

The World Bank and International Monetary Fund (IMF) have driven the initiative of privatising water utilities around the world, especially in Africa. For example, a review of IMF loan documents to 40 countries in 2000 revealed that some 12 countries in Africa were granted loans on conditions that they privatise their water utilities.

Generally, these loan conditions stipulate that water consumers pay for the full cost of water delivery; that is, the cost of operating, maintaining and expanding the water utility and perhaps a reasonable rate of return on investment. The major winners from the privatisation exercise are the businesses, and this has resulted in high prices and disconnections at times. The brunt of privatisation is thus borne by the poor segment of society.

This has engendered conflicts between water users regarding human rights and other non-human rights (contractual and property rights) related aspects as discussed above. In the South African context, prepaid water meters have been used as a tool to collect payment from residents. Thus, when residents cannot pay, their water supplies are shut down. This causes people to look for alternative sources of water, which can be hazardous to human health.

The South African constitution, however, ensures the legal priority to the human right to water above other water uses. Some legal cases exemplify the current legality of water rights in South Africa. The case of Bon Vista Mansions vs. Southern Metropolitan Local Council is a notable one in this regard. The residents of the Bon Vista Mansions block of flats experienced the disconnection of their water supplies by the local council due to the non-payment of water charges. The court ruled in favour of the residents and the water supply was thus restored. This is a clear case where the human right to water use held the legal priority to overpower the claims of contractual right to water use.

In another case of Manqele vs. Durban Transitional Metropolitan Council, the court ruled that it had no clear guidelines regarding the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene, as per the South African Water Services Act. Since Manqele was already being given six kilolitres per month as free basic water and she was consuming more than the basic minimum, the court ruled that her right to water was incomplete and therefore not enforceable. This led to the debate on the free basic water limit – a controversial issue on its own.

In July 2006, five residents of Phiri in Soweto challenged the 6 000 ℓ per household limit imposed by Johannesburg Water in the Johannesburg High Court. Water Programme Director at the US Pacific Institute, Dr Peter Gleick, who acted as an expert witness, was of the opinion that the amount of free basic water should be raised to 50 ℓ/day/person. According to the Coalition Against Water Privatisation, the size of the average household in Phiri is 16, most of whom were unemployed. The current free basic water provided at the rate of 20 ℓ/day lasted no more than 12 days in a month whereafter residents were required to purchase water coupons which they could not afford. The court declared the prepaid meters unconstitutional. The case had reverberating effects – in Cape Town the limit of free basic water was subsequently increased to 10 kℓ/household/month.

SOUTH AFRICA'S FREE BASIC WATER POLICY

The free basic water policy of South Africa has been criticised as being economically inefficient. However, one has to see the emergence of this policy in the broader social context. In 1994, when the country's first democratically-elected government came into power, some ten million people out of 36 million were without access to safe water. The responsibility to provide access rests squarely on the shoulders of local and provincial authorities, with the Department of Water Affairs & Forestry acting as policymaker and regulator.

Three basic reasons are cited for instituting a free basic water policy:

- ◆ Water is a merit good with positive externality leading to enhanced welfare;
- ◆ Water accessibility leads to improved public health, which has multiplier impacts on the economy; and
- ◆ It enables the local municipalities to meet their constitutionally prescribed development obligations.

Under the Reconstruction and Development Plan it was postulated that the National Water and Sanitation Programme be launched to provide a safe and clean water supply of 20 ℓ/day to 30 ℓ/day *per capita* to all households within 200 m. In the medium term, it is to be revised to 50 ℓ/day to 60 ℓ/day. This was later materialised into a legal requirement in terms of the Water Services Act. The Act

Table 1: Population Served under Free Basic Water Policy by 30 June, 2008

Province	Population millions	Served ² millions	Percent	Poor population ¹ Millions	Served ² millions	Percent
Western Cape	5.25	5.00	95.3	0.79	0.77	97.7
Eastern Cape	6.46	4.62	71.4	3.58	2.076	58.0
Northern Cape	1.02	0.94	92.1	0.37	0.35	92.2
Free State	2.79	2.60	92.9	1.59	1.51	99.3
KwaZulu-Natal	10.58	8.56	80.9	5.86	4.09	69.7
North West	3.44	2.81	81.7	1.64	1.12	68.9
Guateng	10.81	9.54	88.2	3.81	2.83	74.4
Mpumalanga	3.68	3.33	90.5	2.09	1.26	60.2
Limpopo	5.36	4.31	80.5	3.24	2.65	81.7
Total	49.43	41.74	84.4	22.94	16.68	72.7

1. Total number of people in poor household and a poor household has a income of less than R800 per month.

2. The population that receives a basic water supply at no charge/ for free.

Source: DWAF

prescribed the 'basic water supply' of 25 l/person/day within 200 m of the household.

Durban Municipality pioneered the free basic water concept and acted it out in 2000. Following the Durban experience, the African National Congress' (ANC's) manifesto for local government elections included the promise of free basic water. It was finally decided to provide 6 000 l to each household per month and detailed guidelines were prepared by the Department of Water Affairs & Forestry.

The economics of the human right to water cannot be ignored in the long run if we look at the supply and demand situation of water in the country. The major use of water is agriculture, accounting for more than 60% of the total usage. Industry and manufacturing combined with mining and energy consume over 15% of the total national water use. The remainder goes to domestic supply and sanitation.

It is estimated that demand already exceeds supply in 80% of catchments in South Africa and the shortfall is being made up through the transfer of water, however, it is believed that the future scope for further transfer schemes is limited. The consumption of water by households is increasing rapidly as general incomes increase. It is estimated that water consumption is growing three times faster than population growth.

South Africa has thus followed a pragmatic approach to the development as required in the case of dual economy models: one, the policy of market-led allocation of water for the developed sector of the economy which can afford to pay; and two, the

policy of free basic water to the underdeveloped sector which lacks the purchasing power. Currently it is being funded by stepwise linear water rates – thus high-volume consumers are cross-subsidising those who cannot afford to pay for their water.

ACHIEVEMENTS OF THE FREE BASIC WATER POLICY

It is also important to stress that water privatisation, as propagated by the World Bank and IMF, is not necessarily a harbinger of efficiency and competition. In some cases, privatisation has done more harm than good. Since water is both an economic and social good, privatisation alone cannot be the sole instrument to bring developmental change. The South African government has thus resorted to a mix of a rights-based approach to water allocation for the poor and a market-based allocation for the rich citizens of the country. Such a rights-based approach to development can be justified when widespread poverty persists.

Bearing above in mind, the policy of providing free basic water to all households will be at a cost to taxpayers. The implementation status of the policy up to June 2008 is summarised in Table 1. As per this estimate, some 41,7 million people out of 49,4 million (84,4% of the total population) are served with free basic water. This is an impressive achievement for the country. It is estimated that implementing the policy is costing local authorities as much as R5,84/capita/month. The estimate is not a generalisation for all situations and is rather an indication of projected cost conditions.

Supplying free basic water especially to rural areas has led to the development

of institutions to capacitate people to perform the required tasks in the long run. These institutional mechanisms include local government, private sector and community-based operations. This has brought a lot of government investment in the development of local governments. Thus, one can see the trickle-down effects of the free basic water policy.

CONCLUSIONS AND POLICY RECOMMENDATIONS

South Africa, like other developing countries, has a dual economy. Since water is a very scarce resource in South Africa policymakers have used water as an instrument for engendering development by following two sets of policies: a market-led allocation for the one sector of the economy and a rights-based allocation for the other sector of the economy. South Africa has thus opted to follow a very pragmatic approach to development by combining the free basic water policy for some people and a market-driven water supply to those who possess purchasing power. However, this is not a costless operation and requires a sustainable strategy for financing water subsidies provided by the State to the underdeveloped sector.

The human right to water is guaranteed in the South African constitution and recent judgements from the country's courts confirm this assertion. Currently, some 84,4% of the population is receiving free basic water. The free basic water policy has been popularised by the ANC and municipalities are trying to implement it within their capacity.

Currently it is being funded by stepwise linear water rates and thus water volume consumers are cross-subsidising poorer users. This has created dissatisfaction in some quarters. However, one should be reminded that water privatisation has not worked particularly well in the water sector, especially in Africa. In the long run, the success of the South African approach will depend on how effectively the free basic water policy is financed.

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