

Dialogue: Water: Situation, Strategies and Scenarios

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Facilitator:

Ms. Candice Pelser: Independent Consultant

Speaker:

Prof. Linda Stewart: Professor of Law: North-West University

Participants:

Mr. Shannon Sherry: Assistant Editor, Agriculture Writer: Financial Mail

Adv. John Whitehead: Advocate: Cape Bar

Adv. Nichola de Havilland: Director: Centre for Constitutional Rights

Mr. John Yeld: Journalist: *The Cape Argus*

Mr. Khulekani Moyo: Doctoral Researcher: Stellenbosch University

Ms. Jessica Wilson: Programme Manager: Environmental Monitoring Group

Ms. Caron von Zeil: Founder & Director: Reclaim Camissa

Ms. Jorisna Bonthuys: Environmental Reporter: *Die Burger*

Mrs. Claudine Roos: Junior Environmental Manager: Centre for Environmental Management, NWU

Ms. Juliet Browne: FLOW (For Love of Water)

Mr. Saul Levin: Independent Consultant

Mr. Robert Fischer: RE & EE Consultant | Project 90 by 2030

Mr. Dominic Uys: Journalist: Sustain

Ms. Gretchen Ndhlovu: 1 World

Mr. Junior Potloane: Chief Executive: Water Institute of Southern Africa

Debate rapporteur:

Mr. Stuart Rothgiesser: Independent Consultant

Ms Felicity Harrison, Director, Goedgedacht Forum for Social Dialogue:

The Goedgedacht Forum is committed to the environment. The Trust has many specific environmental programmes, including on the farm in Malmesbury itself. Every year we have one dialogue to look at environmental issues because we believe they are so important. The Forum feels that it is vital to start having discussions that bring people together from various organizations and sectors. I very much hope that this will be taken as the beginning of a conversation. We would like to work and partner with you in terms of any other topics to take the discussion forward.

In coming to the decision to host this event we realized that issues around water need to be put into the public domain. It is increasingly recognized that conflicts in the future will be around water and access to water. Water affects people in different ways but we are interested in looking at how the issue of water will affect poor people and other marginalized and vulnerable groups. The Forum would like to see discussions that include bringing in people - not marginalizing them - in terms of access to water. We create the space for people from various sectors to envisage the kind of future we want and to look at creative policies and ways to get there.

**Key note Speech: Prof. Linda Stewart: Professor of Law: North-West University
“THE RIVER RUNS THROUGH IT: SWIMMING UPSTREAM OR GOING WITH THE FLOW?”**

Good morning Ladies and Gentleman, may I begin to thank the Goedgedacht forum for the opportunity today to participate in a constructive dialogue on the right to water which is certainly one of the biggest challenges of our time globally and locally. I have immense respect for institutions that afford critical thinkers the freedom of opinion. In the absence of forums such as these the following quote of the famous author George Orwell may just become reality. He said ‘in a time of universal deceit, telling the truth becomes a revolutionary act’. Before I commence my discussion, I should however warn that my discussion today, reflects only my own perspectives on the emerging water crisis as a previously over-optimistic but now disgruntled human rights scholar who clearly recognises that solutions for this problem are not founded in the ‘law’ alone.

According to a recent Legal Brief Report (5 October 2010) the North West and Free State was two of the provinces where local governments failed to spend their allocated funding for infrastructure development. North West returned 39% while Free State returned 34% of the allocated funds. A total amount of R 2.2bn out of the allocated R 8.7bn was returned by all of the Provinces to the Treasury for infrastructure developments. Ironically the previous month one of the local authorities in the Free State was accused of leaking raw sewage in the Vaal River. As a consequence the Free State High Court ordered the Ngwathe Municipality in Parys to take the necessary steps to prevent raw sewage flowing into the Vaal River from its sewage works. Although this has apparently been done the water crisis in Parys does not stop there. I myself have been living there for the past 10 months. Residents in this town 'buy' purified water or turn to others for borehole water. As a real sceptic I initially thought this was a big scam by the 'capitalist upcoming water purifying' business to make money out of the middle class residents of the town. I later realised that although it is said that the water quality is up to standard, the simple smell of the water that was used for domestic purposes was enough to make me run to the nearest supermarket to buy purified water. For the first time in my life I thought twice about opening a tap and drinking water. Unfortunately the water crisis in Parys is not a confined one. Every South African are daily confronted with the fear that our drinking water is not clean and the natural produce we are buying from upmarket supermarkets are contaminated by unclean water. The West Cape Times recently reported that "...only 32 out of approximately 970 water treatment plants around the country complied with the requirements for the safe discharge of sewage". But local governments are not the only polluters, allegations have also been made that the mining and industrial sectors are contaminating the rivers with heavy metal pollution and acid mine drainage.

But even more important are the fact that there are millions of people in our country who have no access to adequate water at all. Statistics indicate that at the beginning of our new constitutional democracy in 1994 it was estimated that 12 million people (approximately a quarter of the population), did not have adequate access to water. By the end of 2006, this number had shrunk to 8 million, with 3,3 million of that number having no access to a basic water supply at all.

In the light of what has been said it is ironic that South Africa is one of the few jurisdictions in the world that provides for an explicit right to water in our Constitution. The Constitution of the Republic of South Africa is the supreme law of the country and any law or conduct inconsistent with it is invalid and the duties imposed by it must be performed. When the right to water is interpreted, conceptualised and implemented the Constitution and specifically the Bill of Rights should be the river that runs through policy, legislation and jurisprudence in South Africa.

Section 27(1)(b) of the Constitution guarantees the right to access to adequate water and place an obligation on the state to take reasonable measures to progressively realise this right within available resources. The protection of the right to water as a human right is based on the underlying principle that human beings have inalienable rights and a deprivation of needs can often be addressed as a denial of rights. In other words, accessible and clean drinking water is not only something you need, it is also something you have a right to have as a human being. Human rights are thus inherent entitlements to every person as a consequence of being human, and are founded on the respect for the dignity and worth of each person. It go beyond the notion of physical needs and include a more holistic perspective of human beings in terms of their civil, political, social, economic, and cultural roles.

Although there are numerous pieces of legislation governing water as a public good, the lack of implementation of the right to water as provided by the Constitution and concretised in national legislation remains problematic. This problem is aggravated by the colossal obligation placed on local governments to realise certain dimensions of this right. As a consequence I am confronted with the question whether we as citizens, jurists, academics, NGOs, politicians and public servants are confronting the water crisis in South Africa correctly? Do we perceive the right to water as an inalienable human right or are we addressing it in a fragmented fashion – where we perceive water either as an economic good, or social good, or an environmental asset or a political tool? Shouldn't we rather focus on the water crisis from a more holistic perspective constantly realising that the right to water is a scarce natural human right that should be respected, protected and realised in a sustainable manner to guarantee that generations to come may still enjoy the same human right.

I am of the view that the weak enforcement of socio-economic rights by the Constitutional Court as primary protector of the Constitution and the Bill of Rights as one of the reasons for the water crisis in our country. The repeated reluctance of the constitutional court to provide substantive content to socio-economic rights as illustrated in the *Grootboom*, *TAC* and more recently *Mazibuko* cases is illustrative of this. In the absence of a clear definition of water as a human right with many dimensions and problems the water crisis up till now has been addressed in a fragmented fashion – where water is perceived as an economic good, or social good, or an environmental asset or a political tool.

I suggest that as critical thinkers we should start swimming upstream (facing the obstacles in our way) and start questioning whether current policy, legislation and jurisprudence on the right to water is providing full effect to our constitutional commitment to social justice and the explicit interdependent rights contained in our bill of rights. Are our courts serious about enforcing the socio-economic rights in our Constitution or are they merely hiding behind the formalistic ‘reasonableness review’ created in *Grootboom* and the weak (so-called programmatic) enforcement of socio-economic rights as rights which require positive state performance?

Before I proceed, may I remark, that the life jacket I intent to use in my attempt to swim upstream is called **sustainability** and the ability of this keeping me afloat is anything but 100% reliable. Sustainability has been punctured as a ‘metafix’ that will unite everybody from the profit-minded industrialist and risk-minimising subsistence farmer to the equity-seeking social worker, the pollution-concerned or wildlife-loving First Worlder, the growth-maximising policy maker, the goal-oriented bureaucrat and the vote-counting politician. But I will grasp on to this **non legalistic** concept later in my paper.

If it appears that I am drowning at this stage of the paper, please forgive me but my intention today is a very humble attempt **to seek answers in the law from outside the law** and to force myself to think out of the box or the river catchment area whatever it may be. However, I will start this discussion **‘in the law’** and the way in which **‘the law’** failed to provide appropriate remedies for the vulnerable and the poor in a country where the Gini-coefficient is regarded as

one of the highest in the world. The most recent ‘law’ illustrating this failure was the *Mazibuko* judgment delivered by the Constitutional Court on the 8th of October last year.

In the *Mazibuko* case five residents of Phiri, one of the poorest areas in Soweto, challenged the sufficiency of the City of Johannesburg’s free basic water policy entitled each household six kilolitres of water per month. With an average of 13 or more people living on a single property, it was contended by the applicants that the free basic water supply of six kilolitres per household per month was insufficient to meet everyone’s basic household and sanitary needs. After the High Court decided in favour of the applicants, ordering the respondent to supply the residents of Phiri with 50 litres of free basic water per person per day, the City, Johannesburg Water and the Minister of Water and Forestry Affairs appealed the entire High Court decision. The Supreme Court of Appeal reduced the quantity of water from 50 to 42 litres per person per day. Unhappy with the order made by latter court, the residents of Phiri turned to the Constitutional Court to seek the reinstatement of the High Court order.

The introductory statement of the Constitutional Court in the *Mazibuko* case recognised the importance of the right of access to water and stressed the existing inequalities in the provision of water to the poor. The Court remarked that

[t]he achievement of equality, one of the founding values of our Constitution, will not be accomplished while water is abundantly available to the wealthy, but not to the poor.

The Court also acknowledges the fact that South Africa is an arid country and providing access to water to everyone requires careful management of water services in a **sustainable** manner. Notwithstanding the recognition of the inequalities in the provision of water and water services and the transformative vision of the Constitution to rectify these inequalities, the Court explicitly restricted its role in the “interpretation” process by arguing that the nature of a right can only be understood if the context of the obligations imposed by it. Effectively the Court desists to interpret at all. The Court refrains to provide normative content to the right to access to sufficient water on grounds arguing that the text of the Constitution requires the Court to do

so and what the Court perceive as the proper role of the court in a constitutional democracy. The Court argues:

...it is institutionally inappropriate for a court to determine precisely what the achievement of any particular social and economic right entails and what steps government should take to ensure the progressive realisation of the right. This is a matter, in the first place, for the legislature and executive, the institutions of government best placed to investigate social conditions in the light of available budgets and to determine what targets are achievable in relation to social and economic rights. Indeed, it is desirable as a matter of democratic accountability that they should do so for it is their programmes and promises that are subjected to democratic popular choice.

In this statement the Court lost track of the fact that although it is the primary role of the legislature and executive to realize socio-economic rights, the courts also have a quasi law-making role (as mandated by the Constitution) to translate these constitutional rights into enforceable legal claims. The reasoning of the Court discussed above and the recognition by the Court that legislative and other measures should inform the content of rights (and not the other way around) is, to say the least, extremely disappointing and outright wrong. The Court further blatantly ignored the valuable contribution of international law and section 39(1)(b) of the Constitution which explicitly states that when a court interprets the Bill of Rights it must consider international law. The Court further disregarded the valuable commentary and inputs of leading academics on the field of socio-economic rights.

Danie Brand has been swimming upstream for years. He already criticised the Constitutional Court's "reasonableness" approach in *Grootboom* and *TAC* as formal and procedural which only constitutes good governance principles. He argues that this approach only allow the courts to ask whether the policies and programmes are rational, coherent, inclusive, and comprehensive. If the state's measures (action or inaction) in the realisation of socio-economic rights are only evaluated against good governance principles the possibility exists that the essence and importance of the constitutional socio-economic rights and the transformative potential of our Constitutional will be lost. Recently at the *Grootboom* retrospective organised by UNISA, Danie

remarked that the Constitutional Court approach so far reflects a support for liberal democratic values.

Similarly Marius Pieterse also cautioned on the magnitude presented by different currents in the river. As early as 2003 he warned against of the possible detrimental effects of the political ideology of neo-liberalism brought about by globalisation. He argues that socio-economic rights frustrate neo-liberal reform and in turn neo-liberal reform frustrates the achievement of social justice. He explains that in the developing world, where many countries remain poverty stricken, governments and the legal system governing that country are increasingly pressured to balance socio-economic needs and the neo-liberal challenges presented by a global economy. He suggests that

...courts and policy makers attempt to transcend the discursive clashes between social justice and neo-liberalism, through accentuating the necessity of social development for economic growth as well as the inter-connectedness of all human rights, civil and social.

Another upstream swimmer, David Bilchitz proposed that the Constitutional Court should first attempt to understand the content of the right and then engage in an inquiry into the reasonableness of the measures. He emphasized that it is not expected that the courts should give a final and complete definition of the particular right but calls upon the courts to formulate the international concept of minimum core for South African circumstances.

In 2006, Sandy Liebenberg stressed that the conception of social justice as envisaged in the Constitution should inform our interpretation of rights claims. **She perceives the litigation process as a platform from which the poor and marginalized are given an opportunity to voice their hardships. She stresses that socio-economic right adjudication does not have to bring about structural reform. All that is needed is affirmative strategies (or so-called non-reformist reforms) which also have the capacity of transformation and change if consistently pursued.**

Despite these suggestions and criticisms by leading academics, the Constitutional Court remained reluctant to provide normative clarity on specific socio-economic rights and as

recently illustrated in the *Mazibuko* case, the Court avoids an explanation of the content of the right to access to water by immediately turning to an examination of the obligations on government by enquiring into the reasonableness of the measures. Surprisingly, the lower courts in the *Mazibuko* matter provided more insight and clarity on the right to water than the Constitutional Court. The SCA explicitly describes adequate water as nothing less than a right of access to that quantity of water that is required for dignified human existence.

Liebenberg and Dugard commend the SCA for their effort to give normative content to section 27(1):

These include its willingness to engage with the substantive interests and values that inform water as a human right, and to articulate normative standards against which the sufficiency of the water supply to an impoverished community must be measured. The Court was also unambiguous in affirming that the right of 'access to' water was not equivalent to access through exclusively commercial mechanisms. It included a constitutional obligation to ensure that water is economically accessible to the poor, including an obligation to supply free water to meet basic needs. The serious consideration which the Court gives to leading international law standards on water rights in interpreting section 27 of the Constitution, and the engagement with the expert evidence on the water needs of the Phiri community are also positive features of the judgment.

The norms, principles, standards and goals of the international and regional human rights system should furthermore provide information and guidance to define the right to water. **Time will not allow for a full discussion of international instruments but it is important to remark that on 21 July this year the United Nations General Assembly in recognition of the emerging global water crisis and the importance of water as a human right adopted a resolution calling on States and international organizations to provide financial resources, build capacity and transfer technology, particularly to developing countries, in scaling up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.**

In an attempt to keep my head above water, I will know proceed to hang on to my life jacket as explained earlier. I will do so by explaining the importance of the environmental right and its interdependence and intersection with the right to water. I will further consider the role of sustainability and sustainable development in respecting, protecting and realising these rights. Section 24 of the Constitution states:

Everyone has the right – (a) **to an environment that is not harmful to their health or well-being;** and (b) **to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that** - (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) **secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.**

The environmental right also strengthens the importance of access to clean water to maintain health (and well-being) but further implies that scarce resources such as water should be dealt with carefully and that due regard should be given to the protection thereof for future generations. This has not been addressed in any of the *Mazibuko* cases. I am of the view that sustainability may possibly provides government and courts with the appropriate threshold to create a more holistic approach to consider the infringement of any right associated with water.

I know turn to some regional provisions pertaining to the right to water and sustainability to illustrate the possible role “sustainability” may provide. Although there is no explicit right to water in the African Charter, the recently formulated Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter indicate that the right to water and sanitation is implied in the protections on the right to life, the right to dignity, the right to work, the right to health, the right to economic, social and cultural development and the right to a satisfactory environment. Other rights also closely related to the right to water are the rights to property, housing and food (*SERAC v Nigeria* comm. No. 155/96).

The Preamble of the Guidelines explicitly recognise the commitment of the African Union at promoting the **sustainable development** of Africa and to the principles of gender equality, democracy, human rights, the rule of law and good governance and the promotion of social

justice to ensure balanced economic development. This commitment of the African Union reflects to a great extent an attempt to reconcile neo-liberalism with social justice as explained above. The Guidelines furthermore explicitly require among other things that State Parties should promote **sustainable** use of water resources.

Sustainability is described in the United Nations' Brundtland Report (1987) as 'those paths of social, economic and political progress that meet the needs of the present without compromising the ability of future generations to meet their own needs'. The *Voluntary Guidelines* of the Food and Agriculture Organisation stresses the importance of the sustainable use of water by stating that State Parties ... should strive to improve access to, and **promote sustainable use** of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and should constantly balance the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality.

'Sustainable development' in the context of section 24 may be perceived as a method or policy paradigm to realise human rights in a sustainable manner. It refers to any actions taken to help reach a state of sustainability such as

- (i) balancing economic growth and social needs with the natural environment;
- (ii) ensuring that growth in the present does not adversely sacrifice future opportunities and
- (iii) applying this approach successfully within a local area and at a global level.

Therefore, sustainable development (in the context of sustainable use of limited resources) should be perceived as not an end in itself but a means of realising human rights. The *Plan of Implementation of the World Summit on Sustainable Development* (2002) therefore correctly stresses that poverty eradication should be placed at the centre of these efforts to achieve sustainable development.

This means when government formulate policy on water or when courts are expected to interpret the right to water it should therefore include not only considerations pertaining to the economical viability of the right to water but consideration should also be given to the equitable distribution of the right among the rich and the poor and the carrying capacity of the right as a

natural resource. The need to preserve water should however not fundamentally compromise the health and well-being of the poor in Africa. In formulating policy, government should therefore not compromise the needs of the poor by only adhering to the needs of their more affluent customers who can afford to pay and subsequently use a limited resource to any extent.

In this context the obligation to protect the right to water as require that government 'take positive measures to ensure that non-state actors such as multi-national companies, corporations, private persons, bodies, armed groups etc do not violate economic, social and cultural rights. This includes regulating the commercial and other activities of non-state actors that affect people's access to and equal enjoyment of the right to water. This implies an obligation to monitor their impact on people's access to quality services, and ensuring the effective implementation of relevant legislation and programmes'. Within the context of respecting, protecting and realising the right to water reference to resources and the availability thereof should not only require the consideration of financial or economical means but should also include environmental and social considerations.

From what has been said above I am left with two choices: If I choose to go with the flow, I suggest that the Constitutional and other courts employ sustainability as part of the reasonableness review when the courts examines whether the state took reasonable measures as part of its obligation to progressively realise the right to water. This simply implies that the courts when examining available resources should consider economic or financial availability as well as environmental and social availability. I doubt however that the courts will do so.

This forces me to swim upstream. It requires breaking and re-examining the barriers presented, it requires breaking rules and building ships to fight the currents and the obstacles. It means re-examining the doctrine of the separation of powers and possibly turning it into the sharing of powers. It requires creating new remedies and new methods of interpretation for example shared constitutional interpretation where a court will appointing fact-finding commissions to gather the necessary information or call for additional expert evidence may also further assist courts in the difficult task of interpretation. It requires that the courts invite the political

branches of government or other organs of state to suggest alternative normative content when defining the right to water.

But this are still answers within the 'law'. And didn't I indeed argue that the law and in effect the Constitutional Court are failing us as citizens....? Didn't I illustrate that government too are failing us? Maybe the time has arrived for us to get out of the river and sit under a beautiful tree (to have a proper legotla) and rethink the urgency of the matter and the potential impact thereof.

I hope today provide such an occasion. I thank you.

QUESTIONS OF CLARITY

Who is the watchdog if the role of the state is compromised and what happens [in this scenario]?

The constitution is more of a watchdog than the state. It tells the Constitutional Court to tell government what they did wrong - not telling government exactly what to do, but the court and other courts as well have a role to tell government what to do. If government is not doing its work; it should be corrected – that is why we have a Constitution. In the TAC case, people were not happy with what the government was doing; many people came together and pushed government to change; that will start to happen with water too.

In the Mazibuko case, it was people who had water who were arguing for more – surely it was better for those who did not have water to argue for others?

This is a zero sum game – principles of equity and sustainability do not apply to the Mazibuko case. Legal and human rights communities would have had a better case in those who did not have access to water e.g. squatter camps. Clem Sumter's scenarios of those who have some pushing for more and therefore pushing further down those who do not have any (because those that have a little have a voice and therefore push out those that have nothing) apply.

Isn't it unsustainable for those who have more to push for more?

This is opening a huge debate. One point made was that people did not have water after a certain time of month. It is opening issues of urban poor areas, which are very different from rural poor areas. We are constantly talking about these issues in the City of Cape Town because

the basic allowable is not enough – 6kl is not much water. People are using up to 80kl a month because they can pay for it. It is not a scarcity of water issue at this level, but rather a financial scarcity level. It is actually not about water scarcity but about financial scarcity!

Water is finite: According to UNECSO, Sub Saharan has the highest rate of non-access to water in the world (60%) and the City of Cape Town has declared by 2013 that we will not have enough water for our current population. Population will increase but the availability of potable water is decreasing. These models are very complex and tricky.

ISSUES IDENTIFIED FOR DISCUSSION

1. Acid mine drainage and what mines are doing about it. Do mines do whatever they want because they provide economy or must they follow regulations?
2. Do we need to think of rationing instead of pricing as our means of distribution?
3. Water shortages - on a concrete level.
4. The involvement of non state actors in water privatization. If we are to conceptualize water as a public good, what are the implications of the right to water in the Constitution? Does it also mean there are obligations on the right to water for non-state actors?
5. Some solutions, some kind of things one could act upon to move forward.
6. Cross subsidization.
7. The concept in the *National Water Act* referring to “public trust” – that concept is not quite clear yet. For example, is this is a property right?
8. The horizontal application of the right to water on private parties. Mazibuko used a UK organization to implement prepaid systems, which is illegal in the developed world.
9. The negative application of taking on government not fulfilling its obligations.
10. Sec 27 (2) of the Constitution states that the state must take on reasonable measures to fulfill rights, including the right to water.
11. The role of climate change – projections indicated that the eastern part of the country will get water and the western part will get dryer.
12. How do we use the water we have, particularly for storage purposes?

13. Who decides usage? What were measures used to determine this? Should the Constitutional Court have a role in setting these specific numbers? If not, do not these decisions go back to individual legislatures?
14. Changing attitudes at how we look at water, particularly direct water re-use (drinking what you flushed).
15. Local government doing what they are supposed to in terms of cleaning and treating water.
16. Land and water need to be regarded in unison in policy – this is the biggest challenge and issue facing us.
17. The *National Water Act* states that every river must have an eco-reserve but land has been privatized so the river is no longer accessible. Laws are not conducive to furthering water access.
18. Big corporations and trade-offs, such as carbon trading.
19. We are sitting on the biggest aquifer in the Southern Hemisphere in Cape Town but our food is tainted. If we start to recharge the aquifer, water would remain clean and usable. Boreholes are exacerbating the problem.
20. Water as a stock value. Let us see if we can adhere to this as a policy – water belongs to the world, not to individuals.
21. Activity or non-activity of government in relation to other developing countries. For example, the situation in Uganda is much worse. South Africa is not doing that bad. Let us look at the international trends.
22. The infrastructure in municipalities getting old – what are the leaking rates? What are some of the state-of-the-art solutions? What are acceptable losses? How can we stretch the water supply? Desalinization of water as a possible solution.
23. Drought in planning and implementation has to do with scarcity. Difference between departments and how government departments affect each other. More senior departments make decisions that influence others. Paying for
24. What measures have state taken? Are they deemed to be reasonable and efficient? What other measures do they need to take?
25. The role of the courts. It is premised that we retain the courts as watchdog.
26. Public awareness. We have certain demons but the challenge is creating awareness focusing on the value of water and how to optimize every drop of water.

In terms of progressive realization and socio-economic rights, Section 7(2) of the Constitution says that there is the right to respect, protect and fulfill. This means also not to take away other rights. Many are debating whether these are negative or positive rights but what is clear is that the state should refrain from interfering with rights. Respect is an immediate right and not subject to Section 27(2). If one looks at respect, one must also look at Section 36, not at Section 27(2). The latter has been interpreted as progressively enforceable. Courts rely on Section 27(2) on obligation, not on implementation. This does not need to be to a specific standard e.g. 25l of water per day per person (the WHO standard). It is more of a universal application; therefore, there must be a minimum core which is immediate. The rest is the progressive realization which is more; for example, we as local government can afford to give more than 25litres per day.

The other argument one can use is that those in desperate need can be given help; for example, the Grootboom Judgement. Section 7(2) also says that the state must promote rights – in this case, to make people aware of that they have the right to water, which may be the most important aspect of the state’s work. It is frustrating when one gets confronted with people not realizing that this is an obligation of the state.

With regard to respecting rights, the question becomes: ‘Is this potable water?’ The Constitution provides for adequate water. To take a government to court on the premise that the state is not respecting our adequate water supply is much stronger than respecting just water. An argument for ‘sufficient’ is much stronger than an argument for ‘adequate’ because implicit in this is that the water must be ‘drinkable’ water.

Section 9 of the Constitution also refers to comment number 15 with respect to sufficient quality of water. There it also spells out the core obligations of government. South Africa has not ratified the *UN Covenant of Economic, Social and Cultural Rights*. We do take notice of it but it is not a binding government. UWC is trying to get civil society to ratify the document. Once ratified, government must adhere to core agreements.

Regarding Mazibuko, often people who are not the poorest of the poor but who are one step up suffer more. There were 13 persons living in that household. Mrs. Mazibuko said they could only

afford to flush once a day. The case started in the High Court, moved to the Supreme Court of Appeal and then went to the Constitutional Court. Within a short period, the judgment came out: the Court said that government is acting reasonably because there are certain indigent policies which could be used by the applicants to get extra water.

One could question these policies. The Court said that there are many people with no water so why should we care for these urban people who want more? This is the whole dilemma about getting water to people. And it is very different when one lives in a rural area where there is a potential for a long drop and so 6 litres per day may be enough. And some of these people were elderly or living with HIV – one must take into account individual cases. But at this level the judgment has become a precedent. It opens the floodgates so all government must do is what it can afford to do; it is not about the availability of water but the affordability of providing it. The Court was saying if we support this judgment we will be deciding how government works. The main problem with this is that the judgment is not looking further than what government is saying, which is what they did in the apartheid years. There is no reason that we cannot make a minimum core of 25 litres per day available to everyone and then look at cross subsidies. Looking only at budget negates all issues of fundamental rights.

Sandy Liebenberg, Danie Brandt and Pierre de Vos have been having another debate asking: 'Isn't the Constitutional Court supposed to protect us all?' Initially De Vos said let's give a universal solution to everyone but then he said let's give a solution to individual cases. The Constitutional Court should give a solution to everyone. Will the case be applicable if you realize a minimum core of 25 litres per day to the whole of the country or only to this small designated community? If 10 people have a problem and have the means to go to the Con Court and they have rights as the Court has ruled for them – what about the others? That is the essence of a judgment. When the Constitutional Court has clarified what a right means and the extent of the government to implement that right, then everyone can claim that right. The Constitutional Court has not just said it applies to Mazibuko. The sadness is that people may need to invoke the courts again because it is almost impossible to approach the Department. It is important to not throw the courts out; the weakness is that the Department is not taking the rulings to heart. For example, the Eastern Cape where people have to take the Department to court to claim their social grants to the extent that the courts have said that they are tired of people taking the

Department to court! Some people do not have money to take these rights to courts. This is not the court's problems. But the Constitutional Court does have remedies to enforce their rules e.g. holding the Minister accountable.

DISCUSSION ARRANGED THEMATICALLY

Raising awareness

Raising awareness comes into question in this regard. Many people who do not have access to water do not realize that they have rights. We could start off with a legal petition to take to the Constitutional Court as a starting point, similar to what TAC did. But some poor person in Mpumalanga dying in a shack is not going to get medication due to these rulings; how do you get to these people on the ground? If there is a clinic they are not getting medication!

In response, another participant asked: "Surely people are aware of their rights?" They went on to observe that we are currently seeing many protests!

This would seem to not be the case. An example was given where the City of Cape Town brought out their bylaws on water and they were covering themselves by saying that they cannot provide clean or sufficient water. It is really serious that a bylaw like that has come out but is not being challenged. What they are doing is inconsistent with the Constitution, but municipalities are getting away with it.

Some input from environmental lawyers would have helped in the Mazibuko case. Socio-economic lawyers will not (or do not) look at green aspects - it's like falling into a deep hole when reading environmental law. No reference was made to sustainable development in realizing environmental rights in the Mazibuko case.

Do we not agree that what is needed is to aggressively inform people about extent of water crisis – in simple language that everyone can understand? Send article after article to every sort of media so that people are aware that they must be very careful with their own water. That would be one practical step. Many people feel like they are individuals and the problem seems like it's too far away from home.

There are other issues as well. There is a lot of fear factor out there – people like to run when they are afraid. We need to create awareness but also focus on positive messaging. One must start by people taking ownership. Any campaign on HIV babies will get us all marching because it will impact on our hearts. Water is ‘out there’; it is not seen as impacting on our lives. Respecting the fact that water is not infinite is one of the most important messages; there is a perception that water will always be there. One of the core ethos of some campaigns is to create that deep respect that we are water and that the earth is water.

Former President Mandela said that people who are angry will not be able to vote. People who are battling to stay alive will not be able to march. Middle class people who pay taxes should mobilize and make it visible to government.

A possible solution is using the Internet to create a petition - like activist.co.za: signing and sending on that is presented to government or a certain environmental body. Those are impactful. One is both gaining awareness and there is an action.

Definition of ‘water crisis’

We need to unpack what we mean by the ‘water crisis’. It is much more than a water shortage. The crisis is mainly a governance and capacity issue; there are not always people to fix the taps. In the Southern Cape, municipal water managers are very open and doing a good job. This is very different to people in the City of Cape Town who are very defensive and in denial. People are trying to pretend that everything is alright. ‘Climate change’ gets brought in as if we are *going to* run out of water, but people do not have access to water right *now* – it is not a future scenario. Perhaps we should invite technical people to say: this is the real situation. What are the critical facts so that we can argue to providing a sustainable solution and argue as to what the issue is?

Politicization of water

There is a need to depoliticize the water issue. Local government cannot do the work; they do not have the competence. Water rights, like mining rights, belong to government. At the end it is a political tool. But water rights are entrenched in the Constitution; the issue is how the

people who are entrusted to deal with water are dealing with it. There is nothing that the politicians can do about a water shortage in the Western Cape due to climate change, but faced with this, they are obliged to deal with the situation. It is correct to say that municipalities are not doing their work. What can us as ratepayers do to force them to do what they are supposed to do – to cut wastage rates, to check competency, etc.? It is a question of citizenry mobilizing to ensure that the municipalities do what they are supposed to do.

The question arises: How big is the challenge we are facing? There is a lot of information of when demand will exceed supply but there are many assumptions in the research; in essence; we are a water scarce country. It is very different to say that we are in a water rich country. In the Southern Cape, municipalities have cut supply to 15l/month. Everyone – whether rich or poor - has to do it. People do all kinds of things but they do keep to these cuts. It comes back to governance and what money entitles one to buy e.g. Millionaires' Mile in Plettenberg Bay. This raises question of people living collectively in a society that is not water rich. We need to rethink how we cost, price and pay for water – where it comes from. This will start shifting water as a political tool. At the moment politicians say: 'Vote for me and I will ensure you have flush toilets'.

In 1655 the first environmental law was made: Do not pollute the water. But municipalities are still denying this law; Cape Town is using spring water to flush toilets in the Cape Town Stadium. Victor Shalberger has done amazing work in India, but he was prevented by a Texan family from putting information out, as they would not become rich. Indians are building 10-storey apartment blocks with bio-dynamic technology so that by the time flushed water comes down to the surface it can be used to make a cup of tea! We need to ask why South Africans aren't instituting these policies.

In response to depoliticising issues around water, one participant observed that it is not possible to take politics out of the water debate: Politicians are making decisions that affect water. In the Southern Cape, people are taking steps – desalinization plants in Sedgefield and Plettenberg Bay are two such examples. But government has planned a R2-billion development in Plettenberg Bay. On the one level, civil society must educate people about the correct use of water, but on other level we need to educate politicians about the correct development. What can we do to

ensure that there is appropriate planning and coordination within government? This goes wider than looking at water issues, to coordination amongst government departments; for example, giving coal mining licenses in areas that are very vulnerable in respect of water. Government departments are not talking to each other about maximizing water. It is the people's vote that government will respond to and it is thus important to use forums to bring attention to these matters so that the electorate can hold the government accountable.

It is important to note that there are fundamental contradictions: between coal mining and water rights, and development and water shortages in the Southern Cape. Municipalities need money and taxes to provide water – there are real conundrums that people are dealing with. Unless we can look at a different way to generate revenue, we must go back to Treasury and the general macro economic approach. But in ten years' time where will the operating budget come from? We are not taking a long term view. What are the alternatives to provide water and infrastructure?

Gaps between policies and enforcement

The key crisis points are well known. There are certain rivers that are heavily polluted, some are okay. As long as municipalities are pushing sewerage into rivers there will be a problem. What is critical is to stop municipalities pushing sewerage into rivers and increasing their capacity to clean. In total only 17% of municipalities achieved a green drop – it is a dismal state where municipalities are not treating water. National government has policies; the gap exists at enforcing those policies.

Government should start off at one point and carry on; first looking at pollution and then move on to other issues. A professor at Midrand University started at grassroots level to get schools to clean areas of a river. It started with an HIV positive mother, who had six kids and no husband, and they were getting sick from their water source. We proposed this to the City of Cape Town but they said rivers are too dangerous to let children near. Where does one start? Someone must make a law and people must abide by it! A company can get a permit and learn. Why should government put money into other areas? There should be some sort of carbon-trading for water.

There is a film that FLOW has the rights to distribute called *For the Love of Water (FLOW)* which looks at access and privatization of water. It also shows the South African context.

Water sufficiency debate

The other issue is around whether there is sufficient water. In some cases the answer to that question is “no”, as it depends on quality of water, looking at new technologies (e.g. desalinization – which is expensive and a new technology), direct water reuse (less water lost in system and seriously considered in Western Cape as not dependent on rainfall). Good rainfall one year means all targets go out the window. But there are other factors that affect capacity; for example, 300km in Limpopo there is a drought. Water reticulation is another issue; in some countries it is down to 5%! This means there is more money for municipalities.

Some local governments are piloting projects. But there are capacity issues – insufficient attention is paid to this issue of the capacity of local government to implement policies and legislation. There are many technologies that could be successfully used: for example, Johannesburg has allocated R5-billion to create new pipes and is turning down pressure at night to reduce whatever loss there is.

Technology

There are already companies installing rainwater systems. Why, from an architectural perspective, is it not mandatory to put rainwater collection tanks on each house for things like garden use? At the moment it is up to the individuals concerned.

Laws state that people are still not able to use grey water to water one’s garden. But it is expensive to use fresh water. There are ways to communicate to people so that they see how to save in the long term. It is also important to look at other environmental issues, so solar panel subsidies should also be on offer.

Pollution

There are new problems such as water quality that come from our use of detergents, as identified in studies by the CSIR where they identify changes in water quality in particular dams.

The evidence suggests that we should be banning certain detergents. We have a lot of new 'super detergents' and Hartbeespoort Dam was designed for waste catchments but many people are pouring these new detergents into the dam. The old SABS standards are not sufficient. There is a huge gap on this issue – no policy, no research and no consumer activism.

South Africa is still a leading country in terms of water quality; you can drink from your taps. Johannesburg water comes clean from Lesotho. Blue Drop tests showed excellent quality water around the country. Drinking water is safe in 90% of Cape Town. Even places that had bad water quality (for example, Delmas) have been turned around. We do have good technology and good water from Lesotho but it will become increasingly more expensive unless we stop what is being put into water at the other end. It is not a crisis in all areas at the moment - especially in terms of potable water in places like Johannesburg. But in Cape Town there were water shortages for 5 or 6 years up until the Berg River came online. The fact is not that there is *no water* but that *we must constrain what we use* – so that we do not get into a situation where the city runs out of water completely. In order to do this we must recognize the triggers that come in that are important. When does the Department issue triggers? Maybe triggers need to come in earlier if we are worried about shortages?

Spring water and aquifers

One of the problems in Cape Town is that we have pulled our water out of the food growing area. Newlands has the highest rainfall in the Southern Hemisphere. Albion Springs runs wasted into the Liesbeeck River. Companies like SAB have ownership of two springs, producing 1-million litres of beer a day. It takes 4 litres of water to produce one litre of beer – they should be paying!

Jan van Riebeeck reported over thirty water springs. To date 20 have been re-found, producing 3.5 million litres of water a day. In some places the noise is so loud one cannot stand above it! At no point has the City created a system to retain this water. Most of it is going straight out to the ocean. There is no record of how much water is wasted by the City. There are 55,000 persons living in the City Bowl – all that water is wasted. No one at Bulk Water knows how much – the last time the aquifer water was quantified was 1897.

Privatisation of systems

The discussion turned to the issue of privatization and the first question raised was why we don't privatise the sewerage systems? Perhaps if there is money in sewerage! But that is as problematic an issue as privatizing water. The Water XX Study was looking at ineffectiveness - there are also many downsides to privatising public services. One is invisible if one does not have money. Privatisation backfired badly in the City of Cape Town with outsourcing garbage – the City had to come back in. Currently much of Cape Town's sewerage is outsourced and the situation is pretty grim.

No-one has quantified a dual system – one for drinking and one for sewerage. The question was posed: Has anyone done a serious study of this issue? And if not, shouldn't this be a priority? Reclaiming Camissa is doing this with MBA students next year. The City of Rome does not waste anything. It builds cognitive maps for citizens as to how water is used, so that people know how water is used and become "hydro citizens". Our biggest problem is to get alignment between national, provincial and municipal levels of government.

The corporate influence on water

The global footprint of water – 500ml of bottled water takes 11 litres of fresh water to make – is bizarre. Some organisations like FLOW have been doing a lot of work with corporates and much is happening internationally where they provide employees with containers and access to water inside the working environment. There is also a need for awareness on water providing fountains that water is not an unlimited resource. There is a lot of hesitancy to put that message out in the retail sector because it will take away from their water sales. Certain corporates who should be at the forefront of educating the public have conflicts as their marketing people, who look at the money side of things. But these conversations have happened. Some of these innovative solutions are starting to be implemented. During the World Cup at the FIFA Fan Fest, FLOW had water stations but no-one could come with their own containers; they had to have Coca Cola products, so people were using their Coke bottles to be filled with water.

Much of the discussion thus far has tended to focus on individuals. What is happening to the big users for example industry or agriculture? Certain users are "green users" – they would like to use water again tomorrow, so they do not pollute their groundwater. The "red users" are

industries like the miners – they don't care. In agriculture, remnants of fertilizers and pesticides are a downside of their use. A comprehensive analysis needs to be done of what it would mean to not grow food. Agriculture does use a lot of water but a comprehensive study needs to be done.

Perhaps there is a water footprint model similar to carbon footprint that can be developed. Organisations such as FLOW have developed five principles of water – to create awareness within channels, to provide access to safe water, to look at ways to mitigate water footprints, to find ways to offset water footprint and working at ways of looking at local usage. The concept is to have three different colours – as people progress they move up the colours. This is similar to buying from green farmers. Consumer demand will mean they will want to purchase from companies that are conscious.

Reaching industries and getting them to pay a higher price for their pollution is essential. Individual efforts can only go so far. In some places we have a lot of water but it is so polluted it cannot be used. "Polluter pays" should be the norm. In agriculture, are there ways we can have food for everyone? What is happening now in terms of industries that are polluting and not being regulated? And then there is the problem of industries that has been bought out and does not exist anymore. Some of the owners of those mines have gone a long time ago. The responsibility is now with the state.

In response to these issues, one of the participants noted that the Scorpions and the Department of Water are setting some initiatives to deal with polluters. But we need to find some synergy with the Constitution and the laws. One department cannot take another to court, so we need some cleaning up and alignment of our laws. We can't lose sight of the fact that mining is the mainstay of our economy. Yes, clean water is very important, but people also have to work. For 200 years, mining has been providing employment. It's not a small thing to consider what we would do instead of mining or agriculture.

The effects of a tariff system

One can use a carrot and stick solution: one could introduce saving water mechanisms as well as having punitive measures to punish offenders. The problem at the moment is that there is not a

premium charged and people just budget for rates increases. But a carrot attempt will assist to encourage people to use less water while there is a block tariff. The City currently has a step tariff, except it flattens out at the top because they did not want to penalize the really big users. There is an assumption that the amount of water one uses is a proxy for wealth. But some people in denser houses will be penalized even though their per person usage is very low. It's very hard to find how people's usage changes depending on tariffs. Cities are trying to link conservation, resources and usage but this is not practical.

In response to some of the assertions made, a participant noted that Cape Town's tariffs are pretty good – that they are steep. Some dense houses are not using a lot of water but their bill will be proportionally large if they don't have an income.

There are also high users in township areas because leakages due to poor construction. Responsibility is put on households to fix these leaks but this is an impossible responsibility.

The current system is a tool but an imperfect one; the onus is always on poor households to find a solution. Issues are around housing, access to land and how to read a water bill further exacerbate the problem.

When we hear water is wasted and demand exceeds supply, it is important to note that demand rises when price is too low. Electricity tariffs are still too low to feel it in the pocket: R400-R600 is too low. We are cross subsidizing; certain industries are paying far too low – 20c/kilohour when consumers pay R1/kilohour.

What is the cross subsidizing model for water? It is not that similar – each municipality is setting its own price. But the problem is one has huge disparities of income in South Africa and therefore huge implications depending on how wealthy one is. Water has different flat rates so one can introduce different rates to the industry. It is hard to do this on a volume basis.

Water and development

The problem with water is not water on its own; there is a cycle. People use fertilizers in order to grow food – in order to get record harvests. The planet needs record harvests every year or it

will not be enough for the population. There are a whole range of things to consider. We cannot isolate water from poverty and that we need to do to feed people. There is an example from Austria with the pulp and paper industry. The river near the city was so polluted children could not play here. Then the green movement started and questioned the procedures which were being used because they were polluting to the point that future was compromised. Today, after working together on a solution, industry is still there and the rivers are clean. So we cannot see things as being black and white i.e. stop industry completely. The environmental technology sector can produce jobs. It is about looking at a different way of doing things, but still doing things. Get a capitalist to invest in something and s/he will ensure that it works!

It is important to also remember that there is a link between land and water – one cannot see the problems around water in isolation.

Obligations of non-state actors versus state

As a result of global water crisis in late '80s and early '90s, global financial institutions (for example, the IMF, World Bank and other institutions) pushed for privatization. This model, replicated in many countries, saw an increasing number of non-state actors involved in the distribution of water. There was opposition trans-nationally by civil society.

The main issue in a context such as ours is that the human right to water is protected as a public good or commons, and that it should at least be accessible in terms of the Constitution Section 7(2). To what extent can this be applied to multinational corporations or non-state actors? How then can such a right be realized if such a public good is being controlled by private actors? While recognising that there is a responsibility on the state to insist that private actors do not impinge on water supply, is that sufficient? There is also a way to impose mechanisms on companies based on human rights and pollution rather than go through the channels of the state's obligations. Can human rights not also apply within the private sphere - instead of making everything incumbent on the State?

The traditional solution would be to say that the state should protect the right to water, and for it to provide adequate policies for that protection, etc., and if there is no such legislation, to protect that right. First, we must argue that the State is accountable under Section 8 of the

Constitution in line with those private parties. In Children's Rights, parents also have obligations in terms of the Constitution as "private parties". There is no such clear distinction any more.

Isn't that the negative obligation of the State - to uphold what has been done and not allow companies to affect this? The positive obligation is that companies must uphold the law. At the moment can we say that the private company involved in the management or provision of water management has an obligation to fulfil Section 27(1) to provide access to water or to the state? The company has an obligation to its shareholders. Do you think that the company is an appropriate vehicle for the state to fulfil its duties? The obligation rests with the state and the company's profitability rests with its efficiency. So this would to a degree be regulated. There is a progressive movement to hold multinational companies accountable; we should look at international law and use that to say it should be applicable to our constitution.

It is important that we should look at using the issue of public trust as an argument to hold private parties accountable if these are transferred. Surely the way to transfer these rights is by contractual means that holds them accountable? What is the problem with this? For example, the privatized Mlembe contract has seen very problematic management. The contract needs massive renegotiation but neither party wants to do this. Whose responsibility was it to clean toilets? The contract did not state that. Contract law is a different case altogether.

Privatization may not be the problem; the real problem is government and management. There's a different set of problems that arises if one does not deliver. The problematic issue when it comes to privatization is to say that once there is privatization the contractor is likely to be motivated by cost recovery by any means necessary. The government needs to be vigilant about this. The poor should still be able to have access to minimum water for their uses. Perhaps we should use "service provider" instead of "privatization".

The Water Services Authority has the legislative authority to provide water but as things stand we have providers to provide services on their behalf. The key aspects are how we manage these processes so that it becomes equitable and useful for all. The key problem with this is that one tends to give the most profitable aspects of service providers – a cherry picking that loses revenue for municipalities. There is also a trend to work with semantics such as "Public Private

Partnerships” (PPP). The fact is that these private actors are still motivated by profit. The State still has its obligation to provide services. Privatisation under Margaret Thatcher is different from a contractual arrangement to provide services e.g. PPP that states one can use this land with certain conditions. It is more efficient to put out a tender. The issue is not for or against privatization. Rather, the issue is that once there is privatization, the State does not wash its hands.

Under international human rights law, the issue is not whether it is a communist or capitalist system. The issue is whether poor have access to clean water. Johannesburg Water operates just like a private company (full cost recovery) but is a government operation. In the case when water is supplied by the municipality, a subsidy system will kick in. “Privatisation” is the wrong word as it implies that the state hands over its responsibility, whereas what we are talking about is what the state going to do about delivering clean water.

Beaufort West property prices will drop due to shortage of water in area!

POSSIBLE SOLUTIONS

What are the priorities in terms of:

1. Legislation and policy
2. Changing local government situation
3. Civil society action
4. Looking at international best practice – international and regional agreements?

We need to revisit the Constitution and make sure we **align the policies with law**. It is still a question of interpretation; this does not guarantee that social justice is done. It is important that policies are aligned within different government departments. But whose task is it to ensure that this happens? How will this be implemented and who will do it? Who will make recommendations, comment on legislation or lobby for certain change? These are all questions which need answers.

It is a question **of getting critical mass to get pressure to bear on those responsible for legislation**. There are so many types of legislation e.g. protection of environment and water

distribution, but each municipality has different by-laws – it is not going to be an easy task. We cannot sit back and throw up one's hands. We must look at the most burning points. A working group can be established, benchmark studies undertaken, a lobby framework formulated and activism planned. We should first look at international and regional provisions and then define the meaning of water for our purposes.

We need to look at **streamlining three levels of government** so that we can comply with the constitutional mandate. Implementation is where the challenge is.

Mining should also adhere to Environmental Impact studies as every other sector.

Subsidizing grey water systems is another solution. It made sense for Eskom to subsidize solar systems – rather than send electricity across the country. It made sense from the supply side. Perhaps it makes sense for municipalities to invest in these technologies instead of investing huge amounts in infrastructure. One of the problems is that people are not using the money that is available – large sums of money are being sent back to Treasury. We need to bring people to book who are not accountable and do not spend the money which is allocated to them.

Civil society must support people to ask and claim their rights. NGOs, agriculture and other actors must pressure government to protect key water areas.

What do us as **individuals** do – we cannot always just look to government to act or provide the solutions? What are the best practices for individuals? People are very fond of their gardens. Some people have gardens which are completely indigenous. Plants and trees live on their own. That is part of a change of mindset which we need to embrace and encourage.

One of the solutions is to give a carrot. These are subsidies to save – change through inducement. But the State must not give up its responsibility – it must enforce punitive measures for going over.

Organic farming: The same can be done for **agriculture:** What are the best crops to plant and where? Planting potatoes in the Northern Cape is not a good idea. Natural fertilizer tends to provide moisture rich soil. In Cape Town and the Free State, people are running on entirely organic soil. After four years, one starts to get results. Using SASOL fertilizer, we get run-off from our soil. Chemicals ruin soil, so that yields in the long run become less. Organic farming takes more time to repair but is a long-term solution. There is the belief in agriculture that one cannot feed the nation on organic farming. The true reason is that one will not make so much money from organic farming, but it will benefit future generations.

CONCLUDING COMMENTS

- It comes down to civil society to transform mindsets – Steve Biko said that it not up to us to depend on government. We are water and we should be able to transform ourselves.
- We are paying taxes and can therefore expect government to do something. At this stage, government is the key player. We need to be more vocal on where we see the problems. We have great policies and a good Constitutional framework, but the biggest problem is around implementation. We need to be more vocal and pick up on different issues; for example, the use of fertilizers and detergents which harm the environment or the benefits of organic gardening. One could have programmes with continuous information on a weekly basis providing practical examples of solutions to these issues. That activism and the work that people are doing are critical. Government knows what the problems are but the gap is between this knowledge and implementation. Being more vocal will assist.
- South Africa has a very good legislative framework but there is a huge gap between what is legislated and what is being done. We have to be more political and vocal. New building regulations do make provisions for water conservation. In terms of decisions for developments, requirements are excellent but the question is whether there is follow up. There are by-laws about certain things like shower heads and twin flush systems but how often are they implemented?

- Access to water is getting worse. Why don't we spend the money we have to getting water to people who do not have access? It is a question of capacity. The judiciary has been under pressure to transform; to what extent is the engineering profession under the same pressure to transform? It seems that there should be a lot of pressure on the engineering profession to transform so that money can be spent more wisely. Many established engineers have retired or were retrenched in Cape Town so that our roads are in poor repair. Let's spend what we have and protect what we have so that everyone can get access to water.
- There should be a group of lawyers working *pro bono* on water cases. They are talking a lot but not fighting.
- Woolworths are selling organic and free range products and environmentally friendly detergents as it is the 'in' thing. We should include saving water as the 'in' thing for the capitalists of society. It was green for a long time and there has been a lot of green washing and there are corporates who use it as a marketing angle. It is about communicating to the consumer so that they have a choice as to where they buy from. Water is becoming a big deal. Woolworths is closing contracts with certain farmers because of the e coli content of water. The consumer is asking questions; that's why they don't just buy into what companies say. It is an elite thing; one must pay a lot more to buy organic or free range chicken. It is a balance. There is also a demand and supply thing; it is about reaching a tipping point.
- The Department of Water Affairs is completely different from the Department of Mining. The Planning Commission of Trevor Manuel is about helping government departments to know each other.
- It is very important to work together in unity and to keep in communication. There are many resources to co-operate with government, corporates, citizen and NGOs and to take action from this place of unity in order to raise awareness. Much energy can be wasted by blaming or not communicating. Perhaps the media will raise columns. Change will be a process.

- South Africa has one of the more progressive constitutions, but words are not enough; what is important is for those rights to be implemented, and for that to happen one must know those rights. It becomes a challenge to put pressure on the State to implement obligations when they are not sure what those obligations are - as in the Mazibuko case. There are international norms at international and regional levels that can be taken advantage of in this regard.
- Education of local government is important. Perhaps we can put together a course to teach what is important in terms of water issues to reps at local government.
- There is much good work happening. It is very important to keep up the controversy and contradictions. We don't have same the ideas and agendas but that is okay and positive. It is not enough to educate; running water waste plants is a government responsibility and they must be held responsible.
- There is no such thing as fresh water; I may be drinking the same water as Julius Caesar! Water cannot be lost. We must just make sure we do not waste it.
- Education is very important. Many government departments are willing to learn and help.

END