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Global business, local constraints: The case of water in South Africa

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GLOBAL BUSINESS, LOCAL CONSTRAINTS:

THE CASE OF WATER IN SOUTH AFRICA

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Abstract

This paper explores the changing incentives faced by global water companies in light of the political and legal struggle in South Africa over the growing trend of supplying urban drinking water on a commercial, for-profit basis, often by multinational corporations. It traces on the changes in rules and institutions in three spheres - global, national and local - affecting the strategies and behaviour of companies in the water services sector. The case of South Africa is an especially interesting intersection of these three levels due to its relatively high level of state capacity and fiscal autonomy, its formal constitutional commitment to a human right to water, and the historical legacy of powerful politically organised civil society, actually existing extremely low or non-existent social provision for communities of colour, and strong political will to provide universal access to water.

The paper argues that at the global level, key actors involved in funding, managing, regulating and consuming water services are constructing a policy of corporate welfarism in water provision, with three facets: fiscal, administrative, and ideological. This intersects with a national-level legislative and regulatory policy approach that uneasily combines what I call 'political' and 'transactional' frameworks for the provision of water services, frameworks that are in significant tension with each other. Finally, locally-based resistance in the townships and peri-urban areas to the implementation of key aspects of the national framework has important implications for the viability of corporate water welfarism. Global water companies have responded with a strategy I call 'soft consumerism', which are likely to only very partially, if at all, alleviate the substantive political conflict regarding larger structural issues underlying the demands for greater political participation by local actors.

Introduction

This chapter explores the changing incentives faced by global water companies in light of the political and legal struggle in South Africa over the growing trend of supplying urban drinking water on a commercial, for-profit basis, often by multinational corporations.ⁱ The delivery of domestic water services has historically been determinedly local and markedly regulated. Its status as a focus for this chapter reflects a remarkable shift over the last ten to fifteen years in the salience of private corporations with a global reach in the water sector. A series of United Nations conferences and gatherings dating from the 1970sⁱⁱ and the so-called 'International Drinking Water and Sanitation Decade' during the 1980s has since the 1990s taken a distinct turn towards the private sector, with an important 1992 UN conference endorsing for the first time the principle that water be treated as an economic good.ⁱⁱⁱ After private sector investment in water between 1990 and 1997 increased 7,300% on 1974-1990 investment levels,^{iv} intergovernmental activities in relation to water have intensified,^v and are increasingly incorporating the private sector as a key partner in their vision.^{vi}

At the same time, private sector actors are themselves forging ahead on their own terms.^{vii} The growing influence of global companies in the provision of domestic drinking water has catalysed a political and legal struggle which intersects not only with changes in national regulation and norms within developing countries, but also with a range of protest, reactions and participation by local NGOs, some of whom are supported by transnational movements. As a result, there are changes in three spheres – global, national and local – which are affecting the strategies and behaviour of companies in this sector. The emerging patterns at each level are constructed by conflicts endemic to what John Ruggie refers to as the process of embedding liberalism, which he defines as piecing together “a grand social bargain whereby all sectors of society agree to open markets...but also to contain and share the social adjustment costs that open markets inevitably produce”.^{viii} The substantive issues he identifies are taken up in global water politics through an oft-repeated trope: ‘is water a human right or a commodity?’ While this opposition is oversimplified, it captures the substantive implications of the changes I discuss in each of the three spheres of global, national and local. I will, however, focus in this paper on the changes in rules and institutions rather than their substantive effects. Nonetheless, the tension between redistributive equity and productive efficiency implied by the human right/commodity distinction is an important shaping force of those rules and institutions.

South Africa focuses the three levels of investigation in a particularly interesting way. First, South Africa is a developing country possessing a relatively high level of state capacity and fiscal autonomy, making it an interesting case for exploring the relative salience of national and international dynamics in the process of trying to embed liberalism, or soften capitalism's harsher distributive effects. Secondly, South Africa has made a formal constitutional commitment to a human right to water, meaning that at the national level of norms and regulation there is a formal opportunity, rarely present in cross-national terms,^{ix} for human rights to balance commodification. Thirdly, South Africa provides, for historical reasons, a rare combination of powerful politically organised civil society, both in labour and social movement terms, and actually existing extremely low or non-existent social provision for communities of colour. As a consequence, South African politics of resistance and protest vis-à-vis dynamics of liberalisation and globalisation are not rearguard action, in contrast to established structures in European welfare states, but can draw on, at a national level, strong political will to supplement the constitutionally embedded legal commitment to

provide universal access to water. The opportunity, then, for social movements to play a co-equal role with powerful market actors in debates over how markets should be embedded in political and social contexts is unusually present in the South African context.

The Changing Global Framework

This section sketches the emerging skeletal architecture that is being constructed at the global level by key actors involved in funding, managing, regulating and consuming water services. I contend that this architecture supports a policy of corporate welfarism in water provision at the global level. The reference to welfarism is intended neutrally, simply to convey the fact that these developments at a global level are portrayed by their proponents as policies that will, amongst other goals, alleviate the plight of those who lack access to water or the means to pay for such access. The likelihood of succeeding in this goal, or even the sincerity of the motivation, is bitterly contested by those who challenge the trajectory of commodification of water. This reflects the tension inherent in this regime of global water welfarism, between on the one hand expanding opportunities for profitable investment in water and on the other hand ensuring the broadest possible diffusion of the resulting benefits.

There are here echoes of older debates on the question of whether national welfare state policies established in post-war industrial democracies served merely to legitimate the basic structures and results of capitalism, or to genuinely modulate it as a form of political economy. Placing my sketch of the global water sector in this historical context serves another purpose too: it suggests an implicit analogy between what is happening in a particular sectoral space across state boundaries, and the growth of state institutions at national level. I do not wish to overstate this analogy,^x but I believe this serves a useful purpose of at least temporarily anchoring the readers' institutional imagination, as well as gesturing to the political significance of private sector influence and involvement at this level.

In short form, global water welfarism entails a vision of a regime where public aid supplements the private investment of multinational corporations to solve the social and environmental problems of global water provision, catalysed by a hopeful mix of corporate social responsibility and the probing eye of government and civil society monitors. In what follows, I elaborate this vision by reference to three dimensions: the fiscal capacity, the administrative capacity and the ideological character of this emerging 'regulatory space'. The 'welfare goal' that animates the field of global water welfarism can be envisaged succinctly by reference to the water-related Millenium Development Goals that aim to halve the numbers of people in the world who lack clean drinking water (1.5 billion) or sewage (2.4 billion) by 2015.^{xi} In effect, the three dimensions of global water welfarism discussed in the following paragraphs could be projected to a 'shadow water state' at the global level. In this ghostly image, legislative potential haunts the World Water Council, the UN Committee on Economic and Social Rights and ISO Technical Committee 224 on Water and Wastewater. Loan conditionalities from the multilateral development banks intersect with the activities of the Global Water Partnership to flesh out these developments in executive fashion while bilateral investment treaties (and possibly even GATS) adjudicate the inevitable conflicts. In what follows, I flesh this out.

The **fiscal capacity** of global water welfarism is provided by an intermeshing of private investment capital and official development aid (ODA). Multilateral development banks have for some time imposed loan conditionalities that require private sector

participation in the water sector, and this continues to be the case.^{xii} Further, since 1999, when the high 1990s level of private sector investment in the water sector mentioned in the introduction began to fall,^{xiii} there has been a trend towards *mixing* aid with investment. This mixing underpins a particular model which is widely disseminated: public-private partnerships where all partners share the goal of efficiently delivered basic goods and services bolstered by a subsidy framework that will facilitate universal or affordable access.^{xiv} This has been specifically endorsed in the water sector by the World Bank,^{xv} and efforts to develop a regional lending facility in Africa^{xvi} along similar lines are presently ongoing.

Such fiscal arrangements have been labelled by civil society critics as “a franchising model for global water corporations”.^{xvii} They certainly leave open the question of what kind of organisations will provide the **administrative capacity** for actually delivering water services, and this is obviously crucial for developing countries such as South Africa with limited resources. In water, direct provision via multinationals is an important carrier of such administrative and technical capacity. The global water market is growing^{xviii} and is dominated by three firms in particular from France and Britain: Ondeo, Veolia and Thames Water.^{xix} All three of these firms participate in the water and wastewater sector in South Africa, and Saur and Biwater, two additional companies also with South African contracts, are respectively French and British and within the top ten global water companies in terms of market share.

At the global level, those with the administrative capacity to deliver water services are increasingly trying collectively to shape the environment in which they operate in several dimensions: standard-setting, policy, advocacy and implementation. France spearheaded the formation by the ISO^{xx} of a new Technical Committee on Water and Wastewater Standards in late 2001, with the objective of developing standards on service activities relating to drinking water supply and sewerage. Many major companies in water (including construction and engineering as well as water service delivery and management) are members of the World Water Council (the WWC), as are the major multilateral development banks. The WWC, legally incorporated in France as a UNESCO-affiliated NGO, describes itself as “the International water policy thinktank dedicated to strengthening the world water movement for an improved management of the world's water”. It functions as a forum for policy and advocacy and hosts a tri-annual World Water Forum, until recently perhaps the only global forum not chaired by the UN to include a formal Ministerial.^{xxi} Finally, the private sector has also taken a lead in fostering a more implementation-oriented kind support for building administrative capacity, via technical assistance and capacity building. The Global Water Partnership, a network that complements the work of the WWC, funds a wide range of water-related activities globally, at twelve regional levels, and develops and promotes management norms and principles applicable at practical implementation level.^{xxii}

Ideologically, the activities of this web of primarily non-governmental actors are underpinned by familiar neo-liberal views regarding the merits of market efficiency, widely promoted even in a sector so unpromising as water services, with their characteristics of natural monopoly and very high sunk costs. But it is important to note the tempering of ‘raw’ market reforms with a concern for poverty reduction goals: this is visible both at the general level in development policy^{xxiii} and in a range of water-specific documentation.^{xxiv} This emergent ‘social face’ of the neoliberal consensus poses a growing dilemma, perhaps more strategic than philosophical, to opponents and activists. Private sector provision of water services has become an increasingly contentious aspect of the World Water Forum and disruptive civil society protests at the second in 2000 resulted in the inclusion of formal

NGO panels at the third in 2003.^{xxv} But the dichotomous cleavage in water access politics (whether the provision of safe drinking water should be treated as a commercial service to be purchased or as a human right) that energises the political divide does not sit comfortably with the welfarism increasingly inflecting the rationale of global water policy.

The reason for this is that the notion that human rights and commercial services are inherent opposites is a perspective that dissolves from a point of view that considers the ideological and practical effects of human rights strategies as embedding more deeply the structure of a global market. Take some remarks in 2000 made by Paul Hunt, Rapporteur of the UN ESCR Committee which give to human rights the task of redistributive politics characteristic of national welfare states but transposed now to a global level:

[T]he Covenant [for Economic, Social and Cultural Rights] - and other international human rights treaties - can be used as a shield to protect the state's poorest citizens from the policies of powerful, global non-state actors ... NHRIs [National Human Rights Institutions] can show how the Treasury's negotiators can use the Covenant in negotiations with [International Financial Institutions]. They might offer human rights training for the Treasury's negotiators...[Moreover] just as the Covenant can be used to tackle unfair inequalities within a state, so it can help to address the grossly uneven distribution of power between the economic north and the economic south.”

This sounds admirably progressive, but his concluding words are prophetic:

Economic re-structuring still occurs. But it does mean that the reforms are introduced in ways which minimise avoidable suffering, for instance by the introduction of safety nets for vulnerable groups – *thereby contributing to the reform's longterm sustainability* (emphasis added).

The UN Committee on Economic, Social and Cultural Rights has in fact recently asserted the existence of a human right to water.^{xxvi} This attempt to formalise and to specify in more detail what has until now been more or less a rhetorical claim points towards ways in which the dichotomy can also be challenged from a more empirical perspective.^{xxvii} For the practical implementation of such a right entails a web of regulatory entitlements and obligations that significantly blur the salience of the distinction between water as human right or as commodity. Socio-economic rights are in practice implemented by regulatory norms that protect consumer (public) interests by establishing minimum standards of provision. Of course human-rights motivated regulatory norms may and often will pull in different directions from the governance norms advocated by the like of the Global Water Partnership.^{xxviii} But since the regulatory dimension of access to water, whether as a human right *or* as a commercial service, has at present almost no operative institutional presence at the global level, it is only at the level of national case studies that one can map more precisely the implications of this ideological ambiguity of global water welfarism. For the cumulative effect of the fiscal, administrative and ideological dimensions traced so far is insufficient for the actual execution and implementation of water service delivery. In practice, emergent global water welfarism piggybacks significantly on national-level rule structures.^{xxix}

The Changing National Framework

Despite the development of the global public policy network structure described above, water remains a policy sector that is irredeemably local in many ways – the physical infrastructure for delivering water is a necessarily local asset, the stuff itself is grounded,

heavy and awkward to move, and the power associated with control over water resources gives local politicians strong incentives not to cede that control. Thus the most important filter of global welfare welfarism is the legislative and regulatory framework established at national (and, in South Africa, provincial) levels.

In the following discussion, I contrast political and transactional frameworks for the provision of water services. Transactional frameworks minimise political discretion especially over tariff-setting processes, and emphasise protection against risk (primarily for those funding infrastructure operation and investment), value for money, affordability and open procurement procedures. Political frameworks preserve political discretion on key issues such as tariffs and prioritise mechanisms for consultation with labour and consumers over the structure of water services. Political and transactional frameworks are not incompatible alternatives but their co-existence tends to generate tensions between the competing policy goals of equity and efficiency implicit in the ‘human right versus commodity’ dichotomy. Political and transactional frameworks provide different degrees of opportunity and responsiveness for the key actors in the water policy networks.

South Africa is, as previously stressed, fiscally, much less dependent on foreign aid than many other developing countries, having only taken out one World Bank loan since its transition to democracy in 1994. Nonetheless, in the immediate aftermath of winning power, the ANC government substituted their electoral platform, known as the Reconstruction and Development Programme (RDP) with an alternative strategy they called GEAR – the Growth, Employment and Redistribution Strategy. RDP was a state-driven programme of redistribution in the social democratic mould, fed by extensive local consultation and participation, while GEAR was a market-led strategy that prioritises economic growth and provides redistribution later and residually. This shift, which one commentator has labelled the ‘great U-turn’,^{xxx} was significantly influenced by a deliberative process in which international capital interests played a critical role.^{xxxi}

The shift from RDP to GEAR had direct implications for water services policy. It included a policy commitment by the government to keep the non-tradable input costs of economic production for industrial consumers (electricity and water primarily) as low as feasible for the purpose of attracting foreign investment. At the same time, GEAR also constrained government borrowing, limiting intergovernmental transfers, crucial for local government delivery of water services.^{xxxii} These pressures fed directly into the new democratic government’s legislative framework for water services, which faced the immense challenge posed by a mere 34% of its citizens having access to piped water. The result is a legislative framework that one interviewee characterised as ‘schizophrenic’,^{xxxiii} reflecting an underlying legitimisation crisis poignantly illustrated by the jarring transition in this 1996 speech by the then-Mayor of Johannesburg:

Transformation has a price. Our country has been liberated into an era governed by the fundamental principles of non-racism, non-sexism and justice for all. But please understand the particular conditions of government which require resources to give people the basic services which are their fundamental right as citizens of this country... Businessmen from the US are used to fast services. It takes us six months to find out who owns a piece of land. There are danger signals when our councillors and administrators do not meet the investors’ aspirations. Some administrator tells the investor to go to such a room and there they find a woman painting their nails. This is the way to rule ourselves out of international global competition.^{xxxiv}

South Africa water welfarism seesaws in similar fashion between the human rights dimension and the needs of investors, as the following compressed narrative will convey.

On the one hand, South Africa, as previously noted, has made a formal constitutional commitment to a human right to water.^{xxxv} And this legal commitment is backed by a genuine political will to effect major redistributive change in this crucial area of basic socio-economic need.^{xxxvi} On the other hand, over the decade 1994-2004, in tandem with the more general shift from RDP to GEAR, three principal trends can be observed: first, the overlay of an initially political framework with a transactional one; secondly, a distinct muting of an initial preference for public sector provision, and thirdly, marked decentralisation to municipal governments mostly stretched very tight for resources and expertise. In what follows I make a limited commentary on the main trends in regulatory oversight, the extent of private sector participation, legislation and policy, focusing on punctuated change across time.

Regulatory oversight

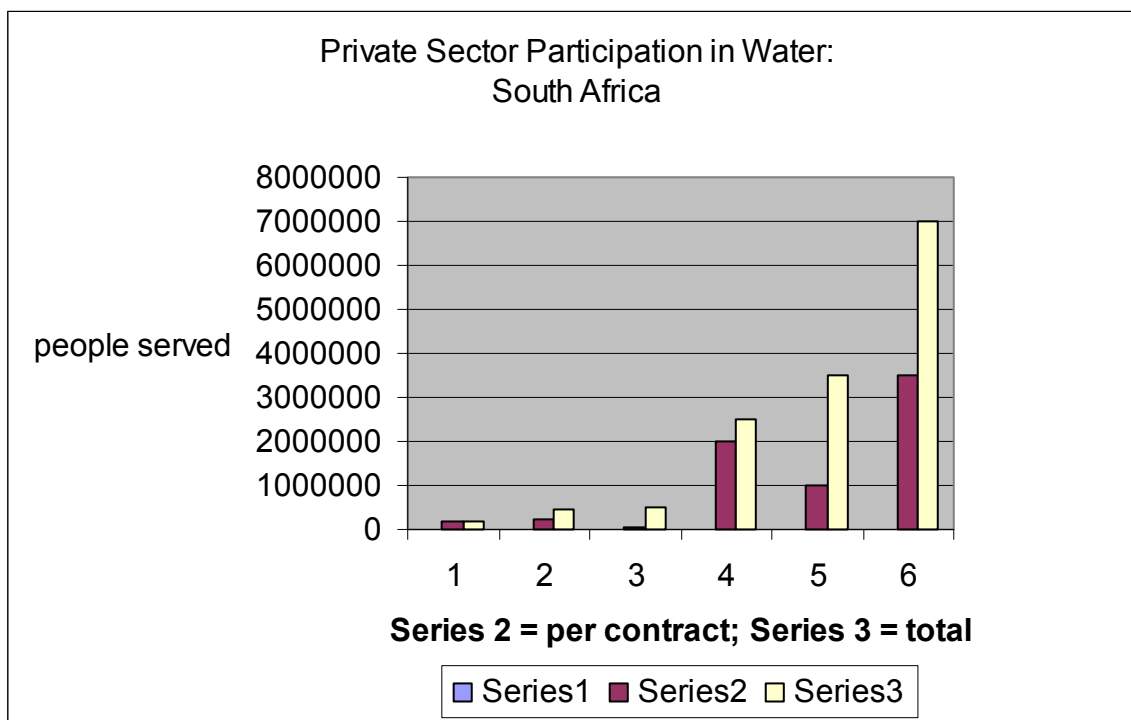
DWAF CWSS Division ^{xxxvii}	MIIU		Dept of Provincial and Local Govt	Treasury
1994	1997	1998	2000 ^{xxxviii}	2001
2003				

Choosing explicitly from the outset to avoid the creation of an independent regulatory agency,^{xxxix} regulatory oversight was initially located in a Community Water Supply and Sanitation division of the Department of Water Affairs that, in tune with the social democratic spirit of RDP, also worked directly with communities in a participatory fashion to provide water supply. As the U-turn began to become operative, a unique institution for providing technical support to local government gained ascendancy. The Municipal Infrastructure Investment Unit (“the MIIU”) deserves further comment, since it illustrates well the interpenetration of national and international personnel and knowledge. The MIIU is a government department structured as a non-profit company, with the objective of facilitating private sector investment in infrastructure, including water and sanitation. It reports to the Department of Provincial and Local Government and relies on its accounting and employment systems, but it operates at arms-length from that department with considerably more flexibility and autonomy as a result of its company structure.

While MIIU has no formal political authority, its capacity to provide both funding and expertise means that it has a powerful influence in shaping the terms of any deal for which it provides support. That influence promotes, broadly speaking, the models, techniques and norms promoted by the World Water Council and the Global Water Partnership.^{xi} USAID provides considerable funding to MIIU to support expatriate advisors who work locally and report through the MIIU governance structures. These advisors have facilitated extensive knowledge transfer about approaches to water services from all over the world.^{xli} The MIIU’s policy-based influence has recently been supplemented by greater legal control given to the Treasury under the recent Municipal Financial Management Act of 2003.

The above trend in regulatory oversight from political to transactional has largely tracked a steady increase in the extent of PSP, at least as measured by population coverage.

Between 1995 and 2003, 7 million (roughly 15%) of the total population have come to be served by the private sector in water services, and the major actors in this private sector provision are almost all members of the World Water Council.^{xlii}



1. 1992: 25 yrs concession to Ondeo for Queenstown water
2. 1994: 10 yrs lease to Ondeo for Stutterheim water
3. 1995: 10 yrs lease to Ondeo for Nkonkobe water
4. 1997: 2-5 yrs management contracts for four province-wide BOTT consortia for rural water
5. 1999: 2 x 30 yrs concessions to Saur and Biwater for Dolphin Coast and Nelspruit Water
1 x 20 yr concession to Veolia for Durban wastewater treatment plant
6. 2001: 5 yrs management contract to Ondeo for Johannesburg water

The upward trend of PSP is, however, complicated by the fact that the depth and breadth of legal delegation the government has been willing to commit to private companies has actually seesawed abruptly. Early long-term commitments made in the first three apartheid era contracts (1-3) are now regarded as poor models. These contracts were negotiated after a series of visits by World Bank officials and Ondeo representatives and a seminar on private sector participation hosted by the Development Bank of Southern Africa.^{xliii} The second phase of private sector participation therefore pulled back to 2-5 year management contracts (4). Four consortia, each led by a subsidiary of a global corporation (Suez Ondeo and Saur in particular), aimed to assist local government in four provinces in building infrastructure and delivering water and sanitation, to rural areas.^{xliv}

Private sector participation was then ratcheted up with the three long-term concessions signed with global water companies in 1997 in Nelspruit, Durban and the Dolphin Coast (5).^{xlv} But the political cost of this move has resulted in a second pull-back to more short-term experiments: a 5 year management contract for Johannesburg Water and (not represented on the time line but discussed further later) a voluntary partnership between Durban Metropolitan Water Services and Veolia (Vivendi) Water. This seesawing in the extent and depth of private sector participation is reflected in an analogous seesawing of the legislative and policy framework shaping that participation:

Legislation-Policy Interaction

Sect 27 Financial Constitution Act	Water Services Act		Municipal Services Act		Municipal Management
1994	1997	1998	2000	2001	2003
	Water Policy Preamble Framework	Framework Agreement for Restructuring of Municipal Services		Free Basic Water Policy	Strategic Credit Code
			Control		

The commentary developed in the following paragraphs to amplify this timeline suggests a rough pattern of ‘action and reaction’, arguably resulting in a gradual increase in the transactional focus at the hard law level, while tempering it politically with soft law or policy initiatives.

The starting point is the unusually eloquent preamble to the country’s first major policy paper on water, which amplifies the constitutional commitment to the full panoply of commitments that a human right to water might entail:

The dictionary describes water as colourless, tasteless and odourless - its most important property being its ability to dissolve other substances. We in South Africa do not see water that way. For us water is a basic human right, water is the origin of all things - the giver of life. We want the water of this country to flow out into a network - reaching every individual - saying: here is this water, for you. Take it; cherish it as affirming your human dignity; nourish your humanity. With water we will wash away the past, we will from now on ever be bounded by the blessing of water.^{xlvi}

The Water Services Act that later fleshed out the 1997 Policy Paper enacted, somewhat less poetically, an initial framework of political regulation that tried to temper distributive externalities and ensure ongoing democratic input into decisions about water service delivery.^{xlvi}

The subsequent waxing star of the MIIU and its promotion of the Nelspruit concession provoked considerable conflict with organised labour^{xlvi} that was temporarily resolved by the signing of a “Framework Agreement for the Restructuring of Municipal Service Provision”.^{xlvi} But this was superseded in fairly short order by the Municipal Systems Act 2000, again an uneasy compromise.^l Decentralization policies have deflected the working through of this uneasy compromise to ill-equipped local government structures, intensifying political conflict. The expansion of PSP has continued in the face of this conflict, albeit on restricted terms,^{li} but importantly, the government did establish in 2001 a Free Basic Water Policy establishing a universal right to access 25 litres of water per person per day within 200m of their dwelling.

The overall result of this can be summed up as a hard law framework that is increasingly transactional and relatively neutral to the identity of the provider, combined with policy-based, non-statutory measures to legitimate this approach. The latter do not reinscribe opportunities for political participation and influence into the regulatory framework, but rather ameliorate its harshest sideeffects. But arguably South Africa's passionate commitment to a human rights approach has developed over time, in the context of the imperatives of transactional risk and commercial service delivery that dominate the fiscal and administrative support for the emerging strategy of global water welfarism, into a type of soft consumerism. As the Executive Director of the MIIU comments:

You've got to be able provide the free basic services, cut the damn thing off when the person's consumed that amount and be able to bill in a reliable way. [But] your credit control policy must include – as opposed to the hard-line 'forcing people' kind of approach – a customer relations function, a complaints centre, a mechanism of incentivising payment and that kind of thing. It's all about creating new systems, new management capacity and we're saying, really, that whilst you're doing that pay attention to *the human consumer issue stuff* because if you don't do that you've got very little chance of success.^{lii}

"Cutting the damn thing off", however, inflames social activism at local levels that continually destabilises the fragile bargain of soft consumerism described above. In part, of course, it is protest that has brought the legislative and regulatory framework to its current uneasy mix of contradictory signals. Organised labour has played the most important role in tempering the transactional focus of that framework.^{liii} But locally resistance in the townships and peri-urban areas to the *implementation* of this move towards greater cost-recovery and marketization in the delivery of water has important implications for the viability of the framework changes. In the rest of the chapter, I look closely at the differences among local reactions in one region of South Africa: the Durban metropolitan region.

Changing local politics

In the townships and peri-urban areas of South Africa, there have long been severe problems of mass non-payment for services, the result of collective political action taken by township residents in protest against apartheid. Apartheid has ended, but now cost recovery principles applied to previously badly underserved areas, even in diluted form, have raised tariffs very significantly from the low base flat rate that was charged (but not paid) under apartheid. Township residents continue to boycott payment, and in relation to water, have mixed marches, protests, payment boycotts, illegal reconnections, political education and test case constitutional litigation to disrupt the policies of the government.

Durban Metro Water Services is a division of municipal government that was corporatised in 2000^{liv} and serves close to a million customers. It does so in a region with a complex political history that provides a rare counterweight, through Zulu tribal and Indian interests, to the dominance of the ANC in national politics. Interviews carried out with four different focus groups showed that local political dynamics vary with the social characteristics of different groups, but not in a manner that connects one particular group to one particular type of strategy. This can be schematically represented by summarising the variety of strategies seeking to alter the terms of the social bargain fixed at legislative and regulatory level, and connecting them with a key to the different focus groups indicating which groups utilise which strategy:

	<i>Collective</i>	<i>Individualistic</i>
<i>Adversarial</i>	<i>Test case litigation (1)</i> <i>Marches, protests, illegal reconnections (1) (2) (3)</i>	<i>Legal defence (1) and to a lesser but growing extent (2)</i>
<i>Cooperative</i>	<i>Marches, protests (1)(2)(3)</i> <i>Political education, building social movements and potentially political parties (1) (2)</i>	<i>Customer Service Agents/ Community Development Officers (4)</i>

- 1) Chatsworth focus group: moderate anti-globalisation
previously Indian township, historically Democratic Alliance or Minority Front. Young organisers and older members; civics-type structures, significant reliance on legal strategies as well as mass direct action
- 2) Mpumalanga focus group: radical anti-globalisation
previously black semi-rural township built on traditional Zulu land, historically IFP and tribal but mixed ANC and IFP more recently. Young students (18, 19), loosely organised, fluid, often violent activism
- 3) Ntuzuma focus group: social democratic welfare state (the 'RDP' constituency)
previously black township, strongly ANC. Mid-late 30s 'forgotten generation' with very little formal education. Primarily involved in community groups pursuing livelihood/survival activities, little direct political action and no reliance on legal strategies
- 4) Kwamashu focus group: 'The Great U-Turn' (the 'GEAR' constituency)
previously black township, strongly ANC. Mid-20s in their first or second job, community development approach focusing on pragmatic service delivery problems

To some extent, a web of overlapping practices cuts across all the groups. Moreover, the variety of strategies tend to co-exist in counterproductive parallel rather than interacting productively to build bridges between regulatory and citizen space. This is in essence because of a conflict between strategies that seek to build political agency and strategies that are aimed at embedding responsible consumer behaviour. At present, the former have more mass support, and undermine the goals sought by the latter. Mass mobilisation strategies swing between cooperative peaceful modes and adversarial violent ones in a pattern one participant calls 'popcorn politics'.^{lv} Both these types of strategies, however, aim to create political agency for pursuing (vaguely if at all specified) alternatives to capitalism. This rejects the current models premised on private sector participation altogether: the aim is to harness the current 'politics of sheer refusal'^{lvi} into a more pro-active, mundane, sustainable political education that will create a sense of collective identity for those excluded not just from basic provision in water, but also in health, education and shelter.^{lvii} Some strands of this activism seek to build an alternative political party, but whether or not the activists aspire to this level of representation, they mobilise around pragmatic service delivery issues such as service standards and the cost of water in order to build political agency against the more structural agenda of neoliberalism and privatisation.

This is in stark contrast to the young activists who work with 'consumer education' programmes run by Durban Metro Water Services in partnership with Vivendi (Veolia) Water, seeking to build social and political consensus around the direction of reform. Here the focus is on paying bills, managing debt schedules, water conservation techniques, the proper operation of sanitation systems and the like. The structural questions that are the concern of the more disruptive activists are part of the taken-for-granted background for this work. There has been a limited shift to a more politicised and less technical conception of

these programmes. Those liaising between citizens and the two partner providers were initially known as ‘Customer Service Agent’ but in the second phase of the project were renamed ‘Community Development Officers’. This reflects the early inefficacy of the technical, problem-solving approach, and the realization by the partners that the preconditions for securing consensus required a less instrumental approach to this mode of responding to affected interests and providing a voice for participation. More recent expansions of this effort to bridge regulatory and citizen space have contracted, interestingly, not with foreign multinationals but with a local South African firm that has more experience of working with local township communities, and builds into its strategies some attention to structural issues (e.g. hiring only those in the local community who have been unemployed for a certain amount of time).

In tandem with these ‘soft’ approaches of two very different kinds, formal legal strategies also play two kinds of roles in the activism around water. The first, more procedural one, is a ‘legal defence fund’ that provides pro bono assistance for those involved in direct actions that often lead to arrest, eviction or assault. This is a strategy that legitimises, by reference to civil and political rights, the actions of activists. As one organiser said:

There is this huge ideological project – the local press and the vast majority of academics are all saying ‘there is one way of doing things, it’s the way that competitive nations do things. We’ve all got to pull together, these [water activists] are messing it up for us, they’re holding us back.’ ...Now getting a court case can really help with the ideological stuff – it helps show these people are not criminal, they are not lazy, [their actions] are actually in line with the values of the new society that was founded.^{lviii}

Procedural legal defence, then, clears a space for political participation on the part of those marginalised by the changes in policy, not just by freeing activists physically to continue their political work, but also by countering tendencies to dismiss the activists as irresponsible hooligans. This is, indirectly, a way of keeping open the possibility of integrating the demands of the activists into the more routine negotiations over the terms of the legislative and regulatory framework.

Secondly, with a more substantive goal in mind, in the hope of enforcing access to water directly as a socio-economic right in itself, some constitutional test litigation has been brought to challenge disconnection for non-payment of bills on the basis that it unconstitutionally denies access to sufficient water. The results are mixed and limited. In the two cases decided to date at lower court level, one held that disconnection was a *prima facie* breach of the constitutional right to water, placing a burden on the water provider to demonstrate that they had provided a panoply of due process rights before disconnecting consumers.^{lix} The other case declined to grant any remedy, in part on a technical ground^{lx} but also (albeit indirectly) because the judge considered that the plaintiff’s illegal reconnection to the system had deprived her of the benefit of the rights accorded by the Water Services Act.

The cumulative effect of the two legal cases is to provide important but purely procedural protection to citizens who pay what they can afford, and refrain from civil disobedience in their broader demands to the political decision-makers. The litigation has no effect on the principal issue that divides the stakeholders in the broader structural conflict: the justice or appropriateness of a cost-recovery approach to the delivery of water services.^{lxi}

It softens the impact of that policy approach, but in a way that accords more dignity to responsible consumers rather than giving more voice to political participants.

The responses of global water companies

The relationship between global, national and local levels of ‘water welfarism’ is complex. On the one hand, national norms and regulations continue to be the most important frame for the operations of global water companies in a developing country such as South Africa. On the other hand, the influence of the companies at the global level is presently somewhat masked by its relative institutional invisibility. Arguably, what exists at the global level to date is a form of evolving self-regulation negotiated primarily between an epistemic community of funding institutions and corporate providers. At this level, knowledge transfer is the most important mechanism of governance, and so although a network of knowledge-transfer-based governance routines at the international level is currently parasitical on a decentralised arrangement of distinct national institutional frameworks, over time, the network does shape the evolution of these frameworks. This occurs via the promotion of a ‘model’ that is presented as demonstrably more efficacious in terms of a particular coherent intellectual perspective (neoclassical economics), and we can see the influence of this model on the evolution of the South African legislative and regulatory framework over time as it becomes increasingly transactional. There is also some indication that global water companies are moving towards the promotion of a global-level regulatory framework: for example, the French-catalysed initiative to develop ISO service standards, the recommendation by the Camdessus Panel that a ‘model contract’ be developed at the global level to save on the transaction costs of public-private partnerships, and work currently being undertaken by the French Water Academy on developing a legal framework for public-private partnerships applicable on a cross-national basis by working ‘bottom-up’ from a range of case studies.^{lxii}

However, it is also clear from the case study discussion that this model is deeply contested, and in the South African case this is so not only at local levels of implementation but also within the coalitions that shape national policymaking. This contestation is to some extent generating some attempts at accommodation from the global water companies, both at the level of globally-disseminated principle and via local-level pilot projects. In 2000, for example, Suez became a member of the United Nations' Global Compact “to create a permanent platform for dialogue and partnership around sustainable development” and in 2002, Gerard Mastrallet wrote an open letter declaring a ‘Water Truce’ and committing Suez to improving universal access to clean drinking water in its recent publication on public-private partnership in management of water services. The letter asserts: “Fighting against poverty is not an option, it is an obligation. Access to water may be one of the most vital issues to underpin development and prosperity, and to provide hope”.^{lxiii} Vivendi is also a member of the UN Global Compact, and the South African case study illustrates its attempt to restructure relations with local consumers via a partnership with the municipal government.

But the case study also suggests that these kind of commitments by global companies are not sufficient to satisfy local demands for transparency and political participation at the local level. In part this is because the ‘soft consumerism’ by which *corporate* welfarism is fleshed out does not address the substantive political conflict regarding larger structural issues underlying the demands for greater political participation. In other words, consumerist versions of local participation fit well with the model disseminated by the global network of

actors, but in their focus on ‘responsible consumer behaviour’ and micro-technical issues of water and waste practices, they elide macro-structural issues of ongoing poverty and unemployment that underlie the more unruly protest-based modes of participation.

Thus we are reminded that debates about governance are increasingly proxy for debates on the appropriate limits of market capitalism, and that there are still enormous gulfs between perceptions at different levels and between different social groups about how to “share the social adjustment costs that open markets inevitably produce”.^{lxiv} South Africa’s introduction of the Free Basic Water Policy may seem an appropriate compromise between the model preferred by global water companies and local political pressures, but it is regarded negatively by the World Bank, and countries that are more dependent on international multilateral development funding than South Africa may well find themselves unable to pursue such compromises.

It remains the case however, that protest can continue to destabilise the contractual environment for global water companies in ways that generate the most extreme response of all: disinvestment^{lxv} and international arbitration claiming compensation. While this has not occurred in South Africa, contracts have been terminated in Bolivia, Argentina, the Philippines, Puerto Rico, and Mozambique, and the slow and expensive grind of international arbitration is in process in several of these. The incentive remains, therefore, to find a more productive way of going forward. The deeply politically divisive nature of water issues has already led to what some have hailed as the first true institutional innovation in global governance, the World Commission on Dams (WCD).^{lxvi} This hybrid institution, which was tasked with generating general principles to guide the funding and building of dams, could be viewed as a novel way of generating a kind of code of conduct to which all players in a particular sector commit to upholding. It was novel in the sense that those generating the code – government, NGOs, activists and corporations – were interacting on a level playing field in an institutional context unmoored from standard representative and accountability mechanisms, and the process was unprecedented in its transparency and openness as a consequence (to compensate for what might otherwise be perceived as legitimacy deficits). It was also novel in a second sense: that its participants, far from sharing the consensus that underpins epistemic communities of the kind that currently dominate the global level of water welfarism, spanned the full range of positions in the debate, including the most radical grass-roots direct action. It is therefore significant to close by noting that a Global Water Scoping Review^{lxvii} has been established to explore the possibility of establishing another, similar, global institution, this time on private sector participation in domestic water service delivery. A global dialogue driven by the concerns underpinning local conflict may yet generate more explicit, visible links between the three spheres that currently frame this troubled issue.

Endnotes

ⁱ The research project from which this chapter draws is funded by the ESRC and the AHRB under Research Grant 143-25-0031, in the Research Programme on Cultures of Consumption, and their support is gratefully acknowledged. This chapter is written mid-way through the collection of evidence, which is focused on six case studies, selected to vary along a number of different dimensions that explore a cross-section of possible governance contexts. They all involve one or more of the three largest multinational water companies. They include both developing countries and OECD countries (Argentina, Bolivia, Chile, France, New Zealand, South Africa), and a full range of different legal structures (one concession, two management contracts, two privatisations, one public-private partnership). Thus far, three national-comparative case studies have been carried out in South Africa, Chile and New Zealand. Three more case studies (Bolivia, Argentina and France) will follow, as well as follow-up work in South Africa and a more systematic survey of trends at the international level.

ⁱⁱ In particular from the Mar del Plata Conference 1977.

ⁱⁱⁱ International Conference on Water and the Environment, Dublin 1992. The Dublin conference endorsed 4 principles in addition to the notion of treating water as an economic good: the other 3 recognise the importance of participatory approaches in water development and management, the importance of the role of women, and the status of water as a finite, essential and vulnerable resource.

^{iv} Private sector investment in the water sector between 1974 and 1990 was US\$300 million; between 1990 and 1997 it rose to US\$25 billion: see Silva et al, 1998, "Private Participation in the Water and Sewerage Sector - Recent Trends", 147 *Public Policy for the Private Sector*, 1-8, The World Bank Group: Finance, Private Sector and Infrastructure Network.

^v One of the Millennium Development Goals set at the UN Summit of 2000 committed to halve the 1.5 billion people in the world without access to safe drinking water. The 2002 World Summit on Sustainable Development in Johannesburg extended this goal to the 2.5 billion lacking sewage, also to be halved by 2015. The United Nations Commission on Sustainable Development has chosen water, sanitation and human settlement as the focus of its implementation cycle for 2004 and 2005. In January 2004, the European Commission launched the EU Water Facility: http://europa.eu.int/lex/en/com/cnc/2004/com2004_0043en01.pdf.

^{vi} Bali Guiding Principles and Type II WSSD partnerships. Although less than 10% of all water in the world is currently managed by the private sector, by 2000, at least 93 countries had partially privatized water or wastewater services: LeClerc and Raes (2001), *Water: a World Financial Issue*, PriceWaterhouseCoopers, Sustainable Development Series, Paris, France.

^{vii} In 2000 the business magazine Fortune 500 declared water to be the oil of the 21st century (*Fortune*, May 15 2000). In April 2003, Schwab Capital Markets hosted a Global Water Conference for investors in Washington DC and in 2004 the World Economic Forum at Davos announced a new Water Initiative: <http://www.weforum.org/site/homepublic.nsf/Content/The+Water+Initiative>.

^{viii} John Ruggie, 'Taking Embedded Liberalism Global: The Corporate Connection', in *Taming Globalization: Frontiers of Governance*, ed. David Held and Mathias Koenig-Archibugi (Cambridge: Polity Press, 2003), p.1.

^{ix} Uganda makes a constitutional commitment to a right to water, and Gambia, Ethiopia and Zambia include constitutional aspirations endeavouring to provide clean safe water.

^x In particular, it is important to note that none of the institutional developments I trace are anchored in structures of representation and accountability that even mildly resemble those that characterise state institutions. This chapter makes no evaluation of such issues: its goals are confined to description and analytical mapping, and the analogy with state institutions is intended in a functional way only.

^{xi} While this statistic dominates the debate on global water issues, there are of course innumerable other factors driving the emergence of structural reform and the rise of private sector involvement in water service provision worldwide. The most important of these in the developed world include aging infrastructure and heightened environmental standards, while in developing countries, the gap in access just quantified is the major catalyst, made significantly worse by rapidly increasing rates of urbanisation (in 1975 27% of developing country people lived in urban settlements: by 2015, 48.5% will do so).

^{xii} In fiscal year 2002 the World Bank lent \$546 million for water sector projects generally. This increased to \$1.4 billion in fiscal year 2003, and in 2004 the board of the World Bank decided to increase its focus upon water *infrastructure* and provide an annual US\$4 billion for that purpose. Although the Bank has occasionally stated that it does not make its water infrastructure loans conditional on privatization, in the pending pipeline of proposed loans, there are 22 separate loans, totalling \$1.458 billion, that contain privatization and/or cost-recovery policies: Public Citizen, *World Bank Watch*, January 2003 Vol 1, received directly by email, but available at www.wateractivist.org.

^{xiii} David Hall, "Water Multinationals in Retreat", Public Services International Research Unit, January 2003, www.psir.org. The causes of the decline are not yet well-established, but the political risks engendered by the widespread social protests against private sector participation in water are thought by many to be an important factor.

^{xiv} For example, aid pays for subsidies (sometimes even bypassing national governments), national government funds the upfront capital costs upfront and private capital funds operating costs and ongoing investments.

^{xv} Following their decision to develop key recommendations (check this) of the influential Camdessus Panel on Financing Water Infrastructure, headed by the previous head of the IMF, that reported in 2003. For the Camdessus Panel, see M. Camdessus, (2003) *Financing Water for All - Report of the World Panel on Financing Water Infrastructure*, <http://www.worldwatercouncil.org/download/CamdessusReport.pdf>). For discussion of the World Bank's response, which includes developing guarantee mechanisms against political risks, protection against currency risks, and even structuring municipal bond finances so that they support private sector involvement, see David Hall, (2003) "Public solutions for private problems - responding to the shortfall in water infrastructure investment", Public Services International Research Unit, available at <http://www.psir.org/reports/2003-09-W-strats.doc>.

^{xvi} Africa Water Facility, shortly to be established under the NEPAD (New Economic Partnership for African Development) framework

^{xvii} Karl Flecker, Polaris Institute, Canada, quoted in “Civil Society Delegations Break from World Water Council Consensus”, March 20 2003, <http://cupe.ca/www/news/3827>, last accessed 6 November 2003,

^{xviii} See *Water Utilities: Global Industry Guide* (Datamonitor 2003)

^{xix} Odeco (previously Suez and before that Lyonnaise des Eaux) serves 110 million people in more than 100 countries. Veolia (previously Vivendi Environnement and before that Generale des Eaux) serves 96.5 million people in 90 countries: see Gleick, Wolff, Chalecki and Reyes, *The New Economy of Water*, Pacific Institute, 2002, pp.24-25. Thames Water serves 22 million people: see Yaron, “The Final Frontier”, Polaris Institute, 2000. Despite these very large figures, it remains the case that globally the private sector serves no more than 15% of the world’s population in the provision of water services: the public sector provides the remaining 85%.

^{xx} The ISO (International Organisation for Standards) is a private standard-setting organization based in Geneva. It is a federation of national standards bodies (some governmental, some private-sector business associations) from more than 100 nations. ISO is often criticised for its skew towards industry: its procedures preserve a large formal role for industry in standards development, and industry representatives dominate its more than 2000 technical working groups. Technical Committee 224 is still in the very early stages of defining its scope of work and its long-term survival or salience is not yet clear.

^{xxi} In December 2003, the World Summit on Information Society followed this format, arguably presaging a growing agenda-setting role for the private sector at the global level.

^{xxii} See for example Global Water Partnership (2003), *Toolkit for Integrated Water Resources Management*.

^{xxiii} World Bank 2004 World Development Report: *Making Services Work for Poor People*. See also Kanishka Jayasuriya, “Workfare for the Global Poor: Anti Politics and the New Governance”, Asia Research Centre, Murdoch University, Australia, Working Paper No. 8, September 2003.

^{xxiv} Examples can be drawn from high-level reports like that of the Camdessus Panel on Financing Water Infrastructure as well as contractual documentation such as concession agreements.

^{xxv} Levels of resistance to private sector participation, can be mapped along four different trajectories. ‘Threatening rebels’ (eg anti-globalization activists) use the human rights challenge the most, ‘cooperative allies’ (e.g. often the environmental groups) make a public good argument focused on the need to internalise ecological externalities. A public good approach, with more emphasis on equity than ecology, is also promoted by ‘citizens’ agora’ groups (e.g. reformist NGOS like Wateraid). Those affiliated with public sector unions use the language of public good mainly to oppose privatization per se.

^{xxvi} General Comment No 15 (2002), The Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 26 November 2002.

^{xxvii} I leave aside in this paper any judgment (essentially a question of political values) on whether or not the reduction of suffering for those without water is or is not outweighed by the support it also provides for stabilising a global field of market-based provision.

^{xxviii} Global Water Partnership, *Effective Water Governance*, 2002.

^{xxix} The IADB survey of November 2003 identifies tariff levels and flawed regulatory frameworks as most important barriers to increased investment in water provision: "Survey: Obstacles and Constraints for Increasing Investment in the Waste and Sanitation Sector in Latin America and the Caribbean", IADB, November 2003. Both issues are still very much within the domain of the national state, notwithstanding the emergent global regime. The World Bank is increasingly focusing its reform efforts on legislative frameworks and it is notable that many specialised 'Water Acts' have recently been passed by developing country governments.

^{xxx} Allister Sparks, 'The Great U-Turn', *Beyond the Miracle* (Jonathan Ball Publishers 2003).

^{xxxi} A series of meetings in Europe in the late 1980s between ANC economists and the apartheid government culminated in the 1989 Lausanne Colloquium where a large number of foreign economists were also present; in 1992 Mandela attended the World Economic Forum in Davos and later that year the Mont Fleur colloquia convinced Trevor Manuel, future Finance Minister, to support a market-led model. 6 months before the ANC came to power, Manuel sought a loan commitment from the IMF on that basis: Sparks 2003.

^{xxxii} The Department of Finance in real terms cut intergovernmental grants which pay for municipal service subsidies by 85 percent between 1991 and 1997: Patrick Bond 1998: 4, citing the Financial and Fiscal Commission (1997:18).

^{xxxiii} Interview with senior official of MIIU, Interview September 16, 2003.

^{xxxiv} Tokyo Sexwale, Mayor of Gauteng Province, September 1996, in a speech relaunching the Masakhane campaign.

^{xxxv} Section 27 of the 1996 Constitution reads, as relevant: 1) Everyone has the right to have access ... b) *sufficient food and water*; (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

^{xxxvi} In the first 10 years the percentage of the population with access to water increased from 34% to more than 76%, though criticisms have been made of both the sustainability and the quality of the access provided: see e.g. David Hemson, "The sustainability of community water projects in KwaZulu-Natal", Human Sciences Research Council of South Africa, 2003, draft manuscript on file with author.

^{xxxvii} Department of Water Affairs and Forestry, Community Water and Sanitation Division.

^{xxxviii} In 2000 fully democratic local government structures came into power for the first time, and was given responsibility for infrastructure and basic services in water. The re-demarcated jurisdictions merge previously racially and economically divided areas; at the same time budgetary caps on local government have been imposed.

^{xxxix} Interview with official from Department of Water Affairs and Forestry, Interview, September 17, 2003.

^{xl} This is despite the fact that there is no significant personnel *overlap* between the South African institutions and the global ones. But there is much more consensus on the models, techniques and norms that support commodified delivery of water services than there is on the desirable alternatives.

^{xli} Though the MIIU stressed that “USAID doesn’t have any say over what we do, in the South African context that’s probably fairly different [from other developing countries]...there’s very little leverage over the decisions of government here” (Interview with senior official of MIIU, September 16, 2003).

^{xlii} With the exception of Saur. It should be noted that where a contract or concession is made ‘with’ a global water company, it almost always participates as a partner in a consortium of companies that includes local South African companies, thereby leading to a different name for the local subsidiary (eg Water Services South Africa for the Suez Ondeo subsidiary).

^{xliii} The process was secretive, unstructured, based on poor data, excluded stakeholders and was almost entirely unregulated. Monitoring responsibility fell entirely on local authorities with strikingly weak technical capacity.

^{xliv} Direct service delivery occurred in an unregulated setting without risk-sharing. The private sector was paid directly by the South African government and indirectly by US\$115 of aid from the EU over 4 years. A large NGO - the Mvula Trust carried out community capacity-building activities in partnership with the consortia.

^{xliv} The funding for these concessions mixed international aid, government funds and private capital: e.g. Nelspruit concession was financed in substantial measure by 150 million rand over 7 years from the Development Bank of Southern Africa (DBSA), who also provided 45% of the finance for the Veolia concession for the Durban waste treatment plant: see Laila Smith, Shauna Mottiar and Fiona White, *Service Delivery Alternatives: The Water Concession in Nelspruit, South Africa*, Centre for Policy Studies, Johannesburg, Draft Discussion Paper June 2003, p.13.

^{xlvi} White Paper on Water Policy 1997.

^{xlvi} In the face of strong resistance from labour to private sector involvement, the Act expressed a legislative preference for public provision, and gave the national government a residual power to cap profits from water services: Water Services Act 1997, s10(2)(b).

^{xlvi} Labour charged that the preference for public provision expressed by the Water Services Act 1997 had not been given adequate attention. Their objections delayed contract negotiations by two years.

^{xlix} This re-affirmed a strong preference for public provision, as well as a sectoral forum which labour hoped would monitor compliance with the Framework Agreement: Interview with delegate from South African Municipal Workers Union, September 17 2003.

^l This act was less clearly in favour of public provision as a first option, and clarified that water service providers (including private companies) could be directly involved in service payment collection. The apparent illegality of this under prior legislation had led to the withdrawal of private lenders and the substitution of DBSA funding in the Nelspruit concession: Ross Kriel, "Facing Local Government Post-Demarcation: Impact of the Regulatory Framework on the Private Sector – Case Studies and Analysis", paper prepared for the Development Bank of Southern Africa Symposium on Risk Management, 1 September 2003, p.3. To labour, the legislation gave elaborate formal procedural protections around the choice to involve PSP (s78), as well as the power for politicians to set tariffs in water services, and a credit control code that tempered the private sector's newly acquired power to collect payment directly (s94(1)(c)).

^{li} E.g. the 5 year management contract for Johannesburg Water and (not represented on the time line) a voluntary tri-sector partnership that Durban Metropolitan Water Services have been experimenting with over the last few years with Veolia (Vivendi) Water, with support and funding from the World Bank and the NGO Business Partners for Development. By virtue of the short length of the Johannesburg contract and the non-legal nature of the Durban partnership, both of these frameworks for private sector participation bypass the political regulation requirements of s78 Municipal Systems Act.

^{lii} Note here the set of principles governing credit control articulated in the 2003 Strategic Framework (4.5.8), including communication, fair process, warnings, restriction rather than disconnection as a last resort and even, unusually in legislation, compassion.

^{liii} See text at footnotes 48,49, 50.

^{liv} It should be noted that as the principal provider of water services for the region, Durban Metro Water Services is a public and not a private sector actor. While it is itself not one of the global water companies, its transformation into a public corporation has led it to adopt many operating on Comment on public not private and justify.

^{lv} Ashwin Desai, *We are the Poors: Community Struggles in Post-Apartheid South Africa* (New York: Monthly Review Press 2002)

^{lvi} Richard Pithouse, Interview, September 11 2003.

^{lvii} The South African 'Social Indaba' aims to host cross-sectoral forums that encourage networking across different areas of social activism and that also foster international connections with anti-globalisation activists overseas.

^{lviii} Richard Pithouse, Interview, September 11 2003.

^{lix} *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* 2002 (6) BCLR 625. In the instant case, no such demonstration (either of fair and equitable procedures, of reasonable notice of intent to disconnect, or of provision of an opportunity to make representations) had occurred, and reconnection was therefore ordered.

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- ^{lx} The plaintiffs had neglected to plead the direct constitutional obligation and were relying on the Water Services Act whose regulations specifying the minimum amount of water to which each citizen has a right had not yet been enacted: *Manqeke v Durban Transitional Metropolitan Council* 2002 (6) SA 423.
- ^{lxi} There has in fact been some other litigation in relation to water with very interesting structural potential. In *Pretoria City Council v Walker* 1998 (2) SA 363, a group of white residents in Pretoria refused to pay their electricity and water bills after local government redemarcation amalgamated their suburb with neighbouring townships. New water connections in those townships were heavily cross-subsidised by the rates paid by white residents, who claimed this violated their constitutional right to equality. They lost narrowly in the Constitutional Court, which expressly endorsed the constitutionality of cross-subsidisation and characterised it as “an accepted, inevitable and unobjectionable aspect of modern life”. While the courts here *endorsed* a resource allocation decision aimed at social transformation, however, it is far less probable that they would obligate the political branches to *intensify* their existing efforts (except perhaps in relation to temporary circumstances of an emergency nature such as the situation homeless people in the *Grootboom* case). In other words, this legal strategy probably has little proactive potential from the point of view of the activists.
- ^{lxii} The French Water Academy was established in 1993 by the French Ministry for the Environment and six French river basin authorities to contribute to information-sharing, relationship-building and decision-making around water policy in both the French and an international context. The Study Group on Water Governance convenes a series of seminars with international experts who work through case studies to come up with common principles and later more specific recommendations.
- ^{lxiii} Gerard Mastrallet, “The Water Truce”, *Bridging the Divide*, Ondeo Services 2000.
- ^{lxiv} John Ruggie, ‘Taking Embedded Liberalism Global: The Corporate Connection’, in *Taming Globalization: Frontiers of Governance*, ed. David Held and Mathias Koenig-Archibugi (Cambridge: Polity Press, 2003), p.1.
- ^{lxv} See David Hall, “Water Multinationals in Retreat”, Public Services International Research Unit, January 2003, www.psir.org. Investment since 1999 has declined, and while its causes are not yet well-established, the political risks engendered by the widespread social protests against private sector participation in water are thought by many to be an important factor. This is also reflected in a recent survey by the Interamerican Development Bank that identifies, for almost half those surveyed, social resistance as either a critical issue or one that is both significant and hard-to-solve: “Obstacles and Constraints for Increasing Investment in the Waste and Sanitation Sector in Latin America and the Caribbean”, Survey, IADB, November 2003, available on IADB web page.
- ^{lxvi} *Dams and Development: A New Framework for Decision-Making* (2000).
- ^{lxvii} Global Water Scoping Process, *Survey Questionnaire*, December 2003, driven by a Working Group composed of Consumers International (international consumer organisation), Public Services International (international labour federation), Wateraid (an international development NGO), RWE Thames Water (the third largest global water

company), Environmental Monitoring Group (a South African advocacy NGO) and ASSEMAE (the Brazilian association of public water operators).

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