

IN THE HIGH OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

Case no: 06/13865

In the matter between

LINDIWE MAZIBUKO

First applicant

GRACE MUNYAI

Second applicant

JENNIFER MAKOATSANE

Third applicant

SOPHIA MALEKUTU

Fourth applicant

VUSIMUZI PAKI

Fifth applicant

and

THE CITY OF JOHANNESBURG

First respondent

JOHANNESBURG WATER (PTY) LTD

Second respondent

MINISTER OF WATER AFFAIRS AND FORESTRY

Third respondent

REPLYING AFFIDAVIT

I,

PATRICK BOND

state under oath that:

1. I am an academic expert in this matter, supporting applicants Mazibuko, Munyai, Makoatsane, Malekutu and Paki. I am a 45-year-old professor, currently residing at 115 Sir Duncan Road, Glenwood, Durban 4001. I lived in Johannesburg from 1990-2004. My current position is Professor in the School of Development Studies, and Director of the Centre for Civil Society, at the University of KwaZulu-Natal. Contrary to the unreferenced claim by Anthony Still (paragraph 33), I have never been a member of the Anti-Privatisation Forum or indeed of any organisations in which the applicants are active, although since mid-2000 I have been a supporter of these organisations' efforts to establish water justice, especially through this court process.
2. The purpose of this affidavit is to reply to the answering affidavits filed by the first respondent (the City), the second respondent (Johannesburg Water), and the third respondent (DWAF). I have been assisted in drafting

this affidavit by the Centre for Applied Legal Studies at the University of the Witwatersrand, who have reviewed the respondents' Answering Affidavits and pointed out areas where my own evidence is questioned or rebutted.

Schreiner, Brits, Still: Questioning of expert credentials

3. With a formal education in Geography and Environmental Engineering (and awarded a PhD in 1993 from Johns Hopkins University, the leading international academic department in the water field), I have a background in, amongst other matters, South African water policy. During the early 1990s, I worked for the Johannesburg NGO Planact and the SA National Civic Organisation (SANCO) on local government reform, serving SANCO as a final editorial team member for the *Reconstruction and Development Programme* in 1993-94. Policy involvement continued inside the South African government, first in the Reconstruction and Development ministry without portfolio in President Mandela's office in 1994 and 1996 where I drafted two major policies (the *RDP White Paper* and *National Growth and Development Strategy*); then at the Department of Constitutional Development where I was involved in the Municipal Infrastructure Investment Framework drafting in 1995-96; and then in 1997-98 when I was briefly a speechwriter and budgetary advisor to Water Minister Kader Asmal. In more than a dozen policy documents which I drafted or edited for the South African government, I became increasingly expert in identifying gaps between political promises, policies and practices. I teach and lecture

regularly on water and other social/economic policies at the post-graduate level (in South Africa and at leading universities in a dozen countries on all continents). Since 2002, I have published more than two dozen major analyses of water issues in international academic journals, peer-reviewed books and other periodicals, including *The Water Encyclopaedia*.¹ All the

¹ BOOKS

Talk Left, Walk Right: South Africa's Frustrated Global Reforms (second edition) – Pietermaritzburg, University of KwaZulu-Natal Press, June 2006 (323 pp); chapter 8 - Water wars: From Johannesburg to Kyoto and back.

Unsustainable South Africa: Environment, Development and Social Protest - Pietermaritzburg, University of KwaZulu-Natal Press, London, Merlin Press, and Trenton, Africa World Press, August 2002 (475 pp).

ARTICLES IN REFEREED JOURNALS

Published Articles

'A Water Policy Revolution?' (with Zoe Wilson) – *Global Social Policy*, 7, 2, June 2007, pp.143-146.

'Water Commodification: Can Human Rights Trump the Market?' – *Asian Exchange*, 22, 1, 2006, pp.39-59.

'Globalisation/Commodification or Deglobalisation/Decommodification in Urban South Africa' - *Policy Studies*, 26, 3, 2005, pp.337-358.

'Decommercializzazione e Deglobalizzazione: Sfide Strategiche per I Movimenti Scioali Africani' - *Afriche e Oriente*, 6, 3, 2004, pp.5-17.

'Water Commodification and Decommodification: South African Narratives from Johannesburg to Kyoto to Cancun and Back' - *Capitalism Nature Socialism*, 15, 1, 2004, pp.7-25.

'The Limits of Neoliberal Water Policies in Africa' - *Austrian Journal of Development Studies*, 19, 4, 2003, pp.34-55.

BOOK CHAPTERS

'The Future of Decommodification: The Case of South Africa' – in M.Muchie and L.Xing (Eds), *Globalisation, Inequalities and the Commodification of Life and Well-Being*, London, Adonis and Abbey Publishers, 2005, pp.169-191.

'The Economics of Water Resources Allocation' - in J.Lehr (Ed), *The Encyclopedia of Water*, New York, Wiley, 2005, pp.215-218.

'Johannesburg Infrastructure' - in K.Egbers et al (Eds), *Public Problems, Private Solutions? New Trends from Globalizing Cities in the South*, Aldershot, Ashgate, 2005, pp.82-91.

'Water' (with Greg Ruiters, David McCoy and Karen Cocq) – in D.McCoy (Ed), *Global Health Watch*, London, Zed Books, 2005, pp.207-224.

'New Municipal Public Management in South Africa: The Rise and Fall of Water Commercialisation' - in P.Dibben, G.Wood and I.Roper, *Contesting Public Sector Reforms: Critical Perspectives, International Debates*, Basingstoke, Palgrave Macmillan, 2004, pp.192-209.

'The Neoliberal Roots of South Africa's Cholera Epidemic' - in M.Fort, M.Mercer and O.Gish (Eds), *Sickness and Wealth: The Corporate Assault on Global Health*, Boston, South End Press, 2004, pp.119-130.

'A Political Economy of Dam Building and Household Water Supply in Lesotho and South Africa' - in D.McDonald (Ed), *Environmental Justice in South Africa*, Columbus, Ohio University Press, and Cape Town, University of Cape Town Press, 2002, pp.223-269.

Chapters Forthcoming

information I presented in my original Affidavit and in the pages below are, to the best of my knowledge, true.

Schreiner paragraphs 200.1-202.3

4. In her testimony on behalf of the Department of Water Affairs and Forestry (DWAFF), at 200.1, former Deputy Director-General Barbara Schreiner denies ‘that Bond has the necessary expertise to pronounce on the theory and practice of the provision of water supply services’. Yet when she was Minister Kader Asmal’s special advisor on water in 1997-98, Schreiner ensured my hiring on two occasions to support Asmal, including direct departmental budgetary advice, water policy development and speechwriting. At 202.2 and 202.3, Schreiner argues that my ‘views are irrelevant’ and that I ‘make assertion and draw inferences without any factual basis whatsoever.’ No evidence is offered for these stark conclusions.

Brits paragraph 39.1.1, Still paragraph 33

5. In her evidence at 39.1.1, Johannesburg Water’s Karen Brits claims that Bond’s ‘affidavit sets out hearsay, rumour and conspiracy theories about the functioning of bureaucracy in South Africa which has no foundation and so

‘South Africa: Post-Apartheid “Sustainable Development” in the Context of Global Apartheid’ – in A.Nadal (Ed), *New Pathways for Mexico’s Sustainable Development*, Mexico City, El Colegio de Mexico Press, 2007.

‘Water and Health Policies in South Africa, Botswana and Zimbabwe’ - in J.Adesina (Ed), *Social Policy in Sub-Saharan African Context*, New York, Palgrave Macmillan and Geneva, UN Research Institute for Social Development, 2007.

cannot be coherently answered.’ Yet Brits fails to substantiate any particular instance where the analysis I offered in the original affidavit is incorrect. As the author of more than a dozen major policy documents for the South African government from 1994-2002 (more than any other drafter of policy in South Africa), the opinions I have gathered about power relations, influence and process are not hearsay or rumour, but first-hand experience. Still’s affidavit (33) claims I cannot be an expert because I am or was allegedly a member of the Anti-Privatisation Forum, an untrue claim.

Schreiner paragraph 149.3-173.1

6. In relation to the respondents’ claim that they are not violating political pledges upon which their government was elected, Schreiner develops an argument about original African National Congress campaign promises in South Africa’s first democratic election (1994). To accept her argument would limit the government’s moral responsibility to provide a larger allocation of Free Basic Water. Referring to the Reconstruction and Development Programme, she claims, at 149.3, that ‘The RDP does not make the promise of **free** basic water’; at 167.3 that ‘The RDP does not refer to 50 liters per person per day free basic water’; and at 173.1 that ‘Dr Bond misses the obvious point, namely that the RDP did not promise free basic water’. In reply, as the editor of Chapter Two of the RDP, I would assert that the common usage of the phrase ‘lifeline tariff’ does include a free component precisely so as to make it affordable to all, even the very

poorest. I would draw attention to the document's clause 2.6.10 – **Tariffs**. To ensure that every person has an adequate water supply, the national tariff structure must include the following: a lifeline tariff to ensure that all South Africans are able to afford water services sufficient for health and hygiene requirements' – which is the main statement in that document about the price of water. The word 'lifeline' does indeed, implicitly, mean **free** for those who cannot afford to pay for water; otherwise their very lives would be threatened. To show that the meaning of lifeline is widely accepted to have a 'free' component, consider the City of Johannesburg's own description of electricity tariffs in a 2004 press statement: 'The lifeline tariff applies to low-usage customers who qualify for subsidies in line with the City's social package. This tariff has no service charge and customers are given 50 kWh of free electricity per household per month in line with a government programme to deliver free power to households earning less than R800 a month.' (http://www.joburg.org.za/2004/aug/aug11_electricity.stm). The semantic meaning of 'lifeline' as 'free' (or at a merely nominal price) is also accepted internationally, as shown at the Massachusetts Institute of Technology's water and sanitation 'definitions' website: **Lifeline tariff:** Also called an "increasing block tariff" or "social tariff." A pricing strategy designed to provide minimal amounts of water at low prices to households. Under a lifeline tariff, the first block of water used (usually 15-25 cubic meters) is provided for free or for a nominal price, with higher blocks carrying

increasing per-volume prices'

(<http://web.mit.edu/urbanupgrading/waterandsanitation/resources/definitions.html#lifeline-tariff>). The MIT site is one of the most respected web resources for the water and sanitation sector, and it is revealing that it refers to 'usually 15-25 cubic meters' as the basis for the first block, which puts South Africa's 6kl/hh/month in context as excessively stingy.

Schreiner paragraphs 205.4, 208.1

7. At 205.4, Schreiner argues that 'The RDP was a political manifesto and has no relevance to this application' that higher levels of water be provided by the state. In contrast, Nelson Mandela stated on 2 May 1994: 'We have emerged as the majority party on the basis of the programme which is contained in the Reconstruction and Development book. That is going to be the cornerstone, the foundation, upon which the Government of National Unity is going to be based. I appeal to all leaders who are going to serve in this government to honour this programme.' (In light of this mandate, Schreiner's hostility to the RDP mandate – *'irrelevant'* - represents further 'bureaucratic sabotage', of precisely the sort she labels 'inflammatory' at 208.1.)

Schreiner, paragraph 205

8. At 205, Schreiner nevertheless attempts to use the RDP citation above to defend the government's failure to provide adequate free water. She does

so by noting the mandate for, 'in urban areas, a progressive block tariff to ensure that the long-term costs of supplying large-volume users are met and that there is a cross-subsidy to promote affordability for the poor' (a position consistent with a free lifeline supply), but for, 'in rural areas, a tariff that covers operating and maintenance costs of services, and recovery of capital costs from users on the basis of a cross-subsidy from urban areas in cases of limited rural affordability' (a position *inconsistent* with Free Basic Water). The difference between the RDP's pro-lifeline position for urban areas and anti-lifeline position for rural areas was a simple reflection of two contrary forces involved in this clause's drafting: a strong grassroots movement's advocacy of urban water (drafted by the SA National Civic Organisation) on the one hand, and on the other, conservative technical experts' advocacy of full cost-recovery in rural areas (drafted by Mike Muller and Len Abrams).

Schreiner paragraph 204.1

9. At 204.1, Schreiner defends the actual tariff strategy adopted by government in the 1994 Water Services White Paper (also drafted by Muller and Abrams), even though it insists upon *full cost recovery*, a policy that became so untenable, and that caused such serious cholera outbreaks when implemented in 1998, that in 2000 it had to be scrapped.

Schreiner paragraphs 162.3.1, 212.2

10. Schreiner argues at 162.3.1 that 'A rough estimate of the national cost of increasing the FBW amount from 6 to 10kl per household per month is R1 billion per year.' (This point is reiterated in 210.2.) Although this is a relatively small investment given the vast social (health, gender equity, economic) benefits that would follow, Schreiner treats it as an impossible social investment. Threatening that this 'may bankrupt smaller, less capacitated municipalities', she fails to acknowledge that the 'cost' could be covered in three ways: through raising revenues by raising existing tariffs; through changing the tariff curves so as to achieve a much greater cross-subsidy from wealthy users (a point I end this affidavit with); and/or through national-local revenue transfers, either through the existing Treasury intergovernmental 'Equitable Share' grant, or through a special DWAF fund to support municipal water provision (a fund regularly used in past years to cover water financing needs of poorer municipalities). One major issue to be assessed is whether the national-local transfers are sufficient in cases of severely-decapacitated municipalities. At 212.2, Schreiner skirts this point by arguing that the Equitable Share grant has increased since 2001, a point that is not contested. But the main national-municipal operating services grant had been in sharp (85%) decline in real terms from 1991-97, and many municipalities require more funding to be sufficiently funded. So the dispute is not whether the Equitable Share is rising (it is off a very low base), but whether it is sufficient. By noting that some municipalities have capacity problems in even delivering the inadequate 6000

liters/household/month, Schreiner is implicitly accepting that municipalities **do** need further funding to build capacity.

Schreiner paragraph 163.1.4

11. Schreiner further claims (at 163.1.4) that ‘Provision can be made for poor households through the indigence policy’, which is indeed what the City of Johannesburg proposes. But the indigence policy usually creates very serious administrative problems in implementation, and also leads to stigmatisation and a much lower rate of take-up due to registration barriers. This is evident in the case of the largest and most capacitated municipality, Johannesburg, where a small fraction of those who should be considered ‘indigent’ have passed through all the bureaucratic hoops to successfully register for discounted services. As an alternative to the ‘indigent’ policy, a universal entitlement to higher amounts of free water, with a much more progressive (concave) rising block tariff would achieve much higher levels of access and water delivery, more efficient internal cross-subsidisation, as well as much-needed water conservation. This is the point I will conclude with.

Schreiner paragraph 174.1

12. At 174.1, Schreiner does not deny or disprove my earlier reference to the post-RDP origins of ‘Free Basic Water’ in Minister Ronnie Kasrils’ February 2000 statement, wherein he referred to the 6000 liters provided by Durban

as a model of efficiency: *delivery of this amount of water free costs less than the administrative expenses associated with billing*, according to the Durban evidence. But such a rationale for Free Basic Water is indeed 'arbitrary' and 'irrational', because billing for the 6001st liter would have to be at 6001 liters (not 1 liter) so as to comply with the efficiency logic. And that in turn would contradict the very point of the policy, to provide people at least a basic free lifeline supply for their first block of consumption. It is because of this irrationality that the courts should intervene and specify a new policy, one in which the first free block of water increases from 6 kl/hh/month to at least 50 l/hh/day, followed by a slowly rising set of blocks, and then much larger increases along a concave curve, with the objective of disincentivising hedonistic water consumption and ensuring a cross-subsidisation of everyone's universal entitlement.

Schreiner paragraph 176.2

13. Considering the possibility that the courts will do their job - protecting citizens' water supply when state policy fails - at 176.2 Schreiner attempts to intimidate the judges, arguing that the relief sought by Sowetans would 'violate the doctrine of separation of powers'. But unveiling the irrationality of this position, DWAF itself has had such power (i.e., veto capacity on municipal water services) in 1998 legislation. DWAF is permitted to intervene in cases of water emergencies, but *has not used this power* to end municipal disconnections that were life-threatening in nature. Because

DWAF consistently fails to make the necessary interventions on matters such as disconnections, unfair pricing and prepaid meters, it is incumbent upon the courts to compel the state to meet its constitutional requirements properly.

Schreiner paragraph 186.1

14. At 186.1, Schreiner argues that there are situations in which the right to water would be 'constrained by water resource limitations'. Given the minimal amounts used by low-income people, in comparison to the vast abuse by wealthier households and corporations, the onus would be on DWAF to demonstrate situations whereby absolute resource scarcity is an issue in mitigating the right to water. I do not believe there are any such situations, given the very small proportion of the society's water that is used by low-income households (roughly 3%, according to late 1990s DWAF reports I was privy to).

Schreiner paragraph 212.3

15. At 212.3, Schreiner argues that DWAF does not have the ability to price water to cross-subsidise poor consumers. Based on discussions with water law drafters (e.g., Ms Robyn Stein), I am convinced that legislative provisions for solving water emergencies do indeed give DWAF the power to impose more concave water tariffs on municipalities where this would solve the problem of inadequate access due to inadequate cross-

subsidisation. Indeed on various occasions, DWAF personnel have armtwisted municipalities to change their tariffs, most notably in the late 1990s case of Hermanus when in exchange for 'Working for Water' funds, Dr Guy Preston was able to persuade that municipality to adopt a much more progressive block tariff.

Schreiner paragraph 213.1

16. At 213.1, Schreiner continues to defend the term 'household' as a viable measure, by noting the 'average' size. The point is that there is enormous variability in household size, often according to class. Hence I reassert that the household is a clumsy and biased unit of analysis for delivery of free basic water, and that – as mandated in the RDP – a specific amount of daily liters **per person** would be preferable.

Schreiner paragraph 216.1

17. At 216.1, Schreiner misreads the analysis I have presented. There is no reason, aside from political lack of will, that government cannot **both** expand the grid (as it is doing, very slowly) and move to an **adequate** amount of free basic water per person.

Schreiner paragraph 218.1

18. At 218.1, Schreiner argues that a per person delivery of water would be administratively difficult. It would not be, if each municipality simply added

another record to every bill, allowing residents to specify how many people were receiving water as long-term residents of the household. (This could be ascertained in various ways, including ID checks.)

Schreiner paragraph 218.1

19. Also at 218.1, Schreiner claims that a move to a higher per person amount per month 'would ensure that the majority of both poor and rich consumers pay less than the cost of water' and would lead to a 'massive subsidy to better-off members of the community', a point that is refuted by any analysis of water consumption patterns, in which *per person*, rich people use far more than poor. The key point that Schreiner misses is that the higher tariffs can be easily adjusted to ensure that, in the case of Johannesburg, no net loss of revenue would occur by charging on a much more *concave* pricing curve. This point we return to below.

Schreiner paragraph 219.1

20. In 219.1, Schreiner defends the 1/3 reduction in the consumption of water recorded by low-income Durban residents, from 22 kl/hh/month in 1997 to 15 in 2004. This decline occurred during the period of health epidemics (cholera, diarrhoea and HIV/AIDS), and although sufficient data do not exist to determine the adverse public health, gender and economic implications, these probably have been serious. There are insufficient data available for Schreiner to credibly claim that the 15 kl/hh/month equates to 125 l/c/d; this

claim assumes a household size of 4, but many of the lower-income Durban areas in which bills are regularly paid have far larger household sizes, with additional residents in backyard shacks, as tenants, and as AIDS orphans being cared for by grandparents.

Brits paragraphs 39.2-39.8

21. Moving to Brits' affidavit, at 39.2, she asks for an explanation of why the following policies – interrelated because they have in common a disdain for low-income people's needs (and in many cases also followed World Bank visiting missions' advice) - are 'regrettable': 'low infrastructure standards, higher services prices than could be afforded, mass cutoffs of water and electricity, evictions and sheriff sales-in-execution, privatisation and commercialisation, captive regulation.' But that these problems are regrettable go without saying, and that they hark back to the insensitivity of pre-1994 municipal management is obvious. Similarly in 39.3, Brits does not try to deny the logical contradiction in offering a free basic water allotment on the basis of an explanation based upon billing efficiency. She does not attempt to show how consumption of the 6001st liter of water can be handled: priced at 1 liter, or at 6001? In subsequent paragraphs, Brits offers no substantive reasons for inaccuracies in what she claims are 'unsubstantiated or unreferenced' arguments. Brits makes only one important statement (39.8) for the purposes of this case in her subsequent claims in paragraph 39: 'The relevance of the "mandate" of the RDP is

denied' (for a rebuttal, see the statement by Nelson Mandela of 2 May 1994, above). The bureaucratic sabotage of campaign promises is at the heart of this legal matter, so it is not surprising that my making this point is considered by Brits to be 'irrelevant' or, for that matter, expert evidence. As author of more than a dozen policy documents for the ANC government, I had numerous experiences of bureaucratic sabotage, and consider Johannesburg's water pricing policy and installation of pre-paid meters to be classic examples.

Brits paragraphs 29.17, 39.13, 39.17

22. Where Brits is occasionally specific in her refutation, her questions can easily be answered. At 39.13 she seeks proof and specifics on time periods: for my paragraph 26, there are Cabinet minutes and government budgetary records which I have seen but do not have physical copies of, but which could be specified for a court investigation if required. The period in question refers to the October 2000 – July 2001 period during which concrete implementation details on Free Basic Water promises were being worked out. Her point in 29.17.2 about the changing nature of Durban's system misses the point, that the policy was adopted with a rationale based upon billing efficiency (not water as a human right and merit good) more than a year before MacLeod's change in policy. At 39.17.2, however, Brits does, to her credit, concede a point related to 'bureaucratic sabotage' of

government's water promises, namely the Durban municipality's readiness to cut off water supplies, even to schools.

Brits paragraph 39.17

23. In one other instance of a specific rebuttal, Brits claims that adding another record to the municipal budgeting software is not 'simple'; in fact, it is a matter of 'insert column' on a spreadsheet, with an additional minor calculation in the final consumer bill which would take account of how many family members are registered as part of an improved, *per capita*, free basic water grant. No specialised knowledge is required to register this obvious point, and it is telling that 'to the extent that these matters fall within the personal knowledge of the Respondents, they are denied' – but with no reason as to why an additional 'insert column' command cannot be recorded on municipal billing databases with a corresponding adjustment to bills.

Brits paragraph 39.26

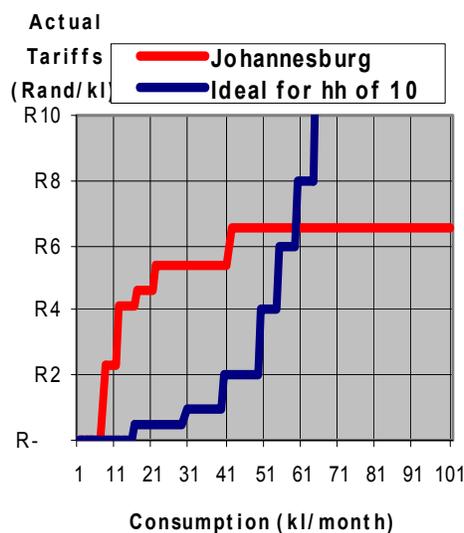
24. Another spurious denial by Brits, at 39.26, concerns the argument that Johannesburg Water had a 'concession partner' at the time it was developing its post-2001 tariff system: Paris-based Suez. Brits notes that Suez 'had a five year management contract with Johannesburg Water' – which in my reading is a 'partnership' in a 'concession' given to JW and Suez by the City Council in 2001. That concession and partnership had

obviously failed by the mid-2000s (hence Suez's departure), but the point concerns the setting of tariffs done in mid-2001.

Brits paragraph 39.26

25. In one other claim, in 39.26, Brits argues that 'the poor are subsidised' already since 'water is supplied at below cost to low volume users', a point not disputed. What is at issue, as my affidavit makes very clear, is how *much* subsidy is provided by Johannesburg to low-income residents. The issue, in short, is *how fast and in what direction the tariff curve rises?* Exemplary in Brits' (and all other respondents') affidavit, is how this issue is completely ignored. The point of the tariff curve offered as *Figure 2* in my original affidavit (*Figure 1* below) is to demonstrate that sufficient funding can be raised from cross-subsidisation, in theory, by having a much more concave curve (blue, below), than exists in practice.

Figure 1: Johannesburg's 2001 adoption of a convex tariff curve



Source: Johannesburg Water and own estimation

Brits paragraph 39.26

26. It is true that since 2001, when the red curve below applied, Johannesburg has shifted water tariffs upward (even above inflation costs, so as to pay for the Lesotho Highlands Water Project), and that water prices for companies are relatively high compared to other cities. But these shifts have generally occurred in a manner that *retains* the bias against low-income households which consume in the range of 6-20 kl/hh/month, even with the adoption of slightly lower Gcin'amanzi rates. As can be observed in the Johannesburg water tariff tables below, the Gcin'amanzi tariff curve remains excessively convex. So too does the tariff curve applied to metered areas. The possibility of Johannesburg increasing the Free Basic Water allotment to 10 kl/hh/month would be welcome but is still insufficient. The problem of very high costs of water to poor households with large numbers of residents will persist at least through the 15 kl/hh/month range.

Tables 1&2: Johannesburg water tariffs, 2005-07

Fitted With Metered Connections as Per the Gcin'amanzi Project

Kilolitres (per connection per month)	2005/2006 Tariffs Subsidised measured (R/kl)	2006/2007 Proposed Tariffs Subsidised measured (R/kl)
0-6	Free	Free
7-10	R2.95	R3.20
11-15	R3.50	R3.80
16-20	R5.45	R5.90
21-40	R7.50	R8.10
41 +	R9.15	R9.90

- Proposed Domestic Water Tariff – Metered Areas

Kilolitres (per connection per month)	2005/2006 (R/kl)	2006/2007 Proposed Tariffs (R/kl)
0-6	Free	Free
7-10	R3.90	R4.20
11-15	R5.15	R5.60
16-20	R6.45	R7.00
21-40	R7.75	R8.40
41 +	R9.15	R9.90

Source: Johannesburg Water

Macleod paragraphs 36-37

27. The affidavit of eThekweni Water and Sanitation director Neil MacLeod disputes exactly this point, in relation to Durban's trend-setting water pricing. First, he has no real answer to the argument about the origins of Free Basic Water made above: that at 6001 liters per household per month, water pricing faces a dilemma. If Water Minister Ronnie Kasrils' original (February 2000) justification for Free Basic Water holds – i.e., that MacLeod has shown it is more expensive to send out and collect bills than to give 6000 kl/hh/month free - then either the 6001st liter should still be free because to bill for an additional 1 liter would not make financial sense, or

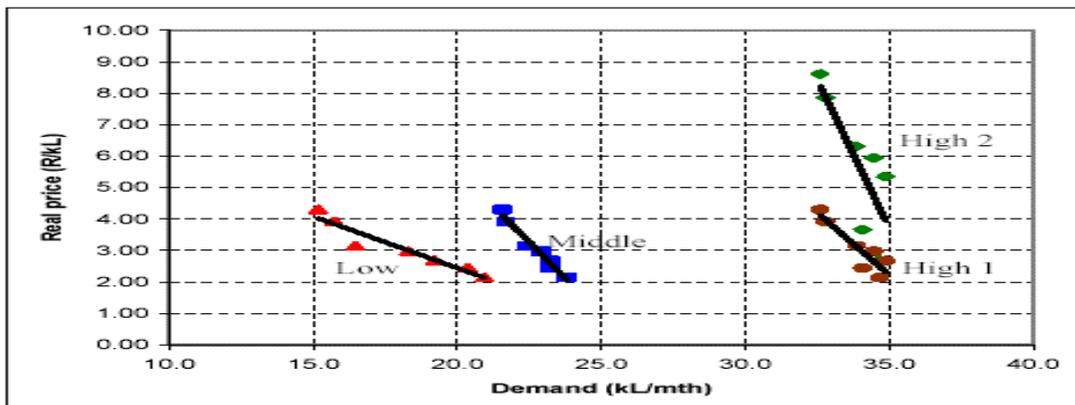
the resident is billed for 6001 liters, hence throwing into question the spirit and letter of the promised 6000 liters/hh/month Free Basic Water supply. Macleod responds by saying that Durban's policy changed in July 2001. But that is not the point: Kasrils used MacLeod's experience *in February 2000* as the sole recorded basis for deciding upon 6000 liters per household per month (as opposed to a higher or lower amount). And as noted above, in the same paragraph, MacLeod persists in defending eThekweni municipality's inhuman and dangerous policy of disconnecting water services to schools – another clear violation of the spirit of the promised Free Basic Water.

Macleod paragraph 39

28. Likewise, MacLeod offers a weak reply to the charge that Durban's tariffs are highly biased against low-income residents, as witnessed in the graph from Reg Bailey's MBA thesis below (Figure 2). As is clear from his graph, Bailey already corrected for inflation in his study, contrary to Macleod's claim. Most importantly, MacLeod simply fails to acknowledge or explain the shocking fact that due to pricing changes, poor people cut back their consumption far more than did wealthier Durban residents - with a price elasticity of $-.55$ for the poorest third compared to $-.11$ for the richest third. These extraordinary statistics, coming at a time of cholera and HIV/AIDS pandemics, represent just as serious a threat to the public health as does disconnecting a primary school's water supply. In sum, the Durban

experience with pricing and water supply roll-out, which was the model for both the country and in some respects Johannesburg, is not a particularly impressive model upon closer examination.

Figure 2: Change in real water price and impact on consumption, 1997-2004



Source: Reg Bailey UKZN MBA thesis.

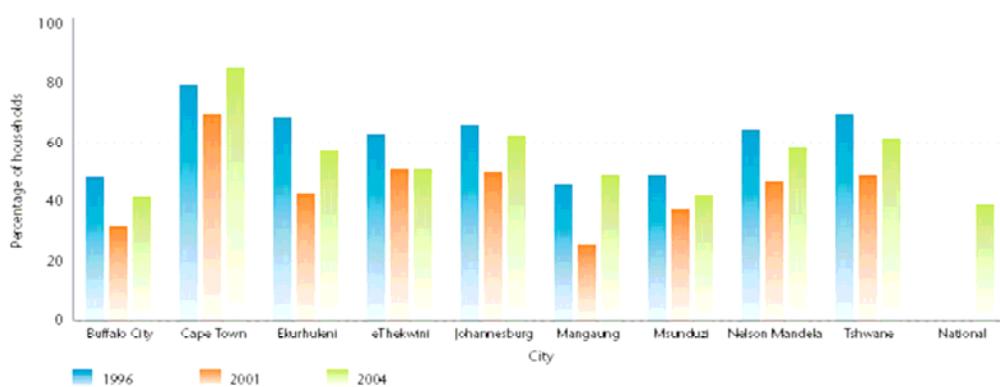
MacLeod paragraph 43

29. Indeed, as a result of these processes and increasingly uneven access by water consumers, resident satisfaction with Durban water supply is a matter of some dispute. MacLeod claims very high levels of satisfaction and coverage. Yet according to the December 2006 *State of the Cities* report, Durban's leading position as provider of water to households fell dramatically from 1996, when 62% of households had in-house water, to just 50% in 2001 and 2004, as a result of municipal demarcation changes. But unlike every other major South African municipality, this record did not improve during the early 2000s, as noted in the bar-graph below. Moreover,

as Table 3 shows, a recent informal settlement consumer satisfaction study - Robin Richards, Brian O’Leary and Kingstone Mutsonziwa (2007), ‘Measuring Quality of Life in Informal Settlements in South Africa’, *Social Indicators Research*, 81, pp.375-388 – showed that compared to East London and Alexandra townships, Durban’s shack residents had the lowest level of satisfaction for water and sanitation. The point of the Durban case is that the lowest-income residents are not being well-served by the water pricing or delivery systems put in place by MacLeod, which in turn inform the country as a whole and Johannesburg in particular.

Figure 3: Water access in SA metro areas, 1996-2004

Figure 3-35: Percentage of households with access to water in dwelling



Source: SA Cities Network State of the Cities Report, 2006.

Table 3: Shackdweller satisfaction with water/sanitation, 2006

Dwelling and basic services access and satisfaction

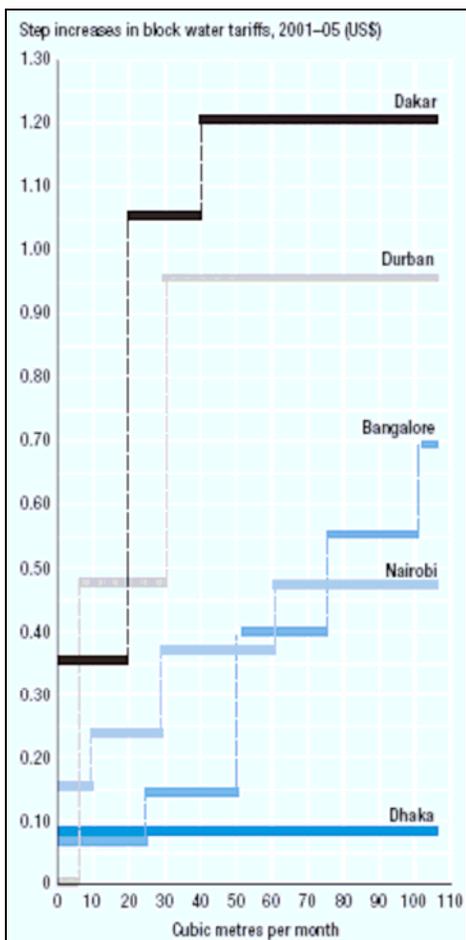
	Alexandra		Buffalo City		Durban	
	Access (%)	Satisfaction (%)	Access (%)	Satisfaction (%)	Access (%)	Satisfaction (%)
Dwelling satisfaction	–	–	–	9	–	13
Water: street taps	74	54	89	34	78	19
Sanitation: not flushing	84	–	73	24	49	7

Source: Richards, O’Leary and Mutsonziwa

Muller paragraph 16

30. Ironically, this point is unintentionally reinforced by former DWAF director-general Mike Muller, who repeatedly refers to the November 2006 United Nations Development Programme’s *World Development Report*. Muller uses the UNDP study to make the claim that South Africa’s water pricing policy is leading the world. But there is only one documented comparison of municipal water prices in that report, and it compares Durban with four other Third World cities. As noted repeatedly in my affidavit and academic work, the UNDP’s comparison of Durban and four other cities shows that, to be sure, a small Free Basic Water supply allows the Durban tariff curve to begin at 0. But as is obvious from the UNDP graph below, the next tariff block rises inordinately, to the point that the Durban curve becomes the most convex of the group under investigation.

Figure 4: Comparison of water tariff curves in five Third World cities



Source: UNDP Human Development Report, 2006

Conclusion

31. The points in relation to water pricing made above, and the disputes over several aspects of policy, together provide a strong case for fundamental change in the direction of the Constitutional human right to water. First, although Johannesburg's water pricing has evolved since its early reliance upon the discredited Durban model in 2001, the changes – the new Gcin'amanzi tariff (slightly less regressive than the ordinary meter tariff) and

a promised move to 10 kl/hh/month free in some areas – are not satisfactory. They represent small-scale changes at the margin, in a situation of profound inequity. Indeed Johannesburg's inequitable and often inhumane water pricing, prepaid meter and disconnection record has made it the periodic subject of not only sharp social protest, but also international publicity. In May 2007, for example, there was extensive concern expressed over a new report issued by the Municipal Services Project at Rhodes University. In a rigorous University of the Western Cape School of Public Health study of 107 Soweto households, 'there was a significant difference in the proportion of household carers with deemed versus prepaid water who never washed their hands with flowing tap water (43% with deemed consumption versus 77% with prepaid meters)' (see <http://www.queensu.ca/msp> for the study). Such findings suggest that in its attempt to save water by limiting households to an inadequate amount and enforcing the savings through pre-paid meters, Johannesburg Water is doing enormous damage to the society as a whole. The main point of the arguments in my original affidavit and this reply to the respondents' rebuttals, is that *Johannesburg could easily raise the money and supply the needed water to its low-income residents, if it simply charged high-volume consumers much more and changes the way water is supplied.* The same critique applies to most if not all South Africa's municipalities, who have systematically favoured wealthier residents by limiting their high-volume water consumption costs, and passing the social costs to low-income

people instead. Coming as they do from state bureaucracies, the respondents' attempts to distract attention from this foundational critique – by claiming I have inadequate expert status, by raising irrelevant points related to the timing and origins of policies, or by simply avoiding the major point that their pricing system is biased in favour of wealthy, high-volume consumers – are a reflection of the insensitivity of some in government to the plight their poor compatriots face in even as simple a task as collecting and paying for water. The courts have an opportunity to send a strong message to South African municipalities and the national water regulators at DWAF, that much more serious attempts to redistribute water through the pricing system are long overdue.