

**In the High Court of South Africa  
(Witwatersrand Local Division)**

In the matter between:

Case Number: 06/13865

**LINDIWE MAZIBUKO**

First applicant

**GRACE MUNYAI**

Second applicant

**JENNIFER MAKOATSANE**

Third applicant

**SOPHIA MALEKUTU**

Fourth applicant

**GEORGE MLAMBO**

Fifth applicant

**PINKIE MOHLABI**

Sixth applicant

**VUSIMUZI PAKI**

Seventh applicant

and

**THE CITY OF JOHANNESBURG**

First respondent

**JOHANNESBURG WATER PTY (LTD)**

Second respondent

**THE MINISTER OF WATER AFFAIRS  
AND FORESTRY**

Third respondent

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**AFFIDAVIT**

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I, the undersigned,

**PATRICK BOND**

do hereby make oath and say:

1. I am a Professor at the University of KwaZulu-Natal School of Development Studies Durban and concurrently a Director at the University of KwaZulu-Natal Centre for Civil Society, Durban. My office address is Memorial Tower Building #185, Howard College University of KwaZulu-Natal. A copy of my curriculum vitae is attached marked "PB1" hereto.
2. I am a development economist and geographer by training, and hold a PhD from the Johns Hopkins University Department of Geography and Environmental Engineering in Baltimore, USA. My fields of specialization within development economics are sustainable development, environment, public health, energy resources and water policy and services. I have developed an in-depth knowledge of, inter alia, the history of the free basic water policy and the impact of prepayment water meters in South Africa. I have been employed periodically by the South African government as a consultant on

these matters, and participated in the drafting of national policy papers.

3. I submit that in light of the positions I currently hold and the activities detailed in my curriculum vitae, I am qualified to comment as an expert on issues relating to the prepayment water meters and the free basic water policy in South Africa.
4. In light of this expertise, I have been asked to give my views on the history, origins and rationale of the free basic water policy and the impact of prepayment water meters. I do so in this affidavit. The facts and opinions to which I depose in this affidavit are to the best of my knowledge and belief true and correct.
5. Over the past ten years, South Africans have regrettably become familiar with several interrelated policies: 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, and so many other manifestations of post-apartheid infrastructure that echoes problems experienced during apartheid.
6. In February 2000, Ronnie Kasrils, Minister of Water Affairs and Forestry (as he then was) acknowledged that a change of policy was feasible with regard to a potential 'lifeline' water supply: "It would save money because local authorities would not be saddled with the

problem of administering large numbers of small accounts." This statement reflects the very unfortunate decision to base the free basic water strategy on the Durban case. That particular case entails providing a 200 litre drum that is filled every day. What is crucial to understand, is that for any other consumers, the rationale does not make sense, because if a consumer uses, say, 6001 litres, the *same problem* of 'administering large numbers of small accounts' (in this case just 1 litre) emerges. The only way to understand Kasrils' mandate using this logic, is that it is permissible for a municipality to charge a consumer for 6001 litres – not 1 litre – if they use 6001 litres. Hence the originating rationale for free basic water is a direct refutation of the spirit of free basic water.

8. In addition to Kasrils' famous 1999 visit to an Eastern Cape water project, at which a low-income woman was seen using dirty river water nearby because of the excessive cost of the government scheme, several other factors converged to cause the reversal of government's water policy, which prior to 2000 – e.g. in the first white paper on water and the national infrastructure investment framework - was based on the principle of full cost recovery:

- 8.1 growing alienation and apathy in townships, along with declining activity in ANC branches, leading to fears that substantial voter abstention would lower the ruling party's overall vote and cost it control in key municipalities;

- 8.2 the outbreak of cholera in Kwazulu-Natal in 2000, which killed several hundred people, attracted international attention and undermined popular faith in the water system;
  - 8.3 the imminent September 2000 Grootboom decision in the Constitutional Court, which signaled that the Bill of Rights provisions on socio-economic rights in the Constitution would be taken seriously;
  - 8.4 and finally, a dawning realisation that the water pricing policy was causing more costs than benefits for the society as a whole, and certainly for the reputation of the Department of Water Affairs and Forestry (“DWAF”).
9. To illustrate the point in paragraph 8.4 above, in early 2001, DWAF’s director-general Mike Muller conceded to presenter Vuyo Mbuli, “Perhaps we were being a little too market-oriented [in supplying water/sanitation services]”.
  10. An even more profound break with the past appeared in the African National Congress promise in the run-up to the December 2000 municipal elections: “The ANC-led local government will provide all residents with a free basic amount of water, electricity and other municipal services so as to help the poor. Those who use more than the basic amounts, will pay for the extra they use”. Note the use of phrases like 'all residents' and 'free', and the explicit endorsement of

what is known as a 'rising block tariff' so that those who consume more pay a higher cost per unit, in order that they cross-subsidise the poor.

11. This promise raised hope that poor people, and indeed all residents of South Africa, would at least be guaranteed a 'basic' amount of water and other services. The principle reflects the mandate from the ANC's Reconstruction and Development Programme ("RDP") to implement a free lifeline plus redistributive approach to pricing services, instead of the cost-recovery strategy that had become the conventional wisdom in DWAF, Eskom and many municipalities. The RDP promise was for a medium-term supply of 50-60 litres per person per day, on site (not at a communal tap).
12. However, hostile bureaucrats - whether in the State or even quasi-NGOs - deployed strategies and arguments to subvert the political process.
13. One allegation was that people suffering a 'culture of non-payment' spent their money on the Lotto, casinos, or cellphones. An old-guard official of the Mhlathuze Water Board, who cut off low-income people's supply at the scene of the cholera epidemic epicentre, told the *Sunday Times* in October 2000, "People will gladly pay R7 for a two-litre Coke, but complain bitterly when they must pay the same price for more than 1,000 litres of water'. In reality, studies that include highly detailed household-income analysis have shown that

in virtually all of the cases of non-payment, affordability has been the universal problem.

25. Several other forms of bureaucratic sabotage emerged. For example, the City of Johannesburg spent the year following its Free Basic Water implementation imposing draconian services cutoffs (often based on incompetent billing): 92,400 water and electricity cuts were made from January-April 2002 alone.
26. A crucial pro-business form of sabotage came from bureaucrats especially in the Department of Trade and Industry, backed by then-minister Alec Erwin, who opposed any form of cross-subsidisation in which business paid higher prices for services. Even DWAF's 2001 'Free Basic Services' policy document also explicitly vetoed such cross-subsidies, notwithstanding the fact that the National Water Act had recently permitted the state to charge large bulk users and raw-water extraction by farmers, often for the first time. Other users had been charged through DWAF's 'Trading Account' for many years, and such accounts could have been augmented by the few hundred million rand required to assure municipalities served all existing serviced residents, and acquired capital investment funds for those without water services. But the argument in Cabinet in October 2000 by DTI, DWAF and the Department of Finance was that higher services bills for corporations represented a hidden tax that would impair economic growth.

28. Still another important technique to sabotage free services was the use of the word 'flexibility', by which a national minister was discouraged from applying pressure to a local municipality. The excuse was that each municipality had unique local circumstances, so that no overarching tariff policy with a minimum lifeline plus rising block tariff would be appropriate. Even more than flexibility, the favoured jargon of sabotage-minded bureaucrats includes abuse of the word 'sustainability' to describe entirely self-financing water schemes, thereby implicitly rejecting any kind of subsidy to low-income people.
29. Another classic bureaucratic trick to foil the provision of free services for people was to limit it to those who had cleared their arrears with the local municipality. Of course, officials rarely considered why people were already in arrears, namely the massive unemployment in townships and the relatively higher prices township and rural residents pay for electricity, compared with high-income consumers and large corporations. In Johannesburg, arrears of R1.2 billion in 1995 had soared to R4.5 billion by 2002. Instead of blaming the culture of entitlement, as has been common, a surprisingly frank consultant to the City of Johannesburg admitted, "Due to the country's economic position, thousands of ratepayers lost their jobs and are now unable to pay their accounts. The City was also unable to enforce credit control because it lacked efficient staff and an effective strategy".

30. Likewise, another trick deployed in Durban by the metro water director was to provide 6000 litres free to low-income households, but charges were levied for the full amount once consumption exceeded the free amount. In other words, the first litre after 6000 were consumed would cost the same as 6001 litres. The same metro government, often praised for being the country's most advanced in supplying water services to the poor, also cut off water supplies to township schools in 2001.
31. Ironically, one concept deployed to sabotage free services delivery was 'equity'. Because the government had not invested enough capital in infrastructure by 2000, the argument was advanced that to give a free lifeline supply of water or electricity would only reward those who already had the service. Given the vast number of broken taps and electricity supply cuts, the argument was compelling at first blush. But on second glance, it is easy to see how equity was deployed as a deterrent to immediately supply free services.
32. The related complaint many municipal officials made was of severe fiscal constraints. It was true that the Department of Finance's 'equitable share' remained vastly insufficient. But by way of rebuttal, in addition to restoring the central-municipal grants that had eroded by 85% in real terms during the 1990s, national-scale cross-subsidies in electricity and water should have been expanded to help smaller, impoverished municipalities pay for the recurrent costs of free services. National-local electricity cross-subsidies already existed,

and were reportedly in excess of a R1 billion transfer from corporations to consumers. Likewise, DWAF had the ability in its 1998 legislation to price water from its national office so as to cross-subsidise to poor consumers via their municipalities.

37. A certain amount of sabotage was built into the very nature of the ANC's promise, since even if the effort was genuine, the redistributive principle was not backed up by thoughtful, detailed provisions. To illustrate, first, the ANC's use of the word 'household' - as in a Western-style nuclear family - meant that the free services were automatically biased against large families, in favour of single-person or 'double-income, no-kids' (dinky) households. Second, the absolute amount of services to be supplied was inadequate for large families, particularly those in which people with AIDS required more water and electricity for ensuring hygienic treatment of opportunistic diseases.
  
38. In the case of water, the promise of 6000 litres per family each month was not more than a couple of toilet flushes per day for each member of a large family of eight people. Families in which AIDS struck down a middle layer of adults often had as many double that number of dependents on a single property. In contrast, the RDP called for a medium-term lifeline supply of at least 50-60 litres for each person in a household per day, available on-site, not at a communal tap. The late-1990s campaign for free water by SAMWU and the Rural Development Services Network endorsed the 50 litres

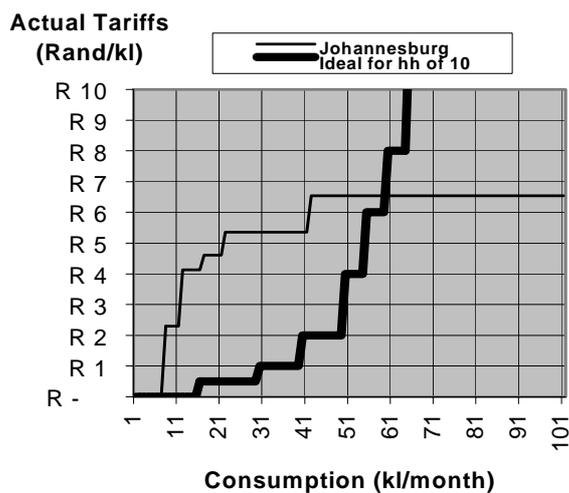
minimum goal.

39. Yet even more than a decade after liberation, DWAF, many municipalities and some allied NGOs are working on an RDP 'short-term' target closer to 25 litres per capita per day for large families. Moreover, in late 1998, DWAF bureaucrats even attempted to revise the target figure for low-density areas downwards to 7 litres.
40. In contrast, it would have been a relatively simple and cost-effective annual exercise for municipal officials to add a single additional record to each billing address. That record would allow the number of people with identification to be noted, with provisions to prevent the possibility of double-claiming the free water entitlement. Similar systems could have been established in the electricity sector. But some cities like Cape Town went ahead with an extremely inadequate 20-kilowatt hours per household per month, amplifying all the same problems but with such a miserly lifeline amount that after a few days, the monthly free lifeline would be used up.
41. In Cape Town, a possible rollout of prepayment meters had been envisioned in Bishop Lavis, Netreg in Bonteheuwel and Richwood at the start of 2006. The City of Cape Town took a recent policy decision not to implement prepayment water meters. In announcing this at a council meeting, then-Mayor Nomaindia Mfeketo said the decision had been prompted by a number of operational problems encountered in the prepayment water meter pilot project,

implemented in Klipheuwel in July 2001. "We have taken a policy decision not to implement the prepayment water meter system in the city," Mfeketo said. "Access to water is a critical right for our people and no measures which will have a negative social impact on our communities will be implemented by this administration as long as I am mayor."

42. Optimally, the Free Basic Water strategy should provide a larger free lifeline tariff, ideally on a per-person, not per-household basis, and then rise in a concave manner to penalize luxury consumption (see Figure 1, below). In contrast, Johannesburg's tariff was set by the City of Johannesburg with help from its water concession partner (the French company Suez). As shown in Figure 1, the price was set with an extremely high increase for the second block of consumption. Two years later, the price of that second block was raised 32%, with a 10% overall increase, putting an enormous burden on poor households which used more than 6 000 litres each month. In sum, the rich get off with relatively small increases and a flat tariff after 40kl/hh/month, which does nothing to encourage water conservation.

*Figure 1: Divergent water pricing strategies  
Johannesburg (2001) v. ideal tariff for large household*

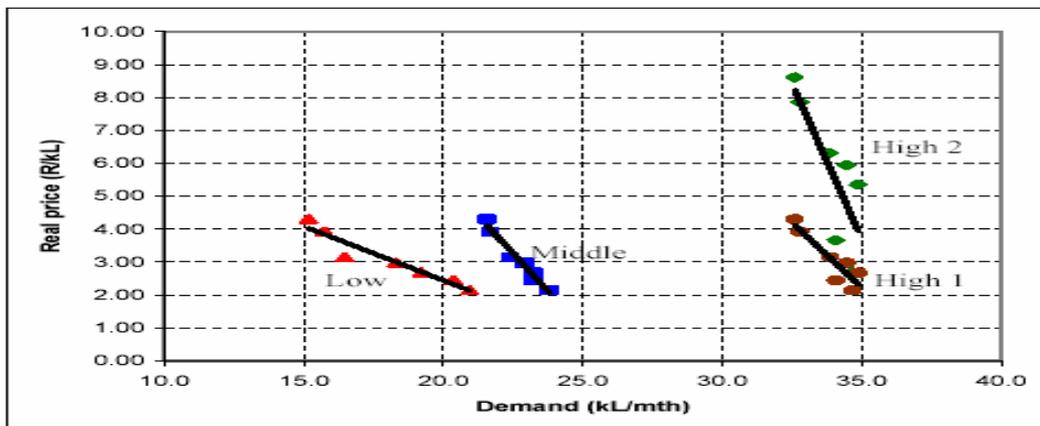


Source: Johannesburg Water (thin) and own projection (thick)

43. In Durban, South Africa's wealthiest municipality, a similar process has recently been measured. The 1997 consumption of water by the one third of the city's residents who have the lowest income was 22 kl/household/month. Shortly afterwards, a 'Free Basic Water' strategy was adopted (for just the first 6 kl/household/month), but steep increases in price for the next blocks of water were imposed. By 2003, the price of the average litre of water consumed by the lowest-income third of billed residents had doubled from R2 in 1997 to R4 (see Figure 2 below). According to Reg Bailey, who runs Durban's water tariffs, that price increase resulted in average consumption by low-income consumers diminishing to 15 kl/household/month during the same

period. (The price elasticity for water was, hence, a disturbing  $-0.55$  – an extremely large impact for what should be a basic need, hence relatively impervious to price change.) In contrast, for middle- and high-income consumers, the price rise was a big higher, but the corresponding decline in average consumption was much less (the price elasticities, respectively, were  $-0.14$  and  $-0.10$ ). Hence, although they provided the pilot case of Free Basic Water, Bailey and his colleagues established a system in the late 1990s and early 2000s that led to much greater inequality.

*Figure 2: The impact of price increases on water consumption by different income groups, Durban, 1997-2003.*



Source: Bailey and Buckley (2005).

I CERTIFY that this affidavit was signed and sworn to before me at \_\_\_\_\_ on this the \_\_\_\_ day of \_\_\_\_\_ 2006, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God". I certify that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

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**COMMISSIONER OF OATHS**

Name:

Address:

Capacity: