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## The damming of Lesotho's Water and the consolidation of commodity relations in occupied Azania<sup>1</sup>: Critical Theory appraisal of the 'civil society' challenge for free basic water services in Johannesburg, Gauteng.

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*Abstract:*

*Water has become a focal and dynamic terrain from through which the intercourse of forces are articulating and defining new theoretical and actual contents to the concept of 'civil society' in occupied Azania (South Africa); this paper seeks to lay out key debates and developments in the on-going discussion over mega-Dams Projects such as the Lesotho Highlands Water Project. The paper will compare this to current global discourses on civil society and consider the implications of the struggle against water privatisation currently underway in Gauteng's largely Black township of Soweto (Phiri). Thirdly; the discussion is based on a comprehensive desk-top analysis of key opinion makers on this issue as well as personal interactions. Fourth; the paper seeks to challenge popular assumptions about progressiveness of notions like 'civil society' 'free-market democracy' and the inevitability of rationalised commodification of water services on the rest of the continent (Aethiopia<sup>2</sup>). The paper will consider the situation of the residents of Gauteng's largely Black township of Soweto (Phiri) focusing on the legal challenges currently underway in Johannesburg High Court. The paper will consider ironic fact that both 'civil society struggles' remain confined in courtroom walls, albeit under different circumstance in each country. The paper does not offer hard clean cut solutions but merely tries to open the space for dialogue over the developments of and between civil society efforts cutting across the two countries; in order to highlight stark continuities in current efforts to toward an alternative approach in so far as Liberal conceptions of citizen/customer/person underlie current right-based discourse of civil society and 'liberalising gesture of neo-colonial state.*

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1 Meaning the children of those whose cries the Most High hears.

2 The Ancient name land mass called Africa; the name describes the original civilisation of human-kind whose capital lay in the upper sections of the Nile River near the borders of modern Southern Sudan and Uganda, ancient Ethiopia Kush the land of the first Pharaohs.

## **The damming of Lesotho's Water and the consolidation of commodity relations in occupied Azania<sup>3</sup>: Critical Theory appraisal of the 'civil society' challenge for free basic water services in Johannesburg, Gauteng.**

28But thou shalt say unto them, This is a nation that obeyeth not the voice of the LORD their God, nor receiveth correction: truth is perished, and is cut off from their mouth.

29Cut off thine hair, O Jerusalem, and cast it away, and take up a lamentation on high places; for the LORD hath rejected and forsaken the generation of his wrath.

30For the children of Judah have done evil in my sight, saith the LORD: they have set their abominations in the house which is called by my name, to pollute it.

31And they have built the high places of Tophet, which is in the valley of the son of Hinnom, to burn their sons and their daughters in the fire; which I commanded them not, neither came it into my heart.

Jeremiah 7 (King James Version)

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<sup>3</sup> Meaning children of those whose cries the Most High hears.

## Introduction

Part of the difficulty of serious engagement with the current state of perpetual socio-economic crisis Aethiopia<sup>4</sup> is the exclusive and historical selectiveness of contemporary discourses on history, subjectivity and centrality of scientific rationality particularly in the 'liberal academy'. History is arbitrarily presumed to start at a certain period and the anatomy of the self-reflective "I" of modern narrative is solidly in the grips of Eurocentric liberal discourses.

The paper argues that the search for alternatives to the current transformation of capitalist modes of being and extraction strategies, best exemplified by the neo-liberal turn of global capitalist socio-economic system, remain by and large within a Western liberal framework, sharing common presumptions that market liberalization as an inevitable progression in the realisation individual autonomy of the 'modern subject'.

The paper argues that the effort of 'globalising resistance' may consciously or subconsciously fulfill the task of totalitising the commodity relations of capital throughout the globe thus at risk of become the contemporary effort at re-drafting of the basis of a new 'social contract between capital, socialized labour and the liberal minimalist State.

This paper is concerned with the question of how to build theoretical tools that can assist in better preparing us for resisting this drive towards the recreation of human subjects into further objects in a ghastly commodified/fying earth experience. Some work in this area is being done across the various academic disciplines; this work however remains largely the concern of Northern intellectual tendencies. Where there is an effort at evaluating the implications of privatization of the whole human existence beyond structuralist political, economic, social -cultural categories.

As a means of substantiation, the paper will use the topical issue of water commodification affecting Lesotho and occupied Azania as cases in point. The paper is divided into four portions. The first portion will provide comprehensive background on the first case study Lesotho Highlands Water Project and consider the details of the project and its socio-economic impacts on the Basotho. The second part of the paper focuses on the background of the struggle against water privatisation currently underway in the Black township of Soweto (Phiri). Thirdly, will give close examination of Liberal epistemological claims to *Truth* the aim being to offer a challenge to dominant assumptions about progressiveness of notions like 'civil society' 'free-market democracy' and the

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<sup>4</sup> The Ancient name land mass called Africa; the name describes the original civilisation of human-kind whose capital lied in the upper sections of the Nile, near the borders of modern Southern Sudan and Uganda, ancient Ethiopia Kush the land of the first Pharaohs. Derived from "Itiopp'is", a son of Cush, son of Ham who, founded the city of Aksum.

inevitability of rationalised commodification of water services on the rest of the continent (Aethiopia<sup>5</sup>)

### **The Historical Specificity of the Western perspective.**

In Greek mythology we read of the great Ethiopian king, Cepheus, whose fame was so great that he and his family were immortalized in the stars. The wife of King Cepheus was Queen Cassiopeia, and his daughter, Princess Andromeda. The star groups of the celestial sphere, which are named after them, are called the ROYAL FAMILY—the constellations: CEPHEUS, CASSIOPEIA and ANDROMEDA.)<sup>6</sup>

The entire ancient world, including the ancient Greeks celebrated Imhotep. Even Hippocrates so called Greek Father of modern medicine was a devotee of Imhotep the Prince of Peace.<sup>7</sup> Scientists examining documents dating back more than 3,500 years have confirmed that the origins of modern medicine lie in ancient Egypt and not with Hippocrates and the Greeks. The medical papyri were written in 2,500BC – 1,000, thousands of years before Hippocrates was born.

The Western perspective of modern Europe can be traced to the Roman Empire. The most important pillar of the Roman Empire was the body Roman law which remains the foundation modern Western Property Law. The Roman Empire differed from other High Civilizations such as Aethiopian Empire, Egypt and China; which preceded Rome by millenniums in the ancient world.

The large scale acquisition of wealth and slaves was attained through use of the state. Roman aristocrats has permanent hunger for acquiring ever increasing quantities of land through the use of brute might of the Imperial state; aristocrats accumulated wealth and territory. With every territory conquered was accompanied by the Roman law including laws around private property of Roman invaders in the territory this was the case across the length and breadth of the Empire<sup>8</sup>.

Regarding what it means to be a modern subject Marshal Berman had this definition; “(modern subjects) are moved at once by a will to change- transform both themselves and their world- by terror or disorientation and disintegration, of life falling apart... To be modern is to live a life of paradox and contradiction. It is to be

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<sup>5</sup> Ibid4.

<sup>6</sup> Jackson J. G: Ethiopia and the Origin of Civilization Part 2 - 1939

<sup>7</sup> Uwechia, J: Ancient African Medicine, Egypt (Khemit) and the World

<sup>8</sup> See also the discussion provided by: Rosenberg, J: The empire of civil society: a critique of the realist theory of international relations, London, 1994.

overpowered by immense bureaucratic organizations that have the power to control and often to destroy all communities, values and lives.”<sup>9</sup>

Frederic Nietzsche noted; “Humanity does not gradually progress from combat to combat until it arrives at universal reciprocity, where rule of law finally replaces warfare: humanity installs each of its violences in a system of rules and thus proceeds from domination to domination.”<sup>10</sup>

It is noteworthy that in his lifetime; Karl Marx was very critical of the concept of ‘civil society’, arguing that civil society was central to the overall development of the global capitalist system. Because the concept claimed political space of generalized freedom in spite of contradictory and contending interests in political society seen through the lens of political economy.<sup>11</sup>

At this stage it becomes important to dissect some rational claims to truth that Western Liberal democratic perspective clings to. For this we will use the work of Rafe Champion on his work in the critical liberalism philosophy of Karl Popper. Briefly, Popper developed a theory of the “Dogmatic Structure”; which he claimed runs through all traits of liberal ideology. Most traits of liberal ideology shared a common history of an attachment to one or the other religious function.<sup>12</sup>

He was of the view that most liberal theory can be broadly divided in ‘organs’ for knowledge production and re-production. These can be reduced to (associated with) crudely; empiricist approach/discipline and rationalist approach/discipline. Popper points out an important observation regarding these approaches/disciplines; both are constantly seeking more authoritative sources of belief (more proof of the divinity of man over the Almighty).

As a result, the approaches generate a lot of ‘critical’ debate against each other, but this debate says nothing of authoritarian framework (neo-colonial western liberal democracy) and they share the key assumptions of this authoritarian framework.<sup>13</sup> A later scholar of Popper; Bill Bartley pushed Popper’s views further by noting that “Dogmatic Structure underlying liberalism’s theories of knowledge which demands

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<sup>9</sup> Berman, M: All that is solid melts into air: The experience of modernity. (1982) New York: Penguin Books, 1988.

<sup>10</sup> Nietzsche from Genealogy and History, quoted in Honneth, A, ‘Foucault’s Theory of Society: A Systems-Theoretic Dissolution of the Dialectic of Enlightenment’ in Kelly, M (ed) Critique and Power (MIT Press, 1994) p. 157

<sup>11</sup> Mohan, G: The disappointment of Civil Society: the politics of NGO intervention in Northern Ghana. 2001, <http://www.sciencedirect.com>

<sup>12</sup> <http://www.mises.org/article.aspx?Id=689&month=32>

that rationalised positive (human) justifications as the only criterion for true belief.<sup>14</sup> Though I differ with conclusions/suggestions offered by Popper and Bartley<sup>15</sup>, their arguments offer an insightful glimpse into the psyche liberal reason.

In recent history; the collapse of the Berlin Wall in 1989, has been termed a turning point in contemporary history. The adoption of capitalist accumulation strategies by countries such as Eastern European, China and South Asian countries this was/is presented as the final triumph of Western perspective i.e. Capitalist liberal democracy<sup>16</sup>. This view held that the internationalized 'free market' of late twentieth century capitalism has ascended without doubt as the means through which all prior enclaves that stood outside the capitalist system were to be integrated into the "borderless' and global system of consumption and production.<sup>17</sup>

The Asian financial crisis of 1997 gave an illustration of the criss-crossing of social and market relationships intra-and- inter nations and regions. But it also exposed the underlying 'corruption' that came to be termed: Cronystic Asian Style Capitalism.<sup>18</sup> This brand of capitalism was found lacking of the so called; efficiency, transparency and robustness characteristic of 'Western' capitalism. These sentiments smack of Conrad-isque characterization of the spheres understood to lie outside the 'West'. The Asian crisis was then characterized as Cronystic, opaque and corrupt practices which represented a 'continental exception'; of a rather sound world economic system. Needless to mention the string of crisis that have followed the 'Asian Tomcats'. The USA finally having to taste the sour juices of her Liberal Democracy orthodoxy: perpetual war and economic recession.

However there is no doubt of the global connectedness of the world economic system perhaps an accessible example in this regard is the world food system. This important element of human survival is controlled by a hegemonic network of transnational economic institutions and corporations which function along same old colonial trade relations in local, regional and national food supply and production; Imperialist pathologies of exploitation of largely black labour, economic exclusion and oppression. This is increasingly becoming true of water; with the same corrupt profiteering motives that which these multi-national forces have so articulately displayed. The dismembering of local culture and identities by homogenizing person/ customer/ citizen food culture through standardizing 'staples' across the globe such as the case of maize-meals in much of Africa and S. America. In the words of Wong: "the steady displacement of collective social institutions and customary practices of social regulation is gradually extinguishing the traditional

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<sup>16</sup> See the work of Fukuyama, F: *The End of History and the Last Man* (1992), publ. Penguin.

<sup>17</sup> Dickens et al. 2001 In Wong, L 'Globalizing' Management Theories: Knowledge, Ignorance and the Possibility of a Postcolonial Critique; <http://rauli.cbs.dk/index.php/cjas/article/viewFile/42/51>

<sup>18</sup> Ibid1. pp 41.

ways of life of disparate populations leaving us poorer both culturally and ecologically”<sup>19</sup>

As Wong, notes in his study: ‘Michael Doyle is of the opinion that colonialism is a potential outcome of imperialism; settler governments are better at administering colonies than those that are largely based in the metropolis with only indirect administration. Wong points out that Edward Said further developed the ideas of Doyle , through arguing that imperialism and colonialism are complementary ideologies, these ideologies moved from an ethic believed, in Said’s words “that certain territories and people require and beseech domination” the two ‘processes re-enforced each other . He notes further that both ideas are premised on the idea of evolutionary superiority of one society and its moral entitlement to subjugate all inferior ones – and are applied to achieve the same discriminatory outcome – foreign rule over a sovereign people.’<sup>20</sup>

### *Background on the Lesotho Highland Water project*

The Lesotho Highlands Water Project LHWP was first proposed in 1954; however it went into operation in 1986, through a treaty signed between the then South African Apartheid government and military regime in Lesotho. Since then, a key social concern surrounding this project has been associated with whether the socio-economic benefits of such a mega project can outweigh the overwhelming criticism surrounding the now established fact of large scale corporate corruption in the dam's construction process<sup>21</sup>, or whether indeed as it has been repeatedly pointed out by various social sectors that the LHWP<sup>22</sup> typifies a more profound corruption of the South African water provision system which has led to outbreaks of social unrest particularly in Phiri, Soweto.

The objective here is to link the production of water as a commodity in Lesotho; a situation whereby multinational corporations profited from construction contracts to

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<sup>19</sup> Ibid2. pp 41.

<sup>20</sup> Dickens et al. 2001 In Wong, L 'Globalizing' Management Theories: Knowledge, Ignorance and the Possibility of a Postcolonial Critique; <http://rauli.cbs.dk/index.php/cjas/article/view>

<sup>21</sup> See the work of Tricarico A. The Lesotho Highlands Water Project, Massive Dams for Massive Disasters, Reform the World Bank Campaign. In which the author provides a compelling account of top end corrupt practices. The article can also be found on this electronic link: <http://www.ipocafrika.org/cases/highlands/worldbank/index.htm>

<sup>22</sup> Hatchard, J: International Businesses: International Corruption: International Action. taken from seminar papers of the OU Law Program: Law Seminar Series notes. 2000

Concern is focused on the situation in some sections in the Township of SOWETO, South Africa.

the difficulties of the many both in Lesotho and South Africa in carrying the social and economic expense for overpriced water, how this can be attributed to the dams that were potentially unnecessary.

It is well a documented fact that many thousands of Basotho Highlands residents have been displaced<sup>23</sup>, Soweto residents have pointed out that the cost charged for water has had an adverse effect on their ability to consume water, the price of water has on average risen five times higher than previously<sup>24</sup> as a result of the higher cost paid by South African government to divert Gauteng's water supplies from the first two Lesotho dams, Katse and Mohale. These two dams derive their water from the Senqu River, which runs along the Southern border of Namibia which is shared with South Africa; the mouth of this river originates in Lesotho and covers a distance of 1800 kilometres through South Africa, where it is called the Gariep River. The river connects with the Atlantic Ocean at mouth of the Orange River. In South Africa, the river is a major tributary the Vaal River, which carries nearly 23 % of the total surface water of South Africa. If the Lesotho Highlands Water Project (LHWP) were to be completed; it would be constituted by a total of five-dams; this in turn will translate to up to 40% of the water diverted through the Senqu river basin to South Africa's Vaal river system in Gauteng Province.

Lesotho has lowlands in the west of the country at a height of 1500 - 1700 m above sea level, the land level rises from the foothills in the central area and finally to the Maluti Mountains in the east, this mountain range continues into South Africa where it is called the Drakensberg. The country receives roughly 800 millimeters per year in the western part of the country with the eastern part receiving up to 1200 millimeters per year<sup>25</sup>.

The Lesotho Highlands Water Project is a project with many dimensions; it serves the combined objective of selling water to South Africa and generating hydro power to meet Lesotho's electricity needs<sup>26</sup>. The LHWP covers the 1990-2017 periods. It consists of water transfer component and a hydropower component.<sup>27</sup>

The desire for Lesotho's water was formerly expressed in the 1960's where two feasibility studies were carried out. Both failed because agreement could not be

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<sup>23</sup> Weisfelder Richard F. Lesotho and the Inner Periphery in the New South Africa; 1992 in *The Journal of Modern African Studies*, Vol. 30, No. 4.

<sup>24</sup> Anti-Privatisation Forum (APF) & others (2004). NOTHING FOR MAHALA'; The forced installation of prepaid water meters in Stretford, Extension 4, Orange Farm, Johannesburg – South Africa. Centre for Civil Society Research Report 16: 1-30.

<sup>25</sup> Hall, S: Ecosystem Services in the Gariep Basin; an Ecosystem Services Approach, 1998, taken from electronic copy on: [www.millenniumassessment.org](http://www.millenniumassessment.org).

<sup>26</sup> Taken from: *Dams and Development: A New Framework for Decision-Making 2000*. A Report of the World Commission on Dams.

<sup>27</sup> Ibid1

reached between the two governments on payment for water exports.<sup>28</sup> However, a new feasibility study was launched. In 1979 a preliminary study recommended a 70cm/sec. water transfer scheme, as well as a hydropower generation component, reflecting Lesotho's desire to replace electricity imports with locally produced energy.<sup>29</sup> The final feasibility study (1983) concluded there were no unsolvable environmental, socio- economic or legal difficulties<sup>30</sup>. It measured the quantities of water available for transfer, dimensioned the dams, tunnels and hydropower facilities, and prepared cost estimates.

Water sales from the project are Lesotho's single largest source of foreign exchange, and account for 75% of the country's budget. During recent droughts, Lesotho has seen its own crops shrivel as its water was shipped to South Africa. Multiple tributaries in the watershed would be dammed if all dams in the project were completed. Two of the dams, the 180-meter-high Katse ("Phase 1A") and the 145-meter-high Mohale ("Phase 1B"), are complete.

In 1944 field surveys and drilling were initiated; this resulted in a report to the South African Government in 1948 which proposed a project comprising amongst others, a diversion dam on the Orange River as well as a diversion canal and tunnel underneath the divide to the Great Fish River valley, with a branch canal to the Sundays River valley<sup>31</sup>. The first White Paper on the project was tabled in Parliament in 1951 and the actual development was started soon thereafter<sup>32</sup>.

The Senqu River originates in Lesotho on the South African side it is called the Orange River, this is an international waterway and it forms the boundary between the RSA and Namibia. If the LWHP was to be completely implemented, more than 40% of the total estimated yield of the Senqu River basin would be diverted to South Africa.

This project is a large inter-basin water-transfer scheme which includes five proposed dams, 200 kilometers of tunnels blasted through the Maluti Mountains, and a 72-megawatt hydropower plant that will supply power to Lesotho. It is one of the world's largest infrastructure projects under construction today. The project's primary purpose is to transfer water to Gauteng Province, the industrial heartland of South Africa<sup>33</sup>

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<sup>28</sup> Molle, F and Berkoff, J: *Cities versus Agriculture: Revisiting Inter-sectoral Water Transfers, Potential Gains and Conflicts*. 2002. Comprehensive Assessment of Water Management in Agriculture.

<sup>29</sup> *ibid*

<sup>30</sup> [www.american.edu/ted/Lesotho.HTM](http://www.american.edu/ted/Lesotho.HTM)

<sup>31</sup> Frost A; McIntyre R C; Papefus E B; Weiss O; 1946. The discovery and prospecting of a potential gold field near Odendaalsrust in the Orange Free State, Union of South Africa.

<sup>32</sup> [www.dwaf.gov.za](http://www.dwaf.gov.za)

<sup>33</sup> Potgiter, L: Raising the bar on big dams; Making the case for dam policy reform at the European Investment Bank. (2007). CEE Bankwatch Network.

Therefore, a generous margin is also left to meet future water-based developments of Namibia. It has to be noted that in 1983 guerilla violence took place in Northern Lesotho the main bone of contention was around the Lesotho Rivers providing water to South Africa's Apartheid regime.

## Management of the LHWP

The scheme is being managed by the Lesotho Highlands Development Authority (LHDA), which is responsible for resettlement and compensation issues, environmental protection and overall construction management. In South Africa, the project is overseen by the Department of Water Affairs and Forestry (DWAF) through the Trans Caledon Tunnel authority. The Joint Permanent Technical Commission (JPTC) was established to represent both countries<sup>34</sup>.

In late 1997, the end-user for the project's water, Rand Water, revealed that it had done a preliminary study which showed Mohale Dam could be delayed 8–20 years by implementing water-conservation measures. NGOs and the World Bank attempted to obtain the study, but neither Rand Water nor the Department of Water Affairs was forthcoming with the information. Despite strong evidence that Mohale dam could be delayed, the South Africa and Lesotho governments proceeded with the project one year ahead of schedule<sup>35</sup>.

Technically; Phase 1A constitutes a 182 meter high Katse Dam releasing water which will be diverted through a 48 kilometer tunnel, the process would in turn generate 72 megawatts of energy through a hydroelectric plant, whose bulk output would then be distributed within Lesotho; the water emerging from the plant would be channeled into a reservoir backed up behind the second dam – the 55 meter high 'Muela dam from which water would be delivered through a 16 kilometer delivery tunnel to South Africa's Ash River and on to Gauteng Province. Katse was completed during 1995, with its reservoir filling during the 1995/96 rainy season. The first water was transferred to South Africa in January 1998 with the first electricity distributed later that year<sup>36</sup>.

Demand-side Management- refers to the situation where a utility or local authority that provides a public service (e.g. provides clean drinking water), affects the rate and manner in which the service is used by the consumer, this management activity is called Demand Side Management (DSM). This management tool was stubbornly accepted as an effective means to discourage excessive water consumption on the

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<sup>34</sup> Document of The World Bank; Report No. 17727-LSO, PROJECT APPRAISAL DOCUMENT, April 30, 1998.

<sup>35</sup> A Brief History of Africa's Largest Water Project. [www.internationalrivers.org](http://www.internationalrivers.org)

<sup>36</sup> Ibid1

side of Gauteng.<sup>37</sup> It is often argued by officials that; reduced water demands in South Africa, can delay to the second and third phases indefinitely. If initiated, Phase 2 will focus on the construction of the Mashai Dam on the Senqu River from whose reservoir water would be pumped up into the Katse Reservoir<sup>38</sup>. Phase 3 would involve construction of the Tsoelike Dam below Mashai with water pumped into the Mashai Reservoir. No estimates exist as to the number of people who would require physical relocation if all three <sup>39</sup>phases were completed, but the total population affected by Phase 1 approaches 200,000. Of these about three-fourths are residents of downstream communities affected by radically reduced Senqu River flows<sup>40</sup>.

It is estimated that about 30,000 village residents who have been living in reservoir catchments basins, are facing an uncertain future where their guarantee of sustenance and self reliance for food have been attacked by the new dammed realities; loss of winter grazing as well as loss of thatching grass due to decreased river water, the micro ecosystem has been threatened by lower water yields, fuel wood also have decrease and reproduced at a slower rate because there is less water, medicinal plants and other common property resources.<sup>41</sup>

Once again, Scudder notes that the impact of phase A1 affected at least 133 villages in the Katse and 'Muela local catchments where up to 121 villages were in the Katse area. Indeed the effect of this mega-development should not only be read in terms the number of displaced alone but also massive disturbance of the social relations of valley residents, these included the fact that 'Muela project works did not require physical removal of the village residents however, many (100 homesteads losing arable land), many had to move from their original abodes, futher back to make way for project roads<sup>42</sup>.

It is estimated that about 3,357. Loss of at least 3,000 hectares of grazing and other common property resources affected approximately 90 percent. Though the large majority of households have been classified as poor by many anthropologist researchers, this is a somewhat problematic or least misleading classification since according to a study conducted by Sechaba research consultancy where it was

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37. Brandes, O.M and Maas T: Developing Water Sustainability Through Urban Water Demand Management 2004. The POLIS Project on Ecological Governance. University of Victoria, BC

38 Ibid1

39 Lang, C, Hildyard, N, Geary, K and Grainger, M: Dams Incorporated The Record of Twelve European Dam Building Companies; 2000 Swedish Society for Nature Conservation

40World Development Report 1992, DEVELOPMENT INDICATORS, World Development Report 1992, Development and the Environment Published for the World Bank

41 Chefa, Lehlolonolo Gabriel interview- (2007)

42 Scudder .T: The Lesotho Highlands Water Project (2003) and Laos' Nam Theun 2 Dam (2003 with 2005 updating) (Unpublished Manuscript)

ascertained that many villagers in the catchments areas were: largely self sufficient in producing food. Only 13 percent, did not own productive fields, however, they remained self sustaining being dependent on share cropping or loan of arable land, while 80 percent of households owned livestock. The proportion of female-headed households was approximately 30 percent.<sup>43</sup>

In the main Mohale impact area an estimated 700 households in 84 villages will lose about 725 hectares of arable land, with the project reducing grazing land, including the most valuable winter grazing, by approximately 1,635 hectares. Katse reservoir filling involved the resettlement of 73 households, while physical removal due to Mohale project works and reservoir filling can be expected to involve up to 400 households<sup>44</sup>.

According to available documents from the World Bank on this mega project (LHWP), the implementation and planning show that the structure is very complicated. In Lesotho an implementation agency and enacted legislation in 1986 that legitimized a treaty: Lesotho Highlands Development Authority (LHDA), In the Republic of South Africa the responsible agency was the Trans-Caledon Tunnel Authority (TCTA).

The 1986 (LHWP) Treaty, provides very clear stipulations that both Authorities were could not take executive decisions without the express approval of (JPTC) Commission, the decisions include budgets, design of project infrastructure and all tendering procedures, implementation plans for each phase, annual and short term operational and maintenance plans, and appointment of staff, auditors, consultants, contractors and other senior personnel.<sup>45</sup>

Dam	River	Catchment Area km <sup>2</sup>	Mean Annual hm <sup>3</sup>	Run-Off m <sup>3</sup> /s
Katse	Malibamats'o	1 860	656	20.8
Mohale	Senqunyane	938	367	11,6
Mashai	Senqu	7 977	1 569	49.7
Tsoelike	Senqu	10 375	1 891	59.9

Source: *Lesotho Highlands Water Project: Boehm Christian and Hall David, 1999.LHWP, Contract LHDA 648,Consulting Services for the Establishment and Monitoring of the Instream Flow Requirements for River Courses Downstream of LHWP Dams; Socio-Economic Survey. Report No.648-25.*

<sup>43</sup> Ibid1. (Notes on Sechaba research)

<sup>44</sup> Ibid2

<sup>45</sup> Matlosa, K: Changing Socio-Economic setting of the Highlands regions as a result of Lesotho Highlands Water Project, 1998, Transformations (vol:38).

The overall cost of such a project are so massive, the building of the two Dams on their own has had an effect of raising the average price of a drop of water by a factor of five. What, then, were the implications of the project for the low-income people of Johannesburg meant to consume the water? As even the World Bank conceded, the impact of the higher price of water was disproportionately felt by lower-income people who consumed water in the first consumption block (who suffered a 39% real increase during the late 1990s), and far less by higher-income people consuming far more water in the fourth block (only 24% increase)<sup>46</sup>.

Hence we can now ask, was the corruption identified above limited to the ways in which multinational corporations and corrupt state officials cream profits in the construction stage? Or was there a more systematic corruption based upon the establishment of a water system that reinforced urban inequality inherited from apartheid? To quote the words of Mr. Olav Kjørven, director of energy and environment group, Bureau for Development Policy, United Nations Development Program:

*“There is no development possible without water, and there is no healthy ecosystem that does not depend on water for its survival. We are convinced that water is not only vital for life and essential for development, but also a priority for contributing to the achievement of all of the Millennium Development Goals, or MDGs. We ask ourselves can poverty and hunger be eradicated or maternal health improved, or child mortality reduced, or gender inequalities addressed without improved access to water and sanitation? The answer is no”<sup>47</sup>*

### **Critical theories as discursive framework for critical appraisal.**

This paper argues that neo-liberalism is an advanced phase of the capitalist liberal democratic project. This phase is distinguished classical liberalism, whereas in classical liberalism the boundaries of what constitutes the ‘private’ domain (i.e. the home, family or personal relations through which individual citizens are reproduced and find self realization) were clearly demarcated-at least theoretically.

The ‘public’ domain was always considered to exist above and between these ‘private domains’. It is therefore the contention of this paper that in the neo-liberal phase of advanced capitalism the notions of ‘public’ and ‘private’ have undergone a level of transformation; as result have radically altered classical liberalism’s

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<sup>46</sup> Bond; P: Accumulation by Dispossession in Africa False Diagnoses and Dangerous Prescriptions.

Cornell Conference on the Ethics of Globalization Sponsored by the Poverty, Inequality, and Development Initiative, Society for the Humanities, Center for the Study of Economy and Society, Provost's Fund and the Institute for the Social Sciences Ithaca, 2007.

<sup>47</sup> *The Global Water Crisis : Evaluation of U.S. strategies for enhancing access to clean water and sanitation;* Briefing and hearing before the Committee on International Relations; House of representatives one hundred ninth Congress, Session 1 June 29, 2005.

conception of citizenship and notions of personhood. Put differently; in classical liberal ideal; the public sphere operates through reason and deliberating with others and treating of all individuals with equal dignity in a civil or public space for achieving the common good.

By implication, by the fact that one is human the one qualifies for certain inalienable rights these rights are to be enjoyed by all citizens who enter into a contract with the state through the concept of a 'social contract' that should be the basis of relations between the state, capital and labour.

It these days globalised financial capitalism there has been a trend towards private enterprise as the dominant distributor of social benefits and the abandonment of social welfare functions by nation states. This has had the effect of replacing citizenship based on individuals' belonging to a certain society; with citizenship based consumer citizenship- that is citizenship based on individual's participation in the consumption of products within a chosen consumer identity.

Critical theorists like Susan Squier note that the dominance of private media technologies and techniques in "consumer publics, constitutes discourses about production of messages and reproduction of representations", she notes that the result of this is the consolidation of global power multinational power of global capital' thus its reproduction of ever increasing parts of planet earth into its own image. Squier notes further; that in this manner; multinational capital dictates definitions and distributes difference within and across a variety of temporally and geographically over-lapping power grids- including "civil society". '

In the case of water between and within Southern African 'publics' this perspective offers many theoretical levers to grapple with this dilemma. The Lesotho Highlands Water project is sold as a milestone towards Lesotho's infrastructural development and connected socio-economic promises of a 'modern' Lesotho. The language of the state is the need to be key 'partner' in the development effort. These 'partners' are The Lesotho Highlands Authority; Department of Water Affairs and Forestry (DWAF) (RSA) through the Trans Caledon Tunnel authority. These two structures reported to the Joint Permanent Technical Commission (JPTC-the Commission) which is representative of stake holders from South Africa and Lesotho, a joint secretary, and separate secretariats based in Maseru, the capital of Lesotho. <sup>48</sup> The Joint Permanent Technical Commission (JPTC) was established to represent both countries. All of these utilities can be classified as largely 'public' utilities organs of the South African and Lesotho states respectively through a treaty and intra-state agreement: the Lesotho Highlands Water Project Treaty (LHWPT) and Lesotho Highlands Development Agreement (LHDA) - respectively.

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48 Report No: ICR168, Document of The World Bank, 2007. Water & Urban 1  
Country Department Africa Region. [www.worldbank.org](http://www.worldbank.org).

However; the UK Export Credits Guarantee Department, the agency at first denied that Balfour Beatty, one of the companies it supported, was being prosecuted. Notwithstanding this, civil society organizations in Lesotho have demanded the suspension of all implicated companies from applying for more credits to run international projects.

This group of utilities has ‘partnered’ with other forces; World Bank plays an oversight role in the Lesotho deal. The World Bank along with her business associates approved and supported the project technically and financially. The key funders for LHWP include the World Bank; bilateral aid agencies from France Germany and the UK; the European Investment Bank; the UK Commonwealth Development Corporation; commercial banks as well as a number of loan guarantees from five UK companies: Balfour Beatty, Kier, Stirling, Kvaerner Boving and ABB Generation's UK subsidiary. For a detail of the funding arrangements see (Lang, C, Hildyard, N, Geary, K and Grainger, M: *Dams Incorporated The Record of Twelve European Dam Building Companies*; 2000 Swedish Society for Nature Conservation).<sup>49</sup> These partners represent the private institutional interests and make their decisions based on economic calculation of returns. The LHWP's contracts have been marred by charges of corruption; this has focused more detailed attention to the ‘legitimate’ partners to this deal.

Upon revelations of corruption charges; the British house of commons had this to say; *“British taxpayers have underwritten loans to UK contractors involved in the project—including those implicated in bribery—to the tune of £66 million. Gibb, Balfour Beatty and their partners received EU grants. The EU along with the World Bank are so determined that this criminal trial should be a watershed for international trade that they have offered to pay for Lesotho’s prosecution.”*<sup>50</sup>

The end ‘customer’ Johannesburg Water- a commercialized water utility company that supplies water to Johannesburg residents; including residents of black ‘townships’ of Soweto and Orange Farm. Bearing in mind that residents, according to the earlier definition of the liberal conceptions of the citizens; residents are an expression of citizenship.

The involvement of intra-state organizations such as the World Bank; reconfigures the question of national sovereignty and political liberalism in a context where strong states dictate foreign policy through the language and mechanisms of the “market”. This has the impact of tendency in states to work less in terms of “national interests” than in terms of free market-principles, imposed by conditions that lay the

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49 Lang, C, Hildyard, N, Geary, K and Grainger, M: *Dams Incorporated The Record of Twelve European Dam Building Companies*; 2000 Swedish Society for Nature Conservation

50 Select Committee on International Development: Appendices to the Minutes of Evidence, APPENDIX 1: RECENT CASES OF CORRUPTION INVOLVING UK COMPANIES AND UK-BACKED INTERNATIONAL FINANCIAL INSTITUTIONS.2001. [www.parliament.uk](http://www.parliament.uk)

basis for partnership with multi and intra-national interests of global corporations; states are pressured to transform the field in which they operate.

The international funding institutions imposed a pre-condition that stated that for nation-states to qualify for World Bank financial assistance. The bank and other so-called post-Washington consensus institutions such as the International Monetary Fund (IMF); argued development failures that characterized much of sub-Saharan African states in the early eighties, were a result of widespread state interventions in the economy and felt that para-statal sector in these societies was an unnecessary drain on scarce government resources.<sup>51</sup> The solution demanded was for these states to implement wide-spread privatisation across all sections of the public sector.

In the of water case then, water was seen the final commodity (economic commodity) which should be bought and sold for commercial gain. This translated to a push for states to privatise water utilities and a form of commercial 'security' for the partners within South Africa and between South Africa and Lesotho and the Multi-national partners. It is this analysis that raises the question: how can critical theories address these challenges of understandings of citizenship without falling into nostalgia for the citizen-subject of classical liberalism? Is it sufficient to unproblematically accept notions of the rule of law as guarantor of rights and freedoms? Finally in what ways do modern notions of belonging and identity continue to reproduce conflict and community?<sup>52</sup>

This paper is concerned with the question of how to build theoretical tools that can assist in better preparing us for resisting this drive towards the recreation of human subjects into further objects in a ghastly commodified / fying earth experience. Some work in this area is being done across the various academic disciplines; this work however remains largely the concern of Northern intellectual tendencies. Where there is an effort at evaluating the implications of privatization of the whole human existence beyond structuralist political, economic, social -cultural categories.

In this light then, there seems to be a need for sustained, vocal and radical critique of the very nature of 'normal' capitalist social relations, even usefulness of Western modernity after 400 years of the whole globe being placed in captivity by this white supremacist civilizing mission. In this view even the project of democracy or democratization within the framework of liberal democratic nation-state *ala* Europe model also thrives on, the notion of human rights that is the mirror image of European circuits with which to define the logic of civil governmentality (scientific rationality, competition, necessity of labour for class differentiation, perpetual production e.t.c.) Permanently structuring and structured by a logic that assumes the inevitableness privatized, neo-liberal global economy and its law and order as a

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<sup>51</sup> Bayliss, K and Cramer, C: Privatisation and the post-Washington consensus; between the lab and the real world? In Development Policy in the Twenty First Century. Routledge. 2006, pp 53-58.

<sup>52</sup> Ibidl.

permanent reality if not the only reasonable alternative for all persons/ consumers /citizens.<sup>53</sup>

In her discussion, Squier points out that even the Multi-Intra National institutions such as the World Bank and IMF attach “human rights conditionalities” to “countries receiving assistance in “Structural Adjustment Programs.” Such as is the case with the Lesotho and South Africa water case. Human rights become a device of governmentality and commodification when deployed as an index of “liberalization” (of markets) and “democratization” (of non-Western political orders). I would argue that the debate on the “free basic services for the poor” does in an sub/unconscious way achieve the goals of privatization; it constructs a standard for calculated rationally acceptable quantity of water each human is requires scientifically measured therefore; anything beyond that is transferred ‘normal’ commodity relations within a fair and more importantly; free market economy where consumers pay for consumption not out of need but ‘economic’ necessity.<sup>54</sup>

Through the discourse of human rights, this qualitative and quantified shift in the relationship of persons/ customers/ citizens, to the very nature that reproduces them; rain water from the heavens is achieved and social relations move that much closer to the global norms model a.k.a. global capitalism where the person/customer/citizen buys her existence in the ‘free market’.

Squier instigates for our vigilance to the fact that some, discourses of the human, human rights and humanitarianism need to be critically explored under these changed conditions where there is a move towards hegemonising world vision into the mirror image of Western civility through a neo-liberal transformation colonial project draped in a (re)globalised garb.

This is clearly a frightening prospect, if we were to borrow from the current Western trope regarding Africa; in literature and film by and large remains *The Heart of Darkness* – its Film version set in Vietnam: *Apocalypse Now*, these texts represents the indigenous people of ancient continent/ civilizations in the direct words of Joseph Conrad? The author of *Heart of Darkness*: Conrad he was a university professor of History at Oxford. He declare that the history of Black Africa (Aethiopia) is “no more than the unrewarding gyrations of barbarous tribes; whose chief function in history is to show to the present an image of the past from which, by history, it has escaped.”<sup>55</sup> this attitude to me represents the mainstream white

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<sup>53</sup> Ibid1.

<sup>54</sup> Stanovsky, D: *A Post-Marxist Look at Pre-Marxism Review of Warren Breckman, Marx, the Young Hegelians, and the Origins of Radical Social Theory: Dethroning the Self*, Cambridge: Cambridge University Press, 1999.

<sup>55</sup> Hugh Trevor-Roper, *The Rise of Christian Europe* (London: Thames and Hudson, 1965), 9

supremacist glorification of Greece and Eurocentric approach to how 'modern' narratives are crafted about the continent.

This view is heavily invested in obstructing and ridiculing the true history of original Aethiopians, the children of Cush, son of Ham who was the son of the ancient Enoch of the original Bible. The first authoritative account of the first and original Black African Israelites also known as the Natufian was given by Sir Arthur Keith a British Archeologist upon excavation of ancient remnants of Black African Israelites.

The Natufians had physical and cultural affinities with the Neolithic or late Stone Age men of Malta (the founding people of the Aegean and Greek cultures) and the remoter Aurignacian men of Southern Europe (who established much of the modern European stratum). Linkages have also been noted between the African Israelites and the ancient Ur of the Chaldees and the prehistoric man of South Africa.

For it is generally conceded by all authorities on this matter, that the earliest evidence of agriculture was found among those Black Africans of Jericho and the Dead Sea. It is said that in 8000 B.C. the Natufians were the first to cultivate modern wheat. They were also the first farmers. And notably they were the first Israelites.

Eminent European researchers also claim that a branch from this same stock of people later moved on to Europe and became the first Europeans.

However, because of the debase of shallow Eurocentricism even the learned professor feared being excluded from the inner circles of pale-skin supremacist academia, which underlies all mainstream establishment scholarship to this day. Sir Arthur played his role by defaming the memory of the African Natufians of Israel with unsubstantiated accusations of cannibalism. The whole history of the West' ascension to the position of dominance is a endless tale of falsification, pillage and white supremacy.<sup>56</sup>

Have no doubt that Neo-colonialism, as practiced by the current African leaders and supported by European powers, has heightened the existing economic hardships. Since Western religion has been used to oppress Africans, Africans in turn have no choice but to use their religion to protect themselves.

### **The impacts of a Neo-liberal turn to the delivery of basic services in Azania.**

Since the ANC-led government took over from the Apartheid state; the distribution of basic services had been at the center of their electioneering platforms. Services such as electricity, water and decent housing were identified as immediate means through-which the majority of Black South African's lives can be improved. This sentiment seems diagonally opposed to the cost recovery policies pursued by the

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<sup>56</sup> Uwechia J: *The Natufians: The Original Black Africans of Israel* Pt 1 - February 11, 2008.

state, the thrust through which cost recovery was consolidated through aggressive privatisation as a means through which Black communities can have access to these same services. The declaration in 1996 of the macro-economic policy: Growth, Employment and Redistribution (GEAR) rationalized the direct attacks on people's lives through further articulating the shift in the role of local government from that of redistributive centre to that of being a 'hands-off' facilitator of an investor friendly environment, where government merely puts in place the necessary infrastructure e.g. roads, pipelines etc. rather than direct delivery essential services.<sup>57</sup>

Viriava and Naidoo provide useful data. By 1994 election compromise, 12 million Azanians had no access to clean drinking water. 21 million people did not have adequate sanitation, 10% had no toilet of any kind.<sup>58</sup> The authors also make the point that in these circumstances, a drive towards commercialization may have the effect of increasing exclusion on basis of economic affordability. The results are potentially disastrous especially in a context where some provinces are recorded to have up to 34% of the persons/customers/ citizens without access to toilets. The authors note that the only means to afford Black people who have been historically and systematically excluded from service infrastructure, is through a de-humanising stigmatizing "indigency policy". This policy makes exceptions for families or households that can scientifically and with legal documentation that could qualify them for exemptions where some of their basic services can be subsidized. The inherent limitations of this policy of course are that at the moment of writing this article, there exists no general or national policy on indigency across Azania; as a result access is determined by the market and no responsibility on the side of the government<sup>59</sup>.

### *Background on Johannesburg commercialization of water services.*

The above observation bears serious consequences on the very direction of the anti-globalisation project which confines itself within unproblematic presumptions around the liberal democratic 'norms' and the inevitability of the penetration of capitalist relations as the primary ordering principle of all societies in the global age. I argue that the project in its current form serves the function of re-inscribing the new global order based on 'civilised' agreements between re-ordered social formations (best articulated by the emerging social movements) with Roman-Dutch Law and Order courts/liberal democratic states around the calculated rations of bare minimum quantities that can stand outside the application of 'normal' commercialized relations of persons/consumers/citizens to resources of nature.

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<sup>57</sup>McDonald and Pape, 2002: quoted in: Naidoo, P and Veriava, A; (2004) People before profits? A review of development and social change. *Development Update* Vol. 4. No. 4. 1-22.

<sup>58</sup> Naidoo, P and Veriava, A; (2004) People before profits? A review of development and social change. *Development Update* Vol. 4. No. 4. 1-22

<sup>59</sup> Ibid 1. pg 41

Johannesburg Water is corporatised Water Provision Company, whose sole shareholder is the City of Johannesburg metropolitan council; in 2001 the company a management contract with sub-contractor: Johannesburg Water Management Company which was constituted by a partnership between a subsidiary of French water transnational giant: Suez Lyonnaise Des Eaux. We have been informed that Ondeo's contract was not renewed after the five year period.

Perhaps the finest research detailing Johannesburg communities' resistance to commodified existence and the forced installation of the pre-paid water meters is Naidoo and Fiil-Flynn research report '*Nothing for Mahala*': The forced installation of prepaid water meters in Stretford, Extension 4, Orange Farm, Johannesburg, South Africa by The Coalition Against Water Privatisation (South Africa), the Anti-Privatisation Forum (South Africa) and Public Citizen (USA) 2004.

The report concludes:

*“Prepaid water meters have started to have devastating effects on the social fabric of communities as water has to be paid for now. Traditional and cultural practices celebrated in community and collective action and spirit (e.g. funerals and weddings) are slowly being eroded as people can no longer afford to pay for the large amounts of water needed at such occasions. As the relationship of people to water has been individualised by the prepaid meters, unequal relationships amongst residents in Stretford, Extension 4 and between these residents and people from other extensions in Orange Farm have started to develop. For example, neighbors are no longer able to share water and suspicion develops over use of and access to water. The general lack of water necessary for the basic survival of households puts untold pressures on social relations as fights over gaining access to water surface in communities and in households. There are often gendered effects of such pressures e.g. increases in domestic violence... Far from facilitating the delivery of the 6 kilolitres of free water to residents in Stretford, Extension 4, the prepaid meters are often technically deficient, and the amount of 6 kilolitres is insufficient for the basic needs of the average household. This is borne out by the fact that a significant number of residents seek alternative sources of water or buy water units over and above the 6 kilolitres of free water.*

*The Water Services Act requires service providers to give reasonable notice if it intends to limit or discontinue water services, and the provider must take the ability to pay into account. Prepaid water meters, with or without the access to 6 kilolitres, clearly violates such provisions”.*<sup>60</sup>

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<sup>60</sup> Naidoo, P and Fiil-Flynn, M. 2004. research report '*Nothing for Mahala*': The forced installation of prepaid water meters in Stretford, Extension 4, Orange Farm, Johannesburg, South Africa by The Coalition Against Water Privatisation (South Africa), the Anti-Privatisation Forum (South Africa) and Public Citizen (USA)

In the Republic of South Africa; the impacts of the Lesotho Highlands Water Project have been felt most strongly by the black residents of the urban townships such as in the South West of the city of Johannesburg (Soweto). Some analysts have attributed this to the persuasiveness of the argument to the city taking heed to calls for an orientation towards demand side management in order to control Gauteng's thirst for Lesotho's water and therefore postpone the extension in to Phase 2-5 of the Highlands water mega-project which would culminate in building of further three giant dams in the Highlands of Lesotho.

The city of Johannesburg acknowledges that the practice of separate and unequal development is still prevalent; that black locations have basically rotting water and sanitation infrastructure in urgent need for upgrades to sewage networks and individual property water infrastructure<sup>61</sup>.

Operation Gcin' Amanzi is a mass water saving campaign launched by Johannesburg Water in 2003. At the heart of this strategy the installation of pre-payment water metering device (pre-paid water meter) so (to quote the language of Jo'burg water) "as to completely do away with practice of deemed consumption approach to water provision". The pre paid meter comes customized with technology which will eventually dispense the pre-programmed 6000-10 000 kL of Free Basic Water (FBW) to each household every month; if this amount should run out, then it is up to individual households to ensure that they buy credits and stock more water.<sup>62#63</sup>

Jo'burg water proclaims proudly that the reductions in household consumption of water, has translated to approximately 14.7 million kL of water and 26.5 million kWh of electricity in money terms this translates to US\$6.8 million "savings" which is a code for profits. Johannesburg water is banking on saving a further R270 million (US\$45) for bulk water purchases. This actually means that the Operation Gcin' Amanzi can recuperate initiating costs within three years.

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61 Please read analysis offered by Reena Parikh in her Senior Honors Thesis entitled: THE COMMODIFICATION OF WATER IN SOUTH AFRICA: A CASE STUDY OF WESTCLIFF, DURBAN; College of Arts & Sciences 2006; Boston College, Where she provides a comparative account in the case of the City of Durban; KwaZulu-Natal; RSA.

62 CITY OF JOHANNESBURG 2004/05 ANNUAL REPORT Annual Performance Report (s), [www.joburg-archive.co.za/2006](http://www.joburg-archive.co.za/2006) .

63 On 30 April 2008, the Johannesburg high court Judge MP Toska, passed the ruling that: prepayment water meter system unconstitutional, free basic water to be Increased to 50L per person per day in Phiri. The Judge ordered City of Johannesburg' remove of prepayment meters if residents demand this. The judgment is historical since it is the first instance whereby the constitutional right to water has explicitly been raised. The Judge found that increasing the free basic water supply would not put significant strain on the City's water and financial resources, especially if free basic water already supplied to rich households is redistributed to the poor. The news was received excitedly by members of the Coalition against Water Privatisation.

The battle for water has been taken to the High Court of Johannesburg where movements are challenging the adequacy of the allocation of 6000kl per household per month that Johannesburg water has offered. In July 2006, five residents of Phiri, a poor community in Soweto, South Africa, brought an application before the Johannesburg High Court to challenge the amount of free basic water supplied. The applicants have requested the Court to declare that the decisions of Johannesburg Water to limit free basic water supply to 6,000 per household per month is unconstitutional and unlawful<sup>64</sup>. The allocation of this amount is challenged as being insufficient. In addition, the applicants are challenging the installation of pre-paid water meters which automatically switch the water supply off once the limit has been reached, unless the customer pays for more.

Section 27(1) (b) of the Constitution of the Republic of South Africa <sup>65</sup>guarantees the right of access to sufficient water. The Johannesburg High Court case represents an effort by first the primary applicants but perhaps also the united social movement's voice to challenge Johannesburg council's current provisions of on the amount of free basic water supplied to the residents of Phiri, the applicants are strongly arguing that this arbitrary amount of 6KL is grossly insufficient to meet basic needs of average households in Soweto; Phiri in particular. Among the experts testifying is the Dr Gleick who is of the opinion is that 50 litres per person per day should be the minimum starting point<sup>66</sup> to provide people in the applicants' position with access to sufficient water.

The insufficiency is compounded by the fact that it is based on an amount per household per month rather than per person per day. The free allocation of 6,000 litres per household per month is calculated on the basis of providing 20 litres per day per person to a presumed household of eight people. But research undertaken by the Coalition against Water Privatisation in 2004, found that the average Phiri household comprises 16 people.<sup>67</sup>

Yet, with the imposition of the prepayment meters, large households in Phiri are often without water for up to two weeks at a time each month because they claim they cannot afford to purchase additional water once the free basic supply is exhausted.

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64THE HIGH COURT OF the REPUBLIC 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. (Available online @ apf.org.za)

65 Section 27(1) (b) of Constitution of the Republic of South Africa, 1996.

66 [www.righttowater.org.uk](http://www.righttowater.org.uk)

67 Coalition Against Water Privatisation South Africa. (2004). The Struggle Against Silent Disconnections: Prepaid Meters and the Struggle for Life in Phiri, Soweto. Available at: [http://www.apf.org.za/IMG/pdf/phiri\\_report.pdf](http://www.apf.org.za/IMG/pdf/phiri_report.pdf).

For the last three years Phiri has seen considerable community mobilisation in what residents call their 'battle for water'. Between March 2004 and July 2006, letters of demand were sent to Johannesburg Water and residents' meetings were held, but no resolution to the crisis was found. It was in this context that the current application was served in the Johannesburg High Court of South Africa.

Residents have come together into a coalition known as Coalition against Water Privatisation (a collection of community organizations and progressive NGOs struggling against the negative effects of current water policies on the marginalised, such as the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand and the Freedom of Expression Institute (FXI).

The five applicants and their support organizations say they intend to bring this case on behalf of their individual households and those of all residents of Phiri, as well as in the public interest. The Court is being asked to order Johannesburg Water to provide a free basic water supply of 50 litres per person per day, and the option of a credit-metered supply installed at the cost of the City of Johannesburg, to the residents of Phiri, Soweto.

### **The theoretical limitations of 'civil society' challenging privatisation through the courts.**

Perhaps the optimistic segments in the battle for water in South Africa are correct in citing the Johannesburg case as a victory of civil society. However it is important not to lose sight of the history of discourse around civil society. To a great extent the modern usage of the concept of civil society is based on specific property relations that exist within capitalist system. Capitalism is a distinct social formation and order with a specific structuring of social relations, modes value is appropriated and exploitation is an integral means through which surplus can be extracted.<sup>68</sup>

In Roman Law, there distinction between public and private spheres of social existence, this has the effect elevating the legal status of private property beyond interference of the state which represents the public sphere.<sup>69</sup>

Further; the concept of Civil Society seeks to represent separate and differentiated sphere of human relations. The concept embodies a variety of social interactions beyond the 'private' home and the 'public' state. Rather; the concept seems most active in describing the networks of economic activities and relations within the sphere of the market place, a floor through which production, distribution and exchange occur. The state is considered an abstract entity with a corporatised identity. This vision of civil society remains the basis on which modern constructs of the concept are grounded; it has specific history of the increase in European

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<sup>68</sup> Meiksins Wood, E: *Civil Society and the politics of identity From Democracy Against Capitalism: Renewing Historical Materialism*. Cambridge University Press, 1995. Chapter 8, pp. 238-263.

<sup>69</sup> *Ibid.* pp 240.

Absolutism. The theoretical development of the term facilitated the notion of an 'autonomous economy'; which would stand outside of the 'political' or 'economic' spheres.<sup>70</sup> The concept was first used in the birth place of capitalist society- England. Indeed Hegel conflated the term 'civil society' with 'bourgeois society'.<sup>71</sup>

Many activists, who theorise about the appropriateness of using the lens and discourse of 'civil society' in overstanding the conditions within Occupied Azania<sup>72</sup>, usually defer to the theoretical works of Antonio Gramsci an Italian Structuralist Marxist intellectual activist. Gramsci is credited for radicalizing thereby rescuing the concept of civil society as the primary organizing 'organ' for all formations working towards the defeat of capitalist system. His analysis was mainly confined to 'advanced' Western capitalist economies/ societies. Crudely put: Gramsci felt that the nature of Western capitalist societies had become so complicated owing to the almost complete diffusion of capitalist mode of being and relations that class domination became diffuse even in the modes of defining cultural and daily practice. As such Gramsci advocated for the resistance against capitalist domination had also to take a 'cultural' dimension, thus, for Gramsci re-infusing the concept of 'civil society' radical content can become a leap into cultural resistance to the terms of capitalist system in everyday life.<sup>73</sup>

Some critical scholars note that the concept of 'civil society' has been appropriated by divergent forces including those wanting to intensify the penetration into previously 'non-capitalist markets, under the guise of plurality and autonomy of the modern person/customer/citizen. In such circumstances, 'civil society' is just a code word for capitalism where many activisms exist even those actively wanting to expand the capitalist market to cover all corners of earth.

### **Deepening revolutionary analysis towards the project of total liberation for Occupied Azania.**

The struggle of water can either serve as a launch-pad for reasserting liberatory effort or as a captive web for the thorough critic of Western Capitalist Modernity project underway throughout the globe- particularly in the South.

There are ample studies that point out that in this globalizing agenda; even the liberal concept of citizen is undergoing radical transformation. Lifton for instance notes, that the construction of a discourse around citizenship in Western 'advanced' capitalist societies, is understood more in line with the idea of consumers where

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<sup>70</sup> Ibid.3. pp. 243

<sup>71</sup> Keane, ed., *Civil Society and the State*. (London, 1988) p.1-7.

<sup>72</sup> Meaning the land of those that JAH hears.

<sup>73</sup> Ibid 1, p 3.

even consumers can be reduced to actual commodities. Lifton was specifically referring to the commercial media industry. He notes that ideas of collective action are rapidly being supplanted with individualist 'self-improvement' ethic. The spaces previously occupied by meta-physical spiritual realm are now being filled by consumer culture where commodities act to fill spiritual void of a people that has displaced the Most High.<sup>74</sup>

Capitalist globalization project undertaken by the State has resulted in a fundamental rescaling of the social forces that have been driving the uneven economic development from the national state/market complex into the global market. What Bond calls "elite transition"? Capitalist globalization is continuing to widen the gap between those that have been historically dispossessed and those to continue to profit from the status quo. Carmody argues further that the globalization strategies of South African conglomerate corporations have gone further than any other transnational worldwide. Five of the largest Anglo American, Old Mutual, SA Breweries, Billiton and Dimension Data collective control about 55% of all shares in the JSE. All of these corporations have shifted their primary stock market listings and corporate headquarters to London in the past decade. Hesse, 2001<sup>75</sup> This observation proves that both South Africa's colonial and Apartheid history is being re-inscribed in the current neo-liberal push for economic restructuring. Once again London has established herself as the dominant command and control center for the South African economy.<sup>76</sup>

Under liberal democratic order; it does not matter how loudly the virtues of equality can be shouted; obvious socio-economic disparities continue to deepen, the logic of this system encourages citizens to think that this is a normal consequence of a regime that leaves them free to pursue their material interests in a free market. As Tocqueville noted modern democracies mean the end to great revolutions. Democracy does not lead to deepening class war rather; it allows for the deployment of 'gentle customs' and appeasement of social conflict in favor of existing power relations in society. Sameness reigns supreme and Otherness previously embodied in those without a part, is denied since everyone is included in a political order that refuses the idea that anything can exist outside of it<sup>77</sup>. This danger I see in a language that refuses to acknowledge the contingent nature of the current political settings in occupied Azania. This has the effect of condemning the dispossessed to either repeat society's dominant discourses or remain in their ghettos of silence<sup>78</sup>.

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<sup>74</sup> Lifton, F.C: *Figures On the landscape: the Social and literary practice of nature in America*, 1995, pp. 12-17.

<sup>75</sup> Hesse, P; *Foreign direct Investment in South Africa*, 2001.

<sup>76</sup> Ndlovu, M.N: *AZANIA SHALL RETURN: RE-FOUNDING THE STRUGGLE FOR COMPLETE IMMANCIPATION FROM CAPITALIST GLOBALISATION* (2007). A paper presented at the conference on "Political Power: State-Party- Popular Power." The Rosa Luxemburg Seminar 2007. Community House, Cape Town. 1-3 March 2007

<sup>77</sup> Labelle, G; *Two re-foundation projects of democracy in contemporary French philosophy- Cornelius Castoriadis and Jacques Ranciere*. *Philosophy & Social Criticism*, Vol.27. 2001.

<sup>78</sup> *Ibid* 1 p114

Keeping in mind that the whole history of the modern world has been characterized by the insatiable greed of Capitalism, the sub-continent of India was 'owned' by the British East India Company, Indonesia and greater Azania by the Dutch East India Company, most of East Africa was 'owned' by British East Africa Company and the Congo was a one man corporation. In this new global phase private Capital wants to subject the entire globe to shape the third world in the image of the West. Through taking the initiative to globalize from within, the new Republic of South Africa has posed itself to be the first territory to become a fully-fledged corporate colony. What Ngugi wa Thiong terms: a *corporony*<sup>79</sup>.

The challenge seems posed to be the radical re-founding of alternative political discourses particularly; in a way that unmasks the violence and lawlessness of their origins and their lack of legitimacy on the ground. The act of re-founding/rapture could do a lot to free the project of complete emancipation from the science fiction tales of NDR currently suffocation possibilities for deeper reflections on the situation facing the majority of the dispossessed.

We end with advice from that founder of modern day social movements, Marcus Mosia Garvey when he reminds us that:

"Cowardice has disappeared from the world. Men have died in this world war so quickly and so easily that those who desire liberty today do not stop to think of death, for it is regarded as the price which people in all ages will have to pay to be free; that is the price the weaker people of Europe have paid; that is the price the Negro must pay some day."<sup>80</sup>

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<sup>79</sup> Ngugi wa Thiong; *Wizard of the Crow*, p.746. 2006

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