

# **The Right to Water and Sanitation- the South African experience**

**A presentation at the Consultation with State Actors- Good Practices in Water, Sanitation and Human Rights.**

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# Content of Presentation

- Political direction and RDP 1994
- White paper 1994
- Constitution 1996
- Water Services Act 1997
- Regulations defining basic WS 2001
- Free Basic Water 2002
- Funding and Implementation
- Policies tested in court
- Lessons learned and Challenges
- Summary

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# Where did it all started?

- Political objectives – 1994- Reconstruction and Development Programme (RDP)
- RDP set out a short term aim “to provide every person with adequate facilities for health” and “clean safe water supply of 20-30 l/c/day within 200 metres and “an adequate/safe sanitation facility per site”
- 1994 White Paper on Community Water and Sanitation
- Political will and commitment+ budget allocation

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# SA Constitution 1996

- South African Constitution, (Act 108 of 1996); Chapter 2- Bill of Rights:
- Section 24: Everyone has a right to an environment that is not harmful to their health or well-being
- Section 27. 1: “Everyone has the right to have access to... sufficient food and water and ...Social security, including....appropriate social assistance.”
- Section 27. 2 “ The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.

# Water Services Act and Regulations 1997-2001

- WSA: *“Everyone has a right of access to basic water supply and basic sanitation”*
- (2) *Every water services institution must take reasonable measures to realise these rights*
- (4) *The rights mentioned in this section are subject to the limitations contained in this Act*
- The WSA defined “water services” as well as “basic sanitation” and “basic water supply” and further quantified in regulations (2001)

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# Water Services Regulations 2001

- Basic sanitation: *“appropriate health and hygiene education” plus “a toilet which is safe, reliable, environmentally sound, easy to clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum.....”*
- Basic water supply: *“...minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month...within 200 metres of household and ...effectiveness..” (no more than 7 days)*

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# Practical implications

- How to get “the right of access” from the legislation to the engineers, accountants and practical implementation?
- As Neil McCleod (Ethekekwini) has put it: “What is often overlooked is what does the “right” really mean in practical terms- how much, what quality, how often, how far, how safe to access? ”
- The “right to water” also about practical choices such as: the water resource, correct technical choices, building relationships with communities, education and awareness raising, sustainable finances etc.

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# The main elements of a water supply “business”

- Access to water and sanitation i.e. the infrastructure (a tap or a toilet)
- The ongoing service from such a facility. (operations)
- The quality of such a service (depends on assets)
- The quantity of such a service – e.g. l/p/day or kl/hh/month (available resources)
- The free part of such a service (management)
- Funding of such a service/viability of service
- Cost recovery/credit control of service
- Communication between municipality/provider and residents

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# Implementation and Funding

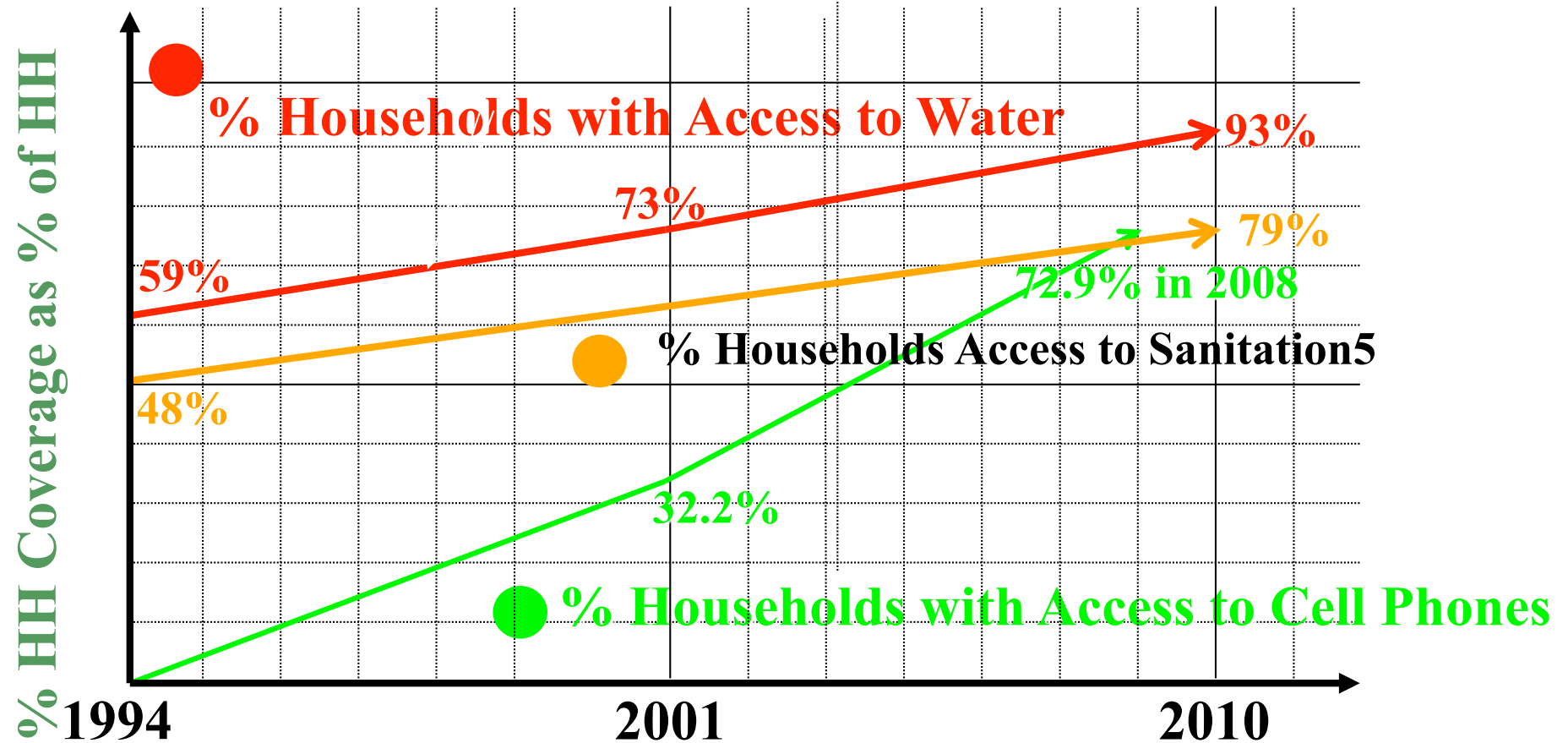
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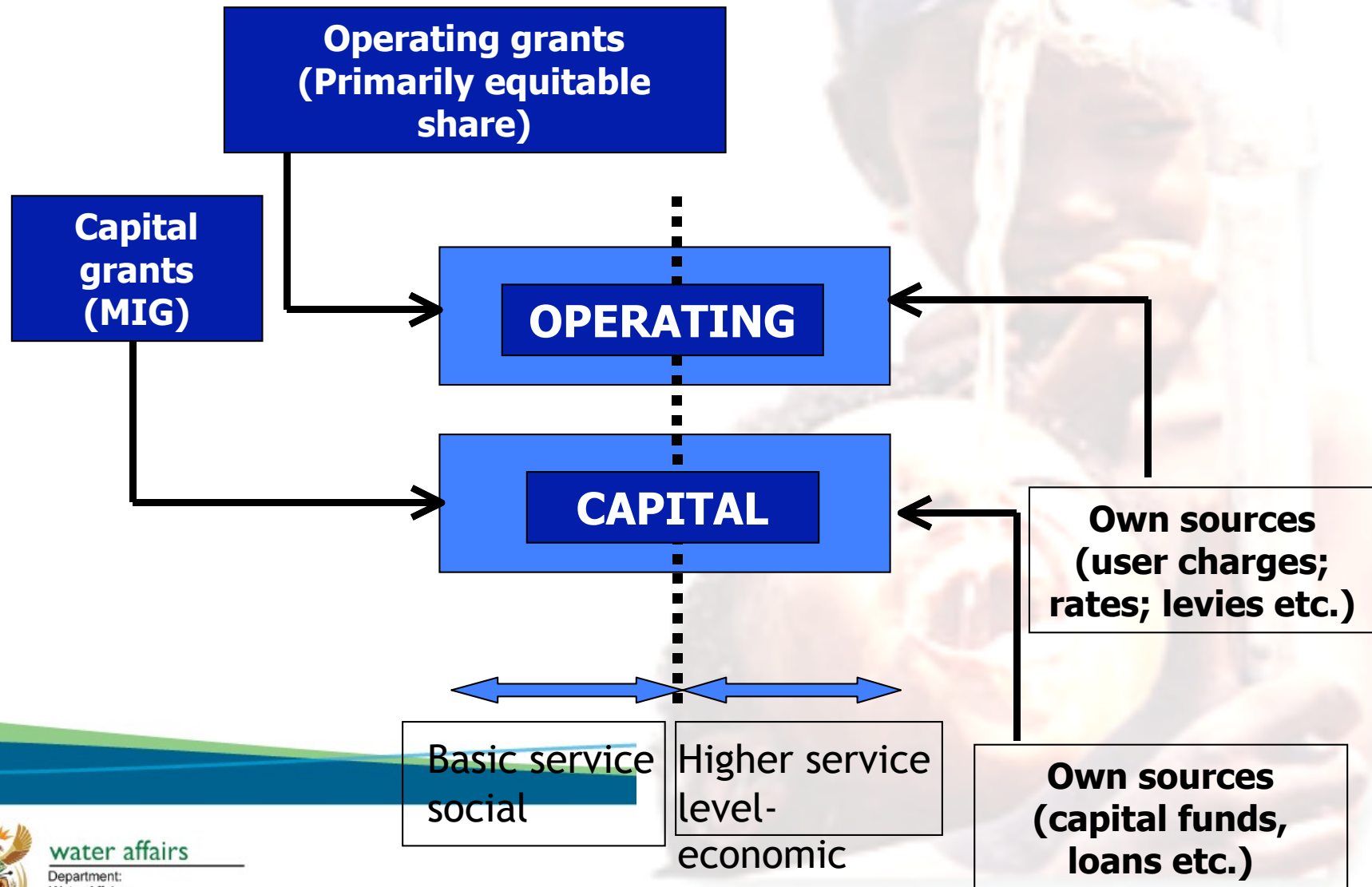
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# SA -% Households with Access to: Basic Water, Sanitation & Cell Phones



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# MUNICIPAL FINANCIAL FRAMEWORK



# Free basic Water

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# Some Practical Approaches



**Free Volume depends on municipal ability.  
(Water resource and finances)**



**Block tariff with lowest 6 kl free” (6kl/hh/month=  
8px25lx30days)- now some areas with flush  
toilets provide 9-12kl/hh/m for free.**



**Property values used or indigent registers**



**Controlled basic volume to users (yard tanks,  
flow control devices etc)**

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# Challenges to implementing FBW

- *Financial*: how to finance and target the supply of free basic services in a sustainable and efficient manner;
- *Socio-political*: how to establish successful communication and co-operation between users, councillors, local government officials and different spheres of government;
- *Institutional*: how to develop the required organisational capacity and working relationships between different institutions
- *Technical*: how to choose the appropriate technical and service level options to facilitate free basic water.

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# Mazibuko *et al.* vs. CoJ *et al.* High Court Ruling

- Application to the Johannesburg High Court challenging:
  - the disconnection of their unlimited water supply at a fixed rate,
  - the installation of the pre-paid water meters; and
  - the provision of free water of an amount of 25 litres per person per day or 6 kilolitres per household per month by the City of Johannesburg (municipality) and Joburg Water.
- High Court judgment in April 2008 :
  - The installation of pre-paid water meters in Phiri without choice of all available water supply options is declared unconstitutional and unlawful
  - The municipality and/or Joburg Water were ordered to provide the residents of Phiri with free basic water supply of 50 litres per person per day

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# Mazibuko *et al.* vs. CoJ *et al.*

## Appeal- Supreme Court of Appeal

- The Supreme Court of Appeal judgment- March 2009:
  - That 42 litres of water per Phiri resident per day would constitute sufficient water and that the municipality, (considering available resources, etc.) is obliged to provide 42 litres of free water
  - That the CoJ are ordered to reconsider and reformulate their free water policy
  - That pending the reformulation, CoJ and Joburg Water were ordered to provide each account holder in Phiri, who is registered with the municipality as an indigent, with 42 litres of free water pp/day
  - The pre-paid water meters system was regarded as unlawful, but not unconstitutional hence they were given an opportunity to within two (2) years to take steps to legalise the system

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# Mazibuko *et al.* vs. CoJ *et al.*

## Appeal to the Constitutional Court

- The resident of Phiri (Applicants) then applied for leave to appeal against the judgment of the Supreme Court.
  - Residents requested the Constitutional Court to reinstate the High Court order.
  - However did not seek to appeal against the order declaring the use of pre-paid water metres unlawful, did seek to appeal against the suspension of the order of invalidity for two (2) years

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# Mazibuko *et al.* vs. CoJ *et al.*

## Appeal to the Constitutional Court

- The Constitutional Court held as follows:
  - Considered progressive increase in allocation since legal action started- size of household and flush toilet
  - Not appropriate for a court to give a quantified content to what constitutes “sufficient water” because this is a matter best addressed by the government.
  - The installation of the pre-paid metres was neither unfair nor discriminatory and therefore do not constitute a breach of section 27 of the Constitution.
  - Orders made by the High Court and the Supreme Court were set aside

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# Lessons learned from Soweto (Mazibuko) Court case

- A municipality must do the best from its own available resources (water and money)
- Basic water volume is “a floor and not a ceiling”
- The basic volume must be set by government and not by the courts
- Progressive realisation of Constitutional rights
- Pre-paid meters are not unconstitutional and can be used. (must be defined in local legislation)
- The right of the institution (municipality) to be sustainable is as important as the right of the individual

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# Lessons learned, Challenges and New directions

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# Lessons learned and challenges

- Policies provided clarity and bound all spheres of government
- The availability and sustainability of the water resource will remain critical in a dry country
- Consider and define all components of the water services business
- Operation and maintenance far more important than construction
- Education to focus and be inclusive of HIV and AIDS, WC/WDM
- Involve consumers in service level decisions and works best if they have a choice (and most probably willing to pay for a higher and/or better service)
- Unauthorised connections will happen when consumers got standpipes and they prefer yard or house connections and the service provider does not offer such an option (even at cost)
- Financial viability of water service providers/municipalities needs to be maintained.

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# Challenge of Disability

- **Stats within SA:**
  - 6% of the SA population have a Disability / Special Needs
  - 2.5 million people in SA that have Special Needs
  - 300 000 children in SA with Special Needs

*(Major potential expertise / capacity that is under-utilised / untapped)*
- **The social model:** Barriers relating to ***physical access, attitudes and mindsets*** rather than the actual medical condition disable the person
  - ✓ appropriate infrastructure – **water / sanitation access**, school, home & workplace environment, technology
  - ✓ Integration, awareness, change management, willingness, mindset

(Eyes Wide Open – Mark Bannister – [www.trafford.com/05-2889](http://www.trafford.com/05-2889))

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# Current debates-Higher Level of Service

- Basic level of service (25l/p/day) enough for survival but too low for accelerated social and economic development.
- Flush toilets preferred over and above the VIP's- but many areas of SA too dry.
- Access to sufficient water resources and lack of bulk infrastructure an obstacle to HLoS
- Municipal finances insufficient
- Preliminary studies- economic development- benefits > costs for HLoS
- How to ensure more effective use of subsidies
- Regulation of basic services

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# Summary

- South Africa has come a long way in providing basic water services- many challenges still remain
- Partly addressed the previous political and social ills of discrimination, segregation and inequalities.
- Constant need to critically consider the changing environment, revise policies and propose actions.
- Greater technological choices and HLOS options needed
- Improved governance, management and accountability at municipal level - important elements to make a legislative right a practical reality
- Added additional infrastructure- Effective O&M and asset management essential
- Sustainable tariff policy and payment for services over and above basic needs essential for financial viability
- Improved regulation to ensure quality of services

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*Thank you*

Information on Policies, legislation and  
regulations

[www.dwa.gov.za](http://www.dwa.gov.za)

Info on research reports  
Water Research Commission

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