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Justice in basic water distribution

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i) Abbreviations:

ANC: African National Congress

CCT: City of Cape Town

DA: Democratic Alliance

DWAF: Department of Water Affairs and Forestry

GEAR: Growth, Employment and Redistribution

NP: National Party

PWWF: People's World Water Forum

SFWS: Strategic Framework for Water Services

RDP: Reconstruction and Development Programme

RSA: Republic of South Africa

UWC: University of the Western Cape

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1 Introduction and methodology

1.1 Introduction

Topic

The topic for this thesis is justice in water distribution.

Distribution of water has many technical sides to it, for example how to collect it, how to purify it, how to use it in a sustainable way. There are also clear political aspects to how water can and should be distributed. Some of the questions that have political importance in terms of water distribution are: How much water should people get? Who shall decide who gets what? Should water mainly be thought of as a commodity or primarily be considered a human right? What should it cost? Is there any justice in how water distribution is planned?

I work with these questions in this thesis. On a more specific level I debate challenges to justice in water distribution mainly in South Africa and Cape Town. To put water distribution in South Africa in an international context I present global challenges to sufficient water provision and the international legislation and policies that affect the water sector especially in developing countries. I also try to see if I can find a social justice on a global scale in water distribution.

My focus is not on water distribution for all purposes in society, but mainly on distribution of basic water that is necessary for the poorest in a society to sustain a healthy life. I use other parts of the water sector for comparison and to put water distribution in a relative context.

I have mentioned justice in water distribution without defining justice. I work with mainly two theories on justice in society: *Justice as fairness* by John Rawls and David Miller's *Social justice*. Both are theories of social justice and are presented in chapter 2.

Miller and Rawls link rights to justice, although they do it in different ways. Throughout this thesis I shall have focus on what rights people may have and how these rights are implemented in societies. I shall follow this debate about rights to water in international laws and policies and how these influence much national legislation. I shall try to understand the justice that laws and policies about water rights are made upon.

Finance and economy are influencing water provision. I will look at the differences between a rights-based approach and an economically based approach to water provision and try to see this in perspective of justice.

Content in the different chapter

- The rest of chapter 1 is about my research approach and methodology.
- Chapter 2 is devoted to theory. I present social justice as described by Rawls and Miller and also briefly about other theories on justice
- In chapter 3 I present basic need for water, how this is unevenly distributed many places throughout the world, different debates about how water should be treated and different laws and policies for basic water provision. The purpose of this chapter is to put water provision in a relative context and to see how international treaties, agencies and policies have impacted and impact on different countries
- Chapter 4 is the main empiric chapter. Here I present and debate how South Africa is managing its water provisions, especially provision for the poor.
- Chapter 5 is about how provision of water is implemented at a local level. My example is Cape Town. I shall assess how this city manages to provide water according to laws and policies.
- In chapter 6 I debate social justice in water provision in an international context, in South Africa and in Cape Town. I also make a conclusion about social justice in South Africa.

I use examples from social justice in all chapters throughout the thesis, and at the end of chapter 3 - 5 I briefly debate social justice with examples from each chapter.

The challenge of water use “...is twofold: *how to manage water in a situation where demand is increasing while supply is becoming less certain in some areas and has reached critical proportions in a few places already; and how to develop the resource to ensure that those groups who need the resource have access to it.*” (Thomas and Clegg 1998: 19-20)

These challenges are present many places in the world, including Cape Town and in most of the rest of South Africa. I will make this quotation a starting point.

1.2 Collection of data and methodology

My methodology has been as follows:

Part one –finding the topic

The starting point for this thesis was to combine two topics - *water and politics* in South Africa. Challenges to water distribution in South Africa are widely debated, but there are some parts of the debate that I didn't find to be properly covered. One common debate about water provision is between those who believe that water should mainly be considered a human right and those that believe water primarily to be a commodity with the understanding that water is an economic good. I found the basics of this debate difficult to grasp. I therefore decided to look more closely at the underlying ideas and beliefs in this debate.

This gave the thesis two points of entry for collection of data: 1) Water distribution in general and 2) finding the underlying ideas and beliefs in the debate between those who promote water as an economic good versus those who believe that water is mainly a human right. I wanted to look at this nationally in South Africa and throughout the world.

Part two –observation and collection of primary data

I have lived in Cape Town for about one year. Throughout the year I observed clear differences in water distribution in different parts of the city. In central areas of the city, where mostly white people live, water provision is good. The greatest contrast to this is the informal settlements where mostly non-white people live and where water connections seldom went into the house, but were standpipes at different places in the neighbourhood. I toured of some of the townships with researchers connected to the School of Government at UWC in order to make a more formal observation of the conditions for water provision in Cape Town. This confirmed my impression of major differences in water provision in the city.

Collection of other primary data have been through interviews with bureaucrats and collection of formal documents about water planning at local level in Cape Town, at regional level in Western Cape and national level in South Africa.

Part three – finding a theoretical approach to the subject and collection of more material

I have considered different approaches to this thesis. The one that I ended up with is quite theoretical. I decided to find out how laws and demands for water in South Africa in general, and in Cape Town in special, relate to different forms of justice. I want to see if the

South African practices for water distribution and water legislation can be considered just according to criteria and ideas presented by some political philosophers.

The main documents and sources that I have relied on in my empirical chapters are UN documents, international laws, South African laws, directives for Cape Town, documents from the South African Department of Water and Forestry, articles and books on the topic and newspaper articles available on the Internet.

In my theory I have relied mainly upon books written by different political scientists. For the general debate about rights and justice in water distribution I have in addition used articles and books on the topic presenting different views, different knowledge and different political agendas.

I have primarily taken a qualitative research approach to my topic by collecting data from many different sources to create a general understanding of the water provision in Cape Town and South Africa. The quantitative research that I have conducted is mainly on numbers and figures about how many people have water and sanitation provision with corresponding prices.

My own influence on research and work with this thesis

There are many conflicts in South Africa. Some of these conflicts are related to skin colour and mistrust between people of different colour. I am white and stand out as different to many people that I have been in contact with. The thesis shall not have been influenced by such differences.

Influence from sources

In South Africa there are many political agendas, also in what is written. I believe that the formal governmental information I have found is quite neutral as it presents both negative and positive information about South Africa. Some of the sources and writers I use have clear or not so clear political agendas. I have tried as best as I can to control different sources (especially those with controversial views) with other sources. I believe that much of the information that I managed to acquire came from people that found my interest in their situation welcome and that people were willing to tell about the situation in South Africa.

I have some, but lack much knowledge of South Africa and its citizens. I am one of many political scientists that try to understand this country with its ongoing democratisation processes, redistribution policies and the peoples' co-existence.

2 Theory

It is challenging to find the right theory to cover the right subject. There are many different theories on justice. Some of these have a global perspective while others go to the basic of a society. I try to find theories that cover distribution of one specific good: basic, necessary water. I find theories on *social justice* to be relevant for my work as these theories in general are concerned about some sort of minimum provision of scarce resources. Basic water provision is so important that I believe that there has to be a minimum standard for water distribution, and that this is a responsibility for society in general and not only the individual.

David Miller claims that social justice is mainly about distribution of private goods, like commodities and money, and that most *public* goods “... occupy a somewhat peripheral place in debates about justice.” (Miller 1999: 10). Rights to water are often found in the interface between public and private goods. I find theories of social justice to be useful in this interface.

“... [Every] theory is wrong somewhere. The important thing is to find how often and how far it is wrong. All theories are presumably mistaken in places. The real question at any given time is which of the views proposed is the best approximation overall.” (Rawls 1972: 52)

I will present the theories that I believe are the best approximations to justice in water distribution.

2.1 Theories on social justice

Justice is difficult to explain, and most people have different ideas and feelings about it. Many philosophers and social scientists have tried and still try to come up with theories of justice for a society. I will work with mainly two theories that I believe can be used to evaluate if there is justice in basic water distribution. These are *Justice as fairness* as described by John Rawls in *a Theory of justice* (1972) and David Miller’s theory of social justice as described in *Principles of social justice* (1999). I have chosen these two theories because both emphasize the importance of some sort of guarantee for provision for those that are worst off in society, which I believe must be a fundamental principle for a theory on social justice.

Rawls and Miller have different approaches and different theories, and neither Miller nor Rawls presents a theory that is a complete theory for a society (Miller 1999, Rawls 1972). I will start with a presentation of Rawls' *Justice as fairness*.

2.1.1 John Rawls and *Justice as fairness*

John Rawls presented his theory called "*Justice as fairness*" in 1958. After making several changes to the theory during the 1960s he published it in a book named "*A theory of justice*" in 1971. In "*A theory of justice*" Rawls criticizes the utilitarian belief of a just society as a society that should create as much benefit as possible, and, unlike earlier critiques of utilitarian theory, Rawls comes up with his own theory – *Justice as fairness* (Rawls 1972). Although there is much criticism of Rawls' theory, it has made a great impact in academic circles trying to be an alternative to maximization of utility presented by utilitarians such as Hume, Bentham and Mill (Hansson 1993).

Justice as fairness is a contract theory. Rawls himself claims that he attempts to "... generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant." (Rawls 1972: Preface). The way Rawls' contract works is that people in any well-ordered society have to place themselves in an initial position before they all agree upon a contract that will be the basis for their society. I will go more deeply into this initial situation and the contract, but first I will try to understand what Rawls think about justice.

Justice, together with truth, is, according to Rawls, the virtue of social institutions. In a perfect society laws and institutions will be changed or abolished if they are unjust, citizenship is taken as settled, "...the rights secured by justice are not subject to political bargaining or to the calculus of social interests" and "...an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising." (Rawls 1972: 3-4). Rawls accepts that this theory of a society is expressed too strongly, but with *Justice as fairness* he tries to come as close as possible to this ideal.

Justice as fairness, the social contract, the initial situation and the maximin principle

Rawls calls his theory *Justice as fairness*. The fairness that he refers to is the initial situation where members of a society negotiate a social contract and the principles of justice for that specific society. In the initial situation members of the society are deprived of their knowledge of own life situation when it comes to financial situation, knowledge of health,

future plans, own abilities and other (Rawls 1972: 11-13). This knowledge is taken away from participants as they are placed behind what Rawls call a *veil of ignorance*. The contract that they agree upon in the initial situation is a contract that they will stay loyal to when they return their everyday society (Rawls 1972).

To Rawls it seems quite intuitive that people in the initial situation would think in a certain way. He gives two principles that he believes persons would accept intuitively: “*First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all*” (Rawls 1972: pp 60) “... the two principles [...] are a special case of a more general conception of justice that can be expressed as follows: *All social values – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.*” (Rawls 1972: pp 62)

My assumption is that countries that have difficulties in providing basic water and sanitation to its citizens also have some or major inequalities in the country. The reason for this assumption is that water is such an important good that if a government cannot or will not provide sufficient basic water to its citizens the country is either very poor or some people are not willing to share available water with others. I believe that South Africa is an example of a country that had and still has major inequalities.

As I understand Rawls he accepts that there are differences in a society when it comes to distribution of goods, that “... *there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved.*” (Rawls 1972: 15). On the other hand he does not believe that some should prosper because others get less (Rawls 1972: 15).

Differences are accepted by Rawls, but he gives some limits to these differences. The limits are found in his maximin principle.

Rawls refers to a *maximin* rule for his “justice as fairness”. *Maximin* means the *maximum minimorum* and is about “...*the worst that can happen under any proposed course of action, and to decide in the light of that.*” (Rawls 1972: 154) Rawls’ principle with the maximin rule is that everybody hopes for the best for their own life and the resources he or she has. In the initial situation, where one is deprived of the knowledge of one’s life situation, people will make sure that they have some sort of safety net to catch them if they fall. People will therefore demand a lowest limit of welfare that society should provide them with for their

security. This limit would be something like a minimum wage or social security benefits (Rawls 1972: 154-155).

I assume that the *maximin* rule covers at least the provision of water and sanitation that is necessary to secure people's health. International legislation and policies and often also national legislation and policies in most countries tend to reflect the need for basic water and sanitation to secure basic health. A challenge is the implementation of these laws and policies.

Justice as fairness is not possible to implement in all societies. Rawls have some constraints to his theory.

Time and different constraints to the theory

Time is one constraint to justice in a society: "*Inequalities [in distribution] are permissible when they maximize, or at least all contribute to, the long-term expectations of the least fortunate group in society*" (Rawls 1972: 151). The present might not fulfil Rawls' demands to a justice in a society, and inequalities today are acceptable if the effects in a longer perspective are for the better for the least fortunate in society.

Another limit to *Justice as fairness* is that it will only work in a well-organized society (Rawls 1972). The society in which it is supposed to function must have reached a level of development and organization. This is a challenge in many developing countries. South Africa might be a country that has reached a level of development of basic institutions but it will be necessary to see how well organized the country actually is.

Inequalities in distribution of basic water and sanitation take place mainly in developing countries (UNDP 2003, UNDP 2006). These inequalities are permissible only if the intention and planned course for the country is such that those who are left behind today are going to get basic necessities in the future.

Just institutions

Rawls writes about social justice in *A theory of justice* (Rawls 1972: pp 7). His theory is, as mentioned earlier, not a theory that is concerned with the whole of society or what the members of a society do on an everyday basis.

Rawls' concern is society's framework and how everyday life and people's life plans are affected by major institutions which are the political constitution and the principal economic and social arrangements (*Rawls 1972: pp 7*). A just society will need to have just institutions:

“... institutions are just when no arbitrary distinctions are made between persons in the assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantage of social life” (Rawls 1972: 5)

Unfortunately these distinctions are often all too present in competition for advantages in societies. I assume that this lack of balance is easy to find in many countries, especially developing countries, and that South Africa is representative for these disadvantages.

Rawls accepts errors to his theory and certainly that it might not work in all sorts of societies. Still he believes that utilitarianism is fundamentally wrong when it can neglect the individual on behalf of society's well being, and that *Justice as fairness* is a better alternative for the basic structures of society.

These are the fundamental principles of Rawls' *Justice as fairness* that I will use when I try to find justice in water distribution. I will now present a theory that is simpler to grasp and that was published about 28 years after Rawls' theory.

2.1.2 David Miller's social justice

David Miller's theory of social justice is quite narrow compared to Rawls' *Justice as fairness*. Miller tries to take justice to a level that people in general can associate with and accept for their own life situation. His theory on *social justice* is sensitive to popular opinion, and also pays closer attention to the social contexts in which principles of justice are applied (Miller 1999: preface). Although justice must be sensitive to public opinion it is necessary to have a guiding theory that will not change automatically as the public opinion changes. The fundamental principles for justice must be made in a mix between theory and what people in general believe (Miller 1999). This is a step away from a theorist like John Rawls. Rawls creates a theory that he believes people will accept and change according to when they have fully realised their own situation. David Miller is concerned that politicians use *social justice* only in rhetoric terms and that they don't give it any content. It is necessary to discuss *social justice* to give it some sort of content and not only use it in this practical way. Where Miller claims that philosophers from John Stuart Mill to John Rawls are mistaken is when they take *social justice* to such an abstract level that it is not possible to see any practical meaning to it. Miller wants to take *social justice* down to the level of ordinary people and learn about how they experience justice and what they believe is right or wrong (Miller 1999). “*If we want to describe what social justice means in contemporary political debate, then sooner rather than later we must look at what the people themselves think*” (Miller 1999: Preface).

I find it important that theories of justice are accessible to ordinary people, that justice can be something people in general understand. People that don't have sufficient water and sanitation provision must be included in the debate about their rights and what is just. I hope that Miller's theory can contribute to this.

The premises for Miller's theory

David Miller starts "Principles of social justice" (1999) with a brief description of social justice as "...how the good and the bad things in life should be distributed among the members of a human society" (Miller 1999: 1). This description can give a basis to say if one group enjoys more or less benefits or burdens than they ought to enjoy in a society (Miller 1999: 1). For those that accept this description of social justice much debate is about what *good and bad things* are, who is going to *distribute* and what are *the boundaries to a human society?* (Miller 1999: 1). Based on this description we need to make at least three assumptions before we can start theorizing about social justice (Miller 1999:4):

First assumption/premise

"First we must assume a bounded society with a determinate membership, forming a universe of distribution whose present fairness or unfairness different theories of justice try to demonstrate." (Miller 1999: 4)

Boundaries to social justice are in most literature taken for granted and stops with the boundaries of the nation-state. This is because of the bonds and cultures that are shared within the nation state, but also due to trust that only nation-states are able to provide. This doesn't say that our personal conception of justice should stop here. The practice should be that we think in terms of justice for the people living outside the boundaries of the nation-state also, even though social justice ends with the nation state (Miller 1999: 19).

I use three examples in this thesis and all have different boundaries to a society. My main example, South Africa, is a national state, which is what Miller has in mind when he writes about a bounded society. I will challenge this assumption and also look at boundaries in Cape Town and in the international community.

Second assumption/premise

The second assumption/premise is about what both Rawls and Miller believe to be most important in a society: *major social institutions*. Miller uses the same major social institutions as Rawls does: the political constitution and the principal economic social

arrangements. These must be regulated by some principles of justice (Miller 1999: 6). “...*the principles we advance must apply to an identifiable set of institutions whose impact on the life chances of different individuals can also be traced.*” (Miller 1999: 5)

I shall look at major international and national (South African) laws and policies in chapter 3-6 and assess their actual impact on the population.

Third assumption/premise

The third assumption/premise follows from the second: “...*there is some agency capable of changing the institutional structure in more or less the way our favoured theory demands.*” (Miller 1999:6) This agency is normally national government (Miller 1999:6). “...*an agency with the power and directing capacity that the state is supposed to have is essential if a theory of justice is to be more than a utopian ideal.*”(Miller 1999: 6)

These three premises: 1) a bounded society, 2) identifiable institutions that have an impact on our lives and 3) a major actor to implement policies must be present for a theory of social justice to be implemented (Miller 1999:6).

The first premise is a challenge in the divided South African society. Although South Africa is a state, there are many peoples in the country with different cultures. To talk about justice it must be possible to find the bounded society within the nation’s great cultural and social differences. I will try to find this bounded society in chapter 4-6.

Examples of the second premise are easier to find in a country as South Africa. South Africa is renowned for its work with water legislation and a very liberal constitution with a liberal *bill of rights*. Although South Africa has primary social institutions and a constitution it is important to see how these are implemented. If these institutions are not put into action then they don’t have the necessary value as instruments of justice which is needed. I leave it to chapter 4-6 to see how implementation works in South Africa and in Cape Town.

The South African state has changed a lot over the last two decades. During the apartheid era there was a strong, centralized government that promoted national policies and legislation. During the transition period from apartheid regime to a democratic society different compromises were made between the old and the new regime. I shall see how the new regime handles basic water provision according to national legislation. I find it important to see how local and national government interact and share responsibility in terms of basic water provision as both have a responsibility in the constitution and different water acts.

A major challenge to social justice is how national communities are influenced by international actors. If influence from the outside challenges the control from the inside it might be difficult to give social justice content (Miller 1999: 6-7). Patrick Bond (2004) is of the opinion that international society is influencing the South African water sector so much that the poorest in the country don't get sufficient water to live a life with sufficient quality. I believe that this can challenge both Rawls' and Miller's social justice.

A country might find it more convenient to provide sufficient water through a regime of subsidization than through cost recovery. This policy will often be challenged by international donors that demand systems of cost recovery in order for a country to receive different grants and loans. In chapter 3 I shall present some of the international laws that influence a country's water regimes.

Inside the borders of a state there are typically different ways in which people interact. Most people feel that they have different obligations towards somebody in their family than they will have towards somebody that they don't have a close relation to. David Miller believes that we interact in three different spheres, each with a different form of distribution.

Miller's spheres

Miller examines how people interact in a modern liberal society. People relate to one another through three different spheres with three different forms of distribution:

1. *Solidaristic community* – distribution is here based on *need*. A community such as a family or clubs where people are dependent on each other in a close relation are typical solidaristic communities. (Miller 1999: 27)
2. *Instrumental association* – “people relate to one another in a utilitarian manner, each has aims and purposes that can best be realized by collaboration with others. *Economic relations are the paradigm case of this mode.*” (Miller 1999: 27). People engage themselves in instrumental associations voluntarily and distribution is here done according to *desert*.
3. *Citizenship* – “Anyone that is a member of ...[a modern liberal democracy]... is understood to be the bearer of a set of rights and obligations that together define the status of citizen.” (Miller 1999: 30). The primary distributive principle of citizenship association is equality. This is a political society that you enter into by birth and that you in general cannot leave.

I will not debate here about which sphere basic water should belong to, I will leave that for later chapters.

Miller is not only looking at how people interact; he also wants to know what people believe to be a just society. He uses the three spheres and gives three principles that the basic structure in a society has to comply with for a multi-cultural liberal democracy to be a just society.

Three principles for a just society

The three principles for a just society are based on how people in general experience justice. To make sure that justice contains more than just the present public demand Miller also includes basic philosophy of justice and consistency in *social justice* (Miller 1999):

- 1 *Principles of need* – in a society there are normally some basic needs that are commonly accepted among its members that have to be fulfilled as primary goals and which people might not get through standard market mechanisms. In most societies food is such a basic need that people will agree to be a primary goal (Miller 1999: 247).
- 2 *Principles of desert* – members in a society should primarily get their benefits due to their work. A just market situation is the basis for how people get their work and how services and goods are exchanged (Miller 1999: 248).
- 3 *Principles of equality* – people must be treated as equals in a political community in their position as citizens, and they must have equal political, legal and social rights. Formal institutions such as a constitution are important to achieve equality. General equality in a society is important if we want to make sure that the minority have a possibility to be heard (Miller 1999: 250).

In general people should get benefits in society based on desert. Those that don't get their basic needs covered should get these on the basis of this need. If this should function at all it must take place in a society where people are respected as equals (*Miller 1999: 250*) This is social justice according to David Miller.

When I use the theories of Miller and Rawls as principle theories I have taken a stand about social justice. Both Miller and Rawls are concerned about those that are worst off in creation of their theories, and that the worst off must have the same basic rights as those that are well off. I too believe that basic rights for those that are worst off must be given a lot of weight when considering a just society. This will be displayed throughout this thesis.

3 Water –global, technical and general perspective

Water is essential for people, animals and plants to live. In some countries (especially in western developed countries) there is in general enough fresh water for the population to drink, to have good hygiene and water for the agricultural and industrial sector. This positive situation is not dominant throughout the world.

In this chapter my main focus will be on the dominant international laws and policies related to water distribution, and also on the implementation and the outcome of these laws and policies. The principle document that I will present is the Dublin Principles from 1992. These principles are widely referred to in literature and many national laws and regulations are based on the ideas and policies presented in these principles. I am also presenting arguments from the debate between those that believe that provision of basic water is a human right and those that believe that water should mainly be considered a commodity.

In **3.1** I look at how water is used as a resource throughout the world, especially if people get basic water provision and what basic water provision is. I find it necessary to understand water as a vital resource if I should debate justice in provision of water.

3.2 is a presentation of international water legislation and conferences that affect basic water provision. Much of this legislation is found as basis is national legislation. The debate about water as a human right and water as a commodity starts here and will continue in the chapter about South Africa.

In **3.3** I present people's participation in the demand for basic water around the world.

In **3.4** I sum up the chapter and try to understand global water policy

First of all I present some data about how much water we have for our use

How much water?

The earth's surface is covered by an estimated $\frac{3}{4}$ of which is water. Just about 3% of this water is fresh water of which only 0.3% is usable for the human and animal population (Vajpeyi 1998:1). Still, this is a huge amount of water since much of it is recycled. About 1, 26 billion km³ of water is constantly recycling for our use. This should be more than enough to meet agricultural, municipal and industrial needs (Vajpeyi 1998).

The amount of water that we have on the planet is one thing, how this water is distributed geographically and among people is more important. Many of the world's poorest

countries are situated in areas with difficult water supply. Other poor countries might have a good water supply but are situated in areas where the water run-off is high, leaving only small amounts of water for available use (Vajpeyi 1998:2). There are different reasons why water will be stressed also in the near and distant future, and it seems that many of the countries that are not very fortunate with their water situation today are among those that will continue to face problems in the future (UN-HABITAT 2003).

3.1 Water as a resource and use of water

There are many competing claims to water as a resource. Different groups and sectors need water and these raise their different claims. Changes within sectors and changes in demand will mark use today and also in the future. The total global water consumption in the 20th century increased nine- or tenfold. Population growth during the same century was about fourfold (Vajpeyi 1998:3, McNeill 2001: 121). As the world's population is still growing so will also the world's water consumption but at an even higher pace.

Population growth, urban growth and need for more water

Use of water in the richer part of the world stabilized after the 1970s. Much of the reason for this was better efficiency in the water sector. In the United States water consumption declined from 1980 to 1995 although the population grew by more than 40 million people (McNeil 2001: 121). For poorer countries the story is different. Population growth and urbanization is giving a greater pressure on available water sources, and health risks are highly connected to urbanized areas without access to clean water and proper sewage systems (UN-HABITAT 2003, McNeil 2001). As urban areas in poorer countries are getting more populous and the water demand is rising from a comparably low level, it is a challenge of providing sufficient, clean water many places.

In Africa the annual population growth in the early 1990s was at about 3% and lead to an increase in the water consumption but also to reduced water quality. With reduced water quality there is a question about the quality of the health of the people in the countries concerned (Vajpeyi 1998: 3, UN-HABITAT 2003).

Urbanisation at a high speed has created a lack of clean, accessible water and proper sewerage systems in many urban areas. This in turn has made poor living conditions for more and more people. People's living conditions in terms of sanitation and clean, drinkable water have been poor in earlier days, but the amount of people living under such conditions has been rising, especially during the 20th century. The greatest parts of the population that

experience these living conditions are often people living in slums built around urban cores. These inhabitants usually lack formal title to their home with a high possibility of being evicted. This situation has not made them very eager to invest money and time in improving the conditions where they live. The environmental conditions that rapid human urbanization has created are among the worst human experiences (McNeill 2001: 287).

Although the relative use of water for personal and domestic use is rising, there is one sector that uses much more water than all the other sectors together. How water is used within and diverted from or to the agriculture sector is very important for the water conditions many people will experience in the future.

Agriculture and industry

The agricultural sector is the major water consumer. Irrigation stands for about 73% of all water withdrawals. This proportion is even higher in developing countries (Vajpeyi 1998: 4). With population growth the need for food also grows. When population is expanding in urban areas there is a further increase in infrastructure and around many urban areas farmland is being used to build roads upon. To compensate lost high quality farmland it is often necessary to use huge amounts of fertilizers on other farmland of poorer quality. This often creates a vicious circle since increase of fertilizers demands additional irrigation and this combination makes runoff water more polluted and not suitable to use for drinking, cooking or farming (Vajpeyi 1998: 4).

It is not only run-off from the agriculture sector that causes pollution. Much industry has need for huge amounts of water, and if not treated after use this water will be a pollutant. With rapid growing industries in many countries there are problems with pollution that stems from different plants or factories. Many people in developing countries have unsafe drinking water due to non-treated run-offs from the industrial sector (Vajpeyi 1998: 7).

Water use in the agricultural sector is influenced by the international society. In exchange of economic aid many poor countries have experienced demands for an export oriented agriculture sector (UN-HABITAT 2003), which puts even more stress on water resources than there already is (Vajpeyi 1998: 4).

3.1.1 Standards and need for water

Standards that have developed for water provision are very different in different parts of the world. In most high-income countries in the world, especially in urban centres,

adequate provision of water will normally be the same as a water connection that works properly 24-hours a day with sufficient pressure and good quality of the water that is delivered. If something happens to the water delivery system, the provider of water will come within a short time to sort out problems with the delivery (UN-HABITAT 2003: Introduction).

When it comes to provision of basic water to people living in many developing countries standards are difficult to set, but the WHO has made some recommendations. The UN standard for water supply is that *improved provision* means "... 'reasonable access' to a water supply from a household connection, a public standpipe, a borehole, a protected dug well, or a protected spring and rain water connection. At least 20 litres per person per day must be available from a source within 1 kilometre of the user's dwelling." (UN-HABITAT 2003: 5).

There seems to be a general acceptance that about 20 – 25 litres of water per day per person is the *minimum* necessary level for cooking, drinking water and basic sanitation (UN-HABITAT 2003, Thomas and Clegg 1998). For *good* hygiene and food preparation an additional 20-30 litres are necessary (Thomas and Clegg 1998: 20, UN-HABITAT 2003). Basic water for drinking and cooking is not many litres per day. The important thing is that this water is clean. The amount of water necessary for sanitation, washing of cloths and cleaning in general is at least double the amount. If people are suffering from bad health the amount is even higher.

Sanitation as a topic is often forgotten when basic water provision is discussed. Proper sanitation is important to avoid different health problems. To have good sanitation it is necessary with good provision for anal cleaning, hand washing and maintenance (UN-HABITAT, 2003: 5-7). Reducing large health risks that arise from bad sanitation is crucial, but often expensive and calls for political and economic incentives. Although basic sanitation does not have to include only water, the two are highly linked as necessities to sustain a human life.

Urban need

The reality for several hundreds of millions poor around the world is that they don't have access to any sort of sanitary facilities for defecation. In many urban areas a plastic bag is the only toilet that people have access to, while in other places people use common toilets shared by maybe several hundreds of people. These toilets often have poor sanitary conditions

and many, especially children and women, find it difficult and sometimes risky to use the facilities. The risks are not only because of the low standard of hygiene at these toilets, but also different physical risks such as rape. After darkness the risks get worse. These types of common toilets are seldom connected to a sewerage system (UN-HABITAT 2003).

Collecting water outside your home also creates hazards for many. Since collecting water normally is a job for women and girls they are more easily disposed for these hazards than most men are. Not having access to water and to basic sanitary conditions in your own home creates many risks that those with access do not experience (UN-HABITAT 2003).

When it comes to health risks in general the number of people using each toilet is more important than what kind of toilet is being used. When this is said toilets that are connected to sewerage are to be preferred to other toilets as the former have the least risks of spreading of diseases (UN-HABITAT, 2003: 5). Water based sewerage systems are more important in urban areas than in rural areas due to the concentration of people in urban areas. The downside to more water based sewerage systems is that there will be an increased stress on the available water in the world's cities (Vaipeyi, 1998: 5).

It is difficult, if not impossible, that poor people in different countries should get the same standard of water and sanitation provision that matches the standards in high-income nations, although these standards certainly would produce the best health benefits. *"...with limited resources and limited institutional capacities, getting better provision for everyone is more important than getting very good provision for the minority. If the focus is on getting very good provision, the beneficiaries are likely to belong to the richer and more politically powerful groups."* (UN-HABITAT 2003: XIX)

This adds a value to the debate about necessary water provision. I will take up this debate later in the thesis, especially in chapter 6.

It is probably necessary with a trade-off between different users and their rights if we want to have an efficient and equitable allocation of water resources (Hope and Garrod 2004: 208). I expect to find much of this trade-off on the international scene where states come together and try to solve challenges in water regulation.

3.2 How is water provision regulated?

I shall look at the principle international conferences and policies concerning water rights and water regulations to make it easier to understand which lawful rights people have to water. Then I shall look at the debate about water as a human right versus water as a commodity.

3.2.1 Principle conferences and guiding documents

It is important to understand which policies and regulations that the international community has set up and agreed upon in terms of use of water, need for water and how water should be distributed. For developing countries this is especially important as donor countries and donor institutions normally use international agreements as a basis for different kinds of donor aid or developing partnerships. What are these policies and regulations?

The United Nations Human Rights convention of 1948 stated several rights that signatory states accepted as basic rights for their citizens. Access to adequate and clean water was never one of these rights. Rose Francis (2005) has done research on the topic of rights to water. The impression that she has got through sources on international law is that nobody thought that water was necessary to write down as a human right when the Human Rights convention and later documents were written. This was not even considered to be important (Francis 2005). It seems like one of the challenges to water provision that too many people have taken and maybe still take good water provision for granted.

Water rights got its status on the international agenda in the 1970s, starting with the United Nations' Conference on the Human Environment in Stockholm in 1972 (UN-HABITAT 2003). In 1976 at the *UN Conference on Human Settlements* the first target came from 132 governments that committed themselves: "*Safe water supply and hygienic disposal should receive priority with a view to achieving measurable qualitative and quantitative targets serving all the population by a certain date*". (UN-HABITAT 2003: 227). This target was followed up in 1977 with the *UN Water Conference* in Mar del Plata, Argentina. One of the results from this conference was that the participating countries agreed that "*...national plans should aim to provide safe drinking water and basic sanitation to all by 1990 if possible.*" (UN-HABITAT 2003: 227).

The aftermath to these conferences has not been very uplifting. The targets and the good intentions have not had much impact as water provision still is a major problem many places throughout the world. But there have been new conferences and new international

legislation during the last two decades that hopefully will help to provide basic water provision, especially for the poor.

The United Nations Convention on the Rights of the Child of 1989

The UN *Convention on the Rights of the Child of 1989* is one document where water is explicitly mentioned. The document is binding for the parties to the convention and was put into action in 1990. Article 24 about hygiene and health conditions states that in order to make sure that children have adequate health and health care they shall have (among other things) access to clean drinking water (United Nations 1989).

The Dublin statement on water and sustainable development (1992)

At the closing session of the International Conference on Water and the Environment (ICWE) in Dublin, Ireland, in 1992, the conference adopted the following statements that were handed over to the world's leaders before the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992:

1. Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment
2. Water development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels
3. Women play a central part in the provision, management and safeguarding of water
4. Water has an economic value in all its competing uses and should be recognized as an economic good

(www.wmo.ch)

Within principle number 4 it is important to understand that although water is recognized as an economic good it is “...*the basic right of all human beings to have access to clean water and sanitation at an affordable price.*”

(www.wmo.ch/web/homs/documents/english/icwedece.html)

It is not stated what “*an affordable price*” is. It is disputed, even into national courts, what an affordable price is if you cannot feed yourself and your family because you have to pay for basic water. People that don't have any money don't either have any affordable price.

Soon after the Dublin principles were accepted at the Rio conference in 1992 the World Bank formulated its principles for the bank's investment policies throughout the world based on the Dublin Principles. The World Bank's principles would emphasize that the needs of the poor and that women and vulnerable people should be given special attention whenever a water project was started (WB 2004, Vajpeyi 1998). This has been reemphasized in the

2004 Water Resource Sector Strategy (WB 2004). This complies with the mission of the World Bank, to develop with the poor as primary target, always (WB 2004).

The United Nations Development Goals from the Millennium Summit 2000

On this conference water was addressed in the context of '*ensuring environmental sustainability*' (UN-HABITAT 2003). The two most relevant goals for water and sanitation from the Millennium Summit are Target 10: *to halve the proportion of people without safe drinking water by 2015* and Target 11: *to achieve, by 2020, a significant improvement in the lives of at least 100 million slum dwellers* (UN-HABITAT 2003:161, 261).

Many countries, including South Africa, try to implement the Millennium goals into national policies. For quite a few of these countries the Millennium goals will not be possible to reach.

The World Summit on Sustainable Development in September 2002

In September 2002 the World Summit on Sustainable Development was held in Johannesburg in South Africa. This conference came up with a new target to the United Nations Development Goals: "*...we agree to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation....*" (UN-HABITAT 2003: 162, 260). This target was to compensate the neglect of including sanitation in the conference in 2000.

The agreements presented above represent much of the institutional framework in international water legislation and policies. A tremendous challenge to these agreements is how to implement the policies in different countries since it is the countries themselves that have this responsibility.

International institutions, such as the World Bank, IMF and different donor countries, can and often will help with financial aid and logistical aid to promote water action in developing countries. These institutions will often put pressure on countries that receive aid to accept the donor's premises, which is often highly connected to policies of cost-recovery (Bond 2004).

In 3.2.2 I follow up the results of these conferences and agreements with extracts of international debates about water as a human right and water as a commodity. Cost-recovery is generally considered to be an important policy for financial loans and grants in developing countries and is important in this debate.

3.2.2 Water as a human right versus water as a commodity and water pricing

Should fresh water be treated mainly as a human right or mainly as a commodity? I find it necessary to present extracts from this debate before arguing about which criteria that basic water should be distributed according to.

Water as a human right

“Access to water for life is a basic human need and a fundamental human right.”
(UNDP 2006: Foreword)

According to the UN *Convention on the right of the Child*, water is a right for children. Still, every year some 1.8 million children die from diarrhoea and other diseases caused by unclean water and poor sanitation (UNDP 2006). The United Nations *International Covenant on Economic, Social and Cultural Rights of 1966* does not explicitly mention rights to water, but articles 11 and 12 mention the right to among others food, a healthy environment and medical assistance (UN 2002). *The United Nations Committee On Economic Social And Cultural Rights* stated in a comment to the implementation of the convention that implicitly the text must be understood so that basic necessary, clean water is included as a right. The amount and standard should be according to minimum standards set by the WHO (UN 2002).

Patrick Bond looks at two different ways to price water. One he calls a *progressive position* and the other he calls a *neo-liberal position* (Bond 2004). The neo-liberal position is where water is regarded as a scarce resource, but still is treated as a commodity. In this system market regulations are the best ways to set the prize of water. This is, according to Bond, business as usual. (Bond 2004: 1). The *progressive position* is in many ways a reaction to the *neo-liberal position*. People taking the progressive position try to promote the ‘decommodification’ of water. The turn towards “decommodification” of water was started in 2003 by the People’s World Water Forum (PWWF) that emerged in Delhi, India. The PWWF’s funding statement is that: *“Water is a human right; that corporations have no business profiting from peoples”*. (Bond 2004:1, <http://www.pwwf.org/aboutpwwf.html>). PWWF further claim that: *“Water is not a commodity to be controlled, bought and sold. Water cannot be owned. Water is a responsibility of the global commons and we have a collective responsibility that addresses the needs of all.”* (<http://www.pwwf.org/aboutpwwf.html>)

Bond, PWWF and many other individuals and organizations are promoting the right to access to water and that water cannot be regarded as a socio-economic good but should be

universally granted and not subject to a cut-off line depending on your income (*Bond 2004, www.pwwf.org*).

Water as a commodity

Water privatization is in much literature considered to be the process where major and often international companies take control over water distribution and sell water to consumers on a basis of capitalism. This has been in accordance with much of the international political changes over the last decades where international institutions and country donors have promoted structural adjustment policies and liberal economic policies in the developing countries and the former eastern bloc. Focus has been on privatization and market liberalism and has hampered governments in attempts to extend water and sanitation facilities (Thomas and Clegg 1998: 20-21). This is much what Bond (2004) describe as the neo-liberal approach.

A major challenge with this type of privatization is that it has cost-recovery through user fees implicit and that it often is difficult to see which responsibility that the companies have. In partnership with private companies many local governments end up as profit seekers and think in terms of market mechanisms and tend to forget about those that cannot afford to pay for basic provision (UN-HABITAT 2003: 168).

The UN report “*Water and sanitation in the world’s cities*” from 2003 also display another type of water privatization. Water privatization throughout the world is often not major companies selling water or as managers of water services. It is more common with small-scale vendors buying or just taking water from municipal pipes before they sell this water to clients in a specific, minor urban area. In some areas in different cities small vendors sell water from water sources as a commodity under almost perfect market conditions (UN-HABITAT 2003).

There are examples of major water privatization programmes that have worked well and produced positive results for people in general although the overall results of major privatization projects are not good. The UNDP report “*Beyond scarcity -Power, poverty and the global water crisis*”, published in 2006 will not put private actors fully on the side line, but says that there is need for “...greater caution, regulation and a commitment to equity in public-private partnerships.” (UNDP 2006: 10). Two of the aspects that should make government sceptic to the reliance on the private sector is 1) that water distribution can easily turn into a monopoly for the vendor in some areas, and the vendor can set prices not everybody can afford, and 2) that areas that are not cost-efficient for the provider will

probably be neglected as the cost of giving people in distant areas water will be too expensive when thinking of profit-maximising (UNDP 2006: 10).

Utility pricing

There is an international tendency to use utility pricing with raising block tariffs as a way of pricing water. The idea is that the consumer that uses much water will have to pay more per litre of water than a consumer that uses less water. The total price will then be much higher for the major consumer compared to the small consumer. This way of pricing water should reflect the value water has as a scarce resource, and at the same time it may benefit the poor that use little water through cross-subsidization where those who use much subsidize those that use less.

Many places this policy seems to backfire. The problem arises as many poor cannot afford to pay for a connected pipe and have to use a middleman to serve them with necessary water. The middleman buys water in bulk from a major supplier who has to pay water from the higher blocks. In parts of Dakar poor households buy water from suppliers that sell water from standpipes. Because of the high quantity of water that is provided from the single standpipe people collecting from this pay more than three times as much as that households which get piped water into their houses pay (UNDP 2006: 10).

Miller claims that it is necessary to listen to people in general about what they believe to be right and wrong before we can talk about justice in a society. To get a step closer to the public opinion I will look at people's action in terms of water distribution.

3.3 People's participation and local action

It is a difficult and complex task to understand different needs and also to find the best solutions to sufficient water provision. Experts on the field might not experience problems with water delivery and problems with water quality that the often poorer often experience. Who are participating when laws and regulations are created and implemented?

The Dublin Statement on water and sustainable development from 1992 emphasizes that when planning, designing, executing and administrating a sound water management policy all user groups should participate, and local non-governmental organizations, women and the poor should be given special attention in the work. Implementation should, when possible, be done by those who best experience the problem. The World Bank's policies for projects that are put into action include much of the same elements (WB 2004). Unfortunately

few national governments around the world have been capable of building up local government structures to take over responsibility of local water provision and sanitation and the necessary health work that comes with this (UN-HABITAT 2003: 227).

People driven organizations at grass root level try to compensate for jobs not done. Organizations like the PWWF try to involve both citizens and local government at the local level. The results are different citizen driven projects that have turned out very well many places. The Pakistani NGO Orangi Pilot Project has been constructing sewerage systems in Pakistan where even the poor in Karachi have been able to afford the prices of connecting to the system. This has been seen as a well-functioning project with an NGO and local governments working together to solve the needs among mostly poor people in the local areas (UN-HABITAT 203:10, 235).

People driven initiatives are important, but it is imperative that national governments are in the forefront to put national and international laws and statements into action. The most common obstacle for not performing is that water and health for the poor don't end up as practical policies or areas with political priority. Limited budget allocation in most countries bears witness of this (UN-HABITAT 2003, UNDP 2006).

3.4 Global water politics put into action

The use of water within and between countries shows huge disproportions. Is there enough development of water provision in the world to give poor people in developing countries hope for sufficient water supply in the future?

Today we have the finance, technology and capacity to solve basic water and sanitation problems throughout the world. We can solve it on a global level in the same way as most industrialized and rich countries have already done after facing problems of water distribution and clean water in former times. The real need is common national and global plans with enough resources and political will (UNDP 2006: Foreword).

The common global plans for necessary, clean water have been presented at several conferences and through different legislation especially since the 1980s. The United Nations Development Goals from 2000 is one of the latest frameworks that governmental leaders have accepted to implement. The development goals are easy to understand but difficult to implement. The necessary political leadership at different levels and the willingness to use the necessary technology, infrastructure and finance to give people sufficient clean, basic water is not present in many countries. The willingness to do something with this major challenge is

often also hampered by obstacles in the bureaucracy and with different forms of corruption in governmental systems (Vajpeyi 1998: 7).

Poor countries that are dependent on donor countries and international donor institutions for development might not be capable of implementing necessary policies even if they want to themselves. In the 1980s dominant international policies did often not promote development of water and sanitation facilities, but rather hampered governmental efforts in the developing world and the former eastern bloc (Thomas and Clegg 1998: 20). Research by Bond (2004) displays that many international policies and institutions (examples are the World Bank, the Dublin principles and Swedish International Development Agency) in the late 1990s and up until now have had cost-recovery and pricing at marginal cost as part of funding for projects (Bond 2004). This has been a challenge to countries and communities where people don't have money to pay for provision and projects are not started because of demands of cost-recovery and that projects cannot receive financial subsidization.

In 1998 84 state leaders gathered at a United Nations conference about water. The participants agreed that “...*water should be paid for as a commodity rather than be treated as an essential staple to be supplied free of cost*”. The French premier Lionel Jospin warned the state leaders about this agreement. Although most states had for too long worked according to the idea that water should be free “...*because it fell from the heavens....*”, there would be a danger in suddenly switching to market mechanisms, especially since some groups have difficulties to pay for themselves (New York Times, March 28 1998).

It is estimated that more than 1 billion people don't have access to clean water and that about 2.6 billion people don't have access to proper sanitation (UNDP 2006: Foreword). In urban centres in Africa, Asia and Latin America less than half the population can access water through piped connections to their homes, and less than a third have good quality sanitation (UN-HABITAT 2003: Introduction). As the number of people without necessary water provision is steadily increasing in many developing countries the UN Millennium Goals seem difficult to reach. These goals might end up just as the many targets that have been set in former times for better provision for the poor people – much talk and not sufficient results. People without sufficient water provision probably don't find international conferences and goals very satisfying all the time these don't produce the planned outcome.

In the World Bank Water Resources Sector Strategy (2004) the World Bank acknowledges errors that have been done in the water sector earlier and has changed to a new policy. This strategy will even more than before take into consideration local needs and local

knowledge, people and groups with local knowledge and that are effected by water plans (especially women) should be included in the process. Results of implementation should not be measured with the insight that work done by the World Bank is not an attempt to make perfect, but a process of making things better (World Bank 2004). With this knowledge in mind the World Bank still promotes cost-recovery policies that hamper development for the poor.

Social justice

I will try to relate what I have found in this chapter to social justice.

Both Miller and Rawls see the challenges that the international community creates for many states. One of the challenges for developing countries is that different international policies in the development sector don't necessarily harmonize with national challenges. This makes it difficult to promote own national policies since donor partners promote their own agenda that the country receiving aid has to comply with. This challenges both Rawls' and Miller's theories about social justice. They believe that the state must be responsible for implementation of national policies. Interference from the outside also makes basic social institutions less identifiable since most of the actors that are found on the international arena don't have obligations to the citizens of a country.

If we want social justice, society must provide for basic needs before it can give the well off an even better life. The debate between water as an economic good and water as a basic human right at the international arena will have impact at national level. If international institutions and donor countries promote cost-recovery regimes for developing countries then these countries often have to comply with this regime if they want external finance. Research shows that cost-recovery regimes are not to the benefit of the poorest in society and that this policy doesn't help people to get basic needs covered. Policies that don't take into consideration the need of the worst off don't correspond to Rawls' maximin principle and not to Miller's principle of distribution according to need for those that cannot pay.

To get people in general to participation in processes in the international community is challenging. The grass root level is normally not present at the moment when policies are decided and agreed upon. It is country leaders and other members of a country's elite that participate during negotiations and formal processes. Implementation of decisions at the international arena can seem to be handed over to the elite in different international institutions and also to the elite in different national institutions. If people in general are not present when challenges to water provision are solved and implemented, it is easy to forget

for whom the policies are. If we want social justice according to *Justice as fairness* it is necessary to include all members of society in the initial situation. They will agree upon a contract that provides a minimum baseline for those that are worst off in a society. If we want social justice according to Miller people should be at least heard but preferably also included in the process at all levels. Social justice is challenged when those that have sufficient provision debate and make decisions at the same time as those that have the greatest needs are kept out of the process.

One of the reasons that South Africa had to end the apartheid regime was because of international pressure and attempts to isolate the South African government. Since 1994 South Africa participates in international organisations and institutions and is implementing many international policies. To develop the country South Africa is dependent on the international community in terms of among others financial assistance. Financial assistance often comes with different demands attached to it. These demands might conflict with policies that South Africa find reasonable for their own development.

One of the issues that I will follow up in the next chapter is how South Africa manages influence from the international community when making and especially implementing water legislation. The main issue throughout chapter 4 is how South Africa is progressing in provision of basic water to the population and how this can be seen in a perspective of social justice.

4 How is South Africa delivering? The national level

I use South Africa as the main case in this thesis. I will present the country in general, today's political regime, national legislation and policies related to water. South Africa has been through a political revolution since the beginning of the 1990s. In this revolution there have been trade-offs between different parties of interests in and outside the country. I shall see how water used to be distributed during the apartheid era, how it is distributed today, and how just South Africa's distribution is.

4.1 is a general presentation of South Africa, including history, people, judicial system and political system.

4.2 is about water in general in South Africa, the history of water in South Africa and about water infrastructure

4.3 is about water legislation, water visions and water policies

In **4.4** the debate about economics in water services starts.

It is important to include public participation in South Africa in the water sector. I do this in **4.5**

4.6 is about who gets and who doesn't get sufficient water in South Africa

4.1 About South Africa

General

The Republic of South Africa is a democratic republic situated at the southern end of the African continent, occupying about 1.2 million square kilometres of land. Harboured inside the country is another country: Lesotho. Other neighbouring countries are (from west to east): Namibia, Botswana, Zimbabwe, Mozambique and Swaziland. South Africa has about 49 million people of which about 23 millions are defined as poor (numbers from September 2007) (DWAF web2). There are several different peoples living in South Africa and also different divisions according to religion and skin colour. The constitution recognizes eleven different official languages. Afrikaans (a South African version of Deutsch) and English are among the languages. Christianity is the greatest religion (about 80% of the population). Other major beliefs are Islam, Hinduism, Judaism, Buddhism and different indigenous beliefs (www.gov.za). The South African population follows the general international trend with people moving more and more into major cities. By 2010 it is expected that about 75% of South Africa's population will live in urban areas (Williams 2003: 5).

South Africa has Africa's biggest economy and has high economic influence especially on neighbouring countries. The country is a leading exporter of minerals and has, since gold was found in the 1880s in the areas where Johannesburg is situated today, been the world's largest supplier of gold (www.gov.za).

Political system

South Africa has an elected president as the state's leader. He or she is elected for a period of five years. Since the country's first free election in 1994 there have been two presidents in South Africa: Nelson Mandela (1994-1999) and Thabo Mbeki who was elected in 1999 and re-elected in 2004. Both of these represent the African National Congress (ANC).

Institutional power is divided between geographical parts of the country. Pretoria is the executive capital, the National Assembly is situated in Cape Town and the constitutional court is in Bloemfontein. The major city and financial capital is Johannesburg.

The country is divided into nine provinces. Each of these has own legislature, premier and executive councils. The level under provinces is communities that have own legislature, mayor and executive councils. One of the aims of the South African political system is to let decisions and execution of decisions take place at the lowest possible level in the political system, whenever this is possible (RSA 1996).

With the end of apartheid and after the free election in 1994 South Africa has normalised its diplomatic relations with most states in the world and rejoined all significant regional, continental and multilateral institutions (RSA web1).

Political and national challenges

Most South Africans are experiencing a political freedom today that they would not have believed 20 years ago. But freedom does not necessarily give you food and protection. Poverty in the country is widespread and there is a high crime rate that is associated with high unemployment. Although more and more former disadvantaged people get higher education the unemployment rate among the educated is also high. The delivery of basic services, including water, electricity and sewerage, is a key concern for the country. This is a challenge as there is a backlog since the apartheid era and a steadily growing population (www.gov.za).

The difference between those with the highest and those with the lowest income has risen since the apartheid era (RSA web 2007), and, when asked, many poor South Africans reply that they were better off during the Apartheid era than what they are today (Bond 2003).

4.1.1 History of South Africa

To understand the present it is necessary to understand the past. I will go back in time, before 1994, and present some extracts from the South African history that can help to clarify how things came about as they are today.

Europeans settled themselves in South Africa when the Dutch East Indian Company created a supply post in the Cape Colony (where Cape Town is situated today) in 1652. With the arrival of the Dutch East Indian Company the dispute between the blacks, the Khoisan people (who had already lived in the areas for more than a thousand years) and whites in the area started. This confrontation about land in South Africa between the Europeans (mainly of Dutch and English decent) and the Africans is still present today (Setai 1998, www.gov.za).

Disputes over land, resources and influence in South Africa have not only been between Africans, khoisan and whites, but also between whites and whites (especially between the British and the Boers) and between different African peoples. The people that have seized the political and economic power in South Africa over the last centuries have been people of European descent (Setai 1998).

Late 19th and early 20th century there was struggle and much fighting between the Boers and the British over the control of South Africa. Most important was probably the Anglo-Boer War (1899-1902). In 1902 a peace agreement was set up between Britain and the Boer-republics. The British would, with this agreement, dominate militarily and economically in South Africa (RSA web1, Setai 1998). In 1910 the Union of South Africa was established when two Afrikaner (Boer) republics federated with the British colonies. The Union of South Africa became a part of the British Empire. Much of the reason why the union was established was the need for the outnumbered Boers and Brits to cooperate against the Africans (Reed 2003).

The Land Act of 1913 has played an important role in South African history. This act gave the African population control over about 7% of the land in South Africa. At the time the Africans were about 2/3s of the total population (Reed 2003:19, RSA web1). *“The purpose of this act was to minimize, and to the extent possible prevent Africans from owning land.”* (Setai 1998: 95). Legislation with the purpose of controlling the African population continued with the Natives (Urban Areas) Act in 1923. This act controlled Africans by means of pass laws inside South African borders and enforced urban segregation (RSA web1). Urban segregation is highly visible in South Africa today.

In 1948 the National Party won the parliamentary election. With the National Party leading the country South Africa saw the end of the ambivalence towards residential segregation as the nationalist had racial segregation (apartheid) as its central theme. Different segregation laws followed tightly over the next years. With these acts South Africans officially got divided into 'White', 'Coloured', 'Asian' or 'Native' (www.capetown.gov.za/water/wsdp).

In 1960 the ANC got banned, and in the following year (1961) Prime Minister H.F. Verwoerd and the National Party government declared South Africa a republic and replaced the British Queen as head of state. Apartheid was introduced as South African official politics (RSA web1).

In 1989 the sitting president PW Botha fell ill and minister of education, FW de Klerk took the position as the country's leader. With de Klerk as president political changes came about quite rapidly. De Klerk met with Nelson Mandela and the latter was released in 1990 (after 27 years in prison) together with other ANC activists. This same year liberation movements that earlier had been banned from performing activities were unbanned (RSA web1).

Between 1990 and the election in 1994 apartheid legislation was repealed and the international community lifted sanctions it had towards South Africa. In April 1994 ANC won the first non-racial election

4.1.2 Judicial system and the South African Constitution of 1996

As many newly democratized countries, South Africa's judicial system is highly rooted in the country's constitution. "*The Constitution is the supreme law of the country and binds all legislative, executive and judicial organs of the State at all levels of government.*"(RSA web5)

The courts in South Africa are independent and have the judicial authority. The courts are subject only to the Constitution and the law (South African Constitution §165).

The South African constitution of 1996

Radical changes were wanted with the election in 1994, especially changes to the laws and the judicial system in South Africa. After the election the government started the drafting of a new Constitution. In the drafting process ideas from individual citizens, civil society organizations, and political parties were incorporated. This process of including all spheres of

society has been widely acclaimed throughout the world to be a good model for constitution drafting. The Constitution was set into function in 1996. It is widely claimed to be one of the most progressive constitutions in the world. The 1996 Constitution “... *embraces human rights principles and contains a comprehensive Bill of Rights, which enshrines rights to basic life necessities, including housing, a clean environment, health care, social security, education, food and water.*”(Francis 2005: 10)

4.2 Water in South Africa

South Africa is a severely water stressed country. The average annual rainfall is about 450-500 mm, which is little compared to the annual average rainfall in the world (about 860 mm). The minimum amount of rain required for successful dry-land farming is considered to be 500 mm. per year. Sixty-five percent of South Africa receives less than this amount of water (RSA 2004).

Due to many hours of sun per year and relatively high temperatures throughout the country much of the scarce rain that falls in South Africa evaporates easily and leaves an in general dry and sandy landscape. Most of the available fresh water for public water supply comes from rivers and some from aquifers. The by far biggest sector for water use is agriculture that takes about 52%, while domestic use is about 10%. Most of South Africa experience summer rain while a part of the Western Cape has winter rain and a dry summer season (RSA 2004).

4.2.1 Water infrastructure

Providing almost 49 million people with necessary water in a huge, water prone country where most people live in areas that are placed far away from major fresh water sources is a challenge. South Africa has a double challenge: a steadily growing population, especially in the major cities, and a backlog in the water infrastructure from the apartheid era. It is difficult to quantify the municipal infrastructure and service backlog, but in 1994 the total cumulative backlog was conservatively estimated at between R 47 – 53 billion with an average annual backlog of R 10.6 billion (de la Harpe 2003: 6). Despite this has national government given its people a guarantee that it will succeed in the matter of providing some water, for all, forever.

Good access to water and centres with major economic growth don't correspond in South Africa, unfortunately. Especially the Gauteng province (where Johannesburg and

Pretoria are situated) needs water run-off from rivers far away as water supply to the industrial sector and for domestic needs. With water travelling long distances there is a high degree of evaporation that greatly reduces an efficient use of scarce water resources (RSA 2004). South African government believes that water resources have been developed to the extent that for the time being necessary requirements of water are reasonably met, and that this is done without making any obstacles in the socio-economic development of South Africa (RSA web3).

Water provision and sanitation provision are highly interlinked. Quite a few people in South Africa don't have access to water borne toilets but have to use alternative solutions for toilets. Other people have water borne toilets but cannot afford to use sufficient water to flush after every visit. The situation is that many people neither have a toilet inside their house nor an available fresh water source in terms of piped water.

It is a difficult and expensive task to provide water borne sanitation to all those who need this. Government's main priority in providing basic water and basic sanitation to those who don't have any is to build (often public) toilets and set up public water pipes. According to government sources South Africa has over the last years been able to supply over 1 million people a year with water-supply infrastructure and over 300.000 a year with toilets and basic sanitation. This is in accordance to national plans to "*...eradicate the backlog in water infrastructure and sanitation facilities by 2008 and 2010, respectively.*" (RSA 2004: 653).

South Africa has resources and the knowledge necessary to develop available water sources to secure people with enough water for good sanitation and enough water for cooking and drinking. But available water is not evenly divided among the people of South Africa. As South Africa is one of the countries in the world with the biggest difference between people in terms of income and wealth, it is necessary to see who gets what. I will start by looking at water history (4.2.2) and then how water is regulated in the country (4.3).

4.2.2 History of water

I will briefly present history from the last decades up until about 1994. I will use this period before 1994 to compare with the changes that have been and are taking place since 1994.

The most important legislation concerning water in South Africa before 1994 is the 1956 Water Act (Mackay 2003). The 1956 Water Act tied water rights to land rights. If you owned a piece of land you also had the right to a share of the water that passed over that land. This was much due to NP policy about subsidizing water to agricultural production and to get

people away from urban centres and out to rural areas. Already in 1956 the reality of clean water as a scarce resource was addressed. The act took this into consideration and added provision about treatment of wastewater so that this could be re-used further downstream. The 1956 Water Act was the latest legislation concerning water until new laws were passed in 1994 (Mackay 2003:50).

The knowledge about degradation of general water quality and over-use of the resources that professionals and officials in the water sector acquired already in the 1950s and the 1960s could be witnessed more visibly some decades later. Urbanisation grew rapidly and changed the needs for access to clean and sufficient water for domestic and industrial use on behalf of farmland irrigation. The South African government did not deal with these challenges at the time as it had more than enough with internal problems concerning control over the population and major changes in water policies never really made it on the national agenda (Mackay 2003).

Since 1994 much has changed when it comes to laws and policies concerning access to water and rights to water. Water provision for everybody has become an important topic on the political agenda.

4.3 How is water regulated in South Africa? – Laws and policies

In terms of access to water there has been a huge transformation in national legislation and programs to grant South African citizens rights to basic water. I will look at and try to understand these basic institutions of society in terms of water distribution.

I start with the most important laws concerning water in 4.3.1 and continue with policies and visions in 4.3.2.

4.3.1 What does the constitution and different laws say?

During the apartheid era water rights could be given to individuals, especially to farmers that had riparian access to water sources. This has changed since 1994. Today does the Republic of South Africa own all water in South Africa. I will give a presentation of laws connected to water rights since 1994.

White Paper 1994: “Water - an indivisible national asset: Water Supply and Sanitation Policy White Paper

The 1994 White Paper gives national government responsibility for managing water resources in the public interest and also gives the national government an obligation to provide all citizens access to *adequate* water and sanitation services (RSA 2002: 14).

This paper also outlines the basic policy for financing of water projects “... *that services should be self financing at a local and regional level*” (RSA 1994: 19). Since there are major regional differences in South Africa when it comes to access to finance and infrastructure all communities might not be able to fulfil basic water services. As a back up for these poor communities it is possible for government to help with construction of minimum services. This financing is not for their operating and maintenance or replacement cost (RSA 1994: 19, RSA 2002: 15).

Involvement of private sector in water distribution is part of the content of the 1994 paper, especially the need to transfer skills from the private sector to public sector is important. At the same time the problems of changing private sector mindset, to think in terms of community participation and also the need of control of private sector’s performances and failures, stand out as challenges. (RSA 2002: 15)

The South African Constitution of 1996

The very liberal South African constitution of 1996 gives fundamental rights to South African citizens such as right to housing, a clean environment, health care, social security, education, food and water. The latter is my focus. These rights are found in the Bill of Rights section. Two of the most important paragraphs concerning water provision are *paragraph 24* that writes:

“Everyone has the right

- a. to an environment that is not harmful to their health or well-being; and*
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that [...] iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”*

and *paragraph 27 1b Health care, food, water and social security* that writes:

“Everyone has the right to have access to sufficient food and water”

These two paragraphs are important and give the South African government a major responsibility in provision of necessary water for its population. They are very wide in description but give fundamental principles for more detailed laws and principles as found in

the 1997 Water Services Act that regulates water service and water delivery and the 1998 Water Act that is the guiding document for use of water in South Africa.

Water Services Act, 1997 (Act 108 of 1997)

The Water Services Act regulates water service and water delivery. In perspective of this thesis the most important aims are to:

- ensure and define the rights of access to basic water supply and basic sanitation services
- define the rights and obligations of service providers and of consumers
- ensure sufficient, continuous, affordable and fair water services
- make sure that water resources should be made available in an equitable way within a municipality

Local government is given the main responsibility for local water services, with necessary back up from national government. (RSA 1997, CCT 2007).

The 1997 White paper on National Water Policy is being implemented over a period of 20 years and should guaranty that everybody gets necessary basic water.

National Water Act (Act 36 of 1998)

The main guiding document for use of water in South Africa is the *National Water Act of 1998*. The purpose of this act is that South African water sources must be used and developed in a way that takes into consideration among others the human needs of the people of South Africa today and also for future generations. Equity in distribution is fundamental and special consideration is to be taken to racial discrimination (of the past) but also the discrimination of genders (RSA 1998: Preamble, RSA 2004).

The National Water Act of 1998 is addressing how water boards, local and governmental authorities and other institutions are to be set up and how the general structure should be in South Africa to be able to supply a growing demand in a water stressed country. To achieve these purposes it is necessary that these institutions have “...*appropriate community, racial and gender representation.*” (RSA 1998: Article 2). The intention of inclusion of people from different parts of society should hopefully show itself in practice in different water boards and in local government.

Under this Act it is not possible with private ownership of water any longer. It is the State of South Africa that owns the water in South Africa and it is only government that can give out *rights* or *authorizations* to use water (Mackay 2003: 55, RSA 1998). One of the more important rights is that all people are given lawful rights to basic water.

The South African Constitution and especially the Bill of Rights give people in South Africa basic rights to water and the National Water Act and the Water Services Act are supposed to enable government to fulfil these rights (RSA 2007: 601).

4.3.2 Different national policies and water vision

Water vision

The South African Department of Water Affairs and Forestry wants to see itself as the department that provides “*some for all forever*” (DWAF web4). Its vision is:

“...a country that uses water and forests productively and in a sustainable manner for social and economic activities; in a manner that promotes growth, development and prosperity of all people to achieve social justice and equity.” (DWAF web4)

An even wider vision with more obligations for the sector was proposed with the 2002 *Towards a water services white paper*:

“All people living in South Africa have access to an adequate, safe and affordable supply of potable water, live in a healthy environment with safe and acceptable sanitation... All people are knowledgeable about healthy living practices and use water wisely... Water supply and sanitation services are sustainable and are provided by efficient and effective service providers who are accountable and responsive to the customers they serve.” (RSA 2002: 10) *“Affordably supply means that nobody should be excluded from water access due to economics. There should be a basis of equity that there is adequate service to all people, fairly distributed.”*(RSA 2002: 11)

I assume that affordability in this context means that water to those that cannot pay is delivered for free, according to need.

These two visions display high intentions by the government for the country. Before I look at how these intentions have been fulfilled, I will look at two important national strategies: The Free Basic Water Policy and one important national policy and Strategic Framework for Water Services.

Free basic water

In an attempt to give people in South Africa a fundamental water security, government has initiated a free basic water policy. The *Free Basic Water Policy* was planned already during the 1990s, but was launched as a national policy in July 2001. The idea behind the policy is to provide the poorest with 25 litres of water per day people without charge. This water should be available from a safe communal water source within a distance of 200 meters

from your house, or delivered by water infrastructure to your house (DWAF 2006). The basis for this calculation is that government provides people with the basic water that they need for drinking, cooking and basic hygiene estimated at 25 litres per person per day. One household is calculated to consist of up to eight people. This gives an estimated use of 200 litres per day or 6 kl per month per household. Local communities can themselves change the amount of free basic water delivered to households as long as every person gets 25 litres per day. The prescription from DWAF is 25 litres per person per day, and 6 kl a month per household is only a recommendation based on a household of eight persons (Reply by minister of DWAF to national assembly on 6 June 2007, RSA 2003: page ii).

A challenge to free basic water policy in the beginning is that water infrastructure over the decades has been created and maintained mostly for the rich, white population. This means that those that get access to free basic water first are in general those that need it the least, while the poor that need free basic water the most have to wait until sufficient infrastructure has been constructed for them (Mackay 2003).

In January 2003 United Nations Human Settlement Programme (UN-HABITAT) awarded the South African Department of Water Affairs and Forestry a Best Practice Certificate for the Free Basic Water Programme (RSA 2004).

One of the disadvantages with the Free Basic Water Policy is that tariffs in many municipalities are based on households, not on person. Since many rich people live in households that consist of fewer people than that of many poor, these new tariffs often have higher negative impacts on the poor than they have on many of the rich.

Strategic Framework for Water Services (SFWS)

In this strategic framework from 2003 responsibility for water services is handed over from national level to local level with both local and national government having a responsibility in providing water services in a transition period. SFWS follows up earlier documents related to water services and provision with some guarantees on performance on the local level:

“• everyone in South Africa who has access to a functioning basic water supply is provided with [free basic water]

• everyone who has access to a functioning basic sanitation facility is provided with free basic sanitation by 2010

• everyone has access to a functioning basic sanitation facility supply by 2010

• all assets of water-services schemes are transferred from the department to WSAs by 2008.”

(RSA 2007: 603)

With these clear dates set it will be possible to follow the process of providing water and sanitation with a critical view and it will be possible to complain if the targets are not met.

Much of South African water policy and water legislation can be summarized with the following:

That everybody has access to basic water services through legislation and necessary means provided by government, and that responsibility for delivery is handed over to local government, supported by other spheres of government. New legislation emphasizes participation by civil sector and community participation in development of different water plans and also in the implementation of these plans (RSA 2002: 12).

These policies and visions give South Africa a good framework for social justice, but there are also different constraints to the framework. One of these is that 25 litres per person per day of free basic water is not sufficient provision for most people, and there are people that are put in a difficult situation if it is necessary to pay for more. This will be the introduction to the next topic that I look at. What is the economic basis for water provision in South Africa?

4.4 Who are paying for the water services, and who cannot pay? – The economics of water provision

Everything has some sort of cost, somebody has to pay. This includes water. During the apartheid era laws and regulations were to the benefit of the few, mainly white, that dominated the political and economic arena. Under this regime water was often a right for the riparian landowner, and the government often subsidized water for farming and industrial purposes. It is believed that this policy did not reflect the scarcity of water or the real cost of water use. Financing of the water sector under the new regime has changed to take real cost and water scarcity into consideration. The 1998 Water Act opens for both cost recovery-based and value-based water pricing (Mackay 2003: 65). Cost recovery-based pricing is much in accordance with international water policy that water must be treated as an economic good, such as stated among others in the Dublin statement from 1992.

The principles for the new South African water policies are 1) that people in general have to pay for water at a rate that reflects its value and scarcity and 2) that everybody is guaranteed water supply to cover basic human needs (Mackay 2003: 66). The technicalities

concerning pricing depend on what water is being used for. Water that is used for domestic purposes is not being priced in the same manner as water for industrial or agricultural purposes. It is usually local authorities that set the water prices in their municipality. This can lead to different prices from one municipality to another (Mackay 2003: 67-68).

DWAF recognizes two sources to fund *free basic water services*: the *equitable share* (everybody has to pay about the same amount) and *internal cross subsidies* (some pay for others). Most cities will use the model of *internal cross subsidies* as most cities consist of some people that have a good economy that can pay for those that don't have sufficient means. In many rural areas both water infrastructure is poor and people are poor. Equitable share is most likely to be used in rural areas where there are so few people that are in a financial situation where they can pay for other people (DWAF 2001). Both these ways of funding water provision have cost-recovery implicit.

For some people, especially in the rural areas it is not a question of won't pay for water services, but cannot pay for water services. For some people 10 rands a month for water services means that they have less food for their children. Paying for water services from safe taps might be considered too expensive and people go looking for water from open sources instead. Taking water from open sources might cause water borne diseases. In these special circumstances where people cannot pay for basic water cost recovery might not be a viable option and an alternative must be found (DWAF 2000). Cost-recovery is difficult not only for rural areas, but for poor municipalities all over South Africa. Mike Muller, former director general of water department stated in an interview in 2003 that cost-recovery in a developed country with a high degree of equity is quite different than trying to implement cost-recovery in a divided country such as South Africa (New York Times, May 19, 2003: *Water Tap Often Shut to South Africa's Poor*).

Just after 1994 DWAF was a major contributor in water and sanitation investments. This has changed so that policy is shifting towards governmental grants for municipal infrastructure with just parts of a project as subsidies (RSA 2002: 8).

There are also external sponsors to South African water and sanitation projects. One of the major contributors is The European Union that supports South Africa's water and sanitation programmes with 1 billion rands in the period 2007 – 2013. In the period since 1994 the South African water and sanitation projects have been supported by more than 1.6 billion rands from the European Union (RSA 2007: 600). Two of the major infrastructure projects that the European Union is participating in are the Lesotho Highland Scheme and the Berg Water Project.

An important socio-economic tool that can be used both to reflect water as a scarce resource and a necessary basic good is raising block tariffs.

Raising block tariffs

Water tariffs in South Africa are much based on raising block tariffs. In the South African version the first 6 kl of water per household are free of charge (in municipalities where free basic water has been implemented), but how water prices raise after these first 6 kl can be a bit different from one municipality to another. In Johannesburg there is a steep increase in tariff for the next step up the ladder, if consumption exceeds more than 6 kl per month. The scale in Johannesburg has a total of six steps before it reaches a peak of 40 kl a month.

The average family in Soweto (Johannesburg) consists of six persons and uses about 20 kilolitres of water each month (Mail&Guardian, September 16 2004: *If there is no money, there will be no water*). The 20 kl of water is well beyond the 6 kl of free basic water for one household and adds up to about 67 rands with the tariffs in 2006/2007. This steep increase in water tariffs after the first 6 kl of free basic water often removes the benefit that the free basic water is supposed to provide. Many of the poorest consumers have to pay more *after* the introduction of the free basic water than what they did before the introduction. This is due to the steeply raising block tariffs and the fact that even the poor need to use more than 25 litres per person per day. An example from Durban demonstrates this.

In 1997 the average water consumption by the one-third with the lowest income in Durban was about 22 kl per household per month. In 2003 the average consumption by low-income-consumers had fallen to about 15 kl per household per month. In the same period the Free Basic Water policy with 6 kl of water for free per household per month was introduced. The introduction resulted in steep tariff raise after the first 6 kl of water used, and the price per kilolitre of water had increased from 2 rands to 4 rands for the one third of the population with the lowest income (<http://wwwserver.law.wits.ac.za/cals/phiri/BondaffidavitFinal.pdf>). For those that have problems with payment in the first place this increase in tariffs is expensive.

It is possible to choose other types of block structures for financing of raising block-tariffs within a system limited by cost-recovery. An alternative version can potentially be more need based (provide more than 25 litres per person per day free of charge) and balance equity and desert when making a decision about which group of people that subsidize this system.

When decisions are made in South Africa some participate and others don't. I will try to find out if those that normally are considered disempowered participate in the decision processes.

4.5 Who are involved in decision processes?

As written in chapter 4.3 the national government does have the main responsibility for implementing water laws and water policies, but where it is possible the service provision, by-laws and regulations should be done by local government with necessary assistance from national and regional government.

Political processes in South Africa since 1994 are to a great extent based upon inclusion of the general public when decisions are made. This is both a right for the people but also a responsibility. I shall find out if the South African policy for basic water provision is following this idea of inclusion.

People's right and duty to participate

One of the fundamental principles of the constitution is that people should be able to participate in the political process when they are affected by a political decision. This gives governmental agencies a responsibility of public inclusion in different processes, but people themselves must also claim this right when it is necessary. Since 2001 *imbizo* has been practiced as a possible solution for participatory democracy and interactive governance. In the *imbizo* members of the executive cabinet, in all three spheres of government, regularly have direct contact with the public about implementation of different policies (RSA web1). This policy of inclusion has unfortunately proved difficult, and most of the people that participate in political processes come from the elite and not so much from the lower levels of society (Tapscott :1-2). One of the reasons why the poor don't participate in forums where they can influence politics is that they don't see any reward from their participation. Many of the poor have not either been trained in how to participate in democratic processes. Their way of participating in the apartheid era was to demonstrate in the streets (Tapscott :2), which is not the way that formal inclusion in processes are encouraged under the new regime.

Reaching out to the poor from a governmental point of view is also challenging. It is necessary to change minds of bureaucrats in order to include people in general and the poor special in decision processes. This is not an easy process (Tapscott :2) and does display the different mindsets that are found in South Africa.

Intergovernmental challenges

There are problems in the implementation of basic water to all South Africans. The policy of free basic water was decided at a national level but responsibility for implementation of the policy is with local government at the bottom level. Rights, obligations, policies and division of responsibility between local municipalities, district municipalities, provincial government and national government are not always clearly identified. Some places district municipalities do not feel that they have been part of the process and don't feel empowered to implement the policies. Local government often feel unprepared to handle distribution in a correct manner when personnel and economic aid from national level are withdrawing after the initial phase (SLSA 2003: 20).

Private sector cooperation

South Africa's government includes private participation in the water industry, especially in the water *service* sector. DWAF uses the private sector in the programme of providing basic water to the South African population, but the department sees challenges in handing over responsibility to a sector that is interested in own profit. When involving private sector it is important that the sector "...*contributes effectively to national priorities, in particular, to meeting the needs of the poor and unserved.*" (RSA 2002: 15).

I find a tendency that South African citizens often are classified as *consumers* in the process of providing necessary water, and that it is only a few, mainly from the elite, that are included when decisions are made. This tendency can be seen clearly when water services are being privatized. Privatization of water services creates a consumer-provider situation and not a situation where two parties participate to solve challenges of delivery of a basic necessity. Williams (2003) believes that citizens of South Africa to a great extent have become tools in technically oriented planning frameworks and not so much resources themselves and that the South African Constitution to a great extent is such a framework itself (Williams 2003).

Miller and Rawls debate the necessity of inclusion of the public in political processes. I will debate Miller's and Rawls' view of political inclusion in chapter 6. In 4.6 I look at who get sufficient water provision and who don't.

4.6 Who get their share of water? Who doesn't get sufficient provision?

South Africa is changing, especially when it comes to political and social rights. National legislation gives people rights to basic water provision and government has quite clear obligations when it comes to delivering this service. Water provision for all is a national goal, but do people get what they need?

I will present some statistics and numbers from South Africa and how access to water and sanitation hopefully has changed for the better over the last decade or so. After that I will debate the results from this chapter about South Africa.

How things were

It is estimated that in 1994 in South Africa about 12 million people did not have access to water within 200 metres from their homes, about 15, 9 million people were without clean, safe water, more the 17 million did not have piped water in their yards and more than 20 million people did not have access to adequate sanitation facilities (RSA 2002: 13). Former homelands were especially underdeveloped in terms of water infrastructure and basic sanitation. This highly divided country had one economy and infrastructure for the mainly white population and another economy for the rest. Reforms were necessary and RDP (Reconstruction and Development Programme) was launched in 1994. What has happened to water distribution since the new South African nation building started in 1994?

How things have changed

By March 2006 it was estimated that 36 million people in South Africa received free basic water. Out of these about 15.5 million people lived in households that had an income of less than R800 per month (RSA 2007: 600). Still, about 3.3 million people lacked access to clean, safe water and 15 million South Africans (32% of the population) did not have access to basic sanitation. Of those that lack access to basic sanitation about 151 660 still use the bucket system. But there is progress. From April to September 2006, 74 188 households were provided with sanitation and could stop using the bucket system. (RSA 2007: 600)

The medium-term targets of the Department of Water Affairs and Forestry is to supply one million people with basic water and 300 000 households with basic sanitation every year (RSA 2004, Mackay 2003:70-71). From 2003 to 2005 the number of people with access to basic water increased from 27 millions to about 32 millions (about 66% of the population) (www.gov.za). This is well beyond government's target of providing 1 million people with

basic water every year and also well beyond the UN Millennium Goal Target 10: to halve the proportion of people without safe drinking water by 2015.

Government at different levels admit that providing the remaining part of the population with basic water provision will happen at a relatively slower pace than what has been the case up until now. The reason for this is that those that still lack access to water infrastructure live in rural area with a widespread population that are difficult to reach (RSA 2007: 600). In 2007 the Government calculated that by 2008 there would not be a water supply backlog any longer and the backlog of sanitation would be solved by 2010 (www.gov.za).

How do the poor manage

The free basic water policy is 25 litres per person per day. Research shows that this is not sufficient provision for most people. Many South Africans that don't have access to more than this amount of water experience health related problems that could have been avoided if they only had better provision. Bond (2004) claims that the South African trend to follow what he calls an *international neo-liberal cost recovery and disconnection regime* continues to cause differences in South Africa after the apartheid era. Disconnections of water users have caused severe problems for those that have been affected. From the late 1990s through 2002 approximately 10 million people were cut off from water connections because they could not pay for their bills. The worst cholera outbreak recorded in South Africa is probably because of a decision in 2000 from a regional water board to cut water to people who could not pay their bills. This outbreak affected more than 150.000 people (Bond 2004), and sporadic outbreaks of cholera and other water-borne diseases, mainly due to poor sanitation and hygiene at household level, have continued to take place in the Eastern Cape and KwaZulu-Natal (RSA 2007: 599).

Obi et al (2006) has made a report on HIV and AIDS in South Africa. They claim that in terms of water supply in South Africa it is necessary to take HIV and AIDS into account as a national epidemic. People suffering from HIV and AIDS often have problems with dehydration and diarrhoea and need additional water supply. 25 litres per day for a person suffering from AIDS is far too little (*Obi et al 2006: 1*). This is in many ways confirmed by the 2003 South African Governmental report *Water is life sanitation is dignity*. This report confirms that better water and sanitation provision (more than 25 litres per person per day) is necessary especially for people that have HIV/AIDS or other diseases. Another recommendation from this report is that there must be a stronger focus on water services to

ensure that the poor have access to “...adequate, affordable and sustainable levels of defined basic water supply and sanitation services...” (RSA 2003:1).

In South Africa it seems to be accepted that 25 litres of water per person per day is not sufficient water provision for a healthy person, and persons suffering from a disease such as HIV/AIDS need access to even more water than a healthy person needs. It is commonly accepted that it is necessary to increase the amount of free basic water to those that really need this but cannot afford to pay for it, but still government doesn't supply people with this necessary water. This happens at the same time as TB and HIV/AIDS are spreading and a higher and higher percentage of the population is without job and has difficulties paying for necessary provision.

That 25 litres of free basic water is not sufficient provision is currently being tried as unconstitutional in the National High Court, Witwatersrand Branch. It is a group of five poor residents in Phiri, Soweto that have raised the case against Johannesburg Water. The residents in Phiri have raised the case with assistance from the Coalition Against Water Privatisation and are supported by the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand and the Freedom of Expression Institute (FXI) (Wits Law School web). The result from this case will hopefully display which rights South Africans have to basic water provision, and if these rights are bound to real needs or if they are bound to calculations made by bureaucrats and politicians that probably don't have difficulties with water provision themselves.

South Africa's water provision

South African legislation, and especially the South African Constitution, gives the people of South Africa many rights to basic water provision. The Bill of Rights, paragraph 27 reads: “*Everyone has the right to have access to sufficient food and water*” (RSA 1996). Access to sufficient water is a right that people have, but the constitution doesn't say how you can claim this right and how much of it you should access. This is found in other laws and policies, but there are different interpretations about how much sufficient water is.

Both Miller and Rawls are concerned about provision of basic goods according to need and equality. Miller believes that provision should be based on need for those that cannot pay for basic goods, while Rawls believes that we need to have a minimum standard for those that are worst off. Provision based on equality is something that you should have as a member of a political society.

Both need and equality is being used as basic ideas for implementation of the *Free Basic Water Policy*. Two of the disadvantages with the *Free Basic Water Policy* are 1) that the 6 kilolitres per household per month or the 25 litres per person per day is not sufficient provision and 2) that the whole system for water provision is based on cost-recovery. Since 1 is not covered and people don't get sufficient provision I will say that poor people don't get water provision according to basic needs. If the poor don't get basic needs covered I will say that the system is not based on equality either. Cost-recovery policies does not necessarily compromise social justice in developed countries, but such a policy is difficult to implement in a country where a large proportion of the population cannot pay for basic water services (Schulz).

When South Africa changed from RDP to GEAR (Growth, Employment and Redistribution) in 1996 this was much because of pressure from the international community to create more market oriented policies (Adelzadeh: 1). The change from RDP to GEAR also affected the water policy to be more market oriented. This has made water provision more based on what Miller calls desert and makes water more of a commodity than a basic human right. This has attracted private investors to the water sector. Both Miller's and Rawls' theories of social justice see foreign institutions and investors as a challenge. National institutions will lose control over policies when foreign institutions promote their own policies and there is no longer an easily identifiable agency that is responsible for water provision.

I will continue the debate about basic water provision in South Africa in chapter 6, where I will also find out if South Africa complies with social justice or not.

In chapter 5 I will look at water distribution at the local level and use Cape Town as an example. One reason for presenting the local level is that both international and national legislation prefer to use local level for implementation of policies. Another reason is because it is the local level that interacts with the public and therefore should have good knowledge of what people in general need. The reason for using Cape Town is of practical reasons since I have knowledge about the city, but also due to the fact that the Cape Town has managed to give its inhabitants an extended right to necessary water provision that is not found in the national policies for water distribution.

5 How Cape Town handles water challenges.

The local level

Cape Town is a world known tourist destination and a major city at the end of the African continent. This city has in many ways at least two different economies. Many Cape Townians are in a financial situation where they can live a life equal to that of western middle and upper class. They are also in the situation where they in general can use the amount of water that they desire.

One of the other sides of Cape Town is difficult to ignore, but not so attractive for many people. The Cape Townian townships that are found at different places in the City of Cape Town cover a major proportion of the city's population. People living in the townships are in general not well off and many find it too expensive to buy even the simplest of necessities. The people that probably face the greatest challenges are those living in informal settlements. Informal settlements are areas consisting mainly of simple shacks that the government hasn't declared as formal areas. As these areas are informal few municipal services are offered, sometimes not even water and sanitation.

I will mainly look at the water provision for the poor in Cape Town and try to compare their provision to those that have sufficient finance to pay for necessary water provision. Local government seems to be very aware of the conditions under which the poor in the city are living under and the challenge is to find a proper solution to this problem and also to implement this solution.

In start in 5.1 with a presentation of Cape Town, the city's political system, the population, the water infrastructure and Cape Town's townships. In 5.2 I look at how local government solves basic water provision in Cape Town, in 5.3 I shall continue the debate about who participates when policies for water provision are made and in 5.4 I compare the solution that they have in Cape Town with the solution that is in the rest of South Africa.

5.1 About Cape Town

South Africa is positioned at the southern tip of Africa. On the southwestern corner of South Africa you find the province Western Cape, and at the southwestern corner of the Western Cape you find Cape Town. The city covers a total area of approximately 2474 km². It was here that Dutch East Indian Company arrived in 1652. Cape Town is the second largest city in South Africa, behind Johannesburg (CCT 2007).

Cape Town is in many ways not one single city, but a conglomerate of villages with enormous differences that separate one citizen enormously from another. When people move themselves from one part of the town to another they tend to experience the other part just as tourists (Williams 2003: 2-3).

Brief history of Cape Town

Cape Town Municipality was formed in 1840, and in 1905 it was declared the legislative capital of the newly formed Union of South Africa, something that it still is. With the introduction of the apartheid regime in 1961 the city got divided into different areas, and most of central Cape Town was declared “White Group Areas”. This has made central Cape Town a highly white community with coloured, Indian and black population living outside of the city centre (CCT 2007). The construction of Cape Town, with the white population in the main centre and people of other origin in the surrounding areas, providing labour force for the white population, was much in accordance with the idea of an apartheid city.

Population and development

It is estimated that about 3.2 million people live in Cape Town in about 847 000 households (CCT 2007: 21). Cape Town experiences a lot of migration, especially from the Eastern Cape (where the former homelands Ciskai and Transkai are situated). Both population growth and immigration growth is relatively declining. People dying from diseases related to HIV/AIDS are contributing to this decline (CCT 2007: 21).

The highest population density in Cape Town is in an area called the Cape Flats. This is also where many of the informal settlements are found. Due to especially the topography, most of the Cape Flats is not suitable for major populations (CCT 2007). Former policies of forced removal of especially African population from central areas to the town’s periphery have increased the geographical differences in living conditions in Cape Town today.

Cape Town is developing in some areas and regressing in other areas. Poverty is rising (about 38% live below or marginally above the household poverty line in 2005 compared to 25% in 1996), HIV prevalence has increased by about 1000% per cent over the last decade, crime is increasing (especially crime related to drugs) and backlog in housing is increasing from about 150 000 in 1998 to about 265 000 (other figures go as high as 400 000) in 2005. The city’s challenge is not absence of economic growth, but how to ensure that this growth reaches the whole population and not only the already empowered ones. (CCT 2007: 41). Of

the improvements that have reached also the poor are better provision of basic services such as water, waste and electricity (CCT 2007).

Cape Town is a multi-cultured society with citizens that don't interact much across cultural and racial barriers. This lack of unity and homogeneity is a challenge in terms of finding a social justice.

5.1.1 Local government in Cape Town

The City of Cape Town (CCT), like the rest of South Africa, has undergone changes in political structure since elections in 1994 and has a guarantee as local government in the constitution. § 152 and §153 of The South African constitution clearly states that local government must be a democratic and accountable government for its community, that there is sustainable provision of services to its community and that there is a safe and healthy environment. Local government must also strive to “... *encourage the involvement of communities and the community organizations in the matters of local government.*” (RSA 1996). Local government has an important role in the transformation of South African institutions and national policies as local government is much involved with people at the grassroots level. Through budgets and planning basic needs have a priority (RSA 1996). National and local institutions and policies have been formulated with people centred development in mind to promote “...*democratic practices such as equality, transparency, accountability and respect for the rights of citizens, especially ordinary people: the poor, homeless and destitute*” (Williams 2003: 8).

Cape Town's local government is since 2006 lead by executive mayor Helen Zille from the Democratic Alliance of which she is also the leader. Cape Town is the only city in South Africa that is not lead by the ANC.

Mayor Zille and the DA have disputed with the ANC about division of power between local level and national level. Zille claims that the ANC is a threat to political power in South Africa as it tries to implement legislation that takes away power from the local level and places it at national level (where ANC has the political power). Her belief is that this reduces local government to be only a service provider and an organ to implement national decisions, instead of an organ to provide alternative services (Mail&Guardian, June 15, 2007: *Zille questions govt plans to centralise public service*).

5.1.2 Water and water infrastructure

Cape Town has in general little rain and is situated in a small area of the Western Cape that has winter rain. Water demands are highest in the dry summer, which makes provision of bulk water complicated. The solution is to store drinkable water from the winter rain to be used during the rest of the year (Joubert et al. 2003, CCT 2002, WSDP).

Most of water delivery to City of Cape Town comes from rivers and dams outside of CCT, from the mountainsides to the east, and the last of the major dams to be built around the Cape Town area (Berg River Project) is currently being finished (RSA 2007: 607).

The general water and sewerage infrastructure in Cape Town is in poor condition and there are problems with the pressure on the pipes. More and more pipes burst, causing leaks. Maintenance of existing infrastructure that has been neglected for many years and providing new infrastructure for new houses have proved too expensive for existing budgets (CCT 2007:20-21). Although the infrastructure is in poor condition all formal households do get adequate water provision and water that is fully treated. All formally developed areas of Cape Town have in general a flush toilet and in-house or on-site water connection (CCT 2007).

Water consumption in Cape Town

The trend over the last decades is that water consumption in Cape Town is increasing. There was a peak in consumption in 2003/2004, but with restrictions applied consumption has decreased the following years. Estimates of potential economic growth and population growth predict a water demand growth in the city between 2.7% and 3.7% per annum (CCT 2007: 85). The City of Cape Town has set up strategy and a program to reduce the general consumption. Water pricing is one of the most important instruments to achieve this.

5.1.3 Cape Town's townships/slums, informal settlements and their water provision

Geographical areas with mainly white population are managing well in terms of water provision and necessary sanitation. It is more important to look at how the poorer areas are managing, especially the informal settlements.

Informal settlements are growing in contradiction to local and national policies to provide people with necessary housing. 23 000 families lived in informal settlements in 1993 and approximately 115 000 families in 2006 (CCT 2007: 41). People living in informal settlements have problems with jobs, health and are in general not participating in the economic boom that Cape Town is experiencing (CCT 2007: 42). Those living in informal

settlements generally rely on shared sanitation services. The basic level of service that they receive is defined as “...suitable clean toilet types shared at less than 5 households/toilet and water taps closer than 200m and shared by less than 25 households/tap.”(CCT 2007: 18). Sanitation is provided without charge to these areas. The sanitation backlog in informal settlements in Cape Town is to be eradicated by 2012, behind national schedule (CCT 2007: 20, 70).

5.2 How local government solves basic water provision in Cape Town

Mayor Zille (DA) announced in March 2007 that prices for water and sanitation would be increased by 19% due to necessary investments in the water sector. Without the improvements Cape Town would fall further back in provision of water and sanitation in the future. The policy of implementation should affect as little as possible those without fixed income or with a low income. Especially the disabled and pensioners are not supposed to have higher expenses because of raising tariffs (Mail & Guardian, March 28 2007: *Zille says time to bite bullet on Cape Town rates*).

Today’s policy for provision of necessary basic water and sanitation is an extended version of the national policy. The free basic water service in Cape Town is 6 kl per consumer (household) per month of water supply. In addition does CCT provide transportation of 4.2 kl of sewage free of charge for those that are connected to the sewerage. Those who are not connected to the sewerage will have latrines emptied free of charge. In addition the city allows for a R20 grant to reduce monthly expenses for about 220 000 households that qualify for it (CCT 2007: 22).

At the start of 2006 CCT considered to implement pre-paid water metres in many poor areas in Cape Town. Gauteng was at the time already rolling out pre-paid metres in many, especially poor areas. CCT decided not to follow this policy. The then-mayor Nomaindia Mfeketo (ANC) announced that the reason for the decision was that: *"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."* (<http://wwwserver.law.wits.ac.za/cals/phiri/BondaffidavitFinal.pdf>)

This statement that basic water is crucial for the population reflects the intentions that are found in international treaties and national legislation in South Africa, that basic provision of water is necessary, and that lack of personal finance should not affect this basic provision.

New pricing regime

The pricing regime used by local government in the water service sector should reflect local government's political intentions. The following tariffs, with a general increase of 19% for water tariffs, were proposed in the WSDP 2007/2008 (approved in May 2007):

TARIFFS FOR 2006/07			PROPOSED TARIFFS PER KL VAT EXCLUSIVE 2007 / 2008	
Domestic Full Water that is used predominantly for domestic purposes and supplied to single residential properties.	0-6	0	0-6	0
	+6-12	R2.56	+6-12	R 3.05
	+12 – 20	R5.46	+12 – 20	R 6.50
	+20 – 40	R8.08	+20 – 40	R 9.63
	+40 – 50	R9.98	+40 – 50	R 11.90
	+50	R13.17	+50	R 15.70

VOLUMETRIC TARIFFS	TARIFFS 2006 / 2007		PROPOSED TARIFFS 2007 / 2008	
Domestic Full- Single residential properties. 70% of water consumption to a maximum of 28 Kl of sewerage per month (70% of 40 Kl of water equals 28 Kl of sewerage)	0 – 4.2	0	0 – 4.2	0
	+4.2 – 8.4	R1.68	+4.2 – 8.4	R 3.78
	+8.4 – 28	R4.10	+8.4 – 28	R 9.23

(CCT 2007: 200)

With the new pricing regime a household can get about 10 kl of treated sewage and about 10 kl of water for drinking, cooking and other sanitation purposes when the free basic water, the free basic sanitation and the 20 rand grant for indigent households have been accounted for (CCT 2007). One of the downsides to this calculation is that it doesn't take into account that the 20 rand grant is also intended to pay for other services such as electricity.

19% increase in tariffs will in terms of rand per kilolitre affect those that use the most water hardest, and under a cost-recovery regime will those that consume most water normally increase their subsidization of water provision for those that use little water, if consumption is held constant for all consumers. The calculations are a bit more complicated than this as the pricing mechanism is also a tool to try to make people use less water than they already do. The effect of this pricing system must also take into consideration that the poor are getting

poorer while the rich are getting richer. That means that many of the poor have difficulties to pay for even the slightest increase in tariffs, while it doesn't affect the major consumers that experience a higher income.

The recommendations from the WSDP 2007/2008 for future plans are to keep to the free basic supplies and the 20 rand grants for those that *cannot* pay for necessary provision. Another recommendation in the WSDP is that not all consumers in the future should be granted the free basic water and the free basic sewage treatment (CCT 2007). My interpretation of this recommendation is that those who can afford to pay for the free basic water and the free basic sanitation will have to pay for this in the future. This may seem to be a change from equity in basic provision to a mix of need based and desert based provision.

HIV/AIDS is making a tremendous impact on South Africa. Cape Town's HIV/AIDS figures are lower than the national average, but some Cape Towninan townships have prevalence high over national average. The impact of the disease is monitored and local government is considering adjustments to the infrastructure requirements that these people have as health problems often create a demand for a higher water consumption (CCT 2007: 58).

The policy under the new mayor Zille seems to have changed some from that of the former mayor Mfeketo. The new policy takes to a greater extent into consideration the cost of developing and maintaining water infrastructure and that it is the consumers that have to pay for this infrastructure.

Conservation policies in times of scarcity

After two consecutive years with little rain in the Western Cape the Department of Water Affairs and Forestry imposed water restrictions on bulk water supplied to Cape Town starting from October 2004. The City of Cape Town was informed that water usage from the major dams supplying Cape Town would be reduced by 20% due to low level of water in the dams. This level was well below average and Cape Town was about to enter the dry summer with reduction in water consumption (City of Cape Town 2004).

One of the measures that local government implemented to solve these shortages was to change the existing tariff blocks for the necessary time period (CCT 2004):

Consumption block	Consumption description	Old tariff R/kl	New tariff R/kl
1	0 kl – 6 kl	R 0.00	R 0.00
2	+ 6 kl – 12 kl	R 2.15	R 2.32

3	+ 12 kl – 20 kl	R 4.30	R 6.15
4	+ 20 kl – 40 kl	R 5.48	R 10.41
5	+ 40 kl – 60 kl	R 6.67	R 13.34
6	60 kl +	R 8.60	R 17.20

This displays that those that use much water (60 +) had to spend a proportionally larger sum of money on water than those that used little (20 -). Those households that used less than 6 kl of water per month would not be affected by the changes. Use of up to 20 kl of water per household per month would give an increase of 16 rand (34%) per month, while a household that consumed 60 litres would pay about 248 rands more, an increase of about 53%. The purpose for the steeply raising block tariffs for domestic use was to ensure affordability for the poor and at the same time force people to reduce water consumption (City of Cape Town 2004). The pricing strategy seemed to function according to plans as consumption fell with about 20%. After the period of water restrictions, water prices were adjusted back to normal, but consumption was still kept at 10% lower than before restrictions were started.

One way to distribute knowledge about health, sanitation and about water in general is through the “Hlonipha Amanzi” (*Respect Water*) Programme. This is an information campaign that is run primarily in the informal settlements. When sanitation and basic water provision is put into function in the settlements people are informed about the scarcity and the necessity of water and that it must not be wasted. The programme also includes workshops where people learn the basics of sanitation such as how to wash hands properly. Those participating will get certificates about their knowledge and also a bucket and soap. Some of the focus for these campaigns is also on how people function in a society and how common resources are used. The campaign started in 2006 and will continue in the future (CCT 2007: 109, 184-185).

5.3 Who participates in local government and local decisions?

Before the early 1990s local government was just the extended central government from the provincial level and had no protection in the constitution. This did not make room for much community participation since this was not promoted. As mentioned in former chapters there have been changes to this policy and the constitution of 1996 and different

national water acts promote public participation (RSA 1996, RSA 1998). So how does this policy of inclusion manifest itself in Cape Town?

There is a clear trend that policies of inclusion of the poor and the disempowered don't function as intended. People in the townships know how to participate in manifestations, but they don't know how to participate in an inclusive political system. People interact with local government mainly through bureaucrats and when they gather together they do this in demonstrations, and not so much as citizens in a participatory and inclusive democracy (Tapscott). The tendencies in Cape Town are about the same as those that are found in the rest of South Africa.

In Cape Town's water vision from 2005 (CCT 2005 web1) and in the WSDP for 2007/2008 people in general are included but mainly as consumers and not much as inclusive partners for visions or service delivery. The "*Hlonipha Amanzi*" programme encourages somewhat to community participation and inclusion in local water decisions, but this is only briefly mentioned in the WSDP. The WSDP in general think about people as consumers, not as persons taking part of a political process about their own lives and interests.

Surveys conducted in Cape Town since 2002 demonstrate this. Questions asked are almost entirely about services provided and people's considerations of these services. Questions about people's awareness about water conservation and use are also included. The results from the surveys are used by local government to improve water services in Cape Town. This process is important so that governmental official and bureaucrats have knowledge about needs, especially about the needs in the informal settlements. What these surveys don't ask about is people's participation in decision forums about water distribution. Knowledge about if and how people participate in political processes concerning water distribution is important. This can help to involve the poor and disempowered and make them responsible for policies and also let them have influence on policies that affect their basic living conditions and also their existence.

I believe that the general tendency is that people from most parts of society are being heard about their need for necessary provision of water, but that only people from the elite participate in the decision process. What this has to say in terms of social justice will depend upon which perspective you look at the situation from. Rawls might say that it is fair as long as people participate to make the social contract in the initial situation when they decide upon water policies. For Miller it is necessary that people's opinions be heard, which they actually are in Cape Town, but it is also necessary that these beliefs are added to laws and policies.

I want to continue to see how good basic water provision in Cape Town really is.

5.4 How good is the Cape Townian solution?

Cape Town has managed to provide all formal households with basic water and sanitation. The former city's mayor Mfeketo managed to display what is often asked for, but not so often delivered in the international water sector, and that is leadership. She displayed leadership when she decided that prepaid water metres would not be installed in the city. Her argument was that basic water is so vital for people that one cannot refuse people this access, even if they cannot pay. Mayor Mfeketo was willing to implement the fundamental intention behind water legislation in South Africa that people have a *right* to basic water provision. Since 6 kl of water per household per month is not sufficient provision she was not willing to let people be cut off from the resource even if they use more than this and cannot pay for this additional use. Cape Town's policy of free basic sanitation shows that the city is willing to take even further steps for necessary water provision to the poor.

Water provision in Cape Town must be seen in a social context within the city. Differences in terms of finance, jobs and access to good health care have increased since 1994. There is an increase in people without jobs and while the amount of people that are poor is quite stable. This happens at the same time as many of the rich get richer.

Water provision beyond the 6 kl of free basic water and the 4.2 kl of basic sewage is treated mainly as an economic good but the raising block tariffs policy is supposed to create a form of equity to the distribution and force people not to use more than necessary. The 19% price increase for water services in Cape Town is affecting the major consumers most in terms of rands per kl of water. But since the rich are getting richer and those without income are becoming more, this increase may be hardest to carry for those that are worst off and who couldn't afford to pay even before the price increase.

Provision of basic water and basic sanitation is in general better in Cape Town than in the rest of South Africa. It will be important to see if local government in Cape Town actually do something with the intentions of providing the poor in general and those that are poor *and* sick in special with better water provision. If local government manages this then Cape Town will probably have a better water policy for domestic consumers than maybe all other South African municipalities. This does not say if the Cape Townian solution complies with social justice or not. I will try to answer this in chapter 6.

6 Justice in basic water distribution

I will use chapter 6 to end this thesis. I will try, by using social justice as defined mainly by Rawls and Miller and the examples in the previous chapters, to see if there is social justice in water distribution.

In **6.1** I go back to chapter 2 and briefly present the essential parts of social justice as presented by Rawls and Mille. In **6.2** I look at the possibility of an international social justice and how the international community make impact on single nations. In **6.3** I debate the challenges to social justice in water distribution in South Africa and Cape Town and make my conclusion about what sort of justice there is in water distribution.

6.1 A brief return to theories of social justice

I have presented justice in water distribution by using two theories of social justice: *Principles of social justice* by David Miller and *Justice as fairness* by John Rawls.

The most important parts of *Justice of fairness* that I have been using in this thesis are:

- 1) The principle that would be accepted in the initial situation where the social contract is made: That all social values should “...be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.” (Rawls 1972: pp 62). Society can accept that those that are well off can have a better life situation if the life situation of those that are worst off is also improved, and it is unjust if those that are worst off are not included when society try to develop. People will stay loyal to the social contract when they exit the initial situation.
- 2) The *maximin principle* that says that people will demand a basic guarantee in society in case they themselves happen to end up in the worst off situation.

Rawls have different constraints to his theory. One constraint is time. Injustice today is tolerable if conditions for society are improved in the future. Another constraint to the theory is that it takes place in a well-organized society.

Justice as fairness is, according to Rawls, a very abstract contract theory that people will accept intuitively in the initial situation (Rawls 1972: Preface). The theory is not very sensitive to public opinion on an everyday basis; it is the social contract that everybody agrees upon in the initial situation that people will accept and stay loyal to when they exit the initial situation.

Miller's *Principles of Social Justice* claims that social scientists (among them Rawls) create theories that are too abstract for people to understand. Miller's social justice is sensitive to people's opinion and looks at the context that social justice is supposed to be implemented in.

Miller has three principles for a just society. These are principles of:

- 1) Need (for those that cannot pay for themselves in a society)
- 2) Equality (In a bounded society, like a nation state, people should have rights based on equality)
- 3) Desert (people should normally get provision according to what they can afford to pay for)

Both Miller and Rawls have some common premises to social justice:

- 1) A bounded society (normally a nation state).
- 2) Major social institutions (especially a country's constitution and basic economic and social institutions). These institutions have to be just and balance the different claims that people have to advance in the social life.

Miller has a third premise which is an agency (normally a national government) that is capable to implement changes. I find this implicit in Rawls' *Justice as fairness*.

Miller and Rawls are mainly concerned about the people that are worst off in a society, and that improvements that are made in a society must be to the benefit of the worst off before the conditions for other people, that are better off, are improved. Social justice is not only about benefits in a society, but also about who are to carry which burdens.

6.2 Does everybody get necessary water? International social justice and international influence

Social justice in an international perspective

Everybody does not get a sufficient share of water. People throughout the world die from lack of water and from drinking unclean water. Most people in developed countries have access to clean, basic water while more than 1 billion people throughout the world don't have right to clean water, and more than 1,8 million children die every year from diseases directly related to unclean water in other parts of the world (UNDP 2006).

If we are not willing to take international responsibility and provide people with necessary water we will continue to follow the uneven path of provision that we have started a long time ago. McNeill (2001) looks back at the period from 1880 at how differences have increased between the comparatively rich, that have managed to pay for clean water and proper sanitation and have managed to increase their wealth and also have become healthier, and those that have not been able to pay for this, and have become poorer and sicker. These differences will continue to grow if we don't manage to fill this gap (McNeill 2001: 128). Can this gap be filled by using social justice as described by Rawls and Miller?

It is not so easy to see a bounded society for the world, although an organization like the United Nations is trying to promote inclusion at many levels. There are international institutions such as the World Bank that work within a framework constructed by the international community. These institutions have *impact* upon different national policies, but it is the sovereign state that is *responsible* for its geographical area. I believe that this doesn't correspond to the premises for social justice as described by neither Miller nor Rawls.

Rawls' maximin principle seems to correspond to some of the basic ideas found in international legislation and in international water policies. Some sort of minimum provision is often included when laws and policies are made, and much focus is on inclusion of the disadvantaged in decision process.

Miller believes that we can extend the *idea* of social justice to an international level, although we don't have the same instruments for implementation of social justice as we have at national level. We can understand that it is necessary to promote better living conditions for the worst off when we make international laws and help with finance for development. In terms of water provision we can make sure that we help to construct necessary infrastructure and political and economic structures to the benefit of those that don't receive basic water, before we make demands about for example cost-recovery. We can help to make sure that provision is delivered according to need, and when basic needs are covered we can raise demands about provision according to desert, or how much money people are willing to pay for a service or a good.

Basic provision is often challenged by the idea of water as a scarce, economic good. Water projects are sometimes stopped because of cost-recovery demands and demands that different projects should not be subsidized. This blocks development of water infrastructure and development of basic provision. The conflicting interpretations of international laws and policies between those that believe that water is primarily a basic human right and those that

treat water mainly as an economic good make it difficult to follow the idea of social justice in the international community.

“The denial of equal liberty can be defended only if it is necessary to raise the level of civilization so that in due course these freedoms can be enjoyed” (Rawls 1972: 152). Many of us deny other people the liberty that we ourselves have been granted. For that reason we should promote equal liberty in the work we do, so that we can give people better freedoms in the future. We don’t and probably won’t have international social justice as described by Miller and Rawls, but we can promote the ideas that are found in social justice to give other people the freedoms we give ourselves.

Influence from the outside

One of the reasons for including a chapter about the international community in this thesis was to see which impact the international community has on a country, and how national water provision and social justice is affected by this impact. Both Miller and Rawls are worried about the influence that the outside has on social justice in a country. The international community is typically “the outside”.

International institutions and different countries have demands when they give financial aid. These demands often affect policies in the receiving countries, and makes national governments and citizens give away some control over own national policies. One of the international policies that probably hampers development of water provision the most is the cost-recovery policy that is often found implicit in market oriented neo-liberal policies. There are countries that receive external financial aid that have had to change their national policies and adjust to demands of market oriented policies from the international community. South Africa is one such country. In 1996 South Africa changed national development policies from RDP to GEAR. Much of the reason for this change in politics was due to international demand that South Africa should keep to more market oriented neo-liberal policies (Adelzadeh, 1996). The international neo-liberal regime has to a great extent made impact on South Africa’s water policies. This shows that the international community has made influence on the social justice that South Africa try to implement.

In 6.3 I will try to find out if South Africa is a just society in handling water distribution.

6.3 Is there social justice in South African water distribution?

South Africa is trying to provide its citizens with necessary basic water. This has turned out partly successful. I will briefly go through the most important observations that I have found about basic water provision in South Africa and Cape Town. Then I compare these observations with criteria for social justice before I end up with the conclusion that I can draw about social justice in South Africa and Cape Town.

Important observations about South Africa

Maybe the most important political, judicial and social instrument in South Africa is the constitution. For water provision South Africa also have two other important acts: *The Water Services Act of 1997* and *National Water Act of 1998*. The legislative framework that these three acts make up grants people necessary water provision. It also tells who has the responsibility of providing people with basic water (the state) and that implementation should be done at the lowest possible level (local government) with participation from citizens (especially women, the poor and the disadvantaged).

There are other laws and policies that also grant people basic water provision of which *The Free Basic Water Policy* is maybe the most important policy. The minimum limit to free basic water is at 25 litres per person per day. *The Free Basic Water Policy* is supposed to be fully implemented in South Africa by 2008. As of 31 October 2007 about 76% of the total population and about 69% of the poor population have access to *Free Basic Water* (DWAf web2).

Although South Africans have rights and guarantees in different laws to necessary water provision not all people (especially the poor) get sufficient provision. There are two main reasons for this: 1) Not all South Africans have yet access to necessary basic water provision because the infrastructure is not available and 2) 25 litres of water per person per day is too little water, and some cannot afford to pay to buy more water.

Different South African legislation and policies are conflicting when it comes to provision of necessary water. It is commonly accepted in the country, also by ministers and bureaucrats in DWAf, that 25 litres per person per day is too little water to live a healthy life. People that are already sick need even more. Still, the 25 litres is what DWAf sets as a minimum standard. This makes it necessary for poor people to buy water. South Africa is a country where the unemployment rate is raising and where many people are seriously ill because of diseases such as HIV/AIDS and TB. Many people are at the same time in the situation where they cannot access sufficient basic water. That people don't get sufficient

provision with the 25 litres of water per day is currently tried as unconstitutional in South Africa High Court.

Among others Patrick Bond claims that the South African government since the introduction of GEAR in 1996 is promoting neo-liberal policies with privatization and cost-recovery implicit, influenced by international institutions and donor countries. With these policies water is treated mainly as a commodity and not so much as a human right. After the introduction of some of these new water policies many people have experienced to have their water cut off by water authorities. The result of this has been an increase in different diseases and one of South Africa's greatest cholera outbreaks in 2000.

The main economic and water conservation instrument that South Africa uses for domestic water regulation is raising block tariffs based on cost-recovery. The raising block tariffs have in some municipalities had higher negative impact on the consumers that initially use very little water than on the major consumers. The cost-recovery policy doesn't in general allow for external subsidization, even if this would be to the benefit of the worst-off in a society.

South Africa is at steady course to achieve the Millennium Goals that target basic water and basic sanitation, but is in general not experiencing reduced poverty. High poverty rate and regimes of cost-recovery and privatization of basic goods are difficult to combine.

From the local level –Cape Town

Cape Town has a level of implementation of basic water provision that is beyond that of South Africa in general. All formal households in Cape Town have free basic water and also free basic sanitation (together these add up to a total of 10.2 kl of water per month per household). Although there was a debate about it, the former ANC government in Cape Town decided not to install pre-paid water metres in the city. The reason why mayor Mfeketo made this decision was the social problems that installation of pre-paid water metres would presumably cause since many people cannot pay for sufficient provision.

Examples from policies implemented when it has been necessary to conserve water show that it is the major consumers that have to cut the most in water consumption, and also have to pay more for their high consumption, than what the poor consumers have to.

The new DA government in Cape Town is concerned that policies of the past have neglected the economic costs that water infrastructure and provision have, and challenges the old policies with increases water tariffs. Some disempowered groups that cannot pay for this

increase in tariffs will not have to pay more for water. The new regime seems to treat water more as a socio-economic good than what the former regime did.

Cape Town is, like the rest of South Africa, challenged by rising unemployment, poverty and people with health related problems. This is highly visible among the people that are worst off in the city. The elite, on the other hand, experiences economic growth and better living conditions. Neo-liberal policies based on the ability to pay are helping to maintain and maybe increase differences in Cape Town.

One of the reasons for exploring water provision in Cape Town was to see how people participate in decisions at the local level, where policies are supposed to be implemented. It seems that many people are asked about their opinions on water service, but few are included in the process of decisions. This exclusion leaves it to politicians and bureaucrats to make and implement national policies at local level. There seems to be a tendency in Cape Town and all over South Africa that people in general are regarded as consumers with consumer rights and that they don't participate as citizens with the obligations and possibilities this gives.

Social justice according to Rawls?

John Rawls' *Justice as fairness* is a very abstract theory of social justice. Rawls is not so concerned about what people believe to be right, and he is not willing to accept that the conception of justice can be changed based on changes in people's minds on an everyday basis. What is just in a society is decided in the fair initial situation where people come together and make a contract that they stay loyal to when they exit the initial situation. I believe that the South African Constitution to a great extent was made with this idea in mind. The constitution drafting process was inclusive and open to all South Africans, and the work that was done within the Constitutional Assembly was done at a multiparty platform. There were of course many conflicting beliefs and many issues that people did not agree upon, but it was a process in which all South Africans could participate (CCS web). In the *initial situation* everybody is supposed to agree upon a common, social contract. There was no consensus to the South African Constitution, but inclusion in the process was important. Many political scientists have challenged Rawls' initial situation and his social contract. One of the objections is that it will not be possible for all members of a society to agree upon the same contract, as Rawls believes (Hansson 1993). The parallel that I see between Rawls' initial situation and the South African constitution making is that both try to create a platform that is supposed to include as many as possible, and that people stay loyal to after the contract has been made.

Rawls' maximin principle can be found in South Africa's attempt to implement basic water provision in the constitution, in the National Water Act, in the Water Services Act and in the Free Basic Water Policy. A challenge is to find out how much water basic provision should be and if South African laws and policies actually encourage provision of the necessary quantum.

I believe that the raising block tariffs in South Africa can be used to regulate water provision according to both the maximin principle and according to equality; it all depends on how government uses the raising block tariffs. In the system that is being used today the maximin principle is present as the first 6 kl of water is free of charge, and equality is present as all households are granted these 6 kl. The challenge is that for many poor households these 6 kl is not enough, and the block structure with the raising block tariffs have in many municipalities made the extra necessary kilolitres of water more expensive today than before the implementation. The basic provision is too little to provide a safety net for the poorest, and equality seems to be dependent on a household's ability to pay for the extra necessary litres of water.

Cape Town is providing people with better provision than the minimum standard which is set by national government, and it may be possible to say that Cape Town has a safety net that is working for many poor people, but maybe not for the worst off. Examples show that people suffering from different illnesses need more water than the prescribed local minimum, and that they don't get their basic needs covered. That Cape Town decided not to install pre-paid metres in the city display that the city tries to make sure that people have their basic social needs covered, even if people cannot pay. The policy of non-payment implemented by the former local government seems to be challenged by the present local government and can be a step away from distribution based on need to a system based on financial capability.

Most of the poorest citizens in Cape Town seem to have their basic needs for water covered and it may be possible to say that the city tries to comply with Rawls' maximin principle. I find Rawls' principle of equality more difficult to find in Cape Town. Most of the water provision above the minimum baseline is based upon people's capability to pay for provision. The differences between people in Cape Town when it comes to their financial situation are tremendous. Those that can pay get what they want, and those that cannot pay get the basic provision. I believe equality in water provision is challenged in Cape Town.

The basic institutions in South Africa are good, at least on paper. National legislation after the apartheid era, and especially the constitution, gives the population basic social rights.

The bounded national society is more complex. South Africa is a highly divided society in terms of culture and peoples and it is necessary to bargain over control and power. I am not sure how South Africa as a divided society affects water provision. What is visible is that some people have finance and others don't. This makes some people capable of buying water as a standard commodity while others have to get water based on need.

When Rawls tries to see if a society complies with social justice or not he finds it important to find out if the society is well organized and if the society is developing to become a just society. Paragraph 27.2 in the South African constitution writes that rights given to among others water provision must be seen as a progressive realisation (RSA 1996). Since South Africa is considering an increase in the free basic water provision to about 50 litres per person per day, one can say that South Africa has a progressive realisation in basic water provision. I believe that South Africa is already capable to achieve this and that it is unjust to wait. I believe that South Africa is sufficiently organized to be able to provide people with sufficient basic water. I will conclude if South Africa is developing to become a just society or not after I have presented social justice according to David Miller.

Social justice according to Miller?

Both Miller and Rawls write about the same bounded society, the same major institutions and the same agency that must be capable to implement policies. I therefore make about the same conclusions about these principles when it comes to Miller's theory as I did when I presented Rawls.

Miller is concerned about what *people* believe is right and what is wrong. Miller himself is quite sure that Rawls is wrong when he doesn't include people's beliefs of justice in *Justice as fairness*, a theory that is too abstract to be understood by most people. People's opinions and beliefs about water services in South Africa are collected and written down by national and local government. It is uncertain if these opinions and beliefs are considered when policies are made since few poor people participate in forums where and when decisions are made. This creates difficulties for Miller's theory because policies will not be just if people in general are not properly heard about what they believe is just.

When the poor don't have the burden it is to participate in decision processes it is not that easy for them to get the benefits that they should have. Miller believes that social justice is about the advantages and *obligations* that are distributed equally in society when we participate in the nation state as citizens. The relation that people have to government in South Africa is heading more and more in the direction where people are customers and where

“...citizens can hold public servants to account for the services which they receive” (Tapscott: 3). This is a step away from basic provision on the premises for the poorest, which is often distribution according to need. We are more in what Miller believes to be an instrumental relation where goods are distribution according to desert and your finance sets the standard for what you can have.

Water is essential to people but there is a challenge to which principles that water should be distributed according to. The South African solution seems to be a mix between all of Miller’s principles: need, desert and equality. Every household gets 6 kl of water free of charge. This is distribution according to need and equality. When you have used these 6 kl you have to pay for additional provision and water is distributed according to desert. The way that raising block tariffs normally are being implemented in South Africa is not granting the poorest people their basic need for water provision. This make the raising block tariffs to conflict with Miller’s principle of distribution according to need for those that cannot pay for necessary basic provision.

Social justice in South Africa?

The transition process in South Africa is difficult. There is sufficient finance, knowledge and infrastructure to provide all people with necessary basic water in South Africa. There is also a judicial and governmental system to provide and manage water provision. Still, those that are worst off are not provided for sufficiently to have their basic needs covered. One of the reasons why this doesn’t happen is lack of sufficient political willingness and leadership, but also because of people’s underlying attitudes towards one another. To change this will take a generation or more (Mackay 2003: 49). The inheritance from the apartheid system is still present among people and will make sure that changes in the South African comes at a slow pace (Williams 2003: 3), also for necessary water provision.

It is necessary to emphasize that South Africa is managing water provision well compared with most other developing countries. This is not only because South Africa has a better economy than many countries, but also that there is willingness to implement parts of the required policies for better water provision.

I have not found that the premises for social justice, as presented by David Miller in *Principles of Social Justice* and John Rawls in *Justice as fairness*, are sufficiently present in South African water distribution to say that South Africa complies with social justice.

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