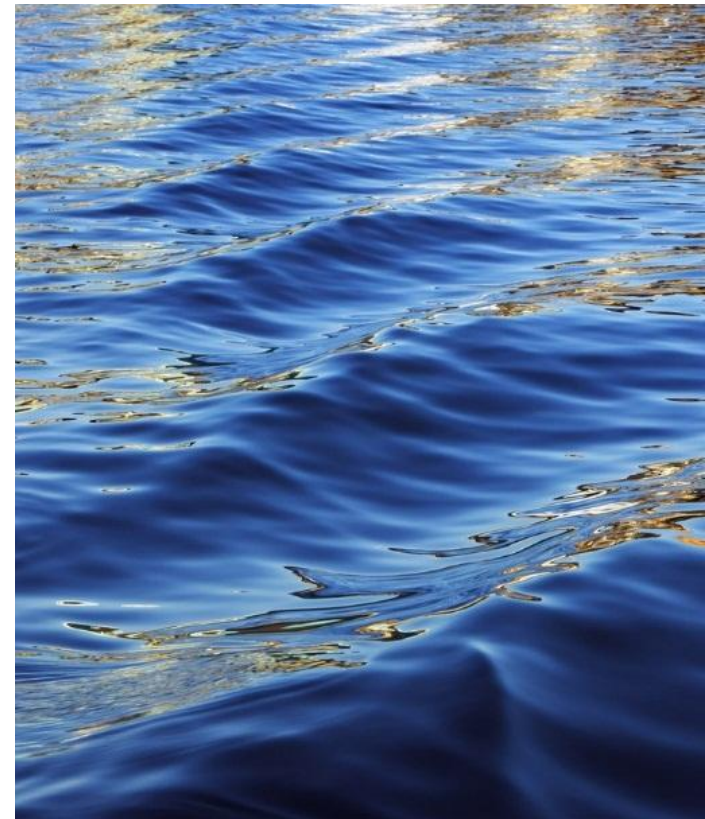




The role of environmental justice in water security

Under a Transformative Constitution



Transformative constitution

- Constitution is transformative in nature
- S v Makwanyane:
 - What the Constitution expressly aspires to do is to provide a transition from these grossly unacceptable features of the past to a conspicuously contrasting... future
- Justice Langa: this includes
 - That we must change
- Transformation provides a platform to remedy the injustices & inequalities of the past
- Transformative constitution promotes human security (access to basic human needs) → the Constitution is adopted as the supreme law... to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights → promotes water security

Water security

- The **capacity** of a population
- to safeguard **sustainable access**
- to adequate **quantities**
- of acceptable **quality** water
- for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability.

Environmental justice

- Means different things within different contexts
- Core components:
 - Equitable distribution of environmental benefits and burdens
 - Recognition of identity and group differences
 - Participation
- Substantive – Equitable distribution of environmental benefits & burdens
- Procedural – Recognition & participation

Environmental justice: Substantive provision

Equitable distribution (of environmental benefits & burdens)

- Equity
 - Allow for exceptions to an otherwise uniformly applied law
 - Provides individualised justice
 - Used when different circumstances necessitates different treatment to achieve a just result
- Distributive justice
 - Acknowledges that humans should be treated as equals
 - BUT further acknowledges that imposing equal duties on people who are unequal may exacerbate the inequalities and impose unfair duties on most vulnerable
 - THEREFORE some people will have to be entitled to more to be equal
- THUS: equitable distribution → Should take note of the gap between the poor and the rest of society and should adjust distribution accordingly

Environmental justice in SA

Historical context

- Finds its roots in colonial conservation
- Favoured affluent and middle-class minority
- Seen as a means to further oppress the majority based in race
- Different levels of service delivery led to discrepancies in the allocation of water

Environmental justice in SA

Historical context

Mazibuko

Although rain falls everywhere, access to water has long been grossly unequal. This inequality is evident in South Africa. While piped water is plentifully available to mines, industries, some large farms and wealthy families, millions of people, especially women, spend hours laboriously collecting their daily supply of water from streams, pools and distant taps. In 1994, it was estimated that 12 million people (approximately a quarter of the population), did not have adequate access to water. By the end of 2006, this number had shrunk to 8 million, with 3,3 million of that number having no access to a basic water supply at all. Yet, despite the significant improvement in the first fifteen years of democratic government, deep inequality remains and for many the task of obtaining sufficient water for their families remains a tiring daily burden. The achievement of equality, one of the founding values of our Constitution, will not be accomplished while water is abundantly available to the wealthy, but not to the poor.

Environmental justice in SA

Historical context

SAHRC Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014

- Those areas which lack water and sanitation mirror apartheid spatial geography.
- National statistics show that 85% of households have access to RDP acceptable levels of water

BUT

- Eastern Cape – 31.1% don't have access to water of a RDP-acceptable level
- Limpopo – 27.2%
- KZN – 21.7%
- Mpumalanga – 19.2%

Environmental justice in SA Constitution

Extent of environmental justice in the water context

- Preamble: the Constitution is adopted as the supreme law... to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights
- S9 – Equality
- S10 – Human dignity
- S11 – Life
- S24 – Environment
- S27(1)(b) – Access to water

Environmental justice in SA Constitution

- Constitutional environmental right
 - Everyone has the right to an environment that is not harmful to their health or well-being
 - Makes provision for sustainable development
- Links to EJ in that it provides for “health and well-being”
 - Equitable distribution of environmental benefits leads to greater health and well-being
 - HTF Developers: well-being is “open-ended and manifestly... incapable of definition”

Environmental justice in SA Constitution

- Sustainable development
 - Equity is the core objective within the context of integration
 - Rio Declaration – importance of recognising indigenous and local communities through “effective participation in the **achievement of sustainable development**”
- Sustainable development is impossible in the absence of environmental justice
- Both centred on humans and meeting their basic human needs
- THUS, environmental justice is constitutionally recognised
- “Everyone”: recognises all members of society

Environmental justice in SA

Legislation: NEMA

Preamble

- State must "strive to meet the **basic needs of previously disadvantaged communities**"

Principles

- **Environmental justice** must be pursued so that **adverse environmental impacts** shall not be **distributed** in such a manner as to **unfairly** discriminate against any person, particularly **vulnerable and disadvantaged** persons.
- **Equitable access to environmental resources, benefits and services** to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination
- The environment is held in **public trust** for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.

Environmental justice in SA

Legislation: NWA

Preamble

- Recognising that while water is a natural resource that belongs to all people, the **discriminatory laws and practices of the past have prevented equal access to water**, and use of water resources;
- Acknowledging the National Government's overall **responsibility** for and authority over the nation's **water** resources and their use, including the **equitable allocation** of water for beneficial use, the **redistribution** of water, and international water matters;

Purpose of the Act

- Promote **equitable access** to water S2(b)

As public trustee

- Government must ensure that water is protected, used, developed, conserved, managed and controlled in a **sustainable and equitable manner**, for the benefit of all persons in accordance with its constitutional mandate

Environmental justice in SA

Legislation: Water Services Act

Preamble

- Recognising the rights of **access to basic water supply** and basic sanitation **necessary to ensure** sufficient water and an **environment** not harmful to health or well-being;
- Acknowledging that there is a duty on all spheres of Government to ensure that water supply services and sanitation services are provided in a manner which is **efficient, equitable and sustainable**.

Environmental justice in SA

Legislation: Water Services Act

S11

- (1) Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to **progressively ensure efficient, affordable, economical and sustainable access to water services.**

- (2) This duty is subject to -
 - (b) the need for an **equitable allocation** of resources to all consumers and potential consumers within the authority's area of jurisdiction;
 - (c) the need to **regulate access** to water services in an **equitable way**;

- (3) In ensuring access to water services, a water services authority must take into account, among other factors –
 - (e) the requirements of equity; and

Mazibuko case

Facts

- Applicants: Lindiwe Mazibuko and 4 others; residents of Phiri township
- City of Johannesburg launched operations to improve water service delivery
- Implement pre-paid meters which would dispense 6kl of free water per household per month; after which the “consumer” would have to purchase water credits
- If not, access to water would be disconnected for the rest of the month
- Applicants challenged:
 - The amount of free water of 25 litres p/p/p/m (6kl per household)
 - The legality of installing the prepaid water metres
- HC: The City should furnish the applicants and all similarly placed residents of Phiri with a free basic water supply of 50 litres per person per day
- SCA: access to 42 litres of free water per day free in so far as it can reasonable be done having regard to the available resources

Mazibuko case

Constitutional court ruling

- Free Basic Water Policy was reasonable - installation of pre-paid water meters was not unlawful
- It was not appropriate for the court to decide on what a “sufficient” amount of water should be as the courts “are ill-placed to make these assessments for institutional and democratic reasons”
- Reasoning largely surrounded the burden that differentiated water policies (tailored to individual circumstances) would impose on the water provider

Mazibuko case: analysis

- Water is a natural resource that is vital for human health and well-being and should be enjoyed equitably
- Court regarded water as a commodity and the applicants as “accountholders”

The role of environmental justice?

- EJ has the ability to promote water security as it ensures **equitable distribution** of access to water.
- This includes acknowledging the different circumstances of different communities and adjusting policies (in terms of water access) accordingly
- BUT EJ is limited to the ability of courts to apply it (Mazibuko)



Thank you

