

Water policy process in south africa environmental sciences essay



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Introduction

Historically, water in South Africa has been unequally distributed. The past two decades of the 'water space' has intended to redress this inequality through a rigorous transformation of the water policy sector. Since the legacy of Apartheid through to the reforming and restructuring of the water legislation to ensure a post-1994 democracy, the water sector in this country experienced a drastic overhaul. As the circumstances of our politics and society changed so did the once accepted values, and thus this essay explores this changing 'water space' to fit the needs of contemporary society and whether those needs are being met sustainably and equitably. The core argument of this essay focuses on the point that the past two decades of the water policy process have envisaged and shaped a paradigm shift in which a balanced and just water sector exists for all South Africans, particularly the previously marginalised. However the ground level implementation of these policies is inadequate and slow-moving. This paper begins by looking at the context and historical background on which the South African water law was based followed by an overview of the last two decades of the water policy process. Finally a critical discussion of the water policy processes and current legislation will be deliberated.

South African Water Law in context: A brief history

In order to understand the present laws regarding water it is essential to understand the context and historical development of water law in South Africa. Traditionally, water in South Africa was based on customary practices used by the Khoi and San people when utilising water for agricultural and survival purposes (Department of Water Affairs and Forestry [DWAF]: You <https://assignbuster.com/water-policy-process-in-south-africa-environmental-sciences-essay/>

and Your Water Rights 1995: 10). However when the first European settlers arrived in the Cape in 1652 they brought the Roman-Dutch Law of water with them. This law stated that " all water was classified as belonging to everyone in need of it" (DWAF 1995: 10). As the Cape settlements began to expand and establish themselves throughout the country, disputes arose around irrigation for agriculture, which meant that the courts had to use legal principles to solve disputes over water claims (DWAF 1995: 11). What resulted was a process of law-making whereby Roman-Dutch and other influences of European water laws were combined to form new water acts (DWAF 1995: 11). One of the principle acts was the " distinction between private and public rivers" as well as the principle of riparian ownership, meaning that " owners of land on the banks of rivers were the only ones entitled to water rights" (DWAF 1995: 11). Throughout the second half of the 19th Century, the State had no role in the regulation of water use (DWAF 1995: 11). However, by the end of the century it seemed obvious that water laws needed to be implemented to regulate increasing demand on water resources (DWAF 1995: 11) This lead to the implementation of the Irrigation and Conservation Act of 1912 but after the World War Two and the rise of industrial development, the Act was reviewed and replaced with the 1956 Water Act (DWAF 1995: 11).

Water policy process in South Africa: 1994 -2003

Since the establishment of the revised Constitution in South Africa the political goals of water in the country have revolved around equitable access to water for all. (DWAF, White Paper on a National Water Policy for South Africa 1997) In Section 27 (1) (b) of the Bill of Rights in the Constitution of

South Africa, it states that " Everyone has the right to have access to sufficient water". This derived from the historically unequal distribution of water access stemming from colonial domination and the Apartheid legacy. According to the Minister of DWAF, Kader Asmal, in the White Paper on a National Water Policy for South Africa " The victory of our democracy now demands that national water use policy and the water law be reviewed. Our Constitution demands this review, on the basis of fairness and equity, values which are enshrined as cornerstones of our new society". (DWAF 1997: 2)

The following section will discuss the extent to which this political objective of water reform is achieved by interpreting the major legal underpinnings of water policy in South Africa; namely the Water Law Principles (DWAF, 1996), the White Paper on a National Water Policy for South Africa (DWAF, 1997), the Water Services Act (1997), the 1998 National Water Act and the implementation strategies which guide these policies such as the National Water Resource Strategy, the Water Allocation Reform Strategy and Catchment Management Areas. The Water Act of 1956 focused on riparian rights and irrigation and therefore its agenda was based on irrigation rights and disputes. However, during the eighties and nineties, the emergence of environmental concerns and sustainability were at the forefront of public debate. The fledgling democracy of South Africa was also focused on addressing imbalances left from the Apartheid regime meaning equitable redistribution and allocation of water was placed on the agenda of water policy reform. Thus by the mid to late nineties water and sanitation services as well as environmental concerns became the main focus of water reform at a national level in South Africa. In response to these pressing issues The Water Law Review Panel began a process in 1995 that formed the new set of

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Water Law Principles for South Africa (de Coning and Sherwill 2004: 17). In summary, Principles 3 and 4 led to the elimination of private ownership of water as well as riparian rights which were replaced with water permits through licensing (de Coning and Sherwill 1998: 19). Principle 7 laid out the objective that water should be managed in an environmentally sustainable manner to ensure the social and economic benefits of citizens (Tewari 2009: 702). Legislations such as Act 108 of 1996 which states that " everyone has the right to clean and safe drinking water and dignified sanitation services" and the National Sanitation Policy of 1996 initiated the alignment of the water sector to goals of equity and redress. The departure of water objectives focusing on agriculture and irrigation and a move towards rural development, addressing the backlog on services and equal access to water in 1995 and 1996 also saw the introduction of the use of water that was sustainable in terms of environmental concerns. In order to ensure water was used in a sustainable manner a policy was inaugurated, known as the Reserve, which consisted of two components. The first being the ' human needs Reserve' which is this notion that " a certain quantity of water should remain in the system to provide for the basic human needs of all South African citizens" (Movik 2012: 31). The second component of the Reserve is the ' ecological Reserve' which is meant to ensure a sufficient amount of water that meets quality standards for quantity of for sustainable future use. (DWA Guide to the National Water Act 2008: 25). The concept of the Reserve highlights the new equity paradigm of the water sector as pre-1994 and during Apartheid DWA had no authority over the homelands and did not contemplate the provision of water to all citizens (Movik 2012: 31).

DWAF 1997 White Paper on a National Water Policy

The 1997 White Paper on a National Water Policy was the cornerstone for the shift away from inequitable use of water to one of environmental sustainability, economic growth and development. Thus it is important to view the White Paper in the context of the Reconstruction and Development Programme (RDP) which envisaged a better quality of life for all South Africans through increasing the availability of job opportunities, boosting economic development, investment in infrastructure and enhancing service delivery (DWAF 1997: 10). In this context, the integrated management of the water sector with RDP was essential, as access to water is a prerequisite economic growth and improved living standards (DWAF1997: 10). The DWAF 1997 White Paper also stated that South Africa was now conforming to international trends of water policy; the state has become a " signatory to several international protocols which are important for water management policy, such as Ramsar Convention on the Protection of Wetlands, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention to Combat Desertification" (DWAF 1997: 11).

Water Services Act (WSA) Act 108 of 1997

The Water Services Act developed from the 1997 White Paper's vision that local government would finally take responsibility for water services and became the statute for this vision (eWISA, 2013). The purpose of the WSA is to " legislate for the supply of potable water and sanitation services" (Pegram et. al. 2006: 27) and also underpins the Constitutional rights under Section 24 which is the " right to an environment that is not harmful to their health or well-being", " the right to sufficient food and water under" Section

27 and the right to adequate supply of water and sanitation (Pegram et. al. 2006: 27). This Act is enforced through strategies such as the water services plan, local government who are the water services authorities as well as institutions such as water service providers. Essentially the WSA is a municipal level of water governance, whereas the National Water Act is a national responsibility.

National Water Act (NWA) Act 36 of 1998

The NWA is an essential feature of the democratic Constitution as it " provides a framework to protect water resources against over exploitation and to ensure that there is water for social and economic development and water for the future" (DWAF 2008: 7). The crux of the NWA identifies that water is a resource that belongs to all and thus crucial that it is managed and conserved sustainability for future purposes (DWAF 2008: 7). The principles - sustainability, equity, efficiency - of the National Water Act exist to guide the protection and conservation of water (DWAF 2008: 11). Sustainability of water both socially and economically needs to be done in way that preserves water for future use as well; equity ensures that the allocation and redistribution of water is done in a fair and equal manner with a particular focus on previously disadvantaged communities and finally, efficiency, to prevent the wasteful use of water (DWAF 2008: 11). Strategic frameworks such as the National Water Resource Strategy (NWRS) are established as tools to assist national governments in safeguarding people's rights to water and the protection and conservation of that water (DWAF 2008: 11). Therefore the purposes of the NWRS are to provide strategies

outlines, intentions and goals for the management of water resources in the country (DWAF 2008: 11).

Catchment Management Strategies (CMS) and Catchment Management Agencies (CMA)

As previously highlighted, water is essential for social and economic development and a core prerequisite for this development is public participation; where people at the lowest levels are to contribute to the management and decision-making process of water resources (DWAF 2008: 28). This is achieved through the formation of a Catchment Management Strategy (CMS) and institutions at a local and regional level, CMAs that are responsible for monitoring the CMS. CMAs are vital in local scale water resource management as they control activities that impact the water cycle in a small area. They are also essential instruments to facilitate participation between communities, local government, municipalities and various other stakeholders in open and transparent decision-making. The NWA established institutions such as CMAs in order to validate their membership and consistency with international paradigms of integrated water resource management (IWRM) (DWAF 2008: 28).

Water Allocation Reform (WAR) and Water Allocation Reform Strategy (WARS)

The NWA stated that equity, sustainability and efficiency are the principles used to guide water resource management in South Africa (DWAF 2008: 11).

However, according to DWAF Chief Directorate: Water Allocation Reform Strategy (2008), the equity principle was not being addressed appropriately.

Thus the Water Allocation Reform (WAR) aimed to amend the shortcomings

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of the NWA and the Water Allocation Reform Strategy (WARS) is the strategic framework through which this will be achieved. WARS would function as the "link between policy intent and practical implementation of the provisions of the NWA" (DWAF 2008: v). The WARS intention was to address the inequities of water allocation in the past; this would be done by focusing on the inclusiveness of black women. (DWAF 2008: v) In terms of redressing the imbalances of water allocation, WARS would ultimately aim to achieve the target that "60% of allocable water should be placed in the hands of black people of which half should be in black women's hands" (DWAF 2008: v). The WARS was implemented in two phases. Phase A will be the "review and integration of the institutional arrangement" with external factors such as land reform and land claims and phase B would be the implementation of water allocation in the context of CMS (DWAF 2008: v)

2012 Natural Water Resource Strategy (NWRS-2)

The 2012 NWRS is a second edition of the 2004 NWRS which was the outline for water resource management in South Africa. The NWRS-2 is a strategic framework that will guide the NWA for roughly the next 20 years (DWAF Natural Resources Strategy 2012: 1). It is aimed to address the shortcomings of the previous NWRS, namely, "the equity and redress in access to water" (DWAF 2012: 1). The reallocation of water to previously disadvantaged communities has not been as productive as it was set out to be eight years ago and thus the NWRS-2 was published to guide water management in areas of socio-economic growth, social development, conservation and protection of water resources. (DWAF, 2012: 1). The NWRS-2 is also a tool for enhancing the role of CMAs, local water authorities, water boards and other

lower level water institutions (DWA, 2012: 1). The NWRS-2 creates a platform for a new paradigm in South African water management whereby key elements such as the "equity-orientated agenda" will require modifications to the "structure, functions, priorities and budget of the Department of Water Affairs (DWA) and CMAs" (DWA 2012: Chapter 13: 1). Three important components are seen as essential for the effective implementation of the NWRS-2: relevant and trustworthy information, compliance to policies and the placement of the capable staff. (DWA 2012: Chapter 13: 1). The notion of water security is placed on the agenda of the NWRS-2, where it was not a crucial idea in the previous NWRS; water security is a concept that describes the ability of a person to have access to adequate amounts of water for a healthy lifestyle. This will be achieved only if, according to the NWRS-2, strong public-private partnerships are formed, inclusiveness of previously marginalised communities and public participation are ensured. (DWA 2012: Chapter 13: 2) The aims and objectives of the NWRS-2 versus the 2004 NWRS are rather similar, however the failings of the 2004 NWRS to meet these objectives has required a new set of improved strategies and these are set out in the NWRS-2. The four core strategies outlined include, the "implementation of Equity Policy" which is fixated on a pro-poor focus through investment in infrastructure to meet the poor's needs, secondly, "putting water at the centre of integrated development planning and decision-making" through the revision of budgets and a new financial value system where water is rooted in the business sector. Thirdly, "ensuring water for equitable growth and development" through the creation of public-private partnerships that inform stakeholders in decision-making processes and lastly, "contributing to a just and

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equitable South Africa" by ensuring access for all to basic services such as health, sanitation, employment and poverty alleviation (DWA 2012: Chapter 8: 2)

Discussion

The South African Policy Process

It is evident that over the past two decades the 'water space' in South Africa has experienced a paradigm shift. There has been a move away from authoritarian (Water Act of 1956), agriculturally biased and inequitable thinking of water to thinking that has attempted to redress imbalances, inclusiveness of previously marginalised communities and a participative policy development (DWA, 2012). The new water paradigm as outlined in the 2012 NWRS is one that is "value driven" and in order to achieve this drive for a new and fair approach to water; amendments to the DWA budget to prioritise CMAs is essential (DWA 2012: Chapter 13: 1) . A call for a more integrated water sector is essential as issues such as public participation, end-user behaviours to conserving water, enforcement of compliance to meet water quality standards are addressed in the most beneficial way. Structural adjustments to water institutions will also need to take place in order for a new paradigm to be implemented, which will largely involve the consolidation of all levels of water governance in the DWA. (DWA, 2012)According to de Coning and Sherwill (2004: 30) the process in which the South African water policy was established was thorough and comprehensive; " despite having and using almost no theoretical knowledge of policy process models, the water community in South Africa followed a logical, participative, legitimate and otherwise sound process". However, de <https://assignbuster.com/water-policy-process-in-south-africa-environmental-sciences-essay/>

Coning and Sherwill (2004: 30) mention that both the "unplanned nature" and "dominance of the legal drafting process" had undesirable effects on the water policy process, especially as it took time off and focus away from the policy analysis and formulation phases. Another aspect of the water policy process that needs commendation is the emphasis that was placed on informing the public and encouraging their participation and opinions of policies before they were formally enacted, this was evident in the publication of the DWAF, 1995 You and Your Water Rights which called for a public response that encouraged the public to participate in the review process. De Coning and Sherwill (2004) also approved of the legal involvement at the initial stages of policy formation and continuing to have legal input throughout the policy process (de Coning and Sherwill 2004: 30). They noted that this input was vital in drawing up legal documents which were "informed by practical realities on the ground" as well as assisting the DWAF team with a more in-depth comprehension of legal aspects of water management (de Coning and Sherwill 2004: 30). In terms of the decision-making in forming the policies, de Coning and Sherwill (2004: 35) raised a concern for the haste of the approval of the White Paper, because it was dominated by the legal progress, it skipped a consultation phase within Cabinet. The consultation phase would have greatly improved the policy and the contributions from Cabinet on the policy would have enhanced the quality of the White Paper (de Coning and Sherwill 2004: 30).

Policy Implementation and Practice

The water sector in South Africa has followed a rigorous policy process and developed comprehensive legislation such as the NWA and various strategic

frameworks (NWRS) that guide the Act. In theory the NWA is sound: addressing past socio-economic injustices of the Apartheid regime, ensuring society's human rights and protecting water in an environmentally sustainable manner. The injection of funds into water and sanitation services over the last two decades has enabled this positive change: in 1994, 59% of people in the country had access to clean and safe drinking water (DWA 2011/12 Annual Report). In 2012, 94.7% had access to basic water services, an increase of 35.7% (DWA, 2011). The backlog of services is at some 710 000 households compared to 3.9 million households in 1994. (DWA, 2011). Overall, the overhaul of the water sector has seen a positive outcome for many in South Africa, the implementation of these policies on the other hand have been slow and inefficient. The incessant service delivery strikes, grave degrees of poverty and imbalances still remaining after 19 years of democracy are all representations of the shortcomings of (water) governance and policy implementation (Jooste 2012). Between 2009 and 2012 the increased amount of services delivery protests regarding water and sanitation were rife, with the majority of the protests due to a lack of running water and basic adequate sanitation (Jooste 2012). One of the causes of poor water services revolved around the fact that the community was unable to participate in any of the local municipality's decision-making and communication between residents and local authorities was absent (Jooste 2012). Participation was a core element of the CMAs, which focused on local areas and having increased community involvement with policy decision-making. De Coning and Sherwill (2004: 44) emphasise the importance of CMAs in the implementation of policies on the 'ground', CMAs will enable local communities a channel to communicate their opinions and concerns to

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local government about the water resources surrounding them. The DWAF Guide to the NWA, states the CMAs are important institutions that are there to involve all stakeholders, including the poor and marginalised communities to participate in decision-making and consultation processes (DWAF 2008: 37). In order for CMAs to be effective there needs to be more thorough information and monitoring systems of the agencies performance (Pegram et. al. 2006: 65). In addition CMAs need to develop healthy relations with other governmental departments and inclusive and transparent governance practices needs to be guaranteed in order for CMAs to fulfil their purpose. (Pegram et. al. 2006: 65). Movik (2012: 8) stated that one of the functions of CMAs is the " decentralisation of management" in the water sector. In other words the power of decision-making is filtered down to the lower levels of institutions (community leaders or local municipal authorities). Movik (2012: 8) points out that the ' nationalisation' of water allocation through compulsory licensing and a registration system is a move in the direction of centralising management, the circumstance that DWAF now has the authority to issue water use rights (through compulsory licensing) with a time limit has created a paradox. Movik (2012: 8) continues to say that this paradox is a result of differing views in water rights and how these water rights should be reallocated, which according to Movik (2012: 8), was due to the vagueness within the 1998 NWA. Nowhere within the NWA does it state specifically how water rights should be redistributed nor does it clarify how water rights should be understood (Movik 2012: 8). Another issue that raises concern within the water reform process is the ' replacement' of riparian ownership rights with compulsory licensing in the 1998 NWA. Existing water users under previous legislation ' lost' their rights and instead were required

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to apply for licences to use the water. (Movik 2012: 42) This caused apprehension as licenses were only temporary; forty years is the maximum period a license lasts and is subjected to a review every five years. (Movik 2012: 42). In addition, Section 4(4) of the NWA states that the replacement of existing water use rights under previous legislation does not entail compensation; Section 22(7)(b) of the NWA also states that compensation is not owed if water is taken away for the storage within the Reserve (Movik 2012: 42). In addition, the process of the license application review takes at least twelve months and the outcome is completely at the discretion of government authorities. (Movik 2012: 42) Although these laws are seen as expropriation in the interest of the public, (Movik 2012: 42) the uncertainty of the continuance of the use of their water resource places stress and insecurity on water users.

Conclusion

The South African experience of water policy reform is unique, it's developmental and redress orientated agenda for water in the State has seen positive change for millions of South Africans. However the process was not flawless and several lessons can be learnt from this experience. Firstly, the ideals and objectives of the 1998 NWA and the subsequent strategies that guide its implementation are well aimed in terms of equity and sustainability, however there needs to be a more enhanced decentralisation of water governance. The lowest levels of institutions need to be more engaging with higher levels of governance as well as the communities they govern. There needs to be strengthened liaison and communications between these levels in order for policy implementation to be successful.

Secondly, the effectiveness of CMAs will be vital for the success of water resource management in South Africa. CMAs need to be subject to rigorous monitoring programmes that allow for feedback on performance; a close relationship with DWAF and the communities they govern is also essential. Thirdly, enhanced inter-departmental relations need to be nurtured; DWAF cannot exist alone in water governance, there needs to be communication between departments of land, marine environmental affairs as water is dynamic and its effects far-reaching. Fourthly, government needs to be consistent in service delivery and implementation of their policies; the uncertainty of sustaining funding for these targets is a constraint and the national budget needs to be adjusted accordingly. Lastly, an emphasis on monitoring, analyses and reviewing of policies is essential for the development of successful water resource management in South Africa.