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Tsiri, Makgabo Hendrick

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THE FREE BASIC WATER POLICY, PLANNING FOR SOCIAL JUSTICE AND THE WATER NEEDS OF HIV/AIDS AFFECTED HOUSEHOLDS IN SOUTH AFRICAN TOWNSHIPS.

MAKGABO TSIRI

A research report submitted to the faculty of Engineering and the Built Environment, University of the Witwatersrand, Johannesburg, in partial fulfillment for the degree of Master of Science in Development Planning.

Johannesburg, 2005.

Declaration

I declare that this research report is my own, unaided work. It is being submitted for the Degree of Master of Science in Development Planning in the University of the Witwatersrand, Johannesburg. It is not been submitted before any degree or examination in any other University.

_____

Makgabo Hendrick Tsiri

_____ day of _____ year _____

Abstract

South Africa is a constitutional state. The constitution is the supreme law of the country (RSA, 1996). Any of the state laws, policies and programmes that are inconsistent with the constitution are invalid, thus they have no legitimate standing. In the preamble of its constitution, the post apartheid South Africa sworn itself as a country recognising the past injustices, hence planning for the society based on social justices, in order to improving the quality of life of all citizens and free the potential of each person. The Bill of Rights is a cornerstone of democracy in South Africa, as it encompasses all human rights, especially socioeconomic rights, whose fulfilment will contribute towards realisation of equal and united society based on social justice. However, the post apartheid South African government adopted a Free Basic Water policy as a way of adhering to the constitutional requirements of ensuring that everyone has the right to sufficient water. Access to clean sufficient water has been identified as a crucial requirement for Care and Prevention to the HIV/AIDS affected households. In the midst of socioeconomic inequalities, scarce water resources and high HIV/AIDS prevalence confronting the post apartheid South Africa today, the Free Basic Water policy guarantees every household of eight; irrespective of its socioeconomic status and health concerns, 6kl/6000 litres of water every month free. The local government has been blamed for not being responsive these special water needs of the poor HIV/AIDS households, especially in townships areas, where water is mostly provided on cost-recovery. However, little attention has been paid on the difficulty faced by the local government authorities in this regard. The report argue for a need of collaboration between planners and others major stakeholders, to come up with group-conscious water policy that will guide for planning of a society based on social justice. However, the research recommends that this policy should not only be guided by / concerned with justice and fairness in the distribution of basic needs of the society with special needs. More important, this new policy should be fair, thus account for the sustainability of the water resources, since South Africa is regarded as water-scarce country.

This work is dedicated to my mother

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Chapter One

1. INTRODUCTION

Despite the attempts of the post apartheid government to adopt the Free Basic Water policy in 2001, the struggle over planning for access to basic water delivery to meet different households' quality requirements still continue in the country's services delivery history. With the high prevalence of HIV/AIDS and provision of basic water services mostly on public-private partnerships' principle of cost-recovery in townships, the struggle has been amplified even further (Bond and Ruiters, 2001). Access to sufficient clean amount of water has been identified as a crucial requirement for effective Care and Prevention to the HI/AIDS affected households (Olufemi, 2002; Kgalusi et.al.2003, Van Wijk, 2003; Tomlinson, 2004; Van Dyk, 2005).

Although water is a 'God given gift' and "a renewable resource; its availability depends on a variety of geographic and climatic factors" (Ashton, 2002:218). Located predominantly in a semi arid part of the world, South Africa is a water-scarce country. The country's climate varies from "desert and semi-desert in the west to sub-humid along the eastern coastal area, with an average rainfall of about 450mm per year (mm/a), well below the world average of about 860 mm/a, while evaporation is comparatively high" (DWAF, 2004: 17). Combination of these factors makes the country's water resources, in global terms, scarce and limited (Ibid).

1.2 BACKGROUND

When the forty-eight year apartheid system was finally pulled down by the country's first historic democratic elections in 1994, hopes for a better life for all and equitable access to basic services such as basic water , as previously denied by the apartheid crime, were lifted very high among the previously marginalised South Africans. However, the following occurrences on the other hand, made it clear that the real struggle for access to basic services, especially water, has just emerged. First, the shift in the planning policy framework from the Reconstruction and Development Programme, to the Growth

Employment And Redistribution (GEAR). Bond (2000) and McKinley (2002) argue that the shift has major implications in the delivery of basic services such as water.

The RDP was committed to meet these basic needs through redistribution first, while GEAR planning approach are largely influenced by the neo-liberal orthodoxy, "turned water and other basic municipal services into market commodities, to be bought and sold on the basis of private ownership and the profit motive" (McKinley, 2002:1). Second, is the challenge of HIV/AIDS and the services needs it calls for, especially clean sufficient water for Care and Prevention(Olufemi, 2002; Kgalusi et.al.2003, Van Wijk, 2003; Tomlinson, 2004; Van Dyk, 2005). These special water needs of the HIV/AIDS affected households emerge as a new mandate for the local government authorities, but with limited financial resources to deliver them to where they are needed most. These two occurrences resulted not only to unequal access to basic services such as water, but also "defines those who can purchase well-being and those who cannot" (Barnett and Whiteside, 2002: 8).

In South Africa, the challenge of HIV/AIDS and the water services needs it calls for, questions the relationship between the goal of *social justice*, as enshrined in the constitution and the neo-liberal orthodoxy as expressed by GEAR's priorities, especially at the local government level, where these services must be delivered. Frank, cited in Barnett and Whiteside (2002: 5) argues

> "this pandemic (HIV/AIDS) pointedly questions how 'we' value other human beings. It ask whether such humanistic valuing is a thing of the past, replaced by 'the market' ; a market that omits the valuing of social goods, reflects only competing preferences for goods and services; and threatens to become the sole determinant of values as well as of value".

South Africa is a constitutional state. The constitution is the supreme law of land against which all other law or conduct must be tested (RSA, 1996 ; Van Wyk, 2005:12). Any law, policies and programmes that are inconsistent with the constitution are invalid, thus they have no legal force (ibid).The first democratic constitution of the Republic of South Africa was adopted in 1996.

In the preamble of its constitution, the post apartheid South Africa sworn itself as a country

"recognising the injustice of the past…. [B]elive that South Africa belongs to everyone who lives in it, united in our diversity…. [H]eal the divisions of the past and establish a society based on democratic values, *social justice* and fundamental human rights…." (RSA, 1996: 3). Moreover, post apartheid government sworn itself as being committed to "improving the quality of life of all citizens and free the potential of each person" (Ibid).

The Bill of Rights is a cornerstone of democracy in the South African constitution, as it encompasses all human rights, especially socioeconomic rights, whose fulfilment will contribute towards realisation of planning for a united society based on *social justice*. Any of the State's planning actions, (it could be either of the legislature, the executive, the judiciary or that of any other organs of the state) must respect, protect, promote and fulfil the rights in the Bill of Rights, which among others include socioeconomic rights, so as to achieve a constitutional goal of social justice (RSA, 1996). However, on the other hand, the constitution does acknowledge that rights enshrined in the Bill of Rights are not absolute; they do have limitations, which largely depend on the State's capacities to fulfil such rights.

Upon coming to power in 1994, the new democratic government inherited the legacy of backlog in water services delivery, with no coherent national policies and guidelines for providing basic water services to people (DWAF, 2001). On its commitment to redress the past injustices in basic water delivery, the post apartheid government adopted the Reconstruction and Development Programme (RDP), a people-centred planning framework, with the primary aim of meeting people's basic needs such as water. Moreover, in the wake of the country's first historic democratic election in 1994, followed by the adoption of new constitution in 1996, access to sufficient water has been recognised as a human right, enshrined in the constitution. Section 27(1.a) of the constitution states that "[E]veryone has the right to have access to sufficient water". In ensuring this, subsection 27(2) states that "[T]he State *must* take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of water" (RSA, 1996:12).

To this end, the constitution raises two important facts that help the researcher not only to identify the research problem, but also to build the argument of this research. First fact is raised in the preamble of constitution, arguing that the post apartheid government learnt from the previous apartheid injustices, thus any of its actions (planning policies and programmes) will be that of promoting of social justice as its primary aim. Planning for a society based on social justice involves, "moving towards an ethical society with genuine equality of all people, with political and socioeconomic patterns shaped to protect the interests and enhance the worth of each person" (Benjamin et al., cited in Kikuchi (2004: 1). This is a society in which social policies and programmes need to be difference-sensitive and not difference-blind, thus responding to society's main concerns in a pluralistic manner.

Definition of these two concepts, difference-sensitive and difference-blind is of equal importance to familiarise the reader with the background of the argument in this research report. These concepts are borrowed from scholars writing in the field of social justice, both Taylor (1995) and Young (1995). *Difference-sensitive* refers to when policies accord to group-differences, (sometimes) giving preferences to the least advantaged groups in society. *Difference-blind* is the opposite. Policies do not accord to any social difference, everyone is treated according same standard, rule and principles, thus group difference is of less significant.

The second fact raised by the constitution is that, on its planning actions, the state (policies and programmes) will respect, promote, protect and fulfil everyone's right to *sufficient water* as a right entrenched and protected in the Bill of Right of the constitution, by taking reasonable legislative and other measures, (but) within its available resources, to achieve progressive realisation of right to sufficient water (RSA, 1996). This means that any of the States' policies affecting the delivery of basic water , will that of respect, promote, protecting and fulfil constitutional requirements of ensuring that everyone has the right to access sufficient water. The adoption of Free Basic Water policy is seen as a way in which the post apartheid government attempted to comply with the constitutional requirements. This policy delivers 6kl/6000 of litres to every household

free every month. However, as to whether the amount of water offered by this policy is sufficient and committed to the promotion of social justice, especially with respect to the water needs of the poor HIV/AIDS affected households in townships, form a central focus of this report. Moreover, as to whether the policy, as a measure taken by the post apartheid government *respect, protect, promote and fulfil* the requirements of the constitutional rights to sufficient water, with respect to the water needs of the poor HIV/AIDS affected households also shape the discussion and the argument of this research report. Third, as to whether this policy could be said to be the State taken measure to ensure that everyone's right to have access to sufficient water, also raise the main concern of this paper

1.3 PROBLEM STATEMENT.

The post apartheid government adopted the 'Free Basic Water' policy as a way to adhere to the constitutional requirements of ensuring that everyone has the right to have access to 'sufficient' water. In the midst of socioeconomic inequalities, scarce water resources and high HIV/AIDS prevalence confronting the post apartheid South Africa today, the Free Basic Water policy guarantees every household of eight; irrespective of its socioeconomic status and health concerns, 6kl/6000 litres of water every month free (DWAF, 2001). May (1998) argues that despite the fact that South Africa is ranked as being an advanced economy in Africa, its Gini coefficient is currently 0.58, making it the second highest in the world, following that of Brazil. The poorest 40% households (equivalent to 50% of the population that is predominantly African) receive only 11% of total income, while the richest 10% households (equivalent to only 7% of the population that is predominantly White and to lesser extent Indian) receive over 40% of total income (May, 1998:4).

The South African Human Rights Commission (SAHRC) (2004: 4) argues that the "Free Basic Water policy is in line with section 27(1) (b) of the constitution, which states that everyone has the right to sufficient water. However, the Free Basic Water policy presents itself as an obstacle to the poor HIV/AIDS affected households to access *sufficient* water, since sufficient clean water has been identified as a crucial requirement for Care and

Prevention to these households. Thus one argues that, the policy seems to have limitations not only to meet the constitutional requirements of meeting everyone's rights to sufficient water. More importantly, the policy's commitment towards the promotion of constitutional goal of *social justice* seems to be questionable, as treats everyone according to same principle and standard, thus is difference-blind . People living with HIV/AIDS need more water than their HIV/AIDS negative counterparts, for Care and Prevention, yet the amount offered by the policy, 6kl/6000 litres does not meet poor HIV/AIDS households' requirements in this regard. Tomlinson(2004) ;Van Wijk (2003: 2) argues that people infected with HIV/AIDS are highly vulnerable to other opportunistic diseases, such as diarrhoea and various skin diseases due to lack of access to adequate amount of water. These opportunistic diseases are experienced during different stages of the virus, due to the already weakened human body immune system of the HIV infected patients.

Due to inability of the poor HIV/AIDS affected households to afford sufficient amount of water needed for Care and Prevention, the likelihood of the already infected patients to infected other uninfected household members and caregivers from Home Community Based Care (HCBC) organisations increase[1], thus making them more vulnerable to the virus (Tomlinson, 2004; NAPWA ,cited in Kamminga, 2003: 13). Lack of access to sufficient water for Care and Prevention, which is far beyond policy's 6 kl/6000 litres, emerges not only as challenges faced by HCBC organisations' caregivers on their daily activities of promoting and maintaining hygienic living environment of the affected household and nutrition (Defilippi ,cited in Tomlinson, 2004: 24).

The *blindness* of this policy to group difference is experienced mostly by the poor HIV/AIDS affected households in townships, whom their household expenditure is now reprioritised to HIV/AIDS medical costs, while at the same time have to pay in advance every time they exceed 6kl/600 litres, since water is mostly acquired from prepaid water

[1] Tomlinson (2004 argues that there is a greater risk of transmission of HIV infection to caregivers through contact with body fluids containing blood, on their daily services rendered to the infected patients. He maintains that " without an adequate supply of water, there is a greater risk of caregivers and other family members being in direct contact with weeping sores and blood faeces containing blood (dysentery)" (Tomlinson, 2004:26).

metered taps, applying cost-recovery principle in townships. Combination of these factors emerges not only as a frustration that undermines the poor HIV/AIDS affected households' inherited right to human dignity and a healthy living environment. Their human rights in this regard are violated, if not compromised, since this policy justifies social exclusion. The local government, (as a services delivery agent of both national and provincial governments) has been blamed for not being responsive these special water needs of the poor HIV/AIDS households affected by HIV/AIDS (Tomlinson, 2003). However, one maintains that, 'it is striking' how little attention has been paid on the difficulties faced by the local government authorities not to respond to these water needs of the poor HIV/AIDS affected households.

Promotion of social justice in social policy involves "recognising and accepting one another's differences and socioeconomic positions, while working together to help the least advantaged groups in society to realise their fullest human potential" (King and Weaver ,cited in Kikuchi, 2004: 1). From the above identified problem, one could ask as how does the Free Basic water policy, (as part of the government's planning action) address issues of social justice, with respect to the water needs of the HIV/AIDS affected households in the South African townships?

1.4 AIMS OF THE RESEARCH.

The main aim of this research is to, first, interrogate the commitment of the Free Basic Water policy, as a government action affecting right to water, in the promotion and fulfilment of constitutional goal of social justice in the delivery of water services. Second, the research needs to highlight that, in order to promote social justice; social policies must adapt to societal changes and respond to the emerging concerns.

1.5 RATIONALE FOR THE RESEARCH

The South African townships continued to present an interesting case not to be underestimated by researchers in the field of social justice, because of the following reasons. First, during the apartheid rule, townships reflected nature of segregationist planning, with little basic services such as water provided to them (SANC, 2004).

Previously, under apartheid, townships use to be governed under the so called 'Black local authorities', with no economic developments to secure source of revenue for their sustained development. Interestingly, today in the post apartheid period, with high unemployment and high prevalence of HIV/AIDS concentrated in them, townships still attract interests of researchers in the field of social justice. The identified role of clean sufficient water to the HIV/AIDS affected households allows one to see the commitment of the government planning actions in promotion of social justice, in communities with special needs, but unable to afford.

Second, because of radical transformation and restructuring of local government in South Africa, water services at the townships are mostly provided on public-private partnerships, which mostly promote the principle of cost-recovery. With high unemployment and prevalence of HIV/AIDS rate at the urban formal locality, from which the relationship between poverty and the virus suggests that high prevalence occurs in townships, the poor households affected by the HIV/AIDS are still facing challenge of accessing to water for Care and Prevention. These challenges attracts the research's interest, as it allows one to critically look at the government's course of action towards people with special water needs, in the face of its scarce water resources.

Third, only the health aspect of HIV/AIDS have been over researched, since the "effects of the disease are rarely considered beyond the clinical on affected individual" (Barnett and Whiteside, 2002). Thus, with this research report one also needs to show the impacts of the virus on the affected household's changing demand for basic services, especially water. Moreover, although most of the research done also focused on Care, Support and Prevention strategies, less has been researched on the *Care* and *Prevention* roles that water plays in HIV/AIDS affected households. Other services such as sanitation are also important, but yet one maintains that we need water to maintain healthy sanitation system. Hence, one also concurs that "water is life, and sanitation is dignity" (McKinley, 2002: 1).

1.6 RESEARCH METHOD.

The research uses a qualitative method. First, the theoretical basis upon which the research is premised derived from the literature in the field of social justice and advocacy planning. It is against the background of this literature (on social justice and advocacy planning) that the research critically interprets and interrogates the sensitivity of the Free Basic water policy on people with special water needs.

Second, the research used the secondary sources, the available literature on published in books, internet and newspapers, with more focusing on social policy, planning for social justice and also on the *Care* and *Prevention* role that water plays in the HIV/AIDS affected households.

However, the researcher saw the importance of conducting informal interviews with government officials in selected government departments in order to clarify some of the debates raised in this research report. These include Departments of Social Development and Water Affairs and Forestry.

•First, constitutionally, the National Department of Water Affairs and Forestry (DWAF) is the custodian of the nation's water resources (RSA, 1997). The researcher spoke to the Senior Manager, Mr. A Vermeulen, in the Water Services Policy and Strategy Directorate that is responsible for the monitoring of Free Basic Water policy in the (DWAF) Department of Water Affairs and Forestry. The questions asked to the official included the following. One, whether DWAF, particularly his Directorate responsible for the management of the Free Basic Water policy, is aware of the special water needs of the HIV/AIDS affected households, especially the poor? Two, his departments' current proposed strategy of intervention in this regard? Three, what other players they have included in their proposed intervention strategy to addresses the challenge on the water needs of the poor HIV/AIDS affected households in townships?

•Second, the department of Social development is concurrently monitoring and coordinating home care programmes, projects and services rendered by Home Community Based Care (HCBC) organisation to the HIV/ AIDS affected households, with the National department of Health. The researcher had informal interviews with an official from the National Department of Social Development, Chief Directorate HIV/AIDS, Mr. Phahlamohlaka, responsible for coordination of actions (projects, programmes and services) of care givers at the community/home level. The questions asked in this regard were guided by the challenges faced by care givers on their daily basis when rendering variety of services to the affected communities/households as a result of lack of access to sufficient clean water. They included the following: The departments' current proposed action to ensure that the uninfected members within the affected households and care givers are not exposed to the risk of being infected as a result of lack of access to sufficient clean water for Care and Prevention. Second, his department's (Social Development) relations with other relevant departments and organs of the State to respond to these challenges.

Lastly, the research uses constitutional court decisions made on similar socioeconomic rights cases, to find how judges ruled on the State's obligation to reasonably and progressively fulfil the requirements of socioeconomic rights, which include water. These include constitutional court decisions made on matters affecting socioeconomic rights that include housing and primary health care. Two cases, involve the *Government of the Republic South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC)*, which affect right to adequate housing. Second, is the case affecting access to primary health care; *Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC*). The primary reason of using this is because, in legal terms, court decisions made on one of catalogue of socioeconomic rights (housing, health care services and food), could still be referred to or serves as a guide in future court decisions concerning any of the rights in same catalogue, since (in most cases) these rights overlap each other (Van Wyk, 2005)

1.7 Limitations of the research

This research report did not focus on a case study because of the following. First, due to time and resource limitations. Second, it was not going to be feasible to focus on a particular area as a case study, because of the foreseen difficulty of identifying HIV/AIDS affected households in a particular township. HIV/AIDS is a sensitive and a human right issue, thus the privacy of the affected households was therefore respected. Given these, the research relied solely on the already existing literature on HIV/AIDS than actual getting the information on the affected households themselves, concerning the Care and Prevention role of water. This affect the study in the sense that there might be other important issues concerning the role of water in the affected households overlooked at by the report.

1.8 STRUCTURE OF THE REPORT

This research report is divided into six chapters.

Chapter 1

This is an introductory chapter, beginning with an argument that despite the adoption of Free Basic water policy, water in South Africa will continue to be a political and economic, than a technical issue. This is informed by the facts that, first, South Africa (in a global term) is a water-scarce country, second, clean sufficient water identified as a crucial requirement for Care and Prevention to the HIV/AIDS affected households. Pressure rise even high on issues of affordability and special water needs in cases where water is delivered on the principle of cost -recovery, while on the other hand, citizens' access to sufficient water is recognised as having a major influence in planning for a society based on social justice. These are main issues that inform the background, problems statements, aims and the rationale for this research report. The last part of the chapter outlines the research methods and the structure of this research report.

Chapter 2

This is a literature review chapter, beginning with review of the main concepts shaping the argument of the research, with attention focused on section 27(b) and subsection 2 of the constitution. Interpretation of this section is done in line with Yacoob's (2001) analyses of socioeconomic right clause(s) of the constitution. The second part of this chapter attempts to show how shift in policy framework, from RDP to GEAR impacted on the idea of *developmental state* as another way of planning for a society based on social justice. The last part of the chapter focus on Rawls (1971) theory of social justice, as the guiding theory of this research report, with contribution from scholars in the field of *social justice* and *advocacy planning,*Young (1995), Taylor (1995) and Davidoff (1965).

Chapter 3

This chapter looks at the importance of access to clean sufficient water to the HIV/AIDS affected households, for Care and Prevention. The chapter begins with an overview of universal shared laws governing right water and status of water provision since 1948, under the apartheid system until recently. Moreover, special attention is paid on the Free Basic Water policy. The last part of the chapter focuses more on the Care and Prevention role that water plays to the HIV/AIDS affected households.

Chapter 4

Services delivery is associated with human empowerment. The local government, as a service delivery agent of national and provincial governments, has been blamed for not paying attention on the water needs of the poor living with HIV/AIDS. The chapter begins by discussing the constitutional competence of local government authorities on their developmental agenda. More attention is paid on the GEAR policy framework under which local government authorities operates and its impacts on the ability of municipalities to respond to the special water needs of the poor HIV/AIDS affected households, especially at townships. Although both the principle of cooperative governance and Integrated Development Plans (IDPs) appears to be a nearest way in

which municipalities could call out support from national and provincial governments, there are many challenges emerging, which are largely influence by the GEAR policy framework at the local government level.

Chapter 5

This chapter focuses on the analyses of the research findings. It is found in this chapter that, the Free Basic Water policy as part of the government decision affecting socioeconomic rights(of access to sufficient water), of the poor HIV/AIDS affected households, does not meet their quality requirements of water for Care and Prevention. Given this, the report argues that the policy is difference-blind, thus does not promote and fulfil the constitutional goal of a society based on social justice. Rather, the policy is seen to be more of addressing the previous inequalities created by apartheid rule, than addressing issues of equity. Second, municipalities have a crucial role to address the water needs of the poor affected households. However, the environment within which services are delivered limit them not to exceed their financial capacities. This is because of cut of subsidies targeting the poor from the national to the local government, because of GEAR policy priorities.

Chapter 6

The chapter gives recommendations and conclusions. While on one hand, the report recommends that the Free Basic Water policy need to be replaced by a policy that is guided by societal concerns in a pluralistic manner, there is a need to be cautious that, South Africa is a water-scares country.

Chapter Two

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 INTRODUCTION

This chapter focus on the core concepts and theory shaping and guiding the argument of this research report. This research is concerned with moral principles that should govern delivery of basic services in society as a way of achieving a society based on social justice, hence applies Rawls' theory of justice, with contributions from scholars in the field of social justice and advocacy planning. The chapter begins by defining the concept of poverty, relating it to urban poverty experienced by the poor living with HIV/AIDS in townships.

Moreover, this chapter gives an overview of the post apartheid urban policies, and how they have been influenced by government policy frameworks, both the Reconstruction and Development Programme (RDP) and Growth Employment and Redistribution (GEAR). Furthermore, special attention is given to the analyses of socioeconomic rights, with critical review of selected four aspects of Section 27 of the South African constitution. The last part of this chapter focuses on the guiding theory of the research, which is that of social justice.

2.2 DEFINING POVERTY

The concept 'poverty', cannot be defined by one fixed definition because the concept itself is an elusive and multifaceted one (UNDP, 2001). Being poor is understood and defined differently by people within diverse contexts, who differ from one country to the other, from place to place and person to person. However, there is a minimal agreement that poverty is generally understood as and characterised by lack of "access to income, employment opportunities, normal material entitlements by the citizens to such things as freely determined consumption and services, shelter and other basic needs of life" (UNDP, 2001:8).

2.2.1 DIMENSIONS OF POVERTY

Chambers, cited in Barberton *et al*. (1998: 19) differentiates between five dimensions of poverty:

• *Poverty proper*

Lack of adequate income or assets to generate income.

• *Physical weakness*

Due to under-nutrition, sickness or disability

• *Physical or Social isolation*

Due to peripheral location, lack of access to goods and services, ignorance or illiteracy

• *Vulnerability*

The poor are vulnerable to crisis and the risk of becoming even poorer

• *Powerlessness*

Powerlessness refers to when individuals have no economic, social and political powers not only to acquire reputable living standards, but to influence socioeconomic policies, which have impacts on their daily lives also.

Both of the above factors on the general understanding of poverty mirror not only the living conditions the poor and vulnerable groups in the South African townships. They do also mirror their daily challenge of HIV/AIDS and the special water needs the virus calls for. First, these are the people located at the periphery of the urban opportunities, far from city centres (because of previous spatial apartheid) , with their income generating capacity to afford sufficient water services needed for their own Care and Prevention, adversely affected on different clinical stages of the virus. The definition of poverty in Africa and particularly to the poor living with HIV/AIDS in South African townships is, to a large extent informed by the HIV/AIDS households' insufficient access to basic social services and necessities such as health services and clean water.

2.2.2 URBAN POVERTY IN SOUTH AFRICA.

Parnell (2004: 4) argues that "urban poverty is consistently underestimated, for it is always contrasted with rural poverty". She see the State's misplaced understanding of the post apartheid developmental agenda being on a general reluctance of government and policy makers to acknowledge urban rather than rural poverty (Parnell, 2004) . To the poor HIV/AIDS affected households in townships, the definition and understanding of poverty went beyond the margins of material cum-income deprivation. Poverty in their context includes not only exposure to risk and vulnerability to the HIV/AIDS virus, because of inability to afford sufficient water needed for their own Care and Prevention. It also includes social exclusion and even political powerlessness to influence the Free Basic Water policy to accord their special water needs for Care and Prevention. The post apartheid urban policies on the other hand are criticised of being difference-blind, and not sensitive towards the country's inherited socioeconomic inequalities, which today makes the poor living in townships more vulnerable to the HIV/AIDS.

2.3 OVERVIEW OF POST APARTHEID URBAN POLICY FRAMEWORK.

2.3.1 THE RECONSTRUCTION AND DEVELOPMENTAL PROGRAMME (RDP).

Upon assuming power in 1994, the ANC led government adopted the Reconstruction and Development Programme (RDP) as a policy framework to guide the post apartheid reconstruction and redistribution process. The RDP had a primary aim of meeting people's basic needs through people driven development approach (RDP, 1994). RDP stance on basic water services delivery focused more on undoing the previous apartheid injustices, in which access to water services was determined by people's racial backgrounds (RDP, 2004). Despite climatic and geographic limits to the availability of water in the country, RDP recognised "water as a basic need to be provided in a manner that it will meet everyone's health and other crucial requirements for now and in the near future" (RDP, 1994:28).

With regard to water tariffs, RDP recognised the inherited income disparities that characterises the post apartheid society and call for "a lifeline services to ensure that all South Africans are able to access water services, sufficient for their health and hygienic requirements"(p:30). Fifty litres per person per day was the medium –target for RDP's lifeline as a lifeline amount (Bond, 2001). In contrary to the above argument, Zarenda (2003) and Paley (2003) argue that the Reconstruction and Development Programme (RDP) was only the African National Congress' (ANC) pre 1994 elections political point scoring campaigning manifesto, which used more attractive slogans such as that of "*Better life to all* , *Free basic services to all* and that *People shall govern*"(ANC, 1994). This argument was justified even further by the closure of the RDP offices in 1996, two years after the first democratic elections. According to Harrison (forthcoming: 15) the closure of RDP office was largely informed by the "enormous pressure from Western governments and international development agencies, as well as the private capital to shift from a broadly Socialist orientation to adopt economic and development policies with more economic orthodoxies".

2.3.2 GROWTH ,EMPLOYMENT AND REDISTRIBUTION (GEAR).

Following the closure of the RDP office, the post apartheid government adopted a market oriented macroeconomic strategy, Growth Employment and Redistribution (GEAR) in 1996. Lodge (2001:21) argues that "after a very secretive formulation "GEAR's authors forecast a 6% growth rate by 2000, to be achieved through deficit reduction, trade liberalisation, government "right sizing", privatisation and wage restraint". The following are the core priorities of GEAR integrated strategy:

• Tax incentives to stimulate new investment in competitive and labour absorbing projects;

• Speeding up the restructuring of state assets to optimise investment resources;

• A faster fiscal deficit reduction programme; and

• A renewed focus on budget reform to strengthen the redistributive thrust of expenditure (GEAR, 1996).

The implementation of these core priorities at the local government level was carried through the following legislation and policy document. The Municipal Finance Management Act (MFMA) of 2003, which focuses on sustainable management of financial affairs of municipalities (Harrison, 2005). The MFMA links municipalities' Integrated Development Plans (IDPs) with their budgets in order to avoid fiscal gab, so as to meet core priorities of GEAR. Second, is the White Paper on Municipal Services Partnerships (MSP) (2000). This supports GEAR's in that the MSP urges municipalities to partner the private services providers in the delivery of municipal basic services. However, the advocates of the MSP policy document maintain that private services providers will benefit the society for efficiency reasons and municipalities who will learn of new technologies (White Paper on MSP, 2000). The impacts of both the MSP policy document and that of MFMA on delivery of water to the poor HIV/AIDS affected households in townships are discussed in depth in Chapter 4 of this report.Unlike the RDP, whose developmental agenda was premised on the idea of 'growth through redistribution', GEAR took a more conservative 'tickle down approach' as a way of meeting of people's basic needs (Lodge, 2001: 20).

2.3.3 SHIFT IN POLICY FRAMEWORK AND DEVELOPMENTAL AGENDA OF THE POST APARTHEID GOVERNMENT.

Like Bond (2000) , Harrison (forthcoming, 2005: 15), also believes that the shift from RDP's people-driven developmental approach, to a market-oriented developmental approach of GEAR reflects a direct influence of the Bretton Wood institutions, the World Bank and International Monetary Fund (IMF), along with the World Trade Organisation (WTO). Despite questioning the commitment of the post apartheid government to the notion of developmental state, the shift also questioned whether the government is committed towards the promotion of social justice or amplifying the inherited socioeconomic inequalities (Ibid).

Moreover, the external forces that influenced this shift also show what has been referred to as a "dependency syndrome and lack of developmental agenda", by the post apartheid government (Parnell, 2002; Mkhandawire, 1997). According to Johnson ,cited in Besson,

(undated :2) developmental state " is a state determined to influence the direction and the pace of socioeconomic development by directly intervening in the economy , rather than relying on the uncoordinated influence of the market forces to allocate resources". The success of developmental state is determined by its political, institutional and administrative capacity, backed by the nation state's autonomy to implement its own socioeconomic policies (Mkahandawire, 1997). Based on the above argument, one can argue that no State can be said to be developmental, if it has entirely shifted its developmental responsibilities to the other actors, whom their actions are not responsive and '*sensitiv*e' to the legitimate services expectations of the people.

Unlike RDP, the GEAR strategy sees an active role of private sector in the allocation of resources being an effective and efficient way of meeting people's basic needs. Under GEAR strategy, the State is expected to play a minimal role in the allocation of basic resources (Mhone and Edegheji, 2003). The only pro-active role that the State is expected to assume is that of ensure a conducive environment for the private sector to take over, through tax incentives and speeding up the restructuring of state assets to optimise investment resources (GEAR, 1996). At the local government (municipalities) level, the implementation of GEAR took form of out sourcing, contracting out and privatisation of previously municipal owned firms in areas such as water delivery, to the foreign privately owned companies (Pape, 2001). The restructuring of basic municipal services such as water took place "in order to meet and match the fiscal orientation and priorities of GEAR" (Parnell *et al*. 2002: 79). There are two ways of looking at the post apartheid urban planning policies, Mainstream approach on one hand and Critical approach on the other, as developed by Bond (2003).

2.4 TWO WAYS OF LOOKING AT THE POST APARTHEID URBAN POLICIES.

1. Mainstream approach.

The mainstream approach is influenced by the 'trickle down effect' orthodoxy, which gave rise to Growth Employment and Redistribution (GEAR) macroeconomic strategy. The underlying argument of the mainstream approach is "premised on the idea that cities

should be competitive units in the world economy first and foremost" (Bond, 2003: 41). The approach maintains that municipal subsidies should be minimised, while pricing of municipal services must be based on market principles (Ibid). Moreover, this approach maintains that the "current existing policies and resources allocated for urban regeneration are fine and quite sufficient" (ibid:42). Deficiency in delivery of basic municipal services is seen as being on the inefficiencies of municipalities" (p: 42). The private sector is seen as a solution to these municipal inefficiencies, with "Public Private Partnerships, outsourcing and other form of municipal services partnerships" (Ibid).

2. Critical approach.

The critical approach's argument emerges as a critique for the Mainstream approach and takes pro-poor stance. Critical approach argues that the "current State policies are excessively market oriented, insensitive to poverty, while planning frameworks are essentially technicist and disempowering", hence amplifies social exclusion (Bond, 2003:41). The current resources allocated are seen as inadequate, not meeting other segment of the society's needs, while privatisation is seen as worsening and not ameliorating the inherited inequalities in basic services delivery (Ibid). Moreover, this approach argues that the current public health concerns and worsening spatial segregation are informed by the post apartheid urban policies.

Unlike the mainstream, the critical approach sees "communities and workers as potential part of the solution, if their control could be enhanced" (p: 42).The validity of the facts presented by each of the above contrasting approaches (in relation to the Free Basic Water policy) seem to appear more clear as the research critically analyse the constitutional stance on right to access sufficient water.

2.5 CONSTITUTIONAL RIGHT TO ACCESS SUFFICIENT WATER.

The current South African constitution is often praised for representing one of the best world models of democracy. Access to water is recognised as a socioeconomic right enshrined in the Bill of Rights (RSA, 1996). Section 27 (1) (b) of the constitution states that "everyone has the right to have access to sufficient water". Subsection 27 (2) states

that "the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right (RSA, 1996:12).

There are four important aspects gathered from Section 27(1.b) and subsection 27(2), of the constitution. The following aspects have been raised by the constitution and their discussion is of paramount importance, because they shape the argument of this research. They include *sufficient* water, *reasonable and other measures*, *progressive realisation of right to access water*, and ('but') *within available resources*. The discussion of the last three aspects, reasonable and other measures, progressive realisation, and within available resources, is carried in the line with Judge Yacoob's constitutional court decision on *The Government of the RSA and Others Vs Grootboom and Others* in 2001.

1. SUFFICIENT WATER.

Section 27 (1) (b) of the constitution states that everyone has the right to have access to sufficient water. One could begin by asking as to how much is sufficient? The concept 'sufficient' itself, is a much contested one. For one to be able to say that they are having sufficient amount of water needed, depends on their daily household activities. It is these different activities that determine each household's daily consumption and their demand for certain amount of water each month. Each household have different activities that heavily depend on the usage of water. According to the American Water Works Association (AWWA, 1995:2) "water can only be sufficient when it meets all the household quality requirements, providing security to the user, based on its affordability, reliability and viability".

Based on the above argument, one could argue that to the HIV/AIDS affected households; water can only be sufficient if it can meet their quality requirements for effective Care and Prevention. Water for effective *Care* implies clean sufficient water "to those household members already infected by HIV/AIDS, to promote positive living, good hygienic practices and nutritious" (SARPN, 2003:12; also see Defilippi ,cited in Tomlinson, 2004: 24). Sufficient clean water for future *Prevention* on the other hand, implies "ensuring that those household members and caregivers at the home/ community levels remain uninfected, thus reducing chances of them being infected every time they

offer care to the infected members" , through accessing '*adequat*e' amount of water needed in this regard (Tomlinson, 2004:26).

2. REASONABLE LEGISLATIVE AND OTHER MEASURES

Section 27(2) of the constitution even went further stating that "the State must take reasonable legislative and other measures, within its available resources to achieve progressively realisation" this socioeconomic right of access to sufficient water (RSA, 1996: 12). Yacoob (2001) gives a clear analysis of this subsection 27(2) in a court case: *The Government of the RSA and Others Vs Grootboom and Others* in 2001.Yacoob (2001) was not specifically referring to water, but housing issues. The researcher decided to interpret the water clause in the line with Yacoob's(2001) decision on Grootboom's housing case based on the following important reasons:

First, is that right access to sufficient water is constitutionally recognised equally as other socioeconomic rights enshrined within the Bill of Rights, such as housing , food, housing and health care services, which any of the State's action must protected, respect, promoted and fulfil their realisation(RSA, 1996). Moreover, in legal terms, court decisions made on one these socioeconomic rights (housing, health care services and food), could still be referred to or serve as a guide in future court decisions concerning any of these rights of the same catalogue , since (in most cases)these rights overlap each other (Van Wyk, 2005). In the case of this research report, the Free Basic Water policy affect rights of the poor HIV/AIDS affected households to access '*sufficient* water. A clear example substantiating this argument is seen in the case followed the Grootboom case, is that of the *Minister of Health and Others v Treatment Action Campaign and Others* (1) 2002 (10) BCLR 1033 (CC) [36]. Court decision on this case was also guided by the decisions of Judge Jacoob's decisions on the Grootboom case in 2001, since access to medical care services is given equal recognition as housing, food and water.

Second, it is only under the clauses of these socioeconomic rights, housing, health care services, food and water that the constitution compels the "State to take reasonable legislative and other measures, within its available resources, to achieve the progressive

of each of these rights". These are the matters which section 167(4) of the constitution regarding them as constitutional rights that the constitutional court may resolve their disputes concerning their constitutional status (RSA, 1996: 70). Moreover, these are rights that are not even subjected to political bargaining or compromises, for they have a crucial role in the promotion of achieving a society based on social justice.

Third, and of equal importance is that Yacoob's J (2001) analyses of socioeconomic right(s) clause is to a large extent guided by that of Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)(1976), which also deals with socioeconomic rights such as access to water. After democratic elections of 1994, South Africa was accepted back as a signatory state to the League of Nations (United Nations). This meant that the protection of socioeconomic rights such as water in the South Africa constitution is an extension and implementation of the Covenant's stance on socioeconomic rights at the national level. A clear connection between the South African constitution water clause and that of the ICESCR is discussed in Chapter 3 of this research report.

To begin with the analysis of the second aspect, Yacoob(2001) does acknowledge that the South African society is divided into two social positions. Given this, he argues that State policies dealing with or affecting socioeconomic rights must therefore take account of these different economic levels of society, between those who can afford to pay and those who cannot (Yacoob, 2001). Yacoob(2001: 67) argues that "the poor are vulnerable and their needs require special attention". In addressing the poor's needs, legislative measures are necessary, but not sufficient. He maintains that "legislative measures must be supported by appropriate well directed policies, which must be reasonable both in their conception and implementation" (Yacoob, 2001: 67).

Moreover, he maintains that policies and programmes that *exclude* a significant segment of society cannot said to be reasonable (Yacoob, 2001). The Free Basic water policy can only satisfy the needs of those who can afford and of the HIV/AIDS unaffected households, whose needs for water is far below that of HIV/AIDS affected households.

The Care and Prevention role that water plays in the HIV/AIDS affected households is what matters, as it separates those who can afford and those who cannot afford. The poor living with HIV/AIDS in townships are in a different socioeconomic position, not only by the virtue of inability to afford, but of their health status that requires more water for Care and Prevention.

Yacoob(2001: 67) argues that "what might be appropriate for the poor living in rural areas; where people live together in communities engaging in subsistence farming and having alternative ways of accessing resources may not be appropriate in an urban areas". Unlike in rural areas where people can still get water from pits, boreholes and rivers, people in townships can only get waters from a prepaid metered taps, from which they have to pay in advance every time they exceed 6kl/6000 litres. Yacoob (2001: 69) maintains that "in determining whether a set measure is reasonable, it will be necessary to consider these socioeconomic problems in their social, economic and historical context". This true because for too long in the history of South Africa, access to water has always been a political, than a technical issue (Emmett and Hagg, 2001:299).

The struggle over access to clean sufficient water in the South African townships is not new, but an inherited challenge from the apartheid system. The fall of the apartheid in 1994 brought new hopes to bring equitable access to those previously deprived access to basic services such as water. Despite the adoption of Free Basic water policy, frustration over access to sufficient water looms even further now with the challenge of HIV/AIDS and the water needs for Care and Prevention it calls for. In the face of high unemployment and high prevalence of HIV/AIDS, water is mostly provided on cost recovery market principle, using prepaid metered taps in townships, regulating any charges beyond free 6kl/6000 litres (HSRC, 2002; Pape, 2002).

3. PROGRESSIVE REALISATION OF RIGHT TO SUFFICIENT WATER.

The third, aspect of subsection 27(2) is that of progressive realisation of the right to sufficient water. South Africa is a constitutional State; any of the state's actions, (could be either of Parliament, Judiciary, Executive or of any of the states organs) are bound to promote, protect, respect and fulfil right for everyone to access sufficient water (RSA, 1996; Van Wyk, 2005).Yacoob(2001:70) argues that, progressive realisation of socioeconomic rights means among others things their accessibility must be progressively facilitated. For socioeconomic rights to be progressively met, administrative and financial barriers should be examined and, where possible, lowered over time (Ibid).

4. WITHIN AVAILABLE RESOURCES.

Progressive realisation of water rights provokes the discussion on the State's available water resources. Although the State is bound by the constitution to take reasonable legislative and other measures to afford people right to access sufficient water, what matters most is how much water South Africa has naturally and could afford to have financially. Yacoob (2001:70) also acknowledge that "the obligation does not require the State to do more than its available resources permits". The issue of availability of water resources is critical because, unlike other socioeconomic rights such as housing, health care services, food and social security, whose realisation depend largely on administrative and financial willingness of the country to afford people, water is a different issue. Due to geographic and climatic limitations, South Africa is (in a global terms) a water-scarce country. Chaskalson P, cited in Yacoob (2001: 70) argues that "what is apparent from this provision is that the obligation imposed on the State by subsection 27(2) in regard to access to water is dependent upon the resources available for such purposes". While financial and political willingness are of equal importance in the progressive realisation of right to sufficient water on one hand, the availability of water resources determines what is reasonable, on the other (Yacoob, 2001).

2.6 GUIDING THEORY: SOCIAL JUSTICE.

The theory guiding argument of the research is that of *Social Justice* by Rawls (1971), with contributions by scholars in the field of social justice. These scholars include Young (1995), with her model of *Politics of Difference,* emphasising the idea of policies to be conscious of group difference and representations of the least advantaged groups with special needs. Taylor (1995) extends Young's (1995) argument, as he speaks of the importance of recognising and acknowledging group difference in policy making, with his model of *Politics of Recognition*. Davidoff's (1965) *Advocacy and Plurality in Planning* complement and extends argument of both scholars, urging planners to act as advocates of the poor and powerless members of society at decision making level.

2.6.1 Rawls's theory of Justice

Rawls's (1971) theory of social justice is concerned with the promotion of justice, fairness and equity in the distribution of resources in society consisting of people from different backgrounds, with diverse interests. For Rawls (1971:3), "each person possesses an inviolability founded on justice that even welfare of society as a whole cannot override". Rawls's (1971) theory was chosen as the guiding theory, since the research is concerned with moral principle that should govern the basic structure of services delivery, with the needs of those in disparate conditions, given special attention. Second, the research is interested in finding out how the Free Basic Water policy address the special water needs of the poor households living with HIV/AIDS in townships, if equity and fairness is to be the government's water delivery policy concern, as entrenched in the preamble of the constitution. What is at stake is *group-difference* and how the Free Basic water policy addresses it. An argument raised here is that, although every household needs water for their domestic usage and health protection, the HIVAIDS affected households needs more water than anyone else for Care and Prevention. ICESCR (2002: 4) argues that "some individuals and groups may require additional water than others due to their health conditions".

The 6kl/6000 litres provided by the Free Basic Water Policy can only satisfy consumption of the poor household not living with HIV/AIDS, since they can control their consumption of water[2]. In contrary, the poor HIV/AIDS affected households cannot control their monthly consumption. This is because the use of more clean water is necessitated almost in all clinical stages of the virus. For example, households with HIV/AIDS infected patient(s) cannot predict when and how often in a day their infected member(s) will experience chronic diarrhoea. Steinberg et al., cited in Tomlinson (2004: 49) argues that "chronic diarrhoea is one of the virus symptoms that cause most disturbances for the household water consumption". This is true because during the chronic diarrhoea times, more water is used for toilet flushing, washing of clothes in case where the infected patient(s) cannot walk to toilets and bathing to maintain hygienic and fresh living environment (Palmer Development Group, cited in Tomlinson, 2004:49). Given the above argument, the Free Basic Water policy cannot said to be promoting justice, but rather *difference-blind*.

In his theory of justice, Rawls (1971) maintains that no mater how efficient and well arranged policies and laws could be, but if they are unjust, they must be abolished and rejected. Rawls (1971: 3) argues that "justice denies that the loss of freedom for some is made right by a greater good by others". However, on one hand the Free Basic Water policy can be seen as a responsive policy, since its primary recipients are the poor who cannot afford and also as part of poverty alleviation strategy (DWAF, 2001). On the other hand, the policy cannot said to be promoting justice, especially when looking the poor HIV/AIDS affected households with special water needs for Care and Prevention. This group's special water needs are not recognised by the policy, but rather outweighed by the larger sum of advantage enjoyed by many, those who can afford or poor but not faced with the challenge of HIV/AIDS and the water services it calls for.

[2] This argument is based on the assumption that the HIV/AIDS affected households needs more water for Care and Prevention, than their counterparts HIV/AIDS negative neighbours.

A. RAWLS' THEORY AND ITS CRITIQUE TO UTILITARIANISM

Rawls's (1971) theory of justice emerged as a critique for and alternative to Utilitarian notion of 'the greatest happiness for the greatest number' (McConnell, 1981). Under the Utilitarian society, benefits and burdens are distributed based on the goal of maximising utility (Williams, 2003). According to Rawls (1971: 26) in this society "there is no reason in principle why the greater gains of some should compensate for the lesser looses of other", thus a citizens rights could be completely ignored if injustice to this one citizen would benefit the rest of society"(Rawls essaysample, 2004: 1).

Rawls (1971) went even further criticising the conception of utilitarianism for what he termed an '*imperial spectator'*. According to Rawls, the conception of Utilitarianism possesses a character of imperial spectator, because one man's principles, interests and desires are universally applied to the society. For this, the whole society is fuses into one (Ibid). Decision making under this system, " is not different to that of an entrepreneur deciding how to make profit by producing this or that commodity or even that of a consumer deciding how to maximise his satisfaction by the purchase of this or that collection of goods"(Rawls, 1971:27). Given this, Utilitarianism is criticised of not taking distinctions between persons serious (Rawls, 1971).

B. SOME IDENTIFIED SIMILARITIES BETWEEN THE FREE BASIC WATER AND UTILITARIANISM.

The Free Basic Water policy could be seen to be sharing similarities with the Utilitarian notion of 'greater happiness to greater majority', based on the following reasons. First, the fact that the 6kl/6000 litres of water offered by the policy is provided to every household, irrespective of its socioeconomic status makes it to share similarities with Utilitarianism. Thus, same principle of 6kl/6000 litres is applied to every citizen, as if all households are homogeneous. Second, different households' demand for water every month, especially for the poor households, is assumed to be below 6kl/ 6000 litres a month. Here again, people classified as being poor are viewed in a homogenous way by

the policy. Thus social difference within this group classified as poor is ignored by the policy. Like policy developed in a Utilitarian society, the Free Basic Water policy therefore fuses the whole group classified as being poor households into one.

Rawls's (1971) theory is concerned with fairness of opportunity and equity in the distribution of resources, by major institutions such as policies, constitution, principles of economics and other social arrangements. These institutions " contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances" (Rawls, 1971:7). According to Rawls (1971), the construction of these institutions itself creates inequalities, since it favours certain places and people over others. It is in this kind of society, that principles of social justice must be introduced to regulate the choice of a political constitution and the main elements of the economic and social system (Rawls, 1971).

C. TOWARDS PRINCIPLES OF SOCIAL JUSTICE.

The application and the success of principles of social justice within a society consisting of self interested people, who are rational and equal must be established in a mutually acceptable manner and commonly agreed upon by people therein (Rawls, 1971, Rawls essaypaper, 2004). Rawls (1971) believe that the only way in which the society could achieve negotiation of laws that will be commonly agreed upon and beneficial to all, will be if people could assume what he terms 'Original Position' (Rawls essaypaper, 2004).

The idea behind the original position is that, parties are situated behind what he terms a 'Veil of Ignorance', "not knowing their socioeconomic positions, status nor circumstances of their own, thus not having any information as to which generation they belong" (Rawls, 1971:12,137). Rawls (1971) supports the idea of original position, because he believe it will allow parties to "choose principles the consequences of which they are prepared to live with, in whatever generation they turn out to belong to (ibid). Moreover, he believe that the original position will help to avoid selfish and unethical

exploitation of resources by men, whom because of their knowledge of political affairs, basis of social organisation and laws of human psychology, influence distributive policies to their own individual advantage.

When applying Rawls's idea of original position to the discussion, it means that all parties with major interests in the delivery of basic water, including the poor HIV/AIDS affected households, basic water services policy makers and all the State organs will be behind the Veil of Ignorance. All these parties will be having no information concerning their health and socioeconomic status and positions and responsibilities concerning the delivery of basic water services. These will allow them to develop basic water policy that is commonly agreed upon and beneficial to all people in different socioeconomic positions. Moreover, the consequences of this new water policy, developed behind the Veil of Ignorance will be the one which every party will be prepared to live with, in whatever generation they turn out to belong. The following two principles are the outcomes of the negotiations behind the 'Veil of Ignorance' or 'Original Position'. (Rawls (1971: 302)

I. First Principle

Each individual is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

II. Second Principle

Social and economic inequalities are to be arranged so that they can both be

(a) to the greatest benefit of the least advantage, consistent with the just savings principle, and

(b) attached to offices and positions open to all under conditions of fair equality of opportunity.

According to Rawls (1971: 4), these principles of social justice, "provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social co-operation". Rawls's (1971) principles of justice are of great importance to the argument raised in this

research. The first principle argues that every citizen, including those poor living with HIV/AIDS in townships, have the voting rights and freedom of participating in the formulation of basic water delivery policies that will have impacts of their daily lives.

The second principle, state that discrimination is only acceptable if it is in a positive way or if it is the interest and benefits of the least advantage people. Rawls's (1971) second principle acknowledges that there is difference in society, which can be ameliorated through positive discrimination. This implies that the Free Basic Water policy can only discriminate in a positive way. The only discrimination that the policy could make, must be positive in a sense that it is biased towards and not against the water needs of the poor households affected by HIV/AIDS in townships.

D. LIMITATIONS OF RAWLS' THEORY OF JUSTICE.

Although Rawls's (1971) principles appear to be more attractive way of promoting justice and fairness in the distribution of scare resources according to people's needs, its applicability to real life situation is impractical, if not impossible. First, right to voting and freedom of participation in the decision making does not guarantee that everyone's opinion will be listened to. Rather, usually what happens at decision making processes is that, the local people are always co-opted, than having their opinions incorporated (Bond, 2002). Moreover, participation without political and economic skills and resources to do what has been referred to as '*wining and dinning'* decision makers to accommodate groups needs in decision making, dispute what Rawls's first principle of justice argue (Anderson, 2000).

Oelofse (2003:92) argues that "Rawls ignores the state which he relies upon as the primary instrument of just redistribution, is never neutral, but always ambiguous on its decisions as a reflection of power relations". Moreover, his theory could be criticised on the grounds of interfering with the market's distribution of resources, especially in countries such as South Africa, where active private sector participation is strongly encouraged in the economy, since his theory advocate for a direct state intervention to

ensure the least advantage are always to benefit(McCarthy and Smit ,cited in Oelofse, 2003:92).

Second, the idea of being behind the 'Veil of Ignorance' is impractical in a real life situation. Both policy makers and planners are not value free. Anderson (2000:135) argues that "in considering the broader social and political forces that impinge on decision makers, we tend to neglect their own values, which are impossible to ignore". Ideological values governing both planners and policy makers in the formulating policies cannot be underestimating, because they are determinative in shaping their behaviour and decisions (Anderson, 2000).

Moreover, Rawls' theory of justice appears to be focusing only on a society in which the poor are only minority. It will seem inapplicable in developing countries within colonial and apartheid legacy such as South Africa, where the minority are the once rich and majority poor. Further more, as also observed by Young, cited in Kihato (2003) Rawls' seems to focus more on redistribution of resources, but very silent of issues of gender disparities. Of paramount importance, Rawls' theory seems to be very enthusiastic about fairness and justice *only* on distribution of resources. However, the replenishing of those resources was ignored by his theory. This is true, because in the case of this research water is a renewable, but scares resource in South Africa. Therefore his theory focuses only on developmental (*brown agenda*) issues and less on sustainable development (green *agenda*) issues.

Despite the above limitations, Rawls (1971) acknowledges the issue of *group difference*, which is of great importance to the argument of this research report. He argues that "Utilitarianism does not take seriously the distinction between persons". For Rawls, group distinction, could be ameliorated through positive discrimination, where "social and economic inequalities are to be arranged so that they can both be to the greatest benefit of the least advantage" (Rawls, 1971: 302). Group difference is of paramount importance in this research, because the main focus is on the poor HIV/AIDS affected

households, who are different to everyone else not only on economic basis, but also on their health concerns.

Rawls's (1971) idea of group difference influenced many scholars in the field of social justice, who carried it forward in their works, both Iris Marion Young (1995) and Charles Taylor (1995). Their contribution complements that of Rawls's (1971) theory of justice, with specific focus on group difference and recognition of the least advantage groups of society in policy making. The basic relationship between their arguments is that, social justice could be realised through recognition of group difference and formulation of group-conscious policies, supported by strong representation of the interests of the poor. They argue that social policies that are blind to group difference, reproduce patterns of continuing marginalisation and privileging of others. Their arguments recommend advocacy and special group representation, as also endorsed by Paul Davidoff (1965). Like Rawls (1971), both Taylor (1995) and Young (1995) did not specifically talk about planning for water delivery to the poor with HIV/AIDS in townships, but their views on how social policies could promote justice and fairness, serves as guidelines to both planners and policy makers in the fields of basic water delivery. We firstly begin by discussing Young's (1995) model of *Politics of Difference,* before getting into *Politics of Recognition* by Taylor (1995), and then follows Davidoff's (1965) *Advocacy and Plurality in Planning*.

2.6.1 THE POLITICS OF DIFFERENCE, RECOGNITION AND ADVOCACY IN SEARCH FOR GROUP-CONSCIOUS POLICIES.

A. POLITICS OF DIFFERENCE

Like Rawls (1971) whose theory of justice emerged as a critique of Utilitarianism, Young's (1995) endorsement of 'Politics of Difference' also emerges as a critique of the liberal conception of democracy, which he termed the 'assimilation ideal'. The assimilation ideal's idea is informed by the liberal conception of democracy, where equal treatment of all people is seen as primary principle of justice. The assimilation ideal assumes that "equal social status for all people requires treating everyone to same

principles, rule and standards" (Young, 1995:199). This is because group difference plays no significant role under this ideal.

Under this ideal, there is a promotion of individual liberal humanism, where each person is treated as individual and evaluated according to her or his individual efforts and achievements (Young, 1995:205). Young's (1995) politics of difference argues that "equality as the participation and inclusion of all groups; sometimes requires different treatment for oppressed or disadvantaged groups". From Barberton's *et al*.(1998) dimensions of poverty, we gathered that the poor living with HIV/AIDS in townships fall under the category of being oppressed and disadvantaged because of the following. First, although they do have equal rights to vote, participate in economic and the political activities, they do not have economic resources and political skills to influence water delivery policies to accommodate their urgent water needs. This is where Young (1995) tends to differ with Rawls's (1971) first principle of justice, which suggest that " everyone have an equal opportunity in the election of a government official and equal power over policies put into effect by official(s)" (Rawls essaysample, 2004:1). For Young (1995:202) "the achievement of formal equality, which includes voting and participation in decision making, does not eliminate social difference". Formal equality is rather blind to different disadvantage groups whose political history and economic capacities differ from those of privileged groups (Ibid).

This is true because people in townships were previously denied an opportunity to participate equally in the political and economic activities. As a result, their political experiences and economic conditions allow them not to afford and influence policies to cater their water needs for Care and Prevention, yet the Free Basic Water policy is blind to these differences. Like Rawls (1971), Young (1995) also sees a society being made up of people from different backgrounds and historical experiences. It is these backgrounds and experiences that influence not only the way people interact with one another, but also their ability to influence policies to accommodates what in their socioeconomic conditions seems to be basics needs for their day to day survival.

What is at stake is the meaning of social difference itself and therefore to promote social justice, social policies should be conscious of these differences, accord special treatment of groups (Young, 1995). Young (1995: 202) endorses a model of politics of difference, from which she argues that blindness to social differences, perpetuate political imperialism, because only the views of those with resources and skills to influence decisions making will dominate endorsed universally. She maintains that "a goal of social justice is social equality" (Young, 1995: 210).

For Young (1995:210) "social equality includes full participation and inclusion of everyone in a society's major institutions, and the socially supported substantive opportunity for all to develop and exercise their capacities and realise their choice". Her argument on policies to be conscious of group difference is supported by Taylor (1995) with his argument of *Politics of Recognition*.

B. POLITICS OF RECOGNITION

Taylor's (1995) politics of recognition gives reasons why policies should recognise and acknowledge group difference on their formulation. He argues that certain groups in society are systematically handicapped by poverty, unable to fully exploit their citizenship rights, thus relegated to what he termed 'second class status' (Taylor, 1995). In order to promote social justices, policies should recognise everyone for their unique socioeconomic status, (Taylor, 1995).

By recognition one does not only imply the ability of municipalities' to statistically know how much poor people are infected by the virus within areas of their jurisdiction. Recognition involves municipalities taking a leading role to ensure that the urgent and special water needs of the poor HIV/AIDS affected households are represented and accommodated in the formulation of basic water delivery policies. Taylor (1995: 249) argues that "nonrecognition of group difference in policy formulation shows not just lack of due respect", but can also inflict harm, since the nonrecognised's mode of being is

reduced, as they internalise a picture of their own inferiority (Ibid). This emerges as an obstacle to them not to take advantage of new opportunities.

Nonrecognition of the water needs of the poor living with HIV/AIDS in townships can also lead to what has been referred to as "social polarisation and spatial segregation" (Harrison, 1996:30). Although the post modernity epoch has been characterised by democratisation, which holds the promise of equal participation in decision making, it is at the same time characterised by "shift from the language of welfare to the language of public private partnerships, large proportion of the society is thrown into the uncertainty world of suffering and marginalisation" (Cochrane in Harrison 1996: 29; Harrison 1996:30).

Recognition of group difference in policy formulation, will allow policy makers to make policies which are conscious of social difference. This is an idea by Young (1995:211) who sees realisation of social justice in policies been realised through what she referred to as group-conscious policies. She argues that "groups cannot be socially equal unless their specific experience and social contributions are publicly affirmed and recognised" (Young, 1995: 211). For recommending group-conscious policies, Young (1995) put two reasons why she think policies that take notice of these specific situations will offset the continuing marginalisation of disadvantaged groups.

First, Young (1995) argues that despite respecting deference in policy, group conscious policies seek to ensure that difference does not harm or disadvantage. Second, she sees a homogenous public being oppressive (Young, 1995: 216). She argues that some groups are materially and politically privileged to influence policies, than the poor, whom their views and interests are under represented at policy decision making level (also see Davidoff, 1965, Anderson, 2000 and Stone, 2002). The idea of group-conscious policies is but, without no criticism also.

Imagine if there could be a policy that deals with delivery of water exclusively to people living with HIV/AIDS, as a way of affirming difference. Already people living with

HIV/AIDS are experiencing discrimination and stigma, due to their health status. Even Young (1995:211) herself acknowledges that "in the past, group-conscious policies were used to separate those defined as different and exclude them from access to rights". However, she sees the principle of '*Democratic Cultural Pluralism'* having a solution to ensure that group-conscious policies are not justifying exclusion and discrimination. Democratic cultural pluralism principle requires a "dual system of rights: a general system of rights which are the same for all, and a more specific system of group-conscious policies and rights" (Young, 1995:212). Karst, cited in Young (1995:212) explains the logic of this principle much better by arguing that "when the promise of equal citizenship is fulfilled, the paths to belonging are opened in two directions for members of the disadvantaged minority. As full members of larger society, they have option to participate to whatever degree they choose. They also look inward, seeking solidarity within their disadvantaged group, without being penalised for that choice".

Young (1995) interpreted disadvantaged minority , to mean any group subject to political imperialism. In the case of this research it refers to the poor living with HIV/AIDS in townships, who are not materially and politically privileged to influence the Free Basic water policy to be aware of their special and urgent water needs for Care and Prevention. The success of democratic cultural pluralism principle depends on the active and viable representation of the needs of the poor, by planners who are expected to play a leading role in this regard. This idea is an idea also advocated by Davidoff (1965), in his writings on 'Advocacy and Pluralism in planning'.

C. ADOVOCACY AND PLURALISM IN PLANNING

Davidoff (1965: 423) argues that "powerful groups in society have skill and resources to shape city plans to serve their interest". Davidoff (1965: 423) acknowledges the consequences of public policies to the well being of the disadvantage groups whom, (because of lack of economic powers and political skills) are unable to influence policies and city plans to entertain their needs. Davidoff (1965) also recognises that the society is made up of different socioeconomic backgrounds and having different needs. Davidoff

(1965) urges planners and policy to act pluralistically as advocates, articulating the needs of the disadvantaged groups, much as lawyer represents a client and represents them at the decision making (Ibid). By acting as advocates of the less privileged groups in society, planners and policy makers will be searching for equity and social justice in the distribution and allocation of resources.

In contrary to what Davidoff's (1965) argues, is Harrison's (1996) view on planning in the post modernity period. The post-modern period is characterised by shift from welfarism and managerialism to entrepreneurialism (Harvey, 1989; Harrison, 1996). Harrison (1996: 29) argues that "this trend has had profound implications for planning as planners have become increasingly involved in the active promotion of economic development and have related ever more closely to the activities of investors, industrialist and property speculators". Supporting this view, is Fainstein ,cited in Harrison(1996: 29) who argues that the post modernity period marked a "change in the discourse of planning from comprehensive and public interests to competitiveness and private interest".

Along the same view, is Beauregard ,cited in Harrison (1996:29) highlighting that the focus "on economic development has replaced reform as primary social goal of planners". In the South African planning perspective, a shift from people driven planning approach, RDP (Reconstruction and Development Programme) to a market- led GEAR (Growth Employment And Redistribution) distance not only planners from play a reform and advocacy role, but it has also change their role to that of economic developer and ever more closely to the activities of investors. The above arguments tend to differ with that of Thomas (2000: 1), who argues that "planners need to play a role in advising decisions-makers of the likely impacts of HIV/AIDS and helping in the formulation of appropriate strategies, which will address inequalities in access to services". Although her argument spur planners to resume advocative role at the decision making level, it paid little attention to the GEAR policy framework under which basic services are to be delivered. Despite distancing planners to play advocacy and reform role towards the

needs of the poor marginalised groups in society, this framework focused planners' role heavily on economic development[3].

CONCLUSION

This chapter attempted to argue that poverty is a multifaceted and illusive concept. Second, the chapter attempted to lay grounds for the argument in the report, as it has critically analysed the constitutional aspects relating to right to access to sufficient water. Third, the chapter already raised an argument on how shift in planning policy framework affected the way post apartheid planning policies are viewed and also the commitment of the post apartheid government to the idea of developmental state, which holds the promise of allowing planning policies to be influenced by the societal concerns ,as another way of realising social justice. Although Rawls theory, as a guiding theory of this research, seems to have limitations, it is still having a significant role in shaping the argument of this report, since he has identified the issues of social difference. This issues was carried forward by Young who emphasised the need of group-conscious policies. Although there seem to be a strong argument on the planners' advocacy role, the fact the discourse of planning has shifted towards 'entrepreneurialism' cannot be ignored.

[3] It should be noted that the role of a planner is not only limited to social reformer, but multifaceted. However, within an environment that local authorities embrace the notion on public-private partnership that encourages interurban competition, in order attract inward investment, planners role is also influenced. It is influenced when the traditional (managerial) function of local authorities of providing social welfare to the poor is reprioritized and replaced by entrepreneurial role, where subsidies used to target the poor are now used as a venture capital to attract private investment (Harvey, 1989; Harrison, 1996; Parnell et al, 2000). Thus the environment within which planners in local authorities operate is that of 'creating favorable business climate', services are provided no longer on the basis of need, but affordability and life line services are used to meet the constitutional mandate of the local authorities to provide basic services to local communities.

Chapter Three

As much as "economic growth is generally regarded as providing the basis for sustained development, increasingly services delivery is being recognised as critical to human development" (Hemson ,2004: 3). Thus, services delivery is crucial in improving quality of life of all citizens and freeing the potential of each person (RSA, 1996).

THE RELATIONSHIP BETWEEN WATER AND HIV/AIDS

3.1. INTRODUCTION.

While the 20th century was characterised by wars on political ideologies and military aggression, the 21st century is to be dominated by wars on scarce natural resources such as water (AL-Atraqchi ,2003). Many of today's territorial and bilateral disputes erupt because of water resources (Ibid). This is common, especially in water-scarce countries such as South Africa. The frustration of water scarcity in South Africa has even led to a controversial military intervention in Lesotho, not necessarily to settle political turmoil in Maseru, but to guard the country's multibillion rands mega-water project interests invested in the Lesotho Highland. (Bond, 2002; Emmett and Hagg, 2001).

Although water is a 'God given gift' and a renewable resource; "its availability depends on a variety of geographic and climatic factors", which are discussed below in this chapter (Ashton, 2002:218). Not until recently, the relationship between HIV/AIDS and water has not yet been sufficiently looked at by the researchers focusing on the impacts of the virus on socioeconomic development. Only the demographic and economic impacts of the virus have been over researched. The specific services needs that HIV/AIDS calls for, such as that of access to clean sufficient water for Care and Prevention, have been under estimated by many researchers in field of HIV/AIDS pandemic.

This chapter focus mainly on the relationship between water and HIV/AIDS. In attempting to arrive at the link between the two, the chapter begin by looking at universal laws governing right to access to water and the status of water of provision in South

Africa. Moreover, attention is paid on the Free Basic Water policy, and art of politics used in the policy making. On the second part of the chapter, attention is paid to the Care and Prevention role water plays to the HIV/AIDS affected household.

3.2 UNIVERSAL LAWS ON THE RIGHT TO WATER.

Access to clean sufficient water is a universally shared human right. Article 11(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) (1976) (to which South Africa is a signatory state memeber), states that "everyone has the right to adequate standard of living for himself and his family, including adequate food, clothing and housing to the continuous improvement of living condition". The General Comment No.15 of the United Nation Economic and Social Council (UNESC) (2002:2) focuses specifically on the legal interpretation of these socioeconomic rights, which include right to water for adequate standard of living. The Comment's stance on right to water is guided by the interpretation of Article 11 (1) and Article 12 (1) of the ICESCR (1976). According to the General Comment No.15 (2002: 3), Art.11 (1) of ICESCR (1976) "specifies a number of rights emanating from, and indispensable for, the realisation of right to an adequate standard of living including adequate food, clothing and housing".

The Comment argues that the "use of the word '*including*' in Art.11 (1) indicates that this catalogue of rights was not intended to be exhaustive" (ICESCR, 2002: 2). As such, the "right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it (water) is one of the most fundamental conditions for survival"(Ibid). It is therefore through the Comment's interpretation of Art.11(1), that water is recognised and enshrined as a human right protected by the ICESCR, entitled to everyone in a sufficient, safe, acceptable, physically accessible and affordable manner, to satisfy personal and domestic use (ICESCR, 2002). Moreover, the Comment recognises that "adequate water is necessary for personal and domestic hygienic requirements, but to prevent death from dehydration and to reduce the risk of water-related disease.

The above argument establishes a clear relationship between water and the highest attainable standard of health, as recommended and enshrined in Art.12 (1) of the ICESCR) (1976). The Article argues that everyone has the right to the enjoyment of highest attainable health. The General Comment No.15 recognises that due to other conditions, such as climatic and geographic reasons, water is a scarce natural resource (ICESCR, 2002: 1). However, the Comment insists that despite these reasons, signatory state members must ensure that the following factors are applied in all conditions. These factors are and not limited following, as the research only choose the two relevant themes to the discussion.

Economic accessibility: "Water and water facilities and services, must be affordable to all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threatens the realisation of the *Covenant* rights".

*Non-discrimination: "*Water and water facilities and services must be accessible to all, including the most vulnerable or marginalised sections of the population, in law and in fact, without discrimination on any of the prohibited grounds. The Comment prohibits discrimination not only on the grounds of socioeconomic conditions, but to a large extent health status, which include HIV/AIDS" (ICESCR, 2002:5).

3.3 STATUS OF WATER PROVISION IN SOUTH AFRICA.

The history of water in South Africa cannot be separated from the history of the country as a whole (DWAF, cited in Bond and McDonald, 2001:5). The struggle over which groups get how much amount of water, on what conditions in South Africa is not new in the country's water delivery history. It is a debate inherited from the colonial rule; politicised and become racially charged under the apartheid system. Bond and Ruiters (2001) argue that the struggle over basic water has been amplified even further now under the democratic government, through privatisation of water services at the

municipal level[4]. Despite government's initiative on Free Basic Water policy, the struggle still looms even further, since access to clean sufficient water has been identified as a crucial requirement for Care and Prevention to the HIV/AIDS affected households.

Located predominantly in a semi arid part of the world, South Africa is a water-scarce country. The country's climate varies from "desert and semi-desert in the west to sub-humid along the eastern coastal area, with an average rainfall of about 450mm per year (mm/a), well below the world average of about 860 mm/a, while evaporation is comparatively high" (DWAF, 2004: 17).Combination of these factors makes the country's water resources, in global terms, scarce and limited (Ibid). These are some of reasons contributing to what makes water management in the country has always be a political rather than a technical issue (Emmett and Hagg, 2001).

3.3.1 BRIEF HISTORY OF WATER PROVISION 1948 -1994

Apartheid policies left South Africa with a great disparity in access to both services and natural resources such as water (Schreiner and Naidoo, 2002). Schreiner and Naidoo (2002) argues that under the apartheid, "the white minority had access to high level of water services, while the large sections of the black community had little or no access to basic services" (Ibid: 1). Although there was no racially charged policy, strictly designed to govern access to water between different racial groups, the 1913 Land Act determined the conditions of access to water resources between different racial groups.

First, the Land Act of 1913 resettled and restricted Blacks to only fourteen percent of the total unfertile land area, characterised by fewer natural resources such as water (Webster *et al*. 2000). Second, access to water under the apartheid government, was linked to ownership of land through the concept of 'riparian rights' (DWAF, 2004). This meant that, the "race based access to land resulted in race based access to water" (Schreiner and Naidoo, 2002:1). As a result, it was estimated that at the time of the elections in 1994 at

[4] Some municipalities have been totally privatised (Nelspruit, Odi District, Naboomspruit, Umlazi, Chatsworth, ect.), while others coorporitised (Johannesburg) Bond and McDonald (2001: 7); Smith et al. (2003).

least 12-14 million South Africans did not have access to portable water (DWAF, 2002:1).

In trying to redress the past injustices in water services, the 1994 democratic elected government did the following: First, South Africa was accepted back as a signatory state of the international community, restructuring its socioeconomic rights, which includes right to water according to the requirements of the Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976. A democratic constitution was adopted, which implemented the requirements of Article 11(1) and Article12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) , (1976) at the national level, with the right to water enshrined in Section 27 of its constitution. Right to access to water and water services was supported further within crucial policy documents, including and not limited to the Reconstruction and Development Programme (RDP), The White Paper on Water and Sanitation (1995), the Water Services Act (1997) (WSA) and the National Water Act (1998) (NWA).

In its preamble, the Water Services Act of 1997 established the Department of Water Affairs and Forestry (DWAF) as the custodian of the nation's water resources, and recognises the need to use water beneficially in the public interest (Schreiner and Naidoo, 2002; RSA, 1997). Water can be used for public interests if it ensures the welfare, health or safety of human beings (RSA, 1998). Public interest usage of water includes the use of water by the other sectors, for the benefits of human being's socioeconomic affairs, as presented in table 1. Table .1 presents how water is distributed among different sectors contributing positively to the well being of the people. Both agriculture and industrial sectors are positively contributing to the well-being of the people through food and employment.

TABLE. 1

Proportion of water used by different sectors in South Africa by Percentages (%) in1998

Sector	**Agriculture**	**Industry**	**Domestic**
Percentage (%)	62	21	17

Sources: *Gleick and WRI, cited in Ashton and Ramasar (2002: 222)*

3.3.2 CURRENT AND FUTURE WATER CONSUMPTION IN TOWNSHIPS.

Since the end of the apartheid government's influx control and the pass laws, restrict the movements of Africa population into urban areas, South Africa is currently an urbanising society, as indicated in table 2. The South African Cities Network (SANC) (2004) estimates that approximately 54% of the South Africa population were living in urban areas. These figures had grown to 58% by 2002 (Ibid).

TABLE. 2

South African population size, proportion urbanized and level of access to safe water in 2000.

Population 2000(millions)	Proportion urbanized (%)	Access to safe water (%)
43.3265	49	80

Sources: CIA, FAO and UNAIDS, cited in Ashton and Ramasar (2002: 222)

Table 2 indicates that South Africa is currently an urbanising society, with almost 50% of its population living in urban areas and 80% of them having access to safe water. The remaining 20% of the urban population without access to safe water is believed to be that in urban informal settlements, where there is little infrastructure to provide services (Knight, 2004).

Given its rapidly urbanising and high prevalence rate of HIV/ AIDS, the local government is currently facing more pressure on water demands in urban areas[5] (Ashton and Ramasar, 2002; HSRC, 2002). However, there is a contesting argument in contrary to the above, by the DWAF's National Water Resources Strategy (2004). The strategy argues that, although the current rapid urbanisation is expected to put more pressure on water demands in the urban areas, due to the negative impacts of HIV/AIDS on population growth, the future of water demands in urban areas will not be extension of the past; rather demand is expected to decline DWAF (2004:35).

[5] This is because of the already alluded to fact that access to sufficient clean water has been identified as a crucial requirement for Care and Prevention to the HIV/AIDS affected households, while on the other hand the urban formal locality (which townships falls under) is the second highest HIV/AIDS infected type of locality (Tomlinson, 2004; HSRC, 2002). With high rate of unemployment in townships, most of poor HIV/AIDS affected households will not afford to pay for amount of water needed for Care and Prevention.

3.3.3. THE FREE BASIC WATER POLICY.

Healy (1997:7) argues

"like every field of endeavour, planning has got a history of ideas, serving as a 'store of experience', which provide advises, recipes and techniques for understanding and acting and inspiration – ideas to play with and develop in the future".

Public policy is a major element of planning, as it emerges from and guided by the societal concern in the distribution and allocation of resources (Anderson, 2000). The adoption of Free Basic Water policy by the post apartheid government could be seen as being guided by and responding to previous societal concerns in water delivery. The previous apartheid policies created great disparities in access to water services, with white minority having access to high levels of services, while the large sections of black majority have little or no access to water services (Schreiner and Naidoo, 2002).

Announced by the cabinet few months before the 2000 local government elections, the Free Basic Water policy was adopted as a government's commitment to ensure that every household in South Africa, is entitled to at least 6kl/6000 litres of safe water free every month. However, DWAF (2005: 25) maintains that " although water services authorities are subsidised by government through various financing mechanisms and grants, it is still the responsibility of customers to pay for their consumption of water that exceed the minimum standards of basic service". The volume, 6000 litres is informed by the World Health Organisation's (WHO) definition of basic water for healthy living. Although the primary intended recipients of free basic water are poor households, this volume of free 6000 litres per month is universally endorsed. Every household, irrespective of its economic and health status is entitled 6000 litres.

TABLE. 3

A. CALCULATIONS OF 6kl/ 6000 LITRES PER HOUSEHOLD PER MONTH.

The following calculations are based on the assumption of monthly water consumption in a poor HIV/AIDS unaffected household of average of eight people.

EACH TIME	MONTHLY
▪ Kettle consumes 1.5 litres	4000 Kettles
▪ Kitchen Sink 30 litres	200 times
▪ Bath 200 litres	40 times
▪ Automatic washing Machine 50 litres	120 times
▪ Toilet Flush 12 litres	500 times
Total litres used per month	***6000***

Source: Engelbrecht *(2005) Vuvuzela,* University of the Witwatersrand, Johannesburg*:* May 6 2005, p6.

The operation of the Free Basic Water policy is premised on two assumptions. First, is that the poor households' consumption of water may not exceeds 6000 litres a month (Palmer Development Group, 2003). Second, is cross subsidation, where "there is a belief that the rich households would pay more for higher consumption of water to cross subsidies a free supply of 6000 litres a month to poor households" (SAHRC, 2004: 47). However, the second assumption seems to be more fragile, if not volatile. In cases where rich households' breadwinners are also infected and children lose the house to stay with other extended family members in townships, cross subsidisation fails (SAHRC, 2004; Tomlinson, 2004).

B. FREE BASIC WATER POLICY AS A MEANS OF ADVANCING HIDDEN POLITICAL AGENDAS.

The process of policymaking is inherently political one, as it involves conflicting interests, values and desires on policy issues (Anderson, 2000). More often the process involves the use devices such symbolic meanings(*catchy words and phrases)*, deliberately designed to influence, control and capture people's imagination, to shape their perceptions and suspends scepticism, at least temporarily (Stone, 2002). Not until recently, when a few researchers started to show the significance of clean sufficient water to the HIV/AIDS affected households for Care and Prevention purposes, the free 6kl/6000 offered by the policy, captured many people's imaginations and suspend their criticisms on the delivery of basic water services. More mistakenly, the policy was even seen to be in line with the requirements of section 27 (1.b) and (2) of the constitution[6]. Stone (2002: 138) argues that "the meaning of symbol is not intrinsic to it, but is invested in it by the people who use it".

The use of the words '*Free Basic Water'* as the name of the policy, influences, since these words hold powerful grip on people's imagination about the commitment of the post apartheid government in addressing the past inequalities in the access to water . The name of the policy, as it is called 'Free Basic Water Policy' has been phrased in a 'politically artistic way' to silence criticisms, while aggregating support for the post apartheid government, especially from the poor whom are seen as the targeted beneficiaries of the policy. The phrase 'Free Basic Water' has been deliberately used since the country has a long history of unequal delivery of water services, due the previous apartheid crime. Therefore the use of this phrase, aggregate support for the political party(*than social justice*) in power, to be seen as being responsive and sensitive to the past injustices.

[6] The South Africa Human Rights Commission (SAHRC) (2004: 4) argues that "Free Basic Water policy has been a success since its inception and is inline with section 27(b) of the constitution. Chapter 2 of this research outlined four aspects made by section 27(b) and (2) of the constitution, from which it was concluded that the Free Basic water does not meet the requirements of the section.

More interestingly, from the policy's operational assumptions, it was gathered that the amount of water provided as 'free' is not really free, as it is cross subsidised from the rich household's high consumption, yet 'Free Basic water' is used as the name of the policy. According to Stone (2002:138) the use of catchy words like these, "hold powerful grip on people's imaginations and their psyche because they offer the promise of resolution for scary problem". Another commonly used and trusted aspect of symbolic representation in public policy by policy makers and politicians is *ambiguity*.

Anderson (2000: 1) argues that "public policies in a modern society are ambiguous in order to advance some hidden political interests". According to Stone (2002: 157) "ambiguity enables the transformation of individual intentions and actions into collective results and purposes, thus without it cooperation and compromise would be far more difficult, if not impossible". She argues that ambiguity facilitates negotiation and compromise because it allows opponents to claim victory, while helping individual to reconcile their own ambivalent and attitudes, so that they are capable of giving sustained support to leaders and policies(Stone, 2002).

For these, ambiguity unites people who would benefit from the same policy, but for different reasons (Ibid: 158). To suspend criticisms, the amount of water offered by the Free Basic Water policy, are offered to every household irrespective of their socioeconomic status, yet it is said that the primary intended recipients are poor households. Given these, one concurs with an argument that politics is more art than science, because it is used in a creative way to influence policies (Stone, 2002). This is what makes the formulation of public policy confer advantages and disadvantages, cause pleasure and pain, and collectively have important consequence for the well-being and happiness of the people (Anderson, 2000).

In the support of the above arguments, there are three contrasting argument behind the adoption of the Free Basic Water policy. First, is that the decision of the post apartheid government to adopt the Free Basic Water policy, emerged as a respond to the previous injustices of the apartheid services delivery, which left the country with great disparities

in water services delivery (Schreiner and Naidoo, 2002). The second argument complements the first, as it argues that the Free Basic Water policy was adopted as a way meeting the constitutional obligation of equal right to access to sufficient water (SHARC, 2004:4). If the policy seen to be complying the requirements of section 27 1(b) and 2 of the constitution, this could be seen as a successful progress of the country in the implementation of Art. 11(1) and Art.12 (1) of the ICESCR of 1976, which deals with right to adequate standard of living that include right to adequate water. The third argument is politically motivated, arguing that the Free Basic Water policy was introduced as what is termed as the 'political point scoring', since was not until few months before the 2000 local government elections that the African National Congress (ANC) national office could start using the concept of 'lifeline water services to all South Africa free of charge' for its campaign (MacDonald and Pape, 2002). Few days latter, it was approved by the Cabinet as a policy, yet 'bottom-up' approach of formulating public policies is what is promised in the post apartheid South Africa. This was also observed by Harrison who argues that, the Free Basic water policy was introduced as compromise by current government (Personal communication with Harrison, 2005).

3. 4 HIV/AIDS AND WATER

HIV AND AIDS

HIV was firstly identified in the late 1970s, towards the early 1980s when doctors in the United States of America discovered it among homosexual men and later on other groups also(Barnett and Whiteside, 2002). Barnett and Whiteside (2002:9) argue that "in 2001, approximately 36 million individuals were living with HIV/AIDS globally". The presence and the impacts of the pandemic are felt most profoundly in poor worse affected countries such as those in the Sub-Saharan Africa, where 25 million already infected people will have died in year 2020 (Ibid:9-24). This number will be an addition to the 13.7 millions Africans already claimed by the epidemic (ibid).

HIV stands for Human Immunodeficiency Virus. According to the UNDP (2005: 1), "once HIV enters the human body, it attaches itself to a White Blood Cell called CD4".

The CD4 cell is a crucial cell in the immune system, as it co-ordinates all the other immune cells. The virus multiplies in these cells and destroys them (Health24, 2005). AACC (2005:1) argues that a "normal CD4 counts in adults range from 500 to 1,500 cells per cubic millimeter of blood". An already compromised CD4 count of HIV infected person is under 200 and this makes the infected persons' immune system weak as more opportunistic diseases attack their body (ibid).

The immune system "is a group of cells and organs which protect the human body by fighting viruses and infections" (Avert, 2005: 2). Johnson ,cited in Tomlinson (2004: 16) indicates that " when the individual's immune system has been severely weakened by the HIV infection, they experience a variety of opportunistic infections, such as Kaposi's sarcoma and pneumonia, which are regarded as being defining of AIDS". The term AIDS therefore refers "to range of conditions that are diagnosed in the late stages of HIV infection" (Ibid). Both words HIV and AIDS are used concurrently, because AIDS is the late stage or advanced stage of HIV.

According to the UNAIDS, cited in Kgalushi et al. (2003: 4), South Africa is one of the worst countries worst affected by the HIV/AIDS pandemic, with 5 million people HIV positive in 2001. In 2002 the Nelson Mandela/ Human Science Research Council (HSRC) conducted a household survey, estimating the HIV prevalence rate among adults aged 25 years and older at 15.5 % (HSRC, 2002: 51). In addition, the study conducted by the AIDS Research Institute at the University of California San Francisco(UCSF), (2003: 9) estimates that "by 2045-50, South Africa will have the world's 10^{th} –lowest life expectancy at birth. More importantly, the study indicates that "between 2000 and 2025, life expectancy will be 27 to 41 lower than it would have been in a no-AIDS scenario".

3.4.1 THREE POSSIBLE WAYS IN WHICH PEOPLE BECOME INFECTED BY HIV.

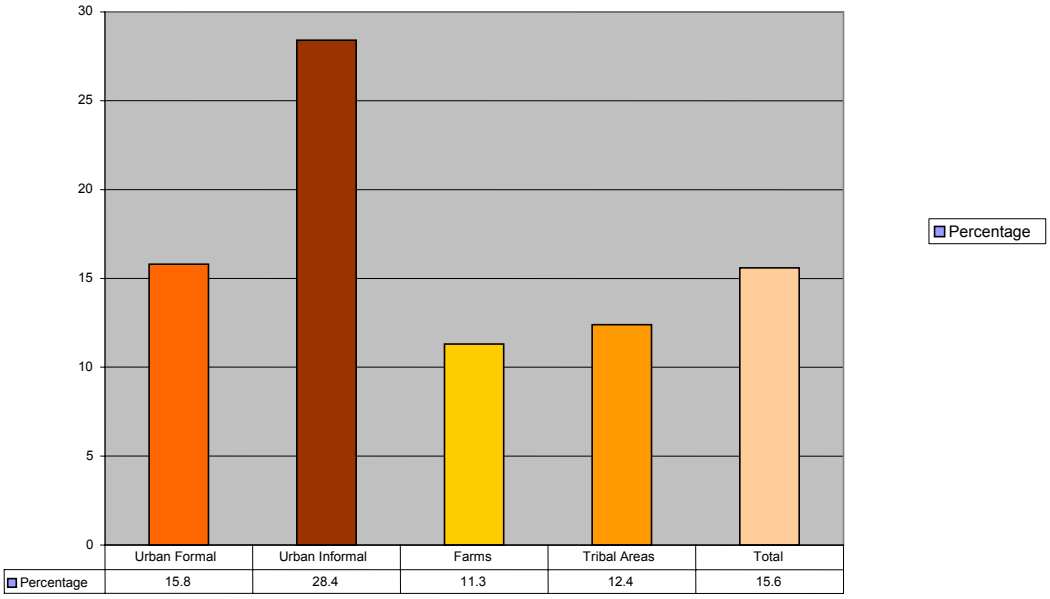
- Through sexual intercourse with the already infected person, either heterosexual or homosexual intercourse.
- Directly into the bloodstream through the use of contaminated blood or sharing of intravenous drug-injecting equipment.

• From mother to child, i.e. breast milk.

Barnett and Whiteside (2002:5) argue that "HIVAIDS is predominantly a sexually transmitted disease that causes illness and death among sexually active groups, aged between 15 and 50 years, as often described as matured adults". Within a country characterised by history of colonialism and political and economic disenfranchisement (disparities), and gender inequality like South Africa, the relationship between HIV prevalence and socioeconomic makers cannot be ignored (UCSF, 2003: 6). According to the UCSF (2003: 6) "risk of HIV infection is related, inter alia, to individual behaviour and socioeconomic characteristics as well as to the socioeconomic of the community in which one is situated". In South Africa, race, gender and type of locality remain a significant determinant of HIV infection (USCF, 2003; Nelson Mandela/ HSRC, 2002).

TABLE:4

HIV Prevalence among persons aged 15-49 years by locality type in South Africa 2002



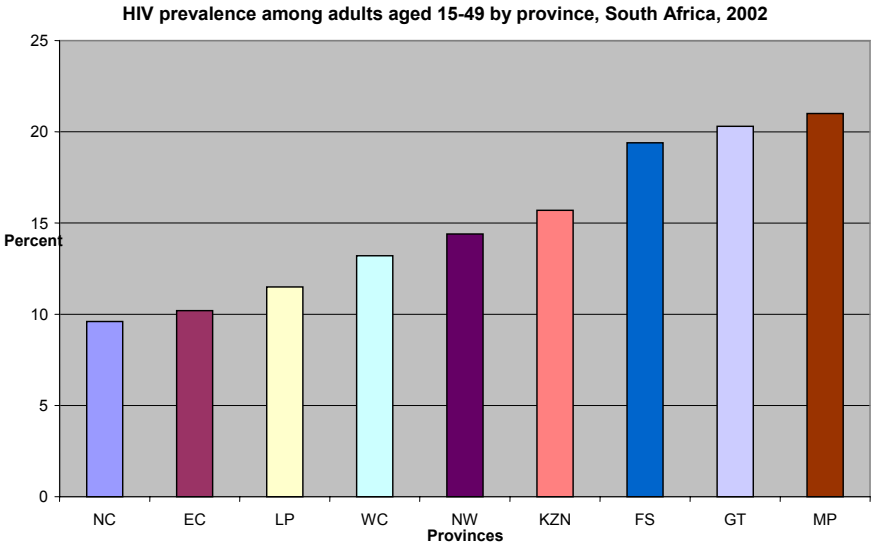
Source: *Nelson Mandela/HSRC 2002:51*

According to the Nelson Mandela/HSRC (2002) study, the urban formal locality registered about 15.8% of the HIV infected people aged between 15 and 49. Figures

presented on table 3 reveal that the HIV prevalence in urban formal locality is high, making it second after the urban informal locality that registered the highest of about 28.4%. The study went further revealing that with regard to HIV prevalence by sex amongst persons 25 and older, females are leading by 16.2%, than men who registered about 14.4%. With regard to prevalence by race, African population is the highest at about 18.8%, followed by Coloured with 6.7 %, White 5.7% and Indians being the lowest at only 2.3 %.(Nelson Mandela/ HSRC, 2002: 51).

Table 5 present HIV prevalence among adults aged 16-49 by province in South Africa. From this table, the Mpumalanga (MP) is the highest by 21.0%, followed by Gauteng (GT) with 20.3% and Free State (FS) province by about 19.4%. Three provinces regarded as being the most rural registered the lowest prevalence. These include the Northern Cape (NC) with the lowest of about 9.6%, the Eastern Cape (EC) being the second lowest at about 10.2% and the Limpopo (LP) province with 11.5%.

Table: 5



Source: *Nelson Mandela/HSRC 2002:50*

Although the survey did not directly specify the level of prevalence between the high income and township (low income) areas of the urban formal locality, the following

factors qualifies the argument that the urban formal locality is the second highest, because of high prevalence taking place at the township areas. First, large number of the urban population is still situated in township areas. Because of the previous apartheid planning laws, townships are predominantly Black, and to a lesser extent Coloured people areas, depending on provinces[7]. Second, townships are characterised by high unemployment rate and poor female headed households, as compared to their counterpart high income areas of the urban formal locality. There is a correlation between unemployment, poverty and high prevalence of HIV/AIDS. The UCSF (2003: 9) argues that "given the depressed economic conditions in townships and high unemployment, sex among economic active population aged between 16 and 49 is often used as commodity in exchange for money or other forms of payment."

3.4.2 THE IMPACTS OF HIV/AIDS AT THE HOUSEHOLD LEVEL.

The water needs that HIV/AIDS is calling for, are again widens the already existing gap between the 'haves and have not'. Cameron, cited in Barnett and Whiteside (2002:183) argues that although during different clinical stages of the virus he severely fell sick;

"the fact that I, he argues, can afford to pay life itself allows me access to good health care and drugs that enables me to pursue a vigorous, healthy and productive life" .

The obvious question pose by the above phrase is, what about those who cannot afford? A society committing itself to the goal of social justice is the one

"moving towards an ethical society with genuine equality of all people, with political and socioeconomic patterns shaped to protect the interests and enhance the worth of each person" (Benjamin *et al*. cited in Kikuchi 2004: 1).

The following table illustrate different clinical stages of the virus and the shift in the focus of the affected households' demand on basic services, both in quality and quantity, which in a long run exhaust the affected household's income expenditure.

3.4.3 TABLE. 6

[7] Race is represented differently from one province to the other in South Africa. For example the both Northern and the Western Cape have high Coloured race. In the Kwazulu Natal province Indian population is the second largest race, following Africans. The African population tends to dominate more in provinces such as Limpopo, Mpumalanga, North West, Free State and Gauteng provinces.

FOUR CLINICAL STAGES OF HIV/AIDS ON INFECTED PATIENT'S BODY

Condition
Clinical stage 1 **Performance scale: 1: (fully active and asymptomatic).** For example: Seroconversion illness Symptoms: : Glandular fever-like symptoms like fever, rash, joint pains and enlarged lymph nodes at the time of seroconversion. Comments: These illness do not depend directly on services (water) for Care and Prevention
Clinical stage 2 **Performance scale 2: (symptomatic but nearly normal activity).** For example: Herpes (shingles) zoster Symptoms: An intensely painful rash with blisters. In people with AIDS the rash is not confined to a single nerve territory, but is extensive across several territories. The blisters often occur on both sides of the body, combined to form large raw patches and are prone to secondary infection. Comments: Poor personal hygiene predisposes to many infectious skin conditions and risk factor for the development of secondary bacterial infection in skin conditions whatever the cause. *Poor hygiene may put other household members at risk of infection*.
Clinical stage 3 **Performance scale 3: (bedridden< 50% of normal daytime).** For example: Unexplained chronic diarrhea. Symptoms: Usually water not dysenteric (bloody) Comments: Many of the pathogens are the same as cause diarrhea in healthy people. Some are opportunistic and very difficult to teat. The cornerstone of management is replacement of fluids. Need to identify and treat pathogen with appropriate antibiotics. Caused by drinking water contaminated by sewage or eating food been in contact with contaminated water, flies or soiled hands. . Domestic, personal and food hygiene very important in preventing infection. Access to *plentiful, clean water needed.* Risk of infection is higher with *inadequate sanitation and overcrowding.*
Clinical stage 4 – AIDS-defining illness **Performance scale 4: (bedridden> 50% of normal daytime).** For example: Extra-pulmonary tuberculosis (i.e. has spread beyond the lungs to other organs) Symptoms: Coughing, loss of appetite and weight, fever, night sweats. Often atypical presentation and widespread in body so symptoms related to site of infection. Comments: Probably the most common AIDS defining illness. Risk of *infection is higher with overcrowding*

Source: *The WHO clinical staging system for HIV infection and disease in adults and adolescents, cited in Tomlinson (, 2004:20).*

Table 6 illustrates four different clinical stages of the virus on the infected patient's body. From clinical stage 2, it is quite clear that the virus has severe impacts on the affected households, with regard to the quality and the quantity of clean water. From this stage

until stage 4, it is evident that the virus impacts on the affected households calls for more water for Care and Prevention, while at the same time the affected households' expenditure, which are discussed below.

HIV/AIDS has severe impacts on social cohesion of the affected communities. Barnett and Whiteside (2002:7) argue that "the impacts of HIV/AIDS are felt mostly by those experiencing them". This is true especially in cases where breadwinners are the one infected. Children and other household dependants are left without both parental and financial supports (Ibid). The HIV/AIDS affected households' income is also exhausted by combination of expenditure the virus creates. The UCSF (2003:10) argues that "the AIDS –affected households spend an average 34 percent of their monthly income on health care, much higher than that spent on health care by non-AIDS-affected households". Booysen *et al*., cited in Tomlinson (2004: 39) also argue that

> "the impacts of HIV/AIDS have direct and in direct effects on household income and expenditure. Direct costs include the cost of medical treatment and transportation expenses required to reach health care facilities so as to receive treatment. In case of death, funeral costs represent another direct cost. In case of illness, indirect costs include the loss of income to the ill person and to those persons caring for the ill, including both direct care and time spent accompanying the ill person on visit to health care facilities".

As already indicated in table 6, unlike the impacts of other diseases, the impacts HIV/AIDS have special services needs, such as that of more water than before the infection , special hygienic standard and dietary requirements, which are discussed below. Based on this, one could therefore support Kamminga, *et al.* 2003 and Tomlinson, 2004, on the argument that the impacts of the virus led to change in demand and consumption of water at the affected household level. This is true because, the quantity and the quality of water demanded for Care and Prevention is far beyond that of the non HIV/AIDS affected households[8].

[8] It is argued in clinical stage 2&3 of the virus (as presented in table 5) that lack of plentiful, clean water needed exposes the non infected household members into the HIV infection risks.

3.5 THE CARE AND PREVENTION ROLE OF WATER TO HIV/AIDS PEOPLE.

Most of the Care and Prevention role of water to the HIV affected household(s) is already indicated at various clinical stages of the virus, as presented in table 5. However, definition of these two important concepts that are at the heart of this research's argument worth to be unpacked. The *Care* role of water implies access to clean sufficient water "by those household members already infected by HIV/AIDS, to promote positive living, good hygienic practices and nutritious" (SARPN, 2003:12; also see Defilippi ,cited in Tomlinson, 2004: 24). *Prevention* role of water on the other hand entails access to clean sufficient water, to "ensure that those household members and caregivers at the home/ community levels remain uninfected, thus reducing chances of them being infected every time they offer care to the infected members" (ibid).

McIntyre (2003: 1) indicates that people infected with HIV or have AIDS need a quality of life that does not undermine their health. This included easy access to sufficient clean water. As also illustrated on table 6, to people living with HIV/AIDS, water entails just more than a liquid responsible for quenching mankind's thirst and other household's 'indoor' consumption. Access to sufficient clean water emerges as a health care service and a form of social security also. In urban areas (township level), the Care and Prevention role is mostly rendered by Home Care Based Care (HCBC) organisations. Members of these organisations that are based at community and home levels, ensures that children and their families affected by HIV/AIDS have access to integrated services, which address their basic needs for food, shelter, water, health care and other alternative care and protection from abuse and maltreatment (DoSD, 2004: 2). Water plays a crucial role on their day to day services to the HIV infected patients. Home care services can be classified into preventive, promotive, therapeutic, rehabilitative, long term maintenance and palliative care categories (DoSD and DoH, 2001; Tomlinson, 2004: 24).

First, water enables the caregivers (from the Home Community Based Care organisation), to render their daily services of promoting hygienic living condition and nutrition to the HIV/AIDS patients effectively (Kamminga, 2003: 13; Defillippi ,cited in Tomlinson,

2004: 24). Water is also crucial to the HIV/AIDS infected people for taking their daily medications (Kamminga et al. 2003). For caregivers to be able to manage pains and control other symptoms such as sores on the skin, more water is needed (also refer to clinical stage 2& 3 in table 6).

Moreover, for the promotion of hygienic living environment for the HIV/ AIDS infected patients, more water is needed (Kamminga et al. 2003; WHO, cited in Tomlinson, 2004:20). Water is needed for bathing patients and washing soiled clothing and linen, in order to reduce exposure to germs and other opportunistic infections (Ibid: p13). One of the basic hygiene principles recommended to the HI/AIDS patients' caregivers is frequent washing of hands. Van Dyk (2005) argues that hand washing is the most basic measure health care to prevent the spread of infection. He urges caregivers to wash hands before care of severely immune-depressed patients and after touching mucous membranes, broken skin , or moist body substances (Ibid: : 281).Using the Vuvuzela's calculation of 6kl/6000 litres, one argues that:

• The amount of water needed for thorough washing of hands, exposed surface and so on for hygienic purposes requires two additional washes per day per month. This amount is equivalent to that of kitchen sink that consumes 30 litres per wash, hence

30 litres x 2 x 30= 1800 litres

•Washing of soiled clothes at least once a day consumes 50 litres , hence

50 litres x 30 = 1500 litres

Total amount of water used is (1800 plus 1500) 3300 litres (only for hands washing and washing).

Source: Calculation of litres is based on Vuvuzela's calculation of 6000 liters a month and style of presentation taken from Palmer Development Group 1998.

In addition, in most cases in townships, sanitation facilities such as toilets are shared by more than eight people[9]. The risk of the HIV-infected patients to contract opportunistic diseases is high, given their already compromised immune systems (Kamminga, 2003). Bacteria and germs are common on latrines and more water is needed to maintain a hygienic environment in the toilet facilities (Ibid). Tomlinson (2004:27,) argues that to

[9] First, Townships are still main recipients of people from the rural areas, coming to search for jobs in urban areas. Thus, relatives in urabn areas (mostly in townships) play an important role of accommodation during job searching. Second, due to high unemployment ,most families depend on the rental income from the backyard rooms, for people who cannot afford renting accommodation next to where they are working (mostly in the city centers). Combination of these factors contributes to over crowding.

"minimise the patient's exposure to pathogens or germs, the HIV-infected person need to wash easily, in order to reduce the risk of contracting these opportunistic infections". Without sufficient water to maintaining a good hygiene living environment, the HIV-infected persons are more vulnerable to opportunistic infections that reduces their CD4+ count and consequently hasted progress towards AIDS (Ibid: 27).

Second, water plays a crucial role of reducing the risk of future infections to other uninfected household members and caregivers, thus preventing them from further discriminating against the already infected patients[10]. (Tomlinson, 2004: 26) argues that "without an adequate supply of water there is a greater risk of caregivers and other family members being in direct contact with weeping sores and blood and faeces containing blood (dysentery)". Based on this argument, one could argue that without access to sufficient water, the HIV/AIDS infected people may suffer from discrimination and isolation, because the risk of infecting caregivers and other uninfected household members become high.

Thirdly, chronic diarrhoea is identified as a major opportunistic disease targeting the already HIV/AIDS infected patients. To avoid dehydration during the chronic diarrhoea, the infected patients are encouraged to drink more water than before (Olufemi ,cited in IRIN (2002: 2; Tomlinson, 2004: 26). According to NAPWA ,cited Kamminga (2003), the poor people living with HIV/AIDS, are not dying because of the virus itself, but from the opportunistic diseases such as cholera and diarrhea, which hasten the progress of the virus to AIDS level. This occurs because of lack of access to sufficient clean water to prevent these opportunistic infections, through maintaining a hygienic living conditions and nutrition. Steinberg ,cited in Tomlinson (2004: 49) argue that chronic diarrhoea is mentioned as one symptom of the virus consuming more water in the HIV/AIDS affected households, as it requires constant washing and cleaning.

[10] The uninfected household members might keep a distant from the already infected patients, especially if they already at the stage of severely depressed immune system, with skins already broken and mucous membranes easily exposed(Van Dyk, 2005). Due to lack of access to sufficient clean water, the none infected and caregivers may be afraid to even wash the infected's clothes or bath them, as another way of reducing chances for them not to be infected. This may inflict harm to the already infected patients, because of this kind of unintended discrimination, by the non infected household members.

Applying Vuvuzela's calculation of 6kl/6000 litres to a township household with member(s) infected by HIV/AIDS, during the chronic diarrhoea.

- If a bath requires 200 liters; with additional three baths per day per mouth for patients having chronic diarrhoea 200 litres x 3x 30 = 18000 litres
- With additional use of toilet three times a day[11] 12 litres x 3x 30 = 1080

Total amount of water used is(18000 plus 1080) 19080litres(in a chronic diarrhoea day)

Source: Calculation of litres is from Vuvuzela's calculation of 6000 litres a month and style of presentation taken from Palmer Development Group 1998.

Fourthly, water plays a critical role also for a good nutrition and healthy food. In case where the HIV infected mothers cannot breastfeed, their children could be safely fed through bottles to avoid possible infections (Kamminga, *et al*.2003). Moreover, Van Dyk (2005: 301) argues that "there is a strong correlation between malnutrition and immune depression". For maintaining a good immune functioning, the infected persons should often eat fruits and vegetables (Kgalushi *et al*. 2003). Vegetables are often expensive at the local markets, and one possible way of having them near, is through vegetables gardens in their homes. Van Dyk (2005) argues that locally grown, natural, unprocessed vegetables are adequate to protect the immune system and keep the infected patients healthy. Vegetable gardens needs sufficient water, in order to produce required fresh and healthy dietary (Ibid: 14).

Lastly, the primary role of the caregivers has much to do with giving the infected patients' dignity. Sufficient water allows caregivers to render their service effectively, giving the infected patients a dignified living environment and hygienic nutrition. Section 10 of the South African constitution states that "everyone has inherited dignity and the right to have their dignity respected and protected" (RSA, 1996: 8). A dignified living environment is the one free from life threatening conditions. Access to clean sufficient water for Care and Prevention purposes, gives both the infected patients, caregivers and other uninfected household members a dignified life. Through the increased access to sufficient water for Care and Prevention, the HIV/AIDS infected persons, can have the sense of belonging, as they will not suffer discrimination, thus their lives are dignified

[11] It should be noted that not only the infected patients will be using toilet facilities in those days, but other uninfected household members also.

(WELL, 2003; Kgalushi *et al*. 2003). As Yacoob (2001:69) puts it "the right of access to socioeconomic rights (water) is entrenched because we value beings" and to large extend their inherited dignity.

The local government, (as a services delivery agent of both national and provincial governments) is been blamed for not being responsive these special water needs of the poor HIV/AIDS households affected by HIV/AIDS (Tomlinson, 2003). However, in the following chapter, this research report attempts to show how little attention have been paid on the difficulties faced by the local government authorities in this regard.

CONCLUSIONS

Although many people at the urban areas gained access to basic water since the adoption of the Free Basic Water policy, the policy is still not sensitive to the inherited socioeconomic disparities, which have a direct correlation with high prevalence of HIV/AIDS at townships. The manner in which the policy came into operation mirrors more political motives than responding to societal concerns. This gives a policy a questionable stance in the promotion of social justice, as it does not cater the quality needs of the HIV/AIDS affected households. To the HIV/AIDS affected households, water entails just more than what is needed for usual indoor usage. Lack of access to clean sufficient water makes caregivers and other household members more vulnerable to infection, while may lead to possible discrimination of the already infected members.

Chapter Four

LOCAL GOVERNMENT AND SERVICES (WATER) DELIVERY IN SOUTH AFRICA.

4.1 INTRODUCTION.

From the previous chapter, the research argued that the HIV/AIDS epidemic influenced not only the needs of the affected households for municipal services such as sufficient water for Care and Prevention. It has also impacted on the ability of the HIV/AIDS affected households to pay for those municipal services (Tomlinson, 2004; SACN, 2004). This chapter focus on the role of local government authorities in the provision of basic household services, more particularly its expected role in the delivery of the water needs of the HIV/AIDS affected households. The chapter begins by defining local government and its importance in the deepening of democratic governance at the community level. Secondly, the chapter give a brief history of the South African local authorities from 1948 to 1994. Special attention is paid to the constitutional competence of the local government authorities in the delivery of basic water services.

Moreover, the chapter examines the macroeconomic planning policy framework (GEAR) environment under which local government deliver basic household services. Attention is paid to whether this policy environment allows the local government to fully assume its developmental role and respond to the challenge of the HIV/AIDS and the water service needs it calls for. The last part of the chapter focuses on the role of the local government authorities in the co-operative governance. In this part, a critical question is asked, as to whether the constitutional obligation of the local government to participate in the co-operative governance and the use of planning tool of Integrated Developments Plans (IDPs), likely to help the local government authorities to respond to the special water needs of the poor HIV/AIDS affected households.

4.2 DEFINING LOCAL GOVERNMENT.

The local government is identified with bringing services to people (Eisa, 2000:3). Local government is defined as " a system of territorial units with defined boundaries, a legal identity, an institutional structure , powers and duties laid down in general and special statues and a degree of financial and other autonomy"(Hill, 1974: 23). It is a part of the state through which services are brought to people in their home communities (Ibid: 21). Being the closest sphere of government to people, local government holds the promise to extend and deepen democracy, through responding to the legitimate expectations of the all citizens, such as delivering basic services (Parnell et al.2002:83). Despite providing services to local inhabitants, local government is essential to allow people to participate in the making of decisions that could either materially or adversely affect their daily lives and livelihoods (Hill, 1974:24-25).Based on the these reasons, one supports Hill's argument that the local government is a platform upon which individuals could voice their needs, and learn the art of practical politics at their home communities (Ibid).

4.3 HISTORY OF LOCAL GOVERNMENT IN SOUTH AFRICA.

Not until the democratic governance in 1994, the nature of local authorities in South Africa reflected not any of the above discussed merits of local government. Since 1948 when the National Party institutionalises the apartheid system of governance, local authorities in South Africa were divided on the basis of race, Black and White local authorities (Smith *et al*.2003). Under the apartheid rule, the local authorities were racially administrated to reflect and reinforce residential and economic separation (Ibid). Local authorities in townships (Black local authorities)were denied any economic developments to fully develop their own revenue base, while lacked essential basic services delivery such as water (Swilling, 1997:214). Their White counterparts' local authority on other hand, served only smaller population than those in Black local authorities, "surrounded by large concentration of economic activities and wealth serving as sources of revenue" (Swilling, 1997; Smith *et al*., 2003:3).This racially designed system of local authorities left a legacy of high levels of inequality in the delivery of public basic services delivery that is unique to this country (Ibid).

Following the fall of the apartheid system in the early 1990s, the local authorities in South Africa went through a radical transformation. This transformation was carried through and emphasised within the following important policy documents. The first policy document guiding transformation was the Local Government Transformation Act of 1993. This Act focused more on "political unification of municipalities that had been racially divided under apartheid" (Smith et al.2003:5). Second, the White Paper on Developmental Local Government (1998), encouraging the idea of "Integrated Development Plans (IDPs) and variety of service delivery alternatives" (Ibid). Third, the Municipal Systems Act of 2000, accompanied by the 2000 first democratic local government elections, which re-demarcated and integrated previously, marginalised authorities into bigger areas (Ibid). These new demarcations reduced total number of municipalities from 843 to 284. All of these legislations and policy were undertaken to transform and restructure local authorities, to meet their new constitutional obligations of responding to people's legitimate expectations on basic services delivery and socioeconomic development.

4.4 THE CONSTITUTIONAL COMPETENCE OF THE LOCAL GOVERNMENT IN SOUTH AFRICA.

Chapter 7 of the constitution of the Republic of South Africa deals exclusively with the developmental competence of the local government. First, section 151(3) of the constitution recognises the local government as independent sphere of government, with the right to govern the affairs of its own community (RSA, 1996: 63). Section 152(1) of the constitution outlines the objectives of the local government as:

a. to provide democratic and accountable government for local communities
b. to ensure the provision of services to communities in a *sustainable* manner
c. to promote social and economic development
d. to promote *safe* and *healthy* environment , and
e. to encourage the involvement of communities and community organisations in the matters of local government.

Second, section 152(2) states that "a municipality must strive, within *its financial and administrative capacity*, to achieve the above objective" (RSA, 1996: 63). These constitutional objectives of the local government authorities, expect the municipalities to

play a proactive role of responding to the legitimate expectations of people, while taking a leading role in the socioeconomic development of their communities. Of paramount importance, these objectives set a new developmental role for the local government, which is that of being a delivery agent for national and provincial government (SACN, 2004).

4.4.1 DEVELOPMENTAL LOCAL GOVERNMENT.

The idea of developmental local government is enshrined within the constitution. Section 153 of the constitution deals with developmental duties of municipalities and compel them to:

a. structure and manage their administrative and budgeting and planning processes to give priority to the needs of the community, and to promote the social and economic development; and
b. participate in national and provincial development programmes (RSA, 1996: 63)

The idea of developmental local government is supported by other crucial planning policy documents including the Reconstruction and Development Programme (RDP), the Local Government Transitional Act, the Second Amendment (1996), the White Paper on Local Government, 1998 and Municipal System Act of 2000. First, the RDP supported this idea because its emphasises on the people-centred planning approach, to meet people's basic needs through public participation in the decision making of services delivery (Smith et al.2003).

Second, the White Paper on Local Government (1998:17) (2002: 79) define developmental local government as a " local government committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve quality of their lives". Of equal importance, developmental local government is the one committed to working with citizens to identify, recognise and respond to the diverse communities' social and material needs pluralistic manner, in order to equally and equitably respond to the legitimate expectations of citizens. The idea of developmental local government is to be achieved

through Integrated Development Planning at the local government level, which is discussed later in this chapter.

4.5 THE CHALLENGES OF DEVELOPMENTAL LOCAL GOVERNMENT IN SOUTH AFRICA.

The idea of developmental local government in South Africa face challenges beyond that of restructuring previous apartheid system of local authorities and readdressing the historical inequalities in services delivery (SACN, 2004). On one hand, this idea faces a challenge on how municipalities could design their IDPs, in a manner that they will respond to the people's legitimate services expectations, in a financial and environmental sustainable manner as mandated by the constitution .

On the other hand, the challenge is on how the local government as a closest sphere of government to the people, should respond to the challenges of HIV/AIDS pandemic and the water services needs it calls for, in the face of public-private partnerships, as endorsed by the GEAR strategy (SANC, 2004). The SANC (2004: 18), argues that

> "growth in population and high prevalence of HIV/AIDS in the urban areas have translated into an increasing gap between range of services needed and the revenue available at the municipal level to finance these services".

Moreover SACN (2004:18) argues that

> "municipalities find themselves spending a disproportionate amount of resources on the developmental agenda without sufficient financial support from provincial government".

Parnell et al. (2002) argue that GEAR has major financial implications for the management of developmental issues of the local authorities. The GEAR strategy aimed at job creation and economic growth through strict fiscal control and a tough deficit reduction schedule, tax incentive and speeding up the restructuring of state assets (privatisation, outsourcing etc. of municipal services) (Lodge, 2000). Given this GEAR tend to "places higher priority on debts reduction than on social spending" (Parnell et al.200:82).

4.5.1 IMPLEMENTATION OF GEAR AT THE LOCAL GOVERNMENT LEVEL.

The White Paper on Municipal Services Partnership (2002) differentiates among forms of municipal services partnerships into the following. First, Public-Private Partnership, which is a contract between a council and privately owned company, in the delivery of municipal basic services. Second, the Public –Public Partnership, which is a contract between a municipal council and any public sector entity, including another council or parastatal. Thirdly, Public-NGO/CBO Partnership, which is a contract between a council and an NGO or a CBO in the delivery of basic municipal services.

Seemingly, given the GEAR planning policy framework and its core strategic objective of reducing budget deficit and rapid shifting of the state's role in the delivery of and expenditure on public goods; municipalities are finding themselves not having freedom of choice among these choice. Of the above three forms of partnerships alternatives, Public-Private Partnership emerge as the only alternative to municipalities, not only to meet the GEAR's requirement of active involvement of private sector in the delivery of public services, but to be financial independent from the national government. Parnell *et al*. (2002: 82) argues that GEAR is "committed to the idea of competitiveness of exports and at the municipal level it advocates for privatisation, corporatisation and the promotion of the principle of cost recovery in the delivery of basic municipal services". She maintains that the implementation of the GEAR at the local government (municipalities level) "result either in reduced subsidies targeted at the poor or the introduction of lifeline tariffs to ensure that the constitutional obligation to provide the poor with basic services are met" (Ibid). The universal applied 6kl/6000 of the Free Basic Water policy is the nearest example in this regard. Reduction of subsidies is identified as another measure compelling municipalities to enter into contract with private service provider, as another way for municipalities to attract investment to increase their revenue base (Ibid).

Bond (2000) and Smith et al. (2003) argue that the GEAR has much of the 'Washington consensus' influence of deregulation, liberalisation and marketisation, which established a new way of thinking about services delivery in South Africa. According to Smith *et al*. 2003, GEAR' priorities have much in common with that of 'Washington consensus' since it advocates for a minimal state intervention or a 'roll-back-the-state' form of neoliberalism. When applied to the realm of service delivery, GEAR encourages an active participation of private sector. This results in a shift away from the supply of municipal services based on the need, towards supply according to the ability to pay (Smith et al. 2003: 2).

The Department of Finance, cited in Khumalo et al. (2003: 6) define public-private partnership as a "contractual arrangement whereby a private party performs a departmental function on behalf of a national or provincial department for a specified time". The implications of public private partnerships (PPPs) in the basic services delivery pose a pressure on municipalities since they have to find a balance between cost recovery and equity in services delivery. Marcuse, cited in Harrison et al. (2003: xiii) argues that the possibilities of PPPs to improve effeciency services delivery are as much as the difficulties it may cause for the poor to access basic services. The difficulties it causes outweigh the possibilities for the poor to access services. In cases where provisions of basic municipal services are entirely provided by the private service provider, the poor households experience insecurity to services[12]. Private services providers are much concerned about making profit not equity, as they sell to those affording to pay. Those groups in society with special needs, such as water for the poor HIV/AIDS affected households are not recognised by the private services providers, thus their legitimate expectations are not recognised, if not underestimated.

[12] In cases where cost-recovery policy uses prepaid water meters, people have to pay upfront , in order to access water (Public Citizen , 2004:2). For example, since the city of Johannesburg co-orporitised the delivery of water services, with the foreign based water company, Suez, residents in poor sections of Orange Farm, Stertford- Extension 4 and Phiri in Soweto have suffred severe cut in water delivery, since they cannot afford upfront payment(ibid).

4.5.2 REASONS FOR AND AGAINST COST-RECOVERY: COST RECOVERY VERSUS EQUITY IN BASIC WATER DELIVERY.

Cost recovery is defined as "the practice of charging consumers the full cost of providing services" (McDonald, 2002: 17). One could argue that both the White Paper on Water policy 1997 and the National Water Act of 1998, values water as an economic resource and fully in support of cost-recovery measures, based on the following arguments. The 1997 White Paper on Water Policy, cited in Pape and MacDonald (2002: 21) states that "to promote efficient use of water, the policy will be to charge the user for the full financial cost of providing access to water, including infrastructure development and catchments management activities". Moreover, the Financial Provision of the National Water Act of 1998 states that "the Minister may from time to time, after public consultation, establish a pricing strategy which may differentiate among geographic areas, categories of water users or individual water users".

Further more, the Act maintains that "water use charges are to be used to fund the direct and related cost of water resource management, development and use, and also be used to achieve an equitable and efficient allocation". The Act went even further, stating that "non-payment of water use charges will attract penalties, including the possible restriction or suspension of water supply from a waterwork or of an authorisation to use water". Cost recovery has been used as means to apply penalty and restriction of water supply to households who cannot afford to pay any amount of water beyond 6kl/6000 litres. Cost-recovery has been successfully implemented at township areas through the use of prepaid water meters. In the delivery of services such as water, cost-recovery is measured on volumetric terms, with prepaid metres making it possible to count number of litres consumed, in order to apply costs. The following are reasons for and against application of cost recovery principle in the delivery of water at the municipal level.

(I). THE EFFICIENCY AND TRANSPARENCY IN SUPPORT OF COST-RECOVERY.

Unlike the previous unreliable billing systems, prepaid meters are on one hand associated with transparency and accountability, since the customers are able to measure how much amount of water they are using monthly and able to afford, in parallel with their monthly household income (MacDonald, 2002). Moreover, bureaucratic politics, mismanagement and fraud which often delays delivery of water services and undermine people's constitutional expectations of water services are minimised, if not to exist at all (Ibid).

(II). ENVIRONMENTAL ARGUMENT IN SUPPORT OF COST-RECOVERY.

The World Bank, cited in MacDonald (2002: 25) argues that the "efforts to mitigate environmental impacts through consumer investment in energy saving are hampered by low consumer prices and subsidies". In addition to this, in the analyses of thesis on 'tragedy for common', Hardin (1968) argues that humans behave in self-maximizing and destructive ways. From the 'Green Rights' perspective "without price incentives and market institutions, humans behave in self-maximizing and destructive ways" (McDonald, 2002: 25).

(III). ETHICAL AND HEALTH ARGUMENTS AGAINST COSTORECOVERY.

Primary aim of private companies is to maximise profit must not be underestimated. The installation of prepaid water metres installed in townships are criticised for amplifying class divisions and social exclusion, especially by the poor living with HIV/AIDS, whom their consumption of water is beyond 6kl/6000 a month, since they need water more for Care and Prevention purposes . Public Citizens (2004:2) argues that "if you cannot afford to pay upfront, you are unable to access water".

For moral and ethical reasons cost recovery seems to undermine the constitutional right to sufficient water, as far as the water needs of HIV/AIDS affected households are concerned. Olufemi, cited in IRIN (2002: 2) argues that "there are many indigents in

townships, who have no jobs and barely eat. Cost recovery will have severe impacts on their lives". She also acknowledges that "somebody in the last stages of the disease (HIV/AIDS) needs constant water because of diarrhea". Bond (2000); Public Citizens (2004:4) argues that "cost recovery mechanisms are attractive and caters only the interests of the private water companies, and not for the poor households with special water needs".

4.6 LOCAL GOVERNMENT AND CO-OPERATIVE GOVERNANCE.

Rawls (1971: 4) argues that "social cooperation makes it possible a better life for all than any would have if each were to live solely by his own effort". On its developmental agenda, the local government works in concurrent with other two spheres of government, national and provincial governments. It is not yet been made clear as to which sphere of government is responsible for responding to the challenges of HIV/AIDS among these three sphres. The SACN (2004: 17) argues that "the mandate for local government's response to HIV/AIDS are not clearly articulated due to the constructional mandate that requires all three spheres of government to work together and function in an interdependence manner. In some instances, the "mandates describe the roles and responsibilities of local government in generic terms, but they do not reflect the changing needs and demands of local population and emerging responsibilities of local government in relation to HIV/AIDS" (Ibid).

Co-operative governance is defined as "a continuous communication and coordination among different spheres of government and different government departments in order to achieve common goal and adequate standard of services delivery" (Ibid: 18). HIV/AIDS is not a challenge faced only by the local government, but all three spheres of government, national and provincial. However, the service needs that HIV/AIDS is calling for, such as sufficient water for Care and Prevention, are the competence of the local government. Section 153(a) of the constitution states that "a municipality must structure and manage its administration and budgeting and planning process to give priority to the basic needs of the community..." (RSA, 1996: 63).

Sufficient water needed for Care and Prevention emerges as one of the basic needs to the HIV/AIDS affected household members. Schedule 4B of the constitution outlines local government matters, which among other matters include the delivery basic water to communities (RSA, 1996). Although the delivery of the special water needs for the poor living with HIV/AIDS is the competence of the local government authorities, it does not mean that it is entirely up to municipalities solely to see how these needs are catered for. According to the principle of co-operative governance, all spheres and organs of government must co-operate with one another in mutual trust and good faith by:

- assisting and supporting one another,
- informing one another of and consulting one another on matters of common interests, while
- co-ordinating their actions and legislation with one another (RSA, 1996: 21).

4.6.1 CHALLENGES OF LOCAL GOVERNMENT AUTHORITIES IN TERMS OF CO-OPERATIVE GOVERNANCE.

Already, the research has established that the constitution recognised the local government as a distinctive, but interdependent and interrelated to the other two spheres of government, national and provincial. Equally, the research already discussed the constitutional framework of co-operative governance that promotes intergovernmental relations. Another crucial aspect of cooperative governance and intergovernmental relation is intergovernmental fiscal relations, which is regulated in terms of the Intergovernmental Fiscal Relations Act of 1997. Intergovernmental fiscal relations form a critical part discussion of the research as it deals with how much funds each spheres of government is allocated, on the conditions of its responsibilities in the delivery of services, from the total collected national revenue income (Manche, undated; Harrison, 2005).

There are two important components of intergovernmental fiscal relations, used for the sharing and transferring of revenue to different spheres of government. These are the equitable share revenue and the transfer of revenue across the spheres of government (Harrison, 2005). The national sphere retains the most significant revenue raising powers,

which allows it to rest with forty percent of the total national revenue. The provincial government having the largest budgets, but limited revenue-raising powers, retain fifty-seven percent. The local government, with new and expanded basic services delivery, retain only three percent of the total national revenue income, based on the following assumptions. First, municipalities are seen as being able to raise more revenue from property tax and tariffs, thus ninety percent of their revenue is derived from these. Second, the GEAR advocates associates local government with budget deficit (Lodge, 2002). Rolling-back- of state's role in services delivery to private service providers, is believed to be leading to a more financial sustainable way of delivering services , without budget deficit or fiscal gab.

Bond ,cited in Bond and McDonald (2001:10) argues that " GEAR's privileging of reducing budget deficits as opposed to guaranteeing service delivery has led to an 85% real reduction in the intergovernmental grant from national to the local government since 1991". Not all municipalities can managed to raise revenue on their own, especially those responsible for delivering basic services to township residents, which were formerly governed under the so called 'Black local authorities', in the apartheid system. Under the apartheid system of local authorities, Black local authorities had little or no revenue based, since economic developments in these areas were viewed as illegitimate (Manche, undated).

These municipalities are now facing pressure for having their own revenue base through attracting investments(through contracting out and privatisation), while having to respond and meet legitimate expectations of the poor communities affected by HIV/AIDS and the water needs is calling for, for Care and Prevention. A counter argument to this could be that section 153 (b) of the constitution is a means through which the local government authorities could use to calling out support from national and provincial government. This section states that "municipalities must participate in national and provincial development programmes". The section appears to be a means of fostering '*bottom-up'* approach of planning. It grants local government authorities legitimacy to voice major developmental challenges facing the local communities, such

as the water needs of the poor HIV/AIDS affected households. Before discussing challenges faced by municipalities not to fully exploit the opportunity offered by section 153(b), the following question is worth asking. Is HIV/AIDS a national government's prime developmental priority? This question is crucial in that it allows one to understand the government's stance on HIV/AIDS and predict its response to the special water needs the virus is calling for. Before the 2002 Constitutional Court case of *Minister of Health and Others v Treatment Action Campaign* and *Others*, the government stance on HIV/AIDS and the services needs it calls for reflected resistance and ignorant of the State's obligation to meet people's socioeconomic rights.

First, following Mbeki's controversial stances on HIV/AIDS, its challenges and the services needs it calls for, then president Mbeki's spokes person, Mankahlana made it clear when asking "*who is going to look after the orphans of AIDS mothers; the state* (Mankahlana ,cited in Gumede, 2004:163). Second, Mankahlana was supported by the finance minister, Manual who told the committee that was investigating the feasibility of a basic income grant of the poor HIV-infected people that " *it does not make a financial sense to spend money on people dying anyway, who are not even productive in the first place*" (Manuel ,cited in Gumede, 2004:163). Third, also in support of Manuel's denial of state's responsibilities to meet the services needs of the HIV/AIDS poor infected patients, the Health Minister, Tshabalala-Msimang enthusiastically urged the infected patients to preserve their health "*not with drugs, but with diet of garlic, lemon, olive oil and the African potato*" (Tshabala-Msimang quoted by Whitaker ,cited in Gumede, 2004:160).

Like in the 2001 Grootboom Constitutional Court case, in the TAC case also the court held that "the State is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflicts our society" (BCLR 1033 ,cited in SAHRC, 2004: X). This case concerned access to health care and, more particularly, anti-retroviral for pregnant mothers, the national government's stand on HIV/AIDS was unequivocal (Ibid).

The ambiguous stance of the government on HIV/AIDS was championed by the State president Mbeki, who used the art of politics to question the linkage between HIV and AIDS (Gumede, 2004). Given this, one could ask a question as to, must it always be a habit or a tradition that before the government's policies and programmes affecting people's socioeconomic rights (such as housing, health care service and water) could be developed in the context of the Bill of Rights; the constitutional court will have to remind the government first, in order for these policies to be reformulated in a manner that they will promote equity and social justice? One is asking this question as this has always been a procedure, as it happened in similar above mentioned cases concerning equitable access to socioeconomic rights, housing in the Grootboom case and health care services in the TAC case.

4.7 INTEGRATED DEVELOPMENT PLANS AS AN ANSWER TO LOCAL GOVERNMENT AUTHORITIES?

The idea of Integrated Development Planning was first emphasised within the Local Government Transitional Act, Second Amendment (1996). More recently, this idea has received a legal status within the Municipal Systems Act of 2000. Integrated Development Plans (IDPs) emerges as a crucial tool that municipalities use to delivery basic community services, in order to realise the goal of developmental local government (Harrison , 2001). The Local Government Transitional Act, Second Amendment (1996) defines (IDPs) Integrated Development Plan as a "plan aimed at the integrated development and management of the area of jurisdiction of the municipality concerned in terms of powers and duties…". Complementing this view, is Mvula (1999: 1) arguing that "IDPs are the vehicle through which municipalities can achieve sustainable ways to meet their social, economic and material needs and improve the quality of the lives of the community".

On one hand, Integrated Development Plans (IDPs) are seen as " important way in which municipalities can develop strategic policy capacity, to mobilise necessary resources, to target their own activities and to develop a holistic strategy for poverty alleviation" (Mvula,1999:1) . Based on the above argument, it seems IDPs, are central planning tool

for the local government authorities to effectively respond to the special water needs of the poor living with HIV/AIDS in the townships. Section 26 of the Municipal System Act (2000:38) requires municipalities to draw Integrated Development Plans reflecting core components, which include and limited the following components only relevant to the research's argument:

a. the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs,

b. an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services.

c. the council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs,

d. the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation.

e. a financial plan, which must include a budget projection for at least the next three years; and

Based on section 26(b) of the Municipal Systems Act (2000), one could therefore argue that the special water needs HIV/AIDS is calling for, clearly falls within the category of "*communities needs to be identified by local government authorities*" , as presented on the above components of IDP. The amount of water offered by the Free Basic Water policy can reach and satisfy the needs of poor non-HIV/AIDS affected households, whose monthly consumption is assumed to be not exceeding 6000 litres a month. The special water needs of the poor HIV/AIDS affected households are covered under the core component (b) of IDP[13], since it the basic municipal service that this segment of the community need the most, but does not have to as they cannot afford.

From the above arguments, IDPs appears to be a central planning tool for local government authorities to effectively respond to the special water needs of the poor HIV/AIDS affected households. This idea also highlighted by Thomas (2003), who also

[13] Refer to component b of IDP core components . The research argues that this component compels municipalities to identify the water needs of the poor HIV/AIDS households. This is because water for Care and Prevention in the HIV/AIDS affected household is regarded as the *most basic municipal service*, needed. Planning for a society based on social justice involves, "moving towards an ethical society with genuine equality of all people, with political and socioeconomic patterns shaped to protect the interests and enhance the worth of each person" (Benjamin et al.., cited in Kikuchi (2004: 1)

sees IDPs as a tool that municipalities could use to respond to the services needs of HIV/AIDS. She argues that "the Integrated Development Plans (IDPs) of local authorities have not integrated HIV response into their development initiatives and budgets" Thomas (2003:2). Like Tomlinson (2003), Thomas also believes that "local authorities have been slow to address HIV in terms of their development mandate" However, the following challenges faced by local authorities must not be underestimated. First challenge is that municipalities are not equal, not only in terms of their size, but their capacities also, while having different developmental priorities and vision on their IDPs. Although all municipalities equally facing the challenge of HIV/AIDS, the water services needs it calls for, may not be a top priority in all of their IDPs. Each municipality is having different developmental priorities unique to the areas of their jurisdiction. In other municipalities, economic development is a top priority than that of AIDS and water needs it calls for. The main challenge is how local government authorities could collectively incorporate HIV/AIDS and the water service needs it calls for, as top developmental priority their IDPs want to achieve, not only as a short term goal, but a long term goal also.

Thomas (2003: 2) went further arguing that "other sectors have been slow to develop strategies which can help to mitigate the impact of the pandemic and help households to cope better with the consequences of the pandemic". Thomas' (2003) argument informs the second challenge faced by the local government authorities in this regard. The second challenge is how could municipalities collectively agree upon structuring of IDPs having the water needs HIV/AIDS calls for as top priority be done in a cross-accepted manner, that not only the national and provincial spheres will 'buy-into it', but other relevant organs of the government such as Treasury and Department of Water Affairs and Forestry also, as a their top developmental focus to be implemented at the local government level. Above questions on the challenges faced by municipalities in incorporating HIV/AIDS and the water needs it calls for worth to be asked based on the following. If only one municipality could solely apply for assistant from these sectors and spheres, the chances of not getting a positive response are high, as compared to when municipalities are voicing their common challenge in a collective manner. The 'buy-in'

of sectors such as DWAF and Treasury are of paramount importance for trade-offs and reprioritization in terms of funding and amount of water to be increased.

4.8 INTEGRATED DEVELOPMENT PLANS AS AN OBSTACLE FOR MUNICIPALITIES NOT TO BE RESPONSIVE TO THE WATER NEEDS OF POOR HIV/AIDS AFFECTED.

However, on the other hand, Integrated Development Plans (IDPs) are seen as an obstacle for municipalities not to respond to the water needs of the poor HIV/AIDS affected households, based on the following two main reasons. First, the first core component of IDP obliges each municipality develop their own long term developmental vision, with special emphasis on the municipality's most critical development and internal transformation needs. However, there is no legal binding criterion as to how each municipality should go about developing such a long term developmental visions. Many municipalities' long term developmental visions focused more on economic than social development of their areas[14]. This has resulted in municipalities competing against each other for investment to their secure revenue base and economic growth, thus little attention is paid on HIV/AIDS and the services (water) needs it calls for. This is because of reduced subsidies targeting the poor from national to local government.

Second, IDPs could be seen as a tool to further the priorities of GEAR at the local government level, since it links municipalities' operational activities with their available budget to avoid fiscal gab/ budget deficit , thus "expenditure are carefully prioritised" (Harrison, 2001: 5). Social services needs that are beyond the government 'lifeline' sponsored quota, such as that of 6kl/6000 litres of the Free Basic Water policy, are given less priority, since they are regarded as unfunded mandates (Parnell et al.2002). As a result, these emerge as an obstacle for municipalities not to fulfil the mandates that are beyond their financial capacities.

[12] For example, despite high prevalence of HIV/AIDS in City of Johannesburg's area of jurisdiction , the City's Joburg 2030 long term developmental vision focused more attention to economic development and very less (*if any*) is talked about as far as HIV/AIDS and the service needs it call for (*see* Joburg, 2030).

Given the above presented difficulties faced by local government in addressing the special water needs of HIV/AIDS, one tends to disagree with Tomlinson's (2003) conclusion on local government and the services of HIV/AIDS. He argues that "it is striking how little attention has been paid to the role of local government in addressing these needs, particularly with respect to services such as water …"(Tomlinson, 2003:1). The above presented challenges faced by local government did show that the criticism should rather be (*if one may put in Tomlinson's, 2003 words*), it is striking on how little attention has been paid on the challenges faced by local government in response to the water needs of HIV/AIDS.

Conclusions

The special water needs of the poor HIV/AIDS affected households by HIV/AIDS are the constitutional competence of the local government. The local government authorities are willing to respond to the water services needs of poor HIV/AIDS affected households water needs. However, they identified their main challenge being on lack of financial support and commitment from national and provincial government. The research argued that municipal IDP will feed the affected household with hope and not water, if HIV/AIDS and the services needs it calls for is not the national government's prime developmental priority. The national government's 'buy-in' commitment is identified as being crucial for influencing major stakeholders such as DWAF and Treasury. The GEAR policy creates a difficult environment for a collective respond in all spheres of government to be responsive to these water needs.

Chapter Five

ANALYSIS OF RESEARCH FINDINGS

5.1 INTRODUCTION.

This chapter focus on the presentation and analysis of the research findings gathered from the previous chapters. Analysis of the research findings is carried in the line with the concern that guides the argument of this research, which is that of promotion of social justice in the distribution of resources. The chapter begins with key remarks on the meaning and understanding of planning for society based social justice.

5.2 THE MEANING AND UNDERSTANDING OF SOCIAL JUSTICE.

A society committing itself to the goal of social justice is the one "moving towards an ethical society with genuine equality of all people, with political and socioeconomic patterns shaped to protect the interests and enhance the worth of each person" (Benjamin *et al*. cited in Kikuchi 2004: 1).Social justice does not allow that the sacrifices imposed on few are outweigh by the larger sum of advantage enjoyed by many (Rawls, 1971: 4). Moreover, Rawls (1971: 4) argued that in a just society, the rights secured by justice are not subject to political bargaining or calculus of social interests". In South Africa, socioeconomic rights have a crucial role in the realisation of social justice, hence they are protected within the Bill of Right of the constitution.

These are the rights that any of the government policies or programme affecting them, must strive to protect, promote, respect and fulfil them. As these rights are crucial for the realisation of social justice, they are not even subjected to political compromises; they must be fulfilled. However, the research found that the Free Basic water policy, which affects citizens socioeconomic right or right to have access to sufficient water, is not satisfying the requirements of Section 27(1) (b) and (2) of the constitution. These

conclusions are informed by the policy's failure to meet the water needs of the HIV/AIDS affected households, especially those who cannot afford to pay. This put the constitutional goal of planning for a society based of social justice under threat.

5.3 CONSTITUTIONAL STANCE ON RIGHT TO WATER.

Chapter two of this research report outlined the South African constitutional water clause, from which it argued that the clause is guided by the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976, to which the country is a signatory member states. General Comment No.15 of the United Nation Economic and Social Council (2002) deals specifically with universal shared laws on the right to access to water. The Comment concluded that, despite financial and natural limitations, members states must take reasonable legislative and other measures to ensure that access to water in their countries is economically accessible and not discriminatory.

In extending and implementing the requirements of International Covenant on Economic, Social and Cultural Rights(ICESCR) of 1976 on socioeconomic rights (which include right to water), the South African constitution stated that socioeconomic rights enshrined within the Bill of Rights must be protected, promoted, respected and fulfilled by any on the government's actions involving these rights. With this stance on socioeconomic right, the South African wanted not only to meet the requirements of ICESCR, but achieve a long term constitutional goal of planning for a society based social justice, as enshrined on the preamble of the constitution. Section 27(1) (b) of the constitution of South Africa is seen as been in line with Rawls's (1971) first principle social justice, that of equality, as it states that "everyone has the right to have access to sufficient water" (Oelofse, 2003: 257). Most importantly, is section 27(2) that obliges the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right (; RSA, 1996).

The research argued that, although there is no consensus on how much *sufficient* water is, as stated in section 27 (1) (b), it was concluded that " water can only be sufficient if it

meets all the households' quality requirements, providing security to the user, based on its affordability, reliability and viability" (AWWA, 1995). The Free Basic water policy's conclusions on sufficient water derived from the World Health Organisation's definition of enough water for a healthy life. That is 25 litres per person per day. Hence, 6kl/6000 litres per month per household of eight was defined as been sufficient according to the policy (see *table 4, p 47*).

5.4 .1 ASSESSING THE FREE BASIC WATER POLICY IN TERMS OF THE CONSTITUTION.

The adoption of Free Basic water policy is seen more as a responsive measure to the apartheid injustices and advancing hidden political agendas than adhering to constitutional requirement, hence not promoting social justice. On one hand, the research argued that the policy is a response to the apartheid injustices given that, had successfully managed to confront the past apartheid inequalities, where access to water was determined by race. This had reversed the pre 1994 backlog of about 12-14 million people without access to portable water, to eighty percent access to safe water in the urban areas in the year 2000 (DWAF, 2002; Ashton and Ramasar, 2002:222; refer to table 2). The policy ended socioeconomic imbalances that were likely to privilege those who can afford or disadvantage those who cannot afford, since 6kl/6000 litres is offered universally regardless of people's socioeconomic status. To this end, the policy could also be seen as being in line with Rawls's (1971) first principle of equality, as it treats everyone equally. This principle maintains that "each individual is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others".

However, for equity in the distribution of resources to prevail, Rawls's (1971) second principle of social justice maintains that inequalities in the distribution of socioeconomic resources could only be allowed if they are in favour of the poor. Seemingly, the Free Basic water policy appears not to be promoting this positive discrimination, as it does not recognise the special water needs of the HIV/AIDS affected households, especially those who cannot afford. Given this and based on Yacoob's (2001) analyses of socioeconomic rights, the Free Basic water policy cannot said to be adhering to the constitutional

requirements of Section 27(1) (b), hence it is difference-blind. Section 27(1) (b) state that everyone has the right to have access to sufficient water. In chapter 2, the report argued, to poor households affected by HIV/AIDS, water can only be sufficient if it can meet their quality requirements of water for Care and Prevention purposes. If right to citizenships entails entitlement to socioeconomic rights and if no one can be discriminated either directly or indirectly on the bases of their socioeconomic conditions, poor households affected by HI/AIDS have the right to clean sufficient water for Care and Prevention.

The policy could be seen as being difference-blind since it treats everyone according to same principle and standard, without recognising the special water needs of the HIV/AIDS affected households. Moreover, based on Yacoob's (2000) analyses of socioeconomic rights, the Free Basic water policy cannot be seen as what Subsection 27(2) referred to as the State's obligation of taking reasonable legislative and other measures to achieve progressive realisation of ensuring that everyone has access to *sufficient* water. For Yacoob (2001), policies and programmes that exclude significant segment of society cannot be said to be reasonable. He further argued that socioeconomic rights are of significant importance in the realisation of social justice, hence acknowledged that the poor are vulnerable and their needs require special attention.

5.5 FREE BASIC WATER POLICY AND UTILITARIANISM

The operational assumption of the policy that assumes the poor may not consume beyond 6kl/6000 litres a month, qualifies the Free Basic water policy to possess the characteristic of Utilitarian's notion of what Rawls termed imperial spectator. This is because the Free Basic Water policy's principle, desires and interests are universally applied to the whole group in society categorised as being poor. For this, the Free Basic water policy fuses the whole groups categorised as being poor into one group. In chapter two, Young (1995) maintained that policies that are not group conscious are oppressive. Hence, the research argued that, social difference is of a less significant under this policy; hence it shares the same similarity with Utilitariasm. It is argued that "in a utilitarian society, citizens' rights could be completely ignored, if injustice to this one citizen would

benefit the rest of society" (Rawls' sample essays, 2004). Planning in the post apartheid South Africa positioned itself very clear in the preamble of the constitution, that it is to be in the interest of promoting a society based on social justice. Young (1995) argued that for policies to promote social justices, they must be conscious of group difference and give special treatment to groups whose needs are most urgent.

Nonrecognition of group difference in social policies perpetuates political imperialism, since the views of those with adequate understanding of power relations and political skills tends to dominate decision making, thus their views are endorsed universally in a society. Taylor (1995) defended the position why group difference is important and why it must be recognised in policy making. He argued that nonrecognition of group difference in policy making relegate the nonrecognised group into what he termed '*second class status'*. When the nonrecognised group is relegated into this status, their mode of being is reduced, thereby feeling inferior and marginalised from the rest of society. This inflicts harm, since the nonrecognised are unable to take advantage of new opportunities in life.

5.6 THE CARE AND PREVENTION ROLE OF WATER IN HIV/AIDS AFFECTED HOUSEHOLD(S).

In applying Taylor's (1995) argument, chapter three of this report attempted to show the importance of water to the HIV/AIDS affected household for Care and Prevention purposes. At first, it was argued that *Care* role of water in the affected households implies access to clean sufficient water "by those household members already infected by HIV/AIDS to promote positive living, good hygienic practices and nutritious" (SARPN, 2003:12; also see Defilippi ,cited in Tomlinson, 2004: 24). *Prevention* role of water on the other hand referred to access to clean sufficient water to "ensure that those household members and caregivers at the home/ community levels remain uninfected, thus reducing chances of them being infected every time they offer care to the infected members" (ibid).

It was found that the importance of water to the HIV/AIDS infected patients involves just more than quenching mankind's thirst. The Care and Prevention role that water plays to the HIV/AIDS infected patients shows that access to sufficient water will restore dignity to both infected , the uninfected household members and the caregivers. It was also found that lack of access to sufficient water by the HIV/AIDS affected households due to inability to pay, exposes or makes the other unaffected household members and caregivers more vulnerable to infection also. Thus, lack of clean sufficient water for Care and Prevention increases chances of them being infected as well, as they maintain close bodily contacts with the infected patients during care giving period (refer to table 6).

Moreover, due to lack of access to required amount of water for Care and Prevention, the already infected patients may suffer discrimination, as the uninfected members will be distancing themselves from infected, as a way of reducing the risk of being infected also. The caregivers also experience difficulties when rendering their daily services of ensuring good nutrition , washing of soiled clothes and bathing of the infected patients due to lack of sufficient water. In cases where the virus has reached advanced clinical stages, referred to as clinical stage 3 in table 6, the chances of them to be infected also increases, since they maintain close contacts with the patients on their daily basis. Moreover, it was found that opportunistic diseases such as diarrhoea and other germs possibly contacted from shared latrines and soiled clothes, hasten the progress of the virus to AIDS level and eventually death (NAPWA ,cited in Kamminga et al. 2003).

Thus, an increased access to sufficient water for Care and Prevention dignifies the living environment of the infected patients, their uninfected family members and allowing caregivers to effectively render their daily services. However, it was found that despite being entrenched as a human right in the constitution, dignity seems very expensive to the poor HIV/AIDS affected households who cannot afford any amount of water exceeding 6kl/6000 litres a month. To this end, it is clear that nonrecognition of the poor HIV/AIDS affected households' special water needs could inflict harm to the poor HIV/AIDS affected households.

5.7 POST APRTHEID URABAN PLANNING POLICY FRAMEWORK.

In chapter two, the research presented two contrasting approaches of assessing at the post apartheid planning policies, the Mainstream approach and the Critical approach. The Mainstream approach maintained that the post apartheid challenges in services delivery are not informed by the current existing policies, while resources allocated are fine and quite sufficient. The approach maintained that the current deficiencies in the delivery of municipal services are the inefficiencies of municipalities. The Mainstream approach advocate for minimisation of subsidies to municipalities, so that provision of municipal services must be based on market principles, since privatisation of these services is seen as solution to these deficiencies. The Mainstream approach's argument was emphasised even further by DWAF's (2005:25), arguing that "although water services authorities are subsidised by government through various financing mechanisms and grants, it is still the responsibility of customers to pay for their consumption of water that exceed the minimum standards of basic service". The research has argued that the Mainstream approach's thinking about the developmental challenges facing the post apartheids South Africa is influenced by the neo-liberal 'trickle down' economic orthodoxy that gave rise to GEAR.

The above critique to the Mainstream approach seems to give the Critical approach's stance on post apartheid policies more justification. The Critical approach, argues that the current planning frameworks are disempowering, technicist and insensitive to the previous inequalities that left many people in poverty. Moreover, the Critical approach argues that privatisation of municipal services will amplify social exclusion given the current income disparities that characterises the post apartheid society. Further more, the Critical approach criticise the post apartheid planning policies technocratic.

The manner in which the policy came into existence question the democratic process of decision making, since it was announced by the cabinet and not emerged as a response to a collective identified societal concerns. Based on the Critical approach's stance on the

post apartheid policies, it was found that the Free Basic water policy is insensitive to the present water services challenges of the poor living HIV/AIDS, since there is a direct link between poverty and the virus. Service delivery has been increasingly associated with human empowerment (Hemson, 2004).

5.8 THE GEAR PLANNING POLICY FRAMEWORK AND SERVICES DELIVERY.

As also observed by Parnell et al.(2002) it was found that the national government's macro-economic policy framework within which basic services are delivered at the municipal level, which is that of GEAR, supports privatisation, public-private partnerships and the promotion of principle of cost recovery. Under the framework of GEAR, subsidies targeted to the poor from the national government are reduced, while lifeline tariffs are introduced to ensure that the constitutional obligations to provide the poor with basic services are met (Parnell et al, 2002). However, these lifeline tariffs, as we have seen in the case of the Free Basic water policy, cannot said to be State taken reasonable legislative and other measures to ensure progressive realisation of ensuring that everyone has access to sufficient water.

Given this, lifeline tariffs such as 6kl/6000 litres provided by the Free Basic water policy, are seen more as a compromise and a political decision from the government than adhering to the constitutional obligation of meeting ensuring that everyone is entitled to sufficient amount of water. To begin with, GEAR advocates more of the rolling-back of the state in the provision of basic services. It changes the role of the state from being the provider of these services, to that of 'enabler', where its role is that of ensuring that there is an enabling environment for the private services provider to operate. Moreover, as also observed by Harrison (1996), this marked a shift in the language planning from welfarism and manegerialism to entrepreneurialism, with more emphasises on public-private partnerships. Planner's primary social goal of being a reformer is also been influenced to that of economic developer (Beauregard ,cited in Harrison, 1996:29).

5.8.1 SHIFT IN PLANNERS PRIMARY ROLE

Davidoff (1965) argued that planners must be the advocate of the less privileged groups in society, planners and policy makers will be searching for equity and social justice in the distribution and allocation of resources. This view was also supported by Thomas (2000: 1), who argued that "planners need to play a role in advising decisions-makers of the likely impacts of HIV/AIDS and helping in the formulation of appropriate strategies, which will address inequalities in access to services". However, there has been a counter argument to both Davidoff and Thomas' argument. The first argument in contesting this, is the one already alluded to by Harrison (1996) who talked about shift in the language planning from welfarism and manegerialism to entrepreneurialism. Second, is the one made by Fainstein ,cited in Harrison (1996: 29) arguing that the post modernity period marked a "change in the discourse of planning from comprehensive and public interests to competitiveness and private interest".

This shift in South Africa have also been witnessed by a shift from RDP's people driven planning approach to GEAR whose approach is that of market-oriented and trickle down economic. Thus, this has distanced planners (at the local government level) not only from playing a reform and advocacy role, but it has also influenced their role to that of economic developer and ever more closely to the activities of investors. At the local government level, planners are responsible for guiding and advising local authorities' decision in a manner that will also address the needs of poor and powerless members of society. Water for Care and Prevention in a poor HIV/AIDS serves as a critical example in this regard. The environment within which planners found themselves in; that of lowered subsidies targeting the poor from the national to local government level, on one hand. The local authorities, on the other, behaving like entrepreneurs, making their locality attractive to private sector, providing venture capital to private service providers to influence their decision to their locality. The notion of inter-urban competition and public-private partnership, cooporitisation and privatisation of services become common, replacing the traditional welfare role of the local authority (also see Harvey, 1989). Issues

of social equality and constitutional compliance of local authorities of providing basic services to local communities is furthered through universal lifeline tariffs services such as 6000 litres providing by the Free Basic Water policy(see Parnell et al,.2002 in p.80 of this report). Planners are not value-free; they can be influenced and co-opted by the local authorities' new governance. As also observed by Thomas (2001) the "response of the planners will depend on the context within which they are working".

More importantly, one still maintain that if HIV/AIDS is not the government's top developmental priority, the services needs it calls for, which in the case of the report, water for Care and Prevention, are unlikely to be given financial attention. It should be noted that the role of planners in this regard, as advisers to local authorities on the impact of the epidemic and how to deal with the devastating impacts on the life of communities, as observed by Thomas (2001), is necessary , however, not sufficient. Giving of guidance and advises by planners to local authorities without power to influence decision making is of paramount importance; and yet planners limited powers. There is a need for power to influence decision. Baum (1983: viii) argues that "planners exercise limited power in decision-making because they misunderstand the ways in which decisions are made in bureaucratic organisations and political process". It is maintained that in most cases planners do not meet public expectations because their mixed feelings about power relations; yet their work is social and inherently political (Baum, 1983). Therefore the social, political and economic environments within which planners operate, influence the final decision.

5.8.2 LOCAL GOVERNMENT, GEAR PLANNING POLICY FRAMEWORK AND SERVICE DELIVERY.

Given its developmental role mandated by the constitution, which is that of :

- ensuring provision of basic services to communities,
- structure and manage their administrative and budgeting and planning processes to give priority to the needs of the community,

Local government has been blamed for not being responsive to these water needs of the poor HIV/AIDS households. However, the research maintain that little attention has paid

on the difficulty faced by local government authorities not to respond to their competence of delivering special water needs of the poor HIV/AIDS affected households, due to the GEAR policy framework which compels them to entrepreneurial local authorities.

5.9 ANALYSES OF CHALLENGES OF LOCAL GOVERNMENT AUTHORITIES IN THE DELIVERY OF SPECAIL WATER NEEDS OF POOR HOUSEHOLDS AFFECTED BY HIV/AIDS.

Among other challenges faced by municipalities in their attempts to respond to the special water needs of the poor affected households, it was argued "growth in population and high prevalence of HIV/AIDS in the urban areas have translated into an increasing gap between range of services needed and the revenue available at the municipal level to finance these services" (SACN, 2004:18). Second, it was found that "municipalities find themselves spending a disproportionate amount of resources on the developmental agenda without sufficient financial support from provincial government" (ibid).

It was found that the implementation of GEAR at the local government level, channels municipalities to enter into partnership with private services providers, either through privatisation, outsourcing or coorporitisation, who endorses the principle of cost-recovery in the delivery of services. The White Paper on Municipal Services Partnerships outlined three options, (Public-Public Partnership, Public-NGO/CBO Partnership and Public-Private Partnership) from which municipalities could choose to enter into services delivery contract with. However, the research maintains that the cutting back of subsidies from the national to the local government compels municipalities to enter into public-private partnership in order for them to secure themselves a viable revenue base. While the researcher also concurs that the participation of the private service providers in the delivery of services improve efficiency and fast tracking in delivery of basic services, at the same time one cannot pretend to be eye-blind on the fact that the primary aim of private service provider is to maximise profit and not equity.

Moreover, at the local government level GEAR compels municipalities' development plans to be formulated within the context of their limited budget that cannot be overspent

and in the context of locally generated revenue, so as to avoid fiscal deficit (Ibid). Given these, it was found that this framework set municipalities' to develop their Integrated Development Plans (IDPs) in a manner that they can only be able to deliver not beyond the lifeline tariff of 6kl/6000 litres. The special water needs required by poor HIV/AIDS affected households, is regarded as unfunded mandates. To this end, it was found that a shift from RDP to GEAR policy framework questioned not only the commitment of the post apartheid to the idea of developmental state, but commitment towards realisation of constitutional goal of planning for a society based on social justice. This is true because RDP's targeted lifeline amount of basic water was fifty litres, opposed to the Free Basic Water policy's target of twenty-five litres person per day (Bond, 2002). Parnell et al. (2002:82) argues that "GEAR places higher priority on debt reduction than on social spending.

Clear evidence of GEAR's discouragement of public expenditure is also seen on the national government stance on the services needs of HIV/AIDS, as alrady presented in chapter 4. The research maintained that, before the decision of the constitutional court case: Minister *of Health and Others v Treatment Action Campaign and Others (1) 2002*, where the court ruled in favour of the socioeconomic rights of the HIV/AIDS infected pregnant woman, (for access to anti- retroviral drugs to reduce the chances of the unborn child from being infected), the government stance on HIV/AIDS the services needs it calls for was equivocal.

The research argues that it was not because of the misunderstanding of the link between HIV and AIDS, as Mbeki pretended it was in a controversial debate about the linkage between the two. It was found that HIV/AIDS and the services needs it calls for, which include water among others, will needs more financial intervention (increase in subsidies targeting the poor), from the state, while GEAR advocate a minimal state social spending, as also observed by Parnell, et al. (2002). The statements made before the *2002 Minister of Health and others v TAC* case by government officials in the departments and organs of the State having an import influence in the solution to the services need of the poor HIV/AIDS affected households. These statements, however, mirrored how the national

government weigh or rank HIV/AIDS and the services needs on the list of their developmental priorities. Please refer to these statements in P: 72 of this report.

Based on the these, the report maintains that although the local government authorities (municipalities) are the ones responsible for the provision of water services to the communities, the special water needs of the HIV/AIDS affected households exceeds their financial capacities, as a result of reduced subsidies from the national government since the introduction of GEAR. Meiklejohn and Coetzee (2003: 39) argued that "the mismatch devolution of planning powers, functions to local government, on one hand, and limited fiscal decentralisation, on the other, lead to more top-down approach , since this means that development and decisions are led where money is".

Moreover, the research identified section 153(b) of the constitution, IDPs and the constitutional principle of co-operative governance as another way in which municipalities could respond to the water needs of the poor households affected by HIV/AIDS. First, section 153 (b) states that municipalities must participate in national and provincial and development programmes. The research concluded that, although this section appeared to an opportunity that municipalities could use to voice their challenges in relations to the water needs of the poor HIV/AIDS affected household, the following emerged as a challenge. One, every municipality's IDP has its own unique developmental priorities, beyond that of providing lifeline tariff services to communities. On rare cases, HIV/AIDS and the services needs it calls for are top priorities in many municipalities. Two, every municipality is expected to develop its revenue base, due to the small fiscal transfer it receives, only three percentage from the national revenue. This set municipalities to compete against each other for foreign investments than co-operating on social common problem, such as HIV/AIDS. Three, the report argued that if HI/AIDS is not a top government developmental priority, it will be obvious that the water services needs it calls for will not be given attention. In chapter 4, the report attempted to present the views of government officials(President's spokes person, Health Minister and the Minister of Finance) who have a crucial role to play in addressing the services needs of HIV/AIDS(Refer to p: 87).

Integrated Development Plans (IDPs) were also, on one hand, seen as a solution for municipalities to effectively respond to the special water needs of the poor HIV/AIDS affected households based on the following reasons. In terms of Section 26 of the Municipal System Act (2000), each municipality must draw Integrated Development Plan (IDP) reflecting core components that includes and not limited to the following component:

• an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services.

The report argued that identification of communities with no access to basic municipal services among others refer the poor HIV/AIDS affected households, who cannot afford the amount of water (exceeding 6kl/6000 litres) needed for Care and Prevention. However, on the other hand, it was found that IDPs also emerges as obstacle for municipalities to respond in this. Another core component of IDP argues that, municipalities must have on their IDPs:

• the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs.

The report argued that, although the Municipal System Act of 2000 successfully managed to compel every municipality's IDP to have the above component, it was not clear on the procedure, as to how municipal developmental visions should entails, especially for municipalities at the urban areas, where HIV/AIDS prevalence is high (refer table 4). The report also maintained that, lack of legally binding procedure on how this long term municipal developmental visions should entail (especially to municipalities in urban areas, where the prevalence of HIV/AIDS is high), continued to set municipalities to compete with each with for investments on their place marketing strategies.

The report argued that in the absence of legally binding procedure on how long term municipal developmental visions should entail , municipalities tend to focus more on economic development and less on the services needs of HIV/AIDS, as they are regarded

as unfunded mandates. IDP "links municipalities' operational activities with their available budget to avoid fiscal gab/ budget deficit, thus "expenditure is carefully prioritised" (Harrison, 2001: 5). The water needs of the poor HIV/AIDS affected households are regarded as unfunded mandates, thus they will not be prioritised because there is no budget available to municipalities for their provision. Based on these facts, the report sees IDP as an obstacle than a solution to this problem.

5.9.1 BEYOND MACROECONOMIC POLICY (GEAR) TO INTERGOVERNMENTAL RELATIONS CHALLENGE FACED BY LOCAL GOVERNMENT AUTHORITIES.

Moving away from the planning policy framework and political stimulated environment that impede the ability of the municipality to recognise the special water needs of the poor HIV/AIDS households, it was found that there is fragmentation of cooperation between relevant state departments, having a crucial role of ensuring that there is an enabling environment for municipalities to respond in this regard. These include Social Development and Water and Forestry National departments. According to the principle of co-operative governance, all spheres and organs of government must co-operate with one another in mutual trust and good faith by, first, assisting and supporting one another. Second, informing one another of and consulting one another on matters of common interests, while co-ordinating their actions and legislation with one another (RSA, 1996).

However, during interviews with officials from the National Department of Water Affairs and Forestry (DWAF) and Social Development it was found that there is a fragmentation in intergovernmental/departmental relations among key government role players, the Water Affairs, Social Development departments. First, during an interview with a Senior Manager, Mr. Vermeulen, in the Water Services Policy and Strategy Directorate of the Department Water Affairs and Forestry (DWAF), it was found that his department (DWAF) sees the Free Basic water policy being in line with Section 27(1.a & 2) of the constitution(refer to the contents of this section in chapter 2). Moreover, he maintained that "issues around who gets how much amount of water, on what conditions, are dealt with by the Provincial and Local government departments (DPLG), while the special

water needs of the HIV/AIDS affected households were never brought to the departments' attention" (Vermeulen,2005). Furthermore, the official from DWAF still maintained and defended the conclusions reached by his department's National Water Resource Strategy of 2004, when arguing that "the current litres of 6000 provided by the Free Basic water policy is adequate given the reducing sizes of families due to HIV/AIDS, especially at the urban areas"(ibid).

The second interview was conducted with an official form the Department of Social Development, Chief Directorate: HIV/AIDS, Coordinated Action, Mr. Phahlamohlaka. The Chief Directorate HIV/AIDS in the National Department of Social Development, in concurred with National Health Department are responsible for coordination and monitoring of Home Community Based Care (HCBC) programmes and organisation at the affected community/home level. Most of the challenges over the water needs of the poor HIV/AIDS affected households are also face by the care givers on their daily services rendered to the affected households. The services they gave to the affected households involve promotion of hygienic living condition and nutrition.

However, during interview with, Phahlamohlaka, an official in the Chief Directorate HIV/AIDS at the National Department of Social Development it was also found that the challenges of lack of sufficient water for rendering Care and Prevention services to the poor HIV/AIDS affected households have being overlooked at, and for the first time he came to learn about this during our interview (Phahlamohlaka, 2005). This has obviously suggested that his department has no relation whatsoever with other relevant departments such as DWAF and DPLG to assist municipalities to cater the special water needs of the poor HIV/AIDS affected households.

The fact that his Department, Social Development, overlooked the importance of sufficient clean water to the HIV/AIDS affected households reflected a fragmented monitoring and coordination of home based programmes and services offered care givers from Home Community Based Care (HCBC) organisation. Moreover, form both interviews with officials from DWAF and Social Development it was found there is a

fragmented intergovernmental/ departmental relations, on cross sectoral issues. Lack of cooperation between these states departments and other key players, hampers the ability of municipalities to voice their developmental challenges when participating in the development programmes of national and provincial government, as legally expected to. Thus, it is striking on how little attention has been paid on the difficulties faced by the local government authorities, to respond to the challenges of HIV/AIDS and the services needs that is calling for.

CONCLUSION.

HIV/AIDS and the water services needs it calls for are the constitutional competence of the local government. It was also shown that local government authorities have already begun doing something, however with very limited support from the national government in terms of finance. Although on one hand it can be argued that the Free Basic water policy is the reflection of inadequacy of the government to develop and assess its policies in the context of the Bill of Rights, one cannot be eye-blind on the GEAR policy framework that uses the art of politics to delay, if not discourages fiscal decentralisation to the local government. A fragmented cooperation among key players also affects the ability of the local government authorities to present problem they confronted with at the local level.

Chapter Six

RECOMMENDATIONS AND CONCLUSIONS

At the heart of every human problem, lies a human solution. As planners, we can change the world, but not overnight, not all at once (CoJ Cooperate Planning Unit, 2004).

6.1 INTRODUCTION

This chapter gives recommendations on how planning for social justice could be achieved in the delivery of the water to people with special needs such as those of households affected by HIV/AIDS. The report argues that, if South Africa is to be a society recognising the injustices of the past and based on social justice, as sworn on the preamble of the constitution, the following are recommended:

6.2 REVIEW OF THE FREE BASIC POLICY.

Section 9 of the constitution states that, on its actions, the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds. Access to sufficient water for Care and Prevention by the HIV/AIDS affected households is a constitutional right that any of the states actions affecting water provision must respect, protect, promote and fulfil. Since the Free Basic Water policy cannot said to be the state taken reasonable legislative and measure to ensure that everyone has access to sufficient water, it must be reviewed. South Africa is now a society striving for *social justice*; its policies and programmes that affect socioeconomic rights must protect and enhance the worth of each person and free their potential.

The water rights of the poor HIV/AIDS affected households cannot be completely ignored erode if injustice to them will benefits the rest of society. Rawls (1971: 4) argues that in a just society, the rights secured by justice are not subject to political

bargaining of social interests". The manner in which the Free Basic Water policy was initiated, as it was announced just before the 2000 elections, subject it to political bargaining. Thus, it was a policy for satisfying the political interest, but not the desperate water needs of the poor HIV/AIDS affected households.

The reviewing of the policy should take a form of pluralistic democracy and be participative, with planners and all stakeholders able to come up with an agreed upon water policy that prioritised the needs of the poor HIV/AIDS affected households. In other words, this new policy should promote what Young (1995) referred to as the 'democratic- cultural principle', where the new policy will meet every citizens' right to sufficient water more specific system of group-conscious policies and rights.

6.3 AN EFFECTIVE COOPERATIVE GOVERNANCE TO SUPPORT THIS POLICY.

A well coordinated and effective cooperation between these departments, together with HCBC organisations, NGOs and FBOs will help in addressing problem with integrated governance. This will help municipalities easily identify and up bring their developmental challenges to the attention of the national government, since these departments and other key players will clustered together by common concern. Healy (1997) maintained that planning was never a unilateral exercise. It requires collaboration and cooperation among stakeholders. A well coordinated partnership between role players will help to clarify each others role, than the recent continuation of pointing of finger. Moreover, this will also help local government authorities, as a service delivery agent of national and provincial government, to call on intervention where they have limited capacities to respond to legitimate expectations of the vulnerable groups of the society with special needs.

6.5 POSITIVE '*GAME-SUM*' PARTNERSHIPS IN THE DELIVERY MUNICIPAL SERVICES.

White paper on Municipal Services Partnerships outlined three options, (Public-Public Partnership, Public-NGO/CBO Partnership and Public-Private Partnership) from which municipalities could choose to enter into services delivery contract with. Public-Private Partnership seems to be the only option (especially those municipalities with poor revenue base) made available for most municipalities, because of cut of subsidies from the national government as encouraged by the policy framework of GEAR, which expect each municipality to develop their own revenue. While active participation of private services providers is recommended for efficiency and new technology reasons, on one hand, all parties should also benefit equally and to a large extent equitable, on the other . The installation of prepaid water meter box at townships level and the application of cost-recovery seem to benefit only the private services provider, at the expense. There is need for a balanced benefit among all stakeholders in the delivery of services, for both ethical and commercial interests to be catered for equally. Public-NGO/CBO-Private partnership is recommended as a reasonable and sustainable way of providing services to people in all levels of society. In this partnership, municipalities will create enabling environment to attract private services provider to come with new technology of providing water, while NGO/CBOs will play a '*watch-dog*' role, advocating for the rights and the interests of vulnerable groups of society.

6.6 HOLISTIC AND INTEGRATED HIV/AIDS AWARENESS.

More money is spent on HIV/AIDS *awareness* than on the water needs the virus is calling for. While the report does not criticise these, it also urges for a multifaceted approach. The government has successfully come to understand the role of condoms in the prevention of spread of HIV/AIDS. The same should apply with role of the services needs, such as water for Care and Prevention, which is recently overlooked at. Planners and academic institutions have a crucial role to play as far as research is concerned. For example, not until few researchers started investigating the role of water for Care and

Prevention, less, if any, attention has been in this regard. Planner's role must be that on advising the government on these needs (Thomas, 2001).

Of paramount importance, the services needs of HIV/AIDS are felt mostly at the local community level, there should be a legally binding procedure for the local government authority's Integrated Development Plans (IDPs) to make HIV/AIDS top priority in parallel with economic development. This will help municipalities to take a common approach and drawing the attention of the both national and provincial government, on matters of common concern to municipalities. Although there is a counter argument that each municipality have their own unique challenges and priorities in the areas of their own jurisdiction, it should be noted that humans themselves are carriers of the virus, and as they move from one city to the other, they could easily spread it. What the report recommends is that there should be a legally binding procedure that each municipality must have a programme dedicated to the services needs of poor HIV/AIDS affected households as part of their developmental priority also. There should be financial supporting budget from the national government to support this programme. Decentralisation of planning powers must be accompanied by decentralisation of fiscal powers to enable this. However, this must be supported financial accountability of municipalities

6.7 STRENGTHENED ROLE OF AND COLLABORATION BETWEEN PLANNERS, HCBC AND NGOs AND CIVIC ORGANISATIONS.

Rawls (1971: 4) argues that "social cooperation makes possible a better life for all than any would have if each were to live solely by his own effort". Planners need to collaborative very closely with other key stakeholders such the Home Community Based Care and NGOs' , whose role must be strengthened through effective way of communicating with the Departments of Social Development and Health. These are the groups that are facing these challenges of the services needs of HIV/.AIDS on their daily services rendered to the affected households. Moreover, for these organisations to play an effective '*watch-dog'* role, advocating for the rights of poor HIV/AIDS affected

households, they need to maintain close relations with civic organisations such as Treatment Action Campaign (TAC).

This will stimulate planners' role of advocacy, as it will be different organisations held together by common vision of advocating for the interests of the powerless members of society , in order for equity to prevail. Constitutional court has a good history of advocating socioeconomic rights of the poor. Hence, planners need to play active role, ensuring that these matters are brought in to attention of constitutional court judges. However, Thomas (20024) highlighted that the response of the planners will depend on the context within which they are working".

6.8 POLITICAL WILLINGNESS

All of the above recommended solutions are reduced to nothing, without political will. Political will, especially at the presidential and national level is crucial. A continuous intervention by the constitutional court to remind policy makers about respect, protection, promotion and fulfilment of socioeconomic rights by polices affecting them, reflect lack of political will. Although Rawls (1971:4) argued that "in a just society, the rights secured by justice are not subject to political bargaining or calculus of social interests", without political will these rights are unlikely to be realised.

6.9 CONSCIOUS OF THE CONSTITUTIONAL ASPECT OF '*WITHIN THE AVAILABLE RESOURCES'*.

Although the report is enthusiastic on how the government could meet the special water needs of the poor HIV/AIDS affected households, the fact that South Africa is a water-scares country cannot be overlooked at. Yacoob (2001:70) argued that "the obligation does not require the State to do more than its available resources permits". The issue of availability of water resources is critical because, unlike other socioeconomic rights such as housing, health care services, food and social security, whose realisation depends largely on administrative and financial willingness of the country, water is a different issue.

South Africa is a water-scarce country. Chaskalson P ,cited in Yacoob(2001: 70) argues that " what is apparent from this provision is that the obligation imposed on the State by subsection 27(2) in regard to access to water is dependent upon the resources available for such purposes". While financial and political willingness are of equal importance in the progressive realisation of right to sufficient water on one hand, the availability of water resources determines what is reasonable, on the other (Yacoob, 2001).

From what this report has gathered on the importance of clean sufficient water in the HIV/AIDS affected households seemed like, the higher the prevalence of the virus, greater the demand of water for Care and Prevention. The debate that the report opens for future discussion will be that of investigating the impacts of Care and Prevention demand for water by the HIV/AIDS affected households in water scarce countries such as South Africa, where the prevalence of the virus is high.

CONCLUSION

The attempts of the government to adopt the Free Basic policy, is seen more as responding to the previous injustices of apartheid, than being either meeting the satisfaction of Section 27 of the constitution. Realisation of right to access sufficient water, especially by the poor HIV/AIDS affected is seen as positive progress towards planning for a society based on social justice. South Africa is a developmental state, thus polices need to be guided by societal concerns, not used for political gains. The planning policy framework should be the one supporting challenges faced by the local government, as the closest sphere of government next to the people.

The devolution of planning powers to the local government must be accompanied by fiscal decentralisation also, for municipalities to be able to respond to the major concerns of the society. It was indicated that devolution of planning powers without fiscal decentralisation, led development to be driven from where money is. This threatens the autonomy of local government to respond to the real challenges facing the community, hence may also threatens its legitimacy. However, fiscal decentralisation needs an accountable and transparent local government authorities, as funds targeting the poor may be used for other personal purposes.

A society planning for social justice is the one, in which access to basic services is determined by need for such services and not ability to pay for it. This call for a review of GEAR's intention on social expenditure, in order for polices and programmes to be driven by societal concerns and not external market forces. However, planning for social justice take a holistic approach, not only concern about justice in the redistribution of resources, but replenishing of those resources. This is true because South Africa is a water-scarce country.

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