

A GENDER PERSPECTIVE FOR WATER ALLOCATIONS

1 GENERAL BACKGROUND: LEGISLATION AND POLICIES

The provision of water is governed by national legislation, some of which is specific to gender-related issues. Overriding all legislation, the **Constitution of the Republic of South Africa (Act 108 of 1996)** sets out the rights and obligations of individuals and government. As part thereof, the **Bill of Rights** (Chapter 2) enshrines the rights of all people in South Africa, which must be respected, protected, promoted and fulfilled by the state. It applies to all law and binds the legislature and all organs of the state. However these rights are not absolute, and may be limited by law according to the requirements of Section 36 of the Constitution, *only if* the limitations are “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

The Bill of Rights is clear on Equality (Section 2.9):

- 2.9.1 Everyone is equal before the law and has the right to equal protection and benefit of the law.
- 2.9.2 Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- 2.9.3 The state may not unfairly discriminate against anyone on one or more grounds, including race, gender, sex
- 2.9.4 National legislation must be enacted to prevent or prohibit unfair discrimination
- 2.9.5 Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair

Certain state institutions are named in the Constitution to strengthen constitutional democracy, including the **Commission for Gender Equality**. This institution is independent, subject only to the Constitution and the law. However, it must report on its activities and the performance of its functions to the National Assembly.

According to the Constitution, “The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality”. Specified are its powers, including “to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality”. For example, it is commissioned to check that all laws treat women and men equally and fairly, and to recommend new laws that promote gender equality. In addition, it is tasked to ensure that South Africa follows agreements made on gender issues with other countries; for example:

- The **Universal Declaration of Human Rights**, written by the United Nations in 1948, accepted but not signed by South Africa;
- The **African Charter on Human Rights and People’s Rights**, written by a group of African countries in 1981, signed by South Africa; and

- The **Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**, signed by South Africa with the promise that legislation does not act against its contents.

There are other rights that women in South Africa want for themselves but have not been made law, contained in the **Women's Charter** finalised at a National Convention of Women in February 1994. The Charter sets out a programme for equality in all spheres of public and private life, stating that law and the administration of justice shall secure the practical realisation of equality for women, only achieved with the full participation of women. The Women's Charter outlines women's rights, including the right to education and training, stating that "there shall be educational programmes and appropriate mechanisms to address gender bias and stereotypes and to promote equality for women in all spheres".

National legislation specific to water is embodied in the **National Water Act (Act 36 of 1998)**, embracing policies outlined in the **National Water Policy White Paper (1995)**.

The White Paper stated that "the right to equality requires equitable access by all South Africans to, and benefit from the nation's water resources, and an end to discrimination with regard to access to water on the basis of race, class or gender". Fundamental principles and objectives were laid down. A selection of these specifically relating to equity include:

- The water law shall be subject to and consistent with the Constitution in all matters including the determination of the public interest and the rights and obligations of all parties, public and private, with regards to water. While taking cognisance of existing uses, the water law will actively promote the values enshrined in the Bill of Rights;
- The national Government is the custodian of the Nation's water resources, as an indivisible national asset. Guided by its duty to promote the public trust, the National Government has ultimate responsibility for, and authority over, water resource management, the equitable allocation and usage of water and the transfer of water between catchments and international water matters.
- Water resources shall be developed, apportioned and managed in such a manner as to enable all user sectors to gain equitable access to the desired quantity, quality and reliability of water. The Paper talked about the "feminisation of water management" through increased membership of women on water committees, as a contribution to women's increased empowerment at community level.

The Preamble to the National Water Act states that the Act provides "for fundamental reform of the law relating to water resources; to repeal certain laws; and to provide for matters connected therewith recognising that while water is a natural resource that belongs to all people, the discriminatory laws and practices of the past have prevented equal access to water, and use of water resources (and) acknowledging the National Government's overall responsibility for and authority over the nation's water resources and their use, including the equitable allocation of water for beneficial use ..."

Aspects of the Act are clear on equity, and in particular gender:

- *Interpretation of the Act.* Section 1(3) states that "when interpreting a provision of this Act, any reasonable interpretation which is consistent with the purpose of this Act as

stated in Section 2 must be preferred over any alternative interpretation which is inconsistent with this purpose". Section 2 outlines the purpose of the Act – to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors facilitating social and economic development, but importantly promoting equitable and sustainable access to water, and redressing the results of past gender discrimination. For achieving this purpose, it aims to establish suitable institutions with appropriate gender representation;

- *Issue of a general authorisation or licence:* Section 27 specifies that the responsible authority must take into account all relevant factors, including the need to redress the results of past gender discrimination;
- *Compulsory licencing of water use:* Compulsory licencing is intended to be used in areas under "water stress", or where it is necessary to review prevailing water use to achieve equity of access. According to Section 45, a proposed allocation schedule prepared by a responsible authority for allocating quantities of water to existing/new users must reflect the quantity of water to be allocated to each applicant to whom licences ought to be issued according to specified requirements, including redressing the results of past gender discrimination;
- *Catchment Management Agencies (CMAs):* Chapter 7 outlines the establishment, function and powers of CMAs, to be established for specific water management areas, after public consultation, on the initiative of the community and stakeholders concerned. Where necessary capacity does not exist to establish a CMA, an advisory committee may be appointed to develop the necessary capacity as a first step towards establishing an agency.

Section 79 states that CMAs must perform their functions "mindful of the constitutional imperative to redress the results of past racial and gender discrimination and to achieve equitable access for all to the water resources under its control".

According to Section 81, the members of a governing board of a CMA, appointed by the Minister with the object of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups, may appoint additional members to "achieve sufficient gender representation" and "achieve representation of disadvantaged persons or communities which have been prejudiced by past ... gender discrimination in relation to access to water";

- *Water User Associations (WUAs):* Chapter 8 deals with the establishment, powers and disestablishment of WUAs. WUAs operate at a restricted localised level, in effect "co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit". Its functions depend on an approved constitution expected to conform largely to a model constitution outlined in Schedule 5 of the Act.

Section 95 states that the Minister may, after consulting with a WAU, direct that a person be admitted as a member of the association on such conditions as are fair and equitable, a directive that must be complied to. In addition, if a WUA has, amongst other things "acted unfairly or in a discriminatory or inequitable way towards any member of the association", or "has failed to admit persons to membership unfairly or on discriminatory grounds"; or "has failed to comply with its constitution or this Act", the Minister may —

- (i) direct the association to take any action specified by the Minister; or

(ii) withhold any financial assistance which might otherwise be available to the WUA until the association has complied with such directive.

Such a directive contemplated must state the nature of the deficiency; the steps which must be taken to remedy the situation; and a reasonable period within which those steps must be taken.

If the WUA fails to remedy the situation within the given period, the Minister may after having given that association a reasonable opportunity to be heard; and after having afforded the association a hearing on any submissions received, take over the relevant function of the association, or appoint a suitable person to take over the power or duty.

DWAF has a comprehensive Gender Policy which affirms that the Minister and the Department of Water Affairs and Forestry “have committed themselves to the promotion of gender equality in the supply and management of water ...” It further states: “ In order to follow the Constitutional policy of gender equality, the Department commits itself to recognising and addressing the current conditions that mitigate against women taking their full part in society. Therefore the Department is committed to a programme of action which recognises present gender roles, and works to counteract the gender inequities of the past. This entails ending discriminatory practices, and according special recognition and special treatment to women ...”. The National Water Act forms the basis of this commitment, and clearly states in many instances where and how the principle of equity should be applied.

The Gender Policy sets out the principles, goals and actions to ensure gender equality. It specifically identifies issues affecting Water Affairs, and sets out the goals and objectives, and the establishment of institutional machinery within the Department, for addressing these issues.

Gender issues are classified as “internal” and “external”:

- internal gender policy refers to internal departmental responsibility;
- external policy refers to the Department’s “external responsibilities to the community at large in promoting gender equality in all of its activities”.

The two are interconnected, most importantly because implementation of external policy depends on the gender sensitivity and responsiveness from within the Department.

To ensure that gender issues are mainstreamed within all DWAF activities and services, and in attaining the goals for external gender policy in all sectors of water resource management and supply, specific objectives are laid out by the Policy. These include:

- Provision of in-house training on methods for recognising and addressing gender issues within problem identification, planning, design, development, construction, maintenance and operations;
- Basing all planning on gender disaggregated data;
- Establishing a system to ensure that all consultants and contractors observe Departmental principles and regulations concerning gender equality in the implementation of all work;
- Ensuring adequate participation by women in the planning, operation and maintenance of service delivery systems at the local level;
- Providing technical training to both women and men of the community in order to enable their participation in project planning and implementation;

- Co-ordinating with other national and regional Departments, and collaborate with the Office of the Status of Women and Gender Commission, to contribute to the collective national effort for women's advancement and empowerment;
- Networking with key stakeholders in civil society, trade unions, and the private sector in order to contribute towards the co-ordinate implementation of national gender policy.

The Department has obligation to fulfil all gender- and equity-related requirements of the National Water Act. It therefore needs to have the will to implement this Policy, and not merely pay lip service to gender and equity issues. According to the Policy, the Deputy Director General (DDG) of Water Policy, holds responsibility to ensure the Policy takes effect, through the Chief Director for Human Resources and the Directorate of Special Programmes.

National legislation is supported by local government legislation. The municipal elections of 5 December 2000 saw local government become fully operative legislative bodies. Supportive legislation was enacted to guide and enable municipalities to be democratic development agents.

The Constitution outlines the aims of local government, to guide each municipality in all its objectives. According to Section 152 the objects of local government include the provision of democratic and accountable government for local communities; promoting social and economic development; and encouraging the involvement of communities and community organisations in the matters of local government. A municipality must strive within its financial and administrative capacity to achieve these objectives. Furthermore, Section 153 states that a municipality must give priority to the basic needs of the community, and promote its social and economic development. "The onus is now on municipalities to use the legal space provided by the Constitution in a manner that is democratic, accountable and developmental".

The **Local Government: Municipal Structures Act (Act 117 of 1998)** focuses on various structures for local government and mechanisms for service delivery.

The **Local Government: Municipal Systems Act (Act 32 of 2000)** regulates the internal systems and functioning of a municipality; for example, organisational change; public participation in decision-making; human resources policies; municipal services; and integrated development planning.

Included in the functions of Municipalities is the formulation and implementation of a local Integrated Development Plan (IDP), and the promotion of integrated Local Economic Development (LED). In line with the IDPs, water service authorities are required to draw up 5-year Water Service Development Plans (WSDPs).

2 SUPPLY DRIVEN PLANNING

Steps 1 and 2:

Legislation

Equality is a non-derogable right embodied in the Constitution through the Bill of Rights. Other national legislation and the ratification by the government of international agreements support the Constitution, and make express reference to equity and gender. In like manner, the National Water Act (Act 36, 1998) is explicit in its provision for equity and redressing past gender discrimination.

There is no question as to the right to equality not being considered in application of the law. The question is how to ensure that it is respected and enforced:

Appropriate Institutions

It is apparent that society needs to be reorganised, and its institutions restructured, to take cognisance of all women and enable their participation on a greater level. Women will thus have more access to information, opportunities, leadership positions, and to decision-making. With reference to water-based enterprises, this can be assisted through appropriate institutions:

- On a community level, the identification of interested community-based applicants and projects should be encouraged through existing localised structures, such as development forums, and Water User Associations (WUAs). However, direct local government involvement is necessary as Municipalities are responsible for allocating resources to enable social and economic development through Integrated Development Plans (IDPs). Give this, *a gender spokesperson for the Municipality should be represented on the body responsible for the Strategic Water Review (SWR)*. In addition, a specific gender-based reserve of funds within the Municipality could allow flexibility to enable corrective action/revision to late applications of community/women-led water-based projects.
- On a departmental level, *the National Water Act sets out obligations around equity and redressing past gender discrimination*. Specific reference is made to gender requirements in water institutions, which have to be fulfilled. For example:
 - » the appointment of additional members to a Catchment Management Agency (CMA) to ensure adequate gender representation and achieve representation of disadvantaged individuals/communities prejudiced by past gender discrimination in access to water, and
 - » that the Minister may take action if a WUA has, amongst other things “acted unfairly or in a discriminatory or inequitable way towards any member of the association”, or “has failed to admit persons to membership unfairly or on discriminatory grounds”.

Supportive to the Act, DWAF has a comprehensive Gender Policy, which commits itself to the promotion of gender equality in all of its activities, including its external responsibilities to the community at large. *The Gender Policy clearly makes reference to gender-related goals and objectives for all services and programmes. These need to be referred to, adhered to and applied proactively by the DDG of Water Policy (through*

its Directorate for Special Programmes), which holds responsibility for implementing the policy, and should be made accountable for this function. Ideally, a separate and independent Directorate for Women is a requirement to ensure the effective mainstreaming of gender in all DWAF-related activities.

- On a national level it is vital that *the Commission for Gender Equality becomes actively involved in the maintenance of gender-related rights*. They can be proactively sought to give input and advice, to ensure that all implementation of legal issues are interpreted and applied appropriately, with due consideration given to relevant national and international gender-related legislation but with particular reference to the National Water Act and its implementation.

Women have the right to act against unfair administrative conduct, any action which does not comply with legislation.

Step 3:

Business Plans

The following is recommended to assist disadvantaged women applicants compiling competitive Business Plans for water-based economic activities:

- Provision of support by DWAF through:
 1. *Enabling access to financial backing*. According to Section 61 of the National Water Act, the Minister of Water Affairs and Forestry may give financial assistance to any person for the purposes of the Act, including assistance for making licence applications, in the form of grants, loans or subsidies, which may be made subject to such conditions as the Minister may determine. As with many other government-funded or subsidised community-based projects, a portion of the grant or subsidy should be dedicated to payment for the development of Business Plans.
 2. *Provision of trained support personnel within DWAF to advise and assist with the application*. Section 91(2) of the National Water Act states that the Director General may assist an individual in a proposal for the establishment of a Water User Association. A similar principle should be applied in the development of Business Plans, where trained departmental advisors are in place to assist with application to a project,
 3. *Provision of a dedicated listing of proven gender-sensitive consultants* to help make applications, including the drawing up of Business Plans. Certain requirements of the consultants are recommended before approval to the Plan is granted:
 - » Consultants should be independent, having no direct or indirect vested interest in the project;
 - » The Plan includes an indication of the participation of the applicants through consultation in developing the Plan, and the results of the consultation; and
 - » DWAF Gender Policy states as an objective the establishment of a system to ensure that all consultants observe Departmental principles/regulations

on gender equality. The Directorate for Special Programmes would be responsible for ensuring this system has been set up and is being utilised.

- Rules for application take cognisance of the disadvantages women may face in terms of requirements, such as higher rates of illiteracy, a possible lack of training in required skills (particularly management), a lack of ownership or leasehold of land, and a lack of other resources (such as financial and technical).
- Rules of application include a section indicating whether applicants have made any attempt to promote equity in their project, and what the action may be; for example, through the inclusion of women in leadership roles; through the creation of an enabling environment for women to participate; through programmes of training/development and/or mentoring; through access to resources. If no attempt has been made, applicants are to state reasons.

Step 4:

Funding Agents

As stated, the National Water Act provides opportunities for financial assistance in making licence applications, particularly in order to attain equity and redress gender discrimination. A number of other government departments have also made provision for financial assistance for programmes, mostly for poverty alleviation where theoretically women in particular are targeted. Where applicable, these departments should be approached directly for funding, given the spirit of co-operative governance.

Examples of government departments that provided assistance in the form of grants, subsidies and/or loans that would support water-based enterprises:

- Department of Agriculture
LandCare: A poverty relief programme which provides funds for projects to already established community groups, it aims to improve productivity through sustainable use of natural resources in order to increase food security and create jobs.
- Department of Science and Technology
Agro-processing technologies project. A poverty relief project, it aims to transfer appropriate technologies and build indigenous knowledge held by communities, increase existing skills and capabilities within communities, provide poverty relief; create sustainable jobs; establish partnerships between government, industry and educational institutions; and, leverage further resources and investment opportunities. Groups in rural, poor or disadvantaged communities, are targeted, with the emphasis on women, youth and disabled people.
- Department of Land Affairs
Land Redistribution For Agricultural Development (LRAD) Programme: Assisted by the Department of Agriculture, the programme provides grants to previously disadvantaged South African citizens to access land for agricultural purposes. The objectives of the programme include increasing access to agricultural land by formerly disadvantaged people through transfer of ownership; improving nutrition and income of the rural poor who want to farm; stimulating growth from agriculture; and, expanding opportunities in rural areas for women and the youth.

The grants can be used by both individuals and groups, for a range of purposes for land development, including household food crop production and production for markets. Money covers acquisition of land, design and transfer agent's fee, working capital, settling in costs, and investment in small-scale infrastructure. However, the grants do not cover the full cost of the land. All beneficiaries are expected to make a contribution in cash or in kind/own labour, with the size of the grant depending on the beneficiaries' contribution. The proportion of the cost covered by the grant declines as costs increase. Beneficiaries can apply for a loan from the Land Bank in addition to the grant.

Beneficiaries can enter the system at various levels of production:

- » Safety-net projects, where beneficiaries acquire land to produce mainly for own consumption;
- » Equity Schemes, where members of a group each contribute a certain amount towards accessing the grant. In turn, each member will own a certain percentage/share of the project according to the degree of their contribution. Shareholders are both co-owners and employees of the farm.
- » Production for markets, where participants have more farming experience as well as access to additional finance through ordinary bank loans, their own assets, and cash to purchase bigger farms, and therefore farm on a larger scale.
- » Agriculture in communal areas provides for people in communal areas who have access to agricultural land, but have not got the money to use the land productively. These projects can range from safety-net to production for markets.

Beneficiaries will be allowed to graduate from smaller to larger farms if they make a big enough own contribution. So some beneficiaries will benefit several times. However, lifetime benefits for a single applicant are limited.

Potential applicants to water licences could approach other institutions for funding projects, non-governmental and private.

Capacity Building, Empowerment and Conscientisation

Transformation of the current social structure can only take place if there is a deliberate programme of capacity building and empowerment of women, and the conscientisation of men about women's issues. More specifically, water-related projects can only succeed if participants have been trained on *how* to use the water allocated to them.

It is therefore recommended that DWAF target its training at two levels, in the short and long term:

- *Provision of training internally, within DWAF, to those who are directly responsible for implementing projects on a local/regional level, based in an awareness campaign of gender-related issues. This would be driven by DWAF, targeting both men and women. DWAF's Gender Policy supports this, including in its objectives the provision of in-house training on methods for recognising and addressing gender issues at all levels of project development.*
- *Ensuring the provision of training to community members to enable their participation in project development. Technical training for men and women is specified in DWAF's Gender Policy; however, emphasis would need to be placed on the capacity building of women if equity is a focus. For water use to be creatively and efficiently employed, the process would involve:*

- » Conducting baseline surveys on needs within communities, to identify existing/required skills of women;
- » Exposing women to options and requirements around water-based projects and related rights, emphasising the opportunities as well as the risks involved;
- » Organising long term training and mentoring;
- » Monitoring the process to ensure objectives are reached, and sustainability is acquired.

Although DWAF would take a lead role in the process, training would not have to be given directly by DWAF but through linkages with other government departments, non-governmental bodies (NGOs), and organisations.

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