

## Emerging Forms of Social Action in Urban Domestic Water Supply in South Africa and Zimbabwe

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### Abstract

This paper compares and contrasts emerging forms of social action in urban domestic water supply in South Africa and Zimbabwe. Both countries represent transitional societies that are facing challenges of providing clean and safe domestic water to the black majority population, which for decades was denied basic social services because of a racist ideology. In the first instance the paper assesses whether there exists a constitutional provision that guarantees the right to water. It then turns to how that is enforced, and what happens in its absence. Lastly the paper examines whether the various interventions lead to improved access to safe water. In South Africa an awareness of the constitutional right to water backed by a supportive legislative framework, which engendered a strong sense of entitlement, caused residents to resort to the courts and direct action such as street protests. Similar initiatives were also observed in Zimbabwe. However, the absence of a conducive legal environment, and disenchantment with the state as a provider of social services, led residents to resort to self reliance in order to access water. In both countries social action was not organic –it tended to be championed if not sponsored either by civil society or party political actors. There was no evidence of improved access to safe water as a consequence of social action. The paper concludes that social action in the urban domestic water supply faces the common challenges of social mobilization in particular and social movements in general.

**Keywords:** urban domestic water, right to water, social action, social movement, emerging forms, self-reliance

### 1. Introduction

Rapid urbanization of the world population, as attested by the fact that 50% of the population is estimated to live in urban areas (World Bank, 2005), is worsening the shortage of domestic water in many urban households (UNDP, 2006). What is particularly worrying is that the rapid urbanization is occurring in developing countries where the majority of the 700 million people without access to clean and safe water are found (Agnew & Woodhouse, 2011). For example in Africa, the size of the urban population between 2000 and 2030 is expected to double (Stein & Fadlalla, 2012). Even more worrying is that most of this growth is occurring and is projected to occur in areas where clean and safe water is unlikely to be made available, such as in slum areas. In sub-Saharan Africa slum areas are very much the “new growth nodes” of urbanization. In some cases they account for approximately 70% of the urban population (UN-Habitat, 2003).

A number of approaches have been attempted to address the water crisis. These include the market, public, community level, and human rights approaches (Langford, 2005). In the last decade much attention has gravitated towards the human rights approach although its operationalisation remains unclear (see for example Jaglin, 2002; Sengputa, 2002; Langford, 2005; Derman, Hellum, Manzungu, Sithole & Machiridza, 2007; Zigashina, 2008). This shift can be seen as an indication of the disillusionment with the privatization of water services, the flagship of the market approach, the well-chronicled failure of public water utilities (World Bank, 2004), and mixed results emanating from community approaches (Jaglin, 2002; Manzungu, Mangwanya & Dzingirai, 2012). Sub-Saharan Africa has experimented with all the approaches as observed by Jaglin (2002):

The reforms, which, over the last decade or so, have affected water services in sub-Saharan Africa are part of a wide-ranging process of economic liberalization and government reform... governments are now being urged to disengage from semi-public sectors.... Consequently, the management of water services has had to adapt to the penetration of market rules and to changes in the roles played by public and private sectors. It has also had to take on board the principles of decentralization, combined with the development of local democratic governance, which is supposed to improve the accountability of local governments and the efficiency of their service provision (Jaglin, 2002).

Judging by the extent of the water crisis, these changes are not having the desired effect. While the reasons for the failure are many and varied, the major problem in our view is that these approaches are mostly externally driven. In developing countries donors and multi-lateral agencies, working in partnership with often poorly-capacitated states, have provided both the finance and the underlying ideology. Witness for example how the World Bank championed privatization of water services and leaned on many governments, starting in West Africa, to adopt the same philosophy in the 1990s (World Bank, 2003), an experiment that turned out to be largely disappointing (Bayliss, 2003; Prasad, 2006). Decentralisation, with its promise of involving local people in water supply, which resonated with democratization of society, found expression in participatory approaches often presented as a proxies of social action. Unfortunately too often unwilling participants were made to 'participate' (Cooke & Kothari, 2001). The common mistake was to downplay the constraints faced by poor people in favour of imagined social capital (Cleaver, 1999; Jaglin, 2002; Cornwall, 2003; Cleaver, 2005). But the question must be asked whether participation is a bad idea, that even if faithfully applied, will yield bad results, or it is a good idea that has been badly implemented? As argued by Fatch et al. (2010), from a purely altruistic standpoint, even the most ardent critic of participation cannot argue that there is no benefit at all in people participating in water projects that are meant to benefit them. It would appear then that the issue is about how participation can better be improved. But perhaps what is even more fundamental is to go beyond being fascinated with the participation discourse and examine the variety of forms of social action that residents rely on in their quest to access safe water. This is the aim of this paper.

This is a relatively new research area in sub-Saharan Africa (Musemwa, 2010). Traditionally activities that resembled social action in water supply were associated with rural water supply. Increasingly however, urban residents in developing countries are being called upon to fill in the gap left by the state (Manzungu, Mangwanya, & Dzingirai, 2012). There are, however, few studies that have examined the various forms of social action, which people in urban areas resort to in order to access domestic water. Such knowledge can inform how such initiatives can be strengthened. At face value the urban water sector seems to contain the key ingredients necessary for effective social action. In general the urban population is relatively well off, better educated, shares common water sources, and lives in close proximity to each other, All these can be used as a springboard to mount effective social action. This paper investigates emerging forms of social action in response to water scarcity that is faced by urban households in South Africa and Zimbabwe. Both countries represent transitional societies that are facing challenges of providing clean and safe domestic water to the majority black population in the aftermath of the fall of white minority governments In South Africa other racial groups, such as the mixed race and Indians, were also negatively affected but not the same degree as the black population. Consequently the focus of discussion is on the black population. In Zimbabwe whites accounted for less than 1% of the population while the remainder was constituted by blacks.

During the period of white domination, basic social services, such as clean and safe water, were out of reach of the black majority, which was also the case in other social and economic spheres. All these policies left a legacy that post-minority governments have had to grapple with. While the new political dispensation, as represented by the installation of majority governments, has given rise, in theory at least, to more 'open societies' it remains to be seen whether this new 'openness' is spawning viable forms of social action. In this paper we are interested in documenting the various forms of social action that exist. We argue that it is through the understanding the nuances of social action that useful interventions, which incorporate citizens as part of the solution in urban domestic water provision, can be found. We focus on recourse to legislation, direct action in the form of street demonstrations, and how people have resorted to self-reliance in the face of shortage of domestic water.

The study relied on a number of methods to collect data. First, a review of relevant documents (constitution, legislation, strategies and policies) of the two countries was undertaken. Second, cases that were brought before the courts were analysed. Third, field research was undertaken focusing on documenting the views and practices of the main actors in the delivery of water supply. The study was undertaken between October 2010 and June 2012.

## 2. Scope and Forms of Social Action

Social action has been defined as a subjective deliberate action (as opposed to accidental occurrences) carried out by an individual or groups of people that takes account of other people 's behaviour, which could be linked to the past, present or in anticipation of future behaviour (Weber, 1978). Two important points can be gleaned from the above statement. First, social action represents some sort of convergence of individual interests with those of a bigger group. This explains the focus on collective action in the discussion (Bakker, 2008). Second, studying social action must be able to offer an explanation of observed social phenomena. Mere documentation e.g. by conducting detailed event analysis does not suffice.. In this paper we examine various forms of social action as they relate to individuals whose interest is to access safe water and team with other individuals with a similar interest. It is important to point out that social action is not based on identity such as class although there may some influence (Mcdonald, 2010). As can be seen from Table 1 social action does not manifest itself in only one way.

Table 1. Types of social action

Type	Description
Rational	Individual interests (such as seeking to improve access to safe water) are based on some expectations in society, which become the motivating force for pursuing those interests individually or as a collective.
Evaluative	Conscious belief in absolute values in society (such as human right to water)
Emotional	Action taken is based on emotional feelings engendered by an existing state of affairs
Traditional	Based on social practice

Source: Sociology Guide (2012).

This paper focuses mainly on actions that fit within the first three types of social action shown in Table 1. We do not focus on the last type because the paper is about how people are trying to change the status quo or the tradition. In this attempt we examine how social activism, which refers to the use of direct, often confrontational action, such as demonstrations or strikes, in opposition or in support of a cause, is being attempted (Wiltfand & McAdam, 1991). In this endeavour we are seeking answers to three questions. First we ask what are the emerging forms of social action in urban domestic water supply, and what are the similarities and differences as well as what explains the similarities and differences. Second we seek to find what types of social action are predominant and why this is the case. Lastly we are interested in finding out what are the outcomes of social action with respect to access to safe water.

## 3. Background: Challenges of Transition in South Africa and Zimbabwe

An understanding of the nature of social action in the urban water sector in South Africa and Zimbabwe needs to be based on past and contemporary socio-historical context of the two countries because of water is inherently political (Mollinga, 2008; Swatuk, 2008). In our context it is crucial to understand the underlying politico-social ideology. In both countries race was a defining ideology – it formed the fault lines along which society became fragmented, and was the *raison de tre* of the liberation struggles. In fact it can be argued that the liberation struggle was fuelled, at least in part, by the fact that majority black people was denied basic social services in urban. There are of course competing narratives that explain the liberation struggle. For example in Zimbabwe access to land dominates the discourse. It is, however, critical to note that the liberation struggle was championed by, among others, urban-based trade unionists representing an emerging black middle class that wanted to have access to better services. The South African case is more straightforward. The backbone of the liberation struggle was an urban working class seeking rights to better living conditions. All the same both countries represent transitional societies that are facing challenges of providing clean and safe domestic water to the black majority population, which for decades endured political, economic and social discrimination.

Post-colonial administrations have been confronted with the twin challenges of expanding water services to previously unserved areas (particularly in the rural areas) as well as maintaining the high standards in the urban areas. The latter is proving to be a formidable challenge. For example at independence in Zimbabwe the proportion of the population with access to an improved water source in urban areas was estimated to be 99%

(Machingambi & Manzungu, 2003). However, the deracialisation of society resulted in high migration to urban areas that put a strain on water services with disastrous consequences (Musemwa, 2010). The cholera outbreak that killed over 4 000 people in Zimbabwe is a case in point (Mason, 2009). In the following paragraphs we give a historical sketch of the challenges that have confronted both countries as far water supply in urban areas is concerned. Thereafter we turn our attention to how, in the absence of perceived progress, the urban population is trying to improve its situation by resorting to a variety of social action.

### *3.1 South Africa*

There is an overwhelming amount of literature regarding the evolution of the water law in South Africa and the consequent water resource management regimes that entrenched inequitable access to water. That literature shows the role of racially-informed history, which gave rise to the development of legislation and policies and investment in infrastructure that were designed to cater for the needs of the white settler population (Swatuk, 2010; Wuriga, 2008). The majority of the literature focuses less on domestic water and more on water for economic development, commonly called productive water use. The impacts on the access to domestic water are, however, well documented, especially after the attainment of black majority rule. Since our interest is on domestic water we shall not go into detail about productive water.

The high point of racial segregation was represented by the introduction of apartheid which perfected the alienation of blacks from political, social and economic spheres. The racial segregation perpetrated by the colonial and Union government policy since the 19<sup>th</sup> century paled into insignificance when apartheid was adopted as policy. This was in part caused by fear on the part of a white settler population that the rapid urbanization of black population during the 1930s and 1940s jeopardized their interests. The impact of the apartheid policy was such that in the mid 1990s when the country became a democracy blacks constituted 95% of South Africa's poor. Blacks constituted the bulk of the 12-14 million people without access to safe water and more than 20 million without adequate sanitation (Swatuk, 2010).

The current South African water law and policy framework is premised on the constitutional recognition of the right to water (RSA, 1996). Section 27(1) of the Constitution provides that "everyone has the right to have access to sufficient food and water" (RSA, 1996). The section obliges the state to take reasonable legislative steps, among other measures, within its available resources, to achieve progressive realization of the right to water. The 'progressive' elements that are contained in the constitution can in part be seen as a product of history. In 1994 when South Africa became a democracy the human rights discourse had advanced significantly in the international arena. Another contributing factor was the disproportionate large population of the black population lacked access to basic water. The disparity needed to be addressed by the new supreme law of the country.

The National Water Act that was promulgated in 1998 set out a comprehensive agenda for water resource management (RSA, 1998). It was based on an integrated approach that aimed to achieve equity, efficiency and sustainability in a decentralized and participatory manner. The Act also provides for the formation of Water Tribunals, which are meant to be platforms for individual appeals of decisions regarding licensing and authorization of water utility companies.

The country also enhanced its protection of the right to water through the 1997 Water Supply Services Act (RSA, 1997). This Act provides that everyone has a right to access basic water supply and basic sanitation, and that every water services institution must take reasonable measures to deliver these rights. Section 4(3) of the Water Supply Services Act provides that no person should be denied access to basic water services for nonpayment where the person proves to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services (RSA, 1997). The Free Basic Water Supply Policy was put in place to ensure that those who are in need and cannot afford sufficient water have access to water. The policy makes a provision of free 6000 litres of safe water per household per month.

### *3.2 Zimbabwe*

The Zimbabwean water history is quite similar to that of South Africa in that the water legislation and policy and related interventions were designed to create an economic and social order that privileged white settlers at the expense of the black majority population. The similarity stems from the fact that Zimbabwe (then called Southern Rhodesia and later Rhodesia) was at first administered by the British South Africa Company. In the 1920s there was a proposal to make Rhodesia (now Zimbabwe) a part of South Africa. This proposal was rejected in 1923 when the white Rhodesian settlers voted against the idea.

In this section we shall not go into a detailed discussion of the evolution of the Zimbabwean water law. For the purposes of this paper we shall only refer to issues that we think are pertinent. In the 1920s effort was made to include in the water legislation a provision for domestic water known as primary water. Primary water was defined as use of water for humans and animals which could be used in gardens and for waterborne sewage or other activities (Manzungu & Machiridza, 2009). The provision was 50 gallons per day per person irrespective of colour or race. It was easy for this provision to be included because the blacks were not in a position to mount a serious claim.

Over the years the provision for primary water has been on the Zimbabwean statute books. Even the 1998 Water Act maintained it (Manzungu, 2001). Primary water was accorded a special status in that one did not require a permit to access and also enjoyed priority over all other uses. In rural areas the Minister of Water was required by law to ensure that the rural population had access to it. There were, however, some inconsistencies with the implementation of the provision. First, the Minister was only required to ensure an allocation for primary water and not make it available. Second, the law was silent on the quality of the water.

It is significant that primary water provisions in the Water Act are not backed by specific constitutional provisions. Currently Zimbabwe uses a Constitution that was promulgated in 1979 commonly known as the Lancaster House Constitution. It was conceived as a transitional constitution that primarily sought to institutionalize majority rule as well as protect minority rights. The Constitution focused more on civil and political liberties rather than on socio-economic rights and does not include the right to water (Zimbabwe, 1979). There was an opportunity to rectify the absence of a human right to water through a new draft Constitution that was proposed and rejected in a referendum in the year 2000. Section 18(3) of the rejected draft recognized the human need for clean and potable water. The government would have been required to actually take measures to provide people with potable water. Moreover the right to water may be envisaged as part and parcel of the right to life which is provided for in section 12 of the Constitution on the basis that human rights are indivisible and interdependent (Zimbabwe, 1979). This argument finds more credence if section 12 of the Constitution is closely examined. Section 12(1) of the Constitution provides that “no person shall be deprived of his life intentionally save in execution of a sentence of a court in respect of a criminal offence of which he has been convicted.” It can be interpreted that the right to life places the onus on the state to pursue policies that ensure that all people have access to the means of survival. This link between the right to water and the right to life has also been demonstrated by international case law. In the case of *General Secretary West Pakistan Salt Mines Labour Union v the Director, Industries and Mineral Development* (Note 1) the court held that water was necessary for existence of life, and if polluted or contaminated, can cause serious threat to human existence. As we shall see later, the use of the right to life as a potential basis for taking the state to court to assert the right to water depends on the discretion of the court. The court can choose either to adopt a narrow or a wider interpretation of the right to life. A wider interpretation means that failure by the government to provide sufficient and clean water can be a ground to justify court action on the basis that one’s right to water has been infringed. On the other hand a narrow interpretation means that if no one has been intentionally or arbitrarily deprived of his life then a person cannot rely on the Constitution as a legal basis for instituting proceedings for the fulfillment of the right to water (Zimbabwe, 1979).

Zimbabwe has a number of laws that deal with water resource management and water supply. These include the Water Act (Zimbabwe, 1998a), the Zimbabwe National Water Authority Act (Zimbabwe, 1998b), the Urban Councils Act (Zimbabwe, 1996a), the Rural District Councils Act (Zimbabwe, 1996b) and the Environmental Management Act (Zimbabwe, 2002). It is of course necessary to caution that not all incorporate water issues to the same degree. Table 2 shows prospects of asserting the right to water through the existing laws.

Table 2. Prospects for asserting the right to water in Zimbabwean Water Act

Provision	Possible interpretation from a right to life perspective
Any person has a right to abstract water for primary purpose for which no permit is required.	Can be seen as guaranteeing the human right to water
Primary water enjoys priority over all other water uses	Can be the basis to enforce the right to water
Provision of affordable water to consumers in underprivileged communities with the Relevant Minister called on to ensure the availability of water to all citizens for primary purposes (Section 6)	Protects the water rights of the vulnerable in society
Stakeholder groups (Catchment councils) can set limits for primary water where there is competition for water	Ensures public involvement in the formulation, implementation and enforcement of policies that affect the realization of their right to water (Derman et al, 2009).

However, the fact that catchment councils can limit the amount of water abstracted for primary water use can have negative effects. This opens up the possibility of arbitrary decisions. The other danger is that catchment councils when hard pressed for revenues can limit the amount of primary water in order to raise charges for what essentially are primary purposes. Other pieces of legislation also contain clauses to do with water supply. In terms of section 183(1) of the Urban Councils Act a Council may provide and maintain a supply of water and may take necessary measures for the purpose of providing and maintaining a supply of water. The use of the word “may” however, shows that it is not compulsory but discretionary. Section 184(1) provides that a Council may require an owner of premises to connect his premises to a system of water supply for drinking, domestic and sanitation purposes. The Act, however, does not give details about water quantity and quality. Section 187 grants power to Urban Councils to establish, by way of resolution, a scheme for rationing or restricted use of water in the case of an emergency (Zimbabwe, 1996). The same section authorizes the councils to install meters to measure the quantity of water consumed by individual occupants of any building or group of buildings. Section 4(1) of the Environmental Management (EMA) Act, provides that every person shall have a right to a clean environment that is not harmful to health. As such the failure by local authorities to provide safe and clean water can be seen as tantamount to a breach of section 4(1)(a) of EMA Act. Section 4(2) of the Act allows for a class action to be brought to the courts where an authority acts contrary to the environmental protection standards set out in that Act. Section 57(2)(b) further allows a third party to sue for reparations where a person pollutes water or permits any person to discharge matter into the aquatic environment in contradiction of the water pollution control standards.

#### 4. Contemporary Water Struggles in South Africa and Zimbabwe

##### 4.1 South Africa

As already noted above in South Africa the right to water is a constitutional right. Below we document how the courts have enforced this right to water. In this regard a landmark case is that of *Mazibuko v Johannesburg City Council* (Note 2). The brief details of the case are that for many years water had been piped to Phiri, an area in Johannesburg via unmetered and unlimited supply system with residents being asked to pay a monthly flat fee. At stake was the lawfulness of operation *Gcin’amanzi*, a project that was started by the City in 2003 to address severe problems of water losses and non-payment for water services in Soweto. The project involved relaying of water pipes to improve water supply and reduce water losses as well as installation of prepaid water meters to charge consumers for use of water in excess of the monthly free basic of 6 kilolitres per household. *Mazibuko* and other residents challenged the new plan on the basis that the Free Basic Water Supply Policy violated their right to water as it set a maximum that was below their required needs as provided for by Section 27 of the Constitution. It was also argued that the installation of prepaid meters was unlawful.

The interesting aspect about this case relates to the various judgments that were issued by the different courts. The High Court held that the Free Basic Water Supply Policy was unconstitutional and that the basic minimum be increased to 50 litres per person per day to comply with Section 27 of the Constitution. Pre-paid meters were said to have no basis at law. On appeal by the City Council the Supreme Court upheld the decision of the High Court on slightly different grounds. While it concluded that the Free Basic Water Supply Policy was in violation

of Section 27 of the constitution and that the pre-paid meters were unlawful, the declaration of unlawfulness was suspended for two years to allow the City Council to bring its water policy to the reasonableness required by the Constitution. The City of Johannesburg appealed to the Constitutional Court, which contradicted the two lower courts by ruling that the City's basic water policy of 25 litres per person per day was reasonable under section 27(1) of the Constitution. It also declared the introduction of prepaid meters to be lawful.

The significance of this case rests on the differences in the reasoning that was applied in relation to the minimum amount of water that would suffice the right to water. The two lower courts, apparently borrowing from international human rights jurisprudence, determined a minimum core content of the right in Section 27(1) by actually quantifying the amount of water deemed sufficient for a dignified life and to meet the hygienic and consumption requirements. This was based on their quantification on the World Health Organisation Guidelines on Domestic Water Quantity, Service level and Health. This approach was at variance with the Constitutional Court's approach which preferred an interpretation imposing a duty of progressive realization of the right to water through reasonable legislative instruments and other measures.

The Constitutional Court affirmed the democratic value of litigation on social and economic rights. It noted that the applicants' case required the City to account comprehensively for its policies and establish that they are very reasonable. By so doing the Constitutional Court, not only pronounced on the obligation of the state with regard to the right of access to sufficient water in tandem with Section 27(1), it also expressly reiterated on the proper role of the court in determining the content of socio-economic rights in a constitutional democracy. It encouraged the legislature and the executive to take up their roles seriously and enact laws that give regard to the right to water.

The case of *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* (Note 3) clearly demonstrates how the right to water can be used as a legal tool to make a difference to the lives of those living in poverty. The case was brought by a resident of the Bon Vista Mansions on behalf of other residents following the disconnection by the local council of the water supply to the flats due to non payment of water charges. The Court found that the conditions and procedures for disconnection had not been fair and equitable in accordance with Section 4 of the South African Water Services Act (RSA, 1997). No reasonable notice of termination and the opportunity to make representations had been observed. On this basis the Court decided that the Council's disconnection of water constituted prima facie a breach of its constitutional duty to respect the right of access to water. In addition to the cases mentioned above there were the case of *Zulu v Minister of Works KwaZulu* in 1992 (Kidd, 2003); the case of *S v Makwanyane* in 1995 (Kidd, 2003); the case of *Zolani v Catchcart Transitional Local Council* in 1998 (Kidd, 2003); the case of the *Government of the Republic of South Africa and Others v Grootboom and others* in 2000 (De Visser, Stein, & Niklaas, 2002); and the case of *Manqele v Durban Transitional Council* in 2002 (Stein & Niklaas, 2002; Kidd, 2003; De Visser, undated).

It appears that during the first decade of majority rule in South Africa, efforts at asserting the right to water were primarily through the courts. At the start of the second decade of majority rule service delivery protests emerged as a form of social action to assert the right to water. One form of service delivery protests is where residents of a particular area take to the street expressing their outrage at the lack of service delivery. Often these marches turn out to be violent. Frequently they are accompanied by the burning of tyres, stoning of motorists and buses, barricading of roads and sometimes setting alight buildings. There have also been claims that the service protests are politicized. Opposition parties such as the Democratic Alliance (DA) have accused the ruling African National Council (ANC) of being the hidden hand behind them in municipalities controlled by the DA such as in the Western Cape. The service protests are also losing a sense of proportion. For example there is a community that prevented children from going to schools for about four months because they wanted one access road tarred! The government is at a loss of what to do.

Service delivery protests in the post-1994 South Africa appeared in 2004, increased and peaked in 2009. As can be seen from Figure 1 the first report on the protest was recorded in 2005. Figure 2 shows the figures from state outlets. What is striking is that the figures from the state are lower than from commercial outlets suggesting perhaps a massaging of the figures by the state. The overall decrease in service protests seem to suggest that there is service-protest fatigue because the results tend to be insignificant.

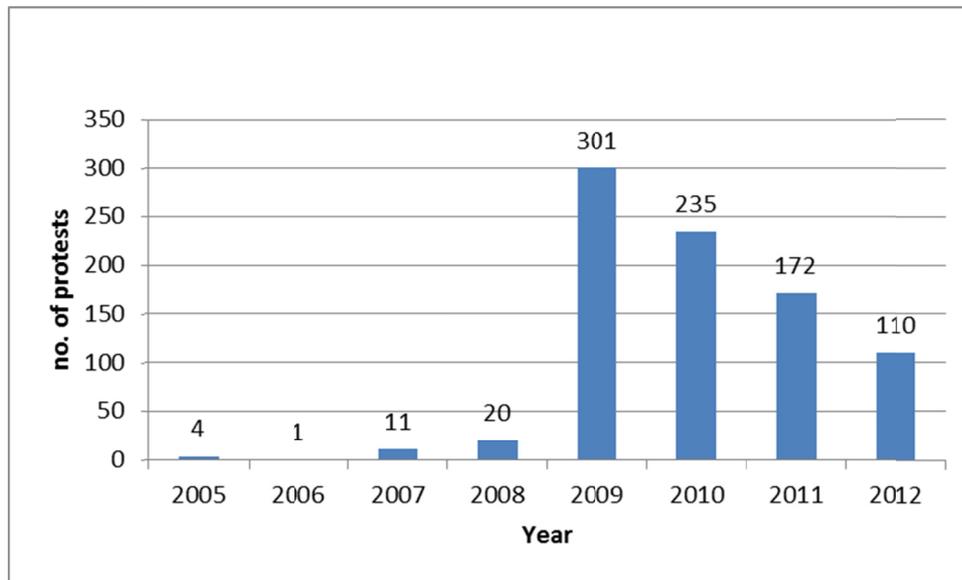


Figure 1. Service delivery protest as reported in South African commercial newspapers

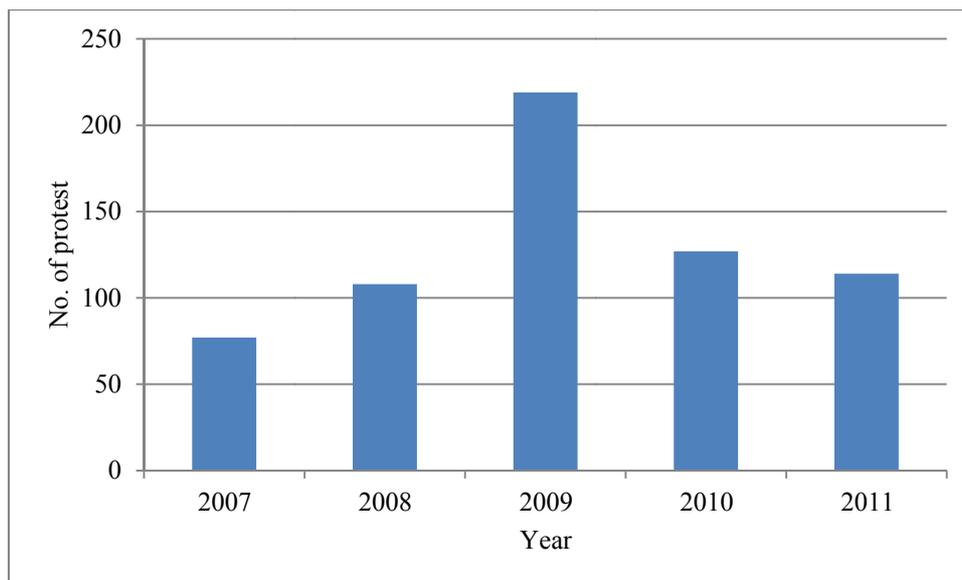


Figure 2. Service delivery protests in South Africa as reported in the Local Government briefings

The second form of service delivery protests occurs amongst organised ratepayer associations. The protests entail withholding municipal taxes and payment by residents in a particular residential area. The money so withheld is paid into a trust account with the intention to return it to the municipality once the ratepayer associations are satisfied that the municipality can deliver the services. In some cases ratepayer associations contract private companies and give them the responsibility of managing the funds. The associations follow a set procedure when embarking on a withholding strategy. First the ratepayers establish a record of non-delivery by sending letters to the municipality complaining about non-delivery. When services are still not forthcoming, a dispute is declared and finally payment for municipal services is withheld. Indications are that the government is not certain how to deal with this phenomenon apart from continuous dialogue with the boycotting associations. The associations are not imaging a problem—municipalities are failing to deliver social services. A government report noted that some municipalities were not capable of service delivery because of incompetence and widespread financial mismanagement (RSA, 2012). The fact that the 2010-2011 audit report showed no improvement on the 2009-2010 Auditor-Generals report seems to indicate that the government in South Africa

seems not able to address the problems in municipalities. Faint hope then that any of these actions will result in better service delivery.

#### 4.2 Zimbabwe

There are a number of cases that have been brought before the courts that relate to access to safe water. In the case of *Tracy Maponde v City of Harare* (Note 4) the applicant, Tracy Maponde, made a chamber application to the High Court against the City of Harare for cutting water supply to her home, which she said, deprived her of basic water. The Combined Harare Residents Association helped the applicant to bring a civil suit for reconnection of water supply to her home after a disconnection for a disputed non payment. The judge directed the respondents to reconnect applicant's water supply without charging any reconnection fee. The court did not allude to or give any reference to water as a right. It alluded to breach of contract.

In another case of *Manyame Park Residents v Chitungwiza Municipality* (Note 5) the Chitungwiza Municipality was hauled before the courts for discharging raw sewage into Manyame River that was a source of domestic water among other uses in Zimbabwe's third largest city. The High Court accepted Chitungwiza Municipality's submission that the Municipality had no resources to remedy the sewage problems. Apparently the court took into account that at that time the country was facing a serious economic crisis, which raises the question of what is the asking price of the right to water? A different reasoning was applied in a related case. In the case of *Dora Farm v City of Mutare* (Note 6) where the City of Mutare was being blamed for discharging waste into the Sakubva River (which Mutare residents depended on for domestic water supply) the Court ordered the City Council to rectify the problem. The Court did not cite the right of citizens to enjoy clean and safe water. It instead relied on more on environmental law.

In some cases even if there is a strong case in terms of the substantial merits of the case, the procedural issues often act as a hindrance. In the case of *Combined Harare Residents Association v City of Harare* (Note 7) the applicants filed an urgent chamber application seeking an interdict restraining the City of Harare from implementing its 2004 water tariffs. They also wanted the City Council to stick to the rates and levies as at the year 2003. The application was dismissed for failure to act timeously. The applicants were ordered to proceed by way of ordinary court application.

After examining possibilities of legal recourse we next examine how other forms of social action have been tried. In Zimbabwe social activism has been fronted by civil society in the shape of residents-oriented pressure groups (such as the Combined Harare Residents Association, Harare Residents Trust and the Progressive Bulawayo Residents Association) and other organizations as described below. They have actively stirred citizens to institute litigation against urban authorities to facilitate the realization of their right to water. Other forms of social activism include marches and demonstrations by residents to highlight their discontent of the service delivery. For example demonstrations were held by the Harare Residents Association on 22 March 2012 to mark the International World Water Day. (<http://www.hrt.org.zw/>)

In recent years The Harare Residents Trust (HRT) has become more prominent in lobbying for better services from the City of Harare. It has been monitoring and auditing performance of the Harare City Council so as to force it to improve delivery of quality by ensuring affordable and sufficient water services to residents. Another initiative was gathering and synthesizing data concerning residents grievances and forwarding them to policy makers and Parliament for discussion and debating. [www.theindependent.co.zw/index.php/](http://www.theindependent.co.zw/index.php/) Focus has also been on the sustainability of the water tariffs charged by the City. HRT has also advocated for the publication of budgets by municipal authorities. There are also plans to withhold rates that the City collects along the lines of the strategy used in South Africa.

Other civic society organizations like the Crisis in Zimbabwe Coalition and the Zimbabwe Coalition for Debt and Development have been urging people to conduct demonstrations in order to foster the realization of their right to water. They have also funded workshops and carried out awareness campaigns in order to provide citizens with a platform to air their views and grievances against the government and the related agencies. Women's groups have also been making efforts in encouraging the government to include a human right to water in the new constitution which is currently still in the making. For example at a constitutional meeting held in Goromonzi district in July 2011, delegates of the Women in Politics Support Unit (WIPSU) demanded the inclusion of the right to potable water in the new constitution. <http://www.ipsnews.net/africa/nota.asp%3fidnews>. This proved to be a success. The Draft Constitution published in May 2012 provides in section 4.24 for the right to food and water.

However, the various efforts do not seem to appear to result in better access of safe water. As a matter of fact studies show that the majority of the residents in Harare rely on their own resources to increase access to safe

water Manzungu et al. (2012) and Manzungu and Chioreso (2012) have documented cases of some residents, facing little prospect of changing urban water governance and the political contradictions that inhibit the flow of water, have resorted to seeking ways to ameliorate the situation. Different socio-economic groupings are relying on different strategies (Manzungu et al., 2012). Where situation permits, poorer households make their own wells on vleis and river banks from which they rely on unsafe and contaminated water. Richer households on the other hand are able to invest in safer sources such as installing boreholes, and storage water tanks and buying water from bulk tankers, which however, are illegal under the existing law.

## 5. Discussion and Conclusions

The empirical evidence presented in this paper shows that there are similarities and differences between the two countries with regards to how residents try and assert their right to water. In terms of similarities we can see a recourse to the courts as well as direct action in the form of street demonstrations and other forms of direct action such as boycotting rates. South Africa can be seen as providing a better platform for the right to water. By making the right to water a constitutional right, the South African government made it possible for the right to water to be justiciable, which opened a window for citizens to seek relief from the courts. A supportive clear legal framework also made a contribution. Meanwhile the absence of the right to water in the Zimbabwean Constitution made it difficult for citizens to assert their rights through the courts. Even in cases where a positive judgment was given it was not based on the human right to water but on other grounds. The situation was compounded by a fragmented legal framework.

Because of the legal framework was not sufficiently developed in relation to the right to water, there was reliance on wide interpretation of the law. Thus the Water Act could be used to fill in the vacuum created by the absence of a clear constitutional provision on the right to water (see Table 1). In this regard the Urban Councils Act was less useful-it mainly focuses on stipulating the powers of Urban Councils in relation to water supply. It does not go deeper into issues of accessibility, affordability, quality and quantity of the water to be provided. These issues which it fails to adequately address are the core components of the human right to water. A resident cannot therefore entirely rely on this Act as a legal basis for seeking relief. The same can be said about Environmental Management Act. It focuses more on the sustainable use and conservation of water and not specifically on the quality and quantity of water supply delivered to the people. The Zimbabwean courts were also found not to exercise judicial activism in asserting the human right to water in cases that were brought before them. As such there was not a judicial precedent that one can rely on to enforce his/ her right to water. It is not clear why the judiciary was not exercising its wide discretionary powers in giving effect to fundamental human rights like the right to water. Could this be a subtle admission that the judiciary was not confident that such a move could be effected given the perceived absence of the rule of law?

The increasing levels (albeit having reached the peak) of direct social action in South Africa and Zimbabwe seem to suggest residents and their benefactors are no longer convinced that legal recourse by itself can deliver water. The protracted legal battles in South Africa and the lukewarm legal victories certainly lends credence to that conclusion. In South Africa where we see an aggressive type of social activism. This was turning to be counterproductive. This was in no small measure fuelled by a strong sense of entitlement in direct contravention to the popular saying, "ask not what the country can do for you but what you can do for your country". South Africans were demanding that the state should do something about their plight. In this regard the self-help attempts by Zimbabweans provides some important lessons. We must hasten to add, however, that we are not suggesting that the two are mutually exclusive. In the quest to improve access to water there is room for more than one type of social action. While the right of citizens must be promoted there surely should be room for the same citizens to make a contribution. In both countries social action cannot be said to be spontaneous or popular. There was a lot of organization that went into championed either by civil society or party political actors. In South Africa there were claims of political (ANC)'s hand while in Zimbabwe civil society mobilized the people.

Thus in both countries the activism could not be called organic in the sense of it did not come from within the communities as a grassroots movement. It is not being argued here that this by itself is wrong because invariably social change starts from outside. The question is can 'choreographed social activism represent' a viable form of social action? The quick answer is no. There is a need for other forms of social action, which are more spontaneous and popular. The present forms of social action easily attract the label of being elitist or hired. There is no evidence that there is improved access to water as a result of social action. As can be seen from decreasing service protests there is a danger that such social action, if it does not yield results, can dissipate. Quick and sustained results are important if social action is remain in the public spotlight or else it exhausts its goodwill. That is to say legitimacy of social action also very much depends on its outcomes.

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### Notes

- Note 1. General Secretary West Pakistan Salt Mines Labour Case v The Director of Industries and Minerals Development, Punjab Lahore 1994 SCMR 2061.
- Note 2. *Mazibuko v Johannesburg City Council* CCT 39/09 [2009] ZACC 28.
- Note 3. *Residents of Bon Vista Mansions v Southern Metropolitan Local Council* 2006 (6) BCLR 625 (W), High Court of South Africa case number 01/12312.
- Note 4. *Tracy Maponde v City of Harare* HH 5948/05.
- Note 5. *Manyame Park Residents v Chitungwiza Municipality* HH 11152/03.
- Note 6. *Dora farm v City of Mutare* HC 1312/2005.
- Note 7. *Combined Harare Residents Association v City of Harare* HH-73-04 HC 2899/04.