

**The social contract and
struggles for recognition in
South African water services**

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DECLARATION

The social contract and struggles for recognition in South African water services is an original conception submitted at the North-West University for degree purposes. Full citation gives credit to other authors whose work substantiates the perspectives of this study.

DEDICATION

Mr Tsebo, the man I love!

Let this be a sign that you can be an astronomical scientist or an engineer.

This project was astronomical for me 😊

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“A student is not superior to his teacher; but everyone, after he has been completely trained, will be like his teacher”. – Professor Johann Tempelhoff, I hope to be like you and more.

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To friends and colleagues for sharing in my joy.

“In all your ways know and acknowledge and recognize Him, And He will make your paths straight and smooth [removing obstacles that block your way]”

Prov. 3:6 (AMP)

PREFACE

This work is an outcome of reflections on South African politics and imagining the trajectory of developments there. In 2005, I saw a phenomenon of disillusioned radicals, which explains “the rebellion of the poor” against below-par service delivery standards and neo-liberal policies. It appreciates one of the recommendations about multi-stakeholder collaboration in my master’s dissertation where I discussed the political culture and socialisation responses to IWRM. This study is premised on the theoretical argument of a social contract breach. A breach manifesting through broken promises and broken trust in public institutions, leading to betrayal trauma in society. This condition of betrayal trauma is central to social interactions of recognition. The phenomenon of mis-recognition and the social contract breach contributes to the growing disillusionment with the government’s performance in water supply. This happened where some communities claimed that the water they received from the tap was polluted, some going months and years without access to water at all. While the government officials contradicted the people’s views about water quality. Also pleading with the people without access to be more patient because the government will eventually supply them with water. On the other hand, there were increasing complaints from the public that where there was no water flowing where the government had installed infrastructure (taps running dry). Service delivery protests were on the increase where demands to access water were among the complaints. The contradiction was also, when government wanted to collect revenue for water services, but the people prevent these efforts. The people argued that is a right, not a commodity to be sold. I observed that cheating was endemic in the water sector, as the people who could afford to pay were not paying just because they resided in neighbourhoods considered poor. This created discriminatory cost recovery policies where people in affluent neighbourhoods were held accountable for not paying. There was a need to explain this phenomenon and challenge the narrative of generalised indigency in so called poor neighbourhoods.

Following the tradition of normative political thought, I explore dominant values of non-payment in water governance and service delivery in South Africa. Especially noting that not only households, but businesses and other government departments were not paying service charges. Therefore, there is a need for dialogue and probe the culture of non-

payment deeper. The dialogues to challenge the culture of non-payment and unwillingness by political leaders to confront the public about it. Especially noting that contemporary climate change pressures of water scarcity amid a rising urbanisation levels and increasing populations. Therefore, modern cities have to be resilient and use water resources more efficiently.

I am beholden to North-West University's Research Niche for the Cultural Dynamic of Water (CudyWat) for financing my studies; this allowed upkeep for my family in the early period of my marriage. I also received the National Research Foundation (NRF) Black Advancement Academic Programme (BAAP 190225420799 / 120629) award, which was also a valuable resource provision that allowed me some relief from teaching and focus on my studies. The NWU staff discount and Faculty of Humanities mobility grant, without which I could not have covered the language editing and writing retreats.

ABSTRACT

The social contract and struggles for recognition in South African water services is a truly political topic. It involves the disempowered on a quest for recognition, and this study presents a new logic to think of the state institutions responsible for water services as disempowered due to the financial limitations that impede service delivery and its extension to the unserved. Therefore, disempowerment is not an experience of individuals or communities alone.

This study is based on the research problem that the breach of the social contract justifies struggles for recognition due to people's perceptions of the state's non-response to violations of their human dignity and demands for redress. The incidents that explain the problem statement include the fact that no one wants to take responsibility for failing water services. The state blames the people for non-payment of services charges, while the people blame the government for corruption and bureaucratic inefficiencies that have led to collapsing water services. Therefore, there is a collective denial of risk and passing culpability off onto individuals in cases of service delivery failure. There is a widespread lack of access to water for residents in rural areas and water cut-offs are becoming a concern in urban areas as taps run dry. Municipalities are also in a debt trap, defaulting on their bulk water and electricity payments, which further undermine their ability to supply basic services. Water demand is on the increase while unaccounted for water remains a serious challenge, exacerbated by decaying infrastructure and endemic cheating.

The institutional design of water services is top-down and bears inherent characteristics of people's dependency. People resort to bottom-up initiatives to provide water for themselves, but this according to the law, is illegal. The study proposes a transition from reliance on unilateral technical interventions, to prioritising the intellectual or spiritual integrity of affected communities in water services. This shift from old centralised technical (state-centric) management practices to new and more externalised practices (multipolar new institutionalism) can facilitate collaboration at the core of water services.

This balance is possible through adherence to norms that promote mutual advantage. Using the social contract theory, this study calls for moral and political obligations among residents from the society in which they live. This is a call for a water honouring culture

as people realise that their inner worth (human dignity) is at stake if water services collapse due to lack of cooperation under the statist approach of water governance.

Water is an object that demonstrates the evolution of South Africa's political community from the state of nature (apartheid) to civil society (democracy). The practical relevance of the social contract theory as an analytical tool explains struggles for recognition due to the unmet expectations of access to water under a democratic dispensation. Thus, dyadic (institutional and interpersonal) contractarian relations shape the state of South Africa's water services now and in the future.

A collective qualitative case study design allows inductive reasoning about the social contract breach and struggles for recognition and suggests a new multipolar collaboration for water security. Focusing on macro analysis of water service institutions' performance and challenges in the administration of water services, the study includes the meso level of groups or communities in their struggles to claim the right to water services. And further to the micro level of people's perceptions of the impact the standard of water service has on their bodily and psychological integrity. From the methodology perspective, the study argues that the water crisis resembles the state of nature and could signify a failing state.

Keywords

Social contract theory, hydrosocial contract theory. struggles for recognition, social contract faultlines, human dignity, water services, multipolar new institutionalism.

OPSOMMING

Die sosiale kontrak en stryd om erkenning in Suid-Afrikaanse waterdienste is 'n belangrike politieke onderwerp. Dit het betrekking op verontmagtigdes en die soeke na erkenning. Hierdie studie bied 'n nuwe denkwys en logika aan staatsinstellings wat vir waterdienste verantwoordelik is.

Hierdie studie is gebaseer op die veronderstelling dat die verbreking van die sosiale kontrak wentel om die erkenning van regverdigheid wat tans nie plaasvind nie. Dit gaan dus oor die erkenning van menswaardigheid. Neigings wat die veronderstelling verduidelik, sluit in die feit dat niemand verantwoordelikheid wil aanvaar vir mislukte waterdienste nie. Byvoorbeeld, die regering blameer mense vir nie-betaling van dienstegeelde. Op hul beurt blameer die mense die regering van korrupsie, burokratiese ondoeltreffendheid en die gepaardgaande ineenstorting van waterdienste. Vandaar die aanduidings van 'n kollektiewe ontkenning van risikos en mislukking. Niemand is bereid om verantwoordelikheid te aanvaar nie. Gevolglik is daar wydverspreide gebrek aan toegang tot water vir inwoners in veral landelike gebiede. Toegang tot water word ook toenemend beskou as 'n rede tot kommer in stedelike gebiede. Die meerderheid munisipaliteite is in 'n skuld strik vasgevang en versuim om hul water- en elektrisiteit betalings aan grootmaat diensverskaffers te maak. Daarmee saam word die vermoë van plaaslike owerhede om basiese dienste te lewer landwyd ondermyn. Die vraag na water is besig om toe te neem omdat water nouliks akkuraat verreken kan word in beplanning en implementering. Verouderde water infrastruktuur, veral lekkende pypleidings en opgaartenks is endemies in hierdie stelsels. Die realiteit is dat lekkasies vererger en daar is sprake van endemiese korrupsie aan die kant van die diensverskaffer asook die gebruiker.

Die institusionele ontwerp van waterdienste word voorskriftelik van bestuur na verbruikers oorgedra. Dié benadering dra inherente kenmerke van menslike afhanklikheid. Mense wend hulle toenemend (onwettiglik) tot inisiatiewe van onder-na-bo om hulself van water te voorsien. Die studie stel 'n wegbeweeg voor van vertrouwe op eensydige tegniese intervensies, na die prioritisering van die intellektuele en geestelike integriteit van geaffekteerde gemeenskappe in waterdienste. Hierdie wegbeweeg van tradisionele

gesentraliseerde tegniese (staatsentriese) bestuurspraktyke na nuwe en meer geëksternaliseerde praktyke (multipolêre nuwe institusionalisme) kan samewerking in die kern doelwitte van waterdienste vergemaklik.

Hierdie balans is moontlik deur die nakoming van norme wat wedersydse voordeel bevorder. Deur die gebruik van sosiale kontrak teorie, word water verbruikers gevra om morele en politieke verpligtinge na te kom in die samelewing waarin hulle leef. Dit is 'n oproep vir 'n water-eer kultuur aangesien mense besef dat hul innerlike waarde (menswaardigheid) op die spel is indien waterdienste in duie sou stort as gevolg van 'n gebrek aan samewerking in die benadering van statistiese waterbestuur.

Water is 'n natuurlike hulpbron wat die evolusie van Suid-Afrika se politieke samelewing uit die toestand van natuur (apartheid) tot die oorgang na 'n burgerlike samelewing (demokrasie) moontlik maak. Die praktiese relevansie van die sosiale kontrak teorie as 'n analitiese instrument, verklaar stryd om erkenning, as gevolg van die onvervulde beloftes van toegang tot water in 'n demokratiese bedeling. Dus vorm diadiese (institusionele en interpersoonlike) kontraktariese verhoudings die stand van Suid-Afrika se waterdienste nou, en in die toekoms.

'n Kollektiewe kwalitatiewe gevallestudie-ontwerp maak voorsiening vir induktiewe beredenering oor sosiale kontrakbreuk en stryd om erkenning. In die proses word 'n nuwe multipolêre samewerking voorgestel vir water sekuriteit. Met die fokus op makro-ontleding van waterdiensinstellings se prestasie en uitdagings in die administrasie van waterdienste, sluit die studie die mesovlak van groepe of gemeenskappe in, in hul stryd om die reg op waterdienste op te eis. Ook op die mikrovlak van mense se persepsies word kennis geneem van die impak wat die gehalte van waterdiens op hul liggaamlike en sielkundige integriteit het. Vanuit 'n metodologie-perspektief, argumenteer die studie, dat die water krisis tans soos die toestand van die natuur lyk en op ineenstorting afstuur.

Sleutelwoorde

Sosiale kontrak teorie, hidrososiale kontrak teorie, stryd om erkenning, sosiale kontrak foutlyne, menswaardigheid, waterdienste, multipolêre nuwe institusionalisme.

KAKARETSO

Konteraka ya setjhaba le mathata a ho ananelwa ditshebeletsong tsa metsi tsa Afrika Borwa ke sehlooho sa dipolotiki ruri. E ama batho ba hlokanang matla a ho batla ho ananelwa. Mme boithuto bona bo hlalisa mohopolo o motjha wa ho nahana ka ditsi tsa mmuso tse ikarabellang bakeng sa ditshebeletso tsa metsi. Le mokgwa oo dikgaello tsa ditjhelete di sitisa phano ya ditshebeletso le ho atoloswa ha yona ho ba sa sebeletswang. Ka hona, ho fellwa ke matla ha se phihlelo ya batho kapa setjhaba feela empa e ama le ditsi tsa mmuso.

Phuputso ena, e ipapisitse le bothata ba dipatlisiso tsa hore tlolo ya konteraka ya setjhaba e lokafatsa ntwana ya ho amohelwa; ka lebaka la maikutlo a batho mabapi le ho se arabele ha mmuso ho tlolo ya serithi sa bona sa botho, le ditlhoko tsa ho lokiswa. Diketsahalo tse hlalosing polelo ya bothata di kenyeletsa taba ya hore ha ho motho ya batlang ho nka boikarabelo ba ho hloleha ha ditshebeletso tsa metsi. Mmuso o qosa batho ka ho se lefe ditefiso tsa ditshebeletso, ha batho ba qosa mmuso ka bobodu le bofokodi ba tsamaiso bo entseng hore ditshebeletso tsa metsi di putlame. Ka hona, ho na le ho latola ka kakaretso kotsi le ho fetisetša molato ho batho ka bomong maemong a ho hloleha ha phano ya ditshebeletso. Ho na le kgaello e pharalletseng ya phihlelo ya metsi bakeng sa baahi ba dibakeng tsa mahaeng, mme kgaello ya metsi e ntse e tshwenya metseng ya ditrope kaha dipompo di hloka metsi. Bomasepala le bona ba hara leraba la dikoloto, ba hloleha ho lefa ditefo tsa bona tse ngata tsa metsi le motlakase, e leng tse senyang le ho feta bokgoni ba bona ba ho fana ka ditshebeletso tsa motheo. Tlhokahalo ya metsi e ntse e eketseha, tahleho ya metsi ntse e le phephetso e kgolo, e mpefaditsoeng ke meaho e senyehileng le bomenemene.

Moralo wa setheo sa ditshebeletso tsa metsi o qala hodimo o lebise tlase, mme o na le ditshobotsi tsa tlhaho tsa batho ba itshetlehileng ka mmuso. Batho ba sebedisa matsapa a ho iphumanela metsi, empa sena ho ya ka molao, ha se molaong. Boithuto bona bo fana ka maikutlo a phetoho ho tloha ho itshetleheng ka boitshunyako ba botekgeniki bo le bong, ho isa pele ho botshepehi ba kelello kapa ba moya ba setjhaba se anngweng ke ditshebeletso tsa metsi. Phetoho ena ho tloha mekgweng ya kgale ya tsamaiso ya botekgeniki (state-centric) ho ya ho mekgwa e metjha le ya kante (multipolar new

institutionalism) e ka nolofatsa tshebedisano mmoho kgubung ya ditshebeletso tsa metsi. Ho lekalekana hona ho a kgoneha ka ho latela mekgwa e kgothalletsang ho thusana. Ka ho sebedisa kgopolo ya konteraka ya setjhaba, thuto ena e hloka boitlamo ba boitshwaro le dipolotiki hara baahi ho tswa setjhabeng seo ba phelang ho sona. Sena ke boipiletso ba moetlo wa tlhompheo ya metsi kaha batho ba elellwa hore boleng ba bona ba kahare (serithi sa motho) bo kotsing haeba ditshebeletso tsa metsi di ka putlama ka lebaka la ho hloka tshebedisano-mmoho tlasa mekgwa wa dipalo-palo wa taolo ya metsi.

Metsi ke ntho e bontshang phetoho ya setjhaba sa dipolotiki sa Afrika Borwa ho tloha boemong ba tlhaho (apartheid) ho ya ho setjhaba (demokrasi). Tshebedisano e sebetsang ya kgopolo ya konteraka ya setjhaba e le sesebediswa sa tlhahlobo e hlalosa mathata a ho amohelwa ka lebaka la ditebello tse sa phethahalang tsa ho fumana metsi tlasa puso ya demokrasi. Kahoo, dikamano tsa dikonteraka tsa dyadic (setheo le tsa batho ba bang) di theha boemo ba ditshebeletso tsa metsi tsa Afrika Borwa hona jwale le nakong e tlang.

Moralo o kopaneng wa thuto ya boemo bo botle o dumella ho beha mabaka mabapi le tlolo ya konteraka ya setjhaba le mathata a ho ananelwa le ho fana ka maikutlo a tshebedisano e ntjha ya dinaha tse ngata bakeng sa tshireletso ya metsi. E tsepamisitse maikutlo tlhahlobisong e kgolo ya tshebetso ya ditsi tsa ditshebeletso tsa metsi le diqholotso tsamaisong ya ditshebeletso tsa metsi. Phuputso ena e kenyeletsa maemo a mahareng a dihlopha kapa setjhaba mathateng a bona a ho tseka tokelo ya ditshebeletso tsa metsi. Ho feta moo, ho ya boemong bo bonyenyane ba maikutlo a batho mabapi le tshusumetso eo maemo a ditshebeletso tsa metsi a nang le yona mmeleng le kelellong. Ho ya ka tebello ya teori, thuto ena e pheha kang ya hore bothata ba metsi bo tshwana le boemo ba tlhaho mme bo ka bolela mmuso o hlolehang.

Mantswe a sehlooho

Teori ya konteraka ya setjhaba, teori ya konteraka ya metsi setjhabeng, mathata a ho amohelwa, diphoso tsa dikonteraka tsa setjhaba, serithi sa botho, ditshebeletso tsa metsi, mekgatlo e metjha e mengata.

SUMMARY OF KEY TERMS AND ABBREVIATIONS IN THE TEXT

AFRA	Association for Rural Advancement
AMD	Acid Mine Drainage
ANC	African National Congress
APF	Anti-Privatisation Forum
BAAP	Black Advancement Academic Programme
BW	Bristol Water
CALS	Centre for Applied Legal Services
CEO	Chief Executive Officer
CER	Centre for Environmental Rights
CMA	Catchment Management Agencies
CODESA	Convention for a Democratic South Africa
CoGTA	Cooperative Governance and Traditional Affairs
COSATU	Congress of South African Trade Unions
CPRC	Chronic Poverty Research Centre
CuDyWat	Cultural Dynamics of Water
CWSA	Council of Water Services Authorities
DA	Democratic Alliance
DBE	Department of Basic Education
DEIC	Dutch East Indian Company

DWA	Department of Water Affairs
DWAF	Department of Water Affairs and Forestry
DWS	Department of Water and Sanitation
ELM	Emfuleni Local Municipality
EMG	Environmental Monitoring Group
FSE	Federation for Sustainable Environment
GDP	Gross Domestic Product
HR	Human Resources
HSRC	Human Science Research Council
HSCT	Hydro Social Contract Theory
IFP	Inkatha Freedom Party
ISS	Institute for Security Studies
IWRM	Integrated Water Resource Management
LHWP	Lesotho High Lands Water Project
MLGI	Multi-Level Governance Initiative
MSA	Municipal Systems Act
NEDLAC	National Economic and Labour Council
NERSA	National Energy Regulator of South Africa
NGO	Non-Government Organisation
NPC	National Planning Commission
NRF	National Research Foundation

NSFAS	National Student Financial Aid Scheme
NWA	National Water Act
NWRIA	National Water Resources Infrastructure Agency
NWRS	National Water Resource Strategy
NWU	North-West University
PMG	Parliamentary Monitoring Group
SAFLI	Southern African Legal Information Institute
SAHO	South African History Online
SAHRC	South African Human Rights Commission
SALGA	South African Local Government Association
SANCO	South African National Civics Organisation
SAPA	South African Press Association
SAVE	Save the Vaal Environment
SAWC	South African Civil Society Water Caucus
SERI	Socio-Economic Rights Institute
SOAS	School of Oriental and African Studies
SOE	State Owned Enterprise
Stats SA	Statistics South Africa
TCTA	Trans Caledon Tunnel Authority
TV	Television

U. S	United States
UBC	Urban Bantu Councils
UDF	United Democratic Front
UK	United Kingdom
UNDP	United Nations Development Programme
WMAs	Water Management Areas
WRC	Water Research Commission
WSA	Water Service Act
WSA	Water Service Authority
WSNIS	Water Services National Information System
WSSA	Water and Sanitation Services South Africa
WUAs	Water User Associations

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CHAPTER 1: THE SOCIAL CONTRACT PROBLEM IN SOUTH AFRICAN WATER SERVICES

1.1 Positionality: locating the researcher in the study

I am a black South African male working as a university lecturer since 2016. My disadvantaged upbringing in Namahadi Township of Frankfort in the Free State Province of South Africa, introduced me to the use of bucket toilets in 1995. As a 12-year-old boy in 1998, I experienced life sharing a yard toilet with about 11 households at the Small Farms section in the Vaal Triangle, Gauteng Province. Around 1999, I fell into more deprivation by relocating to an informal settlement called Sonderwater (translated as without water in English) in Evaton West, Gauteng Province. The settlement had no tap water and I collected water at the stream next to the Golden Highway until the municipality installed taps in the streets. Between 1999 and 2002, I lived in the painful reality of living without a toilet because my family had no means to construct a pit toilet. Throughout this period, I had to ask neighbours to use their toilet for relief. At night, when it was impossible to sneak into the neighbour's locked toilet, the only option was to defecate in a bucket container and dump it in the nearby bushes. Between 2003 and 2004, I relocated to the Boitumelo section in Sebokeng and lived in a government-allocated RDP house where tap water and a flushing toilet were installed. By 2005, I lived at the university residence as a student where access to a bath and shower was a real comfort.

With the lived experience of the dehumanising lack of access to water and sanitation, the experience of neighbours who grew tired of sharing resources like a toilet, and the contrasting experience of the comforts that access to water and sanitation can bring, I started studying water politics in 2008. I was interested in exploring municipal failure to prevent the sewage pollution of rivers and the inferior quality of drinking water. I also worked as a policy researcher at The Mvula Trust, a leading water and sanitation NGO aimed at improving the livelihoods of rural communities. For some 20 years of my life, I have been consumed with the analysis of the institutional arrangements and outcomes of water governance in South Africa. My focus has always been on the analyses and observation of hydropolitics through the prism of lived experiences. In short, I use critical rationalism to make premises in the analysis of public policy and social interactions. However, my focus is not only on premise-driven science alone but also equally tuned to

the persuasion of new instances that lead to a premise. In other words, theory and context are both important in research. This systemic approach to research allows for the inclusion of various realities and perspectives in analysis. This way, a researcher can be critical of his biases about knowledge and facts, likewise subjecting others' knowledge claims to scrutiny. Where debates in the water sector are divided into socialist (free water) versus neo-liberal (service charges) viewpoints, I will remain neutral and instead take what is good from each side. By identifying the less beneficial characteristics in policy proposals, arguments for what an ideal governance of water resources in South Africa is can be made.

1.2 Introduction

The social contract and struggles for recognition in South African water services is a truly political topic. "Politics is not simply a hydraulic transfer of social pressure that changes objective interests into pragmatic action; it is a quest for recognition from the empowered by the disempowered" (Hearn, 1998:19).

The concept of faultlines refers to sources of conflict (Oliker and Szayna, 2003:vii), it is what Sinfield (1992:9) calls "breaking points" that enable dissident world views. Also connected to growing gaps/divisions in society (Yavus, 2000:33); and it could be theoretical and ideological gaps (Roberts, 2007:492; Sinfield, 1992:40). It also refers to conditions that impel people to anger, like suppressing the claims of marginalised groups for recognition, and government failure to provide services at the desired level, and even violent takeover of political power (Yavus, 2000:33; Oliker and Szayna, 2003:xix; Sinfield, 1992:40; Wolfram, 2013). Faultlines is about factors that could disrupt democratic consolidation, preventing society from forming a social contract (Yavus, 2000:33). Empirically, The faultlines refer to the role of state, weak governance; the impact of crime, racial and ethnic tensions, including the competition for natural resources (Oliker and Szayna, 2003). In military and security affairs, faultiness are those breaking points that justify legitimate state violence (Sinfield, 1992). Meissner and Turton (2003) noted political hinderances that destabilise or threaten the successful implementation of large water projects as major faultlines that decision makers should be careful of.

Water security is about integrated management of water quality, availability, hazards, and reserves under which water and sanitation services operate to support environmental and socio-economic wellbeing (Cook *et al.*, 2012; Gerlak *et al.*, 2018). Water security is about legal entitlement for water allocation, which means, everyone is water secure in that the constitutions stipulates that everyone has a right to water. And water security is also about availability where a drought makes one's water insecure, or a flood that destroys the water infrastructure and pollute water sources. On daily basis, going for many days without water available at the tap or alternative supply means one is water insecure. Poor quality of the water leading to illnesses also counts as water insecurity. The pollution of surface water bodies to an extent that water purification cannot meet legal standards of cleanliness and clarity is also water insecurity. The low levels of surface and underground water [the reserve] is another indicator of water insecurity. Water security, therefore, is the opposite of all factors that lead to water insecurity as mentioned in the earlier sentences.

The phrase "water services" refers to clean drinking water in the main, without excluding the management and disposal of human faeces (sanitation). Therefore, the use of the concept, water in this study implies sanitation as well. The phrase of the government is interchangeable with water service authorities (municipalities), and their water distribution companies. The theoretical framework, problem statement, and research design substantiate the need for a research project of this nature. The research aims and theoretical argument pronounce disputes for human dignity in the conveyance of water services. South Africa contends with the prevalence of water cut-offs because of defaulting municipalities unable to honour their debt to water boards that supply them with purified bulk water services. High water consumption, and decaying water infrastructure account for the water shortage that presents a huge challenge for the government.

Struggles for recognition often find expression through social protests, which is a common feature of responses to below-par service delivery at the local government level (Alexander, 2010; Tapela *et al.*, 2015). The below par service delivery and failure to respond to people's complaints is because South Africa's government tends to "cover things up" (Habib, 2013:8) and resorts to "organised irresponsibility", i.e., a collective denial of risk and passing culpability off onto individuals when there is service delivery

failure (Nyaka, 2013:24; Swilling *et al.*, 2017:6; Treviño, 2012:117; World Bank, 2011:2-6). Struggles for recognition are not limited to the water sector alone, they have introduced racialised tensions in society and calls for reforms in South Africa's party politics, labour movement, higher education, primary education, and the economic transformation.

One of the incidents that validate the need for recognition is the 144 deaths of mentally ill patients from a private health care facility called Life Esidimeni. The mental health patients were relocated to ill-equipped care facilities in the cost-cutting efforts by the government (Child, 2017a; 2017b). The irony in this incident is that the word *esidimeni* means the place of dignity, which is fitting for mental health patients. However, the patients were moved to facilities that did not treat them with the dignity they deserved and that led to their demise. Life Esidimeni underscores the significance of recognition and decision making whether to pay real money and sustain a dignified life for vulnerable patients. Or pay cheap administration costs for below-par services that kill them. Another incident that shows the need for recognition is the case when “dead bodies” (Shange, 2017) were strewn on the highway during a logistics error in the delivery of corpses. The public expressed shock and outrage at the sight of a non-caring government. The public reaction underlined the importance of treating the dead with respect, not the living alone.

The South African government has extended access to water services for people in communities that did not have it before (National Planning Commission [NPC], 2013:39, 93; Thipanyane, 2014:81). However, the state of water services has common features of “taps that run dry” (Anon, 2014a:8), water provided to industries at the exclusion of neighbouring residents (Mudzuli, 2015), non-payment for services and the privatisation of water (Dawson, 2010; Fjeldstad, 2004), sewage loaded rivers (Herbig, 2019), inadequate responses to drought and disaster conditions (Baudoin *et al.*, 2017), lack of electricity supply and poor management of water systems leading to water leaks and bursting pipes (Lorraine & Rimuka, 2021). This study considers the state of water services and argues that it reflects the state of nature in a social contract theoretical sense. There is an impending crisis to befall the South African water sector unless there are improvements in management and planning, including the meaningful engagement of residents. The interventions are important because the social contract in water services is loose at the seams and in need of renewal. South Africa's water sector needs to

communicate clearly what constitutes the social contract in water services, and account for current struggles for recognition despite legislative frameworks to uphold life and dignity (Department of Water and Forestry [DWF], 2003).

This study follows a Kantian conception of human dignity in that; “human beings have inner worth as a criterion of reference or attribution” (Ackermann, 2012:22; Kant, 1998). Laurie Ackermann posits that human worth is synonymous with human dignity and comprises “the core of one’s personality expressed in physical and intellectual/spiritual integrity” (Ackermann, 2012:30, 88). The violation of human dignity occurs concurrently with the right of access to sufficient safe and clean drinking water (Breakfast *et al.*, 2019; Republic of South Africa [RSA], 1996: s27.1.b). Lack of access to water leaves people feeling less human; their personalities are undermined and neglected by authorities. This is the case with communities such as Hammanskraal, Ka-Bokweni, Stinkwater, Parys, Sannieshof, Carolina, Ficksburg, Sasolburg, Randfontein, Brits, Soweto, Orange Farm and Bushbuckridge (Abreu, 2015; Bloom, 2011; Tapela *et al.*, 2015; Tuwani, 2014b; South African Press Association [SAPA], 2012).

1.3 Background to the study

The origin and development of the social contract doctrine emanated from ideas of theorists such as Socrates, Plato, Niccolo Machiavelli, St Augustine, St Thomas Aquinas, Hugo Grotius, Thomas Hobbes, John Locke, Baruch Spinoza, Friedrich Hayek, Samuel Pufendorf, Jean-Jacques Rousseau, Immanuel Kant, George Sabine, Hannah Arendt, Thomas Thorson, Frederick Rauscher, Michael Lessnoff, John Rawls, and David Gauthier. Its notable critics are David Hume, Friedrich Hegel, and John Dewey. A comprehensive account of their contribution to social contract theory will feature in the next chapter.

Social contract theory “is the view that persons’ moral and/or political obligations are dependent upon a contract or agreement among them to form the society in which they live” (Friend, 2004). Intrigued by “the war of everyone against everyone”, Rousseau (1762:6) grappled with finding “a form of association which will defend and protect using the power of all; the person and property of each member and still enable each member of the group to obey only himself and to remain as free as before”. The form of association

that Rousseau imagined was a balance between individual freedom, the law of nature (pursuit of peace by all means) and the right of nature (pursuit of self-defence by all means). This balance is possible through adherence to norms that promote mutual advantage, i.e., a contract according to Hobbes (1651). Rawls (1999:10) interprets this form of association as not entering “a particular society or to set up a particular form of government; rather, the guiding idea is that of upholding the principles of justice for the basic structure of society”. Therefore, the objective of the social contract is to engender the ideal of justice in non-ideal circumstances of inequity (Volacu, 2018).

The social contract in water services finds expression in the Constitution of South Africa (RSA, 1996: s25.4.a, s8) which defines water as “property, and posits that no one shall be deprived of property illogically”. The state became the custodian of all water resources, i.e., post the apartheid government system, water resources were nationalised for the benefit of all users in accordance with the National Water Act (NWA) of 1998. The state, thereafter, committed to transforming the water sector towards redress and equity in pursuit of social justice.

The study aspires firstly to review social contract theory and its practical application when interpreting social problems. Secondly, the study aims to pronounce the problem of misrecognition in South African water services and thirdly, to contextualise social contract theory in South African water services by investigating citizens’ and the state’s responsibilities towards the sustainability of water services.

1.4 Problem statement

There is a breach of the social contract in South African water services, which leads to struggles for recognition [protest, service non-payment] because people believe that the state is not responding to resolve the violations of their human dignity and demands for redress. On the other hand, struggles for recognition occur when the government cut service provision and or delays responding to service disruptions for non-paying customers.

The above problem statement connects to the components of social contract theory, namely the state of nature, natural rights, and rational persons.

The state of nature implies illegal water connections and the behaviour of non-payment for services, which threatens efficient service delivery by local municipalities (Bate & Tren, 2002; Molatlhwa, 2015; Nkalanga, 2014; Odendaal, 2014; Serero, 2010:4). The phenomenon of “cheating” involves not paying a cost when the exchange benefit was taken (Wasieleski, 2005:41-45), and pronounces the complexity of South Africa’s water sector problems in a sense that both the water service provider and the water service consumer are perpetrators and victims alike. Inferior water services and lack of access to water offend residents and reduce them to sub-human standards (Ledwaba, 2014; Tuwani, 2014a). Incorrect water billing is another incident of cheating that undermines the social contract.

Natural rights relate to residents who endure inferior water services (Eshbaugh *et al.*, 2011:1; Maponya, 2014) in an environment where the government is sympathetic to corporate business in resource allocation and water costing (Congress of South African Trade Unions [COSATU], 2014; Dawson, 2010:275; Laverack, 2013:11; Manders *et al.*, 2009; South African Human Rights Commission [SAHRC], 2014a:27). Failure to protect human dignity occurs through interventions aimed at addressing water problems, “which focus on physical infrastructure solutions and exclude interventions toward the intellectual or spiritual integrity” of affected communities (Tissington, 2011:15).

The South African water institutional arrangement is top-down (DWAF, 2003:6) and bears inherent characteristics of people’s dependency upon the water service authority. Residents who receive inferior water services have no other alternative source of water other than to purchase bottled water or resort to polluted streams. They claim that the government has forgotten them (Mogale, 2010). Some have had to take the state and water services authorities to court contesting the violation of their dignity and enforcing a natural or constitutional right of access to clean and sufficient water (Dawson, 2010:277; Kings, 2012; Mavundla, 2012). Having been failed by water authorities, people resort to bottom-up initiatives to provide water for themselves, but this, according to the law, is illegal (Hofstetter *et al.*, 2021). The wealthy purchase bottled water or sink boreholes to avoid the inconvenience of dealing with the government.

1.5 Theoretical framework

This study departs from a theoretical argument that there is a long-standing social contract breach in South African water services that interacts with poor service delivery standards.

The poor service delivery, in turn, stimulates struggles for recognition in society. This study unites political analysis of the social contract theory “in productive new ways with other theoretical formations and proper attention” to the aspect of recognition in South African water services (Threadgold, 2003:5). The unification of theoretical formations rests on the thesis of a social contract as justice (Rawls, 1999). In addition to a social philosophy construct of recognition, which resonates with the South African principles concerning the distribution of water services. The theories that find expression for this study are social contract theory and recognition theory.

The social contract theory happens at a social level comprising norms of obligation and reciprocity (Easton, 2000; Edward & Karau, 2007; Wasieleski, 2005). It imagines a state of nature, where people live in ongoing circumstances of conflict, or assume extensive freedom but with no political structure or social conventions to keep them in check (Wright, 2001). To enjoy a fair and just quality of life, rational persons under ideal circumstances consent to stop hostile relations (Friend, 2004; Thompson, 2014). They commit to inaugurate and obey a government, relinquishing certain natural rights on condition that government implements rational laws and social conventions that promote equal opportunity, reciprocity, and the welfare of all (Nbete, 2012; Nussbaum, 2004:4). The social contract theory further provides a basis upon which to determine principles of justice, moral or legal rights, and responsibilities in modern states such as South Africa (Paz-Fuchs, 2011; Rawls, 1999; Spilkin, 2013). It set a foundation for libertarian socioeconomic beliefs based on the principle of equal opportunity as Locke (1823) conceived it.

Recognition theory espouses a “normative view that individuals or social groups have to be accepted and respected in their difference” (Fraser, 2001:45). Struggles for recognition arise from the poor moral quality as seen through the social contract breach in the distribution of goods such as water in society (Fleming, 2011; Fleming & Finnegan,

2010; Honneth, 2012; Makhanya, 2010; Malefane, 2009; Mogale, 2010; Sinwel *et al.*, 2009). Ferree *et al.* (2002:308) define recognition as putting a value on social differences in experience and identities. This study posits that the value of recognition is human dignity as an inherent identity of human and attribute they should experience when receiving or enjoying public services.

Towards solutions, the study calls for a return to the negotiation table by conscious negotiators to explore prospects for collaboration toward achieving sustainable water resources.

1.6 Research questions

The following research questions provide a theory and practice factor to the study in the sense that they connect the philosophical inquiry of the social contract theory with evidence-based research of recognition in the context of South African water services.

- *How does social contract theory apply to water services provision in South African?*
- *How do struggles for recognition relate to social contract theory in water service delivery?*
- *What elements of the social contract apply to South African water services?*
- *What faultlines are associated with the social contract in South African water services?*
- *How willing are both the state and society to collaborate in securing effective local water service?*
- *What conclusions and recommendations can be derived from the study?*

1.7 Research objectives

To demonstrate the connection between social contract theory (the state of nature, natural rights, and rational persons) and the research questions, the objectives of this study are to:

- Explain the social contract theory and its application in water services provision in South Africa.

- Analyse the relationship between social contract theory and the struggles for recognition.
- Explain how the elements of the social contract apply to South African water services.
- Interrogate the fault lines associated with the social contract in South African water services.
- Investigate both the state and society's willingness to collaborate in securing effective water services.
- Provide conclusions and recommendations for sustainable and safe water service delivery.

1.8 Research design

The study embraces an inductive qualitative research approach to present an explanatory account of reality (Holub, 1991:25; Snap & Spencer, 2003:1, 5; Welman *et al.*, 2007:188) and generate theory. The approach is flexible, enables theory building and takes place in a context where the researcher serves as the main data collection instrument (Kumar, 2014:14, 19; Pierce, 2008:43, 45). Empirical investigation takes place through a case study research technique (Shillingford, 2006:25) that fosters the analysis of contemporary phenomena (social contract and struggles for recognition) and captures the complexity in the object of study (South African water services) within its natural context (Johansson, 2003). A multiple/collective case study design creates robust and reliable evidence (Baxter & Jack, 2008). Yin (2003:47) asserts that collective case study design “either, (a) predicts equivalent results (a literal replication) or (b) predicts contrasting results but for predictable reasons (a theoretical replication)”. This kind of case study design will help to contextualise South Africa by looking at different communities and their experiences in water use when attempting a theoretical generalisation of findings concerning the social contract and struggles for recognition.

Social contract components such as the state of nature, natural rights and rational persons constitute a boundary of the proposed multiple case study design. The proposition or issues raised by this study derive from “political, social, historical, and especially personal contexts” (Stake, 1995:17) often reflected in media, academic and institutional reports. Research questions emanate from the researcher's professional

experience and reflections in water research. Miles and Huberman (1994) explain that the conceptual framework equips the researcher to gather general constructs and determine criteria to select respondents in the study. Neale *et al.* (2006) comment that case studies work well in complementing data from various sources like interviews and surveys.

Data interpretation of multiple sources enhances data reliability (Patton, 1990; Yin, 2003), helps the researcher escape the lure of unfounded deductionism (Baxter & Jack, 2008:551), maximises emerging themes, and further confirms the initial proposition of the study. Figure 1.1 below summarises the multiple or collective case study framework according to this study.

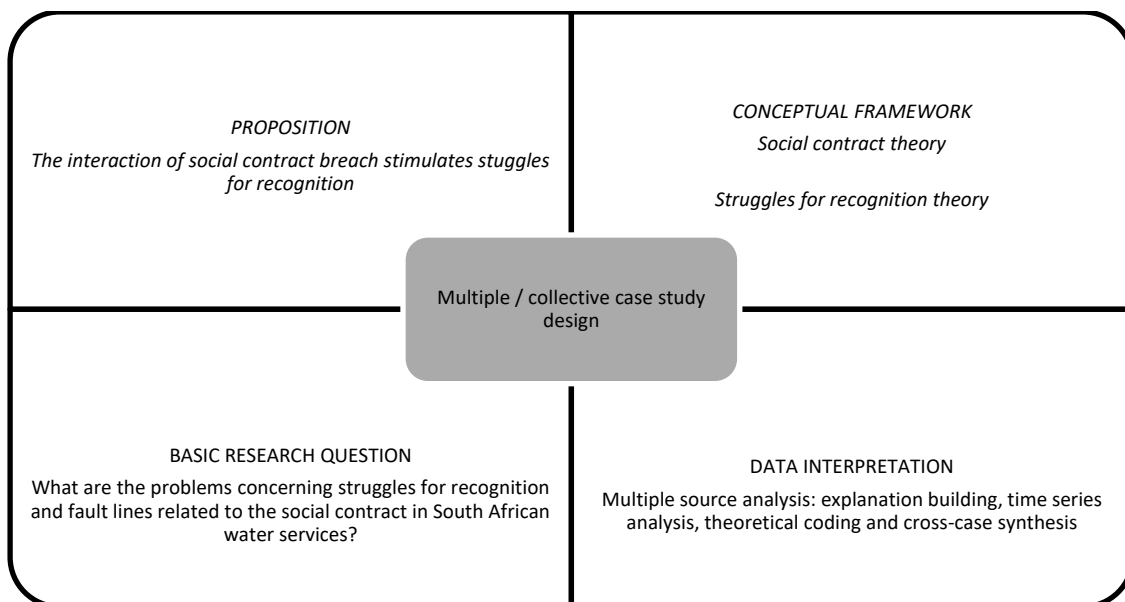


Figure 1.1: Multiple / collective case study design (adapted from Baxter & Jack, 2008)

1.8.1 Data collection and analysis techniques

Information gathering took place through purposive selection (Balbach, 1999:6) of urban, semi-urban, and rural communities in the nine Provinces of South Africa. These presented unique or particularly interesting narratives of past or ongoing water service delivery challenges. The communities include Bushbuckridge (at Mpumalanga Province), Stinkwater (Pretoria, at Gauteng Province), Zwelethemba Township (Worcester, at Western Cape Province), Parys (Ngwathe, Free State Province).

The data collection methods include consultations with managers of various water utilities in South Africa, namely: Lepelle Northern Water, Rand Water, Bloem Water, Amatole Water, Botshelo Water, Mhlathuze Water, Sedibeng Water, Trans Caledon Tunnel Authority (TCTA), Midvaal Water, Magalies Water and Umgeni Water. Also, consultations with employees of government institutions and prominent non-governmental organisations (NGOs) in the water sector; the South African Civil Society Water Caucus (SAWC), the Department of Water and Sanitation (DWS) and the South African Local Government Association (SALGA).

Case study methods often rely on multiple sources of information analysis. Document review and qualitative questionnaires provide a context of the natural setting where data is collected. It is worth noting that this study is primarily based on document review, while self-completion questionnaires and social media data will be supplementary.

1.8.1.1 Document review

Secondary data derived from a thorough analysis of academic journals, books, newspaper articles, institutional reports and meeting minutes will constitute the corpus of documents. The Municipal IQ database, Water Services National Information System (WSNIS) and the Multi-Level Governance Initiative (MLGI) barometer are of particular significance containing information that spans over five years of service delivery in all municipalities. Document reviews minimise or counteract the interview bias (Meyer, 2001) because the researcher and respondent cannot tamper with the facts raised in political discourse.

1.8.1.2 Self-completion questionnaire

Questionnaires can be seen as a type of written interview (McLeod, 2014) and is a suitable primary data collection technique in qualitative research. The researcher distributed structured questionnaires via e-mail to key stakeholders in the water sector to gather their experiences and stories related to the social contract and struggles for recognition in water services.

1.8.1.3 *Social media sources*

Social media as a data source was a significant factor in the study by Snelson (2016), who used mixed research methods with a sample of 229 documents in the period of 2007-2013. The use of social media has increased in popularity and “creating many new opportunities in research” (Loeb & Malik, 2022:533). This increase in social media occurred in disciplines other than social sciences, and when in social sciences, it occurred outside the subject group of political studies, especially in South African scholarship. “Content analysis of social media data has provided a valuable source of information on public perceptions and unmet needs” (Loeb & Malik, 2022:533). Figure 1.2 below shows the process Loeb and Malik (2022:4) produced in the literature review and in this study, it applies to inform the stages in social media review. The researcher first found the broad keywords derived from the social contract and struggles for recognition theories as adapted to the context of South Africa’s water services. This is followed by showing Twitter (now called X), Facebook, and YouTube as vital platforms for accessing data. This study will remain using the name Twitter for convenience because it is the name that resonates easier with the people so far. And that social media data reported in this study is linked with the name Twitter rather than X. Thereafter, the researcher sorted the data and removed duplicates, including any posts that did not include themes related to the social contract, struggles for recognition [dignity, violation], and water services. Through content and narrative analysis, the researcher included relevant social media data for a critical discussion that is evaluated against academic publications and institutional reports. It helped in confirming the veracity and reliability of what people posted as their experiences with the quality and standard of water services in South Africa. By so doing, this study presents a methodological contribution by including social media as a data source in the South African political science scholarship.

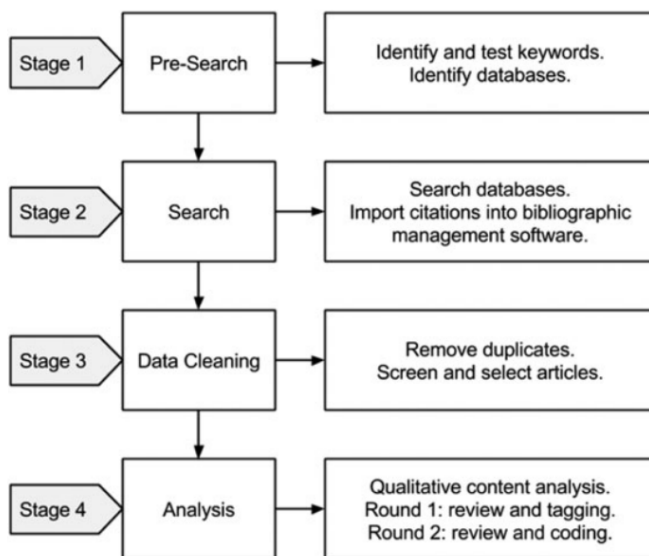


Figure 1.2: Literature review process (Loeb & Malik, 2022:4)

1.8.2 Data interpretation

Assessing the reliability and credibility of research is a pivotal part of scholarship and a critical aspect of case study design (Meyer, 2001). As a result, data analysis techniques are useful if the researcher is to confirm and show the reliability of the study. The study used data interpretation techniques like cross-case comparison (coding similar versus contradictory themes), theoretical generalisation (comparing emergent themes with theory), and analytical generalisation (exploring concepts and examining their relationship to theoretical constructs).

1.8.3 Ethical considerations

The researcher did not interact with any juveniles, but with adults in public service and members of civil society who made use of public services for different purposes. The research project remains subjected to North-West University's ethics guidelines, which emphasise research benefit for the community, scientific enhancement, and security of participants. This study followed the principle of informed consent and participant confidentiality (Corti *et al.*, 2000; Hunt, 2010:46; Kvale & Brinkmann, 2009:70-73; Picardi & Masik, 2014:27-41). The researcher aimed for theoretic saturation (Kumar, 2014:251; Urquhart, 2013:72) in the unit of analysis and choice of respondents based on their role in governance and the provision of water services. The criterion of selection involved

middle to senior managers in government and water utilities while considering respondents with a minimum of three years' involvement in the NGO sector.

In many cases the researchers may encounter sensitive information during interviews, which presents political volatility. It is necessary to ensure that research participants receive minimal exposure to potential risks (Kvale & Brinkmann, 2009:73) such as physical harm, financial harm, victimisation, and sociopolitical exclusion (Pierce, 2008:10). Therefore, the researcher interacted with local authorities to solicit cooperation by explaining the research process, the means of using data and, upon completion, and a willingness for making the final report available to all participants. The use of cryptographic references where necessary provided assurance of privacy for individual and institutional identities (Welman *et al.*, 2007:201). There has also been an understanding that a language editor should not make substantial changes to the content of one's writing (Lozano, 2013:4), for this reason, a certificate is included as an assurance that a professional language practitioner edited the research report in compliance with strict ethical standards.

Listed below, are some of the questions in the questionnaire used for the study. This questionnaire sought to provide an answer to the basic question posed in this study, i.e.: "What are the problems concerning struggles for recognition and fault lines related to the social contract in South African water services?"

1. What is human dignity in the context of South African water services?
2. What is South Africa's social contract for water services?
3. Describe the relationship between the local government and the people concerning water services.
4. What was the cause of water service protests or court interdicts in your jurisdiction and how did you resolve them?
5. How do water users contribute to the water service standards currently?
- 5a. How many water users pay for water services in your jurisdiction?

- 5b. How many indigent people do you have in your jurisdiction?
- 6. Describe, by comparison, your past and present experiences of water service delivery.
- 7. What are the obstacles to equitable, efficient, and sustainable water services in your area?
- 8. What is your opinion concerning water service payment?
- 8a. Does the local authority share the same opinion?
- 9. What did I not ask you that you would like to discuss? (Please elaborate).

1.8.4 Literature review

The initial literature review on the social contract and struggles for recognition in South African water services started with a process of consulting published literature, internet searches of keywords, online databases, and organisational reports. International trends suggest that thinking on the concept of a social contract is shifting (Cragg, 2000; Rubin, 1996). Some authors have criticised the paucity of integrating social and psychological contract theories in the analysis of public issues (Kochan & Shulman, 2007; Thompson & Hart, 2006).

The online journal repository called The Social Contract Press (<http://www.thesocialcontract.com/artman2/publish/>) promotes the contractarian tradition in social analysis. Its contributors have since 1990 relied on social contract theory to reflect on various public issues. On the other hand, the theory has opponents in scholars such as Dworkin (1973) and Frederick (2013), who argue for the rejection of the social contract theory because hypothetical consent is not binding. There is renewed interest in social contractarian analysis in the African context (Check, 2011; Osha, 2014) and the South African context (Basset, 2004; Turton, 2013; Van der Walddt & Oosthuizen, 2014). Scholars such as Habib (2013:111-139) and commentators such as Mbeki and Mbeki (2016) follow a contractarian tradition in their analysis of South African politics. They explore Corporatism or social pacts between state officials, labour unions and businesses to facilitate “peace among warring social partners by managing popular expectations”,

prevent job losses and promote economic development in the South African market economy (Habib, 2013:111, 136, 122). Theorists gravitate to using the social contract theory to interpret the nature of international relations (Kant, 1795).

The theoretical argument of a long-standing social contract breach in South African water services contributes to debates in politico-moral philosophy. It “speaks of the moral point of view conveyed through the enforceable attributes of social relations” (Fraser, 2001:45). The idea of recognition portrays caring and finds relevance in South African politics. Corporatist social pacts have failed to facilitate the desired socioeconomic justice, which stimulated feelings of betrayal among the working class and proved that the state is complicit in the exploitation of workers by the business sector (Kim & van der Westhuizen, 2015; Makoni, 2018). The other concern about corporatist social pact failings is that unemployment continues to increase in South African society; wage disparities are prevalent while corruption and lack of accountability by both business and government fester (Pater, 2021). Dominant political narratives accept that South Africa was in a state of capture during Mr Zuma’s presidency (Madonsela, 2016), which explains the prevalence of maladministration, unethical leadership, and disregard for the rule of law in the present dispensation. To this effect, a group of academics bemoan the betrayal of a promise and intimate that South Africa is being stolen by criminal elements in the governing party (Swilling *et al.*, 2017). The academics elaborate on the politics of betrayal and call for a new economic consensus in line with the programme of radical economic transformation. Corruption and maladministration remain the key challenges of Mr Ramaphosa’s presidency, which indicates that the moral bankruptcy is an endemic ANC problem and not a special feature of a certain administration (Plaut, 2013; Ngobeni, 2022; Vorster, 2023).

The origin of the hydrosocial contract theory (HSCT) spans from a community of practice characterised by exploratory conversations as is the nature of academia. Conversations at the 9th Stockholm Water Symposium where Leif Ohlsson, Anthony Turton, and Jeroen Warner began to imagine the normative values of a hydropolitical environment (SIWI, 1999; Warner, 2024; Turton and Meissner, 2002:1). Warner and Turton continued to have lively e-mail exchanges about emerging and continuously changing issues in the water sector (Warner, 2024). Turton had also been in conversations with colleagues at the

School of Oriental and African Studies (SOAS), reflecting on a suitable theory to apply to the world of water (Turton, 2024). The reflections coincided with Eric Swyngedouw at Oxford who was working on the Spanish hydraulic mission, while Turton was talking about the South African hydraulic mission. But Turton felt that the hydraulic mission is more about a policy or strategy used by a political party in power – arguing that the hydrosocial contract is more of a theory, than the hydraulic mission is (Turton, 2024). Further stating that both have their place, but the one is a theory of how society structures itself around water (hydrosocial contract) while the other is about the strategy used to reach a defined developmental objective (hydraulic mission). Warner and Turton are arguably the main inspirations to have enriched the hydropolitics scholarship with the notion of the HSCT. Given the amount of work put in applying the HSCT, one may accept that Turton was well advanced as a theorist building networks while advancing theory.

This study recognises Turton, Warner, Ohlsson, and Meissner as the fore runners in the expansion of the HSCT. The HSCT has been established in South African hydropolitics scholarship and remains relevant in global water governance arenas (Warner, 2000a; 2000b; Meissner and Turton, 2003; Wong & Brown, 2007). Water specialists such as Koo-Oshima (2012) also discuss the evolving urban hydrosocial contract. Dilworth (2007) likewise discusses water privatisation, a new social contract and urbanisation. Social analysts, such as Rubenstein (2009), reflect on immigration and infrastructure by describing the impact of immigration on water and wastewater infrastructure. One cannot help but appreciate that South African water governance is in line with international trends. The renewed interest in social contract theory encourages further interrogation of the hydrosocial contract to build on what Warner, Turton, Ohlsson, and Meissner began at the dawn of the 21st century.

The breach of contract in modern South Africa has psychological connections with apartheid South Africa's water policy, which lacked human rights considerations in respect of the black population (Bate & Tren, 2002:57, 65-91; Dawson, 2010:274; Isbister, 1993:142; Rosenthal, 2010:246, 257). The management and development of South African water resources later moved from a traditionally fragmented, politically divisive paradigm towards redress, equity, and democratisation (Todes & Turok, 2018). Thompson and Hart (2006:229) recommend a nano-level (at an individual level) analysis

for social contract theory which provides an individual's perspective in the process of interpreting the social contract.

Ackermann (2012) provides one of the best theoretical expositions on human dignity in the South African context. His references to the protection of human dignity (action iniuriarum) are useful for further discussion on concepts such as identity and worth that are equivalent to recognition (Cohen, 2013:100; Fleming, 2011). Misrecognition is implicit in government decision-making, especially where new forms of exclusion are prevalent (Anon, 2014b:11; Bakker, 2007; Bond & Dugard, 2008; Dawson, 2010:282-283; De Jager, 2013:151; EWN, 2014; Francis, 2005; Gouws *et al.*, 2010; Infrastructurenews, 2014; Julian, 2013; SAHRC, 2014b; Simon, 2003:5; Southall, 2007:13; Ukwandu, 2009; Von Schnitzler, 2008; World Bank, 2011:22; Zuern, 2011).

Bearing in mind the above exposition, one cannot refuse the relevance of the contractarian tradition in South African politics and the same bears for this study.

1.9 Chapter outline

The chapters in this thesis highlight the set proposition in the research question as follows:

Chapter 1 The social contract problem in South African water services

The chapter outlines the problematic relationship between the social contract theory and water services in South Africa. The research problem shows that illegal connections and non-payment (cheating), poor water services, unfair water distribution, and a statist model of water governance contribute to the social contract breach. This causes the phenomenon of struggles for recognition in a model presented in this study as a triad of dissent. Where i) people struggle/fight to affirm their dignity when the government does not give them water. Or where people complain that lack of access has led them to share water with animals, which is a dehumanising experience; ii) the government struggles to affirm its dignity as a legitimate authority to supply water service and recover costs in return. The government also fights to affirm its dignity against water boards that cut bulk water supply due to outstanding municipal debts. Which prevents municipalities from fulfilling their obligations to supply water; iii) then there is a fight between the people and

private companies who want the government to affirm water as an economic good. This creates conflicts where residents feel that the government prioritises water for industries while leaving communities, even those located close to water sources like dams, without access.

Chapter 2 The contractarian tradition and struggles for recognition

The chapter presents the contractarian tradition, which is an exposition of the social contract theory, its historical development, and modern variations. The chapter further draws a connection between social contract theory and struggles for recognition. It also contextualises the social contract in Africa, South Africa and within water services. The reader hereby gets to appreciate the notion of struggles for recognition. The chapter also added the creative link between the social contract and recognition. The fundamental value of recognition is that people seek self-worth, self-respect, and self-identity [dignity] in their interactions within a political community. Recognition is the emotional need for essential goods and care. Therefore, public services should promote self-respect, esteem, identity, and care for the people. Likewise, the people ought to acknowledge the identity (authority) of the government whose mandate is to supply life-sustaining public services. And life-sustaining service indeed, because recognition includes protecting the bodily integrity (preservation) of persons; meaning, people should not get water services that cause death. Anything that does not protect human life, mutual respect and worth leads to antagonistic relationships where parties fight to affirm themselves. The struggles are about people and public institutions defending themselves against injury by the other. Such antagonism is what struggles for recognition are about. Where the state fails to fulfil its duty, people take the law into their own hands to ensure their survival. Which is a regression to the state of nature. Conditions of the state of nature manifest in a triad of dissent, which is an original conceptualisation of state-society relations in water services. Although there is a dark triad on organisational dissent, there is not a triad of dissent related to water services and touching water services. Therefore, the chapter makes a useful contribution by blending the concepts of contractarianism, recognition, and water resource management.

Chapter 3 The social contract faultlines in South African water services

The chapter locates struggles for recognition in South African water services; this is a transition from theory to practice. The chapter delves into narratives of water policy and practical contradictions. The constitutional provision of human dignity forms a central unit of analysis in the discussion. The South African constitution, Water Services Act, National Water Act, Municipal Systems Act, and Municipal Structures Act are legislative institutions that constitute the social contract for water in South Africa. And eventually set water service standards by a caring government (affirming human dignity/recognition). These legislative instruments are what drive struggles for recognition when not implemented effectively. It highlights the faultiness related to the social contract in South African water services. The ineffective implementation of water service policies is caused by bureaucratic inefficiencies where the government lack the necessary skills and monitoring processes. Cost recovery policies are not making a difference in municipal accounts for sustaining water services. The culture of non-payment is institutionalised by a government that is lenient to enforce cost recovery policies. The private companies contracted to construct water infrastructure have also failed due to poor workmanship and collusion to steal public funds meant for basic services.

Chapter 4 The struggles for recognition in the post-apartheid South African water services

This chapter talks about the complicated water services in post-apartheid South Africa contrasted with the arbitrary laws that led to unequal distribution of water services under the apartheid regime. This explains the rationale for a statist water governance approach based on the need to protect the most vulnerable in society. The ideological tenets of water socialism or public possession have dominated political imaginations about free water services. This core argument is that political leaders opted for political favour at the expense of sustainable development – which has led to the deterioration of services. The question remains how the government can ensure sustainable services without cost recovery? The people also complain that the government is treating them like the apartheid regime when it enforces strict cost recovery policies. Apathy towards sustainable water services is the reason the culture of non-payment is still strong. Non-payment is a collective [community opinion] problem. Hence the need for cultural

intervention to reverse the beliefs about cost recovery in the community. This requires the government and political leaders to have honest or transparent dialogues about the need for change. The South African water sector is dominated by passing off culpability to others. This is where people blame the government for being insensitive to economic realities when it implements cost recovery policies. On the other hand, there have not been enough campaigns by people-driven organisations (NGOs) to raise awareness about the water service honouring culture.

Chapter 5 Research design and methodology

The chapter covers the research method and data collection realities that shaped this study. The chapter presents the practical relevance of the social contract and struggles for recognition in South African water services by using empirical data from academic literature, institutional reports, interviews, and social media sources. The relevance of the social contract for water is at i) the macro level of water institutions (their performance and challenges); ii) the meso level of groups and communities in their interaction with state institutions (cooperation or dissent); iii) the micro level of individuals who consciously commit to conserve or misuse water, pay or neglect service charges. The theoretical and empirical evidence established the dyadic (institutional and interpersonal) contractarian relations as expressed. The qualitative multiple case study design has been most beneficial for the valid and reliable presentation of the findings. This chapter also responds to the new ethical concerns about using social media for research purposes. And the study presented the rationale on managing ethical risks in the use of social media. Self-completion and face-to-face interviews did not work because of non-responsive water boards and water sector NGOs (critical to the study). Social media data sources were valuable supplements to the paucity of interview respondents, Twitter (now called X), Facebook, and YouTube were dominant sources in this regard. There is a growing trend to use social media sources in academic research, especially in political science. The chapter presents the case for social network analysis.

Chapter 6 Findings based on stated research objectives

The chapter is about the discussion of findings and reflection on stated research objectives. The theoretical reflection on the research findings is that rational persons

should choose non-violent action (civil society) in water governance. Which is what the people in the original position did when exiting the state of nature. Since water is a right of nature, the water crisis in South Africa signifies the state of nature that would cause various incidents of unrest in communities. The chapter discussion is important for basing the research findings on empirical evidence. The empirical evidence shows that people understand the social contract for water as expressed through services that reflect respect for human dignity [recognition], care, ubuntu, and protection for the vulnerable in society. There are expectations for the government to supply effective and reliable services, failure of which causes people to seek alternative sources of water. But the alternative sources are not always affordable, and not safe at times – leading to death. Allegations are that the South African government is uncaring by giving attractive salaries to political executives who in turn do not pay services (absolved from paying). Water scarcity and the government's incapacity worsen the struggles for recognition as a result. And where the government is incapacitated, the people tend to step in through self-supply. However, the government is defensive and quick to threaten legal action against the residents who try to improve public services by touching public infrastructure. This confirms the statist logic of a government that provides services with less collaboration with the people. The alienation and disempowerment of the people is the main Faultline in the social contract for water, hence the need for state-society collaboration to ensure sustainable water services.

Chapter 7 Towards new institutionalism and state-society collaboration for sustainable water services

The chapter presents the state of the water sector institutional reforms and proposes a model of new multipolar Institutionalism as a needed intervention for reforms that lead to sustainable water services. The key message of the chapter is that the construction of dams, and laying pipes make cost recovery mandatory in South African water services. It means that people must pay for the water services they receive. But there is a dilemma where most residents in townships do not pay for water services, using justifications like poverty and unaffordability. And that the political leaders have not been vocal enough about the need for the people to contribute finances towards sustainable water services. Because of less involvement by the people in sustaining water services, the South African

water sector remains state-centric. The best role of the private sector is through investment in the construction of bulk water infrastructure. Therefore, there is a manifestation of alienation contractarianism where the people are dependent on the government for the supply of water services and are made extremely vulnerable in times of water supply disruption; especially when the government fails to implement effective emergency interventions. Hence the fundamental theoretical suggestion of moving to a water governance based on procedures of multipolar new Institutionalism and reciprocity. This would require dedicated citizens and NGOs, private sector involvement, and a professionalised water sector working in collaboration to implement fundamental actions to ensure water security.

Chapter 8 Conclusion and recommendations

The chapter presents the conclusion and recommendations about future implications in water services and imagines possibilities for state-society collaboration. The study posits that the social contract operates optimally where residents and the government assume mutual responsibility and obligations to protect water resources. Given the institutional design of the water sector, the government continues to play a leading role in organising cooperative governance mechanisms. Such cooperation is not an internal government process but should include external actors (stakeholders) in society. This study argues that collaboration will improve the legitimacy of government policies related to water resources. The recommendations include a transition from old centralised technical (state-centric) management practices to new and more externalised practices (multipolar new institutionalism).

1.10 Conclusion

This chapter has presented the rationale and significance of the study, in addition to introducing the background and stating the research problem. The theoretical framework links with the stated research questions and objectives. These are fundamental to shaping the research design and data collection methods. The literature review demonstrates the feasibility of the study and its relevance to the South African context of water governance. The chapter outline is essential to understanding the methodological implementation in the study and key findings as presented in the summary of chapters at

the end of this report. The next chapter is an in-depth exposition of the contractarian tradition and struggles for recognition. These are key theoretical explanations that clarify the relevance of the social contract in water governance. And how the social contract breach presents the problem of misrecognition in political community. The key concepts and ideas presented in the next chapter are a common thread that unites analysis for the entire study.

CHAPTER 2: THE CONTRACTARIAN TRADITION AND STRUGGLES FOR RECOGNITION

2.1 Introduction

The problem statement and research design presented in the first chapter connect with the theoretical foundation in this chapter to help assess the argument of a long-standing social contract breach in South African water services. The social contract breach along with poor service delivery standards lead to struggles for recognition in society. This chapter unfolds in four sections. The first section analytically describes the origin and essence of the social contract theory, presenting its historical development and modern variations. The second section further highlights interpretations of notable social contract theorists, like Hobbes, Locke, Rousseau, and Rawls. The third section presents the social contract in the context of modern politics. Scholars like Osha and Check (2014), Turton (2013), Meissner (2002), Basset (2004), Van der Waladt and Oosthuizen (2014) provide African perspectives that reveal the Constitution as a basis of civil society. A social contract analysis in Africa reveals that colonialism and the apartheid regime made for an uncivil society because there were gross injustices and human rights violations against most black people who are indigenous to the continent (Nkala, 2018; Samaradiwakera-Wijesundara, 2021). The fourth section attends to the linkages between the social contract and recognition. It clarifies the struggles for recognition, the detail and the triad of dissent which sets a framework for the theoretical argument in this study. The causal relationship between the social contract breach and the struggle for recognition begins to make more sense at this point. Further details in this section touch on contractarianism and recognition in the setting of water resources management. The reader will thereby appreciate the idea of the social contract and struggles for recognition in South African water services.

2.2 The essence of the social contract

A social contract is a metaphorical device of political relations that is based on voluntary rational consent or agreement (Hearn, 1998:11; Lessnoff, 1986; Soderberg, 2014; Stark, 2000; Walzer, 1985; Weber, 2009). The voluntary consensual agreement occasions the historical development in the political culture of negotiation, promise-making, rights talk,

lobbying, obligation, collaboration, trusteeship, the establishment of organised political society and its legitimation (Hampton, 2017; Lessnoff, 1986; Mapel, 1992; Saade, 2015; Shafer-Landau, 2012; Smith, 1903). The social contract “justifies or sets limits to political authority and explains political obligation as a contractual obligation” (Lessnoff, 1986:2). The contractarian tradition explains the authorisation of law-making with penalties and principles concerning the *summum bonum* (the greater good). That is a circumstance of justice, equality, moral constraints, limits of political obedience, accountability, and rational choice (Bird, 2006; Corning, 2015; Kant, 1998; Locke, 1823; Maphunye, 2016; Saade, 2015; Skyrms, 2007). The social contract enables a life where “people question, instead of simply accepting, social institutions, and individual rights become the standard of their value” (Ritchie, 1891:656). The social contract is a system of reciprocities, i.e., promising or giving something of value in exchange for some valuable consideration (Corning, 2015; Lessnoff, 1986). In modern times, the social contract has to do with conceptualising a predictable political-economic community and the configuration of its institutions (Hampton, 2017; Hearn, 1998; Stark, 2000). It is worth noting that people enact the social contract while they are in “the state of nature, not in the civil state” (Ritchie, 1891:670). The agents and circumstances of such covenanting are imagined; this feeds the common criticism concerning the social contract being that it already implicates future generations (Engle, 2008; Engle & Engle, 2012). “The theory itself concerns the rationale of relationships among persons, and between society and its members, rather than the cause of those relationships” (Gauthier, 1988:135).

Contracting takes place among people and between people and the superior (Hampton, 2017; Lessnoff, 1986; White, 2007). The social contract also occurs between states from an international relations perspective, where “reciprocity and interdependence” become values of “international ethics of intervention, nuclear deterrence, and global distributive justice” (Mapel, 1992:191). Two types of consent, i.e., actual and hypothetical, appear from these “bilateral and multilateral undertakings” of contracting (Verschoor, 2012:25). Actual agreements are “explicit and prescriptive, entailing the existing political and moral life” (Hampton, 2017:484). They point to “the historical and situational moments of prudential consent by people in the state of nature where they established civil society” (Weber, 2009:3-4). Hardin (1998:645) argues that “no leading contractarian today believes in actual agreements”. Hypothetical agreements are tacit and normative,

pointing to what the actual political and moral life should be like (Hampton, 2017; Ritchie, 1891). The hypothetical agreement is analytically a general invitation to create or determine rules by which to make and sustain societies (Lessnoff, 1989; Soderberg, 2014). Gauthier (1988:136) and Kramer (1994:300) hint that the hypothetical conception is “as if” people’s intentional thoughts and manifest actions espoused the theory of the social contract. The idea of a hypothetical contract is based on the argument that there never was a case in point where people met in history where a group of people made an actual agreement that remains in force to this day (Enoch, 2017; Verschoor, 2012). Stark (2000) commits to rescuing hypothetical consent from the argument that only actual agreements are binding, therefore people ought to reject hypothetical agreements. Hypothetical contracts are structural. It means even though one may claim that hypothetical agreements are not binding, one can consent and be obliged by agreements that have reasonable or liberal conditions because such agreements are legitimate. Verschoor (2012) concludes that hypothetical contracts stand and are vital in establishing political obligations and principles.

The writings of Hobbes and Kant inspire prescriptive and normative agreements of the social contract, respectively (Hampton, 2017). These variations of contractarian arguments denote “contractarianism (natural equality) and contractualism (moral equality) and connect to agency contractarianism and alienation contractarianism (Hampton, 2017:479; Stark, 2013:35). Alienation contractarianism relates to people’s unconditional surrender of their power to the ruler. They have no recourse to restore it, even under conditions of despotism (Gauthier, 1988). Alienation contractarianism is visible where people are still apathetic and tolerate the arbitrary use of power by a government that further undermines their welfare. Agency contractarianism entails that people make the state, they merely loan their power to the ruler as an agent with conditions attached; they can revolt and take back the power when the ruler is not a good steward (Gauthier, 1988). Citizens operating in a contractual framework and exercising agency are quick to hold accountable those in power, even for trivial evasions. Agency contractarianism and alienation contractarianism belong to Locke and Hobbes respectively and confirm both moral and natural equality of persons. Verschoor (2012) explains the typology of the social contract as comprising three types:

i) political voluntarism, ii) contractualism and iii) contractarianism. The first type is an actual social contract theory according to which political society ought to be a voluntary association. This means that an entire group of individuals in a given territory is subject to the legitimate political authority of a state (or its government or institutions) if and only if each member of that group has actually given his deliberate and free consent to this subjection. The second and third types of social contract theory are both hypothetical in nature. According to the second, contractualist type of contract theory, moral and/or political principles are justifiable if free and equal individuals could reasonably be expected to accept them as a basis for informed and unforced agreement. In the third, contractarian type of contract theory, moral and/or political principles are justifiable if they can be the object of a rational compromise or mutually advantageous agreement among utility-maximising individuals whose (given) interests are partially overlapping and conflicting (p. 21).

Reading Verschoor's typology of the social contract, as depicted in Figure 2.1 below, one can appreciate Loewe *et al.*'s (2020) illustration of a typology to renegotiate existing social contracts. The typologies are more applicable in contemporary society and relevant to reaching a consensus on various competing interests. The social contract typology enables social links and enhances bargaining power for interests to reflect in agreements made (UNDP, 2016).

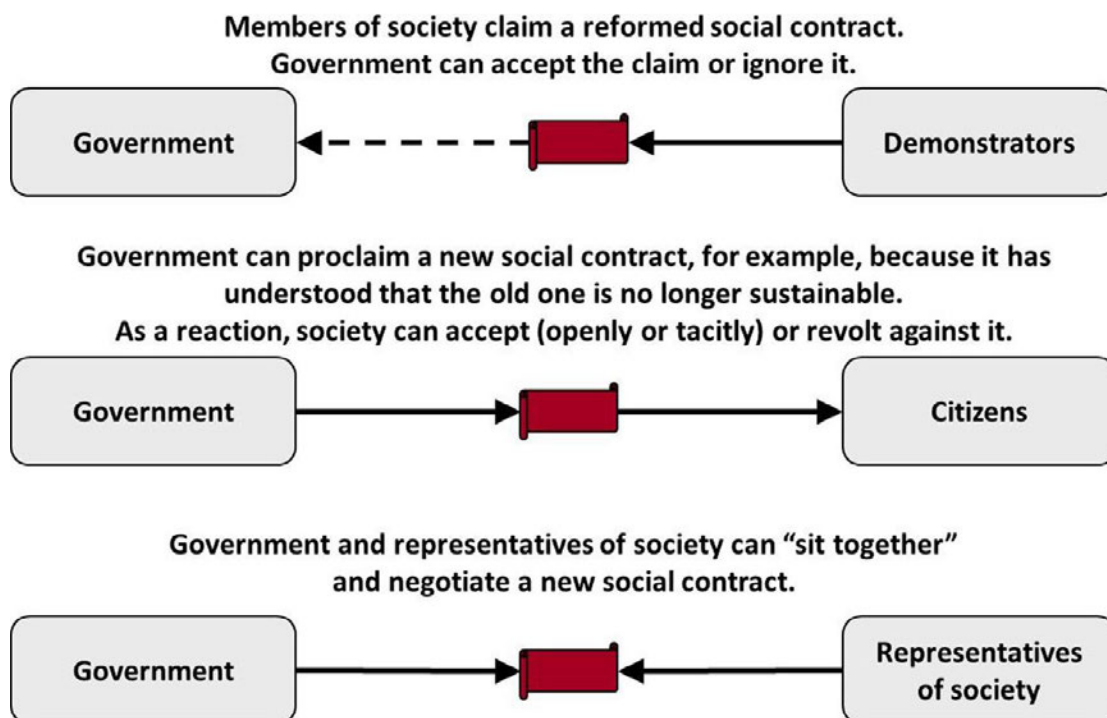


Figure 2.1: Typology of processes toward reformed social contracts (Loewe *et al.*, 2020)

The components of the social contract are a civil society premised on ideas about natural rights, the state of nature and rationality. These are foundations of individual consent and political obligation that sustain modern political order and membership in political society.

2.2.1 The natural right to life, freedom, and dignity

Hampton (2017:478) alludes to a “common image” that brings contractarian philosophers together. The image is about the laws that work comparably in all people as “endowed by nature, not enacted by a government” (Saade, 2015:32). Stinson (2008) mentions natural laws that prescribe human conduct that is acceptable or unacceptable, including the measures to use for punishing the offences. These relate to natural rights as endowed by nature or God and such attributes cannot be taken away by any conventions that people invent when ordering society. Natural rights are values that a person inherently comprehends and protects without instruction; it is those which cause profound hurt to one’s person when others trample on it. In a political context, “natural rights” refer to a theory asserting that individuals possess certain inherent and inalienable rights by virtue of being human, such as the right to life and liberty. The concept has played a significant role in political philosophy, emphasizing individual freedoms and liberties. These rights

are considered universal, fundamental, and not dependent on any specific society or government. Prominent thinkers like John Locke, Jean-Jacques Rousseau, and John Stuart Mill contributed to the development of this concept. Natural rights are seen as pre-existing before governments, and their recognition and protection are crucial for safeguarding individual liberties. Governments are expected to respect and protect these inherent rights.

In no order of significance, examples of such values include: i) life and its preservation. Every human being is naturally inclined to desire life and live well, attempting means to avoid dying when that desire is under threat, given the circumstances at present. The means of survival could be running away or fighting in self-defence as an individual or joining with others in a group; ii) liberty. Where each person wishes to exercise agency, which is essential to affirming one's ingenuity and self-sufficiency; iii) rationality. Closely related to liberty as a natural value. This is where a person has the natural ability to perceive environmental threats and evaluate prospects to maximise the advantages necessary for self-actualisation; iv) nature predisposes people to wish and live in peaceful coexistence where there is little bother from others or in their affairs. It is as such that people would not harm one another without cause; v) dignity is the value linked with happiness; it follows that the combination of the values results in a happy human condition and esteem.

The social contract theory explains against this background, that human nature comprises greed or might, through which people undermine others' natural rights. Even in a modern political community, government coercive policies may affect individual claims to utilities that nature provides. However, a person's self-preservation and pursuit of interests come into competition with others as resources grow scarce or greed governs people's faculties. It follows that every person is born with a right to live and self-will, making the equal claim to pursue life goals without arbitrary interference from others. This is essential if people are to experience the happiness of personhood, which comes from the natural right of freedom; that is, the claim for dignity or recognition. Indeed, humans naturally have a sense of worth (dignity) and expect others to acknowledge it.

Any interference with one's natural right to dignity or freedom to fulfil life aspirations occasions a situation of conflict and the one whose freedom is limited enters a struggle

for survival to “claim humanity” (Smith, 1903:8). The notion of just war applies at this point. War then, is about self-preservation or actualisation (Mapel, 1992). Ritchie (1891:670) alludes to the Hobbesian notion of “natural right as might”, where people do not lose their power when contracting with each other to form the society. The idea of natural rights might extend to war, which is sometimes a necessity to achieve peace and freedom. Peace itself is a right of nature because modern states spend significant resources to defend peace (Smith, 1903). On the other hand, it is clear that “the requirement and establishment of peace is a natural tendency and involuntary response in keeping with a routine of nature” for self-preservation (Kant, 1795:155). Every person has the ambition to live a pleasant life and fulfil life goals that lead to individual happiness. People have a right to peaceful coexistence. Where there is no peace, people are not able to reach their life aspirations. It leads to a poor life, an inferior form of existence, and a diminished sense of worth. Peace makes freedom possible, and without equality, freedom is not possible. “Freedom and equality” are the attributes of the natural right (Lessnoff, 1986:24).

Freedom implies the ability to make personal decisions without external impediments or coercion while affording other people the same freedom. According to the right of nature, everyone is independent and allowed to protect self-worth and pursue life goals. However, the right of nature rests on the law of nature, which holds that “no one is to harm another in life, health, liberty, or possessions” (Locke, 1823:107). It makes sense then that people will reject government laws that contradict natural endowments. The law of nature justifies undermining one’s natural rights only when “doing justice to an offender and thereby deter people from hurting each other” (Locke, 1823:108). Nature gives resources (land, water, food, life) for “subsistence”, every human being has a right to these and should not be deprived (Locke, 1823:115). The right of nature determines a state-people relationship that is based on civic virtues and citizen rights that protect the community and property (Hobbes, 1651; Jagers, 2009; Ritchie, 1891). It also sets a people-people relationship or mutual respect, fair treatment, and reciprocity in daily interactions. People have a “duty to do justice and charity to one another” (Locke, 1823:107).

2.2.2 Life in the state of nature

Social contract theory imagines people's situation without or before the existence of government, also referred to as the original state, a pre-political society defined by lawless liberty, competing interests, and constant conflict among humans (Kant, 1795; Lessnoff, 1986; Saade, 2015). This made humans live under the law of the jungle (Engle, 2008); a condition where one planted, and another took the produce by force. One builds and another takes the house by force (Castillo *et al.*, 2014). Some rear cattle and others loot their enclosures. Some are idle, enjoying leisure time and others attack them. One offers a service; another will not compensate. Some form communities, others colonise them. The quality of life is unpleasant, and people do not experience the happiness that being human creates. The community of Baltimore in the United States is one example of lawlessness that prevails "as a rejection of both the social contract and of the sovereign authority" (Stinson, 2008:294). The community of Baltimore experienced the police who could not control rampant lawlessness due to drug dealing, and killings of residents who opposed crime. The residents were eventually reluctant to cooperate with the police as the intimidation of people who reported crimes increased. The situation at Baltimore reflects the state of nature, where there is no guarantee of a natural right and self-interest determines people's relations. They pursue self-preservation and other "aspirations in life" (Kant, 1795:148-149) at all costs. Oblivion to the natural right entails a society where it is, "every man for himself, of survival for the fittest, enmity, and destruction" (Locke, 1823:112). There is no semblance of "public right except private" (Kant, 1795:192).

Practices of fraud, theft, robbery, murder, and inflicting grievous bodily harm become prevalent; safety and security are no longer certain in communities. Since there is no government in place to enforce "law and order, people driven by ill-nature, passion, and revenge" take the law into their own hands and avenge crimes committed against self or community (Locke, 1823:110). It is here that vigilante activity finds expression, where the society exists as in the state of nature with values of an eye for an eye, a tooth for a tooth, or a life for a life. The need for self-preservation and to reach aspirations of life, where there is no authority or common values except that everything is permissible, leads to greed and exploitation of resources; including other human resources through slavery (Castillo *et al.*, 2014; Locke, 1823:112).

The exploitation of resources introduces the awareness of equality of need, scarcity, power, and limited altruism (Hobbes, 1651; Hume 1739; Nbete, 2012), which puts people into perpetual conflict. Hume (1739) sees this perpetual conflict as a savage condition which precedes society, and as the social contract doctrine posits, this necessitates the existence of a government. The savage condition in which they live, and the brutality of conflict compels people to realise that it is difficult for one to achieve and enjoy the desired life without intrusion by others who are deprived of the same. Because humans by nature, “desire a life fit for dignity, they agree to a mutual compact to enter into one political community which puts an end to the state of nature” (Locke, 1823:111). Summarily, all people are dispersed and vulnerable “in the state of nature until they decide to join a political society” (Locke, 1823:112). It is in this regard that a legitimate government does not tamper with individual property and freedoms. It is an act of rationality for an individual to commit to making contributions that lead to the positive development of a community. Putting an end to the state of nature is a “collective survival enterprise” that forms the essence of the social contract paradigm (Corning, 2015:15, 31).

2.2.3 Voluntary consent by rational persons

The popular concern related to consent in social contract thinking is about determining the actual occasion when the individual said “yes” or “no” to the social contract proposal. The common view is that people have implicitly agreed to the terms of the social contract in modern political communities (Stinson, 2008). It is a paradox of sorts that people would, in most cases, behave in a manner that does not expose them to peril nor place them in a position of disadvantage. They would prefer to gain rather than to lose, get more rather than fewer advantages, even at the cost of other people (Gordon, 1976; Saade, 2015; Smith, 1903). Hobbes (1839:104) regards maximising personal comfort at the cost of another person as “double iniquity and double folly” that leads to “all kinds of injustices”. Thus, “irrationality is the key problem of social life and political disorder” (Freyberg-Inan, 2016:61). The social contract is “a highly individualistic theory grounding legitimate political authority on its acceptance by rational individuals” (Lessnoff, 1986:7). It accepts that humans are inclined to irrational penchants of “promise-breaking and anticipatory violence in the absence of sanctions” (Mapel, 1992:187, 182). This behaviour of cunning, irrational selfishness, promise-breaking, cheating, and inflicting harm on other people for

personal gain, is what the author here calls *egological thinking*. It is in this case that enlightened rationality, or the right reason becomes a necessity.

Enlightened rationality is about each person “pursuing own interests by maximising common goods”, where the strong protect the weak (Arneson, 2008:57; Saade, 2015:24). Enlightened rationality, when realised, brings about a friendly society and mutual benefit; a safe, comfortable, and peaceable living, with legitimate or just social institutions and just personal choices (Cicero, 1971; Freyberg-Inan, 2016; Hampton, 2017; Locke, 1823; Mapel, 1992; Ritchie, 1891; Saade, 2015). Rational persons are characterised by negotiation. They are what Soderberg (2014) calls conscious negotiators, who continually return to the negotiating table when “new forms of suffering, victimisation, and oppression” appear; or when “new opportunities to solve suffering, victimisation, and oppression arise”. Hence returning to the negotiating table requires “placing oneself in the position of a victim and the oppressed” (Soderberg, 2014) and operating through Harsanyi’s equiprobability, i.e., a thin veil of ignorance (Moehler, 2013). This will make a basic structure of society with the most efficient means that advance the interests of the weakest (Arneson, 2008; Freyberg-Inan, 2016). It is in this that a social contract is an outcome of “rational people who choose to cooperate to secure their common welfare” (Saade, 2015:31). Enlightened rationality enables people to avoid injustice for gain’s sake and thus facilitate sociable life and fellowship (Hooker, 1888). Honneth (1987:695) expresses the same sentiment in that enlightened rationality is “embedded in the course of human life that it serves to resolve conflicts or problems that arise therein”.

It follows that the social contract speaks of people who live under the inspiration of reason to order social institutions that promote reasonable policies. The social contract, therefore, brings about the life of reason. The life of reason leads to the idea that Kant (1795) called “perpetual peace”. To attain perpetual peace, it is necessary to abolish practices of egological thinking that hinder peaceful coexistence, undermine state authority, and bring social discord (Stark, 2009:77). Kant (1795:143) conveys that “the course of nature is predetermined to make harmony spring from human discord”. The human discord compels “appropriately rational” persons to collaborate because they are cognisant of the brutality caused by the state of nature (Hampton, 2017:483).

Against the backdrop of discord in the state of nature, rational people pursue civil relations and defend natural rights among each other by installing a desired political institution and a set of values that judge social affairs (Kant, 1795:118). Their contracting serves to escape the madness and “mutual aggression” brought about by the lack of authority and self-prosecution of violations during interpersonal relations (Ritchie, 1891:657). When installing political institutions and values, rational people “quit their natural power” expressed in the state of nature and confer it to the government that will act as an “umpire” to protect or promote natural rights among them (Locke, 1823:141). In return, “individuals have to conform to the rules of just institutions or to bring them about if non-existent” (Arneson, 2008:47; Smith, 1903:60; White, 2007:4). The inauguration of the state “is the first establishment of peace where the private war between people is a breach of peace”, meaning, only the state reserves the control of force or violence (Smith, 1903:6, 20). It is here that the people-state relations in the social contract come into purview (Loewe *et al.*, 2020). The people-state framework signifies the official departure from the state of nature and reinforces the origin and legitimacy of government, the rule of law, and how people can punish the government in case it fails to fulfil its functions like providing essential services (Bird, 2006; Hampton, 2017; Kant, 1795; Nyamaka, 2011).

Voluntary consent by rational people is based on expectations for good governance, justice, promotion of human dignity, respect for human rights, access to property and the rule of law. It prescribes public moral actions, including obligations by individuals toward the government. It includes the obligations of the state to the people. The imperative of justice materialises in modern nuances of the social contract theory. It transcends issues of state legitimacy to include redistribution and recognition, politics of social protection, and accountability in public policy processes (Fraser, 2001; Hickey, 2010; Maphunye, 2016). Public morality that forms the political community implies that if one does not fulfil a duty, others should do likewise, or that the state will punish such abrogation of duty. Some might differ concerning the “civility” of civil society (Grotius, 1901:74) or the state acting as a moral agent. However, Beitz (1979) contends that the state derives its moral compass from the people. In other words, when people are devoid of morality, the state will get away with injustice; tolerate acts of injustice in peoples’ interactions and dealings with each other.

The social contract manifests in rational persons admitting the obligation to obey the laws “for without such obedience the commonwealth which is every subject’s safety and equity cannot subsist” (Hobbes, 1651; Locke, 1823). Theorists such as Locke, Rousseau, and Rawls accept that mutual and voluntary consent by free, rational people inaugurates liberal constitutional sovereignty. This is the most suitable regime type to promote the law of nature and protect the right of nature (Kant, 1795:120). It is a liberal political society that condemns conditions of criminality, slavery, and violence, and promotes individual liberty. Life in this kind of society is safer, more peaceful, and more enjoyable. People from oppressive regimes migrate to liberal societies because there is better hope and opportunity to realise their life aspirations. Citizens of liberal societies are more altruistic and enjoy a better quality of life. Rational persons are committed to consensual transactions obeying the laws and not harming one another, this way the collective promotes the happiness of the individual within the political community.

The guarantees of civil society under the social contract include environmental protection, fair wages and working conditions, self-defence, rational, voluntary mutual consent, equal rights, social cooperation, political legitimacy, social justice, civil duty, a moral obligation, citizen’s participation, self-respect, and political accountability. It is a contract not to injure or be injured (Plato, 1892).

2.3 Proponents of the social contract theory

To avoid repeating a lengthy account of the social contract’s origins, this study focuses on the main proponents who explained the main components of the social contract theory. The literature review of the history of the contract theory presents a concise exhibition of social contractarianism. St Aquinas (1949) concedes that nature equipped people with a reason for them to lead independent lives and pursue determined ends. He further mentions that it is equally natural for people to live in a group or society of many for security and joint support regarding the essentials of life. From the shadows of Greek and Roman philosophy, Socrates intimated moral obligation toward the Athenian state laws and accepted a death sentence imposed on him (Verschoor, 2012). Manegold of Lautenbach is the first in the medieval era to use a contract argument stipulating the conditions for political authority and obligation, separating the named person of the king from the office itself. In this context, the monarch has the obligation of good governance

and people, and the power to remove a tyrannical ruler (Hume, 1739; Ritchie, 1891). Ullmann (2010a, 2008, 2010b) and Rufinus of Aquileia (Christensen, 1989) also upheld the idea of a bilateral agreement of promises and obligations between the people and the ruler (feudal kings); where faithfulness and loyalty (cooperation) were the main ingredients of the contract. The medieval principle of civil disobedience ingrained in contracts with feudal kings was a unique novelty that differed from the assumptions of absolute obedience to theocratic kings, or the divine right of kings. Theocratic kingship would not tolerate disobedience even if the king's commands were unjust (Ullmann, 2005).

Engelbert of Volkersdorf, in line with the medieval ecclesiastical mind, believed although the will of God is the source of universal political authority, people enter a contract of subjection with a king to be governed, defended, and care for (Ritchie, 1891). John of Paris explained that government emanates from the persuasion of rational people who expect the ruler to uphold justice (Jones, 2015). Cicero (1971) added that rational people participate in public affairs to defend themselves from oppressive scoundrels and further prevent them from destroying the state. In this case, the social contract facilitates a two-way relationship where the ruler and ruled respectively have duties and obligations to fulfil toward each other. St Aquinas (1949) agreed that government exists to watch over and lead people toward the common good of the multitude, and people are justified to regard a government as illegitimate when it promotes one person or a group's benefit. In this, a government that does not prioritise the common good of the multitude is illegitimate and not worth recognising, even if that government may claim God as the source of its authority. Modern contractarian thinking considers people as the source of legitimate political authority (Verschoor, 2012).

The focus of this study is on the main proponents of the social contract, such as Thomas Hobbes, John Locke, Jean Jacques Rousseau, and John Rawls as described in the following sections.

2.3.1 Thomas Hobbes

Thomas Hobbes (1588–1679) “is philosophically and politically the most impressive and innovative of all contractarian theorists” (Lessnoff, 1986:46), based on his 1651

publication, *The Leviathan*. Gauthier (1988:72), in turn, regards Hobbes as the “parent of rational morality and politics”. Hobbes’ ideas reflect those espoused earlier, by the likes of Grotius who advocated “absolute government” and demanded absolute obedience to it (Grotius, 1901; Lessnoff, 1986). Hobbes does not accept the idea of a contract between the sovereign and the people; the social contract is between people (a people-people relationship). It is people, in the process of contracting, who create the state and commit to submit to its dictates. The state owes the people nothing because it “is not part of the contracting parties. Hence, to resist the state, is a return to the state of anarchy” (Ritchie, 1891:670). Hobbes was wary of individual opinions and people criticising the sovereign, including legal limitations on the sovereign power (Stinson, 2008). Hobbes (1651:76) argues that humanity enjoys “physical and mental equality despite outward differences” and that such equality enables people to enter a covenant with one another. People are therefore equal in their desire for self-preservation and will pursue it above all other things when faced with life-threatening circumstances. When there is no threat to life, Hobbes maintains that the other priority that people have is that of freedom. These priorities find expression in three factors of the social contract that Hobbes outlines.

The first factor is the natural condition of humanity as a mutually unprofitable state of nature before the establishment of political society (Gauthier, 1988; Lessnoff, 1986). Where no government exists to enforce order, daily living is characterised by unlimited competition for gain / possession, power / safety, and glory (Hobbes, 1651; Kant, 1795; Lessnoff, 1986). Here everyone has a claim to all things and behaves in a manner or seeks things that maximise their benefit. In their pursuit of similar objects of advantage, people come into “conflict of interest with each other” (Saade, 2015:31). This condition of permanent conflict makes life a condition of war where people are enemies of one another (Hobbes, 1651; Lessnoff, 1986). The condition of war does not entail fighting in an actual sense but relates to the “state of universal fear” (Lessnoff, 1986:52); a time where life is “poor, solitary, nasty, and brutish; devoid of trust, commerce, and culture” (Hobbes, 1651:77-79). The state of nature is, therefore, summarised as unreasonable living by people who have the ability for reasonableness. It is here that the second factor in Hobbes’s contractarianism comes to the fore.

Secondly, the inalienable “right of nature” (Hobbes, 1651:79) relates to a person’s natural liberty to think or pursue any opportunity that “preserve(s) his life at all cost” without “external impediments” (Hobbes, 1651:79; 129). When in the state of nature, natural right implies that everyone has a right to everything that life affords and no one will take responsibility, nor assume duty for the welfare of another. “Nothing can be unjust” where everyone is a potential enemy (Lessnoff, 1986:52). Closely aligned to the right of nature is the “immutable and eternal law of nature”, which is a general rule of the reason that stops a person from doing anything destructive to one’s life and the means of preserving it (Hobbes, 1651:79, 80). The law of nature prescribes reasonableness and a desire for political society; that people are willing and would agree to uphold certain natural principles of peace like justice and equity, modesty, and mercy (Hobbes, 1839; Mapel, 1992). In sum, doing to others as one would have done to oneself (Hobbes, 1651). Hobbes posits that people’s adherence to the law of nature is an obvious human inclination to escape the state of nature and “adhere to the terms of the social contract” (Ritchie, 1891:671). Such an escape confirms “people’s self-interest and especially common interests” for self-preservation (Lessnoff, 1986:53). Hobbes’ summary of the law of nature is that contrary to the state of nature where one seeks self-preservation at all costs, the law of nature demands the pursuit of peace as far as possibility avails. If it fails, one should be ready to give up the same natural rights as others will. Also, a person should fulfil the promises made to others. By resorting to this point of view, people take a step in the right direction to set up a civil society where each person can realise their life aspirations. It applies, therefore, that people have turned toward reasonable and peaceful living. This means a person can only disobey the sovereign that “orders him to harm himself or unjustifiably expose him to harm by other people” (Stinson, 2008).

Finally, voluntary mutual consent, by reasonable people, binds them for the right reason. The same right reason comes from the need for peace and defence. Rational people voluntarily agree to transfer some natural rights to “one or an assembly of people” who will enable the existence of civil society (Hobbes, 1651). Contracting is fundamental, the law of nature in practice. People know what is “just and unjust concerning each person’s ability and hope to attain the means to preserve or lead a productive life” (Hobbes, 1651:53, 76, 79). Here, people authorise the state to make laws, promote equality, and by the threat of punishment, compel people to fulfil their obligations (Hobbes, 1651;

Gauthier, 1988). The state then sustains peaceable living and coordinates resources to promote the public good. Note that people, although having appointed a government with right and force, “cannot lay down the right of resisting assault, injury, imprisonment, bondage or murder” (Hobbes, 1651:8, 72). Contracting does not tolerate arbitrary use of force, and people in civil society will pursue non-violent means of engagement and dispute settlement (Kant, 1795:135). Moreover, if the government loses the ability to protect the people, there still is no longer any obligation for people to obey. Thus, there is a return to the condition of war (Hobbes, 1651:136). In this, “obligation is the cornerstone of all social contract theory” (Lessnoff, 1986:53).

Theorists have a consensus that the social contract precedes the installation of a government. The voluntary and mutual transfer of rights is a self-imposed restraint that enables the existence of civil society (Hobbes, 1651; Locke, 1823). One, therefore, has a responsibility not to make void or hinder others from the benefit of the transferred right, because taking away the means of preservation is injustice and injury to all (Hobbes, 1651:81, 88, 89).

2.3.2 John Locke

John Locke (1632–1704) was concerned with the “natural freedom denied to mankind and the utmost misery of tyranny” characteristic of absolute power and its supporters (Locke, 1823:8). Certainly, Locke stands opposite to Hobbes concerning the origin of the state and obligations that the people have toward it. He stands as a stern critic of absolute monarchy saying, it is “inconsistent with civil society, and so cannot be a form of government” (Locke, 1823:143). Locke rejects the notion of “natural subjection” to authority (Locke, 1823:155) and argues for the idea of people’s “autonomy to order their actions and to organise themselves as they think fit without asking permission from another” (Locke, 1823:148, 106, 159). In this, Locke also advanced the idea that sovereignty is derived from the people’s will and resides with them (Locke, 1823; Mapel, 1992; Nyamaka, 2011). Unlike Hobbes’ conjecture, which demands unilateral commitments from the people towards the sovereign, Locke thought that rational, autonomous individuals reserve a right to defy the government that does not protect their natural rights and set up a new one (Locke, 1823).

He differentiates between the state of nature and the state of war. The state of nature is “where people live pleasantly without a common authority to judge between them” (Locke, 1823:113). People could live pleasantly because the natural law enabled them to respect others’ property and perceive the dangers of unbridled conflict (Lermack, 2007). Locke thought that life was not as brutal and people were not as selfish as Hobbes imagined (Stinson, 2008). This is not to say that people were perfect because they “were free and had no obligation to love others more than themselves” while in the state of nature (Locke, 1823:107; 142). Locke thought that the state of nature accommodates “relationships between husband-wife, father-child, and master-servant” (Gauthier, 1988:134). Meaning that people are ethical, equal, and free to define and pursue life goals in the state of nature. However, the thought of categories that are absolved from the reach of the state does not apply to the modern constitutional state. Were it so, there would not be laws about compulsory basic education, domestic violence, labour laws, abolition of slavery and employment conditions. Of course, America is an oddly exceptional society in rejecting some policies that would have the state intervene to promote human health and protect lives.

This is judged by the public responses that rejected President Obama’s health care initiative and denied the state an opportunity to care for the family (Hendricks, 2012). Locke’s social contract interpretation posits that civil government begins outside social relations in the state of nature by “people who appropriated or inherited real estate who contract together for mutual protection” (Gauthier, 1988:134). This means private property was not safe in the state of nature because there was no law or impartial judge to protect it in the case of inconvenience and interference by others (UNDP, 2016). Hence, the state of war is based on the reality of permanent probabilities of conflict over property, where destruction, enmity, and robbery are outcomes. Therefore, human relations revolve around the competition for ownership of, and the ability to maximise property (land primarily). It is in the face of inconvenience and interference with freedoms or property that people see the need to unite in one political society.

The need for a “comfortable, safe, and peaceable living” necessitates people to unite and form a civil society through majority consent” (Locke, 1823:146, 147). Locke argues that by informing civil society, people surrender all their rights, except their status of “equality,

liberty, and estate” to the regulation of the law (Locke, 1823; Saade, 2015). In this case, people will no longer personally punish the offender; that is, in other words, they no longer take the law into their own hands because the state is now responsible for it. This means, in return for surrendered rights, people gain a government with executive authority to make laws, enforce them, and resolve disputes. The exercise of executive and legislative authority related to the “equality, mutual preservation of life, liberties and estate” (property) is based on “the will and determination of the majority” (Locke, 1823:159, 146). It is for this reason that modern societies expect the law to ease conditions of equal opportunity for everyone to own property by preventing an individual from obtaining more essentials than needed (Locke, 1823).

Locke preferred a two-pronged arrangement, informed by a notion of “limited power or limited obedience” (Locke, 1823:154, 115, 162). The arrangement of limited power will have people obey the government and the government then protects the rights of the people (Heyman, 1991; Mulgan, 1979; Mulgan, 1997). The idea of limited power and limited obedience does not imply issues of social disobedience only. It extends to limited freedom in exerting personal will in society and recognises one’s limited abilities for self-actualisation. Where these are in effect, there is the virtue of limited obedience where one is by nature expected to assist others in times of need; this extends in the context of civil society where the state ought to have welfare policies in place. It behoves people to enjoy the freedom to determine their desired life and an opportunity to pursue it. Next to this negative freedom operates positive freedom, that is, the state must avail the essentials of life for those who do not have means for subsistence (Verschoor, 2012); it is here too that the boon of altruism should prevail among members of society.

Locke set up the political foundations of modern states and enabled people to revolt against tyrannical regimes. His philosophy enriched ideas about the abuse of power, a failed state, and human rights.

2.3.3 Jean Jacques Rousseau

Ritchie (1891:672) proclaims that “the history of the social contract theory ends with Rousseau, all others merely perfect his propositions”. Jean Jacques Rousseau (1712-1778) explores natural freedom, the legitimacy of authority and the origin of social order

(Saade, 2015). Lermack (2007) reads in Rousseau that people, while in the state of nature, were noble savages with unsophisticated government; the main desire that people had was society, which was absent then. Rousseau considers life in the state of nature to be happy and that people enjoy equality with each other. He adds that they have no class structure “to constitute either the state of war or the state of peace and cannot be natural enemies, therefore, the war of man with man could not exist either in the state of nature nor civil state” (Rousseau, 1762:7). Like Locke, Rousseau affirms that people have no duty to other people because a person’s first cares are those of self-preservation and, the person is his own master, hence when contracting, people “alienate their liberty only for own advantage” (Rousseau, 1762). Therefore, society comes about through a voluntary association by independent adult persons who share common liberty in the state of nature. Like Hobbes, Rousseau understands the social contract, as being amongst the people; the state is not a contracting actor. Looking at the family as a model of political society, Rousseau contends that as the father is the sovereign of the family, so the leader of a political society is superior to the people. However, he maintains that sovereignty rests with the people, not the monarch, and in saying so, he disagrees with Hobbes. Rousseau does not accept the view of absolutism and argues that people are “obliged to obey only legitimate powers because no one has natural authority over another” (Rousseau, 1762:5). Thereby “conventions form all legitimate authority” because an arbitrary regime also needs the acceptance of subsequent generations to accept it (Rousseau, 1762:3, 5-6). In this, Rousseau believes that people cannot give up all rights. Rousseau considers “social order as a sacred right and a basis of all other rights” that conventions guarantee, not the state of nature (Rousseau, 1762: 2). He says that the right to property does not exist in the state of nature either, instead, it is a “social benefit established by the social contract” (Saade, 2015:32). When the idea of private property began, it led to competition, envy, pride, and contempt against each other; consequently, social inequalities prevailed.

Ritchie (1891) says that Rousseau’s contractarianism advances the idea of the social contract between people and people as a response to the scarcity of resources; it is an outcome of civilisation when people begin to unite in small communities, seeking social goods. It is in the context of inequality and social contempt that people see a need to restore social order; this is a result of what Rousseau calls general will, people’s majority

conception of the common good. Rousseau argues that “social order is a sacred right and a basis of all other rights” (Rousseau, 1762:1). He holds that “conventions form the basis of all legitimate authority” (Rousseau, 1762:5). A view he holds in common with Locke’s is that people’s sovereignty is inalienable (Ritchie, 1891). Rousseau believes people in their primitive independence share “the natural law of common liberty and self-preservation” (Rousseau, 1762:3) or “wild lawless freedom” (Saade, 2015:32) which they “ought to lose in the place of proper moral liberties in the civil state” (Ritchie, 1891:673). He concedes that the social contract introduces moral equality for all members of society instead of eradicating natural inequality (Saade, 2015). The social contract occurs when the certainty of self-preservation is inevitable “in that state, and the human race would perish unless it changed its manner of existence” (Rousseau, 1762:10). The changed manner of existence will see an individual lose the wild lawless liberty that he cannot peacefully enjoy in exchange for civil liberty and higher civilisation (Rousseau, 1762; Smith, 1903).

Rousseau’s social contract implies that it is the right thing to do; that people be equal by law, despite being unequal in strength or intelligence (Rousseau, 1762). Rousseau argues that the law of social contracting is by nature based on unanimous consent and equality related to civil duty (Rousseau, 1762). Although an individual surrenders to dictates of public law, one remains responsible for their natural liberty and to frustrate an unjust government (Rousseau, 1762). An unjust government is that which does not promote the common good of society or promote the general will (Rousseau, 1762). The general will is that undeniable and everlasting desire for equality and justice (Rousseau, 1762). The general will in civil society makes up for enjoying the “rights of citizenship, being ready to fulfil the duties of a subject and compelling whoever refuses to obey it” (Rousseau, 1762:14). Rousseau hereby suggests that the general will is absolute, not the government. He saw that a government without people’s consent is “incompatible with human nature”; it rejects “morality” and does not guarantee “rights of humanity, tranquillity and a desirable place to live in” (Rousseau, 1762:6). It follows that the social compact imagined here is about equality and the freedom to do what ought to be done; not a pursuit of superficial appetites. Grcic (1985:77) observes that Rousseau also advocated “psychological freedom, the absence of dependence on others for a sense of worth or respect”. Rousseau’s social contract “creates citizens out of mere individuals”, something

the state of nature cannot do (Lermack, 2007:1416). Citizens as sovereign (general will) are responsible for making decisions and therefore cannot make decisions to endanger themselves and their survival; people cannot oppress themselves in other words. Hence there are no “limits on governmental powers or guarantees of rights in Rousseau’s system” (Lermack, 2007:1416).

2.3.4 John Rawls

John Rawls (1921-2002) advances the “virtue of justice as fairness implicit in the contract tradition” (Rawls, 1999:3), the same advocated earlier by Hobbes, Locke, and Rousseau. Rawls’ “original position of equality” is identical to the state of nature, however, like contemporary contractarians, he refutes suggestions of the state of nature being “an actual historical state of affairs” (Healy & Murphy, 2017; Rawls, 1999:11; Ritchie, 1891:673; Saade, 2015:9). He regards the original position as a hypothetical situation where free, moral, and equal representatives gathered to select, through the test of justification and acceptability, the “most suitable mutually advantageous principles of justice” (Mulgan, 1979; Saade, 2015; Stark, 2009). Such a gathering is under fair conditions or “behind the veil of ignorance” about what one is to personally gain in greater proportion compared to others by selecting certain principles (Rawls, 1999:118). The contract that members of society agree on is made of two principles for justice. These principles promote an equal claim to freedom and rights, self-respect, and confidence unless any favouritism is to the advantage of the most disadvantaged (Arneson, 2008; Rawls, 1999; Saade, 2015). These principles would eventually shape the conduct of both individuals and social institutions (Rawls, 1999; Saade, 2015) toward a society whose social institutions and individuals do not “arbitrarily discriminate” against others nor leave others destitute in the process of distributing social values (Saade, 2015:8). Rawls’ principles of justice cause “the integrity of persons”, that is, it denies “psychological oppression, physical assault, and dismemberment (Arneson, 2008:46). Rawls’s justice is then opposed to unjustified or senseless inequalities. His contractarianism does not see justice as absolute equality, his is justice with suitable inequalities. Importantly, Rawls’ presentation represents a departure from the traditional style in the work of social contract theorists. It is a departure that amounts to a modern, liberal, democratic interpretation of social contract theory (Rawls, 1999; Saade, 2015).

In his contract theory, Rawls highlights “the moral basis” for a constitutional democratic tradition and an alternative to utilitarianism (Rawls, 1999:104). He defends self-interest, equal basic rights, equal basic liberties, and democratic equality as primary components of justice as fairness (Rawls, 1999). A notable contribution to Rawls’ contract theory pertains to “self-esteem”, which relates to the integrity of persons, achieving life goals, and being valued by others in civil society (Rawls, 1999:386). This introduces a people-people dimension in dyadic interactions. Rawls supports a society that affords every individual an opportunity to realise life aspirations. In such a society, support systems are in place for the underprivileged to experience “competitive success” against the already privileged (Arneson, 2008:48). Rawls endorses political duty and obligation toward “just institutions, including unjust laws” provided they exist within a certain limit of justice (Rawls, 1999:293, 308). Civil disobedience ought to be “a public, political, non-violent, conscientious act that contradicts the law to bring about change in the law or policies of government” (Rawls, 1999:320 quoting Cohen, 1969:218-226).

Figure 2.2 below shows the various theorist agreeing that the social contract protects “the rights of the individual better than they can be secured in the state of nature” (Ritchie, 1891:663). Leading to the rejection of installing an authoritarian political authority. Instead, they advance the view that people delegate an agent of their choosing with the work of government. The people, therefore, keep the supreme power which no one can take away (Gauthier, 1988).

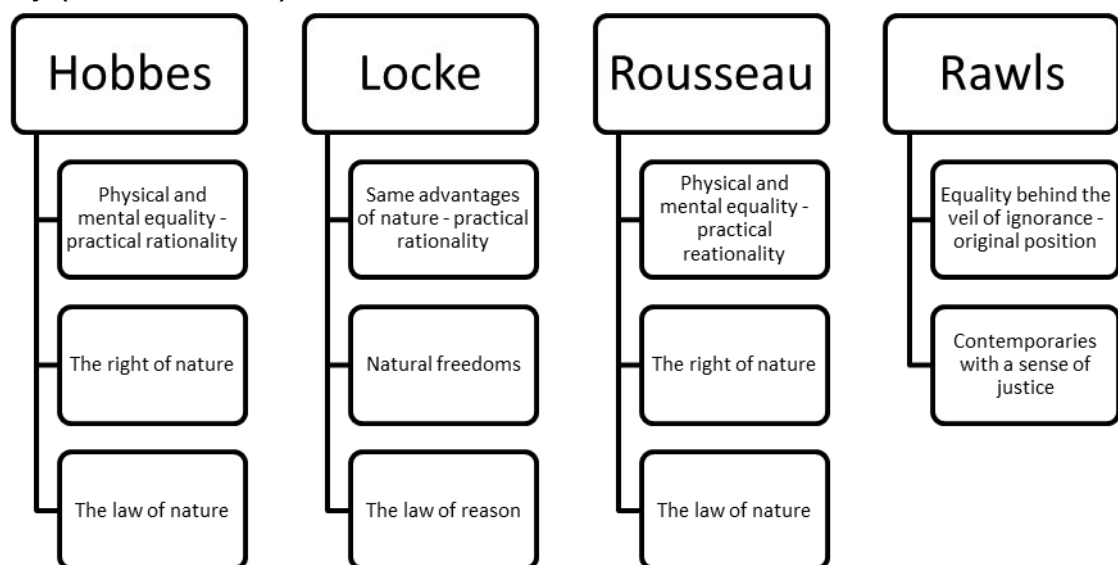


Figure 2.2: Hobbesian, Lockean, Rouseauean and Rawlsian social contract foundations – own construction

2.4 The social contract in the context of modern politics

This section shows that the social contract theory is adaptable to various settings and that it promotes progressive political communities. Furthermore, the section outlines that modern politics and public institutions cannot thrive without infusing the social contract principles.

2.4.1 The social contract in the context of Africa

There appears to be no coherent work on the social contract in the context of African political philosophy. However, scholars use the social contract approach to analyse various themes and problems in African politics. Maphunye (2016), Abuya (2009), Bayart (1993) and Inman and Andrews (2015) are among those who have analysed elections through the prism of the social contract theory. Maphunye (2016) explores the relationship between Africa's elections, public accountability, and the social contract. He observes that the relationship is "dull" and that "office bearers do not appreciate a formal contract with the people to whom they are obligated" (Maphunye, 2016:2, 3). Van der Walt (2019) analyses the use of civic education to engender a new social contract that is sensitive to the plight of immigrants in South Africa. Leonard *et al.* (2011) look at conflict-affected states and how the social contract facilitates the reconstruction of order. The researchers argue that the classical conception of the social contract is not fit for purpose when rebuilding peace in contemporary African states because instead of a social contract between the state and people, Africa has two social contracts. The first is between community governance structures and individuals (traditional leaders for example), and the second is between the community governance structures and the state (Leonard *et al.*, 2011). What Leonard *et al.* (2011) say about community contracts is truly relevant in South Africa as well. People rely on traditional leaders to allocate land to them for residence and production. In the case of King Dalindyebo, who was imprisoned for assault, the King defended himself that he was executing his traditional authority over his subject's, further asking, and lamented that the constitutional democratic mandate overrides the powers of the king. Traditional leaders still feel very much excluded from the modern state formation process. This exclusion of traditional leaders is what the Inkatha Freedom Party (IFP) raised during the negotiations for a democratic transition in South Africa (SAHO, 2017) in presenting this African model of a social contract.

Colonialism used existing and invented traditional authorities to mediate people's compliance at the grassroots level, while the state was a vehicle to promote or protect the interests of the coloniser (Onwuegbuchulam & Mtshali, 2017). At independence, there was no proper transition, or a social contract framework to enable a new postcolonial society. Political transitions often happened violently (*coup d'états*) without compliance, which leaves contentions unresolved in society, a potent foundation for a repeat of civil war.

Therefore, the social contract in Africa exists to ally the existing tension between traditional and constitutional sovereignty, where "the tribe is preferred to the state" (Fanon, 1967 cited in Onwuegbuchulam & Mtshali, 2017:75). It is for this reason that the social contract has remained fragile in Nigeria. Leonard *et al.* (2011) observe that people rely on community governance structures more than the state because it is a community governance structure that interacts with the state, not the individual. In this case, traditional or local government structures wield significant power and influence in that they can delegitimise the state and lead to civil war when the central government does not meet their expectations (Mayen, 2012). In addition, the military as a state institution ought to protect the people according to the classical social contract; but conflict-affected states in Africa "create predation and insecurity", mistreating the people (Leonard *et al.*, 2011:2). This confirms that the state of nature manifests in conditions of Sub-Saharan African authoritarian regimes that disregard the social contract or do not represent the will of the people, where people do not enjoy a sense of security (Mayen, 2012). This is what Bassam (2018) observed regarding the Egyptian authoritarian social contract, where people tolerate human rights violations in return for public benefits like security. Hamann (2011) and Loewe *et al.* (2020) submit that social injustice in authoritarian regimes was the bedrock of the Jasmine Revolution in Tunisia, North Africa in 2011 and the Arab Spring, shortly afterwards, in other parts of North Africa and the Middle East. It led to the renegotiation of existing social contracts.

Seeing that the social contract philosophy is not traditional to African systems of governance, it is acceptable that the "African communitarian philosophy" of human wellbeing displays the social contract (Chemhuru, 2017). Chemhuru (2017) opines that the same reasons advanced by a Western philosophy of the social contract, apply to the

African communitarian social contract. It is here that the African adage of Ubuntu – *umuntu ngu muntu nga bantu* (a person is a person through other people) – is relevant because recognition of an individual's worth happens through interpersonal relations. Cilliers (2008) agrees that the concept of Ubuntu expresses human dignity, community, and respect. Cilliers (2008:2) further explains that Ubuntu conveys “being with others”, which resonates with the contractarian assumption that people have their claim to humanity once in a community or part of society.

Bond (2011:11) says Ubuntu is about “the culture of sharing” or holding resources in common, which is far better than the rights culture. That is, the idea of atomic living or individual enrichment outside the community is strange to African social and political life. However, it does not mean that communal interests trump the individual's interests. On the contrary, communal interests cannot subsist without attention to individual interests. Chemhuru (2017) confirms that Africans traditionally organised in communitarian living for political salvation; in other words, to protect individual lives, liberty, and property, and escape the state of anarchy outside the community. Loewe *et al.* (2020) believe that conflict-affected states will not know peace until all parties agree on a new social contract.

2.4.2 The social contract in the context of South Africa

The apartheid ideology of a former South African government reflects the condition of war between the white minority and black majority citizens in South Africa, where socioeconomic and cultural injustices made life difficult for the black majority in the land (Ndinga-Kanga *et al.*, 2020). International disinvestment and corporate defiance against apartheid (Larson, 2020), exclusion from international sports activities and increasing calls for political reform facilitated the creation of the civil society movement towards the end of the National Party Government's era. Hence the apartheid government and the liberation movements met to negotiate a social contract that would determine relations within a constitutional democratic society (Ndinga-Kanga *et al.*, 2020). Those willing to give their approval for a social contract contributed by way of voting in a new government to endorse a new constitution. Those who did not support this change, left; emigrated to live abroad with New Zealand and Australia being popular destinations. Some people remained within the borders of South Africa, albeit as a separatist community like, for example, that of Orania, a post-apartheid, self-made homeland in other words. South

African society exists against a background of discrimination toward the majority of indigenous citizens by a minority of settlers, which informs a long, brutal history of struggles for recognition by the former.

Certainly, the contractarian tradition finds expression in the political history of South Africa through negotiations between the descendants of the former British and Dutch colonists in 1948, and later followed negotiations between the former colonist and the indigenous citizens (Olivier & Olivier, 2017). The last multiparty negotiations followed the principle of “sufficient consensus” (Habib, 2013:45) to settle. The negotiations and public comments established the terms of the agreement in the 1993 interim constitution that enabled political inclusion within the democratic rule (Murray, 2019:817; Swilling *et al.*, 2017:4). The constitution, with public input, was later adopted officially as Act 108 of 1996, and is lauded as one of the finest constitutions in the world (Ndinga-Kanga *et al.*, 2020). This expresses a true social contract and a new South African society promising a better life for all, although its operation is plagued with a myriad of faults (Adams, 2018; ANC, 2017).

Adams (2018) refers to public sentiments that South Africa’s contract (constitution) was not entirely inclusive. The Constitution is not inclusive because inequality remains prevalent, and socioeconomic injustices persist where the wealthy become wealthier. The ANC’s campaign was on “a social contract for jobs” although unemployment continues to increase since 1994. There has been a “social compact for rapid housing delivery”, premised on the 1994 Botshabelo housing accord and the National Housing Act (107 of 2007), but the housing allocation targets remain distant (Department of Human Settlements [DHS], 2005, 2014; SAHRC, 2015). The Marikana massacre in 2012 equally resulted in a call for a “social compact in the mining sector”, but lacked consent from other social partners (Harvey, 2014). The Fees Must Fall movement by students, who called for fee-free higher education also pressed for the “social compact” in the education sector seeing that “higher education is a public good”, necessary for a country in “transition from a traumatic past” (Vally *et al.*, 2016). The social contract in the economy “failed to materialise” (Bassett, 2004:544-457). Habib (2013:1) observes the enduring “high stakes of leadership drama” in South African politics, which wrangle “comrade against comrade”. Hence South African society is undergoing the most decisive moment of re-evaluating

the social contract affecting general sectors of society and the political system to develop a resilient social contract (NPC, 2015; Ndinga-Kanga *et al.*, 2020).

Contemporary South African politics use social contract framing as an approach to solving public policy issues, hence the political culture of social compacts is now commonplace. Both social compact and social contract refers to collective agreements in national development policies and democratic consolidation efforts in South Africa's development (NPC, 2015). Bassett (2004:544) bemoans such "civic republicanism" visible in the shift from social "contract" to social "compact", which limits the role of social partners in defining the covenant. Social compact thinking makes "a vague reference to people's contact" and "institutionalises the participation of civic movement elites to legitimise interests of big capital" (Pillay, 2007:87). The nature of social contracting in contemporary Africa occurs as a broad charter for action concerning government and social role-players, not individuals.

This notion assumes that individuals belong to a constituent social organisation and the social organisation, therefore, serves as an extension and representative of the individual in contracting and decision-making. The individual's hope for direct participation in social contracting occurs during elections among other things. The practice of foregrounding political and social organisations where individual responsibility receives little emphasis, has led to South Africa's main problem of poor democratic governance. It is where the government fails to resist particularistic demands of free services and excuses for non-payment from social groups at the expense of the general population (Bassett, 2004). As a result, there is poor expression of individual responsibility or obligation toward ensuring sustainable services. Whereas the desire for "service delivery and political accountability" underpins the liberation struggle and demands for an inclusive democratic South Africa (Habib, 2013:35). This study posit that it is not enough to blame "poorly trained officials, lack of capacity in the public sector, and institutional weaknesses" for failed services as Habib (2013:35) does. Citizens ought to carry the greater blame for enjoying basic services without paying for them. As much as the government may collect service charges without delivering efficient and reliable services for it.

2.4.3 Expressions of contractarianism in modern politics

Modern conceptions about the social contract do not depart in a significant manner from what the ancient proponents conveyed. Scholars still regard voluntary consent as essential to creating a government, while voluntary cooperation by citizens is a prerequisite for sustaining civil society (Hardin, 1998). Engle (2008) submits that the social contract is the “foundational myth of western liberal democracies”. This means most liberal democracies take social contract principles to legitimate political authority and community. The aspect of legitimate authority goes together with contested sovereignty, especially in the changing world of emerging regional blocs like the European Union (Zetterquist, 2007). There is a greater belief that rational people or decision-making promotes cordial social relations and the rule of law, not self-interest. Hence, debates about denying law offenders the right to vote exist (Levine, 2009). In addition, the social contract principles are fundamental to civic education programmes of some political systems, where the intention is to foster political tolerance, multiculturalism / diversity, and nation-building (Van der Walt, 2019).

Modern states are also hesitant to use violence as a coercive mechanism, knowing well that arbitrary violence will affect government legitimacy negatively. The notion of promise-keeping influences contemporary politics of giving and taking, where politicians make promises to the electorate through a manifesto. In return, when elected to office, the people expect politicians to deliver in accordance with the promises, failure of which amounts to a betrayal of the promise; a breach of the contract in other words (Levine, 2009). The social contract breach has also become a point of discussion in the analysis of the growing trust deficit in state institutions, elections, and the changing political party landscape (Halikiopoulou & Vasilopoulou, 2016). Electoral promises often contain promises of job creation, the provision of basic services and the promotion of safety and security. Where the government must deliver on promises, the people effectively surrender their agency to the state and depend on it for sustenance.

The mistake in contractarian thinking is when people perceive a contract to be an arrangement between the state and the people, instead of one among themselves. As a result, people lack the urgency to cooperate for a common purpose; they collaborate along partisan lines. Civil society intervention has proved to be effective in an

administrative capacity (Saban, 2013:320). This means that people can do for themselves what the government fails to do as mandated. However, instead of the approach where the rich may thrive when compared to the poor, collaboration between the civil service and civil society organisations is the preference of modern political communities. This confirms a social contract where community bonds enable the culture of reciprocity among citizens towards the sustainable management of water resources. In addition, the collaboration between civil service and civil society organisations is essential to identify marginalised communities for inclusion in the allocations of resources (Saban, 2013:325). Hobbes' belief about imposed order manifests in states that invade despotic regimes throughout the world. However, these acts of invasion rely on the premise of people's consent, expressed through popular protests for regime change, and succeed only when the regime turns against the people. When debates rage about hypothetical and actual agreements, it is obvious today that written constitutions or a set of laws where the constitutions do not exist represent a contract (Lermack, 2007).

The Colonial Charters, the Mayflower Compact (Bradford, 1620), the Freedom Charter, the Sunset Clauses, and the Balfour Declaration, are examples of rudimentary agreements envisaged to escape the state of nature at some point in history. People manage to make claims for, and measure government performance, based on the articles of the constitution. The truth about people's desire for actual government is clear in public responses to the UK prime minister's decision to dissolve parliament at a crucial time of finalising the Brexit process. There are now voices that suggest it is time that the UK moves from the unwritten constitution to a written one. It is for the commitment to constitutionalism and peacebuilding that countries invest in civic education programs and inculcate respect for the rule of law (Ndinga-Kanga *et al.*, 2020). Public office bearers also plead allegiance to the constitution and not party interest, confirming that they are accountable to the people on whose behest they serve. Locke's argument about one having contracted by merely enjoying the benefits of government, is the basis of cost recovery measures that states implement to sustain basic services. It is this policy of cost recovery that causes much contention where states exclude people who fail to pay for access to some services.

The contractarian principle also informs social activism by individuals, especially in social movements (Rudbeck, 2012). One example is the cause for children's rights and youth participation in politics. Slogans such as "born free" and raising awareness about arranged marriages and forced labour among children derive inspiration from Rousseau (1762:6) who spoke about "children born free, their liberty belonging to them". Private firms feature as actors in the new social contract having a duty to the immediate communities within which they operate, the employees, including the environment (CAS, 2018; White, 2007). It is for this reason that corporations are now committed to fair practices with their employees and customers (Hsieh, 2015; White, 2007). This includes corporate responsibilities for sustainable development, clean energy initiatives, and cognisance to provide humane working conditions and labour relations (Messner, 2015). Private firms have taken up the role that the government traditionally fulfilled and as a result, corporations have a significant interest in public policy options (Castillo *et al.*, 2014; White, 2007).

Research hubs like the Chronic Poverty Research Centre (CPRC) maximise the social contract approach to promote pro-poor policies (Hawkins, 2011). The interaction of politics and information technology has also brought the issue of sovereignty into focus. Hence, the expansion of the social contract for blockchain technologies, also called smart contracts, to explore new forms of governance (Reijers *et al.*, 2016). There is also a social contract for a science dealing with human responses to climate emergencies and disease outbreaks on a human-dominated planet (Lubchenco, 1998; Messner, 2015). The development agenda is indeed a global social contract, as Birdsall (2008) claims. International agreements such as the Universal Declaration of Human Rights also represent the social contract that sovereign states enter into with other states, and for which they are held accountable by global institutions like the United Nations (Bond, 2011; Kathrani, 2010). The social contract is thus applicable to international efforts to curb climate change effects, humanitarian crises, poverty impacts and violent conflict.

2.5 Social contract connection with recognition

Charles Taylor (1992), Axel Honneth and Nancy Fraser (2003) are foundational theorists who raised the currency of the struggles for recognition. They summarise the idea of recognition as the pursuit of "self-worth, self-respect, and self-esteem" which forms self-

identity (McQueen, 2015:18). Where the social contract theory opines a state of nature, the concept of recognition imagines a “state of natural life where the abstractness of law does not yet have its reality thus lacks executive power found in state authority – every subject must defend its rights by itself and hence each subject’s identity is threatened by theft” (Honneth, 1995:21). The state of nature alludes to people taking the law in own hands to defend themselves from injury by others. To struggle for recognition implies a person defending himself actively against injury by another (Honneth, 1995). The concepts of social contract and recognition inspire a wide-ranging scholarship that involves international relations and gender studies (McQueen, 2015, 2022; Zerilli, 2008). The word recognition stems from the verb, to recognise. This means to see, to be seen or regarded, and to distinguish and identify or acknowledge something based on some sign of the good or the just (Markell, 2008; McQueen, 2015:19; Ricoeur, 2005). Recognition “is a vital human need to which every individual is by natural right entitled” (Taylor, 1992:25). Recognition is an emotional need for “vitally essential care and goods” (Honneth, 1995:18). It is impossible to imagine a person alive who does not want to be recognised; even the dead receive their due care.

The sign of the good or the just exists in “honouring and dishonouring”, which is the “manifestation of the value people set on one another” (Hobbes, 1651:55). The value that Hobbes (1651:54, 77) refers to, is “the worth of a man, the price or rate that man sets upon himself, by which he expects his companions to value him”. Therefore, in the context of the social contract, recognition is about two people meeting and giving fundamental rights to each other. Locke (1823:116) draws a similar breath in presenting the idea of “property in own person”. The sign of the good, the worth of a man, and property in own person are words that carry similar meaning to human dignity, which is essential to making meaning about the concept of recognition. In addition, the value of a man is that of citizenship and the benefit it affords. This is important in reorganising social arrangements that discriminate based on sex, gender, religion, income, social status, and race when allocating social goods. Rawls (1999:3) emphasises the “inviolability founded on justice, which each person possesses”. McQueen (2015:8) acknowledges the value of recognition in “formulating a theory of justice” and the meaning of being subjects / citizens. This is significant in the economy of honour, where “not the seller, but the buyer determines the price”, therefore, people should “rate themselves at the highest value they

can” (Hobbes, 1651:55). The notion of a seller and buyer implies a people-people interaction that supports the “positive understanding of self” (Fraser, 2001:46). Hence Honneth (1995:22) notes that the goal of struggles for recognition is about “providing evidence for the integrity of one’s person”.

Murray (2019:11) analyses international relations through the paradigm of recognition and indicates that recognition is “not just an individual-level phenomenon, it is also important to states” because it is through recognition that they achieve self-certainty of identity from other states. It is clear then that self-esteem, justice (Rawls, 1999, 1971), self-validation (Kant, 1795), and self-preservation are the ethos of recognition and contractarianism. Recognition is a “kind of acknowledgement of one’s own condition or circumstance, failure to acknowledge is misrecognition” (Markell, 2008:462). Fairness consists of “recognition, mutual respect of other people’s rights, rejection of every type of discrimination and egoism” (Saade, 2015:40). Honneth posits that injustice is not about the violations of stated norms but “the denial of intersubjective recognition that violently disrupts a subject’s relationship to self” (Markell, 2008:452). Justice is being fair in social cooperation and the distribution of goods, giving to whom it is due what is due. Yes, “to be recognised means to be treated justly; justice today requires both redistribution and recognition” (Fraser, 2006:69; Markell, 2008:455; Stark, 2009).

2.5.1 The dimensions and types of recognition

Now, recognition has two dimensions, namely (i) self-assertion and (ii) resource distribution; these apply to people-people and state-state alike. Self-assertion is about the status and benefits of a human / citizen in the community of people or sovereignty in the community of international organisations. It “confirms distinct identities and positive traits, including material capabilities” that a political actor already possesses (Murray, 2019:13). Within this dimension of self-assertion, actors expect recognition for possessing unique attributes in comparison to other societies. Such a unique attribute enables others to speak about benefits that accrue to them, or against injustices that affect others. An example of such a unique attribute is a citizen who pays service rates when others do not, or a law-abiding citizen who is a victim of crime who feels that the state is lenient on criminals. This is where the second component of resource distribution comes to the fore. The mode of misrecognition, i.e., redistribution that rejects or maintains

the denigration of other actors causes clashes for self-assertion by the excluded. It is in the attempt for self-assertion and to reform redistributive policies that people felt the need to leave the state of nature to form a government; in terms of international politics, a “federation toward a world state is inevitable” to order world peace (Murray, 2019:14; Smith, 1903:2).

The types of recognition clarify how to recognise and what to recognise that is essential to identity formations in society. Firstly, the affective relationship of recognition is found in the family relations of love and friendship (Honneth, 1995). At this dimension, natural individuality is confirmed, and the priority is responding to human needs and desires for love and care (McQueen, 2015:10). This familial reciprocal recognition is manifest in incidents of patronage politics where politicians use state institutions to prioritise the interests of their electorates. The electorates also expect that politicians will give them extra care in return for their votes (Mikael *et al.*, 2015). Love and care recognition is also applicable in practices of nepotism in society or having to overlook malfeasance by comrades from one’s political party (Ceva, 2018; Hasty, 2005). Love is a vital, albeit understated, currency of political processes where citizens expect loving care and compassion from government policy and service delivery outcomes (Asamoah & Yeboah-Assiamah, 2019; Edlins, 2021; Power & Hall, 2018). Secondly, rational-formal human relations of recognition found in law are vital for conflict resolution (Honneth, 1995). The law provides protections for the weak in society and grants equality to persons, thus setting a foundation for justice. Thirdly, the emotionally enlightened relationship of recognition is found in the State; they are recognized as concrete universals, that is, as subjects who are socialised in their particularity (Honneth, 1995:25).

It follows that strong patriotic sentiments are derived from principles of love such as commitment to the country, its laws, trusting the political leaders, and promoting the country’s honour in the community of states (Guo, 2020; Sobirovich, 2022). Likewise, heads of state have presented themselves as incarnating the state, or benevolent father figures of citizenry (Costas & Taheri, 2012; Judge & Oddens, 2018; Knauss, 1971). Love equally feeds into the politics of emotions where people support a politician or political party even when the same has undermined the rule of law. People, in the name of love for the country or political ideal, would even take up arms in war or terrorist acts (Graham

et al., 2004). This confirms an observation that “the experience of being loved constitutes a necessary precondition for participation in the public life of a community” (Honneth, 1995:38). The family is a foundation of individual esteem, hence a vital institution in citizenship socialisation where people can be encouraged to show commitment to the welfare of the state and the sustainability of public services. Otherwise, the need for love and care explains people’s dependency on the state for welfare or relief in times of hardship. Welfare policies are a matter of contention in liberal democracies due to concerns about the likelihood of people’s absolute dependency on the state, or what is referred to as entitlement in a South African context.

2.5.2 The process of recognition

Recognition occurs voluntarily and directly through person-person interactions (interpersonal) or indirect person-institution (institutional) mediation and is received individually or collectively. It occurs “under some significant description that makes a difference in the way its bearer is treated and thereby helps to configure the bearer’s powers and possibilities” (Markell, 2008:450). Recognition is in “requesting another for assistance, because one assumes that another has power to help; to obey, because no man obeys one whom he thinks has no power to help or hurt him” (Hobbes, 1651:55-56). The recogniser is a person of legitimate or credible authority. This is what makes recognition meaningful and appropriate to the recognised (McQueen, 2015:19-20). The crucial part of recognition is the intellectual integrity of man, which entails defending the “freedom of the person, freedom from psychological oppression, physical assault, and dismemberment” (Rawls, 1999:53).

In modern liberal democracies, “people are recognised when they are included in ongoing collective activity through which identities are formed” (Markell, 2008:455). The veracity of identity formation (Fukuyama, 2018) that comes with isolation in policy processes is clear in the cross-examination of Cyril Ramaphosa by advocate Dali Mpofu. Advocate Mpofu puts to the witness that “not talking to people is an affront to their dignity” (eNCA, 2014). Not talking to people is when the government does not respond to queries related to service delivery (Chaha, 2014). Indeed, not talking to the people also means not listening to them, hence the protests demanding recognition; in other words, to be heard and spoken to (IDASA, 2010; Healy & Murphy, 2017). Cilliers (2008) explains that people

demand to be heard and receive quality services because they consider themselves as *abantu* (human beings) instead of *into* (things / non-persons). The affront to people's dignity results in public trauma and a sense of betrayal manifested through forgottenness and a wounded psyche, which confirms the phenomenon of disillusionment (Gouws *et al.*, 2010:47-51; Mogale, 2010:9; Makhanya, 2010:6; Sinwel *et al.*, 2009; Malefane, 2009:11; Vilakazi, 1994:151). Forgottenness is non-recognition, that which Fraser (1995:71) alludes to as the injustice of "being rendered invisible". Markell (2008:454) suggests that "recognition is among many different objects of human pursuit, possession, and distribution".

Also referring to the importance of being heard, Thenjiwe Jack, a resident activist in Swellendam municipality in the Western Cape Province argued that theirs was not a partisan disruption, but a struggle for recognition.

This is a struggle of the residents that got out of hand when the mayor and his officials failed to address the community. We will not allow this matter to be turned into a joke by politics. People really need service delivery and there are currently discussions about council offers in efforts to maintain peace and a resolution (Hlati, 2023a).

It is reported (Payne & Marks, 2023) that at the time of this protest, the mayor was standing behind the police officers when the residents called to Mayor Francois du Rand saying, "don't be scared to talk to your people, come closer, the police didn't vote for you, the community did".

Recognition is, therefore, "a fundamental good" that enables a "liveable life" for individuals in society (McQueen, 2015:3-4). Now, this study argues that "the object and attribute of recognition or that which an act of recognition recognises" is the "individual personhood", or dignity (Markell, 2008:455, 456; McQueen, 2015:19; Stark, 2009:74; Yar, 2001:295). The individual is primarily a human irrespective of status as citizen and participation in the body politic. Human dignity is a legitimate benefit that one receives by virtue of being a citizen, which defends the freedom of the person and affirms a positive sense of self (Taylor, 1992). In this case, recognition is synonymous with dignity, which is the fountainhead of human "rights talk" (Coutire, 2016:15; Fraser, 2001:44). Here it is

possible to say recognition is also justice, because “the role of justice is to facilitate dignity and fraternity” (Saade, 2015:110). Therefore, a relationship that undermines human dignity is “unjust and a form of misrecognition” (Markell, 2008:455).

2.5.2.1 Forms of misrecognition

Failure to recognise one in a way that one takes oneself to be is misrecognition, while no recognition is the complete failure to accord identity, rights, or values (McQueen, 2015:22). The absence of recognition represents a lived experience of abuse and contempt, conditions that make up an uncivil society at best. Fraser (1998:3) says that misrecognition is “to be denied the status of a full partner in social interaction and prevented from participating as a peer in social life”. In other words, not being a full partner of society implies inequality and rendering others invisible. Misrecognition is “wounding, distorts one’s mode of being, and saddles people with crippling self-hatred. Due recognition is not just a courtesy but a vital human need” (Fraser & Honneth, 2003:28).

Misrecognition is typical of intentional elitist attitudes and oppressive practices that induce moral injury through neglect, deprivation, and isolation. Hence, feelings of neglect dominate struggles for recognition. It is therefore prudent to understand Hobbes’ categories of neglect as “contempt, crossing, and contumely” that “precipitate misrecognition in defrauding and dissenting” (Hobbes, 1651:55-56). He goes on to point out:

Contempt is when a man thinks another of little worth in comparison to himself, crossing is the hindrance of another man’s will without design to profit himself, contumely is the disgracing of another for his own pastime (Hobbes, 1651:286-287).

Honneth indicates levels of misrecognition as (love) which manifests in physical abuse, (rights) refusal of basic liberties, and (solidarity or self-esteem) that exists in the denigration of individual and collective ways of life (Markell, 2008:454). Restructuring social institutions and arrangements in a manner that affirms the marginalised and reduces inequalities is among the remedies for misrecognition (Fraser & Honneth, 2003).

2.5.2.2 *Struggles for recognition*

Hegel (1807) first presented the idea of struggles for recognition in keeping with the norm of reciprocity (McQueen, 2015:9). That is, in the absence of reciprocal recognition and experiences of disrespect, “subjects are obliged to engage in struggles for recognition” (Honneth, 1995:69). The politics of recognition entails people’s efforts to “transform the ways in which they are seen and esteemed by others, and so to satisfy the deeply rooted human need to be recognised as the bearer of a distinctive identity” (Markell, 2008:451-452). It is struggles over status by presenting the absent, making oneself visible and not forgotten where people undo the cultural injustice of voting but not receiving the benefits of electoral participation. The struggle for recognition is about people demanding “to possess objects that concretise others’ respect for them or distribute objects in a manner that confirm their membership in a community” (Markell, 2008:459). The nature of a social contract is, as such, that the eventuality of conflict is ever present, but latent because the established norms guide contracting parties on how to manage conflict in a peaceful and more predictable way (Loewe *et al.*, 2020).

It is possible for one to miss the benefits of socioeconomic redistribution policies due to misrecognition (Fraser & Honneth, 2003). Therefore, struggles for recognition come from the subjugated and marginalised who demand justice in the face of material inequality (Stark, 2009). Material inequality includes disparities in income, property ownership, education, health care, nutrition, environmental health, and life expectancy (Fraser & Honneth, 2003). The struggle for recognition is a natural response instinct where social conditions are like those of the state of nature, such as when a person’s ability to lead a happy life is weakened, and personhood deprived. In this case, it is in the struggle for recognition that countries and separatist groups wage war (McQueen, 2015:18). Struggles for recognition in water services occur where there is unequal access to water and sanitation infrastructure in non-white residential areas like Alabama, Illinois, Mississippi, Detroit and Flint, Michigan, Ohio, Mebane, Carolina, and the Central Valley of California in the U.S. (Gasteyer *et al.*, 2016).

The state of nature includes the exploitation of the weak by the strong and the deprivation of basic life essentials, such as a dignified life, a living wage, decent accommodation, education, health care, political participation, a clean environment, water, and sanitation

(Healy & Murphy, 2017). Struggles for recognition imply politics of “equal distribution of rights” (Saade, 2015:2) and “equality and self-validation” (Kant, 1795:184). Rawls (1999:386) conveys the same in saying, “the most important primary good is that of self-respect or self-esteem, without which nothing may seem worth doing”. Struggles for recognition connote a “moral order of society taking to consideration the interests of each member and executing equality” not only “eliminating inequality, but avoiding degradation and disrespect” (Fraser, 2001:44, 43; Saade, 2015:35). The struggle for recognition is an attempt to have those in power or privilege to understand the suffering that inequality or unfair policies cause. As said earlier that the right of nature is might, and that peace is the right of nature, it follows that the struggle for recognition is a fight for peace, fighting for basic social goods that enable a peaceable living, it is social strife and political imagination involving a class or group of people who feel deprived and demand the enforcement of their human rights.

Ordinarily, literature on struggles for recognition focuses on demands by members of society. An analysis that focuses on social demands for recognition does not appreciate the complexity of the politics of recognition. This work, therefore, contributes a perspective of institutional struggles for recognition, where institutions tasked with water services provision or water service authorities argue that any man that has “possession or enjoyment of the domains of government has thus given his tacit consent and is therefore obliged to obey the laws of that government during such enjoyment” (Locke, 1823:157, 166). Enjoyment of public services mandates the user to pay service charges as a contribution to advance the freedom of the person (CAS, 2018). The loss of this results in “distrust, resentment, and corrode civility, which tempt people to act in ways they would otherwise avoid” (Rawls, 1999:6).

2.5.3 Struggles for recognition in a triad of dissent

The ways people would otherwise avoid occur through a triad of dissent. There are three contexts of dissent in the water sector, namely, i) where public institutions contend with the people, ii) where the people contend against public-private institutions, or iii) where the people are against each other. The triad of dissent emanates from transactions of neglect and defraud as Fjeldstad (2004:541) posits. Figure 2.3 below shows the three-way relations of dissent that engender misrecognition in the water sector. This is where

“non-compliance”, in the water governance is “a question not only of state-society relationships, but of relationships between citizens and/or groups of citizens within local communities”. The triad of dissent about people vs people conflict is documented by Ruiters (2002:51) where white residents complained about black residents who did not pay for services and quizzed councillors about what “steps were being taken against those who did not pay”. The concern of affluent white residents is about them cross-subsiding other communities or paying more rates than what municipalities spend on them in return.

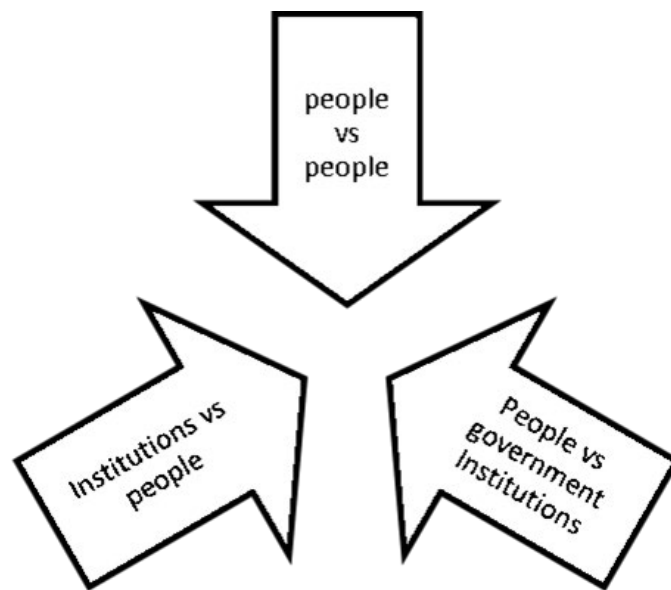


Figure 2.3: The triad of dissent in relations of misrecognition – own construction

However, Pape (2002:123) argues that the concerns are about the “encroachment of the needs” of black residents on the white world of privilege. Deedat and Cottle (2002) and Xali (2002) show that tension exists among black residents when those whose water supply was cut off due to non-payment had to ask for water from neighbours. This suggests a lack of political sympathy among citizens where water services are concerned, yet understandably so, because having to share paid water with a neighbour means incurring more costs on a personal bill. This may lead to one not affording payment and being cut off from the water supply as well. Nel (2002) reported that the residents of Hazyview also experienced a broken water pump at the Sabie River water purification plant – the municipality sent water trucks to collect water from pump stations nearby in Marite, Chochocho, and Nyongane. But the residents there protested and prevented

water trucks from collecting water at the stations – arguing that whatever water they had hardly supplied their own demand (Nel, 2002). Residents resorted to asking the farmers in the community to supply them with water from the canal, which brought relief to the town. The phenomenon of refusing to share water with others is a form of self-defence, which confirms the social contract edict about people reserving the right of self-defence. However, there is a positive report by Masiangoako *et al.* (2022) who show that informal residents in Makana Local Municipality relied on their neighbours in formal residences to share water with them.

If local municipalities cut water due to non-payment for a week or one month, as Xali (2002) found, then it is very unfortunate for town residents looking for whom to ask for water where neighbourliness is lower or worse than that of townships. Asking for water from neighbours is still an unfortunate and humiliating experience for some residents in rural and small towns as Majavu (2020) reports in the case of Bathurst at the Eastern Cape Province. Pape (2002:131) records a resident in Constantia at the Western Cape Province who complained about cost recovery and exorbitant rate increases saying, “we are a soft target; authorities know that people living in these areas [i.e., town/affluent residents] will pay”. It is, therefore, acceptable that better-off residents mostly in towns and suburbs are unhappy and perceive injustice in that they pay for water services while township residents do not pay (Fjeldstad, 2004). Xali (2002:14) and Deedat (2002:150) conclude that water cut-offs promote “unnecessary tensions, many fights and individualist tendencies” where “neighbours who were friends for years no longer talk but curse, swearing at each other because of water”. This shows a society receding to a state of nature.

One is inclined to agree with Fjeldstad (2004:540) in seeing the major flaw in the government’s fiscal health as the collapse of law and order. The triad of dissent is an expression of “morally motivated struggles” for recognition (Honneth, 1995). People question the morality of exorbitant cost-recovery policies and state institutions question the non-payment practices of the people (Rahlagane, 2021). The social contract tradition is the foundation of South African politics and has been re-emphasised ever the more during the presidency of Cyril Ramaphosa, who mobilised business and civil society to revive the stagnant economy and curb high unemployment and the harm caused by

systemic corruption. This work adds italics, in noting that Hegel initially conceived the struggle for recognition to be “a struggle *among* subjects for the mutual recognition of their identity” (Honneth, 1995:5).

The triad of dissent here conceived, shows that the struggle for recognition is among individual subjects, between subjects and state institutions, and between state institutions and subjects. Still, the struggle is for the recognition of identity. Among subjects, the identity is of a ratepayer and non-payer, between subjects and institutions for identity as humans who are worthy of a reliable supply of clean drinking water or the water consumer worthy of fair service charges. While between the water institution and subjects, the identity is that of a legitimate water authority with the mandate of sustainable water service provision, cost recovery, and ensuring water security. However, as Honneth (1995:6) notes, the social struggles for recognition have “since Machiavelli and Hobbes, been about self-preservation”. It follows that self-preservation is the motive of people refusing to share water with their neighbours during water supply cut-offs, people refusing to pay ‘expensive’ water charges, and public institutions implementing various cost recovery measures.

There are those who do not support the cost recovery policy by arguing that people would not have money for food if they used the little money, they have on paying service charges. If a person shares water with the neighbours, the same would incur more increased service charges and may end up not affording payment. Public institutions may not provide water at an acceptable quality, maintain water infrastructure, or extend it to those who do not yet have access. The triad of dissent summarises the competing egocentric interests of socialist versus market-driven distribution principles that have a bearing on the future security of water services. It is only at the negotiating table that relevant stakeholders can come to a mutual understanding of what is good and just in the water sector and policies that can ensure the sustainability and conservation of water resources.

Once the dialogues have dealt with issues that lead to the triad of dissent, it is expected that the people will cease to struggle for individual self-preservation. This is because the state will be a rational political actor upholding the articles of the social contract for water; a contract whose foundation is recognition. The state as a rational political actor that

upholds recognition is vital because it enables the people to reconcile with ethical relations of service payment (Honneth, 1995). The struggle for recognition in South African water services is not only ethical where discriminatory practices and indignity arise but includes self-preservation where lack of access abounds. Honneth's (1995) reasons are as follows:

It is not the case ... that a contract among individuals puts an end to the precarious state of a struggle for survival of all against all. Rather, inversely, this struggle leads, as a moral medium, from an underdeveloped state of ethical life to a more mature level of ethical relations (p.17).

Transactions of neglect and defraud reflect "egotistic tendencies" such as *pleon*, i.e., "a desire to have more" (Balot, 2001:6; Rawls, 1999:107). Egotistic tendencies are characteristic of excuses that people use for not paying service charges because they do not trust that "i) government will use revenues for service provision, ii) government will establish credible systems for revenue collection, and iii) other citizens will pay their share of water-use charges" (Fjeldstad, 2004:541). These excuses hinder the realisation of "efficiency" in "distributing to each man as a free and equal citizen his own materials contributing to a complete life" (Hobbes, 1651:151-152; Rawls, 1999:58, xiii; Rousseau, 1762:14). Redistribution is the "official recognition of the equal moral worth of persons" (Fraser, 2001:85) that circumvents experiences of "shame" in public service delivery (Rawls, 1999:388-390).

2.5.3.1 People's dissent against government institutions

The struggles for recognition surface where people opine that the government is not performing at an acceptable level or does not deliver on its social contract mandate altogether. This is despite people paying service charges and as a result, they feel robbed. There are occasions of the government repeatedly issuing incorrect service bills leading to complaints by customers. This problem of efficiency discourages water consumers from committing to service charge payments. The other element of dissent is that the government is corrupt and misappropriates revenue or pays exorbitant wages to officials and consulting firms. This leads to perceptions about the government's lack of commitment to use service payments for the upkeep of public infrastructure to continue

service provision. There also is an occasion of conflict where people do not trust the quality of water that the government provides, yet the government maintains that the quality is good for human consumption despite doubts about the appearance and taste. If not concerned about poor water quality, the government fails to provide water services completely or to extend access to marginalised communities that do not have access.

Some claim that the government is reluctant to accept that people are unemployed and cannot fund public services which introduces claims of discrimination where the government's austerity measures in the water sector limit water provision for the least well-off in society. These vindications hinder the realisation of "efficiency" in "distributing to each man as a free and equal citizen his own materials contributing to a complete life" (Hobbes, 1651:151-152; Rawls, 1999:58, xiii; Rousseau, 1762:14). Access to materials contributing to a complete life is fundamental to a strong social contract or at least, fixing it (Healy & Murphy, 2017). Redistribution is the "official recognition of the equal moral worth of persons" (Fraser, 1995:85) that prevents experiences of "shame" in public service delivery (Rawls, 1999:388-390). If the experiences of shame endure, people lose the "confidence in the fairness and legitimacy" of the water service sector (Healy & Murphy, 2017:2). There is an experience of shame where the benefits of citizenship (free access to water, health, education, etc.) reach the better-off ignoring the wider, often indigene population without access (Hickey, 2010:10).

Hence, struggles for recognition ensue when people claim inclusion in the material benefits of citizenship (Honneth, 1995). This is in keeping with a belief that a "damnified person has power to appropriate the goods or services of the offender by right of preservation" (Locke, 1690:109). Struggles for recognition are, therefore, in social contract terms "struggles for self-preservation" (Honneth, 1995:7). Struggles for recognition in the water sector by the people, oppose "neo-liberal influences that prefer limited government involvement in public service delivery" (Habib, 2013:153). Neoliberal ideas reflect Locke's justification that "though the water running in the fountain be everyone's, yet who can doubt but that in the pitcher is his only who drew it out?" (Locke, 1690:117). Neoliberalism is a precursor to accusations of racial exclusion as seen in, for example, water cut-offs for defaulting households that conveyed a racist nuance and infringed on the human dignity of Detroit city's residents (Lukacs, 2014).

2.5.3.2 *Government institutions' dissent against the people*

“Sufficient resources are required to ensure all can live life with dignity” (Healy & Murphy, 2017:4). It is common that citizens appear often as victims of injustice, however, there is a need to highlight the injustice of the people against public institutions. Among the functions of the state is revenue collection. If people do not comply or play their part to pay what is due to the state, civil society is in danger of decay. Healy and Murphy (2017) show that an effective social contract that provides enough services and infrastructure necessary for a minimum standard of living requires public investment funded by the people. Government institutions responsible for water services want nothing more than for people to play their part in the social contract, that is, reciprocation. State institutions, therefore, struggle for recognition where they stop providing services or reduce the quality of the same to save costs.

In South Africa, for instance, the controversial case of Life Esidimeni proves that mental health patients died because the state wanted to save costs. The state, unlike citizens, does not protest in the streets, calling people to play their part. Hence most resort to tax hikes, fuel levies, or reach out to financial institutions like the International Monetary Fund and World Bank for loans that will cover the basic cost of service delivery. Still, people complain about more loans that the government take, not realising that without money, the government will fail to deliver on its mandate. Healy and Murphy (2017:12) assert that “right come with responsibilities for all citizens”. This is a fact that the South African populace ought to recognise, and political institutions should emphasise. The government has appreciated that the effective “social contract must have social justice at its core and be focused on building a just society” (Healy & Murphy, 2017:13). Hence the constitutional provision of social welfare policies of free water for the poor at the bottom rung of society.

2.5.3.3 *People dissent against public-private institutions*

People are likely to pay for service charges that private companies provide compared to the same by the government. An individual is comfortable paying for satellite TV compared to the government broadcaster's TV licence. An individual is open to paying for a private medical doctor and complains about paying at a government health institution. People are quick to respond to the summons that private companies issue and

neglect those from the government. The readiness of the people to cooperate with private sector corporations is based on perceptions that the private sector is more reliable, and offers value for money, while government institutions are inefficient at the most (Frederickson *et al.*, 2012). The social contract has inspired discussions about the responsibility that a business has and the recognition it enjoys in the eyes of the law (Hsieh, 2015). This means public-private institutions are now accepted in the institutional configuration of modern states. To dismiss them as neoliberal agents, or undermine their authority in the water sector, will not make governments abandon them. Public-private institutions are, therefore, vital to ensuring the right to social order that Rousseau alluded to.

Talking about social order, it is interesting to see Ozdemir and Atan (2018:290) rely on several scholars (Jakobwitz & Evani, 2006; Jonason *et al.*, 2009; Paulhaus & William, 2002; Rauthmann & Kolar, 2012) to advance the idea of a dark triad. The dark triad is about three classifications of undesired social personalities, namely; Machiavellianism, subclinical narcissism, and subclinical psychopathy. In other words, the dark triad disrupts social order and is opposed to the ideals of the social contract.

The first undesired personality is Machiavellianism that happen through interpersonal strategies that defend self-interests, deception, and manipulation. Examples include people and companies that can afford to pay for water services but manipulate social narratives of unemployment, unaffordability, and maladministration to avoid paying service charges. On the other hand, the government promotes self-interest by implementing cost recovery policies without considering the financial realities of the water users. The government does not listen to the calls by the water users for alternative payment arrangements like a flat rate versus a consumption-based measure. The companies that sabotage water infrastructure to create an opportunity for themselves to provide emergency water supply through the government tendering system, also confirm the Machiavellian characteristics.

The second undesired personality is subclinical narcissism; a tendency to have authority, status, and reputation; being appreciated; and garnering attention. This is where political entrepreneurs use their authority and reputation as human rights activists to disrupt the construction of water infrastructure, demanding to be included as sub-contractors. Or

those who destroy water infrastructure or disrupt water supply during labour disputes and political competition – using water as a weapon (the weaponisation of water). They jeopardise the public welfare to advance their reputation in society. In the case of Parys and its unfilled water tanks, there are some comments by community members to Mayor De Beer that the burning of the water tanks is a political ploy by people who want to topple her from power. In other words, they weaponised water services for political reasons. The other interpretation in the struggles for recognition is that people believe that the state uses water cut-offs as a weapon to generate compliance (Ruiters, 2002:42). Government by cutting basic services to solicit compliance for defaulting water users is like teaching them a lesson. And building a reputation of the government that does not tolerate the non-payment of services. But there is often discriminatory practice of cutting basic services for defaulting users in historically white communities (assumed to be affluent) while ignoring such strictness for the black communities (assumed to be poor). Thus, cost recovery apartheid is institutionalised.

The third undesired personality is subclinical psychopathy as depicted in excitement seeking, irresponsibility, lack of empathy, interpersonal manipulation, and antisocial behaviours. This is where people simply misuse the water infrastructure by flushing things that do not belong in the sewers, not reporting water leaks, and not responding to reported leaks. Furthermore, by tolerating the poor water quality that people receive and justifying it, even when the people complain that the water is poor. It is about supplying water to companies while adjacent communities do not have water. And manipulating the people by making arguments that the water in certain dams is vital for the economic development of provinces that serve as the centres of economic activity. It is about the irresponsibility of refusing to pay service charges and demanding that the government sustain the water supply at the best standards possible.

2.6 Contractarianism, recognition, and water resources management.

Water is a resource that is essential to human life, the existence and evolution of society, economic prosperity / development, and human dignity. Water has been conceptualised as life and a right by the international community and constitutions of some states (Bond, 2011; White, 2007). Schmidt (2014) relies on McGee (1988) to convey an argument emphasising the idea of water as life, saying “we should treat individual thirst in medical

terms, as similar to a kind of cancer caused by want of water". Following the social contract reasoning, the state takes the mandate of water resource management in the political community (Schmidt, 2014). It is believed that in taking the mandate for managing a public good like water, the state would prioritise the interests of the public and protect access for the poor where private companies would have excluded them (ANC, 2017; White, 2007). In other words, "the social contract is a protection against the failures of market economies" (Healy & Murphy, 2017:8). This idea of water as a community resource inspired the social contract beliefs about the imperative of justice to enable the integrity of persons and safeguard the individual natural right to life. This contractarian essence includes the principle of trusteeship or custodianship and beneficiation (Nyamaka, 2011), which modern states have assumed in the efficient governance of water resources (Ben-David, 2012; Heims & Lodge, 2017; White, 2007).

Hence the relevance of the hydrosocial contract. The hydrosocial cycle accentuates the relevance of water, and further expresses the effect "social, political, and non-human relationships" have on water (Schmidt, 2014:221). It is, therefore, important to locate the significant role that society should have in the hydrosocial cycle, meaning that people have a duty and responsibility to protect the integrity of water resources. The hydrosocial contract is about the mandate the government must provide water to individuals who no longer have the means to amass enough water for their own personal survival, and for which people hold politicians accountable (Turton & Meissner, 2002). Having no means to organise sufficient water may imply a lack of money to pay service charges, geographic formations that hinder laying pipelines, climatic conditions and natural occurrences that make water scarce, or political and policy developments that hinder water access to people. This is where water scarcity is characteristic of the state of nature that is unable to ensure human survival and presents chances for conflict. Therefore, water is a pivotal factor in various human insecurities.

Hence, it is in the contractarian tradition that people would partially give up the right to mobilise their own supply of water and entrust the state with the responsibility. Other than water scarcity, the evolution of the human species and increasing population leads to pollution, which implies that deadly disease outbreaks arise in how people use water and dispose of waste; the condition of sanitation in other words. Turton and Meissner (2002)

locate government / water service authorities, the water-consuming public, and interest groups as the main stakeholders in the hydrosocial contract. “Water now became a commodity that flowed from a tap with the origins of that water being somewhere remote and someone else's business to provide” (Turton & Meissner, 2002). The mandate for the state to provide water for people who have no means to mobilise it for themselves introduces the demand and supply dynamics of hydro politics.

The state as a trustee carries the mandate of providing water services in exchange for a financial contribution from the populace toward the efficiency and sustainability of the service (Ben-David, 2012; Citizens Advice Scotland, 2018). Heims and Lodge (2017) deem service charges determined in consultation with the populace as “a negotiated settlement”. The practice of negotiating service charges is the basis of a social contract in water services, which underpins the water trading and setting water tariffs in, for example, the northern villages of India (Banerji *et al.*, 2010). Water trading is also a frequent practice in South African villages where the government water supply is unreliable or non-existent (GroundUP, 2022). The idea of a negotiated settlement confirms Soderberg’s conscious negotiators returning to the negotiating table and the South African democratic breakthrough of a negotiated transition from the Apartheid regime. In other words, the government has a social contract to provide clean drinking water (Bristol Water, 2019). It is for this reason that water services charters exist in the water sector. The social contract is therefore vital for the resilience of the water sector, enabling the sovereign to compel reciprocity where direct appeal to personal self-interest is not adequate to prevent a free rider problem in the distribution of basic services (Gauthier, 1988).

However, there is often a tendency by the people to protest the stipulations of a social contract for water where payment is concerned. The belief is that water, like air and land, equally represents communal assets or natural property from God and cannot be let into private hands (Contreras & Nava, 2014; White, 2007:4). Therefore, the commodification of water is a sure way to have democratic institutions burst at the seams, which accentuates the often-neglected emphasis on the social contract related to service delivery in South Africa. That is, “people have a contract between themselves” to ensure the sustainability of water supplies (Ben-David, 2012:6). The water sector in the UK is

awaking to the realisation of a social contract for water utilities to put people as a focus of operations (Fletcher, 2015). Hence water companies embrace the social contract for water as a strategy to gain people's faith and trust, which is important for the resilience of the water sector (Ben-David, 2012; Bristol Water, 2019). Gaining people's faith is pivotal to ensuring customer direct engagement and collaboration (CAS, 2018; Heims & Lodge, 2017) because people weigh the extent to which public authorities are "worthy of their" (i.e., people's) trust (Ben-David, 2012:22). Here it is confirmed that a dyadic relationship exists where recognition flows from water authorities to the people, and from the people to the water authorities; a state / institution-people relationship that facilitates institutional trust (Bassam, 2012).

Liberty is another principle of the social contract; therefore, water stands for liberty because a lack of water prevents people's autonomy to realise life aspirations. And more than social and material inequality, a lack of water signifies moral inequality. South Africa has had a long history of inequality, and the discriminatory government did not have an obligation to provide water services to everyone. This is where the farming community paid less for the lion's share of water they used, and the commercial sector also enjoyed sufficient water supply (Turton & Meissner, 2002). In the domestic water use sector, white residents did not suffer from want for water, while black residents in rural and less developed areas had limited and inadequate access to water. This proves the similar case of marginalised communities deprived of access to water and sanitation in the U.S. (de Albuquerque, 2011). Depriving people of adequate water or clean water is a misrecognition because it undermines human dignity and compels some to use unsafe sources of water. People who are compelled to use unsafe water sources have described the experience as *sub-human* because one drinks water with animals (Tapela *et al.*, 2015).

This confirms the significance of analysing water services through the social contract theory since sub-human experiences create misrecognition, as a respondent confirmed "feeling humiliated because of problems to access water" (Deedat & Cottle, 2002:89). Deedat and Cottle's respondents indicated that "they could not bear the thought of continually asking for water and being belittled in the process". Xali's (2002:107) respondents said, "water cutoff diminished their dignity by making them request water

from neighbours”. This shows that a lack of water leads to a wounded psyche that is degrading to human dignity. The researcher has personal experience with the humiliation of asking to use a pit toilet from the neighbours. At times one had to defecate in the bushes because neighbours were not always permitting. They even started “locking the toilets”, a trend that Xali (2002:105) confirms in the Makhaza section of Khayelitsha, Eastern Cape Province. Due to a lack of water, the researcher also had to use a stream and boil water before drinking it at Sonderwater, a then informal settlement in urban Emfuleni Local Municipality (ELM) around 1998.

On other occasions, people complain about water quality and water authorities respond by refusing their claim and affirming that the water is clean (Majola, 2022). This means that people are forced to drink water of inferior quality that they are not comfortable with; it is nothing less than humiliating. A discriminatory practice like supplying water to a mining operation at the expense of a community that is adjacent to the water source is misrecognition (SAHRC, 2021:18). There are views that high tariff rates and water supply cut-offs equate to misrecognition because people who do not have water explore various novelties and eventually consume from polluted water sources (Gasteyer *et al.*, 2016). The resident of Swellendam municipality, Monwabisi Mtyanga spoke about the struggle, saying:

“Out of the 2,500 shacks in the region, only 200 have electrical metre boxes, and there is no water in the informal settlements, where around 20 people share one toilet. As a community, we are struggling since we cannot afford to pay for water or power because the costs are too high” (Payne & Marks, 2023).

Residents of informal settlements are said to suffer from systemic exclusion the most. Guysteyer *et al.* (2016) rely on Rogers and O’Neil (2012:402) to refer to systemic or racialised exclusion from access to water as “passive infrastructural violence”. Such realities have led to the struggle for recognition in the water service sector all over the world as people feel that a social contract breach occurs.

Water service delivery is a significant output and basis to measure government legitimacy because people are quick to protest a government that fails to ensure a regular supply of

clean drinking water. This is based on the understanding that it is more difficult for an individual to collect water, purify and store it personally. Leaving a person to own devices like this exposes them to harm or death when the means to purify water are not available, or in times of drought. A war over limited water supplies is also possible, hence people see it fit under the provisions of the social contract to have the state carry the responsibility of water provision. In this regard, people reserved the right to defend themselves “undertaking lethal force” when the “water industry fails to uphold the rights” of regular provision of clean water (Ben-David, 2012:16-17; White, 2007). But the people’s right to use lethal force is not only related to the water sector’s failure to deliver at expected standards. People can use violence when the water sector introduces water demand management policies that people do not approve of. Arneson (2008:54) correctly maintains that “the theory of justice should address people’s actual quality of life over the entire life course”. It follows that water contributes to the quality of life over the entire life course.

Water governance and provision can provide meaningful lessons about “revaluing disrespected identities in ways that would change everybody’s sense of self” in addition to enabling social cohesion (Fraser, 2006:73). In keeping with the contractarian principle of justice, governments have introduced affirmative remedies that give free basic water and ensure that government takes the responsibility to supply water and sanitation to those who cannot afford it. Transformative remedies are that which put water resources under the auspice of the state and not private hands, ensuring that the water licence regime includes previously denied persons. This is in line with contemporary calls to decolonise water resources.

Water authorities ought to be just because water is a primary social good that people aspire to primarily have. Water is an object of recognition – water distribution should be fair and to the greatest advantage of the least advantaged in society. Access to water is an achievement and induces self-esteem in a person. Hence, the push for decolonised water resources responds to political institutions that fail to guarantee a humane living standard. Polluted water and a lack of access due to unaffordability impinge on the psychological well-being of another. This is not a farfetched idea because researchers have opined along similar lines regarding the private security sector existing in a society

where the social contract is in breach (Castillo *et al.*, 2014). In other words, people procure private security services because the state is failing its social contract duty of protecting life or property. However, “the individual separated from the state is not the same as the one belonging in it” (Ritchie, 1891:658) because that individual loses any basis to claim justice, and even sustaining self-supply of basic goods is not easy because public institutions will not be liable in the case of harm. Globally, the social contract looks towards the principles of sustainable development and utilisation of water resources (WBGU, 2011).

International principles in the social contract for water would include: i) efficient and fair distribution, giving water to all without disadvantaging another, including the environment; ii) access to reliable and safe drinking water or alternative provision in case of interruption; iii) representation and technology choices; plus, redress in user pay options, and provision for free basic water or protection of indigents; and iv) accurate information and billing for service provision. The indigence policy is unfair or translates into unequal treatment at face value because it means that one uses water without paying for it while another pays for the use. Conversely, indigence policies are fair when looked at from Rawls’ difference principle that tolerates inequalities, on condition that they benefit the most disadvantaged in society. The South African principles of the social contract for water include: i) equitable and sustainable use of water resources as a public good; ii) effective management of water resources to minimise conflict; and iii) conservation of water resources (Turton & Meissner, 2002).

The social contract for water services based on these principles is a subject of dispute. Especially when people determine unfamiliar terms of the contract such as rejecting the privatisation of public water supplies, particularly when convinced that market interests are superior to those of the people. The conflict between people versus market interest makes Rousseau’s argument for complete obedience to the general will a curious subject in water services. Those who oppose water privatisation feel that the state is betraying the people and imposing neoliberal policies – which is not far removed from the authoritarian social contract that Bassam alluded to, as mentioned earlier. On the other hand, water authorities may claim to be operating in accordance with the demands of the general will for clean water supplies. Attaching a price to water services would then be a

necessity for the common good of all. The struggles for recognition in water services will endure in the immediate future as the trend of water privatisation expands globally (White, 2007).

Although political theorists say the social contract theory as known today is hypothetical, it is essential to note that the contract manifests in tangible forms like the Constitution and similar written laws (Nyamaka, 2011; Saade, 2015). The contractarian idea of obligation and rational persons in terms of water governance comes to the fore when Locke accepts civil obligations as to “following civil order”, while Hobbes says it is about “complying to the sovereign” (Saade, 2015:86). Rawls considers obligation as “not a personal choice but because all persons agreed to follow them as in the original person” (Saade, 2015:87). It behoves that people respect the laws that government has codified, one cannot say: “I was not there when water policies were written, so I am not bound by them” while expecting to receive help from the service that government provides. Water policies are about social order, or cooperation, rejecting them without comprehensive justification is a return to the state of nature and a disruption of social order. Therefore, as Ben-David (2012) correctly says, the authority of water utilities “exists not because government created [them] but because the people have agreed amongst themselves that [they] should exist”.

2.7 Conclusion

This chapter has explained the foundations of the social contract tradition, along with its key proponents. Theorists like David Hume and Ronald Dworkin find the idea of voluntarily consenting to authority and political obligation problematic because people were born into the domain of an imagined contract that inaugurates a certain regime, in addition, the sovereign is the social institutions and not the person holding that office (Chwaszcza, 2013; Dworkin, 1973; Hume 1739). Hume (1739) believed that government is more about resolving quarrels among people of different societies. Concerning the contract as either historical or ahistorical, this chapter conceives that people have agreed to cooperate and make collective decisions at some time in history; it was not a once-off agreement but an ongoing contract (Ben-David, 2012; Chwaszcza, 2013). Immersed in varying critiques about the conception of consent as tacit or explicit, the social contract, to a considerable extent, explains “political societies as conventionally generated human

creations” (Hampton, 2017:481). Overall, “activities that in the main, endorse the conventions of political and legal systems comprise a tacit consent while active rejection withdraws the consent” (Hampton, 2017:482). It is possible that one resides in a political community, and benefits from the common and essential good but still does not consent to the social contract. Such an example of an individual’s active rejection of a political institution is when the Emeritus Archbishop Desmond Tutu declared on national television: “Mr. Zuma, you are not my president, you do not represent me but yourself” (Desmond Tutu Peace Foundation, 2013:08min). Other active rejections of a social contract are in secession by parties who do not feel they belong to the political community any longer. As a result, they look for alternative “unpurified sources” for self-supply or “ask and beg neighbours for drinking water” (Deedat & Cottle, 2002:89). Collectively, people reject norms that they consider unprofitable for civil society as seen in the “not in my name social movement” as an example (Mahlangu, 2020).

CHAPTER 3: THE SOCIAL CONTRACT FAULTLINES IN SOUTH AFRICAN WATER SERVICES

3.1 Introduction

The previous chapter presented the theoretical assumptions of the social contract, its main proponents, and its relevance in an African setting. The social contract continues to be relevant in modern political developments and is a model of choice to facilitate harmonious relations in the face of political instability. The essence of the social contract is the right to life, the need for security, and the use of reason and not brutality to establish communities of purpose. These elements apply to the logic of recognition when people make claims for the affirmation of their rights. The previous chapter noted that recognition is about being seen or seeing. Making it a dyadic process of the seer and the seen. This is a cooperative or social interaction reality, the same cooperation that establishes a social contract. In modern society and within the logic of the social contract, the seer is the state and the seen is the people. But this process can and should also proceed in the opposite direction of the people being the seer and the state the seen. This is depicted in Figure 7.5 later in this study when the theoretic expansion that reveals the three-way dissent is discussed. This triad of dissent is another contribution of this study at the conceptual level to explain the modes of struggles for recognition at a conceptual level.

This chapter has the social contract framework as a foundation of analysis and builds the argument about struggles for recognition in the context of the water sector in South Africa. For meaningful analysis, the chapter unfolds in four sections. The first demonstrates the culture of contracting or returning to the negotiation table in South African politics. This makes room for a social contract for water in modern South African society. The second section explains the social contract for water in South Africa, based on evidence derived from legislation and other government department reports, including documented commitments by public and private institutions. The significance of the second section is that water is an object that demonstrates the evolution of South Africa's political community and allows theorising the transition from the state of nature to that of civil society. The arbitrary discrimination by a tyrannical regime that denied the natural freedom to access water for sections of the population and the misery it caused points to the historical existence of the state of nature in South Africa. It is against this background

of unethical water governance in South Africa that access to water became one of the signifiers of recognition and legitimate authority after the apartheid period. The third section describes the fault lines in the social contract for water in South Africa. The section delineates responsibilities for the government, the people, and public-private institutions, respectively. The responsibilities are also stated in the legislation. The third section is important to show how and where relevant actors fail in their mandates. The consequences of not conducting the social contract requirements lead to struggles. The fourth section attends to struggles for recognition. It is the thesis hereby, that each actor in the contract for water in South Africa behaves in particular ways to be seen and heard. It is an appeal to a society that is just and guided by enlightened rationality. The struggles for recognition are a call for the implementation of the terms agreed upon at the negotiating table. The outline of the chapter is, therefore, important to evaluate the premise about a social contract breach that leads to struggles for recognition. This will be vital to the discussions about the triad of dissent and prospects for collaboration in re-imagining the social contract for water services in South Africa.

3.2 The culture of negotiated agreements in South African politics

South Africa's political history could be summarised as the long-standing quest for "redistribution and recognition" (Fraser, 1995:68), which has led to a series of compromises at a political and economic level (Zartman, 1991). Hence returning to the negotiating table is a common feature of South African politics (Haysom, 2002; Southall, 1990). In 1902 the Treaty of Vereeniging was an agreement to end war and hostilities between Britain and the Afrikaner republics of the Free State and Transvaal, thereby institutionalising "white settler accommodation" in South Africa (Tafira, 2016:7, 184). The British presence in South Africa was evident in the colonies of the Cape of Good Hope and Natal (SAHO, 2017). The war was in effect a struggle between the Afrikaner republics and the British Empire. The Vereeniging peace treaty would, as of 1902, have the Afrikaners of the Boer republics recognise the legitimate authority of the British throne going forth. The Union of South Africa followed the Vereeniging Treaty, based on the first constitution in 1910, which saw Britain diminish its direct influence in South Africa (Ntlemeza, 2013). The white settler population became a formidable force (RSA, 1996). This was the start of legalised limits on black people's political participation and civil rights.

The electoral victory of the National Party in 1948 solidified the white domination of South African politics and the economy.

The policy of separate development (apartheid) would henceforth define relations of animosity between white and non-white residents (Themba & Busisiwe, 2021). This led to the intensification of the black liberation struggle for the next 45 years (Akiyama, 2021). The second constitution, enacted in 1961, removed the British influence and instituted the new Republic of South Africa's exclusion from the British Commonwealth (Bron-Swart, 2021). The republican government added major limitations on black South Africans. The exclusion of black people in the South African political system was glaring when the third constitution of 1983 created a tricameral parliament that represented Whites and gave limited representation to the country's Indian and Coloured populations (Cloete, 2019). Cloete notes that the tricameral parliament was supposed to be a negotiating forum composed of all racial stakeholders in South Africa although still within the political framework of separate development. In other words, black people were excluded from the social contract and relegated to their reserved homelands to exercise political freedoms there. In the same year, 1983, a United Democratic Front (UDF) was formed where the country's Indian, Coloured, and Black citizens joined hands to oppose the apartheid policy (Gibson, 2011). Anti-apartheid and public service delivery protests would become a norm thereafter.

SAHO (2017) notes that between 1990 and 1992 about 19 political groups committed to political reforms through the first Convention for a Democratic South Africa (CODESA). From this, the multi-party negotiation forum of 26 political groups emerged in 1993 and set the tone for the revised interim constitution (O'Malley, 1999). This would enable a transition from racial subjugation by the apartheid regime to an inclusive non-racial democratic society. These negotiations brought about the fourth constitution that led to a transitional government of national unity and parliamentary reforms (Chitonge & Mazibuko, 2018). The people endorsed the social contract reforms by participating in the 1994 elections. The constitutional assembly worked towards the ratification of the incumbent constitution that was signed into law in 1996. The 1996 constitution encouraged a non-racial society and the right to vote for everyone of voting age (RSA, 2016). In effect, South Africa was committed to typical social contract principles of, for

example, abandoning the divisive past, instituting the state based on people's sovereignty, government based on people's consent, promoting rule of law, improving the quality of life, and freeing the potential of each person (RSA, 1996: preamble). Freeing the potential of people and improving their quality of life is vital for happiness. This aspiration for improving people's quality of life is in stark contrast to the brutish and nasty conditions of life in the apartheid state of nature.

Now it is possible to see the application of Loewe *et al.*'s (2020) typology of social contracts as presented in Figure 2.1. The typology is relevant to South Africa's political reality in that the apartheid government and political representatives sat together and negotiated a new social contract of an inclusive democracy. Also, one sees that demonstrators presented their social contract in the form of the Freedom Charter at Kliptown in 1956 (UNCA, 1987). Eventually, the government presented a new social contract that citizens accepted because it incorporated the interests and aspirations of all people. This was in response to country-wide demonstrations for the recognition of human rights and political liberation. Turton (2016:211) relied on (Gottschalk, 1994; SASS, 1996; Spitz & Chaskalson, 2000) to show that the 1980s demonstrations also received international support, leading to compromise because the Apartheid regime lacked prospects for military victory and the status quo was unsustainable. The political culture of social compacts enabled politics of redistribution to ensure a just society and a better life for all (ANC, 2007). This social contract framework involves the redistribution of values like water, economic development, social welfare, and political participation, including safety and security (Neocosmos, 2002). Hence the main actors in the post-apartheid social compact partnership in the context of South Africa are the "government, the community sector, business and labour" (Bassett, 2004:544). In other words, tripartism was a vital strategy to keep the social contract intact. Therefore, the approach to making social compacts is through representatives. However, the extent to which these representatives are free, moral, and equal, as Rawls said they should be, remains disputed. So is the extent to which the social compacts are made behind the Rawlsian veil of ignorance. Because the tripartite partnership of government, labour, and business has a clear personal stake in maintaining political order for a business to thrive and maintain longevity in power for the governing party (Hermanus *et al.*, 2019).

Figure 3.1 below describes the social contract partners in the context of South Africa. Where the social compact is in operation, the business sector is encouraged to invest in the economy and provide job security and labour, having to minimise protest action and safeguard investor confidence (Dibben *et al.*, 2015). The government would have to protect workers against job losses and facilitate the ease to do business, including policies for improved working conditions and a minimum salary also called a living wage. The community sector has the mandate to abandon informal political participation strategies that were characteristic of the liberation struggle against the apartheid regime. Civil society organisations, as parties to the social contract, would limit protest action at the community level and aggregate people's concerns about service delivery standards, and economic policy outcomes; thus, contributing to legitimating government and its policies. The South African social contract based on the tripartite alliance framework has resulted in the institutionalisation of public dialogue as a preferred strategy to solve the obstacles to public policy. Therefore, the representative system where few people function as spokespersons of government, business, and the government is likely to lead to dissatisfaction among some sections of society who feel that their representatives adopt policies that favour business and political interests rather than resolving structural barriers that trap the majority of South Africans in poverty and breed inequality in society.

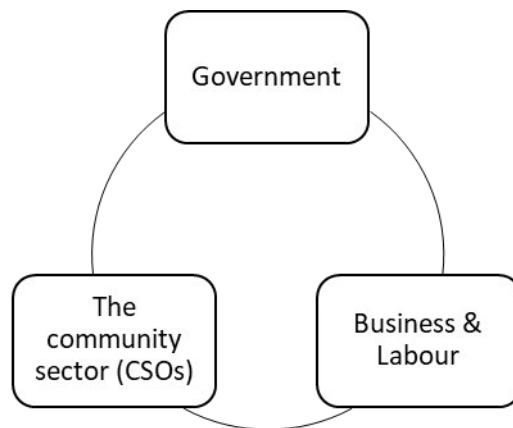


Figure 3.1: Typical social contract partners in the South African context - own construction

Now, Soderberg's (2014) negotiating table for these social contract partners in South Africa is the National Economic and Labour Council (NEDLAC). It is at NEDLAC where representatives of the community sector, business, labour, as well as government, would meet to discuss social, trade and economic development policies and endorse them

(Bassett, 2004; Scerri, 2019). Some have criticised NEDLAC that it is not a consultative and negotiating forum, but a government policy rubber stamp instrument. The other criticism is that NEDLAC is an “invited” and a “closed” space, not an “invented or created space” (Gaventa, 2005:11, 12; Bassett, 2004:544). That means, that not anyone and everyone can participate in NEDLAC processes; entry is by invitation and the process to partake in the forum is less known to the public. In this regard, it is difficult for a business leader to criticise a policy that NEDLAC endorsed and likewise, for a labour union to reject an agreement from NEDLAC. Community organisations are silent in the critical analysis of NEDLAC resolutions (Bassett, 2004). Effectively, organised labour also has little influence in defining economic policy within NEDLAC (Bassett, 2004; Polity, 2017). There are current debates about the inclusivity of NEDLAC and accusations are that it excludes or denies membership of radical voices that could make policy-making difficult (Smit, 2019; Blackburn, 2015). Therefore, it is not possible or that easy for an individual to mobilise a mass movement and protest in South Africa that other civil society organisations support because there might be public statements from political leaders in government like the following:

(T)here...there is a platform for the community sector to voice its concerns on economic issues through NEDLAC and other Parliamentary processes. Organisations that protest are counter-revolutionary and do not want to become part of the social compact that NEDLAC endorsed (Bassett, 2004:545).

This rhetoric of labelling and stigmatising activists as anti-revolutionaries is embedded in South Africa’s political culture under the ANC government (Netshitenzhe, 2021). This is to an extent that NGOs and critical persons outside the state take the fall for raising legitimate social policy concerns (Ndaliso, 2022). This stifles activism and makes people rely on leadership by politicians who are invested in interests that may contradict the general will. The NEDLAC configuration as such is an exclusive platform where government and business “impose policy or engage in empty negotiation” (Bassett, 2004:545). NEDLAC is a corporatist negotiation table where non-negotiable proposals are presented (Ansari, 2021; Kim & Van der Westhuizen, 2018; Oosthuizen, 2021). Nevertheless, NEDLAC is a vital institution for advancing the social contract framework of thinking in practice, in South African society (Bassett, 2004). NEDLAC is, therefore,

pivotal to the social contract tradition that returned as a key or dominant policy-framing mechanism in South Africa in the year 2004 – a decade after the democratic transition (Bassett, 2004).

In the culture of negotiation, most attention and discussions have been on compacts about other things rather than water. One recent compact is related to the 1998 and 2018 job summits (RSA, 2018b) whose job creation commitments remain elusive (Bassett, 2004; PMG, 1999). The 2018 job summit speaks about water stewardship which is about the collective management of water resources by government and business water users. Just as the focus on job creation initiatives in the war on leaks and working for water, the commitments remain top-down approaches where the government assumes more responsibility for water resources management. There is still little emphasis on what role the water and sanitation consumers can play in this. There is no hint of innovation to improve water resources. On the positive side, recognising community-based and owned water schemes for rural areas is commendable, but although mentioned as policy objectives, no practical projects are implanted. The criticism of the job summit outcomes remains the non-delivery of promises. This plays into the hands of criticisms about South Africa having the best policies, but a lack of implementation. To date, the job summit deliverables remain questionable in the face of continued reliance on imports versus local procurement and increasing unemployment along with job losses.

There has been little mention of new social compacting for water resource governance that involves an emphasis on service charge payment or includes efficient use by water consumers in South Africa since the transition in 1994. This brings it closer to home, hence the field of focus of this study is the issue of water governance. South Africa's Constitution (RSA, 1996) and its fundamental obligations stipulate important values that uphold the political community. These values include the following:

Human dignity and equality, advancement of human rights and freedoms, Non-racialism and non-sexism; The constitution will be supreme; The rule of law will be supreme; All adults will be able to vote; There will be a common voter's roll; There will be regular elections; There will be a multi-party system of democratic government to make sure there is accountability and openness (RSA, 1996:1,3).

This study argues that of the above eight founding values, human dignity (recognition) has received little currency in the political discourse. This is strange, because human dignity is key to the essence of South African political disputes – especially about the provision of water services. Tissington (2011) made a bold claim that human dignity is an actual good that the government ought to provide. Such thinking of dignity as a good, reveals how little emphasis there has been on efforts toward the practical realisation of the right to dignity in South Africa. The principle of human dignity promotes an equal claim to freedom and rights, self-respect, and confidence unless any favouritism is to the advantage of the most disadvantaged (Rawls, 1999). One sees that in the context of South Africa's water sector, any favouritism and advantages are not for the benefit of the most disadvantaged and are therefore linked to the claims for self-esteem. Struggles for recognition are legitimate civil disobedience, which means a deliberate contradiction of the law by members and institutions of society with the purpose of changing the policies of government (Delmas, 2016). Yet one observes again that civil disobedience is violent and non-conscientious because people's cumulative choices not to pay for services lead to the collapse of municipalities. It could be said that the South African social contract for water is a result of contradictions in terms of unrealised ideals and practical policy implementation. Whether in talking or protest marches, people want to affirm or call attention to their self-worth.

3.3 The social contract for water in South Africa

The social contract for water in South Africa is summarised as non-discriminatory expansion and distribution of water resources and water governance embracing the principle of cost recovery. Therefore, it is a human-centred, just, and equitable distribution of water as both a common and economic good. It could be that the lack of emphasis on human dignity is based on the belief that the government has made considerable progress to make water and sanitation accessible to the 14 million people without access to water and 21 million without sanitation in previously marginalised communities (DWAF, 2004; Enqvist & Ziervogel, 2019; Nnadozie, 2011). It is as though water issues are done with. However, water governance and the sustainability of the water supply to the citizens are ever as important and relevant in 21st-century South Africa. The efficiency of water services is increasingly becoming a complicated problem because the challenge is about

both access to water infrastructure, and where infrastructure is in place. The question is about water quality. Muller (2017) argues that South Africa is no longer the leading model for the provision of safe water, while Kings (2020) reports that water services are worse than in 1994.

These are the problems the government was supposed to resolve, but there is a permanent backlog where it is not possible to meet targets. It is as though South Africa's water sector is undoing the gains since 1994, effectively engineering a crisis of collapsed water infrastructure through non-payment of services and public sector corruption. It is incumbent that the South African society uphold the articles of the social contract for water to promote a just society going forward. Enqvist and Ziervogel (2019) support this view in their evaluation of justice and inequality in water access and vulnerability. It is worth analysing water services because the South African context of water resources management, before the 1994 democratic breakthrough, reflects the reality of intentional public sector (structural) environmental racism (Gasteyer *et al.*, 2016). Black and coloured South Africans had access to inferior standards of water and sanitation services and infrastructure. That was a result of deliberate urban design, infrastructure development and resource allocation. Deedat (2002:144-145) confirms existing inequality in the water sector by mentioning Northern Cape residential areas that received "virtually no service" and resorted to taking water from the canal, while the "white local authority only serviced white areas". Even when the government started implementing stand taps for water supply, residents received unclean water still, leading to diarrhoea (Deedat, 2002). Jegede and Shikwambane (2021) are of the view that water apartheid persists under the current inclusive democratic regime, which underscores the significance of this study on the social contract for water. Enqvist and Ziervogel (2019:9) confirm these inequalities in their discussion about how the Western Cape Province is "South Africa's most equal province in terms of water access", yet residents in Khayelitsha have no access to running water and toilets. Western Cape is not the only province with such a challenge of inequalities of access, there are more townships without proper access to water and sanitation in other provinces. Bloemfontein in the Mangaung Metro in the Free State province is one area where the lapses in water supply are becoming acute. This is the injustice and inequality that breed struggles for recognition in South African water services.

Below are legislative provisions that confirm a social contract related to water and sanitation in South Africa. The nature of implementing provisions of the social contract determines the extent of struggles for recognition. The apartheid regime was not inclusive and promoted morally questionable policies like excluding certain residents from access to water (Kemerinkl *et al.*, 2011). It cannot be said in social contract terms, that South Africa was a society in the state of nature in the years before 1994. Regardless, it is worth analysing the kind of agreements that existed in the water sector during the apartheid state of nature where the strong oppressed the weak.

3.3.1 The South African Constitution as a social contract for water

The South African Constitution, in Section 3 of the founding provisions (RSA, 1996:3), lays out that “all citizens are equally entitled to the rights, privileges and benefits of citizenship”. Being “equally entitled to the rights” indicates that there is no basis to exclude a citizen from the enjoyment of the rights, unjustly, or without good reason (RSA, 1996:6). Of course, the Constitution does make provision for “fair discrimination” (RSA, 1996:6), which resonates with the Rawlsian principle about discrimination that is to the advantage of the most disadvantaged. The reference of the Constitution to “citizens” implies a social contract in that each adult person consents to keep the enabling documents that the state issued at birth. These documents give access to rights, privileges, and benefits that the political society avails of. This also implies that each adult person who does not have the enabling documents cannot claim the status of a citizen along with the rights, privileges and benefits that status gives. These rights are “the cornerstone of democracy in South Africa”, which the state ought to “respect, protect, promote, and fulfil” (RSA, 1996:5). There it is. Respect or recognition is the essence of democratic expression in South Africa according to the Constitution.

The rights, privileges and benefits include adequate access to water and sanitation. In this regard, social movements have emphasised that the state has a legal obligation to ensure the realisation of these privileges (Bond, 2011). Bond (2011:1) further notes that “in contrast, governments typically dispute their exact responsibilities for water provision and management”. However, Bond’s argument falls away when analysed through the social contract framework because the social contract is not only based on what the citizen receives but what the citizen gives as well. Hence the South African Constitution

(RSA, 1996:3) also lays out that “all citizens are equally subject to the duties and responsibilities of citizenship”. This verifies the social contract theory about people setting up a state with its obligations while the people are in return bound by certain duties and responsibilities to the state. The citizens’ duties and responsibilities include obeying the state’s laws. The South African constitution is silent about payment for service charges or “one’s ability to pay” (Pape & McDonald, 2002:4). However, it is acceptable to think that payment of service charges is one of the citizen’s duties and responsibilities.

Chapter 2, section 10 of the South African Constitution announces that “everyone has inherent dignity and the right to have their dignity respected and protected”, while section 11 maintains that “everyone has a right to life” (RSA, 1996:6). The right to life and dignity are listed as “non-derogable” (RSA, 1996:48). Therefore, the Constitution simply confirms that recognition is a right. This begs the question, of what the place and role of the non-citizen are in the South African Constitution and social contract. The South African Constitution (RSA, 1996:5) declares the democratic cornerstone that is the bill of rights, concerning which “all people in our country” have a claim.

It is acceptable to deduce that “all people in our country” imply both citizens and non-citizens. The non-citizen is thus worthy of the rights and privileges set out in the Constitution as well as the responsibility of obeying the laws of the state. The recognition of human dignity is also intricately connected to “the right to bodily integrity and psychological integrity” as set in section 12(2) (RSA, 1996:6). Chapter 2, Section 24 of the South African Constitution further accepts that the environment can be harmful to people’s health and wellbeing; hence pollution prevention, conservation and ecological degradation are a priority (RSA, 1996). Section 36 in Chapter 2 of the South African Constitution provides for “reasonable and justifiable” limitations on the rights, and privileges that everyone enjoys without undermining human dignity (RSA, 1996:16). In context to water, Chapter 2, section 27ss1(b) of the South African Constitution stipulates that everyone has a right to sufficient food and water (RSA, 1996; Adams, 2018). Although the Constitution does not comment on the quality of the water, it follows that clean and safe water is what is implied here (RSA, 1998:10). The state has a constitutional mandate to see to the realisation of these rights in society at large. The

South African Constitution, Chapter 2, provides for the limitation of rights based on the Section 36ss1 (a-e) considerations.

This study, therefore, adapts those limitations in the context of water services, in that, limitations apply, considering: i) the nature of the right, i.e. water, essential for life, human dignity, bodily security and psychological integrity; ii) the nature, importance and purpose of the limitation, i.e. water supply cut off for non-paying consumers to ensure sustainable or continued future supply of water services purpose of the right; iii) the nature and extent of the limitation, i.e. rationing water flow to provide free basic water or completely cut off; and, iv) harmonise the limitation with its purpose, and less restrictive means to achieve the purpose. It is, furthermore, important to note that water is not among the rights deemed non-derogable in the South African Constitution. This means, there is a constitutional provision to limit the provision of water as a right, benefit, or privilege. The local government sphere has the mandate to provide water and sanitation services in schedule 4, part B of the South African Constitution (RSA, 1996:137). However, the national and provincial governments have legislative and executive authority to ensure that local government fulfils the schedule 4, part B obligations. So, water and sanitation concerns are an intergovernmental responsibility in South Africa. The South African Human Rights Commission (SAHRC) requests annual reports from state organs on measures taken to ensure the realisation of rights, privileges, and benefits of citizenship like water and the environment. But how the SAHRC uses those annual reports to advance human rights is unclear. Because there has not been any announcement by the SAHRC stating its displeasure about the performance of any state organ informed by the annual report.

The right to life and the right to have one's dignity recognised are the foundation of protests or struggles for recognition in water service provision and associated policy decisions in South Africa. The non-availability or poor quality of water threatens one's security and control over their body. Deedat and Cottle (2002) showed how the outbreak of Cholera in KZN between the year 2000-2001 coincided with people having no access to clean water sources due to faulty prepaid water meters, were unable to pay for portable water, and had no option but to take water from the rivers. Struggles for recognition are not only in the form of protest (Ercan *et al.*, 2017; RSA, 1996: S17). People can also

approach the court to enforce the realisation of their rights (RSA, 1996: S38). The South African Constitution does not make any assertions about free basic water, nor does it explicitly prescribe that all citizens have a responsibility and duty to make financial contributions to the provision of water and sanitation services. However, the expectation for water consumers to pay service charges derives from provisions for “revenue-raising measures” to keep sustained operations of the municipality (RSA, 1996:68, 111, 116, 117, 118). The South African Constitution does not contain the phrase, water belongs to all, and the state is the custodian of such water. However, it is possible to deduce from Chapter 2 section 25’s stipulations that “property is not limited to land” and that the state may take “legislative and other measures to achieve land, water, and related reform, to redress the results of the past racial discrimination...” (RSA, 1996:10-11). This is the basis on which one might understand water as property, which the state expropriated in the public interest. However, Pienaar and van der Schyff (2007) clarify that legitimate deprivation of water use allocation cannot be equal to expropriation. This is the premise on which water belongs to all and the state becomes the custodian. In this regard, no one can deprive others of access to water.

3.3.2 The Water Services Act as a social contract for water

The Water Services Act (WSA) (108 of 1997) calls for the introduction of a national information system on water services <https://www.dws.gov.za/niwis2> and further presents a framework for setting up water service institutions including their powers and duties. Under the WSA, local municipalities have the primary function to provide water and sanitation services while the DWS is the supervisor as the principal state custodian of water services (SAHRC, 2014a). The WSA mandates water service institutions to facilitate everyone’s right to access basic water supply and sanitation based on acceptable conditions and an environment that is not harmful to human life and wellbeing (RSA, 1997: S2[a]; S3). It further sets conditions that are fair and equitable regarding payment, limitation, and discontinuation of water services. The WSA (RSA, 1997: S9ss3[a]) highlights “the need for everyone to have a reasonable quality of life” through the reliable supply of a sufficient quantity of water and quality of water. This emphasis on supporting life and personal hygiene is an appropriate social contract principle and intent expression to preserve human dignity.

The one commendable input by the WSA is Section 1(iii) definition of water supply that refers to supplying water to “households, including informal households” (RSA, 1997). This provision is important because it recognises the duty of the government to provide water and sanitation services to informal settlements where people illegally occupy the land. And true to this provision, municipalities do supply water tanks and portable toilets to such settlements. One blemish though is that local government has neglected implementing specific policies to ensure the provision of water and sanitation for homeless people [those living in the streets]. The NGOs that advocate for human rights have also not taken this matter of homeless people seriously enough. As it is now, the homeless rely on water and toilets at taxi ranks [public toilets and taps]. There is something commendable where an NGO called Khulisa in the Western Cape Province collaborated with the Zurich University of Applied Sciences to pilot a closed water system laundry. The laundry washed clothes for the homeless people at a cost of R10 in addition to giving them free showers (Bühler and Barmettler, 2023; Hendricks, 2024). Khulisa is an isiZulu word for nurturing. And as it were, Khulisa is nurturing the human dignity of the homeless people in a manner that the government is failing to. The laundry pilot is an academic and corporate experiment that is unsustainable without government support, therefore, the homeless remain excluded from the water governance regime.

The South African Constitution does not make an express declaration about the human right to sanitation; however, the right is connected to that of adequate safe drinking water and a healthy environment (Toxopeüs, 2019). Hence the relevance of the WSA, which provides the basic standards for the safe removal, collection, disposal, and purification of human excreta in South African society. Under this act, local municipalities must avail sanitation infrastructure and collect faecal waste from households. Be it through water or dry sanitation technology. This means municipalities ought to empty pit toilets, especially in rural communities where there is insufficient water and sewage infrastructure to remove and dispose of human waste.

Government provision of sanitation services is among the worst-performing areas of the South African government because there remain over 14 million people without access to sanitation services. These are the millions of citizens deprived of dignity as they defecate in the bushes and un-serviced pit toilets. Sewage spills in the streets of South

African residential areas are a daily occurrence, while sewage spilling into the Vaal River is one major indication of the social contract breach in the water sector (Basson, 2015; SAHRC, 2014a). Government departments responsible for water and sanitation has been powerless to resolve the sanitation crisis; the best they could do was issue a directive for remedies that municipalities did not implement (Masiangoako *et al.*, 2022). Due to the long-standing failure of municipalities to comply with sanitation standards, public pressure led the finance minister to issue special funds and assign the South African military to resolve the sewage crisis at the Vaal River. The SAHRC (2021) also issued a report about the sewage injustice at the Vaal River. Still, the sewage risks to the Vaal River are not over. The sewage crisis is a national phenomenon with South Africa's rivers inundated with faecal pollution. This kind of pollution might soon overwhelm water treatment facilities (DWS, 2022c). The Department of Basic Education (DBE) is also the culprit where learners have died falling into pit toilets (Odeku, 2022). There is a need for sanitation interventions that ensure pit toilets have ventilation pipes because the widespread practice by residents is to construct basic structures without ventilation or urine diversion, leading to foul smells and an unhealthy environment to live in.

The water governance instrument called the Green Drop report, last published in 2014, shows the dire state of the water sector. The publication of the Green and Blue Drop reports continued in 2021 when Minister Senzo Mchunu took office (South African Government, 2023). The reasons for stopping the Green and Blue Drop evaluations are unknown, and one could best assume this was not a priority of the government in the era of President Jacob Zuma (2009-18). Which also explains the lack of planning as one of the reasons for the dysfunctional and collapsing water and sanitation infrastructure. Even the recent 2022 Green Drop Report shows that the situation has not changed.

A wastewater system is defined as the pipes, sewers, pumping stations, and treatment works that collect, reticulate, and treat wastewater from residents, businesses, and industries before releasing or reusing the final treated effluent and biosolids (DWS, 2023:vi).

South Africa had 824 wastewater treatment systems across 152 municipalities. Most plants are in high risk (259 plants) and medium risk (218 plants), with 212 plants in critical risk and 135 plants in low-risk state. This means that half of the wastewater treatment

works in South Africa were not functioning adequately and needed some form of intervention. Only 60 (7%) wastewater treatment works received Green Drop Certification. Although the Department recently briefed the Parliamentary Committee on Water and Sanitation on the progress of the Blue Drop and Green Drop programmes, no data on wastewater treatment works was provided (DWS, 2013; Toxopeüs, 2019). Contrast this with the recent development, DWS (2022c:x) shows a total of 995 wastewater treatment systems both under public and private ownership. The DWS reports that only 23 wastewater treatment systems received a 90% compliance rate, which is lower than the 60 wastewater treatment systems that got certified in 2013. While 334 municipal wastewater treatment systems are in a critical state (DWS, 2022c:10). A wastewater system that is in a critical state is at less than 31% green drop score, which means “it has failed and dysfunctional” (DWS, 2023:vi). An interesting observation is that 25 of 30 wastewater treatment systems managed by private entities received a rating of over 50% compared to those managed by the government. The Department of Public Works has over 115 wastewater treatment systems rated lower than 50% and 102 of those 115 systems rated less than 31% (DWS, 2022c:x). The better performance of wastewater treatment systems managed by private entities builds a case for more private sector involvement in water resource management. While the poor performance of completely state-owned systems raises concerns about the planning and management capacity of government institutions.

Therefore, there is a 7% deterioration of state-owned wastewater treatment systems which are in high and critical risk of collapse. This is compared to all wastewater treatment systems that have been doing well since the 2013 Green Drop report and are at low and medium risk under private entities (DWS, 2022c:11; DWS, 2014). The overall analysis of the Green Drop ratings between 2013-2021 as a period of institutionalising the reporting instrument shows that the number of wastewater treatment systems at low risk are in decline, and those in medium risk are in decline as well (DWS, 2022c:17). While high risk plants are on the increase, and those in critical risk are on the increase too. The discussion about the Green Drop status of various wastewater treatment systems indicates a serious breach of the constitutional provisions of the state to manage and ensure the integrity of water resources according to the National Water Act. The 2023 blue drop report also shows a worsening situation of the drinking water. There are now

only 26 water supply systems that have an average of 95% compliance [excellence status] versus the 44 water supply systems in 2014 (DWS, 2023). There is also increase of drinking water systems that are in a critical state, from 174 systems in 2014 to 277 in 2023 (DWS, 2023). The problem of deteriorating water quality is becoming even more important considering the overwhelming burden of population growth, coupled with financial shortages, and the effect it has on water infrastructure and its maintenance by the state.

3.3.3 The National Water Act is a social contract for water

Muller and Uys (2006) tell of Jan van Riebeeck's Dutch East Indian Company (DEIC) being charged with the management of water resources in the Cape colony, and as commercial farm interests increased, and the colony expanded geographically, a Heemraad (council of local citizens, serving under the local magistrate) was given the mandate to judge on disputes that included water and water resources. Then, in the 1806 British occupation of the Cape colony, Muller and Uys (2006) report that the British changed the water laws from water as a common good to the principle of freehold, giving the land owner control of the water running on it. This shows the initial trace of the modern understanding of the social contract thinking related to water governance.

The Irrigation and Water Conservation Act No. (8 of 1912) is the first common countrywide legislation regarding water resources, and the predecessor of the institutional water governance that finds full expression in the National Water Act (NWA) of (1956) (Tempelhoff, 2017). There are similarities in the authorisation of various water uses, the water court, water management institutions, information on recorded water resources, and the powers of the state regarding water services. Where the distinction between "public and private water" came with the Irrigation and Water Conservation Act No. (8 of 1912) (Tewari, 2009), the NWA of 1956 re-emphasised it (RSA, 1956:1209). It meant water became private property when a riparian property owner used that water. If riparian water users over-used water upstream there were potential problems. As a rule, that would have given rise to conflict with other downstream landowners and water users. There were also issues that upstream developments affected the water quality and quantity (Simon, 2003). Despite these disagreements about water quality and quantity, the 1956 NWA emphasised that water users owed each other a common law duty of care

(Kanamugire, 2008). This meant that water users had a moral obligation to consider other users' needs, and not hoard all the water to themselves or pollute it or deprive them of access arbitrarily. To deal with water-use issues between (riparian) water users, water courts were used to make judgements.

The management of water resources was connected to land ownership where agricultural use was a priority (Simon, 2003). Therefore, the landowner had exclusive use and enjoyment of water that is found on his land. Also, there was an essence of self-interest in the management of water resources where each person looked for their survival first. Individuals had a greater say and direct involvement in the management of water resources under the 1956 Water Act than in the Water Act of 1998. The intentional or negligent pollution of private and public water, including underground water and seawater, was an offence (RSA, 1956:1231). Reasonable cost recovery for the provision of water and sanitation services was applicable under section 26B (3), section 66, and section 114 of the Water Act (RSA, 1956). Section 66 suggests that there were no user charges for private water.

The service charges were low for the water users who were white (Bond, 2011). In contrast, "black South Africans were highly vulnerable to inadequate water supplies in both urban townships and the segregated rural homelands. The 'Bantustans' had weak or non-existent water and irrigation infrastructures" (Bond, 2011:1). Some irrigation projects were even corrupted for the benefit of homeland politicians. The 1956 Water Act provided for water supply cuts to people who were insolvent or failed to pay for water services. Illegal water abstractions were discouraged by the act as well.

In classic social contract terms, the South African people, since the 1998 National Water Act came into effect, surrendered all their rights concerning water resources to the government. This is confirmed in the National Water Act (NWA) 36 of 1998 which states: "The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic" (RSA, 1998). The NWA aims to ensure "sustainable use of water for the benefit of all". In effect, the legislation with a strong human rights inclination introduced the idea of "water belongs to all people" (RSA, 1998:1). In this regard, the state is a public trustee of the water resources on behalf of all the people (Barlow & Clarke, 2002; RSA, 1998). It also implies the nationalisation of South

Africa's water (Simon, 2003). The rationale was toward greater equity, by overcoming "discriminatory laws and practices that foiled equal access and use of water resources" in the apartheid era (RSA, 1998:1).

Simon (2003:18) notes that black communal farmers did not enjoy sufficient riparian rights, which led to unequal wealth accumulation where "white-owned commercial agriculture, industry and mining altogether accounted for $\frac{3}{4}$ of national water consumption". The other reason for the state's firm control was in the interest of sustainability in situations of increasing water demand, by protecting the quality of water resources using "pollution prevention and cost recovery" measures (RSA, 1998:16, 32). It is worth arguing that the prevention of equal access to and the unchecked pollution of water resources, signifies the state of nature in the water sector. Whereas the local government is responsible for water services as set in the Constitution, the NWA grants "national government overall responsibility and authority over the nation's water resources" (RSA, 1998:1). The NWA grants overall responsibility to the national government, based on the understanding that government at the national, provincial, and regional levels (e.g., catchment), have executive authority over local government's provision of water services according to the constitutional provision in schedule 4, part B. The purpose for which the national government enjoys overall authority and responsibility for water resources is to ensure equal distribution of water in the realisation of everyone's right to food and water and to advance international law obligations. The liberal paradigm imagines water as a human need; South Africa was the first country in the world to pronounce water as a human right in its constitution (Barlow & Clarke, 2002; Bond, 2011). Subsequently many states of the world have followed the South African example.

The NWA qualifies as a social contract in that the state would develop a National Water Resource Strategy (NWRS) in consultation with the people. The water resource strategy is renewed every five years by law and lays out the guidelines and standards for the "use, quality and development of water resources" (RSA, 1998:18). However, the NWRS is not renewed in the cycle of five years. It takes about 10 years to revise it with the first strategy published in 2004, the second strategy in 2013, and the third one was published in 2023 after extensive consultations and deliberations between stakeholders; the next review should occur around 2030. Consulting the people means the will of the people, which

Rousseau alluded to, would shape the compilation of the final strategy document. Hence residents feel hard done having to move from access to free tap water, to prepaid metered taps without being consulted as a community (Deedat & Cottle, 2002; Washinyira, 2014). Deedat and Cottle also found that other residents who had metered taps had their water supply discontinued when they refused to have prepaid water meters installed at their houses. Deedat (2002) also recorded residents in Hartswater and Vryburg who damaged water meters in protest of prepaid water meters. However, Heymans *et al.* (2014) showed how Mogale City residents accepted prepaid water meters and commend the meter for helping save money and water consumption. That there was little opposition in Mogale City against prepaid water meters could be a good indication of how consultation facilitates easy acceptance of alternative cost recovery measures. Still, the activism of the Anti-Privatisation Forum [APF] (2006) tells of another perspective where communities with a more critical political conscience would on ideological grounds oppose cost recovery measures. Nevertheless, consultation is a key to overcoming policy uncertainty in water governance and cost recovery policies.

The NWA further provides for the establishment of institutions that are essential to implementing the requirements of the law within demarcated water management areas (WMAs). The people, organs of state, and private corporates would collaborate through catchment management agencies (CMA) and related local water forums in the management, development, and use of water resources. The CMA would in turn develop a catchment management strategy in consultation and cooperation with local stakeholders and interested people or their representative organisations (RSA, 1998). It is in keeping with the participatory democracy tradition. The catchment management strategy is important. It sets the legitimate “water allocations to existing and prospective users” (RSA, 1998a:12). The issue of water allocations may give rise to disputes where some water users may feel excluded or deprived of access for some reason (RSA, 1998:20). Such dispute arises from prioritising commercial white farmer communities wherein prospective water users get told the water in the catchment is fully allocated (Enqvist & Ziervogel, 2019; SAFLI, 2009b), meaning there is no possibility to allocate more water to another (RSA, 1998:28). A sceptic might argue that the explanation of water being fully allocated for, is one used to exclude emerging farmers, especially the previously disadvantaged (PMG, 2016).

However, there are incidents where established companies faced with the reality of increased water demand run into water shortages to sustain their operations (Marcoux, 2022; Hullet, 2021). And it is the government that refuses to allow water users to construct additional storage dams (SAFLI, 2021a). There are disputes in the water sector that require state, people, and business collaboration to ensure peaceful relations in the water sector. This framework of the state, people, and corporate relations within the WMA enables the manifestation of recognition in the water sector. In response to this, the NWA established an independent water tribunal to hear disputes, related directives, and claims that water management institutions have made concerning water use authorisations and periodic renewal of water use licences for bulk water users (RSA, 1998:64). This means that people will not take the law into their own hands but let the state resolve disputes in the procurement and use of water resources. The water tribunal is the legitimate body to hear disputes related to water use and allocations and is in the same league as the magistrate's court, hence people can appeal its decisions to the high court (Turton, 2016). The tribunal is a vital tool to avoid water users from settling disputes using violence. The tribunal is a proper expression of the social contract principles to resolve contentious matters of lawful water use. The tribunal overruled the DWS and allowed the issue of a previously declined water user licence (SAFLI, 2021). One interesting observation is that the cases at the water tribunal are between the DWS versus companies. There is no indication of a municipality or private company brought before the tribunal by citizens in their individual capacity.

The NWA is about implementing the constitutional provision of the right to food and water. And that is "legal access to water resource for reasonable domestic use, drinking, small gardening not for commercial purposes, and watering animals, recreation, emergency firefighting", etc. (RSA, 1998:10, 94). The water reform that is made possible by the NWA confirms the Hobbesian thinking about reforms. The NWA removed riparian rights that served as an obstacle to access to water for everyone (Turton, 2016). In that case, no single person or a group of people may claim to have exclusive ownership of water resources (Barlow & Clarke, 2002). The water reforms in South Africa embrace the second principle of "fair equality of opportunity and arranging socioeconomic inequalities to everyone's benefit" (Rawls, 1999:107, 53). Section 161 of the NWA (RSA, 1998) is explicit to this effect:

(A) notice, directive, or other document issued in good faith in terms of this Act, but which does not comply with this Act, is valid if the non-compliance is not material and does not prejudice any person (p.68).

This ensures that water is not used for profit – as in the case of indigent communities that are accorded support for service payments, in addition to the free water quota by the government. Striking a balance between making a profit and reasonable cost recovery to fund water resource management is a matter of debate, and that fuels the struggle for recognition globally (Khunou, 2002). The NWA in Chapter 5 lays out provisions for a water strategy that arranges service charges across “different categories of water users”, where social equity is the rationale for differentiated pricing (RSA, 1998:32). Where there are various mechanisms to pay water service charges, the NWA included direct payment by the water consumer in section 56(3)(b)(ii). The NWA further sets penalties for non-payment, which include suspension or rationing of water until charges are paid with interest 59(3)(b). It is worth noting that the NWA does not only procure charges and impose penalties on water consumers, but it also provides financial assistance (RSA, 1998:34-35).

South Africa’s post-apartheid transition prioritised the enactment of legislation for equal distribution of water resources to meet international obligations and future water needs (RSA, 1998). Conservation comes about through upholding the obligation to use water resources in a way that is both ecologically sustainable, equitably accessible, and economically efficient (RSA, 1998). The NWA also instructs the government to keep the ecological reserve, thus maintaining its commitment to environmental protection. The social contract logic, based on the law of nature, dictates that people live in peace with one another while the right of nature warrants a person to pursue self-defence at all costs. Therefore, water pollution through sewage leaks and industrial effluent endangers human lives and disrupts their peace (White, 2007). Soyapi (2017:7) puts it better by saying “polluted water systems that disturb the drinking water of citizens violate the right to a healthy environment, the right to health or even the right to life itself”. Which justifies people protesting violently or through the courts against such pollution. Muller and Uys (2006) show how Jan Van Riebeeck when faced with the challenge of drinking polluted

water that caused illnesses because other sailors bathed and washed clothes in the streams, enacted the law over public streams.

In a way, this was the first social contract for water, to ensure the human right to life. Likewise, denying someone or a group of people access to clean potable water under any circumstances undermines their right to life and propagates them to defend themselves in ways they deem fit, for example, stealing water through illegal connections. These aspects touch on Rawls' conception of the original position of equality, which forms a basis to comprehend the water problems and struggles for recognition in South African water services. Figure 3.2 (below) shows the pillars of the social contract for water in South Africa, which includes the first premise of equality by holding water as a common good. This understanding would necessitate fair distribution of water among all citizens cognisant of the water cycle and rainfall distribution where those with low rainfall should not lack access to water on that account. This would make sustainable use and conservation of water resources imperative to ensure future water security needs in a dry country (Strauss *et al.*, 2021). To ensure water security, incentives for prudent water use are necessary where cost saving comes into play. Hence the implementation of cost-recovery measures in the water sector where law enforcement for negligent water use applies through the user pay principles, and water cut-offs for those who will not honour their water charge debts.

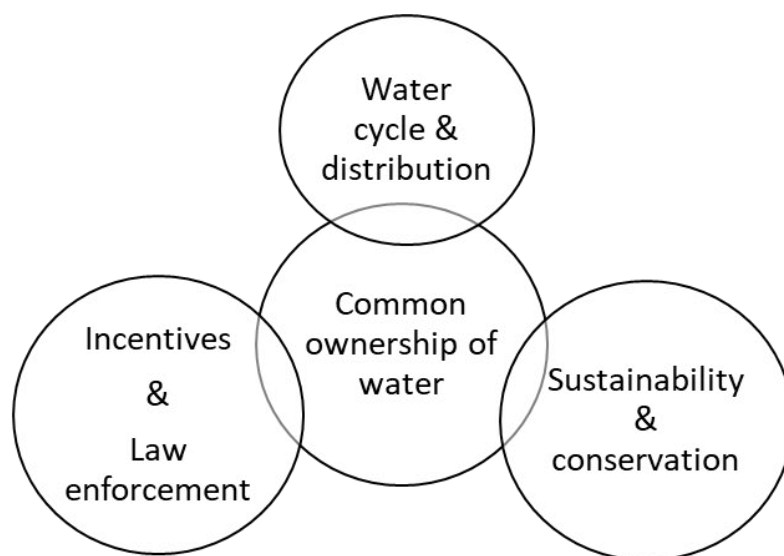


Figure 3.2: Pillars of South Africa's social contract related to water services – own construction.

The NWA also considers it an offence to “intentionally refuse to perform a duty or obstruct any other person in the exercise of any power or performance of any of that person's duties in terms of this Act” (RSA, 1998:66). Municipalities have not considered it an urgent matter to exercise the duty of law enforcement by not monitoring illegal water connections diligently to ensure payment of service charges by those who can afford it. On the other hand, where municipalities act as per duty, it is citizens who fail to perform their duty of service payments by obstructing state organs who go into communities to disconnect illegal water connections or install water management devices (Bond, 2011). Enqvist and Ziervogel (2019) confirm that non-payment for services among coloured and black communities is a challenge that continues to affect post-apartheid society negatively; coupled with the legacy of the apartheid government’s inadequate maintenance of infrastructure in these communities. In other words, the majority of South Africans today do not pay for services because they boycotted payment under apartheid. There are many sewage leaks because of collapsing infrastructure due to age. But these are not valid justifications for the poor state of water resources today in South Africa. The people ought to take some responsibility for not contributing to the sustainable provision of water services.

Before delving into the actual struggles for recognition in South African water services, it is imperative to first comprehend how they come about. These are a result of extant fault lines that precipitate the social contract breach. In other words, if the articles of the social contract are kept, there would be no need for struggles. The social contract “outlines the appropriate relationship between individuals in society, and between them and the State” (Navot, 2013:41). It is a “moral-mental exercise” relating to the values of a just society (Navot, 2013:45).

3.3.4 The Municipal Systems Act as a social contract for water services

The Municipal Systems Act (MSA) of 2000, in sections 4(ss1) (c) and 97(1)(c), provides for municipalities to charge for services and implement differentiated cost recovery measures that have fewer negative implications on the poor (RSA, 2000). A notable feature in the MSA is the clause in section 104(1)(f) that empowers local government to confiscate the property of those who fail to pay service charges (RSA, 2000). Such a provision is intended to instil the necessary fear and alert water users about what to

expect if they do not pay for services. True to the letter, some municipalities have threatened and attached citizens' property for failure to pay service charges (Xali, 2002; Everatt *et al.*, 2006). The MSA, in section 5(2)(6), specifically states that citizens must pay for services (RSA, 2000). This is what the MSA preamble emphasises in saying the local government should "not just seek to provide services to all our people but to be fundamentally developmental in orientation" (RSA, 2000:2). The MSA envisages the active participation of residents in water governance, allowing them to explore solutions and innovations for improved services in collaboration with local government. The MSA is unequivocal in its expectation to have financially and economically viable municipalities. But municipalities have not been innovative in finding alternative strategies to ensure their financial viability because they have not implemented the section 4(ss2) (e) clause about consulting the "local community about available options for service delivery" (RSA, 2000:20). Municipalities could agree to a compromise about service delivery standards and acceptable tariff levels related to water services, but municipalities prefer one-way communication where they tell the community what the charges will be and do not take proposals from the people (Masiya *et al.*, 2019).

3.3.5 The Municipal Structures Act as part of the social contract for water

Section 84(ss1) (b, d, e) of the Municipal Structures Act 117 of 1998 gives the district and local municipality the responsibility for potable water supply, sewage, and solid waste disposal (RSA, 1998; Pejan & Emmerson, 2012). Section 44(ss3) (c) also mandates the municipality's executive committee to improve the efficiency of credit control, revenue, and debt collection services (RSA, 1998). The aspect of public involvement in the affairs of the municipality is also an important one according to the Municipal Structures Act (MSA). The municipal executive committee ought to "ensure that regard is given to public views and report on the effect of consultation on the decisions of the council" (RSA, 1998:42). What the MSA does is affirm the recovery policy of the government, including the expectation for municipalities to hear the people's suggestions about municipal affairs and policy tariffs. Municipalities must show convincingly that they consult, hear the people, and incorporate their views into official policies. This aspect confirms the social contract theory about rational persons coming together at a negotiation table. Public consultation and consideration of people's inputs are essential to prove that people

consented to the official policies the government implements. Without consent, people are likely to opt for protest action because they feel excluded from decision-making processes.

3.4 Fault lines in South Africa's social contract for water services

While the political-social contract enabled a socioeconomic rights reform in 1994 involving specific tariff and subsidy options that non-critical NGOs supported (Muller, 2008:71), the reality and plight of the indigent people revealed the injustice that lack of access to adequate water brings. To this effect, the South African government initiated a policy to supply all South African with a free basic water policy in 2001 (Muller, 2008). Muller (2008:72) reported that where pre-payment water systems were in place, they opted not to use the water and resorted to traditional water sources because they could not afford it. It was for political reasons that the government did not press much for service charges or discourage illegal water connections in South Africa (Muller, 2008:73). The emphasis on free basic water for all created a socially equitable setting that ensures that one cannot and should not be without access to water because they cannot pay the service. The other outcome of the policy is the public perception that is ingrained in the political consciousness of the majority black South African population and critical activist organisations who are opposed to service charges. The third policy outcome is its empowerment factor to citizens and activist groups for rights claiming when the state failed to ensure a reliable water supply for all.

There are breaches in existing laws, as written, or intended, as far as the implementation outcome is concerned. Policy inconsistencies indicate that improvements are needed by way of renewed commitments to perform duties and obligations under the social contract for water. The challenges that exist in South African water governance include: a deficient performance by many wastewater treatment plants; a lack of human resources capacity to implement corrective plans; problematic bureaucratic processes; a lack of planning; vandalism and theft of water infrastructure; and a lack of financial resources to ensure water service sustainability. The following statement made by the Ms Pam Tshwete, Deputy Minister of Human Settlements, Water and Sanitation to the Parliamentary Committee on Human Settlements, Water and Sanitation (PMG, 2020a) summarises the fundamental fault lines that exist in water governance. Deputy Minister Tshwete said:

The Department of Water and Sanitation ... had to take into consideration the current situation, such as the fact that three million households did not have access to reliable drinking water; and 14.1 million people did not have access to safe sanitation; 41% of municipal water did not generate revenue, and 35% was lost through leakage, representing an annual loss of R9.9 billion; 56% of wastewater treatment works and 44% of water treatment works were in a poor or critical condition, and 11% were dysfunctional; an R33 billion funding gap each year for the next 10 years had to be closed through improved revenue generation and reduced costs; only 5% of agricultural water was used by black farmers; and South Africa was facing a projected 3% water deficit by 2040 if it did not successfully implement the planned measures.

These fundamental, bureaucratic fault lines include poor revenue collection, poor infrastructure investment and maintenance, contested public-private responsibilities, and the lack of public participation in the governance of water resources. These fault lines are vital to helping theorise a model for collaborative efforts to sustain water resources. To this effect, trust is a crucial commodity in the social capital of South Africa. Looking at the dimensions of trust, there are several weaknesses in what Fjeldstad (2004:541) presents. First, notwithstanding reports of corruption in government, local municipalities are not entirely redundant to a point of not being able to provide services. What is the primary function of government if not providing public services? It is disingenuous for one to say, *I am not paying my water-use charges because that money will not be used for public services due to public sector corruption*. Not paying water-use charges is not a matter of trust deficit but a simple disregard for law and order. Secondly, the excuse of incorrect billing is not a valid ground for one not to pay service charges because there are mechanisms to challenge the incorrect billing.

A rational person can approach the government to dispute unreasonable water-use charges. The government has customer care centres for people to lodge a dispute, or plead for lenience, as many often do in the event of traffic offences and private service providers. Finally, "to defraud" the public by withholding water use charges "as is by law required, is no sign of prudence, but of want of knowledge of what is necessary for own defence" (Hobbes, 1839:137). There are some residents who do not pay water charges because other people in the township do not pay, or have no water meters installed

(Mavundla, 2016:66). Some are not paying water rates because the municipality is not upgrading water infrastructure (Mavundla, 2016:67). This matter of non-payment is based on the government's reluctance to confront the culture of non-payment that is endemic in South African society. Deputy Minister David Mahlobo, in 2019 explained to the Parliamentary Committee on Human Settlements, Water and Sanitation, that even SALGA and COGTA were covering up for municipalities' non-payment for bulk water supplies (PMG, 2019). The misrecognition of water in human ecosystems constitutes the main problem in water resources governance and service provision.

In keeping with the notion of recognition, practitioners in the water sector believe that water consumers undermine the value of water (i.e., misrecognise water) by not paying service charges (Ruiters, 2002). People tend to reconsider the value of water in times of scarcity, as induced by drought or planned rationing. Hence the policy option of cost recovery from water consumers is not exclusive to South Africa but is a global government practice (McDonald, 2002a). Ruiters (2002) reports that the Argentine and Colombian governments have gone to the extent of publishing the names of defaulting water consumers in the press. The South African state does not readily take unreasonable or unjustifiable measures on matters of access to water and sanitation. The constitutional guidelines allow for making water accessible based on the resources that the state has at its disposal. The government considers the affordability of long-term cost implications for guaranteeing the right to water and sanitation and potential issues of anticipated climate change. The fault line in the provision of water services lies in the systemic inefficiencies that compromise water quality or a reliable supply of water. What is beyond the control of government institutions could be climate conditions like droughts and floods (Mount & Bielak, 2011).

However, with increasing numbers of dams with insufficient water supplies, some argue that water authorities could have made plans to cope with difficult climate conditions and future expansion requirements as the population grows (Turton, 2016; Scholsberg & Rinfret, 2008). The fault lines in the South African social contract for water relate to factors that have "pitted local bureaucrats and politicians against communities and destroyed reciprocity between citizens and the local representative of the state" (Ruiters, 2002:42). The lack of reciprocity and presence of conflict among residents is confirmed by Deedat

and Cottle (2002:89), where residents who have no water, beg their neighbours to share some with them, while the neighbours refuse to share since they find water to be expensive.

3.4.1 Bureaucratic inefficiencies: a key weakness in the social contract for water

The concerns about bureaucratic inefficiencies refer to people's experiences and frustrations about the water governance and management system errors that tend to undo the gains that the government has made in extending water access. Majavu (2020) reports about a resident at Bira Location near Peddie in the Eastern Cape who said "there are taps but nothing is coming out. It will come out after three months and then it is gone again". This is due to water projects that have been implemented but remain inoperable due to faulty workmanship or lack of maintenance (Deedat & Cottle, 2002; Wellman, 1999 cited by Pape & McDonald, 2002). The delays by water authorities to repair reported faults in water infrastructure have led residents to damage water meters to access water (Deedat & Cottle, 2002). Another aspect of bureaucratic inefficiency reflects in the inability of the local government to collect service charges. This is the case where 30 municipalities defaulted on paying water utilities. As a result, water utilities reduced water supplies to municipalities, which resulted in low water pressure for households and eventually some high-lying residents going without water. This administrative error leaves those citizens, who diligently pay their service charges, feeling betrayed or robbed. It follows that local government must implement effective measures as the public authority ought to coerce defaulting residents to pay water-use charges to avoid the apparent injustices or even discouraging law-abiding citizens from paying rates. Government is in this case failing to enforce contracts when defaulters go unpunished. A social contract breach occurs in the case where residents do pay their utility charges, but municipalities fail to provide services as expected. Masiangoako *et al.* (2022) point to about 48 municipalities that have been through successive legal interventions without any improvement in their financial and operational efficiency, which explains the failure to provide expected standards of service delivery.

Non-compliance with water and sanitation standards remain a concern. The water service standards include reasonable access to water set at 25 litres per person per day on-site or within 200 meters of a household; where onsite sanitation is absent, provision of a

sanitation facility and refuse removal to all urban households (Muller, 2008). The implementation of such sanitation policies is poor and undermines human dignity. One example is how municipalities seldom empty the pit toilets in rural areas (Xulu, 2023). Likewise, urban areas that use mobile toilets complain about them not being cleaned (Majiba, 2023). The use of pit toilets is also a contested sanitation option that negatively impacts rural schools (SAHRC, 2021).

Added to this, is the concern about corruption in local government that affects service delivery negatively (Chelin, 2021; Fjeldstad, 2004; Lekubu & Sibanda, 2021; Skenjana *et al.*, 2010). Pejan and Emmerson (2012) detail how a municipal manager went against the tender adjudication committee's advice and appointed a company that lacked proper experience and credentials to do upgrades on a water treatment plant, which was not without adverse effects to the environment through sewage spills. Matlala (2023) reports about Polokwane municipality [Limpopo Province] suspending two municipal officials for irregularities in the section for bulk water-related projects. But the opposition party, Democratic Alliance (DA) was unhappy that only two of the 19 implicated officials were suspended. It shows a lack of commitment to uproot corruption by the municipality. Municipal corruption related to water and sanitation infrastructure is a practice that undermines the government's ability to uphold the social contract (PMG, 2019). Corruption has a ripple effect on the public purse nationally, which leads to service backlogs due to the reduction of funding allocations for local government by the central government (McDonald, 2002b).

Water consumers have included concerns about the reliability of consumption monitoring where municipalities do not do regular meter readings. As a result, there are inaccurate water bills issued to the residents (Ruiters, 2002). The bureaucratic inefficiencies also extend to the local government's administration of the indigent policy system. The SAHRC (2015) found that there is "ineffective implementation of municipal indigent policies" in municipalities across the country. This negatively impacts the delivery of free basic services. Pape and McDonald (2002:5) note the "extremely complex" process of proving one's poverty due to the lack of a common national standard, or a set of criteria to determine indigence. Xali (2002:106), for example, reports on residents whose water supply was discontinued despite having submitted a sworn police statement confirming

unemployment, or even wanting to enter a payment arrangement with the municipality (Jegede & Shikwambane, 2021).

The lack of political will to punish those who can afford to, but are not paying for their water services, is the penultimate flaw in the government's fiscal health (Fjeldstad, 2004). Any disruption of water services will have negative effects on the people. It is, therefore, the government's responsibility to collect revenue. One observes that government officials succumb to political expediency by tolerating excuses for the inability to pay water-use charges. Politicians delight in reporting on the gains of the post-apartheid era, such as facilitating universal access to free water services. Bond (2011), for example, points out:

In the 2000 municipal election campaign, the ANC campaign statement was clear: 'The ANC-led local government will provide all residents with a free basic amount of water, electricity, and other municipal services to help the poor' (p.3).

When making such statements, these politicians seldom explain that the free water component is limited to 25 litres per day per person, or 6 kilolitres¹ (kl); household per month (DWAF, 2002). The water user must pay for the excess. Neither do the politicians indicate that for one to lay claim to free water provision they should register on the indigent population register (Bond, 2011). This is an important thing to note, that free basic water is not for everyone but the indigent. Politicians do not urge the people to pay for their services and the government is very relaxed in engaging civil society movements that advocate free water services. The same movements (the Soweto Electricity Crisis Committee for example) go on to undermine the government's authority by making illegal electricity connections when government institutions have disconnected defaulting users (Fjeldstad, 2004:547; 551-552). As a result, the phenomenon of free-riding is widespread, which indeed perpetuates the culture of entitlement. Social movements, such as the APF,

¹ 6 kilolitres equal 6000 litres.

are quick to protest the government's policies of installing smart water meters, without providing alternatives, to confirm the entitlement (Bond, 2011).

The NWA considers it “unlawful to intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource” (RSA, 1998:66). This confirms the significance of the social contract where lawlessness thrives in the absence of a regulating authority (Fjeldstad, 2004). Turton (2016:217) records an incident along the uMvoti River where the urgent potable water treatment plant ran dry and municipal officials blamed sand miners for diverting the river flow. It implies that water management institutions have not done effective monitoring of water resources to identify any irregularities in the uMvoti River. A similar report provides details on the Kobus Crouse Trust which built two illegal dams to an extent of affecting downstream farmers who had insufficient water for their operations (SAFLI, 2008). In other incidents, the delay to process water use licences leads people to steal water, as in the case of farmers who constructed a dam illegally, affecting downstream water users (SAFLI, 2009a). Yet it is possible to accept that human resource capacity shortages are among the main causes of administrative deficiencies. In some cases, for example, SAFLI (2009c), the government does conduct monitoring of water use and can identify people who take chances altering river banks and water courses without authorisation. This shows that the allocation of more resources for monitoring can lead to significant improvements in law enforcement and good water resource governance. The illegal damming of water is a continuing practice, and it is only when citizens report these malpractices that the DWS responds to investigate and issue directives (SAFLI, 2021b).

Water pollution in the form of sewage spillages is a common occurrence throughout South Africa, yet the DWS has not taken stringent measures to stop the leaks or hold municipal officials responsible for their dereliction of duty. The Matjhabeng Local Municipality is one exception where criminal charges against the municipal manager were brought forward for unlawful sewage discharge or contravening the water act, but the case dragged along with no improvements in the sewage spills (Pejan & Emmerson, 2012). The media coverage of water pollution is pervasive with little coverage of the government prosecuting offenders in the water sector. This silence about criminal prosecutions creates an impression that there is no political will to prosecute companies, municipalities, and

individuals who contravene the water act. The best effort to ensure that offenders in the water sector comply with the water act is through DWS-issued directives (Kanamugire, 2008), which are not often complied with (Herbig, 2019). The DWS seldom pursues criminal charges against illegal practices by businesses. It is encouraging, although a report in obscurity to the public, that there was a report about a criminal conviction against the captain of the Ukrainian registered fishing vessel that dumped sewage in South African coastal waters (RSA, 2018b). This is confirmed in the water tribunal cases where most disputes by the DWS are about water user licence application disagreements or businesses that do not agree or comply with the contents of directives they received.

Turton (2016) shows how the government has neglected its duty in maintaining and implementing new streamflow gauging and rain gauging instruments, a failure that has serious implications for water security and water demand management. Turton's observations show a water sector regressing to primitive stages of water resource management of the 1920s. One makes an unsettling observation in Turton's work, that the drop in streamflow and rainfall gauges occurred in 1990-1994; the period of the political transition and has not increased since. Turton (2016) also notes that there is a significant decline in the availability of qualified engineers in municipal waterworks. This means the social contract for water that South Africa made could be based on insufficient knowledge about the availability of water resources including the lack of technical capacity to make good on the obligations to supply water. The PMG (2020b) reports about the financial constraints that lead to delayed water infrastructure construction that limits bulk water supply to service rural communities without access.

3.4.2 The bane of cost recovery in the water sector

Cost recovery is a fundamental principle in South African legislation related to basic services. Where people refuse to pay for services, or in protest make illegal connections to water infrastructure, understandably, municipalities have explored the implementation of pre-paid water meters to ensure adequate recovery of costs and a more accurate reading of one's consumption (McDonald, 2002b; Xali, 2002). McDonald (2002b:20) makes a valid point that cost recovery is not an easy policy to implement in settings that are "fragmented" or have "no single centre of power". This confirms Hobbes' assertion about the lack of commerce and culture in the state of nature. The social contract makes

it possible to implement practical policies in keeping with human civilisation. One other aspect to consider about cost recovery and income lines is that it is a gross error of judgement to assume that white citizens afford service charges solely based on their residence in town. Many poor whites are not able to afford services and are worth inclusion in the indigents list. A sensitive political activist is woken to this reality and does not make general statements about white privileges in the provision of water services. Ruiters (2002:53) notes that “users are more than willing to approach council offices to reschedule debt when given proper support like having support or advice from the ward councillor”. This confirms the significance of collaboration and dialogues in communities.

The WSA makes a provision that water governance should “not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority that he or she is unable to pay for basic services” (RSA, 1997: S3[c]). The fundamental fault line in the social contract for water in South Africa is people’s reluctance to pay service charges without presenting valid or satisfactory reasons for it (Fjeldstad, 2004). The South African government started in 1995 with a campaign called Masakhane (let’s build one another) with the main objective to promote the payment of service charges toward sustainability and operational efficacy of public services (Pape & McDonald, 2002; Fjeldstad, 2004). Masakhane was vital in the post-apartheid era because most black communities had already embraced the non-payment of service charges in protest of the apartheid regime in the 1980s. At a close look, the Masakhane initiative embodied the social contract principles of reciprocity and collaboration by rational persons in building a desired community of purpose. The WSA (RSA, 1997: S2[c]) provides for the minister of water and sanitation to prevent municipalities from using income generated from the recovery of charges. Which makes it possible to ringfence revenue from water services and allay the fears that municipalities would not use the money to sustain water services. But this policy of ringfencing water revenue can be complicated when few people pay for services (Peters & Oldfield, 2005). Beyond reciprocity, Masakhane was about promoting the people’s duty and responsibility toward the state. The state has an undeniable obligation to ensure the “operational efficacy and economic viability of water services” (RSA, 1997: S9[ss3c]).

In this regard, the people in their reluctance to pay for services undermine the state, and in turn, endanger their well-being when there is water scarcity due to a lack of infrastructure or chemicals to purify water. But municipalities have been inconsistent in executing their legislative and executive powers in cost recovery (CoGTA, 2022; SAFLI, 2021). On the one hand, it is understandable that municipalities did not confiscate property and evict non-paying residents to spare the homeowners' dignity by not leaving them homeless. However, with that, there should have been some political courage to confront those who deliberately avoid paying for services when they can afford them. The MSA, section 4(2)(a) charges municipalities to exercise that executive and legislative favour or prejudice (RSA, 2000). The recent cost recovery campaign by the City of Tshwane under the DA recovered over R300 million in one week, proving that the local governance under the ANC has shown favour to private businesses, universities and other state institutions that were not paying service charges, while implementing cost recovery sanctions on individual ordinary residents. To this effect, the non-revenue collection by the ANC government in Tshwane has resulted in a "R17 million debt owed by customers" (Mohlakwane, 2022). It is, therefore, essential to increase public awareness around free basic water because municipalities just do not have the financial capacity to give free water to everyone despite their affordability status.

The Hellen Suzman Foundation (2018) shows that it is not only individual water users who are reluctant to pay service charges. Companies and state institutions also raised their excuses for not paying as

Slowness in generating invoices or property rates schedules, inaccurate verification and reconciliation, inappropriate billing systems, unreasonable interest rate charges, and reforms in a particular sector negatively affecting another sector;" while private business did not pay because of "irregular billing, incorrect billing, unhappiness with service, high tariffs on-payment for services, and to maintain the sustainability of the business.

The above reasons are similar and do not differ from the experiences of individual households who complain about lack of affordability due to unemployment, while those who are employed are overwhelmed by the increasing cost of living coupled with the above-inflation municipal tariff hikes. Therefore, the common problem that businesses,

government institutions, and individual households share is the expensive cost of service charges. This implies that municipalities must be open to innovative payment strategies where pay-as-you-use is not feasible (Smith & Hanson, 2003; SACities, 2015).

Public awareness should also look to get rid of the fears, stigma, and whatever self-perception that prevents indigent people from registering on the indigent lists. These awareness programmes ought to emphasise a water honouring culture. Brick *et al.* (2017) found that during the Day Zero crisis (2017 – to mid-2018) in the Western Cape people were more willing to modify their water use in the interest of the common good. It shows that with good intentions, mutual trust, and clear communication, people can collaborate with water institutions for the conservation of water resources.

Collaboration is based on the principle of citizenship where a person understands that “when I live my life, it affects others, and to these others, I have obligations regardless of whether or not I know them” (Jagers, 2009:20). Hence the negotiations for the democratic transition in the early 1990s included planning for redistributive policies related to the allocation of basic services under state control or welfare provision for the poor who could not afford necessities (Pape & McDonald, 2002). But to provide water services to the indigent, the state had to take from those who were better off. Thus, cost recovery in public services was necessary. Cost recovery led to the great dissatisfaction of human rights activists and socialist proponents, or the poor communities at the least (Simon, 2003). These critics argued that basic service policies tended to lean strongly along corporatist, or neoliberal lines of cost recovery (Bond, 2000; Taing, 2019; SAHRC, 2014a). The government’s implementation of cost recovery policies has seen people respond unkindly because, they argue that “cost recover has sunk its claws deep into the bill of rights” (Pape & McDonald, 2002:4). This refusal to pay for service charges is the major fault line in the social contract for water in South Africa. The South African Human Rights Commission (SAHRC, 2015) found that:

CoGTA further submitted that there exists a public misconception that Free Basic Service (FBS) is a community subsidy targeted at the poor and in some instances all citizens. However, FBS was never intended to be a general benefit but rather a strategic intervention to assist indigent households out of the poverty trap by removing the financial burden of having to choose between paying for

essential services and committing their time and resources to uplift themselves out of poverty (p.45).

In the following statement, the SAHRC (2014a) notes the discrepancies of unequal access to water and sanitation and takes a pro-poor stance in supporting people who see water as an economic good or commodity serving private sector interests in the government's favour:

The result is that most of South Africa's water is used by business, especially agribusiness, mining, and other industries, at a lower cost per Kilolitre than poor households. By not holding businesses that pollute and waste water to account, government is not protecting water as a basic human right. At the same time, people who cannot afford to pay for water are denied access and their bodies bear the cost through illness, linked to serious chemical pollution. Water should be viewed first as a right rather than a commodity. Private companies contracted to provide access to water should understand this basic principle to ensure that basic access is provided to all households, regardless of the availability of finances (p.14, 18).

In this, the SAHRC affirms the social contract for water being government ensuring fairness by not prioritising commercial interests over human consumption in the supply of water services. Hence its recommendation for cross-subsidisation of poorer districts by well-resourced municipalities to ensure that residents in poor municipalities do not lose access to water services because of their inability to pay. Worku (2018) reports about Madibeng, Mamelodi and Soshanguve communities where service delivery protests are common, and municipalities cannot provide services due to non-payment of service charges. The people in these communities reported that service charges that are over R1000 a month could be too much to bear, while an amount of no more than R700 could be attractive. On the other hand, people prefer government subsidies, or taking from the well-off, to pay for those who cannot afford it.

Pape and McDonald (2002) allude to public sentiments that cost recovery measures are that people get what they can pay for and that the poor communities receive the lowest quality of service. In other words, local government gives priority to paying citizens in affluent communities. Even if one may show faithfulness in paying service charges, the

person who affords service charges would receive low-quality services by residing in the so-called poor neighbourhood. The classic example is where planned water supply shut-offs focus on poor communities. Reflecting on such service provision practices, Pape and McDonald (2002:5) opine that “granting service quality along income lines was a guarantee that apartheid-era living standards would remain intact”. Concerns about apartheid are acceptable, where McDonald (2002b:20) shows that the apartheid regime “heavily subsidised the provision of basic services in white suburbs, industries and homelands” and the overt subsidisation occurred through “rent boycotts” by black citizens in townships.

Having to pay for services at an unprecedented cost in the post-apartheid era could be shocking indeed. That is for both white and black water consumers. McDonald (2002b:27) highlights the “historically unfair” practice of cost recovery as a concern in post-apartheid South Africa. Ruiters (2002) confirms the historical unfairness, after 1994 when water tariffs increased exponentially in black communities that had been poor during the apartheid regime. It meant that people who had fewer means had to pay more. Which explains why “for fear of political reprisals”, the post-apartheid government was not stern to enforce punitive measures such as water cut-offs for failure to pay services (Ruiters, 2002:45).

Hence, it is an important objective that the democratic government that claims to uphold the rights of previously marginalised communities, would implement far-reaching measures to secure payment of services. Human rights activists deride ruthless enforcement techniques like water cut-offs, attachment of property and evictions from households in the name of cost recovery (Fjeldstad, 2004). About “10 million people have had their water cut off and 2 million have been evicted from their homes for non-payment of service bills since 1994” (McDonald, 2002b:22). These are measures reminiscent of the forced removals during the apartheid era, something people did not imagine happening under the democratic dispensation and African National Congress (ANC) government. The historical unfairness in cost recovery measures contributes to the modern debt crisis that municipalities like Fort Beaufort contend with today (Ruiters, 2002). The aspect of income lines has added to debates about cost recovery models. In addition, McDonald (2002b:18) points to concerns that the cost recovery models like the

downward sloping marginal cost curve are such that “those who consume more of a service are charged less” which means that “poor households are penalised on a per unit basis because they consume less than wealthy households and industry”.

On the other hand, McDonald further explains that block tariff models are more affordable and better at promoting conservation practices by consumers. The South African water consumers have complained about high “unemployment” and the inability to afford service charges (Xali, 2002:106; Fjeldstad, 2004:545). As McDonald (2002b:24) shows, citizens are not altogether opposed to paying for services; they “accept the responsibility to pay for reliable, affordable, and good quality services”. Water consumers have called for a flat rate charge that applies to everyone. This is encouraging and implies the potential for people to accept cost increases when they see that government is dependable in its service provision.

Water theft is a phenomenon that rose from cost recovery and water cut-offs (Deedat, 2002). The NWA makes it an offence to “unlawfully and intentionally or negligently tamper or interfere with any water work or any seal or measuring device attached to a waterwork” (RSA, 1998:65). Informal settlements are where tampering with water infrastructure for illegal water connections is common. The vandalism of water infrastructure is also a protest strategy against cost recovery measures (Pape & McDonald, 2002). Residents are quick to embark on violent protests, incinerating houses belonging to ward councillors when government attempts to enforce the law about water water-use charges (Fjeldstad, 2004:553). Non-payment of water services is nothing more than “a dereliction of duty” (RSA, 2000: s5.2.6), leading to the tragedy of the commons (Jenkins *et al.*, 2017:9). The social contract mandate, according to the National Housing Act 107 of 1997 Section (RSA, 1997:9ss1[g]), is that municipalities provide bulk revenue-generating services such as water, and people in return ought to contribute to the revenue-raising service charge payments. It is the duty of the people, according to the Local Government Municipal Systems Act 32 of 2000, to make prompt payment of service charges. The government is keeping most requirements of the social contract for water, but most people in townships are not reciprocating.

3.4.3 The public-private institutions' responsibility

Then there is the problem of the private sector's shoddy construction work and municipal failure to provide reliable water supplies. This has resulted in taps running dry because of water demands that outstrip supply or no water flow at all due to incomplete construction. It is increasingly evident that corporates pursue their interest with little effort to accommodate the people's demands and the right to access water. Muller (2020) compiled a comprehensive report showing the pervasive corruption in the water sector and the impact it has on water services. He writes:

The impact of corruption in the water sector is measured in dry taps, lost jobs, and polluted rivers; many, particularly young children, old people, and those with compromised immune systems, have become ill from drinking unsafe water or their homes, and toilets cannot be kept hygienic (p. 7).

One aspect that the SAHRC (2014a:53) captured was complaints by residents who claimed "there were water pipes installed but the projects were never completed. Now people are being asked to pay R15 per month for the service of water. There was a dam built in Tembisa but there was never water filled in that dam. Now, the community has become impatient and has begun defaulting on the R15 payment". A similar report found that in Marikana informal settlement, the City of Cape Town claimed to have installed 100 communal taps, but an audit confirmed there were fewer taps and that there was no water flow in one of every five taps (Chamberlain *et al.*, 2020a). The residents at Marikana informal settlement had to pay R50 to buy a 25-litre bucket or resort to illegal water connections. The significance of rural water and sanitation infrastructure should not be undermined. The DWS (2022c) shows that most rural municipalities have performed below 50% capacity when measured with the Green Drop criteria.

This is worrying because it implies dysfunctional sanitation services in rural communities. The informal settlements and rural communities are the most negatively affected by water supply outages. These are the most disadvantaged in South African society. The WSA (RSA, 1997) emphasises that fair and equitable limitation of water services should

not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the

relevant water services authority that he or she is unable to pay for basic services (Sections 3 and 4 p55).

There is a need for government and human rights activist groups to have a dialogue about the necessity of cost recovery from the consumers in the water sector. The dialogues, among other outcomes, should lead to a political culture transformation where citizens will appreciate that public service does not fundamentally mean free service, but a service meant to benefit everyone. In this regard, NEDLAC and SANCO are crucial actors. Or an alternative civil society movement should rise, due to concerns that SANCO is now “indistinguishable from government and the [ANC]” (Khunou, 2002:70). Dialogue is a rational activity of critical reflection on the practical problems in the water sector and service delivery (Honneth, 1987). The dialogues are essential for citizens’ participation in policymaking and implementation where they state their policy preferences. It is through dialogue that people and government institutions get to confirm appropriate “values, norms and behaviours” that govern the water sector (van Wyk *et al.*, 2009:2).

The practice of private companies in the construction sector not completing projects is a common one in reports about corruption in South African society. Private companies make their profits but do not deliver on what they are contracted for. This is a serious breach of contract and bears on the general social contract breach where the state fails to provide basic services in the water sector. This abdication of duty by the state to monitor the project deliverables by contracted companies has led to some residents living with non-functioning infrastructure resulting in un-serviced toilets. The private sector in its quest to make profits without providing fair services to the public, is one contribution to the social contract breach in the water sector. More than the social contract breach, the negligence and substandard work by the private sector is degrading the human dignity of citizens. It is nothing but contempt to have received state money and not deliver the service; it is an insult to the people.

This view was reiterated by residents in the Western Cape and other provinces, who complain of poorly erected infrastructure, broken facilities, or facilities in poor working order. Zwelethemba residents complained of blocked drains in their area, which are infested with mosquitoes and other insects. A resident from Mpumalanga complained “there are about 400 toilets built in our area, but they

are not working, persons can [not] go outside to help themselves while the toilets are there, and some of them are locked. The toilets are not well built, and we are afraid people will get hurt, can we please get help (SAHRC, 2014:54).

Regarding water management, companies that partake in public-private partnerships approach their role in a unilateral manner of revenue collection and water provision, and regulation, in short. This way, corporates stand with the government against the people. This is what Ruiters (2002:42) shows concerning the private company called Water and Sanitation Services South Africa (WSSA), which “helped draw guidelines on private-sector management of water and sanitation services and are now helping with a regulatory framework”. WSSA became a regulator and player in that it influenced laws that regulated the private sector’s role in water management and provided direct water services. This implies a conflict of interest and an unfair advantage where WSSA determined legal safeguards for its business environment in the South African water sector. Ruiters’ (2002) documentation of WSSA shows how private corporations went along with the political transition in the early 1990s and established close ties with the ANC, with a view to benefit from policy reforms and actual work opportunities in the new government. WSSA participated in the strategic support of the Maluti-A-Phofung Municipality (MAP-Water) in 2005 and contributed management expertise for operations, income collection, HR (Human Resources) and customer services for the City of Johannesburg in 2001. In these periods, protests related to cost recovery policies increased in both municipalities.

The other dimension is where corporates stand alone to ensure the survival of their operations. The water sector in South Africa confronts challenges from private businesses that have undermined the integrity of water resources in a way that may never be reversed. One example is the issue of acid mine drainage (AMD) (Manders *et al.*, 2009). Hemson (2016) notes the deteriorating water quality connected with the re-use of water where wastewater treatment plants cannot handle pollutants like Cyanobacteria and acidic water. Acidic water comes from decommissioned mine tailing dams where water either seeps underground or floods to surface water bodies, finding its way to the rivers. Public-private institutions, therefore, carry the mandate to ensure the security of the water supply in the context of scarcity.

The reality of water scarcity is something that the public is starting to appreciate. McDonald (2002a) also indicates the growing calls that businesses make for local governments to reduce cross-subsidisation measures that contribute to the high cost of doing business. Large farms and corporates play a crucial role in the cross-subsidisation of water service costs for communities in South Africa (Deedat, 2002). As a result, municipalities are anxious that their cost recovery policies do not chase business away. In this case, the business community is willing to pay acceptable tariffs but not to the extent of them absorbing the financial impacts of “expensive water schemes” on behalf of municipalities (McDonald, 2002b:23). One notable aspect is that the privatisation of water services has slowed down in South Africa due to public pressure against the policy (Mobie & Masango, 2009).

The vision of local government is about

working with citizens and groups within the community to find sustainable ways to meet their social, economic, and material needs and improve the quality of their lives (Pape & McDonald, 2002:4).

However, there is a critical lack of collaboration between citizens and local government for improved living conditions and sustainable service. Ideally, social contract arrangements occur within a framework of dyadic relations as depicted in Figure 7.5. Within this framework, people who are recipients of government water services ought to reciprocate by paying water-use charges to ensure the sustainability of supply. Those who cannot afford to pay water-use charges should voluntarily approach the government and declare penury to receive a subsidy (RSA, 2000: S97ss1c). One will realise that the government does publish an invitation for the indigent to make representations. There would be fewer protests and more operational community structures for service delivery in a setting where there is effective collaboration between local government and the citizenry. But this is not the case with the South African local government, where protests are likely to erupt over water or electricity cut-offs (Ruiters, 2002). Where local government has failed in the provision of water and related services, more affluent citizens and business forums make efforts for self-service. More often, local government does not compensate for such efforts, which creates a negative relationship between the government and the local stakeholders.

3.4.4 Weakened civil society influence in the water sector

The water governance architecture in South Africa is as such that civil society has little influence in decision-making “as equals” except to monitor water use practices (Meissner *et al.*, 2018:116). Given the bureaucratic failures to ensure compliance with the Water Act against polluters, civil society efforts by AfriForum and opposition parties have put pressure by laying criminal charges against municipal officials for water pollution (AfriForum, 2018; DA, 2019). Another effort is through community mobilisation to ensure that municipalities comply with the law regarding the dissolution of municipalities as in the case of Makana in the Eastern Cape Province (Masiangoako *et al.*, 2022). This approach to dissolving municipalities could be effective coupled with criminal charges against municipal managers. Chamberlain *et al.* (2020a) report on the Marikana informal settlement where some residents used the court to enforce the expropriation policy to compel municipalities to take ownership of land that people occupy illegally. This way, the people can force the municipality to provide them with water services without the excuse of being unable to lay infrastructure on private land (Chamberlain *et al.*, 2020b).

Where municipalities have neglected farm dwellers’ right of access to water based on trespassing on private land, the Association for Rural Advancement (AFRA) has taken legal action to protect the right to water for farm dwellers (Chamberlain *et al.*, 2020b). Then there are some prominent organisations like the Groundwork Trust who opposed the DWS on water use licences that endanger the reserve or where there was an inadequate public consultation in the licensing process (SAFLI, 2020). The other popular organisation is the Federation for Sustainable Environment (FSE) which also opposed the water user licence applications citing insufficient notice for public consultation (SAFLI, 2011). The Socio-Economic Rights Institute (SERI) is another organisation fighting for universal access to sustainable water services. Otherwise, university centres are vital in promoting the human right to access water. The Sekhukhune District Municipality opposed a court application by the Centre for Applied Legal Services (CALS) for the municipality to restore the water supply. Both parties came to an agreement that the municipality would provide interim relief by sending water tanks to the community two days a week (CALS, 2015).

This shows that civil society organisations that can afford legal representation have more influence on water governance decisions compared to those community forums without funding from businesses and donors to pursue legal litigation. Soyapi (2017) demonstrates how in Botswana it took donor funding to appeal a lower court decision that would not recognise the right to water. Without such a finding, the affected parties would have missed an opportunity to claim the recognition of their right. This institutional arrangement that makes meaningful civil society activism possible through legal institutions, exacerbates the situation related to domestic water use. At an individual level, the City of Cape Town cut the water supply of a defaulting resident and it took a court decision to restore water to the resident who had a dispute with the accuracy of the water billing by the city (Soyapi, 2017). This case shows that, if the Capetonians did not have money for legal processes, they would have had to live without water when the municipality had decided to cut supply and close any options for further negotiation with the customer.

Where civil society organisations do not have money to defend human rights for water access, protest action is one viable strategy for influence. Masiangoako *et al.* (2022) bemoaned this trend of civil society organisations resorting to protest instead of legal litigation. To this effect, there is only one water-related court case reaching the constitutional court. The report by Jobson *et al.* (2021) about civil society responses during the Covid-19 epidemic has one sentence about people organising around waters. It confirms that civil society organisations had little agency to ensure access to water in time of the Covid-19 crisis. Lack of agency on the side of civil society to defend human rights for water access, may have developed a disdain by public officials towards people who struggle to access water. Deedat and Cottle (2002:95) quote a uMhlathuze Water Board representative who spoke when residents did not have water, saying “these people have been without water for years. They are used to it. What is a couple of weeks to them?” This shows the attitudes of water authorities toward people, which cause water authorities not to prioritise human rights or sympathise with the hardships that people confront in the process of water services delivery. Be it not sympathising with people’s complaints about non-affordability or failing to hurry up in service improvements where people have no water or using unsafe water sources.

As a result, water institutions fail to promote human dignity. Khunou (2002:71) records statements from the South African National Civic Organisation (SANCO) representative talking about how people are “manipulative” and “irresponsible” in their demands related to cost recovery and access to water. This means that people use resources irresponsibly while claiming not to afford service charges at the same time. In addition, people want service delivery policies that suit them as far as when they benefit or receive without giving in return. However, criticisms are that SANCO “lacked an independent political direction” and “offered little assistance in responding to the effects of cost recovery” (Khunou, 2002:70-71).

It is SANCO’s position nationwide, that people pay for water services and that the protest (toyi-toyi) is no longer relevant to the current democratic dispensation (Xali, 2002). The common position among the people is that SANCO is now an institutionalised civic organisation that upholds or promotes unpopular government policies. That is, SANCO stands with the government and not the people. It could be that what SANCO is doing is not necessarily to stand with the government against the people. What SANCO means to emphasise is the need for “civic-mindedness and participation” in the water sector (van Wyk *et al.*, 2009:2). Civic-mindedness and participation are essential to developing “ecological citizens” (Jagers, 2009:18) who are concerned about sewage spills, water conservation, and eradication of water poverty or promoting water justice (Barnett *et al.*, 2005).

Government and SANCO seem to opine that people do not appreciate the value of water, the need to use it sparingly, and the role cost recovery has in making sure that other people, who are currently excluded, have access to safe drinking water. As a result, struggles for recognition are embarked upon at an ideological level by the people outside existing political parties and mainstream civic organisations. The policy position of water authorities and SANCO’s hardened attitude toward the people implies a “lack of legitimacy concerned with common property and natural resources” (van Wyk *et al.*, 2009:2). Because key institutions have set water policy in the name of them being delegates of the people according to representative democratic traditions, the people do not recognise the policies enacted as upholding their best interests. Therefore, a struggle for the democratisation of water is at play.

3.5 Conclusion

This chapter has demonstrated that there is a widespread breach of the social contract in the South African water sector by the people, the government, and businesses undermining the sustainability of water services. This is concerning lack of law enforcement, cost-recovery, and monitoring water infrastructure efficiency. The outcome of this is the impinged human dignity due to polluted water supply and negligent deprivation of people's access to water. Businesses, like residents, have avoided paying tariffs and have negatively affected the municipal revenue collection. The state is set up for failure by trying to ensure water supply for all people when there is no reciprocation through service payment for the sustainability of water resources. In other words, there is a general failure in the rule of law while the social contract is about promoting and protecting the rule of law.

This chapter has established to some extent that people prefer non-payment of service charges, or an affordable flat rate (Xali, 2002). Also, it allows for a reflection with the government that civic responsibility is not only about overdue payments. There surely is a need to come to a new agreement when cost recovery proves untenable but what the new agreement is, will be decided at the negotiation table. Khunou (2002:72) calls for de-commodification where people rely more on the state and less on the market for their survival and provision of basic services, because it is thought that "rights are non-existent in conditions of their unemployment". The aspect of the market determining people's right to access water is confirmed by Deedat and Cottle (2002:89), who speak to a traditional leader that initially supported prepaid water meters in the village, only to realise the flaws this would bring to the residents "because you cannot get water without a card". The dialogues are important to redefine what the customer's or citizen's role is in the context of basic service provision.

CHAPTER 4: THE STRUGGLES FOR RECOGNITION IN THE POST-APARTHEID SOUTH AFRICAN WATER SERVICES

4.1 Introduction

This previous chapter discussed the social contract framework as a foundation of analysis in the context of the water sector in South Africa. This chapter takes from the social contract explanations and the fault lines in South Africa's social contract for water as discussed in the previous chapter. And builds the argument about struggles for recognition in the post-apartheid South African water services. The significance of the post-apartheid era is that water services have in an unprecedented way, become an object of recognition for most citizens who were marginalised under racial discrimination by the apartheid regime. The post-apartheid political reforms are typical of modern societies and within the logic of the social contract, where the seer is the state, and the people are seen.

This chapter submits that each actor in the social contract for water in South Africa behaves in particular ways to be seen and heard concerning the implementation of policies for water services. Struggles for recognition is an appeal by affected parties to prove that their lived realities are not those of a society that is just and guided by enlightened rationality. The struggles for recognition are a call for the implementation of the terms agreed upon at the negotiating table (respect for human rights for example). This chapter is, therefore, important to evaluate the premise of a theoretical argument that says the social contract breach leads to struggles for recognition. This will be vital to the discussions about the triad of dissent and prospects for collaboration in re-imagining the social contract for water services in South Africa, which is a theme presented in chapter six. By presenting the triad of dissent, this study argues that the process of recognition can and should also continue in the opposite direction of the people being the seer and the state the seen.

This chapter is in three sections. The first is a reflection on policy logic that complicates water services. The second is about protest as the instrument of people's struggles for recognition. The protest shows the dimension of people pushing back against the state's

policy options in water governance. Cost recovery policy options that are inflexible, not realistic, or considerate of the people's economic hardships.

The contention in people's protest is, i) that the post-apartheid democracy is doing what the apartheid did; ii) calling the state to protect and promote human rights, iii) demanding the respect of human dignity and the right to live in the face of water services that threaten human survival; and iv) calling for bodily and psychological integrity, which is a matter less spoken about in the water sector. The second section is about the state's dilemma in dealing with society's apathy toward the sustainability of water services. This is important to show the difficult context within which government operates and how one-sided political preferences contradict the principles of the social contract and water security.

4.2 Complicating water services in the post-apartheid South Africa era

If the state of nature comprises conditions that threaten individual life, or if indeed water is life, it is appropriate that the social contract should ensure water security. The state of nature equates to water insecurity, where some people have access to water while others do not because of cultural and economic injustices. Hence, the need for government to take responsibility for the management of water services in the post-apartheid era to avoid arbitrary discrimination or exclusion against other groups. The principle of justice applies today in a South African context unlike when the uneven distribution of water prevailed because of discriminatory apartheid laws and entitlement practices (RSA, 1998). Post-apartheid legislative reforms promote the law of nature instead of claiming the right of nature for a minority in society. Accepting water as a human right, and access to adequate clean drinking water as a recognition claim; rational persons negotiated a post-apartheid settlement with the "desire to do what is right and just" (Rawls, 1999:390). Such a desire follows the approach of "public possession" (Rousseau, 1762:14), or "water socialism" (Monaco, 2006). The significance of this approach responds to the political contention to hold resources such as water under common ownership, as the basis for the right of universal access. Public possession of all the water resources occurred using "the status of majority rule" (Rawls, 1999:313), "not by an empty ceremony, but the only sign of proprietorship that should be respected by others" (Rousseau, 1762:16).

Following the policy logic of public possession related to water resources, it was inevitable that the government had the most responsibility to redress the past inequalities in water services. The post-apartheid regime has significantly changed and improved the material conditions of marginalised communities by restoring their dignity through increased access to water (Muller & Uys, 2006). But increasing and sustaining access comes with costs, which requires the government to make tough decisions like implementing cost recovery policies. Rawls argued for the tolerance of discrimination that benefits the most disadvantaged in society. However, some sections of society believe that institutional discriminatory policies, like reducing water flow, or cutting electricity supply to people due to non-payment of service charges, affect the poor the most. The fact is that more people in poor communities cannot pay for water because they have no income adequate to cover service charges and day-to-day necessities.

The discussion so far has been more about what the government ought to do and is not doing in the provision of water services. The next section is about how the people used ideological reasoning to reject the government's effort of implementing policies to ensure sustainable water services.

Struggles for recognition are “pro-socialist conflicts” by groups who are opposed to one form of exploitation (Fraser, 1995). Bond (2011) refers to water conflicts, or social conflicts surrounding water, which is framed according to the human right to water. These conflicts are what the study considers struggling for recognition because one finds it justifiable to fight when their self-worth is undermined or disrespected. In other words, they fight to affirm their self-worth. Struggling for recognition is also about one's effort to cause the other to see or acknowledge that one's condition and way of life (cultural reality) is not suitable nor fitting for a human being. And in response, introduces remedies. In other words, it is fundamental to human living that all members of society understand that indignity is unnatural to human culture and civilisation.

Struggles for recognition is an effort for one to be regarded as a legitimate candidate by the decision-maker in the allocation of resources. Struggles for recognition in water services as setting a price on self implies that people will not accept the water of inferior quality or exorbitant tariffs of cost recovery.

On the other hand, Honneth (1995:16) emphasises “recognition as a reciprocal effect that underlies legal relations”. Meaning that, by law, the people ought to reciprocate in one way or another for the sustainability of water services. This type of thinking confirms recognition as a mutual process. State institutions struggle for recognition when they cut off water supplies to cause water consumers to realise or reflect on the cost of purifying, maintaining, and sending water to the consumer. It is an effort to have consumers think about the increasing population of water consumers for whom rollout and maintenance of new water infrastructure are needed to supply water and the associated costs thereof (RSA, 1994). The people do not understand water cut-offs as a policy that promotes equity and equality (Corning, 2015:16). This study argues that when opposing the government’s water policies, South Africa’s water sector and social activists have emphasised equality and equity (Flynn, 2005); but they neglected reciprocity [responsibilities and duties of the water consumer].

4.3 People’s protest as a struggle for recognition

Honneth (1995) noted that recognition comprises conflict and reconciliation, hence protests are a vital tool in the struggles for recognition. It is a *modus operandi* of protests to abandon, albeit momentarily, the conventions of ethical life to accomplish the recognition of one’s particularity (Honneth, 1995). South African communities have used their constitutional right of protest (RSA, 1996: S17) as early as 1998 to oppose cost-recovery measures and water disconnections (Ruiters, 2002). Bond (2011) recounts the struggles of residents in Phiri, Soweto to access sufficient water where the City of Johannesburg was backed by the courts to provide water at a quantity that is below universal standards. Bond raises concerns about the rich people and industries having to consume more water than the poor, yet the city implements water demand management measures in poor communities. People who hold this view are aggrieved by this perceived injustice. They argue that the government is failing to progressively realise the constitutional right of access to adequate water.

Effectively the state, through local government and the courts, has misrecognised the people of Phiri, Soweto. Analysing the cons-recovery protests through the lens of contractual relations, one sees the protests are a legitimate response “to all offered transactions with a no” (Honneth, 1995:19). People are saying no to prepaid water meters

and service disconnections that they cannot afford. Muller and Uys (2006:233) concede that “affordability looms large as a determinant in the effect of the means for regulating access to water consistent with the constitution”. The protests are an effort by people to be seen as human beings and citizens first, and not as clients or consumers from whom the government wants to recover service delivery costs. These struggles are forcing South African society from “elementary/natural to absolute ethical life” (Honneth, 1995:19, 24) where people are not willing to accept overt and systemic exclusion and inequalities in the water sector.

The struggle for recognition in South Africa’s water sector is about access to water services. People complain first about affordability and oppose supply disconnections when residents cannot afford to pay. The other struggle is concerning unfair practices in the allocation of water.

Communities complained that while they live next to large dams, which supply mining companies, agribusiness, and tourist companies, they have no access to water. This year, in Madibeng Municipality, local communities protested that while they were expected to go for long periods without any water, wealthy companies did not experience any water cuts. The question is whether water is a right to which everyone is entitled, at least minimum access, or a commodity to which you will only have access if you can afford it (SAHRC, 2014a).

The decision to provide water to companies when residents do not have water for consumption is outright opposed to the legislative provisions to prioritise water for human consumption in times of water scarcity. Hence the people feel the need to protest unfair discrimination in the water allocation. But it is not the people alone that protest, the government is also protesting when it implements the principle of fair discrimination (the user pays principle), cutting services to companies and households that do not pay for services.

The social contract theory of Rawls tolerates fair discrimination, meaning there is fair discrimination in water cuts due to non-payment. This is punitive when one failed to fulfil their civic duty. The South African legislation endorses cost recovery and punitive measures against non-payment. It is against this background that water service providers and authorities emphasise “there is nothing for mahala (free)” and explore the use of

prepaid water meters, despite incentives for the indigent (Deedat & Cottle, 2002:87; Deedat, 2002). This practice of fair discrimination in water cuts is not unique to South Africa.

Ruiters (2002) takes from Herbert and Kempton (1995) to show that water consumers who use prepaid meters in the UK have gone for 24 hours without water, despite legal guarantees of a one-week supply on credit. This implies that people will remain disconnected from water due to a lack of money and that bureaucratic inefficiencies undermine legal provisions that secure access to water for the indigent. Some people justify tampering with water meters by claiming that they cannot afford the payment, instead of applying for a reprieve in line with indigent policies (McDonald, 2002b). Ruiters (2002) records that the culture of non-payment is a simplistic escape; rather, it is mass job losses and unemployment, increase in township water bills, low-income generation, and many people in one household that are the main reasons for service non-payment.

After 1994, racial apartheid ended but South Africa immediately confronted international trends endorsing municipal cost-recovery. In response to this policy, human rights activist communities were of the view that people-centred or community-controlled development is about financial systems that serve the interests of the poor, and not the economic and political elites (Pape & McDonald, 2002). The problem of financial systems that are not in the interest of the people is clear in the “water charges that increased by more than 100 per cent” when the British Biwater company took over water management through a public-private partnership in Nelspruit (Pape & McDonald, 2002:5). This raised concerns about the privatisation or commercialisation of water through long term municipal water management contracts to private companies, in which state agencies converted water into a commodity, i.e., to be sold for, at minimum or, the cost of its production (Ruiters, 2002).

As a result, water was “soon priced beyond the reach of poor households” where “fixed monthly payment rose every year linked to inflation, and had to be paid by the council, even if water consumption declined or consumers boycotted payments” (Bond, 2011:1; Ruiters, 2002:41).

Where the contention included the amount of free basic water and the legality of pre-payment water meters, “the Constitutional court ruled in favour of government allowing for the implementation of pre-paid water meters and 25 litres per person per day” (Bond, 2011:7). Ruiters (2002:41) transcends the framing of water “commercialisation” and argues towards “privatisation” where “private companies enjoy territorial monopoly as sole providers of water” in each area. The protest claiming the state to recognise social rights is made famous by grassroots water activists in Soweto seized on the guarantee to clean water specified in the Constitution’s Bill of Rights, insisting upon a social entitlement to a reasonable supply of clean water amounting to at least 50 litres supplied per person per day, delivered via a metering system based on credit, not prepayment (Bond, 2011:2).

4.3.1 The new apartheid

The people in modern struggles for recognition through protests raise the argument that the democratic government is doing to them what the apartheid regime did (Jegede & Shikwambane, 2021). The significance of this argument in modern South Africa is that black people are still the most affected by lack of access, and it is black communities that are highlighted when the government cuts water supply for non-payment. This has resulted in these accusations that Jegede and Shikwambane (2021) refer to as water apartheid. The Urban Bantu Councils (UBC) in the 1960s had a mandate of movement control removing ‘unlawful’ residents, and ensuring law and order in their areas against which violent protests broke when anti-apartheid riots started (Tafira, 2016). Key to these violent protests was the opposition to rent hikes in Soweto in 1977. The modern reiteration of accusing government officials, or politicians as sell-outs, stooges and collaborators of the establishment started in these protests because the people considered black officials in the UBCs as sell-outs and apartheid stooges. It is based on this historical background that the democratic government of the ANC was reluctant to enforce policies of service charge payments early in the political transition for fear of reviving the apartheid sentiments. It is only in the early 2000s that the South African government started enforcing cost recovery policies by cutting water supply to over 700 000 people for non-payment (Muller & Uys, 2006).

4.3.2 The claim for human rights

There should be no need to emphasise the significance of recognition in South Africa's water sector because South African society and public institutions should already be embracing and prioritising human worth in the articulation of public services. This is especially true, noting that South Africa's political history is filled with cultural disrespect. The SAHRC reports have reported on evidence of the widespread practice of private companies in the construction sector not completing water and sanitation projects. This is a disservice to residents who must make do with a poor and unhealthy environment for living. This is what causes people to conduct violent protests and burnings as they are not happy with the lack of service delivery. More often, people take municipalities as the corrupt agent in these incomplete water and sanitation construction projects. But there is little talk about private sector corruption as the culprit. The other potent question is not looking at municipalities, but the private sector as the culprit weakening the public infrastructure. The obsession with getting more and making monetary profits [pleon] by the private sector that does not serve the public, is the major faultline in the South African social contract for water.

Cultural disrespect [misrecognition] is confirmed by the SANCO representative and a uMhlathuze water board official who said black people are used to being without water for years, and that they are manipulative and irresponsible. These assertions confirm the attitudes that authorities have toward the water consumers, which leads to institutional misrecognition, or what Fraser (1995:71) calls "being routinely maligned or disparaged in stereotypic public cultural representations in daily life". Not only do these assertions deny the other recognition, but they are also "injurious and impair the persons in their positive understanding of self – an understanding acquired by intersubjective means" (Honneth, 1992:188). Impairing one's positive understanding of the self is parallel to a wounded psyche. It is for this reason that the struggle for recognition is about affirming one's honour or defending "the integrity of the person as a whole" not mere "individual assertion of rights" (Honneth, 1995:22).

It is necessary to give due recognition to water consumers and authorities according to their unique circumstances, where citizens under water deprivation, irrespective of their colour, are given priority. Hence the need for more effective implementation of the

indigent policy by municipalities. Another aspect of misrecognition is related to inequalities in the water sector that include disproportionate water use, where farmers use the most water or have the highest priority allocation (van Wyk *et al.*, 2009:10).

Khambule *et al.* (2019:54) note that as of the year 2015, about 80% of municipalities could not fulfil their constitutional obligations related to the provision of basic services. This failure has led to residents living in squalor and dangerous conditions (Masiangoako *et al.*, 2022). Majavu (2020) reports that the residents of Peddie, along with 119 of the 130 surrounding villages in the Ngqushwa Local Municipality, have not had a reliable source of water for up to 10 years, including during the 2019 drought. The CALS (2015) reports that

5,000 households in five villages in Limpopo have been living without access to water since 2009, when the Sekhukhune District Municipality cut off their water supply. The villages of Elandskraal, Morarela, Mbuzini, Dichoeng and Tsansabela have no water even though there is a pipeline servicing a wealthier municipal area nearby.

And in August 2022, the villages were still busy petitioning the national Parliament for intervention in restoring their water supply (Bruce, 2022). It is against this background of water injustices that Jegede and Shikwambane (2021) argue for actions that affirm the personhood of the water users as a response strategy for equality and non-discrimination in South African water services. They call for special measures that accommodate the disadvantaged to access water. One could argue that the government has already supported the disadvantaged through the indigent policy. The problem is that people are afraid of the stigma associated with being indigent in society because they equate indigency with being a lesser citizen (Fuo, 2014:191, 203; Kuhlengisa *et al.*, 2022:116).

As noted in the chapter, there are concerns about people not knowing how the indigent policy works. Therefore, it is incumbent on municipalities to increase the reach of their public education efforts about the indigent policy and activate other civil society networks to find potential beneficiaries of the indigent policy. In this regard, one cannot claim that the contemporary South African government is unfairly discriminating against the disadvantaged in as far as water access unless affirmative action would imply that all

black and coloured people should not pay for water services. This would lead to significant revenue losses for municipalities that rely more on tariffs as a source of income. It is worth saying that the existing issues in South African water services are not deliberate political or legislated discrimination against the poor. The remaining communities without water are in far rural areas without reliable water sources, or in urban informal settlements that make planning difficult to manage (Hemson, 2016; Masiangoako *et al.*, 2022).

Still, these far-placed communities should not be a reason for complacency and tolerating inequalities in water access. Jegede and Shikwambane (2021) correctly argue how the recent Covid-19 pandemic (2020-2022) disparately affected disadvantaged people who did not have access to clean water (Majavu, 2020). Access to water proved very crucial for protecting human life where people needed to regularly wash their hands to minimise the spread of the virus. Covid-19 raised concerns among the South African community about the sudden release of funds to install water tanks to service the marginalised as an emergency response (@DWS_ZA, 2020). Using the moment of crisis to sending temporary water supply to communities that have existed without sufficient water for a long time shows a government turned a blind eye on the people. It is such cases that confirm the argument that the government had breached its social contract duty and forgotten about the people who need water. The Covid-19 water supply relief was coordinated between various spheres of government – and mostly using resources from national government. This implies that local municipalities have failed in their duty to largely supply water services.

The MSA, section 5(1)(b) notes that “members of the local community have a right to prompt responses to their written or oral communications, including complaints, to the municipal council or another political structure or a political office bearer or the administration of the municipality” (RSA, 2000:20). Hence service delivery protests are often people’s efforts to prompt responses from political leaders. But residents do not resort to violent protest alone. Their struggles for recognition have also found expression through formal political action, like taking the municipality to court and filing for disputes (Kretzmann, 2022). The residents at Kgetleng Municipality have taken the council to court and successfully enforced a court judgement that allowed residents to take over the

municipal waterworks if the municipality does not provide water services as per its legal mandate.

This confirms a social contract principle that people will accept and enforce the rights that they have earlier surrendered to the state. It shows that there is a communication breach between municipalities and the people concerning the standard and levels of water service delivery and tariffs. Also, this makes it curious for one to know how municipalities as water service authorities, compile their service charters and the extent to which residents contribute to their content.

4.3.3 The right to life and dignity

The Nelson Mandela Bay Municipality in the Eastern Cape Province was not responsive to disclosing water quality test results when a child had died due to contaminated water and medical doctors wondered how long the incident of water contamination had been taking place before the municipality could caution the public (Ellis & Mehlwana, 2022). In this regard, the municipality had breached its social contract obligation of protecting human lives by letting people drink polluted water. Dayimani (2022) reported about the same incident showing that, in December [2021], there had been 23 children under 5 years treated for diarrhoea and dehydration at the provincial hospitals, and in January [2022], there were 73. That was over two months before the municipality cautioned the public about water contamination. This thing of water contamination occurring and the relevant municipality deliberately not informing the public about it, has also been reported in Carolina in Mpumalanga Province (Tempelhoff *et al.*, 2012). This is a serious thing to look out for when municipalities seem to prioritise their reputation and dignity undermined by poor service delivery over that of the public and their lives.

In their protests for a service that is essential for life (water), four people were killed in Mothutlung, in the North-West Province (SANews, 2014; Muller, 2014). There are other reports of water deaths in the North-West Province (Lewin *et al.*, 2007; Khumalo, 2014). About 13 434 people died from unsafe water, sanitation, and hygiene in 2000. The majority were children under five years of age. Hemson (2016) points to the impact of failure to ensure a healthy environment leads to. Hemson refers to the cholera outbreak in the provinces of KZN and Eastern Cape between the years 2000-2001 where 114 000

people were affected and 260 died. Hemson reports that the people who got affected by cholera were those whose water supply had been cut, due to non-payment and affordability of service charges. Consequently, they had an irregular water supply, and had to use alternative water sources that turned out to be unsafe.

The argument from this case is that municipalities undermine the right to life by cutting people's water because people cannot live without water and are compelled to use anything available for their survival, even when it is not safe. This fact that people could use dirty water while clean water is available, shows that the government prioritises economic return from service delivery instead of human dignity. It is a bad report card about the South African social contract for water, which neglects human security. However, there is a positive response to the human threats that the cholera outbreak presented in the period 2020-2.

The Regulations published in April 2001 (at the time of the KZN cholera outbreak) requiring a defined volume of free basic water were undoubtedly influenced by the cholera epidemic and have led to improved access (Hemson, 2016:28).

It shows that the South African government is responsive and took a firm position to guarantee a specific quantity of drinking water for the vulnerable. There is no greater pride than a government that is willing to forgo monetary profits to protect the most vulnerable in society who cannot afford the payment of service charges. This guarantee of water for the vulnerable is important because rural communities in any South African province are the most vulnerable to waterborne diseases and their children are at risk of losing their lives as a result. But legislation and practice do not always correlate in South Africa.

Hemson (2016) refers to more cholera outbreaks, one at Delmas in 2005 caused by poor management of water treatment works; and another at uKhahlamba in 2008 due to drinking water contaminated with *E. coli*. Nowicki (2018) reports unsafe levels of *E. coli* in Makana's drinking water, leading to outrage among residents and water supply disruptions four to six times a week. Following the Delmas incident, the government launched the Blue and Green Drop programme to monitor the potable and wastewater

quality to minimise risks to human health (WRC, 2014:8). The introduction of the Blue and Green Drop programme has raised awareness about the need for empirical narratives that bemoan poor water quality processes and to maintain water services at a desired standard. The programme did not improve water services but revealed the dire state of increasingly unreliable water infrastructure. The DWS could not compel municipalities to uphold the water service standards. One can accept that the Blue and Green Drop programme is a diagnostic tool for use in planning interventions for the future water management. This study notes the need to revitalise the Green and Blue Drop reporting to encourage people and municipalities to embrace a water honouring culture. The DWS (2023) at the time of writing this study had issued a Green Drop watch report, which is a confirmation of Minister Senzo Mchunu's commitment to ensure the continuation of the monitoring tool. And a sign to improve planning for the water and sanitation infrastructure investment. The Green Drop watch report emphasises the need for increased private sector investment in water resource project (Ensor, 2022). The government is reinstating the blue and Green Drop programme after the period of neglect and the 2016/17 reports were not published to the public (DWS, 2021). The most recent Blue Drop report also acknowledges the vital role that collaboration with the private sector can play in improving the municipal capacity to supply better water services (DWS, 2023:537).

Political parties are like ephemeral rivers in South African politics, active during the electoral season and dormant when in power. Likewise, the political party in power escalates service delivery to win political support, hence the people complain that politicians remember them only when it is election time and forget about them when in power (Tempelhoff *et al.*, 2019:78). Chamberlain *et al.* (2020a) report about the Marikana informal settlement, saying:

With regards to sanitation, following the local government elections in 2016, the city erected 371 chemical toilets along the roads on the edges of the settlement. These latrines were located far from households in the centre of the settlement and their location along public streets made privacy impossible. The chemical toilets are ubiquitously disliked by residents and, because of their distance from households as well as their exposure to passing cars and pedestrians, most people did not use them at night and were reluctant to use them at all (p.10).

The court condemned the City of Cape Town for “demeaning the humanity” of the Marikana informal settlement’s residents by calling them land invaders and not exploring meaningful means to provide them services (Chamberlain *et al.*, 2020a) when the toilet politics played out in 2016. Tempelhoff (2012) also documents the countrywide toilet election where politicians used sanitation to win the hearts and minds of voters .

4.3.4 Neglected right to bodily integrity and psychological integrity

The previous chapter has established literature evidence about the lack of water as a cause of a wounded psyche. The right to bodily and psychological integrity is not mentioned in the same breath as access to water in the Constitution, although people go through pain to access water. Chamberlain *et al.* (2020b) talk about rural residents in the KZN Province who had to travel 500 meters to fetch water from a communal tap found downhill. This takes a toll on the old and weak who must push water buckets to their homes at the top of the hill. Another example is the account of residents at Greenbranch farm in KZN Province who went through the mental stress of dealing with a farm owner who switched off the water supply, without notice, and prohibited the digging of pit toilets. The farm owner told them to defecate in the sugarcane fields to fertilise the crops (Chamberlain *et al.*, 2020b). The implication is that people are denied the dignity of relief in the privacy of a toilet and forced to relieve themselves in the bushes, endangering their lives when they must go at night. These cases confirm the practical correlation between access to water, or lack thereof, with bodily and psychological integrity. And as Chamberlain *et al.* (2020b) observe of the farm dwellers’ experiences:

There are no lights in the sugarcane plantation and the open latrines that they are forced to use are unhygienic, smelly and attract flies and other vermin. Women experience humiliation and impairment of their dignity as they do not have a proper place to dispose of their used sanitary towels. There is also no refuse collection service (p.11).

Water cut-offs have physical and mental health implications (McDonald, 2002b). Xali (2002) interacts with respondents whose response to water cut-offs is tantamount to being killed alive. Majavu (2020) captures the exasperated resident who said,

Only 11 villages have active water running. We can't comply [with lockdown] by sitting at home because we can't sanitise and wash our hands. We have sent numerous letters and emails. *No communication, just being brushed off like we are nothing...* [italics added].

This account of the perception of being brushed off, like they are nothing, confirms the idea of misrecognition that this study is concerned with, and as stated, misrecognition violates human dignity. Being brushed off is experienced when people feel like their dignity is something to be bought. ActionaidSA (2018) reports about a community in Lephalale where the resident explained that

(T)he water we drink is not clean, we get sick, our leaders are bribed, and they are filling up their pockets, the mine caused the informal settlement, and they should not hire in contracts because local people are left unemployed.

Muller (2020) commented that corruption in the water sector has resulted in deaths. While it is common to hear about corruption that delays the delivery of roads and electricity infrastructure, only in recent times the aspect of water sector corruption came into sight.

Village taps have run dry so that councillors and their friends could get contracts to truck water. Construction of a dam to provide water to Gauteng has been delayed by years, in part because a minister sought to change procurement rules to benefit her friends. In the Western Cape, the raising of the Clanwilliam Dam, which would create thousands of new farming jobs, has been delayed for similar reasons (Muller, 2020:7).

The rampant corruption that delayed water projects, has led to service delivery protests. Unfortunately, the police are quick to respond through violence as people express their frustrations. Majavu (2020) captures a resident's experience that included an offensive word to show how the state represented by the police officers addressed them during a protest for water:

They said we are heartless, we are everything. They pulled us ... I had to grab the police shirt and I couldn't move. I was in pain. They didn't care. They were swearing at us in Xhosa, saying *niyasinyela* [you are taking us for shits]. And

then they told us they had the right to do whatever they want because we are intimidating them. Mina, I feel like I am still under the apartheid government.

The above excerpt shows a person who is violated physically and mentally while protesting for a basic right. It shows that the police had no interest in talking with the people, nor consider the physical injuries that had already experienced. This study already alluded to Advocate Mpofu's argument that not talking to people is an affront to their dignity. This is the sentiment that Majavu (2020) expresses, of distraught residents who argued that the police had undermined the important cultural concept of respect by opening fire without first discussing with the protesters. The resident said:

It is a dehumanising issue and when we try to get our voices to be heard, our rights are violated, and we are abused, and we are sent off like dogs. All we are asking for is life. We are asking to live.

The violent police responses also violate people's bodily integrity. One popular example is the killing of Andries Tatane in 2011 whom the police shot during a water service protest in Ficksburg (Knoetze, 2021). Majavu (2020) also reports on a similar experience of bodily harm that people suffered under the police during protests for water.

One sees a phenomenon in South Africa where residents resort to using borehole water instead of relying on municipal supply. In effect, such residents do not seek government permission to sink the boreholes, a phenomenon popular in rural areas and now appearing in urban areas. This choice to use boreholes could be inspired by people's feelings that the government is unable to provide efficient water services (Grönwall & Danert, 2020). Some residents do not pay water use charges because they are confident that government will not institute considerable punishment against them. The most familiar mode of protest in South African water services entails violent protest in an angry response to a negligent government that hinders the people's dignity and opportunity to lead a better life. They feel insulted that the government expects them to make do with inferior water supplies.

4.4 The dilemma of civic apathy toward sustainable water services

The sense of an impending water crisis trailing the energy crisis in South Africa is not that unique a phenomenon. Countries like Pakistan also go through the same, and in addition, the residents also feel that the wealthy and political elites are immune from the impact of the crisis because they can buy their way out of scarcity or use political power to secure their comfort. The problem with this sense of crisis discernment is that people place more responsibility to develop solutions on politicians and not on residents who are primary consumers of public services.

History shows that apathy is the final frontier before anarchy sets in. Pakistan is hurtling towards anarchy on many fronts, which is directly affecting our social, political, and economic well-being. One such front is the water calamity that is descending upon us. From the mighty ranges of the Himalayas to the coastlines of the Arabian Sea, the water crisis in Pakistan has reached a critical stage. It is much worse than the energy crisis, which will seem like child's play when compared to the water predicament. On the one hand, the awam is crying aloud in pain or silently suffering due to hopelessness while on the other, this same awam is in a lynching, attacking, and destroying mood. Yet the movers and shakers of Pakistan continue to display that very Pakistani of traits: dekha jai ga [let's see]. Water protests have recently erupted in Karachi, Hyderabad, Khairpur, Jacobabad, Sukkur, Dadu, Quetta, Multan, Faisalabad, Lahore, Rawalpindi, Abbottabad, and Peshawar. That is more than 50 per cent of our population up in arms against water shortages and the cost of water. Farmers are protesting elsewhere. And what has the government done in response? Zilch. This is apathy at its peak (Ashir, 2017).

The above excerpt shows the people's typical protest responses at the sight of public crises like water, food, and energy shortages. Unlike Ashir's assertion, the correct question is what have the people done, not the government, in response to water shortages? The common argument in the South African water sector's struggles focuses on people's inability to afford payment for water services and has put more attention on the constitutional provisions for everyone's right to access water. The proponents of the human rights campaign have intentionally ignored the subsequent provision of the government availing access to water "within its available resource" (RSA, 1996: S27ss2).

As Bose (2021), Gupta (2022) and Ashir (2017) accurately say apathy is leading to a water crisis. There is intellectual apathy, service payment apathy, political apathy, reciprocity or volunteerism apathy, and water apathy in South African society.

4.4.1 Intellectual apathy in South African water services

Recently the Auditor-General of South Africa (2022:40) cited internal capacity in critical positions, which hinders the ability of municipalities to monitor projects and manage public finances. Intellectual apathy has strengthened the anti-apartheid political culture of non-payment. It could be that the general impression among the people is that the government cannot disconnect water access. This guarantee of access should not be used as an entitlement but as the privilege that the democratic dispensation bestows on the people. Rational persons ought to be cognisant that the constitutional guarantee for access to water is based on government-available means. Meaning that municipalities can reduce the water quantity based on a lack of resources to supply water. South Africa's culture of non-payment in the water sector has led to the failure of useful initiatives like the Masakhane campaign that was intended to promote water sustainability (Corrigan, 2023). Next to this is the confusion about how to best implement the indigent register. Wafer *et al.* (2008) make an interesting observation about the indigency policy benefits being only available to property-owning account holders, which excluded the non-property-owning residents who need help the most. Wafer *et al.* (2008) poke at the intellectual reasoning of indigency policies that serve already advantaged people. This is contrary to the social contract logic of prioritising the most disadvantaged in society. The constitutional provision for the government to realise the right to access water within available resources implies that the government cannot distribute all resources to extend water access without affecting the provision of other human rights negatively. President Nelson Mandela outlined government's measures way back in the 1990s:

In the first two years of our democracy, we sought to use the special mechanism of a so-called RDP Fund to lever changes in the patterns of departmental spending. Today this task is built into the normal functions of all departments. Reprioritisation and more reprioritisation is the challenge that we shall continue to grapple with in the coming years. For if we should not and cannot cut down on houses and clinics being built, on the supply of water, on improving the quality

of education including the building and equipping of schools, on improving policing and so on, then we must cut down elsewhere (Mandela, 1998).

That means South African citizens need to understand that the government cannot put all its resources into water provision and let public health and education collapse due to lack of resources. As the social contract theory puts it, rational persons consider their environment and interpret the threats to human survival. They later propose viable solutions to the threats identified. Meissner *et al.* (2018) point to an area that rational persons can maximise, that is integrated planning and coordination between different municipal departments or water institutions to increase capacity and enhance infrastructure maintenance. This cooperative management approach could see municipalities collaborate with private companies and colleges in their jurisdictions to develop innovative solutions for the operation, maintenance, and security of critical infrastructure. It could be that such a rational conversation did not gravitate into the social imagination of South African society. The cost recovery policy and cooperative governance approach in the water sector is a rational strategy to augment the government's available resources to ensure the continuation of water provision, including expansions of water infrastructure for people who do not yet have access to water services. If people can accept this, it is possible to make progress in the sustainability of water services in South Africa.

With this, there should also be a commitment to “ending impunity, instilling a culture of consequence, and making the water sector an island of integrity” (Muller, 2020:8) for people to trust the government. This way, political leaders should not normalise permanent spending in the procurement of water tanks and use mobile water services needlessly (Meissner *et al.*, 2018).

The political apathy in water services and leadership needs political leaders to go beyond mere expedience and overcome the practice of not adhering to good governance principles. The lack of a vision of water as a common good has ingrained political apathy among residents. If people treasure access to water so much, they ought to have the imagination to analyse what causes taps to run dry in communities that already have water infrastructure installed, and what the future implications of this are. They would realise the need to prevent water leaks, explore alternative options for payment of

services, and conserve water use in the wake of shortages due to climate change conditions and increased water demand. They would unite against criminal elements that vandalise water supply infrastructure and ensure water security in communities where water pumps and power transformers get stolen at water purification plants (Meissner *et al.*, 2018:116). Political apathy has allowed runaway corruption in the water infrastructure construction sector to the extent that there is no return on investment for the money spent (Muller, 2020). The state will have to start afresh making payments to lay new infrastructure. This political apathy by both state institutions and the private sector proves that South Africa has no common vision about the kind of water or public infrastructure that needs contracting for posterity.

4.4.2 Lack of reciprocity or volunteerism in South African water services

Contracted companies that do not complete the projects they are paid to do, coupled with public vandalism of water infrastructure, are constructing South Africa into failure. There is no real mobilisation of people's attitudes and behaviour towards honouring water (Njoku *et al.*, 2022), protecting critical infrastructure meant for water supply. There are no meaningful conversations with people at a ward-based level for them to appreciate the meaning of South Africa as a water-stressed country. Municipalities in their political apathy have not intensified the MSA, section 6(2)(b)(c) on "facilitating a culture of public service and accountability among staff and take measures to prevent corruption" (RSA, 2000). Hence the South African public sector is famous for incompetence and tolerating corruption (Everatt, 2021), with no effort to ask for people's collaboration to ensure the sustainability of water resources.

The other manifestation through which the people do not reciprocate the state's efforts in water management is the rejection of credit control efforts. And the people justify their rejection of a social contract breach. A social contract breach also happens when there is insufficient public consultation. Hence residents feel betrayed having to move from traditional reactive metering to prepaid metered taps without being consulted as a community (Deedat & Cottle, 2002; Washinyira, 2014). Deedat and Cottle also found that other residents who had metered taps, had their water supply stopped when they refused to install prepaid water meters at their houses. Deedat (2002) also recorded residents in Hartswater and Vryburg who damaged water meters in protest of prepaid water meters.

However, Heymans *et al.* (2014) showed how Mogale City residents accepted prepaid water meters and commended the meter for helping save money and water consumption. That there was little opposition in Mogale City in Gauteng's West Rand region against prepaid water meters, and it was said to be a good sign of how consultation eases the acceptance of alternative cost recovery measures. Still, the activism of the APF (2006) tells of another perspective where communities with a more critical political conscience would oppose cost recovery measures on ideological grounds. Nevertheless, consultation is key to overcoming policy uncertainty in water governance and cost recovery policies.

4.4.3 South Africa has no water honouring culture

Water apathy is the fundamental threat facing South Africa's water security. Some may criticise the government for not doing enough, yet the government is not the water consumer per se, the government is not the one making illegal connections. Residents ought to recognise the role they play in water losses and weaken the ability of municipalities to supply services in the long term. If the government has no financial resources to fix the infrastructure breakages, ordinary citizens must step in, either by finding the repairs or volunteering their skills. South Africa needs collaboration between the people and government to reduce the threats to water security. This is what the Masakhane Campaign intended to do; such a spirit of collaboration is important also to highlight that government officials are not deliberately ignoring the people's plight for water but are working under frustrating conditions. Majavu (2020) captures a Ngqushwa Municipality mayor, Sanga Maneli, who said:

There is no silver bullet for the issue of water. It is a crisis, a disaster that we all face, so we can't say we will do this, we will make rain come down. There are technical issues ... areas with faulty reservoirs. Our government must work with speed to ensure that we fix that. Those are the things that we can do. We will fix what is faulty and let other things be dealt with by nature.

Masiangoako *et al.* (2022) report on community mobilisation by people from diverse economic and racial backgrounds united by the water crisis and poor service delivery in Makana. Their efforts resulted in people's agitation for provincial intervention in the Makana Municipality. The court judgement was that the Makana Local Municipality

breached its constitutional obligation and placed the municipality under mandatory intervention. Community mobilisation equally led to drawing attention to the sewage spills in the Vaal River that the ELM had ignored for months. Organisations, like Save the Vaal Environment (SAVE), were key to the mobilisation. This is the kind of unity that the South African water sector needs to improve water security.

4.5 Conclusion

This chapter has explained that struggles for recognition are at the core of political interactions in South African society. The struggles play out when citizens lay claim to their constitutional right to access safe (clean) and reliable water services. The struggles for recognition also manifest in response to the state of water services in South Africa which has been deteriorating since the year 2005, and through increased civil society pushbacks against revenue collection policies. But this study adds another dimension that struggles for recognition is not something that only citizens do. Instead, state institutions are also legitimate actors that struggle for recognition. State institutions want to be recognised as a legitimate authority that enforces water policies in fulfilling their mandate to provide sustainable services. This is what state institutions do by collecting service charges, although that is an unpopular policy in South African politics of water governance. Civil society-state tensions are what threaten the viability of the social contract for water services and their sustainability. The study also presents an argument that political contestations where one party wants to win at all costs in dictating water governance policies is not beneficial for South Africa, instead, there is a need for collaboration between all parties in South Africa (people, state, and corporations). A collaboration that is essential for a renewed social contract for water and redesigning new institutions for water management.

The next chapter focuses on the implementation of the research methods for data collection and interpretation in this study. The constructivist paradigm was vital for presenting the life world without altering the truths (framing) of people that are affected by water services. Constructivism as a research paradigm fits well with inductive qualitative research, especially using collective case studies in context to this study. Constructivism further helps reveal how various actors use their political power and agency to shape achieve their desired aspirations. This is an explanatory research

because the social contract for water and struggles for recognition are unfamiliar analytical tools to explain the South African water sector. Including to inform policy approaches for transforming the water sector to become people centred as much as the government plays a leading role.

CHAPTER 5: RESEARCH DESIGN AND METHODOLOGY

5.1 Introduction

The previous chapter presented the statist policy logic that complicates water services. This has led to retaliations by the people protesting inflexible cost recovery policy options that are also inconsiderate of the people's economic hardships. This tension between law enforcement and human rights claims in water governance presents the state's dilemma dealing with society's apathy toward the sustainability of water services. This is important to show the difficult context within which government operates. And how one-sided political preferences [by the state and the people respectively] contradict the principles of the social contract and undermine water services.

This chapter details the data collection process and experience by the researcher, including the practical relevance of the social contract theory as an analytical tool to achieve the stated research objectives in this study, namely to: i) explain the social contract theory and its application in water services provision in South Africa; ii) analyse the relationship between social contract theory and the struggles for recognition; iii) explain how the elements of the social contract apply to South African water services; iv) interrogate the fault lines associated with the social contract in South African water services; v) investigate both the state and society's willingness to collaborate in securing effective water services, and vi) provide conclusions and recommendations for sustainable and safe water service delivery.

This chapter starts by presenting the research paradigm of the study. It proceeds to the second section about the research design where data collection, analytical concepts, and interpretation along with ethical considerations find expression.

5.2 The research paradigm

Research approaches traverse macro, meso, and micro-level expressions of phenomena (Saylor Academy, 2012). The study focuses on a macro analysis of water service institutions' performance and challenges in the administration of water services. It then gravitates lower to the meso level of groups or communities in their struggles to claim the right to water services. And further lower to the micro level of people's perceptions of the

impact the standard of water service administration has on their bodily and psychological integrity. Thus, an explanation of the dyadic (institutional and interpersonal) contractarian relations that shape the state of South Africa's water services now and in the future.

The research design for this study leans towards constructivism and appreciates a variety of views or truths (DeCarlco, 2018). Such truths are about the obligation of the state as water services administrator and the duty of the people as water consumers who ought to reciprocate through payment for the sustainability of water service provision. Constructivist research paradigms are helpful to understand how people, through their interactions, interpret legal prescripts about water as both common and economic good, including how the distribution of water affects the right to water access.

5.3 The research design

This inductive qualitative research presents an explanatory account of the nature of water services in different communities, examining the fault lines that cause the social contract breach. And thereby theorising how to overcome this weakness toward sustainable futures in South Africa's water services. Qualitative research helps explain and understand the human condition of deteriorating water services and infrastructure where people uphold norms that hinder innovation and social development (Bengtsson, 2015). Therefore, the researcher used the collective case study design noting communities that are contending with water governance and water service challenges. The case studies help with analytical generalisation about challenges that communities face in the articulation of water services. This in turn, shows the social contract breach in South African water services. Barbour (2014) notes that case studies are useful to highlight critical incidents that deviate from the norm, which help theoretical generalisations about common patterns in a changing world, thus, maximising the intrinsic value of case studies. And collective case studies are vital for analysing "multiple cases simultaneously to generate a still broader appreciation of a particular issue" (Crowe *et al.*, 2011). And that issue that needs broader appreciation is the struggles for recognition arising from the social contract breach.

This being an inductive qualitative study, the researcher formulated a theoretical statement that there is a long-standing social contract breach in South African water

services that manifests as poor service delivery standards. Socially, lapses in water supply and sanitation service delivery stimulate struggles for recognition in society. It feeds into a breach of obligations where the government or water service institutions do not follow the quality norms and standards of water services administration and governance. This happens in government institutions that give people incorrect water bills, neglect corporate water theft, neglect infrastructure maintenance, and fail to provide clean and reliable water supply within the legally prescribed quantity and physical distances in some areas. The business sector and the people as water consumers do not follow the norm of reciprocity by not paying for the service charges for using water that the government supplies. This results in: cheating and stealing on both sides – people using municipal services but not paying for them; and where others have paid service charges, the government does not provide water supply due to technical and administrative issues. This situation translates into a state of nature (lawlessness and law breaking), which is undesirable if South Africa is to ensure water security and the sustainability of water services.

The social contract breach, where there is insufficient payment for services, hinders the government from extending the water infrastructure rollout, to give access to people who are without water in South Africa. As a result, people resort to various strategies to claim their right of access to water. The strategies include self-supply, illegal water connections, protest action, and criminal litigation. These strategies of rights claiming are what this study considers to be struggles for recognition.

5.3.1 Purposively selected case studies

The selection of case studies is based on the researcher's interest to use real life experiences that explain the reality of the social contract breach. Experiences that give meaning to the struggles for recognition as well. The literature analysis is the source of identifying research questions, theoretical issues and settings that help delineate the boundaries of a case (Crowe *et al.*, 2011). This study takes an arial view of South Africa as a study area, comprising the case of water services and struggles for recognition. Case studies include water service institutions (water boards, municipalities, state departments) because they are responsible for the planning and implementation of sustainable water provision and public education about water services. Civil society

organisations in the water sector (NGOs and Businesses) as consumers and activists ensure the reliable supply of water services and the protection of the service. Ordinary residents and respective communities are also participants who make demands for service delivery standards and contribute to the collapse of services through theft, vandalism, and non-payment.

The study speaks about the social contract for water as a unit of analysis, while the unit of observation is the struggles for recognition in the population of South African water services. As a result, the document review is essential to show the manifestations of struggles for recognition including the source of ideological justifications people present for their rights claiming. A purposeful sample of water service institutions, like water boards and the DWS, were identified, including the civil society organisations shaping rights claiming in the water sector.

The research covers cases from various towns in South Africa namely, Hazyview in the City of Mbombela (Mpumalanga Province), Stinkwater (Pretoria, Gauteng Province), Zwelethemba Township (Worcester, Western Cape Province), Parys (Ngwathe, Free State Province), and Emfuleni Local Municipality (Gauteng Province). These areas and many more² that evince the social contract breach and struggles for recognition in South African water services. The study also uses some global references of struggles for recognition, which underscore the significance of the social contract for the administration of water services. These global references also show how other communities embrace the social contract logic in a profound way that South Africans do not. And ultimately, validating the significance of the social contract lens in analysing water services.

² Alabama, Alheit, Amathole District, Baltimore, Bergville, Buffalo City, Cape Town, Carolina, Central Valley of California in the U.S., City of Tshwane, Clarens, Detroit, Flint, Estcourt, Emfuleni Municipality, eThekweni, eZakheni, Ga-Mushi village, Giyani, Gqeberha, Hammanskraal, Illinois, Jagersfontein, Johannesburg City, Kgapane Hospital in Bolobedu, Koster, KwaDwesi, Louis Trichardt, Madibeng, Makana, Mazista, Mebane, Michigan, Mississippi, Mokgola, Ohio, Orania, Parys, Potchefstroom, Qwaqwa, Rustenburg, Sekhukhune District, St Rita Hospital, Swellendam, the Mkgalakwena Municipality, Tshikwi, uThukela District, Westville rate payers, Witbank.

The case study method is useful to explain a complex phenomenon like the social contract breach in the water sector and highlights important issues like the impending water crisis due to maladministration. This unearths deeper understandings of struggles for recognition in the water sector (the triad of dissent). Case study results raise awareness and present rich details to affected parties (the stakeholders) and interested parties (the audience) to better understand the implications of the social contract breach in the water sector, creating awareness such as affected parties realising and appreciating their role in the collapse of water services and a commitment to protect water resources.

The researcher focused on the research question when studying the case (case bounding). Dominant issues that emerged from the cases include water pollution, incomplete construction of water infrastructure, lack of infrastructure payment, lack of access to water, neighbours contending for water, civil disobedience against water management policies, non-payment of service charges, and lack of planning that affects water service provision negatively.

5.3.2 Data collection tools

The researcher had expected face-to-face interviews, and where in-person meetings were not possible, self-completion questionnaires were an option, including telephone interviews. These tools are useful to generate personal views and first-hand experiences about water services. The tools would also generate more details about how affected communities opted to overcome the challenges of water and why they chose the methods they used. From these discussions with affected communities, it would be possible to generate unique patterns that contribute to knowledge creation and theory building.

But upon sending requests for interviews to state departments, NGOs, and water boards, the researcher received little response. In practice, the researcher received only four self-completion questionnaires of the 15 sent to water management institutions. When visiting offices, the researcher was told to send an e-mail or call first. When doing that, the person taking the call would refer the researcher to someone else in an endless loop. To emails, there were either no response, or sending the email to another potential respondent. There eventually was no one to take responsibility, or delegate officials who could respond to interviews. Because of the lack of response, the researcher saw it fit to use

documentary sources and supplement them with social media. This is equally valuable because the researcher uses personal reflections that people share about their experiences with water services, while already published research reports provide insight into personal lived experiences in communities that the researcher would never have been able to visit in person.

It was only around the 5th of October 2022 while the researcher was attending a strategic meeting arranged by their employer that the researcher realised that the DWS was hosting a meeting in the adjacent hall. Upon enquiry, the researcher met a DWS official who having heard the researcher's challenge to get help, shared contacts of another official. The researcher requested an interview for around the 13th of October and the meeting was held on the 16th of November. Around the 10th of October, the researcher visited the offices of a municipality to ask for an interview with the municipal manager. The manager delegated the task to an official in the municipality. The same official preferred to have questions by email instead of meeting in person because of their congested schedule that made committing to a meeting difficult. The official eventually sent the responses by WhatsApp on the 17th of November. This experience is important for student researchers to understand the challenges in primary data collection and to embrace the alternative platforms through which they can contact respondents and access data in a manner that meets quality standards.

In total, the researcher had six people who were willing to respond. And they are Respondent 1 – a professor in water and environmental conservation at a South African university. Respondent 2 – a coordinator of a water forum at a prominent NGO in South Africa. Respondent 3 – a coordinator of a water chamber in South Africa. Respondent 4 – Informal discussion: with a district municipal official, when looking for an interview opportunity. The respondent would allow their views considered in the report but did not want to submit any response on record. Respondent 5 – Informal discussion: with a local municipal official when looking for an interview opportunity. Also did not want their inputs on record. Respondent 6 – a DWS official social and economic regulation unit. And Respondent 7 – is an official from Emfuleni Local Municipality.

5.3.2.1 Document sources

This study is based on a qualitative multiple case study design. Bowen (2009:29) posits that document analysis is particularly applicable to qualitative case studies. There are different document formats including textual, audio, video, and other visual information that already exist without the researcher's influence in their construction (Barbour, 2014; Mack *et al.*, 2005). The sources include newspaper articles and reports, journal articles, books, state department websites, and non-state organisations' websites. The significance of document sources is that they reflect everyday realities and represent professional and social functions (Barbour, 2014). Wilkinson and Birmingham (2003:68) maintains that "essays, journal articles, books and chapters in books, discussions, newspaper articles or stories, speeches, conversations and advertisements" are types of documents that are ideal for content analysis, which is convenient for this study. This study used over 500 documents (books, institutional reports, journal articles, newspaper reports, webpages). These documents are produced by authors in South Africa and beyond, which gives the global perspective about the dynamics of people-water relations and what struggles for recognition ensue, owing to the social contract breach in water services.

Document review proved vital data source (Bowen, 2009:27) for the successful completion of this study. Especially concerning the discovery and validation of cases about the struggles for recognition in various communities that the researcher could not reach in person. For this reason, it was important to ensure that the documents are credible and meet academic standards. In this regard, the researcher started with academic sources, went on to institutional reports, and incorporated newspaper articles. Interviews and social media data would then supplement what the document review has shown or to fill what is missing in the document review data. These various data collection sources would corroborate the social facts and help extract people's personal experiences and feelings about the social contract and struggles for recognition in South African water services. The use of various data sources ends a single source/perspective bias (Bowen, 2009:28). At some point some documents were not accessible on the search engine or the library collection, and the NWU (North-West University) library support was helpful by communicating with the publishers, or other libraries for access.

Non-governmental sources like Environmental Monitoring Group (EMG) which houses the water caucus, and Centre for Environmental Rights (CER) which has published many reports about environmental justice and empowering communities to claim constitutional rights, have documented some case studies in recent times that show the constitutional rights violations of various communities in South Africa. Academic sources available from research centres like CALS provide information about community struggles for water rights at the time when the first cost recovery policies were implemented. The Human Science Research Council (HSRC) was also essential to access information about cost recovery and water service standards. The Multi-Level Governance Initiative (MLGI) and state departments including the DWS, Water Services National Information System (WSNIS), Water Research Commission (WRC), MLGI barometer, the water tribunal, SAHRC, SALGA, CoGTA, and Stats SA, helped with information related to levels of water access, citizens' experiences, and indigent policy variations from one municipality to another, and the back-to-basics case studies that present service delivery profiles of municipalities.

All the documents consulted revealed the context of South African water services as that of tensions in state-people, and state-business relations related to the supply of water and payment of services. And the same is what interviews have revealed as well.

5.3.2.2 Self-completion questionnaire

The researcher emailed a questionnaire with open-ended questions to purposefully selected respondents, namely seven water boards, one municipality, two state departments, and five NGOs because of their expertise and activism in the water sector. Two academics responded, one by email answering research questions, and another sent readings that would answer the questions. Then, two representatives of the water sector NGO responded. The one representative from the NGO sector did not want to send a written response and opted for a telephone conversation off the record. The responses from one water board and one state department were those that re-directed the researcher to other people in the organisation to secure responses. Other water boards simply did not reply to emails and calls were forwarded only to be cut off without being picked up. When the call was taken again, the administrator would ask the researcher to contact the corporate services office and there was no further help.

Although planned, there was no opportunity to administer the questionnaire via a telephone interview. Alternatively, the researcher decided to use the document review as the main data collection tool. Telephone calls to the respective institutions did not help either, this goes also for messages sent on the direct mail of the institutions' Twitter accounts. Despite communicating with the people referred to, there was no progress. When the DWS minister went on roadshows that included the Vaal Triangle in 2021, the researcher attended and established contact with officials to try and secure interviews. This is the only time that some progress was made in the year 2022 when the DWS responded. The response was directing the researcher to send the research proposal and proof of ethics clearance to get the authorisation letter. The letter merely allows the researcher to contact officials in the department to ask for an opportunity to interview them and does not identify the relevant person(s) to be respondents. This means the researcher was likely to start over again by looking for respondents in the department. The other response in 2022 from the DWS directed the researcher to the department's website, where it was said documents containing the information asked for in the questionnaire are available.

Reflecting on the struggle to secure interviews, the researcher realised that the topic of the social contract for water, although popular and a norm in the UK among the water companies, NGOs, and policy makers, is difficult for South African activists and water companies to understand. Hence the difficulty to commit to an interview when asked for. Respondent 1 confirms this impression. It is also possible that those in the water sector, be it in or outside government, are not using the social contract as a tool of analysis to understand the problems and imagine solutions for sustainable water services in South Africa. This inability to imagine solutions through the lens of the social contract is odd since the social contract logic is so central to the political imagination of the government in developing policies to build a capable state. This study replicates knowledge about water service challenges, it meaningfully explains the phenomenon systematically, and further diagnoses the social contract breach as the driver of the struggles for recognition in South African water services. Therefore, this study is relevant in that it extends human knowledge about the water services challenge in South Africa in a way that has not been done before.

The social media sources were also useful to reflect the meaning and description that people attach to water services. Through social media, people were also able to contact political office bearers, the kind of interaction that reveals the nature of relationships that people have with the decision makers.

5.3.2.3 *Social media as a data source*

This study uses social media as a data source to supplement the paucity of face-to-face interviews due to the low response rate of participants in the implementation of the research project. Sely *et al.* (2019:5) rely on Mubarak (2016) who defined social media as:

Software in the form of websites and other online groups such as social networking and micro-blogging which are created by a sizable group of users to share conversations, personal messages, ideas, information or to grow social and professional contacts.

Facebook, Twitter, Instagram, YouTube, TikTok, LinkedIn, and blogs are examples of social media (McKenna *et al.*, 2017:89), and McKenna *et al.* go on to say that:

There is literally a flood of qualitative data pouring into the Internet every day on Twitter, Facebook, LinkedIn, blogs, wikis and so forth, all of which can be downloaded, interpreted, and analysed by the qualitative researcher (pp. 87).

Media sources are useful for data generation, and social media (Twitter, Facebook, YouTube) is increasingly becoming a common source of qualitative data building on traditional media like newspapers, radio, and television (Barbour, 2014). There has been a reluctance to accept; if not a slow uptake of social network analysis in traditional political science scholarship, despite its use in other disciplines (Przemysław *et al.*, 2018:39). The slow uptake of social network analysis could be even worse in South African political science scholarship. Looking at Johnson *et al.* (2015), Orr (2005), and Berrens *et al.* (2003) one sees that there has been openness to using the internet for data collection in the Global North countries for a long time now. South African political science scholarship is lagging on the use of social media as a data source. The acceptance of social network analysis (Przemyslaw *et al.*, 2018:40) proves that there are valuable insights to glean

from the personal presentations and political discussions and expressions posted on social media platforms (Turnsek & Jankowski, 2008). Using social media for academic research is therefore acceptable because it has become “venues for political expression, tools and sites of politics” (Turnsek & Jankowski, 2008:1).

Social media use for the expression of opinion and news sources are prevalent and, on the increase, (von Nordheim *et al.*, 2018; Barbera & Rivero, 2015). Twitter is among the leading news source platform and is popular among the elites (von Nordheim *et al.*, 2018). Journalists also use social media as a source, thus giving it an extent of credibility when information is used with circumspection. For this reason, social media was a vital tool for research because government institutions and other political organisations use it to convey information to the public (McCormick *et al.*, 2017:392). Sely *et al.* (2019:2) agree that that people use social media to “act and react to what is happening around them”. These personal presentations on social media “are not mediated, filtered, or restricted” (Turnsek & Jankowski, 2008:7). Which means the people express genuine feelings directly to the representatives about their frustrations and raise awareness about the level of public service provision and life issues (von Nordheim *et al.*, 2018; Barbera & Rivero, 2015), it is a worthwhile source for the researcher to gather what people say.

Genuine feelings and frustrations can be accepted as perceptions, which Sely *et al.* (2019:4) defined as defects in a sensory and conceptual process, or tragedies, events, and objects that evoke people’s responses. And the representatives get to respond directly to their constituents. This social interaction enables the unique understanding concerning the nature of the relations between the governed and governors. In this case, the researcher did not influence what people say concerning life developments. In other words, people post their genuine opinions without prior knowledge of what topic a certain researcher would explore in the future. This posting without the researcher’s prompting, removes the chance of bias or posting opinions that patronise the researcher’s topic (McCormick *et al.*, 2017).

Therefore, social media allows for access to “new voices in the public arena” which is beneficial in the academic analysis of political content that various actors in society convey (Turnsek & Jankowski, 2008:8). The new voices include the phenomenon of flaming (using insults intimidation, cyberbullying) which indicates relations of antagonism;

or lurking (scrolling through without commenting for information or entertainment value) on social media which indicates the relations of antagonism (McKenna *et al.*, 2017:89). Social media trends replicate social relations (McCormick *et al.*, 2017) in a way that it is possible to predict people's behaviour in real-time, especially when polling voting projections (Barbera & Rivero, 2015). Because of its open nature, social media has enabled people to express their views without the trouble of contacting a news editor from a traditional news house. In other words, people contribute content that traditional media might have missed. Social media as a tool for data generation fits the categories of observational, ethnography, and surveys as McCormick *et al.* (2017) describe:

Unlike previous observational work, however, activity on social media platforms can be captured and stored. This is in contrast to face-to-face interactions, which once passed cannot be reconstructed. A researcher conducting off-line observational work is left with only his or her perceptions (and notes) of what transpired. Interaction on social media, however, is preserved and can be reviewed multiple times and passed to other interested researchers (p.392).

Whereas the number of views/interactions, comments, likes, and shares of the social media post contributes to its publicness (Turnsek & Jankowski, 2008:17). This study did not exclude data based on it not being liked, shared, or commented on because it is also important to include such minority voices. The inclusion of minority voices is important for recognition as well, despite that the primary interest is in finding data posted on the public platform and accessible to all. The emphasis is not on which post evoked the most engagement but, on the nature, and content of the comments. Hence this study includes reference to comments made to original posts, this is essential for content and narrative analysis. The aspect of a language barrier could be a challenge in social media posting (Turnsek & Jankowski, 2008:19).

The conversations on social media included in this study did not present any language barrier and no detection of confusion about what another said. The social media posts also include language that others could term offensive, but this study does not tamper with such. This is to preserve the integrity of the actual emotion that the person expressed. And this study adds translations of South African indigenous languages to help the reader understand what was said.

Also, the social media posts include textism (abbreviated language used in short message services [SMS]), which reflects the cultural element and alternative linguistic forms occurring in social media. And the study does not alter textism because its use did not alter or prevent the essence of the message communicated. Therefore, the inclusion of textism or swear words is contextual and in that way, does not negate the academic integrity of this study nor a sign of disrespect for the reader.

The other form of textism is in the form of digital texts like emojis/emoticons (McKenna *et al.*, 2017:89). Emojis communicate emotions in a way that is impossible to convey in a text message without using voice and body language (Gauwe & McCulloch, 2019). The use of emojis started with cellphone communication in three waves, 1997 by the SoftBank, DoCoMo in 1999, the Unicode Consortium in 2007, and standardised in iPhone operating systems in 2011 (Gauwe & McCulloch, 2019).

Thereafter, emojis serve as a visual substitute for language and represent emotions in a practical manner (Robertson *et al.*, 2018). Bai *et al.* (2019) posit that emojis strengthen emotional communication. Found in this study are the following emojis, the thinking face 🤔 face to depict going into a deep state of thinking, loudly crying emoji 🤯 to convey despair and grief (but is also used in fun ways such as laughter or over-the-top joy), then there is a person facepalming 🤦 to denote embarrassment, shame, frustration, or disbelief, and the male sign 🍌. And I read the social media user who posted this sign adjacent to the female facepalming to represent frustration with the quality of governance by men or inequality in a society dominated by men. A nauseated face for general disgust 🤢 while the face vomiting 🤮 is for intense levels of disgust. A broken heart 💔 is for the aching that one feels (often for missing someone but can also represents deep pain caused by life event). The herb 🌿 represents plant life, while the mobile phone 📱 is for communication and technology.

The use of skin colour is deliberate for self-affirmation and representation from the year 2015 (Robertson *et al.*, 2018). The inclusion of textism ensures that “all languages are not missing in the analysis” posting (Turnsek & Jankowski, 2008). McKenna *et al.* (2017:10) make an interesting point on the disadvantage of social media as a data source, but the advantage is also an advantage – in that the researcher relying on social media

could be deprived of non-verbal cues that face-to-face interviews present in body language which are vital to complement the spoken word. Yet, McKenna *et al.* note that the use of emojis is an electronic representation of those non-verbal cues.

The hashtag – written as a # symbol – used to index keywords or topics on Twitter, @reply function, and re-tweets were central to conducting attitude and trend tracking about the social contract and struggles for recognition. This approach of using original posts and replies on Twitter and Facebook is important to reflect social interaction between people and how they persuade each other into action. The researcher looked at what is said and by whom (ordinary persons, businesses, political leaders, or social activists). This is important when commenting on the aspect of dissent and recognition that this study focuses on. This aspect of who says what is seen in ordinary people responding cynically to the government and business' posts about the need to conserve water and report leaks. People could also cite a public figure to draw their attention or response to a water problem.

This way, the researcher can see when a public figure responds or ignores the message. Sometimes a public figure ignores messages because of the disrespectful or vulgar tone that people use when addressing them. Broad keyword searches and sorting results by relevance and date are common procedures in the sampling process followed in this study (Turnsek & Jankowski, 2008:13, 14).

While it is possible to select results that produce similar words to the keywords (Turnsek & Jankowski, 2008:14), this study did not do that [deviating from the keyword]. This study did not use any social media data that does not relate to phrases of (struggles for) recognition, the social contract, and water services. The Facebook search algorithm is different from Twitter because Facebook results bring everything and anything that is linked with the keyword. The researcher had to scroll through posts to identify the relevant evidence to use.

When using the *phrase struggles for recognition*, the prominent return from keyword searches shows that social media posts about struggles for water are by communities who petition public officials. From the side of the municipality, the social media posts are about updates to communities related to water services and appealing for people to be

patient amid the inconvenience. Another notable feature was that the phrase struggles for water generated information about the Hopi tribe in Arizona, United States who struggles for water in their regular 16-mile trek to fetch water because the water from their taps is contaminated with arsenic toxins (American Rivers, 2022). This aspect of toxins in water is also what some South African communities experience. The state of water resources where environmental toxicants and raw sewage inundate South African rivers presents a public health risk (Gani *et al.*, 2021).

Although du Plessis (2017) documents a worldwide problem of water and sanitation where sewage contamination is rife, and countries like India being the worst performing. That does not justify the levels of water contamination in South Africa, as though one would say “but India is worse, be glad that things are not so bad here”.

Dysfunctional waterworks and poorly managed water treatment plants have led to the spread of waterborne diseases (SANews, 2023). It is therefore important for the government to implement a directed public engagement programme to raise awareness about the state of water services. The kind of engagement that would ask for people’s commitment to the sustainability of water resources. The people ought to understand the economic threats to business and jobs arising from polluted water or dysfunctional water resources (Makwea, 2023). The struggles for recognition that the Hopi people engage with include the efforts to get new infrastructure and taking the government to court for the many generations that were subjected to life without access to adequate water (American Rivers, 2022). From a South African point of view, the Hopi experience is like that of rural communities where it is a norm for people to fend for themselves in matters related to water access.

A search on the phrase, ‘social contract for water’ returned 105 tweets dating between 2018 and 2022. About 67 tweets were useful, based on the theoretical arguments the Twitter users made. The table and figure below show the distribution of the 67 tweets. The tweets come from users worldwide and are not limited to South Africa alone. Interestingly, there were very few comments under the theme coming from South Africa; less than five. It implies, which shows that South Africans do not express their concern about water in the philosophical/theoretical terms of a social contract. Hence the significance of inductive reasoning and analysis in this study. It helps connect people’s

opinions with theoretical principles when not clearly stated in the tweets. In the end, this study relied on 51 social media sources. These sources emanated from ordinary residents, experts, organisations, and state institutions. These are sufficient as a replacement for face-to-face interviews. Moreover, these were responses from people on social media who had given thought to matters, potentially or even related to the concept of the social contract, with reference to water. Table 5.1 and Figure 5.1 below are a representation of the qualitative data retrieved from the social media platform (primarily from Twitter and in a snowball effect, linked with data from other platforms like Facebook).

Table 5.1: The thematic analysis of empirical data about the social contract for water – own construction

Thematic analysis of empirical data about the social contract for water	Number of mentions:
Government and water companies prioritising shareholders more than people	5
Payment for water services	12
Provision of clean water for all	32
Value for all, shareholder, customer, and the environment	9
Showing initiative and not waiting for the regulator	2
Free market without regulation cannot promote the social contract	1
Free water	3

Water companies have a role in the community	3

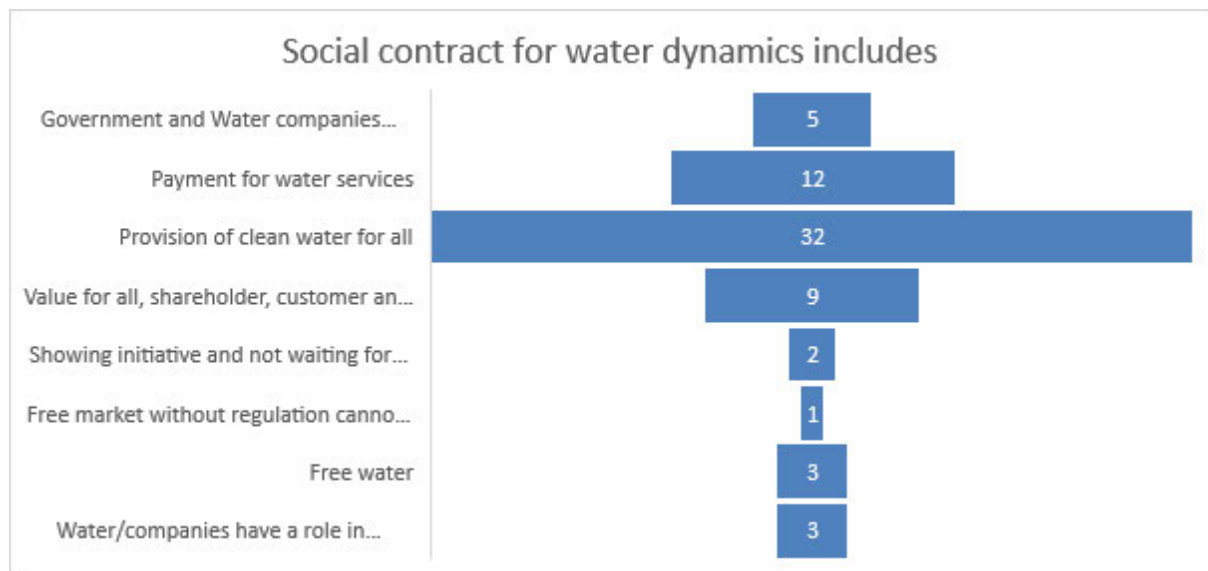


Figure 5.1: The social contract for water dynamics in South Africa – own construction

The above data reveals the global perspective of ensuring the provision of clean water for all as a fundamental aspect of the social contract for water. It implies self-help initiatives of people securing access to water for themselves as an indicator of insecurity and a failing state. Payment for water services either through utility charges or general taxation is vital in the social contract for water. The rationale is that money allows the government to sustain service provision, and the emphasis on all is about ensuring that no citizen goes without water because they cannot afford service charges. The third highest concern is the need to create a culture that values everyone in the management of water resources. This implies that the stakeholders should have adequate resources to sustain their operations, the customers should not be excluded for failure to pay for services, and the environment should not be the victim of the polluting behaviour of humans.

This aspect is central to the imagination about the new social contract. The fourth concern is about the government being lenient on companies that pollute water or tolerate water companies that charge exorbitant service prices on water. On the bottom rung of the data

is the debate about the need to provide free water services, and that water companies have a role in the community. As a result of the government's failure to honour the social contract for water, the public and water companies have hinted at the need for innovative interventions like operating without waiting for the regulator to lead change. The theme of free water services is not dominant in the discourse and people are open and appreciate the notion of paying for water. The American people are very suspicious of free water, seeing it as a communist policy response.

5.3.3 Research analytical concepts

The social contract for water is a concept that people still do not understand fully, and it is inadequately operationalised as a result (Respondent 1). The researcher used the collective case study design along with the qualitative research method. The purpose was to review the literature on water services and identify how the service standards are measured against the social contract theoretical principles. The theoretic measuring constructs include the state of nature, natural rights, and rational persons. These constructs would allow the analysis of how rational persons analyse the environmental threats (state of nature) to human life (right of nature) and what options they choose to promote and protect their livelihood leading to a social contract for water.

In the beginning, the researcher selected specific communities for analysis because of their relevance in that they have had water supply challenges and undertaken protest action to claim their right to access water. Due to unpredictable developments such as personal crises that delayed the researcher's implementation of the study, unresponsive water boards and state departments, and the COVID-19 epidemic outbreak, the researcher could not visit the selected communities for interviews nor secure commitment from selected respondents for interviews. At this point in time, the researcher resolved to rely solely on the aspect of document review for data collection.

The nature of the research questions makes it possible for the researcher to compile a reliable academic report and logical arguments using document review alone. Informed interviews would have served a value addition purpose by contributing some unique information. Even so, the chosen method sufficiently allows for knowledge contribution and theory development related to the struggles for recognition. Through literature

evidence and analysis of public comments from media platforms, the study reflects on-the-ground realities that support an explanatory model of how the struggles for recognition unfold – which the researcher frames as the triad of dissent in South Africa’s water sector. The first level of dissent is between people vs people, the second between people vs institutions, and the third level is between institutions vs people. This model of struggles for recognition clarifies the transactions of neglect and defrauding that drive post-apartheid water services into the state of nature, creating a poor and brutish society without moral restraint or regard for state authority. Such a society has abandoned notions of equality or embracing human dignity that water service administration promotes. The triad of dissent is fuelled by the notable flaws in water services, which need the re-imagination of a social contract for South African water services in building an ideal society.

The social contract for water (natural rights, rational persons, and the state of nature) and struggles for recognition ([non]payment for water services) are key elements of the research questions, which the researcher used to search for and filter information. It is the same elements that enable the researcher to explain the thesis about the triad of dissent and propose solutions towards efficient and sustainable management of water services through state-people collaboration and partnership.

5.3.4 Data interpretation

The researcher used Microsoft Excel for social media content analysis and generated data visualisation in the form of graphs. This is also useful to see the different themes that emerge and how they connect with the research questions as people discuss and express their frustrations. Qualitative content data analysis helps in making meaning and drawing conclusions about the attitude of the speaker or writer from collected data (Bengtsson, 2015; 68). Content analysis can reveal the priorities, meanings, understandings, and ways of seeing the world (Wilkinson & Birmingham, 2003:68). An example of priorities and ways of seeing the world is the complaint about the water allocation from dams located adjacent to communities that have struggle with water supply. The study is based on the analysis of “written, verbal and visual messages” (Elo & Kyngäs, 2007) that manifest conversations of ordinary people’s talk about water services, including the narratives of authorities about cost recovery and other challenges

that bear on their obligations. These conversations reveal experiences of perceived injustices associated with municipal water service administration and actions by municipalities in their effort to enforce water legislation related to cost recovery and illegal actions by water consumers. The research approach uses the primary and secondary questions.

For data interpretation, this study embodies manifest analysis (Bengtsson, 2015) not located to a specific period. In other words, the analysis does not focus on the water services phenomenon at one point in time but across time, from colonial South Africa to the post-apartheid era. This retrospective element in the analysis allows the researcher to see the consistency or causes of water service injustices, past and present. Where, for example, the apartheid period is that of pure injustice and lawlessness because immoral laws shaped water service administration that intentionally deprived black South Africans of access to water. Yet the post-apartheid era intimates a return of water services into the state of nature where, like during the apartheid era, most poor citizens bear the brunt. And it is worth noting that both white and black people fall within the category of the poor, and even living in informal settlements.

The data analysis uses direct quotes and dialogue to reveal the tone and language they use to express their feelings about the quality of water services (Creswell and Creswell, 2018). The analysis reveals norms and priorities that guide water institutions in the fulfilment of their professional and legal obligations. Including their strategies to deal with environmental constraints and discourses that dominate public beliefs about norms that dictate the water services and rights claimed. The researcher selected documentary data that resonates with the social contract and causal factors of the struggles for recognition generated from the colonial period up until the post-colonial period in South Africa. This was essential for explaining building and theoretical coding (DeCarlo, 2018).

5.3.4.1 Data organisation

The researcher had to first understand what was going on in the data and decide the meaning of the information by discarding irrelevant data, thereby making objective inferences, and testing theoretical issues (Bengtsson, 2015; Elo & Kyngäs, 2007). This way, it is possible to build a critical comment regarding the narratives about the social

contract and struggles for recognition in the water sector. For this reason, the researcher identified themes and patterns that link with the study based on the research objectives, from which subthemes would emerge. To describe the problem of the social contract and water services in South Africa, the researcher had to present preliminary evidence available from published reports and related court cases. Document review was also important in explaining social contract theory and its relation to struggles for recognition.

The researcher found that there is little theoretical framing by scholars in hydropolitics about struggles for recognition in South African water services. This is the theoretical gap that the study presents by introducing the triad of dissent model. The model is important in outlining the problem of struggles for recognition in South African water services because it clarifies perceptions about fault lines in the government's responsibility towards the people and people's responsibility towards the government, and thus opine about the willingness to collaborate in securing effective local water services.

To this effect, the researcher developed categories within which to analyse data and themes as shown in Table 5.2 below.

Table 5.2: Data analysis categories and empirical results – own construction

Theoretic category	Empirical results
Social contract for water	Government water supply
The state of nature	State capacity, corruption, pollution, poverty
Natural rights of rational persons	(non) payment, affordability
Struggles for recognition	Non-communication, protest, discriminate supply of water

The state-society collaboration	Need for water conservation, need to pay for service charges

Table 5.2 above is an outcome of the content analysis process that Wilkinson and Birmingham (2003:69) present about the theoretic and empirical relationships of phenomena. Figure 5.2 below is a content analysis process flow that guides the researcher to establish content categories derived from the research topic – test the relevance of the content categories and generate results from the data collected using the same categories.

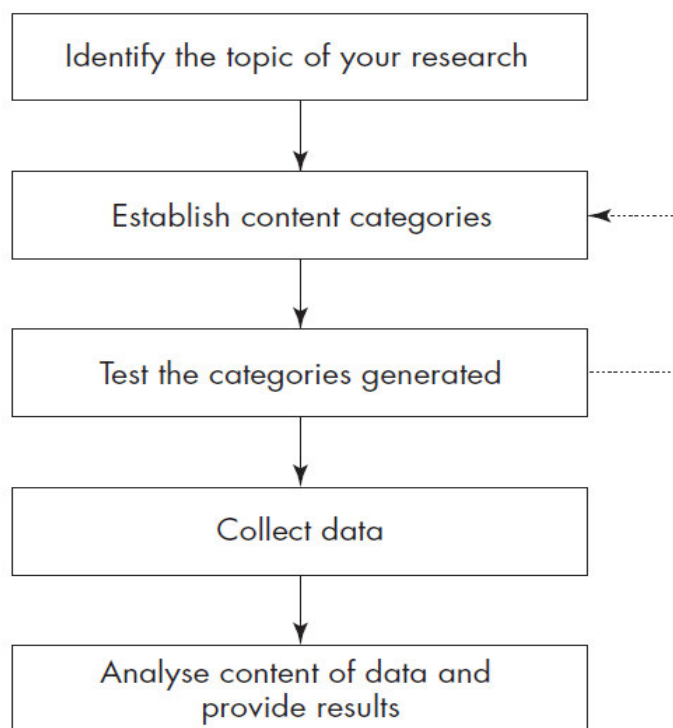


Figure 5.2: The content analysis process (adapted from Wilkinson & Birmingham, 2002:69)

5.3.5 Verification of data and findings

The various data collection sources confirm the credibility and authenticity of the findings in this study. First, academic sources document the problems of water services and public rejections of government's credit control policies. The social media reports also confirm

recent efforts by municipalities cutting services in the quest to promote revenue collection. Newspaper reports also show the dialogue between municipalities who encourage residents to pay their bills, even to the point of encouraging them to pay a flat rate. Likewise, video material and transcripts from commissions of enquiry have shown evidence about misrecognition [not talking to people]. Evidence which academic and newspaper reports have confirmed. Interviews also revealed that both the public and government do not understand the logic of the social contract in water services. This shows data triangulation.

The same sources [news reports, social media, academic, including institutional reports] have been vital for theoretical triangulation as far as confirming the government's commitment to implementing cost recovery measures. People have also mentioned the social contract breach in stating how the government failed to deliver water services despite collecting taxes. Other theoretic validations are about how the people used social media to comment about the unfair allocation of water resources. Including the comments about human rights abuses in both social media, academic, institutional, and news reports. The interviews with government officials also show the desire for collaboration that would ensure sustainable water services.

Other researchers would make similar findings, arguments, and conclusions when using the same data collection techniques and analysis tools. It is not possible for one to alter information shared on government institutions, research think tanks, media houses, and personal views posted on social media. This way, the study relied on authentic expressions of people, professionals, and peer reviewed publications. The document sources are about lived experiences and struggles that people and state institutions have encountered in the administration of water services. The researcher in this study does not make observations that are odd and unrealistic when compared to what has been published about water services. The published reports by the state, through Chapter 9 institutions, research centres at academic institutions, NGOs, the traditional media, and social media commentary complement each other.

The lived experiences of various communities where there are sewage spills, a lack of water supply, and non-payment of services, are not new assertions the researcher makes. Instead, based on these experiences, the researcher constructed a model

describing the struggles for recognition (the triad of dissent), which is vital for a new institutional approach towards sustainable water services where the state and people work together. The frame of recognition is a different analytical tool in the South African water sector and highlights the depth that the frame of dignity has not reached. Thinking about recognition in the water sector provides a more accessible, understandable logic of why people burn and destroy in protest; not because they want water but recognition. Hence, it is possible to accept as dependable and valid that the South African social contract for water is breaking at the seams and needs collaboration between the state and society to build sustainable futures in water services.

However, social media as a source is different from traditional research surveys (McCormick *et al.*, 2017:392) because the public posts might not always correlate with the questions that the researcher is analysing. At times, the use of automated systems (bots) can deceive an inexperienced researcher into believing that some views are expressions of real humans (McCormick *et al.*, 2017). The other benefit of social media is how it guarantees anonymity where the user operates an account based on a pseudonym. In other words, where the respondents would have refused to interview on suspicion that their identity would not be protected, on social media the user is comfortable using the name of their choice and expressing their genuine views. It is to the benefit of the researcher to access such views (Branthwaite & Patterson, 2011:2). The researcher studied the critical exchange between the public and government officials or journalists (Barbera & Rivero, 2015). By using social media, the researcher accessed more people in a brief time and with fewer resources (McCormick *et al.*, 2017), including access to geographic regions that would have been difficult to reach through traditional research processes (von Nordheim *et al.*, 2018; Barbera & Rivero, 2015). Indeed, in the era of fake news and misinformation, the researcher was cautious not to be misled, therefore, careful analysis of posts was crucial. Because social media is not one platform, the researcher had the advantage of comparative analysis in a manner that minimises unfounded generalisations (Barbera & Rivero, 2015).

5.3.6 Ethical considerations

The NWU is committed to high standards of research integrity. To this effect, the researcher signed the code of conduct for researchers, went through ethics training, and

secured an ethics clearance prioritising the safety and security of respondents. This means that the researcher will not disclose the identity of the respondents, nor coerce respondents into participating in the research. The researcher also acknowledges that there is no need to show the respondents' identities where such disclosure does not add unique value to the study. What is important for the researcher to report are respondents' views and what they imply to the causal variables named and theory development for sustainable futures in water services. The researcher did not steal information or deceive anyone in the study. Documents reviewed come from data repositories that are open to the public. The researcher did not take part in social media forums discussing water services and themes related to the study. If there is any reference to social media comments, such comments are organic opinion expressions by people in the natural environment based on their experiences of government without the researcher influencing what they should say.

Making reasonable requests of participants and not placing them at unnecessary risk are vital ethical considerations (Austin & Sutton, 2014). The researcher did not coerce organisations or individuals into giving input to the study as is the case with water boards and the DWS whom the researcher contacted through email and telephone details they make public as official channels through which the public should contact them. The researcher did interact with municipal officials who expressed that the water issue is a sensitive political topic and who confirmed that ward councillors "are scared to confront the public about service payments" (Respondent 4). The problem of corruption is placing government officials in a precarious position because it is difficult to speak about payment at a time when people are tired of fiscal mismanagement. Therefore, local politicians and officials are not willing to speak about this for fear that they might be linked to the study. When assuring them of their safety through anonymisation did not avail, the researcher abandoned the effort respecting the personal apprehensions of the potential respondents.

This study is cautious not to undermine the ethical concerns related to the use of social media as a tool for data collection. Turnsek and Jankowski (2008) posit that:

ethical guidelines vary considerably between disciplines, institutions and funding bodies, the primary concern is to prevent possible harm to human subjects. Basic procedures related to this concern involve requesting permission to

conduct research, protecting subjects through the use of fictive names, and camouflaging other identifiers. In the literature examined, researchers frequently used pseudonyms rather than real names and deleted text such as URLs that might facilitate tracing quoted material to the original sources (p.20).

This study does not omit URLs, nor use pseudonyms, nor request permission from individuals or organisations to include their social media posts in research because what they shared content in the public domain, which researchers are free to use (McKenna *et al.*, 2017:91). Instead, the researcher has had permission to do research through the NWU ethics committee. And for the credibility of the research, it is vital to show the URL as an authentic post just as is common academic practice to post URLs of other documents accessible over the internet. There was no sensitive post that called for the need for the researcher to contact the person who posted it for permission to reproduce.

On the other hand, text that can be considered forms of public expression, and images that appear designed for public viewing, will not require prior approval for reproduction in research reports (Turnsek & Jankowski, 2008:20).

Gatekeeping on social media may apply where one needs to pass the firewall that prevents access to posts; or where access to chat groups and lists on social media (McKenna *et al.*, 2017:90). “However, researchers should obtain consent when they are conducting research on those sites where is some expectation of privacy” (McKenna *et al.*, 2017:91). And the matter of saying social media information is in the public domain is not sufficient a justification. It is important to note the extent to which the social media user’s identity is private, the sensitivity of the topic or information shared, and the vulnerability of the user; where there is a low probability of the above, then there is no necessity to solicit consent (Markham & Buchanan, 2017:203, 205). Markham and Buchanan go on to emphasise that many internet users are less concerned about their information being private, instead, they want that information to be used publicly in a dignified manner. This study is sensitive to the nature of information available on social media and how that information touches the dignity and safety of the user. And the presentation of such information in this study is in such a manner that it respects their personhood, safety, and points of view without distortion.

5.4 Conclusion

The research process detailed herein shows the difficulties that students experience in securing interviews. From the researcher's interactions doing the research before undertaking this study, it was state departments that were hard to deal with. Non-governmental organisations and institutions, for example, water boards that project a professional demeanour but are unresponsive is something the researcher found hard to believe. Despite the difficulties, the researcher ensured credibility and objective reporting based on document sources. It follows that desktop research presents few challenges and is something students should consider doing given the unwelcoming environment currently shown by potential respondents. Of course, the researcher notes the disadvantages that this data collection method presents to the researcher. That is, the student without experience in fieldwork and research design associated with it might be less prepared to do effective research fieldwork when contracted as a research professional. This chapter has shown that social media is a reliable source of textual material that can inform academic research. And that this is a public expression by identifiable people who have had no need to conceal their identity when making those statements for public consumption. Therefore, there is no requirement for prior approval for their use in research. In other words, people voluntarily post their views to friends and the general audience on social media and as a result, the researcher cannot be accused of having violated the privacy of those who posted (Giglietto *et al.*, 2012). The use of private messages and settings to make posts visible to friends only are available to ensure the privacy of a post. The researcher cannot see such posts as a result.

The selected research method is useful to describe group norm-making like non-payment of services, and public sector corruption that affects the sustainability of water services in South Africa. Document review is the main source of data and is supplemented by interviews and social media narratives that reflect the real-life experience of residents in water service delivery. The DWS, water boards, private companies and ordinary residents are the primary actors in the struggle for recognition in South Africa's water services. The validity of the research method and data interpretation is confirmed by the pure respect of academic standards of ethics, text references, and a comparative analysis of case studies. This ensures that other researchers will come to similar findings and conclusions

if they were to repeat this study. And that the researcher does not make far-reaching conclusions or deductions that other academics cannot resonate with. The interviews are few, but this does not degrade the validity of this study. One of the respondents is from the DWS and is a senior manager. It is worth noting that the low number of respondents is attributed to the lack of engagement or appreciation of the social contract and struggles for recognition. This means that this study is pitching above what the local South African NGO and water sector practitioners are imagining now. This is worth noting because the idea of the social contract for water services enjoys great attention in the European countries that are implementing policies that put the customers and the environment central to decision-making. South Africa is, therefore, yet to catch up with the trend of the social contract for water services as a forceful policy.

CHAPTER 6: FINDINGS BASED ON STATED RESEARCH OBJECTIVES

6.1 Introduction

The previous chapter was based on the research design and explanations about the operationalisation of the qualitative case study research method. The chapter showed the heavy reliance of this study on document sources accessed from different repositories and how interviews (self-completion questionnaire) and social media data sources were a vital supplementary data source. This follows lack of willingness by respondents to answer the questions posed by this study. The validity and reliability of the findings of this chapter is in how other researchers can come to the same conclusions and observations (replication) if they were to follow the same research method and consulting the same sources.

The findings in this chapter are based on experiences in South African water services and feature the views of South African residents and organisations. However, there is some addition of international perspectives to show that the South African experience is not unique, or to show how other countries are thinking about the social contract for water, and how those countries experience and respond to the issue of recognition linked to water services.

The first section of the chapter presents the findings in line with the stated research objectives for this study, as stated at the beginning of Chapter 1. The findings reflect an empirical confirmation of what literature survey in Chapter 3 has established about the social contract fault lines in South African water services. The state institutions, and people's accounts about non-payment and poor water service provision, confirm the social contract breach. It is important to confirm the validity and reliability of people's lived experiences as recorded by others or told by them in person. These comments are relayed as is, and the researcher chooses not to correct grammatical and spelling errors because they reflect the person's way of thinking and speaking at the time. This preserves the emotion and genuine arguments of the speaker. The researcher does not tamper with the text to influence the voice of the speaker. The second section of this chapter is about the key meaning of what the social contract for water services is about. To derive meaning, the researcher ought to reduce people's narratives, behaviours, and

descriptions of reality into one sentence to make it explicit and avoid ambiguity (Sulovic, 2010:1). This clarifies how the research findings relate to the theoretical assumptions of the social contract and struggles for recognition in South African water services. The theory based empirical findings open the door for critical reflections that help imagine the components of new institutionalism and solutions toward sustainable water services that will be the focus of Chapter 7.

The chapter outline is the presentation and discussion of findings derived from empirical evidence, followed by the key meanings of what the social contract for water entails. The theoretical reflection on findings allows for a critical comment by the researcher who highlights what the reader ought to pay attention to in the details. And what the significance of those details is for strategies towards water security. The chapter confirms the universal resonance of the social contract theory for water services.

6.2 Basing the research findings on empirical evidence

The average South African would imagine an undesirable life if the government did not supply public water services. This is because the poor in society who cannot buy water services or infrastructure for its access would be vulnerable, while the physically infirm would also be vulnerable to collecting water or even laying implements to access water (Mobie, 2008:30). Eventually, one would need to outsource services to access water – and if the value of social justice and protecting the vulnerable would be suppressed by the profit motive of the service provider. An aspect of a desirable water service is that it must be imbued with ethics of care (recognition) for vulnerable citizens. This need for an ethic of care by the water service provider is what the empirical evidence in this study finds as a common thread – from literature review and personal accounts. The fundamental understanding is that water services should protect the needs of everyone in society.

This study agrees with Hampton (2017:484) that “human beings have intrinsic value, which makes contractarianism a proper moral theory”. A human worth-driven morality ensures that people begin to relate with each other based on being a person (*ubuntu*), not an absolute pursuit of self-interest. This ethics of care aspect often features in public discourses about water and sanitation and evaluations of the government’s performance.

The ethic of care and human worth-driven morality was put to the test. Such applied when it was reported that senior (executive) government officials in South Africa will not pay for their water and electricity as part of their employment benefits. @Duritz79 (2022) argued,

Dear @PresidencyZA @CyrilRamaphosa how do you justify giving a @GovernmentZA cabinet minister that earns R2,4million and annum free electricity and water, while people are dying from power outages at public hospitals and children ar drowning in pit toilets at public schools?

The above comment urges the president to consider promoting the comfort of public officials who are already earning a comfortable salary versus the public interest where resources are needed to protect basic human rights. The argument by @Duritz79 reflects the key components of the social contract theory which is against the violation of natural rights. The comment highlights the vulnerability of the marginalised in society and appeals to the president to recognise their struggles for the right to life and the dignity of safe sanitation. The comment also insinuates that the president is uncaring, or unbothered, by prioritising the comfort of political executives who have a generous salary but are not expected to pay for the full cost of their water services. It is also an appeal to the president to show a political will to resolve the state of sanitation and resolve the power cuts that threaten human life. Having the political executives to pay the full cost of their water services, could be another opportunity to convey the message to the public to follow their example. These social contract components shape different types of social relations in the struggles for recognition (Weber, 1946:51, 9). Relations that filter down to state-people conflict over the standards of water services supply and expanding access to water for the excluded, people-people need for sustainable water services and collaboration with government for water security, including people-state dispute over revenue collection and water conservation.

6.3 The key meanings of what the social contract entails

The findings summarised in the subheadings below convey the basic message that the social contract entails the provision of clean water.

6.3.1 The social contract entails providing clean water

The classic social contract theory posits that the state has an obligation aligned with the duty of the people to build an ideal society together. The government is expected to reciprocate the taxes people pay by providing basic services (@elayzabeth, 2021b; @TheSirrPhabby, 2019). Failure of which results in the betrayal of the people, loss of trust in the government (@DavidCollard1, 2021), and human lives being threatened leading to self-help mechanisms (@tayos02; @StarTrekFan79; @scottgilman, 2021). When people resort to self-help initiatives it invalidates the role and relevance of the state (@DinidariAfrica, 2021; @MOMPERE55, 2021; @CNN, 2018). The comments here are not simply about payment for service charges (municipal rates and taxes) but the view is that people pay taxes to the state coffers and in return, the government ought to supply basic services that include water. A resident commented about the lack of reciprocity by the government where people pay taxes in which the concern is that poor governance nullifies the relevance of the government in society.

In Nigeria, You are your own government. You buy a land, build your house, provide your own electricity, provide your own water, your security, and even roads. So I ask myself, What is the government doing for us? 🙄 Nothing! Absolutely Nothing!! Yet we're expected to pay taxes 🧑🏾💻" (@VicToR_An3n3).

It is the opinion of some observers of the water sector that the contract is cancelled under certain circumstances:

In the absence of a coherent plan, the social contract is cancelled and the individual resorts to self help. This is entirely logical. In essence politicians are becoming irrelevant and will merely be bypassed. This is not healthy for the economy but is a reality of the leadership vacuum (@dr.anthony.turton).

Self-help options are when people go off the grid, pay someone else for their water supply, or must collect water from far away in places where water sources are scarce (@bazi_tsika, 2020). Such failure to meet people's expectations in the provision of basic services has been something that concerns countries globally where the topic of inequality is concerned. In other words, the call for a new social contract is an admission that the social contract has ceased to exist because the government is not providing water

and had failed to plan for the eventualities of water shortages and droughts. People consider a government that fails to provide water services to be in breach of the social contract. The aspects of water and sanitation provision are among the necessities that civil society expects under the dispensation of a social contract, this is a universal principle (USAid, 2022; Jha, 2022). Life is hard without access to water, sanitation, and electricity – without it, there is no civil society (what Hobbes calls civilisation).

Human security and survival are compromised when people fetch water from unmaintained sources that cause them to fall sick or die. Women and children are most vulnerable to rape and kidnappings when fetching water and have limited prospects to achieve their life aspirations (Water.org, 2022). Amid a failing government, private interests arise in the sale of water or providing the service that the government was supposed to deliver. And as these private interests and service providers thrive, the priority becomes profit and not the common good. Seeing this trend of emerging private interests in public service, @Elayzabeth (2021a) bemoans the government's use of profit-led Public Private Partnerships (PPPs) to provide basic services in for example Uganda. The water sector PPPs have created anxiety, Mobie (2008:39) noted that "throughout the world privatization of water system has a history of skyrocketing prices, water quality problems, deteriorating services and a loss of local control".

Where the state has failed to provide water services, even without PPPs, villagers in Mahikeng (SA) buy water from borehole owners because the government has not installed adequate infrastructure to ensure reliable water supply and for some, communal taps have long been dry (@BongeMacupe, 2022). This situation is worse for residents who live in villages and rely on social grants; buying water is beyond their means. The water sector's focus on urban areas and peri-urban townships leaves rural residents in a precarious situation, as though the government is not for them. These are the truly forgotten citizens. Although perceptions could be that the water sector benefits residents who have money, that is no longer valid because the ever-increasing cost of living is making it difficult for all who have to survive with the cost of buying water and fuel for generators since the twin problems of water shortages and power cuts are becoming the norm in South Africa.

A DWS official (Respondent 6) explained that the social contract for water is based on section 27(1)(b) of the Constitution and sections 3 and 11(1) of the WSA. These pieces of legislation say the state's responsibility is to ensure that everyone in South Africa has access to sufficient water and sanitation services.

Going beyond that is the matter of justice when we sing the song of inclusivity, but we are a classy[ist] society with a clear distinction between the poor, middle, and high class. This makes having water fit for consumption come at a cost and cost recovery but the poorest cannot compensate the provider (Respondent 6).

The example of a typical social contract was introduced a free basic service policy where all who cannot pay are supposed to be given a minimum of six kilolitres per household per month. The government can achieve this through transfers like equitable shares to enable municipalities to recover costs. The formula to decide how much the municipality gets in transfers depends on how many destitute people there are in their area. A municipal official (Respondent 7) said human dignity in the context of water services is ensured through the provision of water services (water and sanitation) as enshrined in chapter 2 of the Constitution. This is what constitutes the social contract for water, and the WSA translates this right to water into reality. The prevention of environmental pollution through wastewater is also included in the understanding of the contract.

6.3.1.1 Lack of public sector capacity hinders water services

Emfuleni Local Municipality in Gauteng Province is notorious for its mismanagement of water resources and even refusing private sector support for improved water services (Wegelin *et al.*, 2009). The inability to provide improved water services in ELM involves sewage spills and a reduction of tap water flows to communities due to sanctions from Rand Water because the municipality did not pay its dues to the water board (Tlou, 2021). Apart from certain interventions by the national DWS, as well as the Gauteng provincial government, along with Rand Water, the critical situation has been partly resolved. But, even towards the end of 2023, there were still numerous glitches in water and sanitation service delivery to all parts of the local municipality's area of jurisdiction. The lack of capacity and unprofessional management of public sector employees in the water sector

is something that needs attention for improved services. The Parliament Portfolio Committee Cooperative Governance and Traditional Affairs (portfolio committee on CoGTA) expressed concern about the Emfuleni Local Municipality's failure to buy protective clothing for its employees.

We have learned with sadness that an employee passed away at the municipality's wastewater treatment works because of lack of equipment that resulted in the employee drowning. It is also alleged that the employee was alone at the plant while he was supposed to be working with someone. It is even more concerning that there has been no report on the incident served before council. This presents a picture of an uncaring employer (Parliament of South Africa, 2020).

It is not only the lack of protective clothing that affects the municipality's ability to provide effective services. A shortage of personnel, their qualifications, and the procurement of chemicals for clear water are among the many challenges that face water service authorities grapple with. An image of burning tyres and small stones in the middle of the road posted on the Parys executive mayor's Facebook page goes with an appeal for the public to be calm and not vandalise water tanks. In response to the post said, Ramohlokoane (2022) wrote the following:

Ok... mayor. Nna kere... u hv enough prove tht water department is incompetent for many years. Can not provide clean water consistently to the community. Now...! who ever calls him self water manager or HOD or water engineer or superintendent on water must tell us why must he/she be a head with so much incompetence. Simple as tht... rool heads. If u dnt want to remove ppl who cn not deliver services to the community u gonna fail Ngwathe ppl as a mayor i tell u. Water issue is long over due. Dnt prolong the problem longer.

This post generated some responses that called on the mayor to fire incompetent cadre deployees; and some calling for the major to cut the salaries of the water workers until the crisis is solved. Another comment includes a thought about the water plant having reached its life span and nothing could be done to solve the water crisis in Parys. Another resident, Formality Mokhali (2022), commented that:

The problem was never the idea of JoJo tanks, but the consistency on the supply of water into the tanks and consistent cleaning of the interior of the tanks. While fixing the pumps, can you ensure that the tanks always have water? I am not keen on firing people from their jobs, but whoever is responsible for the supply of water is failing, whether they get demoted from that position and if it's a company, it must be discredited, and a new company appointed. There must be transparency between the water supply team and the community. Appoint an on the ground maintenance team to ensure that the tanks are still working, the taps are still connected, no water leaks because water leaks are also a huge contribution to water loss on the tanks as well, maybe while we at it, have the on the ground maintenance team distribute water to old people who live alone with a van or something, I don't know 😊 You said it yourself, water is a basic human right: TREAT IT AS SUCH. Appoint a new company that will solely focus on cleaning the tanks, supply water to the tanks (meanwhile you focus on the pumps), and the supply has to be consistent, because there is no schedule in the consumption of water, thus the trucks should be moving every minute of every day, even if it means filling a half filled truck.

The above comment underscores that water supply through a tanking system is not a permanent policy of government. It could be that water tanks that are not re-filled are a result of municipal incapacity or unforeseen political interference in services. Municipalities should not be complacent and normalise it. The important aspect the comment highlights is the hygiene of the tanks that are not cleaned regularly, which poses a human health threat. Mokhali in that comment calls for transparency between the municipality and the community on how often the water tanks are refilled. This is to ensure that people plan accordingly and not to remain without water for prolonged periods. The implication of the comment on water services touches on four things, i) access to clean water, ii) regular and reliable supply, iii) water conservation by reducing water leaks, and iv) efficient water management practices. The issue of efficient water management and access to clean water has been the struggle of residents in Hammanskraal and Stinkwater since 2013 (Masilela, 2023). The same Hammanskraal community has had a Cholera outbreak at the time of writing, unreliable water delivery, poor water quality, and mismanagement of water and sanitation infrastructure has been common in Hammanskraal since 2004 (HSRC, 2023).

Other comments following the reply by Mokhali confirmed that the companies tasked with filling the water tanks did not have a reliable and transparent schedule on which to re-fill the tanks. In other words, the water tanks are not an effective solution because the physical container stands there empty just like the dry taps. The demand from the people is for the government to show capacity and efficiency; efficiency is a principle of water services in South Africa that the local government is violating. In other communities, the issue of re-filling water tanks takes a different turn.

Mafate (2022) reports about Moutse Village in Sekhukhune District where R143 million was spent on water services, but people still have not had reliable access to water for years. The same is the case with the investments made in the wastewater treatment plant in Hammanskraal but the sewage and drinking water supply has not been resolved. The spokesperson of Sekhukhune District Municipality argued that the disputes among community members about the employment of truck drivers have led to delays in filling water tanks. What the municipality says about community barriers to project implementation is a notable challenge in stakeholder management in the municipality. The Emfuleni Local Municipality went through a similar challenge when interested people blockaded the wastewater works demanding to be employed as contractors in the refurbishment of the plant to help minimise the impact of the sewage spills that lasted for years (Tempelhoff *et al.*, 2019:22).

6.3.2 Human dignity [recognition] at the core of the social contract theory

As mentioned before, the government's failure to meet people's expectations in the provision of basic services has been something that preoccupies countries globally where the topic of inequality is concerned (USAid, 2022). In other words, lack of access to water perpetuates inequalities in society, which is a contradiction of the social contract aspirations of people having equal claim to the rights of nature like water. In South Africa, there were also concerns about the implication of people being unable to wash their hands during the COVID-19 pandemic as they do not have access to water (Mahlangu, 2020). Nhlapo (2020) replied to Mahlangu saying the Serope sa Benya section at Frankfort has been without water for six years. The complaints about lack of access during the COVID-19 outbreak were widespread in South Africa, which CER (2020; 2021) as documented, using various case studies of affected communities. The human dignity

of poor black communities was affected negatively by the COVID-19 pandemic that confirmed their [poor communities'] permanent vulnerability, without access to clean and sufficient water resources. The conversations about COVID-19 and human vulnerability made it clear that something had to change related to the social contract for water and create a more inclusive society. Having observed the structural inequalities that, the COVID-19 pandemic made obvious, @mbachelet (2021) calls for a new social contract with human rights like water at the core.

The sentiments about the need for a new social contract resonate in @Waleedshahid (2019), @CitiesAlliance (2021), and Naidoo (2021) who call for the promotion of human rights in the context of changing global climate conditions. Interestingly, talks all over the world about the new social contract raise a question of what the role of the state should be in the provision of water services because the state is failing to fulfil its mandate under the current global dispensation. The sentiment about the new social contract is common talk in the UN and global business discussion forums (@SLOtoUN, 2021; @APE_EU, 2022; @WorldBankMENA, 2020). This new social contract for water is more meaningful as @Sameer_Mehrab (2022) considers the prevalence of waterborne diseases. Resonating with the global call for a new social contract, @VeronicaODavis (2021) argued that civil engineers ought to understand their obligation to the public. This means that civil engineers can play a vital role in minimising social inequalities that extend to the supply of water services. Veronica, as a resident in the U.S., argues that civil engineers ought to prioritise quality designs and efficient water-saving innovations in the new social contract for water, especially in the era of a changing climate. What Veronica says about quality designs is the challenge that South Africa is experiencing with engineering companies that do not complete water infrastructure projects, which affects rural communities the most (Hofstetter *et al.*, 2020; Dithebe *et al.*, 2019). Talking about the social contract for water requires the commitment of the engineering sector to collaborate with the state and resolving to ensure good practices. Also, engineers and contractors ought to appreciate their role in creating safe societies and should exercise moral integrity to complete the construction of water projects.

Unlike the global narrative that embrace payment of taxes and service charges. The current talk about the renewal of the social contract excludes any substantive

considerations about what the citizens should contribute to the system of water supply. Perhaps paying taxes and using water sparingly, are the main responsibilities of the citizens. The new social contract for water should include a stronger emphasis on public engagement and education about suitable alternative technologies for the water supply if taps are not feasible. Currently, the social media analysis shows that communities have a problem with water tanks as a technology for water supply. Residents of Jagersfontein in the Free State Province published the following petition about the water crisis in the area:

For the past 8 years Jagersfontein has been without water, a struggle that lead us deep into freestate legislature, which phushed the freestate exco, spear headed by the current premier mme Ntombela, while they addressed the community water was running in our taps as soon as they left there was no water. Currently measures of jojo tanks that were not discussed with the community was installed in every street, by the same mining campany that has running water 24/7 to their plant, while majority of us remain without water.... Making jagersfontein the only town in this manucipality with jojo tanks as a permanent solution to the water crisis. Chapter 2 of the Constitution of South Africa provides that: "Everyone has the right to have access to sufficient food and water". To give effect to this right Parliament has enacted the Water Services Act 108 of 1997. Till date the water crisis is a major problem in jagersfontein and kopanong manucipality as a whole..... We cant rely on jojo tanks for a permanent solution, hope the manucipality will come with a permanent solution to this crisis. JOJO TANKS ARE NOT A PERMANENT SOLUTION at some point the people will get tired of them and forge a revolution to get rid of them....! (Phoofolo, 2022)

The above statement confirms the desire to access water from the taps and not tanks as a feature. What makes it difficult for the public to understand the rationale for using tanks is that when political pressure is felt the taps are turned on, as in the case of Jagersfontein where the premier took an interest in the water issue. When the political interest waned, the water flow also dissipated. This implies that water flowing through taps is not a technical problem, but an issue that water managers determine. The other aspect communicated earlier in this study refers to struggles for recognition, where, for instance, neighbouring mines have access to tap water while the adjacent community does not have

a reliable water supply through the tanks. The perception of discriminatory water supply is not in keeping with the values of dignity and fairness that water authorities should uphold.

The DWS official (Respondent 6) explains that when talking about the social contract breach, it is important to note that,

(S)ection 27 of the Constitution says the realisation of these rights is implemented in a manner that is graduating [progressive, incremental] depending on available resources; it cannot happen overnight. Trucking water is an attempt to meet the contract when pipeline supply is difficult and expensive to reach rural communities although it is the responsibility of the government to pipe water to communities without surface water. When the new government was formed, 60 percent of the existing dams were allocated to agriculture and water supply at households was through small-diameter pipes to supply the selected few. The replacement of the pipeline is not an easy job, which also sets low expectations from the communities in terms of the receipt of services. Most pipes are made of asbestos that needs replacement, and eventually the installation of bigger diameter pipes to allocate to everyone. In the Giyani saga, money was spent on pipes that did not meet the SANS standard and had to be replaced – in other words, money was taken by contractors without any service provision. This pipeline was meant to deliver water to Louis Trichardt in Makhado to ensure that the dams remain filled, even in winter, because there is little rainfall in that area.

The above response affirms the context of limited financial resources to extend water access to communities previously excluded. And this limitation is not an administrative excuse by the DWS, but something clearly thought through at the inception of the constitution. It implies that rational persons are considered not behind the veil of ignorance, but based on comprehensive information that institutionalised an incremental policy approach to expanding access to water services. The complication about the incremental policy of water access is that the population is ever increasing and the gap of access unlikely to close. Consequently, it requires careful planning, also for future expansion and development. The above response also touches on the need for

refurbishing infrastructure to improve the standard of water services. But poor planning undermines the water security of communities planned for.

The issue of water tinkering is understood as an intervention where water infrastructure is failing or unavailable, this shows that water tanking is not the optimum or permanent policy of government. Reference to the Giyani saga in the above response relates to the project started in 2014 by the then-President Jacob Zuma (Matlala, 2017). From the report by Matlala, it is also worth noting that the Giyani project did not fail, or experience delays due to poor construction. Simply put: the DWS did not pay the companies involved, which led to their abandoning the project. Even at the time of writing, the Giyani water project had not been completed (eNCA, 2013). Despite the President, Cyril Ramaphosa having promised the more than 50 villages that they would have access to water by March 2023 (Mokhoali, 2023). These delays and maladministration affect the dignity of residents in that they remain without access to clean and reliable water.

This study has already mentioned the need for government institutions to conceive human dignity as a service – Respondent 6 noted that the DWS is very keen to know and understand the water and sanitation problems and areas where they occur. By this, the respondent emphasises the need for collaboration between communities and the DWS to know in advance, or in time at least. Which would help with speedy responses to the challenges. Respondent 6 further noted that the SAHRC is there to police and ensure that human dignity is protected and upheld in public services. But this matter of the SAHRC policing human rights violations in water services could be rhetorical when there are no consequences or improvements following their reports. For example, the SAHRC released a report on Hammanskraal, but the water service problem did not improve there. On the positive side, the SAHRC report on Emfuleni Local Municipality brought positive changes as the national government acted quickly to resolve the sewage problem there (SAHRC, 2014).

A cynical view about the SAHRC as a proponent of human rights in the water sector would posit that the changes in Emfuleni Local Municipality was a result of the strategic importance of the Vaal River system, whose decay will have negative consequences on the country's economy. Or that the dynamic NGOs relentless in calling for accountability at Emfuleni Local Municipality have kept the Vaal River pollution on top of the agenda.

This view may hold when compared to the dynamism, or lack of it in Hammanskraal where residents struggled with water services. It only took a cholera outbreak for the government to move to hurry improve services. The fact is that municipalities have been ignoring SAHRC recommendations (Respondent 6).

Respondent 6 further commented that the unsatisfactory manner of water services does not uphold recognition. Water service violations of human rights is rhetorical because the SAHRC had issued reports related to the Hammanskraal and Emfuleni Local Municipality, and other communities in the country where water and sanitation issues have not been resolved (SAHRC, 2014). Therefore, the SAHRC is not a dependable champion of human rights to access water when government agencies continue undermining its resolutions. Regarding recognition in the water sector, respondent 6 argued that it is not satisfactory or acceptable human treatment by looking at how water services are delivered. That is, when people are forced to carry water on their heads, push a wheelbarrow to fetch water from a river, or squeeze in commotion at a water truck (tanker). Even if the water quality is good, how people are served water is important to affirm the dignity of the served communities (Respondent 6).

This aspect of *how* people are supplied water services resonated with the complaint by residents in Swellendam Municipality, Western Cape Province who spoke about shortage of water and sanitation. He said that “over 100 people use the bushes to discharge themselves. We also have ladies and children living with us. It is terrible cause safety is also a concern” (Payne and Marks, 2023). Another resident argued that dignity is at the core of water services. Monica Bokoto added: “I am now disgruntled because living without electricity and deplorable sanitation levels isn’t a nice thing — I am a woman” (Payne and Marks, 2023). By using the word, deplorable, means shameful and terrible, which are related to misrecognition, and the state of nature based in theoretical terms. On how people are served water, Respondent 6 mentioned the aspect of water tanking as a temporary measure. The residents share the same view and refuse to accept water tanks as a permanent commitment or solution (@BongeMacupe, 2020). A similar experience of a Moutse resident in Sekhukhune District Municipality in Limpopo Province is that “the water tanks are not filled regularly and were last refilled in September 2021” (Mafata, 2022). The residents who have faced poor administration of water tank services

have asked for a comprehensive solution of installing a tank plus deploying a team to ensure the regular sanitisation of the tanks to keep the water clean. The residents are, however, not in favour of Jojo tanks as a permanent solution/technology in the water supply (Meissner *et al.*, 2018).

This is also confirmed in the court settlement with the Sekhukhune District Municipality that water tanks are an interim relief (CALS, 2015). In the same district, health workers at St Rita Hospital which is being supplied with water tanks because of the water shortage commented about the brownish water that comes from the water tanks (Matlala, 2022). Matlala also notes that the residents felt that the water supply through the tanks is tantamount to dirty tap water because the water in the tanks gets polluted over time. In other words, this is an extension of the insult to the people who expect the government to provide clean water. It is reported that patients are bringing their own drinking water to the hospital where sanitation is also a concern (Matlala, 2022). Matlala noted that the issue of having to bring your own drinking water to the hospital is a big concern because there are patients admitted to the hospital while unconscious and without a companion to carry water for them. Mojela (2020) also reported of the Kgapane Hospital in Bolobedu region, Limpopo Province where water shortages due to low dam levels have affected health services. The community is complicit in the collapsing water services at the Kgapane Hospital because of the illegal water connections on the mainline of the hospital water system (Mojela, 2020). Repeated efforts to stop the illegal water connections have not resolved the water challenges of the hospital.

This narrative of the Kgapane hospital confirms the social contract theory of state-people relations where people should take responsibility to create a conducive social environment and not blame the government alone for governance challenges. Hence the need to revisit the social contract for water services as this study proposes. This state-people relations unfolds in the Swellendam community that submitted a service delivery petition. In it they claimed that “the municipality must adhere to the rule of law, not only when it suits Swellendam Municipality, but also where citizens are affected” (Payne & Marks, 2023). This means that the municipality should take responsibility to serve the public, like wise the public should reciprocate through contributions that lead to sustainable services.

In revitalising the social contract for water, the UK is a leading region where water utilities are actively engaged to have the people take part in the social contracting in the water sector. Indepen (2020) hosts the social contract dialogue about public purpose and raised the four themes as depicted in Figure 6.1 for a community partnership that ensures sustainable water services. It implies water supply based on regular customer feedback about the service standards, including infrastructure investment that reduces leakages. Consideration for environmental conservation is also important where people collaborate by reducing waste that leads to water pollution. Community education is also important for a working social contract. There is a need for willingness to uphold the laws regulating water services, as much as there are programs to assist the vulnerable who cannot keep up with paying service charges. This eventually contributes to water futures based on reliable supply and community centred consciousness on both sides. That is government being conscious of their obligations to the community, and the residents are equally conscious of the required actions to ensure sustainable water services.

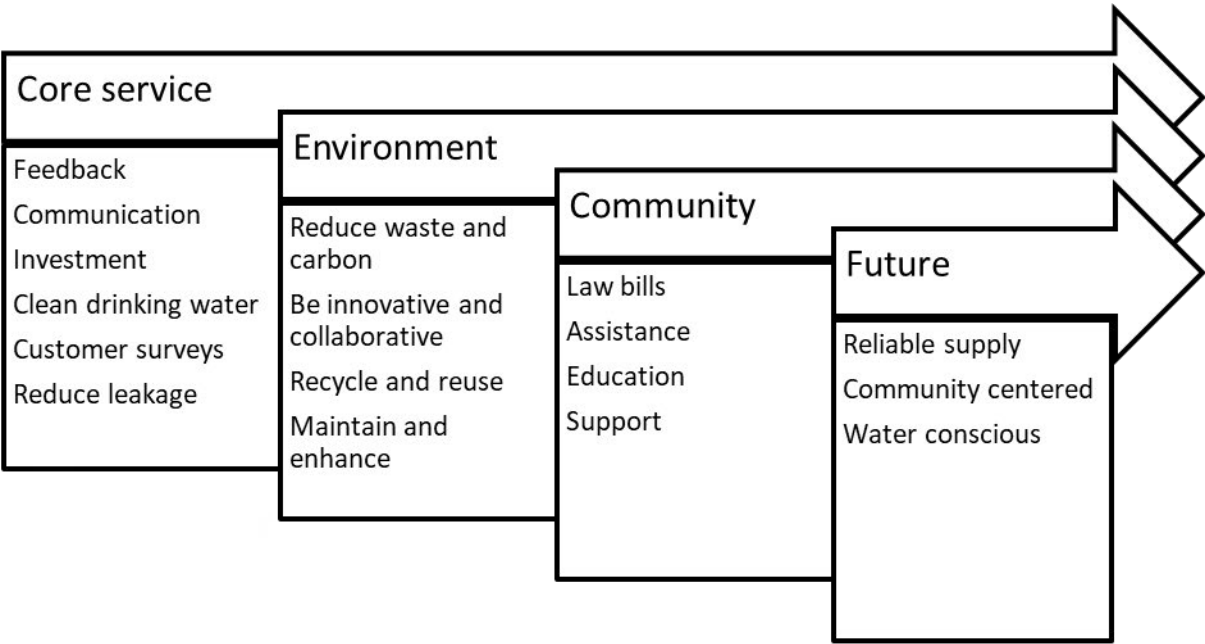


Figure 6.1: Themes for a community partnership that ensures sustainable water services (adapted from Indepen, 2020)

The above framework is comprehensive enough and shows the UK water companies’ intentions to lead in the sustainable management of water resources. The framework

underpins professional operations and people-cantered and water-conscious service. Discussions about the new social contract for water in the UK are also influenced by controversial proposals like the nationalisation of basic services (@BanGaoRen, 2020). Boccaletti (2018) adds that the nationalisation of water infrastructure is not ideal for ensuring water security, this is based on the observation that the government has failed to deliver as expected because of political interference and lack of capacity. And by not nationalising water services, it would follow that the water user would have to contribute to the sustainability of the service. Others argue that mutual obligation is not a requirement to uphold the social contract where the poor cannot contribute due to lack of resources (@CoxyJindas, 2020; @ibebraggin, 2020).

Indepen (2018) summarises the foundations of the social contract for water as i) legitimacy, ii) business, and iii) environmental. These foundational elements are a middle way in the ideologically contested discourse about sustainable water governance. It implies a middle way between water privatisation and water nationalisation. Legitimacy arises from competent business operations that ensure reliable access to clean water, correct billing, and efficient administration of indigent policies. Business is about innovative solutions, transparency and public involvement in planning and decision-making. This way, the social contract ensures that water services do not appear only as a function or responsibility of the government but a matter of collaboration where water users take the responsibility and play a role towards the conservation of water resources. Environmentalism is about future planning and cultural practices that reduce water pollution by all users. Limiting the culture of dumping rubbish in the water, including industrial practices that have a less adverse impact on the environment. Respondent 2 argues that they collaborated with communities to clean rubbish from the river and there was a big difference made. But even when community members are willing not to dump rubbish in the water, the municipality does not collect waste in the community. Since there is nowhere to dump the waste, rubbish will eventually find its way into the rivers.

The Indepen community partnership framework that sees water companies work in close collaboration with customers, is something uncommon of water boards in South Africa that do not effectively consult the community about their water visions (Mbeki & Phago, 2014; Smith, 2009:17, 19). The argument about the social contract principle of mutual

obligation is interesting. And indeed, in the context of South Africa, a mutual obligation is not a requirement for the poor because the government has policies to ensure that the indigent has access to water even though they cannot pay. The indigent policy is commendable because it expresses the principle of recognition and affirms the humanity of persons in that those without money should not go without their natural rights. Arguing that mutual obligation is not a requirement but is a claim for natural justice and creating a fair society, as Rawls explained, tolerating inequalities that benefit the most disadvantaged in society.

6.3.3 Inefficient water services led to struggles for recognition

Failure to ensure water security is detrimental to the survival of society. South Africa is in a moment of crisis because of the increased water demand that does not meet the supply (Muller, 2019). It is therefore important for the people to come together and consider water as a common resource that can lead to transformative social cooperation (coming together in the state of nature to imagine new possibilities). Muller (2014) goes further to say that poor water management is a constitutional crisis that needs ending the local government's autonomy to keep taps flowing. By local government autonomy, Muller wants a more central management of water resources by using regional organisations like water boards where municipalities are failing, or more private sector involvement. This is a step towards more professional services that municipalities lack because of their political in-fighting, and not prioritising service delivery.

The political leadership at DWS seem to agree with this possibility of increased professionalisation of water institutions to make them more efficient, and financially viable (Ensor, 2022). This will allow national government interventions where local government does not plan for the management of services like water and misuse of allocated funds. Muller (2016a) argues that provinces do not have the speciality and capacity that the national government has, for intervention in the event of municipalities failing to provide services.

Turton (cited in Evans, 2022b) argues that South Africa ran out of water as early as the year 2002. This helps underscore the reality of the water crisis facing the country. And in some respect, water scarcity is a result of long-term water pollution and underinvestment

in infrastructure which makes it urgent to refurbish or build new water supply systems that follow chemical standards (Evans, 2022b). The inability to comply with chemical standards implies that people will drink water that is below the necessary quality for human consumption. This lack of planning and operational capacity is among the key causes of water scarcity and has also led to the failure to manage water demand. Extreme climate change conditions, storage availability, high water demand, and efficient water use constitute the water security challenge for South Africa. South Africa is undergoing a scenario of water deficit that would necessitate water rationing as is the case with the load shedding of Eskom's electricity. There have been several episodes in Gauteng where the public had to queue for water tankers because there was a water shortage. And residents complained that the water tanks are not refilled adequately (GroundUp, 2022). Because water supply is a top-down process, people often have no alternatives to access water when municipal emergency water tanks are not refilled (Tapela *et al.*, 2015). In response to one of the water shortages in Gauteng, Sipho Mosai, the Rand Water Chief Executive Officer (CEO), at a press briefing allayed public fears about water availability and emphasised that there were no water rationing plans in place yet (Evans, 2022b). He explained that the water shortage was caused by power cuts, something that is beyond the water board's control.

Explaining energy shortages as a cause of water supply disruptions shows the interconnected system and infrastructure vulnerabilities that poor management of critical infrastructure may cause. Which also makes the case for innovative and less energy intensive methods to pump water. And the government could use the rich knowledge repositories of the WRC in this regard. But an interesting development of water shifting (taking water from one reservoir to another where there is greater demand) suggests that high demand is the problem leading to water supply shortages in the Gauteng Province (Patrick, 2023). And the City of Johannesburg Mayor, Kabelo Gwamanda was caught in a war of words with the DWS Minister Senzo Mchunu, accusing national government of the water supply failures in Johannesburg (Bhengu, 2023).

The Rand Water CEO touched on the aspect of high water demand and explained that South Africans consumed more water than the global average. Gauteng residents during peak demand use 305 litres per capita per day, other South Africans use 233 litres, while

the rest of the world uses 173 per capita per day (Evans, 2022b). Balzer (2018) reports the average South African water consumption was 237 litres. These reports of the average consumption per person per day being over 230 litres versus the 173 global averages make one curious as to which segments of society consume the most water – rural, peri urban, or urban – and along the income levels class. In other words, a general average water consumption measurement that does not highlight the inequalities of access to water by the poor and rural dwellers perpetuates injustice (Mnisi, 2020).

Human rights activists criticise the statistics by raising an argument that the water consumption numbers do not explain whether high water consumption is because of water losses through leakages (Evans, 2022b). This means South African water consumption could reduce significantly if there were prompt responses and repairs to water leaks, making the water consumption problem a water infrastructure (mis)management issue. Considering these facts, it is acceptable to say South African water consumption per capita per day is about 160 litres, well below the international water average.

What is worse about the water infrastructure (mis)management problem is that South Africa loses about R9 billion a year to water leaks. Evans (2022b) includes Turton's comment that a solution to the water crisis is collaboration for water reuse, recovery, and recycling, which can have positive spin-offs of employment creation. The problem is that there is no policy in place to facilitate this water culture. The insinuation is that South Africa is wasteful in that it uses high-quality water meant for drinking for other industrial and commercial purposes (Evans, 2022b). This suggestion for water recapture and recycling is a proposal for a culture that honours water and new institutionalism. This is not entirely new because it is already happening in rural areas where communities are relying on water hawkers, sinking their own boreholes, and using municipally supplied water tankers. It is, however, a new trend that is emerging in urban communities.

One of the causes of high water consumption raised by the government is that residents use alien plants that consume a lot of water during dry seasons (Evans, 2022c). There are few occasions where water boards or state departments nationally and locally, distribute water-friendly plants or information letters that explain this environmental challenge. It is for this reason that activists argue that the government is blaming water

shortages on the people instead of taking responsibility for its planning inefficiencies. Evans (2022c) also adds that DWS convened an emergency water war room [a team of different state departments and strategic stakeholders] in the wake of water scarcity in Gauteng at the time of Cape Town's Day Zero. What is concerning, is that the water war room comprised of government representatives from affected municipalities and the business sector, but the civil society sector was absent in such responses. It remains that top-down management of water services is a fundamental feature of water governance in South Africa (Makaya *et al.*, 2020; Jonker *et al.*, 2010) instead of an inclusive approach of public consultation. The solution to the water shortage in Gauteng was the temporary increase of bulk water supply to Rand Water (Evans, 2022c) which means, the water crisis is not over, and the social intervention on water conservation is halted until another emergency when there will be calls for consumers to use water sparingly.

The above paragraph shows that the government misrecognises the public by making it as if water scarcity is the problem of water consumers whereas the bigger picture is the operational failures of water authorities. The misrecognition of the weak in society when distributing resources is made clear when the residents expressed feelings in the Eastern Cape Province in Kat-katvallei, about water distribution when communities have had no water access for years (Sizani, 2022).

This water crisis makes us very angry because the water tankers are passing our area. Last year in October with five other women we confronted one of the tankers. We asked the driver why they were not supplying water? But he never responded. Instead, he sped off (Sizani, 2022).

The above excerpt points to certain aspects of misrecognition; first, silence, by not responding to people when spoken to about the distribution of resources (lack of accountability). On this issue of being spoken to, the Mokgola community in North West Province has had water problems since 2006. There residents felt ignored by a councillor who did not attend a meeting when asked by the community that has been without water for weeks. As is common to other communities in South Africa, the Mokgola residents believed that the government would not respond to their needs for water without a protest. Mokgathle (2022) records the comments by residents as follows:

Why should we have to protest before we could have water, a basic right to everyone? Every time we must close the road for innocent people because of your poor leadership – Kelebogile Moiloa. I do not like being involved in protest but that is the only language understood by our government – Mmaipeleng Kale. “I can survive without electricity but not without water, hence I use more than R1,000 monthly to buy water while I am unemployed.

The above comments by residents indicate a lack of collaboration and dialogue in resolving the water challenges. Residents see an ineffective government while the municipality cited illegal connections, infrastructure vandalism, sharing water with livestock, and population growth as challenges to provide reliable and clean water (Mokgatlhe, 2022). The municipality’s response indicates a problem of dual obligations where residents should be responsible not to vandalise water infrastructure or make illegal connections to it. While government should be more proactive to develop multiple water uses to accommodate both livestock and human needs, including to plan for population growth and infrastructure expansion. The other concern the Mokgola residents note is that their water problems started when the municipality took over the mandate of being a water service authority, which is an indicator of poor capacity in local municipalities. Something that Coertzer (2022) noted about the slow onset of the water crisis in the past twenty years.

The Kat-katvallei and Makgola communities show that it is humiliating and irrational human relations to exclude certain communities from accessing public services while there are legal provisions to promote access. In other words, the legal institutions are not preventing injustice and are not promoting equitable access in the water sector. Local government has failed to ensure reliable and efficient water supply as a custodian mandated by the Constitution and ended up taking responsibility for the water supply because there was no national agency for water service at the beginning of the political transition in 1994 (Muller, 2008). Muller (2008) argues that an apex institution to provide oversight on water services is what is required for the water sector reforms in South Africa today. Muller (2016a) notes that the infrastructure was installed to reach 10 million of 12 million people who previously did not have access to water in 1994.

The trouble is that people who are not paying for water often use too much. The consequence is that many people who once had a reliable water supply (that 25% of households mentioned earlier, more than 10 million people) no longer have water security. Reliability has gone down and if we do not do something urgently and take serious action, we are going to find that the situation continues to worsen (Muller, 2016:5).

The South African president speaking to a conference on water and sanitation issues commented that:

Many municipalities are unable to deliver services to the people that they serve. This is a crisis of enormous proportions, and it undermines our constitution. Failure of local government is causing a trust deficit with the citizenry. We have just received a disturbing report from the Auditor-General on the dismal performance by the municipalities. This conference should therefore enable us as government to move beyond diagnosis of problems but to rather find solutions that will be implemented (RSA, 2022b).

That more people do not have water means the local government has broken its social contract for water services. Therefore, the national government should take over the mandate. The deputy minister of water and sanitation, Mr David Mahlobo seems to hint at this when he says:

We are on track in terms of ensuring water supply to communities, but the municipalities are our weakest link. It is a major concern that the provision of reliable services of both water and sanitation is showing signs of decline. This is mainly due to dilapidated infrastructure, lack of operation and maintenance on water schemes, and the poor integration between housing programmes and current infrastructure development projects (RSA, 2022b).

Accounts like @waterShortageZA, @WaterWarRoomSA, @sawatercaucus, @DWS_RSA, @watershortageSa, @waterforumsa, YWPZA, @Rand_Water, and @WaterInstSA are prominent on Twitter when searching anything about water, and water conservation in South Africa. These accounts are nothing more than updates on what the government is doing, and organisational events that are hosted. This includes simple mentions that water resources are under stress hence water conservation should be a

priority in South Africa. Otherwise, residents form groups to respond to the emerging water crisis, one of the groups is the @waterforumSA. Which has recently commented on whether the private sector should play a bigger role in water governance, especially asking if the Integrated Vaal River System should be privatised. But the questions about water privatisation by the water forum have not elicited broad public comments. This gives the impression that water issues are only a concern to those who are interested and not the broad community. Other posts about water services are from media houses that show the government's incompetence when water services are failing or mention some government interventions and innovations in infrastructure development. Business and donor organisation accounts are also present, but their posts are about the innovative solutions available to the market that can help conserve water. There is a commonality in all the accounts about the reality of water scarcity.

There is no constructive, critical discussion on Twitter between the public, government, and business about what the social contract for water is. And no appeal to what the public should be doing to ensure sustainable water services. Recently, the Organisation Against Tax Abuse (OUTA) launched a WaterCan initiative which is about citizens taking water quality samples with which they can use the results to pressurise local municipalities to provide clean water services. This is a commendable development, but its focus on taking water samples is limited to people having the test kits which they would not afford unless OUTA donates them. These are separate initiatives that need coordinating for better impact. The neglected part is on engaged public discussions about the need to ensure that people do not flush down material that would lead to blockages in sewage pipes; no mention of mobilising communities and skilled people to fix water and drain leaks that litter the streets and damage roads. South Africa is coming to terms with the reality of water shortages, a phenomenon that water engineers and lawmakers do not find easy to resolve.

High water demand and increasing temperatures prove to be a longstanding complication in the management of water resources and the residents need to adapt to the new changes that climatic conditions are causing. Residents of Moutse in Limpopo Province rely on the Mkhombo Dam, which began to silt, aggravating water shortages. Municipal efforts for alternative sources like boreholes and water tanks did not help due to municipal

incapacity to manage the services (Mafata, 2022). In a different case, the residents of Laudium in the City of Tshwane protested when their reservoir reached 4% capacity (Pijoos, 2019). In their complaints, Laudium residents claimed to have been repeatedly targeted and uninformed about the water cuts by the municipality. In this, residents confirm the need for the government to talk with them. While public officials call for residents to conserve water (@tWeatherSA, 2019), residents are also sceptical, accusing the government of not planning for water infrastructure to match population growth. Daily water cut offs and up to a week without consultation (Mavundla, 2016:66). Slow response rates to fix broken water infrastructure (Mavundla, 2016:66,65), residents ignore leaking pipes because they do not pay (Mavundla, 2016:66-67). The quick retort to blame the government for not planning somehow shows the lack of preparation by the people to play a role in the sustainability of water services. Unwillingness to collaborate is unfortunate because the people are the ones using the infrastructure that the government builds; it is to the benefit of all that people take part in the safe use and protection of the infrastructure. Otherwise, the government is always playing catch up in its effort to detect the mistakes in time. The need to reimagine the social contract in the South African water sector is convenient at a time when the need for refurbishing water infrastructure to avoid dire consequences is undeniable (Adams, 2022). Dire consequences are already manifesting and are no longer just a warning. Nelson Mandela Bay Municipality in the Eastern Cape is expected to be completely dry because of climate impact and mismanagement of water infrastructure; some water leaks take over a year to fix (Lakaje, 2022; Mbovane, 2022). Cape Town is also another area that has experienced extreme water shortages and survived because of disciplined citizens who used water sparingly until the rains restored water levels (Gilbody-Dickerson, 2022). Here, addressing the aspect of the mismanagement of not fixing leaks, building capacity to provide services, and encouraging citizens to play their part is what needs to be prioritised.

6.3.4 The frame of struggles in South African public affairs

The logic of struggles is common in South African public affairs, whether dealing with poverty alleviation, crime prevention, or addressing issues of policy and maladministration. @PresidencyZA (2018) uses the frame of struggles in positing “dignity, respect and peace” associated with a decent education, affordable health care,

a living wage, housing, water, and electricity. @Amandlamobi (2020) highlights the COVID-19 pandemic's impact that exposed people's struggles for access to clean water and @asvikelane (2021) echoes the sentiment that government needs to start listening to communities who struggle with access to water and sanitation. Similarly, @BongeMacupe (2020) notes the struggle of villages in the North-West Province that have gone for six years since the last drop of water when taps dried up. And @watsuppafrica (2020) equally cites struggles for water in QwaQwa. @MasheanePopo (2020) comments about the reality of a lack of water finally taking an innocent life – where communities have struggled for over five years for a basic need. The comment is in response to a tweet about an eight-year-old girl who drowned in a river in QwaQwa, Free State Province while fetching water with her 10-year-old brother (@AdvoBarryRoux, 2020). It is reported that QwaQwa and surrounding areas have been battling with chronic water shortages for years (@AdvoBarryRoux, 2020). The tweet included a picture of community members standing by on the riverbank as two males carry the lifeless body of the young girl out of the river (@AdvoBarryRoux, 2020). Other responses to the tweet comment about irresponsible parents who let children fetch water at the river, disappointment with the governing party, and how this is the fault of voters who keep re-electing the ANC despite poor service delivery.

Some comment on the irony of Sterkfontein Dam being at QwaQwa yet its water goes to get sold in Gauteng, or that the water at Sterkfontein comes from Bergville, where residents do not have access to tap water as well (@sbani, 2020; @ReizMozerella, 2020). The comments about Vaal businesses getting the priority from QwaQwa's dam waters hint at the inequality or injustice in water governance (@gnNhlapo1808, 2020). A resident commented in the discussion about water shortages and the government's inability to ensure a reliable water supply, saying:

The village I'm from what we did is we opened an account then started saving money every month. Then we did boreholes mind you 16 km from our village there's a big dam that Zuma opened in 2014...in short people qwaqwa must stop waiting on this useless government (@Bazi_tsika, 2022).

The aspect of proximity to dam water and being a community with insufficient access to water is also experienced by residents in the uThukela District Municipality, KZN Province.

There is a water shortage in the area meanwhile they are aware as residents that there is a dam in Estcourt called Wagendrift which supplies water to the Gauteng Province. How can they suffer and be asked to pay exorbitant prices if they have their own dam that is supposed to supply water to the community of Ladysmith (Mavundla, 2016:69).

@Bazi_tsika refers to the De Hoop Dam in Sekhukhune District, Limpopo Province (The Presidency, 2014). President Zuma at that time said opening the dam is “a celebration of socioeconomic rights that are mentioned in the Constitution” which will benefit the people of Sekhukhune “who have been excluded from access to basic needs like water under apartheid regimes” (The Presidency, 2014). The De Hoop Dam was constructed for two primary reasons:

the first is to supply water to the towns, industries and poorly serviced rural communities in Sekhukhune, Waterberg, and Capricorn Districts of the Limpopo Province. Secondly, the Dam will supply water to the mines to help unlock vast mineral deposits, mainly in the form of platinum group metals found in the region. The dam will therefore be a catalyst for both social and economic development for this region (The Presidency, 2014).

Echoing this rationale for dam construction, the spokesperson of the DWS, Mr Sputnik Ratau responded to the complaints by QwaQwa residents saying, *with own emphasis added*:

...the ongoing water crisis at Phuthaditjhaba *is not as simple as taking water from the Sterkfontein Dam and giving it to nearby drought afflicted communities*. Communities need to *consider factors such as why certain dams are built before demanding water from municipalities* – as in the case of Sterkfontein Dam (Choane, 2016).

Evans (2022b) cites a water expert, who said: “The reason why the [Vaal] dam is full is because we’ve got to keep it for the years when we don’t have water — for the dry years”.

While Cohen (2022) adds that water shortages at the Katse and Mohale Dams of the Lesotho High Lands Water Project (LHWP) would lead to a ripple effect on water availability at the Vaal Dam. In other words, the Vaal Dam is a safety net for stability in the economic hub of South Africa. As early as 1996, the minister of Water and Forestry (Staff Report, 1996) confirmed that the security of Gauteng's water supply is important and was being dealt with through the LHWP, where the water behind the dam wall was 90 metres deep. @Bazi_tsika's complaint about their proximity to the De Hoop Dam yet they are without water could be explained in what Ratau said about not simply taking water and giving it to nearby communities because certain dams are built for certain reasons. Those certain reasons according to former President Zuma include supplying water to the towns, industries, poorly serviced rural communities, and mines for unlocking mineral deposits is the primary focus of De Hoop Dam. Residents of Riverside in the Sekhukhune District Municipality (SDM) added another concern about perceived discrimination in the water allocation when they blocked the pipeline to St Rita Hospital, as Matlala (2022) reports a community member saying:

...our taps are dry and yet a pipeline runs through our area to the hospital. For years, the SDM had been telling us that water would flow to us from De Hoop and Flag Boshielo dams. It is a forever promise that never materialises.

Conflict by various interests over limited resources is a political reality in society. Ratau clarifies that business interests prevail over Phuthaditjhaba residents' water demands from the Sterkfontein Dam. As @Bazi_tsika noted about De Hoop Dam, nearby villages are also an afterthought in water allocation as the economic value of water is a priority in the mineral complex in Limpopo. Former President Zuma uses the phrase "supplying water to poorly serviced rural communities" that includes @Bazi_tsika's village at face value. On the other hand, it does not include it because poorly serviced villages could imply those already with taps installed but there is no water coming out. Meaning, De Hoop Dam will ensure that taps do not run dry but @Bazi_tsika's village has a long struggle yet to push until their turn comes to access water. In-land areas account for the most GDP revenue in South Africa, explaining why the state prioritises the water supply to the Vaal Dam when water scarcity arises (Muller, 2008). In this way, the state is protecting the economic value derived from the water resource. It explains why Sputnik

Ratau said people should understand the reason some dams were built before calling for water distribution to communities during dry periods.

Motseo (2022) reports a resident from Sekhukhune District Municipality, Mabotsha village, in Limpopo saying, “we never believed that 28 years after democracy we would still be struggling with basic needs such as water”. This is because a water pump broke and had not been repaired for more than four months. The problem is more than just a broken water pipe. Julia Mathebe, the mayor of Sekhukhune District Municipality pledged to meet with the minister of water and sanitation, Senzo Mchunu to unlock the De Hoop Dam and alleviate water access challenges in the municipal area. The mayor pledged in 2022, about eight years since the then President Zuma opened the De Hoop Dam when he announced to supply water to villages previously excluded by apartheid. What is interesting about the mayor’s comment is that she does not say what the cause of water supply backlogs is in the area situated near the dam. In this, there is no report about mining companies and industries being without water.

Nonetheless, the reality of staying next to the dam is a big blemish on the excluded communities’ self-perceptions and dignity – hence they claim that the government does not care. Or that the governing party is treating them like the apartheid regime did. Although former President Zuma said that they did not want to repeat the ills of the apartheid regime, they are perpetuating them. The same injustices of prioritising one over another are witnessed in the residential block of the mayor in QwaQwa getting clean water while other residents do not (@palesa_mmoki, 2020). Just as the then KZN premier, Mr Sihle Zikalala who organised for a water tanker to be delivered to his home amid the community recovering from the flood crisis that made them go without water for weeks; Zikalala was later labelled a water thief by members of parliament (Khoza, 2022).

Vaal dam was drying up dams in the free state in qwaqwa to be specific were opened but qwaqwa people are forced to drink green water. @MYANC must bring back the dignity they took from the people who voted them in power this is slavery n is unacceptable (@gnNhlapo1808, 2020).

What Nhlapo alludes to is the aspect of water transfers to support the Vaal Dam that was drying up which is tantamount to slavery, according to @gnNhlapo1808. In addition to

this, drinking green water makes the linkage between drinking dirty water and impinged human dignity. The aspect of care, which is part of recognition, also appears in public discourses about water services. @PercyLefophs (2020) argued that: “When @HermanMashaba talks about the water crisis in places like Hammanskraal, @MbalulaFikile sees it as a joke. These @MYANC people don't care about our people 🤔🤔. After 26 years of democracy, children are still fetching water from the rivers”. Connected to the lack of care, the commentators are also upset about people losing their lives because of service delivery and basic needs (@ThabiSoul_Deep, 2022; @GrootmanTebza, 2020). @RuralDemocracy (2020) likewise touched on the aspect of recognition in that “...people living in rural areas tend to be othered by Gov when it comes to service delivery and resource allocation!!!”. This experience of being the other confirms the faultline in the South African social contract for water.

The above cases about water allocation along with poor service provision by municipalities highlight the aspect of recognition. Residents live four years without water access to reliable and safe water because the municipality does not fix collapsed boreholes (Sizani, 2022). Municipal officials not refilling water tanks, not sending water trucks to a house where there is a funeral, but sending water to one's friends or family is a sign of misrecognition that needs addressing by enforcing basic principles of service delivery in the public sector. Also, the established practice of municipalities sending water trucks to houses where there is a funeral could be argued as a sign of care. But it is not on the other hand. It means that people get special attention because someone died for a household to get water. This is against the principle of a civil society that the social contract envisages. Bhatia (2020) and @Zwelinzima1 (2020) echo this sentiment of residents travelling long distances kilometres to fetch water as something not conducive for the vulnerable to survive in society. Bhatia (2020) cites injuries like falls, traffic accidents, animal attacks and fights, which can result in broken bones, spinal injuries, lacerations, and other physical injuries sustained while fetching water are not addressed in research, nor are they the concern of policymakers (Bhatia, 2020).

A local opposition political party in the ELM area quoted Mayor, Jacob Khawe, during the public address saying, “one day we will wake up mad and Eskom and Rand Water will feel our madness” (New Horizon Movement, 2018). The New Horizon Movement felt that

the mayor was reckless and encouraging violent behaviour, that the governing party had complained about, of people destroying in the name of protest. The “madness” that Khawe spoke about was unleashed upon the Ngwathe Municipality in Parys (Free State Province) when residents burned water tanks, as reported on by the mayor as follows:

Ngwathe Local Municipality regards the damages and burning of water tanks as unfortunate, particularly at the time when the Executive Mayor Cllr Victoria De Beer and Councillors are working, without rest, to find permanent solutions on current water challenges. Water tanks are serving as a temporary relief providing highly affected areas with water. Some of these areas including Sisulu, Mbeki, Ghana, Phelandaba, Mandela, etc., have been experiencing water shortages for years, hence water tankers are being used to ensure that residents don't struggle that much with water. However, the municipality is taking measures to ensure that jojo tanks are refilled with clean water, safe for human consumption. Water is a basic human right (De Beer, 2022).

Mayor De Beer's statement confirms that some people have not had access to adequate water for years, which is a reason to cause anger for the many years using Jojo tanks and lots of money spent on contractors as the peoples' comments showed. She appeals to the people to be reasonable and considerate of community members who rely on water tanks for water access and expresses a desire to find a permanent solution to the water problem. The social contract principle includes rational persons who explore solutions to the environmental threats they face. Labuschagne (2022) commented on the mayor's post asking why it is difficult to purify water from the Vaal River, a water source sitting next to Parys, when civilisations have managed to abstract and purify water from rivers in the past. While others were concerned about the act of burning the much-needed tanks, another comment claims that the tanks were always empty, hence it was so easy to roll them over and to set them alight.

The residents in rural and underprivileged areas are the ones who struggle the most to access water (@Lastkombo, 2019). The post by @Lastkombo includes a video uploaded from an eNCA broadcast that shows people fetching water from an irrigation canal due to a bulk water project that has not been completed in years, and police attacking Andries Tatane at a public protest. The video confirms public assertions about people drinking

water with animals (@Klaasnamba, 2021). A resident in the Eastern Cape's Kat-katvallei Village bemoaned that:

...the municipality only brought us the water once in December for over 250 households. We are literally competing with the animals for drinking water. We must wake up as early as 4am to get the water before these animals wake up. If they get first to the water, they pee and poo in the river. Then we must wait for many hours until the water clears (GroundUp, 2022).

The experience of competing with animals for water is what makes affected residents feel they have a government that does not care about affirming their dignity, and further reduces them to being less human. Added to the neglect of rural communities as far as access to water is concerned; the greater issue of neglecting rural residents is that of sanitation. Because there is a lack of piped water supplies to support flushing toilets, residents normally build their own pit toilets and even where the state has built some, the toilets get full, and the state does not provide the service to empty them. In this case, rural communities do not have access to sanitation services (@BongeMacupe, 2020).

6.3.5 Stepping in where the government has failed

There is one enduring aspect of people's inability to secure reliable water services across South African communities, especially in rural communities. And in line with the social contract principles of collaboration. Stepping in [filling the gap] where the government fails is an opportune moment for harnessing social resources and citizens' energies to sustain a good life that all humans desire. Which lays a foundation for an enduring social contract for water.

For example, residents as rational persons came together to generate solutions to a social contract for water that ceased to exist. Kretzmann (2022) reports that 510 households in the Mazista community of Kgetleng Rivier Municipality in the North-West Province resort to neighbouring farms to access water from boreholes. In addition, there are two boreholes at Tshikuwi village in Limpopo Province, which supply water to the communities on a constant basis, but the water from these boreholes is slightly salty; as a result, people travel to nearby villages to get potable water from the scheme (DWS, 2005). What is notable is that interventions to supply water through boreholes are not

always effective. The water quality from the boreholes could be inferior or insufficient, while at times, the borehole equipment is vandalised. These are among the indicators of poor performance by the municipality.

An opportunity presents itself for entrepreneurs to sell water when municipalities fail to supply reliable water services. When responding to the parliament question about the water challenges in Tshikuwi village in Limpopo Province, the then minister of water and sanitation Minister Buyelwa Sonjica said “my department is not aware that the community is buying water from individuals who own boreholes, but my department will investigate this” (DWS, 2005).

Selling water is not something unique to Tshikuwi village to call for an investigation by the minister. In recent years, the DWS issued a statement about the reports of borehole water sales in the Western Cape Province, the statement emphasised that “private boreholes are for private use, for reasonable domestic, and therefore not to be commercialised” (Friedman, 2018). The use of capital letters is in the original record for emphasis. In other words, people who sell borehole water from their residences are violating the law, in terms of Section 22 of the WSA (RSA, 1997) that requires authorisation for one to work as a water service provider. People stepping in where the government does not supply water expose themselves to criminal prosecution unawares. Local businesses like Bem-Vindo lodge in Koster, North-West Province are the examples of establishments that could expose themselves to such criminality unawares (Kretzmann, 2022).

The other aspect is that critical infrastructure is vandalised, or not maintained. In such cases, residents like those of Kgetleng River in North West Province, as concerned citizens, went to court to have permission to access the water treatment plant that had been shut down during a labour protest. Having won the court case, the residents could restore the water supply to the town (Kretzmann, 2022). Residents in Koster also got a favourable court decision that mandated the municipality to end sewage pollution, the failure of which would allow residents to take control of the critical infrastructure (Kretzmann, 2022). Again, the municipality did not stop the sewage pollution. This led to residents stepping in and successfully restoring the water supply to the town and releasing sewage effluent. This shows the incompetency of local government and how private sector intervention, or collaboration, can help ensure sustainable water services.

Where the municipality does not supply security services to prevent the vandalism of critical infrastructure, individuals step in to secure it as well. An individual resident paid for security services to protect the borehole serving the community and for the electricity to run it (Kretzmann, 2022). This shows the value of cooperation between residents and government towards the sustainability of critical infrastructure. This means residents, in their personal capacity, step in to supply water to the community, because the municipality is failing. The residents of Clarens, Dihlabeng municipal area in the Free State Province are also stepping in to buy necessary spare parts at the cost of R15.8 million, because the municipality does not have money to replace the broken water pipes (Kretzmann, 2022).

The portfolio committee on CoGTA issued a statement about the dysfunctional Emfuleni Local Municipality. The committee raised concerns about “the lives of the people being affected negatively by the lack of both political will and administrative inclination to serve the people” (Parliament of South Africa, 2020). The committee also cites lack of oversight, consequence management, and non-compliance among the factors that led to the service delivery collapse and irregular expenditure of R1.1 billion. Just as the public sentiment had shown, as highlighted in Chapter 3, about people who will not pay for services because of government corruption, the CoGTA portfolio committee also notes that “unreliable power and water supply will negatively affect the municipality’s ability to collect rates and taxes, which will further worsen the municipality’s financial situation where sewage spillage and water leaks are the norm in the municipality” (Parliament of South Africa, 2020). Amid the management crisis in Emfuleni Municipality, the CoGTA portfolio committee (Parliament of South Africa, 2020) noted that:

The willingness of the business community to assist the municipality, but the municipality’s lack of willingness to harness the financial and other expertise of the business sector is both astounding and regrettable. National government has made repeated calls for public-private partnerships to resolve the many social and economic challenges facing the country, yet the municipality refuses positive private sector proposals. The committee has urged the municipality to reconsider its hostile posture against business and so improve the living conditions of its residents.

The lack of a report for the first intervention means the administrators are bound to commit the same mistakes as the first intervention because there is no record of what initiatives were implemented and what results emanated from them. The committee calls for this introspection and analysis to be undertaken urgently to prevent the repetition of mistakes. Because of the dire situation in the municipality, the committee has resolved to urgently convene a follow-up virtual meeting on Friday, 23 October, to allow the municipality to consider its responses to questions raised by the committee. This resolution is based on the desire to find workable solutions to the municipality's problems and ensure effective service delivery for the people of Emfuleni.

An interesting point from social media reviews is that citizens from African countries like Nigeria, Ghana, Uganda, and Kenya use the exact phrase of 'the social contract' to point out how the state fails in service delivery. South Africans complain, but do not use the concept of the social contract in their analysis of state performance. The aspect of communities having dams in sight but being unable to access the water is not unique to South Africa. The residents of Lesotho are also disgruntled with the situation (@CijLesotho, 2021). Hommes *et al.* (2019:83) speak about these rural-urban divides where "water from rural areas is extracted and piped to supply urban houses and industrial sites". This implies that the infrastructure arrangements in the social contract for water are worth paying close attention to because they shape relations between the people and the state by reproducing inequality or mediating citizenship (Hommes *et al.*, 2019).

Therefore, to enable a society of purpose and embrace human dignity through water service provision requires a social contract reimagination, which is "a process of continuous (re)negotiations and struggles that go far beyond technical questions about where water should flow to, or not. These struggles are also about equity in participation and decision making, representation and recognition of identities, values, beliefs, and knowledges" (Hommes *et al.*, 2019:89). This continuous (re)negotiation process is what @alesandra_na (2020) calls a never-ending work that enables everyone to live in safety and with dignity.

6.4 Theoretical reflections on findings and prospects for solutions

Collaboration for sustainable water services is about non-violent action in water governance (Baggerman & Hidalgo, 2021) which is the very reason people in the original position came together to set up a civil society through a social contract. Climate change threats endanger human communities where water shortages are manifest. The water shortage tensions will also present tensions between state and non-state stakeholders, hence the need for the revision of the social contract that defines the obligations and responsibilities of each stakeholder. Although outright water conflicts have not occurred in modern societies, incidents like water protests over privatisation and tariffs, the destruction of infrastructure, dominating decision-making structures in water governance, corruption and ignoring water polluters, and unequal water allocation, are terrains where conflict for water occurs (Baggerman & Hidalgo, 2021). Therefore, channelling people's power in a strategic and non-violent manner towards engaging with the responsible actors to express local grievances is essential. It is about time that water users in South Africa do not consider the responsibility for water governance as that of the state alone. People ought to decide how they can contribute to the sustainability of water services in a manner that complements the government's efforts in bulk water supply.

6.4.1 South Africa's water crisis is the state of nature

The state of nature in water services is manifest in the lack of state capacity to provide services, coupled with corruption in water services-built infrastructure, discriminatory water supply systems, and pollution of water resources that denies people access to drinking water (RSA, 2015; Du Plessis, 2022; Creamer Media, 2012:12). The growing population and natural hazards that destroy water and sanitation infrastructure worsen the water crisis, especially seeing that the government does not have enough financial resources to restore best water services (Du Plessis, 2023). The depth and brutality of the state of nature are expressed in the most vulnerable members of society who lose their lives or fall sick due to poor water quality, who endure social hardship because they have no access to water. Like villagers who have resorted to fetching water from the quarries, drinking next to animals, and undermining public health (NICD, 2023). It includes residents going without water, a vital resource to support human life, for days, weeks, months, and even years (Damba-Hendrik, 2021).

The state of nature in water services is about the strong taking advantage of the weak, this is where the government prioritises corporate and state institutions more than individual households. This is where the economic value of water surpasses the social value. This is seen in cutting services to households, for being in arrears and overlooking private companies and public institutions that default. It is only recently that the Tshwane Metro started a campaign to retrieve monies from the state's corporate institutions (Mahope, 2023).

Overlooking companies that were in arrears, confirms the notion that the government respects institutions of economic value while excluding access to domestic users (Jack, 2023). Only 24% of municipal water generates revenue, 41% does not generate revenue and 35% is lost through leakages (DWS, 2021:46). The DWS notes that "Municipalities are losing about 1660 million m³ per year (MCM/a) through non-revenue water amounting to R9.9 billion each year. About R89,8 billion is needed each year for the next 10 years to achieve water security". This suggests that more collaboration to stop leakages at the domestic level and the water infrastructure network would return significant funds for future water security (DWS, 2022a:111). In addition, Donnenfeld (2018) expresses disappointment in the governing party (ANC) and the main opposition party (DA) for politicising the worsening water crisis and not implementing meaningful interventions to allay the problem. One of the recent calls from the DA was for the DWS minister to fire the Rand Water CEO for the water crisis that affected the City of Tshwane. The DA did not present concrete suggestions on overcoming the water worsening water crisis that affects the entire country.

The above water sector challenges show that the greater challenge is institutional and operational more than it is about the customer who is not cooperating. This necessitates building an institution that can monitor the diverse segments of water use and enforce legislation and compliance by water users; an institution that is proactive and raises social awareness about the state of water, the responsibility of citizens, and embraces collaboration.

6.4.2 Access to water as the right of nature

The democratic dispensation in South Africa is an outcome of the social contract whose terms include access to basic needs like water (Mamokhere *et al.*, 2021). The provision of water is irrespective of whether people pay income taxes or not – rates and taxes as service charges do apply though. In truth, the South African state exists among other things, to ensure that the most vulnerable in society have access to water (RSA, 1996: S27(1)[b]; Smith, 2009). Payment of water services is a social contract obligation on the privileged in society, as it stands in South Africa today (Ebi, 2021). This is where the logic of free water comes in for the benefit of the indigent and conveys the civil society attribute of recognition (human dignity/rights). Equitable and sustainable access to water and sanitation is the primary strategic goal of the water sector and that objective is to promote socioeconomic growth and development (DWS, 2022a):

The right to basic water supply and sanitation services comes with a corresponding responsibility, namely, to use water and sanitation services responsibly and with due care, and to pay for services provided over and above services provided in terms of the free basic water and free basic sanitation policies (p.150).

Charging for water and sanitation services is essential to generate funds for operating, supporting, and investing in water systems. However, tariffs must consider the affordability of water and sanitation services for the poor. However, the inconsistency in the water governance policies, lies in local municipalities not pursuing water users who can afford it but are hiding in communities dominated by poor people (formerly black communities). This is the phenomenon of free riding and pleon as proved by Andries Lekeletsane, a ward councillor of Ward 39 in ELM who was receiving help from the indigent policy, despite not qualifying, based on the R40 000 income he received (Sibiya, 2023:3). Mr Lekeletsane as a person on the payroll of the municipality, could not be detected by the revenue collection processes and got away with cheating for seven years. It is not the Emfuleni municipality that has discrepancies in councillors who do not pay service charges. The City of Johannesburg has bills running into millions from councillors and staff members who do not pay their rates (De Wet, 2019; Nkosi & Dlamini, 2022; Cox, 2011).

The same challenge occurs in Tshwane (Moatshe, 2023), and many municipalities in the KZN Province (Madlala, 2013). What these incidents show is that public officials just like ordinary residents, are vulnerable to falling behind with their rate payments – and at worst, intentionally avoid paying, it is good that the municipalities can identify and hold them accountable. The Westville Ratepayers' Association in eThekweni, KZN Province has boycotted rates payment and called on the court to prevent the municipality from disconnecting water services, until the payment dispute is resolved. Residents had, in the interim, diverted the funds amounting to R700 000 to a community trust (NewzroomAfrika, 2023). This dispute of withholding payment has drawn the attention of the municipality who acknowledged that estimate billing was a problem that leads people to financial ruin. The issue of community education to understand or interpret the utility bill was noted also, as a matter of concern. (NewzroomAfrika, 2023). The ratepayers complained about the abuse or wasteful expenditure of ratepayers' money in spending about 10 million rands for imbizo/outreach events, instead of using that money to provide services (NewzroomAfrika, 2023).

The complaint is mainly that the municipality is not taking care of its own people. The comments in the YouTube post about Westville generated positive responses from 14 viewers, who thought that the same strategy of withholding payment should be adopted by other communities in South Africa, to effect change at the local government. Mr Asad Gaffar, the chairperson Westville Ratepayer's Association, emphasised that the municipal finances should be used in a correct and responsible manner (NewzroomAfrika, 2023). What is notable also in the case of the Westville residents is the lack of support for people who approach the municipality to admit owing service charges and say they cannot afford to keep up with the payment – but the municipality turns its back on them. Mr Gaffar called on municipalities to look at the bigger picture and cut on unnecessary expenditure – and use that money saved to help people who have fallen behind on payment (NewzroomAfrika, 2023). Responding to the protest by the ratepayers, the eThekweni municipality emphasised that non-payment of user charges is illegal, and that residents should be careful not to support projects that would lead to chaos and anarchy (eThekweni municipality, 2023).

The municipality considers withholding service charges as a self-help initiative that does not promote the common good. Interestingly, the municipality does not respond by saying what it intends to do to resolve the issues that the Westville ratepayer's association bring the municipality to ruin. The issue of municipal tariff increases is also getting worse and leading to destructive protests. The Westville ratepayer's association in eThekweni complained about tariffs although they resorted to the courts. The residents in Swellendam municipality, Western Cape Province have burnt the municipal building and damaged other buildings protesting the administration of the indigent policy (Hlati, 2023b). Another resident of Swellendam, Monwabisi Mtyanga spoke about the struggle, saying,

Out of the 2,500 shacks in the region, only 200 have electrical metre boxes, and there is no water in the informal settlements, where around 20 people share one toilet. As a community, we are struggling since we cannot afford to pay for water or power because the costs are too high (Payne & Marks, 2023).

This matter of non-affordability links with the debate about national ministers whom President Cyril Ramaphosa wanted to exonerate from paying service charges, as part of their employment benefits. It becomes a difficult thing when those holding public offices do not set a good example by paying for services. Water and sanitation services should be planned and implemented in response to effective demand which is linked to consumers' willingness and ability to pay the proper charges in the context of the prevailing subsidy and pricing framework (DWS, 2022a:150-151). Challenges such as not valuing water, poor accountability, non-payment for services, new infrastructure syndrome, vandalism, theft, pollution, wastage, and abuse also exist (DWS, 2022a:152).

6.4.3 Poor water services upset rational persons

Poor urban planning, or law enforcement where water and sanitation pipes move under houses, making it difficult to repair pipe bursts, coupled with political appointments of incompetent people to manage water resources, is a problem that leads to the state of nature in water services and needs resolving (Cohen, 2022). The quality regulation of drinking water is a problem where municipalities are failing in the Green and Blue Drop

ratings. This chapter already mentioned that most water treatment works are in critical condition and near collapse. The water purification plants also do not meet the basic purification standards. “There are high levels of ongoing pollution of water resources by effluent discharged from malfunctioning wastewater treatment works and a need for storm water runoff to be regulated. There are still problems with drinking water quality in several towns” (DWS, 2022a:161). Although institutional arrangements, effective regulation, decentralisation, and transformation are some of the key success factors for water and sanitation services, these measures have not been able to resolve the failure or inefficiencies of water and sanitation services and the ineffective and inefficient operation and maintenance thereof.

The DWS (2022a:153) notes that the department is in a conflict of interest as both a policy maker, policy enforcer, policy regulator, and policy subject (operator), which makes it unable to enforce accountability in municipalities. Smith (2009:5-6) explains this DWS’ conflict of interests are because of legal constraints. First, municipalities are independent entities according to the constitution and the DWS cannot interfere with the legislative function of municipalities to supply water services. Secondly, the DWS is caught in between the developmental role of having to prove that it gave sufficient support to municipalities that struggle with the water supply function before it can enforce punitive measures.

Because the DWS cannot effectively enforce water legislation that requires of municipalities to provide clean drinking water (Smith, 2009:9), rational persons are concerned with guaranteeing the natural right of access to clean water. To this effect, they organise themselves to pressurise the government when not supplying water services (Smith, 20019:19). In this case, rational persons also explore alternative water sources when they are without water access – although these sources could be polluted. Access to alternative water sources leads to people drowning in rivers or being violated while on the way to fetch water. Exposure to such threats causes affront and grief to the people who do not understand why such injustices continue in a social dispensation that claims to honour human dignity (Habib, 2013:156). The discrepancies in the water services, lack of communication, unfulfilled promises about water access, enduring frustration, and grief about water service standards lead people to protest and destroy

water service infrastructure. These protests are what struggles for recognition are about because people try to convey their demands to the government to restore or affirm their worth through the supply of water at acceptable service standards.

6.4.4 A caring government affirms recognition

Protests were expressly about lack of access to water, the unaffordability of water charges, and that the government continued to cut basic services to those who could not afford it. The underlying matter of concern was that the state did not recognise people's real plight of insolvency because it [the state] upholds market principles of the user pays. The misrecognition in this regard is two-fold, first: the lack of recognition is promoted by the local government's inability to prove who is legitimately indigent and then accommodate them through proper policy provisions. The second is that the state does not recognise the plight of the missing middle water users who are classified as affording, but in practice they cannot keep up with service charges and are the recipients of municipal warnings to cut the electricity supply.

The South African education policy has recently exposed the plight of students who do not qualify for funding from the National Student Financial Aid Scheme (NSFAS) because their annual household income is over R350 000. Yet they cannot afford to pay for their education (Zagagana, 2023). The missing middle students suffer financial exclusion from institutions of higher learning as a result. This study expands the idea of the missing middle to the policy of revenue collection in municipalities. The missing middles in this case are people who earn an income that disqualifies them from getting indigent benefits, yet their income is not enough to keep up payment for service charges. The concept of missing middle also applies in economics to refer to the size of companies that determine their (in)eligibility to receive financing support (Bason, 2021; Abreha *et al.*, 2022)

Concerning the missing middle phenomenon, Respondent 7 explains that there is no policy advocating for relief, therefore, they (the missing middle) are forced to keep their consumption of services to their affordability levels. That is, they should use less water than they need to keep their bills low. Available policies cover the indigent, and in some municipalities the basic service level such as free 6kl of water per month, is extended to all citizens. What is notable in the response is the argument that the missing middle

should restrict their consumption to their affordability levels. This argument confirms the South African water governance values of demand management (DWAF, 1994; 2004; SALGA, 2008).

The policy of water conservation and demand management is revealing a new challenge of the missing middle that the government is slowly excluding for financial reasons from basic services. Saying the missing middle should limit their water consumption *within financial means* and not material needs, is as if the government says it is better that you, the resident, *demand less water* from us, although we have a constitutional obligation to *provide you with sufficient water*. In a way, there is economic discrimination against the missing middle. This is theoretically inconsistent in that the policy outlook is strictly opposites (give to the poor who cannot live on their own and take from the rich who can live despite what is taken from them). But there are those who are considered to afford paying service charges, but in truth need help because they cannot keep up with the monthly bill. There is a phenomenon of misrecognition in the water conservation and water demand policy implementation that is yet to become a common topic and be studied further.

This misrecognition creates negative sentiments among residents who are threatened with service cuts arguing that the municipality is targeting them for non-payment while it ignores the users who are not paying in townships (Jack, 2023; Maphologela & Ngwane, 2015). There is a consistent effort by residents to pay a flat rate (Mtila, 2022; Mafisa, 2023; Mohlakwane, 2022; News 24, 2015; Sleka, 2022; Sekhwela, 2022) but the municipalities have not favoured such a proposal. It is the City of eThekweni (Magubane, 2022), that proposed a flat rate to recoup something from residents who could afford but were not paying because they live on land owned by the Ingonyama Trust (the property of the Zulu monarch). Here the eThekweni government starts a flat rate in the interest of recouping funds for itself. Misrecognition happens when residents ask for a flat rate, but the government is willing to give it to them. Yet the government can start a flat rate arrangement when to get the little funds it can there is a 0% payment rate from the public. Also, the inability to acquiesce to the demands of the public for a flat rate, dampens the willingness to pay and the potential for collaboration to ensure sustainable services. As a result, there occur relations of mistrust between the people and the municipalities.

This is against the principles of water governance that the state espouses, namely: i) professional ethics through openness, honesty, consistency and fairness; ii) effectiveness and efficiency through ensuring value for money in service provision and program completion; iii) equitable and fair public service provision that uplifts the most vulnerable; iv) encouraging public participation in decision making which enables listening to and comprehending people's needs and creating innovative approaches; and v) rendering transparent and accountable services (DWS, 2022a). The issues are a concern of urban residents in the main. Rural residents have been without water for many months and years, without it being a matter of public discourse in the national news (Evans, 2022a). The silence about the plight of rural communities without access to water is another big misrecognition in South Africa's water sector. The misrecognition in the water sector is clear in that rural communities only take up 3% of the 27% of municipal water consumption, while the rural communities are also without adequate developed infrastructure for water supply (DWS, 2022a).

6.4.5 State-society collaboration for sustainable water resources

The state-society collaboration includes public participation in the conservation of water resources. The minister of water and sanitation, Senzo Mchunu complained about the residents in Gqeberha who are not playing their part in the water conservation effort during the seven-year-long drought (Nkangeni, 2022).

People will always be willing to pay for water consumption, but they have limited ability to do so with little or no income to pay market rates for water. It is the researcher's view that willingness and ability to pay on the side of the poor are two different things. People will always express a willingness to pay for water consumption, but their ability might be extremely limited by their income streams. (Mobie, 2008:40).

While social views are about the government's mandate to supply water, the public does concede that payment for water services is essential. What is necessary is for water institutions to make arrangements that communities can accept for the payment of services. The discussion about a flat rate is currently open for the government to maximise. Residents in eZakheni also pay a flat rate because there are no water meter readings and it is rare for one to receive a water bill (Mavundla, 2016:65).

The public comments also touched on the need to create value for all in the water sector. This means that the management of water services should consider the cost that the government incurs in the provision and maintenance of water and the benefits citizens get from water services, including the role citizens play in the sustainability of the service. Municipal debt is “threatening the provision of water services nationally” (Ensor, 2022:6). This is a comment by Minister Senzo Mchunu who bemoaned the ripple effect of non-payment for services by municipalities, which negatively affects water boards and the DWS itself. And the debts are rapidly escalating (Ensor, 2022), the escalation of arrears is not anything new (McCain, 2022). Deedat (2002) noted this concerning the community of Alheit (Northern Cape Province) which faced ever-increasing tariff arrears due to mass unemployment.

This aspect of creating value for all resonates with the need to show initiative and not wait for the regulator. Anglian Water (<https://www.anglianwater.co.uk/>) is a water company whose website is a good example of what municipalities as water authorities should have in place. The website is interactive in a meaningful and transparent way that allows the customer to keep track of their accounts, report incidents and monitor their resolution, know how tariff charges work, and submit their meter readings. The website includes the environment and community ecosystems that relate to the water service. Digital innovation systems will help with real-life reporting and data visualisations to monitor progress. The digital systems can help connect community networks in efforts to generate solutions.

6.5 Conclusion

The introductory chapter of this study presented the objectives, which this chapter has addressed in terms of findings.

The first research objective was about conceiving the problem of the social contract and water services in South Africa. And the finding related to the objective from the empirical evidence is that the social contract entails the provision of clean water. Whereby lack of public sector capacity hinders water services.

The second objective was to explain the social contract theory and its relation to struggles for recognition. The finding is that the social contract theory embeds recognition (human dignity) at the core. And water without dignity impels people to seek water from unsafe sources that may cause the loss of life. On the other hand, people are bound to lay claim to their dignity and force the government to recognise their humanity.

The third objective of the study was to explain how the elements of the social contract apply to South African water services. The evidence is that the lack of state capacity in the water sector along with water scarcity exacerbates struggles for recognition. The lack of capacity undermines the natural right to life and proves a government that does not fulfil its contractual responsibility.

The fourth objective of characterising struggles for recognition in South African water services shows from the evidence that the people are engaged in efforts to hold the government accountable. The government is also frustrated by the people's lack of commitment to pay for water services, which is a core policy of water governance related to cost recovery. The enforcement of cost recovery policy puts the people in conflict with the government in what becomes the struggles of wills (to force people to pay, and the people resisting cost recovery efforts). The culture of cheating is in force, where the people, companies, and other state institutions evade paying service charges. While the municipalities issue inflated service charge statements (bills). Therefore, using the frame of struggles in South African public affairs is common.

The fifth objective was to discuss the rationale for the state and society's willingness to collaborate in securing effective local water services. From this, it occurs that there is a willingness to step in where the government has failed to secure sustainable water services. This the people do by taking the government to court, taking over the government functions or resorting to self-help efforts. The last objection about providing conclusions and recommendations shows that there is still a gap in policy where the government does not cooperate with the public in self-help efforts or when the people step in where it fails.

The theoretical statement held that a long-standing social contract breach in South African water services that interacts with poor service delivery standards stimulates

struggles for recognition in society. Based on the research findings presented in this chapter, the theoretical reflection confirms that access to water is the right of nature and that poor water services upset rational persons. Therefore, a caring government affirms recognition. It cannot be denied that state-society collaboration ensures sustainable water resources, this is what needs to be improved in South African water services.

The key issues highlighted in this chapter are the water service suppliers' inability to collect revenue, the non-sustainability of government institutions, unaccounted-for water, water losses and irresponsible use of water. These issues need to be faced head-on. Water services delivery in South Africa can be performed by several actors like water services authorities at a local government level, water boards normally running as separate entities to municipalities, and private sector service providers. Water availability is still essential to sustain the economy, nature, human life, and general development (life in short). The Department of Water and Sanitation claims to take its role seriously in finding mechanisms that can help the conservation and protection of water as the most precious resource (DWS, 2014; RSA, 1997). This chapter helps to show the existing and future manifestations of state-society collaboration for securing water services that are useful to meet the needs and expectations of the public. For this reason, it is worth asking if there were no public water service supply today and the people had to choose, would South Africans agree to suggestions to form a public entity for the supply of water service?

And what kind of water service provision would that be? Balzer (2018:16) reports that "some 77% of rural households are indigent and therefore entitled to free basic water which is placing a significant strain on municipalities with a low revenue base". When noting that the rural communities are most affected by lack of access to water, Muller (2008:73) clarifies a two-pronged strategy to deal with the cost of water provision, namely 1) limiting demand by using small bore pipes together with yard tanks for storage (which, incidentally, help to reduce the costs of the reticulation system); and 2) providing some free water to all users of the restricted access system. The government has held back developing advanced water reticulation systems that would increase water use and demand in rural communities. The lack of water infrastructure is, therefore, a deliberate cost and demand management system.

Stereotypes in water services include a culture of non-payment that is difficult to eradicate as most people claim unemployment as a reason for not being able to pay service charges. From these, it is necessary to ask how many people can afford to pay but are not paying and what prevents municipalities from pursuing those who do not pay for services. The South African water sector is laden with contradictions premised on the common social contract breach by both the state and the people. First, the water legislation is clear that for the interest of justice, the state shall administer water services and recover service charges to ensure continued water provision. Lack of revenue collection has caused the state to fail in the provision of dependable, adequate, and clean water services. The financial mismanagement (corruption) and unstable water supply have also caused the people to stop payment of service charges. It follows then that more revenue collection would lead to sustainable and reliable water provision just as much as clean governance and management of public finances would enhance public confidence to pay for service charges. There is also a narrative about the culture of non-payment that thrives on stereotypes about unemployment and people's inability to pay for services. South African society was surprised to see municipalities going after corporates, universities, and other state departments that have not been paying for service charges. The stereotype of non-payment is thus not only limited to domestic consumers. Agriculture consumption also takes place without farmers having water user licences which the government is ignoring (Respondent 2). This culture and stereotypes are still unchallenged by the government, which further embeds non-payment in the water sector despite there being people who can afford to pay but take advantage of general non-payment in society. The analysis of causality debates about the social contract and struggles for recognition that this study focuses on is a unique approach to exploring group norms in political science scholarship in South Africa.

CHAPTER 7: TOWARDS NEW INSTITUTIONALISM AND STATE-SOCIETY COLLABORATION FOR SUSTAINABLE WATER SERVICES

7.1 Introduction

The previous chapter discussed the research findings as per the objectives stated at the start of this study. The empirical evidence from interviews, academic literature, institutional reports, and social media corroborates the lived experiences of the quality of water services in South Africa. It became clear that administrative discrepancies lead to poor water services where the infrastructure projects are not completed at the desired standard. The incomplete infrastructure projects have led to the water system that is unresponsive to the increasing demand. There has not been adequate refurbishment or expansion of water works to meet the increasing population. The increased water demand by agriculture and industrial operations led to a deepened competition for water in the economy. The gist of it is that municipalities have failed to plan for infrastructure development. Therefore, the poor quality of water services impinges on the individual's self-perceptions of human dignity.

The concept of sustainable water services, as used in this chapter, is about enough water available for multiple uses (household, animals, economic, and recreation) to meet current needs and those of the generations yet to be born. In other words, efficient management of water demand versus availability. Chapter 1 states the objective of identifying what can help create state-society relations that promote sustainable water services. This chapter presents multipolar new Institutionalism as the fundamental change needed to revitalise the social contract for water.

The argument of this study is that promoting human dignity is at the core of water services. The current state of water services does not seem to support the promotion of human dignity. This is why people are not just happy to receive water services but are concerned about the reliability of supply and the cleanliness of the water they receive. The people also reject the prolonged use of water supply technologies like the water tanks in urban areas but prefer piped water supply. These expectations were created by the social contract (the constitution) as fair standards for water services in a democratic dispensation.

The first section of this chapter starts with the aspect of the current institutional culture of water governance and the need to re-imagine the social contract for water. It continues to describe the water crisis that resembles the state of nature in the water services, which would signify the failing state. The second section argues that new Institutionalism is the pivotal change needed for sustainable water governance. This section suggests innovating key aspects in the current institutional culture for more sustainable water services. The third section is about creating a water and service honouring culture, which is essential to raising awareness about the existential threat that the water crisis would bring to South African society. The fourth section is about the need for reciprocity as a foundation for water security in the failing water sector. This section is an emphasis of the need for a broad public dialogue that is pivotal to generating the acceptance of water as an object of national interest. This will improve commitments towards water security and new Institutionalism that will revitalise the social contract for water. The central message of this chapter is that the government cannot solve the water crisis by working alone, the people must contribute to the sustainability of water services.

7.2 The current institutional culture of water governance and the need to re-imagine the social contract for water

Cairney (2019:146) explains institutions as formal (written) and informal (unwritten) rules, practices, structures, and organisations that shape human behaviour. Starting with the formal aspect in the case of South Africa. The structure of water governance in a formal sense is that which makes the water user dependent on the state.

7.2.1 The state-centric water governance alienates vulnerable water users

Water services in South Africa is a purely government (state) driven function with little space for private water suppliers to serve the water users. The institutional design of the water sector in South Africa will always reflect the dominant role of the state in centralised water provision systems (McCallum & Viviers, 2020:44). The best role played by the private sector is the funding of large infrastructure projects (McCallum & Viviers, 2020:45). Of course, there are water entrepreneurs who sell bottled water or refills at retail stores, but retail water sales do not amount to public water supply. Where the state is the sole supplier of water services, there would be no recourse for the water user when the state

fails to supply water services. Muller (2006) makes important observations that help explain the current institutional developments in the South African water sector. The management of treated water supplies to the taps is the responsibility of the local government while the management of water available elsewhere in the rivers, underground, in dams, etc, is the responsibility of the national government (DWS).

The entire institutional culture is statist which means that non-state actors are invited participants in policy making. Therefore, there is little social component or emphasis on individuals as change agents through efficient use. Figure 7.1 shows a clear statist architecture of the water sector, which is what Muller (2020) termed an authoritarian administration. These existing water institutions shaped a sector that after “20 years has failed to deliver fully on its mandate for water allocation reform reallocation to address racial and gender discrimination” (Balzer, 2018:16).

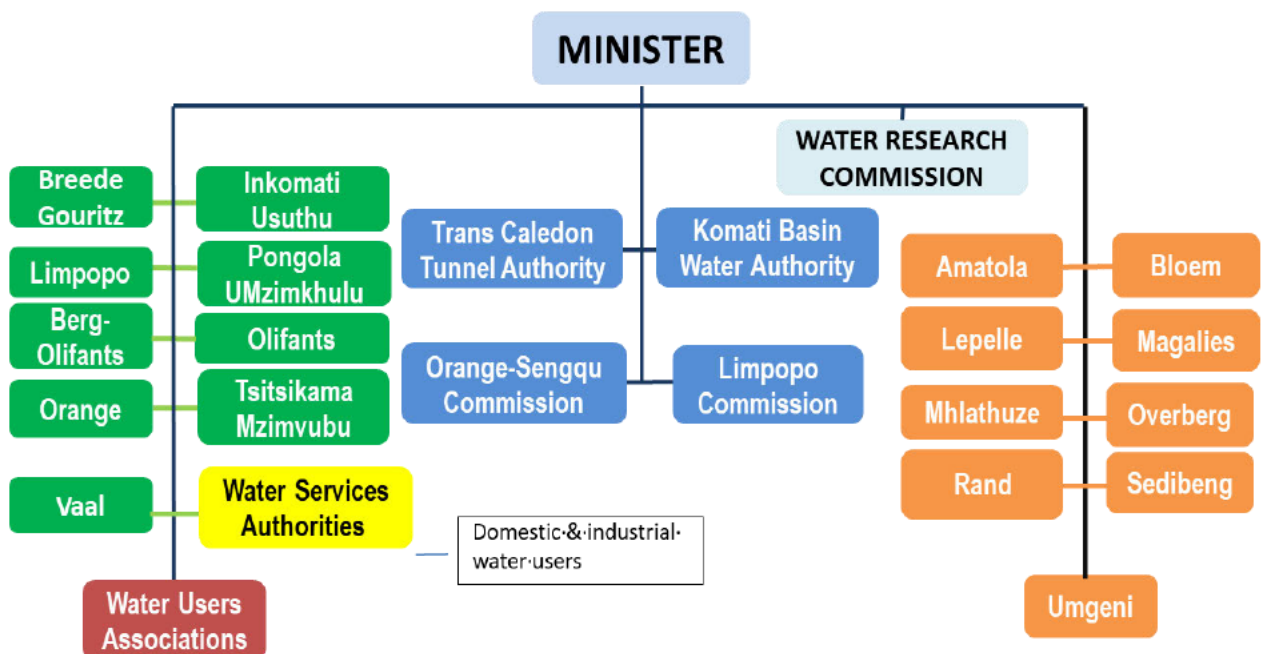


Figure 7.1: Existing water institutions in South Africa (adapted from Mbongwa, 2019)

On the far left of Figure 7.1 are the water user associations (WUAs) from the nine water catchment areas laying claim to water for irrigation, recreation, and conservation in the catchment areas. These WUAs are driven by commercial interests. Then there are water service authorities (WSAs) that have a mandate of water supply to communities. The line

of authority is statist because WUAs are poorly operationalised and have little influence over the functions of these WSAs and they [WUAs] cannot compel commercial actors to follow legal standards of effluent disposal (Sokile & Van Koppen, 2004; Aarnoudse *et al.*, 2018). Then there are water boards on the far right of Figure 7.1. The water boards are led by the government to safeguard water demand and availability to maximise the social and economic benefits of water resources. The political influence is still dominant in shaping the policies that guide water boards. At the centre of the figure above, the Water Research Commission (WRC) is at the forefront of agenda setting for policy innovation, research, and development. Other water service institutions manage the implementation of international water agreements and transboundary water resource administration.

The rationale for the state-centric water service structure is that the state promotes the common good and does not just focus on profit, for example, people are encouraged not to drink from “unsupervised and unauthorised” water sources that may lead to illness (Ngcobo, 2021:1; Qumbu, 2021:2). The poor are vulnerable in their individual (household) capacity to secure their water supply in a liberalised water market. Which justifies the role of the state in the supply of water services. The assumption that the state alone can ensure sufficient or reliable supervision and authorisation of water sources, is indefensible because people are already drinking polluted water from municipal supplies and do go without access to water for unreasonably long periods (Qumbu, 2021; SAHRC, 2021:16).

Ngcobo (2021:3) makes a sharp point about “communities experiencing water shortages, and this aggravates and frustrates individuals who can do nothing about the situation”. They cannot do anything because most households have no infrastructure in place to compensate for times of water crisis. At times, the communities can do something, like the Ga-Mushi village community in Limpopo Province which collected money to purchase spare equipment to fix a broken community borehole. However, the Mokgalakwena Municipality prohibited them to fix the borehole (SAHRC, 2021:18). This practice of refusing the people to fix community water infrastructure creates a dominant practice of the state coming to the aid of desperate water users. On one hand, it serves the political purpose of the governing party which may pride itself in supplying water (Ramaphosa,

2023:14; ANC, 2021) while on the other hand, it serves the economic ends of municipalities procuring the service of water tank service providers (Muller, 2020:14).

7.2.2 Endemic corruption and theft in South Africa's water sector

The problem of corruption and negligence related to the maintenance and planning of water infrastructure has undermined service delivery. When the state does not make efforts to improve the water supply or collaborate with the people for sustainable services, the practice of stealing water through illegal connections is prevalent (Muller, 2020:39; Democratic Alliance, 2017; Ngcobo, 2021:2). Even though the government often prevents people from touching the public water infrastructure, Muller (2020:39) argues that the practice of stopping people from using their resources to fix community water infrastructure is symptomatic of an “authoritarian administration” which creates tensions between the people and the state. In this study, this tension is called a struggle for recognition in that the local municipality would not appreciate that people have the agency to resolve water infrastructure problems. The potential risk of allowing people to work on municipal infrastructure is that of common theft and vandalism that untrained people cause. The practice of stealing is not just a thing only done by people who want to take water for free. Municipalities throughout the country are grappling with the destruction and theft of water infrastructure, especially water meters (Githahu, 2023).

Communities in Cape Town, Johannesburg, eThekweni, Potchefstroom, Buffalo City, Rustenburg, Louis Trichardt, and Witbank are among the areas affected by water meter thefts. Hence municipalities have admitted to the need for installing plastic meters and not those made of brass (Thusi, 2016). The culture of crime affecting the water sector includes municipal officials who falsify water meter readings for a bribe, or traditional leaders who control communities to the extent that it is not easy for officials to access water meters or find illegal connections (Ngcobo, 2021:9). Indeed, stealing is an institutional practice in the water sector. Even though the government has acceded to the private sector as far as funding for large water infrastructure projects, there is little prospect for commercial income (Phalatse, 2021). There is no guarantee that the investment in water infrastructure will always achieve the planned revitalisation and transformation of the water sector because of corruption. The DWS is still recovering from

leadership and fiduciary mismanagement that almost caused the collapse of water services (Kings, 2020).

It is not only the DWS that struggles with the mismanagement of funds. Muller (2020) reports on the endemic corruption in the commercialisation of water supply through hired tank services. This is a practice that has led residents of Madibeng in North West Province to complain that the water mafia (private water tankers) are causing them harm (SABC, 2023). This scenario in Madibeng which has troubled the public since 2014 is getting worse, which shows a broken social contract in the water service. The water tanker mafia is the entrepreneurs known to sabotage water infrastructure so that they can provide water tank services in times of crisis (eNCA, 2023). Residents believe that the water crisis is deliberately created by the entrepreneurs who serve the municipality.

Ngcobo (2021:3) also comments about the corruption related to water contracts that undermine water security for business and domestic purposes, especially in rural areas where people remain underserved (SAHRC, 2021:13). The corruption leads to unfinished infrastructure projects or low-quality workmanship. Ngcobo (2021:3-4) cited those informal laws that evade and undermine formal structures to the extent they have replaced formal rules and laws. Therefore, the culture of stealing is institutionalised in the water sector, threatening the sustainability of water services.

7.2.3 Water service provision under threat

The statist water governance approach and endemic corruption in South Africa's water sector led to a crisis that is clear in the SAHRC report (2021:2-3) covering 11 municipalities in the Limpopo Province. In the report, it is confirmed that the SAHRC (2021:8, 11) had received increased complaints about the lack of access to water, including inconsistent water quality throughout the Limpopo province. The report notes that the water challenges in the Limpopo province were the fault of municipalities and not a physical water shortage because the dams were full at the time of inquiry. Poor communities with weaker municipalities are most vulnerable to water interruption and long periods without access. Access to safe and adequate water supply is a right guaranteed by the Constitution but this does not prevent disruptions or the mismanagement of water resources. There is institutional incompetence in local government as far as water and

sanitation services are concerned. Although the problem of non-payment for services is a concern, a few of the reported interruptions could be the result of low rates of revenue collection. Therefore, poor technical management of water services is the most compelling reason. Overconsumption of water is another considerable factor to look out for. As a result, the statist institutional culture in the water sector has bred dysfunction and negligence of water infrastructure because of poor decision-making by those holding public office.

The efficient use of water by the end user is a missing component of the current institutional alignment. For example, the water service agency in Pakistan (an equivalent of the DWS) has instituted financial penalties for residents who waste water and wash cars using hose pipes (WASA, 2022). But in South Africa, the issue of using hose pipes to wash cars, is the domain of public appeals to conserve water (DWS, 2016). There are not meaningful penalties for people and communities that do not comply with the appeals to conserve water. Other interventions include water-wise civic education programmes targeted at children and appealing to those already active in the water sector nothing that actively or intentionally changes human behaviour for the public (<https://waterwise.co.za/site/home.html>).

In other words, South African legal institutions serve only to protect the state's power in the water sector for infrastructure development and not to generate a water honouring culture among the end users (Saal, 2018). Connected with the aspect of protecting the state's power, the SAHRC (2022:3) notes the "defensive approach demonstrated by state entities" and their lack of communication with the communities. It is only in times of crisis that some municipal areas tend to enforce laws to reduce water wastage – and against those in commercial activities, not households (Gontsana, 2018; Mnyakama, 2017).

Population growth and increased water demand are leading to a decline in water supply standards (Respondent 7) which means efficient water use is more important. Washing cars using a hose pipe is not the main concern of water wastage in South Africa; dilapidated infrastructure and delayed repairs of water leaks are (Respondent 7). This study argues that the lack of law enforcement to ensure social compliance with efficient water use and revenue collection is equal to negligence and a state abrogating its social contract obligation (Smith, 2021).

The current minister of water and sanitation, Mr Senzo Mchunu commented about the water crisis affecting parts of South Africa, saying:

We could have done better ... We could have secured, and fixed broken pipes and we could have governed the urban setups better. The situation now is that we can build anywhere [without first seeing if the infrastructure exists to support the influx of people] and it's not sustainable (Patrick, 2022).

The current institutional arrangement proves to have an inherent weakness in that its main mission is to promote access to water, and not promote water conservation by the end user. Even when talking about the prospect of a water crisis, Minister Senzo Mchunu was vague about what role people should play but specific that the government's goal is to secure access to water for the people.

So, we can always say it could have been done better, but now we must agree on [what to do now for the future]. Yesterday [at the emergency meeting] we agreed to implement measures to ensure that people have reasonable access to water in the future (Patrick, 2022).

The above statement shows the government's commitment to sustainable water services with "reasonable access to water in the future" but the statement does not say what the role of the people is in ensuring water security. Respondent 7 noted that the issue of non-payment is worsening the situation because people experience economic difficulties. As a result, the maintenance of infrastructure is not possible or is postponed, leading to its dilapidation (Respondent 7). Managing this situation is not easy and it is difficult to enforce credit control because of harsher economic conditions and considering that water is a human right. Therefore, one can accept that the water service is at the precipice of failure, receding to the state of nature. In the words of the National Business Initiative [NBI] (2019:6), "the South African water sector is at a crossroads". This means the situation of insecurity will undermine the set goal of supplying affordable and reliable access to sufficient safe and hygienic sanitation before 2030 (RSA, 2012; Farrar & Rivett, 2012). Water services may not improve by 2030 as water demand will increasingly exceed the available supply (Hedden, 2016; Murwirapachena, 2022).

7.2.4 Revenue collection undoing the gains in water services

Non-payment of service charges is unlikely to improve, and municipal consumer debt and low-revenue generation will limit the municipality's ability to supply services that people need (Sithole & Mathonsi, 2015; Murwirapachena, 2022). Enwereji and Potgieter (2018) highlight a culture of non-payment as follows:

Non-payment in black communities had become deep-rooted in the perceptions of citizens so that when democratic governance emerged in 1995/1996, it then became difficult or almost impossible for citizens to change their attitude towards the payment for municipal services to conform to their obligations as required by the constitution (p. 228).

The above statement is not so much about the lack of various methods of revenue collection, but the fact that the deep-rooted culture of non-payment has a socialisation effect. This means that the enduring culture of non-payment is evidence that the current water governance institutions have failed to undo the ingrained attitudes or re-socialise the people into values [new institutions] of reciprocity for keeping the water services. It is important to analyse why it is difficult to eradicate the culture of non-payment, and this study argues that political expediency is one major factor where political leaders do not want to upset the people, and by that lose votes. Enwereji and Potgieter (2018) note that some communities demanded that the government supply equal services in black-dominated areas before they would pay for services. This politicisation of water services by demanding equal supply before paying service charges meant that the government had to limit the level of supply for one community to serve another. It was a difficult situation, yet a missed opportunity. Municipalities could have taken this negotiation point and paved the way for a new dispensation in the service charges payment. The government would have negotiated the subsidy allocations that people had to pay for services while there was a gradual increase in service levels.

Therefore, the municipalities lacked the willingness to collaborate with the people and preferred a one-dimensional imposition of service charge options on the people. This one-dimensional imposition of charges appears punitive and hardened attitudes towards water service payment. In other words, the current institutional design is does not have

the ability to create an inclusive and all-embracing social contract for water security. There is a need to return to the role of the citizen in water services partnering with the government. That people are poor and cannot pay for services in the democratic dispensation should be a reason to identify innovative methods of revenue generation.

The dictionary definition of 'crisis' is 'intense difficulty'. There are places where you go to a village and there is no water to be seen anywhere – that's a crisis. So, I don't agree that a broken pipe or people having to queue for water is a crisis. If it doesn't rain and there is no water in dams and rivers ... that's a crisis (Patrick, 2022).

In the above statement, the DWS minister, Mr Senzo Mchunu downplays the state of crisis in the water sector. First, the statement does not appreciate that broken pipes are wasteful when municipalities do not have enough funds to repair the water leak. It does not appreciate the need for adequate water supply in urban areas served by waterborne toilets and what a health hazard collecting water from the tanks is. The minister had to communicate a message that made people understand that South Africa's water services are in a state of nature due to maladministration and wasteful use. The minister should communicate the message to the public that this is the time to revise the social contract for water.

7.2.5 Time to revise the social contract for water

The moment of water crisis presents an existential shock that compels society to rethink its current water use and management practices (Enqvist & van Oyen, 2023:892; Shafik, 2021: xii). Noting that the South African water and sanitation sector is not financially sustainable, the NBI acted on the conviction that urgent action was necessary (NBI, 2019:3). Hence the NBI introduced an initiative in 2017 called the *Kopano ya metsi* (a Sesotho phrase, *meeting for water*). This is an initiative that involves a series of roundtable discussions, workshops, and conferences with water sector experts, policymakers, government practitioners, banks, investors, private sector actors and community representatives to explore strategies for the water sector's financial viability and alternative service delivery models. The NBI (2019:5) appreciates "the need for partnership to address the significant obstacles facing the sector, as well as by charting

a course for future action”. By using the logic of meeting for water, the NBI follows the social contract framing. That resonates with the focus of this chapter about state-society collaboration for water security. The NBI is a clear call for collaboration and implementation of strategies for sustainable water services and such partnership is what water companies in the UK have been coordinating.

Indepen (2019) defines the social contract for water as an agreement granting the state a licence to work or supply water services. Muller (2008) confirms that local government has a licence to run water services from a regulatory perspective; a licence that society accepts. One of the terms of that licence includes free basic water – a sustainable instrument for a sustainable future in South Africa. Another is that the state will not use its power to limit citizens’ freedom of access to water unfairly. In other words, citizens grant power to the state to achieve important things (Indepen, 2019) including water provision with excellence and fairness and resolving disagreements related to profit raising through water services (Libey *et al.*, 2020). Since public ownership of water resources is becoming less affordable, it is also still on the agenda (Homsy & Warner, 2020). Emphasis on technical aspects of water supply like installing new infrastructure and building water work plants is not enough without reciprocity from the water users through the proper use and care of the same infrastructure (Enqvist & van Oyen, 2023).

Managing public water in the name of the state is an old practice of the political community (Cohen, 2022) and as a result, the norm is that the management of the water resource value chain is a national competency. Meaning, the authority lies with the national government which decides how to engage with stakeholders, while national and provincial governments have the mandate to support and strengthen local government capacity to provide water services (DWS, 2022a). Because of the operational failings of local government in the articulation of water services, the South African state is considering revising the institutional arrangement of already existing wastewater utilities and expanding mandates of existing water boards (DWS, 2022a:102). In the absence of a state-led regional agency, some call for a private regional water entity (Cohen, 2022). This would help strengthen efforts for water conservation and lessen the demand for more water among the users.

Turton and Meissner (2002) mention transitions in South African water services. The first transition is the Hobbesian bipolar hydro-social contract (state-citizen relations), and the second transition is the Lockean tripartite order (state-people-special interest relations). These two transitions in South Africa's hydro-social contract implicate debates about the extent to which the free market can promote the mission of ensuring equal access to water without state regulation. This is where the tension between the NGO interests and business interests occurs. Turton and Meissner's (2002) comments about a Hobbesian bipolar hydro-social contract and the tripartite Lockean hydro-social contract open the necessity to think about the multi-polar hydro-social contract.

This multi-polar hydro social contract is where state-led and private-sector water companies exist, giving the customer options to choose which best serves their needs. Indepen (2019) argues for making the value of water an emergency at the heart of society just like climate change is an emergency. In this way, the social contract for water is not a game for political traction, but a three-way (multi-polar) process between the regulator, customer (society) and the water company. The hydro-social contract, therefore, is about taking into consideration the dynamics of urbanisation, population growth, affordability, democratisation, decaying infrastructure, and technological advancements (Indepen, 2019; Murwirapachena, 2022). South Africa is experiencing a high rate of urbanisation which puts more demand on water resources (SAHRC, 2021:13). These are the fundamental factors informing the imaginations of new multipolar water governance institutions in South Africa.

The NBI (2019) follows the same line of thought as this study in stating that:

In a decade from now sustainable water provision has the potential to be viewed in the same light as the renewable energy programme, as a strong example of effective collaboration between the public and private sectors to achieve a common goal (p.8).

The South African energy sector has independent power producers (IPP) that generate and sell power to the public because the state is failing. This study poses a question for reflection and further research dialogues on whether the multipolar new Institutionalism should allow for private companies that produce and supply water services to the public.

The NBI (2019:8) is adamant in saying that collaboration with private actors (water companies) is “the only approach” to achieve the desired water security in South Africa which means the state is left to serve free water to the indigent. This can be compared to private hospitals and schools that determine their operational procedures and standards while the state is merely concerned with the certification of practitioners and curriculum.

Indeed, the ready criticism for such an approach is that multipolar new Institutionalism would deepen socio-economic inequalities where the well-off would lead a convenient life using private water company services and the poor are trapped in public sector inefficiencies. Yet, a positive spin-off could be that the involvement of private water companies may encourage public entities to be more efficient and improve service standards. On both sides, the multipolar new Institutionalism could help introduce smart technologies that help water users monitor their consumption. It could introduce financial incentives that promote a water and service honouring culture.

In the call for partnership and implementation, the NBI (2019:8) report states:

...much of our effort simply requires us to use solutions and institutions that already exist. Let's build on what we already have in place, recognising that the perfect is the enemy of the good.

Building on what already exists means introducing the multipolar new Institutionalism – a network of individuals, government, business, and civil society working towards creating sustainable water services.

7.3 Multipolar new Institutionalism

The sentiment of a need for cross-sector (multipolar) partnership is not something the NBI imagined alone as a solution to the water governance crisis in South Africa. Having analysed various countries in the world, Jenkins *et al.* (2017) hold the same view of multi-stakeholder platforms across sectors as a critical component in solutions for water governance challenges. And so is the rationale of this study. The multipolar partnership includes overcoming technical, behavioural, and political challenges (Jenkins *et al.*, 2017:7). This aspect of strategic partnerships is similarly reflected upon by key policymakers. Netshitenzhe (2022) spoke about the need for a strategic national

agreement, or social compact for reconstruction and recovery. The compact should clearly indicate what sacrifices and contributions the state and the people should make, respectively. This includes building the capacity of the bureaucracy and state-owned enterprises, the rule of law, and accountability. He points out that the new social compact requires partners beyond NEDLAC, to build a collective national interest.

Appreciating that water is a collective national interest, this study echoes Muller (2008) in warning that people should not take for granted that water is available in the taps 24 hours, seven days a week. Muller talks about the failing infrastructure integrity, followed by a demand that outstrips water that is available for supply. The ageing infrastructure could lead to contamination from the distribution networks, leading to illnesses. There is a need for campaigns that encourage consumers to save water, the DWS (2022) has an initiative called Clear Rivers campaign. Which is important to expand in as many communities as possible to build the water honouring culture. The crisis of water infrastructure failure due to lack of government capacity justifies the involvement of citizens in being the solution. Residents are rising to step in to contribute positively to the sustainability of water services.

This is the case with a village in the Amathole District Municipality, in Eastern Cape province where 40 villages united and collaborated to fix the Mncwasa water scheme that has left them with dry taps despite the Mncwasa dam being full of fresh water. Steyn and Sizani (2022) explain:

The Mncwasa water scheme became derelict because of poor maintenance by the municipality, five years since it was built. The municipal spokesperson explained insufficient funds for operations and maintenance as the contributing factor to the failings of the water scheme. The residents, traditional leaders, private companies, and community organisations came together to form a Mncwasa Water Scheme Advisory Committee. The advisory committee acted on research findings they conducted to help the municipality access an 8 million rands grant to repair the water scheme. Another positive outcome of the advisory committee is how residents formed a citizen monitoring programme (Amanzi kumtu wonke – water to everyone) to help the water operators maintain the optimum water balance and flow to the 31 reservoirs in the water network. This helps ensure that one reservoir

does not go without water and inculcate a culture of reporting water related challenges in the community. Yet the labour protest action by municipal workers delayed the repairs to the Mncwasa water scheme, which shows the negative impact poor governance has on the sustainability of water services and infrastructure – the municipality is bankrupt, under financial administration, and had appointed an underqualified municipal manager.

Netshitenzhe (2022) argues that the collective national interest could be the standard through which to measure political leaders. In other words, the public should be serious about the standard of water services and use it as part of the criterion for electing public officials. Whaley (2022) has a similar view by suggesting an unconventional broadened inclusivity approach (beyond NEDLAC) to water governance and policy implementation. The beyond NEDLAC paradigm allows for institutional diversity that helps achieve integration and complexity for effective water management, as Whaley (2022) purports. Therefore, the governance approach requires a blend of resilience thinking along with the pursuit of justice (environmental and social) through collaboration; accommodation of various interests, and contestation against ideas and practices that hinder progress (Armitage *et al.*, 2014). The institutional dysfunction prevents the implementation of participative and developmental water governance policies (Muller, 2016b). Water services could be an area to start building such a collective interest and not antagonising dedicated residents.

7.3.1 Dedicated citizens and NGOs

As mentioned before, Cairney (2019:146) explains institutions as informal (unwritten) rules or practices that shape human behaviour, the dominant solutions in water services have been the technical construction of infrastructure to expand access to communities without access. Technical solutions are instruments that the end user should manage with care lest they fail (Jenkins *et al.*, 2017:10). Hence this study proposes a multipolar partnership or collaboration between the state and the people. By the people, it means individuals, groups, and businesses. The partnership would promote a water-honouring culture where people control the amount of water they use, including conservative water use practices like avoiding pollution and attending to water leaks. The partnership would also promote a service-honouring culture where water users report water leaks, repair

them where needs be, and pay for the water services they receive from the government. Therefore, a water and service delivery honouring culture is at the core of transforming the social contract for water.

The transformation of the social contract for water cannot be effective without the supporting role of the NGOs. The supporting role of the NGOs should be about promoting community inclusion and ownership in critical decision-making processes related to water governance (Jenkins *et al.*, 2017:10). The community should play a better role than raising controversy and challenging policy options meant to control water demand and cost recovery. The popular role the NGOs play in society includes public education. This should include educating the public to understand the water challenges that South Africa is facing (Jenkins *et al.*, 2017:8). The NGOs can help promote transparency about the state of water resources and what interventions can lead to sustainable reforms.

Therefore, public education that advances the virtue of pure altruism among committed residents should be the uniting force that negates “public rebellion and corruption” where the government uses money effectively and the people stop rent boycotts (Ngcobo, 2021:7). By refuting trends of public rebellion and corruption (Jenkins *et al.*, 2017:10), pure altruism as a tenet of the social contract promotes recognition (human dignity) in water services. This includes businesses using water more efficiently and contributing resources to extend access to water for immediate communities in which the business operates. Pure altruism will restore trust where the public is more comfortable paying service charges knowing that the government is committed to high standards of service delivery. And where the government fails, it should be comfortable with the people stepping in with needed interventions and resources. Such collaboration and reciprocity are vital for sustainable water services. Altruism could motivate the government to introduce innovative incentives for those who pay service charges or register on the indigent registers. Ending public rebellion promotes the acceptance of smart technologies for water demand management.

7.3.2 Private sector involvement

There is an increase in population growth along with increasing urbanisation (Jenkins *et al.*, 2017) and the government is, therefore, expected to supply reliable and sufficient

water services. But the signs at the time of writing this report are that the government is increasingly losing the capacity to do that. The collapse of critical services (waste collection, water, roads, rail, harbours, electricity) is widespread in South Africa. As a result, private investors have shown interest to step in to revitalise the critical infrastructure and to ensure the security of the electricity supply, with the government's approval. It is now a pertinent question of the role that the private sector should play in ensuring water security in South Africa. For now, the private sector is a funder of bulk water infrastructure. The private sector is not involved in operations (the actual purification and supply of water). With the problem of underinvestment affecting the water sector, private investment in water infrastructure makes enhancing revenue collection compulsory (NBI, 2019; Jenkins *et al.*, 2017:11).

Hence the government has contracted private companies to do water meter readings and disconnection services leading to the private sector stepping in where the government fails. The difference is that such stepping in is at the government's invitation, and not a voluntary altruistic action. Yet some residents still complain about the lack of water meter readings, or that the service charge bill they receive is inaccurate, not matching meter readings. But this fact is something politicians and human rights NGOs do not convey adequately to the public. The NBI (2019:8) report notes that municipalities are under a huge debt burden that prevents them from supplying reliable water services because of the government's failure to make tough decisions like enforcing strict cost recovery policies (Jenkins *et al.*, 2017:11).

Ngcobo (2021:3-4) says that the strict application of the law cannot solve the practice of non-payment and corruption in the water sector. According to Ngcobo, the strict application could be where officials go from house to house confirming that everyone complies with the law. The point raised is that legal punishment is not sufficient when people are deliberately disregarding law enforcement initiatives (Ngcobo, 2021:1). What is referred to confirms what this study has already commented about regarding the deliberate efforts by residents of Soweto to stop the installation of prepaid water meters. This calls for solutions that "go much further and deeper as the water problem has become endemic in societies" (Ngcobo, 2021:3-4). This is about realising that the water woes are not a low revenue collection problem.

The main problem is the poor water governance by municipalities. Balzer (2018:17) presents the poor state of the water sector, noting that 27 priority districts have been identified as being particularly dysfunctional and requiring specific intervention. To salvage the situation of inefficient water management in South Africa, the government has identified the following key strategic pillars:

- i) Pillar 1: National Water Resources and Services Authority.
- ii) Pillar 2: National Water Resources and Services Regulator.
- iii) Pillar 3: Water Resources and Services Value Chain.
- iv) Pillar 4: Water Resources and Services Master Plan; and
- v) Pillar 5: Institutional Rationalisation and Organisational Alignment.

In the South African context, the DWS, local government and legislation apply. Going much further and deeper, one sees that government-driven strategic plans have not turned the water sector around. There have been incidents where municipalities were placed under intervention due to financial mismanagement and bankruptcy to the point of being unable to provide water services. Yet institutions where the government has little control of their operations, like the WUA, manage to effectively ensure irrigation water supply to the industry, as reported in the Sundays River Valley Municipality.

This shows that private institutions often work through the lens of professionalism and thrive where the government does not. They are more likely to support transformational water governance because of the messy terrain where various agents interact to decide the allocation of water.

7.3.3 Professionalisation of water authorities

Making tough decisions is necessary for the government to keep playing a leading role where the private sector is not afforded a space. Chapter 3 of this study addressed the conflict of interest where a private company made laws that govern water management and at the same time was providing water services. The DWS (2022a:153) admits its conflict of interest as a state institution that makes policy, enforces policy, and regulates policy, which makes it unable to hold municipalities accountable. Therefore, it is not clear how the DWS contributes to holding municipalities accountable for water supply and

revenue management. Also, the ability of municipalities to hold consumers accountable on the matter of cost charges without anxiety about the implications of political support is important.

Municipalities should professionalise their water services and make tough decisions. This study argues that if municipalities cannot professionalise their water services, it is necessary to establish a water agency that has sufficient political independence and professional integrity for planning and infrastructure development. An entity whose officials are appointed based on merit and not political patronage. An entity that has the legislative capacity to influence the financial viability of sustainable water services. Fortunately, the South African government is working to establish a National Water Resources Infrastructure Agency (NWRIA). Such an institutional revision could imply a regional state-owned water company that would take over the functions of municipalities that fail to fulfil their obligation of supplying water services.

There are already signs of moving in the direction of integration since a bill for the establishment of the NWRIA is underway (RSA, 2022a; DWS, 2022b). Water boards have been expanded, for example, Rand Water has been expanded to incorporate Bushbuckridge Water; while Sedibeng Water has been expanded to incorporate Botshelo Water and Pella Drift Water (DWS, 2022a). Private companies can also participate in sharing technical skills to support municipalities with training water professionals and empowering local groups to unblock sewage and repair leaks that occur inside their yards. These steps will help support municipalities that are struggling with skills, professionalism, and management capacity to operate the water infrastructure and lead the water and sanitation sector in dealing decisively with inadequate governance, fraud, and corruption (DWS, 2022a:235).

Some comments about the NWRIA point to the need to consider not building new infrastructure but using that money to maintain and operate existing infrastructure (Cohen, 2022). The NWRIA seems to imply more centralised planning, financing, administration, operation, and maintenance of water infrastructure. This will leave water service authorities as distributors only because the NWRIA will fund the costs of operating and maintaining water resource infrastructure (DWS, 2022b:6[1][d]). Section 7(1)d, f, and n, of the bill empowers the NWRIA to collect water use charges (DWS, 2022b). This

means that the debates about service charges are not going away be it for the services that the NWRIA or water service authorities will provide.

Indepen (2020) records views about the social contract for water through vibrant institutions. This new institutionalism in water resources would need an environmental purpose where raw and drinking water assessment scores focus on the consumer first (humans and the environment). This undeniable priority in the reconfiguration of water institutions should be about ensuring resilient, safe, and affordable water and sanitation services. This can be done by promoting a social initiative of clean rivers and sustainable ecosystems – awakening people to the need for clean environments (report water and sewage leaks, minimise pollution and illegal dumping in communities).

The focus must also be on conserving township wetlands that incorporate water stewardship and wildlife protection. The values expressed in the NWRIA bill seem to emphasise water justice by repeating the already-known aspirations of equitable access, thus creating a thriving natural environment with value for clean rivers and sustainable ecosystems. A sector trusted by the consumer because of service excellence and support for vulnerable consumers through affordability schemes (Indepen, 2020).

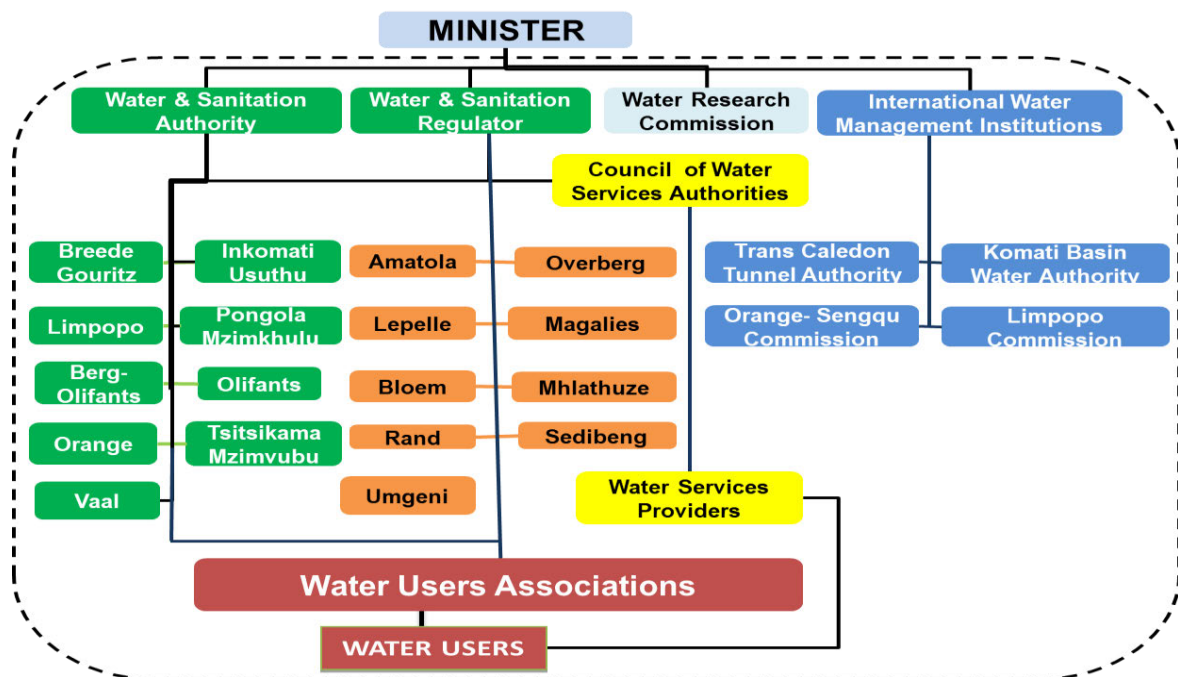


Figure 7.2: Proposed institutional reforms for water governance in South Africa (Mbongwa, 2019)

Figure 7.2 above is a representation of the government's proposed institutional reform towards the new water and sanitation sector paradigm. The institutional reform shows that a new mechanism called the Council of Water Services Authorities (CWSA) will be a political structure to oversee the delivery of water and sanitation. The CWSA will want municipalities to prove their capacity for them to retain the Water Service Authority operating licences. Municipalities that lose their licenses will not work as WSAs and a water board in their catchment management area would be tasked to step in (Mbongwa, 2019).

The proposed institutional reform aims to improve raw water quality, restore the ecological infrastructure, transformative water redistribution, capacity building and financial sustainability, including effective water and sanitation services (Balzer, 2018). It is important to implement the new water sector paradigm because most municipalities are not fulfilling their mandate in terms of water quality and infrastructure operation. Early intervention shows prudent governance before a bigger ecological and political crisis breaks out.

The documents presented by the DWS at various public engagements with the water sector leaders and NGOs to explain the need for institutional reform talk about water as a human right and basic provision calculated at 25 litres per person per day (Mbongwa, 2019). The water for the ecological reserve is also included. What is missing in these public discussions is the aspect of water payment, and what strategies can help nurture the culture of payment for services since the government is on record on various occasions noting that the culture of non-payment is a barrier to sustainable water services provision.

7.3.4 A water and service honouring culture

Fairness (justice) is the cornerstone of effective and sustainable water services, especially in extending access to those without water. Extended access to water requires cost recovery to happen (Enqvist & van Oyen, 2023:892). South Africa needs regulatory obligations that assist consumers in managing water use and not punishing them. The current model of water services is that of a top-down, one-way approach where the water service authority delivers the service and demands payment in exchange. The water

consumer gets told what the water will cost and has no option to suggest alternatives or reduced-cost options. Given the low rate of revenue collection, it is important to promote a service payment culture in South Africa.

7.3.4.1 Innovative incentives and collaboration for creating a service payment culture

Municipalities will do well to implement innovative solutions like incentives for those who pay their bills, including those who register on the indigent list. The idea of cost recovery is based on market principles or economic relations where the more water one uses, the more money one pays (Schneider, 2018:309). There is also a belief that people use water carelessly when they do not pay for it. Speaking about the eZakheni township, Mavundla (2016:67) commented:

The way water is used by people in the area tells the story that it is not paid for. You will find that water is left running from the taps when washing is done, and watering of lawn pipes left unattended.

Most people cannot afford the cost of water services, which creates the dilemma of the government charging what people will not pay. The current structure of credit control creates a relationship between water users who pay for services and a government entity that supplies them. Failure to pay service charges billed through municipal tariffs could lead to the discontinuation of water and electricity services for individuals and corporations (Mokhoali, 2022). The punitive incentive of service disconnection is not unique to South Africa but a global institution in public service (EurEau, 2016). Overcoming this dilemma requires a new way of cost recovery. The first step is to establish trust and good relations with the public, having them be comfortable or willing to pay for services. The second step is that of innovating the cost recovery policies from a punitive to a cooperative and inclusive expression. This implies customising service charges according to the user's affordability.

The successful implementation of the second step will achieve the objective of the first step. This means people will be more willing or socialised to pay for water services when there are flexible payment options in place. The water sector needs cost recovery policies that recognise and affirm the water user, conveying a sense of collaboration instead of competition or punishment. Building community partnerships strengthens the social

contract for water because the social contract for water “is not something water companies do for the community but a two-way” process (Kemp, 2021:76; Indepen, 2020). Water users whose accounts are in moderate arrears should not be cut off from services, on condition that their accounts do not exceed the limit of moderation.

Marah *et al.* (2003:27) report on the pros and cons of using incentives to enhance cost recovery in water services, but they make a case that using rewards has a positive yield. This study suggests that the municipality can cut R100 off the monthly bill when residents submit meter readings. This practice could also save the municipality from contracting companies that read water meters and encourage residents to submit readings unlike when there is no incentive. Giving payment discounts for those who want to settle the accounts or keep the outstanding amount to less than five thousand (5000) rands for example.

Water service authorities could implement attractive incentives for the residents who pay bills like linking service payment with reward points for use in retail stores, gyms, filling stations, or special seasons for payment holidays for those with up-to-date accounts. This could also help incentives to enhance cost recovery (Clifford-Holmes *et al.*, 2016). The Minister, Senzo Mchunu, blamed “weak billing and revenue collection at the municipal level” for the financial woes in the water value chain (Ensor, 2022:6). The municipality could also give discounts on service charges to companies and community groups that invest money to repair leaks. This is in keeping with what Enwereji and Potgieter (2018:232) suggest concerning multiple factors to improve service payment and the sustainability of water services. The factors include fiscal exchange, policies and legislation, service administration and measurement (plus meter reading, not punishing defaulters, etc.), deterrence, payment knowledge and education, budget transparency, social influence and deterrence messages by traditional leaders, influencers, municipal role players and emerging innovations.

The municipality could also present a monthly report on which wards are better performing on waste reduction, water leak prevention, and service charge payments. They can then partner with companies to sponsor communities that keep their parks and environment free of illegal dumping, or those that protect wetlands and reduce water or sewage leaks. The governments of Costa Rica, Ecuador and Mexico paid landowners to

manage their forests sustainably and meet national development plan standards (Hesse & Green, 2014:15) while Mexico had hydrological payments for the conservation of watersheds. The public and private collaboration for enhancing cost recovery can be maximised by creating on-demand account monitoring on various internet platforms sharing tips for cost-saving in water use and responsive communication systems to report incidents. This intervention would bring relief to the water consumers struggling to keep up with their service charges. The point is to encourage continued payment of water services instead of frustrating the customer. Such incentives would complement the existing indigent policies by municipalities. Cost recovery measures should not alienate the water user through one-way communication of charges and tariff increases that harden anti-government sentiments in society.

7.3.4.2 Locating people's good intentions and financial vulnerabilities in a service payment culture

The revision of funding models is necessary to ensure that the water consumer does not feel choked by the rising cost of living to the extent that they resort to illegal means of accessing water or rates boycotts. Cost recovery measures should not affect the psychological integrity of the water user negatively. Indepen (2020) reports that “customers would not contact their water commonly if they were struggling to pay, fearful that would make the situation worse”. Muller (2008) notes that the high cost of water has deterred people from using it. This means that the state-society relations are unhealthy. This study agrees with the argument of Indepen (2020) that “affordability must be front of mind” for the social contract to hold. The social contract should be cognisant of the customer's financial vulnerability. Considering the people's financial vulnerability is in the spirit of Batho Pele (people first) service delivery principles, which is about affirming recognition, not impinging it. There is a need to focus more on raising awareness and public education initiatives that encourage payment of services and for the indigent to register for relief (Pooe *et al.*, 2016; Khale, 2015).

We say people do not want to pay but do municipalities have instruments to make people willing and obliged to pay for services? Do entities have by-laws and what do those say about revenue collection and mechanisms to enforce payment? There is one truth that no one wants to talk about, that

municipal poor performance of duties prevents people from seeing the value of paying for water (Respondent 6).

The above statement shows that poor water services that involve unreliable water supply make customers angry that they pay but have water only once a month, therefore, it is ridiculous to pay. The narrative that people are not willing to pay for services is not accurate. Worku (2018) indicates that 60 percent of township residents are willing to pay for services compared to 39 percent who are unwilling to pay. The municipal official (Respondent 7) explains that the Emfuleni municipal area has payment rates that vary within the different settlements. The suburban areas have higher rates, above 38 percent, and the township areas vary from 0 percent. On average the rate for all services is about 70 percent of all billings and less than 35 percent for water services. On asking how many residents do not pay for services, the respondent said it is like rates vs billing, with no further details provided. Respondent 7 further claims: "No information available in this form. Payment rates are. Compared to billing done". This lack of clarity extends to stating how many indigents are in the municipal area, "information resides in other departments" according to the respondent. However, the respondent could say that the business community has higher payment rates and has organisations that engage with the municipality regularly regarding their concerns about service delivery. Information about rate payments by state institutions also resides in the finance department, the respondent said.

It is therefore important to work on that positive element of willingness and convert it to actual payments. The poor service delivery is the deterrence to service payments, not a refusal to pay for the services. Some residents are not satisfied with service quality; hence they did not pay (Igamba, 2022). Disgruntled about paying for water in return for poor services by the municipality, a resident in KwaDwesi, Nelson Mandela Bay, explained:

...this municipality is forcing people to go and buy water, but we are paying for service charges. Why are we paying for water twice? (Ellis & Mehlwana, 2022).

The belief that municipal rates are not affordable is a fair explanation for low rates of service payment. Which means, people are willing to pay for services even when it is

financially difficult. It could be that people fear that the municipality could discontinue their services when they do not pay. Hence this study argues for innovative payment strategies like community collaboration to raise funds for services. The opportunity already exists among residents (rate payer associations) and companies (business associations) who use own resources to improve services where the government is failing. The municipality could formalise such collaboration by even facilitating the creation of cooperatives in townships for the repair of water infrastructure. Collaboration schemes with the community are important because municipalities are not generating enough money to sustain service delivery (Worku, 2018:102). In the social contract for water report, Indepen (2020) suggests that “water companies ought to collaborate with customers before they start falling behind on bills” and support them to reduce their consumption. Such policy innovations would help minimise people’s anxieties and frustrations about the government terminating their services.

7.3.4.3 Ending cost recovery injustices [apartheid] for creating a service payment culture

This study raises the issue of constraints on cost recovery associated with selective punishment of those who do not pay as a long-standing reality of South African water policies (Marah *et al.*, 2003). For cost recovery to be effective and receive support from water users, the perceived unfairness of the water sector should stop (Marah, 2002:15; Jegede & Shikwambane, 2021; Mahan *et al.*, 2014:78). The government is very much aware of these issues and Balzer (2018) captures it as follows:

Current pricing strategy does not adequately make provision to reward users who conserve water and penalise consumers that ignore consumption caps. The water sector is not financially sustainable, and the pricing strategy will have to be reviewed to address the historic undervaluation of water and sanitation services. Waterborne sanitation is unsustainable, need to adopt “water-less” sanitation technology. Pragmatic management of the Free Basic Water policy is required. Non-Revenue Water in municipalities is estimated at 41%, losing some R9.9 billion of potential revenue per year. The best performing municipalities achieve on average 25% and for practical reason it is not possible to achieve 0%. Need to deal with non-payment for services and enforce cost-recovery. High levels of debt at municipal level reverberate

up the value chain, impacting on the financial sustainability. South Africa invests R42 billion per year into water infrastructure, and R13 billion into sanitation. The estimated capital investment requirement is R90 billion per year over the next ten years, which is R33 billion per annum more than the current investment (p.20).

The narrative of people having to change their behaviour by consuming less water is a concern for some human rights proponents who argue that ordinary people are blamed for high water use while it is industry and agriculture that use the most water (Igamba, 2022). Water authorities should equally hold industry responsible for conserving water as well. Water companies should share meaningful information on how industries are conserving water, which makes the case for households to do the same. The social contract for water requires an end to injustice. It is against the perceived injustice of policy implementation in the disconnection of water supply that the ANC laid a complaint against the governing party in the city of Tshwane (DA) to the SAHRC. The ANC argued that the DA completely cut off water supply for indebted households, including child-headed households (Motha, 2022). The ANC says it supports cutting electricity for the indebted, but not water because water is essential to supporting life.

Cost recovery injustice is a neglected topic in academic outputs although it is a concern for many communities in South Africa. Jegede and Shikwambane (2021) focus on water apartheid and report on how the municipality of Pretoria used discriminatory cost recovery measures. This is where the municipality implements consumption-based tariffs for white residents in town because of the assumption that residents in town are affluent, while township communities pay a lower flat rate despite there being water meters in place. There is also selective enforcement against defaulters where residents in town face legal action (cutting electricity is often the action taken against them) to recover arrears. Similar actions are not implemented in the townships where most people do not pay for services at all while not being registered on the indigent list. This means many people in townships can afford to pay for services but do not, and the municipality is not acting against them. Enqvist and van Oyen (2023) also cover equality and sustainable water tariffs, where they consider public perceptions on what constitutes fair water tariffs in the city of Cape Town. Marah *et al.* (2004:58) argue against discriminatory cost recovery practices like increasing

water tariffs for those who are already paying [the wealthy subsidising the poor] and letting those who do not pay off the hook.

This study argues for a need to distinguish water users in townships that can afford to pay for water services and not count townships generically as areas that need to be subsidised by ratepayers in more affluent areas, which ignores the reality of the poor being present in towns as well. Marah *et al.* (2004) argue that municipalities should ensure that everyone who uses more water than the free basic provision should be made to pay or restrict the amount of water they use. Here follows an example of unjust [apartheid] cost recovery measures:

One of the areas of concern for the department is the credibility or fairness of tariff charges. In some areas, municipalities do not have meters to measure use, or where meters are set, the meter reading is not accurate. There is a fashion of estimation by the service provider instead of reading the meter. These are the stumbling blocks to payment. The department is trying to encourage users to pay and change their mindsets so that people see the benefit of the service. Thirdly, there is no motivation for consumers to pay for services. Municipalities feel they cannot cut water to non-payers, but the law allows it after following certain processes and establishing that this person does not want to pay. If they cannot afford it, they will be pushed to the indigent register. All these processes are not done in the municipalities (Respondent 6).

Non-payment and high wastage of water affect service standards negatively (Johnston, 2014; Enwereji & Potgieter, 2018). There are high incidents of throwing foreign objects into the water systems causing frequent blockages (SAHRC, 2019). Therefore, public education campaigns for good use of water infrastructure and political will to collect revenue are important. Using a scenario of the social contract's original position (where there was no awareness about water use, no penalties for non-payment, nor tariff measures), Marah *et al.* (2004) suggest various methods for effective revenue collection. Cost recovery could increase by 21 percent on average, and 40 percent at best if municipalities implemented a combination of public education initiatives with penalties for defaulting customers, and progressive measures like tariffs not based on consumption (Marah *et al.*, 2004:51). Public education with progressive measures could yield an 11

percent increase on cost recovery (Marah *et al.*, 2004:53), while adding strong penalties for all users with three months account arrears could increase recovery up by 30 percent (Marah *et al.*, 2004:53). In municipalities that already have public awareness in place, implementing strong penalties without progressive measures could see a 23 to 30 percent increase in cost recovery (Marah *et al.*, 2004: iv). Marah (2004) argues that implementing strong penalties rarely has negative effects on cost recovery rates. The essence is that good governance that enforces cost recovery measures and reduces water loss (leaks) will contribute to the significant recovery of much-needed money for sustainable water services.

But there seems not to be a deliberate intention to enforce cost recovery policies in the water sector, while the municipality will not pursue non-payers or threaten them with the disconnection of electricity. Instead, a new institutional practice has emerged, although it is negative and anti-progress. The informal new institutional response in the public sector to communities with high levels of non-payment (whether it be in town or the township) is to respond slowly to their complaints. Chapter 6 presented a narrative of low response rates to fix broken water infrastructure (Mavundla, 2016) which is verified in this chapter. A municipal official responding to this practice of non-payment said, “the municipality responds slow to the plight of those in the townships that do not pay for services” (Respondent 5). In other words, there is a new negative institutional attitude to let complaints from non-paying communities take a long time to solve while responding quickly to paying customers. Also, it means that non-paying communities are the first to be cut off during the time of load shedding, and experience poor waste collection services. In short, there are better service delivery standards and response rates for paying communities compared to those who do not.

Tariff disparities are caused by cost implications involved in developing water resources across the country, meaning that they are systemic. A DWS official (Respondent 6) explains that to meet the social contract obligations, the state must pipe water from one region to another and ensure water access to affected communities. But water transfers cost money in terms of laying and maintaining pipes and, therefore, cost recovery is an inherent factor in the water management system. Respondent 6 further explained that one could note the disparities in tariff charges from one municipality to another where one

charges R5 per litre for water while another could charge R20 per litre. This is not strange when looking at the issue beyond a municipal level in looking at the price base or cost reflection, depending on where the source of the water is located. The processing of the water and bulk allocation to municipalities explains why municipalities that are too far from the bulk infrastructure would charge more tariffs. Disparities exist and are a point of interest for the department.

One minister wanted to establish a national tariff, but this did not happen because ministers come and go with their agenda. The flat rate proposal is not an option because the legislation is based on an incremental block tariff – it means that if one uses a lot of water and pays less, who will cover the difference in use under a flat rate regime? The block tariff is a better option because, for example, say one block is 0-6 kl as a free service to the poor, then 7-15 kl as a lifeline affordable for most people, and then beyond that is 16-30 kl for bigger users. The more water one uses, the more money one would pay. It is a punishing mechanism but a self-management system in a positive way as well. In simple terms, the ones that must pay a lot for high consumption will eventually reduce their use, thus contributing to demand management. It allows for reasonable water use (Respondent 6).

The collection of revenue for raw water is determined by sections 50 to 60 of the National Water Act which empowers the minister to establish the pricing strategy for water. Respondent 6 also explained that the pricing strategy is currently under review to make it align with legislation. Pricing for bulk potable and municipality water is determined by the norms and standards as set out in Section 10 of the Water Services Act which is in an advanced state of review. The totality of legislative revisions should also look at debt management by the department – looking into historical debts in consultation with SALGA, COGTA and the treasury to help entities.

Therefore, it is important to organise a united water utility forum where all water authorities meet to discuss a common vision for the sustainability of water services and to align policies and practices in the water sector. Such a forum would envision water service authorities that provide effective services that build trust among the people, and not merely prioritise customers who pay service charges (Indepen, 2019). This will require addressing the unfairness of tariff regimes, controlling water leaks, promoting affordability

and pollution controls as the foundations for being accountable to communities (Indepen, 2019). Responsible citizenry and ethical service administration are the foundations of a re-imagined social contract for water services that secure the person's life (property) and dignity. This collaborative work in reimagining the social contract for water services in South Africa promotes recognition, social-ecological innovation and overcoming the modern socio-economic threat of injustices in water services (Kemp, 2021). The transformative social-ecological innovation would require new partnerships, changes in governance, and joint value creation that make a sustainable, healthy, and just society.

7.4 Reciprocity as a foundation for social justice in water services

The points discussed concerning multipolar new Institutionalism should facilitate a transformative social-ecological innovation through new partnerships. This shows that managing change in governance is about joint value creation that makes a sustainable, healthy, and just society. Such a society is possible through the natural social contract (Kemp, 2021:49) and community dialogue is a primary feature in this process. Bristol Water (BW) undertook the process of public dialogues and from there developed the social contract for water. Key features of the BW social contract for water include: i) a water challenge panel of various stakeholders (state, business, households). The water challenge panel promotes inclusive and sustainable water governance processes; ii) the water board, where the water service authority (company) explores investment opportunities based on long-term strategic planning; iii) the community stakeholders who monitor service delivery standards against the defined commitments; and iv) customers who engage the water company through transparent customer engagement forums, online platforms, and youth board. This includes employees who develop trust through excellent community projects and innovative customer care strategies. This requires more intentional governance, not strategic choices of personal benefit, but well-meaning citizens who comprehend the vision of creating sustainable futures and valuing water. Behaviour-wise, there is little collaboration between the government and the people to ensure sustainable water services. It is essential to accept that the statist management practices and attitudes are now out of date in modern political communities that voluntarily fulfil their obligation to the public by paying service charges. Figure 7.3 shows the Bristol

Water Hydro social contract intended to promote accountability and social impact through service delivery.

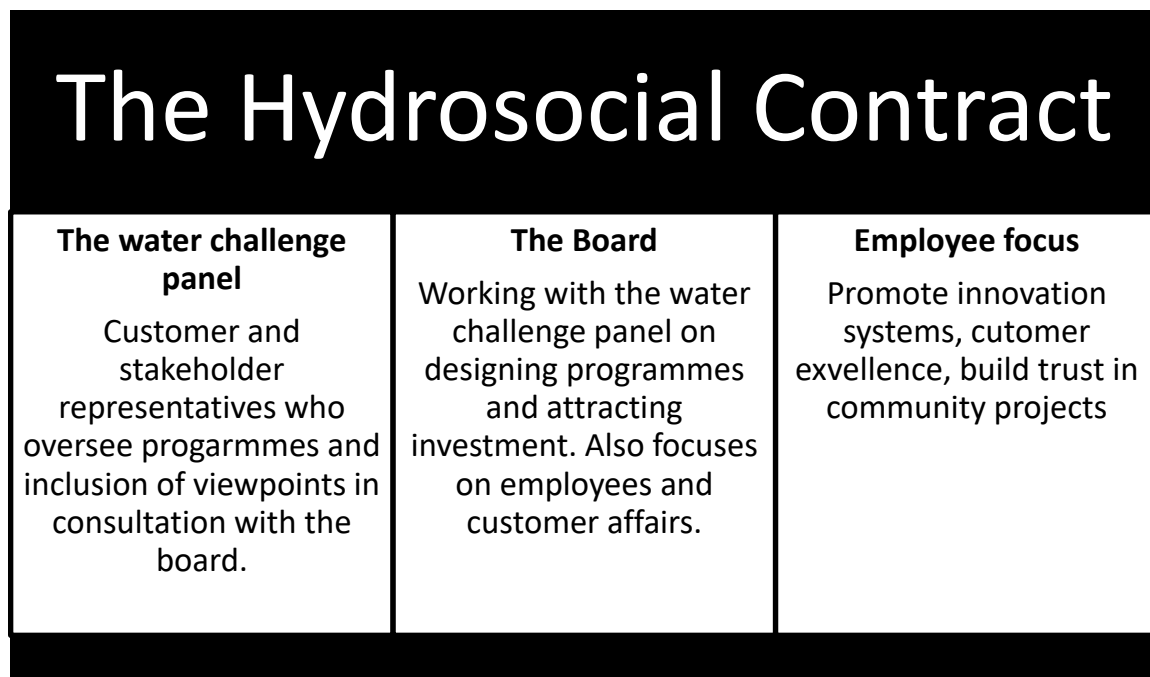


Figure 7.3: The Hydro social contract by Bristol Water (<https://shorturl.at/dmzD5>)

“A real partnership approach to decision making is required to address the current impasse” in the water sector (Healy & Murphy, 2017). The statement below explains South Africa’s governance culture of state domination serving subservient or alienated water users (Shneider, 2018:316). This has led to passive attitudes where people expect the government to fix all water leaks, even the leaks occurring in their yards.

Culture shapes how we live in community, informing our principles, values, attitudes, knowledge, behaviours. These elements in turn determine how we respond to issues of the local environment, whether positive or negative. In order to address these issues, we must first grasp the very value placed on natural resources and the environment—by both the individual and the group (Suarez-Vera, 2014:6).

Kemp (2021:19) talks about the period between 2000 to 2050 as characterised by a sustainability transition which is all about searching for a new social contract. Having analysed that a multipolar new Institutionalism entails norms that cohere social society

together, this section introduces the social contract principle of reciprocity as one factor that can help strengthen the revised social contract for water.

Marah *et al.* (2003) cover the topic of effective cost recovery policies in South Africa, and there is an impression that people would be willing to pay for services only when water standards are improved and reliable. Therefore, the aspect of reciprocity, which is at the core of the social contract theory, is essential to improve the social contract for water.

Reciprocal water agreements are a way of addressing not just one but many realities: from creating (or re-creating) the spaces, both literal and figurative, that show up the gaps and strengths of a specific community, to defining and seeking agreement on matters of conservation and restoration from those who benefit from the natural environment (Suarez-Vera, 2014:6).

This entails people, businesses, and the state fulfilling their responsibility for the sustainability of water services.

7.4.1 The state and people's mutual obligation to ensure water security

The principle of reciprocity is central to the social contract principle where people give something in return for the benefits they receive from the other (Zhong *et al.*, 2016:3). Therefore, the aspect of mutual and equal obligations should be normalised in the South African water culture. The WSA stipulates “the duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services and duty to conserve water resources” (RSA, 1997: S112[d, e]). This empowers water service authorities to limit or stop water supply for people who do not pay service charges. Gauthier (1988:75-79) relies on Hampton (1986:174-145) in that people who respect the social contract will allow the state to uphold security. In the context of South African water services, people who respect the social contract should allow the state to ensure water security. Therefore, South Africans who respect the social contract will (i) “not interfere with the sovereign’s punishment of anyone other than himself”. However, in South Africa there is evidence of communities who interfere with state institutions that implement cost recovery, irrationally making the same excuse of inability to pay for services. They do not make an objective, non-partisan assessment of the situation but should (ii) “actively assist the sovereign when ordered to do so in

punishment and enforcement activities involving others”. As a result, communities should not ostracise those who cannot afford to pay water services but instead allow them to use water for free. South African activist groups do not take a proactive stance in helping the government find indigent households and ensure their inclusion in municipal registers. They do not try to find residents who can afford to pay and encourage them to pay, nor do they hold community dialogues raising awareness about the state of water shortage and dire municipal financial conditions. And where others (iii) “be disposed to obey the punishment orders of only the sovereign”, one sees that a high level of compliance to government punishment orders is possible in rural communities, while those in urban spaces are quick to hold violent protests that challenge government efforts of law enforcement. Government institutions need to communicate with the people and encourage them to do their part which is necessary for good self-interest.

A municipal official (Respondent 7) explains that the relationship between the government and the people concerning water services is of a local government that is bound by the Constitution as a water service authority to serve the people (beneficiaries). The people in turn are responsible for paying for the water services they receive. From this explanation, it follows that the relationship is a formal policy determination – there is no alternative relationship characterisation by government officials. This means that South African residents need to awaken to the reality that if they do not contribute to efforts of water security, relevant government institutions will face challenges to sustain the supply. This will result in collective water insecurity and the one who free-rides makes himself vulnerable to water shortage as well.

Figure 7.4 is the double troika of the social contract for water that confirms the contract as either between “the people and the ruler, or among the people themselves, or both” (Hampton, 2017:479). The top rung of the troika shows the institutional rights to supply water as a basic human need and for the state to collect revenue from the water users. Both parties must protect critical infrastructure from vandalism and misuse, creating the state-people relations that are necessary for sustainable water services. Where the state provides good quality services, they should also diligently ensure correct water bills reach the right people. The double troika communicated here is about consent and not dissent.

However, unhealthy state-people relations occur when the state provides sub-standard services, or when people do not honour their responsibility to pay for services.

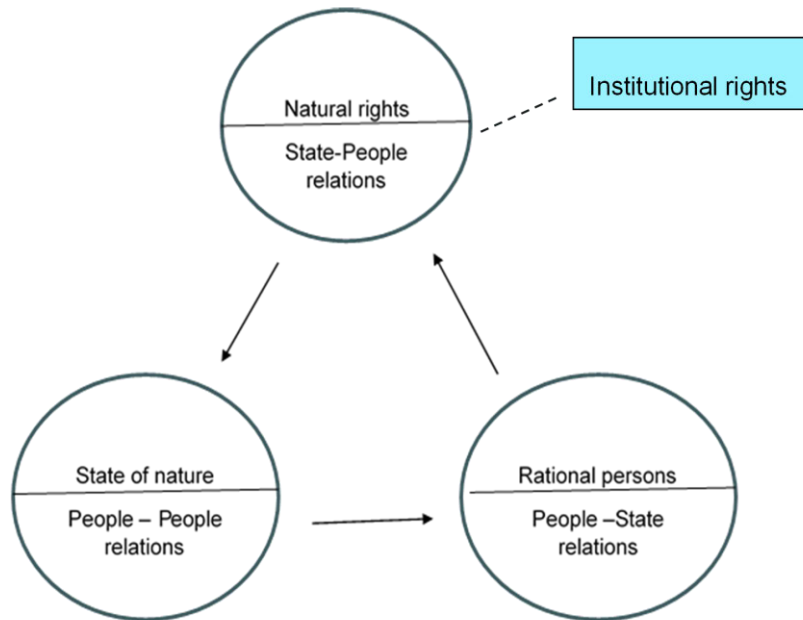


Figure 7.4: The double troika of the social contract for water – own construction

The second rung of the double troika shows the state of nature that occurs because of unhealthy state-people relations where the government can no longer supply water at acceptable standards because people have not paid for their services and people disrupt water service technologies for cost recovery and water demand management. Water supply failure (inconsistency) is another concern where communities stay long periods without access to water. The water services resemble the state of nature because of deaths, illnesses and violent protests caused by water supply failings. This is where struggles for recognition pervade public affairs and strengthen the narrative of failing or poor governance. This study argues that people-to-people relations need to improve where collectively they persuade one another to collaborate with the state to rebuild the water sector.

The third rung is a call for refined, rational persons who acknowledge the existential threat that arises from the water crisis. They establish relations with the government to revise

the new social contract and institutional arrangements that affirm recognition for the water user. Including residents who take pride and co-ownership of water services, such reciprocal relations would create a water and service honouring culture. This is where reciprocal water agreements between the various actors of society can facilitate collaboration for sustainable water services. The divisions between the people and the water authorities will degenerate further without reciprocity (Zhong *et al.*, 2016:29). The government and water users could enhance the efficiency of water forums or water service technical committees to monitor the standard of services and address the aspect of cost recovery equity.

Figure 7.5 describes the contexts of “agency contractarianism” and “alienation contractarianism” in these dyadic relations respectively (Hampton, 2017:479). It shows that the social contract facilitates dyadic relations at interpersonal and institutional levels (people-people and people-state). Dyadic social contractarian relations operationalise elements of the troika explained thus far. On one hand, interpersonal relations dictate that the state will not interfere in agreements and dealings among persons, also known as personal affairs. The state will intervene either to settle disputes or determine values that facilitate justice in private issues.

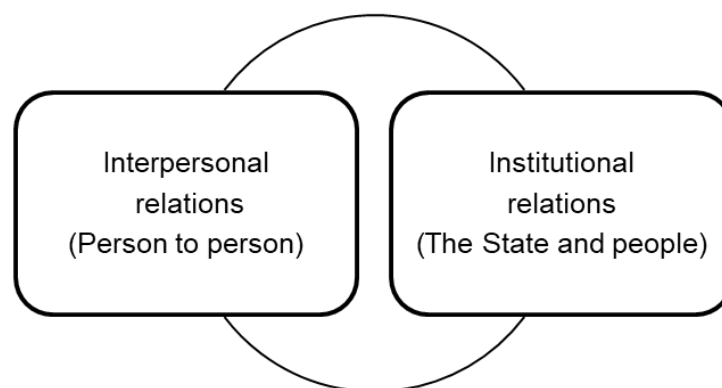


Figure 7.5: Dyadic social contractarian relations – own construction

Institutional relations entail matters between people (individually or as a group) and the state. This is public affairs, where the state has a responsibility for the people and

likewise, people effecting their obligation to the state. Dyadic relations resonate with arguments that reject “absolutism, the divine right of kings” and hold that “governments should come by consent through the will of the people” (Nyamaka, 2011:3). These relations are the lifeblood for the conduct of inter-dependence and protecting vulnerable human ecosystems. This would build a justificatory community that puts the behaviour of non-payment and water deprivation through the interpersonal test, determining on what basis is non-payment or deprivation justified and comprehensively accepted as a social norm.

Arguments of non-payment are based on affordability, yet some of those who make such arguments get away with non-payment not because of affordability, but just because they reside in black spaces (townships) and are part of the majority of black South Africans. Their behaviour is tantamount to hiding behind blackness and free-riding on other people's poverty. Some who do not pay are hiding in illegally occupied white spaces (towns). Those who use the justification of unaffordability make an egoist choice to defraud the state and show no intention to facilitate sustainable social cooperation. Local government institutions are not making the situation any easier, with most South African municipalities not enforcing by-laws or collecting rate payments, which results in a financial crisis. Everyone ought to do their part “to ensure just functioning of social institutions” (Saade, 2015:196).

The dyadic social contract can help overcome the anxiety of being under scrutiny and losing control over “elite-controlled political processes” (Saba, 2013:320), which hinders collaboration between civil services and civil society formations. Securing the sustainability of service delivery has not succeeded in mobilising society (Malka, 2018). The South African government introduced a program, Masakhane (let us build each other), of which one part was to mobilise ratepayers and change civic tradition around public service delivery. Masakhane is a failed attempt to raise civic mindedness because it was superficial and could not reconcile the aspect of cost recovery and free basic water (Marah *et al.*, 2004:57). The success of Masakhane was further undermined by collaboration with organisations that have been partisan and lost credibility like SANCO. Lack of civic-mindedness is a result of organised irresponsibility and “political resistance characteristic of urban society South Africa” (van Wyk *et al.*, 2009:3). Organised

irresponsibility occurs when residents hide behind indigence although they can afford to pay for services or when local municipalities point to low revenue collection because of water throttling. The South African water services are beleaguered with free-riding. This is a problem of political culture, whose grip can be undone through a strategy of engagement for collaboration. If not, water rationing will be the new normal.

There is a need “to breathe life into the social contract through a proactive state with community participation” toward “collaborative regulation” (WBGU, 2011; Heims & Lodge, 2017) in communities that are not willing to pay for water services. This entails a negotiated settlement for existing debt and the possibility of erasing it, followed by residents committing to pay services because of actual use tariffs or a flat rate. The point is that residents must contribute a certain material portion to the sustainability of their water services in keeping with rationality. Collaborative engagement is the bottom-up component that is missing in the regulation and de-politicisation of South African water services.

7.5 Conclusion

This chapter has addressed the need for mobilising the public around water security as a common national interest. This is what Blomkvist (2023:1) called publicness, which should see commitments made around reciprocal water agreements to ensure water security. Therefore, a multipolar new Institutionalism is a necessary innovation in the water sector versus the traditional statist approach of the government playing a dominant role in water supply to complacent recipients. The traditional approach to water development of using technical solutions without the social component should stop. More community involvement is needed.

There is a need to educate and build awareness among communities so that they take responsibility to jointly manage resources together with water service authorities. The Constitution speaks of stewardship when it comes to natural resources, which requires looking after the future (SAHRC, 2022:5).

South African water services are approaching a precipice of disaster with failing water works and endemic corruption that impedes sustainable supply. The non-payment of water services is another problem that needs addressing. There is a deliberate avoidance

and evasion of service charges by residents who take advantage of the weak administrative process of cost recovery. The topic of cost recovery apartheid is another critical aspect raised in this chapter, which needs further research to be resolved. Regarding the general state of water services in KZN, the SAHRC (2022:4) commented on the profound impact of illegal connections, vandalism, theft, the political environment of corruption and business forums that disrupt infrastructure projects on water services. The SAHRC said all these issues “reflect a society that has deteriorated, which hinders water service delivery and renders communities ungovernable”. This confirms this study’s position on the water services receding into the state of nature or the manifestation of relations based on the triad of dissent. The solution for these challenges is for the government to gain public trust by ending the injustices in water services and cost recovery. Hence the need for multipolar new Institutionalism.

Figure 7.6 below is the summary of multipolar new Institutionalism, which is the fundamental model presented in this chapter towards creating state-people collaboration for sustainable water services.

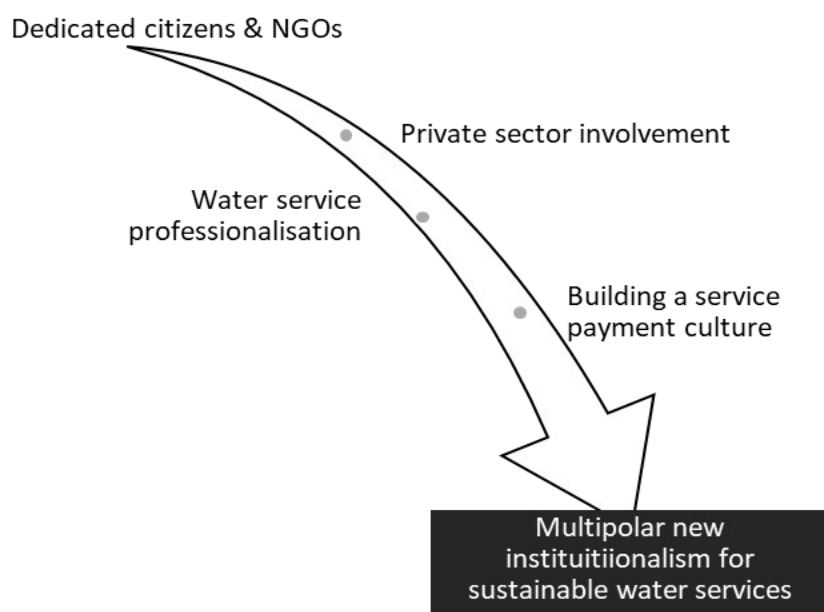


Figure 7.6: The graphical construct of what constitutes multipolar new Institutionalism – own construction

CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

8.1 Introduction

The previous chapter has shown that the water services in the democratic dispensation are deteriorating and increasingly becoming unreliable. This is owing to a lack of infrastructure upgrades despite the growing population number and levels of urbanisation. These have increased the demand for water services, but the government does not have enough resources to meet the water demand needs. There is also the problem of cost recovery. The government has not enforced strict compliance with credit control measures. Therefore, few members of the population pay service charges. Endemic corruption and delays in completing water infrastructure projects worsen the water crisis and present barriers to extending water to communities without water as the much-needed money is misused. The previous chapter also presented the case for multipolar new institutionalism as a solution to water services challenges. This preference for new institutionalism is necessary to add a vital component of reciprocity (state-people collaboration), in addition to the dominant technical and statist approach in water governance. Such collaboration is important to determine and revise new values that shape behaviour necessary for ensuring sustainable water services. The collaborative setup in managing water resources would also help clarify disagreements about perceived injustices in the distribution, use, and payment of water resources. Thus, creating a water and service delivery honouring culture.

This chapter first presents recommendations for sustainable water services. The first section argues for a transition from old centralised technical (state-centric) management practices to new and more externalised practices (multipolar new institutionalism) that put collaboration at the core. The second section on critical reflection on the social contract and struggles for recognition concepts provides a view into future research questions raised by this study. The last section is the chapter summary that recaps the key features of this study.

8.2 Recommendations for inclusive and sustainable water services

The social contract principle of fairness is vital for promoting recognition. As discussed in this study, there are ideological tensions between water socialism and water commercialisation. The problem of non-payment has existed for a long time in South Africa. It was explained in terms of a narrative of the culture of non-payment and entitlement. On the other hand, there are concerns that it is a legitimate material reality that people cannot afford to pay for services, to which the government has not responded effectively. One can understand that the South African government has embraced the neoliberal market economics in public services. This means that it will not abandon the principle of strict cost recovery. However, there is poor implementation of cost recovery policies. Therefore, this study argues that there should not be a unilateral (one-dimensional) solution of embracing pro-socialist beliefs or strict cost recovery principles in water services. The South African legislation is a blend of these ideological strands in that the privileged are expected to pay water service costs while the most economically vulnerable get indigent support from the government. This aligns with the social contract principle for fair (not arbitrary) discrimination, which is essential for creating a civil society. The South African legislation is progressive and has built-in mechanisms to promote human dignity [recognition].

8.2.1 From internalised plans to externalised collaborative actions

The logic of sustainability transition is like what this study presents as new institutionalism. Which focuses on state-society collaborating/working together to create better living conditions. Public institutions should use collaborative practices where i) leaders - acknowledge that people have little means to shape their life prospects without access to water, ii) shaping dominant ideas and beliefs – for progressive and inclusive policies that transform re-ordering society; and iii) institutions and practices – to promote reciprocation and cooperation. Such collaboration is important to creating the better life that was made popular in the South African political imagination through electoral campaigns. However, creating a better life is not an immediate process outcome but a long-term engagement where communities play an active role in the development process. A better life is the main aim that people pursue in their forming of a social contract. This study posits that water is an essential signifier of a better life, and water infrastructure is an outcome of a

civilised and well-managed society. Therefore, collaboration as a social contract principle involves the people saying what mutual obligations, they have with the government to maintain water services (a better life). Payment for services is one of the obligations. However, the culture of non-payment is not limited to one area or selected provinces but is a widespread pattern in South Africa. There should be harmony between civic society and the government to reverse the culture of non-payment for municipal services.

The first point of departure in making long-term changes in dominant practices and philosophies is by revisiting the Batho Pele (people first) service delivery principles. These principles have served as internalised plans by government institutions that wanted to present themselves as open and responsive to the needs of the people. The implementation of the Batho Pele principles does not allow the mechanisms for citizens to monitor and give feedback on the service standards. Neither is there a meaningful mechanism that makes people heard or consulted regarding the supply of services. This study argues that the Batho Pele principles have not made the desired impact because there was little public collaboration/participation in monitoring its implementation. Table 8.1 below shows the expansion of Batho Pele principles. What has been added to the existing principles are the new values of innovation in public service, the significance of public impacts in service delivery, and strategic leadership for attracting stakeholder collaborations that augment the government's capacity where there are deficiencies.

Table 8.1: The old and new Batho Pele principles in a new institutionalism framing where three more principles were added to the old, i.e. principles 9-11.

The Original Batho Pele principles	The revised Batho Pele principles
1. Consultation: the importance of talking to people to understand their needs when making decisions and designing programmes. 2. Standards: making it known to the people, what quality of services they will receive based on available resources. 3. Redress: making amends for mistakes (poor service)	1. Consultation: the importance of talking to people to understand their needs when making decisions and designing programmes. 2. Standards: making it known to the people, what quality of services they will receive based on available resources. 3. Redress: making amends for mistakes (poor service)

committed during the delivery of services. 4. Access: promoting the equality of service delivery access for everyone. 5. Courtesy: ensuring that people feel recognised when in their interaction with public services and institutions. 6. Information: giving sufficient and accurate transmission of information to everyone about services. 7. Openness and transparency: letting everyone have a clear picture about the sustainability of services and scenarios for decision making. 8. Value for money: ensuring that service delivery reflects or justifies the money paid for it. Adapted from https://www.dpsa.gov.za/documents/Abri dged%20BP%20programme%20July2014.pdf	committed during the delivery of services. 4. Access: promoting the equality of service delivery access for everyone. 5. Courtesy: ensuring that people feel recognised when in their interaction with public services and institutions. 6. Information: giving sufficient and accurate transmission of information to everyone about services. 7. Openness and transparency: letting everyone have a clear picture about the sustainability of services and scenarios for decision making. 8. Value for money: ensuring that service delivery reflects or justifies the money paid for it. 9. Encouraging innovation and rewarding excellence: finding new ways of service delivery and improvement in partnership with sectors of society. 10. Customer impact: ensuring that services make a positive developmental impact on the people. 11. Leadership and strategic direction: intentional management of services and resources to make the desired impact on society. Adapted from https://www.umhlathuze.gov.za/images/Batho_Pele_Principles_-_October_2019.pdf

The implementation of Batho Pele principles followed a statist paradigm. But now there is a need to externalise these principles in a setting of network governance and practical involvement of the people. Multipolar new institutionalism supports the transition from old

to new Batho Pele principles that embrace strategic partnerships and innovative solutions. Transparency and effective communication will unlock or resolve problems related to knowing what people need when it comes to water services. Also let them know how the service standards compare with available resources (value for money). And through communication, the government can work to understand what innovative measures can contribute to sustainable services. Especially deciding how to accommodate the most vulnerable in society. Transparent and effective communication ensures civility (courtesy) between the people and government. This state of civility stops relations of dissent (dark triad) to those of consent (light triad). The light triad promotes compassion altruism, which is related to the virtue of reciprocity as discussed in this study. On the other hand, civility ends violent protests as people remain continuously in touch with the government about the service delivery challenges. Then people should not be violent to attract the government's attention. It is again through communication that the government can measure the service impact.

The ward committee system is an essential element in democratic governance. There are also water forums at the catchment management level, it would be a positive policy development to expand their (water forums) footprint to the communities. Integrated cooperation between water forums and ward committees will be a seminal reform that lets communities, businesses and the government explore the water security challenges. Revitalised ward committees in water services will maintain continuous transparency and citizen monitoring of water services. This is a fundamental aspect of strategic leadership in the new Batho Pele.

8.2.2 Key actions to affect the social contract for water

The theoretic explanations of the social contract proponents showed i) rational individuals who consent voluntarily (Hobbes); ii) government preserving people's welfare and lives and legitimate citizens protesting government failure to protect their rights (Locke); iii) interdependent citizens who make compromises for an ideal society (Rousseau); and iv) protecting the most vulnerable in society (Rawls). This study argues that consent and rational actions by the people and government are what is lacking to improve water services. There is an immediate need to facilitate community dialogues at the ward level where residents imagine the new water social reality of water supply. This study also

submits that the economic realities and life struggles of households that are not coping with water service charges will remain a dominant challenge to the South African water sector. This should make policymakers seek innovations for sustainable water and use the people's willingness to pay service charges by collecting a flat rate tariff if need be. Figure 8.1 below, prescribes the basic actions needed to create a social contract for water security.



Figure 8.1: Fundamental actions in a multipolar social contract for water security – own construction

Figure 8.1 above explains institutional reforms where the government must ensure that municipalities supply effective water services and ensure that water service authorities lose their licence when not meeting their obligations. The water supply reforms should include regular and active involvement of ward committees and water forums in monitoring service delivery. The linkage of ward committees and water forums will allow communities, the government, and businesses interaction in water service supply. Although this is a stretch, transferring water distribution services to the private sector should also be an option when public entities are failing. However, water services under private companies should be guided by norms of inclusion and protecting the poor. This should prioritise proper management of finances. A radical step could be de-linking water entities from the control of the local council to be more independent – more aligned with

water boards. Minimising political exposure could help water entities be more professionalised in a performance-orientated way.

Proper allocation and management of finances is more possible under de-linked water entities. This will minimise under-expenditure and wastage by municipalities on infrastructure projects. Active involvement of ward committees to monitor municipal budget expenditures and the extent of value for money in services is equally essential. Issuing monthly report updates on the financial status in relation to service delivery can ensure more transparency and honest reflection on sustainability. The collaboration should also encourage innovative cost-recovery initiatives. Including helping update the indigent register to ensure the most vulnerable get the services. Gradual ward-based initiatives water entities working in collaboration with the water sector NGOs can promote service delivery and water honouring culture. This is where water demand and reducing water leakages come into purview. And water entities are quick to respond when informed about leakages. These networks can help explore solutions related to the infrastructure threats and sabotage that impede service delivery. Stopping the tendering procurement system limits the incentives that alleged entrepreneurs get by supplying services to the government in times of water disruptions.

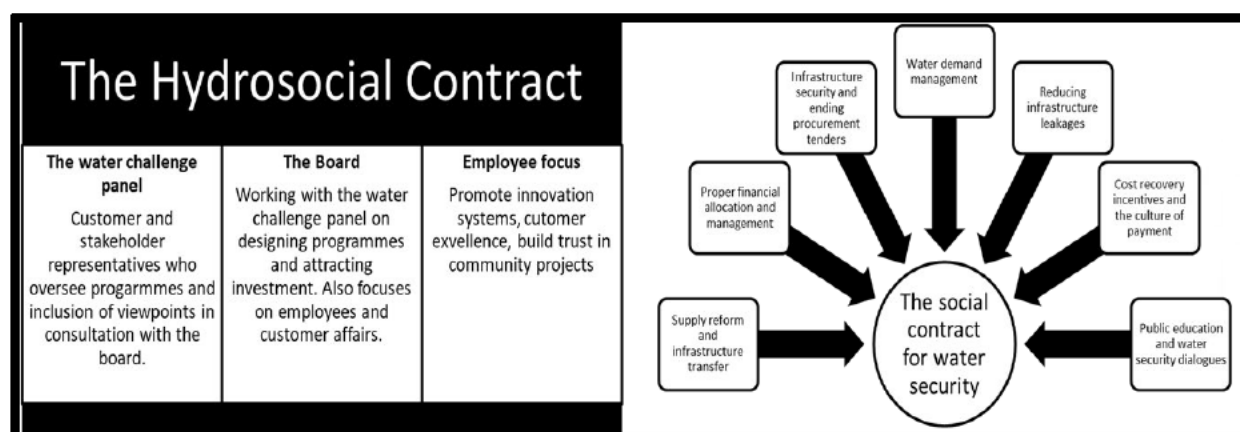
There should be a transparent public education intervention to make people realise the severe state of water services. This study proposes that each municipal ward can compile a water charter with clear commitments like i) protecting the right of indigent people to access water, ii) agreeing on a viable cost recovery model, iii) commitments to stop leaks, collaborating with private companies for environmental conservation as well, iv) talking about ways to save water and holding one another accountable should be normalised. And the government should be responsive to public report about water service failures. Using the internet and social media platforms should be used to transmit the information. The above recommendation for dialogue through transparency and public education is not farfetched but a valid proposition. Discussions by social transitions and development specialists also consider dialogues as effective. Protecting the basic human right to have clean water and a safe environment should be a priority in public services.

Figures, 7.3 and 8.1 read together³, shows what this study contributes as a model of the social contract for water versus what a leading water company imagines about the same theme. It shows that sustainable water services are possible through the meaningful implementation of cost-recovery measures along with customer-centred service delivery. And that the hydrosocial contract through collaboration between the government (municipal level) and community should start at the ward level. This proposed ward development model contrasts with the government-sponsored district development model of state institutions cooperating to improve services without a strong focus on the role the people should play.

8.3 Critical reflection on research findings and multipolar new institutionalism

The sustainability of water services by local municipalities is increasingly under threat, especially in poorer communities with weaker municipalities. Municipalities know that water is a right but cannot guarantee that people have reliable access to it. The Constitution does not prevent disruptions or the mismanagement of water resources. There is institutional incompetence in local government as far as water and sanitation services are concerned. Strong professional business principles, strong oversight, improved coordination, and programme oversight, including stringent accountability and requirements to water service authorities, are among the solutions the government hopes will solve the water crises in South Africa. The idea of the DWS playing a central role in water governance makes sense and is acceptable for effective institutional arrangements. The private water companies in the UK are facing a public relations dilemma because of

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growing incidents of sewage water pollution at the time of writing. This shows that the private sector cannot be completely reliable without the government's supervision. Therefore, the DWS should take the lead in enhancing support for building capacity in municipalities where water services are collapsing. The decision to include water boards to solve the infrastructure problems in municipalities is essential in delivering projects on time and with minimal exposure to corruption. The central government's takeover of local government functions as is the case with the inclusion of water boards could be an ideal model for stopping the tendering procurement. Corruption related to tendering procurement has eroded the capacity of municipalities to sustain water services. This study anchors its contribution on the need for collaboration between the state and the people in revitalising the social contract for water services.

Such collaboration means the current statist paradigm must change toward more inclusive methods that intentionally challenge the norms, institutional, and leadership apathy. This could be instrumental in shaping opinions about cost-fair recovery practices and citizens engaged in using water efficiently and not misusing the infrastructure. This public sector professionalism and collaboration with community networks for sustainable services should be extended beyond the board room to the community halls. Ward committees collaborating with water forums and the government is one vital structural reform needed at the local level. The problem of water services is mostly at the operational levels of municipalities and not the DWS. Therefore, nationwide community dialogues would be one of the approaches to raise awareness about the value of water and the need for reciprocity. Such a transformative network approach would put power back on the people where citizen assemblies and water forums interact with communities and the marginalised to convey accessible information about the state of water resources.

Partnership or collaboration represents the social contract in action where collective action contributes to building trust in the government and political system. South African society has endured many years of alienation by political institutions and political representatives who maintained the logic of doing things *for* the people and not *with* the people. Therefore, the government should facilitate social arrangements in discussion with communities at the ward level to implement efficient and sustainable water services starts with deliberation. Communication about sustainable water services should

transcend the high-level and tightly structured institutions of water boards and state institutions and include various sites of communication. Cultural and sports associations, business associations, and loose groupings of residents at the ward level should transmit the same message of collaboration and conservation for water security. This also includes responding to service delivery protests with an attitude of respect and engagement, taking a rational approach and transparency about the state of public services. Such a response to protests established a relationship of recognition where protesters could appreciate their lack of contribution to the sustainability of services, while the government also admitted its mistakes. The nature and extent of reciprocity by subjects remain a matter of great contention. Effective collaboration will help repair the fault lines in South Africa's social contract for water services.

The injustice of unfair governance concerning debt collection solidifies cleavages in a society where the well-off in white residential spaces feel that the people in black residential spaces get away with much, but the government is not taking them to the task. This study argues that affordability is not measured by where one stays and their skin colour because there are white and black people who stay in towns and are not employed or genuinely struggling to keep up with service charge payments. And not all black people in townships are poor and struggling to afford either. Hence the local government needs to strengthen its affordability means testing instruments and being fair to all residents. This is a reality worth noting to facilitate a social order in an unequal society. This is done by blending the regulatory and welfare elements of the state. Meaning a poor person could be a resident in a formerly white residential area, and a well-off person could reside in a formally black area.

Offering incentives and informative billing that shows water consumption over a period could help the water user to imagine ways of conserving. The municipalities could create a mobile app to share such personalised information or embed it on the municipal website under the accounts tab. Collaboration would allow people to step in where the government is failing. Plumbing companies may facilitate workshops for plumbers, security companies may donate equipment or human resources for protecting water infrastructure. Incentives are vital for generating reciprocity in modern political communities. Although the problem of non-payment for services is a concern, few of the

reported interruptions could be the result of low rates of revenue collection. Therefore, poor technical management of water services is the most compelling reason. Overconsumption of water is another considerable factor to look out for. As a result, the statist institutional culture in the water sector has bred dysfunction and negligence of water infrastructure because of poor decision-making by those holding public office. Poor decisions by public office holders throw society into a state of chaos and injustice, such as a city not properly governed. Water is a vital agent in creating safe cities and makes people collaborate to preserve their collective interests. Life is one of them, and further prevents the outbreak of violent interactions where people compete for the scarce resource that is water. Hence the state needs to play a leading role to avoid the sporadic violence in protests for water services where there is water shortage. The legitimacy of the state rests not only in protecting property but also in its ability to serve the needs through water supply.

There was poor water quality and pollution of rivers and oceans in England before the Water Act privatised the water sector in 1989 under Margaret Thatcher's leadership. The poor state of water governance was caused by the lack of prioritising the water industry and underinvestment by the government among other things. The privatisation of the water industry in England made huge improvements to the quality of drinking water, reduced leakages and supply interruptions and nature conservation. Although there are conflicting reports about the cost-of-service charges. Which is fuelling calls for the re-nationalisation of the water sector. The same idea of water as a public good and commodity to sell is at the core of political debates about England's water future. And still, there are opposing views that the privatisations of the water sector enriched few private holders that it promoted the common good. And that water wastage through leaks is still unacceptably high. This shows that the private sector is equally vulnerable to poor implementation of basic business and maintenance operations. Neither is the private sector immune from complications that come with failing old infrastructure. A popular water company, Thames Water, has evaded taxes and dumped raw sewage in the water bodies. This shows that privatisation does not imply the absence of corporate malpractices (corruption). However, the existence of separate private wastewater companies (operating water works) and water companies (operating drinking water works) has been a positive development for the water sector in England. Despite

improvements in turnaround times responding to complaints, and reduced consumption. There are also complaints that underinvestment is becoming a problem again with the government having to contribute towards big infrastructure projects.

Concerns about the commercialisation or privatisation of water are worth analysing. There is a common expression by the people that one can live without electricity but cannot live without water. But the recent electricity crisis has had a devastating impact on society and made life unpleasant. Even making it the government's priority to seek a new institutional arrangement for the State-Owned Enterprise (SOE) responsible for electricity supply, ESKOM to be more efficient in its operations. The new institutionalism in the electricity sector has had the government open for Independent Power Producers (IPPs) to step in where ESKOM is failing to ensure the security of electricity supply. Given the potential of water services collapsing in South Africa, it would take a truly radical policy step to allow private water service distributors. That is, where publicly managed water utilities share the market with privately owned and managed water companies. And how this competitive element in the water sector may lead to more reliable and affordable water services. The people are comfortable with having municipalities provide water because the appetite and efficiency for cost recovery are at the lowest. Therefore, there is a political practice of deliberate free-rider behaviour among the people; with unemployment and unaffordability being convenient excuses.

But the state already has water boards that are professionalised. The government could de-link the functions of failing municipalities and allow water boards with more resources and legislative provisions for them to take over from failing municipalities. De-linking municipal functions is necessary because intervention by the central government is temporary, and municipalities could relapse to inefficiency once their functions are restored. The de-linking is a difficult process of prioritising water security and not political expedience. It is about water boards controlling the municipal water companies and implementing cost recovery practices that include an improved administration of the indigent policy. The de-linking process would be the implementation of the hydro social contract model as presented in Figures 7.3 and 8.1. This should create a less politicised and more humane administration of water services that is vital for creating a water honouring and service delivery culture in South Africa. The proposal for de-linking

municipal water supply entities should be communicated in a manner that reconciles the concrete differences in policy preferences of political leaders, human rights activists, and the public related to water services for the poor. Especially formulating a common understanding of water services for informal settlements that exist without the government's involvement. The irreconcilable differences are what lead to the triad of dissent.

As in England, the challenge of population growth, climate change, inequality, and increasing demand exists in South Africa's water sector. South Africa and England are expecting a water crisis in South Africa is nothing strange from the experiences around the world. Water companies in Britain use 2030 and 2035, respectively. While South Africa uses water tanks for relief, England gives out bottled water during times of water shortage and supply disruptions. The problem of underinvestment in critical infrastructure exists in both South Africa and the UK, which raised concern about failing infrastructure and the need for investment in climate-resilient infrastructure for the future. South Africa should likewise be talking about the water future, not as a concern of the government alone. But saying what water users could do to achieve the goal of water security, the priority should be creating a behaviour change and culture of using water efficiently where people hold each other accountable for wastages. Water demand management should not be a matter of calling on people in times of water shortage, dry seasons, and heat waves.

The aspect of people being criminally liable for stepping in when the government fails to ensure the water supply needs to be reconsidered. Just as the aspect of de-linking municipal functions as suggested. The residents that step-in do so out of good intentions of protecting the public, and not to usurp government functions. And the people step in out of desperation because they have no recourse without municipal water. The people are merely responding to the two biggest failures of the government, which are a lack of oversight and poor operations. Therefore, municipalities should cooperate with the people according to the principles of reciprocity and public vision. The positive part of such cooperation is that the people by stepping in are already availing resources that the government needs for service delivery. The other positive aspect is that the government, in working with the people, can improve accountability mechanisms. First for the

government to hold corporates accountable for the part they play in service delivery failings. Secondly, the corporates and households hold the government accountable for its failure to supply services. Lastly, introduce a community of purpose that operationalises the constitutional principles of developmental democracy and social responsibility. The people's willingness to improve public services shows the potential for implementing the ward-based development model as proposed in this study. The civic action of people is like the U.S. where corporations step in to bring social change where the government fails. People should not be criminalised for volunteering to prevent public service collapse.

8.3.1 The centrality of recognition in water services: the South African context

People naturally lay equal claim to be included in society and treated with dignity by their governments. Likewise, sovereign states want to be included in the community of states globally. This is the inherent quest for recognition that shapes political expression. The dignity of inclusion is likewise a demand by political and labour organisations that want to be part of decision-making structures of public policy. The danger of recognition is that with or without the social contract arrangement, people continue to fight for recognition. Which causes conflicts as people contend for scarce resources. This erodes social integration and ethical life. The quality and availability of water services are among the primary aspects that define people's inclusion and recognition as members of a political community. This is because people feel they are forgotten when not having access to clean water. Recognition enables social arrangements that ensure human integrity (physically and psychologically), including social equality and promote social cohesion.

A radical transformation of water law made it possible to operationalise equal distribution of water by expropriating water use rights for the public benefit. This understanding of publicness is essential for building social cohesion in a country with a history of racialised water supply. However, the publicness in relation to land ownership still puzzles political expression in South Africa. Talking about land is a side note on struggles for recognition, for now, this study focuses on recognition in water services. Publicness is about rejecting inefficient, and illegitimate processes in water governance as rational and active recipients of public services. Hence this study presents a conceptual process of misrecognition in the water sector. *The bifurcation of misrecognition* occurs through

prolonged periods of accepting egological thinking (cheating, deceit, irrational selfishness, promise-breaking, vandalism, theft, and inflicting harm on others for personal gain). Figure 8.2 below is a representation of the bifurcation of misrecognition. This confirms the expressed theoretical statement that there is a long-standing social contract breach in South African water services that manifests as poor service delivery standards. Which stimulates struggles for recognition in society.

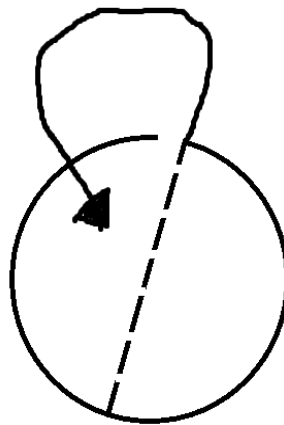


Figure 8.2: The bifurcation of misrecognition– own construction

The bifurcation of misrecognition follows that the solid line of the circle represents reciprocal service delivery and water honouring actions by residents and the government for an ideal society. The broken line represents a dimension of misrecognition that hardens egological thinking. This is about the collective impact of malevolent action by the government and residents in contempt of water services [creating a society of contempt]. The point of this model of bifurcated recognition is that tampering with, or neglecting water infrastructure could benefit the individual temporarily, but the selfish actions return to hurt themselves as shown by the arrow curving back. Therefore, the destruction of water infrastructure to advance political interests causes a negative impact on the public and water services as it happened at Bloemhof. When South Africa has disparities in access to water between rural and urban communities, coastal areas have more access to water compared to inland areas in the Maghreb. In both cases, the failure of water entities to ensure equal distribution of water leads to misrecognition and undermines the legitimacy of the state.

Social apathy, where a person does not report water leaks just because it is not affecting their property or comfort, is another sign of contempt. This study argues that service delivery and water honouring actions involve people reporting water leaks whenever and wherever they see them. Water wastage and demand management is everyone's business. Egological thinking has an element of narcissism, what theorists call general egoism. It is rooted in Rousseau's idea of *amour proper*, i.e. self-love or pride. Egological narcissism in the water sector occurs when people love themselves more than their communities. When people are too proud to report water leaks, saying *it is not my business*.

The bifurcation of misrecognition is not a people versus the government alone. There is a government versus government misrecognition unfolding as well. Respondent 6 explains that the rivalry (dissent) between the DWS and municipalities manifests in the battle over pricing regulation. This is where the municipalities assert their autonomy and say they are not obliged to share their tariffs or receive any ideas from outside parties regarding it. Therefore, it is difficult for the unit of economic regulation to monitor how the municipal tariffs are set or even the extent of their compliance with norms and standards. For this reason, there is hope that the proposed water regulator will be useful in closing this gap. The regulator will approve municipal tariffs and see it as an equivalent of the National Energy Regulator of South Africa (NERSA), which is responsible for price increases implemented and charged by ESKOM. The nature of tariff increment and the social impact analysis is important to determine the need for increases. The water regulator could be separately managed from the department and autonomous, but the shape it takes will depend on political decisions. Currently, some regulatory commissioners monitor the work of pricing regulation and advise the minister.

The dissent is not only inter-institutional in the government, but it includes civil society. There are two underlying factors driving the service protests, as Respondent 7 explains. The first is the litigation by organised environmental advocacy groups and the other is protests about water supply interruptions. Meetings with litigants are held and plans are developed with timelines to address their concerns at a particular time. Some get addressed and some reach a stage where DWS must intervene. With protests, there would be mitigation such as providing the service through carting water (trucking) whilst

the network challenges are attended to. This official's explanation of a two-fold protest, which shows the assertion that burning makes the government respond to people's demands, is not correct. Instead, the government responds symbolically by providing service at face value while litigants get to sit with the government at a negotiating table and contribute to intervention plans. This way, litigants are on a more equal footing with the government, while street protesters remain more passive recipients of services. Street protesters' actions and participation are more out of anger or the expression of it. This angry political approach is not conducive to creating meaningful relations with the government.

Hence mutual recognition through state-society collaboration in water services is a solution to building legitimacy and sustainable services. Based on the findings of this study, the DWS is more committed than municipalities to creating relations of mutual recognition. The DWS official (Respondent 6) argues that the role of the State through the DWS is also to build relations with the communities to understand their complaints. Complaints are raised by letters written to the Minister of Water and Sanitation or Director General which then cascade down to the unit in the form of referral or ministerial order. The other aspect of building relationships with the public includes clarifying the social impact of water pricing in which way the department can help keep the peace between the customer and the water supplier. The problem encountered in the relations with the public is that most communities do not come to the department when they have problems with access or anything like that. One only hears in the media that there was this protest, or that the human rights commission was approached for that reason. If they approached the department, it could be possible to resolve the challenges without much struggle.

It is also important to note that the South African consumer legislation and institutions do not focus on the water sector with the intention of protecting the service quality across the value chain according to quality standards. If consumer protection were applied proactively, it would be possible to identify challenges before they get out of control or lead to conflict. Chapter 4 of the Municipal Systems Act of 2000 compels a public participation process. If implemented well, this could reduce protests where vandalism of water infrastructure happens. Consultation is also important for project implementation where people want to know who will benefit and in which way during the construction

phase before the water flows in the pipes. The issue of contracting and employment preferences for locals is also a challenge. A respondent from DWS urged residents to be partners in whatever local projects, instead of protesting without the government knowing what the concerns are. The minister of water and sanitation [Senzo Mchunu] has been travelling around the country to understand what challenges people have with water, and this has fast-tracked some solutions.

The social contract operates optimally where residents and the government assume mutual responsibility and obligations to protect water resources. Given the institutional design of the water sector, the government continues to play a leading role in organising cooperative governance mechanisms. Such cooperation is not an internal government process but should include external actors (stakeholders) in society. This study argues that collaboration will improve the legitimacy of government policies related to water resources.

8.4 Concluding remarks

Finally, this study presents an unfamiliar topic of the social contract for water in the context of South Africa – an approach which practitioners in the South African NGO sector and water distributors have not embraced in their imaginations and policy influence yet. Therefore, this study is at the forefront of positioning the critical logic of the social contract in South Africa's water governance. The contribution of a new institutionalism seeks to transform the statist approach of water services, creating an inclusive framework of reciprocity towards the social contract for water. This study presents potential for implementing community dialogue initiatives about re-imagining the social contract for water security. These dialogues will involve the local government authorities, residents, private companies, and national government departments.

This chapter has presented the case of the global phenomenon of transitions and ecological social contracts. This explains the relevance of this study in conceptualising the need for a water social contract and a thing other scholars have presented earlier in discussing the hydrosocial contract. The special contribution this chapter makes is presenting the key actions needed for a hydrosocial contract, and these actions are comparable to existing policies of a social contract by water companies in the UK. Still

following the logic of new institutionalism, the chapter presented a recommendation for transitioning from the old to new Batho Pele service delivery principles that are based on collaboration with the public. There are many opportunities for future research in determining how Batho Pele principles find expression in water services. There exists a need for understanding the extent and impact of consultation when setting water tariffs on an annual basis.

Critical reflections on the research findings link back to the theoretic foundations of the social contract and show that the South African case and ideological tensions are not unique but common to the developments in the world. Yet, it shows the need to carefully consider the crisis that characterises the water sector. One could argue that water governance is neglected in the great scheme of things. The critical reflections also show that the social contract crisis affects various sectors of the South African economy, examples being roads, rail, and electricity infrastructure that is collapsing. The state entities have not been able to maintain critical infrastructure, which presents the case for potential private sector involvement. Reliable and sustainable provision of clean water through skilled workers and professionalised water service authorities is an urgent policy need. Promoting and protecting human dignity should be central when supplying water services. It is important to note that a lack of water violates people's dignity. The least that can be done is to at least make alternative water sources more dignified manner. Ensure that no one goes without water for longer than is legally allowed.

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SocMed: Najera, A. (@alesandra_na). 2020, 15 Dec. *"Ensuring clean, reliable water for people and nature comes through the never-ending work on a social contract that enables everyone to live safely and with dignity. Community power on water boards is a part of the puzzle to get there." Read more from my colleague @ap33la and I!* [Tweet].

https://twitter.com/alesandra_na/status/1338996060933394433

SocMed: New Horizon Movement. 2018. New Horizon Movement SOMA press statement. [Facebook status update]

<https://www.facebook.com/search/top/?q=social%20contract%20for%20water>

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SocMed: Nhlapo, T. 2020. July 12. Serope sabenya ke sure ke 6 years kaofla resa tsebe metsi a pompo [Facebook status update]

https://www.facebook.com/groups/523488064446811/posts/2913491382113122/?comment_id=2914774971984763 Date of access: 7 Feb. 2021.

SocMed: Phoofolo, L. 2022. Aug 15 The struggle in jagersfontein which ive always been part of was based on three things 3 things1. Water crisis,2. Unemployment, 3.JDP mine... [Facebook status update]

<https://www.facebook.com/lphoof/posts/pfbid02QXoUUb9u8Tyj4uzMVjD7uTcwHnK7S1rt1NvPkXAx3nne5LQqcZqECFf3jpmbXUe5l> Date of access: 18 Aug 2022

SocMed: Presidency | South Africa ZA (@PresidencyZA). 2018. 28 Jun. *President #Ramaphosa It is a struggle for decent education and relevant skills, for affordable health care, a living wage, decent jobs, land, houses, water, and electricity. It is a struggle for unity, non-racialism, and non-sexism; for dignity, respect, and peace* [Tweet]. <https://twitter.com/PresidencyZA/status/1012295990802636808>

SocMed: Ramarou (@GrootmanTebza). 2020, Jan 20. *Replying to @MasheanePopo @chatlas and @PresidencyZA I'm afraid to tell you that you tagged the wrong guy here Napo. The man has no interest in "minor" issues like young people losing their lives in search of water. He has "bigger" problems facing him [Tweet].* <https://twitter.com/GrootmanTebza/status/1219054152904511491>

SocMed: Ramohlokoane, T. 2022. 6 Jan. Ok... mayor. Nna kere... u hv enough prove tht water department is incompetent for many years. Can not provide clean water consistently to the community. Now...! who ever calls him self water manager or HOD or water engineer or superintendent on water must tell us why must he/she be a head with so much incompetence. Simple as tht... rool heads. If u dnt want to remove ppl who cn not deliver services to the community u gonna fail Ngwathe ppl as a mayor i tell u. Water issue is long over due. Dnt prolong the problem longer...[Facebook status reply] <https://tinyurl.com/33mefebt> Date of access: 10 Jun 2022.

SocMed: Relebohile (@RelzMozzarella). 2020, 19 Jan. *Replying to @AdvoBarryRoux Yet Look At Our Sterkfontein Dam, But The Water Don't Benefit Qwaqwa People By It Goes Outside And We Stay Suffering And Struggling Like This. On The Photo Is Manikka @ManFaya_ [Tweet].* <https://twitter.com/RelzMozzarella/status/1218828339084959744>

SocMed: Shahid, W (@_waleedshahid). 2019, 13 Feb. *Here's our explainer on @AOC's Green New Deal with @sunrisemvmt and @justicedems: It's a call to redefine politics and establish a new social contract for America: good jobs transforming our country; clean air, water, and food; and a stable climate. Justice Democrats on the Green New Deal 'The #GreenNewDeal is not just another climate policy ... it is a call to redefine politics and establish a new social contract for America'. [Tweet]* https://twitter.com/_waleedshahid/status/1095803369967505408

SocMed: Slovenia to the UN (@SLOtoUN). 2021, 1 Nov. *In #UNGA discussion on #CommonAgenda, sz stressed the need to rebuild trust between nations, called for a renewed social contract, while focusing on: 🌍human rights (women & young*

generations) 🌱 environment (climate change, biodiversity, water) 🧑🏿💻 digital cooperation (incl. AI) [Tweet].

<https://twitter.com/SLOtoUN/status/1455158314975834113>

SocMed: Tayo, O. (@tayos02). 2018, 25 Apr. *Amazing woman in the audience gets straight to the point Asks Atiku Abubakar about the lack of social contract between politicians and ordinary Nigerians. Why such poor water and power supply? Why do Nigerians go abroad for healthcare? Auntie..I salute you!! #CHAFrica* [Tweet]. <https://twitter.com/tayos02/status/989077854272008195>

SocMed: Trek Fan (@StarTrekFan79). 2022, 2 Aug. *The social contract has been broken. We agree to pay tax so we can have things like roads, schools, healthcare, and services. Why are we being taxed and seeing services cut, but paying more for fuel, water, travel to privately fund wealthy CEOs and corporations #BBCBreakfast* [Tweet].

<https://twitter.com/StarTrekFan79/status/1554370944474431488>

SocMed: Tsika, B (@bazi_tsika). 2020, 19 Jan. *Replying to @AdvoBarryRoux The village I'm from what we did is we opened an account then started saving money every month. Then we did boreholes mind you 16 km from our village there's a big dam that Zuma opened in 2014...in short people from qwaqwa must stop waiting on this useless government* [Tweet].

https://twitter.com/bazi_tsika/status/1218805056553857026

SocMed: Turton, A. (@dr.anthony.turton). 2018, 31 Jan. *In the absence of a coherent plan, the social contract is cancelled and the individual resorts to self help. This is entirely logical. In essence politicians are becoming irrelevant and will merely be bypassed. This is not healthy for the economy but is a reality of the leadership vacuum.* [Facebook status update] <https://tinyurl.com/4uabtcxt> Date of access: 18 Jun. 2020.

SocMed: Van Dijk, R. (@Lastkombo). 2019, 10 Nov. *South Africa: How water shortages create a struggle for those, the poor, in the underprivileged areas. 10-11-2019* [Tweet]. <https://twitter.com/Lastkombo/status/1193616435194580992>

SocMed: Water.org (@Water.org). 2022. 9 Aug. *For women around the world, the struggle to collect water for their families is a personal, everyday battle. This is why we give our everything every day to help end the global water crisis.*

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SocMed: WatsupAfrica (@watsupafrica). 2020, 4 May. *#SouthAfrica: The struggle for water in Qwaqwa continues* <http://southafrica.watsupafrica.com/news/the-struggle-for-water-in-qwaqwa-continues/> [Twitter].

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[Tweet]. <https://twitter.com/WorldBankMENA/status/1301903366013026304>

SocMed: Zwelinzima Vavi (@Zwelinzima1). 2020, 14 Jun. *Part of the unpaid labour women do! This video was recorded today in the deepest rural areas of South Africa where these chores of fetching water many kilometers away and put a 20liters on the head is still a reality of many women! Not yet uhuru!* [Tweet]

<https://twitter.com/Zwelinzima1/status/1272281842885017602?s=20>

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