



UNIVERSITEIT VAN PRETORIA  
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**An expansive interpretation of the water rights of black dispossessed communities in South Africa.**

By

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Submitted in partial fulfilment of the requirement for the degree

LLM in Socioeconomic Rights

In the Faculty of Law,

University of Pretoria

03 October 2024

Prepared under the supervision of

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## Dedication

In remembrance of my late sister, Ofanelwa Makhadzi Tshamano, This is for you, for we are the river and the river is us:

‘But we,  
we have come to be baptised here.  
We have come to stir the other world here.  
We have to cleanse ourselves here.  
We have come to connect our living to the dead here.  
Our respect for water is what you have termed fear.  
The audacity to trade and murder us over water  
then mock us for being scared of it.  
The audacity to arrive by water and invade us.  
If this land was really yours,  
then resurrect the bones of the colonisers and use them as a compass...’<sup>1</sup>

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<sup>1</sup> K Putuma ‘Water’ in *Collective Amnesia* (2017) 99.

## **Acknowledgment(s)**

To my supervisors, Prof Elvis Fokala and Dr Keneilwe Radebe, thank you for your unwavering support in the conceptualisation and writing of this dissertation. Thank you for trusting in my abilities and capabilities. Without your guidance, support and patience the execution of this dissertation would not have materialised.

I am deeply thankful to my mom, Livhuwani and grandmother, Luvhengo for nurturing spaces that allowed me to think and grow. This is further dedicated to you. Your support and wisdom have been invaluable to me in this journey.

To Thuto and Erykah, I want to express my gratitude for your support in completing this dissertation. It would not have been possible without you. Thank you for holding space for my ideas, for engaging with them, and for encouraging me to further reflect on my ideals.

To my friends, thank you for aiding me with your various support on this journey. Your efforts are valued and appreciated.

Finally, to myself, I want to say, ‘We did it, Joe!—you did it!’

## **Abstract**

The study provides an expansive interpretation of the right to water for black dispossessed communities in post-apartheid South Africa, arguing that the current interpretation of the right to water is insufficient as it does not acknowledge the vital role of water for black dispossessed communities. Drawing on the experiences of the Vhavenda people in the Vhembe district, the study examines water as a focal point of exclusion in traditional water governance, as well as a source of violence through the construction of dams, and as a tool for dispossession and displacement. In this context, water is seen not only as a physical resource but also as a social and symbolic one, with multifaceted associations and implications. The dissertation seeks to advocate for the right to access water and the preservation of the cultural practices of black dispossessed communities in post-apartheid South Africa. It recognises that water is a scarce resource, yet an integral part of people's identities, culture, and religious beliefs. Therefore, it argues for a broad definition that acknowledges the anthropocentric elements and esoteric dimensions of water in relation to black dispossessed communities.

**Keywords:** black dispossessed communities, commodification, dams, Indigenous Knowledge System, neoliberalism, privatisation, right to water, traditional water governance.

**Abbreviation(s):**

BoR	Bill of Rights
CMAs	Catchment Management Agencies
DWAF	Department of Water Affairs and Forestry
DWS	Department of Water and Sanitation
IKS	Indigenous Knowledge Systems
IWRM	Integrated Water Resource Management
NWA	National Water Act
OECD	Organisation for Economic Co-operation and Development
PP	Public Protector
PPPs	Public-Private Partnerships
UNESCO	United Nations Educational, Scientific and Cultural Organization
WRM	Water Resource Management
WSA	Water Service Act
WUAs	Water Users' Associations

## Glossary of Terms

Black Dispossessed Communities	The concept of black dispossession in anthropology refers to a form of anti-black violence that has a devastating impact on dispossessed black communities. In the South African context, it involves communities that have experienced forced displacement, and the loss of land ownership, livestock, and cultural identities deeply rooted in spiritual, ancestral, and religious connections to the land due to the implementation of the Natives Land Act and the Groups Areas Act.
Full cost recovery	the production costs will be recovered from the consumer
Living Waters	Living Waters, as expressed by diviners, cannot be considered merely equivalent to natural water, which in most instances is derived from ecosystems less polluted by humans. Living Waters are based on an epistemological relation that insists on correct human relations with the natural/spirit world. For Isangoma's, 'these waters have the potential to hold the creative divinities responsible for life' and are found in deep pools, the sea, rivers with strong currents, waterfalls, and natural lakes
Riparian rights	exclusive rights to use of river water that passes through private land, the owner would be entitled to unlimited and exclusive use of all water rising on his land.
Privatisation	delegation of public water services management to profit actors, whether they are private companies or public-private partnerships
Neoliberalism	political and economic theory that advocates for the liberation of individual entrepreneurial skills and freedoms, to achieve human well-being within an institutional framework based on free markets, free trade, and strong private property rights

## Table of Contents

Declaration of Originality	i
Dedication	ii
Acknowledgment(s)	iii
Abstract	iv
Abbreviation(s):	v
Glossary of Terms	vi
Chapter 1: Research background	1
1.1. Introduction	1
1.2. Problem Statement	1
1.3. Research Objectives	2
1.4. Research Questions	2
1.5. Literature review	3
1.6. Motivation	5
1.6.1 Overview of the Background	5
1.6.2 Brief History	5
1.6.3 Water Security in South Africa	7
1.6.4 Positioning Water Insecurity in real life: A historical perspective of water rights and economic inequality in South Africa, Vhembe District.	9
1.7. Research Methodology	13
1.8. Limitation(s) of the study	14
1.9. Overview of Chapter(s)	14
Chapter 2: Water governance for rural, black-dispossessed communities in post-apartheid South Africa	16
2.1. Introduction	16
2.2. The contextualisation of water governance in post-apartheid South Africa	17
2.3. Traditional water governance in post-apartheid South Africa	20
2.3.1. Water governance arrangements in post-apartheid South Africa.	20
2.3.1.1 The National Water Act 36 of 1998.	21
2.3.1.2 The Water Service Act 108 of 1997	22
2.3.1.3 Shortcomings of the NWA and WSA with respect to water governance for black dispossessed communities.	22
2.2.2. Traditional modes of water governance.	24
2.3. Conclusion	26
Chapter 3: Re-configuration of white hegemony—water as a tool for further marginalisation of black dispossessed communities.	27

3.1.	Introduction	27
3.2.	Contextualisation Neoliberalism within post-apartheid South Africa.	28
3.2.1.	The nexus between Neoliberalism and water rights for black-dispossessed communities.	30
3.2.2.	Neoliberal tenets in water practices	33
3.2.2.1.	Privatisation	33
3.3.	The construction of dams as tools of marginalisation	35
3.3.1	The history of dams and their relation to the right to water.	35
3.4.	Reflection on dams as a tool for the sustenance of the racial and geographic rhetoric	37
3.5.	Conclusion	40
	Chapter 4: Summary and Recommendation(s)	41
4.1.	Summary	41
4.2.	Recommendation(s)	42
4.2.1	Addressing the lack of indigenous knowledge within water governance in post-apartheid South Africa.	42
4.2.2	Expanding and improving water access for black dispossessed communities.	43
4.2.3	Access to information within the water landscape in post-apartheid South Africa.	44
5.	Bibliography	46

## **Chapter 1: Research background**

### **Introduction**

The study seeks to provide an expansive interpretation of the right to water for black dispossessed communities in South Africa.<sup>2</sup> The study posits that the current interpretation of the right to water is insufficient, as it fails to recognise the vital role of water for black dispossessed communities. Across black communities and cultures, water holds a variety of meanings and plays multiple roles. These meanings and roles are deeply rooted in cultural and spiritual practices and have been studied extensively by scholars in various fields. In this context, water is not just a physical resource, but also a social and symbolic one, with a complex range of associations and implications. In this chapter, I discuss the various ways in which the cultural significance of water for black dispossessed communities in post-apartheid South Africa is threatened.

### **Problem Statement**

Water is a ubiquitous resource that serves various needs in our daily lives, including nourishment, transportation, and relaxation. Its versatility and essential role in our routines make it an integral part of our society and economy. According to Oestigaard, water for many cultures and religions, holds a deeper meaning.<sup>3</sup> Water is multi-faceted, it is not only a physical substance, a biological necessity, or a scarce resource—it is an intrinsic part of people's identities, cultures, and religious perceptions of themselves.<sup>4</sup>

Within African culture(s), various symbolic meanings are attached to 'living waters.'<sup>5</sup> Living waters serve as an ideal symbol for constructing meanings and understanding different life

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<sup>2</sup> The concept of black dispossession in anthropology refers to a form of anti-black violence that has a devastating impact on dispossessed black communities. In the South African context, it involves communities that have experienced forced displacement, and the loss of land ownership, livestock, and cultural identities deeply rooted in spiritual, ancestral, and religious connections to the land due to the implementation of the Natives Land Act and the Groups Areas Act.

<sup>3</sup> T Oestigaard (eds) 'Water, Culture and Identity: Comparing Past and Present Traditions in the Nile Basin Region' (2009) 11.

<sup>4</sup> As above.

<sup>5</sup> Living Waters, as expressed by diviners, cannot be considered merely equivalent to natural water, which in most instances is derived from ecosystems less polluted by humans. Living Waters are based on an epistemological relation that insists on correct human relations with the natural/spirit world. For Isangoma's, 'these waters have the potential to hold the creative divinities responsible for life' and are found in deep pools, the sea, rivers with strong currents, waterfalls, and natural lakes. PS Bernard 'Living Water' in Nguni Healing Traditions, South Africa' (2013) 17 *Worldviews* 139-142.

events such as life/death or production/reproduction.<sup>6</sup> The water is alive, and it is believed to be a living organism animated by the spirit, which enables its healing properties.<sup>7</sup> This subsequently motivates the diverse ritual (religious and spiritual) engagements such as water baptism,<sup>8</sup> *ukuthwasa*,<sup>9</sup> and *impophoma* amongst others in which water is used for its cleansing powers.<sup>10</sup> To this effect, water not only transcends the aforementioned uses but also acts as a rite of passage. The interaction and immersion of the human body in water leads to rejuvenation, a state of being reborn and in some instances, rehabilitation.

### Research Objectives

The main objective of this mini dissertation is:

- (i) To thoroughly examine the relationship between access to sufficient water and the preservation of cultural rights for black dispossessed communities in South Africa, proposing an expansive definition of the right to water.

Sub-objective(s):

- (i) To conduct a comprehensive examination of the historical roots of water rights disparities in post-apartheid South Africa, focusing on the impact of apartheid policies on the allocation of water resources for black dispossessed communities.
- (ii) Identify and critically analyse the governance challenges experienced by black dispossessed communities in South Africa in water management.
- (iii) Investigate the existing economic policies and assess their effectiveness in restoring power to black-dispossessed communities and subsequently improving water security.

### Research Questions

Main question:

- (i) Does the right to access to sufficient water facilitate and protect the right to culture of black dispossessed persons in South Africa?

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<sup>6</sup> Bernard (n 5) 139.

<sup>7</sup> For Water For Life 'Healing Waters' Podcast interview with Gogo Mahlodi <https://open.spotify.com/episode/1k8AOkTSCTxpjemTA9X6aF?si=e446c87aafcf4697> (accessed 30 July 2023)

<sup>8</sup> R Muller 'Sacred rivers: Christianity in Southern Africa has a deep history of water and ritual' *The Conversation* 14 December 2022 <https://theconversation.com/sacred-rivers-christianity-in-southern-africa-has-a-deep-history-of-water-and-ritual-196296> (accessed 30 July 2023).

<sup>9</sup> Prof V Mkhize 'Ukuthwasa' *Umsamo Institute* 21 October 2011 <https://umsamo.org.za/ukuthwasa/> (accessed 30 July 2023).

<sup>10</sup> For Water For Life (n 7).

Sub-questions:

- (ii) To what extent would a broader interpretation of the right to water protected under section 27(1)(b) of the Constitution improve water security for black dispossessed communities in South Africa?
- (iii) What challenges do rural black dwellers, who were dispossessed of their land and subsequently lost access to water sources, face in water management in post-apartheid South Africa?
- (iv) What impact do the economic policies implemented post-apartheid in South Africa have on the ability of black rural dwellers to access adequate water resources?

### **Literature review**

The positioning of black dispossessed communities within post-apartheid South Africa is arguably not different from that of black dispossessed communities during the colonial-apartheid era. Service delivery as well as access to various socio-economic rights has been limited largely based on race. It is for this reason that Madlingozi argues that the current constitutional dispensation is one of neo-apartheid constitutionalism where black people are not regarded as part of the society thus, they remain socially excluded and racially dehumanised.<sup>11</sup> Modiri argues that the construction of the Constitution is premised on the image of western liberal democracy which in turn becomes wholly ineffective in achieving racial justice.<sup>12</sup> Mogobe Ramose views the Constitution as a flawed document incapable of liberating black people, he views it as a document that sustained the right of conquest.<sup>13</sup> Whilst there is appraisal for the Constitution being progressive and transformative, there is little to no change in the construction of South Africa—the transformation of the state and the society lacks social and economic revolution which can only be realisable once there is a redistribution of power and resources along the egalitarian line.<sup>14</sup> It is against this backdrop that this mini-dissertation provides an expansive interpretation of the right to water for black dispossessed

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<sup>11</sup> T Madlingozi ‘Social Justice In a time of Neo-apartheid Constitutionalism: Critiquing the Anti-Black Economy of Recognition, Incorporation and Distribution’ (2017) 1 *Stellenbosch Law Review* 123-124.

<sup>12</sup> JM Modiri ‘Conquest and constitutionalism: first thoughts on an alternative jurisprudence’ (2018) 3 *South African Journal for Human Rights* 305.

<sup>13</sup> MB Ramose ‘An African Perspective on Justice and Race’ (2001) Polylog <http://them.polylog.org/3/fm-en.htm> (accessed 02 December 2023).

<sup>14</sup> P Langa ‘Transformative Constitutionalism’ (2006) 17 *Stellenbosch law Review* 351. See also PW Heydenrych ‘Constitutionalism and coloniality: A case of colonialism continued or the best of both worlds?’ (2016) 75 *New Contree: a journal and human sciences for Southern Africa* 130.

communities—the review briefly explores the complex landscape of water rights and sheds light on the historical injustices which currently influence the present.

To understand the present-day challenges, it is essential to delve into the historical context of water rights in South Africa. Jegede argues that although apartheid has ‘officially ended’ and water laws have been reworked, the agitation for equality in water access is still rampant and remains highly contested within the political arenas in post-apartheid South Africa to the detriment of rural communities that still suffer from the inequality which is a remnant further exacerbated by the previous regime.<sup>15</sup> As Swatuk has argued, the allocation of water represents the political economy of water—through his analysis, he argues that Southern Africa is still underdeveloped and there has been a reinforcement of the highly unequal use patterns that have led to the reinforcement of race rhetoric as well as the sustenance of an underdeveloped regional political economy.<sup>16</sup> Similarly, Dube contends that the allocation of small and big waters on a racial basis is strategic rather than it being coincidental, the allocation of small waters tends to be seen as a benefit to the majority of South Africans whilst in reality they are being blinded and continue to be isolated from big waters that are owned by the white minority.<sup>17</sup>

To this extent, the political economy of water seems to be limited by the political, social and economic arrangements that were adopted during the negotiation phase. Marcatelli and Bümscher argue that through the adoption of neoliberalism, public water supply and other related water services are deemed to be the citizens' individual responsibility.<sup>18</sup> The state fails to upgrade and maintain water infrastructures in rural areas partly due to the lack of investments and the inability to recover costs from these areas.<sup>19</sup> Carmody further argues that through the adoption of neoliberalism during the negotiation settlement, the previous economic system that favoured the white minority, and their associated properties are maintained.<sup>20</sup> Whilst the negotiated settlement is well praised, Bond argues that the negotiated transition ensued with a

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<sup>15</sup> AD Jegede & P Swikwambane ‘Water ‘Apartheid’ and the Significance of Human Rights Principles of Affirmative Action in South Africa’ (2021) 13 <https://doi.org/10.3390/w13081104> (accessed 23 November 2023).

<sup>16</sup> LA Swatuk ‘A political economy of water in Southern Africa’ (2008) 1 *Water Alternatives* 25.

<sup>17</sup> Hydrossoft Institute ‘Decolonising water Access and allocation: A renewed effort to address persistent inequalities in the water sector’ (2021) *Water Research Commission* (2021) 28.

<sup>18</sup> M Marcatelli & B Bümscher ‘Liquid Violence: The politics of Water Responsibilisation and Dispossession in South Africa’ (2019) 12 *Water Alternative* 768.

<sup>19</sup> As above.

<sup>20</sup> P Carmody ‘Between Globalisation and (Post) Apartheid: the Political economy of restructuring in South Africa’ (2002) 28 *Journal of Southern African Studies* 260.

list of compromises that now need to be critically considered, the racially motivated distribution of resources is confined strategically within various clauses under the present Constitution and the water legislation.<sup>21</sup>

My viewpoint corresponds with the above. South Africa continues to grapple with racial injustice and inequalities in the water sector. While efforts to reform the right to access sufficient water are underway, I believe that the current definitions of this right in Section 27 of the Constitution and Section 3 of the Water Service Act lack the necessary depth and insight for the right to be fully realised. Unfortunately, the current definition perpetuates the *status quo* to the detriment of black-dispossessed communities. Therefore, this mini-dissertation aims to propose an expansive definition of the right to water, specifically tailored for application in black-dispossessed communities, taking into account the multifaceted roles of water.

## **Motivation**

### 1.6.1 Overview of the Background

The fair and comprehensive distribution of drinkable water in South Africa is still far from being achieved. In urban areas, the water supply is fairly constant and of generally good quality. However, in rural where most black and poor South Africans reside, the distribution of drinkable water is sporadic, of poor quality, and often non-existent.<sup>22</sup> . This is an age-old issue that began during apartheid when the black community received limited services from the government. Despite South Africa becoming a democratic state over 30 years ago, the problem persists as a result of the lack of adequate redistributive and economic transformation.<sup>23</sup> This problem is compounded by the mismanagement of funds by government officials, departments, and private actors, challenging terrain, and natural factors like the aridness of the land.

### 1.6.2 Brief History

South Africa is ranked as the 30<sup>th</sup> driest country in the world.<sup>24</sup> Due to the country being in the semi-arid part of the world, the ‘climate varies from desert and semi-desert in the west to sub-

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<sup>21</sup> P Bond *Elite Transition: From Apartheid to Neoliberalism in South Africa* (2000).

<sup>22</sup> K Adeyeye *et al* ‘Water Marginality in Rural and Peri-Urban Communities’ 273 *Journal of Cleaner Production* <https://doi.org/10.1016/j.jclepro.2020.122594> (accessed 07 September 2023).

<sup>23</sup> F Fanon *The Wretched of the Earth* (2020).

<sup>24</sup> G Viljoen & C Bosman ‘Some Legal Options to Ensure the protection of South Africa’s utilisable Groundwater Resources’ (2022) 25 *Potchefstroom Electronic Law Journal* 2.

humid along the eastern coastal area.’<sup>25</sup> On average, South Africa receives a precipitation of 497mm/ year, which is lower than the global average of 860 mm/ year.<sup>26</sup> As a result of the uneven (low and highly variable) rainfalls, the high evaporation rate, and the shallow dam basins, the water demand exceeds the water available for supply.

Legally, water is a valuable fundamental human right that is significant in ensuring equitable socioeconomic development.<sup>27</sup> Established under section 27(1)(b) of the 1996 Constitution, the right to water is interlinked with other socio-economic rights, such as the right to food and health. In its purest form, water promotes prosperity and facilitates growth and development for various social and economic sectors.<sup>28</sup> Within the ambit of this growth, access to this element becomes crucial to reducing and possibly eradicating inequality, poverty, and unemployment. As in every other developing nation, water is the lifeblood of various economic activities. However, in South Africa, as discussed throughout this mini-dissertation, water is a limited resource which further contributes to limiting the enjoyment of various rights and rites, especially in black rural communities.<sup>29</sup>

In the absence of an abundant supply of water, people, particularly those in rural communities, cannot follow their desired lifestyles and certain industries such as agriculture and the fishing industry cannot function optimally.<sup>30</sup> Generally, human life and lifestyle depend on water.<sup>31</sup> For instance, water and certain cultural practices are intrinsically linked to the extent that is regarded as core to the existence and practice of key cultural values. Indeed, according to the United Nations Educational, Scientific and Cultural Organization (UNESCO), ‘the values of water to human well-being extend well beyond its role in supporting life-sustaining functions, and include mental health, spiritual well-being, emotional balance and happiness.’<sup>32</sup> Although

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<sup>25</sup> M Kidd *Environmental Law* (2011) 68.

<sup>26</sup> J Igamba ‘Water Crisis in South Africa’ (5 July 2022) <https://www.greenpeace.org/africa/en/blogs/51757/water-crisis-in-south-africa/#:~:text=South%20Africa%20is%20already%20a,are%20distributed%20in%20the%20country> (accessed 03 March 2022).

<sup>27</sup> Unpublished dissertation: AR Chapoga ‘Minimum Core Obligation: Re-evaluating the right to water and sanitation in South Africa’ (2021) Unpublished LLM dissertation: University of Pretoria 1.

<sup>28</sup> As above.

<sup>29</sup> A Kadar ‘Remembering Water: Overcoming Historical Amnesia in South Africa’ (1997) 8 *Colorado Journal of Environmental Law and Policy* (364).

<sup>30</sup> As above.

<sup>31</sup> RA Hughes ‘Pro-Justice Ethics, Water scarcity, Human Rights’ (2009) 25 *Journal of Law and Religion* 523.

<sup>32</sup> For more on this, see the UNESCO 2021 report on world water development, available at <https://www.unesco.org/reports/wwdr/2021/en/cultural-values-water> (accessed 9 September 2023).

the Constitution guarantees everyone the right to have access to sufficient water,<sup>33</sup> the vast majority of South Africans, particularly those residing in rural communities, do not have sufficient access to water, nor can they be entitled to water as envisioned by the country's Constitution.

As discussed, below, in chapter two, the management and distribution of clean water in South Africa is not uniformly implemented. Meaning, that certain regions and communities, may have better water management systems in place than others, leading to disparities in the availability and quality of clean water. The lack of homogeneity in water management in South Africa highlights the need for comprehensive and equitable policies to ensure that all citizens have access to safe and clean water. The provision of water supply as stated above is often influenced by various challenges that differ from place to place. Additionally, the chapter interrogates the role of the government in managing and supplying water resources for the benefit of all persons.<sup>34</sup>

### 1.6.3 Water Security in South Africa

The reality for most black communities tends to differ from the fairy tale version that is described in the Constitution. Black communities are still suffering from the remnants of the settler-colonial history of South Africa.<sup>35</sup> The legal framework discussed in Chapter 2 governing access to water shows little to no regard for sustainable access, resulting in water insecurity. Sadoff and Muller refer to water security as 'the reliable availability of an acceptable quantity and quality of water for health, livelihoods and production, coupled with an acceptable level of water-related risks.'<sup>36</sup> To add, according to the Global Water Partnership Network:

Water security, at any level from the household to the global, means that every person has access to enough safe water at an affordable cost to lead a clean, healthy and productive life while ensuring that the natural environment is protected and enhanced.<sup>37</sup>

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<sup>33</sup> Section 27(1)(b) of the Constitution of the Republic of South Africa, 1996.

<sup>34</sup> Section 3 of the National Water Act of 1998.

<sup>35</sup> JM Modiri 'Law's Poverty' (2015) 18 *Potchefstroom Electronic Law Journal* 225.

<sup>36</sup> C Sadoff & M Muller 'Water Management, Water Security and Climate Change Adaptation: Early Impacts and Essential Responses' (2009) *Global Water Partnership* 11.

<sup>37</sup> Global Water Partnership 'Towards Water Security: A Framework for Action' <https://www.gwp.org/globalassets/global/toolbox/references/towards-water-security.-a-framework-for-action.-executive-summary-gwp-2000.pdf> (accessed 27 July 2023).

Qumbu asserts that to achieve water security, three components must be present and fulfilled as highlighted in the definitions above. These components are affordability, sustainable access, and protection of resources.<sup>38</sup> It is important to note that the physical access granted to the black majority is not affordable. Thus, we cannot argue that access to water in post-apartheid South Africa is granted sustainably.

In, *Mazibuko v City of Johannesburg*,<sup>39</sup> the court acknowledged the clash between a rights-based concept of water where water is positioned as a social good against one where water is seen as a commodity.<sup>40</sup> In this mini-dissertation, the author contends that the case did not promote sustainable access to water, but instead led to water insecurity for black dispossessed communities. The conservative approach used in the interpretation of the right to water broadens the utility of section 27 and as such, the section is not only used to regulate access to water—rather, but the section can also be interpreted as a means of protecting water resources for posterity.<sup>41</sup> The broadening of this section strengthens the protection of water resources and subsequently improves the notion of water security. This approach facilitates a shift in perspective, wherein the focus expands beyond the human-centred aspects of the right to water, and acknowledges the vital role played by the ecosystem in ensuring water security.<sup>42</sup> By recognising the importance of including the ecosystem as a crucial component, it is possible to adopt a more comprehensive approach towards water management.

Through the adoption of neoliberal policies, the definition of water has changed from one that was premised on anthropocentric elements (social good), to one where water is seen as a ‘private good to be extracted and traded on free markets outside state ownership and government regulation.’<sup>43</sup> The government, amongst other private corporations, view water as a commodity rather than a human right. As a result, it privatises water sources and sells them for profit. This shift in perspective transforms water into a commodity that many people cannot afford. Despite there being provisions for free basic water services, the reality is that most rural communities still suffer from water scarcity, resulting in them having to pay for water from different water bodies and suppliers.

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<sup>38</sup> B Qumbu ‘The Role of the Courts in Advancing Water Security in South Africa’ (2021) 24 *Potchefstroom Electronic Law Journal* 4.

<sup>39</sup> *Mazibuko and Others v City of Johannesburg and Others* 2010 (4) SA (1) CC (hereinafter the *Mazibuko* case)

<sup>40</sup> Qumbu (n 38) 22.

<sup>41</sup> Qumbu (n 38) 4.

<sup>42</sup> As above.

<sup>43</sup> Hughes (n 31) 224.

#### 1.6.4 Positioning Water Insecurity in real life: A historical perspective of water rights and economic inequality in South Africa, Vhembe District.

The influence of capitalism is not confined to urban areas, it transcends and is evident in rural spaces where water services and licences are commodified and sold as purported business opportunities. The provision of water in both urban and rural areas is subject to a commodification process entailing different payment structures, which vary depending on several factors.

This is evident in dispossessed (displaced) communities living in proximity to dams, below is a quote capturing one of the lived experiences of a villager living closer to Nandoni Dam, in the Vhembe district of Limpopo:

It is so painful when you see water flowing at the dam knowing very well that you will not be getting any despite being surrounded by the dam. Look, we are forced to go and ferry water from other villages, despite the same water being pumped at our village. And until we are supplied with water, water pumping will not take place at the dam.<sup>44</sup>

In South Africa, there is a stark divide along the racial and economic line between the black population and the white elites who make up the dominant society. The ‘subservient society’ composed primarily of black Africans is largely segregated from the rest of society and endures ongoing dehumanisation and social invisibility.<sup>45</sup> The placement of black people in post-apartheid South Africa is disempowering and still carries negative emotions. When discussing race, the term ‘black’ frequently evokes images of those who are economically marginalised, working poor, or impoverished.<sup>46</sup> As a result of the enforcement of race rhetoric emanating from colonialism and apartheid what becomes clear in post-apartheid South Africa is that:

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<sup>44</sup> N Mukwevho ‘Community protests over water shortages leaves villages in Vhembe district dry’ <https://health-e.org.za/2021/06/05/community-protest-over-water-shortages-leaves-villages-in-vhembe-district-dry/> 5 July 2021 *Health-E News* (accessed 07 September 2023).

<sup>45</sup> Madlingozi (n 11) 124-125.

<sup>46</sup> T Morrison *Mouth full of blood* (2020) 35.

The poorer you are, the lesser you get and the easier you are forgotten, but the richer and powerful you are the more you get and have access to good living.<sup>47</sup>

As a result of the continued racialised poverty, access to fundamental human rights such as the right to water is limited and premised on the existence of capital. The ability to access water not only improves the standard of living but also serves as an asset for employment.<sup>48</sup> Assets arising from water as a natural resource become productive through infrastructures that process or transport water, labour that renders assets productive, and technology that supplements both.<sup>49</sup> Furthermore, by constructing these water infrastructures, the local economy is strengthened, which supposedly benefits the residents of that community or nearby communities.<sup>50</sup> As demonstrated above, water is a key element for inclusive economic growth and the eradication of ‘chronic poverty.’<sup>51</sup>

Economic growth is however dependent on access to land and for this reason, it is crucial to mention from the outset that economic development and colonisation happened simultaneously as a result, the development of water rights is thus woven within the political and economic history of South Africa, therefore, the development of water policies in South Africa should be understood within the history of conquest and colonialism.<sup>52</sup> The settler-colonial history in which the discovery of rich mineral deposits on the high plateau at the centre of South Africa produced a mining industry that was solely dependent on water, and as such these mines were

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<sup>47</sup> IP Molobela & P Sinha ‘Management of water resources in South Africa: A review’ (2011) 5 *African Journal of Environmental Science and Technology* 999.

<sup>48</sup> Water exists in different dimensions, it manifests in different ways namely as a space, an asset and a service. Das explained the idea of water as an asset and placed emphasis on the economic value of water. The idea of ‘water as an asset’ ultimately looks at the economic (employment) opportunities emanating from water.

MB Das ‘The Rising Tide: A New look at Water and Gender’ (2017) *World Bank* 17-26.

<sup>49</sup> Das (n 48) 17.

<sup>50</sup> As above.

<sup>51</sup> Chagopa (n 27), L Modise and N Mtshiselwa ‘The Native Land Act of 1913 Engineering the Poverty of Black South Africans: A Historico-ecclesiastical perspective’ (2013) 39 *Studia Hist. Ecc.* [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1017-04992013000200020](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1017-04992013000200020) (accessed 15 May 2023). Chronic poverty is defined as a ‘problematic state of poverty that has been in existence for a long period.’ For poverty to be considered chronic, it has to occur continuously for five years or more.

Modiri (n 35) 228- Modiri further explored poverty as a racialized phenomenon and defined it as:

a disabling constraint that includes deep distributive and economic patterns, but it also extends to issues of culture, epistemology, and social power, the division of labour, decision-making procedures, autonomy, and agency

From the above statements, poverty in South Africa is a generational thing that continues to limit black people experiences and consequently limits their ability to access socio-economic rights.

<sup>52</sup> DD Tewari ‘A Brief Historical Analysis of Water Rights in South Africa’ (2005) 30 *Water International* 438.

found at some distance from all major rivers and other sources of water.<sup>53</sup> For these mines to exist, people who were living close to the water sources had to be forcibly removed, this was sanctioned under the Native Land Act of 1913 (hereinafter the Land Act). This Act furthered the gap between white people and black people, whilst enforcing white hegemony—this, in turn, left an uneven development whose remnants are still seen in the water infrastructures.<sup>54</sup>

The Land Act played a vital role in shaping various legislation, of particular interest in the current dispensation will be the Water Act of 1956 which was implemented on the back of discriminative land legislation.<sup>55</sup> The Water Act granted water rights solely to those who were riparian to the water sources and consequently, the majority of black people were unable to access water rights as they did not own the land.<sup>56</sup> The issues persist in present days with the new water act namely, the National Water Act of 1998 (NWA). Although there has been a lot of water law reform targeted at increasing the state of water access, they end up being stagnant resulting in the perpetuation of the *status quo*.<sup>57</sup> The patterns of land ownership have seen minimal change, remaining largely in favour of white people. The NWA has created a legislative environment that is conducive to protecting water resources and promoting sustainability through their use.<sup>58</sup> However, the impact and success of this legislation remain unequally applied, leading to a system that continues to benefit white people.<sup>59</sup>

Access to the limited water resources in South Africa has been historically dominated by those who have access to land and economic power, resulting in the majority of black South Africans being unable to access and maintain the right to water.<sup>60</sup> The *status quo* remained unchanged regarding who controls resources and how they are allocated at local level.<sup>61</sup> Contrary to other apartheid legislation, apartheid water legislation did not directly discriminate based on race, the racial imbalance in ownership of land resulted in disproportionate denial of black people's right to water.<sup>62</sup> Water rights within the context of South African history refer to access to water

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<sup>53</sup> H Klug 'Between Principles & Power: Water Principles & the Governance of Water in Post-Apartheid South Africa' (2021) 150.

<sup>54</sup> As above.

<sup>55</sup> Hydrosoft Institute (n 17) 101.

<sup>56</sup> As above.

<sup>57</sup> As above.

<sup>58</sup> Hydrosoft Institute (n 17) i.

<sup>59</sup> Hydrosoft Institute (n 17) 108.

<sup>60</sup> N Gabru 'Some Comments on water rights in South Africa' (2005) *Potchefstroom Electronic Law Journal* 1.

<sup>61</sup> Hydrosoft Institute (n 17) 6.

<sup>62</sup> As above.

and usage of water as deemed right by colonists namely the Dutch, the British and the Afrikaners.<sup>63</sup>

Within this background, access to water in South Africa was premised on statutory law where private streams (waters) were considered to be the exclusive property of the owner, should the stream pass by their land in instances like this, riparian rights prevailed.<sup>64</sup> Access to water was also premised on the colonial dispossession of land.<sup>65</sup>

As the mining industry grew, colonisers realised that water in South Africa is a limited resource and as a result, they started building dams to serve as reservoirs and increase their economic productivity. Similar to the Native Land Act, dam construction results in the dispossession and displacement of black people.<sup>66</sup> Much like the Native Land Act, indigenous and ethnic minorities are displaced without fair compensation or resettlement.<sup>67</sup> The creation of dams prevents rivers from performing their natural functions, namely delivering nutrients to the seas, sustaining habitats and diluting waste.<sup>68</sup> The construction of dams and the industrialisation of water has led to water being viewed as a commodity, promoting privatisation thus water is seen as ‘a private good to be extracted and traded on free markets outside of state ownership and government regulation.’<sup>69</sup> The establishment of mines, the creation of dams and the partial privation of water also pose a threat to *water as a space* and further continue the marginalisation and dispossession of black communities.<sup>70</sup> Water therefore ought not to be seen in its physical dimension only—it ought to be seen within the esoteric dimension as well, thus water serves as a marker of social, political and religious spaces.<sup>71</sup> This study posits flowing water as a nourishing element required for the sustenance of the psychospiritual needs of those who practice African Spirituality.<sup>72</sup>

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<sup>63</sup> Tewari (n 52) 439.

<sup>64</sup> Tewari (n 52) 441. Riparian rights are exclusive rights to the use of river water that passes through private land, the owner would be entitled to unlimited and exclusive use of all water rising on his land.

<sup>65</sup> Klug (n 53) 221.

<sup>66</sup> Hughes (n 31) 524.

<sup>67</sup> As above.

<sup>68</sup> As above.

<sup>69</sup> Hughes (n 31) 525.

<sup>70</sup> I owe the use of the term ‘water as a space’ to Das, The idea of water as a space seeks to bring out the physical and esoteric dimension of water. It recognises that water occupies a physical space and becomes the marker of social, political, and religious spaces. Water is complex and is complex and carries ritual and spiritual significance, thus holding space, a spiritual one. Das (n 48) 37-42.

<sup>71</sup> Das (n 48) 37.

<sup>72</sup> Hughes (n 31) 528. It is argued that flowing water comes from God who is the ‘fountain of living water.’

## Research Methodology

The study combines several approaches to understand the various ways in which the right to access water is restricted in post-apartheid South Africa. The historical method is employed first to trace the development and evolution of water rights in South Africa and subsequently that of land dispossession.

The second approach to be used in this study is that of Critical Race Theory, this approach is used to analyse the racialised patterns of economic inequality and wealth distribution because of land dispossession. Furthermore, whilst this approach rests on uncovering the multiple ways in which post-apartheid South Africa is modelled to sustain white supremacy and white hegemony—the approach is further used to highlight how black people experience socioeconomic rights differently.<sup>73</sup> The critical theory paradigm recognises societal structures and power relations and thereafter their contribution to oppression and ways in which that oppression can be alleviated.<sup>74</sup>

In addition to the theoretical framework, the study employs a desktop approach, which involves reviewing and analysing existing water legislation, policies, and related legal frameworks. This method focuses on systematically gathering and synthesising data from a variety of sources, including government reports, academic articles, and legal documents. The desktop approach allows for a comprehensive examination of how water rights have been legislated, their historical development, and how these laws affect access to water in post-apartheid South Africa. One key advantage of this approach is that it enables the researcher to contextualise the legal and institutional barriers to water access without requiring primary fieldwork, thereby offering a thorough understanding of the current legal landscape.

The research is written within a decolonial framework. The decolonial theory is used as the basis to empower black dispossessed communities to reclaim their humanity. This theory is also used to uncover the coloniality that is hidden within post-apartheid water legislation. Additionally, it is used to examine how race, religious, and cultural beliefs intersect in accessing the right to water.

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<sup>73</sup> JM Modiri ‘The Colour of Law, Power and Knowledge: Introducing Critical Race Theory in (Post-) Apartheid South Africa (2018) 28 *South Africa Journal on Human Rights* 406.

<sup>74</sup> Hydrosoft Institute (n 17) xx.

### **Limitation(s) of the study**

The study seeks to provide an expansive interpretation of the water rights of black dispossessed communities in South Africa. This has the potential of being a broad study however due to the nature of the degree (coursework), the work is limited by the word limit and as such the expansive definition will be limited to water access through a lens that considers only the cultural value, race and economic policies. The study centres race as the foundation or rather the source of the inequalities in post-apartheid South Africa. But this is not to say that race is the only limitation—class, gender, culture, and sexual orientation, amongst other demographics, further the inequalities but through intersectionality, I understand that the matrix of oppression started with the construction of race.

The second limitation pertains to the research approach, which has been significantly influenced by the time constraints of the study. Ideally, a qualitative methodology would have been employed. The study seeks to contribute to scholarship that explores the cultural significance of water and as such the study relies on the lived experience of the dispossessed communities. However, the heavy reliance on existing literature introduces the risk of perpetuating certain biases held by other authors regarding black dispossessed communities. The study adopts a desktop approach utilising relevant statistics, newspaper articles and conversations (with family members, friends and podcasts) to archive and analyse the lived experiences of the dispossessed communities.

A further limitation of the study lies in the reliance on a post-colonial theoretical framework. The existing literature on water predominantly adopts a human rights-based methodology. There is a significant scarcity of research addressing black dispossessed communities, as much of it is on farmers, often to the detriment of the lived realities of those displaced and dispossessed due to their proximity to water sources. This focus perpetuates the cycle of coloniality by failing to consider the broader social and historical contexts that shape the experiences of these communities.

### **Overview of Chapter(s)**

This mini dissertation seeks to provide an expansive interpretation of water rights for black communities in post-apartheid South Africa.

Chapter one provides the background to the study, briefly discussing issues about water rights for dispossessed communities in South Africa. This chapter aims to define and contextualise the historical injustices and economic inequalities and subsequently emphasises the need for an expansive definition of the right to water. The research questions, methodology and limitations of the study are provided, finally ending with the themes that are explored in the subsequent chapters.

Chapter two focuses on water governance and the distribution of water for black dispossessed communities in South Africa. The chapter briefly discusses the history and development of water laws in South Africa, thereafter the chapter discusses the impact of these laws on the right to access water for disposed communities in South Africa, since the distribution of water is skewed towards those in urban areas.

Chapter three discusses the dire effects of neoliberalism on the right to water for disposed communities. The chapter focuses on one aspect of neoliberalism, namely privatisation. Whilst rural communities are usually disconnected from most economic studies, this chapter seeks to discuss the impact of privatisation on water sources with a specific focus on communities that have been displaced and dispossessed due to the construction of water infrastructures. The chapter ultimately discusses the role of privatisation in furthering water scarcity.

Chapter four explores the alternatives to ensuring water security for black dispossessed communities in South Africa. Following the previous chapters, this chapter concludes the study and provide recommendations for an expansive interpretation of water rights.

## Chapter 2: Water governance for rural, black-dispossessed communities in post-apartheid South Africa

### 2.1. Introduction

After apartheid ended in 1994, South Africa worked towards fixing past injustices and helping its black citizens heal. However, the democracy created was not inclusive,<sup>75</sup> hindering the country's progress and transformation.<sup>76</sup> Apartheid's effects still cast a shadow over democracy, causing systemic challenges and failing to meet the needs of those who had suffered from oppression.

Despite the successful democratic election process that ended a discriminatory governance system in South Africa, the bonds with colonisation did not disappear instantaneously. The governance system implemented in post-apartheid South Africa still maintains these ties, as briefly explored in the previous chapter. Within this process of democratisation, the transitioning South African government introduced political reform to integrate historically marginalised groups into the new society where public services would be distributed equitably.<sup>77</sup> The implementation of political reform was fraught with significant challenges that required massive legal and policy reform across all sectors, including the management of water resources.<sup>78</sup> From the political and policy reform, ensued the progressive South African water laws, of which were expected to bring fundamental changes in the way in which water is used and distributed amongst different users.

Although these progressive laws have changed the water governance landscape within post-apartheid South Africa, the prevalence of exclusionary water practices has limited their prospects in the realisation of water rights. Rural communities bear the burden and as such the water sector is yet to fully test the assumptions of democracy and efficacy within this development logic of decentralisation.<sup>79</sup>

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<sup>75</sup> Hydrosoft Institute (n 17) 25.

<sup>76</sup> As above.

<sup>77</sup> JP Enqvist & G Ziervogel 'Water governance and justice in Cape Town: An overview' (2019) 6 *WIRES Water* 4. <https://doi.org/10.1002/wat2.1354> (accessed 18 December 2023).

<sup>78</sup> F Kapfudzaruwa & M Sowman 'Is there a role for traditional water governance systems in South Africa's new water management regime?' (2009) 35 *Water SA* 683.

<sup>79</sup> BN Tapela 'Water governance in traditional rural communities of South Africa' (2015) *Water Research Commission* 5.

The effective governance of water is contingent on the recognition of legal pluralism and the institutional roles of traditional leadership by governments.<sup>80</sup> This recognition will promote a better understanding of water and its management, making it more accessible to all. By involving rural communities, this recognition will ultimately lead to improved water governance and conservation efforts. The handover of governance assured coloniality from apartheid to post-apartheid South Africa.<sup>81</sup> This chapter aims to analyse whether post-apartheid South Africa has effective water governance strategies tailored to the needs of rural, black-dispossessed communities. The first section contextualises water governance and uncovers the water governance landscape within post-apartheid South Africa. The second section focuses on traditional water governance for black-dispossessed communities within South Africa, ultimately emphasising that water is not only of economic and social significance but also of, spiritual and cultural significance.<sup>82</sup> The third section briefly discusses the challenges that ensue in local governance which often contribute to water scarcity, thus making the right to water less realisable for black dispossessed communities.

## 2.2. The contextualisation of water governance in post-apartheid South Africa

The Organisation for Economic Co-operation and Development (OECD) defined water governance as:

the range of political, institutional, and administrative rules, practices, and processes (formal and informal) through which decisions are taken and implemented, stakeholders can articulate their interests and have their concerns considered, and decision-makers are held accountable for water management.<sup>83</sup>

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<sup>80</sup> As above.

<sup>81</sup> Hydrossoft Institute (n 75).

<sup>82</sup> Kapfudzaruwa & Sowman (n 78) 683.

<sup>83</sup> Organisation for Economic Co-operation and Development (OECD) *Principles on Water Governance* (2015) 23. South Africa is one of the key partners to the OECD, along with Brazil, China, India and China. It serves as a member country to the OECD Principle on Water Governance—these principles serve as a set of guidelines that provide a framework for effective and sustainable management of water resources. There are 12 principles divided into 5 dimensions namely ensuring effective water governance framework; establishing clear water policy objectives; balancing water allocation and managing trade-offs; ensuring sustainable financing for water services and lastly promoting integrated water resources management. The principles aim to promote transparency, participation and accountability in water management whilst also ensuring that all stakeholder needs are taken care off. See OECD *Implementing the OECD principles on Water Governance: Indicator Framework and evolving Practices* <https://doi.org/10.1787/9789264292659-en>; OECD ‘Principles on Water Governance’ <https://www.oecd.org/governance/oecd-principles-on-water-governance.htm> (accessed 12 November 2023).

From the definition above there is a clear contrast between Water Resource Management (WRM) <sup>84</sup> and water governance. WRM includes water governance, it is premised on operational activities of monitoring and regulating water resources and their uses whilst water governance is the overarching framework that sets objectives, guides the strategies for their achievements and monitors outcomes.<sup>85</sup> The focus on water governance as compared to water management or services is premised on the water scarcity narrative that seems to influence water legislation and policies in post-apartheid South Africa. This narrative promotes and views water as an economic good and, thus, proposes that challenges are best addressed through market-related mechanisms.<sup>86</sup> Furthermore, this narrative positions governance on managing demand rather than increasing supply.<sup>87</sup> There are various reasons influencing water governance in a particular country or community. Notwithstanding, most water governance policies are adopted to satisfy the water demands and ensure an equitable distribution between the different users and their associated uses.<sup>88</sup> The increasing demand on water resources has now surpassed the primary objective of ensuring water availability.<sup>89</sup> In addition, it has become necessary to adopt measures that safeguard the resource against pollution and protect communities from the potential hazards associated with water extremes whilst reducing the geospatial economic barriers to water.

The water governance narratives are complex and nuanced, it is for this reason that Woodhouse and Muller recommend that water governance should extend beyond the ‘rules, practices and processes’ approach that the OECD recommends.<sup>90</sup> To contextualise water governance within post-apartheid South Africa, it is vital to look at the history of water management, the interests and motives centred on water decision making and the policies. The improvement of these concepts requires the acknowledgement of the water governance system as a measure that determines who gets water, when and ultimately who enjoys water rights.<sup>91</sup> In summary, water governance is ‘a combination of functions, performed with certain attributes, to achieve one or

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<sup>84</sup> C Pahl-Wostl ‘Conceptual framework for analysing adaptive capacity and multi-level learning processes in resource governance regimes’ (2009) 19 *Global Environmental Change* 354-365.

<sup>85</sup> Woodhouse & M Muller ‘Water governance—An Historical Perspective on Current Debates’ (2017) 92 *World Development* 2.

<sup>86</sup> As above.

<sup>87</sup> LA Swatuk ‘The State and Water Resources Development through the Lens of History: A South African Case Study’ (2010) 3 *Water Alternatives* 522.

<sup>88</sup> Woodhouse & Muller (n 85) 3.

<sup>89</sup> Woodhouse & Muller (n 85).

<sup>90</sup> Woodhouse & Muller (n 85) 6.

<sup>91</sup> A Jimenez et al ‘Unpacking water governance: A framework for practitioners’ (2020) 12 *Water* 3 <https://doi.org/10.3390/w12030827> (accessed 13 November 2023).

more desired outcomes, all shaped by the values and aspirations of individuals and organisation.’<sup>92</sup>

WRM within the South African state reflects both the interest of the dominant actors and more generally the understanding, meaning and usage of water.<sup>93</sup> Swatuk posits that the changing state form has made it very possible for dominant actors (white people) to use central power to pursue and ultimately realise often controversial and, by no means, always sustainable, practices of water resources development and management.<sup>94</sup> Water reform has been rapidly progressing in South Africa. However, it is somewhat disingenuous. The narrative has shifted from one where water was used to build a modern state that would protect South Africa from communism and promote economic development, to a new narrative where water is still being harnessed for economic development, but with the aim of reducing poverty and achieving justice for all.

As discussed above, the water governance of a particular country ought to change to meet the needs of all its citizens. The water governance arrangements deployed in post-apartheid South Africa are flawed. There is a need to adopt a water governance system that addresses fully the material and institutional challenges that limit water management, services, and supply. For this to be achieved, there is a need to address water justice which seems to be a critical challenge for water governance—promoting water justice will result not only in the fair distribution of water but also equality in terms of recognised water rights and subsequently the decisions concerning the rights.<sup>95</sup> There is a need to develop a water governance system influenced by African norms, cultures, and customs. Such system should consider African Indigenous Knowledge systems and its associated water conservation methodologies. The water governance framework as well as the legislation are premised on European (British and Dutch) legal systems which have sustained white hegemony in post-apartheid South Africa. The ongoing water reform in post-apartheid South Africa should actively address and challenge the colonial-era legal frameworks that favoured the minority. The water rights and privileges established during apartheid should not have been perpetuated into the new water legislation.<sup>96</sup>

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<sup>92</sup> As above.

<sup>93</sup> Woodhouse & Muller (n 86)

<sup>94</sup> As above.

<sup>95</sup> Enqvist & Ziervogel (n 77) 2.

<sup>96</sup> Hydrosoft Institute (n 17) 110.

### 2.3. Traditional water governance in post-apartheid South Africa

Post-apartheid South African societies have had practices that reflect their beliefs and values for centuries.<sup>97</sup> Within these practices, traditions, culture, customs, and norms, there is a fundamental understanding that has been distorted by the embrace of modernity, affecting the principles of respect for both inanimate and animate objects. Overall, these practices promote social cohesion and unity. As discussed earlier in Chapter 1, water is of significant value to peoples' identities, culture, and overall psycho-spiritual well-being and as such its access should be granted to people irrespective of their race or wealth. This section seeks to investigate traditional water governance arrangements, systems and overall the erosion of these systems in post-apartheid South Africa.

#### 2.3.1. Water governance arrangements in post-apartheid South Africa.

Water governance is vital due to the multifaceted purpose and value of water. Water as a resource connects people, places, and different sectors within society.<sup>98</sup> Similarly, it is of both a local and global concern, as it involves different stakeholders (public, private and non-profit actors) and as such, there is a need for high capital investments, resulting in water governance being crucial for the development needs of vulnerable communities and, largely, that of the country.<sup>99</sup> Enqvist and Ziervogel refer to water arrangements as 'the set of political, social, economic and administrative systems that formally and informally control decision-making around water resources development and management.'<sup>100</sup> The water governance arrangements deployed should therefore be crucial to alleviating poverty, inequality, and unemployment, which in post-apartheid South Africa are adverse challenges to democracy. The discussion that follows briefly outlines the water governance legislation in post-apartheid South Africa and its failures in black-dispossessed communities.

The Constitution is the driving source of water governance within post-apartheid South Africa.<sup>101</sup> The Constitution lays out the foundation that guides the development of all policies

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<sup>97</sup> NH Msuya 'Advocating positive traditional culture to eradicate harmful aspects of traditional culture for gender equality in Africa' (2020) 41 *Obiter* 45.

<sup>98</sup> Enqvist & Ziervogel (n 77) 4.

<sup>99</sup> As above.

<sup>100</sup> As above.

<sup>101</sup> E Makaya *et al* 'Water governance challenges in rural South Africa: Exploring institutional coordination in drought management' (2020) 22 *Water Policy* 520.

and legislation, including those that shape water governance in post-apartheid South Africa.<sup>102</sup> In the development of these policies and legislation, the Constitution emphasises the need to redress the imbalances of the past whilst ensuring that the rights of all citizens are respected.<sup>103</sup> As proven through the varying access to socio-economic rights, post-apartheid South Africa is unable to strike a balance between ‘right respecting’ and ‘redressing the imbalance of the past.’<sup>104</sup> To strike this balance, there ought to be a complete reconstruction of post-apartheid water laws and the state. Thus, a complete overhaul of the post-apartheid state is required for the complete overhaul of white hegemony. With the change in the governance system and the adoption of the 1996 Constitution emerged the two proudly acclaimed yet contested ‘progressive water laws’ namely the National Water Act 36 of 1998 (NWA) and the Water Service Act 108 of 1997 (WSA)—under these two laws, water came under the control of the government.<sup>105</sup>

### **The National Water Act 36 of 1998.**

The NWA has earned a reputation for being a ‘progressive law’ that gives rights to both nature and humans.<sup>106</sup> This legislation has facilitated a legislative environment that protects water resources and builds sustainability through its use. The NWA seeks to ensure that the nation's water resources are protected, used, developed, conserved, managed, and controlled in ways which take into account other factors.<sup>107</sup> For water management to be achieved, the NWA recognises the need for sustainable water management institutions to be developed.<sup>108</sup> Furthermore, the NWA indicates that role-players should be involved in the decision-making process.<sup>109</sup> One of the key role players, water management institutions, identified by this Act are Catchment Management Agencies (CMAs) and Water Users’ Associations (WUAs). CMAs are established with the hope of promoting community participation.<sup>110</sup> CMAs were developed to delegate water resource management to regional or catchment levels. Both the

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<sup>102</sup> Kapfudzaruwa & Sowman (n 78) 685.

<sup>103</sup> Preamble of the Constitution Act 108 of 1996.

<sup>104</sup> S Woolman ‘Community Rights: Language, Culture & Religion’ in S Woolman & M Bishop (eds) *Constitutional Law of South Africa* (2013) 58.

<sup>105</sup> Tapela (n 77) 16.

<sup>106</sup> Hydrossoft Institute (n 72).

<sup>107</sup> These are the other factors that ought to be considered partly or wholly for the NWA to be realized are mentioned in full on this Section 2(a)-(k) of the NWA.

<sup>108</sup> M Toxopeüs ‘The Institutional Structure of Water Resource Management’ <https://hsf.org.za/publications/hsf-briefs/the-institutional-structure-of-water-resource-management> (accessed 14 March 2024).

<sup>109</sup> H Thompson *Water Law: A Practical Approach to Resource Management & The Provisions of Services* (2006) 248.

<sup>110</sup> Section 80(e) of the NWA.

NWA and the WSA discussed below require the involvement of citizens in the management of water resources.<sup>111</sup>

### **The Water Service Act 108 of 1997**

The WSA governs domestic water supply services and delegates responsibilities for such services to Water Service Authorities, such as municipalities, private firms and water utilities.<sup>112</sup> The WSA requires local municipalities to be responsible for the distribution of water and the use of water.<sup>113</sup>

### **Shortcomings of the NWA and WSA with respect to water governance for black dispossessed communities.**

The NWA and WSA are ‘progressive laws’ that were meant to redress the imbalance and heal the nation thus making water realisable. These two pieces of legislation are vital for transformation and aiding the long-term project of restorative justice. Although significant progress in the reforms has been made, there are still many unanswered questions. Indeed, it has been close to 30 years since the NWA was enacted into law, so why is it that the transformation institution that was meant to be implemented six months after the passing of the NWA (October 1998) is still in the inception phase? For this mini-dissertation, this section only deals with the shortcomings in the application of the progressive laws for black dispossessed communities.

The two respective water legislations namely the NWA and the WSA have provisions that supplement white hegemony both structurally and procedurally—they have gained constitutional protection in post-apartheid South Africa. Despite the constitutional optimistic view of liberation, reality depicts the Constitution as a document that hinders projects aimed at improving water access. Whilst significant strides in post-apartheid South Africa have been made, the Constitution still serves as a stumbling block to water access for black dispossessed communities. Section 25 of the Constitution protects white people's access to land which has previously been dispossessed from black people during the settler-colonial and apartheid era. This protection results in improved and safeguarded water access for one minority group, while

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<sup>111</sup> Kapfudzaruwa & Sowman (n 78) 3.

<sup>112</sup> E Makaya *et al.* (n 101) 522.

<sup>113</sup> As above.

it harms the larger dispossessed group. This poses a threat to the transformation of the water sector.

The NWA advocates for efficient social use of water resources, but there seems to be a disconnect as this legislation provides little to no understanding of water uses for religious and cultural activities, the cultural values, and the overall effects of management decisions. While the ‘efficient social use’ is a reasonable starting point, South Africa’s water complexities necessitate a more nuanced provision that explicitly incorporates the cultural, religious and environmental considerations. Without detailed provisions, there may be oversights or gaps in understanding the full impact of water management decisions on different aspects of society. With regard to water governance, there is a strong belief that in good governance people ought to have a say in the decision-making process on matters that affect them. The participation in the decision-making within post-apartheid South Africa is hugely premised on discriminatory demographics such as class, race, geography and gender. Village-based informal institutions are often not formally recognised as water management institutions.<sup>114</sup>

The recognition of cultural belief systems on water access and allocation will improve water equity. The NWA and the WSA have both failed to recognize the cultural values and use.<sup>115</sup> While these legislations provide guidelines for water governance for municipalities and CMAs, they do not provide guidelines or recognise traditional leaders in water governance.<sup>116</sup>

Ultimately, there is a need to reform water management as the current legislation perpetuates violence and maintains the *status quo*. The current approach to water uses and management reinforces the idea that traditional water use is unsustainable. The formal recognition of water for black dispossessed communities will ultimately lead to the reinstalment of people’s

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<sup>114</sup> Kapfudzaruwa & Sowman (n 78) 683. Kapfudzaruwa & Sowman posit a lack of formal involvement of village-based institutions such as civic boards/ tribunals in the new water management institutions such as the WUAs. The government has failed to integrate these institutions, their inclusion will be pivotal to the success of water management. The make-up of the institutional management framework should consider the formal-institutional framework and actively recommend elements of the local/informal traditional arrangement in the new management systems. Thus, WUAs such as the Lebalelo, Luvuvhu, SASOL and the newly formed Olifants WRMs need to work hand in hand with the village-based institutions to achieve full control and management of water sources.

<sup>115</sup>Hydrosoft (n 17) 44.

<sup>116</sup> Tapela (n 79) 4. Chapter 11 of the Constitution recognises traditional leaders and subsequently augments their water-managing authority.

identities, and enforcement of culture and ultimately strengthen the psycho-spiritual position for black-dispossessed persons.

### **2.2.2. Traditional modes of water governance.**

The relationship of water resources within rural communities is positioned within the lens of communality. Water is deemed as a common pool resource whose rules, access and management are regulated through customary law which forms part of water governance.<sup>117</sup> Traditional water governance is reliant on the culture. Culture informs the lives of people. Budeli and Matshidze posit that water governance and traditional leadership are heavily reliant on culture.<sup>118</sup> The section that follows aims to briefly discuss the governance of water with specific reliance on the customs, norms and cultural practices of the Vhavenda people of Vhembe, Limpopo.

African Indigenous Knowledge Systems (IKS) are transferred through oral tradition within various generations, it is linked to a broader framework of people's cosmology and worldview, which is embedded within their physical, spiritual, and social landscape.<sup>119</sup> IKS's are used to manage natural resources and they are now more at risk of disappearance as a result of the white-centric water resource management approach that South Africa is implementing.<sup>120</sup> It is undeniable that the Western liberal approach adopted in water governance sustains colonial and apartheid rhetoric, thus it reduces and downplays water use within African communities. Before the occurrence of colonialism and apartheid, traditional systems of governance characterised administration and governance in rural communities.<sup>121</sup> Traditional leaders were tasked with the management of natural resources and administering other functions such as mediating conflicts and allocating land.<sup>122</sup> Indigenous Africans know how to recognise the links between water and their physical and spiritual well-being,<sup>123</sup> but through various forms

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<sup>117</sup> AE Budeli & PF Matshidze 'Disappearance of African Indigenous Knowledge of Water Conservation and Management in Limpopo Province of South Africa: An IKS perspective' (2022) 12 *African Journal of Development Studies* 54-55.

<sup>118</sup> Budeli & Matshidze (n 117) 54.

<sup>119</sup> Kapfudzaruwa & Sowman (n 102).

<sup>120</sup> To understand the intersection between indigenous knowledge and water management, see, B Ncube 'Indigenous knowledge perspectives on water management and its challenges in South Africa' (2022) 4 *Current Directions in Water Scarcity Research* 227-239. Also refer to G Barnwell et al "Mupo is Life": Intergenerational Community Identity and Safeguarding Sacred Natural Sites in Limpopo' 13(2021) *Eco Psychology* 227-232.

<sup>121</sup> Kapfudzaruwa & Sowman (n 119).

<sup>122</sup> As above.

<sup>123</sup> Budeli *et al* 'Exploring Vhavenda Indigenous methods of water conservation and management in Tshidzivhe village, Limpopo province, South Africa' (2022) *South African Journal of Cultural History* 3.

of oppression, they have had to abandon their cultural identities resulting in them viewing water for its economic capabilities as compared to its anthropocentric elements.<sup>124</sup> The introduction of global technologies aimed at reducing water scarcity has proven to be stale and ineffective -this is mainly due to the fact these technologies neglect traditional technologies.<sup>125</sup> To tackle issues of water scarcity a dual system that embraces both modernity and traditional norms ought to be implemented—traditional methods of water harvesting systems include systems for collecting, storing and conserving surface water run-off.<sup>126</sup>

Rural, black-dispossessed communities not only respect water for its spiritual and cultural significance, but they also recognise the economic, social, and environmental security that is guaranteed if there is good water governance. The Vhavenda people in the Vhembe district use taboos, myths, and stories that are part of the indigenous community's history to convey messages about water conservation. Chemburu and Masaka defined taboos as:

‘avoidance rules’ that forbid members of the human community from performing certain actions, such as eating some kinds of food, walking on, or visiting some sites that are regarded as sacred, cruelty to nonhuman animals, and using nature’s resources in an unsustainable manner.<sup>127</sup>

Within rural, black-dispossessed communities, taboos form part of the regulatory systems that guide and monitor human actions whilst enforcing and upholding the principles of morality. Chemhuru and Masaka further note that the observance of taboos promotes a virtuous life that fosters an ethical relationship with the environment, whilst the lack of the adherence to these taboos leads to a vicious life that not only disregard the sustainable use but also the environment’s moral standing.<sup>128</sup> Budeli and Matshidze explored the concept of taboos within the Vhavenda cultures and customs, their findings revealed that indigenous knowledge has been at the centre of the activities of water conservation and management. The indigenous African education of water conservation and management is passed orally from generation to

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<sup>124</sup> Budeli & Matshidze (n 117) 61.

<sup>125</sup> B Fanteso & K Yessoufou ‘Diversity and determinants of traditional water conservation technology in the Eastern Cape Province, South Africa’ (2022) *Environ Monitor Assess* 194.

<sup>126</sup> As above. Fanteso and Yessoufou define traditional technologies as knowledge and technology that people in specific societies and cultures have developed over time. This type of knowledge should be used to address water scarcity, the utilisation of traditional knowledge should not only be applied as a means for preserving cultural identity as well as tourism.

<sup>127</sup> M Chemhuru & D Masaka ‘Taboos as Sources of Shona People’s Environmental Ethics’ (2010) 12 *Journal of Sustainable Development in Africa* 123.

<sup>128</sup> As above.

generation and in some instances, it is shared through experiences and observation, furthermore, their research revealed that within Vhavenda, the African indigenous trainings were understood both spiritually and physically.<sup>129</sup> The water governance arrangements within Vhavenda are taught through storytelling African indigenous games such as *mahundwane* and taboos.<sup>130</sup>

### 2.3. Conclusion

The usage of water is quintessential to all economic and social activities, it is for this reason that Woodman and Muller argue that the diversity of circumstances in which water is found and used renders it difficult to define a significant or coherent policy for its governance.<sup>131</sup> The water governance arrangement in South Africa remains largely skewed in favour of the white minority with little to no recognition of the African customs which have proven to be more beneficial in the conservation of water for black dispossessed communities. After 30 years since the transformative goals (promises) were made, many black communities in South Africa still experience inequality and dispossession. As discussed earlier, there is a need to develop effective water governance strategies that cater to the needs of rural, black-dispossessed communities. While the highly contested ‘progressive laws’ have had somewhat of a positive impact in post-apartheid South Africa, water practices remain exclusionary to the detriment of rural communities. To circumvent and improve water practices, the South African government needs to enforce legal pluralism and formally recognise and support the institutional roles of traditional leadership in water governance. For water governance to be effective and inclusive for black dispossessed communities there is a need to involve local communities in decision-making processes as well as through the legal recognition of the spiritual and cultural significance of water.

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<sup>129</sup> Budeli & Matshidze (n 117) 12.

<sup>130</sup> Budeli & Matshidze (n 117) 19-21.

<sup>131</sup> Woodhouse & Muller (n 85).

## **Chapter 3: Re-configuration of white hegemony–water as a tool for further marginalisation of black dispossessed communities.**

### **3.1. Introduction**

The journey towards economic freedom long awaits post-apartheid South Africa. The optimism that once founded the State is rapidly diminishing and what was meant to be a utopian society has now taken myriad forms. Whilst significant progress has been made in establishing a more inclusive political landscape, economic freedom remains an ongoing challenge.<sup>132</sup> This challenge is more pronounced among marginalised communities. In these communities, there is a lack of economic empowerment, which hinders the overall development of the nation.

Within the broader context of economic challenges in post-apartheid South Africa, the neoliberal paradigm played a pivotal role in shaping water management practices, often with implications for the dispossession of vulnerable communities. This neoliberal approach consequently influences and has a profound impact on water governance policies. It is characterised by an emphasis on market-driven mechanisms, limited state intervention and privatisation.<sup>133</sup> The manifestation and the influence of neoliberalism can be observed in the construction of dams, which, while serving developmental goals, are associated with the displacement and the dispossession of black communities within post-apartheid South Africa.<sup>134</sup>

The neoliberal influence in the water sector is rather undeniable and it has led to the commodification of water resources, whilst promoting opportunities for private sector involvement.<sup>135</sup> Within post-apartheid South Africa, the construction of dams led to the second dispossession and displacement of black communities who had to endure apartheid and colonialism. The ‘second loss of land’ to make way for large-scale water infrastructure projects disrupts people’s livelihoods and subsequently requires people to adopt new cultural identities

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<sup>132</sup> CC Ngang ‘Human Rights and Socio-economic Transformation in South Africa’ (2021) 22 *Human Rights Review* 360.

<sup>133</sup> D Harvey *A brief history of Neoliberalism* (2005) 20.

<sup>134</sup> Internal Displacement Monitoring Centre ‘Dams and Displacement’ (2017) <https://api.internal-displacement.org/sites/default/files/inline-files/20170411-idmc-intro-dam-case-study.pdf> (accessed 13 July 2024).

<sup>135</sup> Dr MY Al-Madfaei ‘The Impact of Privatisation on the Sustainability of Water Resources’ <https://www.iwapublishing.com/news/impact-privatisation-sustainability-water-resources> (accessed 15 July 2024).

that are in line with their new reality.<sup>136</sup> This neoliberal effect on water management intersects with the broader economic challenges faced by black-dispossessed communities in post-apartheid South Africa.<sup>137</sup>

As briefly discussed earlier, the dispossession from dam constructions not only disrupts the socio-economic fabric of the affected black communities but also requires critical reflection on issues of environmental justice, equity, and the right to water. The struggle for economic freedom is intrinsically linked to the struggle for equitable access to water resources. Black dispossessed communities struggle with the impact of neoliberal policies that prioritise economic development to the detriment of social, cultural, and environmental considerations.<sup>138</sup>

This chapter seeks to discuss the impact and influence of neoliberalism in the political-economy of water. In doing so, the chapter first conceptualises the term neoliberalism and looks at the various tenets of neoliberalism that influence water practices in post-apartheid South Africa. The second part of the chapter discusses the impact of privatisation on black dispossessed communities in South Africa. Lastly, the chapter discusses the construction of dams and views these large-scale water infrastructures as sites of violence.

### **3.2. Contextualisation Neoliberalism within post-apartheid South Africa.**

Neoliberalism is not a new concept that emerged in post-apartheid South Africa. According to Harvey, neoliberalism is a political and economic theory that advocates for the liberation of individual entrepreneurial skills and freedoms, to achieve human well-being within an institutional framework based on free markets, free trade, and strong private property rights.<sup>139</sup> The resurgence of this political ideology in post-apartheid South Africa is noticeable, however, its existence and embrace within the South African landscape is owed to the National Party.<sup>140</sup> Whilst this theory is ever-changing and continuously morphing into progressive politics and

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<sup>136</sup> Land has a particular history and context that implies various things for different groups. The usage of ‘second dispossession and displacement’ is with reference to the post-1994 era. Black people have endured multiple levels of dispossession. To understand the history of dispossession in South Africa, see E Cavanagh *Settler Colonialism and Land Rights in South Africa* (2013).

<sup>137</sup> As above.

<sup>138</sup> KJ Gerson ‘How Neoliberal Policies Have Contributed to the Deterioration of Education in LCDs Lack of Resources’ [https://www.un.org/ldc5/sites/www.un.org/ldc5/files/zambia\\_social\\_forum\\_statement.pdf](https://www.un.org/ldc5/sites/www.un.org/ldc5/files/zambia_social_forum_statement.pdf) (accessed 12 July 2024).

<sup>139</sup> Harvey (n 133) 2.

<sup>140</sup> Bond (n 21) 194.

policies, it is rather vital to reflect on its original meaning compared to the new developments that people's perceptions and beliefs have shaped.

The neoliberal states are premised on the ideology that poverty can be alleviated through free markets and free trade.<sup>141</sup> Harvey suggests that the widespread acceptance of neoliberalism required the articulation of fundamental concepts that became so deeply engraved in common sense.<sup>142</sup> He adds further that, these concepts ought to appeal naturally to people's intuitions, instincts, values, desires, and the possibilities of the social world. The founding figures of neoliberal thought considered individual liberty and freedom as sacrosanct and central values of civilisation.<sup>143</sup> This ideal is a solution to the 'class problem'. Harvey provides two contrasting views of neoliberalism: one, as a utopian project that provides a theoretical template for the reorganisation of international capitalism and two; as a political scheme aimed at re-establishing the conditions for capital accumulation and the restoration of class capital.<sup>144</sup> Neoliberal theorists believe that self-sufficiency is key to alleviating poverty thus 'If you give a man a fish, you feed him for a day. Teach a man to fish and you feed him for a lifetime.'<sup>145</sup> The promotion of individuality therefore is argued to be for the economic good of the country, the man therefore becomes self-sufficient and through the provision of the fishing rod he can therefore provide economically for himself and his family. Consequently, these self-sustaining approaches also benefit the community at large and boost the economy with limited government involvement. According to Brown, the model neoliberal citizen is apolitical and compliant.<sup>146</sup> She adds that these citizens are motivated to take on more responsibilities and as such they strive towards their own social, economic, and political goals to the detriment of the larger community.<sup>147</sup>

This approach transcends to cultural practices, neoliberal citizens (white middle-upper class and the black bourgeoisie) embrace modernity which is heavily influenced by the global north to the detriment of cultures in the global south. Due to modernisation, culture is often

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<sup>142</sup> Harvey (n 133) 3.

<sup>142</sup> Harvey (n 133) 3.

<sup>143</sup> D Harvey 'Neoliberalism as Creative Destruction' (2007) 610 *The Annals of the American Academy of Political and Social Sciences* 24.

<sup>144</sup> Harvey (n 143) 29-30.

<sup>145</sup> RT Tripp *The International Thesaurus of Quotations* (1970) 76.

<sup>146</sup> W Brown *Edgework: Critical Essays on Knowledge and Politics* (2005) 43.

<sup>147</sup> As above.

overlooked, leading to the commodification of cultural landmarks such as practices, customs, land, and water, solely for their economic value. Bayliss suggests that neoliberalism is a new phase in the development of capitalism that has emerged following the post-war boom.<sup>148</sup> Additionally, Bayliss argues that neoliberalism should be viewed within the ‘material structure of social, economic, and political reproduction that is supported by financialisation.’<sup>149</sup>

Neoliberalism is therefore a way of reordering society and rethinking our status as individuals. It is not just a term describing pro-market policies nor a compromise made by failing social democratic parties with finance capitalism. The concept of competition has become an integral part of our daily lives, as it is deemed to be the most legitimate and effective way to organise human activity. According to Metcalf, this idea has had a significant impact on our beliefs and practices. It is a reminder that we often prioritise and celebrate competition in our society, even though there may be other ways to approach and solve problems.<sup>150</sup>

### **3.2.1. The nexus between Neoliberalism and water rights for black-dispossessed communities.**

Within a traditional lens, water is positioned as a common good. However, stemming from the neoliberal perspective that emerged in the 1970s, water has most often been considered an economic good that must be managed under the logic of the market, as a commodity.<sup>151</sup> As previously discussed in section 3 of chapter 2, the commodification of water is presented as a better way to manage water scarcity. However, this is contested since the market is oriented towards one group.

Water within post-apartheid South Africa is positioned as a cornerstone of economic industrialisation.<sup>152</sup> Whilst there is a need to regulate the scarce resource, what is prevalent

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<sup>148</sup> K Bayliss *et al* ‘13 Things you need to know about Neoliberalism: political economy’ (2016) 63 *New Agenda: South African Journal of Social and Economic Policy* 25.

<sup>149</sup> As above.

<sup>150</sup> S Metcalf ‘Neoliberalism: the idea that swallowed the world’ *The Guardian* 18 August 2017 <https://www.theguardian.com/news/2017/aug/18/neoliberalism-the-idea-that-changed-the-world> (accessed 12 April 2024).

<sup>151</sup> United Nations General Assembly ‘Thematic Report A/76/159: Risks and impacts of the commodification and financialization of water on the human rights to safe drinking water and sanitation’ <https://www.ohchr.org/en/documents/thematic-reports/a76159-risks-and-impacts-commodification-and-financialization-water> (accessed 15 April 2024).

<sup>152</sup> J Mathekganye *et al* ‘The Nexus between Water, Neoliberalism and Sustainable development in post-apartheid South Africa’ (2019) 11 *African Journal of Public Affairs* 42.

within the South African policy landscape and as seen globally is that neoliberalism has morphed and is directed at institutions that lie outside market perimeters with aims of reinventing the institutions to fit into a binary that mimics the ‘market-like’ way.<sup>153</sup> Water in this regard is not spared, it has undergone commodification, even though it is an irreplaceable commodity.<sup>154</sup>

The embrace of this political ideology is founded on the belief that an unrestricted free market is the best way to conduct commercial transactions on a national and international level.<sup>155</sup> Without losing traces of the origins of the political ideology, the global north has positioned this theory as a saviour to developing nations in the global south. Due to the pressures that ensue as a result of commercial transactions, the pressure is more felt in the global south, and it has resulted in the further marginalisation of black-dispossessed South African communities. A neoliberal society, as described by Fourie, is ‘more focused on the economic and financial development.’<sup>156</sup> Furthermore, the post-apartheid South African embrace of this ideology reveals the prioritisation of greater accumulation of national wealth, which resulted in class compromises that benefit the wealthy.<sup>157</sup>

The state is instrumental in the realisation of this ideology—to ensure that there is indeed economic growth, neoliberal policies mainly focus on economic liberation, dismantling of the role of the state, deregulation, fiscal discipline, and Public-Private Partnerships (PPPs).<sup>158</sup> Although neoliberalism places the state at its centre, the corporate sector holds significant influence and often directs state actions.<sup>159</sup> With little to no involvement from the state, the doctrine is argued to be the messiah, thus, it is meant to ensure that there is socioeconomic development.<sup>160</sup> Breakfast and Phago argue that the less involvement of the state in the market will result in a ‘trickling down effect’; thus when the economy grows the poor (black dispossessed communities) will significantly benefit from the economy.<sup>161</sup>

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<sup>153</sup> Mathekganye *et al* (n 152) 43.

<sup>154</sup> As above.

<sup>155</sup> Mathekganye *et al* (n 152) 46.

<sup>156</sup> D Fourie ‘The neoliberal influence on South Africa’s early democracy and its shortfalls in addressing economic inequality’ (2022) 0 *Philosophy and Social Criticism* 17.

<sup>157</sup> As above.

<sup>158</sup> N Breakfast & K Phago ‘Post-development approach on the post-apartheid governance of South Africa’ (2019) Special Issue *Journal of Gender, Information, and Development in Africa* 51.

<sup>159</sup> Fourie (n 156).

<sup>160</sup> Breakfast & Phago (n 158) 51.

<sup>161</sup> As above.

Brown contends that the flourishing of the economy can only be achieved within a neoliberal paradigm when ‘directed, buttressed and protected by law and policy’ through joint efforts from both the institutions and members of society.<sup>162</sup> This however is contradictory to the nature of neoliberalism. Instead of mending and alleviating racialised poverty, the neoliberalism system has resulted in significant destruction, not only of prior institutional frameworks and powers but also of division of labour, technological mixes, attachments to the land, habits of the heart, social relations, welfare provisions, and way of life amongst others.<sup>163</sup> Heywood argues that the Constitution mandates the government to implement policies that prioritise the needs of the underprivileged population, as reflected in socio-economic rights related to healthcare, education, social security, housing, environment, food, water, and children.<sup>164</sup> The government in South Africa is failing to guard the needs of those who are already vulnerable and marginalised.<sup>165</sup> Heywood further argues that economic policies ought to be formulated with the objectives of fulfilling the Bill of Rights (BoR) and must be assessed through this lens by policymakers at any stage.<sup>166</sup> Whilst there are many limitations to the accessibility of the right to water such as ‘progressive realisation’ and ‘minimum core obligation’—it is vital to explore other limitations to the accessibility of the right.

The majority of the public goods related to but not limited to water which are in turn required for the realisation of socioeconomic rights have increasingly been privatised and are now the new basis with which post-apartheid inequalities are furthered.<sup>167</sup> Although there is a need to protect, safeguard, and regulate water and its accessibility to the dispossessed communities—a deeper conversation centred around the exclusionary nature that is warranted and guaranteed through the private markets has to happen now. The right to water is now marketed to those who can afford to purchase this human right, the existing policies reinforce this rhetoric—thus at present, the water is currently affordable for ‘rich’ households but less so for ‘poor’

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<sup>162</sup> W Brown *Edgework: Critical Essays on Knowledge and Politics* (2005) 41.

<sup>163</sup> Harvey (n 133) 23.

<sup>164</sup> M Heywood ‘Economic Policy and the Socio-economic Rights in the South African Constitution, 1996-2021: Why they don’t talk to each other’ (2021) 11 *Constitutional Court Review* 350.

<sup>165</sup> M Nagar ‘Face the facts: South Africa’s public service has failed’ *Business Tech* 18 May 2024 <https://businesstech.co.za/news/government/772576/face-the-facts-south-africas-public-service-has-failed/> (accessed 23 October 2024).

<sup>166</sup> Heywood (n 164) 351.

<sup>167</sup> Heywood (n 164) 375.

households.<sup>168</sup> Access to water for the black dispossessed communities who were historically disadvantaged, is limited and reinforces the marginalisation of black dispossessed communities.<sup>169</sup> Below, the mini-dissertation discusses various tenets of neoliberalism used to further marginalise dispossessed communities.

### **3.2.2. Neoliberal tenets in water practices**

#### **3.2.2.1. Privatisation**

Privatisation refers to the delegation of public water services management to profit actors, whether they are private companies or public-private partnerships.<sup>170</sup> The term also refers to private ownership of water resources and infrastructure for managing water and sanitation services.<sup>171</sup> The embrace of this phenomenon in the global south is a result of the state's failure to provide for socioeconomic rights adequately.<sup>172</sup> It is believed that due to the resources that the private sector has, they can mobilise to extend networks, improve services and introduce an element of competition through a tendering process.<sup>173</sup>

Loftus and Budds describe water privatisation as the transfer of some or elements of water provision from the state to the (formal) private sector.<sup>174</sup> However, this phenomenon is not limited to the transfer of water to the private sector, for privatisation to occur water must be transformed into a commodity.<sup>175</sup> For this to be achieved materially Loftus and Budds contend that exclusive rights to freshwater have to be assigned to a company and that the positionality of water reflects a framework where water is seen as an economic good.<sup>176</sup> These two concurrent approaches further result in the dispossession of the rights of the former users as well as the unjust/exploitative pricing of water.<sup>177</sup> The embracing and implementation of privatisation in post-apartheid South Africa disregards the unique history, which has deeply

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<sup>168</sup> A Mgwele *et al* 'Measuring residential water affordability and basic water needs in South Africa' (2021) *Leibinix Information Centre for Economics* 3.

<sup>169</sup> A Kaziboni 'Exclusion and invented water scarcity: a historical perspective from colonialism to apartheid in South Africa (2024) 16 *Water History* 60.

<sup>170</sup> United Nations General Assembly (n 151).

<sup>171</sup> As above.

<sup>172</sup> United Nations Human Rights 'Thematic report A/75/208: Human Rights and the privatization of water and sanitation services' <https://www.ohchr.org/en/documents/thematic-reports/a75208-human-rights-and-privatization-water-and-sanitation-services> (accessed 17 April 2024).

<sup>173</sup> A Loftus & J Budds 'Neoliberalising water' in S Springer eds in *Handbook of Neoliberalism* (2016) 504.

<sup>174</sup> As above.

<sup>175</sup> Loftus & Budds (n 173) 505.

<sup>176</sup> As above.

<sup>177</sup> As above.

influenced the structure of South Africa's water industry. The implementation of neoliberalism has paid little attention to the distinctive racial, class and equity issues that impact access to water in South Africa. In support of this argument, Mathakganye argues that access to and affordability of water depend on social determinants like race and geography.<sup>178</sup>

The social structure of South Africa has already been significantly harmed. Although efforts have been made to repair it, it is apparent that not everyone will benefit. The influence of neoliberal economic policies in the water sector has caused corporations to invest more in water infrastructures based in urban areas, prioritising profit over the needs of poor communities. Corporations have adopted a full-cost recovery strategy to ensure profitability.<sup>179</sup> However, this approach is based on estimates rather than fixed calculations and thus lacks a solid foundation.<sup>180</sup> The entrenchment of full cost recovery is not entirely reliable, and it has led to rent-seeking and profit maximisation to ensure that there is profit.<sup>181</sup> Consequently, corporations involved in the water sector have complete control over the prices and manipulate them to meet certain performance requirements.<sup>182</sup>

Water privatisation in South Africa is not yet complete thus water service delivery in South Africa is not fully privatised, as there is no change in ownership from public to private management.<sup>183</sup> Privatisation in South Africa comes in different forms, but it is grounded in the 'marginal cost accounting/full cost-recovery' approach.<sup>184</sup> In practice, however, consumers end up paying for future costs, as this strategy and its technologies have led to low-income communities paying more for water services compared to high-income areas.<sup>185</sup> Despite there being a constitutional mandate to ensure that everyone has the right to access water, the right is placed under fiscal control—national government placed strict fiscal control, and this resulted in municipalities having limited budgets.<sup>186</sup> Due to fiscal constraints, municipalities have had to privatise their services to ensure that they remain financially stable and sustainable.<sup>187</sup>

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<sup>178</sup> Mathekganye *et al* (n 152) 48.

<sup>179</sup> See S Narsiah 'Discourses of privatisation: the case of South Africa's water sector' (2008) 25 *Development Southern Africa* 23

<sup>180</sup> As above.

<sup>181</sup> As above.

<sup>182</sup> As above.

<sup>183</sup> Mathekganye *et al* (n 152) 49.

<sup>184</sup> As above.

<sup>185</sup> As above.

<sup>186</sup> Section 215 of the Constitution, See also the Municipal Finance Management Act 56 of 2003.

<sup>187</sup> Mathekganye *et al* (n 152) 50.

The Public-Private Partnerships (PPPs) that have been emanating in post-apartheid South Africa have created opportunities for the private sector to provide public services like water.<sup>188</sup> Although PPPs relieve the already burdened local government, it is crucial to recognise that these local partnerships are controlled by multinational corporations.<sup>189</sup> PPPs could potentially solve the water crisis in South Africa, but can the black dispossessed communities trust the private sector? The collective efforts between the government and the private sector could easily solve the water crisis and improve the lived experiences and socioeconomic environment for black dispossessed communities.<sup>190</sup>

Due to this being a recent initiative, there is a general lack of consistent political resolve, Mashwama and others provide that the implementation of PPPs requires the commitments of political leaders. As a result of the political landscape of South Africa, PPPs suffer more due to the lack of political commitment from parties.<sup>191</sup> Furthermore, corruption in post-apartheid South Africa is high, especially within local governments, embracing privatisation and acknowledging PPPs have the potential to further dispossess marginalised communities.

### **3.3.The construction of dams as tools of marginalisation**

#### **3.3.1 The history of dams and their relation to the right to water.**

The history of dams in South Africa highlights the complex relationship between water, power, and social justice. Post-apartheid South Africa continues to grapple with issues of inequality and sustainability resulting in the further marginalisation of vulnerable groups. The history of dams is rather complex and contentious. Different schools of thought have discussed the benefits and the exclusionary nature of dams in the accessibility of water. While dams have often been portrayed as vital sources of water, this mini-dissertation draws from Kaneti's work to highlight the complex and controversial nature of dams. It aims to contribute to the school

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<sup>188</sup> As above.

<sup>189</sup> S Narsiah 'Neoliberalism and privatization in South Africa' (2002) 57 *Geo Journal* 33.

<sup>190</sup> N James 'PPPs can boost rural development' *Engineering News* 03 November 2023 <https://www.engineeringnews.co.za/article/public-private-auxiliary-projects-improve-rural-development-2023-11-03> (accessed 10 April 2024).

<sup>191</sup> NX Mashwama *et al* 'Challenges faced by Public-Private Partnerships in improving service delivery' in J Shiau (eds) *Proceedings of International Structural Engineering and Construction: Streamlining information transfers between construction and structural engineering* (2018) [https://www.isec-society.org/ISEC\\_PRESS/ASEA\\_SEC\\_04/pdf/INF-03.pdf](https://www.isec-society.org/ISEC_PRESS/ASEA_SEC_04/pdf/INF-03.pdf) (accessed 10 April 2024).

of thought that posits dams as a source of displacement, violation of sacred sites, and environmental degradation.<sup>192</sup>

As discussed earlier in this dissertation, the country's semi-arid climate and scarcity narrative have necessitated the need for large water storage structures. Due to the fact that rivers are the primary source of freshwater, the country is compelled to construct storage dams to ensure that there is a reliable supply of water for various purposes.<sup>193</sup> The intention behind this art and manipulation of water flows is not only to provide citizens with water, but there is also hope that through the construction of dams, the economic potential of South Africa will be unlocked.<sup>194</sup> However this is rather questionable, who in South Africa benefits as a result of the construction of these dams? The answer to this is rather complex, looking at the veil with which South Africa was woven it is clear that there are racial as well as class elements that influenced the construction of dams. Bearing this in mind, whose needs are being met with the construction of dams?

During the apartheid era, dams in South Africa were constructed in a manner that reinforced racial segregation and exploitation, occurring in two folds: resource allocation-based and labour exploitation. These discriminatory practices still exist in the construction industry today. Many bulk water supply infrastructures constructed during this period primarily benefited the development of urban areas, thus, the growth and economic development of urban areas are attributed to these dams.<sup>195</sup> However until the 1980s, environmental and social impact studies were not required legally required in the conceptualisation, development, and construction of dams.<sup>196</sup> The construction of dams during this era emphasised maximising the abstraction of water for economic purposes to the detriment of the local communities in South Africa. In the post-apartheid era, this approach is no longer applicable. The NWA provides provisions and requirements to improve the safety of new and existing dams to ensure that there are fewer safety concerns and that there is compliance with social impact assessments which will be in line with public interest.

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<sup>192</sup> M Kaneti 'Dams, neoliberalism, and rights: Mainstreaming environmental justice claims' (2020) 28 *Sustainable Development* 424.

<sup>193</sup> Water Research Commission 'In the footsteps of giants—exploring the history of South Africa large dams' (2012) 4.

<sup>194</sup> As above.

<sup>195</sup> As above.

<sup>196</sup> Water Research Commission (n 193) 5.

The safeguarding mechanisms applied in post-apartheid South Africa do not however change the lived reality of communities living closer to the dams. The dislocation, displacement and dispossession of local communities are viewed as a side-effect of development.<sup>197</sup> The construction of dams need not be seen within the paradigm of water management and conservation, we ought to consider the socioeconomic effects on both the local communities and the environment. The construction of dams makes communities more vulnerable and susceptible to poverty. This is because many communities in South Africa rely on the natural goods and services that rivers provide. Unfortunately, the building of dams disrupts the natural systems of these rivers. As a result, communities can end up losing access to the resources they depend on.

Despite being symbols of progress and economic development, dams are a harsh reality of displacement and dispossession.<sup>198</sup> Nasriah recognises the influence of Marxist theory in the capitalist mode of production and acknowledges that geographical expansion was a natural result of the development of productive forces.<sup>199</sup> This occurred during the period of colonialism when previously untouched lands were integrated into the web of capitalist relations.<sup>200</sup> Although colonisation and apartheid have ended, post-apartheid South Africa is experiencing the ‘last stage of capitalism’ from neoliberalism. The spread of neoliberal ideas easily recolonises various places and spaces.<sup>201</sup> The recolonisation occurs without much consideration for the cultural values of the already dispossessed communities. It becomes evident that in the acknowledgement and implementation of neoliberalism, there is a desire for a spatial solution, without taking into account the long-term effects of neoliberalism. Narsiah, posits that neoliberalism is intent on destroying communities historically marginalised.<sup>202</sup> To put the effects of neoliberalism into context, the next part of the discussion discusses the practical implications of these policies with reference to a community in Limpopo.

### **3.4. Reflection on dams as a tool for the sustenance of the racial and geographic rhetoric**

This section aims to discuss the spatial inequalities that still exist in post-apartheid South Africa in reaction to access to water and water distribution. Despite some changes in the social fabric

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<sup>197</sup> As above.

<sup>198</sup> Water Research Commission (n 193).

<sup>199</sup> Narsiah (n 189) 30.

<sup>200</sup> As above.

<sup>201</sup> As above.

<sup>202</sup> Narsiah (n 189) 36.

of the country, the construction of dams has been used to maintain racial and geographical divisions, continuing to mirror the injustices of the apartheid regime. The experiences of the dispossessed villagers near the Nandoni Dam in the Vhembe District of Limpopo provide a practical example of the spatial inequalities that still exist in post-apartheid South Africa.

The construction of the Nandoni Dam commenced in 1998 and was eventually completed in 2005. This ambitious project was undertaken with the primary objective of upgrading the management of water resources in the Vhembe District Municipality.<sup>203</sup> Although the dam was completed in 2004 and opened officially in 2005, the Nandoni Water Treatment Works were fully completed in 2008.<sup>204</sup> This is a category 3 large dam with a wall height of 43 metres and its total capacity is 164 million cubic meters, as of 2023, it was at a volume of 101% capacity.<sup>205</sup> In the construction of this dam, the local communities were informed of the economic benefits that would ensue as a result of the project. This ongoing project aims to improve the local economy through water-based recreation and tourism, which around the time of construction had not been explored as a means of improving the standard of living for the nearby communities.<sup>206</sup> In the promise of ‘improved local economy’ the surrounding villages rightfully hoped that their livelihoods would improve and that employment would be created through water-related recreation and ecotourism.<sup>207</sup>

The embracement of the project by members of the 33 nearby villages can be attributed to their willingness to embrace modernity, in light of the promises made by the project. Due to this reason, the villages of Ha-Budeli, Mulenzhe, Dididi, and Tshilungoma demonstrated a willingness to vacate their original homesteads.<sup>208</sup> After consultation with the Department of Water and Sanitation (DWS), previously the Department of Water Affairs and Forestry (DWAF) about 405 homesteads were relocated whilst in other communities’ people lost access

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<sup>203</sup> NI Sinthumule ‘Window of Economic opportunity or Door of Exclusion? Nandoni Dam and its local communities’ (2021) 13 *Sustainability* 1.

<sup>204</sup> Parliamentary Monitoring Group ‘Portfolio committee on water and sanitation Progress Report on the Giyani Bulk Water Project- 12 September 2023’ [https://pmg.org.za/files/230912DWS\\_presentation-Giyani\\_Bulk\\_Water\\_Project\\_-12\\_September\\_2023.pdf](https://pmg.org.za/files/230912DWS_presentation-Giyani_Bulk_Water_Project_-12_September_2023.pdf) (accessed 12 March 2024).

<sup>205</sup> As above.

<sup>206</sup> Sinthumule (n 203).

<sup>207</sup> As above.

<sup>208</sup> Public Protector South Africa ‘Final report on an investigation by the Public Protector into complaints by people and communities who were allegedly adversely affected by the construction of the Nandoni Dam in Vhembe District, Limpopo Province’ (2008/2009) 7 [https://www.pprotect.org/sites/default/files/legislation\\_report/NANDONI%20DAM%20%20FINAL%20REPORT%20NO%209%20OF%202008-09.pdf](https://www.pprotect.org/sites/default/files/legislation_report/NANDONI%20DAM%20%20FINAL%20REPORT%20NO%209%20OF%202008-09.pdf) (accessed 14 April 2024).

to their agricultural land which was used for crop production, grazing and fruit trees.<sup>209</sup> To counter-effect the relocation, alternative land was to be provided and in instances where this was not a possibility monetary compensation would be paid.<sup>210</sup> The monetary compensation was to be paid for loss of production and ‘modern houses with facilities such as toilets and fences’ would be built and given to those who lost their homesteads.<sup>211</sup> These promises did not materialise, the community reached out to the office of the Public Protector (PP) with hopes that the promises would become their reality.<sup>212</sup> Whilst the PP provided recommendations to the DWAF, these recommendations remain stale and it has been 26 years as of today and these communities remain in abject poverty, dare I say racialised poverty?

Aside from the displacement, dispossession, and dislocation of the members in these 33 villages, access to water remains an issue. The dam has barely benefitted these communities, who consequently lost their farms, crops, homes, gravesites, and ancestral land.<sup>213</sup> They have no access to taps, and they live in debilitating conditions with no backing and support from the government. Whilst there are a lot of contentious issues centred around the construction of the Nandoni dam what is prevalent and specific to this dam is that it is a sight of violence where social, economic and cultural rights are violated daily. Abject poverty or rather racialised poverty dictates how people belonging to this dispossessed community navigate life. The existence of this dam contradicts the claims that were initially pitched to the 33 villages, it is clearly a sight of violations, and it continuously excludes the local communities—as argued by Sinthumule, the dam is a clear indication of the way with which the states facilitate the transformation of rural spaces to benefit private businesses at the expense of the local population.<sup>214</sup>

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<sup>209</sup> Public Protector South Africa (n 208) 7.

<sup>210</sup> As above.

<sup>211</sup> As above.

<sup>212</sup> B Chiguvare ‘They were relocated for the Nandoni dam. 22 years later they still have not been compensated’ *GroundUp* 13 August 2020 <https://groundup.org.za/article/villagers-relocated-dam-sit-uncompensated-after-20-years/#:~:text=Construction%20on%20the%20dam%2C%20about,supplies%20water%20to%20Vhembe%20district> (accessed 15 March 2024); L Ledwaba ‘Long wait for water and compensation continues for Limpopo Nandoni Dam communities’ *Daily Maverick* 11 February 2021 <https://www.dailymaverick.co.za/article/2021-02-11-long-wait-for-water-and-compensation-continues-for-limpopos-nandoni-dam-communities/> (accessed 14 March 2024).

<sup>213</sup> N Shange ‘A dam shame: 22 years on, Mutoti’s people wait patiently for compensation’ *Times Live* 06 December 2020 <https://www.timeslive.co.za/sunday-times-daily/news/2020-12-06-a-dam-shame-22-years-on-mutotis-people-wait-patiently-for-compensation/> (accessed 16 April 2024).

<sup>214</sup> Sinthumule (n 203) 15.

### 3.5. Conclusion

The embrace of neoliberalism within post-apartheid South Africa has led to the subversion of socio-economic rights.<sup>215</sup> The privatisation, commodification and commercialisation of water have led to the sustenance of spatial inequalities and similarly furthered the marginalisation and vulnerability of dispossessed communities. While South Africa needs to embrace modernity and partake in globalisation, it is equally important to do so whilst respecting, fulfilling, and realising the right to water. The government needs to critically review its economic policies and prioritise providing basic needs to dispossessed communities, regardless of their contribution to the economy. Access to water has become overly politicised, while transformation within the economic sector remains limited. In post-apartheid South Africa, water and its associated infrastructures are not only vital resources but also instruments of power. They have also been used to reinforce white hegemony, further marginalising African practices of communal water management and sustainability. This reconfiguration highlights the exploitative colonial legacy within the social fabric of South Africa. There is a need for more inclusive policies that recognise the historical significance of water as a source of identity and as a community asset.

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<sup>215</sup> P O'Connell 'The Death of Socio-economic Rights' (2011) 74 *Modern Law Review* 534.

## Chapter 4: Summary and Recommendation(s)

### 4.1. Summary

*What water, land, seed, and air give us as People of the Global Majority who have been made marginal by white capitalist supremacy, is a cosmology and sites/sights of remembrance and connection that far transcend the material facts of these commons. These are not only places we turn to for nourishment and sustenance — in a relationship of mutual reciprocity — but it is also to land and water we go, to commune with our ancestors, to remember things lost and disappeared and to return to ourselves.’<sup>216</sup>*

The dissertation delved into the complex legal and socio-political/economic landscape surrounding the right to water in post-apartheid South Africa. It aimed to shed light into some of the challenges faced by black dispossessed communities in accessing water and how this intersects with broader issues of culture and human rights. By critically examining the current interpretation of the right to water, the study sought to emphasise the anthropocentric significance of water and its implications for marginalised communities. Furthermore, it highlighted the commodification of water as a consequence of legislative shortcomings, ultimately advocating for a more holistic and inclusive approach to water rights in the country.

The first chapter of this dissertation defines and contextualises the cultural significance of the water within black dispossessed communities in post-apartheid South Africa. In this chapter, I discuss water as a space through a historical lens. While shedding light on the cultural and spiritual dimensions of water for black dispossessed communities, the chapter also discusses the factors that have led to the dispossession of black communities and consequently shifting their relationship and perception with water.

The second chapter discussed water governance arrangements in post-apartheid South Africa for rural black dispossessed communities. In this chapter, I discuss water as sight/a sites of erasure, thus, the chapter posits that there has been an erasure of traditional water governance arrangements in post-apartheid South Africa. The chapter explored the diverse meanings and various roles deeply embedded in cultural and spiritual practices within dispossessed communities in post-apartheid South Africa. The current mechanisms in place to protect water

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<sup>216</sup> L Mngxitama Interview with Z Khan ‘On delicious Joy and Dancing around the Spectrum of Time, Space and Place’.

governance are not enough to address the specific challenges faced by black-dispossessed communities. It is important to acknowledge and utilise African Indigenous Knowledge Systems (IKS) within these systems, as they play a crucial role in managing natural resources. The limitations of the discussed legislative frameworks highlight the necessity of enforcing and implementing legal pluralism and legally recognising traditional governance systems in water governance. This is essential to ensure the inclusion of black-dispossessed communities and prevent further marginalisation.

In the third chapter, I explore the political economy of water. The chapter discusses how water has been used as a tool to further marginalise, dispossess, displace, and dislocate black dispossessed communities. In this chapter, I discuss water as a site/sight of violence through dams. The chapter explores the concepts of dams and positions them as sights of violence with promises that never materialise, this is done using the Nandoni Dam in the Vhembe District of Limpopo. The study looks at the economic value of water and discusses the neoliberal tenets that have been utilised to reduce and limit water access for black marginalised communities in post-apartheid South Africa. Furthermore, this chapter contends that the lack of water access in post-apartheid South Africa has led to the reconfiguration of white hegemony.

The fourth chapter briefly summarises the study and provides recommendations to improve access to water for dispossessed communities amongst these is the incorporation of the African Indigenous Knowledge System in the water sector to expand and improve water access as well as the improvement of the water information landscape. The goal is to ensure equitable access to safe and clean water and to support sustainable management of water resources while acknowledging historical injustices.

## **4.2.Recommendation(s)**

### **4.2.1 Addressing the lack of indigenous knowledge within water governance in post-apartheid South Africa.**

With the embrace of modernity in post-apartheid South Africa, African Indigenous water governance mechanisms (management) have been diminishing due to the custodians of the Indigenous Knowledge not being able to disseminate the knowledge to the younger generations, however whilst this is a threat to indigenous knowledge, we have also seen the sustenance of indigenous knowledge through indigenous games and normal daily encounters

as discussed in chapter 2. The water governance arrangements in South Africa are white-interest centric and they have furthered the marginalisation of black dispossessed communities in South Africa. The section that follows provides recommendations to improve water management for black dispossessed communities.

- The local governments and dispossessed communities should work together to conserve indigenous knowledge. Local governments should initiate programs to share water management practices in order to address water security issues. These initiatives will not only help preserve culture but also empower the dispossessed communities. These combined efforts will enable the dispossessed communities to actively engage and enhance their participation in water governance.
- The water governance arrangements in post-apartheid South Africa need to be reformed to include Indigenous Knowledge (IK) of water management and governance practices. The incorporation of IK into existing legal frameworks will improve water access and safeguard environmental rights. The water sector needs to incorporate this and create an action plan to recognise and demystify indigenous knowledge. The incorporation of an IK within the existing framework will benefit both dispossessed communities as well as the country from the wisdom and sustainable practices developed by these communities over generations, this will ultimately improve water access and, subsequently, the management while upholding the historical and cultural perspectives.
- Indigenous technologies and tools should be incorporated into modern technologies. A hybrid system embracing both modernity and tradition will result in water rights being safeguarded, thus water conservation methods will be improved, and water can be efficiently managed.

#### **4.2.2 Expanding and improving water access for black dispossessed communities.**

The allocation of water in South Africa remains geographically skewed in favour of people living in urban areas. Due to the geographic distribution of water, historical factors such as colonisation and apartheid, and current land dispossession, there is a critical need to enhance water access for black communities who have been historically marginalised in South Africa.

The following recommendations are provided for the expansion and improvement of water access for black-dispossessed communities:

- The connection between land and water for black-dispossessed communities is undeniable. Land reform and water reform are inherently linked, as equitable access to water is closely tied to land. Reallocation of land and increased access to water sources are essential for improving water access. Addressing historical injustices related to land ownership and its impact on water access for black dispossessed communities is crucial. This may involve land restitution efforts and ensuring that water resources are managed in a manner that prioritises the needs of these communities.
- The mismanagement of funds in the local government sector has resulted in water scarcity being broadened. Local government has to promote good practices, thus there is a need to fully implement anti-corruption mechanisms and promote transparency. Enforcing stringent procurement mechanisms will safeguard access to water for dispossessed communities.
- The existing water infrastructures in black-dispossessed communities are poorly managed. To improve sustainable water management and increase water access, there is a need to improve water infrastructures and investing in them will also improve the local economies.

#### **4.2.3 Access to information within the water landscape in post-apartheid South Africa.**

The right to access to information is essential for the realisation of socio-economic rights within post-apartheid South Africa. Through the dissemination of information, vulnerable persons can engage and meaningfully participate in society. The realisation of socioeconomic rights within post-apartheid South Africa is limited due to the lack of transparency and meaningful access to information. To circumvent this, I propose that:

- There is a need for specific capacity-building initiatives that target rural communities and aim to involve them in water management processes. These initiatives will focus on advocacy, policy analysis, and negotiation skills to empower the communities to

navigate the complexities of water governance. Additionally, they will enable the communities to demand transparency and accountability from the various water stakeholders.

- An improved multi-stakeholder transparency system in which various stakeholders proactively disclose information, such as legal frameworks and policies related to the right to water. This will promote access to information on water-related policies and programs, ensuring that dispossessed communities can make meaningful decisions. While a system like this already exists, it has not been efficient, and its implementation has been more of a formality. To address this local information hubs or water clinics should be established within traditional councils, where skilled practitioners can disseminate information and facilitate information requests to the relevant water stakeholders. A crucial factor for success is establishing trust and engaging with these black-dispossessed communities. Local leaders and water committees ought to be involved in data collection and the decision-making to ensure that the information shared is relevant, accessible and culturally appropriate. Providing regular feedback on outcomes will help build community confidence, ultimately empowering them to take ownership and make informed decisions regarding water management
- The government should invest in community engagement initiatives that incorporate inputs from traditional leaders into local governance systems. This will broaden the understanding of water rights, water resource management, and water sustainability. Engaging traditional leaders will also improve and supplement education about the water crisis, equipping all involved parties with the necessary skills to reform the water sector. These initiatives should specifically target young people who will lead educational efforts and play a role in preserving indigenous information.

**(16731 words)**

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