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Judicial Enforcement of the Human Right to Water – Case Law from  
South Africa, Argentina and India

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## Abstract

Access to water is fundamental to human life and health. The human right to water finds increasingly recognition at an international level. Yet, the crucial question remains if and how the right can be enforced. As the legal enforcement of human rights primarily takes place at the national level, it is interesting to take a look at case law on the human right to water from different countries.

Case law from South Africa, Argentina and India has been selected for the analysis as all three countries have developed a remarkable body of case law. They have been following different models regarding the judicial enforcement of the right to water, thus allowing addressing the variability of options for judicial enforcement. Courts have dealt with a broad range of issues related to the right to water ranging from concerns over the availability of sufficient water resources over the lack of access to concerns over water pollution and cases of disconnections of water services.

In order to understand the scope of the judgments, the paper makes use of the common tripartite distinction of human rights obligations. States are obliged in different ways bearing duties to respect, to protect and to fulfil. The latter is often regarded to be the least justiciable. Yet, the paper includes judgments referring to all types of obligations thus showing that the obligation to fulfil the right to water has also proven to be judicially enforceable.

## Keywords

Human right to water, Socio-economic rights, Judicial enforcement of human rights, Case law on the right to water, South Africa, Argentina, India

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## 1. Introduction

Access to water is fundamental to human life and health. Yet, 1.1 billion people do not have access to safe water and 2.6 billion people lack access to adequate sanitation facilities (World Water Assessment Programme 2006, p. 46). The human right to water could be a means to improve this situation by giving people the possibility to claim to have access to water and sanitation. During the last years, it has increasingly found recognition at the international level. It is not explicitly acknowledged in the International Covenant on Economic, Social and Cultural Rights (hereafter Social Covenant), but can be derived from other treaty provisions, in particular Art. 11(1) that guarantees the right to an adequate standard of living (Gleick 1998, p. 491; McCaffrey 1992, p. 11; Riedel 2006, p. 596; Smets 2002, p. 28). Moreover, the right to water is explicitly mentioned in the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. The issuance of the General Comment No. 15 on the right to water by the Committee on Economic, Social and Cultural Rights (hereafter CESCR) in November 2002 was a major push for the increasing acknowledgement of the right to water.

The question remains whether these pronouncements on the right to water are only lip-service or whether it is a judicially enforceable human right. By establishing a reporting procedure to the CESCR, the enforcement mechanisms of the Social Covenant are rather weak (Simma 1998, p. 875). And even with the adoption of the Optional Protocol to the Social Covenant within reach, the enforcement of human rights at the international level is only subsidiary and is subjected to the exhaustion of local remedies. Primarily, the judicial enforcement of human rights takes place at the national level. The article therefore aims to analyse if and how the right to water can be enforced through national jurisprudence.

Case law on the human right to water can be observed in a great number of countries ranging from France, Great Britain and Belgium over Costa Rica and Brazil to Malaysia and Indonesia. This paper focuses on case law from South Africa, Argentina and India as these three countries can be regarded as representing three different models of judicial enforcement of the human right to water (cf. Note 2007, pp. 1068 et seq., 1079). All three countries have developed a remarkable body of jurisprudence.

South Africa is one of the few countries that have explicitly recognised the human right to water in their Constitution along with other socio-economic rights. A number of other countries have also explicitly acknowledged the right: Uganda has included the right to water in its Constitution in 1995 (Art. 14), Ecuador in 1998 (Art. 23 and Art. 42), Uruguay in October 2004 after a successful referendum and the Democratic Republic of the Congo in 2006 (Art. 48). Moreover, there are efforts to include the human right to water in the Belgian<sup>1</sup>, Bolivian<sup>2</sup>, Colombian<sup>3</sup> and Kenyan Constitution<sup>4</sup>. As South Africa's explicit incorporation of the right to water and the case law dealing with it have raised considerable attention, it can serve as a model for other countries that explicitly recognise the human right to water.

Without being able to rely on a specifically guaranteed human right to water in the national Constitution, Argentinean courts have also developed an extensive body of case law on the right to water mainly by deriving it from the right to a healthy environment. Such an approach is common in Latin America, as for example courts in Colombia and Costa Rica have been taking similar approaches to adjudicate the right to water.

Whereas South Africa has explicitly recognised the right to water in its Constitution and Argentina has at least included an explicit right to a healthy environment, courts in India started from the right to life in order to derive the right to water. Indian jurisprudence on environmental rights is regarded as one of the most extensive and innovative (Anderson 1996, p. 199) and it can be regarded as a model for other Asian countries. For example,

courts in Bangladesh, Pakistan and Nepal have taken an approach very similar to the one in India deriving the right to water from the right to life (Razzaque 2002, pp. 9 et seqs.; cf. as well Lau 1996, pp. 296 et seqs.).

It will be shown that despite starting from legal provisions that show great differences, courts in all three countries have developed a quite extensive body of jurisprudence dealing with the right to water. A wide range of issues relevant for the realisation of the right to water has been addressed by courts in common law as well as civil law systems. In South Africa, the lack of access to water supply, disconnections and the installation of prepayment metres are perceived as major problems (Mehta 2005, p. 4; Francis 2005, p. 151), whereas water pollution is one of the major threats in Argentina and India (Anderson 1996, p. 199; Note 2007, p. 1082; Muralidhar 2006, pp. 70 et seq.). The different awareness of water issues is reflected in the cases courts had to deal with.

In order to understand the scope of the judgments that will be analysed, it is important to note the common tripartite distinction of different human rights obligations. States are obliged in different ways by human rights bearing duties to respect, to protect and to fulfil. This concept was first developed by Shue (1980) and has become widely used, eg by the CESCR and in section 7(2) of the South African Constitution.

*Obligations to respect* require States to refrain from interfering with the enjoyment of human rights. These obligations thus aim at ensuring that existing human rights guarantees are not violated (Craven 1995, p. 109; Eide 2001, p. 23). In the case of the human right to water they become particularly relevant when existing access to water is not respected, ie in cases of disconnection of water supplies.

*Obligations to protect* refer to the duty of States to prevent third parties from interfering with the enjoyment of human rights (Craven 1995, p. 109; Eide 2001, p. 24), in this case the human right to water. States are required to take the necessary measure to prevent third parties from undermining the rights of others. These obligations are for example relevant in form of the duty to protect people from the pollution of water resources committed by third parties. Moreover, they become relevant in the case of water service privatisation. States have to ensure that private supply of water services does not compromise access to water by establishing an effective regulatory system (CESCR 2002, Para. 24). In so far, the result the State has to ensure is the same as in regard to obligations to respect: the right to water must not be infringed. However, the measures the State has to take differ as the State does not act itself as water supplier in the case of privatisation, but then has to act as a regulator.

*Obligations to fulfil* require States to adopt the necessary measures directed towards the full realisation of human rights (Craven 1995, p. 109; Eide 2001, p. 24). Primarily, States are obliged to enable and assist people in gaining access to water services. In general, every individual is expected to use his or her own efforts and resources for the satisfaction of basic needs (Eide 2001, p. 23). Only when people do not have the means to attain water services for themselves, the State is required to take the necessary measures of direct provision, in particular to ensure that water is affordable to everyone. This can be achieved by subsidisation mechanisms or even supplying water free of charge in order to ensure access to a minimum essential level of water (CESCR 2002, Para. 25, 27).

Still, due to these far-reaching obligations that require positive and often resource intensive measures (cf. Liebenberg 2001, p. 58), the obligation to fulfil is regarded to be the least justiciable. It seems easier to affirm the justiciability of obligations to respect and to a certain extent obligations to protect as they give rise to negative obligations (Budlender 2004, pp. 35, 38). Yet, it will be shown that this is not necessarily the case as Courts have not shied away from considering obligations to fulfil the right to water.

In this context, the distinction between obligations to progressive realisation and core obligations should be considered. This distinction stems from Art. 2(1) of the Social Covenant which requires States to achieve the full realisation of socio-economic rights progressively. Similar provisions are for example included in the South African Constitution, eg in section 27(2). In spite of this clause the CESCR has developed the concept of core

obligations that are to be fulfilled immediately (CESCR 1990, Para. 10; CESCR 2002, Para. 37 lit. a; cf. as well: Klee 1999, pp. 182 et seqs; Lohse 2005, pp. 102 et seq.; Maastricht Guidelines 1997, Para. 9). These aim at guaranteeing a minimum standard which is indispensable for human survival and dignity and thus has to be secured immediately. Otherwise, the guarantees enshrined in the Social Covenant would be deprived of their *raison d'être* (CESCR 1990, Para. 10). Such obligations thus refer to the rather limited core content of the right to water and are accordingly much more specific. Their judicial enforcement is therefore easier to achieve (cf. Muralidhar 2004, p. 31).

The paper thus aims to explore in how far the right to water has proven to be justiciable in courts in South Africa, Argentina and India. Particular attention is given to the questions which obligations have been regarded as justiciable, if only the obligations to respect and to protect or the obligation to fulfil as well have been regarded as judicially enforceable and if the notion of the minimum core has played a role in this regard.

## 2. Judgments from South Africa

### 2.1. Introduction

It is not surprising that several cases dealing with the human right to water are from South Africa. On the one hand, the country has to cope with immense water problems. Water resources are scarce (Francis 2005, p. 152) and access to water supply is extremely unevenly distributed, a legacy of the apartheid era (Francis 2005, p. 153; Khan 2008, pp. 99, 101; Kürschner-Pelkmann 2005, p. 402). It was estimated that twelve to fourteen million people, predominantly of the African population, lacked access to water supply, when the African National Congress won the first democratic elections in 1994 (Conca 2006, p. 319). The government has mainly relied on water commercialisation and privatisation to expand access to water services by introducing market mechanisms including cost recovery (Khan 2008, pp. 99, 105). While privatisation has only taken place in a number of municipalities (Conca 2006, pp. 353 et seq.), the commercialisation of water services has been of much wider effect. The principle of cost recovery has become official policy with the adoption of the *Growth, Employment and Redistribution* (GEAR) policy in 1996. In regard to access to water this policy had a number of adverse consequences. Exact figures vary, but still a great number of people lack access to water services (Kürschner-Pelkmann 2005, p. 402; Smets 2005, p. 62). Moreover, water service disconnections are widespread (Mehta 2005, p. 4; Francis 2005, p. 174) which could even result in a degradation of access to water supply (cf. generally Winkler 2008).

On the other hand, the South African Constitution of 1996 is regarded as being one of the most progressive in the world (Francis 2005, p. 156), in particular due to its far-reaching commitment to socio-economic rights (Liebenberg 2002, p. 2; Scott and Alston 2000, p. 214; Note 2007, p. 1082) including the human right to water. The South African Constitutional Court has ruled that these rights are justiciable<sup>5</sup> and there is an extensive body of case law on socio-economic rights, in particular on the rights to housing, health and social security<sup>6</sup>. In particular the *Grootboom judgment*<sup>7</sup>, whose implications for the water sector will be discussed below, can be regarded as a landmark judgment in the field of socio-economic rights (Liebenberg 2002, p. 10) and has caught the attention of many scholars (cf. Liebenberg 2002; Wesson 2004). South Africa thus has taken a leading role in the national judicial enforcement of socio-economic rights. Several judgments deal with the human right to water, that will now be presented.

### 2.2. Disconnection of Water Services

There have been some water cases decided by lower South African courts dealing with disconnection of water services. All of these cases refer to the obligation to respect existing water supply. Some legal provisions are relevant for all cases. Above all, section 27(1)(b) and (2) of the South African Constitution is to note. It reads:

(1) Everyone has the right to have access to

- a. ...
- b. sufficient food and water
- c. ...

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

This right is reiterated in section 3(1) of the Water Services Act reading

(1) Everyone has a right of access to basic water supply and basic sanitation.

Furthermore, section 4(3)(c) of the Water Services Act is of particular relevance. It is part of the procedures for the limitation of discontinuation of water services and provides that procedures must

(c) not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.

These basic water services are defined in the ministerial 'Regulations relating to compulsory national standards and measures to conserve water'<sup>8</sup>. Regulation 3 refers to the minimum standard.

3. The minimum standard for basic water supply services is –
- (a) ...
  - (b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month -

A first reported case dealing with a disconnection of water services is *Manqele v. Durban Transitional Metropolitan Council*<sup>9</sup>. The applicant, Mrs. Manqele living in a flat in Durban with her children, is one of the great number of people in South Africa whose water supply had been disconnected due to the non-payment of her water account. She claimed that the disconnection was unlawful in particular because it resulted in her being denied even access to basic services, even though she was unable to pay for these. She relied on Section 3(1) of the Water Services Act, but not specifically on her constitutional rights (Manqele judgment at 41).

The Court held that the right as included in the Water Services Act was at that point incomplete and therefore unenforceable. It is important to note that the Regulation which defined the term 'basic water supply' and set up the number of 25 litres per day per person had not yet been promulgated<sup>10</sup>. Therefore, the Court concluded that it had no guidance from the legislature or government on how to interpret the right embodied in section 3 of the Water Services Act. The judge argued that these are policy matters that are linked to the availability of resources and thus outside of his purview (ibid. at 43-44).

While the case was heard, the applicant argued that the provision of the Water Services Act must be understood in a way to at least fulfil the constitutional requirement. The judge turned down this argument stating that a case based on a violation of a constitutional right must be made properly and set up in the founding papers (ibid. at 44).

In the end, the judge argued that the applicant chose not to limit herself to the six kilolitres per month that the respondent provided free of charge, but to consume additional quantities. As a consequence of this behaviour, in the opinion of the judge, she cannot rely on her inability to pay for water services (ibid. at 46). Thus, the judge concluded that the disconnection had not been unlawful (ibid.).

This judgment has been widely criticised in literature. Kidd (2004, p. 131) argues that the Court fails to distinguish between a person's past behaviour and his or her current ability to pay. He is therefore of the opinion that a person falls in the ambit of section 4(3)(c) if he or she proves that he or she is currently unable to pay for water services. The result is that an indigent person may not be denied basic water services for non-payment. Instead water services can be limited (Kidd 2004, pp. 132 et seq.). Furthermore, the Court should have considered the fact that the respondent provides six kilolitres per month for free as standard practice and thus obviously has the means to do so (de Visser 2001). Thus, the Court could have concluded that the respondent was obliged to continue to supply this minimum amount.

Several months after the Manqele case, a second case was brought to court: *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*<sup>11</sup>. The residents of these flats in Hillbrow, Johannesburg launched an urgent application for interim relief, because their water supply had been disconnected which they regarded as unlawful.

The judge held that the matter relates to the duty to respect the access to water (Bon Vista Mansions judgment at 629). In order to interpret the Bill of Rights in the South African Constitution and in casu in particular Section 27(1)(b) the judge considered international law as stipulated by section 39(1)(b) of the Constitution. He stated that international law is particularly useful for the interpretation when the language used in international instruments and the South African Bill of Rights is similar as in the case of the Social Covenant. He thus concluded that the constitutional duty must be understood in the same way as duties under the Covenant, namely that the State must refrain from actions that would deprive individuals of their rights (ibid.).

Hence, the disconnection of water supplies is prima facie a breach of the constitutional duty to respect the right to water and requires constitutional justification (ibid. at 630). The onus lies with the respondent who has to show that the disconnection was legal, ie in compliance with the Constitution and the Water Services Act, in particular its section 4(3) (ibid. at 632). At the time of the interim order, the Council had not yet discharged that onus. Therefore, the judge ordered to restore the water supply of the residents pending the final determination of the application (ibid. at 633).

### 2.3. Installation of Prepayment Metres

The issue of the installation of prepayment metres has been raised in a recent judgment delivered by the Johannesburg High Court: *Lindiwe Mazibuko and Others v. The City of Johannesburg and Others*<sup>12</sup>. The applicants are residents of Phiri, a township in Soweto, where prepayment metres have been installed. The application was supported by the Centre for Applied Legal Studies of the University of Witwatersrand and the Coalition Against Water Privatisation. Apart from the issue of prepayment metres, the judgment is also concerned with the amount of water supplied, which will be considered below.

The prepayment metres installed in Phiri are charged with a free amount of six kilolitres per month per household. Once this amount is exhausted, the metres shut off automatically and people are required to purchase water units (Mazibuko judgment at Para. 3, 84). In the household of the applicant, this results in lack of access to water for two weeks every month, as the six kilolitres provided free of charge are only sufficient for two weeks (ibid. at Para. 84), in particular because of the large number of people relying on the amount of water provided to the household. The Court held that the automatic shut off of the metre has the same effect as the disconnection of water services (ibid. at Para. 84).

In the rather lengthy and detailed judgment, the Court makes extensive reference to international and comparative law dealing with the disconnection of water services (ibid. at Para. 86 et seqs.). Apart from that, it relied on two main arguments: It argued that in the case of prepayment metres cut-offs occur without reasonable notice and do not allow for making representations and explaining financial difficulties (ibid. at Para. 93). The Court therefore concluded that the installation of prepayment metres is unlawful and unreasonable as it amounts to a violation of

section 33 of the South African Constitution that provides for lawful, reasonable and procedurally fair administrative action (ibid. at Para. 92.).

Moreover, the Court held that the installation of prepayment metres is discriminatory on the basis of colour. While historically 'white' areas receive water services on credit with the opportunity make arrangements in the case of financial difficulties and to settle arrears, prepayment metres are installed in poor and predominantly 'black' areas such as in Phiri (ibid. at Para. 94, 151, 153). The judgment declared the prepayment water system to be unconstitutional and ordered that the residents of Phiri must be provided with the option of a metered supply (ibid. at Para. 183).

## **2.4. Access to Water Supply**

The judgments discussed so far deal with the disconnection of water services<sup>13</sup> as well as the installation of prepayment metres and thus mainly refer to the obligation to respect an existing water supply. The question arises, if the obligation to provide access to water supply, thus to fulfil the right to water for people who do not yet have access can also be enforced by the courts. In this context, the *Grootboom Judgment* of the South African Constitutional Court has to be considered first, even though it does not directly deal with the question of access to water, because it is groundbreaking in regard to obligations to fulfil socio-economic rights. The applicant, Mrs. Irene Grootboom, was part of a group of people previously living in an informal squatter settlement called Wallacedene on the Eastern fringe of Cape Metro. Due to the appalling conditions they decided to move and occupied vacant, but privately owned land from which they were then evicted and rendered homeless (Grootboom judgment at 1176). Their situation can be regarded as symptomatic of the intolerable conditions under which many people in South Africa still have to live (ibid. at 1175).

The case was thus primarily concerned with housing rights, but the Court stated several times that all socio-economic rights have to be interpreted together (ibid. at 1181, 1184) and made specific reference to section 27 including the right to water (ibid. at 1204, 1208). The test of reasonableness that the Court developed in the judgment therefore also applies to the right to water. This view is also acknowledged by the Department of Water Affairs and Forestry which makes specific reference to the *Grootboom judgment* in its Strategic Framework (2003, p. 51).

### **2.4.1. Grootboom Judgment – Concept of Reasonableness**

In the *Grootboom judgment*, the Constitutional Court developed the notion of reasonableness. It pointed out that section 26(2) and 27(2) of the Constitution respectively oblige the State to establish a coherent programme directed toward the progressive realisation of the rights enshrined in these sections (Grootboom judgment at 1190). It must be ensured that measures are reasonable in their conception and their implementation. This includes that programmes must be balanced and flexible and take account of short-, medium- and long-term needs (ibid. at 1191).

One statement of the Court is of particular importance: A programme that excludes a significant group of society cannot be reasonable. This refers in particular to those whose needs are most urgent, thus the most indigent part of society. Therefore, it is not sufficient to show a statistical advance regarding the progressive realisation of rights. The Court explicitly states that measures that fail to respond to the needs of the most desperate may not pass the test of reasonableness (ibid.). Rather, it must be ensured that a significant number of people in desperate need – although not all people – are afforded relief (ibid. at 1202). The Constitutional Court thus has developed a concept to scrutinise government policies to fulfil socio-economic rights. It does not prescribe any particular measures to the government, but examines whether the measures the government has chosen are reasonable and stipulates a number of important requirements in this regard. In so far, the notion of reasonableness provides a means for the judicial enforcement of the obligation to fulfil, that has thus proven to be justiciable.

### 2.4.2. Criticism of the Court's Concept of Reasonableness

The Court's approach has been criticised for not being far-reaching enough. It has been proposed that the Court should have applied the minimum core approach developed by the CESCR (Bilchitz 2003b, p. 3; cf. as well Scott and Alston 2000, pp. 262 et seqs; but also Wesson 2004), which the Court has rejected to apply (Grootboom judgment at 1188). The approach could provide the basis for more far-reaching and more specific decisions on the obligation to fulfil the human right to water. The approach acknowledges that there are certain minimum needs, such as the need for a minimum amount of water that are more urgent than others and therefore enjoy priority over other needs. They are to be fulfilled without delay (Bilchitz 2003a, pp. 11 et seq.). As such, the minimum core content would be the baseline from which the progressive realisation of the right to water, to which section 27(2) of the South African Constitution obligates, has to start (Bilchitz 2003b, p. 3, Bilchitz 2003a, pp. 11 et seq.).

Thus, the government would be obliged to fulfil the right to water immediately, eg by immediately expanding its FBW Policy to all indigent people in need and supply them with this minimum amount. It would not be sufficient to ensure access to water services for a significant number of people in desperate need. Rather, the minimum core approach would oblige the government to supply all people living in conditions comparable to those of Mrs. Grootboom with access to minimum essential services immediately.

However, the minimum core approach does not prescribe the impossible. There may be situations in which the fulfilment of even these minimum needs is impossible. In this case, the State must demonstrate that every effort has been made and all available resources have been used to satisfy these minimum needs as a matter of priority (CESCR 1990, Para. 10, Bilchitz 2003a, p. 16). This signifies an important shift of burden of proof towards the State.

### 2.4.3. Mazibuko Judgment

The judgment in the *Mazibuko case* already mentioned above in regard to prepayment metres is also relevant in this context because the second main issue raised in the case is the amount of water supplied as free basic water and because the Court has dealt with the minimum core approach in much detail. South Africa's Free Basic Water Policy has been adopted in 2001 aiming to provide each household with 6000 litres of clean water every month free of charge, which translates to 25 litres per person per day in a household of eight (Smith and Green 2005, p. 446; Winkler 2008).

The applicants in the *Mazibuko case* argued that this amount is insufficient, firstly, because often more than eight people live in one household as in the case of the first applicant, and secondly, because even 25 litres per day per person are not sufficient to meet basic needs (*Mazibuko judgment* at Para. 9, 125; cf. as well Smith and Green 2005, pp. 449 et seq.; WHO 2003; Winkler 2008). They requested the Court to order the water services provider to supply a free basic water supply of 50 litres per person per day (*Mazibuko judgment* at Para. 11).

The judgment provides an interpretation to combine the reasonableness review of the Constitutional Court with the minimum core approach. Recognising that the Constitutional Court has not applied the minimum core approach in the *Grootboom judgment*, the Court held that is nevertheless left a caveat to potentially consider it (*ibid.* at Para.131). Whereas the Constitutional Court argued that the determination of the minimum core presents difficult questions (*Grootboom judgment* at 1188), the High Court in the *Mazibuko case* held that it is possible to determine the minimum core if the Court is provided with sufficient information – at least in the case of access to water services (*Mazibuko judgment* at Para. 131 et seqs.).

Dealing with the amount of water to be supplied, the Court first considered the validity and constitutionality of the regulation<sup>14</sup> setting the standard of 25 litres per person per day (*ibid.* at Para. 25 et seqs.). Again, it considered international law extensively (*ibid.* at Para. 31 et seqs.). The Court concluded by accepting 25 litres per person per

day as set out in the regulation as the minimum, and thus held the regulation not to be invalid (ibid. at Para. 53 et seq.).

However, it also held that the City has the obligation to provide more than this minimum if residents' needs so demand and the respondents have the available resources to do so (ibid. at Para. 126). The Court concluded that an amount of 25 litres is insufficient to meet the applicants' needs, particularly where water is used for water-borne sanitation systems as well as for people living with HIV/AIDS (ibid. at Para. 179). The City of Johannesburg was ordered to provide 50 litres per person per day of free basic water. Thus, the Court calculated this amount on a per-person-basis. In this regard, the decisive question was whether the City had the resources to do so, which it did not contest (ibid. at Para. 181 et seqs.). This judgment thus made a very specific order in regard to the amount of water to be provided and thus clearly relates to the obligation to fulfil the right to water.

## 2.5. Conclusion for South Africa

Due to the explicit recognition of the right to water in its Constitution and its leading jurisprudence on socio-economic rights, South Africa has received much attention in regard to the realisation of the right to water (cf. Liebenberg 2001, p. 56). A number of cases decided by South African courts deal with the disconnection of water services by municipalities and thus refer to the obligation to respect. Although water services have been privatised in South Africa in a number of municipalities, the human right to water has not been invoked in the context of privatisation. The obligation to protect has thus not become relevant.

The *Grootboom judgment* relates to the obligation to fulfil socio-economic rights. The notion of reasonableness developed in it allows courts to scrutinise whether government policies aiming at the progressive realisation of the human right to water are reasonable in their conception and implementation. The recent judgment of the Johannesburg High Court, that had been eagerly awaited, has provided an interpretation to link the reasonableness review to the minimum core approach. It has set up very specific requirements in regard to access to water services and the government's obligation to fulfil these by ordering the City of Johannesburg to provide 50 litres of free basic water per person per day. Moreover, the Court has declared the installation of prepayment metres to be unconstitutional.

All in all, South African courts have addressed a large range of issues relating to different kinds of obligations. Not only has the obligation to respect existing access to water proven to be justiciable, but the recent judgment in the *Mazibuko case* shows that courts can also enforce the obligation to fulfil.

## 3. Judgments from Argentina

Argentina has not explicitly recognised the human right to water in the Constitution, but it has included the right to a healthy environment in Art. 41, which is understood to include the right to water (Picolotti 2003, p. 8). Furthermore, in Art. 75 Para. 22 the Constitution has incorporated several international human rights instruments including the Social Covenant, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women. These treaties enjoy constitutional status and are to be understood to complement the rights explicitly guaranteed by the Constitution. The Argentinean Supreme Court has held that courts should follow authoritative interpretations by UN treaty bodies in interpreting these treaties (Fairstein 2006, p. 107). In so far, the above mentioned General Comment No. 15 of the CESCR becomes relevant.

Many issues that arise in Argentina are related to the reform of the water and sanitation system in the early 1990ies that allowed for the participation of the private sector (Fairstein 2006, p. 95). Disconnections of water services have to be seen in this context. Moreover, a great number of people still do not have access to safe water supply (Fairstein 2006, p. 95).

### 3.1. Disconnection of Water Services

A case similar to the disconnection cases from South Africa is *Quevedo Miguel Angel y Otros c/ Aguas Cordobesas S.A.*<sup>15</sup>. The water supply of a group of indigent families in the City of Cordoba had been disconnected by the water services company due to non-payment. Unlike in the South African cases, water was not provided by the municipality itself, but by a private company. This affects the kind of obligation borne by the State: While the case of a disconnection through a municipality refers to the State's obligation to respect an existing water supply, a disconnection carried out by a private company does not relate to the obligation to respect as it is not the State acting. Rather, in cases like this one the State's obligation to protect the right to water in the context of water supply privatisation by establishing the necessary regulatory framework becomes relevant.

The applicants requested the Court to obligate the company to provide them with at least 200 litres of water per family per day. In its judgment, the Court stated that the provision of a minimum quantity of drinking water must be guaranteed to everyone, which follows from its character as a public utility. By making reference to a provincial law that establishes that everyone has the right to receive adequate public services to meet their needs, the judge held that the State is responsible for providing drinking water, as it is an essential service (Quevedo Miguel Angel judgment at Para. VII).

Furthermore, the Court had to consider the regulatory framework of the concession establishing a guaranteed amount of 50 litres daily per family that were to be provided regardless of payment. The Court held that such an amount is not sufficient to meet the basic requirements of hygiene and health of a standard family. The Court therefore ordered the company to provide a minimum of 200 litres of potable water daily per family. It explicitly stated that it is possible to reach an agreement with the State authorities to be compensated for the costs (ibid. at Para. VIII). This clearly shows that the judgment refers to the State's obligation to protect the right to water.

### 3.2. Water Quality Concerns

The case *Menores Comunidad Paynemil*<sup>16</sup> relates to the pollution of water with heavy metals by an oil company resulting in the contamination of the aquifers on which the indigenous Paynemil Community in Neuquen relied for water supply. Health studies revealed high levels of toxic metals in people's blood and urine. The Children's Public Defender filed an 'acción de amparo' (an expedited procedure) against the government holding that it had violated its obligation to protect the right to health.

The Court stated the government had not taken any reasonable measures to tackle the pollution problem, even though it was informed about the situation threatening the health of the Paynemil community. It therefore ordered the government to provide 250 litres of drinking water per person per day and to ensure the provision of drinking water by appropriate means within 45 days.

This order shows the close relation of the different obligations in the tripartite distinction. After the government had violated its obligation to protect the Paynemil community from the pollution by the oil plant, it has an obligation to fulfil the right to water, at least in form of an interim relief. However, in the long-run a sustainable solution will have to be found impeding the pollution of drinking water sources by the oil plant, thus again relating to the obligation to protect.

### 3.3. Access to Water Supply

The case *Marchisio José Bautista y Otros*<sup>17</sup> deals with water pollution as well as the lack of access to safe drinking water thus stressing the linkages between the two issues. The case takes place in some poor neighbourhoods in the city of Córdoba. Not being connected to the public water distribution network, the neighbourhoods rely on domestic groundwater wells that are, however, heavily polluted with faecal matter and other contaminants. Furthermore, a treatment plant has been built upstream on the river close to these neighbourhoods. The capacity of this plant is not sufficient for a city of the size of Córdoba resulting in the daily spillage of untreated sewer-water

into the river (Marchisio José Bautista judgment at Para. V). The case was litigated with support of an Argentinean NGO (CEDHA) and addressed specifically the right to safe drinking water.

In its judgment, the Court acknowledged this right as being implied in the right to health and ruled that the State was *inter alia* responsible for violating the human right to water. It made specific reference to several international human rights instruments incorporated in the Argentinean Constitution: Art. 25 of the Universal Declaration of Human Rights as well as Art. 11 and 12 of the Social Covenant. Moreover, the Court specifically mentioned General Comment No. 15 on the Right to Water stressing that access to safe water is indispensable for the right to health. The Court continued to point out that the right to health includes measures to be taken to prevent damages to health such as providing water and obliges the State to take positive measures (*ibid.* at Para. VIII).

The Court ordered the State to address the situation immediately and to take urgent measures, in detail to adopt the measures necessary to minimise the environmental impact of the plant until a permanent solution for its functioning will be found and to provide 200 litres of safe drinking water per household per day until the full access to the public water services is ensured (*ibid.* at Para. VIII). The decision thus includes a positive obligation for the State to provide safe drinking water in the long-run by building a sewage system that has sufficient capacity, but due to the urgency of the situation also by providing short-term relief. Thus, it clearly relates to the obligation to fulfil. The short-term relief of providing 200 litres per day can be related to the core content of the right to water, while building a sewage system aims at the full realisation of the right to water that has to be achieved progressively over a longer period.

### **3.4. Conclusion for Argentina**

The cases from Argentina demonstrate that the full spectrum of human rights obligations relating to the human right to water can and have been addressed by courts. The cases outlined above address a broad range of issues: disconnection of water services by private companies, thus referring to water privatisation, water pollution and the lack of access to water supply. In regard to the obligation to fulfil, courts have distinguished between short-term relief and sustainable long-term solution thus addressing the core obligations as well as the obligation to the full realisation of the right to water to be achieved progressively.

Moreover, the example from Argentina shows that NGOs can play an important role in supporting litigation (cf. Tushnet 2005, p. 5; Smets 2005, p. 51), especially when people are not even aware of their rights (cf. Mehta 2005, pp. 6, 9). In such a context NGOs can undertake significant work in reaching out to the communities, awareness-raising and finally supporting litigation.

## **4. Judgments from India**

In India, neither the human right to water nor the right to a healthy environment is explicitly recognised in the Constitution. Art. 39(a) of the Constitution entails the right to an adequate means of livelihood and Art. 48A provides for the protection and improvement of the environment. However, these are included as directive principles of State policy and Art. 37 of the Constitution explicitly states that these principles shall not be enforceable in court.

Yet, the Indian Supreme Court and High Courts have developed sophisticated case law on the right to water and similar issues revolving around Art. 21 of the Indian Constitution which guarantees the right to life. They have interpreted and developed this guarantee in wide terms to include *inter alia* the right to a healthy environment (Pathak 2000, p. 128; Nomani 2000, p. 121). This jurisprudence, that has developed over the last more than 15 years, is of paramount importance for the acknowledgement of the human right to water in India. The expanded interpretation of the right to life has enabled the Indian Courts to overcome objections regarding the justiciability of socio-economic rights (Muralidhar 2004, p. 25; Note 2007, pp. 1080 et seq.; Kothari 2004).

This body of case law has to be seen in the context of public interest litigation and is inextricably linked to its upcoming. Beginning in the 1970s the stage was set for judicial activism that also found its expression in public interest litigation. This form of litigation aims to enable easier access to justice for deprived sections of society and is often used when the rights of a larger public have been violated (Muralidhar 2004, p. 25; Kothari 2004). It allows any individual or organisation to approach the courts for the benefit of society (Desai 1993, p. 30; Pant 2003, p. 12). Such litigation has enormous importance in cases being concerned with environmental matters and has acted as a catalyst for the courts to develop extensive jurisprudence on the right to a healthy environment as being derived from the right to life (Desai 1993, p. 39; Pathak 2000, pp. 127 et seqs.). This provides an opportunity for NGOs to play an important role in litigating the right to water.

The first cases in which the Supreme Court of India mentioned the right to water were *Charan Lal Sahu v. Union of India*<sup>18</sup> and *Subhash Kumar v. State of Bihar and Others*<sup>19</sup> (cf. Anderson 1996, pp. 216 et seq.; Pant 2003, p. 14). The Court observed in *Subhash Kumar* that the right to life under Art. 21 'includes the right of enjoyment of pollution free water and air for full enjoyment of life' (Subhash Kumar judgment at 424). This view has since then been expressed in many judgments. This paper only presents a selection of these showing the different aspects of the Indian jurisprudence<sup>20</sup>.

#### 4.1. Water Availability Concerns

The case *F.K. Hussain v. Union of India*<sup>21</sup> before the High Court of Kerala is concerned with the special situation on some coral islands where water resources are scarce and salt water intrusion into the groundwater is a major concern. The administration had developed a scheme to increase water supply by extracting more groundwater. The petitioners were of the opinion that such an augmented extraction would upset the fresh water equilibrium and lead to salinity of groundwater.

The court followed this argumentation and held that the administrative action would amount to an infringement of Art. 21, as the right to life 'is much more than the right to animal existence. ... The right to sweet water, and the right to free air, are attributes of the right to life, for, these are basic elements which sustain life itself' (F.K. Hussain judgment at Para. 7). The Court obligated the administration to ensure that its action will not result in salt water intrusion in order to protect the existing water supply and as such to respect the right to water of the inhabitants of the islands.

Another case dealing with groundwater exploitation is *Perumatty Grama Panchayat v. State of Kerala*<sup>22</sup> before the High Court of Kerala this time referring to the obligation to protect. It was concerned with the cancellation of a licence of a factory producing non-alcoholic beverages due to excessive exploitation of groundwater resources. The extraction led to acute drinking water scarcity in the region as water sources have dried up. As a result, the village council no longer permitted the company to extract groundwater. It was held by the company that there is no law governing the use of groundwater and that everybody is free to extract groundwater which is available under the land that he or she owns.

The Court pointed out that such a view is incompatible with the emerging environmental jurisprudence developed around Art. 21 of the Constitution of India. The Court made reference to Principle 2 of the Stockholm Declaration stating that the natural resources of the earth must be safeguarded for the benefit of present and future generations (Perumatty Grama Panchayat judgment at Para. 13). Furthermore, the Court relied on the public trust doctrine as part of the legal system. According to this doctrine, '[t]he State is the trustee of all natural resources which are by nature meant for public use and enjoyment' (ibid. at Para. 34). As such, the State is obligated to protect the natural resources. The Court concluded that the underground water belongs to the public and must be protected by the State against excessive exploitation. If the State failed to do so, this would be tantamount to an infringement of the right to life under Art. 21 of the Constitution as the right to clean water forms part of this right (ibid.).

The Court acknowledged that normally every landowner can extract groundwater from the ground under the land he or she owns as a customary right. However, this is restricted to a reasonable amount, ie the amount necessary for domestic uses and to meet agricultural requirements. In the present case the amount of water that was withdrawn exceeded this quantity. Furthermore, the Court pointed out that the water was converted into products and transported away thus breaking the natural water cycle. The Court showed the drastic consequence if the company and every other landowner would be permitted to extract as much groundwater as he or she wishes: the entire region would turn into a desert (ibid.).

The Court concluded that the excessive exploitation of groundwater is illegal and the State has a duty to prevent this. This is part of its obligation to protect. The Court therefore directed that the company stops drawing groundwater. However, this judgment is not the last one rendered in this matter. In 2005, a bench of the Kerala High Court reversed the decision by the single judge and decided that the company could extract a certain amount of water under certain conditions. Currently, the matter is pending with the Supreme Court (Muralidhar 2006, p. 79).

#### **4.2. Water Quality Concerns**

Moreover, the obligation to protect becomes particularly relevant in cases dealing with water pollution. The fact that 200 million litres of raw sewage and 20 million litres of waste are dumped into the Yamuna River in Delhi every day (UNDP 2006, p. 143) illustrates the extent of water pollution. In this regard, tanneries, that play an important role in the Indian economy, have been a matter of concern before the courts in several cases in addition to a great number of other cases dealing with water pollution. These cases illustrate the conflict between economic development and environmental concerns (Muralidhar 2006, p. 75).

As far as the reference to the human right to water is concerned, *Vellore Citizens Welfare Forum v. Union of India*<sup>23</sup> stands out in as far as it explicitly links environmental concerns to the right to water. The case is based on a public interest petition brought to the Court by the Vellore Citizens Welfare Forum. The Forum was concerned about the water pollution caused by more than 900 tanneries in the State of Tamil Nadu that were discharging untreated effluent in agricultural fields, waterways and open land. The effluent ended up in the River Palar which was the main source of water supply to the residents of the area. As a result, no potable water was available to the residents.

The Court acknowledged that the leather industry is of vital importance to the country, generates foreign exchange and provides employment opportunities, but stressed that this development must be sustainable. The economy must not destroy the ecology and constitute a hazard for human health (Vellore Citizens Welfare Forum judgment at 2720). The Court elaborated on the concept of sustainable development making reference to the Stockholm Declaration, the Brundtland Report and Agenda 21. It did not hesitate to hold that the concept has become part of customary international law (ibid.). The Court continued elaborating on the precautionary principle and polluter-pays principle thus in large parts focusing on environmental law, but also linked these principles to Art. 21 of the Constitution (ibid. at 2721). Furthermore, it stressed that the Constitution and the statutory provisions protect inter alia the right to clean water citing the common law right of clean environment as the source of this right (ibid. at 2722). Finally, the Court ordered the government to implement the precautionary and polluter-pays principles and to ensure that the compensation reaches the individuals and families who have suffered from the pollution (ibid. at 2726).

At the beginning, the Court had remarked that efforts lasting more than ten years had been made to persuade the tanneries to construct effluent treatment plants or other pollution control devices, but had not been successful. Indeed, the Court itself had been monitoring the matter for about four years and had issued various orders (ibid. at 2719). Therefore, the Court saw no justification to grant much more time. It directed the tanneries to set up pollution control devices within a specified time frame of a few months. Then, they had to obtain the government's

consent to operate. If refused, they were ordered to be closed (ibid. at 2726 et seq.). The case thus shows that the State has an obligation to prevent third parties – here the tanneries – from undermining the right to water of others and to protect people from the pollution of their drinking water.

### 4.3. Access to Water Supply

According to the official Millennium Development Goals database, only 86 percent of the Indian population had access to an improved drinking water source and 33 percent were using an improved sanitation facility in 2004 (MDG Indicators 2008). The cases analysed so far, however, have not been directly concerned with questions of accessibility. Yet, one case that is concerned with the lack of access to water supply is to be mentioned in this context: *S. K. Garg v. State of Uttar Pradesh and Others*<sup>24</sup>. It was filed as a public interest litigation aiming to ensure regular water supply in the city of Allahabad whose water supply system was functioning very poorly resulting in a water shortage in the city. Infrastructure was often out of order and many localities received either no water at all or only very limited quantities.

In its judgment, the Court held ‘the right to get water is part of the right to life guaranteed by article 21 of the Constitution, but a large section of citizens of Allahabad are deprived of this right’ (S. K. Garg judgment at 42). It noted that many people were suffering from this deprivation, in particular in the summer. In its order, the Court set up a committee that was directed to explore the problem of lack of access to water supply and to find a solution. The Court ordered the committee to consider immediate remedial steps, but also long term solutions. It made several suggestions, but stated that it lacked the technical expertise to take a decision. The decision was therefore delegated to the committee that was required to submit a report to the Court. However, the Court also issued a number of immediate directions: The authorities were ordered to repair the existing tube wells and hand pumps that had broken down within a week as well as to regularly test water to ensure its drinking water quality.

In this case, the High Court of Allahabad thus approached the question of lack of access to water supply pertaining to the positive obligation to fulfil the right to water. In its judgment, it acknowledged that it lacked the expertise (and competence) to decide on how the government had to solve the problem and realise the right to water. Therefore, it turned to the innovative solution of setting up a committee that was directed to look into the issue.

### 4.4. Conclusion for India

As it has already been true for South Africa and Argentina, the cases from India as well address a great variety of issues ranging from groundwater exploitation over water pollution to the lack of access to water supply. The cases refer to the entire range of the State’s duties: obligations to respect, to protect and to fulfil. The cases that are concerned with the availability of water resources refer to the obligation to respect and to protect respectively. Cases that deal with the issue of water pollution also relate to the obligation to protect, while the last case concerning the lack of access to water supply is associated with the obligation to fulfil. In this context, the Court has chosen the innovative approach of setting up a committee to explore possible solutions to the problem of lack of access to water services.

## 5. Conclusion

It has been shown that there is a wide range of cases dealing with the human right to water. The recognition of the right to water is thus not only lip-service, but the right to water has proven to be an enforceable human right in many instances. Courts that addressed the right to water are on different continents and part of different legal systems. Dealing with the human right to water in a national context, the focus has often been on South Africa. Yet, the above-outlined case law from Argentina and India as well as that from a number of other States is also noteworthy.

The courts had different legal provisions to start from: Whereas the human right to water is explicitly recognised in the South African Constitution and the Argentinean Constitution includes the right to a healthy environment, LGD 2008 Issue 1 [http://go.warwick.ac.uk/elj/lgd/2008\\_1/winkler](http://go.warwick.ac.uk/elj/lgd/2008_1/winkler) Commentary

jurisprudence from India relies on the right to life and interprets this very broadly. The South African model has the advantage of being transparent due to the explicit recognition of the right to water allowing everyone to know his or her rights. Yet, the *Manqele* case shows the importance of competent legal support arguing properly. Moreover, the enforcement of the right to water depends in large parts on the willingness of the courts to interpret the provisions in a broad sense. In so far, judgments from Argentina and India have turned out to be very innovative.

These courts have addressed a broad range of aspects pertaining to the right to water. Issues including availability, accessibility, quality, quantity, affordability and fair procedures have been covered. Moreover, courts have addressed these issues under different human rights obligations. The obligations to respect and to protect are regarded as relatively easy to adjudicate. Courts have addressed these in the context of disconnections of water services, the installation of prepayment metres, water pollution and concerns regarding water availability.

Although it has often been stated that the obligation to fulfil is not justiciable and there is much reluctance, it has been shown that courts do not hesitate to issue decisions ordering positive measures to be taken that have an effect on resource allocation. In regard to the obligation to fulfil, courts have developed the most innovative approaches. The judgment by the High Court of Allahabad establishing a committee to find solutions to the city's water crisis has to be recalled in this regard. While the South African Constitutional Court has developed the notion of reasonableness in its landmark *Grootboom judgment* that allows scrutinising whether government policies aiming at the realisation of the right to water are reasonable, the recent *Mazibuko judgment* of the Johannesburg High Court is much more specific in regard to obligations to fulfil the right to water by ordering the city to supply 50 litres of water per person per day.

Moreover, whereas the South African Constitutional Court has so far rejected to apply the minimum core approach, the High Court in the *Mazibuko case* has found an interpretation to include the approach in the reasonableness review. Other judgments can also be understood to encompass the concept of a minimum core. Several judgments provide for an interim relief in a situation of urgency and include orders to provide immediately a certain amount of water, eg 200 litres per day per household in the *Quevedo Miguel Angel* and *Marchisio José Bautista* judgments. This could be understood as part of such core obligations, even though it can be argued that the amount provided for in some cases reaches beyond these minimum requirements (cf. Bluemel 2004, p. 985 referring to the *Menores Comunidad Paynemil* case). All in all, it can thus be stipulated that courts have addressed all types of different obligations in the tripartite distinction of obligations to respect, to protect and to fulfil.

The case law from South Africa, Argentina and India could serve as orientation for courts in other countries. While States that have included explicit provisions on the right to water in their constitutions could in particular be guided by South African case law, the constitutions of many other States contain the right to a healthy environment (Lee 2000, p. 314) as in Argentina whose jurisprudence could serve as orientation. Furthermore, the development in India shows that courts can interpret the right to life in a way to cover the right to water. This model has already been followed in a number of other States besides India such as Nepal, Pakistan and Bangladesh. It will be interesting to see, what further developments will take place in regard to the national judicial enforcement of the human right to water and in how far courts play a role in improving the situation of those who currently do not have access to water and sanitation facilities.

## Endnotes

<sup>1</sup> Cf. Draft Amendment by the Belgian Senate to include the right to water in Art. 23 of the Belgian Constitution, <<http://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=50332290>> (17 January 2008).

- <sup>2</sup> Cf. Food and Water Watch (2008) 'Defend the Global Commons, Newsletter, February 2008', p. 2 <<http://www.foodandwaterwatch.org/world/publications/world-newsletters/defend-the-global-commons-february-2008>> (10 April 2008).
- <sup>3</sup> Cf. Martinez, H (2007) 'Colombia: Campaign Seeks to Make Water a Constitutional Right', <<http://ipsnews.net/news.asp?idnews=39013>> (10 April 2008).
- <sup>4</sup> Cf. Art. 65 of the Draft Constitution, <<http://confinder.richmond.edu/admin/docs/KenyaProposed220805.pdf>> (17 January 2008).
- <sup>5</sup> Cf. s. 38 of the Constitution; Constitutional Court of South Africa: Certification of the Amended Text of the Constitution of the Republic of South Africa, 1997 (1) BCLR 1 (CC).
- <sup>6</sup> Cf. Constitutional Court of South Africa: Soobramoney v. Minister of Health, KwaZulu-Natal 1997 (12) BCLR 1696 (CC); Constitutional Court of South Africa: Government of Republic of South Africa v. Grootboom 2000 (11) BCLR 1169 (CC); Constitutional Court of South Africa: Minister of Health v. Treatment Action Campaign 2002 (10) BCLR 1033 (CC); Constitutional Court of South Africa: Khosa v. Minister of Social Development 2004 (6) BCLR 569 (CC); Constitutional Court of South Africa: President of RSA and Another v. Modderklip Boerdery (Pty) Ltd and Others 2005 (8) BCLR 786 (CC).
- <sup>7</sup> Constitutional Court of South Africa: Government of the Republic of South Africa and Others v. Grootboom and Others, 2000 (11) BCLR 1169 (CC).
- <sup>8</sup> Republic of South Africa, Regulations relating to compulsory national standards and measures to conserve water, <<http://www.dwaf.gov.za/Documents/Notices/Water%20Services%20Act/SEC9DREG-20%20April%202001.doc>> (29 June 2006).
- <sup>9</sup> High Court, Durban and Coast Local Division: Manqele v. Durban Transitional Metropolitan Council, (2002) 2 All SA 39 (D).
- <sup>10</sup> The Regulation dates from 20 April 2001, whereas the judgment was delivered on 7 February 2001.
- <sup>11</sup> High Court, Witwatersrand Local Division: Residents of Bon Vista Mansions v. Southern Metropolitan Local Council, 2002 (6) BCLR 625 (W).
- <sup>12</sup> High Court, Witwatersrand Local Division: Lindiwe Mazibuko and Others v. The City of Johannesburg and Others, 30 April 2008, unpublished at the time of writing, available at: <[http://www.law.wits.ac.za/cals/basic\\_services/phiri/Mazibuko%20Judgment.pdf](http://www.law.wits.ac.za/cals/basic_services/phiri/Mazibuko%20Judgment.pdf)> (14 May 2008).
- <sup>13</sup> A third reported disconnection case is High Court, Transvaal Provincial Division: Highveldridge Residents Concerned Party v. Highveldridge TLC and Others 2003 (1) BCLR 72 (T).
- <sup>14</sup> Cf. the regulation mentioned in note 8.
- <sup>15</sup> Ciudad de Córdoba, Juez Sustituta de Primera Instancia y 51 Nominación en lo Civil y Comercial: Quevedo Miguel Angel y Otros c/ Aguas Cordobesas S.A., Acción de Amparo, 8 April 2002, <<http://www.cedha.org.ar/docs/doc220-spa.doc>> (22 June 2006).
- <sup>16</sup> Neuquen, Sala II, Cámara de Apelaciones en lo Civil: Menores Comunidad Paynemil, Acción de Amparo (Expte. No. 311-CA-1997, 19 May 1997), summary available at: Picolotti 2003, pp. 13 et seq.; COHRE 2004, pp. 110 et seq.
- <sup>17</sup> Ciudad de Córdoba, Primera Instancia y 8 Nominación en lo Civil y Comercial: Marchisio José Bautista y Otros, Acción de Amparo (Expte. No. 500003/36), 19 October 2004, <[http://www.fian.org/fian/pdf/SENTENCIA\\_Chacras%20de%20la%20Merced.pdf](http://www.fian.org/fian/pdf/SENTENCIA_Chacras%20de%20la%20Merced.pdf)> (22 June 2006).
- <sup>18</sup> Supreme Court of India: Charan Lal Sahu v. Union of India, (1990) AIR 1480.
- <sup>19</sup> Supreme Court of India: Subhash Kumar v. State of Bihar and Others, (1991) AIR 420.
- <sup>20</sup> Other judgments include Supreme Court of India: AP Pollution Control Board-II v. Prof. M.V. Nayudu (Retd.) & Others, (2001) 4 LRI 657 and Supreme Court of India: Narmada Bachao Andolan v. Union of India & Others, (2000) 4 LRI 696.
- <sup>21</sup> High Court of Kerala: F.K. Hussain v. Union of India, 26 February 1990, <<http://www.elaw.org/resources/text.asp?ID=1126>> (22 June 2006).
- <sup>22</sup> High Court of Kerala: Perumatty Grama Panchayat v. State of Kerala, 16 December 2003, <<http://www.elaw.org/resources/text.asp?id=2551>> (22 June 2006).
- <sup>23</sup> Supreme Court of India: Vellore Citizens Welfare Forum v. Union of India, (1996) AIR 2715.
- <sup>24</sup> High Court of Allahabad: S. K. Garg v. State of Uttar Pradesh and Others, Writ Petition No. 19754 of 1998, 28 May 1998, (1999) AIR All 41.

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