

The Water Dialogues- South Africa

## **Proceedings**

Working Group Meeting

Chartfield Guest House, Kalk Bay

9-11 March 2008

## Meeting Register

---

### Attendees

Marie Brisley (DWAF);  
Hameda Deedat (SA Water Caucus);  
Kathy Eales (Independent);  
Mary Galvin (WD-SA Coordinator);  
Laila Horton (PPP Unit of National Treasury);  
Neil Macleod (eThekweni Municipality);  
Jean Pierre Mas (JOWAM);  
Jeff Rudin (South African Municipal Workers' Union);  
Laila Smith (Mvula Trust);  
Jessica Wilson (Environmental Monitoring Group);  
Ann Harper (Facilitator);  
Erin Raab (Recorder)

### Apologies

Jay Bhagwan (Water Research Commission);  
Barry Jackson (DBSA);  
Sandile Mbanjwa (Mogale City Municipality)  
William Moraka (SA Local Government Association);  
Nolene Morris (Bloem Water);  
Bheki Ngubo (Department of Water Affairs and Forestry);  
Tony Sanders (Water and Sanitation Services, SA);

## Table of Contents

<b>9 March 2008</b> .....	<b>4</b>
I. Welcome and Introduction .....	4
II. Presentations on Contracts and Financing: Jean Pierre Mas, Laila Horton	4
<b>10 March 2008</b> .....	<b>5</b>
I. Welcome .....	5
II. Presentation on “Re-aligning expectations”: Mary Galvin .....	5
III. Discussion .....	7
IV. Discussion about specific case studies .....	8
<i>WG General Comments on Reports</i> .....	8
<i>iLembe Report</i> .....	10
<i>Ugu Report</i> .....	12
<i>Bushbuckridge Report</i> .....	14
V. Cape Town Bucket Sanitation System Short Film .....	18
<b>11 March 2008</b> .....	<b>20</b>
I. Opening.....	20
II. Cross Cutting Themes .....	20
<i>Equitable vs. Sustainable and Tariffs</i> .....	21
<i>Equitable Share and O&amp;M</i> .....	26
<i>Regulation</i> .....	28
III. Presentation on Phase 2 progress .....	31
<i>Maluti</i> – .....	31
<i>Johannesburg</i> .....	32
<i>Chris Hani</i> .....	32
<i>uThukela</i> .....	33
IV. Strategic Opportunities for Advocacy .....	33
IV. Reflections on Experience .....	34

**9 March 2008**

## **I. Welcome and Introduction**

Mary welcomed the group and introduced the presentations requested at the Working Group (WG) meeting in Salt Rock, August 2007. The presenters were Jean-Pierre and Laila Horton. Unfortunately Tony Sanders was unable to make a presentation since his work required him to travel out of the country.

## **II. Presentations on Contracts and Financing: Jean Pierre Mas and Laila Horton**

Three presentations were made (see attached power points):

Jean-Pierre Mas gave a presentation about contracts and financing that covered:

- 1) Issues of risk-assessment (the kinds of questions a municipality needs to ask before deciding on an approach or contract);
- 2) An explanation of the range of contractual options open to municipalities and what each one means in terms of risk allocation and regulation;
- 3) A discussion of the National Treasury's definition of PPP and how its lack of clarity has led to some confusion within the municipal sector;
- 4) International trends in contractual models from the private sector perspective;
- and
- 5) Issues in regulation of contracts ("The best regulation is achieved through open and fair competition")

Jean-Pierre gave Tony's presentation, which covered the issues surrounding the life-cycle of costs and returns of investment of the water and sanitation sector.

Laila Horton gave a presentation on the two key roles of the National Treasury: regulatory and technical assistance.

10 March 2008

## I. Welcome

Ann Harper welcomed the group and introduced the agenda.

Day One included:

- Re-aligning expectations,
- Drawing out cross-cutting themes from the reports
- Deciding how the WG wants to proceed with pilot cases.

Day Two included:

- Looking at the next round of case studies,
- Discussing avenues for advocacy and strategic opportunities for WD-SA, and
- Considering the implications of extending the life of WD in terms of WG member commitment.

## II. Presentation on “Re-aligning expectations”: Mary Galvin

Mary gave a presentation about the ways she and the Working Group need to re-align expectations for the project. She noted problems in the standard of reports (the BBR/Ugu reports not being as polished as expected). But, the issue actually revolves around something much broader: What have we learned from how the project is unfolding about what WD can do and what we can achieve?

### *Methodology of Research*

The original plan was to conduct around 20 case studies so that comparison amongst and between each institutional type would be possible. However, the pilot cases have taken more time and resources than anticipated, so we will be able to complete only six or seven cases. We shall still be able to make comparisons between cases using the CBO, management contract, and internal models. But with fewer cases the methodology will shift to ensuring that we have cases that are representative of each type of institutional approach specified in our chart. This has implications for the final analysis as we cannot draw conclusions in the same way from one case of each institutional type or conclusions comparing institutional types.

Some other necessary methodological changes identified during the first round of case studies included the need for financial analyses of each of the cases. In the pilot round financial analyses were done for Ugu and iLembe by Werner Zybrands, but he is not available for future cases. Researchers found the financial analyses helpful, and since most of the researchers are not qualified to do the kind of in-depth analysis on financial documents, we will need to identify someone new to do this for the new round of cases.

### *Management and Research Team Structure*

Why are we not able to do 20 cases? One of the major reasons the cases took so long to complete was the issue with managing researchers. Although their research was solid, the analysis and write up has been very weak. The teams for the pilot studies were comprised of junior and senior researchers, with the team as a whole responsible for delivering reports—and no one took real responsibility. Additionally, there were issues with how they cost their time since, despite there being concrete deliverables, researchers still looked at their work in terms of days and were not willing to go too far over the number of days they had allotted.

Having separate researchers working on community, financial and municipal research makes it challenging to integrate data. Some of the disjuncture is between these areas in reality, leading to natural lack of integration in reports. Ideally as questions arise from municipal interviews they should be followed up in community workshops and vice versa. There were timing and logistical obstacles to ensuring this happened. It remains a challenge.

None of the three reports was adequate when submitted by the research teams. The iLembe report needed more data so we had to bring in Glen Robbins to write the report and Werner Zybrands to do the financial analysis. The BBR report was initially written in a consultancy format and did not have an argument or put forward a case. Anne Mayer re-wrote the report over and above existing contract. The Ugu report was mostly unfinished when it was submitted. Gaps were identified and Mary went and did senior interviews herself, but eventually it became clear no one was going to write it up. Erin Raab was brought in to write it drawing on previous reports and a teleconference with the researchers as well as their field reports.

To prevent these problems from re-occurring, the following steps will be taken in the next phase:

First, each team will have an assigned team leader responsible for managing the team and ensuring quality deliverables. We will watch out for a bias in the writing toward the team leader's interests.

Second, expectations of researchers/ consultants will be more clearly defined in contracts. Penalties will be introduced if the expectations/requirements are not met.

Case studies were also delayed by the difficulty of obtaining documents, even WSDPs. After much time diligently chasing them up, Ruby obtained almost all of the documents we requested. It was interesting to find that our access was not blocked by municipalities trying to hide what was going on, but rather because they have not known where to find documents!

Mary is continuing to work on the contextual analysis (she has already worked on track changes from previous WG comments, etc.). The contextual analysis will be part of a

final paper which combines all of the WD-SA case studies. Before the case studies are presented, the document will have an introduction to the SA context, the history of WD and the WD-SA methodology.

At what stage do we accept the reports, meaning - how long do we go back and forth with edits – at what point do we say the data is not accurate enough, but this is good enough description; and then analysis, how much are we asking the researchers to do the analysis and at what point do we draw conclusions from the group. At a practical level, some of the researchers were hired in July last year, are meant to be finished, and are waiting to get paid. There is the ‘at what point are you beating a dead horse’...you take what has been submitted and move on?

When will we accept the reports? One point to remember is the case studies are not a ‘WD report’ they are the researchers’ reports. Any dissensions from the group can be added as an addendum. Then, we have to look at cross-cutting issues and make our own report. Additionally, the whole point of WD-SA is to engender dialogue. These will not stop here with the WG; we need to bring the cases and cross-cutting issues to the wider forum as well.

Proposed Process:

- Mary receives reports and passes them on to the WG
- WG gives comments, focusing on those places where there is inadequate data or gaps in analysis
- Mary gives the reports and feedback to the researchers for revisions
- Mary distributes final reports to WG
- Mary coordinates the production of the final product – an overall, synthesis report. WG names should be on the final report, not the case study reports.

### **III. Discussion**

Ann clarified what the WG needs to address with regards to the two phases of cast study research. First, a discussion needs to be held on the pilot case study reports wherein the WG identifies gaps and what lacks clarity. Second, the second round of case study reports needs to be discussed, and a plan of action developed.

A discussion emerged about the responsibilities of the researchers versus those of the WG: where should the analysis be done? On the one hand, some WG members felt it is not the researchers’ responsibility to draw out the over-arching message. First, because there will not be a ‘black and white’ answer from each of the case studies, and WG members will have differing ideas (but the whole group will have to put the stamp of approval on it at the end). Also, WG members may be better equipped to tackle the larger analytical questions. One member explained: “We have been thinking about these issues for two years and are expecting our researchers to be very on top of this wide range of issue in a very specific field (resource management/resource constraints, municipal roles/policy, transformation over time, practical issues with delivery, technology, revenue, govt finance, collection models, accountability and oversight

mechanisms, data, sustainability, etc.). These are all really complex, and the WG needs to start rethinking what is working and we need to learn what is working. Are municipalities given an impossible, complex mandate? Maybe we need to go beyond the studies, go back to the constitution, etc., as these are very complex and intertwined issues. With this in mind, how much analysis can we expect of the researchers? Most of analysis has to come from us...the WG needs to start grappling with what is coming out of the studies”.

Similarly, a few of the WG members felt the reports do not need to necessarily draw conclusions. They felt that while, in the beginning, the WG thought the research would uncover ‘the truth,’ but instead members have come to realise that a certain notion of ‘reality’ is not going to come out. There is no common understanding between the municipality and communities because they are not communicating with one another. It is the WG’s task is to unpack that at the meta-level so it does not need to happen in each of the reports. WG members hold many different viewpoints, thus it would be difficult to produce a report that everyone will agree with the point of view or analysis.

On the other hand, some WG members felt the reports should include more analysis than they currently do. For the amount of money WD-SA is paying researchers then we should be able to expect more analysis. There is now a wealth of information and if the researchers are more analytical it will make it easier for the WG to engage with the documents and make suggestions for conclusions, etc. This project is not about just collecting data, one of the major contributions is that this is a valuable archive of information about what is/has been going on and each case should be able to stand on its own.

It was suggested the reports are re-written to draw out and enhance the analysis, but the meta-analysis will be left up to the WG. A reminder was given that when there are truly conflicting comments from the WG, they will simply have to be noted in an addendum, rather than trying to take one side or another in the report itself.

#### **IV. Discussion about specific case studies**

After a brief break, WG members began discussing the pilot round of case study reports.

##### ***General Comments***

##### **All reports should have:**

- Main arguments set out clearly in the introduction
- An explanation of “this is the arrangement, this is how it works, these are the lessons learned about the institutional model. Then the lessons about the rest or interesting bits that stand out can be relayed”.
- A section or comments on how the situations are set-up that allowed the municipalities to tackle issues in a certain way. The ways should be identified so we can know if they can be replicated in other areas or not.

## Structure of Reports

- Introductions should be re-written and should lay out the main argument or 'sound bite' of the case. The purpose of WD is to look at institutional models and the reports need to talk about what can be seen in each of the models/cases. The reports should help readers through the information, why the model is working or not working.

## Analysis/Data

- Researchers should look for the situations in each case where the institutional approach/type of the organisation allowed it to tackle issues in a certain way. These should be identified so we can know if they can be replicated in other areas or not.
- **What is the percentage of people with the different levels of service? This could be compiled into a table or pie chart** and would be especially helpful when start linking back to equitable share (ES).
- **Who is using what amount of water in each area? Per household?**
- We do not quite get an analysis of the rural problem. We need to make some comment about the nature of services of the rural area. The Ugu case should discuss the nature of problems in rural / informal settlements areas and include more analysis of informal settlement issue. **What is the nature of challenges of service delivery in rural/informal settlements? This should be drawn out in the report in the introduction or conclusion.**
- What is coming out of the three case studies is that no one is responsible for what is going wrong. So there is a constant downward spiral about how roles and responsibilities are not held to account. A national regulator needs to hold the buck in the end, but the absence of enforcement is a key area throughout the case studies that needs to be teased out. This issue of regulation in the broader piece has to tie into the current case studies. **What are the issues of regulation in the case studies that need to be addressed?**

## Equitable Share

- On the whole, this is more of a background issue (i.e. there is not enough equitable share) than one that needs to be in each report. **In terms of research for each case study it is imperative that we are checking on the allocation of ES within each WSA. What is the amount? How are they dividing it?** ES recommends how much goes to each area but does not require it is actually spent following its guideline.
- Another issue is the **definition of poverty/indigence the municipality is using,** and whether or not it is different from that of the national treasury.

- Once the municipality has determined who is indigent, if there is a shortfall in the amount of ES, how do they address it? How do they recoup the losses?

### ***iLembe Report***

- Overall analysis upfront—main points/ lessons-learned and then flow through document. Right now one section ends then goes to next section but do not know why moving from section to section. Analysis and drawing out things at end of each one would be helpful.
- Include some timeframe so that can see how it relates to changes in the sector and local government (LG), etc.
- Provide area details especially population per income groups (Werner Zybrands section – points to coastal areas/wealthy, but gives no details about the area (income numbers, water usage, etc.)
- Big political issues do not come through. Ask Glen to add, or interview Glen and others and add from WD-SA.

### **Contract**

- Biggest gap is a lack of comparison of Siza vis-à-vis the contract. What do the numbers mean now? What were they supposed to achieve, did they get there in time? The report compared private to public but not private to the contract. Need to study the contract and the implications and how perform next.
- Get more into the regulatory issues/capacity for regulation: The municipality was supposed to regulate SW but does not have the capacity and does not know what is happening in the concession area. How is this impacting delivery? Is SW asking for regulation? Every five years the contract is supposed to be re-negotiated—how did this proceed? VIP issue? Needs to come through that they should be regulating. Also implication for national regulation—if no one is regulating, DWAF should be involved.
- Regulation also an issue because people on the ground respond to/ blame Siza, but not being regulated and communication is missing.

### **Tariffs**

- Timeline of tariffs and tariff structure (fixed charge is attached and not mentioned); mention of average increase in tariff but looking at patterns, curves, etc.

### **Discrepancies**

- Confusion around the tariffs, the section needs clarification.
- Community saying have to buy first card and Siza saying they are given the first card (Mary remembers Robert Giron saying they gave first cards to everyone and from then on you have to buy cards).

- Confusion even between different community reports: it is fine to say this is what community understands, but need to get clarification on what the 'reality' is.

### **Community Write-up**

- Boxes were hard to follow (community write-up). Main points/ discussion needed.
- Community does not integrate well with the rest of the document.

### **Financial**

- Credit control and debt (industrial, etc.) – what is the breakdown of who is paying and who not? May not have the breakdown, if it is not there then need to mention that it is not there.
- Affordability issue (depends on from whom collecting)
- Flip side of bad debt, then the affordability on other side.
- On what basis do we know these are iLembe's costs? Does it actually tell us anything about what the true costs of providing services are? (It is fine to say Siza is into profitable era, but does it tell us anything?)
- iLembe – are these impossible tasks they are asked to achieve considering they must stay within the current budget

### **FBW, Equitable Share, Indigent Policy, Cost recovery**

- Should state that there is a pre-paid water system (discussion of tokens, etc.).
- Check factual point that iLembe does not have an indigent policy. May not have formal, but definitely implementing indigent policy. They have worked out who is poor, and how did they determine. Census is potentially not covering the whole picture.
- Insert analysis about SW operations moving ahead before iLembe by-laws/ policy are in place. The problem being that the informal approach means that the users cannot contest how it is being handled because there is no policy to contest.
- Equitable share:
  1. Does iLembe (WSA) receive funds from Treasury for equitable share (and based on what population)?
  2. What amount does SW (WSP) get from iLembe (how many households and does it get equitable share?)
  3. How is any shortfall handled and how do they deal with cost recovery? How much does SW cross subsidise? How provide water—implementation and indigent policy? This has significance for how WSP provides water since is determined by the path they take is partly determined by the fact they need to recover costs.
- How many indigent people are receiving equitable share? On which criteria, etc.
- Revisit Hamedata Deedat's research findings: says there is FBW across the board, but people who are not indigent have to pay a fixed service charge each month... Need to look at how cost-recovery measures are put into place.

## **Other**

- Terminology: “users” is the most neutral (then perhaps citizen...but not consumer or customer).

## ***Ugu Report***

### **Financial**

- Revisit numbers on page 18 and contextualise how this money fits into the funding the municipality receives.
- It is questionable to say the “average household” uses 50kl /month
- To what degree are the tariffs able to offer cross-subsidisation? On whom are restrictors used?
- Comment by one WG member that it is currently technologically impossible to restrict to 6kl, legislation says cannot be less than certain flow rate
- Confusion about everyone being billed. So, they treat equitable share as revenue? Are they overstating their collection rate?
  - How many people are actually paying and what is the breakdown? (i.e.: industry vs. household) Are they counting the FBW ‘paid’ for by ES in their percentage payment? May not have the breakdown, if it is not there then need to mention that it is not there.
  - affordability issue (depends on from whom collecting)
  - Flip side of bad debt, then the affordability on other side.
- Tariffs very confusing (p 28)
  - Availability charges differ, etc.
- How many indigent people are receiving equitable share? On which criteria, etc.
  - Should include discussion on the ES funding issue. Equitable share based on R800/month income. There are at least 5 different definitions of indigent, but the subsidy criterion is R800. The money is paid to the WSA who may or may not give it all on to the service provider. You cannot blame WSA because only getting equitable share for 1000 households and there are 2000 indigent households.

### **Clarifications**

- In reflection on delivery performance – some things should come out on VIPs in terms of ‘higher’ vs. ‘appropriate’ levels of service (saying all people should have water-borne sanitation?)
- Pg 43 last paragraph, groundwater surprise at end if cannot be substantiated.
- In conclusion – “users” not very content; (define contentment)
- Explain public consultation better – unclear because 3,243 are registered out of 30,000 consumers- are these the ones consulted or is it only with paying consumers? Need more analysis as to the sense of comfort the municipality has with doing public consultation. If call centre not integrated with mgt.

## **FBW, Equitable Share, Indigent Policy, Cost recovery**

- pg 18 (backlogs under 3.4..too simplistic to blame apartheid, need to talk about since 1994 and address some of the additional reasons for the backlog);

## **Management of Resources and Planning**

- Resource availability and constraints (how being taken up by the municipality); disjuncture b/w bulk and what is getting there.
  - Critique of Ugu is that are dealing with bulk/scarcity but not reticulation
  - What is the appropriateness of capital investment? DM is putting all money towards that instead of saying how can we use the money to get local water, etc.
  - Ugu is famous on the map movable structures. Need to make more prominent part of the case study. What are the difficulties presenting in terms of replicability? Innovation comes from the municipality, DWAF says yes then no then goes back to the municipality, and it is this communication is important.
  - Pg 33 – where actually getting the water from, where is it running out (ask local officials, etc.)

## **CBOs**

- Cannot do comparison, keep CBO as part of the story but cannot compare because not enough data. Cannot say it is one model or the other one.
- Rework CBOs into historical section (fit in the beginning)
  - Issue of once FBW was implemented the CBOs were not sustainable as individual entities without more cross-subsidisation. The municipality would end up paying one way or another, and if they kept the CBOs as separate entities then they had to manage multiple contracts on top of still paying for everything. What is the benefit to them?
  - Question is: did equitable share flow to the CBO / is it meant to? If it is a no-capital project they (CBOs) have a chance (if they are only meant to cover operational costs, supplies, develop boreholes). But if they are forced to give FBW to the communities and are not receiving equitable share then they are not a feasible alternative.
- Going to add organisational ethos of Ugu which is very much against partnerships with CBOs. From early JSB days there is a dislike of NGOs/CBOs. Attitude is 'we can handle this on our own'
- The CBO model section does not address some of the technical weaknesses (would it be useful to have support service agent). Different permutations to the CBO model
- What is a workable model? Could it work with more ISD support service agents? (What were the issues that constrained or supported the CBO model?).
- Broader issue with Ugu about contradictions in terms of bringing in people into the organisation with the aim of learning from them, but then this other side that is all about meeting deadlines and not community development

## Other

- Terminology “users” is the most neutral (then perhaps citizen...but not consumer or customer).
- Alfred Nzo does not use the CBOs anymore (last discussion)
- Section 3.3
  - Pg. 15 - “Next, a local water committee was nominated and elected through participatory processes undertaken at village level. These community-based committees were referred to as Village Water Committees in Mvula implemented schemes and as Project Steering Committees in DWAF implemented schemes, and there was also provincial variability.
  - The “official” justifications for using this CBO structure, rather than immediately extending local government, are explained well in a case study report on the CBO formed in the Izingolweni community:
  - Pg 17: Despite these justifications, the decision to absorb the CBOs, and thus cut much of the community involvement and ownership, was contentious in communities and amongst some water-sector activists. They argued that a more centralised structure means consumer relations would drastically change and decrease in importance and efficacy. Essentially, the argument was that the decision would cut out the voice of the community, and thus levels and quality of service would decrease as the organisation’s ability or willingness to respond deteriorated<sup>1</sup>. The counter-argument given is that the establishment of ward committees at local level gave voice to the community in service delivery decisions, but structures for political representation and participation were being established, so these community committees were becoming redundant.

## ***Bushbuckridge Report***

- Summary of arguments:
  - Problem that we had is that the argument gets blocked before it is developed because the DM was the WSA, then the WSP was split between DWAF and LM, and the LM is doing about 9% in the piped areas in the towns. Then there was re-demarcation and the provision then went to LM, but then the Water Board was lost trying to get money out of the LM – conflict between local and water board is that it is not working and there is a section 78 process in motion.
  - There is little scope for analysis as it stands: the report argues that we do not want to make the mess worse so might as well learn to deal with what is there.

---

<sup>1</sup> It is unclear after reviewing background documentation, existing case studies and interviews with two senior municipal officials (to date) whether an assessment was carried out in keeping with section 78 of the Municipal Systems Act to decide on water services provision mechanisms. It is clear that an assessment was conducted, but it may not have been a formal section 78 assessment, and a copy of that report will need to be obtained and scrutinised.

- Needs to draw some conclusions about how water and sanitation is provided.
- Needs to raise questions about premature decentralisation to under-capacitated LMs
- Municipal research/ data not adequate
  - People's names were given as options for interviews to fill in the gaps. Need to interview DWAF people!

### **Clarifications and/or Elaboration Needed**

- The politics need to come out better in this, what kinds of questions do we need to ask?
- Need to explain the dynamic within the demarcation, but careful as argument gets lost when focus solely on re-demarcation.
- Discussion of what happened with USAID capacity-building project. Internal politics meant people who were trained are being sidelined.
  - It is a management issue (using law to explain away their capacity). Why was a fantastic system developed at DM but not given to LM?
  - Develop this argument in a more detailed and subtle way and this alone should fill in some of the gaps. It is difficult to unpack because it is a personality thing, but where should the decision lie?
- Discuss situation: complicated by water board, existing big jealousies between the two so each is pointing fingers about real capacity (and there is also the issue with motivating the 500 people inherited from DWAF. It does not really matter if it is LM/DM. They receive all of the people and salaries for three years then funding stops).
  - Should get taken care of from equitable share? (salary budget tripled, not covered in budget)

### **FBW, Equitable Share, Indigent Policy, Cost recovery**

- How many indigent people are receiving equitable share? What criteria is used?

### **Other**

- The Section 78 is mentioned but need more information about it (when, by whom commissioned, is it available, etc.).
- Terminology: "users" is the most neutral (then perhaps citizen...but not consumer or customer).

### ***Emerging Cross-Cutting Issues***

WG members discussed points and themes emerging from the three pilots.

### **Financial**

- If water tariffs are knowingly non-reflective of the costs, and this is having negative effects on services, then we need to be finding the details and offering another dimension to the story.
- It is this politics of 'what can we afford' at both a national and local level.

## **Management and Regulation**

- What is coming out of the three case studies is that no one is responsible for what is going wrong. So there is a constant downward spiral about how roles and responsibilities are not held to account. A national regulator needs to hold the buck in the end, but the absence of enforcement is a key area throughout the case studies that needs to be teased out.
- The reason we have the issue of pricing is because we do not have national regulation. When policies are evolving, who is regulating the change and implementation? Nationally policies have been changing since 2001, but the discussion about regulation did not begin until about two years ago, the current problems are precisely due to that.
- These are higher level decisions and relate to different models almost across the board. We are still in the phase where we do not have a national economic regulator. LMs cannot really do the regulation, and DWAF is not currently regulating the economic side. We can argue about whether they have a capacity but the truth is we do not have any regulation going on and this should be fixed. In terms of the concession, someone has to be in place to make sure terms of the contract are being met. If that person is local, then s/he should have the capacity, and s/he does not, then there needs to be a nationally sanctioned mechanism to capacitate them.

## **Equitable Share and FBW**

- Equitable share should be addressed in the broader analysis (discussion of how there is not enough overall). In some places, though, ES is given to the municipality and although the water department needs the funds it is not receiving them. ES is an unconditional grant - it recommends how much goes to each but does not require any specific division of the funds.
- Also, a discussion is needed on the issue of poverty/indigence calculations: various definitions are currently used across different government bodies (National Treasury, DWAF, StatsSa, etc.) This causes confusion and problems of uniformity.

## **Institutional Models**

- Perhaps the bigger picture is to show the challenges for each of the different models and then say what we think is the best model.

## **CBOs**

- Did ES flow to the CBOs? If it is a no-capital project they have a chance. If it is operational, supplies, and development of borehole then they could work. But if CBOs are forced to give FBW and are not receiving ES, then it is not a viable model.
- Workers are against CBOs as service providers.
- Someone in the Eastern Cape Mvula Office (Jamie) to talk to about CBO models.  
– Perhaps just do a comparative analysis between the three cases in a separate paper completely.

- Chris Hani / Alfred Nzo – we could bring in a small comparison with Nzo to add a triangulation.

## **Data**

- The broader piece needs to include the realities and practicalities of municipalities. It should also include the issues with gathering data, etc.
- Municipal
  - Municipal data is very poor, how do we address that as a key point of advocacy? The broader piece needs to raise the points of lack of quality and lack of disclosure of financial and official information (discuss whether the municipalities were 'blocking' the collection of data or if they simply did not know where the information would be).
  - The case studies show the polarisation of organisations, the lack of communication within and across organisations, etc.
  - There is a scattering of numbers – need better idea of the percentage of people. Is it possible to have pie chart has each level of service. Compile into a table. Especially helpful when start linking back to ES.
  - Is it possible to know who is using what amounts of water in each area? Per household.

## **Resources**

- Water resource constraint is a thread leading through, environmental, institutional and financial. When people in water departments do not have the proper relationships with water resource people it is going to come back and 'bite' them. We should look at how neglecting those relationships further constrains water services people from performing their functions properly.
- We need to start working on the whole cycle, not just particular points (every poor wastewater treatment, leaking taps, etc. starts to affect water usage/resources).

## **Water and Sanitation System**

- In terms of the sector as a whole, only 17 out of 50+ municipalities can send information at all even then the information is not sufficient. There is a very low confidence in the data - less than 50% is able to give us anything. WSDPs do not even exist. What this is telling us is that people, municipalities, are really not coping and so obviously things like communication with their users is frightening. We need to get a point where we can do an analysis of the whole sector, because this is sector-wide. If the leadership and managers are not confident of their abilities, then bringing in a CBO or private sector is frightening because they are not sure how to engage with the new entrants. Managers are fighting with political leadership, losing staff, and cannot engage even with people who can help. The general message is the sector is dysfunctional....less than five DMs can actually run their Watsan sector. The end question is going to be: how can we take this forward?
- We need to highlight that these problems are not specific to water or general service but have much broader political-economic elements and perhaps this

does require going back to the constitution, etc. We need to do some fundamental rethinking of where we are, where we want to get to and how are we going to get there.

- Talk about where there have been successes and talk about why that was allowed to happen. Need to look for the situations that allowed them to tackle issues in a certain way, identify them so know if can replicate in other areas or not.
- “Structure vs. agency” – need to extract more of this instead of the superficial dealing with just the institutional model.

### **Other**

- Pulling together of data has led to a focus on the technical side of things, and the broader piece will need to look at how social morays are changing, the increasing need for a quick fix by the municipalities (and in this need then it seems very top-down and paternalistic in the way technologies are introduced - i.e.: Johannesburg, need to fix leaks or there is a consequence; Cape Town - uniformly implemented ‘water saving devices’, since more benign much less upheaval against it.) Why is the approach to water demand management different across the city; the issues of inequality in the implementation of policies need to be dealt with.
- We do not quite get an analysis of the rural problem – need to make some comment about the nature of services of the rural area, the nature of the challenges of service delivery in these areas.

## **V. Cape Town Bucket Sanitation System Short Film**

Jeff introduced the short video on the sub-contracting taking place within the bucket collection system in Cape Town. WD-SA commissioned Liane Greef to draw on SAMWU and MSP photos to formulate a DVD, which was entitled “Outsourced and Outcast.”

A few points for reflection for the group from Jeff were:

- The vastly different meanings of efficiency
- The fact that the pictures are all from Cape Town and CT prides itself as being a world class city
- The question of dignity when it is guaranteed as a constitutional right (in terms of workers as well as users).
- The government has set deadlines for elimination of the bucket system. However, the official commitment applies only to formal housing areas built before 1994, the post 1994 informal settlements are not covered at all (buckets are set to become a permanent feature of SA landscape).
- Is the risk faced by service delivery people - the loss of reputation (referring to the presentation on private sector from the night before) – really enough to regulate their actions?
- The video will be shared in meetings with senior councillors, etc.

***Some points from the video about the bucket system:***

Workers do not receive any form of inoculation, gloves etc., they have to buy any safety equipment themselves. It is hazardous getting from point of collection to the plant, particularly without this protection. Additionally, their clothing is not changed before going home to their families and there are no proper facilities to shower or clean - no soap, etc. - after they have worked with human waste.

The negative psychological aspects of the work for workers included people being rude to them, shame in what they do, etc. They reported being treated like outcasts within the community.

The tendering process is inadequate – to be hired one needs to come in with a low bid, which means cheap labour is needed. Workers do not receive contributions to a pension fund, a thirteenth check, etc. If they complain about the conditions they are told “you do not have to come back tomorrow.” To make a profit from the low price they have submitted to get the tender, subcontractors do not furnish workers with essentials like protective clothing, etc.

The municipal bucket workers – Nyanga workers – are better treated. The system used by the city of Cape Town when it hires workers is different from that of subcontractors. The recommendation from SAMWU is for the city to re-municipalise. The fact is that the buckets are not going to be eradicated anytime soon, and they are actually increasing because of informal settlements. If the work is municipalised then the treatment of workers will have to follow official Acts and Laws – they would need to educate workers, protect workers and children in the areas, etc.

***Post video discussion***

Jeff explained he had attended a meeting with senior councillors and managers and had Nick speaking there speaking with them. Without exception all of the officials were stunned at what was portrayed in the video. It was obvious the officials had no knowledge of any of it: it simply was not monitored or regulated at all. Outsourcers outsourced to outsourcers! A senior councillor who was present said ‘we must stop outsourcing’, but then they did not follow up. The city committed itself to top-level emergency action and did make some changes but nothing substantive seems to have changed.

The WG discussed the issues in the case, including: the fact that this is an endemic problem throughout the country; that it is likely not an issue of privatisation but one of poor regulation on the part of the municipality; and that, according to the new Operational Health and Safety laws, a contracting agency is now liable and has to obtain a health and safety plan from sub-contractors (what is happening is against the law and if the city is responsible then it is in contravention of the law). The WG decided WD-SA would commit to doing more research and creating a case study on the Cape Town bucket system. The research will be captured in written form, but also potentially in video with a focus on how the ‘grey area’ of sub-contracting needs to be addressed.

11 March 2008

## **I. Opening**

Ann welcomed everyone and reiterated the agenda for the day.

- Discussion of cross-cutting themes
- Phase 2
- Business Meeting (advocacy, implications of extending life)

Ann gave a summary of Day One's decisions with regards to taking the gaps and reports forward:

- The reports will at some point just need to be accepted
- They should be internationally publishable – we want numerous people to read them and learn
- The big emphasis overall should be on the complexities of the situation and potential solutions: 'It is about capturing the nuance and what underpins everything.'

## **II. Cross Cutting Themes**

### ***Identification of Cross-Cutting Themes***

WG Members began a discussion about broader themes which run throughout the case studies, and/or have become apparent through WG members' experiences. The cross-cutting themes included:

### **Equitable vs. Sustainable and Tariffs/Cost Recovery/Subsidies**

- Performance Management
- Collapsing roles and responsibilities of WSA/WSP – distinction between the two is not happening
- Building institutional capacity
- Regulator, etc.
- Data, difficulty of access
- O&M

### **Equitable Share and FBW**

### **Operations and Maintenance (O&M)**

### **Regulation**

- What are adequate service standards?
- Who does the assessing and who assesses the assessors?
- Subtleties the assessments do not capture

- Trends of improving delivery beyond the basic levels

### **Language**

- User/consumer, etc.
- Community participation

### **Role of CBOs**

- Further research in Phase 2

### **Public Consultation**

Procedural vs. Distributive Equity Comments:

- The focus has been on how to get services out as quickly as possible and there has been a neglect of including people in the procedures and policies. Gains have been made, but at what cost? There is a trend of public disengagement across the board and it is a consequence of the public not being involved in the procedures.
- There is a procedure but it is top-down. The difference between a constituted procedure or group and a constituent group is large. All of the procedures are formulaic and they all are supposed to be applied to any situation. If there actually were distributive equity then we could forgive the procedure, but it seems we ended up with worst of both.

### **Challenges of serving rural areas**

- Inheriting hinterlands

### **Role of Politics**

- Contextual information
- Political environment

### **Data**

- Availability at the municipal level
- Ability of consumers to access data

### ***DISCUSSIONS ON CROSS-CUTTING THEMES***

WG members selected a few of the cross-cutting themes to discuss during this meeting, saving the rest for the next WG meeting. The themes chosen for this meeting included: Equitable vs. Sustainable, Tariffs, Equitable Share, FBW, O&M and Regulation.

## **EQUITABLE VS. SUSTAINABLE and TARIFFS**

### **Summary: Equitable vs. Sustainable**

- 'Money is the measure of all things': we have a system that gives higher preference to cost-recovery than to quality of services for all citizens. One way to

deal with this would be to have universal free basic services instead of a 'user pays' system. This would mean cross-subsidisation through rates. However, this could be a potential issue because:

- If there is a rates-based fee then it must depend on an assessment of the value of property and there are people (particularly pensioners) for whom the value of their home rises quickly but they do not have an increase in income to cover the increased costs.
- There is an issue of 'free services' meaning uncontrolled usage. There must be a balance struck between equity of access to the resources and the scarcity.
- The management of water as a resource is essential, but this is made difficult by people's attitudes towards water and towards government intervention. A question was raised about whether or not South Africa is actually a water-scarce country, but it was agreed that, either way, management of the resource is important.
  - People do not see water as a non-renewable resource. Politicians are afraid to impose too large of increases on water prices, despite this being one way to manage demand.
  - Politicians are afraid to impose large tariff increases, despite this being one way to manage demand.
  - While increasing prices is one way of changing behaviour, they have to be raised by an enormous amount to produce an effect, so this it may not be the most effective approach.
  - When there is unlimited access people use water without thinking about conservation. The best way to deal with this would be to educate communities about water management and conservation.
    - This should not be limited to poor communities. Wealthy communities are just as (if not more) likely as poor ones to abuse their access to water through over-usage and by trying to cheat the system and not pay the full amount for how much they use.
    - There was a limited consensus that cost recovery as practiced needs to be revisited as a policy. Stakeholders had different reasons for thinking it should be re-visited, but most agreed it should be reviewed.
    - Water is not only used by households, but also by industrial and agricultural users (incl. the generation of electricity). These could be looked at as a potential area for cross-subsidisation due to the large amounts of water used. However, the cost of providing infrastructure for households is much higher, and increasing the cost of water to industrial/agricultural users could have adverse effects on other parts of the economy.

## **DISCUSSION: EQUITABLE vs. SUSTAINABLE**

Tariffs get mentioned in keeping the municipality financially viable, but there are objections to this both due to philosophical and practical considerations.

Philosophically, money is the measure of things, but it does not have to be. A recurring

there is the confusion about the meaning and measure of poverty. Everyone agrees there are a large number of poor South Africans on whom we should be concentrating our minds. It is such a large-scale problem that being poor is not 'bad enough', people need to be the poorest of the poor (use of the term 'indigence' is straight out of feudal Europe and we are reproducing that system at the heart of our policy). But who defines 'indigence' and the poorest of the poor and on what basis? Once decided, what is the cut-off and at what point is someone no longer eligible for the benefits (R1000 vs. R1000.01).

One way around the philosophical issue is that we have universal free basic services. We should not be trapped into the idea of user pays. There are alternative ways of raising the money and finding the money. While it would be easy enough to say government will pay, perhaps we should use a rates-based system. Most property is privately owned and has its individual estimation; we could say that water will be determined by rate-able value of the property (we already pay municipal rates based on this, why not pay/cross-subsidise like this). Alongside widespread poverty is enormous wealth, we just have to remind ourselves of how we spend our money as a country and individually.

However, the counterpoint is that if we have a rates-based fee then there will be people who are pensioners whose property value has soared since and can barely afford to pay rates much less water. Not everyone who has a property is wealthy enough to provide cross-subsidisation.

This is a broader social issue about people's attitude towards water. It needs to be tackled by looking at short term ways to curb use, and longer-term societal changes that needed to shift people values and attitudes. A few years back there was a major drought in Cape Town and the city's response was to figure a drought factor into water tariffs. Newspapers and talk shows were filled with people concerned about the cost of water. If the price is raised sufficiently then people will care. The City of Cape Town's response to the anger of users was to announce that if you have water underneath your property or if you have access to a well, use it. The ground table was advertised as free water. Politicians made a decision to try and deter over-usage, but they were not willing to stick with the decision.

If the usage is too high then the question is how do you change behaviour? We have people now who are using 60-65kl /month. It is not consumption it is waste. Everyone has right to high level of service but they also need to know responsibility. When managing water services it is better if people manage water themselves. It is great if 90% of people are managing their usage, but someone needs to monitor those who are not following along. You cannot be nice and allow some people to over-use because it would be inequitable to those who are trying to conserve.

If you can get a community to be serious about managing water within the system, it becomes part of a growing learning community around water management. It seems a better way than high bills.

However, the situation that leads to high usage is often sub-quality infrastructure, which would mean it is not solely an issue of changing behaviour.

It is actually a combination of the two. In the 1970s the city provided the same level of services for the Umlazi community as the rest of the city had at the same time. People had meters and used 18kl/month. When the engineers went back in 1996 they had tracked the consumption per household and the average consumption went from 18kl to 50kl – same houses, same everything. Even in better infrastructure some leaks are going to appear and we have to be ready to repair these leaks, but this was a combination of leakages and also practices of the houses. Engineers found households taking a pipe to run down the roof for air conditioning, taps running all day, flush toilets running all day. They have now replaced all the pipes and dismantled the weird things and saw usage fall back to 24kl/month. The only difference was whether or not users were paying for the water. Pricing is one way to control and delivering a fixed amount is another.

But we still do water demand management inequitably. Some people are using a high-pressure hose to clean their driveways every day. How progressive is the tariff and is it progressive enough?

Average consumption is dropping. Currently to be charged for water the valuation of a house must be higher than R300,000 and the household must be using more than 7kl/month. When you try to decrease demand through tariffs, the amount of increase needs to be substantial. The city had to have a tenfold increase in price to affect demand when it was in the midst of a drought – you need this kind of multiplier to make a difference. The culture of the country has moved from a negative aspect of compliance to a spirit of anarchy (let us see how much we can get away with) – in wealthy and poor areas. If it continues we are going to end up in a situation where consumption is unregulated.

But in general the anarchy we see in the poor areas is a feeling of 'to hell with local government,' it is an issue with communication. We must look at the context: Apartheid era, then around 1994 and the initial changes, and to the present municipalities now. Communities are struggling because initially, around the time of the changeover, they were promised certain kinds of services, and for free. So when we begin looking at this current world with cost recovery, it is important to see there is a big disjuncture from what many communities believed would come about. Also, the implementation of some of the policies has issues in that conservation is forced on the poor while the wealthy can use as much as they would like. For instance, you can go into a household in a township and see every person in the family taking turns bathing in the same bath full of water and then washing clothes in it. But then, on the other side of town, there are still people with swimming pools, golf courses, etc. It seems like we ask the poor to manage their demand so we conserve as a nation, while most water is actually used in wealthier households.

The sentiment of anarchy was not meant to be exclusively tied to poor people. The city found at least a thousand customers who are using nefarious practices to skip out on their water bills and who are living in R8m+ houses. There is a company advertising in Durban North saying that if you pay them R60/month they will provide you with an unlimited amount of water for life. There are 25,000 illegal connections and they are mostly made by one company, but nothing is being done. Many politicians are tired and cannot just deal with it. There are different approaches that need to be taken for different areas. Some communities have a culture of 'we are not going to pay' collectively and there we need to have community leader, someone influential, to be a champion for the cause.

This all needs to be taken within the broader social context. It is not necessarily individuals who are behaving badly or well, the social context is that every person is encouraged to make the most money for themselves regardless of how they do it. So long as money remains the measure of all things, then of course these things happen. We cannot isolate water provision from everything else, both theoretically and practically this is happening across the board.

Can we come to some kind of consensus that cost recovery, as it is currently practiced, needs to be revisited? Perhaps we will all have different reasons why we think cost recovery needs to be revisited, but if we can agree on the basic idea then we can all give our inputs. We ought to remind ourselves that if we do have a problem, such as scarcity of water, then using money to solve it might not be the best tactic and it is certainly not the only one.

What about the amount of money recovered through domestic water usage vs. industrial and agricultural usage? The latter must certainly be using a much larger share of the resource. Cost recovery is squeezing the poor for something that is an infinitesimal amount compared to the larger usage of water. What is the breakdown?

Yes, but the cost of provision is very different across the different categories of users. To provide the infrastructure needed to serve households costs a significant amount more than it does to provide agriculture and industry (both in terms of piping, and in terms of the kinds of plants needed to decontaminate the water to a potable state). There are also other considerations such as wider effects on the economy. We cannot take water away from agriculture because it provides other things for the economy.

And, agriculture is not even the worse if you count the amount of water used by other industries. Perhaps 80% of water is used for electricity – your average wet-cooled power station needs a high quality and quantity of water. The deteriorating natural quality of water in our rivers means additional kinds of treatment have to be performed before it can be used to generate electricity. Plus the reliance on coal- powered fuel generation is a huge drain on our water sources as coal mining does immense damage to our water sources (impacting on quality). These need to be looked at as intergenerational issues.

Where does the idea that SA is a water-scarce country come from? It is true that certain parts of SA have water problems but then there are others where it is fine. It is not so much water scarcity that has to be discussed but the management of the resource. We can have floods and then a few weeks later we are being fined for 'water scarcity.' Perhaps the question should be "why are our catchments' management areas in the wrong place?" We need to implement better rainwater harvesting, etc. Right now the poor have to bear the brunt of issue as using higher tariffs are only a disincentive for those who cannot afford them – the poor. High tariffs are not proven to be a disincentive for wealthier households. The balance between social justice/ redress and cost recovery is not happening.

## **EQUITABLE SHARE / O&M**

### **Summary: Equitable Share (ES) and the Crisis of Operations and Maintenance (O&M)**

Infrastructure is not being properly maintained for a few different reasons:

- Funding crisis – O&M is not happening because there is not adequate funding. ES is both not sufficient and O&M has to share with many competing priorities (management tends to become reactive rather than proactive when there is a shortage of funds). ES may not be sufficient because a) there is not enough money in the national 'pot'; or, b) the definition of poverty varies widely and the numbers of indigents/poor are not properly counted, which leaves municipalities with less money than they need to cover costs of providing services to the poor.

Tariffs should cover O&M, but the current tariffs are not cost-reflective for a variety of reasons, not least because municipalities do not know the true costs of maintaining their systems. Also, the rates of tariffs have to increase more quickly in a situation of rapid expansion of infrastructure than in an area where there is only maintenance to be done. (Additional infrastructure means more money must be spent on O&M each year).

Whether users should be covering these costs or not is another debate we should have in the future.

- Skills crisis – O&M not happening because municipalities do not have enough skilled people to perform the technical repairs: we currently have 1/7 of the number of engineers in SA in 1994 (there were 1400 two years ago, 1200 now).
- Management understanding – O&M not happening because there is such a push to address backlogs that the focus and money stays there. People are very excited about CapEx and it is fulfilling to have an end product you can point to once the money is spent rather than an ongoing cost. There is a question of the interest of engineers and management in O&M and this may come from how students are trained as engineers, etc.

### **DISCUSSION: EQUITABLE SHARE AND O&M**

Equitable share is decided by the 'need' of the municipality compared with other municipalities' needs. One issue is that there are five different possible ways the SA government defines poverty. It is imperative to find out which figure the national

treasury is using because it defines how much is allocated to ES overall and how much the municipalities are going to receive. This is the only 'real' definition. It would be ideal if the government developed one standard definition that could be used across all government grants, programmes, etc., because then other bodies will begin basing on that definition as well, which would make it all less confusing.

It is critical to find out once a municipality has determined who is indigent, if there is a shortfall between the cost of providing all indigent households with services and the money it receives from ES to cover the cost of those services. How does the municipality address any shortfall? How does it recoup the losses? For instance, if the municipality is saying R800 is the indigent level, and ES is based on R1200, or vice versa.

The issue with equitable share is it is not driven by actual needs on the ground in terms of numbers of 'indigents' it is driven by the availability of funds in the state's budget. There is only a certain amount of 'pie' and it is allocated by the state to municipalities based on needs, but it is probably not enough to cover all of the needs within each municipality.

One of the bigger problems with this is that municipalities are probably not getting enough for O&M from ES. The problem with maintenance coming out of ES is that it has to share with so many other things, so when all of these activities are funded through ES, and the municipality is not receiving enough overall, then there is not a lot left, if any, for O&M after everyone has pulled from the same pot.

Looking at O&M, what kind of figures are we striving for in terms of providing guidelines of the amount of ES that should be allocated to O&M? What is the benchmark that should be given to O&M? 2% of value of assets? And for O&M across the city, where is the funding supposed to come from?

Funding for O&M is supposed to come from the tariffs. But, in general, municipalities do not actually have any idea what it costs them. Maybe they will know how much it costs to fix a burst pipe, but the cost actually depends on whether a municipality is reactive or proactive. A major chunk of maintenance is included under capital spending in terms of renewals. It is hard to pick a percentage of a value of assets or of a budget since there are so many different numbers, and municipalities rarely know how much they are spending.

Also, we are dreaming if we think they can pick one number to cover all maintenance since there are different prices for providing services in different areas (especially with the issue of rural areas). And what about situations like those covered in the iLembe report – sewage overage incidents where 11 of 14 were due directly to storm damage. Who is responsible then? In the report the 'owners' tended to be responsible, but should this not be partly the municipalities' responsibility?

An anecdote: In 1996 Cape Town completed a new asset register and all of the officials were questioning the validity of the data gathered, yet it still became the baseline for everything (still is to-date). If Cape Town is doing that, and it is one of the wealthier and better-capacitated municipalities, the other ones are likely to be worse.

Is there not a cap that the Treasury places on spending on O&M budget that the municipalities are restricted from going over?

There is a cap on how much municipalities can spend on HR – but the vacancy rate is so high it does not often come into play – there are financed the positions but no one is in them. In terms of O&M there is a guideline. The cap comes into play in the degree to which your tariffs can reflect true costs. The lack of cost reflectiveness is partly because they cannot surpass CSS. Municipalities cannot get funds from the tariff structure so they are shifting cost recovery to rates. Rates are going up every year by large percentages and it is a less regulated area so the money can be used more freely.

The reality of people's ability to pay is captured in rates increases. In Vancouver they spend 95% of the water budget on asset management and only 5% on CapEx. So, the rate of growth in costs is very little. But in SA the infrastructure is growing and growing so the O&M budget is also increasing greatly; but we are spending so much money on increasing services there is less left for O&M. It is tension running all over the place – each should have much more money, they do not have it, so each municipality has to make choices.

But again it is this politics of 'what can we afford'. If water tariffs are knowingly non-reflective of the costs, and this is having negative effects on services, then we need to be finding the details and offering another dimension to the story.

So are we agreeing there is a need to set up tariff structure at least partly based on costs?

No. We need to know what the cost of water is so we can cover it, and then we can come to the issue of who pays for it. The more accurate the information the better, and then we can have a true debate about who should pay for it.

The better you understand what goes into the tariffs, the better the municipality might be able to target its subsidies (Cape Town has the lowest taxes in the country, but why should that be?).

## **REGULATION**

### **Summary: Regulation**

All of the case studies point to a deficiency in terms of regulation, particularly in those cases where there are contracts that have to be managed. Some points that emerged from the discussion included:

- Institutions are not being held to account for fulfilling their roles and responsibilities; there is a serious need for a national regulatory body, as well as to build capacity in the DMs and LMs.
- The WSA/WSP breakdown is mostly conceptual and not being put into practice, but this is mostly due to: a) a lack of knowledge amongst municipal officials as to what a WSA should be; and, b) a lack of skills at the local level – most municipalities do not have enough staff to cover technical requirements as it is, much less to add in the even more technical role of WSA.
- Proper regulation requires a high-level of skills and capacity across financial, management and technical areas. Currently there is not an organization in SA that has the ability to do this. Larger metro areas may be able to hire international companies to monitor contracts, but smaller municipalities are struggling just to fill technical positions and are not able to either hire an outside organisation or train staff to perform the role.
  - DWAF has been the regulator, but it does not have the capacity either. The national regulator should not be DWAF but rather should be a separate entity with people from DWAF, DPLG and National Treasury since the group will need to have strong economic skills.
  - Regulation should be an ongoing process from discussion of the contract, through monitoring and the conclusion or renewal of the contract.
- Water boards and the way they are managed/regulated are issues which need to be addressed. Currently they are making higher profits than private companies, are less regulated and are not building local municipal capacity (in fact, in some cases they are ‘poaching’ staff).

## **DISCUSSION: REGULATION**

What is coming out of the three case studies is that no one is responsible for what is going wrong. So there is a constant downward spiral in terms of institutions and managers not being held to account for their roles and responsibilities. A national regulator needs to hold the buck in the end, but absence of enforcement is a key area in each of our case studies that needs to be teased out; it is even bigger than issues of contract management. It is about accountability because the more you are pricing water through rates people end up thinking, ‘well, what am I getting?’

The reason we have an issue with pricing is because we do not have national regulation. Rules and regulations have been changing since 2001, but the discussion about a regulator did not begin until about two years ago. The current problems are precisely because of that.

In terms of the cases, there is a huge concern about how iLembe could have done a PPP of this nature without a regulator. In some countries concessions are regulated through the contract and a local contract person, in others they are regulated at a national level. We do not really have either. We are still in the phase where we do not have a national economic regulator. LMs cannot really do the regulation and DWAF is

not doing the economic regulation. We can argue about whether or not they have the capacity to do it, but in the end it is just not getting done.

In the iLembe case the concession does have a regulator at the local level. The question is whether or not there should be a national regulator. In terms of the concession, someone has to be in place to make sure the terms of the contract are being met. If those people are going to be local, then they have to have the capacity to do the job, and if they do not then we need a mechanism to capacitate them. In terms of the iLembe case, what came through is that, as much as there were changes with iLembe DM, there was not any interaction with Siza throughout - so now iLembe does not have a clue.

Regulation is highly complex and requires high-level skills. Between 2001 and 2006, JOWAM was supporting Johannesburg Water in Johannesburg. In order for Johannesburg Water to determine if JOWAM was doing well, it appointed a different company to monitor the performance and contract. That organization would spend two months a year just looking at performance - asking very detailed technical and financial questions (economic regulation). It is unlikely there is anyone / any organization in the country that has the ability to perform the regulatory function at that level, but we need it. Without that capacity, having a regulator or stricter regulation will not achieve anything. The current level of skills is so limited that putting that structure in place would be useless, who is going to do it?

The WG response in general was that we have to get national capacity for regulation and this was particularly an issue related to DWAF, which wanted to do it. Metros either have staff with the capacity to oversee contracts, or they can bring in international companies to monitor the contracts. But if you go to iLembe the DM is not going to have either the funds to hire an international company, or the capacity to regulate contracts themselves. DWAF has been the regulator, but it does not have the capacity either. The national regulator should not be DWAF but rather should be a separate entity with people from DWAF, DPLG and National Treasury since the group will need to have strong economic skills. DWAF has to stop saying 'no, we are the leader, the regulator' - it is the leader, but cannot be the regulator.

Having engaged with DWAF about whether it should be "the regulator," and asked about water boards making huge profits, the only information given was that 'they make surpluses'. In terms of the process for getting a national regulator, the strategy is supposed to be put down by the Minister this month but the institutional form is still up for debate. They are meeting at the end of the month and there is a research project by Africa Centre that is supposed to look into DWAF regulatory process and is also supposed to be looking into other options.

Bringing it back to WD, regulation is not something you do at the end when the contract is already there, but rather at the beginning when the parties are writing all of the rules of the game. When they were written in iLembe it was without long-term thinking and was created in a way to encourage conflict not partnership. Also, like with the buckets

(in Cape Town), it was not done properly from the beginning in terms of law, etc., which means it is harder to fix now. Regulation is not an end, it is a process and it all needs to be regulated.

One problem that appears throughout our case studies is that the WSA/WSP separation is mostly conceptual while in practice it is not working. Few municipalities understand what a WSA is and only two municipalities have it, so we need to be careful about blaming municipalities in the reports, and it really should be included as a national issue.

In terms of the breakdown between the WSA/WSP, there is not enough staff in Durban to cover these, and if the metro area cannot even implement the policy, then which municipality will be able to? The politicians are told they have to be the regulators, but the politicians do not have the skills or the financial advisors (environmental, economic, technical, etc.) to do the job. If there were this kind of regulator it would go a long way towards improving services. Currently DMs are struggling without the finances or skills to do the service much less the regulation as well. 94 municipalities do not have even one technical engineer. We need to bring them help, but skills are concentrated in the private sector. We need to find someone to support the LG in a way that is positive for capacity to be built within the municipalities. Water boards are encroaching on decision-making without building capacity and are even poaching staff. Everyone has to be regulated, not just private companies. When are we going to get water boards regulated? When you compare the profit of water boards to private companies there is a huge disparity – profits for water boards are around 30%, for private companies they are 3-4%. Rand water made R600m profit and paid big check to its CEO – its profit was increasing every year.

Labour's position is that we do not say 'private bad, public good', but we do say that, often, the public sector behaves like the private sector and therefore is bad. We need to change the ethos of the public sector.

### **III. Presentation on Phase 2 progress**

Mary gave the group a presentation on the progress of the 'Phase 2' case studies.

#### ***Maluti***

The case is moving ahead but needs support. They have begun initial research and are almost ready to move into field / community research.

About the case:

There are two water boards, DM and on top of that a management contract. There is a lot of financial analysis to be done. The work to be done on the contracting side is also very important (currently the researcher is mixing up the Maluti equivalents of 'Johannesburg Water and JOWAM' in the report).

## ***Johannesburg***

About the Case:

The story in Johannesburg is as much about service delivery as why it chose the route it did (losing skills, not being able to give services, low funds, etc...fast collapsing institutionally). So, the question is how did it get itself out?

Then, it is important to look at the service delivery choices/experiences. Political decision vs. private company should be analysed. The performance contract was supposed to include a transfer of skills, but there is a whole agency issue (even if people are trained, do they take the onus upon themselves to perform? how they have been trained?). The post contract phase is very important to capture.

So much information is already available about the municipality in audited paper form. Through these it is easy to identify the history and what the contract was set up to achieve and researchers can track the performance over the years and see how they 'put themselves out of a job' by meeting all of the objectives. Community and political aspects may be harder to capture.

## ***Chris Hani***

About the Case:

There are six or seven LMs in the DM. Mvula Trust was working there until a few years ago doing O&M. Then, the water board came and announced it must be involved in implementation of all projects and it has now purposefully placed itself between the LMs and WSPs, but the same people are on the ground in some places. The main PPP contract has been in place since 1992 and now they are using more private sector contracts - this is important to focus on. (Amathola Water) The report needs to explain the whole history.

The initial focus of the researcher in the first report was too narrow. The research will need to be broader and also include DM/LM relationships, etc.

The research should focus on rural areas, as this is where there are differences and it is interesting. Also, need to include info on farms, etc. There are former white, deep Transkei areas and farms. Urban areas should only be mentioned in passing, then move on to the interesting rural areas. There should be a focus on CBOs, supporting agents and contracts - Chris Hani has a wealth of different approaches used: contracts, LMs, CBOs, etc.

The person identified to be lead researcher has a personal issue and may or may not be able to continue with the case. Additionally, she comes from water resources not from water services which means she still has to become familiar with the issues.

- Regarding the scoping report, we expect that the opinions expressed are not her position, but a simple take on complex issues. Her current questions are about ethics, etc. and are not our research questions. The section was supposed to be raising questions and issues to get to know the case. It will be re-done whether or not this lead researcher stays on.

## ***uThukela***

About the Case: Names and documents were gathered and Glen Robbins wrote an initial report. The situation has gotten worse since the information used was published. Additionally, top people have left uThukela and may now be prepared to talk more openly.

## **IV. Strategic Opportunities for Advocacy**

WG members next discussed how to bring the WD-SA message (once it is established) to a wider audience. While it is difficult to figure out an appropriate audience since we do not know what our advocacy messages are yet, we would still like to build receptivity amongst different audiences so that action can begin immediately upon completion of the research. The WG brainstormed possible opportunities for advocacy. Ideas included:

- Water Services Act is currently being revised, we could potentially influence it
- Water Sector Leadership Group (WSLG)
- District and Local Water Managers Forum
- Present papers on WD process at conferences
- Present WD-SA to DWA
- A key area WD-SA is identifying is how public involvement in service delivery needs critical attention, so we could pursue vehicles through Mvula projects that will be used to bring messages to people.
- We need to look at the range of players, not only in the water sector.
- We need to include politicians.

Mary need not be the only person representing WD-SA in terms of advocacy. This also needs to be done by WG members in different forums where they have contacts and influence. We need to lay the groundwork so that a wide group of role players know what The Water Dialogues is about and its processes, etc. Our members have the 'gravitas' to be listened to, so we must speak to as many people as possible.

- Some people may not want to listen to what we say. One of the main lessons of advocacy is that policymakers tend to only listen to what agrees with them. If we go with a message that challenges policymakers, they are unlikely to be super excited and try to change policies. (If policymakers at this stage are not willing to listen, then we must consider other ways of making them hear, such as bringing in civil society.)
- The message bearer is as important as the message, so we must be careful about who addresses which forums. For example, WSLG and SALGA are likely to listen to Neil. At the same time, it is good to challenge some of the stereotypes and talk about the other side of the issue (or have three WG members from different sectors at the big events).
- We cannot necessarily speak on behalf of our organisations, but we can all advocate the WD process. Also, internal dialogue within each person's organisation can be an effective way of spreading the message.

## **IV. Reflections on Experience**

Ann closed the session by requesting WG members reflect on their experience and give feedback about the meeting. WG members' responses were overwhelmingly positive about this meeting and felt it was the culmination of much work in creating trust and goodwill within the group. The discussions, particularly on the cross-cutting issues, were interesting, valuable and started to delve into the 'substance' of the issues at hand. It was felt there was a sharing and understanding of where people are coming from and the group was no longer just keeping to surface issues.