

**IN THE HIGH COURT OF SOUTH AFRICA
(Witwatersrand Local Division)**

Case No

In the matter between:

LINDIWE MAZIBUKO

First applicant

GRACE MUNYAI

Second applicant

JENNIFER MAKOATSANE

Third applicant

SOPHIA MALEKUTU

Fourth applicant

VUSIMUZI PAKI

Fifth applicant

and

THE CITY OF JOHANNESBURG

First respondent

JOHANNESBURG WATER (PTY) LTD

Second respondent

**THE MINISTER OF WATER AFFAIRS
AND FORESTRY**

Third respondent

FOUNDING AFFIDAVIT

I, the undersigned

LINDIWE MAZIBUKO

state under oath that:

1. I am the first applicant in this matter. I am a 39-year-old unemployed female, currently residing at House No. 279B, Phiri, Soweto, Gauteng, 1818.
2. I am authorised to bring this application and to depose to this founding affidavit on behalf of the second to fifth applicants.
3. The facts contained in this affidavit are within my personal knowledge, unless it is clear from the context that they are not, and are, to the best of my belief, true and correct. All submissions of law are made on the advice of the applicants' legal representatives.

A. INTRODUCTION

The parties

4. Grace Munyai is the second applicant in this matter. Ms Munyai is a 43-year-old unemployed female, currently residing at 2657 Phiri Ext., Soweto, Gauteng.
5. Jennifer Makoatsane is the third applicant in this matter. Ms Makoatsane is a 35-year-old unemployed female, currently residing at 428a Matilili St. Phiri, Soweto, Gauteng.



6. Sophia Malekutu is the fourth applicant in this matter. Ms Malekutu is a 71-year-old female pensioner, currently residing at 361b Phiri, Soweto, Gauteng.
7. Vusimuzi Paki is the fifth applicant in this matter. Mr Paki is an unemployed 40-year-old male, currently residing at 168b Mandlempisi St. Phiri, Soweto, Gauteng.
8. All the applicants are poor, unemployed and live in Phiri, Soweto, Gauteng. In this application, we are acting on our own behalf, as well as on behalf of our children and those elderly members of our households who cannot bring this application themselves. We also bring this application on behalf of other residents of Phiri who are in the same position as we are, as well as in the public interest.
9. The first respondent is the City of Johannesburg, a Municipality, established by the MEC for Local Government and Development Planning in the Gauteng Province, acting in terms of section 12(1) of the Local Government: Municipal Structures Act, 1998, by Notice in *Provincial Gazette* No 6766 of 2000, dated 1 October 2000 ("**the City**"). The City's head office is Metropolitan Centre Building, 158 Loveday Street, Braamfontein, Gauteng. The City is a water service authority as contemplated in the Water Services Act 108 of 1997 ("**the Water Services Act**").

10. The second respondent is Johannesburg Water (Proprietary) Limited (“**Johannesburg Water**”), a company incorporated in South Africa. Johannesburg Water was established by the City’s predecessor, its sole shareholder, as part of the iGoli 2002 plan. The City remains the sole shareholder of Johannesburg Water. Johannesburg Water has its head office at 58 Frederick Street, Marshalltown, Johannesburg, Gauteng, 2107. The City has delegated to Johannesburg Water the authority to act as water services provider, as contemplated in the Water Services Act.

11. The third respondent is the Minister of Water Affairs (“**the Minister**”), care of the Office of the State Attorney, 10th Floor, North State Building, 95 Market Street, cnr Kruis Street, Johannesburg, Gauteng.

The nature of this application

12. This is an application concerning the water services provided to the residents of Phiri, Soweto.

13. The applicants challenge two aspects of the policy of the City, alternatively Johannesburg Water, regarding its water services to the people of Phiri:

13.1. First, the decision to discontinue the unmetered water with which the residents of Phiri used to be supplied at a fixed charge, and to install in its place what is known as “*prepayment water meters*”. I will explain the difference between these two forms of

water supply in greater detail below. We challenge both the principle of this decision, and the manner in which the decision was implemented.

13.2. Second, setting the level of free basic water supply at 6 kilolitres per household per month.

14. The applicants also challenge the constitutional validity and lawfulness of Regulation 3 of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water published in Government Gazette 22355, GN R509 of 8 June 2001 (“the **National Standards Regulations**”).

15. We seek two forms of relief. First, we ask that these decisions and Regulation 3 of the National Standards Regulations be set aside. Second, the applicants ask that the City of Johannesburg, alternatively Johannesburg Water, be ordered to provide each applicant and other similarly placed residents of Phiri with

15.1. a free basic water supply of 50 litres per person per day; and

15.2. the option of a metered supply installed at the cost of the City of Johannesburg.

The structure of this affidavit

16. This affidavit is structured as follows: In part B, I set out the legal and policy framework against which the application must be considered. Part C deals with the impact of the prepayment meters in Phiri, the suburb of Soweto where I live. I will conclude by briefly describing in Part D the legal submissions on which the applicants rely.

B. LEGAL STANDARDS FOR MUNICIPAL WATER SERVICES

17. I do not have personal knowledge of all the legislation, regulations, standards and policies with which municipal water services must comply. I am, however, informed that there is a substantial legal and policy framework against which the applicants' case must be considered.

The RDP promise

18. In the ANC's Reconstruction and Development Programme ("RDP"), it was promised in the short-term that each person should have a free basic water supply of 25 litres per person per day, and a medium-term supply of 50-60 litres per person per day within the household – in other words not through a communal tap. I attach a copy of the relevant part of the RDP marked "LM1" hereto, which reads as follows at paragraph 2.6.6:

“The RDP’s short-term aim is to provide every person with adequate facilities for health. The RDP will achieve this by establishing a national water and sanitation programme which aims to provide all households with a clean, safe water supply of 20-30 litres per capita per day (lcd) within 200 metres, an adequate/safe sanitation facility per site, and a refuse removal system to all urban households”

19. The RDP promise of 25 litres free water per person per day was therefore clearly intended for personal and household use and not also for sanitation purposes.

The White Paper

20. The White Paper on Water Supply and Sanitation Policy, issued in November 1994, included the Government’s commitment that all people would have access to basic water supply and sanitation services within seven years. I attach a copy of the relevant parts of the White Paper marked “**LM2**” hereto.

21. The White Paper quantifies the daily minimum amount of water as 25 litres per person per day. This daily minimum is described as follows at page 15:

“Water supply

Basic water supply is defined as:

Quantity: *25 litres per person per day. This is considered to be the minimum required for direct consumption, for the preparation of food and for personal hygiene. It is not considered to be adequate for a full, healthy and productive life which is why it is considered as a minimum.”*

22. In addition to determining the minimum quantity, the White Paper also provides that water should be available on a daily basis, at no less than 10 litres per minute. There should be a 98% assurance of the supply. The operation and maintenance of the water supply should also be sufficient to provide a supply that is not interrupted for more than 1 week per year. The basic minimum water should also be safe to drink and must be of a quality that would be acceptable to consumers.
23. Under the chapter headed “Basic Service Provision Policy”, the White Paper provides separate sub-chapters entitled “Water supply” and “Sanitation”. The White Paper does not quantify the daily minimum amount of water required for sanitation, other than to provide for “adequate sanitation” at page 16:

“Sanitation

...

Adequate sanitation: *The immediate priority is to provide sanitation services to all which meet basic health and functional requirements...*”

24. The White Paper therefore provides *separately* for both basic water supply and basic sanitation services. Not only is a basic minimum water supply guaranteed, but also that households should have adequate sanitation.

The Constitution

25. The Constitution of the Republic of South Africa 108 of 1996 (“**the Constitution**”) provides in section 27 that everyone has the right of access to sufficient water.

26. The Constitution also provides in section 33(1) that every person has the right to administrative action that is lawful, reasonable and procedurally fair.

The Water Services Act

27. The Water Services Act of 1997 secures in section 3 to each person the right of access to basic water supply and basic sanitation.

28. Every water services institution must take reasonable measures to realise these rights, and every water services authority must provide for measures to realise these rights.
29. Section 4(3) states that procedures to limit or discontinue water services must be fair and equitable. The procedure must provide for reasonable notice, as well as the opportunity to make representations.
30. Section 4(3)(c) of the Act provides that a person may not be denied access to basic water services nor 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.

The National Water Act

SAHA

31. The National Water Act 36 of 1998 (“**the National Water Act**”) provides in section 59(4) that a person must be given an opportunity to make prior representations regarding proposed restrictions or suspensions.

PAJA

32. The Promotion of Administrative Justice Act 3 of 2000 (“**PAJA**”) provides in section 3 for the requirements with which administrative decisions have

to comply to be procedurally fair. These requirements include adequate notice, a reasonable opportunity to make representations, a clear statement of the administrative action, adequate notice of any right to internal appeal, and adequate notice of right to request reasons.

33. PAJA also provides in section 6 for the grounds on which decisions may be reviewed and set aside.

The Systems Act

34. The Local Government: Municipal Systems Act 32 of 2000 (“**the Systems Act**”), provides in section 17 for appropriate mechanisms, processes and procedures to enable the local community, and particularly non-literate members, to participate in the affairs of the municipality.
35. Section 95 of the Systems Act also sets out requirements for regular and accurate accounting, accessible mechanisms to query or verify accounts and metered consumption, and appeal procedures that provide prompt redress for inaccurate accounts.

The Johannesburg Water Service Delivery Agreement

36. On 30 January 2001, the City’s predecessor in law, the Greater Johannesburg Metropolitan Council (“GJMC”) approved the Sale of

Business Agreement in terms of which the City sold its water and sanitation business to Johannesburg Water.

37. Also on 30 January 2001, the GJCM approved a Service Delivery Agreement in terms of which the City contracted with Johannesburg Water for the provision of water services for a period of 30 years. I attach copies of the minutes of the Council's meeting of 30 January 2001 and the Service Delivery Agreement, marked "LM3" and "LM4" respectively, hereto.

38. In terms of clause 10.4 of the Service Delivery Agreement, Johannesburg Water had to comply with *"Government Policy relating to the provision of 6000 litres of water per household per month, free of charge."* Clause 11 of the Agreement also provides that, in regard to the supply of water services to informal settlements, the company shall be entitled *"after consultation with THE COUNCIL"*, *"in consultation with community leaders"* and *"in its own discretion"* to supply water services to such settlements over such period, and at such level of service as it may in its discretion determine.

39. In terms of clause 12 of the Service Delivery Agreement, the City may require Johannesburg Water to provide water services to individuals or communities who are unable to pay normal tariff rate for water services. In such an event, Johannesburg Water must provide the service at rates and

service levels set out in the annual Business Plans. If less is recovered from these indigent consumers than what the actual economic costs of this supply is, the City must pay the difference to Johannesburg Water on a monthly basis in arrears

Free Basic Water Implementation Strategy

40. In February 2001, Minister Ronnie Kasrils, then Minister of Water Affairs and Forestry, announced that Government had resolved to ensure that poor households were given a basic supply of water free of charge. Minister Kasrils went on to state that Cabinet had approved a policy to provide 6 kilolitres of safe water per household per month.
41. In May 2001, the Chief Directorate: Water Services of the Department of Water Affairs and Forestry issued Version 1 of its “*Free Basic Water*” Implementation Strategy Document.
42. The purpose of the document was to set out an implementation strategy to provide free basic water to the people as part of “*the Government’s strategy to alleviate policy*”. In the introduction to the document, it is said that

“Much of the ultimate responsibility for delivering free basic water will rest on local Government. However, they will have to operate

in a context which enables them to provide subsidised services effectively. This includes appropriate national subsidy arrangements and guidance and support from other spheres of Government.”

43. At paragraph 3.2 the Government articulated *“a broader policy commitment to the extension of free basic services to all households the primary target of the policy is poor households for whom free basic water services represent a significant poverty alleviation measure”*.

44. The policy document, however, stated the following at paragraph 3.3:

“Again it needs to be recognised that local authorities should still have some discretion over this amount. In some areas they may choose to provide a greater amount, while in other areas only a smaller amount may [be] possible. For example, in some remote areas with scattered settlements, high water costs and water stressed areas it is often not feasible to provide 6000 litres of water. . . In some areas where poor households have waterborne sanitation the total amount of water seen as a “basic supply” may need to be adjusted upwards (if financially feasible) to take into account water used for flushing. Some local authorities (for example, Volksrust), where affordable, have already defined free basic water as 9000 litres per month to take into account waterborne sanitation.”

45. At paragraph 6.3, the policy document points out that metropolitan areas are in broad terms economically strong areas with adequate capacity to cross subsidise poor consumers.
46. The Minister indicated that the date set for implementing the free basic water policy by local Governments would be 1 July 2001.

The National Standards Regulations

47. The Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN R509 of 8 June 2001) ("**the National Standards Regulations**") set the minimum standard for basic water supply services.
48. Regulation 3(b) provides that the minimum standard is –
- 48.1. a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month –
- 48.2. at a minimum flow rate of not less than 10 litres per minute;
- within 200 metres of a household; and
 - with an effectiveness such that no consumer is without a supply for more than seven full days in any year.

The Strategic Framework for Water Services

49. In September 2003, the Department issued the Strategic Framework for Water Services entitled "*Water is Life, Sanitation is Dignity*" ("**the Framework**"). I attach a copy of the Framework marked "**LM5**" hereto. In the Framework (at page ii), the Government identified what it called "The Water Ladder". It committed itself to "*progressively improving levels of service over time in line with the original aims of the Reconstruction and Development Programme in 1994*". The National Government undertook to increase its commitment of grant funds over time to support households to step up the water ladder. According to the Framework, basic levels of service will be "*reviewed in future to consider increasing the basic level from 25 to 50 litres per person.*"
50. The Framework confirmed the constitutional responsibility to ensure that all poor people have access to at least a basic water supply and sanitation service which is affordable. However, the Framework also refers to the fact that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to water. According to the Framework (at page 26) "*National Government will continue to provide subsidies to the water services sector to promote the realisation of the right to a basic water supply and sanitation service.*"

51. As to what a “basic water supply” is, the Framework provides the following (at page 46):

51.1. A basic water supply facility is

“the infrastructure necessary to supply 25 litres of potable water per person per day supplied within 200 metres of a household and with a minimum flow of 10 litres per minute (in the case of communal water points) or 6 000 litres of potable water supplied per formal connection per month (in the case of yard or house connections).”

51.2. A basic water supply service is

“The provision of a basic water supply facility, the sustainable operation of the facility (available for at least 350 days per year and not interrupted for more than 48 consecutive hours per incident) and the communication of good water-use, hygiene and related practices.”

52. The Framework reflects (at page 26) that, over and above basic water services and sanitation, consumers will have to pay for water services. Tariffs for such further water services must take into account the affordability of water services for the poor and the *“subsidies necessary to ensure the affordability of water services to poor households.”*

53. According to the Framework (at page 29),

“the cost associated with providing free basic water to poor households is not large for a country of our economic size and strength. Free basic water services can be financed from the local Government equitable share as well as through cross-subsidisation between users within a system of supply or within water services authority area where appropriate. For 2003/2004, a separate window within the local Government equitable share grant has been created for the funding of free basic services (electricity, water, sanitation and refuse). This additional grant over and above the equitable share allocation will enable municipalities to accelerate the provision of free basic services to poor communities.”

54. The Framework contemplates (at page 29) that the definition of what comprises “basic” services would be revised from time to time and that the grants from national to local Government would increase commensurately with economic growth as the definition is revised. It also requires that, where sustainable, water services authorities should give consideration to increasing the basic quantity of water provided free of charge (25 litres per person per day), aiming for the free provision of at least 50 litres per person per day to poor households. National Government will give

consideration to increasing the national subsidy over time to make this feasible in all water services authority areas.

55. Some of the key challenges identified in the Framework (at page 29) is the development of subsidy mechanisms which benefit those most in need, including vulnerable groups such as households headed by women or children or those affected by HIV/AIDS) and to ensure the equitable treatment of those large households or multiple households sharing one connection.
56. It is apparent (from page 30 and 46 of the Framework) that the provision of basic sanitation services is separate from, and in addition to, the Government's provision of basic water services.
57. On the issue of credit control, the Framework requires (at page 36) that the approach of water services authorities, including the City, must take into account the impact of the credit control policies on the community and must be guided by a number of principles, the first of which is **compassion**. Local Government must develop and implement a credit control policy that is "*compassionate, especially towards poor and vulnerable households.*" It contemplates that priority should be given to providing a reliable, secure, sustainable and affordable water supply and sanitation service to all households including the poor.

58. Other principles in the Framework include (at page 37):

58.1. **Communication.** Consumers must be *informed* with respect to water consumption, credit control, debt collection and disconnection policies, credit control procedures and consumer responsibilities. Communication must be clear and accessible and, wherever practical, in the home language of the consumer.

58.2. **Fair process.** All restrictions and disconnections must be done in terms of a fair and transparent process and as a result of the failure of a consumer (or consumers) to fulfil their obligations in terms of a consumer contract.

58.3. **Warning.** Domestic consumers must receive a warning prior to any credit control action. Such a warning must state clearly the time allowed for payment, alternative methods of payment (such as instalments), and the consequences of non payment.

58.4. **Restricting domestic connections.** In the first instance, and after following due process (including a warning), domestic water supply connections must be *restricted and not disconnected, ensuring that at least a basic supply of water is available.*

- 58.5. **Disconnecting water supplies.** A water services provider has the right to disconnect water services provided to domestic water consumers only after communication, fair process, warning, and prior restriction was first followed and where the disconnection follows upon non-payment, tampering or interference with a restriction.

The Water Services By-Law

59. The City of Johannesburg Metropolitan Municipality Water Services By-Laws of 28 April 2004 (“**the Water Services By-Law**”) provide in section 3(1) that the City may provide different levels of service to consumers at the level of fees set out in the Schedule to the Water Services By-Law.

60. Section 3(2) lists three different options which may be offered to consumers.

60.1. “*Service Level One*”, which consists of water supply from **communal water points** and a ventilated improved pit latrine located on each site;

60.2. “*Service Level Two*”, which consists of an **unmetered** water connection to each stand with an **individual yard standpipe**, a

waterborne connection connected to either a municipal sewer or a shallow communal sewer system and a pour flush toilet; and

60.3. “*Service Level Three*”, which consists of **metered full pressure** water connection to each stand and a conventional waterborne drainage installation connected to the Council’s sewer.

61. Section 3 also provides for the circumstances under which the City, instead of supplying one of these three options, may install a prepayment meter, namely when a consumer with a Service Level Three supply option contravenes certain of the stipulated conditions for that supply.

62. Section 9C of the Water Services By-Law provides that water supply may only be discontinued to a consumer in arrears after a final demand notice including notification of the date by which such arrears must be paid, after notice of discontinuation and the opportunity to conclude an agreement for payment of the arrears amount in instalments.

63. The Water Services By-Law also provides that registered indigent consumers will be entitled to basic water services.

Amendment to the Special Cases Policy

64. The City has a Special Cases Policy, issued in April 2002. This policy provides for 6 kilolitres of water free per household, a services subsidy for refuse removal and sewage and a number of other credit control provisions, including the fact that no interests would be charged on arrears, the placing of arrears in a suspense account and a six-monthly review of these accounts. I attach a copy of this policy, marked “**LM6**” hereto.

65. In May 2005, however, this policy was amended so that these benefits would only be obtained subject to the compulsory installation of prepayment water meters (and prepayment electricity meters).

66. Where the indigent customer does not agree to the installation of a prepayment meter, the City would also reinstate any arrear debt written off as a result of the City’s indigency policy. I attach a copy of this amendment marked “**LM7**” hereto.

C. THE IMPACT OF PREPAYMENT METERS IN PHIRI

My personal circumstances

67. I currently reside at House No. 279B, Phiri, Soweto, Gauteng, which is owned by my mother, Anna Sibeko (nee Mazibuko).

68. A cumulative total of 20 (twenty) people live in the house and the two shacks on my mother's property ("**our household**"). The demographic details of these individuals living in our household are as follows:

Name	Age	Relationship to Owner
Anna Mazibuko	66yrs	House owner
Lindiwe Mazibuko	39yrs	Daughter
Paulina Mazibuko	38yrs	Daughter
Thembi Mazibuko	20yrs	Granddaughter
Nokuthula Mazibuko	16yrs	Granddaughter
Phumzile Mazibuko	24yrs	Daughter
Ntombikayise Mazibuko	15yrs	Granddaughter
Gift Mazibuko	11yrs	Granddaughter
Khosi Mazibuko	2yrs	Granddaughter

Mbali Mazibuko	9yrs	Granddaughter
Mabuntle Mazibuko	20yrs	Granddaughter
Zodwa Mazibuko	9yrs	Granddaughter
Zanele Mazibuko	19yrs	Granddaughter
Siphiwe Mazibuko	19yrs	Grandson
Domingo Simba	unknown	Boarder [1]
Motsamayi Letlala	unknown	Boarder [2]
Sylvia Khambane	unknown	Partner to boarder [1]
Mamara Phokode	unknown	Partner to boarder [2]
Ezekiel Khambane	2yrs	Son/daughter to boarder [1]
Sekese Phokode	2yrs	Son/daughter to boarder [2]

69. Of the 20 people who are part of our household, one is a pensioner, 3 are small babies and six go to school. I suffer from arthritis and high blood pressure. My mother suffers from diabetes, high blood pressure and has a history of cardiac arrest. My sister, who recently moved into our house, suffers from a stroke. She moved in with us with her four children for us to take care of them.
70. My mother is retired and receives a pension grant of R820 per month. The rest of us are unemployed. Other than her pension, my mother used to rely on R150.00 monthly rental money she received from the three outside shacks. All of our boarders moved out in August 2005 however, following

the change in our water situation. Between August and December 2005 we had to survive without this supplementary income.

71. It was only in December 2005 that we finally found two new boarders, Domingo Simba and Motsamayi Letlala, who have moved into the shacks on the property with their partners and children described in the table above. We charge them R70.00 and R50.00 each.
72. I receive a child support grant of R180.00 per month in respect of two children in our household, namely Khosi and Zodwa Mazibuko.
73. Our total monthly household income is accordingly R1 300.00.
74. I am unsure of the exact figures of all my mother's expenses. However, she spends money on her own monthly doctor consultation fees in the amount of R140. She also spends another R140 for my doctor consultation fees. She then has to cater for all the transportation, food and clothing needs of the 14 Mazibukos, as well as schooling for the minor Mazibuko children Thembi, Sipiwe, Zodwa, Nokuthula, Ntombikayise, Gift, Khosi, Zanele, Mabuntle and Mbali.
75. Above all that, she has to pay for the electricity and water expenses for the entire 20-person household.

76. My mother used to pay the rates for the property. The amount she used to pay varied from R60.00 to R117.00 per month. Sometimes, when she couldn't afford it, she didn't pay these amounts. However, she still regularly buys the prepayment electricity card. My mother's water account has always been in arrears. The outstanding amount is well over R16 000.00. She cannot afford to pay this amount.

77. The people of Phiri are very poor. They are all black. There are many people who live in households with even more people than I do. Many of them are women who take care of children, elderly members of their family, or other members of the community who are ill. Many of the people in my community are HIV positive or have AIDS.

The discontinuation of my water supply

78. Before 17 March 2004, all the members of our household had access to a full-pressure, unmetered, unlimited water supply for which a flat-rate charge of up to R68.40 was levied (a "**flat-rate water system**"). The flat-rate water system applied to all households in Phiri.

79. On 17 March 2004, a field worker from Johannesburg Water, calling himself a 'facilitator', came to our residence and advised me that the old

secondary midi-block water supply system was “old and rusty” and would need to be replaced.

80. This facilitator told me unequivocally that he would merely replace old and rusty equipment. He did not tell me that the existing flat-rate water system would be affected. He specifically did not mention anything to me about installing a prepayment water meter system. In fact, all I received was a letter entitled ‘Decommissioning of the old secondary mid-block water supply system’, which does not mention anything at all about installing a prepayment water meter system. I attach a copy of this letter marked “**LM8**” hereto.

81. I had, however, heard from people living in Orange Farm of the devious tactics routinely employed by Johannesburg Water field workers in surreptitiously installing the prepayment water meter system. I therefore asked the facilitator whether Johannesburg Water would be replacing the existing infrastructure only, or whether the system would be changed to a prepayment water meter system. The facilitator reluctantly admitted that a prepayment water meter system would indeed be installed at my residence.

82. I informed the Johannesburg Water facilitator that I refused to have the prepayment water meter system installed, but that I would consent to an

upgrading of my existing infrastructure. The facilitator simply laughed at me and left my residence.

83. Later that day, Johannesburg Water workers started digging trenches in the pavement outside my residence. When I protested, the workers said that they were digging trenches in order to lay pipes for the installation of a prepayment water meter system. They said that, since the pavements belonged to the Government, I could not stop them.

84. At the end of March 2004, without any notice whatsoever, Johannesburg Water switched off the water supply to my residence.

85. At or around the same time, many of my fellow Phiri residents were experiencing similar cut-offs.

86. Many Phiri residents received standard letters substantially in the form of the letters attached marked “**LM9 – LM14**” hereto. In LM 11 and LM 12, Johannesburg Water makes it clear that failure to consent to the installation of a prepayment meter or standpipe would result in a total cut-off of access to water to residences.

87. Because of the total lack of access to water, enraged Phiri residents took to the streets, marching on the Johannesburg Water offices to demand the restoration of their water supply.

88. When my water was disconnected, I was in any event, however, not even given a choice between a prepayment meter or a standpipe. I was instead informed that the only water supply option available was to have a prepayment water meter installed on our property. I know that many other residents whose water supply had been disconnected had also not been given a choice between a prepayment meter and a standpipe.
89. Between March and October 2004, the water supply of many residents was disconnected without any alternative form of supply being provided. The water supply of others was disconnected and then reconnected via a prepayment water meter system.
90. The disconnection and, in some cases, the change to a prepayment water supply, was carried out by persons employed by Johannesburg Water or persons acting on its instructions.
91. By 8 July 2004 many of the residents, including the members of my household, were still without water. On that day, however, the City, alternatively Johannesburg Water, blocked all access to Chiawelo 1 Reservoir in Phiri. This left the residents of Phiri entirely without any access to water. Once again, persons employed by Johannesburg Water or acting on its instructions were responsible for this action.

92. Between 8th July 2004 and 11th October 2004, I was forced to obtain water from Block A, 3 kilometres away, using only a wheelbarrow to transport water twice a day.
93. Despite not receiving any water from the City or Johannesburg Water during the months between March and October 2004, the City nevertheless continued billing me for the flat-rate amount of up to R68.40, together with other amounts for services I did not receive. I attach a sample copy of a statement addressed to my mother, marked “**LM15**” hereto, showing the manner in which the City billed this, according to its tariff sheet, attached marked “**LM16**” hereto.

The connection of a prepayment water meter

94. Having no water supply, became impossibly hard for me, and I could no longer endure the 12 km trip every day to get water from Block A. I was left with no other choice but to apply for a prepayment water meter, which was installed on 11th October 2004. I attach a copy of the relevant agreement between my mother and Johannesburg Water marked “**LM17**” hereto.
95. I was not given the option of any of the other service levels. Many other residents in Phiri who had never had any water connection before, and therefore were not in arrears, were not given the option of a full-pressure

metered supply. I attach copies of the various types of agreements presented to residents marked “**LM18 – LM 20**” hereto.

96. The prepayment water meters work on the basis that a household will at the beginning of every month only receive the 6 kilolitres free water provided for in the National Standards Regulations. Thereafter, there is no further water supply unless more water credits are purchased.
97. As is the case with the City’s indigency policy referred to in paragraphs 64 – 66 above, a municipal services subsidy can only be obtained subject to the compulsory installation of prepayment water meters (and prepayment electricity meters). Where the applicant does not agree to the installation of a prepayment meter, the City would also reinstate any arrear debt written-off. I attach a copy of the relevant agreement marked “**LM21**” hereto.
98. The attempts of some residents, whose water supply was disconnected, to manually re-connect their water supply were dealt with harshly by Johannesburg Water, which unilaterally imposed fines of R1 500.00 on residents. I attach copies of such notices of fines marked “**LM22**”. Most residents who received such notices could not possibly afford these amounts and accordingly were not, accordingly to Johannesburg Water, entitled to the reconnection of their water supply.

99. I have recently come into possession of certain promotional materials published by Johannesburg Water regarding Operation Gcin'amanzi and the installation of prepayment water meters, which are referred to misleadingly as 'freepay meters'. Copies of these documents are attached marked "**LM23 – LM25**" hereto.
100. In October 2004, the first month that the meter was installed in our household, the 6 kilolitres ran out between 11 and 29 October 2004.
101. The free 6 kilolitres of water per month has never lasted the entire month since it was installed in 11 October 2004. It usually finishes anytime between the 12th and the 15th of each month. We can often not afford to buy further water. This means that our household is without any water for more than half of every month.
102. When the free 6 kilolitres of water is finished, the water supply is discontinued without any notice. There is no person to whom I can explain the reason why I cannot pay, or why I need the water to remain connected. The prepayment meter automatically cuts off the water.
103. In order for us to have water for the entire month, we have to buy water at least twice a month after the 6 kilolitres is finished. However, we can't always afford to buy more water. Sometimes water runs out at a time when my mother does not have the money to buy more water. We are

then forced to either borrow money or borrow water. On average, my mother spends about R50.00 per month for additional water.

104. Sometimes the water finishes after-hours and we cannot access more water until the next day because the offices where we buy water close at 10pm and reopens at 7am. In that case, the children in our household have to go to school without bathing.

105. Many times, especially in January 2006, when we went to the Jabulani Municipal office of the City, the officials told us "there is no water left".

106. There are regular water cuts in Phiri that come without warning. These usually last the entire day. When there are water cuts, we still cannot access more water, even after buying more units. When water is reinstated, the first 75 litres or so are usually extremely soiled and unusable. We often have to throw it away, yet we have paid for it.

107. Until recently, we continued to receive water and services bills even after the prepayment meter was installed. This seems to be due to the fact that the accounting system of the City is in disarray.

Technical complexity of the prepayment water meter

108. The prepayment water meter device is a complicated piece of equipment. I attach copies of a 'simplified' brochure as well as a PowerPoint presentation on the Teqnovu prepayment water meter, marked "**LM26**" and "**LM27**" respectively, which describe the complex functionality of the meter.

109. I have encountered several technical difficulties with the prepayment water meter. The readings on the meters after loading the payment are very confusing. The meter flashes a few numerical codes before it displays the number of units of water that is available. It does not, however, display the actual quantity of water available. I have never received a tutorial on what these units mean, whether, for example 10 units is the equivalent of 10 litres or 10 kilolitres or a different amount altogether. Sometimes, when I try to load the meter, it displays the message "battery flat" and the credit disappears.

110. In annexure "**LM33**" hereto, Sophia Malekutu, the fourth applicant herein, describes the immense technical difficulties she has had with the prepayment water meter.

The amount of free water

111. The amount of 6 kilolitres free water we are supplied with is simply not enough for our entire household's basic needs. This is despite the fact that we use water only for our basic needs. We cannot use less water in our household than what we are using at the moment.
112. Our household uses water each day for drinking, cooking, sanitation, bathing, cleaning the house and laundry.
113. On its website and in various brochures Johannesburg Water provides calculations of how far the amount of 6 kilolitres free water goes, how much water each domestic activity consumes and 'menus' of suggested water usage. I attach copies of these documents marked "LM28 – LM30".
114. Assuming our household was to follow Johannesburg Water's 'Menu 1' provided in "LM29", each person In our household of 20 would only be able to flush the toilet less than once every two days; each person could only have a 'body wash' every four days; 2 kettles of water, 1 sink full of dishes and half a clothes wash per day would have to be used by 20 people. After all the free basic water budgeted for that day was used, no water would be left for anything else, such as drinking, cooking, cleaning the house and watering my food garden.

115. We use very little water to bath with. We are now forced to do our laundry at my sister's house in Protea South, approximately 4 kilometres from our house.

116. Sometimes, I do not drink sufficient water. This weakens my health. We often do not flush our toilets. If we do, we use water that was used for bathing or washing dishes to flush our toilets.

117. I used to have a small food garden but abandoned it when my water was cut off in March 2004. Now I have to buy the vegetables that I used to plant in my garden.

118. The other applicants have suffered even more from prepayment water meters and the meagre rations of free basic water. I summarize their affidavits, attached marked "**LM31**" through "**LM34**" as follows:

118.1 Grace Munyai, the second applicant herein, was a caregiver to her HIV-infected niece. The additional water required to take care of Ms Munyai's HIV-infected niece, Sizile, necessitated a 3km walk to fetch water, as the free basic amount was insufficient to ensure hygienic conditions and adequate drinking water.

118.2 Jennifer Makoatsane, the third applicant herein, describes the burden she endured having to wash nappies for her new-born baby; cleansing her father's gangrenous foot and attempting to host a funeral for her father with the insufficient amount of free basic water.

118.3 Sophia Malekutu, the fourth applicant herein, describes the immense technical difficulties she has had with the prepayment water meter, paying various monies without receiving water.

118.4 Vusimuzi Paki, the fifth applicant herein, describes how his shack burnt down and people died due to lack of normal water service and pressure.

119. Most residents of Phiri resent having being coerced or deceived into consenting to the installation of prepayment water meters and are angry at the negative consequences for their daily lives. I attach, marked "**LM35**" hereto, a copy of a memorandum of grievances to the Phiri ward councillor with signatures appended, as well as a selection of affidavits marked "**LM36**", from residents who made complaints about prepayment water meters to the South African Police Services, to no avail.

120. I do not know how the Government determined the amount of free water at 25 kilolitres per person or 6 kilolitres per household. I do know, however,

that it is less than we need to take after the basic needs of all of the members of our household, and less than we used to have access to.

121. By dividing 25 kilolitres per person into 6 kilolitres per household, it appears that the Government assumes that there are no more than 8 members in a household in South Africa. This is certainly not the case in Phiri, where each 'household', including backyard shacks dependant on the supply of water to the main house, is 16 people. In this regard I refer to the penultimate page of the research report by the Coalition Against Water Privatisation completed in July 2004, which concludes that "our research reflected an average household size of 16, double the number used to calculate the amount of water provided free to South African citizens". I attach a copy of this research report marked "LM37" hereto.

122. I am affiliated to the Coalition Against Water Privatisation. In August 2004, our attorney approached the Department to request access to Government records used by the Minister to determine the amount of free water stipulated in the National Standards Regulation. We made this request under the Promotion of Access to Information Act, 6 of 2000 ("PAIA"). I attach a copy of our request marked "LM38" hereto.

123. The Minister responded by providing us with a copy of an extract from the White Paper, referred to in paragraphs 20 to 24 above. This response is referred to earlier and attached marked "LM2" hereto.

124. My attorney again approached the Department on behalf of the Coalition to appeal against this response. A copy of our letter of appeal is attached marked “**LM39**” hereto.

125. In response to our appeal, the Department responded as follows:

“After consulting with various officials it is clear to me that their (sic) is no single point of reference in the Department of Water Affairs and Forestry as to how the 25 litres per person per day or 6 kilolitres per household per month was determined in 1994 as a minimum benchmark for a basic water supply. This was considered good practice at the time of the publishing of the White Paper on Water Supply and Sanitation. The principle of progressive realisation was already established and later in 1996, entrenched in section 27 of the Constitution . . .

. . .

The [RDP] , which was published in 1994, refers to a safe minimum water supply that is between 20 – 30 litres. This information guided the Government in the absence of any other Governmental guideline, but the [Department] cannot provide documentation on how the ANC arrived at this figure.”

I attach a copy of the Department’s letter marked “**LM40**” hereto.

126. There has been no increase in the amount of free water since the RPD was published in 1994. The medium-term amount of 50 litres per person per day contemplated in the RDP has never been implemented.

127. All in all, I have access to less water than I had before the City and Johannesburg Water introduced prepayment water meters and 'free basic water'. My quality of life is much worse than it used to be.

128. I understand that all people living in Johannesburg receive 6 kilolitres of water free every month, even though they are not all poor, and even though they do not have to use prepayment meters. Prepayment meters have not been installed in middle and upper-income suburbs that have a predominately non-black population.

129. The parties have endeavoured to settle this matter amicably, without success. My attorney, Simon Delaney, has deposed to an affidavit detailing the various correspondences between the parties, as well as the requests under PAIA as described above. I attach a copy of Mr Delaney's affidavit marked "**LM41**" hereto.

D. LEGAL SUBMISSIONS

130. There are at least three respects of the policy of the City, Johannesburg Water and the Minister in respect of the supply of water to the residents of Phiri that are unlawful:

- 130.1. First the manner in which the flat-rate water supply was discontinued;
- 130.2. Second, the decision to install and the continued use of prepayment water meters;
- 130.3. Third, the limitation of minimum water supply to 6 kilolitres per household per month.

131. I will deal with each of these aspects in turn.

The discontinuation of water

132. The discontinuation in Phiri of the flat-rate supply and the limitation of the water services of the applicants and other similarly placed residents of Phiri by Johannesburg Water was unlawful. In discontinuing my water and those of my fellow applicants and others who are in the same position, the City did not follow a fair or equitable procedure. The City or Johannesburg Water did not give us reasonable notice of the intention to limit or discontinue our water services and did not give us the opportunity to make representations on the proposed discontinuation. I am advised that the discontinuation is in violation of the Constitution and the relevant legislation and that it is unlawful for this reason.

133. I am advised that it is also unlawful to deny the applicants access to basic water services despite the fact that we are unable to pay for such services.

134. The discontinuation of the water supply of the applicants and other similarly placed residents of Phiri violated our rights and to basic water supply and basic sanitation and our rights to access to sufficient water.

The installation and use of prepayment water meters

135. The installation and continued use by the City of Johannesburg Water in Phiri of a prepayment system to replace the flat-rate system is unlawful in that the applicants and other similarly placed residents of Phiri were not given the option of a metered system.

136. The installation of prepayment water meters diminishes our access to water and accordingly does not amount to a reasonable measure to realise the right to every person to a basic water supply.

137. The prepayment meters are faulty and unreliable. They do not provide us with access to water 98% of the time, as is required by the Government's own policy. The applicants and others in the same position as we are, do not, on average, have access to water for about 2 weeks in every month.

138. I am advised that the Minister and the City, alternatively Johannesburg Water, have the duty to respect, protect, promote and fulfil the applicants' rights under the Constitution. They have all, however, failed in this duty in that the installation of prepayment water meters result in diminished access to water by the applicants and other similarly placed residents of Phiri, and accordingly does not amount to a reasonable measure to achieve the progressive realisation of the right to access to sufficient water.

139. The prepayment water supply fails to provide the applicants and other similarly placed residents of Phiri with the reliable supply of a sufficient quantity and quality of water to support life and personal hygiene. It results in our being denied access to basic water services due to the fact that we are unable to pay for basic services.

140. The use of prepayment meters violates the rights of the applicants and other similarly placed residents of Phiri to lawful, reasonable and procedurally fair administrative action in that the prepayment meter system operates in an inherently unfair and inequitable way. The meters discontinue or restrict the water supply to consumers in an unlawful, unreasonable and procedurally unfair manner. It results in the discontinuation of our water services without reasonable notice and without providing us the opportunity to make representations. It necessarily results in the denial of access to basic water services for non-

payment without the opportunity to prove that we are unable to pay for basic services.

141. The prepayment meter does not comply with the principles of fair credit control articulated in the Strategic Framework for Water Services. It does not comply with the principle of compassion, communication, warning, a fair process, or the principle that disconnection should only occur after a number of other graduated steps have been taken.

142. The use of prepayment meters violates the rights of the applicants and other similarly placed residents of Phiri to equality and equal protection and benefit of the law and amounts to unfair discrimination by the state, either directly or indirectly, on the grounds of race and poverty. The residents of Phiri are not given the same water supply options, including the option of a metered system, as other consumers who are not black or poor, or who live in areas that are not predominantly black or poor.

The minimum standard for basic water

143. The National Standards Regulation 3(b), which sets the minimum standard for basic water supply at only 25 litres per person per day or 6 kilolitres per household per month, is unconstitutional and invalid. It violates the Constitution in that the minimum standard of water provided in the

Regulation is insufficient for the applicants and others who live in conditions of extreme poverty to support life and personal hygiene.

144. The amount of 25 litres per person per day was aimed at supporting life and personal hygiene. It was not contemplated that it would be enough to support a water-borne sanitation system, as we have in Phiri. More water is needed for our basic human needs if consideration is given to the fact that the 6 kilolitres is supposed to also address our basic sanitation needs.

145. Providing a minimum standard of only 25 litres per person per day or 6 kilolitres per household per month also subjects the applicants and others who live in conditions of extreme poverty to living conditions that violate our human dignity and amounts to inhuman treatment.

146. I refer to the affidavit of Peter Gleick, attached marked "LM42" hereto, in which Dr Gleick concludes that 25 litres per person per day is not sufficient to meet the basic needs of people living in Phiri. His expert opinion is that 50 litres per person per day should be the minimum starting point to provide people in our position with access to sufficient water.

147. I refer to the affidavit of **Desmond James Martin**, attached marked "LM43" hereto, in which Dr Martin concludes that in HIV-affected households, access to additional water is not only important for infected individuals, but also for care-givers and for the whole household in order to

lessen the burden of caring for an HIV-infected household member and to ensure that other members of the household do not have to forego their basic water requirements in order to care for those infected with HIV.

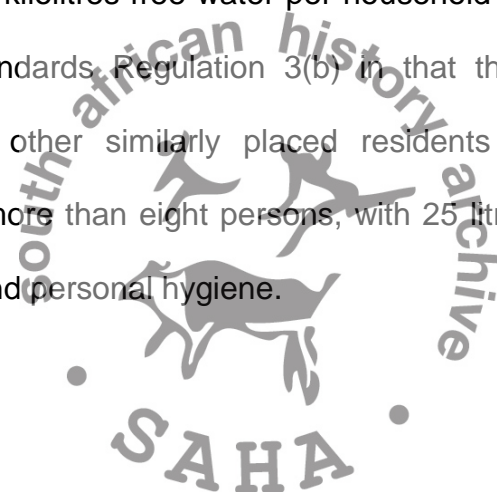
148. I refer to the affidavit of **Patrick Bond**, attached marked “**LM44**” hereto, in which Dr Bond traces the Government’s steady historical dilution of the concept of ‘free basic water’ from the RDP’s promise of a medium-term lifeline supply of at least 50-60 litres for each person in a household per day, available on-site, to the current position of 25 litres per capita per day for large families. Dr Bond even notes an attempt to revise the target figure for low-density areas downwards to 7 litres per capita per day.

149. It appears from the Government’s own response to our application for information under PAIA that the manner in which the amount was determined was in any event arbitrary and irrational.

150. Even if a free basic minimum of 25 litres per person a day were rational and sufficient for us to sustain life and personal hygiene, which we deny, the Regulation is unconstitutional. National Standards Regulation 3(b) provides for “*25 litres per day or 6 kilolitres per household*” to be provided free. If this means that the minimum standard for basic water supply is the *lowest* of 25 litres per person per day or 6 kilolitres per household per month, this would distinguish irrationally between households in which there are eight or less people and those households in which there are

more than eight people. It would also violate s 9(3) of the Constitution in that it discriminates directly or indirectly on the analogous grounds of race, gender and poverty.

151. To the extent that the National Standards Regulation 3(b) can, however, be read to set the minimum standard for basic water supply systems at the *highest* of 25 litres per person per day or 6 kilolitres per household per month, the City of Johannesburg Water, by limiting the free basic water supply only to 6 kilolitres free water per household per month is in breach of National Standards Regulation 3(b) in that they fail to provide the applicants and other similarly placed residents of Phiri who live in households of more than eight persons, with 25 litres per person per day to support life and personal hygiene.



DEPONENT

I CERTIFY that this affidavit was signed and sworn to before me at _____ on this the _____ day of _____ 2006, by the deponent who acknowledged that she knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on her conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God". I certify that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS

Name:
Address:
Capacity: