

# Restricted water denies dignity

## Tracking Phiri water victory

The City of Johannesburg's installation of prepaid water meters in Phiri, Soweto caused deep hardship. **Silumko Radebe** charts a spirited and lonely struggle by Phiri residents and support organisations to overturn this unjust practice.

**T**he Johannesburg High Court water victory in April 2008 was historic globally being the first of its kind. The Coalition Against Water Privatisation (CAWP) together with the Anti Privatisation Forum (APF) and its affiliate Phiri Concerned Residents (PCR) filed the case in July 2006 after three long street battles with Johannesburg Water, private security 'Red Ants', and the Johannesburg Metropolitan Police. In 2003, many residents resisted the forced installation of pre-paid meters. Many were arrested and were left with no choice but to seek other tactics to fight installation.

The first applicant Lindiwe Mazibuko unfortunately passed away before she could enjoy the fruits of her struggle. Like many other brave working-class people, she helped to ensure that the war against the community by Johannesburg Water did not break the community's spirit of resistance. When the judgement was handed down, Lindiwe, despite ill health, was ecstatic. She had fought long and hard with other residents of Phiri to realise the human and constitutional rights to water that had been denied her family, simply because they were poor.

### RESISTANCE TACTICS

Just like many other Phiri residents, Lindiwe and her family shared their yard with extended family. This became a problem when pre-paid water meters were introduced without proper consultation. Neighbours turned against each other as residents were forced to steal water from one another at night or when the need arose. Johannesburg Water caused further divisions when it employed some Phiri residents to install meters. The community viewed them as enemies.

Through political input from the APF, residents became aware that the enemy was the state and not workers themselves. There were attempts to engage many other stakeholders but this did not bear fruit and rolling mass action was met with brutal force by state institutions which forcibly installed the pre-paid meters.

One resident, Mr Phaki, was charged with malicious damage to

property for removing a pre-paid meter in his yard that was installed without consultation. He was sentenced to a fine of R25 000 or five years in prison. After this many residents became scared and resistance started to crumble. Another tactic had to be found to take the struggle further – this was the legal route.

There were different perceptions from the community about whether to trust the judiciary in solving the problems of the working class, especially as the courts often protect the rich's property. Finally, after many discussions in the community, there was consensus that all avenues must be explored in fighting the privatisation of water and the law was one.

### THE VERDICT

The case was finally heard over three days in December 2007 before Johannesburg High Court Judge MP Tsoka. It took the court four months to give a verdict. On passing his judgement, Judge Tsoka declared that the City of Johannesburg's forcible installation of pre-paid meters in Phiri was unlawful and unconstitutional. He ordered that the 6 kilolitre limit of free basic water per household per month be set aside and that the City and Johannesburg Water must supply Phiri residents with 50 litres per person per day.

Further, the court declared that the choice that the City gave to residents of either a pre-paid meter or a standpipe for water in Phiri was unlawful. He directed the City to provide Phiri residents with the

option of an ordinary credit metered water supply. The City was ordered to bear all the legal costs of the applicants since 2006.

This judgment goes down as the first for poor communities and for all those who have struggled against the unilateral, profit-driven, neo-liberal basic service policies of the South African government. The Centre for Applied Legal Studies (CALs) stated after the judgement that this was the first time that, "the constitutional right to water has explicitly been raised".

Judge Tsoka went beyond the legal points and recognised the racial, class, administrative and gender-based discrimination underlying the City's water policy. The judge rejected the arguments for restricting the water of poor communities: "... to expect the applicants to restrict their water usage, to compromise their health, by limiting the number of toilet flushes in order to save water is to deny them the rights to health and to lead a dignified lifestyle." The Judge labelled the so-called 'consultation' with the Phiri community as, "more of a publicity stunt than consultation" and criticised the City's "big brother approach".

The victory was met with jubilation all over the world and by South African labour. It left the City's Mayor Amos Masondo, who is a known driver of privatisation, shell-shocked. Masondo has hypocritically stated in many international conferences that Johannesburg is a world class city and that there is development taking place for poor and ordinary working-class people.

### VICTORY DESPITE COUNTER ATTACK

This ruling meant that Johannesburg Water's *Operation Gcina'manzi* cannot continue and a new system for water provision has to replace it. But once again the City of Johannesburg showed its unwillingness to listen to the needs of the people. Johannesburg Water immediately launched a Supreme Court appeal to counter the high court ruling. It has ignored the ruling and is rushing around installing pre-paid meters in Soweto. It is important for organisations like Cosatu (Congress of South Africa Trade Unions), including the South Africa Municipal Workers Union, to assist communities to apply political pressure on the City of Johannesburg, Johannesburg Water and the Department of Water and Forestry.

If the City had followed the law in implementing the water service, consulted with the community and listened to the voices of protest, they would not be sitting with egg on their faces and a R320 million loan for meters they can't install. The City chose rather to deploy the Red Ants, and police in Phiri at the onset of *Operation Gcina'manzi* in August 2003 to protect their misshapen project.

While the community has already appealed the judgement and it will probably go all the way to the Constitutional Court, this does not detract from the political and social significance of this victory. It is a judgement with applicability across South Africa. But it also engages billions of poor people around the world who are suffering under neo-liberal water policies, alongside

governments that are implementing with corporate allies who seek to turn water into a profit-making stock market option.

The greatest credit for this legal victory must go to the residents of Phiri who resisted the installation of the pre-paid meters, and to all residents of poor communities, in Johannesburg and across the country, who have been fighting for accessible, affordable and sufficient water.

CAWP wants to extend its heartfelt thanks to advocate Wim Trengove, and to all the attorneys and paralegals at CALs and the Freedom of Expression Institute who pulled together the persuasive legal arguments. When government implements by managerial command and disregards the interests of the people it is meant to serve, the Bill of Rights becomes little more than the paper it is written on. The legal team made the Constitution real again.

I believe that if Jesus was alive, he would have argued with Mayor Masondo to give people of Johannesburg free water. Jesus would also have joined the residents of Soweto in breaking water meters to make sure that people could enjoy free water. LB

*Silumko Kbethokuble Radebe is an organiser for the AFP and an activist with CAWP. He is one of many who have been at the forefront of the Phiri struggle since 2003. It dedicates the Johannesburg High Court judgement to the memory of Phiri activist Lindiwe Mazibuko who witnessed the victory before she passed on.*