

Specific Questions Relating to the SAHRC's Strategic Focus Area

Report on Access to Water and Sanitation

- 1. Have you identified any violations of the rights to water and/or sanitation? If yes, please explain.**

Yes.

- a) Violation of the right to access water and sanitation

Many of the communities involved in the public hearings did not have access to water and sanitation (more often a lack of sanitation). The lack of access can be attributed to one of the following:

- A lack of access to any infrastructure;
- Access to infrastructure that has never been operational; and
- Access to infrastructure that is no longer in working order.

In some provinces, residents complained of a complete lack of access to infrastructure or services, where water is accessed via reservoirs, open water sources such as rivers or via water tanks erratically supplied by the municipality. In the Eastern Cape, residents complained of a reliance on dams for water provision.

Mostly, communities complained of broken taps, pipes (reticulation systems) and toilets, which were never maintained or repaired by municipalities. Therefore, national statistics might indicate a higher level of access than is actually enjoyed in reality. If infrastructure for a service is provided, it seems to be considered by government that the right has been realised, despite the fact that there is no access due to non-functional infrastructure and systems. In addition, evidence shows that some communities are still being charged for services that they do not receive.

It is important to note the study was undertaken in the poorest communities across South Africa and the findings are therefore representative of those communities and not the country as a whole.

b) Lack of progressive realisation of the rights

Currently, the Department of Water Affairs (DWA) considers the right to water fulfilled when the basic service at an RDP-acceptable level is provided, but wants to see services continually improved. In terms of progressive realisation, service must be continually improved until an ideal is achieved. However, the DWA sees this as optional. The DWA also believes that six kilolitres per household per month, as a family of eight people, is sufficient, calculated by providing 25 litres per person per day. However, it does not indicate procedures for provision for a family larger than eight. The DWA does believe that residents with access only a communal standpipe are able to access 6 kilolitres per month but is not able to assess or confirm this.

Likewise, once a toilet is provided within the yard of a household, the Department of Human Settlements does not put in place plans to improve access to this service progressively.

c) Lack of a human rights-based approach

Findings from the hearings showed that government does not engage sufficiently with communities and that there is complete lack of communication and access to information. There was a lack of education and awareness on peoples' rights and on the correct usage of the facilities that were provided by local government. This lack of a rights-based approach to service delivery results in many inappropriate decisions by local government such as the location of sanitation facilities (along busy roads) and the provision of unenclosed toilets.

Also, services provided did not cater for religious or cultural preferences and special needs, such as the needs of people with disabilities. In addition, there were many complaints heard of a lack of responsiveness by government departments to community concerns.

2. What do you regard as the structural causes and underlying determinants of the human rights violations you have identified? How do these relate to power relationships between various groups and sectors of society?

a) Lack of inter-departmental coordination and collaboration

There is a lack of coordination and collaboration between different departments that are tasked with the provision of different services. In South Africa, the Department of Water Affairs is responsible for water resource management and the provision of bulk infrastructure. The Department of Human Settlements is responsible for the provision of housing and planning for sanitation. Ultimately, the provision of water and sanitation to households is done by local government. Local government is managed and coordinated by the Department of Cooperative Governance and Traditional Affairs.

Overall, these departments do not coordinate their activities sufficiently, which leads to a lack of provision in some cases and in other cases, a lack of maintenance of infrastructure.

b) Lack of collaboration between different spheres of government and a lack of capacitation and monitoring at a local level

The provision of bulk infrastructure is the responsibility of national government. Provincial government is an extension of local government. The responsibility for the delivery of services to households lies with local government.

In many cases, particularly in rural areas, local government does not have sufficient capacity to implement plans for service delivery. These local departments receive little or no support from provincial and national government and in the case where local departments are not able to meet their targets, provincial and national government should step in to assist, but does not.

c) A lack of monitoring

Often, private companies are contracted to provide a specific service and is paid for that service. In many cases, a company does not provide the promised service or provides only part of the service. Despite their contractual obligations not being fulfilled, they are paid for

their services. Adherence to contracts the quality of provision is not monitored by any government departments. This leads to wasteful expenditure and corruption.

d) Poverty and inequality and a lack of political will

The study that the Commission conducted, involved mostly rural, impoverished communities that were severely marginalised during apartheid and have not benefited from changes post 1994. Importantly, these communities lack power to have their complaints heard and to ensure change in their favour. All communities indicated that they lack access to grievance mechanisms and when complaints were laid with local representatives, they were not dealt with. In many cases, complaints were completely ignored. There was a general feeling the poor economic status of the communities meant that they were not prioritised for services and not taken seriously despite the prolonged lack of access to basic human rights.

3. Have you identified particular groups and individuals whose rights have been violated disproportionately? Which individuals and groups?

Research has shown that a lack of access to water and sanitation impacts greatly on women and children, particularly girls and people with disabilities.

a) Women and girls

Many of the reports of impacts on women and girls involve illness or violence. In some cases, women and children fall ill due to the lack of access to water or access to poor and unhealthy sanitation facilities. Often, toilets are small and do not provide adequate privacy. The lack of access to water and sanitation in schools impacted more greatly on girls, who missed school or dropped out of school for this reason.

Women and girls were also more prone to violence, including sexual violence, when the water and sanitation facilities were outside their home or a distance from their home. There were cases where women were attacked, particularly at night, when using a communal toilet or fetching water.

b) People with disabilities

Persons with disabilities provided examples during the hearings, of service delivery that did not cater for them. Most complaints were about water facilities that were a distance from one's home and sanitation facilities that are not disabled-friendly. This means that, amongst other factors, toilets are too narrow to allow for wheel chairs or people to assist, are on uneven surfaces and are poorly lit. Municipalities that presented at the hearings indicated that if a person required a home that is disabled-friendly, they should apply to the municipality and they would be catered for. However, very few people were aware of this provision.

c) Farm labourers

Many respondents at the hearings highlighted the plight of farm workers and their access to land and basic services. Farm workers live on privately owned land, and it is at the discretion of the owner whether or not to provide adequate service and accommodation that is of an acceptable condition. There have been cases where farm owners cut off water supply to farm workers, despite the fact that access to water is a basic human right.

4. What activities do you undertake to monitor the realization of the human rights to water and/or sanitation and alleged violations?

a) S184(3)

Section 184 (1) and (2) of the Constitution of the Republic of South Africa (Constitution) clearly outlines the mandate, functions and powers of the Commission. Section 184 (3) is specific in respect of the Commission's requirement to monitor and assess Economic and Social Rights (ESR). In particular, section 184 (3) requires that:

Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment.

As such, each year the Commission develops seven questionnaires, including the right to water and sanitation, that is sent to government departments for completion. The

questionnaires aim to assess the steps that government has taken within a specific year to realise ESR. The information from the questionnaires is used to develop the annual S184(3) report.

b) Strategic focus area

The Commission also produces a report on additional, called a strategic focus area report. This report emanates from independent primary research. In the 2012-2013 financial year, the Commission chose water and sanitation as a focus area. Subsequent focus areas also assessed the impacts of particular rights on the right to water and sanitation.

c) Ad hoc monitoring

The Commission also monitors media reports on a particular right, amendments to legislation and investigations legal complaints in relation to the right.

5. Have you taken any cases on the rights to water and/or sanitation to court? If yes, please elaborate.

No. The Commission is currently investigating opportunities for strategic litigation.

6. Have you been involved in procedures before other accountability mechanisms? If yes, please elaborate.

The study into the realisation of the right to water and sanitation is on-going. Please see attached report for full process.

7. Have you sought to address the lack of policy design or policy implementation, the failure to take steps, the failure to take targeted measures, the lack of sufficient budgetary allocation or similar failures? How have you framed these failures as human rights violations? What standards of review have you relied on?

The Commission has engaged government departments on the amendment of certain policies to ensure access to free basic services for all ‘indigent’ households, with limited success. The

Commission will engage with National Treasury on budget allocation for water and sanitation and regulations to ensure that local departments allocate sufficient funds to water and sanitation. Currently, this allocation is at the discretion of each individual local government.

8. Have you sought to address and seek remedies for discriminatory practices?

Have you sought to address structural inequalities in the realization of the rights to water and/or sanitation? If yes, please elaborate.

Yes. Please see attached report. Interventions are ongoing.