



**Water Research Commission (WRC)**  
**WAT-Indaba: Charting a Roadmap to Water Equity**  
 21 April 2015

**Strategic Focus Area 2012-2013: The Right to Access Sufficient Water and Decent Sanitation**



## Pit Latrine used in schools



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## 1. Mandate of the SAHRC

1. **The South African Human Rights Commission must:**
  - a) Promote respect for human rights and a culture of human rights;
  - b) Promote the protection, development and attainment of human rights; and
  - c) Monitor and assess the observance of human rights in the Republic.
2. **The Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power –**
  - a) to investigate and to report on the observance of human rights;
  - b) to take steps to secure appropriate redress where human rights have been violated;
  - c) to carry out research; and
  - d) to educate.
3. **SAHRC Commissioners have strategic leadership responsibility for different rights.** The SAHRC Deputy Chair, Commissioner Pregs Govender, has been the lead Commissioner on Water and Sanitation since 2009.

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## 1. Mandate of the SAHRC (2): Monitoring the Realisation of Socio-Economic Rights

**Section 184 (3) of the SA Constitution** requires that "[e]ach year the South African 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."

- **Research:** Economic and Social Rights (ESR): monitoring for constitutional compliance and ensuring the advancement of economic and social rights; develop and draft annual reports relating to ESR, as well as Equality and International Human Rights.
- **Legal:** record and finalisation of complaints relating to ESR; conduct hearings.
- **Advocacy:** education on human rights, modes of access, recourse and resources for assistance. Conferences, seminars and workshops are often held.

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## 2. National statutory framework on the Right to Water and Sanitation

### National Obligations

- **Section 27(1) (b) of the RSA Constitution** provides that "*everyone has the right to have access to sufficient food and water.*"
- This obligation is extended in section 27 (2), according to which "*the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.*"
- The right to sufficient water intersects with environmental rights and is an enabling right for the enjoyment of other rights such as health and education.
- Important policy frameworks which guide water delivery include: **Free Basic Water (FBW) policy, Free Basic Sanitation (FBSan) policy and the Free Basic Services (FBS) policy**, which commits free services to poor (indigent) households.
- South Africa FBW policy provides for a minimum of **6 kilolitres of water per household per month.**

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### 3. Contextualising Access to Water and Sanitation in South Africa



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### 3. Contextualising Access to Water and Sanitation

#### The State of Access to Water in South Africa

- 2011 StatsSA Census showed that **46.3% of households in SA have access to piped water and just over 85% have access to water that is of a RDP-acceptable level**, i.e. either piped water in the house or within the stand or within 200 meters from the household via a communal standpipe
- However, this level of access, is **not reflected across all provinces** in the country (i.e. in Eastern Cape, less than 70% of households have access to piped water in their dwelling, stand or within 200 meters from their stand).
- **People in rural areas suffer more due to a lack of access to water**, as they rely greatly on land and water resources for their livelihoods.



### 4. SAHRC's Water and Sanitation Campaign (1)

#### Background:

- In 2010, the Commission received two complaints about municipalities that built toilets without enclosures in their local communities.
- The first complaint was from the Western Cape branch of the ANC Youth League against the DA led municipality (Cape Town) in that province; The second was from a DA leader against an ANC-led municipality in the Free State.
- The Commission investigated the complaints and ruled that both municipalities had violated the right to dignity, privacy and a clean environment

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### 4. SAHRC's Water and Sanitation Campaign (2)

- The Commission ruled that both municipalities must immediately enclose these toilets in a manner that upheld basic human rights; in addition the Commission ruled that the DPME must provide a report on the state of sanitation in every municipality across the country. The DPME delivered its findings in 2 parts in 2012 and 2013 and presented to the Commission.
- The Commission's findings recognized that the issue of unenclosed toilets was part of a bigger problem facing millions of people who are poor – a lack of access to sanitation and a lack of a right-based approach to service delivery, particularly by local government.
- The Commission made a strategic decision to link these two local-level complaints to the constitutionally recognised right to water and sanitation across South Africa and called for a national campaign to ensure responsibility and accountability by government across spheres and competencies.



### 4. SAHRC's Water and Sanitation Campaign (3)

#### The 2012 National Water and Sanitation Hearing

- During the week of the hearing, the Commission held site inspections and meetings in Ramulotsi (FS) and Makhaza (WC) where unenclosed toilets were identified to assess the progress made in implementing the Commission findings and to enable community participation around the delivery of water and sanitation.
- Site inspections revealed that while the two municipalities had made significant progress in attempting to comply with the Commission's ruling to enclose the toilets, there were problems in how this had been done.
- At the National Hearing, communities, CSOs and local government all had an opportunity to make submissions on the right to Water and Sanitation.
- The DPME reported that 16 million people do not enjoy the right to sanitation and that R45 billion is needed to address the backlog and upgrade infrastructure to appropriate standards.

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### 4. SAHRC's Water and Sanitation Campaign (4)

#### Provincial Hearings all 9 Provinces (August – December 2012)

- The goal of the hearings was to give effect to the constitutional commitment of public participation on the right to access to water and sanitation, and to gather qualitative information on the state of access to water and sanitation across South Africa.
- We wanted to place the DPME report up for scrutiny and confirmation with communities
- Communities facing water and sanitation problems were identified by provincial Commission offices and provincial hearings were hosted in these communities.



## 4. SAHRC's Water and Sanitation Campaign (5)

### Provincial Hearings all 9 Provinces (August – December 2012)

- Stakeholders from civil society, government, research institutions and the private sector were invited to attend and provide submissions on the right to water and sanitation.
- The process and development of the public hearings entailed the production of a working document. The purpose of the working document was to stimulate thinking by respondents around water and sanitation as human rights and linked these to ESR.
- Submissions and the oral testimony of the hearings was supplemented by extensive secondary research of government documents, academic texts and international literature.



## 4. SAHRC's Water and Sanitation Campaign (6)



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## 5. Findings



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## 5. Findings (1)

### From the public hearings the Commission found that:

1. Despite government's assertions that access to water and sanitation across the country is substantive and adequate, poor communities suffer from a severe lack of access to basic services.
2. Some households have never had access to any form of service, some still utilise buckets as sanitation facilities, and many have infrastructure that is not operational or is broken, which effectively amounts to a lack of access.
3. The state of water and waste water treatment plants was equally concerning. Very few treatment plants in areas we visited has blue-drop certification, meaning that the quality of the water was completely fit for use and consumption.

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## 5. Findings (2)

4. There were complaints from all provinces on the lack of effective implementation of projects and monitoring by government departments.
5. In addition to being non-responsive, communities and CSOs complained that government does not engage sufficiently with communities and that there is complete lack of communication and access to information.
6. Women, children and people with disabilities were specific groups of people especially affected by the lack of access to water and sanitation.
7. Many respondents at the hearings highlight the plight of farm workers and their access to land and basic services.

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## 6. Recommendations



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## 6. Recommendations (1)

### 1. Governance from a Human Rights-Based Approach

- A cabinet-level task team should be established to ensure cooperation between government departments: their mandate and terms of reference should specifically refer to ensuring a human rights-based approach to service delivery projects.
- A national human rights campaign, funded by national government, should be rolled out in all provinces, which will focus on the drafting and enforcement of budgets and IDPs
- All policies should be centred on the Constitution to ensure that all policies and service delivery projects are framed from a human rights perspective.

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## 6. Recommendations (2)

- A lack of access to information and the lack of responsiveness of government departments remains a huge problem for communities. The Presidency must provide solutions to this problem or alternatives so that government can be engaged effectively in the short and long term.
- The National Planning Commission must provide information in its NDP on water as a human right rather than a commodity.
- Cross-subsidization of the poorer districts by well-resourced municipalities will ensure that the poorer districts are not as disadvantaged by the lack of payment for services in poorer communities (i.e. indigent communities).
- Provincial and national government departments must monitor the implementation of contracts with the private sector.

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## 6. Recommendations (3)

### 2. Community Partnerships and Monitoring

- Immediate community engagement on existing and the development of new IDP's is required to ensure that planning is done in consultation with the public and is community-specific.
- Budgets must be more transparent and accessible to the public to allow community monitoring of budget allocations and spending.
- Communities visited during the hearings were adamant that they have solutions to many of the problems facing local government, if only they were engaged at a more meaningful level.
- Community-based civil society organizations should be provided with funding to implement certain projects, with monitoring from the relevant government departments and other community-based organizations.



## 6. Recommendations (4)

### 3. Intersecting Rights

- When engaging with communities, local government departments must ensure that the voices of vulnerable groups, such as women and people with disabilities, are heard.
- All government departments must make all communities aware of policies relating to vulnerable groups.
- The Departments of Human Settlements, Basic Education and Water Affairs must undertake to supply all schools with sufficient water and sanitation by a specific date, with specific timelines attached to all agreements
- The Dept of Basic Education must ensure that its new Norms and Standards makes the provision of water and sanitation to schools compulsory and not in competition with other rights.
- The Dept of Women Children and Persons with Disabilities must monitor the cases of violence against women and girls and provide the Commission with this information along with plans to eradicate sexual violence in this context.



## 6. Recommendations (5)

### 4. Access

- Private companies contracted to provide access to water should understand that water is a right rather than a commodity and therefore ensure that basic access is provided to all households, regardless of the availability of finances.
- Immediate implementation of upgrade of water and waste water treatment plants is required, including budget allocation, project management, monitoring and evaluation from national government, which must allot timelines to this process.

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## 6. Recommendations (6)

- National government must use recent census data to provide immediate remedies to the poorest districts in the country, by way of infrastructure repair or provision of basic services.
- Information with regards to contracting of services needs from the private sector to be readily available to all public bodies, civil society organizations and communities.
- Private companies that contravene laws and human rights must be penalized by the relevant government departments.
- The "bucket system" must be eradicated with immediate effect in all provinces.

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## 7. Ensuring Equity in the Realisation of the Right to Water (1)

### SA water legislation and policy makes provision for principle of Equity

- However, the Commission found that a lack of access to basic services mirror apartheid spatial geography.
- Further, most of SA's water is used by irrigation in agricultural sector (60%) and 95% of irrigation water in SA is still in the hands of white farmers.

#### Factors for Consideration:

- **Water must be reconfirmed as a basic human right and not a commodity**
- **Redressing historical inequalities**
- **Transformation Agenda:** implementation of land reform policy
- Need for **access to reliable information** around the profile of water users and what they pay for it.
- Speaks to the issues of **Water Ownership and Water Trading**
- Linked to the issue of **affordability** in context of high levels of poverty, unemployed, and inequality: cross-subsidising of poorer municipalities by wealthier ones.

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## 7. Ensuring Equity in the Realisation of the Right to Water (2)

- **Water Pricing Strategy:** big players vs individuals/communities; impact on poorer municipalities unable to collect revenue from indigent communities
- Proportion of Water budget directed at water equity
- Commitment to **Capacity Building and skills development**, particularly at local levels as indicator of how equity to be achieved
- Need to **broaden focus of Equity** beyond gender and race and include other vulnerable and marginalised groups
- Also have to consider – beyond access to water – **Adequacy, Acceptability and Quality of water**; no use have access to water that is inadequate or of a poor quality.
- **Accountability:**
  - Government and Private Sector nexus
  - Oversight and Regulatory functions, for municipalities, for water lie with CoGTA and DWS

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## 7. NHRI Best Practice – SAHRC (1)

In summary, the Commission's Water and Sanitation campaign advocated for:

- *The indivisibility and interdependence of ESR.*
- *Re-iterated that in addressing the problems identified in the DPME report on sanitation, there should be no trade-off between ESR in national, provincial or local budgets.*
- *Maintained that it was crucial that both government and those it contracted to deliver and maintain services had to be monitored and that these entities and government departments should be held to account for the lack of delivery of basic ESR.*

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## 7. NHRI Best Practice: Systems of Accountability (2)

- The SAHRC drew on all available accountability mechanisms in order to ensure accountability to the poor for the realisation of their right. Such mechanisms included:
  - The court (with the initial two cases received);
  - All spheres of government: local, provincial and national;
  - Civil society and community based organisations;
  - Parliament; and
  - Other Chapter 9 institutions, such as the Commission for Gender Equality.

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## 7. NHRI Best Practice: Systems of Accountability (3)

- The SAHRC has sought to develop ongoing and sustainable accountability through specific recommendations to relevant spheres of government to co-operate and engage with communities through meaningful participation.
- Further through engagements with Parliament on our findings and recommendations, we have encouraged the legislature to enact its oversight role.

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## 8. Conclusion

- This campaign remains a work in progress; there are no easy victories
- Government, following the last elections in May 2014, have set up a new Ministry of Water and Sanitation
- In November, 2014, the SAHRC met with government representatives from the new Ministry W&S as well as COGTA (Cooperative Governance and Traditional Affairs), to understand what progress if any is being made
- The process of communicating findings and recommendations to government cannot be a once off exercise
- Regular engagement with relevant government departments and officials is required to ensure accountability
- The Commission continues to receive complaints from communities around the country with regard to the provision of sufficient water and decent sanitation...

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## Thank you

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