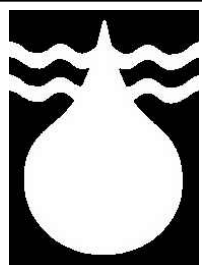


aving the
Sand
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Human Rights Project **WORKBOOK**

2



Water Research
Commission

**REPORT
NUMBER**

TT 296/07

Water as a Human right, made easy!

A framework for understanding a
rights-based approach to water



Water as a Human right, made easy!

A framework for understanding a
rights-based approach to water

Report to the
Water Research Commission

by

**Association for Water and Rural Development
(AWARD)**

WRC Report No TT 296/07
February 2007

Obtainable from:

Water Research Commission
Private Bag X03
Gezina, 0031
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ISBN 978-1-77005-513-1
Set no 978-1-77005-514-8

Printed in the Republic of South Africa



The Save the Sand Project

The Save the Sand Project is a national pilot project exploring ways of implementing Integrated Catchment Management and Landcare principles within the catchment area of the Sand River. As a national pilot project, it has a responsibility to develop a vision, be innovative in its approaches, and provide documented lessons that can be shared. Its main goal is to address the rehabilitation and sustainability of the Sand River and its catchment in an integrated and comprehensive way.

Key principles of the Save the Sand Project:

Rehabilitation and sustainability

- Social upliftment and equity
- Economic growth
- Co-operative governance.

This workbook is part of the Save the Sand Project's work towards building public awareness, capacity and action around water and land management in the Sand River Catchment.

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Acknowledgements

This workbook was written by Derick du Toit and Teresa Sguazzin.

The publication of this report emanates from a project entitled: *The development of a framework for understanding rights-based approaches and integrating them into water resources management in South Africa* (WRC project no. K5/1512).

AWARD would like to thank the focus groups that helped to pilot and clarify these materials. These include the Department of Water Affairs and Forestry Bushbuckridge group, the Bohlabela Municipality Ward Councillors, village water committees, and the Bushbuckridge Water Board.

Thanks also to Dennis Mtsweni and Vusi Dlamini for their work on the project.

Working with a rights-based approach...

South Africa's Rights-Based Approach

As we have learnt in Workbook 1, South Africa has chosen a rights-based approach to its constitution and way of governing, as enshrined in Chapter 2 of our constitution, the Bill of Rights.

*In **Workbook 1** I learnt about human rights and water, but how can I use this “rights-based approach” to understand what is happening in the water sector and to influence my own practice?*



Working with human rights can be complicated – one right cannot be compromised for another, and choices have to be made to balance needs and priorities.

Our water rights include the right to participate!

When it comes to water, not only do we have a right to enough water for our basic needs, but we also have a right to **information** about how water is being managed, and to **participate** in water management processes. How can we do this in way that takes a rights-based approach into account?

Introducing a framework for working with human rights...

In this workbook (Workbook 2), we introduce a framework to help you to understand and work with a rights-based approach. This framework can be used for all human rights, but we have focused specifically on the right to water contained in our constitution.

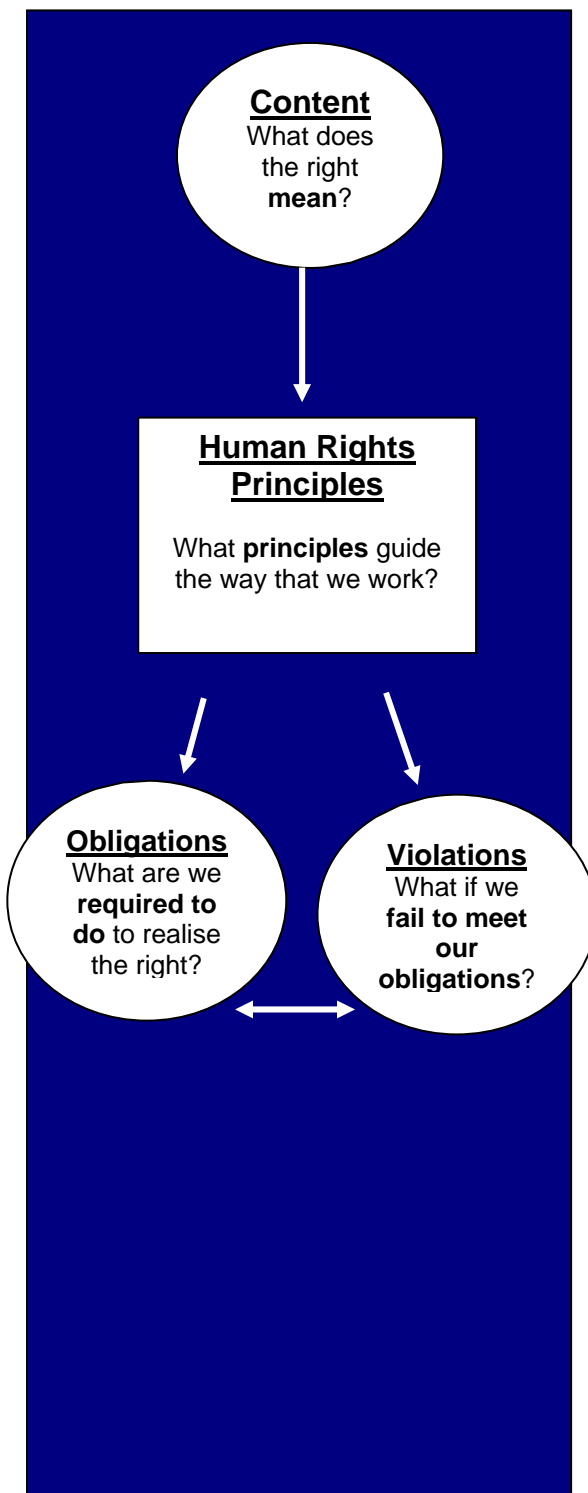
However you are involved with water, whether it is through a village water committee, local government, or through government departments, this framework for working with rights can help to check your practice against a rights-based approach to ensure that we all work towards fulfilling the South African constitution.

A summary...

Understanding how rights work

A framework for understanding a rights-based approach

Below is a framework through which we can explore what a rights-based approach means for working with water. This framework has been used to structure this workbook, and will be revisited at the end of the workbook. It is included here to show you the shape that your learning journey will take. Its five different components are briefly defined, but are unpacked in more detail on the pages that follow.



Content

The interpretation of what a human right actually means is drawn from international laws and our own Bill of Rights. In the South African Constitution, our right to water is broadly stated as the right to '**sufficient**' water. This is given more meaning in our National Water Act and Water Services Act (see units 7 and 8). Based on international and national laws, we can look at content through 3 lenses:

- **availability**
- **quality**
- **accessibility.**

Human Rights Principles

Principles guide the way that we work. There are certain principles, drawn from international law and our own constitution that must be taken into account in all of our practice. The 5 most important principles to guide us when working with water are:

1. **non-discrimination or equality**
2. **participation**
3. **accountability**
4. **indivisibility of rights**
5. **universality.**

Obligations and violations

Once we have defined what a right actually means (content), we can work out what needs to be done to fulfil this right, and who is responsible for doing it. These actions then become **obligations** – things we **must** do by law to ensure that people's human rights are met. The responsibility for fulfilling these obligations usually lies with some form of the government, and obligations can usually be divided into obligations to **respect**, **protect** and **fulfil** a right. If the defined actions are not taken and obligations are not met, then people's human rights are being **violated** (broken or disregarded). Steps must then be taken to address these **violations**.

National implementation

Human rights are meaningless unless steps are taken to make them real and to ensure that they are met for all people. To achieve this, they have to be planned for in national policies and strategies, and these policies and strategies then need to be implemented at all levels. In South Africa our National Water Act and Water Services Act make a start at planning for ways to meet people's human right to water, but many of our obligations still need further research and clarification before they can be properly implemented. Much of our own work in the Sand River Catchment forms part of South Africa's working towards fulfilling people's right to water.



Discuss and debate....

- What do you know about human rights and their history?
- What do you know about the struggle for human rights in South Africa?
- How much do you know about the South African Constitution?
- What do you know about human rights and water?
- Why is water so important to human beings?

Where does your work fit into the human rights model?

- Are you involved in setting or clarifying policy or strategies that define the content of our rights?
- Do you work to fulfil the obligations that our constitution places upon us?
- How do you participate in South Africa's national implementation of the right to basic water?

Notes and questions:

The content of our right to water

Where do we look for help defining ‘content’?

As we have said in Workbook 1, the ideas that shape a human rights approach are part of an **international trend** to make sure that all people are treated with respect and dignity. Our right to water is framed by international laws, declarations, charters and plans, by South Africa’s own commitment to ensuring that there are human rights for **all**, and by our Bill of Rights, based in part on the Freedom Charter.

The South African Constitution is the highest law in our country: all other laws **must** support it and help to fulfil its clauses. The Constitution of the Republic of South Africa takes a rights-based approach, and contains, in chapter 2, the Bill of Rights that lists all of our rights. Amongst these is the right for all people to have access to “sufficient food and water”. The Constitution does not define this further, but relies on our legislation and the actions of government and other role players to clarify what this means and make sure that necessary steps are taken to make this right a reality.

Defining our right to water



What does it mean when we say in our Constitution that “**everyone has the right to have access to... sufficient food and water**” (Article 27 (1) (b))?

There is no easy answer to this question, but people across South Africa who work with water and related issues are doing their best to work out what is **reasonable** and **deliverable**.

Well then, what factors do we look at when defining ‘how much is enough’?



A human rights focus asks us to look at:

1. availability
2. quality, and
3. accessibility.

Availability

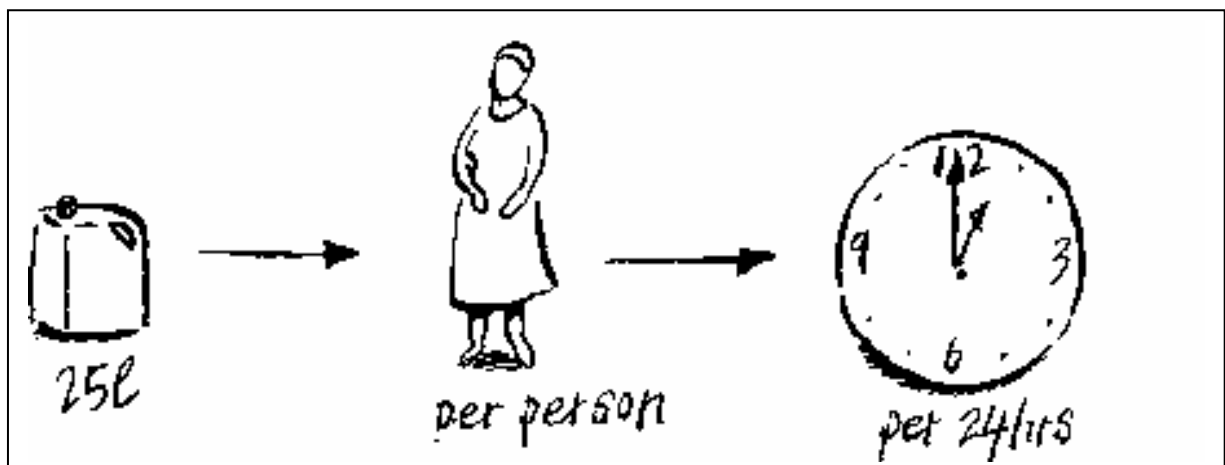


A survey of international documents has shown that **availability** can best be defined as meaning:

*“the water supply for each person must be **sufficient** and **continuous** for personal and domestic uses”.*

Sufficient?

How much is enough? This figure can be debated, but the figure that South Africa has currently set for this is 25 litres of water per person per day (the RDP minimum).



This means that every single human being in South Africa should have access to at least 25 litres of water for drinking and domestic uses (cooking and cleaning) every single day.

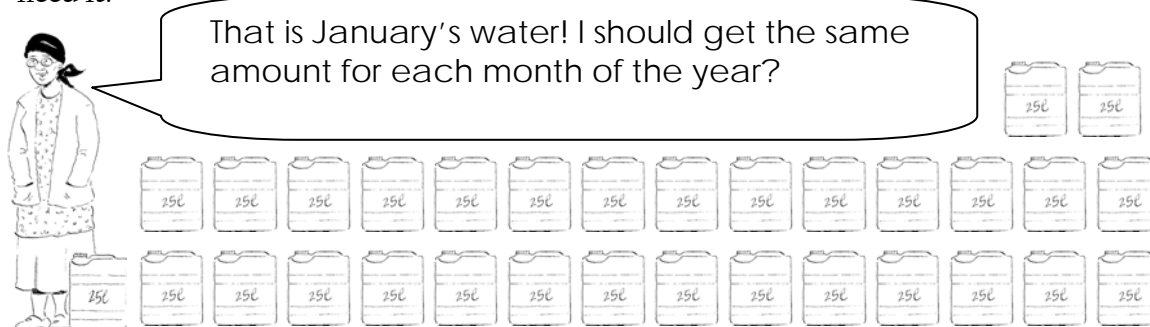
◀ ? *How many litres of water a week is this family entitled to?*

A survey of international documents has shown that **availability** can best be defined as meaning:

*“the water supply for each person must be **sufficient** and **continuous** for personal and domestic uses”.*

Continuous?

Continuous means that this water is not only available, but is available **regularly**. We cannot provide a person with 750 litres on one day and nothing for the rest of the month, because if that person does not have a way of storing that water, they will not be able to access it when they need it. Likewise, we will not be fulfilling people’s right to basic water if they can sometimes access what they need (for example, in summer when the rivers run) and sometimes not (for example in winter when rivers may dry up). People must be able to access water on an **ongoing** basis, when they need it.



Continuous availability also refers to the fact that we need to ensure people have access to water now and in the future. We cannot use up all our resources to meet short-term needs without considering long-term needs. This has implications for how we manage our water and our environment. To ensure availability for both present and future generations, water provision must also be ecologically sustainable.

Work it out for yourself....

If our goal is to provide people with 25 litres of water a day:

- how much water would four people require for one week?
- and 100 people for 10 days?

If you are in a municipality that provides 6000 litres of free basic water a month to each household in your boundaries:

- how much water will you need for a ward that is home to 250 households?

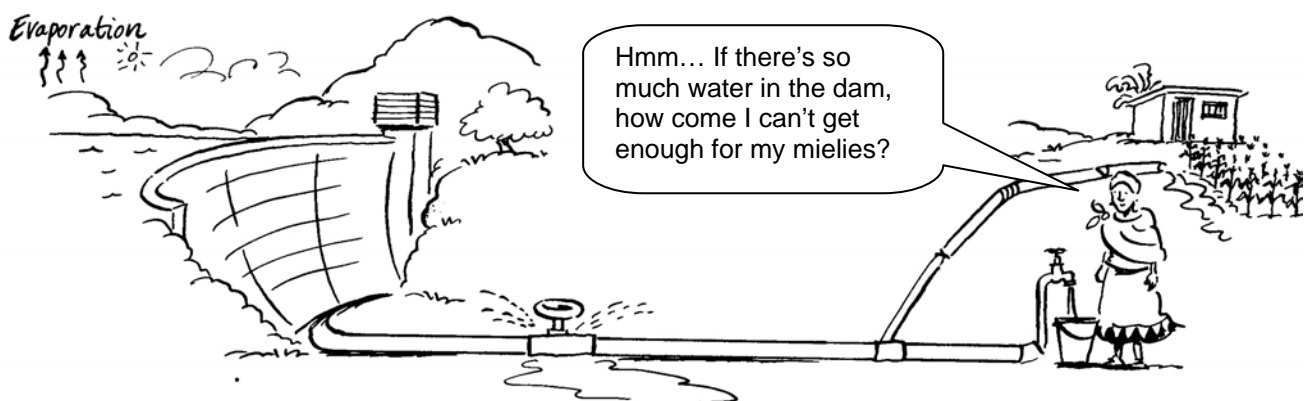


25 litres at the source is not 25 litres at the tap!

Calculations like the ones you have just done are important for planning, but it is important to realise that 25 litres at a water source does not always equal 25 litres at the tap! Evaporation, water leaks and illegal connections all affect how much water actually reaches its destination.

Even the most efficient delivery systems lose a certain amount of water between the water source (dam, borehole or river) and the tap.

It is important to work out how much water is lost between source and delivery and to factor this into your calculations and plans.



Let's imagine you are responsible for ensuring access to basic water to 40 people who live in village called Blue Valley that has piped water from a borehole. You have worked out that you will need **1000** litres a day to fulfil their right to water...BUT research has shown that about 30% of the water that enters the pipes is lost to leaks and illegal connections. How much water will be needed at the source (borehole) to guarantee the community will be able to access their 1000 litres a day?

$$1000 \quad \times \quad \underline{130\%} \quad = \quad \mathbf{1300 \text{ litres}}$$

You will need to have 1300 litres per day available at the borehole to meet this community's basic water needs. You can work out your needs for a month by multiplying this figure by 30, and for a year by multiplying your answer by 12.

$$1300 \times 30 = 39000 \text{ litres a month}$$

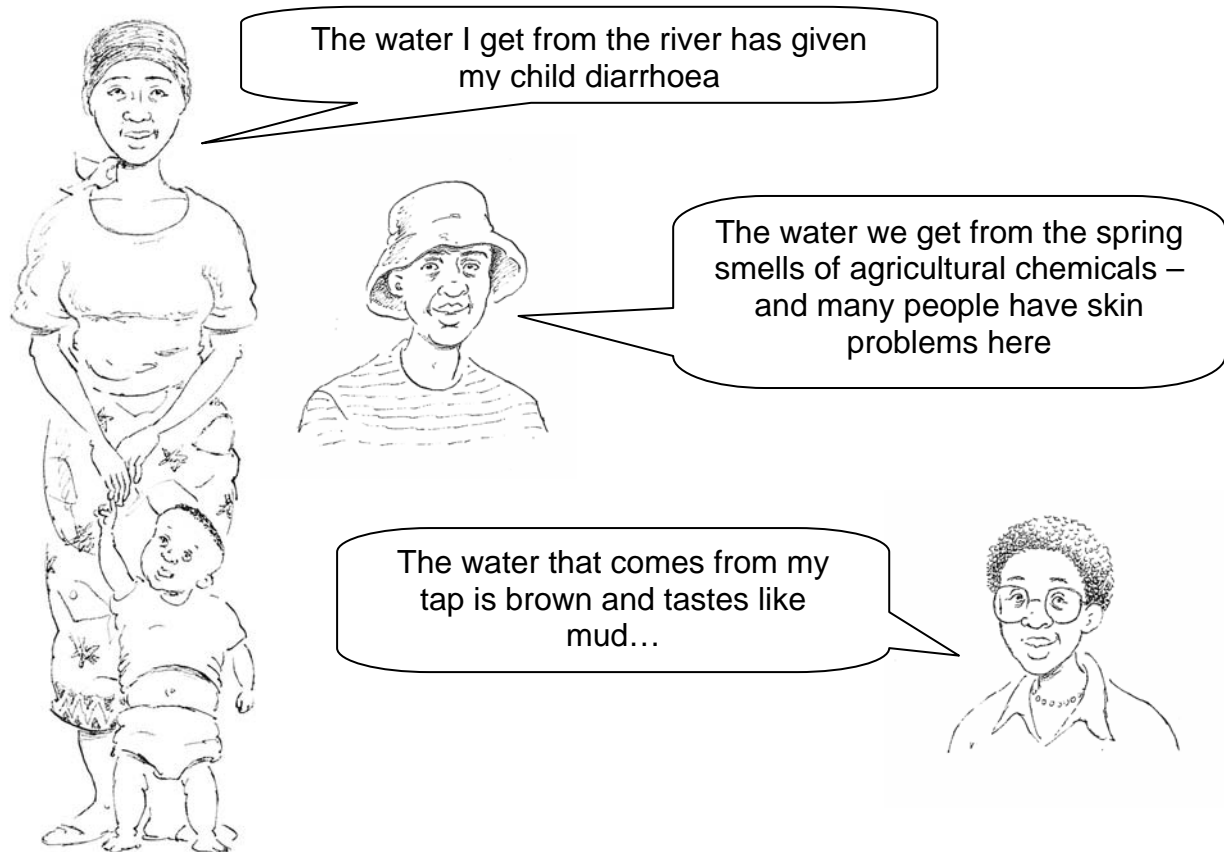
$$39000 \times 12 = 468000 \text{ litres a year}$$

TEST YOURSELF: Work out how much water you would need for the same community for a day, a month, and a year if 60% of your water was being lost between the source and the tap.

Quality



We will not have achieved anything if we provide people with water that is dangerous to their health. International and local law agrees that the water people access for personal and domestic use must be clean and safe. It must also be acceptable in terms of colour, smell and taste.



The **quality** of water can be affected by many different things. For example, pollution from industries or from chemicals used in farming can make water unfit for drinking. Contamination by animal and human wastes can spread dangerous diseases (for example, diarrhoea and cholera). Soil erosion from bad farming practices can affect colour, taste (and quantity). The rocks within which groundwater is found can add dangerously high levels of minerals.

Solving these quality problems does not only come down to installing expensive purification systems. Careful selection of water sources and good environmental management practices can help to ensure that the water that people use is clean, safe, and pure.



- Notes and questions:

[illegible]

Accessibility

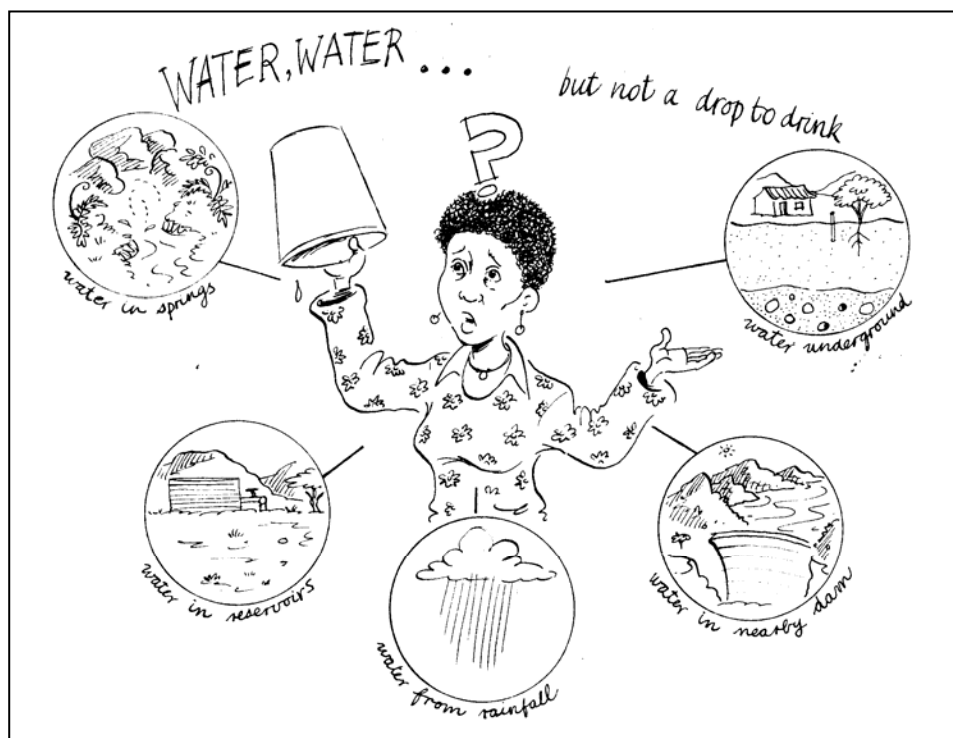


Accessibility refers to actually getting the water that you have a right to. We also use this section to look at our right to information about water and water management (access to information). The four 'lenses' we use to look at accessibility are:

1. **Physical accessibility:** how can we get to the water we have a right to? Must we fetch it from rivers or springs? How far will we need to walk? Will we have access to a shared or household tap? How far should this tap be from our home? Are we safe when we fetch our water?
2. **Economic accessibility:** can we afford the water that we need?
3. **Non-discrimination:** does everybody have equal access to basic water?
4. **Access to information:** how do we find out about our water and the issues that affect it?

Let's look more closely at accessibility through each of these 'lenses'.

1. Physical accessibility

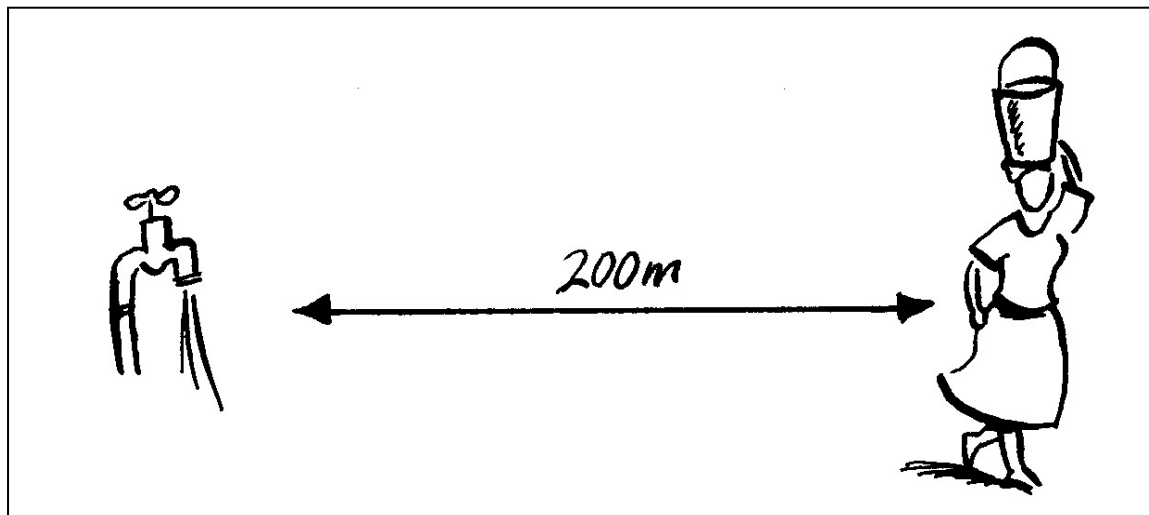


It is not enough to ensure that water is available... we also need to make sure that it is accessible!

Internationally and locally, human rights policies and strategies agree that:

Water for personal and domestic use must “be accessible within, or in immediate vicinity, of each household, educational institutions and workplaces.”

In South Africa, we are aiming for making available 25 litres of water per person per day that is accessible **not more than 200 metres** from their homes.



Nobody should have to travel more than 200 metres to access water for their basic needs

When we think of access to water, we tend to think in terms of pipes and taps. However, especially in areas like the Sand River Catchment, we need to think creatively about how best to provide access to water. Springs, boreholes, rivers, and even rainwater harvesting systems can all play a part in making water for basic needs accessible.

Whatever source people access their water from, we need to put in place ways of making sure that water is clean and safe (purification through boiling or the addition of bleach is one option), and that people can access water without having to travel too far.

Human safety when accessing water

While it is important that the water people access is clean and safe, it is equally important that people are safe while they access their water.

There are many stories about people being attacked by criminals while fetching water. This works against their right to access to



water, and police services, local government and communities must address this issue.

We also hear stories of people risking their health and even lives to access water in deep wells or from fast flowing rivers. This is also not acceptable in terms of our human rights approach.



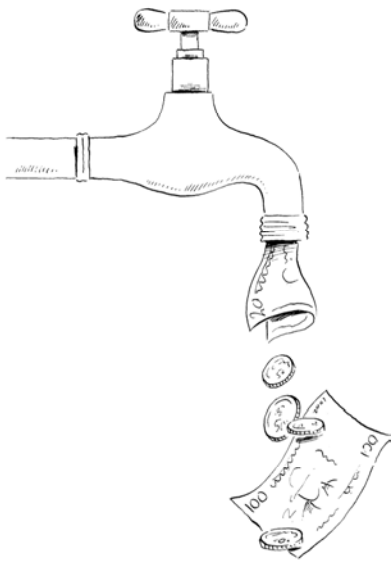
Discuss and debate....

Discuss the physical accessibility of water in your community

- Do people in your community get water from a borehole, the river, springs, taps?
- How far do most people in your community walk to fetch water?
- How many people have water that is accessible in their homes?
- How many people have water accessible within 200m?
- Are there any safety issues (crime, drowning in fast rivers, dangerously deep wells) with regard to accessing water in your community?
- Who most often fetches water?

Notes and questions:

2. Economic accessibility



Enough good quality water can be available and easily accessible... and people's water rights can still be unfulfilled. In addition to availability and accessibility, water must be affordable.

National and international human rights laws agree that **water must be affordable to all.**

The “direct and indirect costs and charges associated with securing water must be affordable.”

There is also a widespread recognition – and an economic necessity – for people to pay for water, especially when large quantities are being used for economic activities. Paying for water also helps people to realise the true value of this resource and helps to ensure that water is used efficiently and with the least possible wastage.

How do we balance these two views?

Free Basic Water

South Africa has adopted a policy of **free basic water** and is aiming to provide people with their basic water at no charge. This policy works towards fulfilling people's right to water by ensuring that all people, both rich and poor, will have access to the water that they require for their basic needs.

Water in excess of basic needs will be charged for on a sliding scale, with those who use the most paying the most. People using water above their basic water allocation will also need to register and to apply for water use licences. This will enable Catchment Management Agencies and local government to make considered choices about where best to use the water they have available to them.

Many people who are connected up to formal water supply systems are already paying for water when they use more than the free basic water they are allocated. This money goes towards paying off the real cost of water, and may also be used by local government to improve water infrastructure and to subsidise the provision of free basic water for the disadvantaged members of the community





In areas where water is not easily accessible, people often end up paying for the basic water they need to survive. These costs are often far higher than those charged by municipalities for water. Informal water sellers provide a valuable service in helping people access water, and have a right to charge for the services they provide and costs (for example, transport) they incur. How best can local government take advantage of the entrepreneurial skills of these people, while at the same time ensuring that the rural poor are not placed at an economic disadvantage when it comes to accessing water?

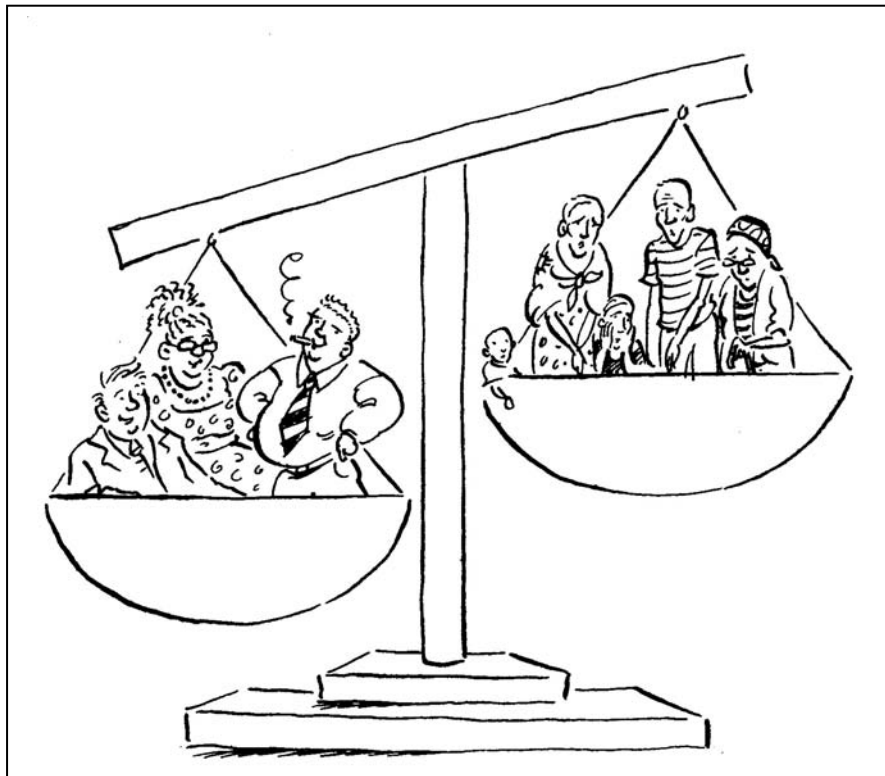


Discuss and debate....

Discuss the economic accessibility of water in your community

- Do people in your community access water for free or do they pay for water?
- Do informal water sellers operate in your community? How much do they charge for water?
- Where does local government get money from to work on water supply projects?

3. Non-discrimination



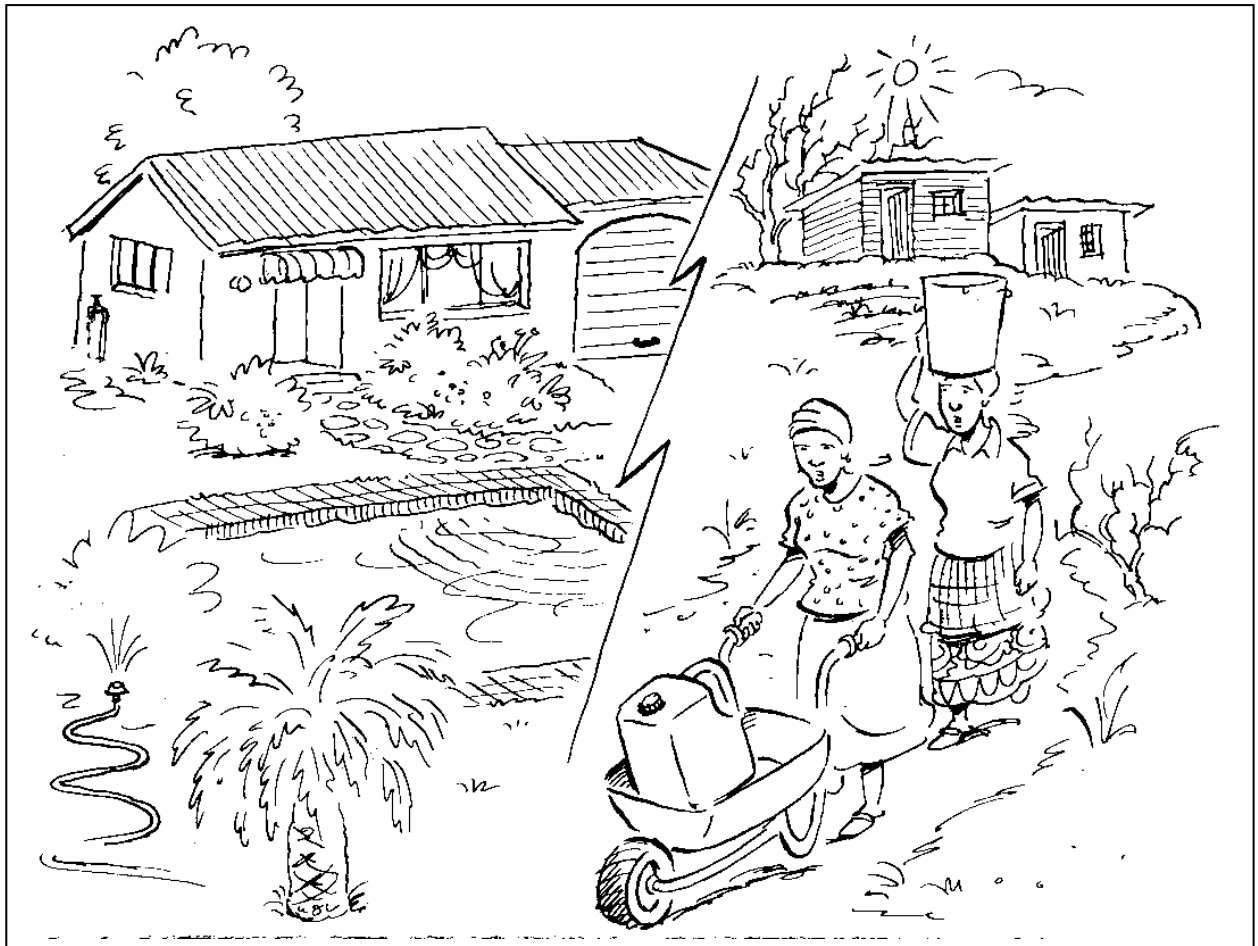
Water for some but not for others is a violation of our human rights!

South Africa has a long history of institutionalised discrimination. One of the most important tasks for our newly democratic country is to ensure equal rights and opportunities for **all**, and to work towards righting some of the injustices of the past. Everybody in South Africa is entitled to the water they need for their basic needs. No single group has more right to this water than another.

We all have a right to water

Rich people and poor people, young people and old people, men and women, South Africans and people from other countries, criminals and law abiding citizens... everybody has a human right to the water they need to live.

Accessibility for all must be guaranteed both in law and in fact. Because of our history, many groups of people are disadvantaged when it comes to access to water. These include people who live in rural areas (who are often poor) where water infrastructure is limited or inefficient; rural women, who often have the burden of walking long distances, sometimes in unsafe circumstances, to fetch water; and refugees, who are often not factored into planning for water supply or who may be discriminated against by the communities in which they live. Often the most powerful people in society – for example, political and traditional leaders and the rich – have far easier access to water, and often have access to much more water than is necessary to meet their basic needs.



Non-discrimination is a fundamental human rights principle.



Discuss and debate....

Discuss issues of discrimination in terms of access to water in your community

- Do all people living in your community have equal access to water?
- Do some people have to travel further to fetch their water than others?

people find it difficult to get enough water to meet their basic needs

4. Access to information

Access to information is listed as a fundamental right in the South African Bill of Rights (chapter 2 in our Constitution). The box on the right gives you the full text of this right.

With regard to water, drawing on international and local laws, the right of access to information includes the right to

“seek, receive and impart information concerning water issues.”

It is important to make sure that people can access information regarding, among other things, a proposed project, laws, and policies that can potentially affect water resource.

Access to information

32.

1. Everyone has the right of access to
 - any information held by the state; and
 - any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Access to information is important, since it is closely connected to the right to participation, which is meaningless without an informed public.



Real participation cannot happen if people are not informed about the issues. This cannot happen unless they have easy access to relevant information



- Where do you get information about water laws?
- Where do you get information about water infrastructure projects?
- What organisations or individuals in your area can provide you with the information you need to participate in water management?

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

A look at human rights principles

There are certain principles, drawn from international law and our own constitution that must be taken into account in all of our practice. Most important when it comes to working with water are the principles of:

1. non-discrimination or equality
2. participation
3. accountability
4. indivisibility of rights
5. universality

Let's look more closely at each of these and how they might be reflected in practice.

Non-discrimination or equality

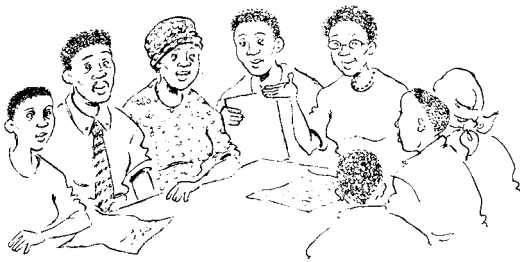


Non-discrimination is the heart of much of human rights law, and is particularly important in South Africa because of our history.

This principle means that we must focus on the rights of the most vulnerable and marginalised groups in society:

“including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees”.

The Constitution of the Republic of South Africa applies equally to all people within the borders of our country.



Discuss and debate....

How is this principle reflected in your practice?

- Can you think of any examples of how people are discriminated in terms of access to water in your community?
- Does everybody have access to the same amount of water?
- How easy is it for different groups of people to get physical access to water in the place where you work?

Participation



This principle relates to the processes we engage in when working towards realising our human rights.

The principle of participation is extremely important, and is linked to the right to seek, receive and impart information and the right to freedom of expression. The right to participation is enshrined in our constitution, and also in the Universal Declaration on Human Rights.

Catchment Management Agencies, catchment fora, and catchment management plans and the process of their formation clearly reflect our attempts to ensure that we work with water in a way that encourages participation.



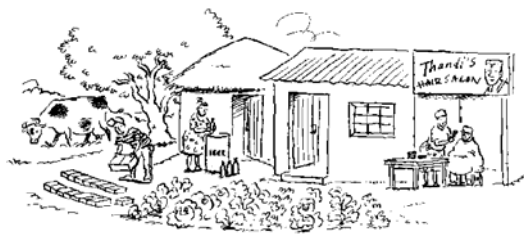
Discuss and debate....

How is this principle reflected in your practice?

- How can members of your community participate in managing water?
- List the ways that you know of, and discuss whether these are working successfully or not.

Are there any groups of people in your community who would find participation difficult?

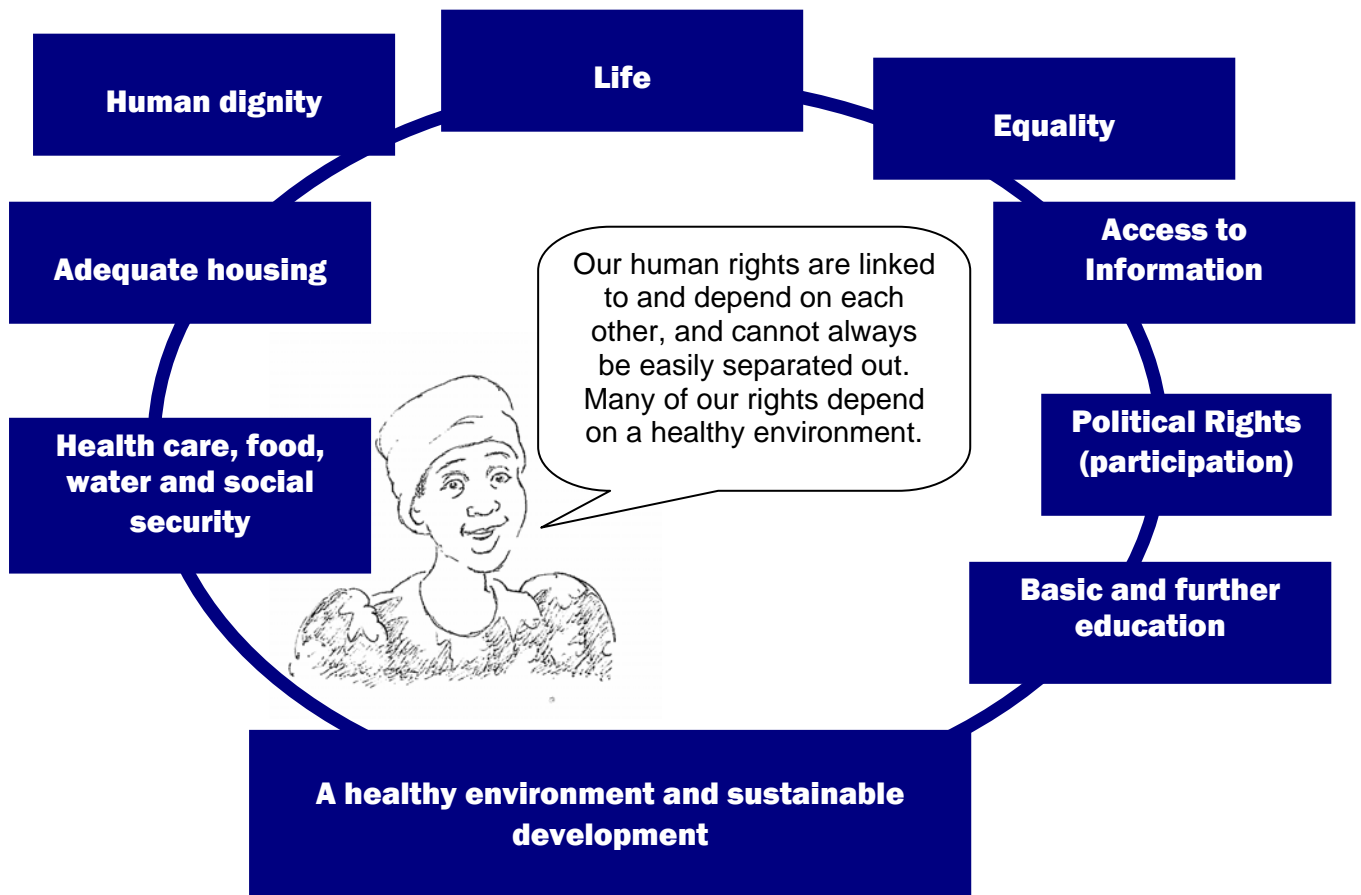
Indivisibility of rights



All human rights are indivisible or interdependent. Lack of water affects other human rights and violations of other human rights often have an impact on the realisation of the right to water. For example, providing basic water means that we need enough water of acceptable quality to do this. This can only happen if the environment that provides us with water is healthy and functioning properly, so our right to a healthy environment is closely linked to our right to water.

We have a right to 'adequate' housing – all sensible definitions of 'adequate' housing would specify access to basic water as an important part of what makes housing acceptable. Our political rights, which include the right to participate in our own government, make our mandate to participate in water management clear, and we cannot fulfil this obligation properly without access to relevant information.

How many other links between our human rights can you think of?
(see Workbook 1 or chapter 2 of the Constitution for a complete list of all our rights).



Fulfilling the right to water is also vital step in our approach to development and poverty reduction, although creating economic opportunities often requires more than simply basic water – in fact, research has shown that these opportunities only really arise when people have access to 60 litres or more a day. The diagram on the following page provides just a few examples of how access to water can support small industries. How many more economic uses can you think of?

Examples: small industries



Discuss and debate....

- How is the indivisibility of rights reflected in your IDP?
Draw a chart of all the rights that are addressed in the for your municipal IDP and show how they are connected with arrows.

Accountability & Transparency



The principle of **accountability** is another key aspect of a human rights framework, and is closely linked to the need for transparency. Both of these concepts are strongly linked to our right to access information.

A human right is nothing more than words on paper unless measures are taken to fulfil it. Fulfilling human rights means that we need to determine who is responsible for fulfilling them, and to make sure we hold them accountable. In most instances, the responsibility for fulfilling and protecting human rights lies with various branches of the government.

The State has the primary duty and obligation to protect, respect and fulfil human rights. Thus the state and its institutions are **accountable** and **responsible** to rights-holders or individuals.



Discuss and debate....

How is the principle of 'accountability' reflected in your practice?

- What is meant by accountability in meeting basic human water needs?
- In your understanding of water issues, who is accountable to who for:
 - Allocating water for Basic Human Needs?
 - Ensuring there is enough water left in rivers or underground to maintain the health of our environment?
 - Any violations of water for Basic Human Needs that occur at a ward level?
 - Ensuring that our use of water does not negatively affect the rights of people in Mozambique?

Universality



Universality makes it clear that everyone enjoys human rights. The simple fact that we are human beings entitles us to these human rights.

Although this is a very general principle, it has important implications as it means that states are responsible for fulfilling and protecting the rights of all human beings – not simply those of their own citizens. This means that non-South Africans within our country are entitled to their human rights, and that South Africa's actions must not impact negatively on its neighbours' or other countries' abilities to fulfil the human rights of those within their borders.

Universality is also closely linked with equity and non-discrimination, in that every person should have access to water and other human rights, and no person should be excluded.



Discuss and debate....

How is this principle reflected in your practice?

Are there examples of discrimination when it comes to providing water for basic needs that you are aware of? Explain your answer to your group. What action can be taken?

Notes and questions:

Exploring obligations

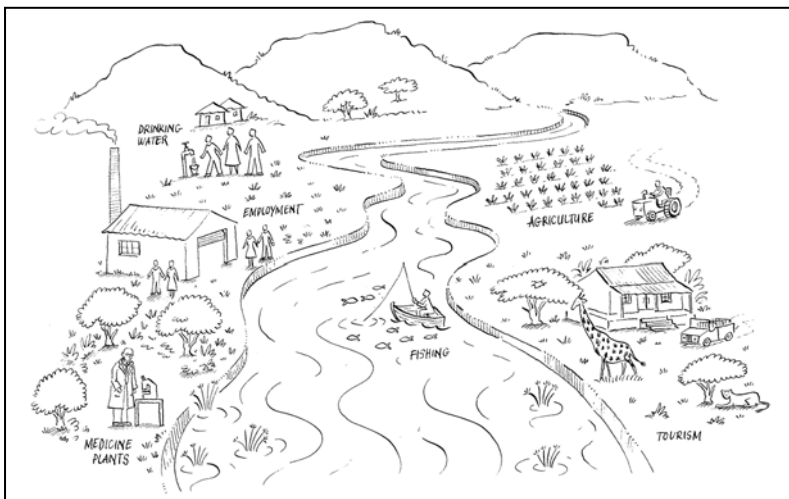
The fact that we have accepted the idea of human rights and defined them in our constitution means that we are **obliged** to do our best to fulfil them through all reasonable means. This **obligation** is binding by law, because the constitution is the highest form of law in our land.

This is not as simple as it sounds. The constitution of South Africa recognises that in many instances our rights are not being met, and obliges the state and all citizens to **progressively** work towards fulfilling them. In many instances part of this progressive work includes identifying and clarifying what these obligations are (for example, how much water is 'sufficient' for human needs?) and identifying and building the capacity of various role players to fulfil these obligations.

Obligations are based on the **content** of our right to water. In other words, states are legally obliged to realise the content of our right to water. States **violate** the right to water when they do not comply with their obligations to ensure the content of the right to water. States have four types of obligations under human rights law:

1. **general obligations** to progressively realise all rights in the constitution as fast and effectively as possible and not to move backward or retrogressively
2. **specific obligations** to respect, protect and fulfil people's rights
3. **core obligations** that must be satisfied immediately because non-compliance with these obligations can have severe short-term affects (these are drawn from general and specific obligations)
4. **international obligations** not to interfere with other countries' enjoyment of the right to water.

We should not look at one type of obligation as more important or less important than another.



We all have rights to water BUT we also have obligations to act responsibly and fairly so that we can all benefit in the long run

Generally, all human rights impose three kinds of **obligations** on States:

1. obligations to *respect*
2. obligations to *protect*
3. obligations to *fulfil*

Obligations		
Negative	Positive	
<i>Respect</i>	<i>Protect</i>	<i>Fulfil</i>
The State shall NOT...	The State SHALL...	
(Examples only)	(Examples only)	(Examples only)
<ul style="list-style-type: none"> Support actions that negatively affect people's ability to access basic water 	<ul style="list-style-type: none"> Enact legislation against water pollution 	<ul style="list-style-type: none"> Facilitate the participatory development of a national water strategy
<ul style="list-style-type: none"> Increase one group's access to basic water at the expense of another group's access to basic water 	<ul style="list-style-type: none"> Fight crime to ensure the safety of people accessing water 	<ul style="list-style-type: none"> Ensure that information needed for good water management and use is easily accessible
<ul style="list-style-type: none"> Develop legislation that works against people's water rights 	<ul style="list-style-type: none"> Ensure that water plans and practices are ecologically and socially sustainable 	<ul style="list-style-type: none"> Support, encourage and facilitate the improvement of rural water infrastructure

The obligation to *respect* is a **negative** obligation: the state must not interfere directly or indirectly with the enjoyment of the right to water.

The obligations to *protect* and *fulfil* are **positive** obligations, in that they require an active role.

The obligation to *protect* requires that the state prevents third parties (for example, individuals, groups, corporations) from interfering in any way with the enjoyment of the right to water. Examples include adopting necessary and effective legislative and other measures to restrain third parties, for example, from:

- ❑ denying equal access to adequate water
- ❑ polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems
- ❑ failing to address security and safety issues like stolen taps on communal stands or dangers, such as criminal activity, when people walk distances to fetch water.

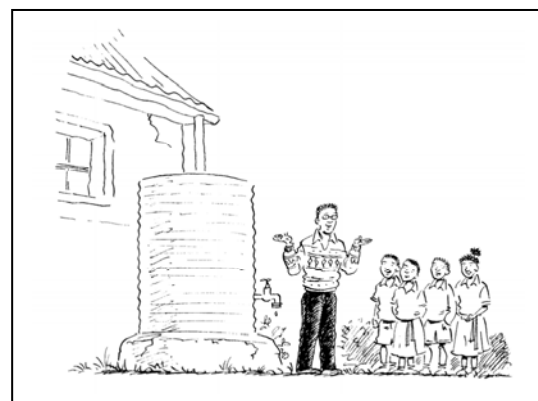
The obligation to *fulfil* is the most difficult to implement because it requires the State to take positive steps that often have long-term implications, and involves issues of finances and capacity building.

This obligation can be subdivided into three parts:



- the obligation to **facilitate**: for example, the South African government, through DWAF, is facilitating people's right to participate in water management through establishing Catchment Management Agencies and Catchment Fora

- the obligation to **promote**: this obliges the State to take steps to ensure that there is appropriate education concerning hygienic use of water, protection of water sources and methods to minimize water wastage

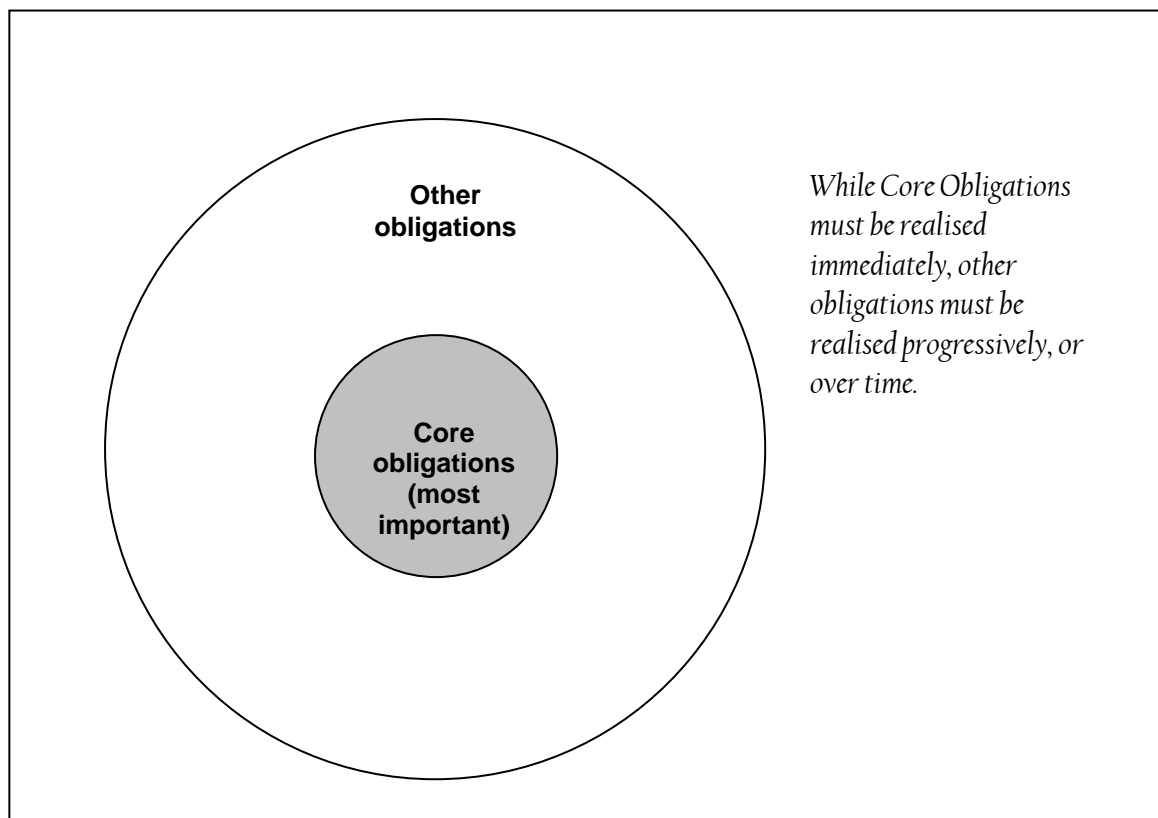


- the obligation to **provide**: which includes the obligation to adopt a national water strategy and plan of action to realize this right; ensure that water is affordable to everyone; and facilitate improved and sustainable access to water particularly in rural and deprived urban areas.

Core obligations

An obligation becomes a **core obligation** when it is important to satisfy it immediately to avoid severe negative affects (for example, if people cannot access enough water to drink, they will die).

Core obligations also lie at the heart of other obligations, and if core obligations are not met, it may not be possible to meet other obligations. Core obligations may also fall under the other categories of obligations.



Core obligations include:

- ❑ to ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease
- ❑ to ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalised groups
- ❑ to ensure personal security is not threatened when having to physically access water
- ❑ to ensure physical access to water facilities within a reasonable distance from the household and with very little waiting time
- ❑ to ensure the equitable distribution of all available water facilities and services; and to monitor the extent of the realization, or non-realization, of the right
- ❑ to adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups
- ❑ to monitor the extent of the realization, or non-realization, of the right to water

- ❑ to adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups.



Discuss and debate....

- Are the core obligations listed above being met in your community?
 - Does everyone have access to enough water for his or her basic needs?
 - Are people safe when fetching water?
 - Do **all** people have equal access or are certain groups disadvantaged?
 - Is a strategy for managing and providing water being implemented in your area?
 - Who is monitoring how water is managed and used?
- In your opinion:
 - Does water for Basic Human Needs fall under our core obligations?
 - Does water for ensuring the health of our environment (ecological reserve) fall under our core obligations?

Notes and questions:

The Reserve: a tool for managing water to meet our needs

“The Reserve” is a legal instrument to fulfill obligations towards achieving human rights for all (see Units 7 and 8). How does this work? The Reserve consists of two parts:

1. the Basic Human Needs Reserve (BHNR)
2. the Ecological Reserve (ER)

The Basic Human Needs Reserve (BHNR)

The BHNR is the amount of water **at the source** needed, at the very least, to meet the peoples basic water needs, in other words the ‘**minimum content** of the right to water’.

The BHNR is necessary in order for the government to comply with its *core obligations* to “ensure access to the minimum essential amount of water.” As a *core* obligation, the government must see the BHNR as a short-term or immediate obligation, and not as something that is subject to progressive realisation. Thus, government should be held accountable if it is not setting aside the BHNR or if it is not setting the BHNR high enough to meet the basic minimum content “at the tap”.

Is the BHNR, currently set at 25 litres per person per day, too low? Under this calculation, one must assume that in order to comply with the basic minimum content of the right to water, currently set at 25 litres per person per day within 200 metres from the house (RDP minimum), there can be no loss of water between the source and the tap. As this is highly unlikely, if not impossible, one can conclude that the BHNR at present is in violation of the *core* obligation to provide the minimum content of water.

Where is water in our catchment? The area in our catchment where most of our people live is not the area where most water is available. In other words, the BHNR may all be needed in one part of the catchment because that’s where people live but the water may have to be found elsewhere.

The Ecological Reserve (ER)

The right to a healthy environment is included in the South African Constitution. Human rights, including the right to water, depend on a healthy and sustainable environment.

The National Water Policy considers this important link when it defines the ER as “the quantity, quality and reliability of water required to *maintain the ecological functions on which humans depend*.”. As the language clearly indicates, one of the key goals in

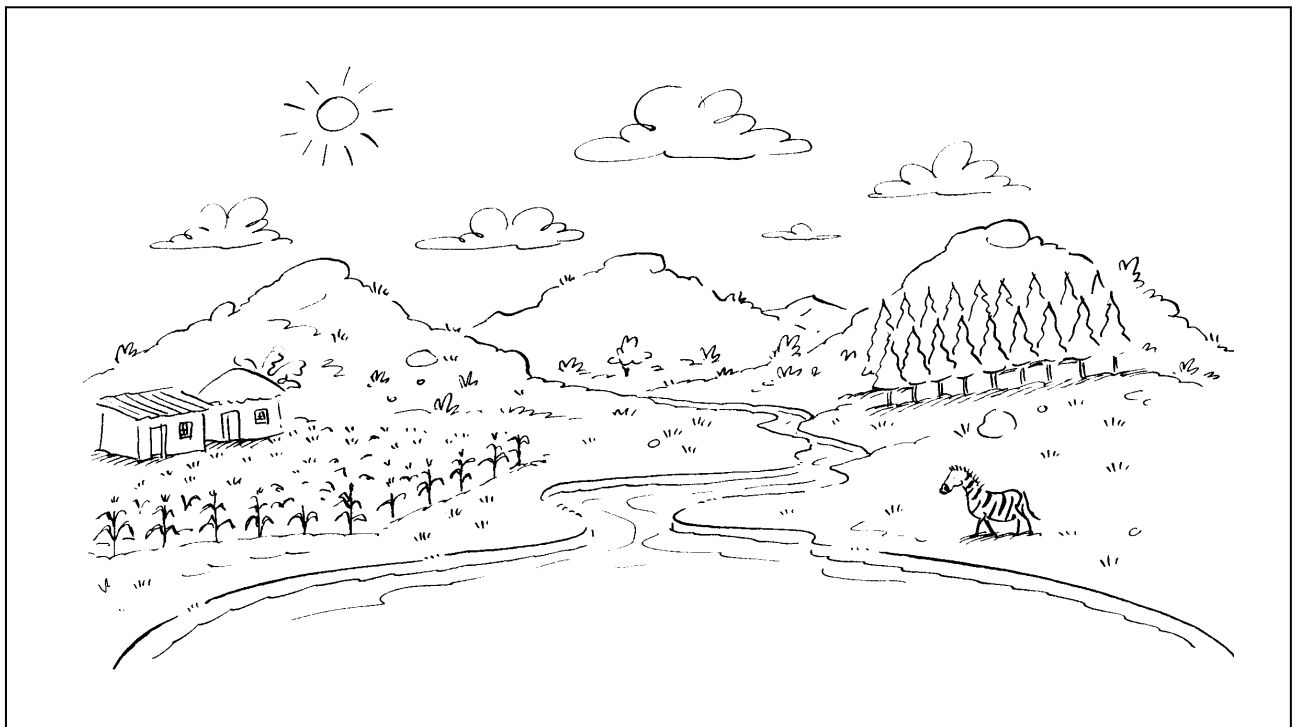
maintaining the ER is that humans depend on ecological sustainability and well-being for their needs.

The Reserve is intended to protect our water resources so that basic human needs can be met and ecological functions can continue. Technically speaking, the Reserve is defined in terms of the quality and the quantity of water needed to protect the Basic Human Needs Reserve and the structure and function of ecosystems to ensure sustainable development and use.

Simply put, the Ecological Reserve is the amount and quality of water that must remain in an aquatic ecosystem to ensure its health, now and in the future. Through the law, we recognise aquatic ecosystems as:

- rivers
- wetlands, and
- estuaries.

Although we have no estuaries in the Sand River Catchment, our rivers and wetlands require a certain amount of water to maintain their health.



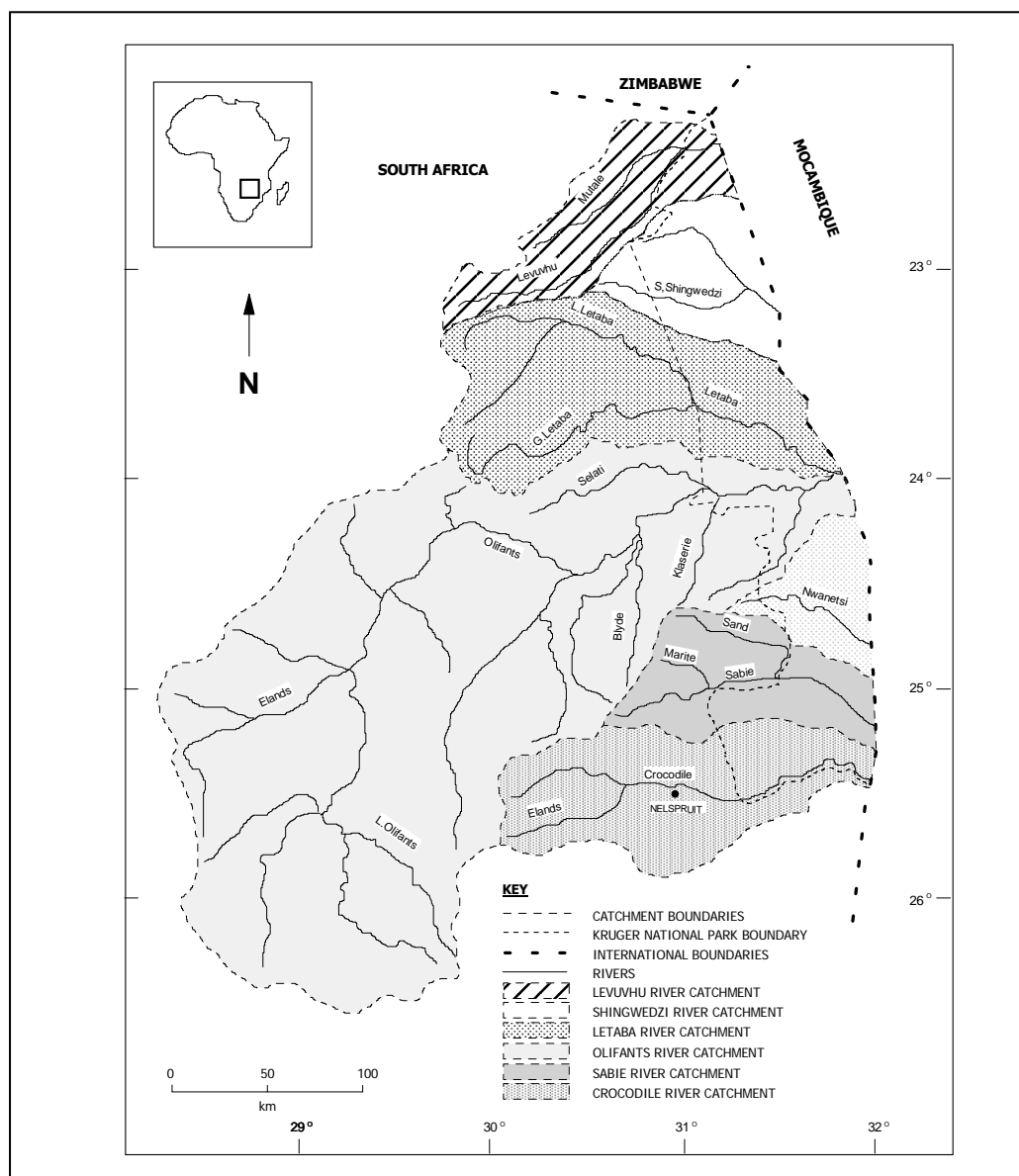
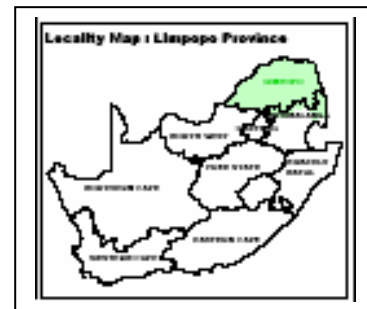
Without a healthy environment we will not be able to provide for our basic needs!

International Obligations

States have an international obligation not to interfere with other countries' enjoyment of the right to water. This, among other things, means that they must not take actions that will directly or indirectly affect other countries' enjoyment of the right to water. Specifically, States should take steps to prevent third parties from violating the right to water of individuals and communities in other countries.

In our case, we are most affected by our obligations to Mozambique.

This map shows rivers flowing from South Africa through Kruger National Park into Mozambique





- ### Notes and questions:

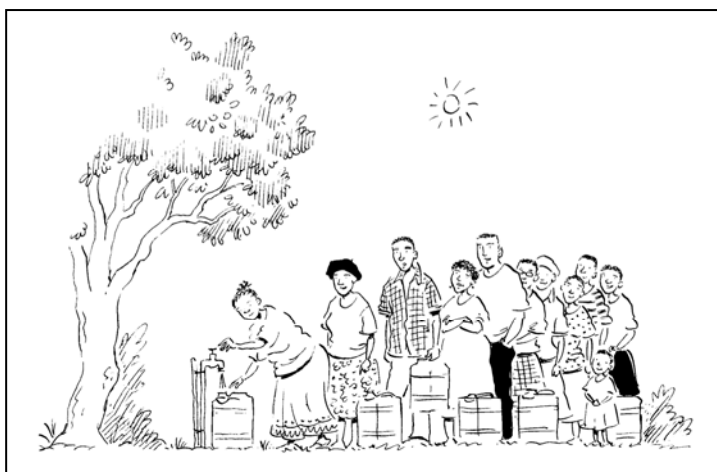
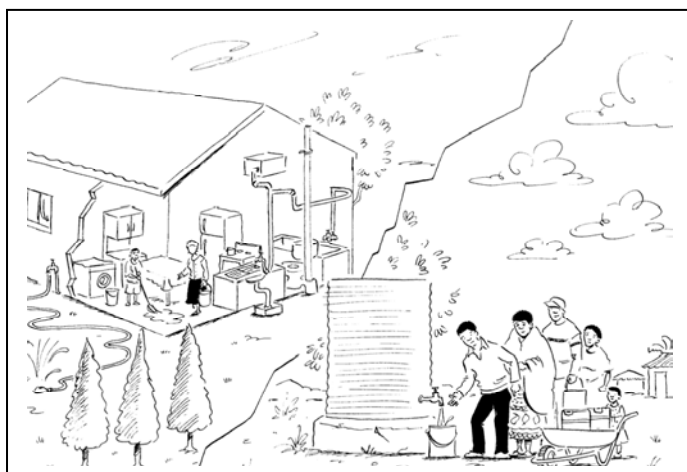
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What are violations?

What are **violations**? Violations occur when States do not live up to their obligations either through taking no action, or through taking the wrong actions. For example, a state that moves a community from an area where they have access to basic water to an area where there is not enough water to meet people's basic needs is violating those people's right to water. A state that charges people more than they can afford to pay for basic water is also violating human rights.

Core obligations must also be implemented immediately and cannot be ignored. It is important to identify where these are being violated and take steps to address them.

Can you identify the problems in these pictures? Are violations occurring? How could we go about addressing these?



Towards national implementation

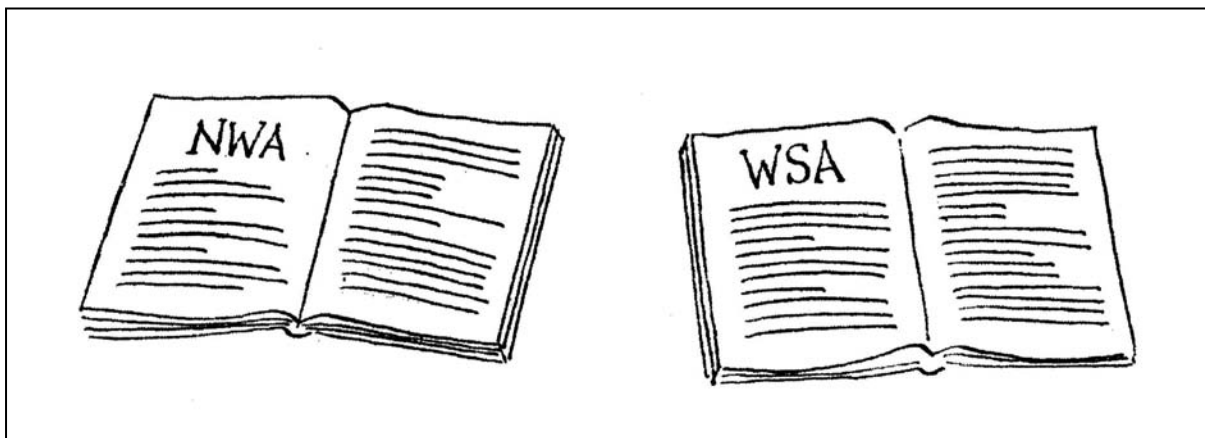
National implementation is all of our work towards meeting people's right to water. It is the responsibility of the state to meet this right, but all levels of government have roles to play along with many other stakeholders, including NGOs, private water provision firms, and ordinary citizens.

If the implementation of the right to water is delegated to regional or local government, the national government still keeps the responsibility of complying with its obligations, and must ensure that these authorities have "at their disposal sufficient resources to maintain and extend the necessary water services and facilities." In addition, the Government must ensure that there is enough coordination between the national ministries, regional and local authorities in order to harmonise water-related policies

South Africa is working towards realisation of the right to water on a number of fronts. These include:

Legislation, strategies and policies

South Africa's legislative framework has undergone huge changes in the post-apartheid process of economic, political and social reconstruction. Among other things, this has led to a completely new system of water laws and a new institutional system for its implementation. Some important legislation as regards human rights and water includes our constitution, our new water laws (the National Water Act and Water Services Act), our Strategic Framework for Water Services, and the National Environmental Management Act.



Our new water legislation is an important part of our national implementation of the human right to sufficient water for our basic needs

Local government

It is also important to look at laws that deal with local government powers and functioning. In this regard, among others, three important laws must be considered: the Constitution, the Municipal Structures Act, and the Municipal Systems Act.



How is implementation of our right to water taking place in the Sand River Catchment?

How are you, in your work with water, contributing to fulfilling human rights? How does your own practice reflect the content and principles of our Bill of Rights?



Discuss and debate....

- How are people and organisations in your area working towards fulfilling people's human right to basic water?
- What are the aspects of water management and provision that require most attention in the community where you live and work?
- How can you, through your own practice, contribute to fulfilling people's right to basic water?

Notes and questions:

Summary and recap

