# Briefing note on the Provincial Hearings 2012[1]

***(Issued by the Deputy Chair's office: Commissioner Pregs Govender)***

**The South African Human Right Commission**

The South African Human Rights Commission (SAHRC) is a National Human Rights Institution mandated to promote the protection, development and attainment of human rights in South Africa. It provides leadership on human rights through its handling of complaints, research, education and advocacy.

**The Right to Access Water and Sanitation**

According to the World Health Organisation (WHO), 115 people in Africa die every hour from diseases linked to poor sanitation, poor hygiene and contaminated water.[2] A lack of access to safe drinking water and sanitation still kills more children than malaria, measles and HIV/AIDS combined.[3] The Special Rapporteur on the human right to safe drinking water and sanitation has shown that inadequate water and sanitation facilities impact on the realisation of other rights such as education, health, work and dignity, amongst others.[4] Water and sanitation are fundamental to the health and wellbeing of all people. In South Africa, it is estimated that 16 million people do not have access to adequate sanitation while 3.5 million do not have access to safe drinking water[5].

The Constitution of the Republic of South Africa , Act 108 of 1996 (Constitution) enjoins the State to progressively realise economic and social rights including *inter alia* the right to water, housing, a healthy environment and adequate food.[6] In addition, South Africa has ratified several international conventions that enshrine the right to water and sanitation[7]. The United Nations Human Rights Council noted that "*the human right to safe drinking water and sanitation... [is] inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity*."

**The SAHRC 2012 Water and Sanitation Campaign**

Widespread poverty and inequality prevents millions of South Africans from enjoying the rights enshrined in our Constitution. This reality motivated the SAHRC to develop a clear strategy on poverty and inequality, which recognises that people who are poor seldom enjoy access to socio-economic rights and civil and

[1] This document is based on the Concept Note produced by Commissioner Govender
[2] Cited by UNICEF 'Water, sanitation & hygiene" 19 November 2010. Available at www.unicef.org/madagascar/Final_Global_Latrine_Day.docx
[3] See Wash United. Available at http://www.wash-united.org/the-club/why-wash.htm
[4] Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, Human Right Council A/HRC/6/3 16 August 2007
[5] DPME Executive Summary (2012) Available at http://www.sahrc.org.za/home/index.php?ipkMenuID=&ipkArticleID=95
[6] These include the following: National Water Act 36 of 1998; Water Services Act 108 of 1997; Water Research Act 34 of 1971; White Paper on Water Supply and Sanitation (1994); White paper on Water Policy (1997); White Paper on Basic Household Sanitation (2001); National Water Resource Strategy (2004); Draft White Paper on Water Services (2002); Draft Position Paper for Water Allocation Reform (2005); and Draft Position Paper for Water Allocation Reform in South Africa (2005).
[7] Namely the Convention on the Elimination of all Forms of Discrimination Against Women (Article 14 (2)), the Convention on the Rights of the Child (Article 24 (2)), the Convention on the Rights of Persons with Disabilities (Article 28) and the African Charter on Human and Peoples' Rights (Article 4)

political rights. People are further discriminated against based on factors such as race, gender, sexual orientation, disability, culture and language.

Historically, most complaints laid with the SAHRC dealt with the violation of the rights of individuals. Most of these complainants, from urban centres were brought to urban-based SAHRC offices. Thus those with the greatest resources often monopolised this access to demand that the SAHRC prioritise their complaints. More recently, the SAHRC complaints mechanism has been used by individuals from political parties to solve problems with opposing parties.

In the run up to the 2010 local government elections, the SAHRC received two complaints on municipalities that built toilets without enclosures in their local communities. The first complaint was from the Western Cape ANC Youth League against a DA-led municipality in the Western Cape. The second was from a DA leader against an ANC-led municipality in the Free State. As a Chapter 9 Institution, the Constitution mandates the SAHRC to operate without fear, favour or prejudice. In line with this mandate, the SAHRC investigated the complaints and ruled that both municipalities had violated the right to dignity, privacy and a clean and healthy environment.[8]

In both findings, the SAHRC addressed the responsibility of the local municipalities to immediately enclose these toilets. The SAHRC findings also recognised the fact that this 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. The SAHRC thus made a strategic decision to link these two local-level complaints to the generic right to sanitation across South Africa by calling for national responsibility and accountability. Later in the year residents of Makhaza approached the Western Cape High Court for relief, as the toilets remained unenclosed. The Court found in favour of the applicants, ruling that the toilets violated the right to dignity and privacy and that no provision was made for vulnerable groups such as the elderly, people with disabilities and women..[9]

**DPME Report to SAHRC**

In its first ruling on sanitation, the SAHRC asked the Department of Human Settlements to report on progress on eradicating the bucket system across the country. In the second ruling, the SAHRC asked the Department of Monitoring and Evaluation (DPME) in the Presidency to provide a comprehensive report on the right to sanitation in every municipality across the country and Government's plans to address backlogs. The DPME brought together an inter-governmental task team, consisting of departments such as COGTA, Human Settlements and Water Affairs, to develop this report. The DPME committed itself to the following:
Phase 1 deliverables:

- Fully populated and geo-referenced country wide community level classification of quality (adequacy and functionality) of sanitation services experienced by citizens using the SFW criteria
- An assessment of the quality and condition of existing sanitation infrastructure (inclusive of waste water treatment works)
- Identification of the settlements where the quality of sanitation service levels does not meet the above criteria whilst also quantifying the types of investments and costs to bring sanitation service levels to acceptable levels
- Key challenges hampering the attainment of adequate sanitation service levels in identified hotspots

[8]SAHRC findings from Makhaza available at http://www.sahrc.org.za/home/21/files/Makhaza%20Finding%202010.pdf and findings from Free State available at http://www.sahrc.org.za/home/21/files/FS%20Open%20Toilet%20Finding.pdf
[9]Beja vs City of Cape Town and others, April 2011 Available at http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=233509&sn=Detail&pid=71616

Phase 2 deliverables:

- An institutional assessment of municipal technical and financial capacity to expand and sustain access to adequate and functioning sanitation services following an asset management approach
- Establish the conditions required for a national performance monitoring framework for sanitation service delivery and clarify the regulation and/or monitoring of sanitation service delivery at a municipal level
- Establish the roles and responsibilities for the provision of both technical support and support for community consultation, communication and the conclusion of variation agreements regarding norms and standards as interim sanitation delivery arrangements
- Establish the policy, programme and legislative review implications of the recent rulings made by the Cape High Court and SAHRC for the delivery of quality basic sanitation services.
- Propose sanitation master plans linked to WSDPs with actions, timeframes and allocated resources to implement quality sanitation services in areas where they are lacking.

The SAHRC has received the first phase report from the DPME. This was presented at the National Hearing in March 2012. The executive summary is available on our website.

**Section Five Committee**

The SAHRC has the power to create expert-advisory committees that have a particular focal point. Two "Section Five Committee" meetings, relevant to water and sanitation have been held to date. In May 2011, the Committee looked specifically at governance and basic services. There was a particular focus on the need for the Commission for hold government and the private sector accountable for the delivery of basic rights. The second Section Five Committee meeting was a round-table discussion, which focused on Basic Services and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). It was held in Cape Town on International Women's Day 2012. Fourteen participants from ten civil society organisations met to look at the SAHRC's campaign on water and sanitation to ensure that a gender analysis is central to the campaign.

**Site inspections and Meetings**

In the same week of the March 2012 National Hearing the SAHRC held site inspections and meetings in Rammulotsi and Makhaza, the two communities were unenclosed toilets were identified. The goal was to assess the progress made in implementing the SAHRC's findings in the Rammulotsi and Makhaza cases, to enable community participation so government officials were able to see and hear firsthand the community concerns regarding the delivery of water and sanitation. The SAHRC aimed to facilitate the engagement between community members and the municipality to ensure that remaining problems related to the right to sanitation were addressed.

The March 2012 inspections and meetings were attended by government representatives such as the mayor and local government officials as well as the complainants, members of the communities and local organisations. The site inspections revealed that whilst the two municipalities had made significant progress in attempting to comply with the SAHRC ruling to enclose the toilets, there were problems in how this had been done, for example there were instances in which there were no connections to water pipes; no taps; no provision for people with disabilities; no lighting. In addition in areas surrounding the now enclosed toilets, there was evidence of the lack of planning and prioritisation by local government authorities with

regard to the provision of water and sanitation, for example, many portable toilets had not been cleaned or collected for weeks. On site and at the meeting at the end of the inspections, the SAHRC was able to ensure a constructive engagement between the local communities and local government, who made significant commitments to addressing the problems that had been identified.

**National Human Rights Month Hearing**

On 14 March 2012, the DPME submitted its report to the SAHRC National Hearing on Water, Sanitation and the Progressive Realisation of Rights. The DPME reported that 16 million people do not enjoy the right to sanitation and R45 billion is needed to address the backlog and upgrade infrastructure. [10]

Representatives of the two communities (mentioned above), community-based organisations (CBOs), non-governmental organisations (NGOs), academics and engineers from the private sector presented submissions at the hearing. The inter-sectionality of human rights was reinforced by participants who addressed the adverse and disproportional affects of a lack of sanitation and water on women, school-going children as well as those who were elderly or had disabilities.

In summarising the hearing the SAHRC asserted the indivisibility and interdependence of economic and social rights. The SAHRC re-iterated that, in addressing the problems identified in the DPME report on sanitation, there should be no trade-off between economic and social rights in national, provincial or local budgets. It also maintained that it was crucial that both government and those it contracted to deliver and maintain services are monitored and that these entities and government departments be held to account for the lack of delivery basic economic and social rights.

In addition to asking for government accountability it is necessary to look at the nexus of government and the private sector, which also uses water and sanitation services. They question is how much do they use and at what cost? The private sector is also often contracted to provide services and hence must also be held accountable for non-delivery thereof. Municipalities sign Service Delivery Agreements with private entities, which should be made available for public viewing on their website as per the Municipal Finance Act[11]. Not one municipality currently has these contracts in their websites.

In fact the High Court noted in the Makhaza matter:

> Before a Municipality enters into a service delivery agreement with an external service provider, it must establish a program for community consultation and information dissemination regarding the appointment of external service provider and the contents of service delivery agreement must be communicated to the local community through the media (section 80 (2) of the Act).[12]

**Provincial Hearings**

A series of provincial hearings are to be held from August to November 2012, through which the SAHRC will give effect to the Constitutional commitment to public participation on the right to access to water and sanitation. Communities facing water and sanitation problems have been identified by provincial SAHRC offices and provincial hearings will be hosted in these communities. Stakeholders from civil society,

[10] DPME Executive Summary (2012) Available at http://www.sahrc.org.za/home/index.php?ipkMenuID=&ipkArticleID=95

[11]: Local Government: Municipal Finance Management Act No. 56 of 2003. Section 75(1) The Accounting Officer of a municipality must place on the website ....
(d) all service delivery agreements

[12] Ibid section 3

government, research institutions and the private sector will be invited to attend and provide submissions on the right to water and sanitation. The hearings will enable local communities to:

- ✓ Interrogate the DPME report relating to their province and municipalities from their own lived experience of access to water and sanitation.
- ✓ Share their analysis of delivery of these rights, the initiatives they have taken to access their rights and the solutions they have proposed.
- ✓ Reflect on the differentiated impact of the lack of rights, for example, on gender-based violence and gender equality.
- ✓ Engage with and hold accountable local provincial and national government to ensure the right to water and sanitation is realised.
- ✓ Enforce government accountability to regulate and monitor private entities contracted to deliver the services in a way that upholds human rights.
- ✓ identify what businesses pay, in comparison to households, for their use as well as pollution of water

**The dates for the hearings are as follows[13]:**

| Province | Date |
|---|---|
| Mpumalanga | 29 August 2012 |
| KwaZulu-Natal | 12 September 2012 |
| Limpopo | 20 September 2012 |
| North West | 27 September 2012 |
| Northern Cape | 9 October 2012 |
| Gauteng | 11 October 2012 |
| Free State | 16 October 2012 |
| Eastern Cape | 14 November 2012 |
| Western Cape | 27 November 2012 |

**2013 National Hearing**

DPME will present its second report to this hearing. Prior to this, the SAHRC's report from the provincial hearings will be sent to the DPME and specific departments with questions for clarity and accountability on specific issues. The SAHRC Report from the provincial hearings will be presented to Parliament in March 2013

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[13] Venue and times for each hearing will be confirmed closer to the date of the hearing