

CHAPTER EIGHT

THE RIGHT TO SUFFICIENT WATER

PART A: OVERVIEW

1 INTRODUCTION

Before the 1996 constitutional dispensation, there were huge disparities and inequities with respect to access to services including water. The laws governing water in this country were shaped and developed by the needs and aspirations of Whites, who influenced and enacted laws that served their domestic, agricultural and industrial needs.¹ The vast majority of black people especially those in rural areas, had limited access to water services.²

With the advent of the Constitution,³ came the recognition of past injustices, and the need to establish a society based on democratic values, social justice and fundamental human rights. In line with this constitutional mandate, relevant organs of State, namely the Department of Water Affairs and Forestry (DWA), the Department of Provincial and Local Government (DPLG) and provincial local government departments, have developed legislative and other measures towards the progressive realisation of the right to have access to sufficient water.

This chapter assesses information provided by organs of State to the South African Human Rights Commission on legislative and other measures instituted during 1999/2000 financial year towards the progressive realisation of the right of access to water.

2 CONSTITUTIONAL OBLIGATIONS

The right of access to sufficient water is accorded to everyone in s 27(1)(b) of the Constitution, which states that everyone has the right to have access to sufficient water. Section 27(2) requires the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right.

In a number of international and regional instruments, the right to sufficient water is not explicitly recognised. Most of the instruments provide for the right to an adequate standard of living for the health and well being of the individual and family.⁴ These instruments include the Universal Declaration of Human Rights (UDHR),⁵ the International

¹ J Glaweski *Environmental Law in South Africa* (2000) 509.

² RDSN *Water for All* at http://www.rdsn.org.za/documents/archive/water_sanitation.html. Site visited on 16/08/2001.

³ Constitution of the Republic of South Africa, Act 108 of 1996.

⁴ G E Devenish *A commentary on the South African Bill of Rights* (1999) 366.

⁵ Article 25 of the Universal Declaration of Human Rights (1948).

Covenant on Economic Social and Cultural Rights (ICESCR),⁶ and at the regional level the African Charter on Human and Peoples Rights.⁷ The above-mentioned provisions emphasise the link between food, water, environment, housing and health.

The right to 'adequate water' is specifically provided for in the International Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and Draft Protocol to the African Charter on the Rights of Women.⁸ CEDAW recognises the right of women in rural areas to enjoy adequate living conditions, particularly in relation to sanitation and water supply.⁹

The right to water has also been provided for in the Copenhagen Declaration, where States are supposed to focus their efforts and policies to provide basic needs for all. The efforts should be directed at providing safe drinking water and sanitation to everyone.¹⁰

Access to sufficient water

The Constitution provides for the right of access to sufficient water. In interpreting the right of access to sufficient water, consideration must be given to international law. The Constitution provides that international law must be considered in interpreting the rights contained in the Bill of Rights.¹¹ Access to water implies that water should be both economically and physically accessible. Physical accessibility means that water should be available within a distance accessible to everyone including vulnerable individuals such as children, elderly persons and persons with disabilities.¹² There should be adequate infrastructure and the effective maintenance of facilities and equipment, and equitable access even for under-serviced areas. Economic access refers to the financial costs associated with accessing water.

The right of access to sufficient water in s 27(2) should be understood to mean that the State is not obliged to provide water freely, but is under an obligation to create mechanisms that enable people to have access to sufficient water. In the event of resource constraints, which limit the ability of the State to fulfil its obligations, the State is still obliged to provide a plan of action that demonstrates that the full realisation of the right shall be achieved over time. Furthermore, available resources should be utilised effectively so as to give maximum results, with priority being given to assuring to everyone, the satisfaction of the most basic requirements as

⁶ Article 11 of the International Covenant of Economic Social Cultural Rights (1966).

⁷ Article 16 (1) of the African Charter on Human and Peoples Right..

⁸ Ibid Article 17(1)(a) of the Draft Protocol recognises the right to have access to nutritious and adequate food. In this regard, State parties to this Protocol shall take appropriate measures to provide women with access to clean water.

⁹ Ibid Article 14(2)(h).

¹⁰ Commitment 2 of the Copenhagen Declaration on Social Development (1992).

¹¹ Note 3 above, Section 39(1)(b).

¹² General Comment 12 (1999) para 13.

well as the provision of essential services, including access to sufficient water.¹³

Sufficient water

Sufficient water refers to the quality and quantity required to satisfy basic domestic needs. The quantity refers to the minimum amount of water required to meet basic needs, and the quality refers to the minimum standards acceptable to consumers in terms of health related characteristics. Water quality implies that it should be free from adverse substances such as toxins, bacteria and other harmful substances.¹⁴ This is important because safe drinking water is an essential part of the human diet and is necessary for survival, and should therefore be within acceptable standards with regards to potability (taste, odour and appearance). It should be safe enough for food preparation, bathing, and for washing laundry.

The quantity of water refers to the cartage distance, availability, assurance of supply, and upgradability of services. Availability refers to the flow rate of water from the outlet, which should be available on a regular basis. Assurance of supply refers to the security in the supply, through regular maintenance of the system and ensuring clean water supply, 98 percent of the time. Upgradability refers to the extent to which communities can upgrade a basic service to a higher-level household connection.¹⁵

According to the World Health Organisation (WHO), the quantity of safe water required is 20-40 litres per person per day. In South Africa, the Department of Water Affairs and Forestry has set the minimum quantity at 25 litres per person per day, the minimum cartage distance at 200 metres, with consideration for varying landscapes. This is considered to be the minimum requirement for direct consumption, food preparation and personal hygiene, but not adequate for a full, healthy and productive life.

As mentioned above water rights are inter-linked with several other rights: the right to food, health, housing and a healthy environment. This places an obligation on the State to provide clean drinking water for human consumption, conserve water and provide basic services for sanitation for the protection of the environment. Water is essential for human survival and must be protected against contamination and unhygienic environmental practices for drinking purposes. The right to a healthy environment requires the appropriate disposal of sewage where basic sanitation services should at the very least provide on-site services such as ventilated pit latrines.

¹³ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) (1986) para 28.

¹⁴ Ibid. para 10.

¹⁵ Department of Water Affairs and Forestry *White Paper on the Water Supply and Sanitation Policy* (1994) 15-16.

3 KEY DEVELOPMENTS FOR THE YEAR UNDER REVIEW

The Water Supply and Sanitation Policy released in 1994 and the White Paper on the National Water Policy for South Africa of 1997, guide legislative and other measures instituted by the State, including those instituted during 1999/2000. The Water Supply and Sanitation Policy sets out the policy for water supply and sanitation services, while the White Paper sets out the policy for the management of both the quality and quantity of scarce water resources.

There are two pieces of legislation, enacted before the reporting period that broadly set the context for the progressive realisation of the right of access to water. These are the Water Services Act 108 of 1997 and the National Water Act 36 of 1998. The two Acts are founded on principles of equity, optimal and sustainable use, responsibility and accountability.¹⁶ It is against the above that legislative and other measures discussed below have to be understood.

3.1 Policy developments

The only major policy developments that took place during the reporting period was the Water Conservation and Water Demand Management (WC/WDM) Strategy for the Water Services Sector.¹⁷ The WC/WDM was one of the four sectoral strategies being developed by the Department, due to the inefficient usage of water found in all water sectors and the lack of recognition of the value of water. Within the WC/WDM strategy the other strategies relate to industry, mining and power generation; agriculture and forestry; environment and water management systems. The integration of all these sectoral strategies will form the National Water Conservation and Water Demand Management Strategy. The overall WC/WDM strategy will then be a component of the Water Resources Strategy promulgated in the National Water Act mentioned above.¹⁸

The purpose of the Water Services Sectoral Strategy was to develop a model that could be used as a guideline by water services authorities. It was aimed at identifying measures to ensure the development and implementation of the WC/WDM by all Water Services institutions.

3.2 Legislative developments

There were no legislative developments on the right to have access to sufficient water that took place during the reporting period. The Department of Water Affairs and Forestry was still implementing the Water Services Act¹⁹ and the National Water Act²⁰ respectively.

¹⁶ Department of Water Affairs and Forestry *Water Conservation and Demand Management National Strategy Framework Draft* May (1999) 8.

¹⁷ Water Conservation and Water Demand Management Strategy for the Water Services Sector: at http://www.dwaf.gov.za/directorates/water_percent20use_percent20percent26percent20cons/lastrat1.doc. Site visited on 16/10/01.

¹⁸ Ibid.

¹⁹ Water Services Act 108 of 1997.

The Water Services Act makes provision for an institutional framework for the delivery of water supplies and sanitation, and recognises the right of access to basic water supply and sanitation necessary to secure sufficient water and an environment not harmful to health or well being.

The National Water Act shifts emphasis from supply management to demand management as an approach to water management and seeks to conserve the nation's water resources by lessening demand through pricing mechanisms and other innovative means. The Act further declares the national government to be the public trustee of the nation's water resources so as to ensure the sustainable and equitable use, management and conservation of water resources. The Act prioritises socio-economic needs, which include the right of access to sufficient water.

3.3 The Budget

During the financial year 1999/2000 the budgetary allocation for the Department of Water Affairs and Forestry amounted to R2, 9 billion or 1.1 percent of the national budget. Of the R2, 9 billion allocated to water, R1, 58 billion was allocated to the Programme of Regional Implementation, which entails the establishment and maintenance of water services schemes and construction projects. Spending on the supply of new water connection services in rural areas for the reporting period amounted to R750 million, which was mostly utilised in the Water Services Capital Programme. The new sanitation infrastructure programmes accounted for about 10 percent of the R750 million of the allocated budget.

3.4 Outcomes

From 1994 to 31 March 2000 water was supplied to 5,4 million people in total.²¹ By the end of 1999, more than 4,4 million people in rural areas had gained access to water. During the year under review, 545,1 million cubic metres of water were delivered to South Africa via the Lesotho Highlands Water Project. The Project augments the water supply in the Vaal System and generates hydro electricity for Lesotho. This project shows positive steps by the State to reserve and provide water in a country with scarce water resources.²²

The Pongolo and Elands River Government Water Scheme are amongst some of the projects that have been successfully initiated by the State to realise the right to have access to water.

An issue that has come to the fore in recent times is the sustainability of water delivery. Some of the water provision projects have become dysfunctional or fallen into disrepair. The pipes ended up delivering dirty water thus forcing people to use alternative sources such as rivers and

²⁰ National Water Act 36 of 1998.

²¹ Department of Water Affairs and Forestry *Progress Report March (2000)*.

²² Department of Water Affairs and Forestry *Annual Report 1999/2000 (2000)* 32.

streams.²³ This is a result of many factors, one being the inability of people in the rural areas to pay for water service. Declining consumption also threatens the financial viability of schemes, as local authorities do not generate sufficient revenue to sustain the schemes.

4 CONCLUSION

The lack of water and sanitation is a public health crisis, and deprives people their right to live in dignity. Although government has made an attempt to realise the right of access to water, statistics indicate that the most vulnerable groups in society do not enjoy access to clean and adequate water. The recent outbreak of cholera in some provinces highlights the fragile and limited infrastructure for safe water supply and sanitary health.

The lack of access to basic water services affects women and children, especially in rural areas where women spend most of their time collecting water. Children in such circumstances die from preventable diseases related to poor sanitation and lack of clean water.

The allocation of resources for water services has economic consequences with secondary costs far in excess of those required to provide everyone with water and sanitation infrastructure. The spread of the cholera epidemic that began in August 2000 increased costs and the burden on health care services and has resulted in the loss of productivity for the economically active population. The Department should develop more short-term solutions because any long-term delivery plans, especially for the provision of basic services will result in more money being spent on treating people suffering from water-borne diseases and the rehabilitation and maintenance of existing over-burdened infrastructure.

²³ UNDP *Transformation for Human Development: South Africa* (2000) 30.

PART B: ANALYSIS OF RESPONSES BY ORGANS OF STATE

This section analyses information provided by relevant organs of state on policy, legislative and budgetary measures taken towards the progressive realisation of the right of access to water. Unlike in the preceding reporting periods, where the protocol was sent only to the Department of Water Affairs and Forestry, for the current reporting period the protocol was also sent to the Department of Provincial and Local Government, as well provincial departments responsible for local government. This was in view of the fact that the Department of Provincial and Local Government, through provincial departments responsible for local government, administer the Consolidated Municipal Infrastructure Programme (CMIP). Water is one of the services provided in CMIP.

1 POLICY MEASURES

1.1 National Sphere

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

The Department of Water Affairs and Forestry (DWAF) did not provide information on new policy measures instituted during the 1999/2000 financial year but provided information on the implementation of a previously instituted policy measure: the Water Services Capital Programme.

1.1.1 Water Services Capital Programme

DWAF reported that it was still implementing the Water Services Capital Programme developed for the delivery of basic water for people in rural areas. Altogether, 5, 447 451 people living in rural areas had access to the minimum standard of 25 litres per person per day, at a cartage distance of within 200 m.

1.1.2 Vulnerable groups

DWAF reported that the Water Services Capital Programme mainly targeted people in rural areas. The Department concentrated mainly in rural areas, as urban areas were catered for through the Consolidated Municipal Infrastructure Programme (CMIP) administered by the Department of Provincial and Local Government (DPLG) and provincial departments responsible for local government.

1.1.3 Difficulties experienced in implementing the measures

The Department indicated that limited financial resources and inadequate water sources had made it difficult to provide high levels of service. The measures were implemented through regional offices of DWAF and other

agencies. Beneficiary communities were also involved in the implementation process.

DEPARTMENT OF PROVINCIAL AND LOCAL GOVERNMENT

The Department of Provincial and Local Government (DPLG) reported that the CMIP was still being implemented. The CMIP was designed to provide internal bulk and connector infrastructure in order to support household infrastructure for needy families to enhance the integration of previously divided areas.²⁴ One of the aims of the programme was to enhance the developmental impact of the infrastructure delivery process through skills transfer, job creation, and small, medium and micro enterprise development. Another aim of the programme was to provide capital funding and capacity building to municipalities to help minimise infrastructure backlogs, which would be minimised through the provision of basic levels of infrastructure and facilities to low-income households in rural and urban areas over a period of 10 years.²⁵ Capital grants are made available to municipalities to provide services such as water, roads, solid waste removal, sanitation and community lighting to needy communities.²⁶

Since the programme was targeted at needy communities, CMIP funds were utilised for new services, and not for upgrading services already at an intermediate or full level.²⁷

1.1.4 Constitutional obligations and vulnerable groups

The DPLG indicated that the CMIP was reasonable and effective, with 66 percent of the beneficiaries receiving access to water and sanitation during the reporting period.

The Department maintained that over 14 million people benefited from the programme, of which over 3 million were in rural areas. According to the Department, the programme respects the right to have access to sufficient water because it does not deprive or obstruct the provision of the right for the needy.

1.1.5 Difficulties experienced in implementing the measures

Lack of implementation capacity by the provincial and local spheres of government was a major difficulty faced in the implementation of the

²⁴ Needy households are defined as those who earn less than R3 500 per month. An amount of R3 000 will be made available for each site.

²⁵ Department of Provincial and Local Government *The Consolidated Municipal Infrastructure Programme Handbook* 3rd edition (1998).

²⁶ CMIP at <http://www.local.gov.za/DCD/dcdlibrary/cmip/cmipa-d.html>. Site visited on 07/08/2001.

²⁷ Ibid.

measures. Other difficulties were the floods that took place in the provinces of Mpumalanga, Northern Province, North West and Gauteng that had an effect on expenditure patterns as construction was halted for long periods of time.

1.2 Provincial Sphere

Only Gauteng, KwaZulu-Natal, Mpumalanga, Northern Province, North West and Western Cape departments responded to the protocols. However, the Northern Province only provided information on policy measures, programmes and other related services.

The provinces that responded indicated that they were implementing the CMIP. Only the North West was implementing the Rural Municipal Infrastructure Programme (RMIP) for the provision of water to rural areas.

1.2.1 Vulnerable groups

The Gauteng and North West departments reported that the CMIP was meant to benefit vulnerable groups, more specifically people living in rural areas. Projects apply different criteria and take into account the peculiarities of the rural situation. Low-income earners benefited because of the inclusion of households, who earn less than R3 500 per month. People in informal settlements were accommodated in communal projects. Both departments reported that the measure was reasonable, even though there were some problems associated with lack of capacity.

The KwaZulu-Natal Department reported that the programme enhanced the provision of potable water to communities in need.

The Western Cape reported that the CMIP was reasonable because 37 percent of funds were allocated to water projects. There were 247, 327 beneficiaries in rural areas and 752, 166 people from poor communities who benefited from the programme.

1.2.2 Difficulties experienced in implementing the measures

The departments of Gauteng, KwaZulu-Natal, Mpumalanga, North West and Western Cape experienced problems due to lack of capacity and insufficient budget allocation for local authorities tasked with the provision of water and sanitation facilities. The Western Cape Department also reported that other problems were due to uncertainty caused by the new demarcations in preparation for the 2000 local government elections.

1.3 Critique

The non-reporting by some provincial departments such as the Eastern Cape and Free State is a violation of the Constitution in terms of providing information to the South African Human Rights Commission to enable it to

fulfil its mandate. The departments that provided information on policy measures provided insufficient details.

DWAF provided information on policies that were instituted before the year under review, while there were new policies that were not reported. For instance, the Department did not report on the Stream Flow Reduction Activities (SFRA), a measure that was developed to secure a constant supply of water for basic human consumption through regulating third party activities that might interfere with that supply. According to the provisions of the National Water Act, there is a need for the licensing of stream flow reduction activities.²⁸ The SFRA sets the policy and procedures for the licensing of land use that reduces stream flow. Activities include forestation for commercial purposes, which involves the conversion of stands of invasive trees or abandoned woodlots to managed plantations.

During the year under review, existing contracts on the *Built Operate Train and Transfer* (BOTT) initiative were re-negotiated and extended for two years.²⁹ BOTT is part of the Private Public Partnerships mentioned previously in the overview section.

The Constitution requires that provincial executives take responsibility for the implementation of national policies as well as initiate their own policies.³⁰ By not implementing measures, provincial departments are falling short of fulfilling constitutional provisions relating to the right of access to water in the Constitution.

The policies and programmes of the departments are not contributing sufficiently to the improvement of the lives of the most vulnerable groups. This might be due to the manner in which the measures are being implemented. The most vulnerable groups still do not have access to sufficient water with only 1,1 percent of the water being utilised by rural communities.³¹ The challenge facing DWAF and DPLG seems to be the implementation of the measures. In 1998 approximately 74 percent of households needed to fetch water on a daily basis, and 21 percent lived at a cartage distance greater than 500 m away.³² The measures to progressively realise the right to have access to water, must be reasonable both in their conception and implementation.³³ Non-implementation or lack of proper implementation negatively impacts on the effectiveness of the measure.

²⁸ Department of Water Affairs and Forestry *SFRA Policy and Procedure - Final Draft*. November (1999) 4.

²⁹ Department of Water Affairs and Forestry *Built Operate Train and Transfer* at <http://www.dwaf.pwv.gov.za/programs/BoTT>. Site visited on 18/09/01.

³⁰ Section 125 of the Constitution of the Republic of South Africa Act 108 1996

³¹ Note 2 above.

³² J May (ed.) *Poverty and Inequality in South Africa* (1998).

³³ *The Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169.

The BOTT is reasonable because its provisions have the potential to contribute to building the capacity of stakeholders in the delivery of water and related services. The measure respects, protects, promotes and fulfils the right in that it represents deliberate actions aimed at securing delivery of water to communities. Although the Public Private Partnerships (PPP's) projects are good for the delivery of services, the manner in which they are being implemented seems to frustrate the objectives of the partnership. The beneficiaries of the services rendered by PPP's are sometimes denied access to sufficient water if they are unable to pay for water and sanitation services. The water supply is cut off due to non-payment for services. Private companies involved in such projects do not take into consideration the plight of the marginalised, who are unemployed and living in poverty. Therefore, this means that even with such partnership government still needs to retain some control over the distribution of resources.

The CMIP is reasonable and effective, as it has ensured access to 66 percent of the targeted groups. The programme is striving to promote equitable access to resources, thereby reducing inequalities relating to access to water. It targets poor communities earning less than R3 500 per month to gain the right of access to water. For this reason the measure is reasonable because it targets one of the vulnerable groups and in line with the Copenhagen Declaration the measure seeks to provide equal access to resources and basic services.³⁴

The major shortcoming is the lack of monitoring of projects to assess sustainability. Lack of maintenance has also resulted in several water facilities deteriorating much earlier than their expected duration. Irregular access to water violates the right because it does not ensure a sustainable supply of water.

1.4 Recommendations

The Department of Development Planning and Local Government in Gauteng should devise infrastructure maintenance within the context of sustainability of the water supply. The role of communities in the maintenance of water facilities needs to be encouraged.

Measures such as the BOTT and CMIP should be given maximum financial support to ensure capacity building of service providers, especially in view of the fact that lack of capacity seems to be the main obstacle in the provision of services.

DWAF should ensure that the Water Services Capital Programme continues to be implemented to eliminate the backlog in service provision to rural communities. The Department should develop measures that consider the special needs of people with disabilities, the elderly, female-headed households and people living in informal settlements.

³⁴ Note 10 above, Commitment No 2.

There should be better collaboration in the Public Private Partnerships to ensure that there is equitable access to water resources, especially for vulnerable groups. Government must retain control and subsidise projects where communities cannot afford to pay.

2 LEGISLATIVE MEASURES

2.1 *National Sphere*

According to the response from DWAF, two legislative measures were being implemented for the realisation of the right of access to sufficient water. These were the Water Services Act 108 of 1997 and the National Water Act 36 of 1998.

To ensure the implementation of the provisions of the National Water Act, a number of Regulations were developed and published during the reporting period. The first Regulation is on the Use of Water for Mining and Related Activities.³⁵ This Regulation is aimed at protecting water resources from mining related activities by ensuring that no environmental laws are contravened during such activities. The second Regulation on Registration of Water Use regulates the registration of water uses including existing lawful water uses in terms of s 34(2) of the National Water Act.³⁶

DWAF believes that the effects of the measures are to be felt gradually, in the medium to long term. DWAF also believes that legislative measures were reasonable in promoting and fulfilling the right of access to sufficient water.

The Water User Association and the Catchment Management Agency are the two institutions, which were created for the protection, promotion and conservation of national water resources.

1.4.1 *Difficulties in implementing the measures*

Lack of capacity in the municipalities, who are responsible for the delivery of services was identified as a major problem as was non-payment for services. These factors threaten the sustainability of the delivery of water services.

2.2 *Critique*

The response from DWAF provided substantial information on the measures instituted before the year under review, but insufficient details on new measures. Information regarding how the measures gave effect to the constitutional obligations to respect, protect, promote and fulfil was not adequate.

³⁵ GN No. 704 dated June 1999, 20119.

³⁶ GN No. R 1352 dated November 1999, 20606.

It is also imperative for DWAF to provide information on how the measures have impacted on vulnerable groups as required by the protocol. Regarding vulnerable groups, the report made provision for general information only. The conditions of these various groups are not the same and for the purposes of monitoring economic and social rights, the conditions of the various vulnerable groups should be clearly understood. The response indicated that the measures were specifically aimed to benefit and give special considerations to people in rural areas, but no mention was made of other groups such as those living in informal settlements, in urban and peri-urban areas, refugees, and children.

The Department of Provincial and Local Government provided no information on the legislative measures developed to progressively realise the right.

2.3 Recommendations

The protection, use, development, conservation, management and control of water services are very important. Mining is not the only activity that affects water use; there is also the problem of domestic waste which can adversely affect underground water. Therefore, DWAF must develop other legislative measures that would address the problem of domestic waste and its affect on underground water resources and also the extent to which ventilation improved pit latrines affect underground water.

3 BUDGETARY MEASURES

3.1 National Sphere

DEPARTMENT OF PROVINCIAL AND LOCAL GOVERNMENT

Information provided on the programmes has been summarised in Table 1 below.

Table 1 Budgetary allocations towards programmes of the Department of Water Affairs and Forestry

PROGRAMME(S)	YEAR	TOTAL ALLOCATION IN RAND(S)	ACTUAL EXPENDITURE IN RAND(S)
Water Services	1998-1999	874 648 000	-
	1999-2000	614 359 000	-
	2000-2001	472 121 000	-
Water Resources Assessment	1998-1999	68 000 000	68 000 000
	1999-2000	78 000 000	75 000 000
	2000-2001	86 000 000	-
Water Resources Planning	1998-1999	48 000 000	48 000 000
	1999-2000	53 500 000	53 500 000
	2000-2001	53 200 000	-

Water rights

PROGRAMME(S)	YEAR	TOTAL ALLOCATION IN RAND(S)	ACTUAL EXPENDITURE IN RAND(S)
Water Resources Development	1998-1999	185 708 000	158 252 000
	1999-2000	213 388 000	202 053 000
	2000-2001	194 994 000	-

[-] denotes that no information was provided

The budget allocation as indicated in Table 1 shows a decrease in the allocation for Water Services from R 874, 648, 000 for the year 1998/1999 to R 614, 359, 000 for the year 1999/2000. The budget allocation towards this programme decreased further to R 472, 121, 000 for the 2000/2001 financial year. The allocation for Water Resources Assessment shows a different trend, where the budget allocation has increased over the three consecutive financial years. Furthermore, the budget allocation for Water Resources Planning and Development has been fluctuating over the three financial years.

Water Services

According to DWAF, the budget allocation for Water Services encompasses funding for capital programmes only, and not operation and maintenance of services. The Department reported that variances were due to the reprioritisation of issues relating to Water Resources Management. DWAF maintains that the allocation was not adequate for the assessment of the ecological status of water resources to determine water reserves.

The response from DWAF indicated that special considerations has been given to vulnerable groups with the exclusion of female-headed households and homeless persons. The Department maintained that Water Resource Planning deals with the supply of bulk water to all users including the above-mentioned groups. However, DWAF prioritises areas where there is a shortage of access to clean and safe water.

DWAF's Annual Report indicates that during the year under review R735 million was spent on Water Services Programmes, with water being provided to over 1.6 million people.³⁷ The same report also indicates that over R3, 6 million was spent in respect of Water Services projects in various provinces affecting over 4,9 million people. The community Water Supply and Sanitation Programme was allocated R50 million as part of the Poverty Alleviation Programme and R30 million for Economic Development Projects.

Water Resources

In response to variances in the allocation for Water Resources Development, DWAF reported that there was under-spending in 1998/1999 due to delayed progress by contractors. DWAF maintained that the allocation was adequate because of the preference to demand

³⁷ Department of Water Affairs and Forestry *Annual Report (1999-2000)*.

management and development over building of dams. The projects would therefore benefit rural communities and poor people.

3.2 Provincial Sphere

Only Gauteng, Mpumalanga, North West and Western Cape provided the information on their respective budgetary allocations for Water Services as summarised in Table 3 below.

Table 2 CMIP Allocations per Province

PROVINCE(S)	YEAR	CMIP ALLOCATION IN RAND(S)	ACTUAL EXPENDITURE IN RAND(S)
Gauteng	1998-1999	64 841 000	37 064 000
	1999-2000	41 561 000	19 200 000
	2000-2001	53 198 000	-
Mpumalanga	1998-1999	-	-
	1999-2000	-	-
	2000-2001	17 900 000	
North West	1998-1999	76 320 394	76 320 394
	1999-2000	74 955 000	74 955 000
	2000-2001	70 710 000	70 710 000
Western Cape	1998-1999	78 385 000	19 117 584
	1999-2000	99 483 849	24 263 454
	2000-2001	86 724 000	21 151 411

[-] denotes that no information was provided

Allocation towards the Consolidated Municipal Infrastructure Programme showed different trends. The allocation for Gauteng decreased from R64, 841, 000 during 1998/1999 financial year to R41, 561, 000 for the period 1999/2000. The budgetary allocation for Gauteng increased for the period 2000/2001. In the North West, the budget allocation for the three financial years decreased. For the Western Cape Department, the allocation was fluctuating; it increased for the financial year 1999/2000 and decreased for the financial year 2000/2001.

Variances: The Gauteng Department of Development Planning and Local Government reported that there was under-spending, which was caused by managerial problems.

Budget adequacy: The Gauteng Department of Development Planning and Local Government indicated that the allocation was adequate for Water Services Programme because it was incorporated into the housing budget.

The North West on the other hand indicated that the allocation was inadequate to meet the needs of the province. As a result, the Department had to shelve a number of projects. The allocation only catered for 16 000 households which was not adequate to address the backlog of 486 000 households without water connections. To address this inadequacy and other estimated 50 000 people living below the RDP standard, the province would need R7, 8 billion and funds from other sources.

The Gauteng and North West indicated that the allocation was designed to benefit vulnerable groups. The Rural Infrastructure Programme was implemented by the North West province to benefit rural people. The CMIP also helped with the provision of houses to homeless persons because it was also linked to the housing programme.

The CMIP Quarterly Report of the DPLG shows that the biggest allocation in the Free State went to Water and Road projects. In KwaZulu-Natal, 89 percent of the allocations went to Water and Roads. For the North West province, the allocation for Water Services increased to 53 percent.

The information on the budget allocation provided by KwaZulu-Natal was not for water related projects only, but also for all the projects in the Department. The information has been summarised in the Table 3 below.

Table 3 Total allocation for the KwaZulu-Natal

YEAR	TOTAL ALLOCATION IN RAND(S)	ACTUAL EXPENDITURE IN RAND(S)	FUNDS FROM OTHER SOURCES IN RAND(S)
1998- 1999	146 183 000	146 183 000	29 000 000
1999- 2000	153 408 000	153 408 000	10 000 000
2000- 2001	186 828 000	107 747 000	107 747 000

3.3 Critique

Information provided on the budgetary allocations towards the Regional Implementation Programme was not included, as allocation for that programme was done at the regional level. No information was provided on allocations towards the Integrated Water Resources Management and no reasons were provided for the omission. The DWAF and the DPLG failed to provide the per capita allocation on the programmes or projects being implemented.

Lack of complete information from some provinces and the Department of Provincial and Local Government made it difficult to make a proper analysis. The inability of the Mpumalanga Department to report on how much money was actually spent on the CMIP also compromised the analysis. Mpumalanga only provided information on the allocation of the year under review, and there was no water project allocation in the previous years.

DWAF under-spent on some of its water resources components, such as in Gauteng and Western Cape. No explanations were given for under-spending. The South African Municipal Workers Union reports that there were about 2 million community taps in disrepair.³⁸ Earlier in the report, it was stated that government was also concerned about the maintenance of new connections. Services were collapsing and yet the Department responsible for providing water resources was not spending all the

³⁸ UNDP *Transformation for Human Development: South Africa* (2000) 29.

allocated funds. Most of these deteriorating facilities were in communal areas serving poor people.

DWAF stated that the budget allocation was inadequate but failed to account for spent money, by indicating as to whether the funds allocated were appropriately spent for water services. The Limburg Principles state that the manner in which the financial resources were spent was essential for the progressive realisation of the right.³⁹ Therefore, the inappropriate use of funding contributes to the violation of the right.

The Gauteng Department of Development Planning and Local Government admitted that under-spending was due to managerial problems. However, the Department failed to indicate steps that will be taken to address the situation.

The allocation in other provinces represented a reasonable measure to promote access to water for poor people. The Free State and KwaZulu-Natal departments spent more on water supply.⁴⁰ This was regarded as a positive action, which would ultimately contribute to the progressive realisation of the right because there is a deliberate State action aimed at providing access to water.

3.4 Recommendations

DWAF should reprioritise resources in the provision of water and related services. This would entail setting more funds aside for infrastructure and maintenance.

Measures should be developed for the proper monitoring of budget expenditure and the early identification of shortfalls in the budget allocation. The provincial departments of local government should make effective use of their budget allocations in order to address past inequalities in the provision of water services. The respective national and provincial departments should develop proper financial management and accounting systems for improved management in spending allocated funds.

4 OUTCOMES

The departments were required to provide information on indicators that show the number of communal taps installed during the reporting period; taps that were not in working order; households with access to communal taps, and those with piped water. Information on households that use other water sources such as water tanks/carriers and rely on unprotected water sources, such as springs and dams was also required. Departments were required to provide information on the number of households with water

³⁹ Note 13 above, para 23.

⁴⁰ Department of Provincial and Local Government *CMIP Quarterly Report* (Jan-Mar 2000).

sources within varying distances, ranging from less than 200 m to greater than 1000 m.

The last set of indicators requested was on standards in terms of litres per person per day, per household, the acceptable level of microbes per litre of drinking water, and the number of people whose access to water was below departmental standards.

4.1 National Sphere

DWAF provided inadequate information on outcomes while the DPLG stated that the number of beneficiaries of Water and Sanitation projects amounted to 66 percent who received potable water supply and sanitation.

4.2 Provincial Sphere

Except for the North West, none of the provincial departments provided information on the indicators. The North West reported that more than half a million people in the province did not have access to piped water. There was a backlog in housing delivery, and concomitant lack of access to piped water. Funding made available via the CMIP was insufficient to address the backlogs and to meet the growing need. The province did not fund any water related projects due to budgetary constraints. This was the main factor accounting for little progress in supplying water.

4.3 Critique

DWAF provided information that was inadequate and not helpful for the analysis. The failure to respond to the outcomes by provincial departments is not acceptable. The lack of information in the outcomes section suggests that provinces do not have proper information systems in place to monitor the progressive realisation of the right of access to water.

Other sources indicate that there has been a slight increase in the number of people gaining access to piped-water on site, from 78,5 percent in 1995 to 83,4 percent in 1999. The number of people using boreholes and rainwater tanks decreased from 10,0 percent in 1995 to 4,7 percent in 1999.⁴¹ Even though there was an increase in access to water supply and services, there were still people mostly from vulnerable communities, who still use contaminated water directly from rivers and streams. This indicates that access to sufficient clean and safe water for the poor and marginalised was not improved sufficiently.

Figures provided by Statistics South Africa, suggest that different communities relied on different water sources, as shown in the Table below.

⁴¹ Statistics South Africa *South Africa in Transition: selected findings from the October household survey of 1999 and changes that have occurred between 1995 and 1999* (2001) 4.

Table 4 Different sources for water used by communities⁴²

Main source of water	Total	African	Coloured	Indian	White
Running water in dwelling	4 168	1 681	660	257	1 559
Running water, on site or in yard	2 911	2 722	160	4	24
Public Tap	1 867	1 822	41	4	0
Water Carrier/ Tanker	100	95	5	-	0
Borehole on site	96	85	3	-	8
Borehole communal	271	268	2	0	0
Tank water on site	40	33	6	-	1
Flowing Water/Stream	556	545	6	0	0
Dam/Pool/ Stagnant water	134	132	2	-	-
Wells	139	137	1	-	1
Springs	321	316	3	-	2

Table 4 above indicates that a number of people were still using unprotected water sources, especially flowing waters and springs. This phenomenon was more prevalent among African communities.

Table 5 Cartage distance for the availability of water⁴³

Distance	Area	Total	African	Coloured	Indian	White
Less than 100m	Urban	395	373	22	2	1
	Rural	628	613	13	1	1
100m-less than 200m	Urban	6 503	173	10	1	-
	Rural	4 268	712	11	1	-
200m-less than 500m	Urban	70	69	1	-	-
	Rural	530	527	3	-	-
500m- less than 1000m	Urban	43	41	2	-	-
	Rural	530	527	3	-	0
1 km or more	Urban	16	15	0	1	-
	Rural	407	404	1	2	0

The information in Table 5 shows that a great number of African communities especially those in rural areas were still travelling long distances to collect water. The information indicates that physical access to water was still a problem for many communities. The state was thus in violation of the right when it fails to ensure the satisfaction of, at the very least, the minimum essential level required for an adequate standard of living.⁴⁴ The measures instituted have to respond to the needs of people who were most desperate.⁴⁵

4.4 Recommendations

⁴² Provision of water services at http://www.statssa.gov.za/RELEASE/Household/99/Section_percent206.htm. Site visited on 18/09/01.

⁴³ Ibid.

⁴⁴ General Comment 12 (1999) para 17.

⁴⁵ Note 33 above, para 44.

The measures that were instituted by DWAF to progressively realise the right of access to sufficient water, whether in the form of policies, programmes or projects, should be in such a manner that they take into consideration the plight of the majority of South Africans who were living in poverty. In supplying water to people at a price, those who were unable to pay were denied access to the supply of water. The DWAF has to devise means of ensuring that people who are unemployed have access to water and sanitation services.

The departments should develop mechanisms that will ensure proper implementation of measures to achieve the intended result. Priority should be given to the most vulnerable groups when measures are instituted and implemented.

5 MONITORING SYSTEMS

5.1 National Sphere

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

DWAF reported that a substantial part of the water services institutions were monitored through compulsory Development Plans for Water Service Authorities, and Business Plans for Water Boards. The business plans were submitted annually. There was a process for appraisal of these plans by the Minister of Water Affairs that began in 2000. The Minister may, direct a Water Board to amend its plans if they were not in the best interest of consumers within its service area.

An Information Management System was being established and would enable the Department to monitor and assess the performance of all role players in the water service sector. Direct and indirect statistics were collected which allowed the Department to monitor and evaluate the realisation of the right of access to water. This included Project Management Reporting Procedures.

DEPARTMENT OF PROVINCIAL AND LOCAL GOVERNMENT

The Department used internal departmental mechanisms to monitor and assess the progressive realisation of the right of access to sufficient water. The Department held meetings with provinces on a monthly basis to discuss policy issues, prioritisation methods and monitor progress. Provinces also submitted monthly and quarterly reports to the Ministry for Provincial and Local Government.

Key performance indicators used to monitor the progressive realisation of the right of access to water were:

- Actual expenditure vs. projected cash flows
- The number of beneficiaries

- The number of people employed, especially women, youth and the disabled
- Number of people trained
- Number of Small Medium and Micro Enterprises used in the projects

The DPLG reported that monthly and quarterly reports by the provinces provided statistics collected in order to facilitate the monitoring and assessment of the progressive realisation of the right of access to sufficient water. The following statistics were collected:

- Actual expenditure vs. projected cash flows
- Number of projects approved
- Projects status – design/tender phase, or under constructions, or completed phase
- Funds allocated to rural and urban areas
- Funds allocated to project categories
- Funds allocated to project types
- Beneficiaries related to project categories
- Employment created – split between women, youth and men
- Training provided – split between women, youth and men
- Utilisation of SMME's on the projects

5.2 Provincial Sphere

The Gauteng Department of Development Planning and Local Government uses six monthly reports and samples of projects to conduct independent studies. The Department had commissioned a consultant to determine the overall success of the CMIP. Regular monitoring was done on projects in progress to determine physical progress.

In responding to the question on what and how statistics were collected, the Gauteng Department reported that the CMIP project leaders and consultants collect statistics, and presented these in a monthly report which culminated in the end-of-the year report.

The Mpumalanga Department constituted Municipal Support Teams to work co-operatively with officials from various municipalities in the province in order to ensure sufficient water provision to the communities. There was also a Project Management Team responsible for the implementation and monitoring of water infrastructure projects. The Municipal Support Team and the Project Management Team were internal departmental mechanisms, which monitor and assess the progressive realisation of the right of access to sufficient water. The Department required municipalities to provide information such as the number of households who would benefit from the programme. This information was provided in the Business Plans that municipalities used to apply for funding. The Department was in the process of establishing a provincial Geographic Information System to assist with the management of all services to the communities.

The North West Department reported that the computerised Perform Developer and Project Management Programmes, including special spreadsheet reports were utilised as internal departmental mechanisms and measures to monitor and assess the progressive realisation of the right of access to sufficient water. The Housing Subsidy System, the National Housing Subsidy Database and the National Housing Information System were utilised to capture information relating to housing delivery and by implication also reflect on water provision, as it was provided together with housing.

The statistics collected by the North West were on the CMIP through site inspections on each project at various stages of implementation. The site inspection was a way of ensuring that the data captured on the Housing Subsidy System, the National Housing Subsidy Database and the National Housing Information System were correct. This ensured that the business plans that indicated statistics such as the number of beneficiaries per project and employment targets in respect of female and youth employment were met.

In the Western Cape, a provincial engineer monitored each CMIP project on a regular basis. Progress was tracked through the payment claims from the local authorities and reported on a monthly basis.

5.3 Critique

Government departments have the responsibility as part of the realisation of socio-economic rights, to have in place monitoring mechanisms to help gauge the progress in realising the rights.⁴⁶ Without such a mechanism there is no reliable basis for the determination of the progressive realisation of the right of access to water. Non-reporting by other provinces may be indicative of the lack of such mechanisms. The non-existence of these mechanisms is a violation of responsibility to realise the right to have access to water.

Although the national and provincial departments have reported that they collected data on the provision of water and related services, these departments did not provide information on indicators. Such actions are unacceptable and result in an incomplete analysis of whether the measures taken do progressively realise the right to have access to sufficient water.

5.4 Recommendations

To ensure effective monitoring of water services government departments need to have information management systems. The information collated in those information systems must be able to assist in the planning processes of the departments. The information collated must also be

⁴⁶ Maastricht Guidelines on the Violation of Economic, Social and Cultural Rights (1997) para 16.

usable for information booklets that will be distributed to the public on water related issues, especially on the conservation of water.

PART C: CONCLUSION

The responsibility for the provision of water is currently split between various spheres of government, which results in serious challenges in terms of the co-ordination of the delivery of services. The supply of retail water (piped or tap water to individual consumers) is the responsibility of the municipalities. Better co-ordination between all the role players, namely national, provincial and local government including parastatal organisations should be addressed, and co-ordination of these roles and functions would enable the government to ensure, within available resources, the progressive realisation of access to sufficient water.

Ideally, water should be free so that everyone can have access to water. Currently the right of access to water is not enjoyed by everyone because water is not delivered free of charge to all the people of South Africa. The most vulnerable amongst the sectors of the community, the unemployed, people who live in dire poverty are amongst those denied access to the right of access to water. The cause of this is due to the inability to pay for water, uncompleted, abandoned and dysfunctional projects, which were initiated to supply water, infrastructure problems, unsolved problems between and amongst services providers (local authorities) who deliver water and sanitation services to the people.

DWAF and provincial departments responsible for local government should monitor the realisation of the right of access to water by having indicators. The purpose of indicators is to capture the willingness and capacity of the government, be it national provincial or local to protect, promote and fulfil the realisation of the right to water. Lack of infrastructure and financial resources, does not constitute an obstacle to the development of indicators. Indicators are designed to monitor progress and identify gaps that need to be addressed in order for government to progressively realise the right of access to water.⁴⁷ The Departments of Water Affairs and Forestry and Provincial and Local Government are slowly moving towards fulfilling their duty to progressively realise the right of access to water. For the efforts to have a greater impact on communities, implementation will have to be accelerated.

⁴⁷ A Eide et al (eds) *Economic Social and Cultural Rights* (1995) 391.

ABBREVIATIONS

BOTT	- Built Operate Train and Transfer Initiative
CEDAW	- Convention on the Elimination of all forms of Discrimination Against Women
CMIP	- Consolidated Municipal Infrastructure Programme
DPLG	- Department of Provincial and Local Government
DWAF	- Department of Water Affairs and Forestry
ICESCR	- International Covenant on Economic Social and Cultural Rights
PPP's	- Public Private Partnerships
RMIP	- Rural Municipal Infrastructure Programme
SFRA	- Stream Flow Reduction Activities
UDHR	- Universal Declaration of Human Rights
WC/WDM Strategy	- Water Conservation and Water Demand Management Strategy
WHO	- World Health Organisation

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