CHAPTER 11
PARASTATALS

1. INTRODUCTION

This chapter is devoted to the parastatals whose activities are pertinent to the fulfilment of economic and social rights as provided for in the Bill of Rights of the Constitution. An analysis of the information provided will be utilised to assess whether there is a progressive realisation of the fulfilment of the right in question.

Each parastatal was requested to identify which of its activities are relevant to the following economic and social rights. These are as follows:

- the right to environment\(^1\)
- the right to adequate housing\(^2\)
- the right to have access to health care services, including reproductive health care\(^3\)
- the right to water\(^4\)
- the right to have access to social security\(^5\)
- the right to education\(^6\)
- the right to land\(^7\)

Each right is divided into three sections. The first section under each right focuses on primary activities of the parastatal whose activities are pertinent to that particular right.\(^8\) The second section addresses the constitutional obligations of the parastatal. The third and the last section under each right is concerned with implementation difficulties experienced by a parastatal in delivering its mandate.

A critique on the constitutional obligations and implementation difficulties will follow at the end of the chapter. The critique section will then be followed by recommendations, which will be followed by a conclusion.

2. RIGHT TO ENVIRONMENT

\(^1\) The Agricultural Research Council (ARC), The Council for Scientific and Industrial Research (CSIR), the Land Bank, Rand Water and Umgeni Water were the parastatals that responded to the Human Rights Commission’s (HRC) protocol dealing with the right to the environment.

\(^2\) The National Housing Finance Corporation (NHFC) was the respondent to the HRC’s protocol on the right to adequate housing.

\(^3\) CSIR and the Medical Control Council (MCC) were the respondents to the HRC’s protocol on the right to health.

\(^4\) Rand Water and Umngeni Water were the respondents to the HRC’s protocol on the right to water.

\(^5\) South African Council for Social Service Professions (SACSSP) was the respondent to the HRC’s protocol on the right to social security.

\(^6\) National Student Financial Aid Scheme (NSFAS) responded to the HRC’s protocol on the right to education.

\(^7\) The Land Bank was the respondent to the HRC’s protocol on the right to land.

\(^8\) Note that in some cases there are more than one parastatal involved in activities related to a right, these parastatals’ constitutional obligations will not be dealt with as such parastatals are not directly dealing with the right in question. Their constitutional obligations will only be dealt with where the parastatals are directly involved in the activities pertinent to a right.
2.1 Primary Activities: The Council for Scientific and Industrial Research (CSIR)\textsuperscript{9}

The CSIR is the largest scientific and technological research, development and implementation organisation in Africa. Its mandate is to foster industrial and scientific development by itself and through partnerships with public and private sector institutions.

2.2 Constitutional Obligations

In response to its constitutional obligations to respect, protect, promote and fulfil the right to the environment, the CSIR stated that it is not directly involved in the provision of services but that it does play an enabling role by providing support with regard to science and technology to some of the institutions mandated with economic and social rights responsibilities. The CSIR further reported that the right to the environment as stipulated by section 24 of the Constitution is among those activities that are of relevance to the organisation. With regard to the CSIR’s performance in relation to the activities, which are aimed at supporting and promoting the right, the organisation reported on the following:

- The CSIR is developing and strengthening its record of accomplishment as a relevant contributor to the effective conservation and use of the country's natural resources. Environmental issues have increasingly come to the fore in global trade and the CSIR assists the South African government and companies to achieve internationally acceptable environmental practices.

\textit{The fishing industry}

- The CSIR has completed a project, which is aimed at encouraging cleaner production technologies within the fishing industry in order to support sound, sustainable and cost-effective environmental practices. The use of the above technologies often result in water, electricity and raw materials being conserved and production yields being increased.

\textit{The Climate Change Project}

- The CSIR is involved in the climate change project in partnership with other institutions. It is also involved in an initiative known as SAFARI 2000\textsuperscript{2}, which is aimed at explaining and predicting climate changes. The aim of this project is mainly to assist in the management of regional trans-boundary pollution.

\textit{The Cape Action Plan for the Environment}

\textsuperscript{9} Note that it is only the CSIR that responded to the constitutional obligations question. The reason for that is that the rest of the parastatals referred to in this right, engage in activities that are not pertinent to the right. Their responses on the constitutional obligations will or should be found where their activities are pertinent to such rights.

\textsuperscript{10} SAFARI 2000 is a southern African three-year environmental field campaign headed by the CSIR and the University of the Witwatersrand, in collaboration with the National Aeronautical and Space Administration and the University of Virginia, which will help to predict and explain climate changes.
• The Cape Action Plan for the Environment (CAPE) is the first international conservation plan for the Cape flora. The CSIR has been closely involved in the development of the long-term strategy and implementation programme of the Cape fynbos and adjoining marine environment.

2.3 Implementation Difficulties

The CSIR did not mention any of these. It only committed itself to working with government and other institutions in ensuring that South Africa complies with internationally acceptable environmental practices.

b) The Agricultural Research Council (ARC)

The ARC indicated that with regard to the right to environment, its understanding is not only limited to the natural environment, but that its stewardship extends to all the elements of the environment, including, human, cultural and economic. The organisation further stated that it is committed to sustainable agricultural production practices in the interests of economic and social development. The response further indicated that, amongst the ARC’s objectives, it continually strives to direct its research and technology development to minimise the negative impacts on the environment. That is, impacts occurring as a result of pollution. It is also the ARC’s objective to make a positive contribution through remediation(s), conservation and sustainable economic value addition.

c) The Land Bank

The Land Bank is an agricultural financial institution established in 1912 to provide financial assistance to farmers. However, it has now changed focus to address imbalances of past discriminatory practices and has come to the assistance of Black farmers.

The Bank indicated that whilst all of the economic and social rights are relevant to it, of major importance is the right to access to land and that the right to environment is indirectly relevant to the functions of the Bank.

With regard to the Bank’s performance in order to ensure that the constitutional obligations to the right to environment are satisfied, the Bank reported that though it is indirectly involved in the protection of the environment, it does so during the land evaluations it conducts. These evaluations, to a certain extent, ascertain that the land’s carrying-capacity is not over extended. The Bank does this by ensuring the prevention of ecological degradation and securing the use of natural resources and ecologically sustainable development.

Furthermore, the Bank indicated that it did embark on a flood relief emergency programme during the year 2000, together with the National Department of Agriculture (NDA). The aim of the programme was to protect and restore the natural resources following the devastating floods during the same year. The Bank’s involvement was basically through providing financial assistance in the form of non-payable grants in order to provide effective relief to agriculture in flood disaster areas for land restoration and for certain forms of agricultural infrastructure repair.
d) Rand Water

The above organisation indicated that its activities are mainly in the areas of bulk potable water supply and sanitation services, where the latter is more relevant to the right in question.

With regard to Rand Water’s performance in relation to the activities, which are aimed at supporting and promoting the right to environment as stipulated in section 24 of the Constitution, the organisation reported that it has ensured that the following is achieved:

- Compliance with all the relevant legislation
- Entrenchment of environmental management in the organisation’s overall management strategy
- Compliance with the South African Bureau of Standards (SABS) and International Standards Organisation (ISO) 17025
- Striving towards ISO 9001 and 14001 accreditation
- Rehabilitation of natural wetlands
- Promotion of various Water Wise projects
- Promotion of Environmental Education programmes aligned with Curriculum 2005

e) Umgeni Water

The Umgeni Water reported that the right to environment, as stipulated by section 24 of the Constitution, is among those activities that are of relevance to the organisation. This includes the provision of water and sanitation services to municipalities (provided in the Water Services Act of 1997), health care and related environmental management services. The Umgeni Water reported that in addition to providing treated bulk water to people residing both in rural and urban southern KwaZulu-Natal, the organisation also manages a number of waste waterworks in the region, and has provided on-site sanitation to over 200 schools and a number of households in rural KwaZulu-Natal.

3. RIGHT TO HAVE ACCESS TO ADEQUATE HOUSING

3.1 Primary Activities: The National Housing Finance Corporation (NHFC)

The National Department of Housing established a number of institutions that offer guarantees in order to facilitate the flow of finance to low income-housing delivery. The institutions were also meant to create funding intermediaries that would promote greater access to housing finance and to normalise the lending process. The NHFC is one such institution.

The NHFC’s primary activity is to address the problem of lack of finance for housing for low and moderate-income families. The NHFC does this by mobilising finance through forming partnerships with other organisations outside the State parameters.

12 Ibid.
The reason for focusing on these groups was due to the fact that mainstream financial institutions either lacked capacity to address their demands or were unwilling to assist because of the high risk nature of the market.

3.2 Constitutional Obligations

**Respect**

In its quest to mobilise funding for housing from sources outside the state, the NHFC has formed partnerships with a variety of institutions. The organisation respects the right to adequate housing because it has ensured that there is equality in the housing market by using intermediaries for providing low-income housing. The funding provided will, in the long term, ensure that people with a regular source of income gain access to finance for buying or renting, incrementally building or improving their homes.

**Protect**

The NHFC protects the right to adequate housing because it funds or endorses funding for institutions that promote broader access to housing finance. The organisation also facilitates capacity building within housing institutions. The partnerships the NHFC has are meant to ensure the delivery of innovative housing finance solutions.

**Promote and Fulfil**

The NHFC believes it promotes the right to adequate housing as it ensures the creation of better quality housing and living environments. The NHFC has embarked on a study to increase access to affordable housing finance for every citizen. The study is meant to assist in identifying and understanding clearly what the blockages are in the housing finance sector for the low to moderate-income market. The findings from this study will inform the National Housing Policy Revision process. Other activities the NHFC has been involved in include working on the Social Housing Policy, through assisting government with the community reinvestment legislation.

3.3 Implementation Difficulties

The NHFC's clients suffered a major setback when government stopped payroll deductions. The payroll deductions served as a mechanism that had provided relative security in terms of loan repayments. This resulted in some housing institutions reassessing their client base, and subsequently redirecting their attention away from the public service. Some of these institutions were forced to close down because they could not meet this challenge, thus leaving a gap for communities they serviced.

Some of the NHFC’s clients need the government subsidies to fulfil their projects. Therefore, the slow release of subsidies, delays the implementation of the projects. The NHFC thus has to communicate with its clients and the provincial government.

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13 Rural Housing Loan Fund, Housing Institutions Development Fund, Housing Equity Fund, Niche Market Leaders.
departments to ensure that government honours its responsibility to keep projects growing and housing delivery increasing. The NHFC will develop mechanisms for a more efficient process for the allocation of housing subsidies.

b) The Land Bank

Although the Land Bank is an agricultural financial institution that provides finance to farmers in South Africa, it has also used this process to ensure the enjoyment of other economic and social rights such as housing. The enjoyment of the right to housing has been made possible through the Land Bank introducing a financial product that serves as an incentive to commercial farmers to contribute to the development of their emerging counterparts and farm workers.

The measure that the organisation uses to ensure access to housing is the Social Discount Product (SDP). The Bank uses the SDP to encourage socially responsible behaviour amongst commercial farmers, by recognising and rewarding farmers that promote development for their farm labourers and the rural communities where they operate. The clients that build houses and ensure service provision for their farm labourers are rewarded by getting a discount on the interest rate that is calculated on the existing or new loan held with the Bank. The discount is provided in the form of an annual rebate depending on the project progress. Through the SDP, the Bank is indirectly contributing to the farm labourers' right to have access to adequate housing.

4. RIGHT TO HEALTH CARE, INCLUDING REPRODUCTIVE HEALTH

4.1 Primary Activity: The Medicines Control Council (MCC)

The MCC was established in terms of the Medicines and Related Substances Control Act of 1965 for the registration and control of medicines based on quality, efficacy and safety. Since its inception, there are approximately 20 000 medicines that have been granted marketing approval through registration, or allocation of a reference number only for those medicines that were on the market prior to 1995.

4.1.1 Legislative Measures

The MCC reported that it undertook the following legislative measures to deliver on its mandate:

- The amendment of the National Drug Policy of 1996, which was mainly aimed at ensuring that drugs improve everybody’s health within the country’s available resources. Amongst others, this was to be achieved through proper pricing of drugs, testing of drugs, planned procurement of drugs especially for the rural poor and rationalisation of the structure for Pharmaceutical Services.
• The South African Medicines and Medical Devices Authority Act, aimed at transforming the MCC was also passed.⁴

Administrative steps taken to assist the MCC to fulfil its section 7 (2) obligations included the following:

• Development and formulation of regulations and guideline to make the Act and other policies operational;
• Upgrading the structure of the Chief Directorate and establishment to four new committees;
• Skills audit and training of personnel in line with the Skills Development Act; and
• Implementation of an Information Management System.

4.2 Constitutional Obligations

Respect

The MCC cited the 1996 National Drug Policy (NDP), which was aimed at ensuring availability, accessibility, safety and efficacy of quality drugs and also to lower the cost by promoting cost-effective and rational use of drugs. Furthermore, the MCC reported to have come up with a framework for the registration and control of Complementary Medicines and African Traditional Medicine has been implemented.

Protect

In meeting this obligation, the MCC reported that they offer protection to the public by ensuring that:

• all medical and scientific experiments are subject to regulatory control and follow informed consent processes;
• the public does not use unlawful and counterfeit medicines; and
• the public does not fall victim to the harmful effects of dependence-producing substances through restricting access and promoting education.

Promote and Fulfil

The MCC approves the sale of medicines and thus has a role in promoting health and protecting the public as well as respecting life. The MCC further reported that it promotes access to generic medicines. This is done through the distribution of a Patient Information Leaflet to consumers. Furthermore, the MCC also ensures the registration and safety monitoring of anti-retroviral drugs (ARVs). Lastly, the MCC reported that it collaborates with SADC regulators to harmonise regulatory requirements for effective control of cross border flow of medicines.

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⁴ The purpose of establishing a South African Medicines and Medical Devices Regulatory Authority is to serve the public interest by ensuring efficient, effective and ethical evaluation and registration of the legal supply of safe and effective medicines and devices that are of good quality.
4.3 Implementation Difficulties

The following difficulties were reported as impeding the progress in fulfilling the right:

- Budgetary under-allocation to provide for efficient administration
- Excessive reliance on external experts
- Promoting transparency in line with the Promotion of Access to Information Act of 2000
- Conflict of interest with members and consultants
- Control of counterfeit and illegal medicines e.g. The Adlam case where R200 million worth of medicines resulted in a plea bargain and a suspended sentence
- Audit of clinical trials to ensure compliance with GCP guidelines\improved turn around time for approval to ensure timely access to medicines

5. PRIMARY ACTIVITIES: Centre for Scientific and Industrial Research (CSIR)

The CSIR, is, by its own definition "the largest scientific and industrial research, development and implementation organisation in Africa." It is constituted as a Science Council by an Act of Parliament. As a research institution, it is not the direct supplier of goods and services pertinent to economic and social rights, but plays an enabling role by providing science and technology support to the providers of these.

5.1 Policy and Programmatic Measures

The CSIR reported the following activities which promote the right to health:

Reproductive Health

- The development of a diagnostic tool for screening placental development (intra-uterine deaths account for 30 out of 1,000). The use of this device could increase the chances of survival for impaired foetuses from 48 to 80 per cent.

HIV/AIDS

- The Medical Research Council is engaged in collaborative research with the CSIR in the development of a vaccine against HIV. The focus is on viral-cell membrane fusion.
- The development of nutritional food additives to boost the immune system for immuno-compromised HIV patients.

Bio-prospecting Programme

- Obesity treatment using the Hoodia plant is in the process of being commercially patented. Currently the patent (P57) is in the third year of a seven to ten year clinical trial in the UK. If successful the San people who
are the custodians of ancient traditional knowledge systems will share in the benefits with the CSIR.

Child Abuse

- The CSIR hosted the third in a series of seminars on the role of volunteers in support of the national effort to reduce and prevent child abuse. This was in response to an appeal for assistance by Business Against Crime.

Small Scale Medical Waste Management

- The CSIR has developed and is optimising a small-scale medical waste incinerator for the safe and effective incineration of medical waste in rural clinics to reduce infection risks.

5.2 Constitutional Obligations

In response to the question as to the CSIR's understanding of its obligations vis-a-vis section 7(2) of the Constitution, the CSIR did not provide any information

The CSIR identified the laws listed below to assist it in fulfilling its obligations with regard to socio-economic rights:

- The South African Constitution
- The Labour Relations Act
- The African Renaissance and the New Partnership for Africa’s Development (NEPAD)
- National Imperatives as an Integral Part of the National System of Innovation

5.3 Implementation Difficulties

The decreasing grant funding from Parliament was quoted as a reason for the declining ability to deliver on economic and social rights.

6. RIGHT TO WATER

6.1 Primary Activities: Rand Water

According to the response received from Rand Water, its primary focus is on the supply of bulk portable water and the provision of sanitation services. However, in terms of the Water Services Act of 1997, Rand Water would undertake other non-core activities, which may include but not limited to:

- activities related to the water services sector;
- activities undertaken to support and enhance the performance of Rand Water’s primary activities for the benefit of stakeholders;
- activities aimed at supporting and strengthening the capacity of water service authorities and institutions in providing effective, efficient sustainable and
cost effective water services provision to customers in Rand Water’s service area.

6.2 Constitutional Obligations

This water utility also did not provide a precise response on its constitutional obligations. The Rand Water’s was a comprehensive and indirect response included in its strategic objectives. The Rand Water strives to:

- become the preferred water service utility for municipalities
- ensure that Rand Water continues to be a viable and sustainable regional water utility
- satisfy all customers
- improve efficiencies in the provision of quality services
- achieve social transformation
- minimise raw water tariff increase

b) Umgeni Water

In accordance with its response, Umgeni Water’s primary activity is the provision of water and sanitation services and related environmental management.

6.3 Constitutional Obligations

Umgeni Water gave an elaborate response that does not explain precisely how it respects, protects, promotes and fulfils the constitutional obligations.

In providing the primary services, Umgeni Water has incorporated a number of other services to its customers to further enhance their quality of life and to protect, promote and fulfil the economic and social rights enshrined in the Constitution. These include:

- Environmental Management Policies and systems to prevent pollution and ecological degradation
- Promotion of conservation and security of ecologically sustainable development
- Monitoring programmes which results in analyses of some 13 000 water samples on a weekly basis
- Provision of leadership and institutional support on managing the catchments in its 24 000 km area
- Formulation of a Water Conservation Policy and Implementation Strategy dating back to 1999

6.4 Implementation Difficulties

Rand Water reported that internal transformation has been a stumbling block to the achievement of its constitutional obligations. However, it was further reported that measures were being put in place to address this challenge.

Umgeni Water reported that the legislative environment has not been a favourable one for Water Boards. The fact that Water Boards are not mentioned in the Constitution,
the Water Services Act of 1998, and Local Government legislation puts them in a weaker position. The meaning of “a weaker position” was not explained.
7. RIGHT TO SOCIAL SECURITY

7.1 Primary Activity: The South African Council for Social Service Professions (SACSSP)

The SACSSP is governed by the Social Services Act 110 of 1978 as amended. The Act provides for the establishment of the SACSSP and the registration with it. It is also vested with disciplinary powers for unethical and unprofessional conduct accorded by the regulations and rules made under the Act.

The SACSSP has the responsibility to ensure that its policies and guidelines for the professions under its auspices are adhered to. If practitioners neglect to follow guidelines, it is the SACSSP’s responsibility to investigate and evaluate the alleged unprofessional conduct and to determine whether the practitioner dealt with the parameters and domain of the specific profession concerned to ensure the utilisation of resources to promote the economic and social rights of clients.

7.2 Constitutional Obligations

Respect

The SACSSP has to ensure that practitioners’ conduct does not:
- deprive the client of any economic and social rights or access to these rights;
- deny or obstruct the client in obtaining or accessing such rights; and
- unfairly discriminate against the client in obtaining or accessing the rights.

Protect

The SACSSP has to protect the interests of consumers from poor service delivery and neglect by social service professionals registered with it.

7.3 Implementation Difficulties

According to the organisation’s response, it was asserted that since it is not involved in direct service-rendering to the public, it does not have specific policies presenting themselves as stumbling blocks to the achievement of the constitutional obligations.

8. RIGHT TO EDUCATION

8.1 Primary Activity: National Student Financial Aid Scheme (NSFAS)

The NSFAS core function is to provide financial assistance to needy and academically able students, who wish to attain a higher education qualification.

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15 The SACSSP did not respond to the question on how, as an organ of state, it promotes and fulfils the right to social security.
8.2 Constitutional Obligations

According to its response, the NSFAS has done the following to satisfy its constitutional obligations:

- It has provided funding to over 275 000 financially needy students with awards worth R3 billion in order that they might access higher education. These students would not have been able to access higher education had NSFAS’s funding not been available.

8.3 Implementation Difficulties

The organisation reported that they have not experienced any difficulties in meeting the constitutional obligations, hence they do not have policies and or other measures that present difficulties in as far as meeting the constitutional obligations is concerned.

9. RIGHT TO ACCESS TO LAND

9.1 Primary Activity: The Land Bank

The Land Bank is an agricultural financial institution established in 1912 to provide financial assistance to farmers. However, it has now changed focus to address imbalances of past discriminatory practices and has come to the assistance of black farmers.

The Land Bank reported on how it assisted the in the following programmes instituted by the Department of Land Affairs:

Land Redistribution

Recently the Bank has concentrated its efforts on improving land tenure security and on extending property ownership and access to production resources to historically disadvantaged communities. Thus, according to the Land Bank, support for Land Reform and Development is seen as its primary objective and the Bank’s constitutional obligation to assist emerging African farmers. A qualifying farmer can access a loan of R1 million from the Bank to develop the land the farmer would have purchased through the government grant.

Bought-in Properties

According to the report, the Bank uses the Bought-in Properties Scheme to help farmers to takeover under-performing farms that are due for liquidation and are repossessed by the Bank. The Bank is working closely with Enathi Empowerment Company to empower entrant farmers with management skills. The Bank sees this scheme as one of its foremost strategies to contribute to the Land Redistribution programme.

The Land Bank concedes that this scheme reduces the burden of the emerging farmers and is beneficial in the short term. However, it stands to profit in the long-term, as more inexperienced farmers would face liquidation.
Land Restitution

The Bank is party to the Trilateral Agreement with the Land Claims Commission (LCC) and the NDA. This agreement was signed with a view to give land back to the “formerly dispossessed peoples”, with the Land Bank charged with supporting the financial needs of the beneficiaries, so that they can develop the land for agriculture.

Special Mortgage Bond

According to the report, the Bank offers smaller farmers a 25-year Special Mortgage Bond of up to R50 000 at 10% interest. This, according to the Bank, is lower than the 15% lending rate, for which qualifying farmers can access “up to 80% of a property’s value in loan”. This “concessionary interest rate” is reviewed every two years.

Capacity-Building Development Fund

The Land Bank has a Capacity-Building Fund in access of R2 million which is geared toward developing skills of the emerging farmers. The Bank says that since it is not always possible to provide everything toward empowerment of farmers, it looks for partners and allies. Hence the Bank has forged partnerships with other organisations to develop agricultural skills of new farmers. This, according to the institution, will ensure collective delivery.

Capacity development has meant annually sponsoring 20 tertiary students who study agriculture. The long-term objective is to have more South Africans with qualifications in agriculture that would apply their skills in both the Bank and various other agriculture development institutions. It is for this reason that the Bank offered the University of Fort Hare R120 000 grant to be used toward research and training in Agricultural Economics.

The Bank states that annually, through the Corporate Social Investment (CSI), it spends at least R5 million towards training of Black farmers, especially women and youth in the rural areas. It is hoped that agricultural skills will elevate these groups from the level of subsistence farmers to that of commercial farmers. The Bank also has projects that involve “broader community participation and impact” and it insists that the beneficiaries participate directly.

The Land Bank says that it is also responsible for developing new and innovative products for emerging farmers. It has a focus on development nodes identified for urgent infra-structural development and social upliftment.
9.2 Constitutional Obligations

The Land Bank understands its obligation to respect as that of paving a way for aspiring farmers to enter the agricultural sector. In this respect, the Bank is charged with supporting emergent African farmers financially and non-financially so they may access land for agricultural activity and for on-farm housing. The Bank is also responsible for the development of measures and policies to ensure adherence to its mandate.

The Land Bank says that it is also responsible for developing new and innovative products for emerging farmers. It has a focus on development nodes identified for urgent infra-structural development and social upliftment.

9.3 Implementation Difficulties

The Bank reported that there are primarily two pieces of legislation that inhibit it to address economic and social rights. The Land Bank Act 13 of 1944 has security and collateral rules, which restrict the participation of entrant farmers in commercial farming. Often emerging farmers hardly access the Bank’s finance because they lack the necessary security or collateral. The Bank reported that the Act is in the process of being amended, so as to address such impediments.

The other restrictive provision in the Act is section 3(d) of the sub-division of the Agricultural Land Act, which “prohibits the lease of agricultural land for longer than 10 years without ministerial consent.” This legislation is used in conjunction with the Stamp Duties Act, which due to high stamp duties discourages the lease of land for agricultural development. As such, an otherwise potentially vibrant market in the rural areas is rendered ineffectual and dysfunctional. According to the Bank, leasing is important in that leased land serves as collateral for the financial loans from the Bank.

The Bank also posits that understanding of, and resistance to its new role as a Development Finance Institution makes it difficult for it to do its work effectively. The other impediment involves the conflicting interests of government and investors. Whereas the government wants to see the development of new farmers, the investors want to get profit. Thus, the Bank hopes to synthesise these priorities so that both the conflicting stakeholders continue to have confidence in its work.

10. CRITIQUE

Right to Environment

The CSIR, ARC, Rand Water and Umgeni Water need to be commended on what they are doing with their limited resources with regard to section 7(2) of the Constitution where environmental rights are concerned. The above-mentioned organisations are within their limited resources striving to conserve the environment. In particular, the Rand Water needs to be commended on the alien vegetation project it has been involved with, as not only does this project create jobs for the previously disadvantaged communities, but will ultimately generate far more water than is currently available.
The CSIR provides key information and technology solutions to both the public and private sector organisations as their major clients. Moreover, it ensures that community needs are met throughout South Africa, including the Southern African Development Community (SADC) region. Owing to its wealth of expertise with regard to section 24 of the Constitution, the CSIR compiles Environmental Impact Assessment (EIA) reports for other organisations. Furthermore, the CSIR, in collaboration with the Department of Environmental Affairs and Tourism and other relevant stakeholders, has developed a set of environmental indicators aimed at enhancing the State of the Environment Reporting at the national, provincial and local spheres of government.

The ARC should be commended on ensuring that the organisation interfaces with all the spheres of government, higher learning institutions, agricultural unions and farmers’ associations in South Africa, including other Science Councils in order to achieve its goals with regard to section 24 of the Constitution. The organisation’s research programmes comprise a range of multidisciplinary agricultural activities and services aimed at ensuring that the environment is protected for the benefit of the present and future generations. This is done through supporting the agricultural policy analysis systems at national, regional and industry level, participating and collaborating at international and local networks. In addition to the above, capacity is also built with regard to EIA, implementation, monitoring and evaluating agricultural practices.

In conclusion, it is also encouraging to note that most of the above organisations are trying hard to comply with all the relevant environmental legislation and complying with the SABS policies and the ISO’s.

**Right to Adequate Housing**

The mandate of the NHFC is in line with the interpretation of the right to have access to adequate housing as provided for in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights. One of the prerequisites for the right to housing to be considered adequate is that it should be affordable. To this end the State must establish forms and levels of housing finance that reflect housing needs. The NHFC as a State entity has the ability to ensure that it provides access to finance that will result in people getting their own homes, improving the already existing ones or getting houses to rent.

The response from the NHFC highlights its core function in so far as its facilitates people's access to affordable housing. The duty to respect the right to have access to adequate housing requires that an organ of State refrains from taking any action which prevents people from satisfying the right when they are able to do so themselves. The NHFC has therefore met the obligation to respect the right to adequate housing by ensuring that everyone has an equal opportunity in the housing market, by providing finance directly or indirectly through intermediaries. The aforementioned clearly point to the NHFC’s commitment to respecting the right to have access to adequate housing.

The duty to protect the right of access to adequate housing requires that measures be taken to ensure that any possible violation of this right by other powerful individuals
and groups in society is prohibited. The NHFC did not provide any information on how it protects the right.

The NHFC did not provide any figures for the number of houses built in 2001 and 2002 even though it showed a substantial increase in the Rand value of the loans disbursed.

The duty to promote requires that the public is educated about their rights, and that the right to adequate housing be made a reality. The information provided by the NHFC shows the limited understanding of its obligation to promote and fulfil the right. The institution was supposed to have provided information on how it educates its clients and beneficiaries about the services they offer to ensure the provision of housing. Also how their clients and beneficiaries can access the services provided by the NHFC. Merely stating that the right is promoted by the creation of better quality housing and living environments is not sufficient, especially when no explanation is given on how this is achieved.

Lastly, the mandate of the NHFC is in line with the interpretation of the right to have access to adequate housing as provided for in General Comment No. 4 of the Committee on Economic, Social and Cultural Rights. One of the prerequisites for the right to housing to be considered adequate is that it should be affordable. To this end the state must establish forms and levels of housing finance that reflect housing needs. The NHFC as a state entity, provides access to finance that will result in people getting their own homes, improving the already existing ones or getting houses to rent.

**Right to Health Care, Including Reproductive Health Care**

Both the CSIR and the MCC are not directly responsible for health care delivery. The former is a leading research institution, which conducts research into areas, which are relevant and important to promote the health of South Africans. The MCC on the other hand is a regulatory body whose main function is to ensure that medicines available to the public are safe, affordable and efficacious.

Although the CSIR did not respond to the question on how its activities comply with section 7 (2) on constitutional obligations, it can be said however the research programmes *vis-a-vis* reproductive health care, the development of an AIDS vaccine and immune boosters, obesity treatment, and small scale waste management incinerator are measures aimed at fulfilling the right the health care. Seminars and information packages distributed by the CSIR promote the right to health. According to the General Comment No.14, one of the requirements to promote and fulfil the right is for State parties to foster research and provide information.

The MCC provided a generalised, but detailed response on how its policies, programmatic and legislative measures respect, protect, promote and fulfil the right the health.

The MCC has succeeded ensuring accessibility to quality drugs, lowering the cost of generic drugs thereby making them available to more people. This fulfils the core obligation to provide essential drugs as defined by the World Health Organisation’s
Action Programme on Essential Drugs. The MCC regulatory functions protect the public against harmful medicines and practices. The production and dissemination of patient information and leaflets promotes health.

However, available and affordable anti-retroviral drugs are still not readily accessible to the majority of people with living with AIDS.

Right to safe drinking water

Umgeni – This water utility’s response shows that the utility does not have an understanding of what it means to observe constitutional obligations. It is important that the four obligations are understood so that people’s rights are not violated. Whilst the utility’s response refers to disabling legislative measures, the response does not state what precisely the problems are with regards to legislation. The non-mention of the water utility in the Constitution, Water Act of 1998 and in Local Government legislation, does not precisely explain how this puts the water utility in a weaker position, as it is claimed in the response.

Rand Water – Based on the response Rand Water gave on the constitutional obligations, it does not understand what each of the four obligations mean with regards to the right to water. It is important the Rand Water sticks to its future goals as these are important for communities that do not have access to water.

Right to Education

Based on its response on the constitutional obligations, the NSFAS does not understand the meaning of the constitutional obligations to respect, protect, promote and fulfil the right to education. It is important that the NSFAS, as a state organ, understand the four constitutional obligations aforementioned so that these inform its policies in financing the financially challenged students. General Comment No. 13, adopted at the twenty-first session (49th meeting), on 29 November 1999 has the following to say regarding the benefits of education:

Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognised as one of the best financial investments states can make. But the importance of education is just not practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.

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The fact that it is only recent that it had planned to make aware the rural poor of its financial assistance to access higher education, means that the it has been failing to promote and fulfil the right to further education. This is a cause for concern; it has to be addressed urgently. Moreover, this means that most of the rural poor who are not aware of the NSFAS’s financial assistance to access higher education are deprived of the benefits of education.

Higher education includes the elements of availability, accessibility\(^{18}\), acceptability and adaptability which are common to education at all levels.\(^{19}\) If the state has to progressively introduce free higher education, institutions such as the NSFAS have to ensure that all those in need benefit from them. This requires that the NSFAS establish the number of students who are academically able but not enrolled in the higher learning institutions due to, inter alia, financial constraints. These are potential students who are not benefiting from the financial assistance of the State either due to the NSFAS not doing enough to meet its constitutional obligations as it appears through its response, or due to some other unknown factors.

**Right to access to Land**

The Land Bank is a multi-tasked parastatal with a clear understanding of its obligations or responsibilities and well-pronounced goals. The protocol reveals that the Bank is ready to give money to all qualifying applicants it is responsible for. The emphasis of its tasks involves building the capacity of all its beneficiaries. It should be commended that the Bank sponsored 20 students every year.

What is not clear, however, is how many people have already benefited from the projects of the Land Bank, and how long ago the efforts started. This creates a problem in that there are no statistics, which may allow in-depth analysis. The Land Bank should be urged to supply statistics concerning the number of people that have benefited from its projects, or those beneficiaries that will be supported in future. Providing statistics will make it easier to appreciate the work done by the Bank.

The concern raised by the Bank concerning legal constraints should be given some consideration, for its efforts could be slowed down. Subsequently beneficiaries would

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\(^{18}\) It is especially this element of the four on the right to higher education that the point to be made is concerned with. This element means that educational institutions have to be accessible to everyone, without discrimination, within the jurisdiction of the state party. Accessibility has three overlapping dimensions:

i) Non-discrimination: education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds

ii) Physical accessibility: education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighbourhood school) or via modern technology (e.g., access to a “distance learning programme”);

iii) Economic accessibility: education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13, paragraph 2 in relation to primary education, secondary and higher education: whereas primary education shall be available “free to all”, states parties are required to progressively introduce free secondary and higher education; …

stand to lose, or their benefits delayed. Such laws must be reviewed to enable the Land Bank to provide essential services to all concerned.

11. RECOMMENDATIONS

Right to Environment

The CSIR, Umgeni Water, Rand Water and the NSFAS should be given training on the constitutional obligations so that they are in a position to make these part of their policy-making and implementation. It is not clear at this stage if these organisations’ policies are informed, inter alia, by the constitutional obligations.

Right to adequate Housing

The NHFC clients suffered a major setback when government decided to stop payroll deductions. The payroll deductions served as a mechanism that had provided relative security in terms of loan repayments. Other means to guarantee loan repayments will have to be found so as ensure that the NHFC is able to continue to service the needs of poor. Furthermore, since the many of the clients depend on government subsidies, the NHFC should liaise with government departments to facilitate and expedite the process in favour of the clients to service the needs of those most in need.

It is recommended that the NHFC provide details of how many low cost houses are built each year, who the beneficiaries are and their geographical distribution. Given the level of poverty and acute shortage of housing it is imperative that loans are disbursed efficiently and timeously.

Right to Health Care, including reproductive health care

The MCC needs to fast track the approval of ARVs, which have already been tested in other countries and make them readily available to stem the tide of the AIDS pandemic. The use of generic drugs should be actively encouraged and local pharmaceutical companies should be assisted to produce generic drugs to mitigate the high cost of medicines.

Right to Education

It is important that in its funding, the NSFAS considers the restructuring and transformation process taking place in the Higher Education and Training band to allocate funding appropriately to the newly-formed institutions of higher learning. The NSFAS’s move to consider funding part-time students is a commendable one since not all part-time students are employed.

As part of its strategic goal, one of the measurable outcomes of the NSFAS should be to find out if ever it has succeeded in targeting students from the rural poor communities. Whilst the measurable outcome is an indication that the NSFAS is trying its best to help the financially challenged students access higher education, setting specific targets that would be closely monitored would help the NSFAS achieve this strategic goal. Specific targets should also be set for the funding of disabled and women students as well.
**Right to access to Land**

What is not clear, however, is how many people have already benefited from the projects of the Land Bank, and how long ago the efforts started. This creates a problem in that there are no statistics, which may allow in-depth analysis. The Land Bank should be urged to supply statistics concerning the number of people that have benefited from its projects, or those beneficiaries that will be supported in future. Thus providing statistics will make it easier for us to appreciate more the work done by the Bank.

The concern raised by the Bank concerning legal constraints should be given some consideration, for its efforts could be slowed down. Subsequently beneficiaries would stand to lose, or their benefits delayed. Such laws must be reviewed to enable the Land Bank to provide essential services to all concerned.

**12. CONCLUSION**

Generally, it appears that most parastatals that were sent protocols by the HRC do not understand what is meant by constitutional obligations. This requires that such parastatals be trained on the constitutional obligations so that they incorporate these into their strategic plans to deliver on their respective economic and social rights.

**ABBREVIATIONS**

<table>
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ARC</td>
<td>Agricultural Research Council</td>
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<tr>
<td>CAPE</td>
<td>Cape Action Plan for Environment</td>
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<td>CSI</td>
<td>Corporate Social Investment</td>
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<td>CSIR</td>
<td>Council for Scientific Industrial Research</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>HRC</td>
<td>Human Rights Commission</td>
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<td>LCC</td>
<td>Land Claims Commission</td>
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<td>Abbreviation</td>
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<tr>
<td>MCC</td>
<td>Medical Control Council</td>
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<td>NDA</td>
<td>National Department of Agriculture</td>
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<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
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<td>NHFC</td>
<td>National Housing Finance Corporation</td>
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<td>NSFAS</td>
<td>National Student Financial Aid Scheme</td>
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<td>SABS</td>
<td>South African Bureau of Standards</td>
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<tr>
<td>SACSSP</td>
<td>South African Council for Social Service Professions</td>
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<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
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<tr>
<td>SDP</td>
<td>Social Discount Product</td>
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