



**ECONOMIC &  
SOCIAL RIGHTS REPORT**

**SANGOCO'S REPORT ON  
POVERTY AND HUMAN  
RIGHTS VOL V**

**1997-1998**

# TABLE OF CONTENTS

<b>Introduction .....</b>	<b>4</b>
<b>Methodology .....</b>	<b>6</b>
<b>Access to Land and Rural Development .....</b>	<b>6</b>
An overview of the relevant constitutional provisions and the measures adopted by government to give effect to the right .....	6
Past violations of land rights and their current impact on the poor .....	7
People's understanding of their land rights .....	8
The main obstacles experienced by the poor in gaining access to land .....	9
The role of government in promoting the right .....	12
<b>The Right to Sufficient Food and Water .....</b>	<b>13</b>
Overview of the relevant constitutional provisions .....	13
Violations of the right to water under Apartheid and their current impact on the poor .....	14
People's understanding of their rights .....	14
The main obstacles experienced by the poor .....	15
The role of government in promoting the right .....	17
<b>The Right of Access to Adequate Housing .....</b>	<b>17</b>
Relevant constitutional provisions .....	17
Violations of the right to adequate housing under Apartheid and the current impact .....	18
People's understanding of their housing rights .....	19
The main obstacles experienced by the poor .....	20
The role of government in promoting the right .....	21
<b>The Rights of Access to Health Care Services .....</b>	<b>22</b>
Relevant constitutional rights .....	22
Violations of the rights to health care under Apartheid .....	22
People's understanding of their right to health care .....	22
The main obstacles experienced by the poor .....	23
Gender .....	25
<b>The Right to Social Security .....</b>	<b>25</b>
Relevant constitutional provisions .....	25
Violations of social security under Apartheid .....	26
People's understanding of their social security rights .....	26
The main obstacles experienced by the poor .....	27
The role of government .....	31
<b>The Right to an Environment that is not Harmful to one's Health and Well-being .....</b>	<b>32</b>
Relevant constitutional provision .....	32

Violations of the right under Apartheid.....	32
People's understanding of the right .....	32
The main obstacles experienced by the poor .....	33
The role of government .....	35
<b>The Right to Education .....</b>	<b>35</b>
Relevant Constitutional Provisions .....	35
Violations of the right under Apartheid .....	36
People's understanding of the right .....	37
The main obstacles experienced by the poor .....	37
The role of government .....	41
<b>Labour .....</b>	<b>42</b>
Labour Rights and the Right to Work .....	42
Past policies .....	43
The present situation .....	43
Vulnerable workers .....	44
Retrenchments .....	44
The Role of Government .....	44
<b>Macro-Economic Policy and Socio-Economic Rights .....</b>	<b>45</b>
<b>Conclusions.....</b>	<b>46</b>
<b>References .....</b>	<b>54</b>
Volume I	Baseline Information
Volume II	Protocols
Volume III	Governmental Responses to Protocols
Volume IV	Researcher's Evaluation of Government Responses
<b>Volume V</b>	<b>SANGOCO's Report on Poverty and Human Rights</b>
Volume VI	CASE Report

# **SANGOCO's Report on Poverty and Human Rights**

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Through the Truth and Reconciliation Commission we've heard about the political and civil rights violations under apartheid. But what about the violations of social and economic rights? Understanding this legacy is critical to the success of strategies to eradicate poverty and inequality, and to secure a better life for South Africans.

Speak Out on Poverty aimed to provide a platform to both understand the legacy of social and economic right violations and the extent to which our new Bill of Rights in the Constitution addresses this legacy.

A joint initiative by the South African National NGO Coalition (SANGOCO), the South African Human Rights Commission (SAHRC) and the Commission on Gender Equality (CGE), Speak Out on Poverty provided a unique opportunity to listen to the experiences and opportunities of the poor.

Ten nation-wide hearings were held over 35 days from 31 March to 19 June. One of the social and economic rights was selected as the primary theme for seven of the hearings. The remaining three were non-thematic open hearings. Nearly 600 people made oral submissions and over 10 000 people participated in the process either by making written submissions, attending the hearings or mobilising others to participate.

*"We live in a society in which there are great disparities in wealth to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order."*<sup>1</sup> The inclusion of social and economic rights in the 1996 Constitution reflects the understanding that dignity, freedom and equality are not just about the absence of civil and political violations. Along with torture, killings, detentions without trial and censorship, violations of human rights in South Africa also consisted of mass forced removals, racially restricted 'group areas' and a denial of equal access to education, health care services and social security. Laws and policies in these areas have left a legacy of deep poverty and inequality in South Africa today.

The equal status of all human rights in the Bill of Rights is recognition that formal civil and political freedoms on their own, will not lead to an improvement in people's quality of life.

The economic and social rights recognised in our Bill of Rights relate to labour relations, the environment, access to land, housing, health care, food and water, social security and education. In addition, South Africa has ratified certain international human rights treaties that also recognise economic and social rights. These include:

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<sup>1</sup> Judge Arthur Chaskalson, President of the Constitutional Court in *Soobramoney v Minister of Health, KwaZulu-Natal* 1997(12) BCLR 1696 (CC), paras. 8 - 9.

the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979 [CEDAW], the *Convention on the Rights of the Child*, 1989, and the *African Charter on Human and Peoples' Rights*. Furthermore, the government has announced that it will shortly ratify the major international treaty protecting economic, social and cultural rights - the *International Covenant on Economic, Social and Cultural Rights*, 1966. It is also due to ratify the *Convention on the Elimination of All Forms of Racial Discrimination*, 1966.

By their very nature, economic and social rights imply that conditions of poverty and deprivation will be eliminated, and basic human needs will be satisfied. By recognising these rights, the eradication of poverty becomes not merely a policy choice for the State, but a legally binding responsibility for which it is accountable. There are various ways in which accountability can be demanded from the State for the realisation of these rights. These include: monitoring policy and parliamentary processes, lobbying and advocacy, political pressure, interventions by the South African Human Rights Commission and the Commission of Gender Equality, and court applications.

Like civil and political rights, a court can enforce economic and social rights. The Constitution provides another important mechanism for monitoring the fulfilment of economic and social rights. Every year, the South African Human Rights Commission requires relevant organs of the State to provide it with information on the measures they have taken towards the realisation of these rights [section 184(3)]. The Commission has announced that it will compile a comprehensive report, analysing and assessing the information it has received from relevant government departments and incorporating information received from civil society. The report will be tabled in Parliament. This mechanism provides an important opportunity, for participation by civil society, in the monitoring of economic and social rights. In addition, the Commission of Gender Equality has a broad mandate to monitor, investigate, research and lobby on issues concerning gender equality. This includes women's full and equal enjoyment of economic and social rights.

The Constitution requires the State to "respect, protect, promote and fulfil the rights in the Bill of Rights." In the context of socio-economic rights, this means that it must not deprive people of their rights, make it difficult for them to gain access to the rights, or discriminate unfairly against people. In addition, it must take reasonable measures to improve and advance access to decent housing, clean water and so on, by everyone.

The measures to be adopted include legislation, policies, financial, administrative, educational and social measures. Both under the Constitution, and international human rights law, the primary duty of the State is to create an enabling environment. This environment should make it possible for people to gain access to economic and social rights through their own efforts and initiatives. This requires that it remove those barriers that stand in the way of people gaining and enjoying access to the rights. In the case of groups who are particularly vulnerable and disadvantaged, the State has a special duty to assist them to gain access to these rights. These include, for example: rural women, persons living with disabilities or chronic illnesses, poor children, and elderly persons. The State should ensure that everyone at least has access to basic levels of economic and social rights necessary to sustain human life, health and dignity. This is what the UN Committee on Economic, Social and Cultural

Rights refers to as the “minimum core obligation” of States. The fulfilment of this core duty should have a priority claim on the State’s resources.

The Poverty Hearings provide a platform for poor people in South Africa to share their perspectives on what economic and social rights mean for them, the obstacles and difficulties they experience in gaining access to these rights, their suggestions for overcoming these obstacles, and the role of government in promoting their rights. The hearings also allow us to identify the gaps between constitutional rights, laws and policies on the one hand, and people’s lived realities and experiences on the other. The challenge facing human rights activists in South Africa today, is to transform the economic and social rights in the Constitution into tools of empowerment and mobilisation in the hands of the poor.

## **Methodology**

The report will focus on the following socio-economic rights in the Bill of Rights: access to land, housing, health care, food, water, social security, education and environmental rights. The following issues are examined in the context of each right:

- a) An overview of the relevant constitutional provisions and the measures adopted by government to give effect to the right;
- b) Violations of the right under apartheid, and their current impact on the poor;
- c) People’s understanding of their rights, and how they can enforce them;
- d) The main obstacles experienced by poor communities in gaining access to the right;
- e) The role of government in promoting the right.

Access to jobs emerged as a strong theme. We have therefore included a section on labour rights. Several submitters mentioned the impact of economic constraints, and the macro-economic policy, on the realisation of economic and social rights in South Africa, a section has also been included.

We have focused on the testimony and submissions presented at the hearings by poor people and the organisations that work closely with them as a basis for our reflections and conclusions.

### **1. ACCESS TO LAND AND RURAL DEVELOPMENT**

- a) An overview of the relevant constitutional provisions and the measures adopted by government to give effect to the right

Land and rural development were predominant themes of the hearings in the Northern Province. They also emerged at other hearings - particularly in the North West Province, Mpumalanga and KwaZulu Natal.

The Constitution makes provision for the following in relation to land:

- The duty of the State to take “*reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*”;
- the right to tenure security or comparable redress through an Act of Parliament for persons or communities whose tenure is legally insecure as a result of past racially discriminatory laws or practices;
- The right of persons or communities dispossessed of property after 19 June 1913, as a result of past racially discriminatory laws or practices, to restitution of their property, or to equitable redress through an Act of Parliament.

The Constitution also expressly provides that the property rights, protected in the Constitution, may not prevent the State from taking legislative and other measures to achieve land, water and related reform to redress past racial discrimination, provided that these measures are reasonable and justifiable. [See section 25(5) - (9)] In addition Section 24 of the Constitution requires the State to take reasonable measures to secure ecologically sustainable development.

The government’s land reform programme has three main elements: restitution, redistribution and tenure. A number of pieces of legislation have been enacted to give effect to people’s land rights. These include: the *Restitution of Land Rights Act, 22 of 1994*, the *Upgrading of Land Tenure Rights Act, 112 of 1991*, the *Development Facilitation Act, 67 of 1995*, *Land Reform (Labour Tenants) Act, 3 of 1996*, the *Communal Property Associations Act, 28 of 1996*, the *Extension of Security of Tenure Act, 62 of 1997*. Through its Land Distribution Programme, the government provides a Settlement/Land Acquisition Grant, to a maximum of R15 000 per household, for the purchase of land directly from willing sellers (including the State)

#### b) Past violations of land rights, and their current impact on the poor

The dispossession of black people from land in South Africa initially took place at the hands of white colonisers, and through legislation such as the *Native Land Act, 1913*. Black people were forced off their land and made to resettle in over-crowded reserves. These became pools of cheap migrant labour for white-owned farms and mines. Under apartheid, an estimated 3.5 million people were removed from rural and urban areas between 1960 and 1980, often without compensation. Influx control legislation, which was only abolished in the mid-1980’s, prevented black people from acquiring permanent land rights in urban areas. In the Bantustans, infrastructure development was rudimentary, and the livelihood of rural people undermined through the government’s policy of ‘Betterment planning.’

Dispossession forced successful black farmers to seek employment as farm labourers thus converting them into insecure land occupiers and tenants. Large scale commercial farmers monopolise fertile land. Joseph Mokgalabie described this in his written submission: “*It is even reflecting now, because the area of land occupied by whites is fertile when coming to agriculture. Whites were commercial farmers and blacks were tenants, which means it was the issue of landlord against landless.*”

The migrant labour system resulted in a large number of women-headed households in the rural areas, most of which are impoverished. The White Paper on South African Land Policy estimates that “*three-quarters of the children in rural areas are in*

*households living below the minimum acceptable subsistence level.”* (p.11). The migrant labour system also led to the break-up of families and traditional community support structures.

Many people raised harassment, as a result of apartheid land policies, as a serious problem. As Mmanoko Evelyn Makgai testifying in the Northern Province explains: *“Our cattle were grazing all over the area [farm] and life was very wonderful then. Then we were stopped from ploughing back around 1967/8 and our cattle were restricted to a minimal number. Now they say that we have to leave the farm. These white people made our lives a mess.”*

Jasper Cloete of Spegrivier, Namakwaland described how as a child he was sold by his grandfather to work for a farmer for a year for *“’n bondel twak en 10 sjielings...Dit was slawerny.”* (a bundle of tobacco and 10 shillings..It was slavery). Magrieta Engelbrecht of Garies, Namakwaland recounted how her son had to buy her out of bonded labour to a farmer for 20 shillings because she was in debt to him.

Many of the submissions highlighted the link between past land policies and the impoverishment of black people in rural areas. The forced removals precipitated a spiral of tenure insecurity, loss of educational opportunities and poverty. In the words of Joseph Mashia, *“We tried to develop an area to grow things. The government disallowed access...We discovered we were victims of apartheid. We had no say where we reside. And that brings us to this situation of poverty now.”*

Zukwa Madlala, Chairperson of the Forum representing farm workers in Mplendle, KwaZulu-Natal, testified about the on-going impact of land dispossession and violence on communities: *“We have tried to talk about our rights to land, but what we have tried has not yet succeeded. Other families, due to a lack of land, have been removed by those in power who have been reinforcing apartheid. Other families have been destroyed by violence. Up until now many people are just squatting around the city. It’s difficult to reconstruct those families and those houses.”*

### c) People’s understanding of their land rights, and how they can enforce them

Persons who were part of an organised community claiming restitution of their land, demonstrated a better understanding of their rights. However, certain submissions indicated that people were either not aware of their right to claim restitution or were relying on traditional leaders to lodge claims with the Land Claims Commission on behalf of the community. Julia Kotelo explains: *“We have not made a claim to the Land Claims Court because we thought the chief represents us and claims on our behalf. But we are worried because we heard .... The place was sold.”*

The testimonies also strongly suggest that farm workers, as a group, are generally unaware of their new legal rights. Lennox Vusumzi Mange, representing the Bedford community at the Grahamstown hearings, said that most farm workers were illiterate and *“don’t know their basic human rights. They work long hours, do not receive UIF. Sometimes they do not have contracts and are not paid. They are evicted without alternative accommodation. Just chucked out. People are ignorant so they just move... Bedford is a place of slavery.”*

Although some of the submissions did describe people's experiences, in trying to access the Settlement/Land Acquisition grant, it is not clear whether there is widespread knowledge of the Department of Land Affairs grant.

d) The main obstacles experienced by the poor in gaining and enjoying access to land

#### ***Legal and administrative obstacles***

The inability to acquire a secure right to land was identified as a major constraint. In their written submission the National Land Committee (NLC) pointed out that the restitution process was experiencing "*a crisis of delivery*" for a number of reasons. These include its legal and bureaucratic approach, and the extreme slowness of the process. The NLC point out that, to date, only 8 claims have been finalised with 85% of the total claims received being from urban areas. The NLC believes that there has been "*no effective communication campaign to communicate the rights of potential restitution beneficiaries.*" Petrus Bahumi, the vice-chairperson of the Bethany community described how the removal of the community to Thabanchu in 1965 devastated the community, "*resulting in a loss of lives, possessions, livestock, and job opportunities.*" The community organised to claim their land back, and submitted a restitution application in September 1995. The process has been protracted, and they are still attempting to settle their claim through negotiations with the present owner: "*It has gone on until today, taking us up and down...Maybe one day we will be able to sign for us to go back to our home.*"

The NLC also claims that the redistribution programme, which is predicated on market mechanisms, will not result in an equitable distribution of land in South Africa. Even State land has to be purchased. The Lydenburg Rural Council identified a number of obstacles, which prevented it from facilitating access to land and installing basic service infrastructure for farm-dwellers. It claimed that: "*The willing buyer - willing seller Act passed by the democratic government prohibits the Lydenburg Rural Municipality to reclaim any farm for its landless subjects.*"

The NLC identifies the property clause in the Constitution as a major obstacle, inhibiting the State from embarking on any thorough land reform strategy. It also appears that communal property associations (CPAs), which were intended to facilitate access to land have not been formed and registered quickly enough. According to a written submission by the Centre for Applied Legal Studies(CALS), only 98 CPA's had been registered throughout the country by the end of May 1998.

In his testimony, at the Free State hearings, Joseph Modise ,of the South African Small and Medium Enterprise Development Initiative (SASMEDI), described how a group of aspirant farmers, in his community, applied to the Department of Land Affairs for land acquisition grants. Officials lack of clear guidance on how to complete the application forms for the grant, combined with conflicting messages regarding the criteria for accessing the grant, led to divisions and frustrations. As a result some members of the organisation withdrew.

Sophie Coetzee of Mier described how a court case, initiated by the "boereunie" (Farmers' Union), was obstructing efforts to achieve a final settlement of the land

claim: "...[R]ight now no development is taking place; money is not being invested there because of the confusion around the court case, and our people are suffering because of this." She also identified conflicting strategies within the community as a problem. Finally tension between the Coloured community and the San people, who are also claiming land in the area, is yet another obstacle to achieving a fair division of limited land resources.

### ***Lack of access to services and infrastructure***

At the hearings there was a strong feeling that access to land alone is insufficient. In order for access and control over land to be productive and sustainable, it must be accompanied by a range of other services and infrastructure. These include agricultural extension services, lowering the price of agricultural inputs, access to credit for agricultural infrastructure (for example, irrigation schemes), access to markets, water, roads, electricity and training. At the Free State hearings, Adam Dichaba said: "*We are asking government that they can support us in our farming because we have got the land, but we don't have the facilities.*"

Epang Natolweni, representing Mphatlalatsane Development Agency in the Northern Cape, echoed this. He applauded that the people of Hartdrif and Smitsdrif have had their land restored to them. He complained that these communities have had to "*start from scratch*". They have not been given the necessary financial support by government: "*It is not enough to say we have restored the land to the rightful owners when we do not assist them to live on it.*" The province has many emerging or subsistence farmers: "*Structures set up to support small farmers have collapsed and they are in dire straits. Government is obviously favouring the established commercial farmers at the expense of the small farmers,*" Natolweni went on to say.

### ***Racist attitudes***

Isaac Doktor of Victoria West claimed that communities in the Northern Cape were experiencing "*the problem of the reactionary 'grond hervolking' (land redistribution) phenomenon, where the ideal is for no blacks to be allowed on the land at all, and small businesses are not allowed to be owned.*" He said that farm workers were particularly insecure because they tended to be evicted when farms changed ownership: "*This is precisely the Oranje ideal - to do away with the farm workers.*"

### ***Forced evictions and conditions of life and work on the farms***

The high prevalence of forced evictions of farm-dwellers and labour tenants is clearly an issue of deep and on-going concern. Many of the submissions highlighted the insecurity of farm housing, as eviction from the farm inevitably follows dismissal. Maria Mooko testified that she had worked on a farm for 29 years when she was evicted: "*I was told that he [the farmer] did not want to hear my children on the farm.*"

There were also tales of the eviction of elderly or ill people from farms who were no longer able to work. After the eviction, labour tenants and farm workers are often dumped along the side of the road or in inhospitable settlements. The NLC tells of the eviction of 33 families from a farm where some of them had lived even before the

latest owner was born. The farmer demolished their houses and crops and impounded their livestock. They were dumped in the middle of the night in an informal settlement called Daggakraal, a wetland, which is neither appropriate for grazing nor for residential purposes. They missed the cut-off date for applying for reinstatement, and are presently destitute.

Cut off from their homes and sources of livelihood, farm-dwellers “*live like nomads*” according to the Rural Council of Lydenburg. They claim that magistrates ignore recent labour legislation such as the Labour Tenants Act and the Extension of Security of Tenure Act. They allegedly use “*outdated legislation of the old apartheid regime*” to assist the white Lydenburg landowners. Farm workers also face the obstacles of legal costs, the transport costs caused by frequent postponements of cases, and even negative attitudes from local attorneys.

Conditions on the farms were also a frequent subject at the hearings. According to the Lydenburg Rural Council: “*Labour laws are not applicable on the farms of Lydenburg. The farmers prohibit their employees to join unions.*” There were also accounts of children being dragged out of schools, by farmers, to work on the farms. There were similar stories of pensioners being forced to work. Timothy Motau testified at the Mpumalanga hearings on behalf of the South African Farm Dwellers Union (SAFDU). He referred to the case of Sonny Boy, a worker on a farm, “*who was tortured and assaulted then... set alight*” after losing a pair of pliers. In his statement, at the Northern Province hearings, Elias Tholo told of “*working on Mr Venter’s farm since I was a young boy with the system of working on week for money and one week without pay.*” The Lydenburg Rural Council attributed the low wages paid to farm workers to: “*unlawful migrant labourers on the farms from Mozambique and Zimbabwe who accepted without complaint low wages and even being unpaid at times.*”

The Council made an impassioned plea for concerted efforts to improve the lack of basic services and social infrastructure for farm-dwellers: “*People do not have secondary schools, churches, community halls, theatres, sports grounds, parks, libraries, clinics etc. on the Lydenburg farms...It is unacceptable to realise a lack of basic services and social infrastructure is a common phenomenon throughout 95% of the farms in South Africa.*”

Albert Mahladisa complained of his lack of time for a family life. He is forced to work on the farm “*from seven in the morning to five in the afternoon, six to seven days per week*” and gets R480 per month. His boss threatened to cut his pay if he did not report for work on Sundays. There were accounts (particularly at the Northern Cape hearings) of farmers beating their labourers, including children, at the least provocation.

There were also accounts of discrimination and lack of respect for farm workers by other service-providers and the broader community. In the words of Timothy Motau: “*The mobile clinics do not take care of us. They say we are dirty. But the farm dwellers do not have soap. But they should be taken as human beings. They must be accepted.*” Isaac Doktor identified the lack of representation of farm workers on district councils as the main problem.

## **Gender**

The submission by the Rural Consultative Forum highlights the impact of migrant labour on rural women. They bear the brunt of rural survival strategies. When migrants take a second wife in urban areas, it often creates additional difficulties - like competition between the two wives for the migrants pension benefits. Often it is the wife in the rural areas that has to bear her husband's burial costs. Women also have to bear the responsibility of caring for children and elderly relatives while also doing the bulk of manual work for cultivation.

Most rural women do not have access to land in their own names, but through a male relative. Some testified that traditional leaders obstructed women's access to land. Pauline Machai from the Northern Province reported she was not even allocated a small piece of land by the chief *"where I can grow some vegetables."* According to the Centre for Applied Legal Studies (CALs): *"There seems to be no policy on promoting independent ownership of land - for residential, agriculture, mining or industrial use - by women."*

### ***The special obstacles experienced by persons with disabilities***

In their submission, to the Northern Province hearings, the Disabled People of South Africa (DPSA) highlighted the difficulties experienced by persons with disabilities in gaining access to land: *"When trying to access land as a disabled adult, we are usually told that our father, or a child who has reached the age of 21, or another senior member needs to sign for us i.e. the land will belong to them."* The underlying assumption is that disabled people are unable to use the land effectively. Accordingly, many eldest children who are disabled are denied their inheritance rights to land or a home from their parents.

Agricultural extension programmes were generally not tailored for persons with disabilities: *"We are often told that they do not work with people with disabilities, and that we need to go to the hospital or social workers office as these people know better."* Poor roads and public transport infrastructure in rural areas also impact disproportionately on persons with disabilities, restricting them to their homes.

### **(e) The role of government in promoting the right**

It emerged from the hearings that most people believed that government had a responsibility to assist them in gaining access to land, extension services, basic social services and infrastructure. However, the mechanisms of obtaining assistance were not always clear to people. In the words of Paulina Machai: *"It is not clear to me who gets assistance from the government and how...We need land that we and our children will be able to survive on. We need land to produce our own food to be able to survive."* According to Joseph Mashia speaking at the Mpumalanga hearings, *"we can chase away starvation if the government supports people through projects. We need our own land for our own crops. With a lack of information and procedures to follow we fail to get assistance."* Simon Msiza wanted assistance to obtain a loan from the bank to buy a farm. Lydia Nhlahla believed that the government should assist with tractors and money *"so that we can go on with our farming."*

Pholoshlo Malatju, speaking at the Northern Province hearings, believes there is a need for special programmes directed at women: *“I think women in rural areas must be allocated land to grow fruits and vegetables because I met many women at the dumping site looking for something to eat.”* Mmamoketwa, also from the Northern Province, told of living with the fear of being evicted from the farm where she and her seven children and five grandchildren are staying. As female head of her household, she works at the farm house of the farm, earning R250 per month: *“I just wish to have land of my own where I will be able to plough and keep livestock and if the government can increase that money [a grant for the support of her children] to the original amount, I think life might be better.”*

There is clearly an on-going need to ensure the effective implementation of legislation designed to protect the labour rights and security of tenure of rural dwellers. As the Rural Council of Lydenburg said: *“The Bill of Rights, section two of the Constitution must be followed and must be implemented so that the poverty status of the blacks can be improved...Poverty on these farms could disappear gradually if provincial and national governments could intervene and see to it, that justice takes its course on the farms.”*

Epang Natolweni had a similar view: *“We have got excellent new laws and ordinances, but we want them to be put into effect so that they are not just paper. The Development Facilitation Act, the Extension of Security of Tenure Act - these only exist on paper. Its like inventing a ship where there is no ocean for it to sail.”*

## 2. THE RIGHT TO SUFFICIENT FOOD AND WATER

### (a) Overview of the relevant constitutional provisions and the measures adopted by government to give effect to the rights

Food and water rights were not dealt with as a specific theme at any hearing, but the issues relating to these rights emerged in all the hearings.

Section 27(1)(b) of the Constitution gives everyone *“the right to have access to sufficient food and water.”* In terms of section 27(2), the State *“must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation”* of this right. In addition, every child has the right to basic nutrition [section 28(1)(c)].

The Department of Water Affairs has pioneered two important pieces of legislation designed to give effect to the right to water. They are the *Water Services Act, 108 of 1997* and the *National Water Act, 1998*. The *Water Services Act* makes provision for an institutional framework for the delivery of water supplies and sanitation. It explicitly recognises *“the right of access to basic water supply and basic sanitation necessary to secure sufficient water and an environment not harmful to health or well-being.”* (section 2). The minimum standard of water supply will be defined in regulations. *The White Paper on Water Policy* (30 April 1997), has adopted 25 litres of water per person per day, within 200 metres of a person’s dwelling, as a minimum standard. It makes provision for a life-line or social tariff in terms of which the capital

cost of the provision of the 25 litres of water is subsidised. Communities are, however, expected to pay the operation and maintenance costs of this basic supply.

The *National Water Act* effects a fundamental change to the current water law, by replacing the system of private ownership of water rights with a licensing system. The national government is given the role of “*public trustee*” of the nation’s water resources to ensure the sustainable and equitable use, management and conservation of water resources.

#### (b) Violations of the right to water under apartheid, and their current impact on the poor

The old water law, which is to be replaced by the *National Water Act*, gives private landowners extensive rights to water resources that are located on or adjacent to their land. Water rights are therefore directly tied to land ownership. Given the historical dispossession of black people from their land, these laws have perpetuated the privileged access enjoyed by white landowners to the country’s water resources.

- large scale irrigation on commercial farms accounts for over ½ the nations water resources; [I got this from Mail & Guardian article - not sure if this is reliable enough source? Consider replacing with the estimated collection time of 4 hours for women to collect water
- between 12 and 14 million people are without access to safe water;
- over 20 million people are without access to adequate sanitation.

Women and children are disproportionately affected by the lack of access to basic water services. Rural women spend more than 4 hours a day collecting water and wood for fuel, and thousands of children die annually of avoidable diseases related to poor sanitation and the lack of clean water.

Julia Kotelo expressed her feelings about the inequitable distribution of water services at the Mpumalanga hearings: “*Loskop has water, but not for us. It is only 10km away, but the water passes us. It goes to Groblersdal and Marble Hall. They are 85km away, but we have no access. The problems are caused by the lack of water. It is made for whites only. We want access to it. For irrigation. To look after our children through water. We do not want the water taken out of Loskop.*”

#### c) People’s understanding of their rights, and how they can enforce them

The general trend of organisations having a better understanding of water and food rights than poor individuals persisted. The Rural Development Services Network provided a written paper for the hearings in the Northern Province. They note that water is “*a basic right,*” but that people have to pay even for the first 25 litres of water. The Network argues for a “*free 50 litres per person per day which is just below the world standard of 60 litres per person per day.*” (p. 13). A similar position is adopted by the Rural Consultative Forum.

d) The main obstacles experienced by the poor in gaining access to water and food

### ***Inadequate infrastructure and services***

The Rural Development Services Network described the difficulties faced by Mr Mhlangu and his family in collecting sufficient water for their domestic needs. They are generally forced to cross a freeway to collect water from a standpipe. Collecting water directly from a spring in the vicinity makes them sick. *“Even the borehole that is in the neighbourhood is always full of people. If we want to get water from this borehole, we end up queuing the whole day and at the same time we are not guaranteed that we will go home with water...We leave this place at six in the morning and return at eleven midmorning.”* They also have to cross the freeway to go to the bush toilet: *“We are in danger of being hit by a car when we cross the road. We are also in danger of being bitten by snakes while using the bush toilet.”* (pp. 11 - 12).

People associated their lack of access to water with an inability to meet their basic needs. The failure of many small self-help projects (e.g. gardening, small-scale chicken farming etc.) was also largely attributed to a lack of a reliable water supply. Water and infrastructure for irrigation purposes were identified as key needs.

### ***Unreliable and inadequate services and infrastructure***

Even when services and infrastructure do exist, people complained that they failed to deliver a reliable supply of clean water for a number of reasons. Lennox Fakude, of the Eco Plan Environmental Club in Hazyview, Mpumalanga, said that pipes were installed in his community: *“...but they don’t work. When the water sometimes comes, it is dirty. We approached the chief. He said the same [as the local authority] - they are working on the dam. But there is no progress.”*

Often the communities are unable to afford the costs of maintaining pumps and boreholes, or lack the skills to do so. Chayisa Motokwa of Phalaborwa said, that although they had stand pipes in the area, *“sometimes they dry-up for a long period. Even when the water comes - it is dirty.”* At the KwaZulu Natal hearings, Mlande Tokwe, of Zozo Village, complained about a lack of responsiveness from the Department of Water Affairs [DWAF] to their problem of burst pipes: *“So much so, that people who have telephones pay exorbitant fees because we ask them all the time to phone to ask them DWAF officials] to come look into the issue.”* He said that it was the community’s third month without access to piped water, and they were going back to using *“unhealthy water.”*

### ***Affordability***

Many of those who testified identified the costs of water supplies as a serious problem. *“Water is too expensive for poor people. Masakhane says we must pay for electricity and water. That is impossible if we are unemployed,”* said Magome RSA at the North West hearings. Tolwe Stokman of Grahamstown told the hearings in the Eastern Cape, *“...rates are rising, especially water. I gave up. My arrears are becoming larger and larger.”*

### ***Pollution and poor quality of water supplies***

Poor health was closely associated with the lack of access to clean water. Constance Mbele of the Rural Consultative Forum, South Coast, told the hearings that people were suffering from dysentery and cholera as a result of drinking water directly from rivers. Josiah Magula complained, at the Mpumalanga hearings, about the pollution of the river in his community. Chemicals from the local factory run down to the river. People's health was also affected by inadequate sanitation. Ipuphele Edu-Care described, at the Gauteng hearings, the unhealthy conditions caused by the bucket system of toilets. These include three households sharing one toilet, cleaning which only occurred once in two weeks, and the collapse of toilets when it rained. According to Hleziphi Banda, of the Titkimbi community in KwaZulu-Natal, polluted water supplies and lack of sanitation facilities are major problems. Sugar cane fields surround the small stream from which people get their water. Chemicals sprayed on the sugar cane, and people going to the toilet in the fields pollute the water.

### ***Gender and disadvantaged groups***

A number of persons described the long hours spent by rural women collecting and carting water either from communal taps or directly from streams and rivers. Hleziphi Banda also testified that women who went to collect water from the stream were frequently raped. Jabu Ntuli, of the Self-Employed Women's Union (SEWU) in KwaZulu-Natal, described the dangers involved in collecting water from the river: *"We find that many ladies have lost their limbs because of crocodiles while they are trying to fend for their children... When trying to fetch water, you have to put a string on the bucket and throw it there to avoid an attack from the crocodile."* Long cartage distances also pose particular difficulties for elderly people and persons with disabilities. Several women also spoke about their fears of being raped on route to remote water supplies.

### ***Local Government and traditional authorities***

At the Northern Province hearings, Casperina Mashamaite described the obstacles posed by local government structures and traditional authorities in gaining access to water in Skoongesicht: *"We have problems with local government regarding water. They told us to approach the king. There is always discrimination and they say we have to wait... Even water, we are going up and down and then the committee tell us to go to the king where they approve it. Before they help, they want you to pay first. We are on the waiting list."*

### ***Food security***

Many people who testified at the rural hearing also drew a link between their lack of access to land and water, and food insecurity. Wilson Mhana told the hearings in the North West Province: *"People are starving. There is no work and no water. The gardens fail, and people eat rotten vegetables. I teach cooking and nutrition in adult schools. But people are too poor to buy fresh food."* Louise Mnisi Mabuza told the Mpumalanga hearings: *"The police and communities come to complain about starvation. I find people who have had no food for a week. Just water. What to do? The local authorities should extend the areas for growing vegetables."*

Many people also highlighted the critical role played by pensions and other social grants in feeding families. The absence of school feeding schemes in certain areas, or the limited nature of the schemes, has a detrimental impact on the right of children to basic nutrition. Nombeko Qeja, of the Eastern Cape, described his battle to find sources of food for his young grandchild: *“The clinic only provides medicine, not food. In school – only the sub-A’s and sub-B’s get food. That’s what makes my child faint. He sees others eat and he has nothing to eat.”*

The link between proper nutrition and education was also highlighted in the testimony of Lydia Monoale at the Free State hearings. She described how she and her siblings were unable to *“listen in class because we were always hungry.”* Michael Phungula of Ndumakazi Health Care Project in KwaZulu-Natal described the nutrition project they initiated for children in the age-group 0 – 11 years when it was discovered that the majority of children were anaemic. A lack of information in the community about nutritional principles was identified as a key issue. They drew on the experience of this project to disseminate information to the community about proper nutrition and to encourage them to grow vegetables.

Sipho Khuzwayo representing Operation Hunger in KwaZulu-Natal confirmed that there is starvation and malnutrition in the rural areas. They try to introduce programmes *“for communities to function without expecting help from outside. They grow their own gardens, and they can sell some of it.”*

#### (a) The role of government in promoting the rights to food and water

People who testified clearly regarded government, particularly local government, as having a duty to ensure access to clean, reliable and affordable water supplies by communities. Government also has a key role to play in facilitating food security, and in giving effect to the right of children to basic nutrition through accessible programmes. Most people were aware of their role in providing for their basic needs through farming or self-help projects etc. However they pointed out that to be successful these initiatives depended on access to decent water supplies and infrastructure.

### 3. THE RIGHT OF ACCESS TO ADEQUATE HOUSING

#### (a) Relevant constitutional provisions and the main measures adopted by government to give effect to the right to housing

The Poverty Hearings that took place in the Western Cape focused on housing, a theme that also featured in other provinces.

Section 26(1) of the Constitution gives everyone the right to have access to adequate housing. Section 26(2) places a duty on the State to take *“reasonable legislative and other measures, within its available resources,”* to progressively realise the right. In addition no one may be evicted from their home, or have their home demolished, without a court order made after all the relevant circumstances have been considered [section 26 (3)]. The section further prohibits any legislation that permits arbitrary

evictions. The Constitution also gives every child the right to shelter in section 28(1)(c). Finally, section 35(2)(e) provides for the right to adequate accommodation for detained and sentenced persons.

The constitutional right of access to adequate housing clearly does not oblige the government to provide free housing to everyone on demand. Instead, the government is obliged to create an enabling environment for people to access this right. The housing subsidy scheme is the cornerstone of government's initiatives to assist people in this regard. Housing subsidies, of varying amounts (with an upper-most limit of R17000), are available to those who qualify. Individual income levels determine the amount that an individual may receive for a housing subsidy. Should the subsidy amount be inadequate, the individual is responsible for any additional costs.

The Department of Housing has also established the Mortgage Indemnity Fund to promote lending patterns by the private sector to poor communities. Finally, the *Prevention of Illegal Evictions from and the Unlawful Occupation of Land Act 19 of 1998* was recently passed. The Act prohibits unlawful evictions and establishes fair procedures for the eviction of unlawful occupiers.

The Constitution provides for a right of access to *adequate* housing. International law has made reference to a number of factors that should be taken into account when defining the adequacy of housing. Many of these were referred to by the participants in the hearings namely: legal security of tenure, the availability of services, materials and infrastructure (such as clean drinking water, energy for cooking, heating, lighting, sanitation, washing facilities and refuse disposal). Affordable housing, habitable housing (housing that offers protection against severe weather or disease vectors and ensures the safety of the inhabitants), location (to allow easy access to all amenities), as well as culturally adequate housing were also regarded as important.

#### (b) Violations of the right to adequate housing under apartheid and their current impact on the poor

The current housing situation in the country is a result of past policies, and participants frequently referred to the effects of the *Group Areas Act 36 of 1966* on people's housing rights. People spoke about being evicted from their homes without any form of compensation, and being relocated to remote, racially defined group areas that often deprived them of work, educational opportunities, etc. Mxolisi Dada commenting at the Free State Hearings said: "*Now those laws no longer exist, but their effects are still working until now.*"

The pass laws were particularly detrimental as they affected people's ability to earn a living and to secure basic needs like housing. As Nowethu Ngwane explained: "*Later, I was told I could not work because I had no pass.*"

Violence, during the apartheid era and more recently, has resulted in many homes being destroyed or burnt down. The type of housing that many people construct due to financial constraints often has a higher risk of being destroyed. Freddie Arries commented: "*We should get away from the wooden houses which burn easily.*" Finally, the psychological impact of apartheid further limits people's capacity to gain

access to housing. In the words of Jerry Elridge: *“Apartheid let us think we are no good. We have that mind set. So we don’t even try.”*

c) People’s understanding of their housing rights and how they can enforce them

Most people understood that the right of access to adequate housing imposed a duty on government to facilitate the release of land for housing purposes. At the Gauteng Hearings, Benedicta Mahlangu spoke of the laudable initiatives of the Homeless People’s Federation and People’s Dialogue in empowering people and working together to build houses. She spoke of sharing skills and involving the community in the process of building houses. She said: *“We are also asking for the subsidy for people who are still looking for land - and that is very important .because we cannot build without land.”* Once land is obtained, legal security of tenure and the stopping of arbitrary evictions were the calls of participants.

Related to the adequacy of the housing, people referred to services such as water and sanitation, the size of the housing, the lack of privacy as well as the extremely unhygienic environments in which they were situated. Lucy Dyakala said: *“Five to six families are living in three-roomed houses, consisting of a kitchen and two bedrooms. Daughters and sons sleep together. Married couples and children in the same room. TB, the whole family gets it. Streets are dirty, there are holes and it is unhealthy. Children must go to clinics everyday for a rash or something. The houses are dirty and there are no inspectors to look and do something. We have been complaining for years. We are crying for houses.”* Vuyani Ncamaza reiterated the point: *“They are hokkies, pondokkies. They are not houses. I know a house but these are pigsties. But people take them.”* The point was supported by James Mantalna who described government houses as: *“Not plastered. One electricity light. No ceiling. No bath or basin. Rain water seeps through walls. Only two windows. Sewage pipes run under plots.”*

Submissions revealed that people living in hostels are subjected to similarly appalling conditions. Access to housing for fishing communities was also emphasised, and in particular the connection between inadequate housing and sexual abuse. Gert Christie said: *“There are problems with the way fishing communities live. There are two rooms and a toilet outside. The man is at sea while the family is at home. If women go to the toilet at night, many are raped.”*

Violence against women impacts on their right to enjoy adequate housing. A submission from *Tshwaranang Legal Advocacy Centre to End Violence Against Women* noted that issues of economic dependence often compelled women to remain in abusive relationships. The proximity of living arrangements contributed to this violence in the home.

The need for recreational, sporting, health and educational facilities was also stressed. Lottie Damana said: *“We youth need sports fields.”* Katie Clarke noted that there is limited access to health care services, libraries and other basic facilities. Proximity to places of employment was also high on people’s agendas . Kate Ntombomzi explains: *“Our wish is to be close to our workplaces.”*

People understood that they were entitled to equal access to housing. References to inequality between urban and rural areas were frequent. Gert Talmakkies spoke of the variations between different areas in terms of the amounts subtracted from the housing subsidy for services.

The need for equality for disabled people was stressed in the housing sector. Marjorie January said: *“We [the disabled] request houses, not a separate village. We want to be amongst other people.”* Randall Bomela recounted the problems for those lucky enough to secure housing: *“If a disabled does get a house, it is difficult to get in the door and the toilets are inappropriate.”* Gender discrimination in the housing sector was also raised as a rights violation.

d) The main obstacles experienced by the poor in gaining access to adequate housing

#### *Lack of awareness and information of relevant rights and programmes*

The lack of knowledge and information regarding access to housing is a significant obstacle to the realisation of the right. For example, Willard Nodlela said: *“We have never tasted this subsidy. No channels. If you can tell me we will flock there.”* Even in cases where people did receive housing subsidies, they were often oblivious to the details. For example, Mxolisi Dada at the Free State Hearings said: *“No details were explained to the people.”*

#### *Lack of access to land*

Government’s failure to assist people in gaining access to land for housing was considered a significant obstacle to the enjoyment of adequate housing. Kate Ntombomzi said: *“Each has a right to a decent place of their own. Government should contribute to our getting land.”* [repetition!]

#### *Lack of infrastructure and services*

The lack of access to basic services such as water, sanitation, refuse removal and electricity were considered major obstacles to gaining access to adequate housing. Furthermore, many participants complained about the remote areas in which housing was situated and the absence of infrastructure to ensure access to other basic services such as health care.

#### *Obstructive attitudes by officials*

A lack of assistance by municipalities and their failure to release money for housing purposes was stressed. Rose Claasen complained that: *“Government gives plots but no deeds of sale.”* The absence of deeds of sale are particularly problematic when two or more families occupy a single plot of land as neither family is allowed to build. Freddie Arries said: *“The municipality is refusing to hand over government subsidies of R 17 000.”* The need for people to control the monies received from the subsidies themselves was also emphasised, and submitters complained that the bureaucracy involved in utilising the subsidy was a further obstacle.

## ***Financial***

According to Martha Jobs: *“Many say R15 000 at a time is too little.”* Others echoed the same concerns. Nosipho Managli complained that contractors refuse to build two roomed houses and the community did not have the additional money to pay for anything bigger. The payment of R11 000 for serviced sites often leaves only R4000 for building materials which is insufficient to build adequate housing.

Many spoke about the difficulties facing poor people in gaining access to housing finance from banks. They were criticised for not providing a service that accommodates the needs of poor people’s saving schemes. Benedicta Mahlangu remarked: *“What I ask from the banks is that their laws or regulations should be flexible. When I am talking flexibility, what I am saying is that they must be able to accommodate everybody. When we started our savings schemes there was this law that we should save from this amount.”* Finally, the costs of paying for services such as water, electricity and refuse removal were also cited as obstacles.

## ***Lack of security of tenure***

The absence of legal security of tenure for farm workers was a further obstacle. Harry Lavendal said: *“Farm workers are dependent on farm owners for housing – they enjoy no security of tenure.”* In speaking of arbitrary evictions, Martha Molwantwa, at the Free State Hearings said: *“The owner of the farm evicted us, being nine families, without any reason.”*

## ***Social, cultural and gender factors***

Corruption amongst police officials and the impact of gangsterism also undermined people’s housing rights. Some participants referred to gangsters demolishing their homes and selling the materials. People also referred to a lack of adequate protection and intervention from police officials in these circumstances.

Lack of security of tenure affects women disproportionately. As Harry Lavendal recounted: *“If a man dies, the woman must move [from the house]. Women have no rights on farms.”*

### **(a) The role of government in promoting the right of access to adequate housing**

Whilst many were aware of the channels in applying for a housing subsidy, some participants obviously had an extremely poor knowledge of even the existence of a subsidy. Whatever their knowledge the majority of the participants were generally frustrated and disillusioned with the poor assistance from local government in creating an awareness of their rights and providing assistance on how to access them.

The role of government in complementing the self-help approach of organisations, like the Homeless People’s Federation, is critical. For instance, Benedicta Mahlangu referred to a large donation from the Ministry of Housing. It is vital that initiatives of this kind continue. Further, support from government in making sufficient land available for housing is vital.

#### 4. THE RIGHT OF ACCESS TO HEALTH CARE SERVICES

##### a) Relevant constitutional rights and the main measures adopted by government to give effect to the right to health care services

The poverty hearings that took place in KwaZulu-Natal focused primarily on the right of access to health care services.

Section 27(1)(a) of the Constitution provides for a right of access to health care services, including reproductive health care. The State is under a duty to take “reasonable legislative and other measures, within its available resources,” to progressively realise the right [section 27(2)]. In addition, section 27(3) provides that no one may be refused emergency medical treatment. The Constitution also provides for the right of every child to basic health care services in section 28(1)(c). Finally, section 35(2)(e) gives detained and sentenced persons to medical treatment at State expense.

The primary health care approach is one of the key mechanisms through which the right to health care services is being implemented. It places extensive emphasis on participation, education and equality, and it seeks to ensure preventative and affordable health measures. The right of access to health care services is being implemented, for example, through the government policy of free health care services to pregnant women and children under the age of six. The right to reproductive health care services is being implemented through a number of measures, including the *Choice on Termination of Pregnancy Act 92 of 1996*. There are a large number of other policy and legislative measures that seek to promote affordable and accessible health care services.

##### b) Violations of the right to health care services under apartheid and their current impact on the poor

The legacy of apartheid has created a fragmented and discriminatory health care system. Many people stressed the effects of discriminatory laws such as the *Group Areas Act No. 36 of 1966* on people’s health status. For example, the Group Areas Act has ensured that health care services remain located largely in formerly white areas, making access difficult for the majority. [Karrisha worked on this section, and I am not confident that this direct link can be drawn - Jacqui to decide] Health has also been compromised by the endemic levels of violence, both during the apartheid era as well as more recently. The costs of this are borne by the current health system. As Gugu Betty Zuma noted: “*My daughter was hunted by vigilantes. She got sick because of fear, she is mentally disturbed, she is disabled.*”

##### c) People’s understanding of their right to health care services and how they can enforce the right

Many people understood that government has an obligation to bring access to health care services closer to the people. “*Clinics need to be brought closer to the people,*” pleaded Hilda Gumede. Others added a call for mobile clinics on a more regular basis. In all cases there was a cry for properly equipped health facilities.

Many submitters noted that an efficient ambulance service is a critical dimension of health rights. Hleziphi Banda explains: “*When we call an ambulance, the ambulance would not come on time. We had about six people who died before the ambulance arrived.*” Adelaide Ngidi added: “*You find people being wheeled in a wheelbarrow being taken to the main road [clinic].*” People spoke about instances of discrimination in access to health care services on the grounds of race, language, disability and gender.

The need for government to subsidise medication to make it more affordable to disadvantaged communities and individuals was emphasised was identified as another crucial dimension of the right.

People felt that government had a duty to fund the salaries of community health workers, and to assist them in terms of training, resources, capacity-building as well as infrastructure.

The duty of the Department of Health together with other departments to contribute to the nutrition of school children to combat the health effects of poor nutrition was stressed.

d) The main obstacles experienced by the poor in gaining access to health care services

#### ***Lack of awareness and information of relevant rights and programmes***

Lack of knowledge of government structures is an obstacle to the realisation of the right to access health care. Lucky Lebenya explains: “*These government structures are not close to where the people are. If you are an ordinary person you don’t know where to start looking for the Human Rights Commission.*”

In her submission Adelaide Ngidi bemoaned the lack of capacity: “*There is quite a number of diseases, including people with HIV. But we don’t have people coming to our communities to teach people to know and to take precautions.*”

#### ***Lack of health care services and infrastructure***

*It is apparent that the main cause of poverty is the absence of infrastructure such as roads and bridges, which are corridors that will connect people to places of health, where they can get help in terms of health. As well as in telecommunications which makes it extremely difficult to communicate with hospitals as well as clinics,*” said Nason Ntshangase.

The absence of an efficient ambulance service and the lack of health workers in far flung areas are additional obstacles to the enjoyment of the right. The point was made by Winifred Nontubeko Sifumba: “*Rural clinics and areas totally lack health facilities. there are no visiting doctors, there is insufficient medicine ....*”

The lack of co-operation and co-ordination between different government departments was also considered a problem. As Constance Mbele noted: “*For example, there may*

*be an agreement to erect a clinic, but the infrastructure may not be there, like a road to convey the goods. People perish trying to cross a river.”*

The lack of access to clean water, sanitation, nutrition, electricity, facilities, health personnel and medicines were all identified as contributing to the poor health status of disadvantaged communities.

### ***Financial***

Most of the participants saw the transport costs of getting to health care facilities as major obstacles. Hilda Gumede explains: *“The majority of clinics are too far from the places where we stay. From my place, when trying to approach a clinic, I need to pay at least R10.”* The costs of getting to telephones was noted by Zephania Zondo when he said: *“There are no phones. When you have to phone you pay R10 transport only to find out that the telephone is out of order.”*

On the costs of medication, Elisabeth Joseph noted: *“Pensioners have no medication. They say medication is free but it is not. They go to the clinics and there is nothing. There’s no money to buy medication so they must just sit and rot.”* Given the high levels of unemployment people stressed that they were unable to afford proper nutrition.

### ***Physical obstacles***

Many clinics are inaccessible for disabled persons impeding their access to health rights. Disabled submitters spoke about the discrimination they suffer at the hands of taxi owners. *“There is a problem of people being charged double if they are in a wheelchair,”* explained Sarah Rule. For Zephania Zondo the problem is: *“The doctor in our area [who] does not know how to care for disabled people.”*

### ***Social, cultural and gender factors***

The low social standing of women in society, the high levels of poverty and illiteracy among women, as well as the prevalence of violence against women were noted as major obstacles to their enjoyment of health rights. More specifically people spoke about the effects of rape, domestic violence and economic dependency as significant factors contributing to the HIV-infection amongst women. Many women who work as sex workers in order to earn a living have an increased susceptibility to HIV/AIDS and sexually transmitted diseases. In this regard, The Centre for Applied Legal Studies said the lack of access to treatment for sexually transmitted diseases further increases susceptibility to the HIV-infection.

A number of submissions highlighted problems faced by pregnant women in accessing health care facilities for delivery as well as pre and post-natal care.

Participants often referred to the discriminatory and unhelpful attitudes among certain doctors and nurses. Particular reference was made to such attitudes in the context of family planning. Many participants noted that health care workers are often rude and insulting to single women who go to clinics for family planning. Certain doctors also

displayed racist attitudes. James Batwali, in the Northern Cape, commented: “[We] have a doctor who doesn’t like blacks.”

#### e) The role of government in promoting the right to health care services

Many people stressed that government health media and messages were not reaching the people. “*The people in need are those unable to go to school enough, and to be literate. They are unable to get hold of the messages on how to avoid such a disease [HIV],*” said Ncumisa Nongogo. Dexter Livingstone Zama added: “*We see that these diseases are not caused by a lack of infrastructure, but sometimes the ignorance of people.*”

In short, government was seen as bearing a two-fold responsibility in realising the right: providing easy access to effective and affordable health care services, and educating people on how to live healthier lives through accessible mediums of communication. People saw local government as bearing an important responsibility of co-operating, educating, sharing ideas and advising people on health issues *are too old. Now, when I apply for a pension they say, no, you are too young.*”

## Gender

### 5. The Right to Social Security

#### (a) Relevant constitutional provisions and the main measures adopted by government to give effect to the right to social security

The poverty hearings that took place in the Eastern Cape focused on social security.

Section 27(1)(c) of the Constitution gives everyone “*the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.*” In terms of section 27(2) the State “*must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation*” of this right. Every child has the right to social services in terms of section 28(1)(c) of the Constitution.

The White Paper for Social Welfare commits government to establishing a comprehensive and integrated social security system to which there is universal access. Everyone should have “*a minimum income, sufficient to meet basic subsistence needs,*” and should not have to “*live below minimum acceptable standards.*”

Comprehensive social assistance to those without other means of support, and the restructuring of social insurance, (including the retirement industry, unemployment insurance and health insurance) are the two pillars of a transformed social security system.

A key policy measure, adopted by government, to give effect to the socio-economic rights of children is the introduction of the new Child Support Grant, with effect from 1 April 1998. This grant will provide a basic benefit of R100 per month to the primary

care-givers of children under the age of 7 years. To qualify the care-giver must comply with a means test and a number of other conditions. The Child Support Grant replaces the old system of State maintenance grants that is being phased out over a three-year period.

The Department has also introduced a Flagship Programme for unemployed women with children under 5 years to help these women gain employment.

#### (b) Violations of social security rights under apartheid, and their current impact on the poor

Racial discrimination characterises the history of social security in South Africa: For example, the exclusion of black persons from coverage under various public and private schemes, the application of different eligibility criteria, and the provision of unequal benefits.<sup>2</sup> Racial parity in State old age pensions, the government's largest social assistance scheme, was achieved in 1993. The social security system was segregated under 14 separate administrations. The new Department of Welfare inherited a fragmented, inefficient system that was highly susceptible to fraud and corruption.

There were testimonies at the hearings from retired or retrenched black workers who, after many years of service, obtained only minimal benefits. This was a result of only being allowed to join a pension or provident fund scheme late in their working lives. At the Gauteng hearings, Easter Momone told commissioners that her husband had worked for a company for six years before his death. All she received as his widow was "*a condolence of R888.*"

#### c) People's understanding of their social security rights and how they can enforce them

Generally the advice offices and organisations like Disabled People of South Africa (DPSA) displayed a good understanding of people's constitutional rights to social security. DPSA provided a submission to the hearings in the North West Province which asserts: "*We have Constitutional rights since 1996. In our region we are deprived of those rights. Only 17% get grants. In deep rural areas, we can only wonder. There is poverty, disability and exclusion.*"

Similarly representatives of the Paterson Advice Office, Dusa Malene and Mnimimzi Elliot Masewu, who testified at the Grahamstown hearings claimed that the State is not protecting the Constitution and Bill of Rights. Among the reasons given for this view are: no access to information, "*government makes decisions without the grassroots,*" poor infrastructure at pay-points, long delays and back-logs in the processing of grant applications, and the restriction of social grants' back-pay by government.

In contrast, many poor individuals who testified demonstrated a lack of understanding of their rights, and how to go about claiming them. Boy Philis testified that he believed that his pension was too little, but went on to say that, "*we must accept what*

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<sup>2</sup> See Poverty and Social Security in South Africa background paper (1998)

*we are given. Beggars can't be choosers.*" The testimonies suggested that many people did not know that they could qualify for one of the social grants. Neither did they understand the criteria for eligibility (for instance the qualifying ages for old age pensions), and the process for making an application.

Dolly Moso, of the Matatiele Advice Office, described the impact of illiteracy on people's ability to enforce their social security rights as follows: *"For uneducated people the law has no meaning. People were never explained how the UIF card works. People keep it until it has expired. They don't know what to do with it. They never get their money."*

d) The main obstacles experienced by the poor in gaining access to social security

### ***Lack of awareness and information of the right and relevant programmes***

The lack of awareness and information by people of their rights discussed above is obviously a critical constraint, blocking access to social security. Being illiterate also poses major problems – pay-out dates are missed, and the accuracy of grants and benefits cannot be checked. Paul Lesiba Swartz described how his third party claim prescribed as he lay paralysed in bed for 7 years without a wheelchair after a motor vehicle accident. *"No-one told me about insurance claims,"* he said.

### ***Administrative obstacles***

The testimony of Anastasia Molefe, at the North West hearing, echoed a common theme emerging from the hearings – the multiple difficulties experienced by old people in accessing their pensions. These ranged from the long distances that people have to travel to pay-out points, transport costs, the conditions at pay-out points (inadequate shelter, chairs, ablution facilities), the exhaustion of long hours of queuing, the stealing of pension money, etc

Lamkelo Qojana identified similar problems in relation to the collection of disability grants. Persons with disabilities are pushed around at pay-out points due to the absence of chairs, and the pay-out points are sometimes physically inaccessible due to stairs or other such features. The absence of doctors in some areas was also a major obstacle in accessing disability grants or reviewing a beneficiary's medical condition. The private company *"with its guns"* that has been contracted to deliver social grant payments intimidates people, complained Jamani Batwali of Philipstown in the Northern Cape.

Sometimes access to grants is impossible due to difficulties experienced in obtaining new ID documents. *"I requested an ID because I have never been able to get one. We were told to count to ten. The others had to go home. We just stared at the officials. I became fed up,"* recalled Constance Momoza from the Eastern Cape. Long delays in the processing of grants, administrative bungling (such as sending money to the wrong location or depositing it in the wrong bank account), computer malfunctioning, and the unexplained stoppage of payments for a certain period of time, were among the common complaints presented.

A large number of those who testified identified obstructionist and unresponsive attitudes of welfare officials as a major issue. These included: a failure to give relevant information regarding grant applications; a failure to give reasons for the arbitrary reduction or stoppage of grants; and sending people “from pillar to post” in complete disregard of the burden of time, money and inconvenience this imposes on poor people.

Some even gave testimony of being mocked or abused by officials. “*You get thrown around,*” described Vuyisa Mantaga, a 68 year old man from East London, who tried to track reduced grant money deposited into a wrong bank account: “*Up and down, always. They use English words you don’t understand. They play around with you.*” It appears that social workers don’t always advise people that they may qualify for one of the social grants.

### ***Government conduct***

A large number of the submissions at the Eastern Cape hearings focused on the devastating consequences suffered by poor people when grant payments were suspended and beneficiaries were required to re-register. This was a major part of the provincial government’s efforts to eliminate fraudulent beneficiaries (“ghosts”) from the system. Many of the elderly, disabled and poor families who testified at the hearings are teetering precariously on the breadline. Grants received monthly save them from falling into utter destitution. Many beneficiaries of these grants found themselves in desperate straits when their grants were suspended late last year in the re-registration drive. Rent, electricity, burial policy payments, school fees and food needs could not be met. The debt burden of these families increased as they struggled for survival. Many claimed that their grants had not yet been reinstated. Doreen Ellison, who cannot walk, described how the stoppage of her and her diabetic husband’s disability grants plunged the family into crises. They have three children, one of whom is paralysed and mentally disabled. They can no longer pay rent, and depend on their landlord for food and leniency regarding their accommodation. **PIC**

Many people claimed they were not warned about the cut-off, nor told why their grant payments were suddenly stopped. Others do not understand how to go about re-registering for their grants. The chronically disabled, bed-ridden elderly persons, and those that cannot afford transport costs, are simply unable to do what is required to get their grants reinstated.

McDonald Nkosiyanane in Umtata described the impact of this stoppage as follows: “*The government tried to find out who is existing. But they removed from the list those who are existing, and disabled. Now they say re-apply. But it takes years, and meanwhile there is suffering. The disabled usually take an overdose, commit suicide.*” Henna Arendse, chairperson of the Social Grants Association, described how the organisation was formed to deal with the crisis around the stoppage of social grants: “*Educated people did not care. Nor in Parliament. So we established this organisation. Irrespective of colour, we help in various ways...Apartheid was of the past, but now things are worse. We were never punished before by the removal of pensions.*”

The chairperson of the Standing Committee on Welfare in the Eastern Cape legislature, Mr Serache, said that some welfare officials are suspected of foul play. They place the “ghost beneficiaries” on the system and pocket grant payments. In the re-registration process, it is possible that they are eliminating genuine beneficiaries, and keeping the lucrative “ghosts” on the system.

### ***Lack of comprehensive and adequate social security provision***

Some people complained that the size of the grant was insufficient to meet their needs and those of their dependants. This places a particular burden on elderly persons who are expected to use their pensions to support a wide net of relatives. Melita Bojang described, at the Free State hearings, how she struggled to stretch her pension. She paid her granddaughter’s school fees and clothing as well as paying electricity, telephone and services: *“After paying that, I don’t have anything to eat.”*

People complained about the reduced amount to be received for child maintenance, and the fact that children over 7 years will not qualify for the child support grant. Mrs Vuyelwa Duma of the Disabled Children’s Action Group described the cut-back in child maintenance as pathetic: *“These people need the money most to send children to school. We tried to reason with government. To no avail.”*

Jane Finger, a representative of SANCO in Phuthadijhaba commented as follows: *“Concerning maintenance, we hear that the government will feed these children from zero up to seven years. Now we ask ourselves, as the community organisation, what is going to happen after seven years? What are they going to eat? Because the money is already reduced – they only get hundred and something. Now we ask ourselves, if a child is over seven years, now when the clothes are expensive, what is going to happen?”*

She went on to say that the government should not be reducing maintenance at the present stage. There are no jobs, and black people were still in the process of improving their skills: *“Let the government stop. Let us find ourselves. It can use this strategy maybe later. Not now.”*

The SA National Council for Child and Family Welfare state in their written submission that children in the age group 7 to 18 years *“are left extremely vulnerable”*. They believe the abandonment and institutionalisation of children, increased child labour, child prostitution and children living on the streets will result in a large cost to society.

The testimony of a number of people suggests inadequacies in social insurance schemes usually tied to formal employment such as occupational retirement, unemployment insurance or compensation for occupational injuries and diseases. Mrs Nomthandazo Bewana of the Umtata Advice Centre claimed that they experienced frequent problems assisting miners to claim UIF benefits and pension and provident fund benefits.

Mr Skwebu told the Free State hearings that he did not receive an occupational pension when he retired after a number of years working in the mining industry. He was told that he did not qualify for benefits under the company’s pension fund

because he had joined the mining industry when he was over the age of 55 years. His main source of income now is a State old age pension.

Mohau Kitime, of Young Christian Workers, highlighted the insecurity of temporary and casual workers as they often do not receive any employment benefits: *“After getting work, they say you are a casual worker. That doesn’t make sense. There is no permanent work. They say it’s just temporary. They do this purposely so that we shouldn’t get our benefits. They are just interested in making profits. You cannot even feed or clothe your family.”*

The evidence of many highlighted large gaps in South Africa’s social security system, particularly for the long-term unemployed. Thami Ramton, of Gauteng, described his dilemma as follows: *“Everywhere when I look for a job they say, how old are you? When I say I am over 51 years they say, you* Many women described their up-hill battle to obtain maintenance from the father of their children through the private maintenance system. Faldiela de Vries who works at the Mannenberg People’s Centre, described the hostile attitude women experience from some magistrate’s and court officials. *“Men are able to manipulate the system successfully,”* she said, adding: *“Women do not have access to their rights, leading to poverty of women.”*

The testimony presented by some women suggests that those that do have access to social grants are able to reduce their dependency on indifferent or abusive partners. These grants also provide some relief in shouldering the burden of child care that falls disproportionately on women’s shoulders.

Lulama Kosi testified that after her divorce she was given custody of the children. In 1986 she received a disability grant: *“That helped because the father does nothing.”* Hilda Mahobe said that her greatest wish was that she could access child support grants for her five grandchildren. They were dumped in her care by her daughter after her boyfriend landed in jail: *“That will solve a lot of our problems and place us in a position where we can pay their school fees and buy their own uniforms.”*

At the Free State hearings Mrs Skwebu highlighted the effect of interrupted employment and pre-defined gender roles on women’s access to social security benefits. She had been a teacher for 45 years when she was forced to retire on short notice: *“Then they said I don’t qualify for a pension because I had many breaks. Those breaks were not through my wish. I remember in Transkei, after being married, you were not supposed to go back and teach. You were teaching for three or six months and then you were supposed to leave. Now I am in this because of that Transkei government.”*

### ***Lack of support for social services***

Many of the formal and informal welfare organisations that testified described their struggle to provide an adequate service in the face of inadequate government subsidies. The Gompo Welfare Society for the Care of the Aged in East London includes a subsidised home nursing programme. It receives a subsidy for 250 people, but serves 1000 ambulant and 500 house-bound elderly people.

The problems experienced in running day-care centres for children in informal settlements were also described. Many parents children cannot afford to pay for the service provided. Pinky Mthambo runs a crèche for children with mental disabilities in Orange Farm, Gauteng. The crèche suffers from inadequate facilities, and Mrs Mthambo finds herself in a “Catch 22” situation. In order to register and qualify for a fund-raising number, she was told by social workers that they have to build a formal structure: *“My problem is, I can’t build. I don’t have the money...The place in Orange Farm is not proclaimed. We will never get a place to build.”*

Masechabe Malejwa, who testified at the Free State hearings on behalf of the Sechaba Feeding Scheme and Life Skills Training, described the difficulties her organisation encountered in attempting to obtain a government subsidy for the work they do with street children. The initial obstacle appeared to be the absence of a clear policy on street children by the Department of Welfare. She participated in drafting a policy document on street children, and since then the project has been permitted to register for a subsidy.

NGOs in rural areas also complained about the difficulties they experience in accessing resources to render social services to children. SA Stop Child Abuse (SASCA) based in Mpumalanga believes rural children are discriminated against in the provision of services. The SA National Council for Child and Family Welfare state in their written submission that less than R2 billion rand is spent directly on supporting children and families through the welfare budget.

#### e) The role of government in promoting the right to social security

The evidence presented at the various hearings strongly suggests that social grants play a vital role in saving people from hunger and destitution. When asked by Commissioner, Vivienne Taylor what would happen if she didn’t receive her pension, Christina Momoza of Umtata responded: *“I would die of hunger. My daughters have children out of wedlock so they are my burden. I need money for food and school. The pension feeds us.”* These grants also reduce their dependency on the charity of others.

However, what emerges is the need for a concerted education campaign around social security rights and their application. The numerous complaints concerning unhelpful attitudes of welfare officials also point to the need for a special code of conduct, for officials dealing with welfare beneficiaries. Social security beneficiaries and applicants are entitled to be treated with respect and in a way that promotes their human dignity. The manner in which the Eastern Cape Welfare Department conducted the re-registration process demonstrates a complete disregard for people’s social security rights.

Finally, the testimonies highlight the critical importance of the progressive expansion of access to social security through a comprehensive, integrated social security system.

## 6. THE RIGHT TO AN ENVIRONMENT THAT IS NOT HARMFUL TO ONE'S HEALTH AND WELL-BEING

### (a) Relevant constitutional rights and the main measures adopted by government to give effect to the right to a healthy environment

The poverty hearings that took place in... in the Eastern Cape [state venue more precisely to avoid confusion with venue of socsec theme focused on the right to an environment that is not harmful to one's health and well being.

Section 24 of the Constitution provides that everyone has the right "*to an environment that is not harmful to their health and well-being.*" It further provides for the right of everyone "*to have their environment protected, for the benefit of present and future generations, through reasonable legislative and other measures.*" Such measures should prevent pollution and ecological degradation, promote conservation and "*secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.*"

The recently released White Paper on Environmental Management Policy for South Africa, is the primary policy framework through which the government seeks to give effect to Section 24 of the Constitution. It acknowledges that sustainable development requires an integrated and co-ordinated environmental management policy from all spheres of government. It incorporates principles such as the 'polluter pay'. The White Paper also provides for increased participation and consultation with communities who are going to be affected by particular projects.

### (b) Violations of the right to a clean and healthy environment under apartheid, and their current impact on the poor

Oppressive apartheid laws have resulted in most black communities being located in areas that are close to polluting industries and dumping sites. The health and safety of a significant number of black people, forced into working in mines or industries that cause excessive pollution, has been compromised. Apartheid policies further created overcrowded settlements that are poorly serviced or not serviced at all. For example, trees are cut down for firewood in unserviced areas. Removals and farm evictions have resulted in black rural areas having a much higher population density than commercial farming areas. Chronic erosion is a natural consequence of such overcrowding. Bishop Davies explains: "*The areas like the Transkei are so over-utilised that the ground never has a chance to grow, to rehabilitate itself, because people have to find a meal for themselves for the next day. There is a constant demand on it.*"

### (c) People's understanding of their right to a clean and healthy environment and how they can enforce the right

Many participants referred to industries in the immediate vicinity of their homes that emit toxic gases, and complained of the harmful effects of such gases on those living close by. Most participants believe that preventing and prohibiting such practices is the obligation of the Department of Environmental Affairs, in consultation with the

community. Kgakishi Morewane notes: *“The Department of Environmental Affairs together with the communities could achieve something by going to them [the polluting industries].”*

Submitters objected to dumping of toxic waste close to their homes. Nelson Fezi said: *“Waste-Tech were dumping close to our houses. They did not even build a wall or a fence. Chemicals from Durban and Johannesburg were brought in huge trucks to be dumped here....People are sick, they suffer from diseases.... Those diseases came here since Waste-Tech came here....We are situated between an incinerator which collects chemical wastes.”* Francis Uithale said: *“We don’t know why government allowed Waste-Tech to operate among people.”* She and others believed government is responsible for prohibiting the dumping of toxic waste if their rights are to be protected.

Mark Butler said: *“Dirty industrial processes have moved from rich to poor countries. When they move within poor countries, they still move away from the rich communities and are situated in the poor communities.”* Submitters emphasised government’s duty to ensure that the poor do not suffer the brunt of pollution and environmental discrimination.

There was also a general view that government is obliged to provide people with serviced sites. This minimises the harmful effects on the environment when there is a lack of adequate sanitation and other facilities.

d) The main obstacles experienced by the poor in gaining access to a clean and healthy environment

#### ***Lack of awareness of rights***

Many of the submissions indicated that there was a lack of awareness of the constitutional rights relating to the environment. A further lack of knowledge of the health hazards of pollution was also evident. Lucky Thabete said: *“The problem is the public are not aware of the things that happen. The company is situated in a rural area, where people are semi or fully illiterate. One can’t expect full participation from the community in challenging the things that the company is doing.”* Nohle Tabata said: *“The community has not been told of the implications of trying to survive on the waste site....The lack of information is a problem.”* Polluting industries contribute to the lack of awareness by failing to inform employees of the dangers of working with certain chemicals. Lucky Thabete explains: *“When we worked with mercury, we were never told how dangerous the chemicals were.”* Dumisa Bangane felt one way of addressing this problem is: *“Issues concerning the environment should be part of the curriculum provided at schools.”* Financial

One of the most difficult issues is the trade-off between job creation and preservation of the environment. Chris Albertyn explains: *“That is a fundamental problem - How do we balance jobs, profits and environmental costs?”* Biased information, that exaggerates the financial gains and understates the health costs of polluting industries, is a further problem. People informed of the health hazards of pollution were often not given any viable alternatives; namely, relocation and access to alternative employment or land for farming. Finally, the keeping of livestock, though a form of

livelihood for some, was identified as being a health hazard to the community in certain situations.

### ***Lack of communication and assistance by officials***

*“If the government is of the opinion that there should be a dam in a certain area, they should talk to the residents. We have lost faith a bit in government because seemingly they are not concerned with our interests,”* said Jane Khumalo. This lack of communication is a hindrance to the realisation of the right. According to Francis Uithale: *“There is no use going to government. Last year they even granted Waste-Tech a permit for another five years. They are operating on the second site.”* Local government's lack of knowledge of the harmful effects of pollution exacerbates the problem. Dumisa Bangane explains: *“Our councillors are not expert around this area of the environment.”*

### ***Legal barriers***

Another obstacle is South Africa's inadequate laws to govern pollution by industries. Moss Phakwe was of the view that: *“Laws should be made that compel employers or these companies to have direct contact with community representatives and structures, so that they can hear what are the people's concerns. They should not be reactionary, but proactive in their activities.”* Participants also stressed that fragmented environmental laws have resulted in a lack of clarity as to who bears responsibility for their enforcement. Such confusion allows for officials to 'pass the buck' when approached by members of the community.

People highlighted their problems understanding the law and gaining access to legal structures. For Moss Phakwe the solution is: *“Firstly, let us have a simple interpretation of the law for ordinary people. Two, let us have easy access to legal structures of the country in presenting complaints of this kind.”*

### ***Poor implementation***

The lack of enforcement by government of existing laws, policies, rules or regulations, is another major obstacle to the realisation of the right. For example, Francis Uithale informed the hearings that: *“Waste-Tech is operating an incinerator without a license. They have been operating since 1982.”* According to Nohle Tabata: *“Environmental laws are not being properly implemented. They cater for a certain section of our society, forgetting about the poor.”* Chris Albertyn expressed the view that *“Government does not have the capacity to inspect, control and monitor everything in the environment.”*

### ***Lack of co-operation from industries responsible for pollution***

Another problem is the lack of co-operation from the responsible industries. Most participants had made numerous attempts to consult with the relevant industries, but to no avail. Some even referred to the possibility of reaching a compromise with the relevant industries, but noted that they were not even given the opportunity to meet. To avoid their responsibilities, industries deliberately make use of casual labour in high risk jobs. Maria Buthelezi, in KwaZulu-Natal, described how she *“was working*

*for a cotton factory as a machine operator. My hand was chopped off. I went to inquire ... I was not insured. I was a casual worker.”*

#### e) The role of government in promoting the right to a clean and healthy environment

There was a general sense that government had failed to adequately promote and protect the right to a health environment, and to deal with the health hazards of pollution. Even when local government structures did make people aware of the health hazards of pollution, they generally failed to provide alternatives (such as relocation, alternative employment or land) to individuals. The high level of illiteracy needs to be taken into account when the government engages in environmental education and awareness campaigns.

The proposed environmental legislation, when passed, will enable communities to directly prosecute environmental offenders. This legislation will unify and clarify the fragmented laws dealing with the environment. It will also improve the enforcement of environmental legislation. It gives rights to interested and affected parties as opposed to leaving enforcement to the limited capacity of the State.

## 7. THE RIGHT TO EDUCATION

### (a) Overview of the relevant constitutional provisions and the measures adopted by government to give effect to the right

Education emerged as a central theme in all the hearings, although it was the main theme of the hearings held in the Free State.

The Constitution guarantees the following rights in relation to education:

- the right to basic education, including adult basic education;
- the right to further education which the State must make progressively available and accessible through reasonable measures;
- the right to receive education in the official language or languages of one's choice in public educational institutions where this is reasonably practicable;
- the right to establish and maintain, at own expense, independent educational institutions. These institutions may not discriminate on the basis of race, they must be registered, and maintain standards that are not inferior to standards at comparable public educational institutions. [section 29].

Government's main policy framework for transforming education in South Africa is contained in the Department of Education's *White Paper on Education and Training* (1995). Among the principles endorsed in the White Paper are that education is a basic human right, lifelong learning and training of good quality should be an overarching goal, equal access to education for all, a special emphasis on redress, an improvement in the quality of education, and democratic governance in all aspects of the system. The *South African Schools Act, 84 of 1996* aims to provide a uniform system for the organisation, governance and funding of schools. The Act –

- abolishes corporal punishment at schools;
- provides for compulsory education for children between the ages of 7 and 15 years;

- establishes two categories of schools – public schools which are funded totally or largely by the State, and independent schools which are privately owned, but may receive subsidies from the State;
- the establishment, composition and functioning of governing bodies at all public schools;
- the levying of school fees at public schools to be determined by resolution at the annual meeting of parents of the school, and to be enforced by the governing body.

The resolution concerning school fees must provide for the amount of fees to be charged. It must also give “equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay school fees.” (s. 39). The Ministry may make regulations regarding these “equitable criteria and procedures.” A decision of the governing body regarding the exemption of that parent from paying school fees can be appealed by writing to the Head of Department.

Other relevant legislation and policy measures include the *South African Qualifications Authority Act, 1996*, the White Paper on Higher Education (1997), and the Department of Labour’s Skills Development Bill, the recommendations of the National Commission on Special Needs in Education and Training (NCSNET) and the National Committee for Education Support Services (NCESS).

#### (b) Violations of educational rights in the past and their current impact on the poor

Even pre-dating formal apartheid, education policies were designed to perpetuate the inferior economic and social status of black persons, and to reproduce the racially segregated division of labour in South Africa. Under apartheid, education was administered through 19 different education departments leading to fragmentation and inter-regional inequalities. Not only were educational institutions at all levels racially segregated, but there were vast racial disparities in the funding of education. As late as 1992, four times as much money per capita was spent on white pupils as compared to African pupils.

The policy of ‘Bantu education’ left a legacy of illiteracy, in numeracy, and a lack of high-level skills in the majority of the population. These legacies pose a formidable challenge to the realisation of the constitutional right to education.<sup>3</sup>

The following statistics capture the impact of discrimination:

- 29% of the adult population is[functionally?]illiterate
  - The 53% of the population living on less than R301 per month receive only 40% of the budget allocated to education
  - 1 in 4 schools have no water in walking distance
  - 57% of schools have no electricity
  - 20% of African women older than 20 have no formal schooling
- 27 000 learners with disabilities are outside the formal school system

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<sup>3</sup> For a full description of this legacy see: Poverty and Education in South Africa occasional paper, 1998

(c) People's understanding of their rights and how to enforce them

School fees were unaffordable for many who testified. Most did not know of their rights to apply for exemption from the governing body of the school, nor of the right to appeal to the Head of Department. Ellen Motlakhana requested advice during the course of her testimony on what the family should do if the school excluded her children because they could not afford school fees. Emily Lebakeng, on the other hand, testified that by going to explain her impoverished situation to both school authorities and service providers, she was able to keep her children in school. She was also able to prevent her water supply from being cut off.

Pule Ramosweu referred to the lack of training of school governing bodies, and how this resulted in a lack of knowledge of the relevant rules and regulations.

d) The main obstacles experienced by poor people in gaining access to education

***Physical inaccessibility***

A number of people highlighted the shortage of schools within a reasonable distance, as well as the lack of subsidised transport. Travelling or walking long distances to school imposes costs and hardship on disadvantaged communities. In the words of Adam Dichaba at the Bloemfontein hearings: *"We have a problem of our children attending school from standard five up to standard eight. They are attending school far away...They travel something like seven kilometres and they walk on their feet to and from. That is affecting their education. We need more schools so that our children can be nearer to education. It is our appeal from the rural people. We need school buses so that our children can be able to use buses."* He said that his child spent 4 hours a day walking to and from school: *"A child cannot travel for so long. She is always tired. Because we are not equal, some parents are able to give their children money for buses, but others cannot."* Isaac Doktor of Victoria West said that transport to school used to be provided for farm children in the area: *"Now that has been withdrawn. Children are now walking long distances and it is not safe - rapes occur."* Mxolisi Sithukuthezi pleaded at the Eastern Cape hearings for a pedestrian bridge to be built to enable children to cross a river safely in order to get to school. He said that many children in the community had drowned, trying to cross the river to get to school.

***Poor school facilities and conditions of education***

The lack of electricity, adequate water and toilet facilities in schools was referred to in a number of submissions. Overcrowded classrooms continue to be a standard feature of education in poor communities. Annah Mokgaloane described how different grades shared classrooms in the primary school in Bofulo that was built by the community. In her submission, Tsidi Ndlala of Barkly West said that, although the teacher/pupil ratio was 1:45, *"our classes are getting bigger all the time."*

In her submission at the Kwa-Zulu-Natal hearings, Constance Mbele of the Rural Consultative Forum, South Coast, said that scholars were suffering from a lack of access to clean water: *"At the school they use river water. The schools are supposed*

*to be closed because there are no toilets.*” A lack of basic services in the broader community also impacts on children’s education. Mlande Tokwe from KwaZulu-Natal described how children woke up at 5.00am to collect water before school: “Sometimes they get to school late. and they don’t find time to rest.”

Jamani Batwali of Philipstown told the hearings in the Northern Cape that white children were withdrawn from the existing high school along with all the equipment. As a result the high school is now struggling to find equipment for the school.

### ***Quality of the education received***

Melita Bojang referred to the differential education standards between schools “*in town*” and those in “*the location .I cannot, after taking him to town, take him back to the location. The education in town is a little bit higher. He is used to it,*” explained Melita commenting on the extra education costs she incurred. Konelo Lekhafola of the Free State Unemployed Graduates Initiative (FUGI) was of the view that the standard of education was deteriorating because of the retrenchment of temporary teachers. “*This devalues of the teaching profession.*” Jamani Batwali informed the commission in Kimberly that the standard of education in Philipstown is “*very poor.*”

### ***Financial obstacles***

The inability to afford school fees and the other costs such as uniforms, shoes, books, stationery and transport are some of the major obstacles blocking access to education.

There were reports of children being barred from school because their parents can not afford school fees or uniforms. In some cases parents, or even the pupils themselves, decide to discontinue schooling as the costs of books, school uniforms and transport impose too heavy a burden on the family. Ellen Motlakhana testified that her son in Std. 5 decided to stay at home “*after realising that I didn’t have money to buy books.*” After losing her job as a domestic worker, Paulinah Sekhuthu testified that she is no longer able to afford the bus fares for transporting her children to school. Noel Kok of Prieska in the Northern Cape described how his family was forced to sell their wardrobe in order to pay examination fees.

A lot seems to depend on the attitude adopted by the governing body of particular schools. In her submission, on behalf of the Sedomasang Rural Development Organisation, Debbie Lesshope said that the schools in their area had generally been very accommodating of parents who could not afford school fees. However, from press reports, she gathers that “*in the conservative towns, when the parents can’t pay the child’s school fees, the child has been staying at home, or been sitting on the stairs and not being allowed to go into the classroom.*” As a member of a governing body of a school in the Klerksdorp area, Amelia Mathi described how they went about setting school fees and assessing whether or not a child’s family could afford school fees. She confirmed that reports were withheld if school fees are not paid.

Melita Bojang used her old age pension to pay her grandchild’s school fees and clothe him. She is required to pay the full fees of R110 per quarter. She appeared to be unaware of her right to apply to the governing body of the school for a partial or total exemption.

The broader context of poverty and unemployment in many communities also has a significant impact on children's ability to complete their schooling. Benedicat Mhlangu told the Gauteng hearings that children sometimes have to leave school to contribute to the economic survival of their family.

### ***Teaching***

The dispute between teachers and the Department of Education regarding their terms of employment continues to disrupt schooling. Joseph Mashia, of Mpumalanga, said that the children were the victims of the ongoing strikes and problems. Moses Mautsoa told the Gauteng hearings that after 10 years he was still working as a temporary teacher.

### ***Gender***

Girls are exposed to the dangers of rape when walking the long distances to school: "...and then at the end of the day they don't want to go to school.." High rates of teenage pregnancies in certain areas also contributed to girls dropping out of school. Debbie Lesshope stated that culturally many communities were resistant to addressing the need to keep pregnant girls in schools. She identified the importance of life skills training to reduce the number of teenage pregnancies.

Christina Mokoena, who is working with the Ntswananatsatsi Educare Trust, spoke about the importance of education for women's advancement: "*Because as soon as you are with these women, talking to them, asking them why are they not working, they will explain that: I am not educated. I don't know anything.*" However, even those poor women who have had some educational success are unable to make full use of their potential because of their daily struggle to survive: "*This poverty it is where women stay with children who are hungry, children who cannot be educated and women who have knowledge, but they cannot proceed with their knowledge.*" She also testified about a lack of government support for community educare organisations, like the one she is involved in.

Nohaytaze Tladi of the Adult Education Trainers Association of South Africa (AETASA) said that 80% of the users of ABET were women. This presented a problem as most of the areas in which they operated did not have crèches or educare centres. This meant that women often had to bring their children to courses with them.

### ***The special problems experienced in relation to farm schools and farm worker's education***

Veronica Kekesi described, at the hearings in the North West Province, how farmers were able to abuse their position of power in relation to farm schools: "*On the farms, there is a struggle with schools. The Boers say that the children are dirtying the place.*" There were also reports of children being taken out of school to work on the farms. According to Simon Msiza from Mpumalanga, the farmer simply says when this happens: "*This is my farm, this is my school.*" Nonene Nzuzo of the Eastern Cape complained that if there is a dispute with the farmer, he simply closes down the farm school.

The forced eviction of farm-dwellers also has a serious impact on the education of their children. Martha Motlantau and Pikiini Nameka told the Free State hearings of nine families being thrown off the farm, where they had been working, for no apparent reason. They were dumped along the side of a tar road, and the women were forced to sleep in the police station that evening. As a result of this eviction, they were forced to ask people living on other farms to assist with their children's schooling. They were also no longer able to afford the education costs of those attending school in town.

Lillian Antonie, representing the National Welfare Social Services Development Forum, focused in her submission to the Northern Cape hearings on the special problems of the "karretjiemense" - seasonal farm workers - who travel in carts from farm to farm. She said that their children don't attend school regularly "*and this is a major problem.*" Tsidi Ndlala said that adult education classes, which are held at night, are generally not accessible to farm workers.

### ***Inadequacy of support for early childhood development***

Many parents are bearing the main burden of establishing pre-school facilities and paying for staff. Adam Dichaba told the commission that these pre-schools were not registered, and that promised assistance from government had not yet materialised. Pule Ramosweu described the informal provision of child care facilities in communities in the following terms: "*We made some shacks in our villages to accommodate the small children so that the parents can be able to go to look for jobs.*" There is a general lack of toys and entertainment facilities for the children.

### ***Adult basic education and training***

Nohaytaze Tladi made a submission on behalf of the Adult Education Trainers Association of South Africa (AETASA) an NGO offering adult basic education and training (ABET) in the Free State Province. She indicated that, despite a number of important legal and policy commitments to ABET, there was not yet widespread impact "on the ground." The impression from her testimony is that NGO's are shouldering the major burden of ensuring the delivery of adult education. The demise of the National Literacy Co-operation forced many adult learning centres to close, the vast majority of which were attended by unemployed black women. She did, however, refer to the substantial financial support provided by industry for programmes such as adult learner's week, and the helpful role played by certain farmers in facilitating ABET programmes for farm dwellers. Other farmers "*will just shut us out before they can even hear what we are saying.*" ABET provision in rural and urban areas is "*so different*" because resources for people in the rural areas are very limited and not accessible.

Mxolisis Mahlangu, representing the ANC Women's League at the Mpumalanga hearings, complained about the reduction of the subsidy for ABET. It only covers literacy to Std. 5. Mrs. Khongisa, of the Gompo Welfare Society for the Care of the Aged in East London, said that they were unable to gain access to funding for the literacy project that they had initiated.

### ***The special problems experienced by learners with disabilities and special needs***

Debbie Lesshope reported that although there were some special schools in the Free State, they were generally not accessible to children in the rural areas. Manthipi Molamu of Disabled People of South Africa (DPSA), said that there were no schooling facilities for children with disabilities in the North West Province. They were forced to go to Qwa-Qwa for schooling that was prohibitively expensive. She alleged that mainstreaming in schools, for children with disabilities, was not being practised. The sheer physical obstacles in the way of disabled children gaining access to schools was described as follows by Moses Mahlangu of Mpumalanga: *“Who will carry this 9-year old child to and from school? The rights of this child have been violated. The wheelchair is broken.”*

### ***Access to tertiary education and employment opportunities***

A number of persons who testified said that even if the children in their community succeeded in obtaining a matric, they usually could not gain access to bursaries to pursue their education. This resulted in frustrated ambitions and disillusionment. Darkie Mokhoathi told the Free State hearings that his father was paying not only the school fees of his younger siblings, but also his own tertiary education fees from his pension. His parents were unable to obtain a student loan for these fees as they did not have security, and they could not afford the interest payments on this loan.

Obtaining an education does not guarantee access to a livelihood or a job. Many young people testified that they *“were doing nothing”* or *“staying at home”* after completing matric. In his submission, Pitso John Radebe highlighted the need for proper career guidance to be provided at schools. Konelo Lekhafola believes that the education received, particularly in disadvantaged communities, does not equip people adequately for employment: *“I think the way that our education was structured, it was meant for us to be disadvantaged.”* He highlighted some of issues faced by young graduates from disadvantaged backgrounds. Many graduates are highly indebted to tertiary educational institutions. This results in them being unable to obtain their qualifications or being black-listed on the credit bureau. He also believes that the procedures and regulations for voluntary service with government departments are too restrictive, and that this deprives graduates of a much-needed opportunity to obtain work experience. According to Lekhafola, the legislation, policies and programmes of government need to be transformed and made more flexible to enable the previously disadvantaged to *“partake in the governing of this country.”*

#### **e) The role of government in promoting the right to education**

A number of people testified that they believed that government was reneging on its promise to provide free education, at least for school children. According to Darkie Mokhoathi: *“Now my plea is, the government should try and look at the school children, the pupils, make sure it provides the school children with moneys. Because the government promises us that there will be a free education - I don't know how to put it - but now that type of education, its not there.”* He also believed that government should assist in establishing a programme of community service for students.

A strong view was also expressed that government should take steps to improve the conditions in schools, particularly the overcrowding and the lack of facilities, equipment and books. In the words of Tsidi Ndlala of Barklay West: *“The Government must act on this. I say to the MEC on education: he or she must cut on some budget and focus on education so that we can have more teachers.”*

The Adult Educators and Trainers Association of South Africa (AETASA) submitted that there was a need to integrate a stronger training component within adult basic education. This would make training more relevant to people’s life experiences and needs. This could only be achieved by strong inter-sectoral collaboration between government departments. Adult education should not be viewed as only the responsibility of the Department of Education.

## 8. LABOUR

### a) Labour rights and the right to work

The Bill of Rights enshrines certain rights that are applicable to the employment relationship. For example, everyone has the right to fair labour practices, and every worker has the right to form and join a trade union, to participate in its activities and to strike. Employers have the right to form and join an employer’s organisation, and to participate in its activities. Trade unions and employers also have the right to engage in collective bargaining [section 23]. The *Labour Relations Act 66 of 1995* and the *Basic Conditions of Employment Act 75 of 1997* have been enacted to give effect to these rights.

The Constitution does not explicitly recognise the right to work. This right is recognised in the *International Covenant on Economic, Social and Cultural Rights (1966)* which the government has undertaken to ratify. Article 6, State Parties to the Covenant recognise *“the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”* Among the steps to be taken by a State Party to achieve the full realisation of this right are *“technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”*

One of the consistent themes that emerged in all the hearings was the high priority people attached to obtaining employment. Moholo Kgopane of Malamulele Task Force expressed the view at the Gauteng hearings that *“People have a right to have access to jobs.”* Jabu Ntuli, of the Self-Employed Women’s Union (SEWU) in KwaZulu-Natal, said that they had decided to approach government for help in alleviating the unemployment problem: *“Every other problem stems from unemployment because you don’t have money to buy basic needs.”* Many submissions also focused on the negative social consequences of unemployment - particularly for the youth. These included resorting to drink, prostitution and low self-worth.

According to Lydia Julies of Rietfontein, the high unemployment rate in her town meant that “*most of the people are dependant on State pensions.*”

## b) Past policies

Tata Gubula of Pabelello, Upington, gave an account of the impact of influx control legislation on his efforts to secure employment: “*In 1965 I got a green paper (a town pass) as the son of Samuel Gubula which entitled me to look for a job. In that way I could work here under certain conditions. If you stayed with one boss you could stay in Upington.*” Eventually he got section 10(1)(b) rights that meant that he could reside in the urban area of Upington: “*After that you could change jobs if you wanted.*” Hendrik van Rhyn described how for many years workers like him had no rights to protect themselves against the arbitrary use of power by their employer: “*Al wat gebeur het by die werk moes jy net aanvaar - daar was niks gepraat van regte nie. Die baas was net altyd reg.*” (*You must accept all that happens at work. There was nothing said about rights. The boss was always just right.*)

Apartheid education policy has left a legacy of illiteracy and lack of skills. According to Tsidi Ndlala of Barklay West “*unemployment and high illiteracy go together.*”

## c) The present situation

Unemployment rates in South Africa are extremely high - in the region of 30%. Women, persons living in rural areas, black people, youth, and persons with disabilities are most deeply affected by unemployment. For example, it is estimated that the unemployment rate among African women is over 50% The majority of the unemployed have never worked, and do not have access to any form of social security.

The labour market is highly segmented with professional and managerial positions still largely dominated by white men. Workers in production and service sectors have far less job security. Their terms and conditions of employment are much less favourable. Workers in the informal sector enjoy even less security, and enjoy little regulation of their employment conditions. The prevalence of casual, temporary, home-based work, piece work, and other atypical forms of employment contribute to the phenomenon of the working poor - characterised by low wages, few benefits and a high risk of unemployment. These forms of employment also have strong gender dimensions.

The gendered division of labour is particularly acute in South Africa. Women tend to have more interrupted employment, less training and experience, and fewer marketable skills. They are concentrated in certain sectors and jobs of the economy that are generally valued less, and attract low pay and fewer benefits.<sup>4</sup>

## d) Vulnerable workers

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<sup>4</sup> Poverty and Economics in South Africa, occasional paper;1998

A number of submissions highlighted the poor working conditions and terms of employment of farm workers, domestic workers, casual workers and seasonal workers. These include low wages, long working hours, unsafe working environments and a lack of job security and social security benefits. The appalling conditions of work of many farm workers have been described in section 1(d) above.[If possible, insert page numbers for ease of reference] Paulinah Sekhuthu told the Free State hearings that she received a wage of R150 per month as a domestic worker: “Can you imagine getting R150 per month on top of five kids?”

Mohau Kitime, of the Young Christian Workers, described the special problems faced by casual workers such as being forced to do the difficult duties by the permanent staff, being spoken to in an abusive manner by the management, and deprived of overtime pay: “*And you are not supposed to say a word, or what you think or what you feel. They don’t want to hear if you agree or if you don’t. They are not taken as people like other workers...These casual workers, they don’t know their rights.* [note: repetition on p.30]He said that he did not know if the problems that casual workers experienced lay in the law itself or in its implementation. The Young Christian Workers organisation planned to mobilise casual workers to stand up for their rights: “*They must control their own futures. Because if we just sit, saying that in Parliament this law was passed, we’ve got this right, tomorrow at your job place this is not done.*” He also believed that labour flexibility and mobility as well as technological advancements that reduced labour costs were exacerbating the unemployment problem. Lilian Antonie of the National Welfare Social Services and Development Forum highlighted the lack of security and deep poverty of the “*karretjiemense*” - seasonal farm workers in the Northern Cape: “*They lack the most basic amenities like water, housing and food...The karretjies are their only shelter as well as their only mode of transport. They have absolutely no security.*’

#### e) Retrenchments

Silas Diamond of the National Union of Mineworkers told the Free State hearings that the conditions of service of mineworkers were very bad. He described how the Union initiated co-operatives to deal with the problems of retrenchments and dismissals from the mines after 1987. Most of these co-operatives have now been converted into ‘Mine Development Agencies’ (Section 21 Companies) “*in order to make these agencies viable, to generate more profit for themselves, and to train people for whatever job that they can do to sustain life.*” The communities in the rural areas are also involved in these co-operatives.

#### f) The role of government in facilitating employment

Many participants in the hearings clearly viewed the government as having a key role to play in facilitating access to employment. The measures identified to promote employment included: literacy and skills development programmes, the promotion of volunteer/community service, a more vigorous policy of promoting jobs in the rural areas, and affirmative action that should also include persons with disabilities. Certain participants like Bethwell Gugula of the Inkqubela Resource Centre in Pabellelo, Upington believed that “*the government’s macro-economic policy has led to joblessness and starvation.*” Konelo Lekhafola of the Free State Unemployed

Graduates Initiative (FUGI) informed the hearings that his organisations saw the need for a commission for unemployed people: *“That will give the unemployed full participation and full representation so that their needs and their problems can be identified.”* He believed that his organisation and the unemployed generally should be present at the forthcoming Job Summit: *“We need to be there as the unemployed because we have solutions that government and the labour movement cannot have, and also business.”* Defining its duties and responsibilities in employment creation is a key challenge for government as it goes into the Job Summit.

## 9. MACRO-ECONOMIC POLICY AND SOCIO-ECONOMIC RIGHTS

The majority of the submissions from poor people at the hearings focused on their daily lived experiences of poverty. Understandably few of these submissions commented specifically on macro-economic policy. Discussion of the government’s *Growth, Employment and Redistribution* strategy (GEAR) tended to be confined to more organised groupings such as NGO’s and academic institutions.

The background paper, ‘Poverty and Economics in South Africa,’ argues that GEAR *“should be evaluated in terms of its promised effects - job creation and growth - and the ability to provide socio-economic rights to the people living in South Africa.”*<sup>5</sup> They point out that the deficit reduction targets mean that, without strong economic growth, economic resources will be constrained: *“Fewer available resources, in turn, means that the ability to ensure adequate housing, affordable food, clean water, accessible health care, and quality education will be compromised.”*<sup>6</sup> They provide, as examples of the impact of GEAR on socio-economic rights, the fact that social pensions for the elderly have increased at a rate slower than inflation, and the restructuring of the State maintenance grant. In the latter case, the Ministry of Welfare sought to achieve greater equity in the distribution of public child support benefits within highly constrained fiscal parameters. The net result was a significant reduction in the benefits provided to poor children. To this can be added the recent 3 month restriction on the back-pay of social grants. This is clearly a retrogressive measure as previously social grant beneficiaries received full back-pay to the date of application.

The background paper is critical of the fact that one of the reasons for the reduction in social expenditure is to reduce the *“apartheid debt.”* They argue that high interest payment on this debt (over 1/5 of the combined national and provincial budgets) diverts public resources away from the realisation of the socio-economic rights in the Bill of Rights: *“GEAR has responded, not by restructuring the debt or taxing the beneficiaries of apartheid, but by cutting government spending.”*<sup>7</sup> Isaac Doktor agrees: *“the apartheid debt is crippling the delivery of services in rural area and small towns....the debt must be written off if we are to seriously tackle the problems for rural development.”*

GEAR makes the attainment of substantive gender equality more difficult. An increase in labour market flexibility will perpetuate the poor working conditions experienced by many women workers. The reduction in government spending *“means*

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<sup>5</sup> *Poverty and Economics in South Africa*, SANGOCO occasional; 1998

<sup>6</sup> p16 *ibid.*

<sup>7</sup> p16 *ibid.*

*that women will continue to perform large amounts of unpaid labour to substitute for the lack of adequate social services.”*<sup>8</sup>

The Poverty and Education occasional paper argues that the State should actively facilitate the meeting of basic human needs. This should not lead to an increase in inequality or impose the greatest burden on the most disadvantaged of our society.<sup>9</sup>

In concluding this section, it is apposite to remind ourselves that a commitment to human rights implies that the dignity and well-being of every individual is the subject of public concern. This means that we cannot be indifferent to human suffering or defer the meeting of basic human needs to some future time when higher levels of economic growth will allegedly raise everyone’s standard of living. Economic and social rights imply that the State must take deliberate, concrete and targeted measures to ensure that everyone at least enjoys basic levels of each of the rights. It also demands progressively advancing and improving access to the rights. In this process, the needs of disadvantaged and vulnerable groups should enjoy a priority claim on the State’s resources.

In the words of Prof. Philip Alston, chairperson of the UN Committee on Economic, Social and Cultural Rights, who launched the poverty hearings:

*“The pressures of globalisation and economic competitiveness have promoted a logic which, if permitted to remain unchecked, will inexorably reduce the living standards of the poorest groups in our society. Such an approach is neither economically sustainable nor morally acceptable. ...Economic policies must ultimately be judged solely on the basis of their capacity to contribute to the dignity and well-being of every individual, and not just of entrepreneurs and those allied to them.”* [‘Economic and Social Rights in the International Arena’<sup>10</sup>]

## CONCLUSIONS

In this final section we review the main themes relating to economic and social rights which emerged from the hearings, and make a number of recommendations based on these themes.

### Key themes

#### ***a) Lack of understanding and awareness of rights***

It emerged clearly from the hearings that there was a general lack of awareness and understanding by people of their economic and social rights. Participants were generally not asked directly whether they understood their rights. However one could infer from people’s narratives at the hearings that the Bill of Rights was remote from their daily experiences. When Mimi Mokoena was asked directly, at the North West hearings, whether she received information about the Constitution and Bill of Rights, she responded: *“No, I never saw them. Maybe I don’t know them.”* Generally, it was the more organised groups like NGO’s and trade unions that were more conscious of

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<sup>8</sup> p17: Poverty and Economics in South Africa, SANGOCO occasional paper;1998

<sup>9</sup> p27 Poverty and Education in South Africa, SANGOCO occasional paper; 1998

<sup>10</sup> p4: *ESR Review*, a quarterly publication by the Community Law Centre and Centre for Human Rights, vol. 1, no. 2, June 1998

rights generally, and economic and social rights in particular. Obviously the widespread problem of illiteracy has a profound impact on people's capacity to understand and enforce their rights.

***b) The close linkages between all human rights***

The testimonies at the hearings demonstrated graphically the interdependence and interrelatedness of all human rights. For example, access to land was regarded, by many rural dwellers, as crucial to ensuring food security: Access to clean water was critical to the enjoyment of health; poor education makes unemployment more likely: Finally, social security is, for many people, essential to ensuring a decent standard of living. Links were also drawn between economic and social rights and the enjoyment of civil and political rights such as the right to human dignity, equality, and full participation in democratic processes. Mrs. Xasa, Director of the Kei District Committee in Umtata expressed the link as follows: *"Poverty takes away dignity. When women here have to borrow and your neighbour swears at you, you still sit and wait for her. That's how you lose your dignity."*

***c) The role of government in giving effect to people's rights***

People believe Government has the primary responsibility for ensuring that people are able to gain access to, and enjoy, their economic and social rights. There was a general understanding that this did not imply that people should be the passive recipients of government *"hand-outs."* People acknowledged that they should be active participants in improving their standard of living, and that personal and community resources should be mobilised for development. It was the role of government to support and facilitate these initiatives and to improve the resources available to poor communities.

This perception was expressed in a number of ways throughout the hearings. Konelo Lekhafola of the Free State Unemployed Graduates Initiative (FUGI) was adamant that people *"don't want handouts. We want to be empowered, and we want resources that will help us to empower ourselves."* Benedicta Mahlangu acknowledged that *"assistance from the government as well as others was necessary to enable them to achieve what they had."* However, she emphasised that people should do things for themselves so that they could be helped. Meisie Ledagile of the Rural Women's Movement in the North West Province underscored the importance of community organisation and solidarity: *"We realised that the government can help. But not if you're just sitting. Let us stand up so people can help us."* Mrs Xasa said that, *"Today we are not waiting for manna from heaven."*

A striking feature of the large number of testimonies concerning self-help projects was how a lack of access to resources, basic social services, and infrastructure, contributed to the collapse of these projects. If projects did not collapse, they often did not achieve their full potential. Without government playing an active role in ensuring access to productive assets, basic social services, infrastructure, and employment - the socio-economic rights in the Bill of Rights will remain largely unrealised for the vast majority. Mzoli Sifiki of the Pedi district highlighted the special developmental duties of local government: *"Local government should stand up for us. They know our needs"*

- *basic needs for life. We didn't just vote for promises. Government should deliver... We should have different lives from the lives we lead under oppression.*"

Government also has a direct and immediate role in ensuring that disadvantaged and vulnerable groups enjoy access to basic levels of the socio-economic rights such as food, water, health care, shelter and social assistance. The hearings highlighted how groups such as children, the elderly and persons with disabilities face special obstacles in meeting their basic needs. It is the responsibility of government to ensure that these groups are not deprived of life, health or dignity due to a lack of access to basic socio-economic rights. Other groups that are particularly vulnerable include migrant workers, refugees, rural women and persons living with HIV/AIDS.

Apart from proactive measures, government must also refrain from obstructing people's access to socio-economic rights. Such actions range from obstructive attitudes of government officials and misinformation to deliberately depriving people of access to socio-economic rights. A good example of this type of conduct is the blanket suspension of social grants in the re-registration drive that was described in graphic detail at the Eastern Cape hearings (see section 5(d) above. Insert exact pg. no, if possible). Other examples include arbitrary forced evictions, barring children from school because their parents cannot afford school fees, and denying access to basic water services for non-payment where people are unable to pay for this service.

#### ***d) The role of the private sector***

Given the highly unequal distribution of wealth and resources in South Africa, the active participation of the private sector is clearly vital to the full realisation of economic and social rights. Benedicta Mahlangu emphasised the need for banks to accommodate the needs of the impoverished poor. This was echoed by Sharda Naidoo of the Alliance of Micro-Enterprise Development Practitioners when she commented that the financial sector "*is not catering to the majority of the people in the country.*" At the social security hearings, people noted that private employers need to play a greater role in ensuring adequate social insurance provision for all their workers. This is particularly true for those in insecure forms of employment such as casual, temporary and domestic workers. The need for private employers to implement affirmative action policies is crucial to ensuring a more diverse and representative workforce, and facilitating access to employment by disadvantaged groups. The hearings on the environment highlighted the need for private companies, mines etc. to closely monitor their environmental practices and to refrain from violating legal and international standards relating to work-place health and safety, pollution and environmental protection.

#### ***e) Accountability, access to information, and participation in decision-making***

Many of those who testified indicated that there was a need for mechanisms and channels to hold their elected representatives accountable for meeting their basic needs. It was not enough to participate in an election once every few years.

A large volume of submissions concerned the unresponsiveness of government officials at all levels to people's complaints, and requests for information, advice and assistance. McDonald Nkosiyanane representing an organisation concerned with the

rights of persons with disabilities said: *“People do not recognise us as human beings. It is as though we are not alive. The government in 1994 pleased us when they allowed us to vote. But they have not addressed our needs. They only remember us when we have to vote.”* Tolman Stokwe of Grahamstown called on the government the people had elected to *“show us they exist”* and *“to come closer to the people.”* Elizabeth Mokobane expressed her disenchantment with the local government councillors in her region in the following terms: *“The community elects them before and when we call them, we wait and wait and they don’t come.”*

Many people complained about writing numerous letters requesting information and assistance to which no response was forthcoming. In some cases, officials appeared to be downright obstructive, and sent people from pillar to post to resolve their problem.

The long delays in processing applications for social grants and the lack of feedback on the progress of applications were a major issue for many social grant recipients.

A lack of infrastructure such as telephones, electricity and proper roads inhibits access to information and knowledge that could assist people in realising their socio-economic rights.

A further theme that emerged was the sense that poor people were often excluded from policy-making processes that have a direct impact on their socio-economic rights. Jonty Ndlanzi of the Rural Consultative Forum believes that it is insufficient to simply convey information about policy development. There is a need for materials in languages that people understand, workshops, and more time for feedback and response to calls for public comments - *“the deadlines are too quick.”* Rosalie Telela, of the Human Rights Research and Advocacy Project, National Association of Democratic Lawyers (NADEL), said that an important component of their project was empowering disadvantaged communities to make submissions to parliamentary portfolio committees etc. on their own behalf.

#### ***f) Obstacles experienced in gaining access to the rights***

In each section of this report, we have highlighted the obstacles identified by participants that impede their access to the particular rights. The most common obstacles encountered were the following:

##### ***(i) Legal obstacles***

These ranged from legal provisions that were too restrictive and administratively complex, poor implementation of existing legislation, and a lack of access to affordable, accessible legal services for enforcing rights. For example, even though substantive legal protections have been enacted to promote security of tenure for farm workers and labour tenants, a lack of access to legal services makes the enforcement of these rights extremely difficult. In addition, there were accounts of hostile attitudes from local lawyers, the police, and magistrates that discourages people from taking their cases further. The entrenched and unequal power relations in the rural areas make it very difficult for farm workers to challenge violations of their rights.

***(ii) Administrative obstacles***

This includes complex, time-consuming and bureaucratic procedures for gaining access to socio-economic assistance measures such as housing subsidies, land restitution applications, land acquisition grants, social grants, subsidies for welfare organisations etc.

***(iii) Financial obstacles***

The unaffordability of the costs of basic social services such as water, medicines, education, and housing emerged as a major theme throughout the hearings. It appears that school fees, and the associated costs of education, are major factors that are undermining the enjoyment of the right to basic education. A strong view was expressed that the government had reneged on a promise of free primary education. No general view was expressed that the delivery of all social services should be provided free of charge. However, there was a general perception that people should not be denied access to basic services when they are genuinely unable to pay, due to unemployment and poverty. In the words of Mangome RSA at the North West Hearings: *“Water is too expensive for poor people. Masakhane says we must pay for electricity and water. That is impossible if we are unemployed.”* Even when legislation does make provision for people to apply for reductions or exemptions, from the payment of fees or user-charges, many are unaware of this right or how to go about applying (see, for example, section 7(d) on financial obstacles to education. Insert pg. no, if possible).

***(iv) Physical obstacles***

Often services are not accessible to people because they are located far away from where people stay. Poor roads and other transport infrastructure and a lack of affordable means of transport aggravates this. Persons living in rural areas suffer the most disadvantage in this regard. This was highlighted particularly in relation to the location of clinics, schools and water facilities. Apartheid planning and legislation have meant that many people’s homes are located far away from employment opportunities. This has the effect of burdening disadvantaged communities with heavy transport costs and long hours spent commuting to and from work. These disadvantages are compounded for people with physical and mental disabilities who are living in these communities. The lack of facilities and the sheer extent of the physical barriers that prevent persons with disabilities from enjoying equal access to socio-economic rights was consistently highlighted. These ranged across all sectors critical to the realisation of socio-economic rights - welfare, education, health care, housing and land.

***(v) Gender obstacles***

The hearings confirmed that the disproportionate share of reproductive work performed by women, particularly in relation to the care of children and elderly or sick relatives, the deep social and cultural patterns of gender discrimination, and violence were critical factors in women’s unequal access to socio-economic rights. Clearly gender roles are still deeply entrenched with women taking primary responsibility for bringing up children - in many cases with little or no support from

the father of the children. According to Constance Momoza of the Eastern Cape: *“Men don’t care about hungry children. Women dies from worry. We look after our children. Men don’t care.”*

Due to the migrant labour system, many women struggle alone in the rural areas to eke out a living for themselves and their dependants. Remittances and social pensions provide a vital life-line in this context.

Certain submissions drew a link between women’s poverty and customary law practices such as polygamy and patriarchal inheritance principles. Traditional leaders often stood in the way of women gaining access to land in their own name.

Certain submissions demonstrated graphically how women can be deprived of income, opportunities to participate in employment and public life, and a sense of self-worth in violent and abusive relationships. Poor women have few viable options to escape from these relationships which trap them in a cycle of dependency and poverty.

### ***Recommendations***

It is not possible within the scope of this report to make detailed recommendations in relation to each right. However, based on the themes identified above a number of general recommendations can be made:

#### ***a) Human rights awareness and education***

Campaigns and training programmes to increase awareness and knowledge of the Bill of Rights among disadvantaged communities should be a priority. They should be designed so as to be accessible to persons with a low level of literacy, and should be relevant to their daily experiences of poverty. They should also pay particular attention to economic and social rights, including practical ways to enforce them. Human rights education should be a joint responsibility of government and civil society.

#### ***b) Improved access to legal services***

Intensify efforts to improve access to legal services, particularly in the rural areas. This could be achieved through revision of the legal aid system, and establishing a network of community-based legal aid centres and advice offices. It is essential, that both the public legal aid system and legal services provided by non-governmental organisations include redress for violations of economic and social rights within their respective mandates. This clearly implies that local and international donors, providing funding for legal services in South Africa, should be aware of the importance of ensuring proper mechanisms for the enforcement of economic and social rights.

#### ***c) Integrated strategies and intersectoral collaboration***

Promoting access to all economic and social rights requires an integrated strategy and intersectoral collaboration on the part of all relevant organs of the State. Because of

the interdependency of all human rights, establishing strong linkages between the policies and programmes of different government departments, is vital.

***d) Improving the responsiveness of government officials***

Government must give priority attention to improving the responsiveness of officials to the needs of disadvantaged communities. It must actively enforce and monitor the implementation of the Public Service's Code of Conduct. It is essential officials respond to requests for advice and assistance efficiently and in clear, accessible language. Officials should make every effort to advise people of their entitlements under various programmes (e.g., the new child support grant), and should minimise inconvenience and costs incurred by the public. Strong penalties must be applicable to officials who do not respect the human dignity of those that apply to them for assistance, particularly social grant recipients. Local government and other relevant officials must be trained on economic and social rights.

Efforts to promote participation by disadvantaged communities in policy-making and legislative processes should be intensified. These should include community workshops, adequate response times for public comments, and holding public hearings in informal settlements and rural areas. It is also essential that disadvantaged communities, in both rural and urban areas, are actively involved in the process of monitoring socio-economic rights by the SA Human Rights Commission under section 184(3) of the Constitution.

***e) Strengthening the role of government***

Government should play a proactive role in ensuring that everyone has access to basic social services, building a comprehensive social security system, and fostering conditions that enable people to gain access to employment and land on an equitable basis. It should explore creative ways of supporting and building on the initiatives of poor people: for example, by facilitating access to credit, providing transport and telecommunications infrastructure, and promoting skills development. In doing so the needs of groups in vulnerable and disadvantaged circumstances should be prioritised.

To achieve equitable access to basic needs and a fair distribution of resources, government must play a leading role. This is particularly important in the light of the legacy of poverty and inequality in South Africa. Market mechanisms alone cannot be relied on to achieve equitable access to economic and social rights in the South African context.

The government must also avoid retrogressive measures that reduce or deprive people of access to economic and social rights.

***f) The participation of the private sector***

This sector must also participate actively in promoting a more equitable distribution of socio-economic resources in society. This can be achieved by, for example, providing skills training, implementing affirmative action policies, and extending social insurance protection to all categories of workers. They must also adhere to the labour and environmental standards enshrined in the Constitution and legislation.

***g) Removing legal obstacles***

Legislation that is passed must make it easier, and not more difficult, for people to gain access to socio-economic rights. Enforcement, and proper implementation of socio-economic legislation, is critical. The hearings on the theme of the environment highlighted the importance of partnerships between government and communities in ensuring the proper enforcement of legislation.

***h) Removing administrative obstacles***

Administrative procedures for accessing social grants, subsidies, land, etc. should be streamlined. Much work is needed to ensure that these procedures are simple, speedy, transparent and effective. Government must eliminate the long delays in processing applications for assistance as they expose poor people to great uncertainty and insecurity.

***i) Removing financial obstacles***

It is essential that government develop and implement policies that remove financial obstacles to gaining access to economic and social rights - particularly in relation to water, medicines, land, housing and education. This may include an increased level of subsidisation and more effective procedures for reducing or exempting poor people from paying user-charges. Where such procedures do exist, for example, in relation to water services and the payment of school fees, it is vital that government and NGO's promote a more widespread awareness of these procedures.

***j) Removing physical obstacles***

Government must make on-going efforts to locate basic social services in closer proximity to people, and to eliminate the effects of apartheid rural and town planning. It must complement these efforts by improving transport infrastructure and more affordable forms of transport (e.g. subsidised bus services for school children). Programmes, aimed at improving access to social and economic rights, must be designed in such a way that people with disabilities can participate equally in them. They must also accommodate the diverse needs of women, elderly persons and other disadvantaged groups.

***k) Removing gender-based obstacles***

Promoting women's full and equal enjoyment of economic and social rights will require a range of intersectoral strategies aimed at eliminating the gendered division of labour both within the home and in the economy. These strategies should include improving the level of social assistance for child support, intensifying the efforts to make the private maintenance system more effective, and mobilising private sector resources for child care and early childhood development facilities.

Government must investigate, with the full participation of women affected by these practices, appropriate measures to eliminate discriminatory customary practices which

undermine women's rights. The elimination of all forms of violence against women continues to be a key priority for both the State and the NGO-sector.

Government must give a high priority to adopting special measures and policies that facilitate women's independent access to resources such as land, capital, credit and income-generating opportunities. Finally, efforts to improve the working conditions, social security benefits and job security of domestic workers, informal sector workers and those engaged in casual and other atypical forms of employment should be intensified. This will benefit disadvantaged women who predominate in these types of jobs.

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