

The Right to Water & Sanitation



THE RIGHT TO WATER AND SANITATION IS A FUNDAMENTAL HUMAN RIGHT THAT IS PROVIDED FOR IN THE BILL OF RIGHTS.

The Water Services Act provides that:

- Everyone has a right of access to basic water supply and sanitation services;
- Every water services institution must take steps to realise these rights;
- Every municipality must plan in its water services development plan to realise these rights.

Chapter 2 of the Constitution of South Africa provides that:

“Everyone has the right to have access to sufficient food and water.”

In order to give effect to this right Parliament has enacted the Water Services Act 108 of 1997. The purpose of this Act is to provide for the right to basic water supply and basic sanitation services.

This Act recognises that the right of access to basic water supply and to basic sanitation services is necessary to ensure sufficient water and an environment that is not harmful to health or wellbeing of people and animals.

Other regional treaties that enshrine the right to water and sanitation include:

- The African Charter on Human and People's Rights (1981)
- The African Charter on the Rights and Welfare of the Child (1990)
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988) and
- The Arab Charter on Human Rights (2008)

Who is responsible for delivery of water and sanitation services?

There is a duty on all spheres of government to ensure that water and sanitation services are provided in a manner which is efficient, equitable and sustainable.

All spheres of government must strive to provide water supply and sanitary services sufficient for subsistence and sustainable economic activity.

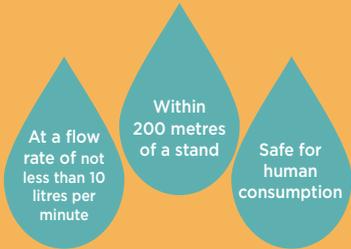
The role of government is that:

- National government must manage water resources through various water boards;
- Municipalities are responsible for the delivery of water and sanitation services and must draw up plans for delivery. These plans must take into account effective delivery services to informal communities;
- Our law recognises that due to lack of resources government cannot provide these services to everybody immediately. However, the government must have a clear plan with timeframes and budgets to provide these services and increase access;
- Government must do so without trade-offs of other basic rights.

Government must provide the following basic water and sanitation services:



1. At least 6000 litres per household per month



2. A toilet or ventilated pit latrine, which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents the entry of flies and other disease-carrying pests.



NO CONSUMER CAN BE WITHOUT WATER FOR MORE THAN 7 DAYS PER YEAR



At the conclusion of the Millennium Development Goals in 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development, which announced the Sustainable Development Goals (SDGs). South Africa has also committed itself to achieve the SDG's within set time frames.

Goal 6 of the SDGs deals with the right to water and sanitation services for all to:

- Ensure availability and sustainable management of water and sanitation for all;
- By 2030, achieve universal and equitable access to safe and affordable drinking water for all;
- By 2030, achieve access to adequate and equitable sanitation and hygiene for all, and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations.

The Department of Water and Sanitation is the custodian of South Africa's water resources. It is mandated to promote effective and efficient water resources management to ensure sustainable economic and social development. Information about the Department may be accessed through its website on www.dwa.gov.za.

Free basic services

South Africa has a policy¹ of free basic services (indigent policy) including water, electricity and solid waste collection to ensure that:



- Every household should receive the first 6 000 litres of water a month for free. Water that is used over and above this has to be paid for. Water is charged at a rising tariff which means that the more you use, the more it costs. Nationally 92,5% of households have access to improved drinking water sources;²
- Different municipalities have different policies for the provision of free water and sanitation. You may receive these services automatically or you may have to register for the services.

Where to get help



- You have a right to free services and you have a right to know why you are not receiving adequate services;
- You must tell your municipality, ward councillor or community development worker if you are experiencing problems;
- The South African Human Rights Commission (The Commission/ SAHRC), other chapter 9 institutions and non-governmental organisations (NGOs) can also assist you to get the information you need.

The rights in the Bill of Rights are interrelated

Every right in our Constitution is equal and rights are dependent on each other. For example, without water it is difficult to learn at school and to get an education.

All human rights are intertwined and interdependent. The right to water and sanitation services is linked to the rights to life, dignity, health, housing, food, education, physical security, gender equality, and the prohibition against discrimination. A lack of access to water and sanitation has many negative impacts.

At least 26% (3.8 million) of households within formal areas have sanitation services which do not meet the required standard due to the deterioration of infrastructure, caused by lack of technical capacity to ensure effective operation, timeous maintenance, refurbishment, and/or upgrading of pit toilets emptying services, and /or insufficient water resources services.³

Civil society and non-governmental organisations play an important part in monitoring the progressive realisation of the right to water and sanitation services.

The Socio-Economic Rights Institute of South Africa (SERI) is one such organisation and can be contacted through their website www.seri-sa.org.za

Complaints on difficulties to pay debts may also be lodged with the **National Credit Regulator** at www.ncr.org.za.

THE RIGHTS IN THE BILL OF RIGHTS ARE INTERRELATED, FOR EXAMPLE:

- The spread of preventable diseases like diarrhoea and cholera;
- Children, especially girls, tend to drop out of school if there are no toilet facilities;
- There is an increase in the use of hospitals and clinics;
- People miss work and are not productive;
- Women are afraid to go to toilets at night for fear of their safety.

The role of the SAHRC



THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION IS AN INDEPENDENT BODY SET UP BY THE CONSTITUTION TO MONITOR, PROTECT AND PROMOTE THE ATTAINMENT OF HUMAN RIGHTS IN OUR COUNTRY.

Violations to the right to access water and sanitation are unacceptably high in South Africa, with most violations taking place in rural and informal communities. The Commission receives many complaints about water and sanitation. Between 2012 and 2016 the Commission accepted 1 363 complaints about violations to the right to water and sanitation.⁴

Violations to the rights to access water and sanitation, lead not only to violations of other basic rights, but also sometimes cause social protests by communities frustrated by the lack of adequate services.

The courts have been clear that the people are entitled to have access to water. Important judgments by the courts provide guidance to responsible authorities about what their duty to provide access to quality water and sanitation involves. The courts have recognised that the right to water and sanitation for all in South Africa is vital for the country to end inequality; poverty, to improve and protect other rights like the right to health and education.⁵

In two early complaints to the Commission, communities in Makhaza, Khayelitsha and Rammulotsi in the Free State complained about toilets in their communities.

The Commission's investigation revealed people in these communities suffered a number of violations to their basic rights. They were being forced to live in unhygienic and unsafe conditions as they had to use unenclosed toilets, that were unclean and against norms and standards for delivery of services. The Commission ordered both municipalities to take immediate steps for the protection of the privacy, dignity, right to a clean and safe environment and rights to access water and sanitation of the communities.

The Commission also called on the Presidency's Department of Planning, Monitoring and Evaluation (DPME) to provide a report to the Commission on the right to sanitation across the country. The DPME reported that there were continued and widespread problems regarding "key water services weaknesses and challenges has been attributed to a lack of adequate funding and poor revenue collection leading to financial instability; a lack of technical, management and business skills; political interference and corruption and unclear municipal powers and functions."⁶

The Commission formally addressed its findings and recommendations with national parliament after hearings conducted in all provinces about violations to the rights to access water and sanitation. It continues to monitor and report on the right and to respond to complaints brought to it by communities. More recently the Commission approached the court for relief on behalf of a community in the North West Province.⁷ In this case, water was being provided by the Municipality but was insufficient for their needs.⁸ [ble on the website www.sahrc.org.za](http://www.sahrc.org.za)

End notes

- ¹ Free Basic Water Implementation Guideline for Local Authorities Version 2.3 available at <http://www.dwa.gov.za/Documents/FBW/FBWLocalAuthGuidelinesAug2002.pdf>
- ² GHS Series Volume VIII Water and Sanitation: In depth analysis of the GHS 2002 – 2015 and CS 2016 data
- ³ Report on the right to access to sufficient water and decent sanitation in SA 2014 (SAHRC)
- ⁴ SAHRC Annual Trends Analysis Report 2015/2016
- ⁵ Mazibuko and Others v City of Johannesburg and Others 2010 (3) BCLR 239 (CC) (08 October 2009)
- ⁶ SAHRC Mqohaka findings (2011)
- ⁷ SAHRC Section 184 (3) Report (2016/2017)
- ⁸ SAHRC v Madibeng Local Municipality NW/2014/0036

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