



WATER & SANITATION RESEARCH BRIEF

Monitoring the Implementation of the
Commission's Recommendations from its 2014
Report on Access to Water and Sanitation



March 2018

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ABBREVIATIONS AND ACRONYMS

CBOs	Community Based Organisations
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CoCT	City of Cape Town
COGTA	Department of Cooperative Governance and Traditional Affairs
DoBE	Department of Basic Education
Commission	South African Human Rights Commission
Constitution	Constitution of the Republic of South Africa, 1996
DHS	Department of Human Settlements
DPME	Department of Planning, Monitoring and Evaluation
DWS	Department of Water and Sanitation
EE	Equal Education
ESR	Economic and Social Rights
GBV	Gender-Based Violence
HRC	Human Rights Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Integrated Development Plan
Local Government Act	Local Government Municipal Systems Act, 32 of 2000
MDGs	Millennium Development Goals
MISA	Municipal Infrastructure Support Agent
NDP	National Development Plan
NGO	Non-Governmental Organisation
Norms and Standards	Minimum Uniform Norms and Standards for Public School Infrastructure
NPO	Non-Profit Organisation
Report	The Right to Access Sufficient Water and Decent Sanitation in South Africa, 2014
SALGA	South African Local Government Association
SDGs	Sustainable Development Goals
StatsSA	Statistics South Africa
UN	United Nations

EXECUTIVE SUMMARY

Section 27(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) guarantees everyone the right of access to sufficient water and requires the state to adopt reasonable legislative and other measures to progressively realise this right within its available resources. Although section 27 of the Constitution addresses the right to water, it does not explicitly provide for the right to sanitation. The right to sanitation can, however, be derived from other sections in the Constitution such as environment, health and dignity and myriad international instruments to which South Africa is a signatory.

The South African Human Rights Commission (Commission) has undertaken extensive work in respect of the right to water and sanitation as part of its constitutional and statutory mandate. In 2014, the Commission launched a report entitled *The Right to Access Sufficient Water and Decent Sanitation in South Africa*, based on the Commission's systematic and extensive work undertaken in fulfilment of its mandate on these rights since 2010. The report details the findings from the Commission's legal investigation into and the resolution of two major complaints on unenclosed toilets, which subsequently informed the Commission's investigation into the level of access to sufficient water and decent sanitation in impoverished communities in all provinces across the country.

The Commission found significant challenges impacting access to water and sanitation in these communities, including *inter alia*:

- The poor construction and/or maintenance of water and sanitation infrastructure in homes and communities, which led to a lack of access to services.
- A lack of monitoring of the completion and quality of service delivery projects tasked to external contractors that were paid for their services.
- The lack of ongoing maintenance, upgrading and expansion of bulk infrastructure to meet the needs of existing and new settlements leads to problems with service delivery.
- Poor or a lack of maintenance of water treatment and waste water treatment infrastructure.
- An absence of a rights-based approach to service delivery permeating all levels of government, particularly at a local government level, leading to inaccessible, inadequate and inappropriate service provision.
- A lack of coordination between different government departments and spheres of government that are constitutionally obliged to progressively realise the right of access to sufficient water and sanitation.
- A lack of understanding of the concept of progressive realisation.
- The lack of accessible, appropriate and adequate provision of quality services, which impacted most significantly on people that suffer existing vulnerabilities and on associated rights such as the right to health, environment and education.

In response, the Commission directed broad recommendations to primary duty bearers in the state with a view to highlighting persistent challenges, and to support remedial action and improved delivery. The recommendations included capacity building for municipalities, and engagements with vulnerable and at-risk communities, in order to ensure the progressive provision of adequate water and sanitation facilities.

Noting the environment within which public bodies operate, their three-year planning and budgeting processes, and their monitoring mandate, the Commission saw fit to monitor and evaluate the status of implementation of some of the specific recommendations it had made to relevant government departments in 2014. The purpose of this monitoring exercise was to assess the status of implementation of the 2014 recommendations and identify existing gaps in policy implementation, to ultimately provide the relevant state departments with appropriate recommendations.

For the purposes of the assessment, information was requested from various government departments. In addition, feedback from identified stakeholders was secured. This body of information, together with the Commission's own research, forms the basis of this report.

Perhaps one of the most telling outcomes of this research process is that despite repeated requests for information from the Commission to the Department of Water and Sanitation (DWS), Department of Cooperative Governance and Traditional Affairs (COGTA) and the Department of Mineral Resources (DMR), they failed to respond. Government bears a constitutional and statutory obligation to provide information to the Commission, and non-responsiveness is thus highly concerning. Furthermore, a lack of responsiveness contradicts the foundational values of openness, responsiveness and accountability of the Constitution and State and negates the significant right to access to information. Of particular concern is the lack of response by the custodian for the fulfilment of the right to access water and sanitation, which has denied the DWS a valuable opportunity to engage on the issues which challenge delivery and could possibly enhance service delivery, if addressed.

CHAPTER 01

INTRODUCTION

Access to sufficient water and decent sanitation is a basic human right, which should be universally enjoyed in South Africa. Despite constitutional and statutory provisions, which guarantee the right to water and sanitation these rights are neither universally nor equitably enjoyed. Different provinces in the country have a disproportionate access to basic services. Based on complaints to the Commission and ongoing media reporting on access to basic services, learners in public schools and residents in rural and peri-urban communities still face unacceptable challenges to accessing water and sanitation services.¹

In 2014, the Commission published a report entitled *The Right to Access Sufficient Water and Decent Sanitation in South Africa* (Report).² The Report was prepared following a lengthy study and data collection process, which included an in-depth engagement with the Department of Planning, Monitoring and Evaluation regarding sanitation backlogs in the country, provincial hearings on the right to sufficient water and decent sanitation with disadvantaged communities in all provinces across the country, and meetings with key state departments. The Report documented a number of adverse findings on the status of access to water and sanitation, particularly in the most impoverished communities in the country and a lack of state accountability for the realisation of rights.

Findings included *inter alia* that:

- ➔ Statistics on access to water and sanitation demonstrate that access at a macro level has improved, but that district and local averages, particularly in poor areas, remain low;
- ➔ The lack of access to water and sanitation has a disproportionate impact on vulnerable groups such as women, girls and people with disabilities;
- ➔ The state does not adopt a human-rights based approach to the service delivery; and
- ➔ There are systemic failures in governance and budgeting.³

¹ South African Human Rights Commission *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014* (2014).

² Ibid.

³ Ibid 14.

Accordingly, the Commission made a number of recommendations to various government departments aimed at addressing the challenges identified in the Report. This research brief seeks to evaluate the level of implementation of the recommendations made in the Commission's 2014 Report and provide a revised set of recommendations based on the findings. There was a particular focus on specific recommendations (detailed below). These recommendations were deemed crucial in addressing the persistent water and sanitation challenges in South Africa. Relevant state departments were asked to respond with details of steps taken to implement the recommendations and the status of implementation thereof.

This research brief will provide an overview of the legislative framework relating to water and sanitation, internationally and domestically, followed by a broad overview of the state of access to water and sanitation in South Africa based on an evaluation of recent literature and responses received from state departments. Finally the brief provides revised recommendations to state departments based on the combined findings.

CHAPTER 02

THE RIGHT TO WATER AND SANITATION IN CONTEXT

Levels of poverty remain intrinsically connected to quality of life and the ability to enjoy and exercise basic human rights. Apart from historical inequality due to apartheid and the associated dispossession of resources, poverty and inequality in South Africa are largely unchanged due to, amongst other factors, high unemployment rates,⁴ and poor access to quality economic and social rights. In 2015, the Statistics South Africa (Stats SA) poverty line report revealed that of the 55.9 million people in South Africa, 30.4 million of them were living in poverty.⁵ This is attributed to a number of factors including high unemployment, which is currently 26.7 percent, the historical dispossession of land and other resources and unequal access to economic and social rights.

Macro conditions such as corruption and slow economic growth has led to low levels of service delivery to poor and outlying areas. This is important because poor people are the least likely to have access to a reliable and safe water supply and decent sanitation services, and are less able to secure appropriate redress for the violations of such basic rights. This failure to realise basic rights in such communities, serves to perpetuate and entrench cycles of poverty and inequality in the country.

In 2016, the United Nations (UN), adopted the Sustainable Development Goals (SDGs), which are aimed at ending poverty, eradicating inequality and injustice and fighting climate change within agreed timeframes. The predecessor to the SDGs were the Millennium Development Goals (MDGs), which in 1990, set 25-year global development targets for signatory states. One of the MDGs required States to “halve ... the proportion of people without sustainable access to safe drinking water and basic sanitation.”⁶ One of the indicators was used to track progress was the provision of an improved sanitation facility in households. Since 1990, there has been a 36 percent increase in the number of South African households that have access to improved water supply.⁷

⁴ Statistics South Africa *Poverty Trends in South Africa: an examination of absolute poverty between 2006 to 2015* (2017) 44. The unemployment rate currently sits at 26.7 percent.

⁵ Ibid 14.

⁶ UN Sustainable Development Goal 6: Ensure availability and sustainable management of water and sanitation for all <<https://sustainabledevelopment.un.org/sdg6>>.

⁷ World Health Organisation *Progress on Sanitation and Drinking Water - 2015 update and MDG assessment* (2015) 73.

While there has been a notable increase in the number of people who have access to water and sanitation in post-apartheid South Africa,⁸ the number of people without access to reliable water supply and decent sanitation remains unacceptably high.⁹ According to a survey conducted by Stats SA in 2016, only 44.4 percent of people had access to water inside their dwelling, while 30 percent of households had taps within their stand and the remaining made use of communal taps and natural water sources such as rivers and dams.¹⁰ These statistics indicate that despite the passage of 24 years since democratic elections in South Africa, the proportion of people using communal taps remains significantly high and the reliance on the use of natural water sources for access ought to have been eradicated by now.

The same survey found that 60.6 percent of South Africans have access to a flush toilet connected to public sewerage system while 2.2 percent of South Africans are still using the bucket system.¹¹ In 2014, the Commission reported that “approximately 1.4 million households (formal and informal) have yet to be provided with sanitation services.”¹²

⁸ Statistics South Africa *The state of basic service delivery in South Africa: In-depth analysis of the Community Survey 2016 data* (2016) 14, 35.

⁹ Ibid 14 & 37.

¹⁰ Ibid 14.

¹¹ Ibid 36.

¹² South African Human Rights Commission (note 1 above) 1.

CHAPTER 03

LEGISLATIVE FRAMEWORK ON WATER AND SANITATION

Domestic Law and Policy

Section 27(1)(b) of the Constitution guarantees everyone the right of access to sufficient water, and requires that the state take reasonable and other measures within its available resources to ensure the progressive realisation of the right. The Constitution implicitly recognises the right to sanitation via associated rights provided for in the Bill of Rights including the rights to a healthy environment,¹³ health¹⁴ and dignity.¹⁵

Further, the Local Government Municipal Systems Act, 32 of 2000 (Local Government Act) was promulgated to “provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of communities.”¹⁶ The Local Government Act entrenches an obligation for the delivery of basic services to all. A basic service is defined as “a municipal service that is necessary to ensure an acceptable and reasonable quality of life”¹⁷ and, if not provided, would endanger public health or safety or impact on the natural environment. A basic service would include access to water and sanitation.

Section 3 of the Water Services Act, 108 of 1997 interprets section 27 of the Constitution by stipulating that everyone has the right of access to water and basic sanitation, relevant state institutions must take reasonable measures to realise these rights and that relevant authorities must provide measures to realise these rights.

The South African Constitutional Court has readily accepted and articulated the interrelationship of rights and substantive meanings to be attached to them. In the seminal judgment of the *Government of South African v Grootboom*,¹⁸ the Constitutional Court expressed this substantive meaning by recognising that sanitation and access to water are significant elements constituting adequate housing:

¹³ Section 24, Constitution of the Republic of South Africa Act 108 of 1996.

¹⁴ Section 27(a).

¹⁵ Section 10.

¹⁶ Local Government Municipal Systems Act, 32 of 2000 2.

¹⁷ *Ibid* 14.

¹⁸ 2001 (1) SA 46 (CC).

[H]ousing entails more than bricks and mortar. It requires available land, *appropriate services such as the provision of water and the removal of sewage* and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing *all of these conditions need to be met: there must be land, there must be services, and there must be a dwelling.*¹⁹

The interpretation of the right to adequate housing adopted by the Constitutional Court is thus inclusive of basic sanitation.²⁰ A number of other judicial pronouncements recognise and enforce this understanding, highlighting the adverse impacts on the basic rights of dignity, environment, health food, social security and freedom amongst others, where the provision of sanitation is not considered.

In *Beja v Premier of the Western Cape*,²¹ the Western Cape High Court found that “[a]ny housing development which does not provide for toilets with adequate privacy and safety would be inconsistent with section 26 of the Constitution and would be in violation of the constitutional rights to privacy and dignity”²² The court concluded by indicating that by providing people with unenclosed toilets, the City of Cape Town violated the rights of the people to dignity, freedom and security, privacy, environment, housing and health care, food, water and social security.²³

In 2012, the Presidency launched the National Development Plan (NDP), which is considered a blueprint for the elimination of poverty and inequality. South Africa is widely considered the most unequal country in the world,²⁴ and the degree of economic inequality is aggravated by substantial developmental challenges. These challenges included a lack of equitable access to basic services such as water and sanitation. The NDP aims to address these challenges by reducing the proportion of people living in poverty, reducing income inequality and reducing poverty-induced hunger by 2030.

The Strategic Framework for Water Services in South Africa states that:

A basic sanitation facility is safe, reliable, private, protected from the weather and ventilated, keeps smells to the minimum, is easy to keep clean, minimises the risk of the spread of sanitation-related diseases by facilitating the appropriate control of disease carrying flies and pests, and enables safe and appropriate treatment and/or removal of human waste and wastewater in an environmentally sound manner.²⁵

The domestic policies on water and sanitation have been documented comprehensively in the Commission’s 2014 Report on water and sanitation.²⁶ However, a notable policy development occurred in 2015 with the adoption of the National Sanitation Policy, which recognises sanitation as a public good that extends beyond the household boundary. However, the National Sanitation policy is concerning as does not expressly recognise sanitation as a human right to which everyone is entitled. This is contradictory to international pronouncements and South African jurisprudence.

¹⁹ Ibid para 35 (emphasis added).

²⁰ SPII *Monitoring and Evaluating the Progressive Realisation of the Right to Water and Sanitation in South Africa* Working Paper 12 (2016) 106.

²¹ 2011 (10) BCLR 1077 (WCC).

²² Ibid para 143.

²³ Ibid.

²⁴ <<http://databank.worldbank.org/data/reports.aspx?source=2&series=SI.POV.GINI&country=>>.

²⁵ Department of Water Affairs and Forestry *Strategic Framework for Water Services* (2003).

²⁶ South African Human Rights Commission (note 1 above) 24.

Regional and International Obligations

The UN has adopted a series of treaties and conventions, which either explicitly or implicitly recognises the rights to water and sanitation. Article 25 of the Universal Declaration of Human Rights explains that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.²⁷ The 1979 Convention on the Elimination of All Forms of Discrimination against Women calls on States to ensure that women have the right to “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply”. The 1989 Convention on the Rights of the Child obliges states to combat disease and malnutrition by providing children with adequate nutritious food and clean drinking water. It further obliges them to ensure that people are “informed, have access to education and are supported in the basic knowledge of ... hygiene and environmental sanitation”.

Article 11 of the International Covenant on Economic, Social and Cultural Rights states that everyone has the right to an adequate standard of living, which includes adequate housing that is accessible and available. The Committee on Economic, Social and Cultural Rights adopted (CESCR) General Comment 15 in 2002, which declares that “the human right to water is indispensable from leading a life in human dignity. It is a prerequisite for the realisation of other human rights”. The General Comment prescribes core State obligations relating to the right to water, outlines violations of those obligations and sets out a clear policy roadmap for states to work towards the progressive realisation of the right to water.²⁸ General Comment 15 prescribes State duties as ensuring “access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent diseases” and “to take measures to prevent, treat, and control diseases linked to water, in particular ensuring access to adequate sanitation.”²⁹

According to General Comment No 15 of the CESCR, access to water should comply with requirements such as availability, quality, safety, acceptability and financial affordability.³⁰ Therefore, water should be available in sufficient quantity for personal and domestic use; it should be safe and of suitable quality and represent no health risk.

In 2010, the UN General Assembly passed a resolution on the human right to water and sanitation. This resolution recognised the “right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights” and called on “states and international organisations to provide financial resources, capacity-building and technology transfer... to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all”. This resolution has influenced other international developments, which are geared towards giving substance to the right to water and sanitation. For example, the 2030 Agenda for Sustainable Development of 2014 envisages “a world where we affirm our commitments regarding the human right to safe drinking water and sanitation and where there is improved hygiene”.

²⁷ UDHR 1948.

²⁸ K Moyo *Water as a human right under international human rights law: Implications for the privatisation of water services* Unpublished LLD, Stellenbosch University (2013) 32-34.

²⁹ CESCR *General Comment No. 15: The Right to Water (Arts 11 and 12 and 12 of the Covenant)* E/C.12/2002/11 (2003) para 37.

³⁰ Office of the High Commissioner for Human Rights *General Comment No. 15: The Right to Water* (2010)

In 2016, the Human Rights Council (HRC) adopted a resolution where it expressed concern at the negative impact that a lack of access to water and sanitation and hygiene has on health and mortality.³¹ The HRC has also recognised the challenges faced by women and girls in accessing water and sanitation, particularly during their menstrual cycle, and that the deprivation of the right, reinforces widespread stigma associated with menstruation. This in turn often impacts on both the right to education and health.³² The HRC further noted, with concern, that gender inequalities still exist in the realisation of the right to safe drinking water and sanitation.³³ The resolution was adopted by vote with the South African government voting in favour.

The SDGs recognise that access to water and sanitation constitutes services that are essential to poverty and inequality alleviation and survival. SDG 6 calls on States and people to “ensure availability and sustainable management of water and sanitation for all.”



Some of the notable targets under Goal 6 include:

- a. By 2030, achieve universal and equitable access to safe and affordable drinking water for all;
- b. 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;
- c. Improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally;
- d. Substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity and;
- e. Support and strengthen the participation of local communities in improving water and sanitation management.³⁴

³¹ UN Human Rights Council *The human rights to safe drinking water and sanitation* A/HRC/33/L.19 (2016).

³² Ibid.

³³ SAHRC *International and Regional Human Rights report 2016/2017* (2017).

³⁴ <<https://www.un.org/development/desa/disabilities/envision2030-goal6.html>>

CHAPTER 04

WATER AND SANITATION AND RELATED ECONOMIC AND SOCIAL RIGHTS

All socio-economic rights are interconnected and interdependent and the right to water and sanitation is essential for the realisation of associated rights such as the right to food, education and health. The analyses which follow explore some impacts to related rights where a lack of access to water and sanitation occurs. Steps taken by the state to address such shortcomings and associated impacts are also considered.



The Right to Education

The 2014 Recommendation

In the 2014 Report on water and sanitation the Commission recommended that the Department of Basic Education (DoBE) put in place a plan to address water and sanitation backlogs in schools within a specified timeframe. During the development of this plan the DoBE was instructed to pay particular attention to the special needs of girls and to ensure that the money allocated to the provision of water and sanitation is not in competition with the provision of other services.

Evaluation of Implementation

In November 2013, the DoBE promulgated the Minimum Uniform Norms and Standards for Public School Infrastructure (Norms and Standards), with the aim of ensuring *inter alia*:

- The implementation of minimum uniform norms and standards for public school infrastructure;
- Compliance with these norms and standards;
- Timeframes for the eradication of school infrastructure backlogs;
- The provision of water; and
- The provision of sanitation.



In the information provided to the Commission, the DoBE states that it has developed two programmes specifically aimed at addressing water and sanitation backlogs in public schools, namely the Accelerated School Infrastructure Delivery Initiative (ASIDI) and the Provincial Schools Build Programme.³⁵ The purpose of ASIDI is to address school infrastructure backlogs to meet basic safety norms and standards by eradicating schools constructed from inappropriate materials and ensuring the provision of basic water, sanitation and electricity in schools. Under this programme, 615 schools were provided with water and 418 with sanitation, while 548 sanitation and 670 water projects are currently at the implementation stage.³⁶ The Provincial Schools Build Programme, which is funded through the Education Infrastructure Grant and a provincial contribution through equitable share, has 573 sanitation and 404 water projects in its implementation stage.³⁷

During the 2015/2016 financial year the ASIDI programme is reported to have consistently underspent its allocated budget. This resulted in a budget allocation decrease for the 2016/2017 period, which then led to the DBE failing to meet its ASIDI targets.³⁸ Most failures of the ASIDI programme are evident in the Eastern Cape, which has the biggest infrastructural backlog and is home to 800 schools built of mud, wood, corrugated iron and fibrecrete.³⁹ The programme reportedly aimed to build 510 schools in the Eastern Cape during 2010 to 2014, and yet has only managed to build 179 schools in a six year period.⁴⁰

A study conducted by NEIMS in 2016 showed that 99.6 percent of ordinary public schools in South Africa have access to water, however, 5 004 schools have an unreliable water supply and 171 schools have no water supply at all, many of these located in the Eastern Cape and KwaZulu-Natal provinces. The Eastern Cape province is also home to some of the worst performing schools, achieving a 59.3 percent matric pass rate in 2016, which was 13.2 percent lower than the national average.

³⁵ Department of Basic Education 'Implementation of the recommendations of the South African Human Rights Commission's 2014 report on access to water and sanitation' (27 September 2017).

³⁶ Ibid.

³⁷ Ibid.

³⁸ South African Human Rights Commission *National Human Rights Institution Report to the United Nations Committee on the Economic, Social and Cultural Rights* (November 2017) 28. See Parliamentary Monitoring Group *Infrastructure and Rationalisation: Provincial Education Departments Reporting System Review, Presentation to the Basic Education Portfolio Committee* (7-03-2017).

³⁹ N Soon-Shiong 'Equalisers fight for schools not built' *Mail and Guardian* (3 November 2017).

⁴⁰ Ibid.

Figure 1: Water Supply National Education Infrastructure Management System (NEIMS)⁴¹**SITE TYPE: ORDINARY OPERATIONAL SCHOOLS**

PROVINCE NAME	NUMBER OF SITES	NO WATER SUPPLY	UNRELIABLE WATER SUPPLY	WATER SUPPLY	BOREHOLE WELL ON SITE	MOBILE TANKERS	MUNICIPAL COMMUNAL	MUNICIPAL YARD SUPPLY	RAINWATER HARVESTING
Western Cape	1 441	0	8	1 441	163	81	354	921	10
Eastern Cape	5 433	53	1 958	5 378	1 040	44	642	2 076	3 188
Northern Cape	534	0	54	534	244	7	50	364	61
Free State	1 227	27	57	1 200	365	36	98	766	21
KwaZulu Natal	5 839	91	1 522	5 740	1 538	332	574	2 638	2 885
North West	1 485	0	260	1 485	915	95	211	777	5
Gauteng	2 069	0	81	2 069	314	26	313	1 696	86
Mpumalanga	1 715	0	235	1 715	628	228	429	646	5
Limpopo	3 834	0	829	3 834	2 793	245	632	1 306	204
TOTAL	23 577	171	5 004	23 396	8 000	1 094	3 303	11 190	6 5177

One site can have more than one type of water source.

* 1 023 number of projects are in design and planning or construction stages.

While access to water and sanitation in schools may not be said to be the sole determinant of educational outcomes, the Commission and civil society organisations working in the sector - including Equal Education (EE), a civil society organisation which advocates for quality and equality in South Africa's education system - have consistently linked poor learning conditions and persistent inequality in society to poor learning outcomes.⁴²

Considering the level of compliance with its recommendations relating to water and sanitation in schools across the country, it is apparent that the Norms and Standards applied by the DoBE had differing levels of success across provinces and that the provinces most in need, have been largely ignored.

⁴¹ Department of Basic Education (note 32 above).

⁴² Equal Education *Planning to Fail: A Report on Equal Education's Eastern Cape School Visits* (November 2016) 7.

Figure 2: Access to Sanitation: NIEMS⁴³

SITE TYPE: ORDINARY OPERATIONAL SCHOOLS

PROVINCE NAME	NUMBER OF SITES	PIT	BUCKET	ENVIRO LOO	VIP	FLUSH TOILET SCEPTIC TANK	FLUSH TOILET MUNICIPAL	MOBILE TOILETS	CHEMICAL TOILETS	ALT. SANITATION	WITHOUT FACILITIES
Western Cape	1 441	0	0	1	9	209	1 1375	3	0	0	0
Eastern Cape	5 433	2 369	0	84	2 244	213	1 009	5	8	0	62
Northern Cape	534	62	0	31	87	86	357	8	1	0	0
Free State	1 227	317	0	41	136	135	730	5	1	0	6
KwaZulu Natal	5 839	2 608	0	199	2 357	550	1 582	63	65	4	0
North West	1 485	476	0	41	308	473	689	14	8	1	0
Gauteng	2 069	7	0	13	25	152	1 938	100	8	0	0
Mpumalanga	1 715	835	0	88	546	457	496	0	0	0	0
Limpopo	3 834	2 529	0	1 252	1 393	637	398	1	3	0	0
TOTAL	23 577	9 203	0	1 750	7 105	2 912	8 574	199	94	5	68

One site can have a combination of different types of ablution facilities.

* 1 242 projects are in design and planning or construction stages.

The response provided to the Commission by the DoBE seen in the table above and the research conducted by EE in 2016 reiterates this finding. Based on the research, EE found that while all of the 60 schools visited had some sanitation, five of the schools had no working toilets.⁴⁴ In 52 percent of the schools, there were more than 30 learners per toilet and the toilets were found to be 'filthy,' while at times entire schools had to rely on two or three pit toilets.⁴⁵ Additionally, of the 23 577 ordinary public schools in South Africa, 9 203 have improved or unimproved pit toilets. Such toilets are not an acceptable form of basic sanitation because they are generally unventilated, dangerous and not acceptable for female learners.⁴⁶

CONCLUSION

The Commission accordingly finds that the DoBE has failed to adequately meet its own targets set out in the Minimum Norms and Standards, through the ASIDI programme, which states that by November 2016, all public schools must have access to water, electricity and sanitation. The DoBE has failed to implement the Commission's recommendations to address water and sanitation backlogs in public schools. The Commission further recommends in this regard that the DoBE audit the ASIDI programme in order to evaluate the causes of under-spending and develop an urgent plan to combat this.

⁴³ Department of Basic Education (note 32 above).

⁴⁴ Equal Education (note 39 above) 3.

⁴⁵ Ibid 4.

⁴⁶ DWAF *Sanitation Technology Options*, 5, as referenced in K Tissington *SERI Guide to Basic Sanitation* (2011) 9.



Right of Access to Adequate Housing

The 2014 Recommendation

In its 2014 Report on water and sanitation, the Commission recommended that the Department of Human Settlements (DHS), transfer the responsibility for the provision of sanitation services to the Department of Water Affairs, which was subsequently changed to the Department of Water and Sanitation (DWS).

Evaluation of implementation



The right to water and sanitation is intimately linked to the right of access to adequate housing and should be considered a part of a larger framework of rights,⁴⁷ as held in the *Grootboom*⁴⁸ judgment and in General Comment No 15 of the CESCR⁴⁹. The realisation of these rights thus requires coordination between the different government departments, including the DHS, DWS and the Department of Cooperative Governance and Traditional Affairs (COGTA).

The DHS has confirmed in writing to the Commission that the responsibility for the Rural Household Infrastructure Programme was transferred to the DWS. The purpose of this programme is to provide on-site sanitation and water facilities to rural communities.⁵⁰ During the 2016/17 financial year, the DWS merged the Municipal Water Infrastructure, the Water Services Operating Subsidy, and the Rural Households Infrastructure Grants into a single grant called the Water Services Infrastructure Grant.⁵¹ The purpose of the Water Services Infrastructure Grant was to “facilitate the planning and implementation of various water and sanitation projects to accelerate backlog reduction and improve the sustainability of services.”⁵² The Commission welcomes this development as it is believed that it will lead to more coherent and integrated development planning and budgeting which will leader to greater service delivery and oversight.

Access to water and sanitation is a persistent challenge, which requires urgent redress. In 2016 the Commission published a report which detailed various human rights violations committed by the City of Cape Town against residents of Netreg. The complaint detailed inadequate sewerage drainage which caused human waste to spill over onto properties, leaking roofs, inadequate storm water drainage, toilets without doors or with broken flushing systems, blocked drainage, no access to water in certain property or restricted access to water.⁵³ In this matter, the Commission concluded that the City of Cape Town had violated the residents’ rights to adequate housing, access to a free basic water supply and the right to decent sanitation.

⁴⁷ SPII (note 18 above) 107.

⁴⁸ *Grootboom* (note 16 above).

⁴⁹ CESCR (note 26 above).

⁵⁰ <http://www.dhs.gov.za/sites/default/files/documents/publications/Rural_Housing_Infrastructure_Programme.pdf>.

⁵¹ DWS *Annual Performance Plan 2016/17 to 2018/19* (2016)

<<http://www.dwa.gov.za/downloads/MediaProduction/Sannet/APP%202016-17%20-%2017-18=27%20Feb%202016/APP%202016-17%20-%2017-18=27%20Feb%202016.pdf>> 104.

⁵² Ibid.

⁵³ South African Human Rights Commission *Investigative Report on Netreg Concerned Residents Organisation and City of Cape Town* File Ref. No. WP/1213/0055 (June 2016) 3-4.

The Social Justice Coalition (SJC), a civil society organisation operating mainly in informal settlements, conducted a social audit of water and sanitation facilities in townships in the City of Cape Town (CoCT). The SJC's social audits reported a number of disturbing findings concerning the quality and safety of communal toilets provided by the CoCT to residents in Khayelitsha. A third of the residents reported that the toilets are only cleaned once a week and that residents often resort to cleaning the toilets themselves on behalf of the community. One quarter of the flush toilets inspected by the SJC were not working.⁵⁴ The state of the toilets in Khayelitsha was one of the concerns informing the Khayelitsha Commission of Inquiry.⁵⁵ Residents of Khayelitsha reported feeling unsafe when using communal toilets at night. Further, there was an inadequate number of toilets which meant that one toilet could be used by as many as ten households.⁵⁶

CONCLUSION

The case of Khayelitsha shows that while government departments report on service to specific areas, the reality is that such services are not always of an adequate standard and ultimately affects large numbers of people. The situation in the CoCT is further concerning due to the drought that the city is currently facing. The CoCT's dam levels are at 24.5 percent as at February 2018,⁵⁷ and there are concerns that water scarcity brought on by the drought will disproportionately and seriously affect those who already experience significant challenges to accessing water and sanitation services.⁵⁸ The Commission has committed to monitoring the human rights implications of the drought in the Western, Eastern and Northern Cape provinces.

⁵⁴ Social Justice Coalition *Our toilets are dirty: Report of the social audit into the Janitorial Service for communal flush toilets in Khayelitsha, Cape Town* (2014).

⁵⁵ K O'Regan & V Pikoli *Towards A Safer Khayelitsha Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha* (2014).

⁵⁶ Ndifunukwazi *Our Struggle for Safety and Justice in South Africa* (January 2014) 27.

⁵⁷ COGTA *The outcomes of the Inter-Ministerial Task Team meeting on Drought and Water Scarcity held on 30 January 2018* (February 2018) 3.

⁵⁸ The drought experienced in South Africa were declared a national disaster on 13 March 2018 <<http://www.cogta.gov.za/?p=3425>>.



Right to Personal and Environmental Health

The 2014 Recommendation

A specific recommendation by the Commission concerned the responsibility by business to clean up water sources in the mining sector. The Commission recommended that the former DWA (now DWS) put in place a system to ensure that mines are responsible for cleaning up water sources that they have polluted during mining or prospecting activities, within a specific time.



Evaluation of implementation

Reliable access to water is essential for personal health, hygiene and dignity and access to clean, potable water is essential for the realisation of the right to life. Exposure to unsafe drinking water and inadequate sanitation can lead to cholera, typhoid fever and other diseases.⁵⁹ Access to water and sanitation is also crucial in the fight against HIV/AIDS, TB and other communicable and non-communicable diseases.

In its 2016/17 Annual Report, the DWS stated “Freshwater eco-systems protected from Acid Mine Drainage” as one of its strategic objectives but reported that its Draft Mine Water Regulation Programme target was not achieved due to the finalisation of the policy taking longer than anticipated.⁶⁰ While the Commission was conducting research for the *National Hearing on Underlying Socio-economic Challenges of Mining-affected Communities in South Africa*, it found that communities expressed concerns about the depreciation of water sources and the potential contamination of water resulting from mining. The challenge of acid mine drainage in mine affected communities, some of which are severely underdeveloped, impacts greatly on such communities by further polluting their water supply and exposing them to health risks.

CONCLUSION

The Commission notes that the absence of adequate regulation of water use by the mining industry may lead to continued human rights violations against affected communities. It is important that the policy on the regulation of mine waste developed in consultation with communities and other stakeholders, is expedited. Such a policy will contribute greatly to securing commitment from business for respecting human rights, while alleviating the multiple scourges of poverty on affected people. The Commission is open to engagement with the Department of Mineral Resources and the DWS in this regard.

⁵⁹ D Hemson 'Water, sanitation and health: South Africa's remaining and existing issues' (2016) *South African Health Review* 26.

⁶⁰ DWS *Annual Report 2016/2017* (2017) 75.

CHAPTER 05

WATER AND SANITATION AND THE RIGHT TO EQUALITY

According to the DWS, “[s]anitation is one of the basic necessities, which contributes to human dignity and quality of life and is an essential prerequisite for success in the fight against poverty, hunger, child deaths, gender inequality and empowerment.”⁶¹ When the Commission conducted its hearings on water and sanitation it paid particular attention to the service delivery needs of the most vulnerable members of our society. Their concerns found expression in its recommendations in respect of governance from a human rights based approach.

Women, Girls and other Vulnerable Groups

The 2014 Recommendation

The Commission, in its 2014 Report on water and sanitation, recommended to the DoBE that it work with the DHS and the former DWA (now DWS) to ensure that service delivery projects address the special needs of women and girls, with the objective of, amongst others, to eradicate school drop-out rates that result from poor water and sanitation facilities.

Evaluation of Implementation

Position 17 of the National Sanitation policy makes provision for Gender, Youth and Disabled in Sanitation Services.⁶² Furthermore, “global research indicates that sanitation interventions that are designed and managed with the full participation of women are more likely to be sustainable and effective.”⁶³ The National Sanitation policy position states that women must play a meaningful role at all levels in consultation, planning, decision making and in the management of water services. The safety and the dignity of girls and women need to be considered in the provision of sanitary services.



⁶¹ Department of Water Affairs *National Sanitation Policy* (2016) 2.

⁶² Ibid.

⁶³ Ibid 34.

The UN Water policy brief on Gender, Water and Sanitation, conveys the link between access to safe drinking water and basic sanitation to gender equality and the empowerment of women, by demonstrating how access to a domestic water supply and sanitation reduces the time, health and care-giving burden of women.⁶⁴ In communities without access to running water, women often bear the burden of collecting water from communal or natural water sources on behalf of their family. Convenient access to water and sanitation facilities increases privacy and reduces the risk of sexual violence and assault against women and girls.⁶⁵ South Africa has an unacceptably high rate of assault and rape, and women and girls are exposed to unnecessary risk when collecting water or using sanitation facilities situated a distance from their home or in poorly lit areas outside their homes.⁶⁶ Access to safe water and basic sanitation in every household in South Africa would make women and girls less vulnerable to violence and sexual assault.

CONCLUSION

The Commission accordingly finds that the relevant state departments have considered the needs of women and girls when making policies. The translation of the policies into action which has a positive impact on the lives of women, girls and other vulnerable groups remains to be evaluated. At this time, however, women, girls and other vulnerable groups still face systemic challenges to accessing safe sanitation services.

⁶⁴ UN Water *Gender, Water and Sanitation* (2016) 2.

⁶⁵ Ibid.

⁶⁶ SAHRC *National Human Rights Institution Report to the United Nations Committee on the Economic, Social and Cultural Rights* (2017); Mpumalanga News 'A woman's rape ordeal compelled Mhala police to build the victim a decent toilet at her home in Islington, Thulamahashe.' Mpumalanga News <<https://mpumalanganews.co.za/311177/rape-victims-family-will-no-longer-use-bush-toilet-thulamahashe/>>.

Spatial Inequalities and Access to Water and Sanitation

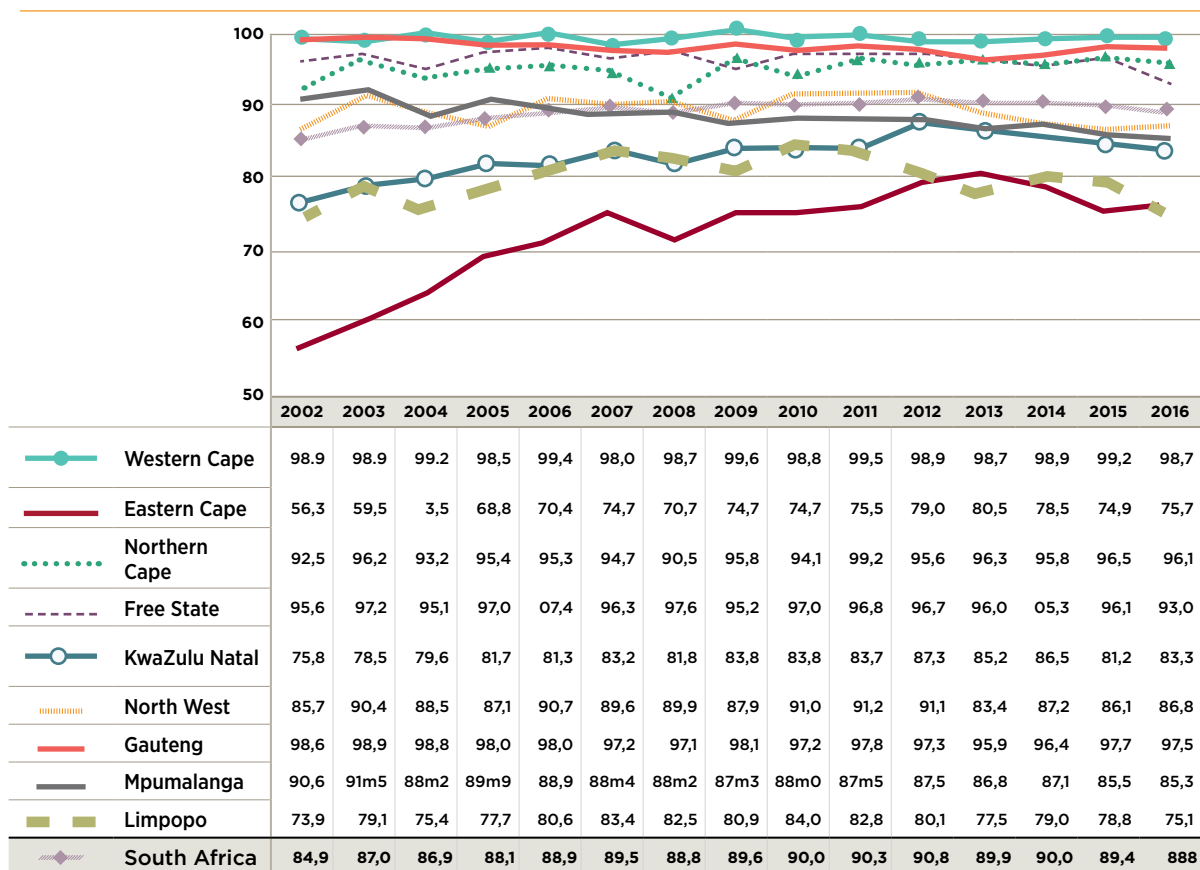
The 2014 Recommendation

In 2014, the Commission recommended to the former DWA that the bucket system be eradicated as soon as possible in all provinces and that the relevant government departments agree on plans with timelines for the eradication of buckets in all existing settlements. This plan should have been communicated to all affected communities and the Commission once finalised.

Evaluation of implementation

Access to water is not equal among South Africa's nine provinces. In 2016, the average access to piped water in South Africa was 88.8 percent, while in Limpopo and the Eastern Cape only the average proportions were 75.1 percent and 75.7 percent respectively. This discrepancy was initially the result of apartheid spatial planning, which distributed services unequally between the provinces. Since 1994, poor planning, corruption and questionable governance failed to remedy the situation and in some cases, exacerbated it. Provinces with large portions of rural land, such as the Eastern Cape, Limpopo, Kwa-Zulu Natal and the Northern Cape, struggle to catch up with the rest of South Africa because of historical underdevelopment and a persistent apartheid legacy.

Figure 3: Percentage of households with access to piped or tap water in their dwellings, off-site or on-site by province, 2002–2016⁶⁷



⁶⁷ Statistics South Africa *Water and Sanitation: In-depth analysis of the General Household Survey 2002–2015 and Community Survey 2016 data* (2016) 25.

Figure 3 demonstrates inequalities between the nine provinces, households in the Eastern Cape, KwaZulu-Natal, North West, Mpumalanga and the Limpopo provinces fall below the national average in terms of access to piped water whether onsite or off-site. The Eastern Cape and the Limpopo province have the least access to piped water, and have been associated with a number of developmental challenges, including high levels of poverty, poor education outcomes and high levels of unemployment.

The 2014 Recommendation

In order to ensure that people have safe water and decent sanitation, the COGTA and the National Treasury should evaluate how the state can strengthen the impact of existing mechanisms and programs for poorer and outlying municipalities. This includes ensuring that the Municipal Infrastructure Support Agent (MISA) (which deploys technical capacity into district), as well as government's capacitation grants, capital grants and technical assistance grants aimed at assisting municipalities with the execution of their powers and functions, are utilised for the intended function.



Evaluation of Implementation

In its 2015 annual report, the MISA identified a number of challenges faced by municipalities, including inadequate integrated planning and monitoring, inadequate capacity to plan, deliver and operate infrastructure, inadequate funding and inadequate coordination and performance management.⁶⁸ In order to combat these challenges, the MISA established the Municipal and Sectoral Technical Support Programme, which provides technical support to municipalities towards improvement in infrastructural planning, implementation and operation and maintenance.⁶⁹ One of the objectives in this programme is to provide support to municipalities to strengthen their capacity and capability to deliver on their water and sanitation targets. In its annual report, the MISA reported that it only achieved 53 percent of its objectives, while it failed to support 19 municipalities of those that it had intended to provide with support.⁷⁰

During the writing of this report, the Commission contacted the DWS requesting information on the status of the implementation of the recommendations relevant to it. The DWS failed to respond, which is concerning given that all state departments have a constitutional mandate to respond to all requests for information made to them by the Commission. In the absence of a response from DWS, the Commission has relied on its own reports, reports from civil society, information from statutory monitoring and research bodies and information on the DWS's website.

⁶⁸ MISA Annual Report 2014/2015 (2015) 23-24.

⁶⁹ Ibid 38.

⁷⁰ Ibid 43.

In its Annual Report for the 2016/2017 financial year the DWS reported, under its strategic objective to “enhance the provision of sustainable and dignified basic sanitation,” that it had replaced a total of 1 838 bucket toilets during 2015/2016 and 6 978 during 2016/2017 in formal settlements.⁷¹ For the 2016/2017 term, it had planned to provide 13 591 “sustainable and dignified basic sanitation” and exceeded its target by supplying 19 424 “sustainable and dignified basic sanitation” services. The number of rural households provided with access to sanitary services in order to eradicate sanitation backlogs in terms of the DWS’s norms and standards was 12 446 in the 2016/2017 financial year, this figure is 2 990 in excess of the targeted number of households.

CONCLUSION

Based on research by the Commission and in the absence of formal responses from the DWS, it would appear that there has been an increase in the number of households which have access to water and sanitation but disproportionate access to water and sanitation between the different provinces remains evident. While the progress made by the DWS may not be as a result of the recommendations made by the Commission, it is nonetheless in line with the recommendations made by the Commission. The Commission notes this increase in overall access to water and sanitation but is concerned by the disproportionate enjoyment of access to water and sanitation across the nine provinces and the continued use of buckets in some provinces.

⁷¹ Department of Water and Sanitation *Annual Report for 2016/17 Financial Year* | Vote 36: Department of Water and Sanitation (2017) 70.

CHAPTER 06

WATER AND SANITATION AND RELATED CIVIL AND POLITICAL RIGHTS

Access to the rights to water and sanitation, and other basic services, has created politically active citizens who take to the streets in order to claim their rights. It has also led to questions around justice and accountability in terms of budgeting and policy implementation. In what follows, the implementation of the recommendations that relate to civil and political rights made by the Commission in its 2014 Report, is evaluated.

Claiming the Rights to Water and Sanitation



The 2014 Recommendation

In its 2014 Report on water and sanitation, the Commission recommended to the National Treasury that it liaise with community-based civil society organisations (CBOs) on proposals on the provision of water and sanitation and to potentially provide CBOs with funding to implement appropriate projects, with monitoring from the relevant government departments and other CBOs.



Evaluation of Implementation

In South Africa, economic and social rights are most commonly claimed through protest, litigation or a combination of the two. In 2010, the Community Law Centre of the University of Western Cape conducted a survey to establish the causes of service delivery protests. It found that 18 percent of all protests were due to a lack of access to clean water and 15 percent due to a lack of access to adequate sanitation.⁷² These protests usually occur when citizens have exhausted all other avenues of communication and have to resort to protests – and at times violence – in order to have their voices heard.⁷³

⁷² Community Law Centre *Community protests in South Africa: Trends, Analysis and Explanations* (2010) 29-31.

⁷³ Karl von Holdt et al *The smoke that calls: insurgent citizenship, collective violence and the struggle for a place in the new South Africa* (2011).

During such protests, the police have been accused of reacting violently to protesters thus infringing on their right to assemble.⁷⁴ Further, litigation has become increasingly expensive and lengthy and does not always yield the desired outcome for a community. Only a small percentage of the population is able to seek redress through the courts through the assistance of legal NGOs. Litigation poses challenges in securing expeditious relief both because favourable outcomes are not guaranteed and because of factors relating to time, complexity and psycho-social barriers. Furthermore, there is no guarantee that the State will comply with court orders.

In the National Sanitation Policy, the DWS admits that the participation of CBOs in the provision of sanitation services has been largely abandoned,⁷⁵ but added that the participation of CBOs is encouraged. This is indicated by the DWS's commitment to engage, support, encourage and assist CBOs in matters relating to the provision of sanitation. Position 20 of the National Sanitation Policy provides for the capacity of communities to participate in the provision of sanitation services and states that the approach employed has been a top-down one and that there is a need to embrace bottom-up approaches.⁷⁶

CONCLUSION

The National Sanitation Policy commits to service delivery, which is in line with Commission's recommendations. The implementation of this recommendation would not only assist the state in fulfilling its mandate, but allow for a participatory approach to service delivery. The Commission will continue to monitor this.

⁷⁴ Section 17, Constitution.

⁷⁵ DWA (note 57 above) 26.

⁷⁶ Ibid 38.



Access to Justice and Accountability

The 2014 Recommendation

In 2014 the Commission recommended that COGTA conduct an audit of relevant policies relating to water and sanitation and liaise with the Commission to reformulate those policies that are not in line with the Bill of Rights. The Commission further recommended that national human rights campaign take place to address budgets and Integrated Development Plans (IDPs) and the role that citizens can play in the development and implementation of such plans. This campaign would communicate budgets and IDPs in plain and accessible language so that the choices and priorities can be monitored. Human rights such as water and sanitation could be addressed without trade-offs on other socio-economic rights. The campaign would ensure that communities are empowered to scrutinise budgets and hold government and the businesses that they contract, to account.



Evaluation of Implementation

In response to this recommendation, the National Treasury informed the Commission that South Africa regularly ranks among the top nations in the Open Budget Index and has recently launched a Municipal Money website, which enables communities to scrutinise local government spending. The transparency of this website would make it easier for communities to hold their municipalities to account, although a lack of access to the internet⁷⁷ and poor literacy rates will be a limiting factor to participation in this case. Civil society organisations such as Code for South Africa and My Vote Counts have called for greater transparency and public participation in the government budgeting process and recently transparency in political party funding.

The SJC is reported to have been forcefully and violently removed from the CoCT's special budget meeting in 2017, while protesting silently and peacefully in the public gallery in attempt to demand engagement with the CoCT and to demand its adherence with certain guidelines.⁷⁸ This is concerning to the Commission because organs of states have a constitutional duty to engage with the public on matters which concern them.

⁷⁷ It is reported that over 26 million South Africans are unable to access online spaces. See Association for Progressive Communications *Perspectives on Universal Free Access to Online Information in South Africa: Free Public Wi-Fi and Zero-Rated Content* Issue Papers (September 2017) 2.

⁷⁸ SJC 'City of Cape Town Budget Leaves Poor in Darkness – SJC' (June 2017) *Political Analysis* <<https://www.politicalanalysis.co.za/2017/06/28/city-of-cape-town-budget-is-exclusionary-and-anti-poor-sjc/>>.

To realise the rights of access to basic water and decent sanitation, the public must have access to information which can be used to enforce their rights and hold the government accountable for the realisation of the right to water and sanitation. The Commission will engage with COGTA and national Parliament about the audit it recommended to secure monitoring information given its significance to measuring the realisation of the right to water and sanitation.

The 2014 Recommendation

The Commission recommended that the Presidency, through the DPME, engage with existing government multi-department structures that deal with water and sanitation to ensure the necessary coordination and oversight in relation to the provision of water and sanitation is achieved.

Evaluation of Implementation

The Commission obtained a response from the DPME stating that the President established an Inter-Ministerial Task Team on service delivery in 2014 to ensure access to water, sanitation and other services. This team was led by the Minister of COGTA. A coordinated approach between the different government departments responsible for the provision of water and sanitation has the effect of improving service delivery, the roles of the different departments would be clearly defined which improves the effectiveness of the departments. The Commission looks forward to receiving information on the progress made by this task team in terms of improving access to water and sanitation in South Africa.



CONCLUSION

The Commission is of the view that an open budget, although necessary, does not automatically equate to a fair one; meaningful engagement with the public on budgetary allocations is essential to ensure that budgeting responds to the needs of the people. The Commission thus recommends that the CoCT and the DWS provide it with information on the measures they have taken to solicit the views of communities in their budgeting processes for water and sanitation services.

CHAPTER 07

GOVERNMENT NON-RESPONSIVENESS

The Constitution mandates the Commission to monitor and assess the observance of human rights in the Republic⁷⁹ and to require relevant organs of state to provide it with information on measures taken towards the realisation of the right to housing, health care, food, water, social security, education and the environment.⁸⁰ In terms of section 13(1)(a)(iii) of the South African Human Rights Commission Act, 40 of 2013 the Commission may request organs of states to supply it with information on any legislative or executive measures adopted by it relating to human rights. Section 13(4) of the Human Rights Commission Act further requires all organs of states to afford the Commission with assistance that it may reasonably require in order to effectively exercise its powers and perform its functions. The DWS, COGTA and DMR's failure to provide the Commission with the requested information hampers the Commissions' ability to perform its constitutional and legislative mandate.

Some of the founding values of the Constitution are accountability, responsiveness and openness. The failure of DWS, COGTA and DMR to provide the Commission with information on steps taken to implement the recommendations of the Commission is not in keeping with the founding values of the Constitution. Such failures oblige bodies like the Commission to expend scarce public resources to compel state departments to provide such information and, in the absence of implementation, to enforce recommendations for remedial and preventative actions. The lack of cooperation also lends itself to other less favourable inferences that the information is not on hand and possibly that the actions recommended have not been implemented.

⁷⁹ Section 184 (1)(c).

⁸⁰ Section 184 (3).

CHAPTER 08

CONCLUSION AND RECOMMENDATIONS

Conclusion

The government of South Africa has made notable progress towards realising the right to water and sanitation for all. The progress made, however, is not enjoyed in an equitable manner by different members of society and in different geographical areas of the country. People living in rural areas and in informal settlements still do not have access to sufficient water and decent sanitation. The result is that vulnerable groups, including learners, are adversely affected, particularly in the Eastern Cape, KwaZulu-Natal and the Free State. In addition, women and girls who do not have equitable access to water and sanitation remain disproportionately affected by lack of access to such services. Using shared community toilets, which are at times far from their homes, increases their exposure to threats like sexual assault and other forms of violence against women and girls.

State departments have committed to consulting with communities in their development efforts but despite these commitments we still find communities engaged in protest and litigation against the government. These factors have led the Commission to believe that communities are not adequately consulted and involved in their development processes.

A lack of responsiveness or late response by relevant state departments to requests for information by the Commission stymies not just the developmental work of the Commission, but also prevents the Commission from providing concrete, recommendations to support and enhance responses to developmental and service delivery challenges in South Africa. This raises questions around how the state engages with communities during policy formulation and implementation if they are unable to honour their statutory and constitutional mandate to assist the Commission its own mandate. Further, it indicates a lack of respect for the state department's own mandate and disdain for the role of chapter nine institutions.

Recommendations

CONCLUSION

- The Commission recommends that the DoBE, in consultation with the DWS, implement an emergency programme to combat water and sanitation backlogs in public schools, with a particular emphasis on Eastern Cape, KwaZulu-Natal and Free State schools within the next 12 months. The Commission requires regular feedback from the DoBE on progress made in addressing water and sanitation backlogs in these three provinces.
- The Commission recommends that the DWS and COGTA develop clear plans for the engagement of communities affected by delivery backlogs and engage in constructive and meaningful dialogue with communities affected by water and sanitation backlogs and communities, where the delivery of water and sanitation has led to protests in order to involve communities in the presentation of solutions to challenges that they face before the end of the 2018/2019 financial year. The Commission requires a list of communities which the departments will have engagements with and a report on these engagements.
- The Commission recommends that the DWS, COGTA and CoCT provide it with quarterly feedback, beginning in August 2018, on the drought crisis in the Western Cape, the Eastern Cape and the Northern Cape, this is no longer considered a national disaster.



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