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# ECONOMIC AND SOCIAL RIGHTS

5TH REPORT 2002/3

# **THE RIGHT TO WATER**

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**5th Economic and Social Rights Report Series  
2002/2003 Financial Year**

South African Human Rights Commission

21 June 2004

## PREFACE

In this 10th year of our young but thriving democracy, we are all engaged in some way or the other, in critically reflecting on the achievements we have secured over the past years as well as the unfinished work that lies ahead. In the context of the various rights guaranteed by our Constitution, they seek in their totality to ensure that the individual and the society are able to develop to their full potential and indeed that human rights becomes a central feature of our society. In this regard we have made much progress, and in the main, few argue against the notion that civil and political rights are well secured both in law and in practise.

However, the challenge that is situated at the heart of our Constitutional contract is how we advance social and economic rights and in so doing ensure that we advance the interests of the poor and those many who are still to enjoy the full benefits of our democracy. The inclusion of social and economic rights in the Bill of Rights was a clear articulation that democracy was as much about the right to vote, and of free expression and of association as it was about the right to shelter, the right to food, the right to health care, the right to social security, the right to education and the right to a clean and healthy environment.

The Constitution has tasked the Commission with a specific mandate to advance social and economic rights. In particular, section 184(3) requires that: "Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment."

A healthy and robust debate exists around these measures that the Constitution requires the State to take. In addition, the human rights discourse sees considerable contestation around issues such as the nature and scope of the right, the adequacy or otherwise of the measures taken and the meaning of the phrase 'progressive realisation of rights.' These are difficult issues and it is not always possible, nor may one say desirable, to always have consensus on them. In some instances the Courts have had to rule on them. We see this Report, however, not only as a contribution to those debates but also as a tool that can assist Government, Parliament and civil society in developing a critical understanding about social and economic rights and their implementation.

The modus operandi of the Commission in discharging its constitutional mandate to monitor and assess the observance of economic and social rights has in the main focussed on requiring organs of state to report to us on measures they have taken. This continues to pose several challenges, namely: to ensure that organs of State submit to the Commission reports that are timeous, accurate and of good quality . We are pleased that good progress has been made on this front over the past year and the process of presenting draft reports to organs of state and civil society for comment has been most valuable to the Commission in finalising this report .

The launch of the 4th Economic and Social Rights report in April 2003 generated considerable interest and much debate and discussion on the Report ensued. We were invited by numerous parliamentary portfolio committees from the National Assembly and National Council of Provinces to present the Report. We certainly found the

engagement with Parliament a very useful and mutually rewarding exercise. It provided the Commission with a unique opportunity to share its thinking and vision around its work with Parliament while it enables us to better understand Parliament's expectation of the Report and its use to them as a tool in their work. There have been numerous valuable recommendations that have emerged from our presentations to Parliament which we are committed to giving effect to from our side.

So as we commence the beginning of the 2nd decade of our democracy the delivery of social and economic rights become crucial to the ongoing success of our nation and the entrenchment of a culture of human rights. It is certainly our hope, and the intention of this Report, to contribute to ensuring that the promise and the vision underpinning our Constitution is shared and enjoyed by all in our country.

Jody Kollapen

Chairperson - South African Human Rights Commission

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## **ACKNOWLEDGEMENTS**

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### **Second draft language and style editing**

Wordsmiths

### **Final layout and content editing**

South African Human Rights Commission



## INTRODUCTORY SECTION

The aim of the *Introductory Section* is to provide an outline of the common analytical framework used in the reports, briefly discuss the political and economic context of the year under review, and provide an integrated summary of the key findings and recommendations of all eight reports in the series. Details of the report production process are also included at the end of this introduction.

The 5<sup>th</sup> Economic and Social Rights Report follows a more user friendly format than previous reports. There are now separately bound, less bulky, reports on Land, Water, Environment, Food, Health, Social Security, Education and Housing. Each report has an executive summary to facilitate access to the main findings and recommendations. Issues that connect one right to another are highlighted in the body of each report to emphasise the interrelatedness and interdependence of the rights in the Bill of Rights of the Constitution of the Republic of South Africa Act 108 of 1996 (simply referred to as the Constitution throughout the reports).

### A) Analytical Structure and Framework

Each report in this series follows a basic structure:

1. **Introduction:** a discussion of the meaning and content of the right with reference to the Constitution, case law and relevant international human rights instruments.
2. **Progress in the realisation of the right:** a factual description of measures instituted by government during the period under review and their impact, especially on vulnerable groups.
3. **Challenges for the realisation of the right:** a description of key challenges that hamper the realisation of the right, and in some cases, government's response to these challenges.
4. **Critique of measures instituted:** a consideration of some of the shortcomings of the measures instituted by government.
5. **Recommendations:** a set of recommendations that may encourage progressive realisation of the right as expeditiously as possible.<sup>1</sup>

Each report consolidates information from various sources including: relevant government protocol responses, government Annual Reports and Strategic Plans, the Intergovernmental Fiscal Review, as well as research funded by government, international donors or other agencies.

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<sup>1</sup> Some reports in the series end with a conclusion.

All reports employ the standard of reasonableness as laid down in the *Grootboom*<sup>2</sup> and *TAC*<sup>3</sup> judgements of the Constitutional Court, in conjunction with relevant international human rights instruments.

The constitutional provisions pertaining to socio-economic rights require the State to “take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of [these rights]”.<sup>4</sup> This requirement, read with the provision on the obligation of the State to “respect<sup>5</sup>, protect<sup>6</sup>, promote<sup>7</sup> and fulfil<sup>8</sup> the rights in the Bill of rights” in section 7(2) of the Constitution ensures an effective guarantee of socio-economic rights in South Africa. The judicial enforcement of these rights by the courts and the constitutional mandate of the South African Human Rights Commission to monitor and assess the observance of the rights by the State<sup>9</sup> and non-State entities also contribute to the effectiveness of the constitutional guarantee of these rights.

The Constitutional Court has played a significant role in ensuring the effective guarantee of socio-economic rights in our country. On the obligation of the State, Judge Yacoob held in the *Grootboom* case:

*The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.*<sup>10</sup>

On the effective guarantee of basic necessities of life for the poor, Judge Yacoob further said:

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2 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC)

3 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)

4 See sections 26(2), 27(2) and 29(2) of the Constitution.

5 Respect is a negative obligation, which requires the State to refrain from denying or limiting equal access for all persons to the enjoyment of the rights. This also means that the State should abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure which violates the integrity of the individual or which in any way interferes or limits his/her right to pursue the enjoyment of the rights in the Bill of Rights.

6 The obligation to protect places a positive obligation on the State to prevent the violation of any individual's rights by a third party.

7 The obligation to promote places a positive obligation on the State to create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education.

8 The duty to fulfil places a positive obligation on the State to institute active measures that enable each individual to access entitlements to the right and which cannot be secured through exclusively personal efforts. State parties are also obliged to provide a specific right when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. e.g. people in disaster situations or those in dire need.

9 See sections 184(1) and (3) of the Constitution.

10 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC) [24]

*This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the State to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The State must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.<sup>11</sup>*

On the role of the courts in ensuring that the State fulfils its role in giving effect to these rights and thus ensuring that there is an effective guarantee of these rights, Judge Yaccob said:

*I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the State is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the State to give effect to them. This is an obligation that Courts can, and in appropriate circumstances, must enforce.<sup>12</sup>*

A similar position was taken by the Constitutional Court in another seminal judgment, *Minister of Health and Others v Treatment Action Campaign and Others*, where the Court held:

*The state is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflicts our society. The courts will guarantee that the democratic processes are protected so as to ensure accountability, responsiveness and openness, as the Constitution requires in section 1. As the Bill of Rights indicates, their function in respect of socio-economic rights is directed towards ensuring that legislative and other measures taken by the state are reasonable.<sup>13</sup>*

In outlining the role of the courts, the Court also stated:

*The primary duty of courts is to the Constitution and the law...Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to do so.<sup>14</sup>*

While there might be some criticism directed at the Constitutional Court pertaining to the determination of when there are no available resources for the State to fulfil its obligation pertaining to socio-economic rights, the courts, particularly the Constitutional Court, have and will continue to play an important role in ensuring that the provisions in the Bill of Rights are effectively guaranteed for our people.

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<sup>11</sup> Ibid., [93]

<sup>12</sup> Ibid., [94]

<sup>13</sup> *Minister of Health and Others v Treatment Action Campaign and Others* (1) 2002 (10) BCLR 1033 (CC) [36]

<sup>14</sup> Ibid., [99]

## **B) The Political and Economic Context of the Year Under Review**

The period under review, 1 April 2002 to 31 March 2003, followed the 11 September 2001 attacks and a 24% depreciation of the South African currency (Rand) near the end of 2001. Consumer Price Inflation, especially for goods and services bought predominantly by the poor, increased sharply to the highest level since 1994. Concerns were signalled to the Competition Commission about the impact of import parity pricing in several sectors of the economy, most notably in food production, processing and retailing as well as metals and engineering. Interest rates were raised in an attempt to curb inflation, with a subsequent dampening effect on the rate of economic growth in the latter part of the financial year. According to the Reserve Bank Quarterly Bulletin for March 2003, economic growth stood at a robust 3% in 2002.

As a result of prudent fiscal management, the government introduced a more expansionary Budget in February 2002. Total government expenditure increased from R262,6 billion in 2001/2002 to R291,8 billion in 2002/2003. Overall, the budget directed more resources towards reducing poverty and vulnerability, improving education and training, developing skills amongst the youth, building and enhancing physical infrastructure and basic municipal services, as well as making communities safer places to live, work and play.

It is also important to note that the February 2003 Budget provided for significantly greater expenditure than the previous year. Total expenditure was R331,7 billion for 2003/2004. The additional allocations accommodated substantial policy changes for all three spheres of government and also provided for *higher than anticipated inflation in 2002*.

By the end of the reporting period in March 2003, the Rand had appreciated by 18%. This created concern about the job losses that could arise out of an increase in import competition. Therefore, during the period under review, the goals of progressively realising economic and social rights took place in the context of significant macro-economic volatility, inflation and an expanding government budget.

## **C) Key Interrelationships Amongst Economic and Social Rights**

### *The Right to Land*

The State was responsible for achieving progressive realisation of the right to land during the reporting period. The Commission demonstrates that there was a year on year improvement in land delivery performance by the State, especially through the Land Restitution and Land Redistribution sub-programmes. Improvements in rural tenure reform were less noticeable.

Between 2000 and 2001 there were 12 094 settled Restitution claims, while in February 2002 there were approximately 32 000 settled claims. By March 2003, there were 36 488 settled claims recorded. Although the majority of these claims were in the urban areas, settled rural claims show a substantial increase. The people working on the Land Redistribution for Agricultural Development sub-programme delivered 103 682 ha against a target of 81 555 ha for the year under review. Whereas the Department had targeted to benefit 3 601 people, the programme ended up benefiting 6 170. Concerning

tenure reform, the State initially delivered 30 000 ha of land through 201 projects. Beyond that, the State is working towards bringing the Extension of Security of Tenure Act (ESTA) and Labour Tenants Act (LTA) together in the Consolidated ESTA/Labour Tenants Bill.

Throughout the report, the Commission reflects on the demand, voiced by landless people and others, that the pace of land redress is too slow and inattentive to vulnerable groups. The report recommends accelerating land reform to meet its new targets by relieving budgetary constraints and the associated problems of personnel shortages, lack of quality training and understandable communication; land acquisition; and improvements in monitoring and evaluation.

The Commission would also like to highlight that it was informed by the Department of Land Affairs that it was impossible to represent the racial and gender composition of land purchase transactions and repossessions, according to the size and value of land parcels.

### *The Right to Education*

The right to education is analysed as a continuum of three bands of schooling- General Education and Training, Further Education and Training and Higher Education and Training. The State instituted measures to respect, protect, promote and fulfil the right to General Education and Training, and in the Commission's overall assessment, it succeeded in achieving progressive realisation of this right.

The Department of Education succeeded in ensuring that all targeted Early Childhood Development sites for children between the ages of five and six were operating. However, the Department acknowledges the challenge, which has budgetary implications, that only 13% of all children have access to the programme. In the context of a substantial increase in the rate of student enrolment in primary schools between 1994 and 2001, the National Department focused on further increasing access to General Education and Training through reviewing public school financing and the system of school fee exemptions. The report highlights the shortcoming that some schools and Provincial Departments of Education failed to make parents aware of the school fee exemption.

While progress was made in eliminating instances where learners are forced to receive education in environments that are not conducive to teaching and learning, the report emphasises that more needs to be done to address infrastructure backlogs, especially when it comes to water and sanitation. The Department also made progress in developing a redistribution model for personnel and operating expenditure that would achieve equality of teaching quality and equality of learning outcomes in the schooling system from 2003/2004 onwards. All stakeholders in education, including the SAHRC need to explore and come up with a definition of quality basic education which could be measurable and relatively easy to monitor.

Conditions in farm schools were identified as hinderance to progress in the realisation of the right to General Education and Training. The issue of street-children also has to be given some serious attention by all the relevant stakeholders. Amongst other recommendations to further observance of the right to General Education and Training,

the report calls for better-published medium term strategies and improved spending on Adult Basic Education and Training. In the 2001 Census, 4,5 million people aged 20 years and older did not have a formal education and 4 million people had primary schooling only.

Most of the developments in the Further Education and Training band met the Constitutional requirement to respect, protect, promote and fulfil the right. *Dinaledi*, the programme that seeks to improve participation and performance of learners from historically disadvantaged backgrounds in Mathematics, Science and Technology (MST), reportedly surpassed its target of 10% of students enrolling for MST in its first two years of implementation. The development of Recognition of Prior Learning (RPL) is another development that contributes to the realisation of the right to Further Education and Training. RPL recognises non-formal and/or non-academic education. RPL also stands to maximise learning opportunities for those without formal and/or academic qualifications to acquire formal qualifications in Further Education and Training institutions, which must all be registered with the State.

Areas where the State fell short of its obligations to progressively realise the right to Further Education and Training include: insufficient public education on school fee exemptions and insufficient Learner Support Materials and/or their late delivery. The report also highlights that participation rates in education by girl learners were being negatively affected by girls' involvement in income generating activities.

While Higher Education and Training is not explicitly recognised as a right in the Constitution, it obviously depends on the learning outcomes achieved in General and Further Education and Training. Here, there seems to be room for improvement as the average graduation rate for university and technikon students is 15%; less than half the ideal average of 33%.

Key challenges associated with the Higher Education and Training band include assisting potential students with subject selection choices and career guidance at school and university level, as well as lowering the high costs of accessing higher education and applying to different tertiary institutions. The report recommends ensuring that admission requirements to tertiary institutions are transparent and fair, promoting indigenous languages as academic/scientific/legal languages, mobilising funds for bridging courses and improving access for mature and post-graduate students, including part time students.

### *The Right to Water*

Ever since 2001 and the introduction of Regulations Relating to Compulsory National Standards and Measures to Conserve Water, the State instituted a national measure to fulfil the right to water by supplying 6000 litres of free, clean water, per household per month, otherwise known as Free Basic Water.

During the reporting period, approximately 1,6 million people gained access to improved piped water supplies through Department of Water Affairs and Forestry's Community Water Supply and Sanitation Programme. Approximately 65 thousand toilets facilities were constructed during the reporting period under the same programme, but it should be noted that these figures exclude the large number of

sanitation facilities that were delivered as part of the State's housing programmes. Less than 530 000 households also benefited from water and sanitation projects through the Department of Provincial and Local Government's Consolidated Municipal Infrastructure Programme. Although the above indicates that the roll-out of water and sanitation infrastructure is proceeding towards the Department's medium delivery targets, the report raises concerns about the level of dysfunctional infrastructure and projects, especially in rural areas.

At the end of the reporting period in March 2003, access to Free Basic Water by poor people stood at 38% or approximately 12,2 million people. Access to Free Basic Water by non-poor households stood at close to 100% or approximately 14,2 million people. A large number of poor people (19,6 million) were still to receive their Free Basic Water allocation. Where Free Basic Water was not available, the average cost of 6 kilolitres (kl) was approximately R13 per month. The price for 6kl of life-line supply was highest in Limpopo province at approximately R19 per month. Gauteng and KwaZulu-Natal also had comparatively high average charges for life-line supplies where Free Basic Water services were not operational.

In order to remove these glaring inequities in Free Basic Water provision, the report calls for an urgent revision of the pricing system to include a significantly greater level cross-subsidisation from high volume water users to low volume users in the 0-6 kl range. More support and funding is required to assist municipalities with capacity problems in implementing Free Basic Water. During droughts, local governments should ensure that Free Basic Water supplies for domestic users are assured and that a situation cannot develop where agricultural, mining and industrial users are allocated large volumes of water at similar prices to low-volume users.

The report describes some aspects of the devolution of domestic water quality monitoring and testing from Provincial Departments of Health to local municipalities and calls for rapidly providing sufficient funds for water quality monitoring to prevent serious disease outbreaks and illness.

The report recommends that the Department of Water Affairs and Forestry (DWAF) should take a leading role in making sure that farm dwellers, residents near commercial farms and poor households in rural and urban areas access clean water and proper sanitation services. DWAF should also ensure that it develops and implements a plan to address the specific problems of water access experienced by people living with HIV/AIDS.

The report suggests that monitoring bodies should be created at local level to effectively monitor the implementation of policies and laws aimed at fulfilling the right of access to water. The report warns that monitoring will only be effective if monitoring bodies from local, regional and national spheres work together. Where possible and when possible, the Free Basic Water allocation should be increased to cater for higher levels of domestic water consumption. A 50kl water allocation per household per month would bring South Africa's Free Basic Water allocation into the 'low level of health concern' range defined by the World Health Organisation.

## *The Right to Health Care*

The report on the right to health care focuses on key developments in three key health programmes of the State (Health Service Delivery, Strategic Health Programmes and Administration). Although the policy and legislative measures developed in the fiscal year under review can be said to be “reasonable” in their conception, there remain large gaps in implementing them in a manner such that all the provinces, urban and rural peoples, rich and the poor have equal access to the same high quality of care.

The three most important, and universally acknowledged, indicators to measure the health status of a nation are Life Expectancy at Birth, the Maternal Mortality Ratio, and the Infant Mortality Rate. Life expectancy has fallen from 56 years in 1996 to 52,5 in 2002 and is projected to fall to 47 by 2005. The infant mortality rate has increased from 45 in 1998 to 59 in 2002. This means that more children under the age of one died in 2002 as compared to 1998. The under five-mortality rate has risen from 61 in 1998 to 100 in 2002. Similarly, the maternal mortality ratio shows a steady increase since 1998 and is estimated to be 150 per 100 000 live births. The National Department of Health, as well as independent researchers, have concluded that this is due to HIV/AIDS related deaths.

The single most important challenge that government faces is the one posed by the AIDS pandemic and the high incidence of opportunistic diseases such as tuberculosis. It is estimated that about one tenth of the population of the population is infected with the HI virus i.e. close to 5 million people. The number of AIDS orphans is estimated to be one million. In a landmark case instituted by Treatment Action Campaign against the Minister of Health, the Constitutional Court, in 2002 confirmed the finding of the High Court that government’s policy to limit Nevirapine to research and training sites was in “breach of the States obligations under section 27(2) read with 27(1)(a) of the Constitution.” The report recommends that the Comprehensive National Aids Plan should be rolled out effectively in all the provinces so as to meet targets and timelines in order to substantially reduce new infections and to prolong the lives of those already infected.

In spite of the fact that policies and programmes directed at improving the health status of the country have been put in place such as the Integrated Management of Childhood Illnesses, the AIDS pandemic continues to be the single most cause of death in South Africa. This has placed an enormous strain on an already overburdened health system and undermines the efforts made by the State. This is compounded by the fact that the other economic and social rights, which contribute substantially to the health status of a nation, are also not fully enjoyed by the vast majority of poor South Africans due to the huge backlogs inherited from the past. Inadequate housing, poor sanitation, overcrowding, lack of clean drinking water, lack of efficiently run social services, insufficient nutrition and health education exacerbate the diseases of poverty. Moreover, a household that is affected by AIDS contributes to depleting the financial resources available to the family, thereby increasing the level of poverty.

government developed legislative and other measures to comply with its constitutional obligations in terms of section 7(2) of the Constitution. However, despite national policies and programmes, which, in the main comply with international standards and targets, the health care system has not been able to successfully deliver quality health



care on an equitable basis in all the provinces. Provinces do not spend the same amount per capita on health care delivery, and there is a serious lack of managerial capacity in the health system. The biggest challenge facing the efficient running of the health system is training managers to operationalise efficient systems especially for running clinics and hospitals where many problems have been identified. Efficient management systems in conjunction with effective engagement with labour should be operationalised with immediate effect in the public health sector so as to ensure that hospitals and clinics run well.

The report also recommends that there is a need to increase efforts in promoting preventative health measures by the State as well as by non-state actors. Programmes and policies should also be put in place to address the needs of the poor and vulnerable members of society, including a National Health Insurance System. Inequities in the health system such as intra- and inter-provincial health expenditures, access to clinics and hospitals, number of doctors, specialists, and nursing staff need to be addressed so as to give meaning to the constitutional right to universal and equal access to everyone. Finally, Departments of Health are strongly advised to improve their monitoring, evaluating, and reporting systems

### *The Right to Social Security*

The Constitution provides that everyone has a right to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The number of social assistance beneficiaries increased dramatically by 966 311 people from April 2002 to the end of March 2003, mostly as a result of increased registration for Child Support Grants for children up to the age of seven. By the end of March 2003, 5,6 million people were beneficiaries of social assistance, which mostly comprised of child support grants (2,5 million people), old age pensions (2 million people), disability grants (897 050 people) and foster care grants (133 309 people). The most rapid increases in uptake of social grants took place in Gauteng, Free State, KwaZulu-Natal, Mpumalanga and Limpopo. Take up rates were considerably lower in the Northern Cape, North-West, Eastern Cape and Western Cape.

Most provincial departments indicated that the allocated budget was not enough and that numbers of grant beneficiaries were constantly increasing, resulting in overspending for social security. However, the delivery of social services has not been efficient in some parts of the country as a result of administrative problems, lack of documentation as barriers to accessing grants, poor conditions at pay points, as well as corruption and maladministration.

As a result of rapid inflation in the cost of basic goods bought by the poor, in 2002/2003, the State moved swiftly to implement above inflation related increases in social grants. The old-age pension was increased by R20 to R640, the child-support grant increased by R10 to R140, the grant in aid increased from R120 to R130, the foster-care grant from R450 to R460, and the care dependency grant from R620 to R640.

The National and Provincial Departments of Social Development spent 90% of the R49 million allocated to the HIV/AIDS (home based/community based care) programme. The Home/Community Based Care programmes, through the collaborative work of

government, non-governmental organisations, including faith-based organisations, and communities have benefited 29 612 children orphaned or vulnerable to HIV/AIDS by the end of March 2003. The programme reached 75 000 children orphaned or vulnerable owing to HIV/AIDS since its inception in 2000.

The State also instituted new measures to further the right to social security, including disability assessment panels, a social relief of distress policy and the implementation of the National Food Emergency Scheme/Programme. Figures of the number of households that were assisted with food parcels in the pilot phase of the National Food Emergency Programme from December 2002 to the end of March 2003 range from 60 089 to 149 779.

The social security system at present does not cater for everyone and not everyone in need of social assistance is afforded such assistance. This is especially so for children in child headed households and children who live in the streets who sometimes engage in exploitative forms of labour. Some parents also fail to provide and take care of their children and put strains on the maintenance and social assistance systems.

The report recommends that the Department of Labour should take the International Labour Organisation's Decent Work for All Strategy forward in South Africa. It is also recommended that the relevant organs of State achieve better regulation of the insurance, health and maintenance systems. Particular attention should be paid to the coverage of old age pensions for workers in non-formal employment. The Department of Social Development is encouraged to continue fostering collaboration with all stakeholders, such as other government departments, Faith Based Organisations and Non-Governmental Organisations. The Basic Income Grant should continue to be considered as a viable option for addressing poverty in the country, especially amongst people of working age. The proposal to extend social assistance to all children in need (up to the age of 18), should also be kept alive.

### *The Right to Food*

The report concludes that many people, and children in particular, had their right to food violated during the reporting period as they lost access to affordable food due to high prices and/or unreasonable plans devised and supervised by government. During the reporting period, 101 152 children were admitted to hospital with severe malnutrition and it was not possible for the Commission to state how many children died of malnutrition. However, it is alarming that case fatality rates for severe malnutrition in two under-resourced hospitals in the Eastern Cape ranged from 21% to 38%.

The report finds the National Department of Health's targets for reducing malnutrition to be unreasonable in their conception because the targets for 2000 and 2005 were virtually identical. The report also finds two elements of the Primary School Nutrition Programme to be unreasonable in their conception.

The first issue concerns the reduced allocation of resources to the programme in 2002/2003 as compared to 2001/2002. In 2001/2002 the total cost of the school food "meal" ranged from approximately 99 cents to R2.10. In 2002/2003, the maximum budgeted resource available per targeted learner per day was less than 67 cents. This is

clearly an unreasonable set of parameters for the programme to be improved to meet the higher standards set by Cabinet.

The second element of the programme that was unreasonable was the reduction in the targeted number of children who should benefit from the programme. In the context of increasing numbers of children enrolled in schools, the Primary School Nutrition Programme did reach 4,5 million children in grades R to 7, however this was 151 615 children less than the year before. The drop in the number of learners who were reached is connected with government reducing its target from 5,4 million learners in 2001/2002 to 4,9 million learners in 2002/2003 as well as rapid increases in the cost of food procured for the programme. A three month gap in the implementation of the programme in the Eastern Cape also reduced access to the programme.

Non-State actors appear to have fallen short in their observance of their positive obligations to fulfil the right to food. As one example, the Yiyo Lena sifted maize relief programme introduced by a group of companies is alleged to have sold relief maize packs at a 20% discount, despite that fact that the companies announced that the programme would entail a 50% discount.

High basic food prices during the reporting period, were partly attributable to inadequate safeguards on the South African Futures Exchange, where maize prices are formed. High prices for maize were passed on to low-income consumers, who could ill afford such dramatic basic food price increases for such a sustained period of time. The potential for market manipulation should have been prevented by the Johannesburg Securities Exchange when allegations of abuse were first signalled in 2002. The report identifies that there are weaknesses in the State's observance of its obligation to protect against fraud, unethical behaviour in trade and contractual relations.

There were some signs of improvement in the State's delivery of production support to emerging farmers and people who grow their own food. For example, the Comprehensive Farmer Support Package was instituted during the reporting period to assist land reform beneficiaries. However, it was implemented in some provinces only.

The LandCare programme, which is one of the major production support programmes from the National Department of Agriculture, was heavily underspent at 65% of the total conditional grant to provinces. There is also a significant gap in production support for rural restitution beneficiaries.

It was found that very few Provincial Department's of Agriculture were operating well funded programmes designed specifically to provide grants or revolving loans to support increased access by small scale and emergent farmers to production and/or marketing related infrastructure. Production support materials and learning support materials that are relevant to resource to poor farmers in water scarce areas were also not readily available.

On the whole, the report determines that the State absorbed the heavy burden of duty to achieve the progressive realisation of the right to food as expeditiously as possible, within its available resources. However, there was a crucial weakness in the measures to protect the right to food from being violated by non-State actors or third parties that need not be repeated in future.

The report suggests that there is a need for greater care in the preparation of strategic and financial planning targets so that they inspire civil society to marshal their resources in support of the progressive realisation of the right. The report recommends: public education to raise awareness of malnutrition, rolling out the Integrated Food Security Strategy at a provincial level, improving food safety, achieving better regulation of the food industry through State procurement, accelerating agrarian reform, and communication policy and legislative developments more effectively. Finally, the report supports the call for government, labour, community and business representatives to negotiate an agreement at the National Economic Development and Labour Council (NEDLAC) to ensure the right to food and quality job creation in the food industry.

### *The Right of Access to Adequate Housing*

In order to fill some gaps in the housing policy framework, the State identified medium density housing, rental housing, social housing and emergency housing as the key policy priorities for 2002/2003. Emergency, medium density, rental and social housing are part and parcel of addressing inequalities in access to transport and the legacy of racial segregation. The Emergency Housing Policy Framework was conceptualised as a result of the *Grootboom* judgment and aims to assist groups of people that are deemed to have urgent housing problems, owing to circumstances beyond their control (e.g. disasters, evictions or threatened evictions, demolitions or imminent displacement or immediate threats to life, health and safety). The report highlights that it was not clear whether the Emergency Housing Policy should also cover people living in informal settlements, because they are living in intolerable circumstances. Social Housing projects demonstrate that socially, environmentally and sunshine conscious design principles can make a difference to the quality of State subsidised housing.

The State reported on measures to protect the right to housing in the form of the Prevention of Illegal Eviction from Occupation of Land Amendment Bill and the commencement of the Home Loan and Mortgage Disclosure Act 63 of 2000. With a view towards curbing discriminatory practices, the Act compels financial institutions to disclose information in their financial statements on home loan patterns according to categories of persons and geographic areas (both of which may be prescribed). The Community Reinvestment Bill confirmed the State's intention to increase private sector investment in the lower end of the housing market. The report highlights that the State was also attending to some aspects of the Housing Act 107 of 1997, as amended, in order to ensure that the Act, and its implementation, did not violate an individual's right to property in terms of the Constitution.

In terms of on-going policies and programmes, in 2002/2003, the State reported 203 288 houses completed or under construction, whilst the State approved 519 498 subsidies to households with a joint monthly income less than or equal to R3 500, or R1 500 if the house was built under the apartheid system. By the end of 2002/2003, the State reported that over 1,4 million houses had been delivered since 1994, whilst the number of families without houses (i.e. dwellings in backyards, informal dwellings, backyard dwellings in shared properties and caravans/tents) was reflected as 2 399 825- from the 2001 Census. The State also increased the subsidy amounts for the housing programme to keep pace with inflation and maintain the well-known quality and size of housing. Sixty-three projects were also completed as part of the Human Settlement Redevelopment Programme in order to correct imbalances and dysfunctionalities in

existing settlements that cannot be funded through the housing subsidy scheme (e.g. sports facilities, business hives, labour exchanges, cemeteries, parks and ablution blocks).

There was under expenditure on housing delivery amongst many provincial departments responsible for housing. Reporting on the constraints associated with underspending was not complete, but included the following in some cases: failure to secure suitably located land, delays in tender adjudication, municipalities failing to submit business plans, delays in the National Department approving projects, weaknesses and staff shortages at municipal level, incompetence, corruption, political intervention and nepotism, slow delivery associated with the People's Housing Process and delays at the Deeds Office.

Comparing performance in relation to targets was a problem in that provincial information was reported in the format of the number of units completed *or* under construction. Nevertheless, Gauteng and Limpopo provinces stand out as the only provinces to show a reduction in units, whether complete or under construction, from 2001/02 to 2002/03. The Gauteng Department of Housing reported delivering 59% of the target in the incremental housing programme and 39% of the target in the Social Housing programme. A Customer Support Service in the province acknowledged 83 714 queries and responded to a further 11 774 by letter.

According to the National Department of Housing, in 2002/2003, 6 469 houses did not conform to the Department's construction and safety standards. The National Home Builders Registration Council's (NHBRC) Warranty Scheme was instituted to provide assurance to beneficiaries that houses built and financed through the housing subsidy scheme are of an adequate quality. After trying to resolve disputes about the quality of construction, a housing subsidy beneficiary can forward complaints to the NHBRC. However, the report highlights that public education is required to empower consumers to identify quality problems and make use of the complaint procedures of the NHBRC. The Mpumalanga Department of Housing also reported that building works inspectors from provincial government and local government monitored the work of contractors.

The report makes one urgent recommendation, namely: to establish the dedicated fund for acquiring well-located land for low-cost housing. Other recommendations include reducing policy incoherence and institutional fragmentation, improving monitoring and evaluation, interpreting the Peoples' Housing Process as a route for strengthening culturally adequate housing, creating an informed and supportive environment for whistleblowing, and ensuring effective participation in the delivery of housing. Specific attention is drawn to the plight of farmworkers and vulnerable groups, especially HIV/AIDS orphans and People with Special Needs.

### *The Right to a Healthy Environment*

Section 24 of the Constitution establishes the right to environment in order to ensure the health and well-being of present and future generations. At its core, the right to environment aims to grant this benefit to everyone in South Africa, not just to the few. Although, translating this vision of the benefit of environmental health into reality has become increasingly complicated, ensuring that there are no violations of this right is as urgent as any violation of other rights in the Bill of Rights.

Analysts of data from South Africa's Global Atmosphere Watch station at Cape Point contend that continued emissions of greenhouse gases are cause for concern. Like many countries, South Africa is sensitive to global climate change and there are also occasions, especially in major urban areas, when more localised air pollution becomes a health threat.

By way of illustration, the Johannesburg *State of the Environment Report 2003* indicates that “while in many parts of Johannesburg, air quality is within acceptable standards, approximately 20% of the City, particularly dense settlements and lower income townships, experience severe air pollution, with ambient air pollution levels exceeding acceptable guidelines by approximately 20-30% particularly during winter when temperature inversions prevent emissions from dispersing.” The report goes further to state that “levels of particulate matter in certain townships can exceed the World Health Organisation standards by as much as 250% in winter.”

Progress in the realisation of the right to environment could not be very well monitored and observed by the Commission during the year under review because annual progress reports in terms of section 11 of the National Environmental Management Act 107 of 1998, were inaccessible at the time of writing. These progress reports should contain detailed information on the implementation of measures instituted to ensure the right to environment.

Nevertheless, the Commission did observe the growing influence of the Committee for Environmental Co-ordination through an interpretation of its review, and subsequent consolidation, of Environmental Implementation Plans and Environmental Management Plans submitted by relevant organs of State. These reports contain the planned and *aligned* outputs of national and provincial departments with an impact on, or management function over, aspects of the right to environment. The Commission also recognises that some Environmental Co-ordinating Committees were established at the provincial sphere, also for the purposes of alignment and co-operative governance.

Progress has been made, through the courts and other avenues, towards realising the procedural aspects of the right to environment (access to information, participation in decision-making processes, redress and remedy). The report includes several examples of objections and court applications lodged by Non-Governmental Organisations, with a view towards safeguarding environmental health in low-income areas. Despite these opportunities to access information and participate in decision making, some remedies for old violations could not be realised without concerted action on the part of the State. One example, is the case of workers with mercury poisoning, which first occurred many years ago. In March 2003, Thor Chemicals was served with a R60 million toxic chemical clean-up directive by the State.

On the substantive issue of waste management and pollution control, what was reported by government to the Commission fell short of what was expected in terms of the strategic objectives of the policy and strategy for pollution and waste management. The report highlights that there is still no clear understanding among the different mandate holders for this function of what they are required to do and as a result, implementation was not as effective as it could be. Having said this, there were positive developments during the period under review, including the introduction of waste buy-back centres

which address brown issues and could assist in strengthening the bargaining power of the very low income people who do the hard work of collection.

On the issue of Air Quality, the report acknowledges that progress was made in the Southern Industrial Basin through the focused action of the State and Community Based Organisations (CBOs) in linking asthma in school children to emissions, however there is an urgent need for national legislation to institute mechanisms and standards to effectively protect against pollution that threatens health and well-being, possibly including pollutant release and transfer registers.

Several new control measures were introduced to manage water pollution, including the second draft of the National Water Quality Management Framework Policy and the Waste Discharge Charge System. The Working for Water programme succeeded in protecting and preventing against water loss due to alien invasive plant species, however it was not clear how much of this work focused unfairly on commercial farmlands and not on areas inhabited by vulnerable sections of the population.

Most of the work by the State on inland as well as marine and coastal biodiversity and conservation was reasonable in as far as it related to tourism and the economic development of the country.

The report highlights that the challenges facing South Africa in terms of the right to a healthy environment include: allocating sufficient resources for progressive realisation of the right for the benefit of vulnerable groups; educating and training communities; ensuring that proper implementation systems are in place; ensuring effective co-operative governance; operating proper monitoring and evaluation systems.

The report recommends that while most policies and laws are in place or about to be instituted, there should be a quantum shift in focus towards implementation of measures to further the right to environment for vulnerable groups in a more decentralised way. Provincial government and local government should be resourced to concentrate their energies on implementation, in association with community based organisations that have already developed innovations to further the right, sometimes in the face of extreme resource scarcity.

The State has made valuable contributions to promoting the right to environment through for example, the “Bontle ke Batho” or the clean schools, wards and towns campaign; however, organs of State could do more to ensure that their own internal operations reflect implementation of the right to environment. For example, the Council for Scientific and Industrial Research (CSIR) implemented International Standards Organisation 14001 standards for handling and disposing of its own hazardous waste. This initiative by an organ of State seems to have afforded the CSIR the opportunity to gain some capacity and insight, which could be applied to other relevant contexts in the public or private sector within the South Africa.

The report also recommends that monitoring and evaluation systems need to be simplified where possible and improved. Annual progress reports in pursuit of targets and plans laid down in Environmental Implementation Plans and Environmental Management Plans should include a focus on the substantive aspects of the realisation of the right for vulnerable groups. The contents of the reports should also be widely

communicated so as to avoid conflict and encourage effective participation. The Committee for Environmental Co-ordination could also be complemented by the National Environmental Advisory Forum (NEAF) envisaged in the National Environmental Management Act 107 of 1998. This provision to encourage participation should be effected without delay.

#### **D) Protocols and the Report Production Process**

The production process for this report began with the SAHRC sending questionnaires, which are called protocols, to various organs of State for their comment in May 2003. The Commission then took some time to revise the protocols, which were resent to all relevant organs of State for comment and suggestions in June 2003. The response from relevant organs of State was not satisfactory; with the Department of Housing (Gauteng Province), the Department of Land Affairs and the Department of Water Affairs and Forestry being the only organs of State to respond. However, the Commission acknowledges that further work is required, in the next reporting cycle, to ensure that the protocols are improved for all spheres of government and parastatals.

The final protocols were sent to various organs of state (national and provincial government, parastatals, metropolitan and local councils) in July 2003, as mandated by section 184(3) of the Constitution. In future, the Commission will pay more attention to smaller municipalities by focusing field research on the implementation of programmes and projects at a local level.

The first deadline for the release of this Report was in December 2003. However, the Commission had major problems in getting timeous responses from organs of State and as a result, the Commission took a decision to subpoena several departments and postpone the release of the Report until sufficient information had been received (see summarised list overleaf).



SPHERE	INSTITUTION	DATE RESPONSE RECEIVED
2 - Provinces	GAU Social Services and Population Development	August 21, 2003
1 - National	NATIONAL Labour	August 29, 2003
2 - Provinces	EC Health	August 29, 2003
2 - Provinces	WC Agriculture	August 29, 2003
2 - Provinces	LIMPOPO Agriculture and Environmental Affairs	August 31, 2003
2 - Provinces	FS Health	September 1, 2003
2 - Provinces	NW Health	September 1, 2003
2 - Provinces	WC Social Services	September 1, 2003
2 - Provinces	EC Education and Training	September 5, 2003
2 - Provinces	GAU Health	September 5, 2003
2 - Provinces	KZN Agriculture and Environmental Affairs	September 9, 2003
4 -Parastatals	PARASTATAL Rand Water	September 9, 2003
2 - Provinces	KZN Traditional and Local Government	September 10, 2003
2 - Provinces	MP Local Govt and Traffic	September 10, 2003
2 - Provinces	NW Education	September 10, 2003
1 - National	NATIONAL Land Affairs	September 12, 2003
2 - Provinces	FS Social Welfare	September 12, 2003
2 - Provinces	GAU Housing	September 12, 2003
2 - Provinces	NC Health	September 12, 2003
2 - Provinces	NC Social Services and Population Development	September 12, 2003
1 - National	NATIONAL Agriculture	September 15, 2003
1 - National	NATIONAL Water Affairs and Forestry	September 15, 2003
2 - Provinces	EC Agriculture and Land Affairs	September 15, 2003
2 - Provinces	FS Education	September 15, 2003
2 - Provinces	GAU Education	September 15, 2003
2 - Provinces	MP Housing and Land Administration	September 15, 2003
2 - Provinces	WC Education	September 15, 2003
2 - Provinces	WC Environmental Affairs and Development Planning	September 15, 2003
2 - Provinces	WC Health	September 15, 2003
2 - Provinces	WC Housing	September 15, 2003
2 - Provinces	NC Agriculture Conservation and Environment	September 15, 2003
2 - Provinces	KZN Health	September 16, 2003
1 - National	NATIONAL Education	September 18, 2003
2 - Provinces	MP Health	September 18, 2003
2 - Provinces	NW Agriculture, Conservation and Environment	September 23, 2003
2 - Provinces	MP Social Services and Population Development	September 25, 2003
3 -Metropolitan Councils	METRO Greater Tswane Metropolitan Council	October 2, 2003
3 -Metropolitan Councils	METRO Nelson Mandela Metro Council	October 2, 2003
1 - National	NATIONAL Correctional Services	October 3, 2003
1 - National	NATIONAL Social Development	October 3, 2003
2 - Provinces	LIMPOPO Health and Welfare	October 3, 2003
2 - Provinces	EC Social Development	October 3, 2003
1 - National	NATIONAL Health	October 10, 2003
2 - Provinces	GAU Agriculture, Conservation, Environment and Land Affairs	October 10, 2003
4 -Parastatals	PARASTATAL Medicines Controls Council	October 10, 2003
2 - Provinces	FS Local Govt and Housing	October 29, 2003
1 - National	NATIONAL Housing	October 30, 2003
1 - National	NATIONAL Provincial and Local Government	October 30, 2003
1 - National	NATIONAL Environmental Affairs and Tourism	October 31, 2003
4 -Parastatals	PARASTATAL Agriculture Research Council	October 31, 2003
1 - National	NATIONAL Minerals and Energy Affairs	November 3, 2003
2 - Provinces	KZN Education and Culture	November 3, 2003
2 - Provinces	EC Housing, Local Government and Traditional Affairs	November 4, 2003
2 - Provinces	GAU Development Planning and Local Government	November 4, 2003
2 - Provinces	LIMPOPO Education	November 4, 2003
2 - Provinces	MP Agriculture, Conservation and the Environment	November 4, 2003
2 - Provinces	NC Local Govt and Housing	November 4, 2003
2 - Provinces	WC Planning and Local Govt	November 4, 2003
4 -Parastatals	PARASTATAL National Education Financial Aid Scheme	November 4, 2003
2 - Provinces	NW Developmental Local Government and Housing	November 5, 2003
3 -Metropolitan Councils	METRO Eastrand Metropolitan Council	November 5, 2003
4 -Parastatals	PARASTATAL Umngeni Water	November 5, 2003
3 -Metropolitan Councils	METRO Cape Town Metro Council	November 6, 2003
4 -Parastatals	PARASTATAL Medical Research Council	November 6, 2003
2 - Provinces	FS Agriculture	November 7, 2003
2 - Provinces	KZN Welfare and Pensions	November 7, 2003
2 - Provinces	LIMPOPO Local Govt and Housing	November 7, 2003
2 - Provinces	MP Education	November 7, 2003
2 - Provinces	NC Education	November 7, 2003
4 -Parastatals	PARASTATAL National Housing Finance Corporation	November 7, 2003
2 - Provinces	KZN Housing	November 14, 2003
3 -Metropolitan Councils	METRO eThekweni Metropolitan Council	November 17, 2003
4 -Parastatals	PARASTATAL Landbank*	November 17, 2003
4 -Parastatals	PARASTATAL Council for Scientific and Industrial Council*	November 18, 2003
2 - Provinces	FS Environmental, Tourism and Economic Affairs	November 19, 2003
3 -Metropolitan Councils	METRO Greater Johannesburg Metropolitan Council	December 17, 2003
2 - Provinces	NW Social Services**	

\_\_\_\_\_ First deadline  
 \_\_\_\_\_ Extended deadline  
 \_\_\_\_\_ Subpoena hearings begin  
 \_\_\_\_\_ Subpoena hearings end

\* Extension granted as a result of communication problems  
 \*\* No subpoena served, a letter explains the breakdown in communication

Most organs of State submitted their reports before they were meant to appear at a subpoena hearing. However, the North West Department of Social Services, Arts, Culture and Sport did not provide a response to the Commission as a result of problems with network cabling and the resignation of the personal assistant to the Acting HoD. The Department submits that it was not out of irresponsibility and deliberate disregard of the law that the Commission did not receive a report from the Department.

In order to improve the quality of the information, analysis and recommendations in the reports and to forge closer and better working relationships with government and non-governmental entities, a set of draft reports were released for comment to government and civil society before a National Input Workshop on 27-28 January 2004. Comments made at the workshop, and in writing, have been considered by each report writer.

A set of second draft reports were then made available to the Director General of the relevant national department in February 2003 to correct any remaining problems with factual information. Responses were received from the following departments: Water Affairs and Forestry, Minerals and Energy, Provincial and Local Government, Health, Social Development, Education, Land Affairs, and Housing. The final reports were also reviewed intensively within the Commission before being published.

## **E) Conclusion**

One of the concerns acknowledged by the Commission about the monitoring process so far is that it still relies heavily on reports from government.

Furthermore, even though the Bill of Rights applies vertically and horizontally and binds State entities and non-State entities, the Commission has some capacity problems in extending its mandate to non-State entities, especially big corporations.

In the next reporting cycle, the Commission will place more emphasis on conducting its own primary research in addition to improving on the existing protocols for each right and making better use of annual report information as soon as it becomes available.

## ACRONYMS

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CMAs</b>	Catchment Management Agencies
<b>CMIP</b>	Consolidated Municipal Infrastructure Programme
<b>CRC</b>	Convention on the Rights of the Child
<b>CWSS_P</b>	Community Water Supply and Sanitation Programme
<b>DPLG</b>	Department of Provincial and Local Government
<b>DTMC</b>	Durban Transitional Metropolitan Council
<b>DWAF</b>	National Department of Water Affairs and Forestry
<b>GISSIP</b>	Gauteng Integrated School Sanitation Programme
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>KZN</b>	KwaZulu-Natal
<b>LHWP</b>	Lesotho Highlands Water Project
<b>MIG</b>	Municipal Infrastructure Grant
<b>NEDLAC</b>	National Economic Development and Labour Council
<b>PHAST</b>	Participatory Hygiene and Sanitation Programme
<b>RDP</b>	Reconstruction and Development Programme
<b>SABS 241</b>	South African Bureau of Standards 241
<b>SALGA</b>	South African Local Government Association
<b>SMME's</b>	Small Micro and Medium Enterprises
<b>UNCESCR</b>	United Nations Committee on Economic, Social and Cultural Rights
<b>WATSAN</b>	Water and Sanitation Act

## **EXECUTIVE SUMMARY – THE RIGHT TO WATER**

### **Constitutional Obligations**

The right of access to water is enshrined in the Constitution in Sections 27(1) (b) and 27(2). Section 27(1)(b) of the Constitution states that everyone has the right to have access to sufficient food and water. Section 27(2) of the Constitution states that the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to water. Basic sanitation is dealt with in Section 24(a) of the Constitution which states that everyone has the right to an environment that is not harmful to their health or well-being.

The right of access to water is also provided in various international instruments. The key international instruments within which the right of access to water is enshrined are the ICESCR, UNESCR, CRC and CEDAW. Article 11, paragraph 1, of the ICESCR recognises the right of everyone to an adequate standard of living which includes accessibility and availability of adequate housing, food and clothing. The right to water falls under this article as it guarantees an adequate standard of living particularly since it is one of the most fundamental conditions for survival.

General comment no.15 (2003) of the UNESCR recommended that before any action that interferes with the right of access to water is carried out by the State party or third party, the relevant authority must ensure that such actions are performed in a manner warranted by law, compatible with those affected and that comprises of the (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies.

Article 24, paragraph 2 of the CRC states that State parties are required to combat diseases and malnutrition through the provision of nutritious food and clean drinking water. Article 14, paragraph 2 of the CEDAW requires that State parties that are signatories shall ensure that women have full enjoyment of the right to adequate living conditions-particularly with water supply.

### **Progress in the Realisation of the Right of Access to Water**

In terms of Section 7(2) of the Constitution the State must respect, protect, promote and fulfil the rights in the Bill of Rights. Alternatively, the State parties that are signatory to the ICESCR must respect, protect, promote and fulfil the rights enshrined in the International Bill of Rights. To achieve the obligations the State is obliged to take appropriate measures within a shortest period of time to ensure that everyone has access to sufficient water.

*Respect*

At the time of reporting, information about the actions that were taken to avoid disconnection of water supply to households and the construction of dams next to the river on which the communities depend, were not provided for by DWAF and the DPLG. This indicates that not much has been done with regard to respecting the right of access to water by DWAF and the DPLG at the time of reporting.

However, at municipal level only E-thekwini municipality introduced the flow limiter and restrictor technology policy to enable access to 6000 litres at no cost to all domestic users including those who were in arrears in order to eliminate the problem of disconnecting water supply to households. This policy was targeted to poor households. However, given that it was introduced at the time of reporting no estimates on the number of households who benefitted from this policy were available. Other municipalities in other provinces have not indicated actions that they have undertaken for eliminating the problem of disconnecting water supply to households.

*Protect*

Protecting the right of access to water means that government must prevent any violations of any individual's right which might be as a result of water pollution and unaffordable price increases by a third party. At the time of the reporting, DWAF and the DPLG failed to provide information on the actions they have taken with regard to protecting the violations of the right by the third party. This indicates that less attention is given to protection of the right of access to water. Rand Water at the time of the reporting had increased prices that might be regarded as unaffordable in order to payout the owed debts, and yet neither DWAF nor DPLG did something about such an action by Rand Water.

*Promote*

Promoting the right of access to water means that government should create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education. During the reporting period, DWAF conceptualized and promoted the Water Conservation: 2020 Water Education Programme vision in schools. The scope and nature of the programme has been extended beyond water conservation which focuses on quantities to include quality issues, sanitation, curriculum development in schools and integration of water knowledge through recreational/arts and cultural programmes. The programme was to encourage more children, especially rural based children, to take an interest in water related issues. However, estimates on the number of schools who benefitted from this programme was not provided by DWAF and the DPLG.

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In addition, during the reporting period, E-thekwini municipality has extended the community education and awareness programme to further educate and inform communities and learners on water and sanitation issues. Other municipalities have failed to provide information on its programme of action with regard to promoting the right of access to water.

### *Fulfil*

Fulfilling the right of access to water means that the government should institute active measures that enable each individual to access entitlements to the water rights, which cannot be secured through exclusively personal efforts. In other words government should thus, take all steps within available resources to realise the right of access to water.

During the reporting period, DWAF, the DPLG and municipalities have committed themselves to fulfilling the right to water in a progressive manner. In terms of water supply and sanitation, this was done by providing access to basic water and sanitation through the implementation of the Community Water Supply and Sanitation Programme, Free Basic Water Policy, the Consolidated Municipal Infrastructure Programme; establishment of the Municipal Infrastructure Grant; revision of Water Service Policy and initiation of a New Strategic Framework on Water Services and Free Basic Sanitation Policy.

The introduction of the Free Basic Water Policy was a realisation by government that there are many South Africans who cannot afford to pay for services so essential for health and basic needs. Its vision is to ensure that everyone that has access to water infrastructure will be able to benefit. 57% of the total population in South Africa received an amount of free basic water at the end of March 2003 (25 litres per person per day or 6000 litres per households per month).

The Consolidated Municipal Infrastructure Programme (CMIP) provides capital grants to municipalities in order to fund the installation of new infrastructure and the provision of services and/or upgrading the existing infrastructure and the provision of services, particularly for low-income groups. During the year under review 530 000 people of South Africa benefited from the water and sanitation projects that were supported by CMIP.

The Municipal Infrastructure Grant intends to assist the poor to gain access to infrastructure by fully subsidising the capital costs of providing basic services to poor households through distributing funding for municipal infrastructure in an equitable, transparent and efficient manner. The Free Basic Sanitation Policy aims to promote affordable access by poor households to a basic level of sanitation service. However, these policies are still at their refinements stage.

The revision of Water Service Policy facilitated integration, co-ordination and consistency, and served to accelerate the delivery of the Water Service Programme whilst the new strategic framework gave consideration to the provision of 50l per person per day, where suitable.

#### *Overall assessment*

Notwithstanding positive developments during the reporting period, marginalised and vulnerable groups continue to face a vicious combination of inferior access to water, discrimination, higher prices, greater chances of using contaminated water and inadequate sanitation. This is because the laws and policies in the country fail to respect, protect and promote the right to clean water as a human right. In addition, there are a few monitoring bodies to ensure the equitable implementation of water policies that provide redress for violations of the right of access to water as evidenced by international instruments and the *Grootboom* judgment. The *Grootboom* judgment states that the State should take reasonable legislative and other measures to achieve the progressive realisation of the right within its available resources.

Laws and policies thus continue to provide scant protection for vulnerable people in South Africa. During the reporting period, pricing policy and Free Basic Water Policy were not implemented as intended. Many municipalities continued to formulate prices for 0-6 kilolitres and households consuming between 21-60 kilolitres per month at levels higher than the industrial users. In times of water shortage (during drought season) there were sometimes problems with allocating water to domestic users and the poor people were the first sector of the population to bear the brunt of these conditions. Poor water quality for many poor households was also a life-threatening problem as is the non-provision of effective sanitation in rural areas. According to the International Commission of Jurists, “ failure to perform any of these....obligations (respect, protect, promote and fulfil) constitutes a violation of the right.

This clearly pose some concerns with regard to the reasonableness of the measures instituted during the reporting period. Water Service Policy which has been revised during the reporting has not been able to achieve its main goal, that is, to ensure that the poor households receive a sustainable service. However, with proper implementation and guidelines to guide municipalities the Revised Water Service Policy might be regarded as a reasonable measure that can pass the reasonableness test.

Free Basic Policy has been a success since its inception and is in line with Section 27(1)(b) of the Constitution which states that everyone has the right to sufficient water. However, households using communal taps and pre-paid metered taps seem not to be benefiting from this policy. If implemented as required (6000 litres per households per month) in rural areas where households rely on communal taps and 50 litres per person per day for larger

families, this policy can be regarded as a reasonable measure that can pass the reasonableness test as evidenced in the Grootboom judgement.

As for sanitation, implementation of the previous policy was successful. The poor were not able to access adequate sanitation facilities, mostly urban and suburban people benefitted. MIG is possibly a positive measure that requires proper implementation. If it can be implemented as required (benefiting household earning less than R1 100, farm dwellers and small businesses owned by poor households), it can be regarded as a measure that can pass the reasonableness test.

The occurrence of these recurring problems is attributed to the fact that national government faces difficulties or challenges with regard to: monitoring executed measures; the provision of free basic water; service sustainability; provision of water to farm dwellers and residents near farmers; and the provision of sanitation services. Local government experienced difficulties with regard to implementation of measures instituted during the financial period 2002/2003.

### **Recommendations**

The strategy outlined in this document is designed to make recommendations about policies that are already in place in order to stimulate the progressive realisation of the right of access to water by different spheres of government. The key recommendations are as follows:

- DWAF should create monitoring bodies at local level (municipality level) to effectively monitor the implementation of policies and law aimed at fulfilling the right of access to water. Monitoring will be effective if and only if monitoring bodies from local, regional and national levels can work together. In addition, the successful monitoring of the right of access to water could be made possible by a new venture capital fund and an array of new and existing support structures.
- DWAF, together with DPLG, should provide support both financially and at policy level to provincial departments and municipalities. These spheres should make use of MIG to provide additional funds to the provincial departments and municipalities that are in dire need. Regarding guidelines, the formulation of guidelines which will be responsible for the implementation of the new policies and programmes instituted is required. In that way, provincial departments and municipalities will get enough support financially and policy wise from DWAF and the DPLG.



- Government should make use of the pre-paid meters either through private pre-paid meters or communal pre-paid metres that work with a token. These pre-paid metres must be set to provide 6 000 litres free automatically to each household at the beginning of each month. By doing this government will be able to control the total amount consumed, provide free 6 000 litres and also provide 50l per person per day where suitable. This should be accompanied by the provision of funds for the installations of these metres to municipalities through MIG.
- The functionality of infrastructure in place should be the priority of DWAF in order to achieve the goal of providing free basic water to all. The functionality of the infrastructure should go along with the improvement in the sustainability of services within municipalities. This can be made possible through the provision of sufficient funds by DWAF and the DPLG and employment of skilled workers and managers within municipalities.
- The pricing mechanism has to be in line with the user-pay principle, the cross-subsidisation principle and the regulations made in schedule 4(2) of the water service Act which oblige the water institution to take into account the differences (tap water supply or communal tap water supply) within areas when setting prices. The payments of water should largely depend on the quantity used taking into account the free basic water. This being the case, DWAF should continue to combat the issue of privatisation among municipalities. This can be done through penalising municipalities who engage in such activities as a matter of first resort. Also, combating privatisation in retailers should be looked into carefully to respect the right of access to water by everyone. During drought season, local government should factor in the scarcity value when allocating water to avoid a situation where domestic users are left without water whilst agricultural users, mining and industries are given more water at the same price.
- Government should provide funds for capacity building with regard to water quality to municipalities. Also, government should see to it that domestic water quality and testing are the responsibility of municipalities rather than the provincial governments.
- DWAF should take a leading role in making sure that farm dwellers, residents near farmers and poor households access clean water and proper sanitation services. Also DWAF should see to it that programme of action for HIV/AIDS infected

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workers within schemes and infected households within municipalities are in place.

- Finally, the document recommends renewing the focus of water and sanitation policies and laws on the poor. Careful attention must be given to the intended beneficiaries of the established policy. Sometimes established water and sanitation policies and legislation end up benefiting the rich instead of the poor.

## 1 INTRODUCTION

### 1.1 South African Constitutional and National Water Legislative Provisions

Section 27(1)(b) of the Constitution of the Republic of South Africa, Act 108, 1996 (hereafter the Constitution) states that “everyone has the right to have access to sufficient food and water”. Basic sanitation is provided for in section 24(a) of the Constitution where it states that “everyone has a right to an environment that is not harmful to their health or well-being”.

Part B of Schedule 4 of the Constitution vests the responsibility for potable water supply, domestic waste-water and sewage disposal systems in local sphere of government. While the structure of the local governments have the responsibility for managing their own water reticulation, sanitation and tariff systems, in reality these spheres can only choose to source water from dams in their jurisdiction (which are few and far between), recycle water or purchase bulk water supplies from regional Water Boards, who in turn, purchase water from the National Department of Water Affairs and Forestry (DWAf).

The National Water Act of 1998<sup>1</sup>, establishes the National Government, acting through the Minister of Water Affairs and Forestry, as the public trustee of the nation’s water resources, with the power to regulate the use, flow and control of all water in the republic.<sup>2</sup> According to DWAf, the National Government has the Constitutional responsibility to “support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and perform their functions, and also has the authority to see to the effective performance by municipalities of their functions ... by regulating the exercise by municipalities of their executive authority”.<sup>3</sup> In practical terms, DWAf issues guidelines and regulations in terms of the Water Service Act, which municipalities must comply with. The Water Services Act 108 of 1997 aims to create a “developmental regulatory framework within which water services can be provided”.<sup>4</sup> The Act defines water service institutions and a policy document defines their roles and responsibilities.<sup>5</sup>

During the reporting period, a technical assessment of various private sector offerings with a view towards supplying measuring equipment *en masse*, was published. Furthermore, by 8 June 2003 all water service institutions must have fitted a suitable water volume measuring device or volume controlling device to all user connections provided with water supply services.<sup>6</sup> However, the report felt a need to discuss regulation and guidelines published in the previous year as they were still used within municipalities during the reporting time. In 2001, regulations made under section 9(1) and 73(1)(j) of the Water Service Act in June 2001 provided that every person in South Africa should be able to access a minimum of 25 litres (*l*) of potable water per day or 6 kilolitres (*k*l) per household per month, at a minimum flow rate of not less than 10 *l* per minute, within 200 meters of a household, with an effectiveness such that no

consumer is without a supply for more than seven full days in a year.<sup>7</sup> The Compulsory National Standards therefore provide for 25 l per day to households of eight people and up to 50 l per day for households of 4 people.<sup>8</sup>

Significantly the conservation regulation states that a water services institution must have a consumer service to which non-compliance with the regulations can be reported.<sup>9</sup>

As for sanitation, the conservation regulations provide that the minimum standard for basic sanitation services is the provision of appropriate health and hygiene education, and a toilet which is safe, reliable, environmentally sound, easy to keep clean, well ventilated, and which provides privacy and protection against the weather, keeps smells to a minimum, and prevents the entry and exit of flies and other disease-carrying pests.

The conservation regulations also provide for water quality by stating that water service institutions must compare the results obtained from the testing of the samples with *SABS 241: Specifications for Drinking Water* or the *South African Water Quality Guidelines* published by DWAF. If the results indicate that the water poses a health risk, the Director General of DWAF and the head of the relevant Provincial Department of Health must take steps to inform consumers by providing: a warning, the reasons for the health risk, any precautions to be taken by consumers, a time-frame within which safe quality water will be provided.

The National Water Act 36 of 1998 also gives effect to the quality of water resources (water courses, surface, and groundwater bodies, wetlands and estuaries). This is significant because a large number of households in South Africa derive water directly from natural sources.<sup>10</sup> Overall, the National Water Act 36 of 1998<sup>11</sup> aims to:

*ensure that South Africa's water resources are protected, used, developed, managed and controlled in a sustainable and equitable manner for the benefit of all persons.*

Section 10(1) of the Water Service Act empowers the Minister of Water Affairs and Forestry to set national norms and standards for tariffs charged for the delivery of water. The tariff regulations<sup>12</sup> create a regulatory framework, which seeks to standardise water tariffs for the effective management of all water services. The water tariff regulations provide that norms and standards, in respect of tariffs for water services, may differentiate on equitable basis between different users, water services and geographic areas, taking into account the socio-economic and physical attributes of each area when providing water services.

In general, the tariff regulations propose that sufficient revenue should be raised to recover almost all the costs of delivering water services (i.e. excluding

the costs of grants subsidies and donations) at the same time ensuring that all households have access to basic water supply and basic sanitation.

With a view towards ensuring a basic supply to all households, the regulations make provision for municipal rates and taxes or transfers from national or provincial government or transfers from any other source to be used to subsidise tariffs. Importantly the tariff regulations also state that:

*A water services institution must consider the right of access to basic water supply and the right of access to basic sanitation when determining which water services tariffs are to be subsidised.*

Customer installations designed to deliver an uncontrolled volume of water must support the viability and sustainability of water supply services to the poor and discourage wasteful or inefficient water use. If this is done through applying a progressive block tariff structure, the tariffs for the highest consumption block must discourage high water use.

The tariff regulations also provide that the tariffs for the provision of sanitation services to households must support the viability and sustainability of sanitation services to the poor, recognise the significant public benefit of efficient and sustainable sanitation services, and discourage usage practices that may degrade the natural environment.

## **1.2 Relevant Case Law**

Both Constitutional and legislative provisions on the right to water have been given effect by the Constitutional Court and High Courts in South Africa. In practice, the Constitutional and legislative provisions has been used to make judgements on cases of violation of the right to access of water.

The first judgment on the violation of the right of access to water together with other socio-economic rights was on the case of *Government of the Republic of South Africa and others v Grootboom and others in 2000*.<sup>13</sup> Although the *Grootboom* case centred on the right of access to housing, it emphasised that socio-economic rights are interrelated and interconnected and that in order for a government policy to pass the test of reasonableness as elaborated upon in the *Grootboom* judgment case, a policy aimed at providing access to a right cannot be aimed at long-term statistical progress only but it should benefit the targeted people (poor households).

Furthermore, the Constitutional Court placed an emphasis on co-operative governance between the different spheres of government in an effort to avoid mere finger pointing. The Constitutional Court also placed a specific responsibility on National Government to ensure that its water service delivery enables local government to deliver potable water and sanitation services. Basically, the *Grootboom* judgment dealt with the positive obligation on the state to achieve the progressive realisation of the socio-economic right and not

with the negative obligation to refrain from interfering with the socio-economic right.

*Other* judgments were on the cases of *Manquele v Durban Transitional Metropolitan Council (DTMC)*<sup>14</sup> and *Residents of Bon Vista Mansion v Southern Metropolitan Local Council*<sup>15</sup> which dealt with the negative obligation on the State to achieve the progressive realisation of a right. Both of these cases deal with the disconnection of water supply to households and the judgement of this two cases took place in 2001 and 2002. *Manquele* case judgement took place in 2001 whilst *Bon Vista* case judgement took place in 2002 .

The *Manquele* case was about a 35-year-old woman with seven children who fell into arrears on her water account. She was given written notice and allowed to make representation to the Council before her water supply was disconnected. The woman approached the Durban High Court for an order declaring the disconnection illegal. The woman argued that the by-law was inconsistent with the Water Services Act in that the discontinuation resulted in her being denied access to a basic water service because she was not able to pay for it.

The Durban High Court focused on the validity of the by-law rather than the justification for the disconnection. The Court stated that in the absence of a regulated minimum standard of water supply, it could not enforce the right to basic water supply in terms of the Water Service Act of 1997. At the time of the judgment the conservation regulations prescribing the content of basic water supply did not exist. As such, the judgment indicated that the interpretation of sections 3 and 4(3) of the Act without the conservation regulations concerned policy matters that fell outside the purview of the Court's role and function. The Court was therefore satisfied with the procedure taken by the DTMC in accordance with its by-law, which did not fall foul of section 4(3)(a) or (b) of the Act.

Moreover, the Court ruled that given that the applicant chose not to limit herself to the water supply provided to her free of charge, but continued to consume additional quantities, the Court removed her from the ambit of those who could prove that they are unable to pay for basic services. Therefore, the Court supported the decision taken by the DTMC to discontinue services to the woman due to the fact that she failed to pay. According to De Visser et al<sup>16</sup> it is regrettable that the Court could not entertain sections 27(1)(b) and 28(1)(c) of the Constitution in light of the fact that she had seven children.

The *Bon Vista Mansions* case was about the disconnection of water supply to the residents of a block of flats in Hillbrow because of the non-payment of arrears. The residents obtained an interim order against the municipality to restore their water supply. The Court ruled that:

water supply may not be discontinued if it results in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.<sup>17</sup>

The onus is therefore currently on the person to convince a water service authority that a disconnection is denying them their right to sufficient water, which stands in some contrast to the *Manquele* judgment where the person had no right to prove this in the first place.

Again, the report felt a need to include previous year's judgment as they are still relevant to the water problems of this financial year.

### 1.3 International Instruments and Statements

Internationally, the right to adequate clean water and sanitation is explicitly recognised in a wide range of international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the International Convention on the Elimination of All forms of Discrimination against Women (CEDAW).<sup>18</sup>

Article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to an adequate standard of living, which includes the accessibility and availability of adequate housing, food and clothing. The right to water was not clearly indicated in this article but it was assumed that this right falls under Article 11, paragraph 1, as it guarantees an adequate standard of living, particularly since the right to water is one of the most fundamental conditions for survival.

During the reporting period, the United Nations Economic and Social Council released *General Comment No. 15* on the right to water, which recommended that:

*Before any action that interferes with an individual's right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies (see also General Comments No. 4 (1991) and No. 7 (1997)). Where such action is based on a person's failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.<sup>19</sup>*

The United Nations Committee on Economic, Social and Cultural Rights also took note of the:

*commitment in the 2002 World Summit on Sustainable Development Plan of Implementation to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.*<sup>20</sup>

During the reporting period, the World Health Organisation also released a report on *Domestic Quantity, Service Level and Health*, where it provided an analysis on the relationship between the level of water service provision and the level of health concern (see Table 1).<sup>21</sup>

**Table 1: World Health Organisation requirements for water service levels to promote health**

<i>Service Level</i>	<i>Access Measure</i>	<i>Needs met</i>	<i>Level of Health Concern</i>
No access (quantity collected often below 5 l/c/d)	More than 1000m or 30 minutes total collection time	Consumption – cannot be assured Hygiene – not possible (unless practised at source)	Very high
Basic access (average quantity unlikely to exceed 20 l/c/d)	Between 100 and 1000m or 5 to 30 minutes total collection time	Consumption – should be assured Hygiene – handwashing and basic food hygiene possible; laundry/bathing difficult to assure unless carried out at source)	High
Intermediate access (average quantity about 50 l/c/d)	Water delivered through one tap on-plot (or within 100m or 5 minutes total collection time)	Consumption – assured Hygiene – all basic personal and food hygiene assured; laundry and bathing should be assured	Low
Optimal access (average quantity about 100 l/c/d)	Water supplied through multiple taps continuously	Consumption – all needs met Hygiene - all needs should be met	Very low

*Source: Howard and Bartram, Domestic Water Quantity, Service Level and Health, 2003*

*Notes: South Africa's basic service level standards are similar to the basic access level*

Article 24, paragraph 2 of the CRC states that State parties are required to combat diseases and malnutrition through the provision of nutritious food and clean drinking water.<sup>22</sup> Article 14, paragraph 2 of the CEDAW requires that State parties that are signatories shall ensure that women have full enjoyment of the right to adequate living conditions – particularly to water supply.

Similarly, a wide range of international statements from the Mar del Plata Action Plan (1977), New Delhi Statement (1990), Dublin Statement (1992), Copenhagen Declaration (1995), Marrakech Declaration (1997), International Conference on Water and Sustainability (1998), Hague Declaration (2000) and



United Nations Commissions on Human Rights (2002)<sup>23</sup> recognise the right to an adequate clean water and sanitation service that can be accessed by all citizens of States within a reasonable distance of their living quarters.

In 1977, the Mar del Plata Action Plan stated that all people, whatever their stage of development and their social and economic conditions, should have the right to have access to drinking water in quantities and qualities equal to their basic needs. The 1990, 1995, 1997 and 1998 statements state that everyone has the right to have access to clean water and sanitation.

In 1992, 2000 and 2002, the Dublin Statement, Hague Declaration and United Nations Commissions on Human Rights stated that everyone has the right to have access to enough safe water at an affordable cost in order to have a healthy and productive life.

## **2 PROGRESS IN THE REALISATION OF THE RIGHT**

### **2.1 New National Policies and Programmes**

#### ***2.1.1 Review of Water Service Policy***

During the reporting period DWAF reported that it has initiated a review of the Water Services Policy. The main objective of the review was to produce a water service framework that would assist in guiding the water service sector for the next 10 years.<sup>24</sup> According to the Department, the review process facilitated integration, co-ordination and consistency, and served to accelerate the delivery of the water service programme.<sup>25</sup> The strategic framework was publicised in September 2003.<sup>26</sup>

#### ***2.1.2 The Municipal Infrastructure Grant Policy***

The Department of Provincial and Local Government (DPLG) established the Municipal Infrastructure Grant (MIG) based on the consolidation of six Municipal Infrastructure Conditional Grants during the period under review. The MIG is the merger of the Consolidated Municipal Infrastructure Programme (CMIP), the Local Economic Development Fund, the Water Service Capital Grant, the Community Based Public Works Programme, the building for Sports and Recreation programme, and the Urban Transport Grant. The overall objective of this policy is to assist the poor to gain access to infrastructure in order to improve their opportunities to engage in the economy. This policy thus has the overall objective of removing the backlog with regard to access to basic municipal services for the poor over a 10-year period, while at the same time promoting economic development through employment creation and enterprise development.

Basic municipal services refer to the minimum level of service required to provide the access necessary to ensure the health, safety and well-being of the

community.<sup>27</sup> The basic minimum level of service includes adequate access to water supply, sanitation, roads, protection from storm water and sufficient attention to the disposal of household refuse. The inclusion of electricity in the basic minimum level of service is at the discretion of the municipality.

Specifically, this policy has the key objective of fully subsidising the capital costs of providing basic services to poor households through distributing funding for municipal infrastructure to municipalities in an equitable, transparent and efficient manner, in order to:

- maximise developmental outcomes;
- enhance developmental capacity of municipalities; and
- provide a mechanism for the co-coordinated pursuit of national priorities with regard to basic service infrastructure programmes.

Moreover, the municipal infrastructure grants aims to target the poor, who are defined as households earning less than R1 100/month, farm dwellers and to a limited extent, businesses run by individuals who are poor and that are located in municipalities in poor areas.<sup>28</sup>

All spheres of government are responsible for the implementation of the MIG. With regard to capacity building, the MIG is concerned with the project level capacity building i.e. for internal employees, contractors and the public.

Allocations of funds will be based largely on the sectoral assessment of infrastructure gaps. However, in order to ensure that the funds are used specifically for infrastructure, the DPLG has decided that specific medium term targets will be set for splitting the MIG funds received by municipalities between sectors.

Monitoring of the implementation of this policy will occur at two levels; through an information management system and the performance of the municipalities with regard to the implementation of MIG. These policy refinements are still fairly new and the impact on poor households has not yet been felt.

### ***2.1.3 Free Basic Sanitation Policy***

DWAF initiated a process to develop a Free Basic Sanitation Policy after the reviewing of Water Service Policy. The aim of the Free Basic Sanitation Policy is to promote affordable access by poor households to a basic level of sanitation service. According to the Compulsory National Standards of the Water Service Act, a basic minimum standard is the provision of appropriate health and

hygiene education, and a toilet which is safe, reliable, environmentally sound, easy to keep clean, well ventilated, and which provides privacy and protection against the weather, keeps smells to a minimum and prevents the entry and exit of flies and other disease-carrying pests. During the reporting period, strategies for household sanitation, farm worker and clinic sanitation and the eradication of the bucket system were clarified in order to facilitate programme rollout and to address specific issues. The clarification of these programmes has enabled the relevant authorities to deliver sanitation services more effectively. This programme was targeted at needy households, farm workers, clinic personnel and patients.

## **2.2 New Provincial Policies and Programmes**

### ***2.2.1 KwaZulu-Natal Drought Relief Programme***

During the reporting period, only KwaZulu-Natal Department established a new policies. Other eight provinces and the municipalities did not established any new policies. The Department of KwaZulu-Natal established the Drought relief program whose main aim is to provide emergency water and sanitation services to vulnerable households during drought. The programme catered for low-income groups, poor people living in rural areas and female-headed households.

## **2.3 Indicators**

### ***2.3.1 National Indicators of Water and Sanitation Infrastructure Delivery***

#### *Water infrastructure*

In terms of water service policy of 1997, the Department of Water Affairs and Forestry has the responsibility for setting minimum reporting requirements for Water Service Authorities and Water Service Providers with a view towards monitoring their performance and providing support. Information supplied by DWAF demonstrates that a substantial increase in access to water infrastructure took place during the reporting period. Statistics from the Department of Water Affairs and Forestry's 2002/2003 Annual Report show that 86% of the people in South Africa had access to improved water infrastructure in March 2003 compared with 83% in March a year before. Other statistical estimates from DWAF to the end of March 2003 show that the level of access to improved water supply infrastructure could be as high as 89% of the population. The number of people with access to improved water infrastructure (piped water) grew at a rate of 6% from 2002 to 2003 as compared to an overall population growth rate of 2% for the same period.

**Table 2: The water infrastructure backlog to March 2003**

	<i>Version 1 Mar-03 (Millions of people)</i>	<i>Version 2 Mar-03 (Millions of people)</i>
Total population	46,6	46,2
Water in house or in yard		28,3
Standpipes less than 200m		6,7
Standpipes further than 200m and boreholes		6,2
Subtotal – improved to high level of service	40,2 (86%)	41,2 (89%)
Unacceptable – river, pool, dam, stream	6,4	5

*Sources: Version 1 DWAF Annual Report 2002/2003 page 12, Version 2 - DWAF Water Supply Perspective, Census 2001 updated to March 2003*

*Notes: These figures reflect access to infrastructure, not necessarily effective services e.g water quality, flow & sustainability*

According to DWAF's Annual Report for 2002/2003, 2,4 million people gained access to improved water infrastructure during the year. However, the response to South African Human Rights's protocol for 2002/2003 from DWAF shows that the number of people who gained access to improved (piped) water supplies through the DWAF-Community Water Supply and Sanitation (CWSS) in 2002/2003 was 1 565 118. The gap of approximately 834 882 people that remains may have been supplied with access to infrastructure by other departments, namely: DPLG through CMIP for bulk infrastructure, the Department of Housing for housing projects, and the Department of Public Works, which focuses on schools and clinics. The rapid pace of water infrastructure delivery lies behind DWAF's confidence that the 6,4 million person backlog in access to water services infrastructure (that existed in March 2003) will be eliminated by 2008. However, estimates of the backlog in access to water infrastructure vary.

#### *Sanitation infrastructure*

When it comes to basic sanitation, DWAF's new water strategic framework of 2003 mentioned that by the year 2010 all South Africans must have access to sanitation facilities that are functional. The DWAF's 2002/2003 Annual Report shows that 63% of the South African population had access to basic sanitation infrastructure in March 2003 compared with 60% in March a year before. DWAF's 2002/2003 Annual Report indicated that approximately 1,6 million people gained access to improved sanitation infrastructure between March 2002 and March 2003. The rate of increase in sanitation infrastructure from 2002 to

2003 was 5%, as compared to an overall population growth rate of 2%. However, the response from DWAF's protocol indicated that for 2003, 65 105 households (not individuals) had toilets delivered to Reconstruction and Development Programme (RDP) standards under the DWAF-CWSS programme. Similar to water services infrastructure, estimates of the backlog in access to sanitation infrastructure vary.

**Table 3: The sanitation infrastructure backlog to March 2003**

	<i>Version 1 Mar-03 (Millions of people)</i>	<i>Version 2 Mar-03 (Millions of people)</i>
Flush toilet (connected to sewer or septic tank)		24
Ventilated Improved Pit Latrine (VIP)		4.1
Sub-total	29.2 (63%)	28.1 (61%)
Unacceptable, none, pit latrine, buckets, chemical	17.3	18.1
Total population	46.6	46.2

*Sources: Version 1 DWAF Annual Report 2002/2003 page 12, Version 2 - DWAF Water Supply Perspective, Census 2001 updated to March 2003*

*Notes: These figures reflect access to infrastructure, not necessarily effective services. 1,8 million people were using the bucket system within the unacceptable category*

### Water and Sanitation Service Quality

For both water and sanitation, DWAF is at pains to point out that the figures on access to infrastructure do not necessarily reflect effective services in terms of quality, flow and sustainability. The actual impact of rapid infrastructure delivery is therefore difficult to assess because there is insufficient information on the percentage of infrastructure that is functional or dysfunctional. Only 100 out of 185 local governments provided information on their perceptions of the reliability and quality of water services delivery. Table 4 shows that service reliability and quality is high in metropolitan areas and formal areas in towns, but rural service reliability is a major problem. Since only local governments with better capacity reported to DWAF, its Annual Report stated that the actual situation might be worse than reflected in Table 4.

**Table 4: Service quality as reflected by a sample of information provided by local governments**

<i>Perspective</i>	<i>Percentage of local governments meeting reliability of service</i>	<i>Percentage of local governments meeting service quality</i>
Rural	47	56
Urban-formal towns/cities	91	89
Metro	99	94
National	75	78

*Source: DWAF Annual Report 2002/2003*

Functionality and sustainability of water projects has always been a problem in rural areas of South Africa. Due to unsustainable projects there are problems in continuing delivery. Sustainability is defined in terms of the present and future functioning of water projects to meet community needs. In addition sustainability is defined in terms of successful operations and maintenance, adherence to basic RDP standards (which is the 25l per person per day), free basic provision and social inclusion. At the moment there is insufficient information on the percentage of projects that are functional or dysfunctional. However, the Human Sciences Research Council (HSRC)<sup>29</sup> found that out of 23 projects sampled in KwaZulu-Natal in late 2002, 10 were sustainable or functioning at RDP standards (43.4%), 8 were working, but problematic and the remaining 5 (21.7%) were not working.

In addition, an address by the then Premier of Mpumalanga in 2002 indicated that in the Nkangala District, which includes the former Kwandebele area and part of the former Bophuthatswana areas, people have in the last four to five years at times stayed without water for up to three months in a year due to the fact of unsustainable water projects. In most cases, those projects that are unsustainable are not implemented according to the RDP standards. Hemson, 2002 indicated that there are high levels of unserved people in KwaZulu-Natal because projects are not implemented to RDP specifications.

The unsustainability of these water projects results from the fact that the consumption level among people served by rural water projects is low. For example, HSRC indicated that level of consumption among people served by rural water projects in KwaZulu-Natal is very low and in many water projects rules apply to limit consumption to certain hours of the day or by other means. The reason for very low consumption is attributed to the poverty and destitution of many communities and a distinction needs to be made between the better-off, poor and very poor to ensure successful and continuing delivery.

*Local Indicators of Water and Sanitation Infrastructure Delivery*

Only the Nelson Mandela Metropolitan Municipality provided reasonable information on the water and sanitation backlogs in its jurisdiction. The response indicates that 10 thousand households had access to piped water inside their dwellings in 2002/2003. Approximately, two thousands households at the time were using river, pool, dam and stream water. These households fall under the unacceptable level defined by DWAF. The majority of households had access to communal standpipes less than 200m from their dwellings, whilst few had access to communal standpipes further than 200m away from their dwellings.

**Table 5: The water infrastructure backlog in Nelson Mandela Metropolitan Municipality**

<i>Source</i>	<i>Number of households</i>
Water in house or yard	10 000
Communal standpipes less than 200m	253 000
Communal standpipes further than 200m	400
Unacceptable-river, pool, dam, stream	2 060

*Source: Nelson Mandela Municipality protocol, 2002/2003*

For sanitation, 236 thousand households had access to flush toilets inside their homes at the time of the reporting. Approximately 72 thousands households had no toilets or had pit latrines, bucket and chemical. No one had access to ventilated pit latrines in this municipality during the reporting period.

**Table 6: The Sanitation Infrastructure Backlog in the Nelson Mandela Metropolitan Municipality**

<i>Source</i>	<i>Number of households</i>
Flush toilet	236 000
Ventilated pit latrines	0
Unacceptable-none, pit latrine, bucket, chemical	71 900

*Source: Nelson Mandela Municipality protocol, 2002/2003*

*Note: Flush toilet refers to number of flush toilet installed inside and outside the house.*

## 2.4 Ongoing Policies and Programmes

### 2.4.1 Community Water and Sanitation Programme

During the period under review, DWAF continued to implement the Community Water Supply and Sanitation programme (CWSS-P), which targets urban and rural communities that require sustainable water and sanitation infrastructure.

As shown in Figure 1, approximately 1,6 million people gained access to improved piped water supplies during the reporting period through DWAF’s CWSS-P. From 1994 to the end of the 2002/2003 financial year, 8,8 million people gained access to piped water infrastructure through the CWSS-P. Despite this level of infrastructure delivery since 1994 up to the year under review, the number of people who gained access to improved water infrastructure varies greatly from province to province. The majority of people who gained access to improved water infrastructure during the reporting period were from KwaZulu-Natal, Limpopo, Eastern Cape, North West and Mpumalanga. During the year under review a much smaller number of people gained access to piped water infrastructure through CWSS-P in the Free State, Western Cape and Northern Cape.

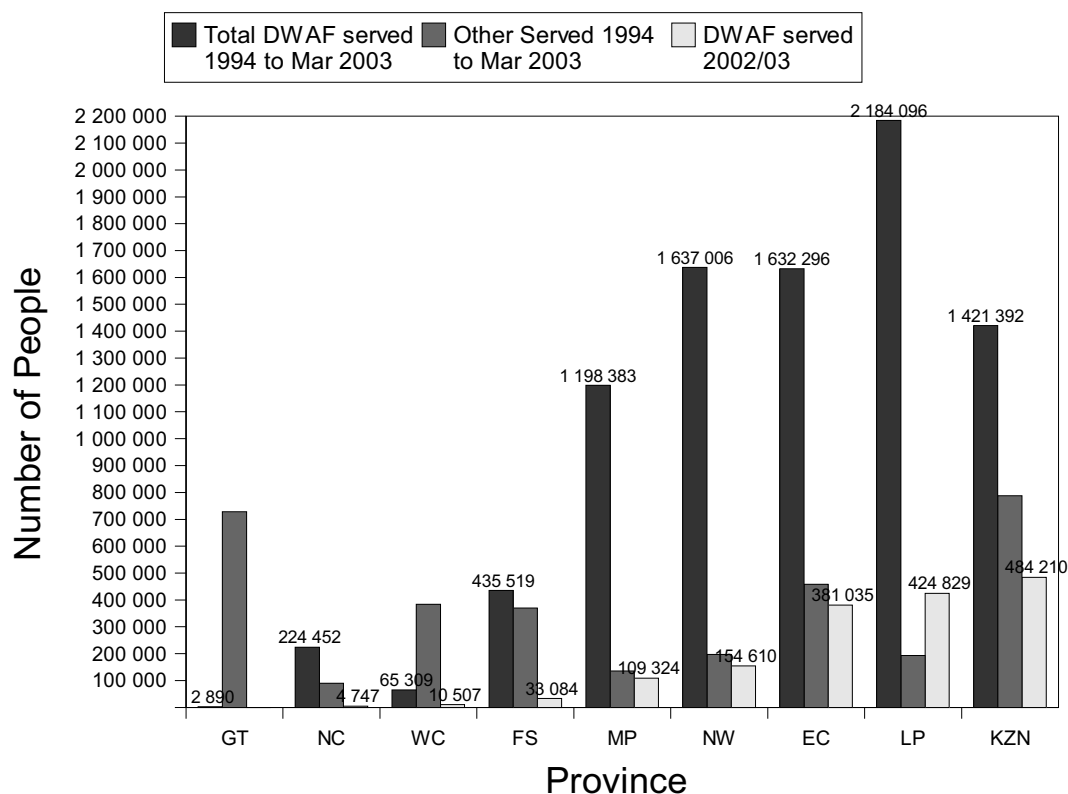
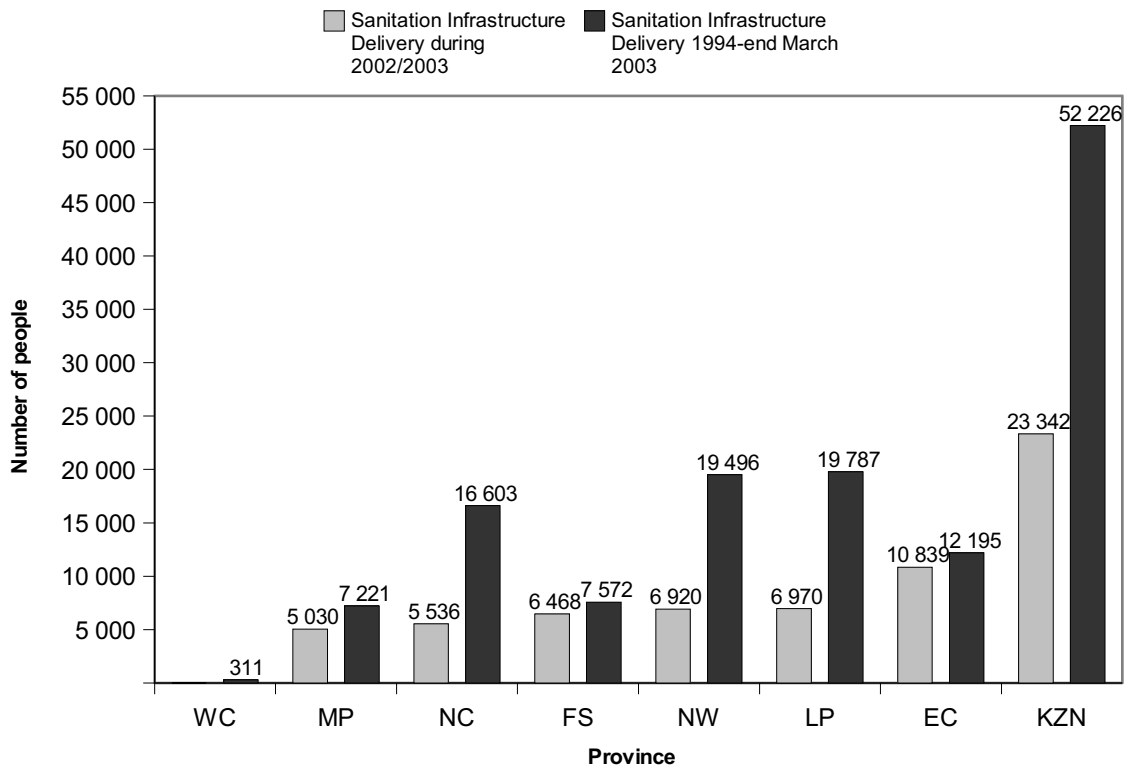


Figure 1: Access to piped water infrastructure through the CWSS-P

Source: DWAF Protocol Response 2002/2003





**Figure 2: Access to sanitation infrastructure through the CWSS-P**

*Source: DWAF Protocol Response 2002/2003*

Approximately 65 thousand toilets facilities were constructed during the reporting period (Figure 2). From 1994 to the end of the 2002/2003 financial year, 135 thousand toilet facilities were constructed. While only a few toilet facilities were constructed in the Western Cape during the reporting period, it is clear from Figure 2 that the pace of delivery picked up during the 2002/2003 financial year as compared to the pace since 1994 to the end of March 2002. In the case of the Eastern Cape, Free State, and Mpumalanga more than half of all the toilet facilities built since 1994 to the end of March 2003, were built during the 2002/2003 financial year. For both water and sanitation, the CWSS-P does not operate in Gauteng.

#### **2.4.2 The Consolidated Municipal Infrastructure Programme**

The Consolidated Municipal Infrastructure Programme (CMIP) provides capital grants to municipalities in order to fund the installation of new infrastructure and services or upgrade infrastructure and services, particularly for low-income groups.<sup>30</sup> CMIP is driven by DPLG and managed by each of the provinces of South Africa to address the backlogs in each of the municipalities within its province. During the period under review, the following results were achieved.

The DPLG determined various targets to be achieved under CMIP. DPLG targeted technical support to weaker municipalities to assist them with implementation of the programme during the reporting period. The DPLG set out to deliver 150 water projects, 60 sanitation projects and 50 roads projects of which 50% were going to be in rural areas and 50% were going to be in urban areas; beneficiaries of 450 000 households per annum; employment opportunities and provision of training to 30% men, women and youth and the utilization of 300 Small Micro Medium Enterprises (SMME's) per annum.<sup>31</sup> Compared to its targets, the DPLG reported impressive delivery of 460 water projects, 280 sanitation projects and 450 roads projects of which 51% were in an urban area and 49% were in rural areas. These projects benefited 530 000 people.<sup>32</sup> However, the DPLG failed to provide a reason for this achievements.

Provincial Departments in Mpumalanga, Limpopo, Northern Cape, Western Cape, Gauteng and KwaZulu-Natal made use of CMIP funds to reduce the water and sanitation infrastructure backlogs within their boundaries during the reporting period. Five Provincial Departments provided information on the delivery of water and sanitation infrastructure during the reporting period.<sup>33</sup> Owing to the format of information provided to the South African Human Rights Commission it was not possible to provide a reliable description of water and sanitation projects and beneficiaries by these five departments. Many of the projects are multi-year projects at different stages of delivery. There is also a risk of double counting in relation to the number of beneficiaries because the project lists include both bulk infrastructure (e.g. sewage treatment works) and household reticulation infrastructure (e.g. pipes along streets for household connections).

#### ***2.4.3 Gauteng Province Department of Development Planning and Local Government***

During the reporting period the Gauteng Department of Development Planning and Local Government continued to implement two programmes/projects, namely the removal of bucket system and the provision of clean water and sanitation for all communities in Gauteng. These programmes/projects were based on the July 2001 Gauteng Executive Council resolution whose purpose was to ensure adequate access to clean water and sanitation for all in Gauteng by March 2006. According to the Department, removal of buckets in all Gauteng communities aimed to ensure a healthy life style and restore the dignity of people.

There was a water or sanitation backlog of 459 thousands households in Gauteng at the end of the 2002/2003 financial year. The Department reported that 495 000 households in Gauteng province did not have access to water or sanitation in 2001. However, DWAF provided the figure of 254 628 as the backlog for water or sanitation in 2001. 40 thousands households in formal areas and some families living in farmland benefited from water and sanitation

infrastructure delivery during the reporting period. Also, this program led to the removal of 4 thousands bucket systems from households and some families living in farmlands. Specifically, the program catered for all the historically disadvantaged groups in Gauteng especially low-income groups, female-headed households and rural areas.

#### 2.4.4 Free Basic Water

During the reporting period, the DWAF disseminated revised policy, guidelines and tools necessary for the provision of free basic water to all municipalities. Provincial support units assisted local government to expand free basic water delivery. Estimates from the DWAF's Annual Report 2002/2003, show that 75% of all municipalities provide free basic water services.

**Table 7: Municipalities offering Free Basic Water**

<i>Institution</i>	<i>Total no of municipalities</i>	<i>No of municipalities providing FBW</i>		<i>Total Population (Millions)</i>	<i>Population with FBW services (Millions)</i>	
Free State	21	20	95%	2,9	2,8	97%
Gauteng	13	12	92%	8,4	7,8	93%
Western Cape	30	29	97%	4,4	3,9	89%
Northern Cape	31	26	84%	0,9	0,5	56%
North West	27	20	74%	3,8	2,0	53%
Mpumalanga	27	18	67%	3,3	1,4	42%
KwaZulu-Natal	55	34	62%	9,5	4,0	42%
Limpopo	27	18	67%	6,1	2,0	33%
Eastern Cape	43	29	67%	7,4	2,0	27%
National*	274	206	75%	46,6	26,4	57%

Source: Department of Water Affairs and Forestry Annual Report 2002/2003

Notes: \* Sum errors in the original table have been corrected here.

Approximately 57% of the South African population had access to free basic water services (Table 7), whilst 38% of the poor population had access to free basic water services (Table 8). 38% indicates that out of 31 869 268 poor people, only 12 239 210 poor people had access to free basic water. In the Limpopo Province, **none of the 4 725 895 poor people benefited** from Free Basic Water Services, whilst in Mpumalanga province **37 424 poor people out of 2 399 635 poor people** benefitted. Estimates in Tables 7 and 8 clearly

indicate that the total number of non-poor who benefitted from FBW are more than the total number of poor who benefitted.

**Table 8: Poor households with Free Basic Water (FBW) as of March 2003**

<i>Province</i>	<i>Poor Population</i>	<i>Poor population receiving FBW</i>	<i>Poor population still to receive FBW</i>
Northern Cape	593 811	389 227	204 584
Western Cape	2 146 136	1 757 367	388 769
Free State	2 105 537	1 517 401	588 136
Gauteng	4 759 069	3 891 377	867 692
North West	2 682 552	635 792	2 046 760
Mpumalanga	2 399 635	37 424	2 362 211
Eastern Cape	5 625 055	1 633 151	3 991 904
KwaZulu-Natal	6 831 578	2 377 471	4 454 107
Limpopo	4 725 895	0*	4 725 895
<b>Total</b>	<b>31 869 268</b>	<b>12 239 210</b>	<b>19 630 058</b>

*Source: Information supplied by the DWAF on 11 February 2004. Following the first round of comments, DWAF officials argued that the original data supplied by DPLG was incorrect and that it was ultimately derived from DWAF in any case. \* According to DWAF 86 000 poor people gained access to FBW in May 2003, increasing to 441 366 by January 2004.*

Water service backlogs in poor urban areas are estimated at 10%, while in poor rural areas they are estimated at 39%.<sup>34</sup> 20% of the poor population in the Western Cape, Gauteng and Free State provinces were without free basic water, while 78% of the poor population in the remaining (mostly rural) provinces were without free basic water. This shows that the Free Basic Water policy was implemented more widely in Gauteng, the Western Cape and the Free State as compared to other provinces.

Neither DWAF nor DPLG was able to indicate what poverty line was used in the calculation of the poor and non-poor population. The SAHRC was actually advised to use the figures in Table 8 with circumspection by DWAF.<sup>35</sup>

#### **2.4.5 Pricing policy**

DWAF provided a summary of the water tariff figures that were provided to them by 125 Water Service Providers (Table 9). Table 7 shows that where free basic services were **not** offered, the average cost of 6 kilolitres (kl) was approximately R13 per month. The price for 6kl of life-line supply was highest in Limpopo province at approximately R19 per month. Gauteng and KwaZulu-Natal also had comparatively high charges for life-line supplies where free basic water services were not operational. Where free basic water services are available, the cost of 6kl or slightly more should be zero.<sup>36</sup>

**Table 9: Average Municipal Retail Tariffs adjusted to 2003**

<i>Province</i>	<i>0–6kl</i>	<i>7–20kl</i>	<i>21–60kl</i>	<i>&gt;60kl</i>	<i>Industrial</i>
NC	R1,91	R2,34	R2,74	R2,89	R3,12
WC	R2,52	R2,56	R3,18	R3,55	R3,56
MP	R2,12	R2,85	R3,39	R3,57	R3,72
EC	R2,15	R2,71	R2,55	R2,67	R3,68
NW	R2,11	R2,84	R3,32	R3,80	R4,57
LP	R3,18	R3,01	R4,15	R5,66	R3,00
KZN	R3,08	R3,54	R4,46	R4,63	R4,64
FS	R1,07	R4,20	R4,45	R4,59	R4,30
GT	R3,13	R4,78	R5,03	R5,57	R4,72
Average	R2,18	R3,06	R3,52	R3,85	R3,40

*Source: Information supplied by the DWAF on 11 February 2004; Industrial tariffs from DWAF Annual Report 2002/2003*

*Notes: Block 0-6 kl is the average of tariffs excluding Free Basic Water*

The poor and working class spend a higher percentage of their income on water than the wealthy. In October 2000, the lowest expenditure group spent approximately 1,8% of all their expenditure on water, whilst the very high expenditure group spent approximately 1,6%.<sup>37</sup> In September 2002, the Labour Force Survey estimated that approximately 3,2 million households earned less than the R399 per month. Many households in this income category could reasonably define a monthly charge of R7 for 6kl as unaffordable. A further 2,9 million households earned between R400 and R799 per month. Many households in this income category could similarly define monthly charges of R14 for 6kl as unaffordable. Anecdotal evidence suggests that water affordability is a serious problem, which can force indigent households to access water from sources that are hazardous. This underlines the importance of extending Free Basic Water services as soon as possible.

On the face of it, Table 9 suggests that in some provinces, domestic water tariffs appear to be progressive in the sense that high volume water users pay slightly more per kilolitre of water used. However, the SAHRC was not able to compare water tariffs with the actual costs of installing different levels of service and ensuring their continued operation. Service levels range from no-pressure (Windy Windy) systems to high-pressure systems, which are now much more costly to construct and maintain than in the past. From the information available to the SAHRC at the time of writing it was therefore not possible to conclude whether high volume users cross-subsidise low volume users in any way or if pricing policies approach being equitable. The same is

true for cross-subsidisation from industrial and commercial water users to domestic users.<sup>38</sup>

#### ***2.4.6 Bulk Water and Service Delivery Parastatals***

During the year under review Rand Water's sales volumes increased by 6% from 1 232 938 mega litres to 1 307 577 mega litres as a result of high temperatures, low rainfall, urban growth and new mining activity. Rand Water's profit grew by a considerable 45% to R281 million in 2003. The increase in profit arose mainly from a 16% growth in revenue linked to increased sales of water to municipalities. While Rand Water's profit margin grew from 7,8% in 2002 to 9,7% in 2003, municipalities were expected to eventually sell water to consumers at 0,5% below inflation.<sup>39</sup> The profits appear to have been used to reduce Rand Water's net interest bearing debt to equity from 0,75 to 0,53.

These financial developments took place at the same time as Johannesburg Water issued appeals to consumers to keep their water usage to a minimum and to refrain from non-essential water use (e.g. gardening and re-filling swimming pools) as a result of soaring temperatures and low rainfall since the end of the winter period, which triggered abnormally high water gardening activities.<sup>40</sup>

Umgeni Water adopted a strategic plan to give effect to the need for the organisation to play its role in increasing access to water services. Their strategy is to adopt a phased approach by first focusing on eliminating the backlogs within their own area of supply. In addition, Umgeni Water plans to continuously improve customer satisfaction while growing and developing their customer base, increase access to water, sanitation and related services through partnerships, conserving scarce natural resources and reducing environmental impacts in their operations, continually improving their financial strength and becoming a winning, responsive and learning organisation that is the employer of choice in the long term.

At the moment, the instituted measures by Umgeni Water benefited rural areas through the provision of water services. As far as Umgeni Water are concerned, it met the obligations outlined in the Constitution<sup>41</sup>. Umgeni Water indicated that they are restructuring in order to ensure that the end consumer does not pay too hefty a tariff when they finally receive water, and to provide bulk customers with a value-driven service.

#### **2.4.7 Piped Water Quality and Environmental health**

DWAF indicated that 88% of metropolitan councils professed that they met water supply quality requirements and due to lack of information it is not known of the compliance of water supply quality requirements in other municipalities.<sup>42</sup> Water quality requirements are specified in the South African

Bureau of Standards code 241 of 2001.<sup>43</sup> The percentage of municipalities meeting supply quality drops sharply to 45% when it comes to urban-formal towns/cities. No information was provided in DWAF's Annual Report for 2002/2003 about rural water supply quality. However, information from Umgeni Water indicates that rural water quality can be problematic especially when chlorination systems fail:

By far the greatest non-compliance was for the rural community water supply schemes where sixteen of the nineteen sites failed the microbiological compliance. The main reason for the poor microbiological compliance was a lack of adequate disinfection with chlorine. Umgeni Water has been acting as Implementing Agent for rural community water supply schemes on behalf of DWAF and various District Municipalities.<sup>44</sup>

All Provincial Departments of Health responded to the environmental rights protocol and most provided some information on their water quality monitoring / sanitation activities. Table 10 below provides a summary of the limited information made available by each provincial department:

Table 10 below seems to indicate that environmental health functions related to water quality and sanitation suffered some set-backs during the reporting period. A new monitoring system based on a standard set of environmental health performance indicators was instituted for local municipalities to comply with.

**Table 10: The Water Quality and Sanitation Activities of Provincial Departments of Health**

<i>Province</i>	<i>Information provided on water quality / sanitation achievements</i>
North West	Bacteriological and chemical tests were performed using SABS <i>SA Water Quality guidelines, Volume 1 Domestic Use, 1996</i> .
Free State	A quarterly water quality monitoring programme was implemented. Section 30 areas in terms of the Health Act 60 of 1977 will be transferred to category C municipalities on 1 July 2004.
Mpumalanga	619 SABS water tests and 52 cholera tests were conducted. 432 residential chlorine tests were completed and remedial action was taken. 15 000 bottles of bleach were distributed to people who were admitted by health system as suffering from diarrhoea. 590 chlorine tablets were distributed. 25 000 chlor flocc sachets were distributed. 25 Jojo tanks were erected at health facilities. 9 'pro-forma' toilets were erected to demonstrate their use to the community. The process of devolving health care services to local government affected staff morale negatively. Limited human resources meant that monitoring work could not be done. This, in addition to a shortage of transport and computer equipment, posed a health risk to the communities.

April 2002 – March 2003

<i>Province</i>	<i>Information provided on water quality / sanitation achievements</i>
Northern Cape	Data collection was not carried out by all municipalities and it only started in 2003. Environmental health district forums were established to strengthen co-operation between the Department and service rendering municipalities.
Gauteng	The Department implemented the Gauteng Integrated School Sanitation Programme (GISSIP) which focused on farm schools as well as the Participatory Hygiene and Sanitation Transformation (PHAST) methodology.
KwaZulu-Natal	PHAST was instituted as a new policy. 48 Environmental Health Practitioners were trained in the sanitation methodology. 15 household sanitation projects and 53 school projects were supported with PHAST methodology. A sanitation project aimed to reach 7 422 households, but it was not clear whether this was achieved or not. 1 200 households were provided with 40 toilets. 30 water quality samples were taken.
Eastern Cape	Clinics were upgraded to meet basic sanitation standards.
Western Cape	-
Limpopo	-

*Source: Provincial Departments of Health Environmental Rights Protocols 2003*

*(-)this indicates that the information was not provided for in this province*

#### **2.4.8 Cholera Prevention Strategy**

The main objective of the National Cholera Strategy is to assist in the containment of cholera outbreaks, to prevent the spread to non-affected areas, and to minimise the likelihood of future outbreaks.<sup>45</sup> Only KwaZulu-Natal provided information on this policy. At the cost of R49 million a cholera prevention strategy was designed and implemented, which focuses on emergency water and sanitation programmes.<sup>46</sup> This strategy is targeted to benefit recipients for a short period of time. The KwaZulu-Natal Department did not provide estimates about the impact of this strategy. However, the cholera prevention strategy was designed to help the municipalities to prevent the spread of water-borne diseases to low-income groups, poor households without access to basic water services and historically disadvantaged groups.



## 2.5 New National Legislative Measures

DWAF indicated that the Water Services Act would be amended after the *Strategic Framework for Water Services* was formally adopted. The intention to amend the Act was signalled as early as June 2000 with the publication of the *Introductory Policy Note Regarding Regulation of Water Service Providers*. The amendments to the Water Service Act are necessitated by the fact that the Water Service Act was largely based on the Water and Sanitation White Paper published in 1994 and that there have been substantial changes in the local government policy system (e.g. indigence policy) and finance system. Some of the key issues that may be expected in the amendments include:<sup>47</sup>

- i) the structures and methods through which regulations concerning water service providers will be implemented
- ii) the relationship between the National Water Act and Water Service Act
- iii) the role of Water Boards in the achievement of regional scale in service provision and as a competitive public alternative to promote efficiency in the sector
- iv) the regulation of Water Boards and the rules governing the establishment by them of joint ventures and other corporate entities
- v) the approach to regulation of Water Service Providers, particularly with respect to the regulation of tariffs and rates of return outlined in section 19 of the Act
- vi) possible amendments to section 10(2)(b) and (c) of the Act (i.e. those sections dealing with limitations on surplus or profit and limitations on use of income generated from the recovery of charges)
- vii) possible amendments to section 19(2) of the Act (i.e. the requirement that a Water Service Authority may only enter into a contract with a private service provider *after* it has considered all known public sector providers which are willing and able to perform the relevant functions)
- viii) technical issues such as the use of words ‘licence’ or ‘permit’ instead of the word ‘contract’ to reduce the potential for litigation and whether ‘joint venture’ should be referred to separately from other agreements in the Water Services Act.

### ***2.5.1 Water Services Provider Contract Regulations***

After tabling a set of draft regulations in the National Economic Development and Labour Council (NEDLAC) in 2001, DWAF promulgated *Water Service Provider Contract Regulations* under section 19(5) of the Water Service Act on 19 July 2002.<sup>48</sup> Section 19 of the Act deals with contracts and joint ventures with water services providers.

The contract regulations provide guidelines on contracts between Water Service Authorities (municipal government) and Water Service Providers (public, private or mixed entities, or municipal government itself).

## **2.6 New Provincial Legislative Measures**

### ***2.6.1 Water and Sanitation (WATSAN) Act***

The objective of this Act is to co-ordinate all water and sanitation strategies/initiatives in the province. It was indicated that the draft is currently in the provincial parliamentary process and a State Law Advisor's certification of the draft has been obtained. The anticipated piece of the legislation is based on the Water and Sanitation policy.

## **2.7 Budgetary Measures**

### ***2.7.1 Department of Water Affairs and Forestry CWSS-P***

In the reporting period, the total amount allocated to the DWAF-CWSS-P programme was R1 009 million and actual spending was R1 463 million. When donor funds are included, there was a small percentage of overspending. More money was allocated to the sanitation programme in August 2002 to supplement the acceleration of its implementation. Approximately R520 million was spent on sanitation. The experienced variance was accommodated and spent as required in the 2003 financial year. However, the money allocated to sanitation programmes was under-spent by way of government appropriations. As for adequacy, Table 11 indicates that funding was adequate and was assisted by supplemental donor funds. A recommendation was made by the Department that in future, government should provide more funding for the projects if the targets of 2008 and 2010 are to be met.

**Table 11: CWSS-P Budgetary Measures**

<i>Year</i>	<i>Allocation for programme in R'000</i>	<i>Conditional Grants in R'000</i>	<i>Total donor funding in R'000</i>	<i>Projected expenditure in R'000</i>	<i>Actual expenditure in R'000</i>
2001/02	921 753	921 753	228 108	1 139 898	1 181 089
2002/03	1 009 283	1 009 283	300 280	1 433 343	1 463 638

Source: DWAF's protocol, 2002/2003

There was overspending in two financial years. This overspending was mainly due to the need to accelerate the delivery of services to rural communities that do not have adequate water and sanitation. To address this overspending, the Department expressed a commitment to continue to manage its budget within the normal parameters laid down by the National Treasury. The programmes' budget was targeted at female-headed households and low-income groups living in rural and informal settlements.

### **2.7.2 Department of Provincial and Local Government-CMIP**

The total allocation for CMIP projects was R1 799 million during the reporting period. This amount was more than what was allocated to CMIP projects in the previous financial year. In the previous financial year and that was R1 034 million. According to the DPLG, the amount of R1 797 million in the form of conditional grants is the total allocation for the CMIP and includes provision for water services and other infrastructure. The total conditional grant increased by approximately R797 million rand from the previous financial year.

**Table 12: CMIP budgetary allocations - Overall**

<i>Year</i>	<i>Revised Total CMIP Allocation for programme in Rands</i>	<i>Actual Total CMIP Expenditure in Rands</i>	<i>Total CMIP Expenditure as a % of revised allocation</i>	<i>Actual Expenditure on CMIP water projects</i>
2001/02	1 033 773 000	1 000 234 000	96,8%	448 000 000
2002/03	1 799 097 000	1 797 255 000	99,9%	751 000 000

Source: Department of Provincial and Local Government, Annual Report 2002/2003 p76-77. Actual expenditure on CMIP water projects from DPLG Protocol Response 2003

### **2.7.3 Mpumalanga Province Department of Local Government, Traffic Control and Traffic Safety**

Government allocated a CMIP amount totalling R3,5 million to the Mpumalanga Provincial Department of Housing and Local Government. No variances occurred as the Department spent the entire amount allocated to them. Nevertheless, the Department mentioned that they are in need of additional funding in the form of conditional grants in order to provide adequate water to communities. This is because the allocated funds were insufficient to ensure complete realisation of the right of access to water. To acquire more funds, the Department submitted a request for increased funding for the next period.

**Table 13: CMIP budgetary allocations - Mpumalanga**

<i>Year</i>	<i>Allocation for Programme/project in Rands</i>	<i>Projected Expenditure</i>	<i>Actual Expenditure</i>
2001/2002	3 402 000	3 402 000	3 402 000
2002/2003	3 500 000	3 500 000	3 500 000

*Source: Mpumalanga Province Department of Local Government, Traffic Control and Traffic Safety's protocol, 2002/2003*

### **2.7.4 Limpopo Province Department of Local Government and Housing**

Limpopo Department was not allocated the funds through CMIP from the national government, instead the Department got a conditional grant of R258 million, which is more than the R136 million rand of the previous financial years. The actual expenditure was the same as the total conditional grants of this Department.

**Table 14: CMIP budgetary allocations - Limpopo**

<i>Year</i>	<i>Conditional Grants</i>	<i>Projected Expenditure</i>	<i>Actual Expenditure</i>
2001/2002	94 405 000	94 405 000	94 405 000
2002/2003	178 813 000	178 813 000	178 813 000

*Source: Limpopo Province Department of Local Government and Housing's protocol, 2002/2003*

### 2.7.5 KwaZulu Natal Department of Traditional and Local Affairs

For KwaZulu-Natal, government allocated a CMIP amount totalling R 400 361 188 for the period under review. As a result, minor variances occurred, as the budget was under spent. This was attributed to minor delays that occurred during the project implementation phase. The Department addressed the under-expenditure by rolling over funds to the next financial period, in order to continue implementation of projects without any impact on service delivery. Moreover, the Department made a concerted effort to commit all allocations for the year by timeously approving projects to be implemented. Nevertheless, the allocated budget was found to be inadequate to address the backlog in water and sanitation services in the province. To avoid this inadequacy in the periods following, the Department made an application for an additional amount of money to the national and provincial treasuries.

**Table 15: CMIP budgetary allocations – KwaZulu-Natal**

<i>Year</i>	<i>Allocation for programme/project in Rands</i>	<i>Projected expenditure</i>	<i>Actual expenditure</i>
2001/2002	206 350 000	211 349 000	206 350 000
2002/2003	400 361 188	386 330 494	400 361 188

*Source: KwaZulu Natal Department of Traditional and Local Affairs's protocol, 2002/2003*

### 2.7.6 Western Cape Province Department of Local Government

In the Western Cape Province, the Department of Local Government was allocated an amount totaling R39,76 million. There was no variance because the Department spent the entire allocated amount. The budget allocated was, however, regarded as inadequate but the Department failed to indicate what measures it put in place to address this impact therefore. Moreover, the Department failed to indicate the impact that budget inadequacy had on the realisation of the right in question.

**Table 16: CMIP budgetary allocations – Western Cape**

<i>Year</i>	<i>Allocation for programme / project in Rands</i>	<i>Projected expenditure</i>	<i>Actual expenditure</i>
2001/2002	12 580 000	12 580 000	12 580 000
2002/2003	39 760 000	39 760 000	39 760 000

*Source: Western Cape Province Department of Local Government's protocol, 2002/2003*

### 2.7.7 Northern Cape Province Department of Housing and Local Government

This Department failed to indicate the total departmental budget allocated to them. However a total conditional grant of R57 million was received, which amounted to more than the grants received in the previous period.<sup>49</sup> No variances occurred as the Department had spent the entire allocated budget. Moreover, the Department did not experience any over- or under spending during this period. Nothing was said about the adequacy of the budget. For a complete provincial breakdown, see Table 12.

**Table 17: CMIP budgetary allocations – Northern Cape**

<i>Year</i>	<i>Projected Expenditure</i>	<i>Actual Expenditure</i>
2001/2002	36 000 000	36 000 000
2002/2003	57 000 000	57 000 000

*Source: Northern Cape Province Department of Housing and Local Government's protocol, 2002/2003*

### 2.7.8 Gauteng Department of Development Planning and Local Government

The Gauteng Department of Development Planning and Local Government allocated R70 million for water and sanitation projects and reported that 100% of the funds were spent. Nevertheless, the Department mentioned that they are in need of additional funding in the form of conditional grants in order to make adequate provision of water to communities. This is because the allocated funds were insufficient to ensure complete realisation of the right of access to water. To acquire more funds, the Department has since submitted a request for increased funding for the next period.

**Table 18: CWSS-P Budgetary Allocations - Gauteng**

<i>Year</i>	<i>Allocation for Programme/project in Rands</i>	<i>Projected Expenditure</i>	<i>Actual Expenditure</i>
2001/2002	R50 000 000	R50 000 000	R50 000 000
2002/2003	R70 000 000	R70 000 000	R70 000 000

*Source: Gauteng Department of Development Planning and Local Government's protocol, 2002/2003*

### 3 CHALLENGES FOR THE REALISATION OF WATER RIGHTS

Although progress has been made with regard to the establishment of policies and law, DWAF revealed that the following challenges remain:

- DWAF's difficulties in monitoring instituted measures;
- provision of free basic water to communal tap and prepaid meter tap users;
- sustainability of water services in rural areas;
- roll-out of sanitation programmes in rural areas;
- the process of transferring capital grants to local municipalities;
- provision of water to farm dwellers remains a challenge to DWAF; and
- monitoring local implementation of CMIP by local government and DPLG

Other sources indicate that the elimination of water privatisation and the long distance walk to the tap is still a challenge to DWAF.

#### 3.1 Department of Water Affairs and Forestry (DWAF)

##### *3.1.1 Monitoring Difficulties*

DWAF reported that as much as it has improved numerous internal and external monitoring networks in place, it is difficult for them to monitor the progress of realising the right of access to water. This is because, provincial departments and local governments provides less quality information to DWAF. Instead of providing information based on the recommended reporting standard, these spheres provide information that does not conform with the reporting standard determined by DWAF. In most cases little information is provided to DWAF. This is because there is still a gap in the management of information at provincial and local government levels.

##### *3.1.2 Free Basic Water Policy*

Although the implementation of free basic water policy shows signs of success, DWAF's strategic framework revealed that there are some difficulties particularly with regard to:<sup>50</sup>

- the provision of infrastructure necessary to provide free basic water to poor households;
- the development of a subsidy that will benefit needy households being the previously disadvantaged, poor and vulnerable people;
- the equitable treatment of large households and multiple households sharing one communal tap; and
- the collection of revenue over and above the free basic water allocation.

In addition, South African Local Government Association (SALGA) reported that the development of indigence policies<sup>51</sup> for poor households remains a challenge to DWAF.

### ***3.1.3 Sanitation policy***

At the time of the reporting period, the Department indicated that monitoring of the implementation of sanitation policy was the main challenge. This is because the reporting system of local government on the provision of sanitation services is poor and there is little information on how municipalities are providing sanitation services to poor households. In addition, the strategic framework indicated the provision of sanitation infrastructure, the increase of the sanitation subsidy to the municipalities and the aims of making sanitation a national campaign where the government and the communities are all involved as the Department's future challenges.

### ***3.1.4 Service sustainability***

In his speech in September 2003 the then Minister of Water Affairs Mr. Ronnie Kasrils mentioned that many people had asked whether the water and sanitation systems DWAF had built were working as intended.<sup>52</sup> This report has already highlighted the case study research on dysfunctional infrastructure and projects in KwaZul-Natal. The challenge that DWAF faces is to make sure that the systems function as intended. According to the then Minister, all the achievements in providing services turn to dust if the Department cannot make the systems to work.<sup>53</sup>

Although the Department has asked the Human Science Research Council and the Water Research Commission to determine the extent of the functionality of water projects funded by DWAF, the challenge for the Department now is to focus on strengthening local government and its management to ensure that the delivery of water services is effective.<sup>54</sup>



### ***3.1.5 Allocation of Funds***

DWAF's Annual Report for 2002/2003 states that the evolving financial framework for local government continued to pose considerable challenges. The Intergovernmental Fiscal Review mentioned that this is because part of the capital grant and operational subsidy is provided directly to municipalities, whilst another part is allocated indirectly as allocations-in-kind to fund investments in, and operation of, specific water projects in that municipality.<sup>55</sup> During the reporting period, there was an intensive engagement with National Treasury, DPLG and SALGA over arrangements for financing new infrastructure, the operation of existing systems and their transfer to local government. Amongst other things, DWAF intends to transfer R999 million on basic water and sanitation infrastructure to municipalities in the coming financial year.<sup>56</sup>

However, the challenge lies in the process of transferring the funding system to local municipalities since many of them are incapacitated. The Estimates of National Expenditure 2004 revealed that the process of transferring water services delivery and operations to water services authorities (local governments) will only be implemented in eight to ten years time.<sup>57</sup> SALGA reported that a dedicated grant to fund the transfer programme is welcomed as it would provide better planning, transparency and accountability.<sup>58</sup>

### ***3.1.6 Service Delivery to Farm Dwellers and Former Homelands next to Farmers***

As indicated in the SAHRC's *Final Report on the Inquiry into Human Rights Violations in Farming Communities* of August 2003, securing an independent water supply to farm dwellers and investing State resource on a private land in order to supply water services to farm dwellers, remains a challenge for DWAF.<sup>59</sup> To tackle this challenge, DWAF has referred the matter to local government to make arrangements with the farm owner with a view towards providing free basic water to farm dwellers. DWAF suggested that an agreement be entered into with landowners to provide water to those people who reside on their land and has already drafted an agreement with farm owners to regulate the provision of water services to farm dwellers.<sup>60</sup>

In addition, the provision of water to residents near commercial farms remains a challenge to DWAF. It is common in South Africa for people in the former homelands who live next to large scale irrigation farms to be without sufficient water.<sup>61</sup>

### ***3.1.7 Water Resource Management***

With regard to water resource management, DWAF Strategic report of 2003-2004 gave an indication that the Department is finding it difficult to implement the provisions of the National Water Act including<sup>62</sup>:

- Establishment of the catchments management and water user associations;
- Establishing a National Water Resource Strategy which will set out the procedures, guidelines and overall strategy for managing water resources;
- Developing and testing a strategy for compulsory water licensing to facilitate equitable access to water resources for previously disadvantaged communities;
- Enhancing water use efficiency;
- Ensuring compliance with dam safety regulations and enhancing public safety at water resource installations;
- Investigating and implementing appropriate institutional arrangements for the optimal management of the interdepartmental Working for Water programme, which may result in the transfer of the programme to another department;
- Building national capacity to monitor the state of water resources so that accurate information is used in decisions about the use and management of water; and
- Investing the creation of a National Water Resources Infrastructure Agency to manage and develop national infrastructure.

According to Schreiner, 2003, Catchment Management Agencies (CMAs) will be the vehicles to meet poor peoples' basic water consumption needs as well as productive water needs linked to economic empowerment and the protection and expansion of water use under growing competition for the scarce resource.<sup>63</sup> However, the challenge is to speed up the progress of establishing CMAs. Moreover, SALGA's presentation to the Portfolio Committee on Water Affairs and Forestry, 2003 noted the process of CMAs but has a concern with regard to the governance of CMAs and the role of the local sphere of government in the CMAs.<sup>64</sup>

## **3.2 Department of Provincial and Local Government (DPLG)**

### ***3.2.1 Monitoring of Policies and Laws Implemented at Municipal Level***

During the reporting period, DPLG reported that they were experiencing various challenges in monitoring the implementation of policies by local

government. This was attributed to the fact that municipalities, especially rural municipalities, lack technical support, significant revenue bases and capacity to deliver infrastructure and that MIG provides for basic services only.

DPLG stated that during the reporting period, integrated governance was given priority and the system of intergovernmental relations was stabilised.

SALGA reported that the implementation of policies and laws were not joint within spheres of government. On that note SALGA proposed a joint implementation to continue through the establishment of Joint Response Teams and common provincial transfer action plans. Moreover, SALGA had concerns with regards to the adequacy of consultation between municipalities and DWAF in the development of the White Paper on Basic Household Sanitation and the national strategy.

### **3.3 Provincial and Local government**

#### ***3.3.1 Implementation Difficulties***

DWAF reported that both provincial departments and local government experienced difficulties with regard to the implementation of measures instituted during the period under review.

##### **3.3.1.1 Provincial Government**

At provincial level, DWAF indicated that implementation difficulties were mainly attributable to a lack of adequate cooperative governance and dedicated capacity. Different departments at provincial level were using different approaches and standards. According to DWAF, the inconsistency was clearly seen in the implementation of the sanitation programme, especially when it came to the level of subsidisation and the maximum unit costs. However, the standards and funding criteria were revised to set a common approach for the sector and a programme with top-down mobilisation was to be proposed.<sup>65</sup>

DWAF reported that the community-driven sanitation policy required dedicated capacity at provincial and local level if the 2010 target for eradicating the backlog in service delivery was to be achieved. An additional requirement for the national eradication of the bucket sanitation system was identified and policies and guidelines were under development during the reporting period.

However, different provincial departments provided different reasons for their implementation difficulties. The KwaZulu-Natal Department of Traditional and Local Affairs reported that implementation difficulties arose from delays in projects as a result of technical capacity problems, inefficient procurement policies and shortages of skilled people and contractors. The Department indicated that due to political indecision, many projects in the province could not be agreed to timeously and the procurement policy of municipalities slowed down the appointment of suppliers and contractors.

In view of solving these problems, the Department of KwaZulu-Natal province decided to assist through close liaison with municipal managers in order to finalise decisions on projects, provide training to contractors in the construction industry to improve their skills, promote SMME's, employ and train local labour in construction skills, and operationalise capacity support programmes.

The Mpumalanga Department of Local Government, Traffic Control and Traffic Safety reported that during the implementation of policies, legislation, programmes and projects, lack of capacity in certain municipalities and poor workmanship by some of the service providers were experienced. The Department intends to institute capacity building programmes and interventions in some municipalities in order to tackle these difficulties.

#### 3.3.1.2 Local Government

While the local governments have made significant progress with respect to addressing backlogs and extending services, they face many constraints, including:

- huge infrastructural disparities which require municipal expenditure far in excess of the revenue currently available within local areas; and
- inequalities, including substantial variations in capacity with some municipalities having little or no pre-existing institutional foundations to build on as a result of apartheid.

DWAF indicated that project implementation was sometimes accelerated to address the backlogs in a local authority area. This acceleration tended to ignore some of the softer issues that may affect the sustainability of the projects in the long-term. The acceleration of infrastructure implementation can lead to operational problems after commissioning and transfer to local government.

At project level, the DPLG had experienced major capacity challenges especially in newly developed municipalities in rural areas, which were unable to attract adequately skilled people in CMIP and Local Government Equitable Share programmes.

With respect to CMIP, the DPLG worked very closely with the provincial departments of local government, who set up programme management teams to support municipal capacity development. The teams have initiated a number of interventions from engaging the services of consultants to developing mentorship programmes to organising a range of training programmes.

That being the case, the Intergovernmental Fiscal Review 2003 reported that at a local level most houses in rural areas are often 200m apart from each other and in some cases the delivery point is further than 200m. This makes it difficult for the municipality to achieve the government's objective of ensuring access to water within 200 metres of all households. <sup>66</sup>

Nevertheless, DWAF has developed several strategies and policies to address these implementation difficulties, which include :<sup>67</sup>

- policies and guidelines for increased sanitation subsidies including full infrastructure costs;
- carrying out audits and project visits to determine deviation from standards and advise on policy amendments;
- aligning DWAF's business planning processes with that of DPLG and CMIP;
- supporting local government with strategic guidance, technical expertise, capacity building and training;
- promoting the alignment of the Department's Strategic Plan and the service delivery targets thus making sure that the development of the new strategic plan of the Department is in line with the water service delivery targets already set.

As mentioned above, additional guidelines on the eradication of bucket sanitation system were under development. DWAF indicated that it may also have its own capacity problems when it comes to understanding the work and functioning of local government.

#### **4 CRITICAL ANALYSIS OF THE MEASURES INSTITUTED**

Policies and legislation instituted in the reporting period are positive but have some limitations with regard to rural water supply and sanitation. As for water supply, limitations of these measures are clearly seen in water supply and sanitation infrastructure delivery, free basic water services, the pricing of water supply, the quality of water, the allocation of water among competing users during drought periods, provision of water to farm dwellers and residents next to farmers as well as monitoring of these policies. With regard to sanitation, the limitations of the policies and legislation lie in the provision of sanitation service delivery.

##### **4.1 Water and Sanitation Infrastructure**

Considerable progress was made by DWAF, the DPLG and local governments with regard to the investment in infrastructure necessary to provide basic water and sanitation services. During the reporting period, 86% of the population has access to water supply infrastructure whilst 63% of the population has access to sanitation infrastructure. Although these spheres should be commended for investment in infrastructure, a lot has to be done with regard to the functionality of the infrastructure installed. The number of systems that were functional and dysfunctional was not known. Local government failed to report on the functionality of the systems.

Lack of information about the functionality and dysfunctionality of the current infrastructure put the SAHRC in an awkward situation as an assessor. With data on the functionality and the dysfunctionality of the infrastructure (projects and taps), the SAHRC would be in a better position to assess the actual impact of the infrastructure on the poor and also assess whether spheres of government are progressively providing access to water as stipulated in section 27 (1)(b) of the Constitution. This underlies the importance of providing data on the functionality and dysfunctionality of infrastructure by local governments and DWAF in the future.

The perception of the Commission is that most systems are dysfunctional especially in rural areas. This is because the then Minister of Mpumalanga indicated that in rural areas of Mpumalanga households spend almost three months without water as a result of the dysfunctionality of infrastructure. Also, HSRC indicated that in KwaZulu-Natal projects out of 23 projects, most projects especially groundwater projects were not working.<sup>68</sup> This raises a concern because 4 million poor people rely on groundwater. Dysfunctionality of the systems therefore indicates that the majority of the poor are unable to access sufficient clean water. Water from boreholes is regarded as cheaper and of better quality as compared to surface water.<sup>69</sup>

In its strategic framework, DWAF is confident that by 2008 all South African must have access to water facilities that are functional, whilst by 2010 all South Africans must have access to sanitation facilities that are functional. However, less is said about the way to achieve this targets. The problem of dysfunctionality of facilities is and has always been the major problem in rural areas, rural settlements and townships. The dysfunctionality problem is attributed to poor maintenance, which is a result of financial difficulties experienced by the local municipalities.

This is mainly because municipalities find it difficult to raise enough revenue to maintain the infrastructure. The equitable share of funds allocated to municipalities is also not enough to cover the provision of free water, maintain the municipality itself and maintain the infrastructure in place. There is a need for DWAF to provide a guidelines, which will clearly indicate the way in which the dysfunctionality problem will be minimized as soon as possible.

#### **4.2 Free Basic Water policy**

Since the establishment of this policy, the implementation of Free Basic Water Policy has been progressive. This policy has been implemented successfully in certain municipalities in certain provinces as a result 75% of the local and metro municipalities provided free water during the reporting period. Almost 93% of the total population in Free State, Gauteng and Western Cape has access to free basic water whilst 42.2% of the population in Northern Cape, North West, Mpumalanga, KwaZulu-Natal, Limpopo and Eastern Cape has access to free basic water. The rapid implementation of this policy and its success in several municipalities gives the Department the confidence that by the year 2005 all municipalities will be implementing the policy.

In spite of DWAF's confidence in this policy, a number of problems have been identified. The majority of people benefiting from this policy seems to be urban rather than rural-based. This is clearly seen in Table 4, which indicates the disparities among provinces that are predominantly rural and urban with regard to the number of people benefiting from the Free Basic Water policy. In practice, training officers from the SAHRC found that in one of the rural areas in Mpumalanga, a municipality provides 4l per person per day instead of 25l per person per day. Moreover, HSRC (2002) found that the tendency in social reform is for somewhat better-off and more organised to benefit first (the inverse equity hypothesis) and there is evidence of this in the social exclusion of the poorest in the implementation of the free basic water programmes. Similarly, water service backlogs in poor urban areas are estimated at 10% while in poor rural areas they are estimated at 39%. It appears that the majority of people that got disconnected from the consumption of free basic water are mostly rural people as they are unable to afford water given their employment and socio-economic status. This indicates that the issue of equality as stipulated in the Water Service Act should receive more concerted attention.

In addition, the provision of free basic water through communal taps and stand pipes seems impractical. In most rural areas the whole community uses one communal tap or stand pipes and these communities spend ours queuing for water. At the end of the day most families end up with 50 litres for the whole family. Hence, the provision of water through communal taps and stand taps seem impractical. E-thekwini municipality indicated that the use of standpipes clearly provides free basic water to households and even more than the defined basic level (6kl per household per month). Unless, there is monitoring by either the Traditional Chief or the municipality itself there is no guarantee that indeed these households do get free basic water.

The use of pre-paid meter in communal taps does help in providing free basic water to households each month. However, these pre-paid meters prevent the consumption of free basic water to households who cannot afford to pay a specified amount per month. This violates their rights. For example in Gathoka section, Ga-Mothapo village in Limpopo province, households use pre-paid card and those who cannot credit the card, use water from the Dam, which according to their inspection is not clean. Each household is expected to pay R10 per month.

This indicates that households with access to water infrastructure (communal taps) lack access to 6000 litres per households per month. A need for municipalities to make sure that each household has access to 6000 litres per month is required. DWAF's strategic framework is willing to accommodate the provision of high basic level services (50l per person per day) where suitable. Accommodating the basic needs of the most needy groups i.e. large families is a positive step forward to realizing the right to sufficient water as stated in section 27 (1)(b) of the Constitution. Also, by allocating more funds and using the MIG to support high basic level provision of water to poor households over time, the Department will be achieving its role as evidenced in the *Grootboom* judgment.

However, the strategic framework failed to provide the guidelines under which the local government would operate in the provision of free high basic level of water services. Moreover the framework failed to provide the guidelines with which monitoring of the implementation of the high basic level policy would be made possible. Also the issue of equality when allocating 50 litre per person per day was not clearly indicated in the framework. Without a procedure to be followed, and the monitoring and redressing of inequity, the implementation of the high basic level service will end up being given to the rich instead of the poor. Guidelines, monitoring and redressing inequity is necessary to achieve the Department's goal of providing high basic level water services where possible.



### 4.3 Pricing

According to regulations made in schedule 4(2) of the Water Service Act of 1997 in July 2001 under section 10(1), the water service institution, must when setting tariffs for providing water services to households, differentiate, where applicable, between at least the levels of services outlined in the following subsections:

- a) the supply of water to a household through a communal water service work;
- b) the supply of water to a household through a water service work or consumer installation designed to provide a controlled volume of water;
- c) the supply of water to a household through a water services work or consumer installation designed to provide an uncontrolled volume of water; and
- d) the provision of sanitation services to a household not connected to a sewer

DWAF requires local municipalities to provide information based on the above subsections with regard to tariffs. However, at the moment, the municipalities seem not to be following this guideline. Municipalities are charging higher prices to households in rural areas. This raises a concern about the way the guideline is being used at the municipal level, specifically in relation to communal taps versus private taps. From a practical situation it seems as if the water service authority sets the same tariff for both the private users and the communal tap users. In other words, the water service sector fails to apply the regulations made in Schedule 4(2) as stated in the Water Service Act. Differentiation of tariffs between private tap users and communal tap users is necessary in order to achieve equity.

In addition, the average water price for industrial users is lower than the average price of domestic sector. The average price for industrial users is supposed to be higher than the domestic sector average price. Having said that, the water boards seem to price consumer higher prices in order to repay their loans thus denying the poor their right to water. During the reporting period, the total debt of Water Boards and Irrigation Boards was estimated at R269 508 million. To repay this debt these boards tend to increase the cost of water for domestic users. Increasing of costs by Water Boards prevents consumers to enjoy their full right to water. This raises a concern on the effectiveness of the monitoring by DWAF and the provincial government as stated in section 155 (6)(a) and 155(7) of part B of Schedule 4 of the Constitution of the Republic of South Africa.

#### **4.4 Cross Subsidisation**

Cross subsidisation was introduced to assist in making the free basic water policy operational. The notion was that rich households would pay more for higher levels of water consumption to cross subsidise a free supply of 6000 litres a month to poor households. It was discovered that in cases where the ratio of the rich population is higher than the ratio of poor population in the country, it would be possible to operationalise cross subsidisation. However, in the areas where the ratio of rich households is less than the ratio of poor households, cross subsidisation is difficult to operationalise, especially in the deep rural areas that do not see a great deal of sales.

The concern is whether the cross subsidisation is being used in areas where the ratio of rich people is higher than the ratio of poor people. As indicated previously, at the time of reporting it was unclear whether cross-subsidisation in urban areas was being used. Judging from the price estimates from DWAF (Table 9), cross-subsidisation in urban areas is not being used widely. Free basic water is still priced in some areas. Furthermore, the price for industrial users is lower than for domestic users consuming between 21-60 kilolitres. As for the cross subsidisation between commercial farmers and small farmers, it is impossible for us to determine whether it is operational due to a lack of information. A need to operationalise the cross subsidisation in urban areas without privatising water is necessary.

#### **4.5 Privatisation**

During the reporting period, both DWAF and the DPLG failed to report on the issue of water privatisation. At the time of reporting, information about privatised water in the country was not available. Privatisation of water is still a problem that requires more concerted attention by DWAF. At local level, municipalities especially in rural areas, experience very low water consumption volumes, which compromise the sustainability of the municipality. Most of these municipalities, just like Nelspruit's Mbobela Municipality and Dolphin Coast Municipality, tend to make partners with the private sector without abiding by the water service framework agreement which states that the public sector is the preferred deliverer of services in order to remain sustainable.

Moreover, privatisation often is looked into from a municipal perspective rather than a retail perspective. The cost of bottled water is expensive in most provinces. For example, in Limpopo, a bottle of 250ml of water costs R14. There is also the problem that bottled water may be almost identical to tap water in some cases. In February 2004, *This Day* newspaper, revealed that a Rand Water Microbiologist reported that Coca-cola's bottled water "BonAqua" was comparable to tap water. DWAF and the DPLG need to pay more careful attention to the issue of privatisation of water.

#### **4.6 Allocation of Water during Drought Season Among Competing users**

Conflict between users in the provinces grows every day, as the amount of water available for use in certain areas is smaller than the demand. An example is the Steelpoort river basin in the Limpopo province, where conflict exists between agriculture and mining. During drought, when taps dry up or water is only available once or twice a week, the conflict worsens. This is attributed to poor management, and compounded by a lack of communication to households by municipalities. Such a behaviour leads to situations where poor households have to go back to consuming dirty, unsafe water. Local government needs to address this issue and institute a drought policy in order to combat this problem. In addition during droughts periods domestic users using water between 21-60 kilolitres and more continue to consume more water at the same price. Scarcity value is not factored in when pricing these groups.

#### **4.7 Provision of Water Services to Farm Dwellers and Residents near the Farm**

Most households in South Africa are situated next to large commercial irrigated farms especially in former homelands. These households lack access to clean adequate water. The challenge is to provide clean water to these households. DWAF is engaged in some agreements with farm owners with the aim of providing water to farm dwellers. However, DWAF failed to indicate the type of agreement it has entered into with the farm owners. The agreement process between the farm owners and DWAF seem to be slow. There is a need to speed up the adoption of suitable agreements in order to realise the water rights of farm dwellers with regard to water.

#### **4.8 Provision of Sanitation Services**

Progress in the provision of sanitation services is currently slow. Urban people have access to sanitation services, whilst rural people are still in the dark with regard to sanitation services. In other words, at the moment section 24 (a) is violated as vulnerable people continue to live in the environment that is harmful to their health or well-being. The government has taken a step forward by initiating a process to establish free basic sanitation. However, much still needs to be done with regard to the provision of basic sanitation. Provision of basic sanitation always requires infrastructure and education by the local government. Poor sanitation has negative impacts on the health of households, without education the diseases related to sanitation will not decline over time. DWAF indicated in their strategic framework that careful consideration is required when choosing a technology, education, health and increasing funds for subsidies.

#### **4.9 Water Quality**

According to the Centre of Rights on Housing and Evictions, the right to water entitles everyone to sufficient, safe, physically accessible and affordable water for personal and domestic use.<sup>70</sup> At the moment, only the better-capacitated municipalities are able to meet the required water supply quality. In rural areas, municipalities are often unable to do so. A need to capacitate the rural municipalities in order for them to meet the required level of service quality is necessary. More funds should be allocated to capacitate municipalities to ensure a reliable water supply quality. Moreover, monitoring the perceived quality is also required.

#### **4.10 Budget allocation**

Concerning the utilization of limited resources, provincial and local municipalities have utilised their entire CMIP allocations, however these allocations were not only spent on the provision of access to water. However, DWAF should be commended for allocating more money to sanitation programmes to supplement the acceleration of implementation, as priority has been given to the implementation of water projects over the years. Water and sanitation are interlinked and interdependent. Provision of both services at the same pace will reduce health risks for all the South Africans.

According to the response provided by DWAF to the SAHRC protocol, (2003), approximately R520 million was spent on sanitation and over 135 toilets were built during the reporting period. This increase in spending indicates that the Department is aware of the slow rate of progress regarding the implementation of sanitation programmes compared with the number of water projects implemented. According to the *Grootboom* judgment, a reasonable measure involves ensuring that the appropriate financial resources are also available.<sup>71</sup> The Department under spent the amount allocated to it by way of government appropriations. This is not acceptable and is recognised as such in the *Grootboom* judgment and other international instruments. The Department should have used its available resources in order to achieve maximum results for both programmes effectively.

Budget allocations towards CMIP and free basic water, DPLG was allocated more money than in previous financial years, but underspent the funds allocated for CMIP and free basic water. According to the DPLG protocol report, 2003, the reason for this underspending is the lack of capacity in local government. At the same time, the unspent budget gets re-appropriated from the DPLG and this creates problems in the following financial years, as the budget consequently decreases, with less money available to spend.

The DPLG is, however, committed to using the unspent amount in the next financial year and also to solving the underspending problem through amending

the National Treasury requirements. Nevertheless, less spending is not acceptable because the majority of rural communities lack access to free basic water and have serious infrastructural constraints. This shows that the DPLG did not realise the interrelation between the spending of the budget and the provision of water supply and infrastructure services. The DPLG should see to it that the allocated amount is used to its maximum extent.

Provincially, KwaZulu-Natal and Western Cape departments exhausted the entire amount allocated to them during the reporting period. No variances were experienced. These Departments should be commended for progressively realising the right of access to water. However, these departments remain in dire need of funding for CMIP projects. Departments in Mpumalanga and Gauteng provinces did not spend all the money allocated to them, experiencing minor variances. Unfortunately other departments in other provinces and municipalities failed to provide information on their budget allocations.

#### **4.11 Monitoring of Instituted Measures**

Overall, DWAF together with DPLG have established various policies and laws in order to achieve progressive realisation of the right to water. At the same time local governments have engaged themselves in providing water and sanitation services to households. However, the provision of water and sanitation services seems to be unequal in the sense that rich households benefit more than the poor.

This is mainly attributed to lack of effective monitoring body at local, provincial and national level. At the time of reporting DWAF indicated they were not in a good position to monitor given the financial stress that they are in.<sup>72</sup> At the same time DWAF indicated that they have developed monitoring programmes, but these programmes do not seem to be working effectively according to DWAF. DWAF indicated that the information gaps that exist hampers their ability to monitor. There is a need for effective monitoring of the progressive realisation of the right to access water.

#### **4.12 Linking HIV/AIDS and Water Resource Management**

Evidence indicates that HIV/AIDS has an impact on water resource management in Southern Africa.<sup>73</sup> Water resource management involves both the protection of water resources and the provision of water to users in a timely manner. The HIV/AIDS epidemic leads to high mortality rates especially of the economically active population, skilled workers and household heads.<sup>74</sup> This can lead to a situation where the managers in water schemes have incorrect information about the population growth and demographic density in most Southern African countries. Incorrect information about the demographic distribution and the population growth rates leads to inaccurate planning with regard to ensuring that the reasonable demands for water by each user are met

in a timely manner. Thus, incorrect information prevents construction schedules from matching water demand profiles.

In the wake of the HIV/AIDS epidemic the inability to pay increases and it becomes harder and harder for local government to collect rates from the services rendered<sup>75</sup>. This is because economically active people die, especially working head of the households with proper income and as a result, the households lose the income permanently. In case where relatively rich people die from this epidemic, the issue of cross subsidization is non-operational and in cases where skilled people die, productivity declines and therefore service provision is poor. For example, it has been observed that in cases where skilled water treatment engineers are infected, their productivity declines and the chances of providing unclean water is high in the scheme.<sup>76</sup>

The HIV/AIDS impact has increased the demand for water. Infected mothers demand more water for breast-feeding and households require water to take care of patients, as their immune system becomes weak.<sup>77</sup>

Nevertheless, neither DWAF nor the provincial and the local government provided information about the impact of HIV/AIDS on local government. Also, little information about the programme of action for HIV/AIDS in water schemes is available. This gives the SAHRC the impression that the Department gives too little consideration to the impact of HIV/AIDS epidemic on water resource management. Information about the impact of HIV/AIDS and the programme of action will help the SAHRC to assess what the Department is doing about the impact that HIV/AIDS has on the provision of water and sanitation at local level.

#### **4.13 Distance from the household to the nearest communal tap**

Regulations made under section 9(1) and 73(1)(j) of the Water Service Act provide that every person in South Africa should be able to access a minimum of 25 litres (*l*) of potable water per day or 6 kilolitres (*k/l*) per household per month, at a minimum flow rate of not less than 10 l per minute, *within 200 meters of a household*, with an effectiveness such that no consumer is without a supply for more than seven full days in a year . Although at the time of reporting, information about people who still suffer from the long distance when collecting water, many people, especially those living apart from each other, are still collecting water from a distance more than 200m from their dwellings. Provision of water infrastructure within 200m from the dwellings is still a challenge faced by DWAF, the DPLG and municipalities. Walking long distance to collect water has health impacts. DWAF together with the municipalities should see to it that water is provided within 200m from household's dwellings.

## **5 RECOMMENDATIONS**

### **5.1 Water and Sanitation Infrastructure**

To solve the problem of dysfunctional facilities, DWAF should develop a guideline that indicates the way in which the functionality of these facilities by local government would be achieved by 2008 and 2010. Making infrastructure work should be the government's priority. Consideration should be given to providing more funds to local government through the MIG. At the same time, good management of financial resources and employment of skilled managers to manage the finance and the daily activities of the municipality is required from the local government in order to continuously maintain the facilities.

### **5.2 Free Basic Water Policy**

DWAF has to provide a guideline with which local government can provide high basic level services where suitable. This will provide relief to those households (vulnerable people) in need of water for their basic needs instead of the rich. The Department should develop a comprehensive procedure, which local government can adopt in order to provide high basic level services where suitable. In addition, the Department must encourage and provide funds to local government to conduct research on the income level and size of families within villages in their administrative boundaries. This will help them to understand how many people need high basic level service and how many need a basic level service.

The Department must encourage local government to make use of the water limiter technology to supply free basic water to the most needy groups to avoid disconnection of 6000l per month. For larger the families DPLG must ensure that additional funds are provided, together with an equitable share, in order to provide a high basic level of service. Local governments must make sure that they implement the high basic level policy as outlined in the guidelines prepared by the Department.

### **5.3 Pricing**

DWAF should restructure the pricing method to cater for poor people who consume between 0kl and 6kl in order to realise the right of access to water. This can be done by allocating free basic water to everyone on a monthly basis and charge them an amount that goes beyond 6kl. Monitoring of pricing among users is necessary to create equality among users. Moreover, the Department must regulate the pricing methods of retailers for bottled water and penalize water boards that increase prices to cover their debts. Finally, the Commission requires the provision of actual costs of installing different levels of services to compare the cost with the tariffs to assess the continued operations of facilities and the level of cross-subsidy from high volume to low income users.

#### **5.4 Cross subsidisation**

In principle, the SAHRC see some scope for cross-subsidisation from higher and lower volume users. Considering estimates in Table 9, the gap between the tariffs for higher and lower volume water users appears to be too little. According to the user pay principle, the more you consume the more you pay. If this was the case, the gap between low volume users and high volume users should be wider. Looking at the gap between these users, it indicates that the high-volume users are still paying less than what they consume especially those watering their gardens and owning swimming pools. In most cases, high-volume users are not as price sensitive as low- volume users, therefore increasing the price of water for high-volume users to create a balance between these users will be desirable and would therefore cater for cross subsidisation.

#### **5.5 Provision of Sanitation Services to Poor Households**

DWAF should capitalise on the provision of sanitation infrastructure, and services as water and sanitation are interlinked and interdependent. However, the provision of sanitation infrastructure and services requires a collaborative effort from all spheres of government and households. Government should see to it that more funds are provided for the sanitation programme in order to accelerate the provision of sanitation facilities to poor households. Both the DPLG and DWAF, on the other hand, should ensure that they accelerates the development of positive measures to reduce sanitation backlogs in poor communities.

Government thus needs to ensure that the Free Basic Sanitation policy is implemented fully in the coming years. DWAF should devise promotional measures that will inform poor people about the importance of hygiene. To ease the process of providing free basic water other than promotioanl approach , local government should encourage households and communities to practice correct hygiene that would not jeopardizes their health and the health of the community. In this regard everyone would be viewed as a role-player in water and sanitation

#### **5.6 Water Quality**

Together with the DPLG, DWAF should provide sufficient funds to local municipalities for capacity purposes. This will speed up the process of improving the service quality in rural municipalities.

#### **5.7 Allocation of Water Services during Drought Season Among Competing users**

With regard to allocations of water among competing users, a water management and allocation policy developed by the Department should cater



for equality in the allocation of water among different users. This can be done through the determination of the economic value of water, which will help in allocating water among users efficiently and equitably. In the meantime, local governments should make use of the emergency policy during drought episodes. Progress in the development of drought policy is required.

It is recommended that during drought episodes, municipalities together with DWAF and the DPLG should factor in the scarcity value of water when setting prices. By doing that, municipalities will be able to provide water to poor households and minimize the problem of scarcity during drought.

### **5.8 Budgetary Allocations**

There seems to be a problem with regard to the water quality functions. Referring to (Table 1) the water quality functions is currently with demoralised Provincial Departments of Health since the function is in the process of being devolved to local government. Attention to the water quality functions is necessary as this is an urgent problem. In addition the DPLG should provide more funds for capacity building, especially for water quality to local government. Without funds, local governments will fail to provide water supply and sanitation infrastructure, free basic water and free high level basic water services.

### **5.9 Monitoring of Instituted Measures**

Government should see to it that its monitoring programmes in place are implemented effectively. To effectively monitor the right of access to water an integration in all spheres of government is required. Collaboration between the three spheres of government in the delivery of water is insufficient it needs to be strengthened. This means that the inter-governmental relations framework needs to be established, refined and clarified and efforts must be made to make it work more efficiently and effectively.

Government can encourage this integration by creating small monitoring body at local government. At the moment information is only collected from national and regional networks for monitoring purposes. With information networks at local level working together with the national, provincial and regional networks, the right to water will be monitored effectively. This method of monitoring will ensure that local governments provide water service delivery fairly, ensuring that both the poor and the rich have access to 25l of free water. Moreover, it would ensure that the policies on water limiter technology and pricing are applied as required.

### **5.10 Linkages between HIV/AIDS and Water Resource Management**

The only way in which the DWAF can deal with the impact of HIV/AIDS is to develop a programme of action with regard to HIV/AIDS for skilled workers in

the water schemes. In a Treatment Action Campaign (TAC) case judgment, it was decided that in case where the mothers are unable to access nevarapine, they should use the breastfeeding substitutes like bottled milk. However, the case indicated that for this substitute to be successful, the mothers must have access to resources like the provision of clean water. This is not the case in most rural areas of South Africa and therefore this indicates that the transmission of HIV/AIDS to children are prevalent in such cases. The programme of action should therefore cater for the infected skilled workers in the schemes and also the households suffering from HIV/AIDS. The programme of action for HIV/AIDS issue is another solution to the problem of the provision of water in South Africa.

### **5.11 Distance from the household to the nearest communal tap**

DWAF together with the DPLG and municipalities should come up with a way in which they can provide communal taps within these area that can comply with the regulation made under section 9(1) and 73(1)(j) of the Water Service Act.

### **5.12 Constitutional Obligations with Respect to Water Rights**

Based on the critical analysis and the recommendations, DWAF, its regional offices, the DPLG, local government and bulk water providers have not fully met their constitutional obligations. Section 7(2) of the Constitution states that the State must respect, protect, promote and fulfil the rights in the Bill of Rights of which the right of access to water. With regard to respecting, promoting, protecting and fulfilment the following took place during the reporting period:

#### ***5.12.1 Respect***

E-thekwini water has adopted a water limiter policy in order to refrain from interfering with people's access to water. This policy provides free basic water to every households and limits the consumption over and above the defined basic level. However, the use of water limiter seems not to be applicable in most municipalities in the country. This indicates that most municipalities are still interfering with people's access to water through disconnecting their water supply where payment for water cannot be realised. From the response provided by DWAF and DPLG, DWAF nor DPLG seems not to be doing much with regard to making sure that all the municipalities adopt the same policy as the E-Thekwini municipality.

#### ***5.12.2 Protect***

rotecting the right of access to water means that government must prevent any violations of any individual's right which might be as a result of water

pollution and unaffordable price increases by a third party. At the time of the reporting, DWAF and the DPLG failed to provide information on the actions they have taken with regard to protecting the violations of one's right by the third party. This indicates that less attention is given to protection of the right of access to water. From the Rand Water's response to the SAHRC's protocol, it clearly indicated that Rand Water at the time of the reporting had increase price that might be regarded as unaffordable in order to payout the owed debts. And yet neither DWAF nor DPLG did something about such an action by Rand Water.

### ***5.12.3 Promote***

Promoting the right of access to water means that government should create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education. During the reporting period, DWAF conceptualized and promoted the Water Conservation: 2020 Water Education Programme vision in schools. The scope and nature of the programme has been extended beyond water conservation which focuses on quantities to include quality issues, sanitation, curriculum development in schools and intergration of water knowledge through recreational/arts and cultural programmes. The programme was to encourage more children especially rural based children in water related issues. However, estimates on the number of schools who benefitted from this programme was not provided for by DWAF and the DPLG.

In addition, during the reporting period, E-thekwini municipality has extended the community education and awareness programme to further educate and inform communities and learners on water and sanitation issues. Other municipality have failed to provide information on its programme of action with regard to promoting the right of access to water.

### ***5.12.4 Fulfil***

DWAF has taken positive measures, towards fulfilling the right of access to water. For example, the National Water Service Act of 1997, the Free Basic Water policy and Free Basic Sanitation policy, which are aimed at ensuring that all South Africans have equitable access to effective, affordable, economical and sustainable water and sanitation services have been instituted. DWAF has set the minimum quantity at 25 litres per person per day, and the minimum cartage distance at 200m. Although this is considered to be the minimum requirement for direct consumption, food preparation and personal hygiene, it is not adequate for a full, healthy and productive life. What continues to be of major concern and a challenge to the State, is ensuring that the poor and previously disadvantaged and marginalized groups benefit from law and policy measures directed at them. This can be done by making available resources that are directed towards addressing their plight. DWAF has further developed a consolidated municipal infrastructure service, by putting proper infrastructure

in place in order to improve the water supply services and sanitation services. During the reporting period DWAF was phasing-out all the bucket systems in use and introducing water-borne sanitation facilities in communities.

The DPLG has also taken positive measures to fulfil its water provision obligations and continues to support the Free Basic Water policy, CMIP, the Household Sanitation programme and the Cholera prevention strategy, together with a drought relief programme to provide clean water and sanitation to the poor, rural communities, and those people living in informal settlements, in order to address high incidences of disease such as cholera and diarrhoea. Although much effort has been made to address the backlogs on water and sanitation services, DWAF, its regional offices and the DPLG need to focus water and sanitation policies and law on the poor. This can be done through monitoring of policies and law measures that are developed for the poor like Free Basic Water Policy.

## **6 CONCLUSION**

Overall, DWAF, its regional offices and the DPLG have realised the right of access to water partially, not fully. However, Government is still faced with several challenges in terms of discharging its obligations pertaining the realisation of access to water. While much has been done to realise the right to water, it is not enough. An adequate monitoring framework is a pre-requisite for sustainable water and sanitation development. Moreover, amendments of free basic water policy to accommodate large number of previously disadvantaged, poor and vulnerable families, and the provision of adequate funds should be the government priorities to ensure that the right to have access to water is realised progressively.

- 1 The aim of reporting on this Act and other regulations which were established before the reporting period is to indicate the roles of all spheres in the water sector and some regulations that still apply in the municipalities.
- 2 Department of Water Affairs and Forestry, *Annual Report 2002/2003*, p16.
- 3 Department of Water Affairs and Forestry, *Annual Report 2002/2003*, p16.
- 4 Ibid,.
- 5 Department of Water Affairs and Forestry, *Introductory Policy Note regarding Regulation of Water Service Providers*, Government Gazette, 21310, 30 June 2000.
- 6 Ibid,. Regulation 13.
- 7 Department of Water Affairs and Forestry, *Regulations relating to compulsory national standards and measures to conserve water*, Government Notice R509, Government Gazette, No. 22355, 8 June 2001
- 8 According to Census 2001, there were approximately 620 000 households with 9 or more members. There were approximately 380 000 households with 10 or more members meaning that, with the 6 k/ limit, the standards for these households are 20 l per day or less.
- 9 Department of Water Affairs and Forestry, *Regulations relating to compulsory national standards and measures to conserve water*, Government Notice R509, Government Gazette, No. 22355, 8 June 2001, Regulation 16.
- 10 According to the 2001 Census, 1,3 million households derived water from a dam, pool, or stagnant water, river or stream, spring or non-specified source. Ninety-nine percent of people accessing water from these sources were African.
- 11 The Act was amended in 1999 by the National Water Amendment Act of 1999 No. 45. <http://www.gov.za/acts/1999/a45-99>.
- 12 Department of Water Affairs and Forestry, Norms and standards in respect of tariffs for water services in terms of section 10 (1) of the Water Services Act (Act no. 108 of 1997) Government Gazette, 22472, 20 July 2001
- 13 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC)
- 14 Manquele v Durban Transitional Metropolitan Council (2001) JOL 8956 (D)
- 15 Residents of Bon Vista Mansions v Southern Metropolitan Local Council 2002 (6) BCLR 625 (W).
- 16 Jaap De Visser, Edward Cottle and Johann Mettler, *Realising the right of access to water: Pipe dream or watershed?*, Community Law Centre
- 17 Ibid,. para 26
- 18 See U.N.T.S. No 14531, vol. 993 (1976), p3 for Article 11, para 1 of International Covenant on Economic, Social and Cultural Rights.
- 19 United Nations Economic and Social Council, *General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11 26 November 2002
- 20 Ibid,.
- 21 Howard, Guy and Bartram, Jamie, *Domestic Water Quantity, Service Level and Health*, World Health Organisation 2003
- 22 See General comment No 15 (2002) on the Economic, Social and Cultural Rights of Water, paras 4 & 5.

- 23 *Water and Sanitation in the World's cities* (2003). United Nations, www.unhabitat.org
- 24 See Department of Water Affairs and Forestry protocol on the right to sufficient and clean water for the period of April 1 2002–March 31 2003
- 25 *ibid.* Policy and legislative measures section, p1
- 26 Strategic Framework for Water Services, 12 September 2003. Department of Water Affairs and Forestry.
- 27 As stated in the MIG programme manual of September 2003
- 28 Department of Provincial and Local Government Report on Municipal Infrastructure Grant policy, 2003
- 29 Hemson, D (2002). *The Sustainability of community water projects in KwaZulu- Natal*. Human Sciences Research Council.
- 30 See *4th Economic and Social Report, 2002/2003*, South African Human Rights Commission, p386-387
- 31 DPLG Presentation To The Portfolio Committee Infrastructure Investment, 10 March 2003
- 32 *Ibid.*,
- 33 The KwaZulu-Natal Department of Traditional and Local Affairs, Limpopo Department of Local Government And Housing, Gauteng Department of Development Planning and Local Government, Western Cape Province Department of Local Government, Northern Cape Province Department of Housing And Local Government.
- 34 See DPLG protocol, Policies and legislation measures section, p1
- 35 See DPLG protocol, Policies and legislation measures section, p12
- 36 It is important to note that DWAF's strategic framework released in September 2003 mentions that when a user consumes up to 7kl instead of just 6kl, the water service authorities would not request the consumer to pay for an extra 1kl. However, if the user consumed an amount way in excess of 6kl, then the water service authorities would request the consumer to pay for the extra.
- 37 Statistics South Africa, Consumer Price Index (CPI) 2000 weights (Historical metropolitan and other urban areas), Statistical Release P0141.5, 28 February 2002
- 38 According to Colin Marx "It is worth noting that even the policy on free basic water contained the provision that municipalities should keep tariffs to commercial and industrial users as cost-reflective as possible to minimise cross-subsidisation." See *South Africa's experience in the privatisation of its water and sanitation services*, Report prepared for WaterAid, February 2002
- 39 Impumelelo, South Africa's Top 300 Empowerment Companies, 4<sup>th</sup> Edition, 2003/2004
- 40 Johannesburg Water, *Hot weather puts a strain on water supply*, 18 October 2002
- 41 See Umngeni Water protocol's, Constitutional obligation section, p5.
- 42 Department of Water Affairs and Forestry Annual Report 2002/2003 p13.
- 43 The SANS 241 / SABS 241:2001 - Drinking water standard (approved on 23 February 2001) "specifies three classes of water, defined in terms of physical, biological, organoleptic and chemical requirements, that are suitable for delivery as drinking water. These classes are: an ideal (class 0) classification that is closely comparable to current international standards for water quality; class I, that is considered to be acceptable for lifetime consumption; and class II, that is considered to represent the minimum acceptable quality for various maximum consumption periods." [www.stansa.co.za](http://www.stansa.co.za)

- 44 Umgeni Water *Annual Sustainability Report 2001-2002* p51.
- 45 See *4th Social and economic report 2000/2002*.
- 46 Ibid.
- 47 Department of Water Affairs and Forestry, Introductory Policy Note regarding Regulation of Water Service Providers, Government Gazette, 21310, 30 June 2000.
- 48 Department of Water Affairs and Forestry, *Water Service*
- 49 See Northern Cape Department of Local Government protocol, April 1 2002–March 31 2003, p3
- 50 Strategic Framework for Water Services, 12 September 2003. Department of Water Affairs and Forestry.
- 51 Under indigent policy households earning less than R1100 per annum are registered as indigent and therefore qualify to access a tariff lifeline of 6000 litres per month.
- 52 Hemson, D (2002). *The Sustainability of community water projects in KwaZulu- Natal*. Human Sciences Research Council.
- 53 Speech by Minister of Water Affairs and Forestry, Mr Ronnie Kasrils, In the parliament media briefing on the 1 September 2003.
- 54 Ibid
- 55 Water and Sanitation, Chapter 11. Intergovernmental Fiscal Review ,2001
- 56 Department of Water Affairs and Forestry, *Annual Report 2002/2003*, p.
- 57 Estimates of the National Expenditure 2004, National Treasury, Republic of South Africa, February 2004, Vote 24: Water Affairs and Forestry, p975.
- 58 Powerpoint presentation to parliamentary portfolio committee on Water Affairs and Forestry on strategic framework for water services on 18 February 2004 by South African Local Government.
- 59 Final Report on the Inquiry in to Human Rights Violations in Farming Communities, August 2003, South African Human Rights Commission, p48
- 60 Ibid, p48
- 61 Johanna Ramaila, 2004. Observation from a visit to Nkomazi area on Human Rights week on the 15<sup>th</sup>-19<sup>th</sup> March.
- 62 DWAF's Strategic Framework report for Water Services, 12 September 2003. Department of Water Affairs and Forestry.
- 63 Schreiner et al, 2002, *From Bucket to Basin: A new water management paradigm for poverty eradication and gender equity*, Chapter 10 in Turton, A.R. & Henwood, R. (Eds.). 2002. *Hydropolitics in the Developing World: A Southern African Perspective*. Pretoria: African Water Issues Research Unit (AWIRU).
- 64 Powerpoint presentation to parliamentary portfolio committee on Water Affairs and Forestry on strategic framework for water services on 18 February 2004 by South African Local Government.
- 65 See Department of Water Affairs and Forestry's *protocol March 2002-31 April 2003; implementation difficulties section*. p7
- 66 Water and Sanitation, Chapter 11. Intergovernmental Fiscal Review ,2001

- 67 See Department of Water Affairs and Forestry's *protocol March 2002-31 April 2003; implementation difficulties section.p8*
- 68 See Department of Water Affairs and Forestry's *protocol March 2002-31 April 2003; implementation difficulties section.p8*
- 69 Focus on Groundwater, National Water Act news of February 2004, Department of Water Affairs and Forestry.p2
- 70 Right to water, 2003. Centre for Housing Rights and Evictions.<http://www.cohre.org/water.htm>
- 71 Government of the Republic of South Africa and others v Grootboom and others, 2000(ii) BCLR 1169 (CC) para 39
- 72 Statement by Helgard Muller and Allestair and Allestair Wensley in a eeting with SAHRC in February 2004.
- 73 Bollinger, L and Stover,J(1999). The Economic Impacts of AIDS in South Africa.The Futures Group International in collaboration Research Triangle Institute and the Centre for Development and Population Activities; Urban Management Programme Regional Office for Africa (2001). Making the Linkages: HIV/AIDS, Urban Local Government and The Urban Management Programme in Sub Saharan Africa; Ashton,P. and Ramasar,V.(2002). Water and HIV/AIDS: Some considerations in Southern Africa. Hydropolitics in the Developing Countries: A Southern African Perspective. Pretoria: African Water Issues Research Unit(AWIRA); Integrated Regional Information Network (2004). SOUTH AFRICA: Special report on a decade of democracy - poverty alleviation. [http://www.irinnews.org/S\\_report.asp?ReportID](http://www.irinnews.org/S_report.asp?ReportID)
- 74 Ashton,P. and Ramasar,V.(2002).Water and HIV/AIDS: Some considerations in Southern Africa. Hydropolitics in the Developing Countries: A Southern African Perspective. Pretoria: African Water Issues Research Unit(AWIRA)
- 75 Urban Management Programme Regional Office for Africa (2001). Making the Linkages: HIV/AIDS, Urban Local Government and The Urban Management Programme in Sub Saharan Africa
- 76 Ibid
- 77 Integrated Regional Information Network (2004). SOUTH AFRICA: Special report on a decade of democracy - poverty alleviation. [http://www.irinnews.org/S\\_report.asp?ReportID](http://www.irinnews.org/S_report.asp?ReportID)