

# **2nd Economic & Social Rights Report 1998 – 1999**

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## Preface

The Constitution of the Republic of South Africa Act 108 of 1996 calls on the state to “respect, protect, promote and fulfil the rights in the Bill of Rights.”<sup>1</sup> It goes further, however, by establishing a mechanism for monitoring and assessing the realisation of the economic and social rights. Section 184(3) thus empowers the South African Human Rights Commission to require relevant organs of state to provide the Commission with 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.<sup>2</sup> The Commission has also included the rights pertaining to land and prisoners in this process.

This provision has capacity, if used creatively, to ensure not only the monitoring of the implementation of these rights, but also accountability. The South African Human Rights Commission Act 54 of 1994 gives the Commission powers to enforce this accountability through judicial means.

This second report, based on the information obtained from institutions of state, is part of the Commission’s continuing efforts and contribution to a meaningful realisation of economic and social rights in South Africa.

This second report mainly focuses on measures taken by relevant national and provincial government departments in discharging their constitutional mandate to realise economic and social rights. The Commission hopes that this report will help in the necessary and on-going promotion and protection of economic and social rights and provide meaningful and useful information in this regard.

During the drafting of this second report, like the first one, we have learned many lessons and committed several mistakes. However, these lessons and mistakes should help the Commission in this on-going process. In the end, we are proud of this effort, which is certainly an important process and meaningful contribution in our struggle for a better life for all the people of South Africa.

We thank the Finnish Government for the financial support provided through HURISA (Human Rights Institute of South Africa) for the remuneration of most of the researchers and the Canadian International Development Agency (CIDA), which provided funding for Dr. Richard Shillington who helped in the development of the Commission’s second socio-economic rights questionnaires (protocols).

We would also like to express our gratitude to members of the Commission who assisted in this process in their different capacities, especially the head of the Research and Documentation Department and Project leader (Tseliso Thipanyane) for his leadership and vision in putting together this report and the following researchers who

<sup>1</sup> Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>2</sup> Section 184(3) *ibid.*

assisted in this process: Zandile Nkonyane, Busi Sithole, Ebrahim Asmal, Glenda Moss, Malose Mahloko, Musa Zuma and Rachel Odoi; Commissioner Charlotte McClain (the Commissioner responsible for economic and social rights) and Jeanette Campbell (Deputy Director: Communications) who assisted in proof-reading and Donna Reid (Communications Technician) for designing the cover and placing the report on the website, and Lesedi Sojane our Librarian and Documentalist.

***To them we say lekamoso!***

*The struggle for equality, social justice and human dignity for all must continue.*

N. Barney Pityana  
CHAIRPERSON  
South African Human Rights Commission

# CHAPTER ONE

## THE MONITORING PROCESS

*Each year, the South African 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.<sup>1</sup>*

### 1. BACKGROUND

Section 184(3) of the Constitution obliges the South African Human Rights Commission (herein after the Commission) each year to request information from relevant organs of state on measures taken by such organs in the realisation of socio-economic rights. In pursuance of this mandate, the Commission published its first report in March 1999.

This report represents part of the second cycle of monitoring of socio-economic rights by the Commission. The period monitored by the Commission for the second socio-economic rights report is from 1 April 1998 to 31 March 1999.

### 2. DEVELOPMENT OF PROTOCOLS

#### 2.1 Process

As part of the second cycle of monitoring and assessing the realisation of socio-economic rights, the Commission drafted its second monitoring instruments or questionnaires, referred to as 'protocols' (Appendix 1 contains a sample protocol). Dr Richard Shillington, a Canadian consultant specialising in the quantitative analysis of health, economic and social policy, joined the Commission on 22 June -9 July 1999 for approximately two weeks, and assisted in the further development and refinement of the protocols. He also advised on the development of information gathering and monitoring systems. This process helped to develop protocols requiring detailed information, which signalled a change of emphasis from a minimal to maximum approach for both the Commission and organs of state.

The draft protocols were sent to a number of non-governmental organisations for comments and suggestions. After further refinement, the protocols were sent to relevant Government departments at national and provincial spheres of Government on 06 August 1999. Relevant Government departments were given until 6 October 1999 to submit their responses to the Commission.

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<sup>1</sup> Section 184 (3) of the *Constitution*, Act 108 of 1996.

## **2.2. Content and format of protocols**

While the first set of protocols was divided into nine sections, the protocols for the second cycle only had six sections dealing with different themes. The themes were designed to monitor and assess the measures taken by organs of the state to respect, protect, promote and fulfil socio-economic rights. The protocols were thus sub-divided into the following themes:

- Policy measures
- Legislative measures
- Definition and monitoring of the minimum standards established for the realisation of socio-economic rights
- Budgetary measures
- Outcomes (results) of the measures taken
- Additional information on the realisation of economic and social rights that has not been included in the above sections.

Questions in the protocol required detailed information on measures implemented in the reporting period, as well as an explanation of how such measures provided for the respect, protection, promotion and fulfilment of the relevant socio-economic rights. Specific questions were also asked of the Departments on measures taken towards the realisation of socio-economic rights for socially and economically vulnerable groups. These groups included:

- People living in rural areas
- People living in informal settlements
- Homeless persons
- Female headed households
- Women
- Persons with disabilities
- Older persons
- Persons with HIV/AIDS
- Children
- Formerly disadvantaged racial groups (Africans, Coloureds, Indians)

An explanatory memorandum meant to assist government departments in preparing their responses was prepared and attached to the protocols. The explanatory memorandum stated the Commission's mandate, explained certain concepts, and outlined the format of the responses. The Departments were required to prepare and send the reports in both hard copy and electronic form. Suggestions on the layout, content and structure were elicited from government departments, to improve on the protocols.

The main differences between the protocols of the first cycle and the second cycle centred around the use of indicators to measure the accountability of organs of State to socio-economic rights. Although the protocols of the first cycle did pose questions on the impact of policies and legislation, specific outcomes or

results were not required. The present protocols sought to measure these outcomes by means of universally utilised indicators such as literacy rates for education and mortality rates for health. Furthermore, additional indicators were developed that were particularly applicable to the South African scenario. The rationale behind including indicators in the second set of protocols was that the information gathered would aid in assessing the *progressive realisation* of socio-economic rights. Similarly, the development of a separate section on 'Budgetary measures' sought to gather data on the *available resources* that were allocated to fulfil the different rights.

### 2.3. The rights targeted in the protocols

The socio-economic rights covered by the second cycle of protocols were:

- Education
- Environment
- Food
- Health care
- Housing
- Land
- Social Security and Social Assistance
- Water

Finance and the rights of prisoners in terms of adequate accommodation, nutrition, reading material/education and medical treatment were also covered by relevant protocols.

## 3. THE DISTRIBUTION PROCESS

### 3.1 Process

In order to facilitate the monitoring process, letters were written to relevant Cabinet Ministers, Premiers and Directors-General (D-Gs) in various government departments. The purpose of the letters was to inform these officials about the Commission's socio-economic rights monitoring process. The Directors-General were also required to provide names of contact persons from their relevant departments who would liaise with the Commission on various issues pertaining to the protocols.

Protocols were sent to the following National Departments:

**Table 1.1: Government Departments that were sent protocols**

Departments
Agriculture
Correctional Services
Education
Environmental Affairs and Tourism

Finance
Health
Housing
Labour
Land Affairs
Trade and Industry
Water Affairs and Forestry
Welfare

The protocols were also sent to relevant Departments in all nine provinces. In some of the provinces D-Gs were requested to distribute the protocols to the relevant government departments as indicated in tables 1.4-1.12 below. Follow-up telephone calls were made to confirm whether all the targeted officials and Departments had received the protocols. The contact persons were advised to contact the Research and Documentation Department of the Commission if they required clarity on the content of the protocols. Correspondence between the Commission and the organs of state was recorded and kept by the Commission.

The Departments were given a period of two months to compile appropriate responses to the protocols. The due date for the submission of the responses was 6 October 1999. Some Government departments requested extensions (verbally or in writing) for the submission of the responses. Extensions for only the written requests were granted and extended to 31 October 1999. After this date some Departments requested further extensions and 19 November 1999 was set as the final extension date for all departments that had not submitted their responses. On 10 November 1999, a letter granting the final extension was sent to all the departments that had not submitted their responses. The letter stated that government departments should respond not later than 16h00 on 19 November 1999. The letter also stated that failure to respond to the protocols before this extended due date would result in the Commission serving subpoenas against those departments that would not have submitted their reports.

**Table 1.2: Due dates for submission of Government departments' responses**

<b>06 October 1999</b>	<b>31 October 1999</b>	<b>19 November 1999</b>	<b>23 December 1999</b>
First deadline for the submission of the responses	First extension granted to the Departments that requested it	Second extension date granted after the final warning before the Departments could be served with subpoenae	Final date of the submissions by the Departments that appeared before the Commission for the hearings



### 3.2. Problems encountered during the follow-up process

The Commission discovered that most Departments had not received the protocols. Some of the problems that resulted in this situation and thus the delay in the submission of responses by the departments, included the following:

- Some D-Gs delayed in sending the protocols to the Departments in time and some Departments said they were not aware that protocols had been sent and required immediate attention. In response to this situation the Commission faxed and e-mailed protocols to those Departments, and granted the first extension of the due date.
- Other Departments claimed not to have received the protocols, and the protocols were then faxed or e-mailed again to those Departments.

### 4. SUBMISSION DATES FOR THE RESPONSES FROM THE GOVERNMENT DEPARTMENTS

The following were the submission dates for both the National and Provincial Departments. Most Government departments submitted their responses before the hearings scheduled for 8-10 December 1999:

**Table 1.3: National Departments**

<b>Departments</b>	<b>Date received</b>
1. Housing	15 October 1999
2. Environmental Affairs	28 October 1999
3. Correctional Services	05 November 1999
4. Education	08 November 1999
5. Labour	11 November 1999
6. Finance	15 November 1999
7. Water Affairs and Forestry	15 November 1999
8. Land Affairs	19 November 1999
9. Health	19 November 1999
10. Agriculture	29 November 1999
11. Welfare	29 November 1999
12. Trade and Industry	30 November 1999

**Table 1.4: Eastern Cape Province**

<b>Departments</b>	<b>Date received</b>
1. Welfare	26 November 1999
2. Housing and Local Government	06 December 1999
3. Finance	07 December 1999
4. Health	08 December 1999
5. Agriculture and Land	23 December 1999

Affairs	
6. Education and Training	23 December 1999

**Table 1.5: Free State Province**

<b>Departments</b>	<b>Date received</b>
1. Social Welfare	08 October 1999
2. Education	17 November 1999
3. Local Government and Finance	23 November 1999
4. Agriculture	24 November 1999
5. Health	24 November 1999
6. Environmental Affairs and Tourism	01 December 1999
7. Finance	09 December 1999

**Table 1.6: Gauteng Province**

<b>Departments</b>	<b>Date received</b>
1. Education	05 November 1999
2. Housing	12 November 1999
3. Agriculture, Conservation and Environment	18 November 1999
4. Development Planning and Local Government	19 November 1999
5. Finance	24 November 1999
6. Health	25 November 1999

**Table 1.7: KwaZulu-Natal Province**

<b>Departments</b>	<b>Date received</b>
1. Housing	08 October 1999
2. Local Government	13 October 1999
3. Economic/ Finance	17 November 1999
4. Education and Culture	19 November 1999
5. Health	24 November 1999
6. Agriculture	29 November 1999
7. Social Welfare	06 December 1999

**Table 1.8: Mpumalanga Province**

<b>Departments</b>	<b>Date received</b>
1. Social Services, Population and Development	04 October 1999

2. Economic Affairs	07 October 1999
3. Land Affairs	04 November 1999
4. Local Government	04 November 1999
5. Agriculture	08 November 1999
6. Conservation and Environment	18 November 1999
7. Health	25 November 1999
8. Education	25 November 1999
9. Finance	07 December 1999

**Table 1.9: Northern Cape Province**

<b>Departments</b>	<b>Date received</b>
1. Health and Welfare	25 November 1999
2. Housing	25 November 1999
3. Economic Affairs	25 November 1999
4. Education	29 November 1999
5. Finance	07 December 1999

**Table 1.10: Northern Province**

<b>Departments</b>	<b>Date received</b>
1. Local Government	04 November 1999
2. Health and Welfare	15 November 1999
3. Finance	08 December 1999
4. Agriculture and Environment	09 December 1999
5. Housing and Water Affairs	09 December 1999
6. Education	23 December 1999

**Table 1.11: North West Province**

<b>Departments</b>	<b>Date received</b>
1. Health	19 November 1999
2. Education	19 November 1999
3. Agriculture	19 November 1999
4. Local Government	25 November 1999
5. Finance	01 December 1999

**Table 1.12: Western Cape Province**

<b>Departments</b>	<b>Date received</b>
1. Education	12 October 1999
2. Environmental Affairs	20 October 1999
3. Economic Affairs, Agriculture and Tourism	19 November 1999

4. Environmental and Cultural Affairs	19 November 1999
5. Finance	22 November 1999
6. Planning and Local Government	06 December 1999
7. Health and Welfare	06 December 1999

## 5. THE SUBPOENA PROCESS

Subpoenas were issued on the 23 November 1999 to all the departments that had failed to submit their reports. The subpoenas were faxed and were also served by the Sheriffs in all the provinces.

The subpoenas required those departments that had not submitted their reports by the extended due date of 19 November 1999 to appear before the Commission in Johannesburg on 8, 9 or 10 December 1999.

**Table 1.13: Hearings Scheduled for the 8 December 1999**

Department	HODs/ MECs	Province
Agriculture	Dr Mohlahlane	Free State
Environment Affairs	Mr Matsebula	Free State
Finance & Expend.	Mr Barlow	Free State
Health	Prof. Househam	Free State
Trade and Industry	Mr Roberts	National
Finance	Dr Nyathi	Mpumalanga
Local Govt. & Traffic	Mr Vilane	Mpumalanga
Health	Dr Karim	Mpumalanga
Education	Mr Hindel	Mpumalanga
Welfare	Ms Bester	National
Agriculture	Mr Mbongwa	National
Social Services	Mr van Wyk	Gauteng
Finance	Mr Maharaj	Gauteng
Health	Dr Mgijima	Gauteng

**Table 1.14: Hearings Scheduled for the 9 December 1999**

Department	HODs/ MECs	Province
Local Government	Mr Lefatola	North West
Finance	Mr Tjie	North West
Welfare	Ms Khondlo	Eastern Cape
Health	Dr Goqwana	Eastern Cape
Education	Mr Sizani	Eastern Cape
Land Affairs	Mr Mamase	Eastern Cape

Finance	Mr Godongwana	Eastern Cape
Housing & Local Government	Mr Nkwiti	Eastern Cape
Health and Welfare	Dr Sutcliffe	Western Cape
Planning and Local Government	Mr Africa	Western Cape
Health	Prof. Green-Thompson	KwaZulu-Natal
Social Welfare	Mr Mhlongo	KwaZulu-Natal
Agriculture	Mr Kruger	KwaZulu-Natal

**Table 1.15: Hearings Scheduled for the 10 December 1999**

Department	HODs/MECs	Province
Local Government and Housing	Mr Govender	Northern Cape
Economic Affairs	Mr Perkins	Northern Cape
Education, Arts, Culture	Mr Nkoane	Northern Cape
Health and Welfare	Dr Kistnasamy	Northern Cape
Finance	Mr Makape	Northern Cape
Housing and Water Affairs	Mr Rantete	Northern Province
Finance	Mr Mphahlele	Northern Province
Education	Dr Nengwekhulu	Northern Province
Agriculture	Dr Tau-Mzamane	Northern Province

As a result of the subpoenas, many Departments submitted their reports before the scheduled hearing dates and were therefore released from the subpoenas.<sup>2</sup> The Department of Health in the Eastern Cape and Department of Education in the Northern Province were required to appear before the Commission, as they did not submit their reports before the hearing. There was no hearing on 8 December as all the organs of states scheduled to appear before the Commission on that date responded before the day of the hearing. On 9 December 1999, the Eastern Cape Department of Health appeared before the Commission. The hearing for the Northern Province Education Department was on 10 December 1999 and the Department was granted an extension for submission until 23 December 1999.

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<sup>2</sup> Due to prior arrangements with the Commission, the Department of Education and the Department of Land Affairs in the Eastern Cape were granted a further extension until 23 December 1999.

## **5.1. Subpoena Hearings**

### ***5.1.1 Legal Background***

According to section 9(c) of the South African Human Rights Commission Act,<sup>3</sup> the Commission reserves the right to serve subpoenas against any person to come and provide information that may have been required of him/her as provided for in section 184(3) of the Constitution. According to section 18(a) of the South African Human Rights Commission Act, failure or the refusal to furnish the Commission with information is an offence, and legal action can be taken against the party concerned.

The purposes of the Hearings were twofold:

- To allow the respondents to present the Department's submissions.
- To provide the Commission with the opportunity of investigating the reasons given for failure to submit reports.

### ***5.1.2. Procedure at the Hearings***

For the hearing scheduled for 9 December 1999 the panel comprised Commissioner Tlakula, Commissioner Tom Manthata, Commissioner Jerry Nkeli and Commissioner Zonke Majodina. The panel for the hearing held on 10 December 1999 consisted of Commissioner Tlakula, Commissioner Jody Kollapan and Commissioner Jerry Nkeli. Commissioner Pansy Tlakula chaired both the hearings.

The respondents were advised of their right to legal representation as provided for in section 9(4) of the South African Human Rights Commission Act. The hearings were conducted as formal legal proceedings; statements and evidence were provided under oath. After formal introductions of the panel and the respondents, the Chairperson explained the purpose and procedures for the hearing. The respondents, with the assistance of their legal representatives, were questioned in relation to their failure to comply with the protocols. Witnesses were called where necessary during the hearings and were questioned accordingly. After all information and evidence had been adduced, the respondents were allowed to make their concluding statements. The hearing was thereafter adjourned for a short break to allow the panel to deliberate on the evidence presented. After reconvening, the chairperson handed down the decisions as discussed below.

### ***5.1.3. Hearing for the Eastern Cape Department of Health held on 9 December 1999***

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<sup>3</sup> South African Human Rights Commission Act 54 of 1994.

The Department stated the following as reasons for failure to comply with the given time frames:

There was confusion in the Department about the protocols. The protocols were given to a junior official who did not forward them to the officials in charge.

The changes and redeployment of personnel within the Department contributed towards the delay in responding to the protocols.

Numerous documents that were received daily by the Department caused confusion, which led to the protocols not being attended to timeously.

Negligence by some staff members resulted in failure to attend to the protocols on time.

After providing the above reasons the Eastern Cape Department of Health made the following submissions during the hearing:

- The report submitted at the hearing was prepared that morning before the departmental representatives came to the hearing.
- The Department apologised unreservedly for its failure to comply with the Commission's requirement.
- The Department pleaded with the Commission for an extension so as to enable it to complete its report that will supplement the incomplete report presented.

#### **5.1.3.1. Ruling by the Commission**

The Commission ruled that the Eastern Cape Department should be granted an extension to 23 December 1999 for the submission of the report. In making the ruling, the Commission took a number of factors into consideration. These included the reasons provided for non-submission of the report by the Department, and the fact that the Commission was still expected by Parliament to produce a report notwithstanding the failure by the Department.

The Commission further indicated that failure to comply with the extension would result in criminal legal proceedings instituted in terms of section 18(a) and (i) of the South African Human Rights Commission Act.

#### ***5.1.4 Hearing for the Northern Province Department of Education held on 10 December 1999***

The Head of Department (HOD) for the Northern Province Department of Education did not attend the hearing as required by the subpoena. The Commission considered whether the HOD should be released from the subpoena because of failure to appear in the hearing.

The Departments' Head of Legal Services told the panel that the HOD could not attend the hearing due to other commitments in the province. He also expressed

apologies on behalf of Professor Nengwekhulu (the HOD), and indicated that he as the relevant person had been delegated by the HOD to appear for the hearing on his behalf and to deal with legal issues.

The Northern Province Department stated the following reasons for failure to comply with the time frames:

- The Department alleged that the protocols were not sent on time, as the Department claimed to only have received the protocols during the first week of December 1999.
- The lack of human resources resulted in the Department being unable to perform its assignment expeditiously.
- The Department's offices are situated in such a way that it is extremely difficult to execute its task. The Department alleged that it was unable to gather the necessary information, as the offices in the province are too far apart.

#### **5.1.4.1. Ruling by the Commission**

The Commission acknowledged the reasons provided by the Department for failure to comply with the time frames. On the basis of the given evidence, the Commission found that the respondents received the socio-economic rights protocols during the month of August 1999 and not December 1999 as alleged.

The Commission ruled that:

- the respondents be given until 23 December 1999 to submit their report.
- failure to comply with the above shall result in criminal action being instituted against the respondents on the basis of section 18(a) and (i) of the South African Human Rights Commission Act.
- the Head of Department was not released from the subpoena and still needed to appear before the Commission.

#### **5.2. Conclusion from the Subpoena Process**

The negligence and lack of commitment displayed by the government departments in question, reflects a lack of awareness and commitment towards the socio-economic rights monitoring role of the Commission. The officials in the respective government departments need to take the provisions of section 184(3) of the Constitution seriously and appreciate their constitutional function and duty to the Commission in this regard.

### **6. EASTERN CAPE DEPARTMENT OF HOUSING REPORT**

The Eastern Cape Department of Housing and Local Government was one of the Departments that were served with subpoenas for not complying with the provisions of section 184(3) of the Constitution within the requisite time-frame.



However, the afore-mentioned Department was released from the effects of the subpoena upon the Commission receiving what was purported to be the Department's report.

The report was e-mailed to the Commission and the message accompanying the attached report from the Department read "Please find attached a copy of the response by the Department of Housing and Local Government in the Eastern Cape regarding [the] House Survey." The Department also sent a hard copy of the report signed by Andre Daniels, who purported to be the person who compiled the report. However, the MEC for the Eastern Cape Department of Housing and Local Government, Mr G. E. Nkwinti, who was meant to confirm the report, did not sign the report in question.

One of the researchers in the Commission upon reading the report discovered that the Eastern Cape Housing and Local Government Report was an exact replica of the report submitted by the National Department of Housing. The HOD of the Research and Documentation Department of the Commission compared the two reports, and apart from the titles the reports were identical. The title of the Eastern Cape report read "Province of the Eastern Cape Department of Housing and Local Government: Socio-Economic Rights Protocol April 1998 to March 1999". The HOD verified that the report received was the only report that was submitted by the Eastern Cape Department.

The Complaints Committee of the Commission discussed the matter and it was agreed that the conduct of the concerned officials in the Eastern Cape Department was dishonest and fraudulent and constituted a criminal offence in terms of section 18 of the South Africa Human Rights Commission Act. The Committee then approached the office of the Director of Public Prosecutions to institute criminal proceedings against the officials responsible for this conduct. The Committee also decided that the Premier of the Eastern Cape, the MEC responsible for the Eastern Cape Department of Housing and Local Government, the relevant Portfolio Committee in the Eastern Cape Provincial Legislature, the President, the Minister of Provincial and Local Government and the Speaker of Parliament and National Minister of Housing should be duly informed. A letter was sent to all the afore-mentioned people to inform them about the report. Affidavits were written by the HOD of the Research and Documentation Department and one of the researchers, and were sent together with the letter to the Premier of the Eastern Cape, the MEC for Housing, Director of Public Prosecutions and Chairperson of the Portfolio Committee in the Eastern Cape.

In response the MEC of Housing and Local Government in the Eastern Cape sent a letter to the Commission stating that the Department will avail the required information if still sought. The Department also requested that the Commission withdraw the charge laid against them. The Commission forwarded the letter to the Acting Director of Public Prosecutions in the Eastern Cape. The Commission informed the MEC that the matter is now being handled by the Director of Public

Prosecutions therefore it is unable to grant their wish. The Department of Public Prosecutions in the Eastern Cape sent a letter stating that the matter is still being investigated, and the Commission will be duly informed about the decision taken after the investigations have been completed. When this report was compiled the Commission was still awaiting the decision from the Acting Director of Public Prosecutions of the Eastern Cape.

## **7. EVALUATION OF THE RESPONSES**

The process of evaluating governmental responses to the protocols began in mid December 1999. In the previous evaluation, the Commission collaborated with other organisations. However, for the second cycle, the Commission decided to employ the resources of its Research and Documentation Department to evaluate the responses from different government departments.

### **7.1 Methodology**

The methodology involved in the evaluation of Economic and Social Rights for the reporting period is based on the protocols issued by the Commission. The government responses to the protocols formed the basis of the analysis and an attempt was also made to verify the information received. The verification of information could not be done sufficiently due to limited resources and time.

### **7.2 Structure of the Report**

Each Economic and Social Right is contained in a separate chapter. The responses of the National and Provincial Departments are combined to present a comprehensive report on the respective right. The chapters are each divided into five major sections, following the format of the protocols. These sections are:

- Policy Measures
- Legislative Measures
- Monitoring
- Budgetary Measures
- Outcome Measures

These sections were each subdivided into the following sub-sections:

- Summary of Responses
- Commentary
- Recommendations

The sub-section on 'Summary of Responses' is a synopsis of the different measures instituted by the government departments during the period 1 April 1998 to 31 March 1999 as per response furnished by each of the relevant organs of state. The summary is presented in a uniform manner based on questions in the protocol, and describes the measures instituted to *respect, protect, promote and fulfil* the right. All of the National responses were analysed in detail. Since

some of the information provided by the provinces was a repetition of information contained in the responses of government departments of other provinces, this information was not repeated in the summary. The responses were also summarised to exclude extraneous information and to provide a consistent presentation of measures and information provided for by the respective Departments. The summary is written to provide the average reader with an idea of what measures were instituted during the reporting period.

The Commission's analysis of the government responses is encompassed in 'Commentary'. On the basis of the protocols, this sub-section analyses the following issues:

- Whether the information provided is sufficient in terms of the questions put to the relevant organs of state. What information has not been provided?
- Whether the measures taken are sufficient in meeting the constitutional obligations as informed by the relevant norms and standards including international ones. Do the measures taken achieve any *progressive realisation* of the right? Are they *reasonable and effective*? Do they cater for vulnerable and previously disadvantaged groups?
- The quality of the response in terms of the government department's appreciation and comprehension of the right.

The challenges that need to be addressed and the steps that need to be undertaken by the Departments to meet the Constitutional obligations to the right are outlined in the 'Recommendations' section. This section deals with whether organs of state have provided information in the required format as requested in the protocols and the quality of the response. Recommendations are also made on what information the Departments should report on, as well as on what measures and action need to be undertaken by the Departments to achieve the *progressive realisation* of the rights.

# CHAPTER TWO

## EDUCATION<sup>1</sup>

*Everyone has the right to a basic education, including adult basic education and to further education. Everyone has the right to receive education in the official language of his or her choice. The state is obliged to respect, protect, promote and fulfil these rights and should thus take reasonable legislative and other measures within its available resources to achieve their progressive realisation.<sup>2</sup>*

### POLICY MEASURES

#### Summary of Responses

##### *National Level*

South Africa has made significant progress in terms of policy development in the education sphere. The National Department of Education (hereinafter National, DoE) was required to provide information on policy measures instituted to respect, protect, promote and fulfil the right to education. The following were policies and programmes instituted between the period 1996-1999 by the National DoE towards the realisation of the rights pertaining to education.

- Early Childhood Development (ECD)
- Adult Basic Education and Training (ABET)
- Outcome Based Education (OBE), also known as Curriculum 2005
- Culture of Learning, Teaching and Service (COLTS)
- Education for Learners with Special Education Needs (ELSEN).

The ECD, which was first introduced in 1996, is a multi-disciplinary programme, which required the establishment of inter-departmental committees at National and Provincial Departments of Education and their counterparts in the Health and Welfare Departments. The committees had to develop and promote a comprehensive and multi-disciplinary approach to the welfare and development of young children from birth to nine years.

The right to adult basic education is provided for in the constitution, and ABET seeks to provide for that right through addressing the problem of adult illiteracy in the country. The National DoE saw ABET as an important tool for social participation and economic development. The programme was targeted at groups that were historically disadvantaged in terms of education and training and its standards were based on the National Qualifications Framework (NQF). The objective of the NQF is to attain the

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<sup>1</sup> The analysis of the responses is based on information received from government departments, and thus it sometimes differs for the provinces.

<sup>2</sup> Section 29 (1) (a) and (b) of the *Constitution*, Act 108 of 1996.

restructuring of formal education in order to adopt an outcome-based approach through all tiers of the education system. In February 1998 two policy papers on ABET and the National Multiyear Implementation Plan (NMYIP), were issued by the National DoE. The policy paper on ABET proposed that the provision of ABET be expanded from 370 000 people in 1997 to 691 875 by the year 2001, in order to reach about 2.5 million adults in the process. The NMYIP policy as part of its first phase was meant to commit all players, including non-governmental organisations, tertiary institutions, publishers, the private sector and trade unions, to set up mechanisms that would ensure sustainable, large scale delivery of adult basic education.

Another policy measure instituted by the National DoE for the progressive realisation of the right to education was OBE, which was geared at providing skills training for both youth and adults. The OBE programme resulted in the restructuring of formal education, which was guided by the NQF and the South African Qualifications Authority (SAQA). Both the NQF and SAQA were designed to standardise an outcomes based approach through all tiers of the education system.

The COLTS campaign was meant to ensure the improvement of access to quality education for all. In line with this, whole school development strategies were undertaken by non-governmental organisations together with the district level of government and community structures.

The National DoE also instituted the ELSEN policy for learners with special needs, a by-product of the White Paper No.1 on Education and Training (1995). The policy identified the need for the transformation of 'Education Support Services' (ESS). A Green Paper that was released for public comments in August 1999 highlighted the need for changes to be made in the provision of education and training to cater for learners with special education needs. This would be done through prioritising their needs, in terms of developing the capacity of educators in the current system and revising training policies and legislation.

In response to the question on how the above policy measures contributed towards the progressive realisation of the right to education, the National DoE stated that all the policies emphasised equal access to good quality education and training and that the policies were reasonable and effective in that all forms of discrimination were removed from the education system, and that specific measures were being taken to ensure that redress of past discrimination takes place.

In response to the question on the norms and standards used by the National DoE for the funding of schools, the report stated that a policy document outlining the norms and standards was published in the Government Gazette, No. 19347 on 12 October 1998. The policy on norms and standards became national policy on 1 April 1999, and will be implemented in January 2000. The main aim of the policy measure is to remove the inequities in the distribution of public resources for education, within and across provinces. The policy meant that funding would be based on an equitable cost per learner and public spending would be channelled to the poorest schools. The policy was

thus intended to give effect to the funding of schools in terms of the South African Schools Act 84 of 1996.

On measures taken to address gender equality among educators, the National DoE stated that the Gender Equity Task Team was set up in September 1996. The Task Team was meant to investigate gender issues and make recommendations for the establishment of a Gender Equity Unit (GEU). A report published in 1997 by the Task Team resulted in the formation of a GEU that was to be located at the Director-General's office with similar units established in provincial offices as well.

### ***Provincial Level***

Policy measures instituted by some of the Provincial Departments of Education (herein after Provincial DoE) on the right to education were in line with national policies. Most of the Provincial DoE's did not provide the period on which the policy measures and programmes were instituted. As an example, the Eastern Cape established community-based centres for a pilot project on ECD and the Northern Cape DoE adopted a new policy for funding ECD centres as well as the policy on admission to these centres that ensured that all children were admitted on an equitable basis.

Some Provincial DoE's developed programmes and policies in support of the national ABET programme. For example in the Eastern Cape, teaching on ABET was already in progress at the community based centres. In Gauteng and KwaZulu-Natal, policy measures were developed to intensify the delivery of formal ABET programmes. The Mpumalanga DoE instituted a policy to ensure that the existing schools provide ABET programmes. The Northern Cape established Adult Learning Centres in the rural areas to cater for the educational needs of adults and youth. These centres also catered for street children and other formerly disadvantaged groups. In the Western Cape, an interim policy measure for the establishment and funding of Community Learning Centres (CLC) was developed in order to provide ABET and make it more accessible to adult learners. The Eastern Cape also had a project called Ikhwelo, which provided skills development especially for rural women. The Gauteng DoE also opened inner-city schools for homeless people and street kids.

The Free State DoE was the only province which provided information on OBE, This introduced in grades 1 and 2, as required by the SAQA Act 58 of 1995. Schools of Industry have been designated for learners who needed rehabilitation. The Free State DoE, as a means of ensuring the maintenance and improvement of education in grades where OBE had not been introduced, implemented the Register of Institutional Programmes in Public Schools, June 1997, in all schools. Also as a means of preparing for the implementation of the compulsory reception year (grade 1) in the Free State, a pilot project was launched and 100 school sites with approximately 4 000 learners were identified for this purpose. The pilot project was conducted to assess whether there are enough schools for learners who will need to be registered for grade 1.

In KwaZulu-Natal, 58 ELSEN schools were provided for learners with special needs for 1999. The schools admitted learners from all communities, with first preference given to previously disadvantaged learners. Psychological, Guidance and Special Education specialists were employed to provide support services and appropriate training for the educators. In the Western Cape an inclusive policy, that accommodates learners with special needs in ordinary public schools where practically possible, was developed. In support of this initiative 40 co-ordinators and facilitators were appointed to co-ordinate and facilitate the education of learners with special needs in mainstream schools. According to the ELSEN policy all schools must be built in such a manner that they are accessible to learners with disabilities.

The Provincial DoE's<sup>3</sup> that responded to the question on the norms and standards established for the funding of schools stated that the same principles of the national norms and standards were adhered to. The policy on the norms and standards ensured access to education without any discrimination and accommodated poorer families by providing partial or full exemption from payment of school fees. The funding of schools was also based on the principle of poorer schools receiving more funding than richer schools.

In response to the question on policies established or action taken to address gender inequality among educators and learners, only a few provinces responded. In the Eastern Cape, a gender sub-unit, aimed at addressing all gender-related issues, was established. In KwaZulu-Natal the policy instituted dealt with the introduction of affirmative action at schools and focused on race and gender. The policy aimed at balancing gender and race registration in schools. The Mpumalanga DoE also established gender equity units or committees at the head office and district offices, including circuit offices and schools. The Western Cape DoE established informal structures that would co-ordinate gender equity in education.

In some provinces projects were established in order to assist learners who lived far away from schools. In Gauteng a transport project was initiated for learners who live in remote areas like rural areas or farms, in order to provide for easy access to schools. In the Western Cape province buses were also provided for children that lived far from schools.

Measures instituted to respect, protect, promote and fulfil the right to education include the policy instituted by the Mpumalanga, Northern Cape and Western Cape DoE's. This policy dealt with the signing of contracts between private property owners where farm and church schools were located. The policy was instituted in terms of section 14 of the South African Schools Act 84 of 1996. This policy minimised the rate of denial of education to the learners by some owners of properties where schools were located, especially in the rural areas.

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<sup>3</sup> The DoE's that responded were the Eastern Cape, KwaZulu-Natal, Mpumalanga, Northern and Western Cape.

Information provided by the Eastern Cape DoE indicated that schools were regularly assessed to ensure that they were kept in good standards and that effective learning and teaching took place. Similarly, in the Northern Cape policy guidelines on the maintenance of schools on a daily basis were instituted. This initiative was intended to ensure that schools were kept intact and were protected against unnecessary dilapidation.

In order to ensure equality in the teaching of all official languages offered in schools, the Free State DoE introduced a uniform system of evaluating and assessing all these languages in all grades. The Free State DoE was still in the process of developing new policies when the report was compiled. The first policy would cater for multi-religious worship in schools. This policy would also seek to accommodate those teachers and learners who do not belong to any religious group. The second policy dealt with language, which is a furtherance of the national language policy. The DoE intended to use the policy to ensure that other language needs were accommodated in schools. The Department did not explain how this would be realised.

In KwaZulu-Natal other projects undertaken by the DoE were the Primary Schools HIV/AIDS Education Project, Crime Stop Project and the Learning Opportunities for Educators Project. The latter project was aimed at assisting educators to meet the required educational standards by affording them opportunities for personnel development.

In Mpumalanga and Northern Cape DoE's guidelines for the adoption of a code of conduct by schools were instituted. These guidelines provided for the promotion and maintenance of order within schools in that educators protected learners against arbitrary punishment and possible physical abuse.

The North West DoE failed to respond to all the questions asked in the protocol. Instead the Department attached the Government Gazette as their report.

## **Commentary**

### ***National Level***

The National DoE reported on the ECD as one of the policies instituted for the progressive realisation of the right to education but failed to explain the principles guiding the development of this policy. For instance, there was no clarity as to why the policy was developed and what were the problems it was trying to address. The report did not describe how the National DoE deals with children living with HIV/AIDS under this programme. However, according to other sources ECD was developed because of the government's responsibility, in terms of its constitutional duty to protect the rights of children as well as their right to security, basic nutrition, basic health care and basic



education.<sup>4</sup> The ECD policy also provides children who have different abilities the opportunity to develop to their fullest potential.

The National DoE reported that ABET is a tool for social and economic change, but failed to outline how it will be implemented and achieved. According to other sources, the primary focus of ABET is to initiate a culture of learning and provide a foundation for acquiring knowledge and skills required for social and economic development, justice and equality.<sup>5</sup> The policy seeks to link literacy with basic (general) adult education and training for income generation. The historically disadvantaged groups, that were targeted by ABET include unemployed youths and adults in the urban areas and settlements, the rural unemployed, and female headed households in both urban and rural areas. Other diverse constituencies that were targeted by this policy include organised labour in the formal economy and self-employed people.<sup>6</sup>

The implementation of ABET programmes was meant to be done in partnership with outside agencies, such as non-governmental organisations and the private sector. The policy was meant to promote a culture of life-long learning and economic development, hence the need to involve both the public and private sector. Lifelong learning is described as the development of human potential through continual support that will stimulate and empower individuals to acquire knowledge, values, skills and understanding they will need throughout their lifetimes.<sup>7</sup> During 1998 the National DoE campaigned to highlight ABET during two calendar events, namely Women's Day and International Literacy Day.<sup>8</sup>

The policy on OBE by the National DoE was not thoroughly explained in terms of what it entailed, and how it was being phased in, nor was it explained how the educators would assess the performance of learners using this form of teaching. According to the report compiled for the Minister of Education, the basis for OBE was that learning should be an essentially inter-active process between and among educators and learners. The teaching process should be centred on the learners and the teachers serving as facilitators.<sup>9</sup> The report further stated that OBE would be phased in over a three-year period. For grade 1 it would be phased in at the beginning of the year 1998, grade 2 at the beginning of the year 1999 and grades 3 and 7 by the year 2000. Means of assessing the progress for OBE in terms of expected levels of performance are being developed for the foundation and senior phase. This means systematic evaluation of learner achievement will take place at grades 3, 6 and 9.<sup>10</sup>

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<sup>4</sup> Department of Education *Interim Policy on ECD* at <http://www.gov.za/reports/1996/childdev.htm#6>. Site visited on 12/07/00.

<sup>5</sup> Department of Education *Policy document on ABET* at [http://www.education.pwv.gov.za/DoE\\_Sites/ABET\\_Policy.htm](http://www.education.pwv.gov.za/DoE_Sites/ABET_Policy.htm). Site visited on 13/07/00.

<sup>6</sup> Department of Education *Policy document on ABET* at [http://www.education.pwv.gov.za/DoE\\_Sites/ABET\\_Policy.htm](http://www.education.pwv.gov.za/DoE_Sites/ABET_Policy.htm). Site visited on 13/07/00.

<sup>7</sup> Ibid.

<sup>8</sup> National Department of Education *Annual Report*. (1998) 20.

<sup>9</sup> Status Report for the Minister of Education, June 1999 :*Curriculum 2005* at <http://www.education.pwv.gov.za/Archives/StatusReport.htm>. Site visited on 13/07/00.

<sup>10</sup> Status Report for the Minister of Education, June 1999 :*Curriculum 2005* at

The basis for the development of the COLTS campaign was not clearly explained by the National DoE, nor was there an indication given as to how this campaign would improve access to quality of education for all, and when did it commence and for how long will the campaign be in progress. COLTS was launched in February 1997 and has been guided by the Oversight Committee at national and provincial levels.<sup>11</sup> The campaign was expected to run for three years, with the expectation that its message would have been institutionalised by 1999. During 1998 the National DoE resolved to intensify its efforts to bring visibility, urgency and popular participation to the COLTS campaign. Some of the priorities adopted for the year included making COLTS visible at community level, ensuring that National DoE and Provincial DoE's took the lead and played a catalysing role, and encouraged the implementation of codes of conduct for learners, educators and civil servants.<sup>12</sup>

COLTS as a strategy was adopted to establish and strengthen governing structures, initiate institutional re-organisation and undertake human resource capacity building. The campaign was meant to highlight the problems of dysfunctional educational institutions, especially schools. Accordingly, community involvement was necessary for the restoration of a sense of professional responsibility among educators, and learners were urged to properly utilise their educational opportunities and assist in combating crime and violence in schools.<sup>13</sup>

The National DoE failed to mention how the ELSESEN policy contributed to the progressive realisation of the right to education. According to other reports the ELSESEN policy means education should address the necessities of learners with special needs. As a result education institutions needed to be prepared to accommodate more learners who experience barriers to learning and development. Even the new guidelines for the allocation of educators' posts to schools have been adjusted to accommodate the requirements of learners with special education needs.<sup>14</sup>

The information provided on the norms and standards of school funding by the National DoE failed to highlight the criteria used to decide when the parents can or cannot afford to pay school fees, and the criteria used to allocate subsidies given to schools.

The policies instituted by the National DoE do to some extent progressively realise the right to education for most of the vulnerable groups. For example, ECD provides for children between the ages of 0-9 years. Adults, especially women, are provided for by ABET and GEU, and the disabled learners are provided for in ELSESEN. However, the effectiveness of the policies was not properly explained in the report, especially for

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<sup>11</sup> <http://www.education.pwv.gov.za/Archives/StatusReport.htm>. Site visited on 13/07/00.

Status Report for the Minister of Education, June 1999 :COLTS at

<http://www.education.pwv.gov.za/Archives/StatusReport.htm>. Site visited on 13/07/00.

<sup>12</sup> National Department of Education, *Annual Report 1998 (1998)*, 14.

<sup>13</sup> Status Report for the Minister of Education, June 1999 :COLTS at

<http://www.education.pwv.gov.za/Archives/StatusReport.htm>. Site visited on 13/07/00.

<sup>14</sup> Status Report for the Minister of Education, June 1999 :ELSESEN at

<http://www.education.pwv.gov.za/Archives/StatusReport.htm>. Site visited on 13/07/00.

people living in rural areas, informal settlements, homeless and poor persons. Policy measures instituted for homeless children need serious consideration because of government's commitment to providing free and compulsory education to children for the first seven years of school.

Another aspect that was omitted by the National DoE report is the financing for tertiary education. The Department failed to address its strategy in terms of how it intends to deal with issues relating to student financing in universities, technikons and colleges. According to the annual report the government established a National Student Financial Aid Scheme (NSFAS) in 1996 as a means of addressing the rising student debt problem in higher education. The Financial Aid Scheme was also meant to give effect to government's commitment to redressing the inequities of the past.<sup>15</sup> The Financial Aid Scheme was endorsed by the White Paper, which suggested further research in order to identify alternatives to the NSFAS as being necessary for developing a comprehensive and sustainable financial aid scheme. As a result a report was released in 1998 which outlined and examined the feasibility of having three options, such as loan schemes, graduate taxes and payroll (employer) taxes, and the provision of financial assistance to higher education students. The report also evaluated the administrative efficiency and principles that underpin the existing loan and bursary scheme operated by Tertiary Education Fund for South Africa (TEFSA).<sup>16</sup>

### ***Provincial Level***

Provincial DoE's that reported on the ECD policy did not indicate the period in which the programme was instituted. The Eastern Cape failed to indicate whether the community centres were sufficient to provide ECD for children. The Eastern Cape also did not indicate whether the Ikhwelo project was successful in transferring skills to rural women and the nature of skills transferred. Similarly the Gauteng DoE failed to mention how the Department ensures that street children and the homeless attend inner-city schools.

The Free State DoE should have explained the objectives of the Schools of Industry, what sort of rehabilitation is offered and whether such assistance offered by the schools was helpful to the learners. The Free State DoE should have provided more details on the evaluation and assessment of the languages is conducted.

The KwaZulu-Natal DoE only indicated that 58 ELSEN schools were provided but failed to indicate whether these schools can accommodate the current number of learners and whether the schools are succeeding in providing access to education for learners with special needs. The Western Cape DoE failed to indicate whether there was success in providing ELSEN in mainstream schools, and whether effective teaching and learning was happening in schools. In KwaZulu-Natal, education on HIV/AIDS is offered at primary schools, but details were not provided on the content of the education offered. Reasons for why such education is not provided to secondary schools were not

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<sup>15</sup> National Department of Education *Annual Report*. (1998) 36.

<sup>16</sup> *Ibid.* 36.

provided. However, the prevalence of the epidemic requires that HIV/AIDS education should be provided even in secondary schools.

The response by the North West province of attaching the Government Gazette is inexcusable and the Department needs to understand that reporting on measures instituted for the realisation of the right to education is a constitutional obligation that needs to be taken seriously.

## **Recommendations**

- Sufficient details need to be provided for policy measures instituted by the government departments.
- The effectiveness of the policies such as ECD, ABET and COLTS needs to be clearly outlined in order to assess whether the progressive realisation of the right to education was achieved.
- Provincial DoE's should indicate as requested whether the policy measures instituted were within the reporting period, this being April 1998 and March 1999.
- The Departments need to follow the format of the protocols when answering questions.
- The National and Provincial DoE's need to outline the impact of the policy measures they have adopted.

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

#### ***National Level***

The report from the National DoE refers to various laws that were passed since 1994. Some of the notices and regulations cited in the report were promulgated within the present monitoring period, but emanate from certain laws passed before the monitoring period. For instance, *Notice No. 3432 of 1998* and *Notice No. 2432*, which deal with the admission policy for ordinary schools and ordinary public schools respectively, both further the provisions of the South African Schools Act 84 of 1996 regarding administration of admissions and accommodation of learners in public schools. Paragraph 9 of the former notice states that: The admission policy of a public school and the administration of admissions by an education department must not unfairly discriminate in any way against an applicant for admission. Section 5(4) of *Notice No. 2433 of 1998* regulates admission to ordinary public schools in terms of age requirements. *Notice No. 3432* further provides in paragraph 22 that "the rights and wishes of learners with special education needs, must be taken into account at the admission of the learners to an ordinary public school." The South African Schools Act 84 of 1996 requires ordinary public schools to admit learners with special education needs, where this is reasonably practical. *Notice No. 2362 of 1998*, which deals with

norms and standards of funding public schools, is based on South African Qualifications Authority Act 58 of 1995.

There are also other prominent notices that emanate from the South African Schools Act 84 of 1996. Firstly, *Notice No. 2362 of 1998* which deals with norms and standards of funding public schools as provided in section 35 of the Act. Secondly, *Notice No. 1293 of 1998* which deals with the exemption of parents from payment of school fees, and lastly, *Notice No. 2630 of 1998* which enforced the provision in the Act regarding the date on which the governing bodies of ordinary public schools must begin to operate. Section 39(4) of the Act exempts those parents who are unable to pay school fees, from paying. While section 48(1) of the Act refers to subsidies for independent schools.

The Further Education and Training Act 98 of 1998 furthers the provisions of section 29 1(b)<sup>17</sup> of the Constitution regarding the right to further education. The preamble of this Act outlines the purposes of this law, *inter alia*, to redress past discrimination and ensure representivity and equal access. In order to ensure access to further education and training at the workplace by persons who have been marginalised in the past, such as women, disabled<sup>18</sup> and other disadvantaged groups, *Notice no. 1043 of 1998* provides for regulations for the establishment, composition and functioning of the National Board for Further Education and Training (BFET). This notice also furthers the provisions of the National Education Policy Act 27 of 1996.

Paragraph (14)(6) of the Further Education and Training Act advance the provisions of section 195 of the Constitution regarding factors to be considered when making appointment of staff at further education and training institutions. These factors are also entrenched in paragraph 7 (1) of the Employment of Educators Act 76 of 1998. Those factors are the ability of the candidates, the principle of equity, the need to redress past injustices and the need for representivity. The Act further provides in paragraph 17 (3) that the admission policy of further education and training institutions may not unfairly discriminate in any way and must provide appropriate measures for the redress of past inequalities.<sup>19</sup> The provision of higher education by non-registered private higher education institutions was terminated by the promulgation of *Notice No. 1356 of 1998* in line with the provisions of the Higher Education Act 101 of 1997.

### ***Provincial Level***

The reports from the provinces indicate that there have generally been no legislative measures instituted during the period under review. The only exception is the Northern

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<sup>17</sup> Section 29(1) (b) provides that everyone has the right to a basic education, including adult basic education and to further education...

<sup>18</sup> Paragraph 17 (5) provides that the councils of further education and training institutions must ensure that the institution is accessible to disabled students where reasonably practicable.

<sup>19</sup> Section 26(c) of the Act prohibits any discrimination on the grounds of race, gender or disability.

Cape, which introduced the Northern Cape School Act Amendment Bill of 1998. This bill was instituted to allow the MEC to merge schools on the basis of economic efficiencies, equity in quality of education and equitable access to resources. The Bill was not passed in the legislature due to disapproval by opposition parties, which staged a walkout.

## **Commentary**

### ***National Level***

The National DoE has only presented answers to three questions in the protocol. The omitted questions were on how particular legislative measures give special consideration to specified vulnerable and disadvantaged groups, and how these measures affect these groups, and lastly, whether the measures are reasonable and effective in addressing the special needs of these groups. These omitted questions are crucial as their answers would carry substantial information about the impact of legislative measures on the lives of vulnerable and disadvantaged groups.

The report does not account for the four core obligations, which are the respect, protection, promotion and fulfilment of the rights in question. After providing information on the legislative measures that were taken, the report does not explain how these measures advance the right to education in terms of the four core obligations. According to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, failure to perform any of the core obligations constitutes a violation of rights.<sup>20</sup>

The report is silent about the protection of language rights in education. Language was used as a tool of discrimination during the apartheid era. It is therefore very important that the state should provide information on legislative measures that were instituted to transform the education system with the objective of breaking barriers resulting from language differences. To receive education in one's own language is an important component of the right of access to education.<sup>21</sup>

Section 29(1) (a) of the Constitution provides for the right to basic education, including adult basic education. The report does not mention anything concerning these rights. Despite there being specific policies on these, it is imperative that specific legislative measures be taken to advance the right to basic education and adult basic education. It is also unclear as to whether primary education is free and compulsory. While the South African Schools Act 84 of 1996 provides compulsory education for learners between the ages of seven and fifteen years of age, nothing is said about whether primary education is free.<sup>22</sup>

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<sup>20</sup> Economic, Social and Cultural Rights: *A Compilation of Essential Documents; International Commission of Jurists*, (1997), November, 83.

<sup>21</sup> Section 29(2) of the Constitution states that "everyone has the right to receive education in the official language or languages of their choice..."

<sup>22</sup> In terms of Article 13 of the ICESCR, primary education should be free and compulsory.

One other glaring omission in the report is that it refers only to public educational institutions to the exclusion of private institutions. The Constitution<sup>23</sup> regulates private educational institutions by requiring them to be registered with the state, and not to discriminate on the basis of race. Public funds are also allocated to private institutions in the form of state subsidies. It is therefore very important that the state provide information on measures taken to advance the right to education in private institutions. The report also failed to refer to the Higher Education Act 101 of 1997, which came into operation in 1998. This law provides a policy and legislative framework for the transformation of higher education system.

The legislative measures cited by the report are not sufficient for the achievement of the progressive realisation of the right to education. The bulk of measures instituted by the government are mainly at policy level and less in terms of legislation. For example, basic education is not adequately regulated. International human rights law asserts that primary/elementary education shall be compulsory and free to all.<sup>24</sup> Despite the provisions of the South African Schools Act 84 of 1996 which provides for compulsory education for learners between the ages of seven and fifteen, there is still a great number of children roaming in the streets without attending school. The Census report released in 1998 revealed that just more than 3,5 million people in the country have had some primary school education, and only more than 1,57 million completed their primary school education. These figures are acutely alarming, considering the overall population of more than 40,58 million.<sup>25</sup> The report should have reflected on what the Government has done in terms of refining or improving this law to achieve the desired purpose.

The report has generally excluded legislative measures that cater for vulnerable and previously disadvantaged groups. It further failed to give adequate account of how the legislative measures contribute to the progressive realisation of the right to access to education. From the analysis of the report, only the provisions of the particular pieces of legislation are reproduced without giving account of the impact those measures have on the realisation of the right of access to education. If the law just says everyone has the right to education, this is not enough, considering that some pupils are still being barred from attending certain schools.<sup>26</sup>

Knowledge and understanding of the right to education is scant in terms of appreciating the four core obligations of respect, protect, promote and to fulfil. The report failed to factor in how the legislative measures referred to effect these core obligations. According to the Maastricht Guidelines, all these obligations must be realised; and failure to do so constitutes a violation of economic and social rights.

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<sup>23</sup> Section 29(3) of the Constitution, Act 106 of 1996.

<sup>24</sup> Article 28(1) (a) of *Convention on the Rights of the Child*, and Article 13(1) (a) of the *ICESCR*.

<sup>25</sup> Burger, D (ed) *South Africa Yearbook 1999* (1999) 336.

<sup>26</sup> The case of Vryburg High School in North-West Province, where only 75 Black pupils out of the expected 600 were registered at the school. The school was torn by racial conflict in 1998. See *Business Day*, Jan 13, (1999) 2.

### ***Provincial Level***

There are certain problems existing in the provinces that would be adequately addressed if the provinces had instituted adequate legislative measures. For example, the Eastern Cape province is one of the provinces that have extremely high classroom shortages.<sup>27</sup> These conditions make it imperative for the province to take positive measures to alleviate the problem. According to the South Africa Yearbook of 1999,<sup>28</sup> the Northern Province is still facing the most serious problems regarding the condition of school buildings. It is reported that 33% of the existing buildings are in poor condition, and that there is an extremely high shortage of classrooms in the province. The province has however failed to give account of conditions in schools. It is evident, on the basis of the above report, that conditions in the province are adverse to the delivery of the right to education. This further shows inefficiency in the provincial legislature to pass laws that protect and fulfil the right of access to education.

### **Recommendations**

- The state responses should be result oriented so that the Human Rights Commission can monitor progress. There should thus be information as to what has happened since specific measures to realise the right to education were instituted. For instance, the reports should have provided information regarding developments in the transformation process in terms of the South African Schools Act of 1996, which was passed in 1998.
- Much time should have been spent on providing substantial information, and not to give a long list of statutes, the majority of which fall outside the present monitoring period.
- There should be a distinction between policy and legislation, especially with regard to Provincial Departments. There should also be a distinction between National legislation and Provincial legislation.

## **MONITORING**

### **Summary of Responses**

#### ***National Level***

The National DoE was required to provide information on the minimum standards established to define adequate learner/teacher ratios, area of teaching per learner, access to water, electricity, telephones, toilets, recreational, technological and scientific facilities, the average distance from home to school and the state of repair.

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<sup>27</sup> See note 13.

<sup>28</sup> See note 24.



In response to the statistics collected by the National DoE to monitor the progressive realisation of the right to education, the National DoE did not set minimum criteria, but an extensive survey was conducted to establish a database of information for all schools. The primary aim of the survey was to collect information on the availability, number, size and condition of facilities; the provision of learning and teaching materials, equipment, stationery and furniture, and the provisioning of services such as transport, water supply, electricity, sanitation and telecommunication to schools. Information on learner enrolments, teaching and non-teaching staff was also collected in the survey.

The School Register of Needs Survey, information is also collected through the Education Management Information System (EMIS) units of the different provinces, which gather school information on an annual basis.

### ***Provincial Level***

In response to the question on the minimum standards established to define adequate educational infrastructure, the learner/ teacher ratio for primary schools in the provinces was: Eastern Cape 40:1; Northern Cape 30:1; Free State 35:1; Gauteng 37:1; KwaZulu-Natal and Mpumalanga 38:1; North West 34:1; Western Cape 39:1. The learner/teacher ratio for secondary schools was: KwaZulu-Natal and Mpumalanga 38:1; Northern Cape 30:1; Eastern Cape 35:1; Free State, Gauteng and North West 34:1 and Western Cape 33:1.

Responding to the question on the minimum area for teaching per learner, the provincial reports indicated that the area for primary schools was: Mpumalanga 1.5m<sup>2</sup>; Northern Cape 0.8m<sup>2</sup>; Eastern Cape 1.2 m<sup>2</sup>; Free State, North West and Western Cape 1.4 m<sup>2</sup> and KwaZulu-Natal 1.3 m<sup>2</sup>. For secondary schools the area for teaching per learners was: Western Cape 1.6m<sup>2</sup>; Northern Cape 0.8 m<sup>2</sup>; Eastern Cape and North West 1.4 m<sup>2</sup>; Free State and KwaZulu-Natal 1.3 m<sup>2</sup>; Mpumalanga 1,5 m<sup>2</sup>. The Gauteng DoE stated that information could not be provided regarding the area for teaching because it is not possible to measure, while the Northern Province DoE did not respond.

The minimum standard set for access to water in the provinces showed that according to the Eastern Cape DoE for schools that did not have a tap on site, two water tanks were provided for every three classrooms. The Northern Cape DoE provided that there should be piped water in or outside the building. The North West DoE reported that access to water should be in the form of piped water on site for all schools. The Free State, Mpumalanga and Northern Province DoE's did not provide any information on access to water, while the Gauteng, KwaZulu-Natal and the Western Cape DoE provided information that was irrelevant and not helpful for the purposes of analysis. For example, the Gauteng DoE reported that all schools have basic facilities like water, electricity and toilets, without explaining what it means by basic facilities.

Provincial DoE's responded to the question on the minimum standard established for schools that did not have electricity by indicating that in the Northern Cape and North West provinces solar energy or generators were used as sources of power. The other

provincial departments provided information that was irrelevant for the question asked. For example the Northern Province DoE stated that electricity is provided to schools if available. No explanation was given for what 'if available' means and who is supposed to make electricity available. Only the Eastern Cape DoE provided information on access to telephones, which indicated that the supplier (TELKOM) needs to provide pay phones at schools where the schools do not have any.

Information on the minimum standard set for toilets that the Eastern Cape's current norm regarding access to toilets is to supply 1-5 toilets for every one classroom, and that one of the toilets should cater for the needs of those with disabilities (wheelchair accessible). In the Free State where the number of girls exceeds 300, the DoE adds one toilet to every 30 additional girls, and one wash basin is also added for every 50 additional girls. In the Northern Cape the minimum standard for toilets is the ventilation-improved pit (VIP), and the ratio is 20 girls per toilet seat and 25 boys per toilet seat. The North West uses the ratio of 1:20 or two toilets per classroom.

Most Provincial DoE's did not provide information on access to educational and recreational facilities. In the Northern Cape province standards on access to educational recreational facilities cannot be set due to the rural nature of the province. But every learner should have access to sport facilities, though not necessarily on site. This means the school can use facilities in nearby schools if available.

The Eastern Cape reported that the distance to schools should not exceed 2,5 km, and for high school learners the distance should not exceed 5 km. In the Free State the reasonable distance from home to school should be within a radius of 3km. In KwaZulu-Natal learners who stay too far from school are accommodated at a boarding school. Similarly in the Northern Cape children whose travelling time exceeds 1½ hours qualify for hostel and travel subsidies. Mpumalanga stated that the minimum distance from home to school should not exceed 4 km. Therefore the Department in assisting pupils who stay more than 4 km away from school, identified and subsidised 46 transport routes, and 44 of these routes are operating while the other two are inoperative. However, due to budget cuts these routes served only 20% of the learners in need. The North West province stated that minimum standards on the distance from home to school were not yet defined. The Western Cape province indicated that the distance from home to school should not exceed 5km. The Gauteng province indicated that information on the distance from home to school was not available, and no reasons were provided for the lack of information.

At provincial level, the type of statistics collected for monitoring the progressive realisation of the right to education included the number of learners at school and eligible learners not at school, learners' parents, educators, subjects, physical structures, and spatial location of institutions and facilities available at each institution. The statistics are collected using the 10-day snap survey, which is conducted between January and April whereas the annual survey is conducted during the last six months of the year. In KwaZulu-Natal the data collected is verified by the Regional Planners and then sent to the Central Capturing Center. The Mpumalanga DoE also uses sample

and pilot surveys to collect information and the Northern Cape DoE uses the Persal system. As stated above the EMIS unit also collects information for Provincial DoE's.

The Northern Province only reported that information on the minimum standards established to define the right of access to adequate educational infrastructure was not available at the time the report was prepared, and no reasons were provided for the unavailability of information.

## **Commentary**

### ***National Level***

The submission by the National DoE that it does not set standards pertaining to minimum standards on educational infrastructure is unacceptable. The National DoE is the policy making and co-ordinating agency, while implementation of policies is the responsibility of the provinces.<sup>29</sup> Therefore standards need to be set at a national level for consistency.

### ***Provincial Level***

The Eastern Cape report failed to outline the measures taken to provide electricity to schools that did not have electricity. For instance, the Department should have outlined alternative means of providing electricity such as generators or solar energy. The Department should have provided the exact number of toilets per classroom, and not just state that there should be between 1-5 toilets per classroom. The report indicated that one toilet would be provided to cater for the needs of the disabled. However, the Department did not indicate what type of toilet, that is either a flush toilet or ventilation improved pit latrine, would be provided.

The Free State DoE only provided information related to girls instead of reporting on access to toilets for both gender groups. The Gauteng DoE failed to indicate measures that will be taken to define the minimum distance to school and area for teaching per student. The Department needs such information to be able to assess whether all enjoys the right to education. For instance a factor such as distance could restrict access to schools for many learners. The access to primary and secondary schools for communities living in informal urban and metropolitan areas in Gauteng was lower than access for most other categories of residents.<sup>30</sup>

Most provinces did not provide information on access to facilities such as toilets for vulnerable and previously disadvantaged learners. Only the Eastern Cape stated that one toilet should cater for disabled learners. Another matter of concern relates to the state of repair in schools. Provincial DoE's did not provide information on the minimum

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<sup>29</sup> NEDLAC Infrastructure Report: Education - Achieving Equality. *Indicator S.A.: The Barometer of Social Trends*, 2000, June, vol. 17, no. 2, 40.

<sup>30</sup> *Ibid.* 41.

standards for the conditions of buildings in schools, hence no analysis could be made on what constitutes a school building that is not suitable for learning.

Generally, the reports from the Provincial DoE's failed to provide a clear picture of what minimum standards were used to monitor access to the right to education. The lack of information from Provincial DoE's made the assessment of minimum standards for educational infrastructure difficult. These key standards are important because they can be used as a yardstick in determining whether schools have adequate educational infrastructure.

## **Recommendations**

- The National DoE needs to set minimum norms and standards for educational infrastructure since policies are developed at national level. The standards would serve as yardsticks for the provinces.
- Minimum standards for schools in the rural areas need to be clearly outlined by the government departments.
- The Free State DoE needs to provide information on standards set for both males and females.
- Information on standards for educational infrastructure for persons with special needs should be set.
- The government departments need to clearly indicate the purpose of collecting statistics on learners and educational facilities.

## **BUDGETARY MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DoE was requested to indicate resources that were used in various programmes that contributed to the realisation of the right to education. Funding for both Primary and Secondary Education was allocated at provincial level. The feeding scheme programme is financed by the Department of Health and the DoE only co-ordinates and manages the programme. The National DoE only subsidised HIV/AIDS and ECD programmes.

The National DoE reported that it had allocated R34 000 and R2 880 000 to HIV/AIDS education and ECD, respectively, in 1998/1999. While the budget for HIV/AIDS was expected to increase to R1 million in 2000/2001, the allocation for ECD is expected to decline sharply to R1 million in 2000/2001. Although the National DoE only co-ordinates and manages the feeding programme together with the Department of Health, R466 million was allocated for 1998/1999. The allocation is expected to decrease to R458 million for 1999/2000.

Information on Higher Education indicated that the budgetary allocation for universities accounted for 0.69% (R3,8 billion) of the country's GDP in 1996/1997 and showed a downward trend to 0.65% (R3,9 billion) in 1997/1998. The decline in the allocation as a percentage of the GDP was expected to continue to 0.66% in 1998/1999 (R4,4 billion) and 1999/2000 (R4,6 billion) respectively. Meanwhile, expenditure on Technikons accounted for 0.24% (R1,4 billion) of the total GDP in 1996 and was expected to increase to 0.27% (R1,8 billion) in 2000. The National DoE indicated that expenditure on tertiary education could not be broken down on a per capita basis due to complexities involved in higher education financing.

The report further stated that the National DoE also funded the National Student Financial Aid Scheme (NSFAS). The NSFAS was aimed at assisting potentially deserving but financially deprived students to further their tertiary education. Government's expenditure on NSFAS declined from R300 million in 1996/1997 to R200 million in 1997/1998. The budgetary allocations were however expected to be restored to R390 million in 1999/2000.

The National DoE also allocated "redress funds" which were aimed at improving previously disadvantaged universities and technikons in areas such as management capacity and academic administration. Funds to the value of R27,6 million were allocated in 1998/1999, while R60 million would be allocated in 1999/2000.

### ***Provincial Level***

The budget for ECD to provinces was allocated as indicated by the table below:

**TABLE 2.1: Allocation for Early Childhood Development**

<b>Province</b>	<b>1996/1997</b>	<b>1997/1998</b>	<b>1998/1999</b>	<b>1999/2000</b>
Gauteng	-	R 6m	R6m	R8m
KwaZulu-Natal	-	R4,4m	R4m	R4,2m
Mpumalanga	R38 789	R28 479	R27 335	R26 000
Northern Cape	-	R2,1m	R2,1m	R3,5m
Northern Province	R950 000	R968 000	R975 000	R986 000
Western Cape	R30 000	R374 000	R2,3m	R2,5m

In KwaZulu-Natal and Mpumalanga allocations for ECD showed a decrease over the years. In Mpumalanga, the per capita expenditure showed a downward trend from R3 572 in 1996/1997 to R3 128 in 1998/1999, whereas the Northern Province and Western Cape budget allocation showed an increase. The budget for the Western Cape was expected to increase to R2,5 million in 2000/2001. The Western Cape report also stated that, after adjusting for inflation, such allocations remained constant throughout the years at R400 per student.

The Northern Cape reported that funding for ECD accounted for 0.2% of the total departmental expenditure, while budget allocation for ECD remained constant at 0.2%

in 1998/1999. The budget was expected to increase to 0.4% in 1999/2000 as indicated in the table above.

Only the Free State and North West Departments did not provide information on the budget for primary education. The budget for primary education for all the other provinces is summarised in the table below:

**TABLE 2.2: Budget allocation for Primary Education**

Province	1996/1997	1997/1998	1998/1999	1999/2000
Eastern Cape	-	R2,1 b	R2,6 b	R2,7 b
Gauteng	R2,4 b	R2,6 b	R2,7 b	R3 b
KwaZulu-Natal	R3,4 b	R3,2 b	R3,5 b	R3,9 b
Mpumalanga	R1 403 m	R1 601 m	R1 606 m	R1 687 m
Northern Cape	-	R275 b	R322 b	R314 b
Northern Province	R2 b	R2,6 b	R2,7 b	R2,7 b
Western Cape	R2,2 b	R2,1b	R1,9 b	R1,6 b

The DoE in Gauteng reported that the real per capita expenditure on primary education per student increased from R2 924 to R3 084 between 1996-1999, whilst in KwaZulu-Natal the per capita budget for primary education only increased from R1 900 to R1 950 between 1996-1999. In Mpumalanga the per capita expenditure increased from R2 428 to R2 590 between 1996-1999. In the Northern Cape the per capita expenditure increased from R1 727 to R2 342 between 1996-1999, and the allocation accounted for 32,45% of the departmental expenditure.

**TABLE 2.3: Budget allocation for Secondary Education**

Province	1996/1997	1997/1998	1998/1999	1999/2000
Eastern Cape	-	R 1,5 b	R 1,8 b	R 1,9 b
Gauteng	R1,8 b	R 1,8 b	R 1,9 b	R 2 b
KwaZulu-Natal	R2,4 b	R 2,1 b	R 2,2 b	R 2,3 b
Mpumalanga	R622 579	R659 933	R717 415	R733 365
Northern Cape	-	R235 b	R275 b	R208 b
Northern Province	R1,7 b	R 2 b	R 2,1 b	R 2,2 b
Western Cape	R1,5 b	R 1,3 b	R 1,3 b	R 1,3 b

Real per capita expenditure for the provinces is summarized in the table below:

**TABLE 2.4: Real per capita expenditure for provinces**

Province	1998/1999
Gauteng	R3 704
Mpumalanga	R2 600
Western Cape	R4 499

The Northern Cape budgetary allocation for secondary education was expected to decrease to only 24% of total expenditure in 1999/2000. Similarly in the Western Cape

expenditure on secondary education was subsequently dropped from 35% in 1996/1997 to 33% between 1998/1999. Reasons for the decrease in the budget allocations were not provided.

Only the Free State and Gauteng Provinces provided information on budgetary allocation for HIV/AIDS education. In the Free State R10 000 was allocated for HIV/AIDS in the year 1998/1999, whilst in Gauteng HIV/AIDS education was allocated R2,5 million in 1998/1999.

Most provinces provided information on tertiary education as indicated by the table below:

**TABLE 2.5: Budget allocation for Tertiary Education (Colleges)**

Province	1996/1997	1997/1998	1998/1999	1999/2000
Eastern Cape	-	R228 m	R291 m	R296 m
Free State	-	-	R111 m	-
Gauteng	R138 m	R133 m	R121 m	R122 m
KwaZulu-Natal	R222 m	R220 m	R188 m	R182 m
Mpumalanga	R 97 317	R 95 548	R 86 588	R 92 851
Northern Cape	-	R8,1 m	R10 m	R8,6 m
Northern Province	R172 m	R200 m	R206 m	R201 m
Western Cape	R206 m	R157 m	R153 m	R144 m

In the Eastern Cape budgetary allocation for Colleges after adjusting for inflation, increased from R9 413 to R11 316 per student between 1997-1999. With regard to tertiary education in KwaZulu-Natal, a decline in the budget for Colleges was reported, as seen in the table above, whilst the per capita expenditure increased from R13 870 to R24 930 per student between 1996-1999. In the Northern Cape budget allocation amounted to R10 166 per capita, while for Technical Colleges, the per capita expenditure after adjusting for inflation increased from R6 152 to R7 035 between 1997-1999. In the Northern Province, tertiary education accounted for 3,5% and 3,6% of the department's total expenditure. Like other sectors in the Western Cape, budgetary allocations for Colleges also showed a declining trend. Thus an allocation of R10 232 per student in 1998/1999 represented a decrease from a high of R16 155 per student in 1996/1997. These figures constituted only 3,97% and 4,71% of the Department's expenditure between the respective years.

### **Commentary**

#### ***National Level***

It is clear that the National DoE's expenditure on ECD showed a declining pattern, the same was true of expenditure on universities. This trend should be interpreted against the background of government's broader macroeconomic strategy that was aimed at gradually reducing government's expenditure on public services over a period of time.<sup>31</sup>

<sup>31</sup> National Department of Finance, *Medium Term Budget Policy Statement*. (1998) 13.

This required the National DoE to rationalise the allocation of financial resources into priority areas. Note should be taken of the fact that funds were allocated into HIV/AIDS education for the first time in 1998/1999. The National DoE thus expects to increase funding for HIV/AIDS education in 2000/2001.

In terms of higher education, the National DoE has taken reasonable measures towards the progressive realisation of the right to education. The fact that the National DoE restored its budgetary allocation for NSAFS in 1998/1999 and that it was expected to increase in 1999/2000 clearly indicates the Department's attempts to address economic barriers in accessing higher education.

Furthermore, the provision of "redress funds" by the National DoE to previously disadvantaged universities and technikons was also indicative of the attempt to eliminate inequalities in the provision of higher education.

The National DoE failed to provide information on budgetary allocation towards ABET. It also did not provide information on budgetary allocation for ELSEN and the COLTS campaign.

### ***Provincial Level***

Most Provincial Departments of Education failed to provide information for budgetary allocation on a per capita basis for ECD and Primary and Secondary Education. Budgetary allocation for technikons and universities is not the responsibility of the Provincial DoE's. In the information provided very little was said about how the budgetary allocation catered for the needs of the previously disadvantaged and vulnerable groups.

In provinces such as Gauteng, KwaZulu-Natal, Mpumalanga and the Northern Cape, the budget for primary education per student increased steadily, and the budget for secondary education decreased steadily in 1998/1999. The increase in the budget for primary education could be indicative of progressive measures aimed at fulfilling the right of access to basic education.

Other sources indicate that the Eastern Cape DoE increased its per capita expenditure into public education from R1 947 in 1995 to R2 774 in 1998.<sup>32</sup> The increase in per capita expenditure on public education represents progressive measures that were instituted to ensure access to education. The information provided by the Eastern Cape DOE indicated that reasonable measures were taken to fulfil the right of access to tertiary education, as indicated by the modest increases on per capita expenditure in 1998/1999.

The limited information that was provided by the Free State province did not show trends in terms of budgetary allocations to the various projects. Information was

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<sup>32</sup> UNESCO et al *South Africa Report: Education for all 2000 Assessment* (1999).



requested for a number of projects, but there was no explanation provided for the lack thereof.

In KwaZulu-Natal the per capita expenditure on Colleges (tertiary education) had almost doubled from R13 870 in 1996/1997 to R24 930 in 1999. In this way, progressive efforts towards ensuring that tertiary education was increasingly accessible were taken.

Mpumalanga province reported a decline in financial resources for ECD, which would clearly impact negatively on the progressive realisation of the right to education. However, it was reported that 'the poor' were exempted from paying school fees at primary and secondary education level, which seemed to endorse the Department's efforts towards making education more accessible. However this action does not necessarily result in compulsory education. No definition was provided on what 'the poor' means and whether means tests are done to determine this. Although it was stated that the DoE had instituted a policy on ABET, there was no indication of the resources that were instituted for its provision.

The Northern Province's DoE had reportedly allocated more funds into primary education since 1996/1997. However, a comparison with secondary education reveals that the province had actually spent more funds on secondary education as indicated by expenditure per student after adjusting for inflation. In other words, higher levels of real expenditure<sup>33</sup> were incurred on secondary education. Nevertheless, these discrepancies could be attributed to a number of factors, such as facilities, which determine the high costs incurred per secondary student.

The Northern Province DoE indicated that the downward spiralling of the budget figures over the years has forced the Department to abandon some of the most progressive projects due to lack of funds. For example, for most of the previous Department of Education and Training (DET) and previous Homeland Administrations, the curriculum packages were made up of humanities subjects. However, initiatives to introduce and sustain mathematics, commerce, and agricultural, technical or technological subjects were unsuccessful due to lack of funds.

In the Western Cape there were huge increases in the budget for ECD between 1996/1997 and 1998/1999. The primary education budget appeared to constitute a higher percentage of the total budget in relation to other expenditure items, while the budget for colleges constituted an insignificant proportion of the total expenditure of the Department.

## **Recommendations**

- The Departments needs to provide information on a per capita basis, where possible, in order to allow for an effective analysis of the extent to which the

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<sup>33</sup> Real expenditure refers to expenditure after adjusting for inflation.

departments have been able to service the needs of learners, particularly at primary level.

- Information required in the protocol should be provided to facilitate better assessment on the provision of the right of access to education.
- Where the required information is not provided, it would be helpful to furnish explanations for failure to submit such information.
- The Free State Province should provide information on primary education since it forms the core of government's policy of a free basic education.
- It is essential to provide information on a per capita basis as a proportion of the total population of potential learners.
- The government needs to adopt a needs based approach to budget allocation in order to ensure that provinces receive enough money for their specific needs.
- Mechanisms should be developed for creating separate categories of expenditure, such as disability, rural people, children infected by HIV/AIDS, for bookkeeping purposes.

## **OUTCOME MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DoE was required to provide information on the number of schools which failed to meet national standards for educational infrastructure, in terms of building safety, heating and access to water and sanitation, provision of supplies, recreation and libraries. The National DoE reported that 4 407 schools in South Africa were in a poor or very poor condition. The National DoE defines poor conditions as those schools which need major structural repairs, while very poor conditions mean that the buildings were not suitable for education and posed a serious risk to the safety of the learners and educators.

In responding to the question on the number of schools which did not have adequate access to water and sanitation, the DoE indicated that there were about 2.3 million learners who attended 6 503 schools that did not have water within walking distance. No estimate was given in terms of the distance to the water source. There were 6.6 million learners who received education at schools without toilet facilities. In total, there was an estimated shortage of 329 153 toilets at schools in the country, this was calculated using the norm of 20:1 student/toilet ratio.

According to the National DoE the provision of supplies for all the provinces indicated that 11% of primary schools and 36% of secondary schools had recreation facilities and libraries. Approximately 62% of schools in all the provinces did not have telephones.

Information on the student/teacher ratio in schools was based on the assumption that the student/classroom ratio norm is 40 learners per classroom. Using this the National

DoE found that 49% of schools in South Africa had a shortage of classrooms. In total there was a shortage of 64 742 classrooms for the entire country. On average the student/teacher ratio for primary schools was 35:1, while for secondary schools the ratio was 30:1. These ratios do not include information from private schools.

In providing information on the learners enrolled in primary and secondary schools the National DoE indicated that there has been over-enrolment in primary schools for the past decade. Current information indicates that the trend seems to be reversing. Secondary schools on the other hand, as indicated by the figures in the following table, showed under-enrolments.

**TABLE 2.6: Gross Enrolment Ratio (GER) and Net Enrolment Ratio (NER) for 1995 to 1998<sup>34</sup>**

GER <sup>35</sup>	1995		1996		1997		1998	
	DIB	SSA	DIB	SSA	DIB	SSA	DIB	SSA
Primary	124%	129%	120%	124%	123%	123%	121%	118%
Secondary	88%	90%	89%	89%	90%	90%	90%	90%
NER <sup>36</sup>	1995		1996		1997		1998	
	DIB	SSA	DIB	SSA	DIB	SSA	DIB	SSA
Primary	96%	101%	n.a.	n.a.	96%	96%	n.a.	n.a.
Secondary	59%	60%	n.a.	n.a.	60%	60%	n.a.	n.a.

In response to the question on the level of education the National DoE stated that for people 20 years or older, on average 19.3 % have no formal education. While 16.7% have some primary school education, 7.5 % actually complete primary school, 33.9 % have some secondary education, about 16.4 % completed standard ten (grade 12) and only about 6.2 % proceed to higher education.

### **Provincial Level**

Information provided on building safety indicated that in the Eastern Cape, 203 schools did not have safety equipment and tornados and other natural disasters destroyed 334 schools, while in the Free State there were 109 farm schools and 19 other had unsuitable buildings for learning. In Gauteng only farm schools and township schools did not have safety equipment, such as fire extinguishers. The Northern Cape only had 3 schools, which were in a very poor condition, and 28 that needed attention. Similarly the Western Cape had only 14 schools which failed to meet departmental standards in

<sup>34</sup> Information from the National DoE report as cited from: Demographic Information Bureau (DIB), *Population* (1999) and Statistics SA (SSA), preliminary 1999 enrolment from the 1995 – *Education Statistics*, June 1997 and *SRN 1996-1998* and 1997- *Education Statistics in 1997 (draft)*, July 1999; (4) 1998 – preliminary figures received from provinces.

<sup>35</sup> GER- the total number of learners enrolled as a proportion of the appropriate age group, expressed as a percentage.

<sup>36</sup> NER- the number of appropriately aged learners who are in school as a proportion of the corresponding age group in the population, expressed as a percentage.

terms of building safety. The Northern and Mpumalanga provinces did not provide the information.

In the Eastern Cape, 1 487 schools did not have adequate access to water, sanitation and heating. Whilst in the Free State about 800 farm schools and 65 other schools had inadequate infrastructure. In Gauteng 27 farm schools still had no access to water and the toilet/pupil ratio was still above the norm (29:1) for former DET (Department of Education and Training) schools. In KwaZulu-Natal, 1 236 schools have no water within walking distance and 352 were using a communal tap. With regard to access to sanitary facilities 2 466 schools were still using the bucket system and pit latrines. About 2 822 schools in KwaZulu-Natal had no source of power supply. In Mpumalanga approximately 50 schools had no sanitary facilities, and 18 had sanitary facilities within walking distance in the form of pit latrines or buckets.

The Northern Cape DoE, due to the hot weather in the province, does not gather statistics on schools that need electricity for heating. There were 3 schools in the Northern Cape which did not have access to running water. However, water was supplied through water trucks or cans. There were also 8 schools with no water on the premises, but a communal water source was used. In the Northern Cape 24 schools still had a ratio of more than 30 learners per toilet while 78 schools were below the provincial standards.<sup>37</sup> In the Western Cape only 89 schools lacked access to heating, water and sanitation.

Information on schools with inadequate recreational facilities from the respective provinces indicated that in the Eastern Cape, 5 760 schools did not have recreational and library facilities. In the Northern Cape, 355 schools did not have sports facilities and 261 did not have libraries. The information on libraries from the Northern Cape might not be accurate due to different definitions used for library facilities.<sup>38</sup>

The student/lecturer ratio for colleges (full time) in the provinces was on average 13:1, with the Free State having a student/lecturer ratio of 15:1 and Gauteng together with the North West having a ratio of 8:1. The National DoE was unable to calculate the ratio for part time students but assumed that the student/teacher ratio might be higher compared to full time enrolments for colleges.

Information provided on school enrolments according to gender show that about 51% of the learners were females and the other 49% were males. The Mpumalanga DoE provided the student/ teacher ratio for independent and public schools as follows:

**TABLE 2.7: Student/teacher ratio for schools in Mpumalanga**

Institution	Independent	Public
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<sup>37</sup> Provincial standard is 20:1 students per toilet.

<sup>38</sup> The different definitions used were not provided.

<b>Pre-primary</b>	19:1	24:1
<b>Primary</b>	16:1	38:1
<b>Secondary</b>	14:1	34:1
<b>Combined</b>	14:1	36:1
<b>Adult education:</b>	13:1	17:1

The Northern Cape reported that the student/teacher ratio for schools was 31:1 for primary schools, 28:1 for secondary schools, 6:1 for Colleges and 25:1 for technikons.

Most departments did not provide information on the illiteracy rate. The Mpumalanga DoE reported that although it does not have a specific figure for the age group (15-24), the overall illiteracy rate for the province was estimated to be above 30 %. In response to the question on children of school going age who are not attending school the Eastern Cape stated that between 5-10 % of children who were of school going age were not attending either primary and secondary schools.

Both the National and Provincial DoE stated that there were no primary and secondary (to grade 9) school learners who were denied access to public schools because of failure to pay fees, since legislation and policy prohibits such practices.

The Gauteng DoE reported that statistics on ECD are not available due to the fact that ECD is provided per disadvantaged community, and not on an individual basis.

## **Commentary**

### ***National Level***

The information provided by the National DoE was sufficient in terms of questions asked, but it was taken from a survey conducted in 1996 by the Department. Therefore some of the information may no longer be applicable. The National DoE did not provide information on pre-school learners, the number of children assisted by the feeding programmes or the ECD programme. However information received from a report compiled for the National DoE by UNESCO and UNICEF showed that the ECD programme has reached 2 800 non-governmental Early Childhood Learning sites which serve approximately 70 000 of the most disadvantaged learners.<sup>39</sup>

The National DoE did not provide information on the number of adults between 30-39 years who completed some secondary school. Information on children employed for labour was not provided, nor statistics on previously disadvantaged and vulnerable groups. Information on the number of children aged 7-15, who are not attending primary schools, and those children between the ages 15-19 who completed primary school, was not provided. The same information was not provided for secondary schools and colleges.

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<sup>39</sup> UNESCO et al *South Africa Report: Education for all 2000 Assessment* (1999).

The information provided by the National DoE did not reflect progressive measures taken to improve the right of access to education adequately. For instance, the National DoE has noted that 49% of schools were experiencing a shortage of classrooms. About 2,3 million learners are attending in schools which do not have proper water and sanitary facilities, and there is a shortage of 329 153 toilets in schools. However the National DoE failed to show what measures were being taken to try and address this problem.

The UNESCO and UNICEF report for the National DoE indicated that the literacy rate in the country for young adults (+15 years) was 67 %, and 83 % for the youth (15-24 years).<sup>40</sup> This meant 43 % of young adults and 17 % of the youth were illiterate for the whole country.

### ***Provincial Level***

The Eastern Cape DoE should be commended for its efforts in trying to progressively realise the right to education through its ECD programme which assists more than 9 000 learners in the province.

Some Provincial DoE's failed to provide information on the number of adults between 30-39 years who completed some secondary school. Information on children employed for labour and statistics on previously disadvantaged and vulnerable groups was not provided. The number of children aged 7-15 who are not attending primary schools, and children aged 15-19 who completed primary school, was not provided. The information was also not provided for secondary schools and colleges.

Most of the provinces did not provide adequate information on schools that failed to meet departmental standards for the provision of supplies, recreation and library facilities. In most provinces, budgetary constraints were some of the reasons stated for the lack of adequate delivery of services. For example, the Gauteng DoE spent a greater percentage (80%) of the budget on personnel and as a result, non- personnel requirements could not be fulfilled due to budgetary constraints.

Similarly, in KwaZulu-Natal 93% of the budget was spent on personnel. Problems experienced as a result of insufficient funds were that the department was unable to cover the costs of textbooks, pupils' stationery and equipment for schools. This has meant that parents have had to pay more for their children's education. The department has only been able to subsidise the cost of services such as electricity, water and telecommunications.

In the Eastern Cape, prioritisation in the department has resulted in some planned activities not being implemented to redress the imbalances of the past. The Eastern Cape includes two former homelands characterised by abject poverty and lack of resources. In total the province has ± 2.4 million learners who have to depend on infrastructure that is almost non-existent. As a result the department would need a

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<sup>40</sup> Ibid.

budget specifically for infrastructure in order for it to be able to meet its constitutional imperatives.

Both the National and Provincial DoE's failed to provide information on vulnerable groups such as students with disabilities enrolled in colleges, and no actual figures were provided for the number of vulnerable groups who receive subsidies, financial assistance and study grants.

The failure to respond by the DoE of the North West Province is regarded as a serious violation of its constitutional obligation. The failure to respond indicates that the Department made no attempt whatsoever to provide the information requested by the Commission. The reasons for not providing information were not stated by the North West DoE.

### **Recommendations**

- The reliance on out-dated information is not that helpful since conditions may have changed.
- The Provincial DoE's need to ensure that information provided is clear and gives an acceptable account of the state of education.
- When information cannot be provided, the departments need to state the reasons why that information is unavailable.
- For children who are not attending primary school, the departments must find out why and find means of ensuring that these children attend school because they have the right to free and compulsory education.
- The departments need to develop an approach that will enable them to address the problems of infrastructure.
- The DoE of the North West needs to understand that it is constitutionally obliged to provide information, therefore every attempt should be made to provide the relevant information to the Human Rights Commission.
- The DoE in the Western Cape needs to ensure that information is collected according to the categories outlined in the protocols so that it will be able to provide more information for the next report.

### **LIST OF ABBREVIATIONS**

**ABET**            Adult Basic Education and Training

<b>CESCR</b>	Covenant on Economic, Social and Cultural Rights
<b>CHE</b>	Council for Higher Education
<b>COLTS</b>	Culture of Learning, Teaching and Service
<b>CRC</b>	Convention on the Rights of the Child
<b>DoE</b>	Department of Education
<b>ECD</b>	Early Childhood Development
<b>ELSEN</b>	Education for Learners with Special Needs
<b>EMIS</b>	Education Management Information System
<b>ESS</b>	Education Support Services
<b>GEU</b>	Gender Equity Unit
<b>NDE</b>	National Department of Education
<b>NGO</b>	Non-governmental Organisation
<b>NMYIP</b>	National Multiyear Implementation Policy
<b>NQF</b>	National Qualifications Framework
<b>NSFAS</b>	National Student Financial Aid Scheme
<b>OBE</b>	Outcome Based Education
<b>SAQA</b>	South African Qualifications Authority
<b>VIP</b>	Ventilation Improved Pit latrine

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## LIST OF INTERNATIONAL INSTRUMENTS

- African Charter on Human and Peoples' Rights, 1981.
- Convention on the Rights of the Child, United Nations General Assembly, 1989.
- Covenant on Economic, Social and Cultural Rights, United Nations General Assembly, 1966.
- Universal Declaration of Human Rights, United Nations General Assembly, 1948.

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# CHAPTER THREE

## ENVIRONMENT<sup>1</sup>

*Everyone has the right to an environment that is not harmful to their health or well-being; and the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. The state is required to respect, promote and fulfil these rights.<sup>2</sup>*

### POLICY MEASURES

#### Summary of Responses

##### *National Level*

Activities of the Department of Environmental Affairs (hereinafter DEAT) for the reporting period focused on the finalisation of policy for environmental management, sustainable coastal development, and integrated pollution and waste management. These policy measures are based on the White Paper on Environmental Management Policy in South Africa. The White Paper set out the national policy on how government would empower environmental rights in the exercise of environmental management and compliance with environmental legislation. The policy applies to all organs of state and to all activities that impact on the environment. Principles for government decision-making, legislation and enforcement are described. Measures intended to give effect to environmental rights, administrative justice, accountability and public participation are detailed. Sustainable development in resource management and utilisation is contextualised in the White Paper, and the White Paper also establishes the environmental right 'to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that... secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development' into policy.

The White Paper also provided a framework for the White Paper on Bio-Diversity Conservation and the Draft White Papers on Integrated Pollution and Waste Management and Sustainable Coastal Development. Vulnerable and formerly disadvantaged groups were dealt with collectively by the above-mentioned White Papers. However, the White Papers also provided for special measures for people working or living in areas of harmful pollution, women, the youth, and rural communities.

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<sup>1</sup> Please note that the analysis is based on the responses submitted by government departments

<sup>2</sup> Section 24 and section 7 (2) of the Constitution, Act 108 of 1996.

These related to issues of access to resources, participation in governance, protection of rights, education and capacity building.

The Department indicated that these policies impacted on the *progressive realisation* of environmental rights by committing Government to developing practices, programmes, decision-making structures, educational resources, information systems, and administrative measures on environmental rights. Examples of these effects included the:

- raising of public awareness and participation in environmental governance.
- promotion of cleaner production technologies.
- protection of workers from harmful environments.
- rehabilitation of polluted and ecologically degraded environments.

The DEAT reported that the development of the National Waste Management Strategy and Action Plans was the most significant policy contribution towards the *progressive realisation* of environmental rights. Developed together with the Department of Water Affairs and Forestry, and in consultation with stakeholders (NGOs, CBOs, organised labour, business and the mining sector), the strategy presented a long-term plan for addressing key issues, needs and problems in the area of waste management. The policy on waste management was transformed into Governmental action plans and presented as fifty major integrated waste management initiatives. The main features of the strategy are:

- a move from 'end of pipe treatment' to pollution prevention and waste minimisation that extends over the entire waste cycle.
- ensuring that health, socio-economic development and quality of environmental resources in South Africa are no longer adversely affected by uncontrolled and uncoordinated waste management.
- provision for basic waste management services to all South Africans by extending an acceptable standard of waste collection, transportation, treatment and disposal services to all communities.
- proper consideration of health and safety issues.
- an integrated waste management approach with other government initiatives, programmes and administrative systems.

The Department stated that indicators to quantify whether the policy measures were *reasonable* and *effective* were not available. Current indicators used by the Department are aimed at assessing impacts on the environment and the status of the environment as opposed to indicators on the effects of policy measures on the human rights of people. However, the Department planned to develop such indicators and internal capacity to monitor the affects of policy measures on people.

Policy measures reported on by the National Department of Health (DoH) on environmental rights included a National Environmental Health Implementation Strategy to ensure that an equitable, affordable environmental health service was made accessible to all South Africans. The Department had also initiated a process of transformation and development of environmental health human resources, and

intersectoral collaboration with other Government Departments had been formed to address water and sanitation, indoor-air quality, chemicals management, and hazardous waste. Environmental awareness was addressed by means of information campaigns on pollution control and the safe handling of pesticides.

The Department reported that the National Environmental Health Implementation Strategy should ensure that vulnerable and previously disadvantaged groups receive redress by 'identifying most deserving areas and shifting resources to them.'

The Department of Water Affairs and Forestry's (DWAF) responsibility to environmental rights encompasses sanitation and refuse removal and stems from the right to environment clause in the Bill of Rights, the Water Services Act, 1997 and Environment Conservation Act, 1989.<sup>3</sup>

For most aspects of sanitation, the primary constitutional responsibility rests with the Local Authority and the Provincial Governments. However, the DWAF responded to the protocol in what it terms as 'secondary or temporary responsibility.' As such, in the non-existence of rural local government before 1996, the DWAF was responsible for sanitation programmes in rural areas, until Local Government is equipped to take on this responsibility. Since then, the Department has continued to work closely with Local Government to develop its capacity to promote improved sanitation, and provided funding for the implementation of sanitation programmes across the country. This programme is known as the DWAF's Rural Sanitation Investment Programme. Due to the massive backlog in sanitation in rural areas, the priority of the programme is to 'ensure at least basic sanitation for all before investing in a high level of service for some.' Policy principles of the programme, based on the 1996 White Paper on Sanitation are:

- sanitation is about health.
- sanitation is a community responsibility development, and should be demand based and community driven.
- basic services are a human right.
- 'some for all' rather than 'all for some'.
- allocate resources for development equitably/fairly between regions.
- protect the environment.

The Rural Sanitation Investment Programme is health and hygiene promotion based, with an emphasis on promoting the connection between good health and good environmental sanitation. The provision of infrastructure for sanitation is based on:

- 'demand' for a toilet, demonstrated by a willingness of consumers to contribute their own resources to obtaining and maintaining a toilet.
- a social marketing campaign promoting sanitation as a social product, on the basis of dignity, privacy, convenience, health and status.

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<sup>3</sup> The Minister of Water Affairs and Forestry administers section 20 of the Environment Conservation Act, 1989.

- an effective health and hygiene promotion campaign, supplemented by user education and training to ensure behavioural changes to reduce sanitation and water related health problems.

The Rural Sanitation Investment Programme does not ‘fully fund’ toilets, but subsidises each participating household with a capital subsidy of R600. End-users have contributed financially to every toilet built by the programme.

Regarding the DWAF’s function concerning refuse removal, the Department together with the DEAT developed a National Waste Management Strategy (NWMS).<sup>4</sup> The NWMS addresses waste issues by way of different action plans. The first priority of the NWMS is to offer sustainable refuse removal to 300 000 households of formerly disadvantaged groups. The ultimate goal of the programme is to offer ‘sustainable and environmentally acceptable refuse removal’ to everyone. The implementation of the short-term priority action plans would be completed by the end of 2004.

The central programme on the prevention of pollution reported on by the DWAF was the Water Monitoring at Waste Management Facilities, which has Minimum Requirements (MR) as defined by The Waste Management Series. The MR provides minimum standards that need to be met to prevent pollution of the environment from waste that could be harmful to human health or well being.<sup>5</sup> Buffer zones around waste disposal sites are monitored to ensure that possible impacts such as odours and dust have a minimal effect on adjacent residents. The public is involved in monitoring committees through which the public can voice their concerns regarding any aspects of the waste disposal sites. Communities can enforce closure of sites where the sites have been found to be detrimental to the environment or community. Examples of sites forced to close are the Umlazi site in Durban and the Margolis hazardous waste disposal site in Johannesburg. Waste disposal sites were often located close to formerly disadvantaged communities, and the MR now provides these communities with the means to express their grievances.

The DWAF reported that these policy measures gave special consideration to previously disadvantaged and vulnerable groups in the following ways:

*a) People living in rural areas*

The focus of the Rural Sanitation Investment Programme is on poorer households who do not yet have adequate facilities.

*b) People living in informal settlements*

The performance of water services authorities (Provincial and Local Government) in ensuring the provision of sanitation services in all areas, including informal settlements is monitored by the DWAF.

*c) Female headed households*

The majority of rural households are female-headed households and are thus the primary beneficiaries of DWAF’s Rural Sanitation Investment Programme.

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<sup>4</sup> See ‘1. POLICY MEASURES, *National Department of Environmental Affairs and Tourism*’ for further evaluation of the NWMS.

<sup>5</sup> The minimum standards referred to in the Minimum Requirements (MR) were not described.

d) *Persons with disabilities*

The special needs of disabled people are considered in the design and location of community projects.

e) *Poor households*

The rural programme focuses on households without adequate sanitation facilities, which by definition are poor households, as those who have the financial means have either moved to areas where a service is provided, or have made their own arrangements.

e) *Africans (Including Khoi and San), Coloureds and Indians*

The Rural Sanitation Investment Programme focuses on rural settlements in the former homeland areas, where the population is almost exclusively African, and in areas such as the Northern Cape and Western Cape, where Coloured people have been the primary beneficiaries of the rural programmes targeting the poor. Indians are not addressed specifically unless they reside in areas where there are sanitation projects.

The DWAF believes that the achievements to date of the Rural Sanitation Investment Programme are a vindication of the *reasonableness* and *effectiveness* of the policy. The Department reported that conventional approaches to sanitation had focused on mass toilet construction without involving end-users in health and hygiene promotion campaigns and technical choice and design, at considerable costs without long lasting benefits. The programme is aimed at achieving sustained improvements in sanitation, with community-centred involvement in health and local decision-making.

### ***Provincial level***

The Eastern Cape Department of Environmental Affairs stated that the National policies of 'Environment Impact Assessments, the National Environmental Management Act, and Integrated Pollution and Waste Management' were 'implanted' (sic) to *respect, protect, promote and fulfil* environmental rights in the Eastern Cape.

The DEAT of the Free State stated the following as policy measures on environmental rights:

- promotion of Integrated Environmental Management.
- development of Conservancies.
- development of Environmental Education and Awareness Programmes.
- management of Conservancies (agricultural, townships, rural and urban).
- establishment of environmental and income generating projects.
- establishment of nurseries and greening projects (rural urban and townships).
- promotion of use of indigenous plants.

The Free State DEAT stated that vulnerable groups were empowered by the establishment of Conservancies, which aimed to manage the local environment and control pollution.

The Gauteng Department of Agriculture, Conservation and Environment reported that no new policy measures were developed in relation environmental rights for the period 1<sup>st</sup> April 1998 to 31<sup>st</sup> March 1999.

The submission by the Department of Environmental Affairs in KwaZulu-Natal on policy measures was in relation to Local Agenda 21 Project, the implementation of the Green Wedges Policy for the KwaZulu-Natal South Coast and the establishment of a Coastal Management Forum for the province. However, the latter two projects were not specifically policy measures. The Local Agenda 21 Project, based on the United Nations Agenda 21 is aimed at establishing 'policies and programmes to achieve a balance between the primary driving forces of environmental change and the earth's natural resource base upon which all development depends'. A Sustainable Development Training Guide was developed in 1998 as Phase 2, as an instrument to train municipal councillors, officials and community leaders on sustainable development. Phase 3 commenced in January 1999 and entailed the training of these groups. It was envisaged by the Department that the training of representatives from different sectors of society would empower disadvantaged groups through the transfer of knowledge on sustainable development.

The Department of Agriculture, Conservation and Environment in Mpumalanga stated that the Directorate of Environmental Management's mission statement guides the policy approach on environmental rights. No actual policies or the mission statement were explained.

The Northern Cape did not provide information on policy measures for the protocol on environmental rights.

In the Northern Province, the Department of Agriculture and Environment reported that the Department participated in the development of National policies. The nature of this participation and the implications on policy measures for the province was not provided.

The Department of Environmental and Culture Affairs in the Western Cape reported that the Fynbos Work for Water Project introduced a number of policy measures directed at certain previously disadvantaged groups. Whilst the impact of the measures were said to be effective, the actual measures were not stated.

## **Commentary**

### ***National level***

The information provided on policy measures for environmental rights by the DEAT is exceptional, and reflects a thorough understanding of environmental rights by the Department. In instances where the Department could not answer the question, a clear explanation was provided, as well as the intended plans to ensure compliance in the future. It is evident that the Department is committed to *respecting, protecting, promoting and fulfilling* environmental rights by the detailed and transparent response.

The policy measures elucidated upon by the Department are extensive, and as a result of exhaustive consultation with various stakeholders. The challenge for the DEAT remains the *implementation* of these policies, as the *protection* and *realisation* of environmental rights can only be assessed once policy is transformed into delivery. The Department's approach on policy measures was directed towards comprehensive measures encompassing education, prevention, equity and capacity development. As such, the effects of these policies shall only be fully *realised* in the long-term. Areas in which the Department needs to address are policy measures to deal with crisis interventions (for example oil, insecticide and toxic substance spills) and current problems that require immediate attention with short-term solutions.

The submission on policy measures by the National DoH to address environmental rights demonstrates a poor understanding of the right to 'an environment that is not harmful to their health or well-being.'<sup>6</sup> Firstly, most of the measures were not relevant to the reporting period. Secondly, policies were referred to without a clear depiction of what these measures entailed. Finally, the National DoH failed to address environmental issues that are most applicable to the Department. The Department did not elaborate on the measures it has taken to deal with medical waste. Whilst it appears that the National DoH was involved in addressing other socio-economic factors impacting on environmental rights, the report does not expand on the scope and objective of the intersectoral collaboration that had been formed with various Government Departments. Many of the measures that the Department provided were still being developed and had not been implemented.

Policy measures reported on by the Department of Water Affairs and Forestry were extensive, and go beyond the Department's obligation to environmental rights. The DWAF should be commended for reporting on both its primary or Constitutional responsibilities, as well as what it terms as 'secondary and temporary responsibilities.' The DWAF's Rural Investment Sanitation Programme is an example of the latter. Constitutionally, delivery of sanitation services and infrastructure rests with the Local Authorities. However, the DWAF's involvement in providing sanitation services in rural areas is necessary in lieu of both the organisational and functional difficulties experienced by Local Government in ensuring delivery of services. At the time of the initiation of the programme, 12.5% of South African households did not have toilets.<sup>7</sup> In the Eastern Cape, 28.9% of households did not have toilets. It is refreshing to note that the programme is based on addressing sanitation within the context of health and hygiene, as well as empowering communities in decision-making. The pragmatic approach of subsidised toilets ensures both accountability on the part of consumers and allows the Department to target the maximum number of beneficiaries. A detailed account of how vulnerable and previously disadvantaged groups would benefit from the programme was also provided.

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<sup>6</sup> Section 24 (a) of the Constitution, Act 108 of 1996.

<sup>7</sup> Statistics South Africa "Census in Brief, The People of South Africa, Population Census, 1996." at <http://www.statssa.gov.za/census96/HTML/CIB/Households/312.htm>



The Department's involvement in pollution prevention and monitoring of waste sites as described by the programme 'The Monitoring at Waste Management Facilities' has already proved successful in ensuring that communities close to waste sites are have a right to be heard on issues that impact on their health. Through this programme, the Umlazi waste site in Durban and the Margolis hazardous waste disposal site in Johannesburg have been forced to close.

### ***Provincial level***

Many of the responses from the Provincial Departments accountable for environmental rights were vague and provided a broad overview of programmes rather than specific policy measures. It is also apparent that the Provincial Administrations do not have a clear-cut understanding of the questions on policy measures. Most Provincial Departments failed to state plainly the environmental policies adopted and implemented to *respect, protect, promote and fulfil* environmental rights in the province. Subsequent responses to questions on the *reasonableness, effectiveness* and the *progressive realisation* of environmental rights in relation to policies were of little value, as the fundamental question was not answered acceptably.

### **Recommendations**

- The National DEAT should provide measures to address emergency interventions for environmental pollution.
- The major Action Plans of the National Waste Management Strategy should have been outlined in the DEAT's submission.
- The DWAF should provide the actual standards defined by the Minimum Requirements.
- The National Department of Health needs to provide a comprehensive policy on the management of medical waste; environmental health standards should also be described.
- Provincial Departments of Environmental Affairs should describe which National policies are used, and how these policies are applicable in the respective provinces; details of other policies to address particular provincial environmental pressures should also be described.

## **LEGISLATIVE MEASURES**

### **Summary of responses**

#### ***National level***

In its response to the question on measures instituted to *respect, protect, promote and fulfil* the right to a healthy environment, the National Department of Environmental Affairs and Tourism reported that the National Environmental Management Act 107 of 1998 provides that national environmental principles, as contained in Chapter 1 of this

Act, shall apply in line with all other appropriate and relevant considerations, including the State's constitutional responsibilities to *respect, protect, and promote and fulfil* economic and social rights, and basic needs of particular categories of persons disadvantaged by unfair discrimination. The Act provides for principles that address the four constitutional obligations.

In terms of the obligations section 2(4) (c) of the Act entrenches the pursuance of environmental justice. Section 2(4) (d) ensures equitable access to environmental resources, including environmental information, benefits and services to ensure human well being and basic needs. To address the obligation to *protect*, the Act provides in section 4(a), principles of sustainable development. The custodian principle is provided by section 4(o). Section 28 provides for a general duty of care, and this is furthered by section 29, which *protects* the workers against work that is harmful to human health and environment. Section 31 also *protects* whistle-blowers, which report on environmental risks.

Regarding the obligation to *promote and fulfil*, the Act has provisions that require participation such as principles in section 2 and the procedures outlined in chapter 5 of the Act. There is also a chapter on fair decision-making and conflict management. Section 35 provides for environmental management co-operation agreements to ensure compliance with the principles laid down in this section. Section 32 and 33 of the Act provides for legal standing to enforce environmental law and to introduce private prosecutions in the public interest and protection of the environment.

The National Department of Health was still in the process of developing regulations regarding Conditions Detrimental to Health or Nuisance. These shall be published for public comments.

The Department of Water Affairs and Forestry (DWAF) submitted two reports on environment and sanitation, which are closely interrelated. Regarding legislative measures for environmental protection, it is reported that legal action is not preferred in protecting people from detrimental effects of waste disposal. Communities use legislative measures that are available, such as those prescribed in the permitting system, to settle legal disputes. Despite being slow and cumbersome, legal measures serve as deterrents to waste practitioners. The Department is guided by Minimum Requirements in issuing waste facility permits. Waste disposal sites in previously disadvantaged communities were forced to close, and disposal operations have had to be improved. The law reform process<sup>8</sup> is underway and will provide for legislative measures that will promote the rights to adequate refuse removal for formerly disadvantaged groups.

The report on sanitation only cites the Water Services Act 108 of 1997. According to the Act, water services means water supply and sanitation services.<sup>9</sup> Section 2 of the Act provides that one of the main purposes of the Act is to provide for the right to basic

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<sup>8</sup> See the Chapter on Land.

<sup>9</sup> See the definition section of the Act.

water supply and basic sanitation necessary to secure sufficient water and an environment that is not harmful to human health or well-being. The Constitution does not provide for the right to sanitation, and therefore sanitation is a statutory right in terms of Water Services Act 108 of 1997.

There are Draft Regulations in terms of sections 9, 10 and 19 of the Act. Regulations under section 9 are specifically aimed at previously disadvantaged areas in terms of providing standards relating to water quality and standard of service. Section 10 provides Regulations for differentiation of areas in terms of geographical position and socio-economic attributes. Section 19 Regulations assist Local Government in providing better and more economic water services to clients.

### ***Provincial level***

There are only three provinces that did not submit reports on environmental rights. They are Eastern Cape, Northern cape and NorthWest. The rest of the provinces have cited national legislation in their reports, except KwaZulu-Natal, Mpumalanga and Northern Province.

The KwaZulu-Natal Province has passed the Provincial Planning and Development Act 5 of 1998 (the PDA) and its regulations that are intended to replace the Town Planning Ordinance No. 27 of 1949 since it came into effect in April 1, 2000. This law requires local councils to prepare Local Development Plans that meet the requirements of national and provincial legislation. The PDA, among other things, is intended to promote the development and planning of all municipalities in an integrated and sustainable manner, which covers environmental rights and the rights to basic services. When the PDA was developed, care was taken to ensure that it was in line with the National Environmental Management Act. The PDA makes provision for coastal zone management and the formulation of a provincial coastal forum. The Act also grants powers to the Minister,<sup>10</sup> with the concurrence of the Cabinet, to prescribe certain areas as special case areas as contemplated in Section 2(4)(r) of the National Environmental Management act of 1998.

The Department of Environmental Affairs in Mpumalanga has implemented environmental impact assessment (EIA) regulations as provided by the Environment Conservation Act 73 of 1989. These regulations are based on the principles of Integrated Environmental Management, which were developed two decades ago.

The Northern Province has drawn up the Environmental Conservation Bill that was due to be tabled before the provincial legislature.

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<sup>10</sup> See Section 31(1).

## Commentary

### *National level*

The National Environmental Management Act 107 of 1998 is an important piece of legislation that is aimed at bringing cohesion to the highly fragmented area of environmental management and to promote a sustainable environment. This Act furthers the provision in the constitution that recognises the need for environmentally sustainable development.<sup>11</sup> Section 29 of the Interim Constitution made no mention of the concept of sustainable development. This concept means that the environment should be exploited to sustain human, plant and animal life over the longest period or development in such a way that allows renewable resources to re-accrue.<sup>12</sup>

The National DEAT has omitted from its report the Marine Living Resources Act 18 of 1998, which came into operation in September 1998. This law provides for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the protection and orderly access to exploitation of such resources.<sup>13</sup>

Also, according to the DEAT report, special consideration was given to the vulnerable and formerly disadvantaged groups. However, the report is silent on whether the measures are *reasonable and effective* toward the *progressive realisation* of the right to an environment that is not harmful to health or well being. Specific legislative provisions that address the constitutional obligations have been outlined, but there is no account of their impact in terms of improving environmental conditions.

Despite the omission of some information as pointed out above, the quality of the report is reasonable and helpful to the monitoring process. Appreciation and comprehension of the right is manifested by the manner in which the National Environmental Management Act was designed. This law is in line with the provisions of section 24 of the Constitution.

The report from the National DoH has provided nominal information. It is evident that most of the questions were not answered. Section 24(a) makes specific reference to 'health and well-being'. It is from this clause that the role of the National DoH is discernible. It should be understood that human health is a complex and multifaceted phenomenon that cannot be excluded in environmental rights discourse. It is therefore imperative to apply a broad and value-based interpretation when reading section 24(a) as mandated by section 39 of the Constitution.<sup>14</sup>

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<sup>11</sup> See Section 24 (b) (iii) of the Constitution.

<sup>12</sup> For further discussion on the concept, see J de Waal, I Currie and G Erasmus in *the Bill of Rights Handbook*. (2000) 376.

<sup>13</sup> See <sup>13</sup> D Burger (Ed). *South Africa Yearbook 1999*. (1999) 133.

<sup>14</sup> Section 39 mandates an interpretation that promotes the spirit, purport and objects of the Bill of Rights. For a thorough discussion, see GE Devenish *A Commentary on the South African Bill of Rights*. (1999) 334-5.

Considering the direct role of the National DoH, as explained above, there should have been sufficient measures instituted to meet the Constitutional obligations regarding a healthy and protected environment. However, the Departments efforts to develop Regulations Regarding Conditions Detrimental to Health or Nuisance should not be overlooked. For the purposes of providing useful information, the Department was supposed to reflect the importance of these regulations regarding environmental rights, not just to state that regulations are still to be published. The report should inform the monitoring process, in terms of the structure of the protocol questionnaire, as to whether the intended regulations would achieve the *progressive realisation* of environmental rights.

The report from the National DWAF has failed to expatiate in detail on the measures taken by the DWAF for environmental protection.

Among the related categories that constitute environment, is the concept of pollution. The DWAF therefore has a role to play in as far as regulating refuse removal and water system. If these are not regulated and controlled, a polluted environment will result, in adverse to the right to an environment that is not harmful to health and well being as envisaged in Section 24(a). It is against this background that the DWAF should develop laws that will ensure the maintenance of the environment in line with the Bill of Rights. Though the Water Services Act is a measure that ensures healthy sanitary conditions, it is irrelevant to the present report because it was passed outside the reporting period. The DWAF's obligation to *fulfil* environmental rights is established in section 24(a), which provides the right to have the environment protected by prevention of pollution and ecological degradation. The provision of sanitary services protects the environment from pollution.

The assertion that legal action is not a preferred measure is flawed. Section 24(a) contains an individual's justiciable right to a healthy environment. Any conduct, by the State or private individuals, that infringe upon the right can be challenged. This challenge can only be effected by way of a legal action. Section 38 (a) to (e) also provides for a remedy to all persons mentioned in it. The decision in *Ferreira v Levin*<sup>15</sup> affords individuals a standing to challenge law or conduct under the Bill of Rights. It is therefore important that legislative measures should provide remedies to individuals who seek relief from a violation of environmental rights.

### ***Provincial level***

The reports from the provinces are generally unsatisfactory. The majority of the provinces have cited national legislation in their reports. National legislation is not relevant to provincial reports. National laws cannot be enough to address a specific province because they were designed to operate nationally. The provinces are different from each other, which makes it necessary for them to develop their own laws appropriate to their peculiar circumstances. National laws only set a standard that

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<sup>15</sup> *Ferreira v Levin* NO 1996 (1) SA 984 (CC). See also J de Waal, I Curie and G Erasmus, *The Bill of Rights Handbook*. (2000) 374.

should be sustained by provincial laws according to their various backgrounds. For example, the Free State report mentioned that there are some loopholes in the National Environmental Management Act 107 of 1998, such as lack of specific penalties for people who flout environmental regulations. Such gaps prevalent in the national legislation should be filled by provincial legislation.

## **Recommendations**

- The DEAT should in future consider and include all the relevant laws pertaining to environmental rights.
- The report should endeavour to reflect the impact of laws, whether they are *effective* or not, on the *progressive realisation* of the right to a healthy environment.
- The DEAT should heed the challenges outlined in the National Action Plan regarding environmental issues.<sup>16</sup>
- The Department of Health must comply with the structure and format of the protocol. The socio-economic rights monitoring process is a Constitutional obligation, and should be complied with.
- Human health is central to environmental rights. The National DoH should play a pivotal role in the development of legislation that will ensure *progressive realisation* of the right to a healthy environment.
- For future purposes, the National DoH should provide information on any steps taken, whether complete or incomplete, in terms of enforcing environmental laws.
- The Department of Water Affairs and Forestry should endeavour to put in place legislative measures, within its mandate, which will ensure environmental protection in terms of section 24 of the Constitution.
- For the purposes of providing useful information, the report of the DWAF should give a detailed account regarding the *progressive realisation* of the right in line with the core minimum obligations in the constitution.

## **MONITORING**

### **Summary of responses**

#### ***National level***

In response to the minimum standards and criteria established to define when the right to a clean environment has been realised, the DEAT reported that some standards for air pollutants such as particulate matter, sulphur dioxide, oxides of nitrogen, ozone, total suspended particles and lead had been established. These standards were reported to be in line with the standards used in Europe and USA. Reasons provided by the Department for not providing the standards were that the existing standards were outdated and were not geared towards measuring the realisation of the right to a clean

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<sup>16</sup> See the National Action Plan for the Protection and Promotion of Human Rights 1998.

environment. However the Department was involved in the Commission for Sustainable Development (CSD) Work Programme on Indicators. The aim of the programme was to develop indicators for all countries to use by the year 2000 and to create a viable and flexible system for monitoring progress on sustainable development strategies, policies and activities. A report was published in October 1998 on the results from testing of CSD Indicators of Sustainable Development in South Africa.

The Department reported that guidelines for air pollution were set according to the 72 scheduled processes identified in the Atmospheric Pollution Prevention Act (Act 45 of 1965). Scheduled processes were issued with a permit specifying emission limits. It was reported that standards specified in the permits were on par with international standards and permit conditions were revised so as to implement new technologies.

The DEAT reported that there were no statistics collected to monitor the *progressive realisation* of the environmental right. Initiatives were not monitored or measured from a human rights perspective but from an environmental impact perspective. Indicators, information gathering and interpretation exercises were focused on both monitoring development and socio-economic impacts on the environment, and the effects of environmental policies and programmes on environmental management practices and the state of the environment.

*On how statistics are collected*, the DEAT reported that statistics were collected from a variety of sources and in different formats depending on the subject matter. The South African Weather Bureau or the CSIR provided all atmospheric pollution data, and the Department of Water Affairs and Forestry or the Institute for Water Quality Studies provided data on water. Soil data was obtained from the Institute for Soil, Climate and Water.

The National DoH reported that minimum standards have been set for drinking water, human waste disposal, solid waste and liquid waste.

Mechanisms to collect data on environmental health indicators were to have been implemented in January 2000. The data collected would have been on:

- the percentage of the population with access to 25 litres of safe water at a minimum of 200m away.
- the percentage of the population with access to Ventilated Improved Pit Latrines (VIPs) at a maximum distance of 50m away.
- access to safe solid waste disposal facilities that would be attended to at least once a week.
- the ratio of environmental health practitioners to a given population using the WHO guideline of 1 in 10 000 as a reference point.
- the percentage of medical waste generators managing waste in a prescribed safe manner.

Statistics were to be collected by Local Authorities and districts on a regular basis and forward the data to provinces in three and six month intervals to be fed to the National

Department on a yearly basis. The October Household Survey and National Household Census would be used as evaluation mechanisms on a yearly and ten year basis respectively.

Minimum Requirements (MR) relating to pollution prevention for waste disposal was used to define when the right of a clean environment has been *realised* by the DWAF.<sup>17</sup> The Department reported that if these standards were followed there would be a reduction of the risk of unacceptable soil and water pollution. The DWAF monitored *progressive realisation* of the right to a clean and healthy environment through waste disposal site audits, water monitoring results and regular monitoring committee meetings. Statistics were *collected* from waste disposal site permit holders who were required to submit information to the DWAF at regular intervals.

Acceptable conditions for refuse removal was defined with the involvement of communities, and depended on what the community was prepared to spend, on the type and volumes of waste and the method of waste removal. Where a refuse removal system allowed for waste to become a health hazard or impact negatively on the environment, the refuse removal system became unacceptable. Comparison between local waste management plans and visual inspections of community areas, as well as complaints from the community were used as to monitor refuse removal. Major waste generators such as Local Authorities had to submit the information to Provincial Government, which was forwarded to National Government. The information was then processed on a waste information system.

The DWAF's definition of sanitation was provided for by draft regulations developed in terms of Section 9 (1) of the Water Services Act (108 of 1997) that defined Basic Sanitation as:

- the provision of appropriate health and hygiene education.
- technical support to enable the construction and utilisation of at least a Ventilated Improved Pit Toilet (VIP) per household.

Bucket latrines, chemical toilets and simple pit latrines were deemed as inadequate, with the VIP as the 'entry point' for basic level of service. Where VIPs were not appropriate due to technical or affordability reasons, other options were considered in the rural sanitation programme. The statistics that were collected on the project included information on:

- the total planned toilets.
- percentage of deposits received from the community.
- number and percentage of toilets completed.
- the approximate number of people served.

Statistics were also *collected* on the maintenance and use factor of the latrines and health and hygiene practice factor. The statistics were collected by project agents, with the help of project committee members, and forwarded to Implementing Agents, who

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<sup>17</sup> The minimum standards for the MR were not described.



then reported to the Department at the regional level. The information was fed to the DWAF's Monitoring and Evaluation System. The sanitation sub-directorate assessed the information and reported to the Department's senior management. The information was used for planning purposes and to monitor the sustainability of projects.

### ***Provincial level***

The Eastern Cape Department of Environmental Affairs stated that regulations in terms of the Environmental Conservation Act were implemented where applicable. The statistics were *collected* through applications and site visits.

The Free State reported that Atmospheric Pollution Prevention Act No.45 of 1965 and National Water Act No. 36 of 1998 were the standards used to define the right to a clean environment in the province. For sustainable development, the criteria established were in relation to the Environmental Impact Assessment and Local Agenda 21. The statistics *collected* in the province for monitoring the *progressive realisation* of the right were the types and number of waste generators. These were collected by means of a questionnaire including personal interviews and surveys.

The Gauteng Department of Agriculture, Conservation and Environment subscribed to the National DEAT and DWAF minimum requirements for air, water and soil pollution. The criteria for sustainable development were established through layers of information including the Land Development Objectives and Environmental Impact Assessment regulations. The province also used the Gauteng Spatial Development Framework. The criteria for the nominated World Heritage Site were set by the World Heritage Convention operational guidelines. The Department *collected* information related to the sources and nature of waste, developments and industrial activity. It also gathered information on the fauna and flora in the province. The location, possible threats, number counts, permits for import and export and poaching figures were amongst the statistics collected by the Department. Quarterly reports and additional research projects within the Chief Directorate were sources of statistics. Information was stored on a Geographic Information System developed into the Environmental Management Information System that linked into the State of the Environment Report. In addition, the Conservation Directorate undertook special game counts on the province's reserves and has a research unit for specific research projects.

The submission by the Department of Environmental Affairs in KwaZulu-Natal on minimum environmental standards and criteria was in relation to the implementation of the Green Wedges Policy for the KwaZulu-Natal South Coast. These included biophysical factors, socio-economic factors, aesthetic factors and institutional factors. The information provided was specifically for these programmes.

The Mpumalanga Department of Environmental Affairs reported that indicators for air, water, soil pollution and sustainable development were considered where necessary.<sup>18</sup> Baseline information on environmental indicators for the province was obtained through

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<sup>18</sup> The nature of these indicators was not explained.

the Provincial State of Environmental Report (SoER). In order to monitor the *realisation* of this right, existing secondary statistical data was collected.

In the Northern Province, the Department of Environmental Affairs stated that the criteria used to define the minimum standards for the right to a clean environment 'differ.' The criteria vary according to the type of pollution. The Department reported that sustainable development is not possible to define nor possible to measure. However, sustainable development should include inter-generational equity, current equity, possible hazards, and long-term ability of the development not to impose cumulative threats to the environment or human health. With regards to statistics, limited water monitoring was done on rivers. Qualified aquatic scientists collected statistics on water monitoring. Extensive monitoring of veld condition on protected areas was undertaken to ensure the sustainability of these areas. Due to lack of other scientists in the Department, baseline data was not collected.

The Western Cape Department of Environmental and Cultural Affairs indicated that as resources were inadequate, the monitoring of environmental rights in the province had not been possible.

## **Commentary**

### ***National level***

Generally, the response from the National DEAT is fair in that supporting statements and explanations were supplied where information was not provided. For instance the Department clearly provided that standards and guidelines are not yet established, but other measures were underway in order to monitor progress on sustainable development strategies, policies and activities.

In terms of air pollution, the DEAT made reference to legislation rather than providing a detailed and specific account of air pollution standards and criteria. The report also indicated that the standards were on par with the international standards and permit conditions, but failed to provide details of these standards

Whilst the National DoH mentioned that the standards have been set for drinking water, human waste disposal, solid and liquid waste, it failed to provide information on these standards. Regarding environmental health indicators, the information provided by the Department falls outside the reporting period, and entail guidelines on indicators and statistic collections that had not been enforced between 1<sup>st</sup> April 1998 and 31<sup>st</sup> March 1999.

The submission by the DWAF was satisfactory in that the Department developed the Minimum Requirements (MR) as the minimum standards and criteria used for pollution prevention, and also provided the minimum standards for refuse removal and sanitation. The type and collection of statistics relating to these measures was also provided.

However, the Minimum Requirements should have been provided and explained by the DWAF.

### ***Provincial Level***

On the whole, the submissions by the Provincial Departments of Environmental Affairs were of poor quality as the Departments failed to report clearly on the criteria or minimum standards that were instituted to *respect, protect, promote and fulfil* the environmental rights. For example, the Free State stated that the Atmospheric Pollution Prevention Act No.45 of 1965 and National Water Act No. 36 were the standards used in the province. The requirements of the protocol were for the provision of details of standards on air, water, soil pollution and sustainable development.

High levels of pollution are attributed to many factors such as lack of proper sanitary facilities and practices including the frequent use of coal and wood for cooking and heating. Consequently, the Departments ought to have reported on the criteria and minimum standards for projects and programmes aimed at curbing pollution in informal settlements and amongst other vulnerable groups.

### **Recommendations**

- The National DEAT needs to mention how it monitors the *progressive realisation* of environmental rights with the indicators collected.
- The National DoH should provide a detailed explanation on the monitoring measures instituted by the Department in ensuring that the right to a healthy and clean environment is realised.
- The DWAF should provide a description of the Minimum Requirements.
- Provincial Departments need to subscribe to National standards or formulate strategies and minimum standards that shall be used in protecting people against air, water and soil pollution.

## **BUDGETARY MEASURES**

### **Summary of responses**

#### ***National level***

The DEAT reported that R1,191 000 was spent on reducing environmental hazards in 1998/1999 and accounted for 0.26% of the Department's total budget. This spending was projected to remain at 0.26% for the 1999/2000 financial year.

The National DoH spent R3,37 million on reducing environmental hazards in 1998/1999. The allocation was expected to decrease substantially in 1999/2000 to R2,56 million. No explanations were provided on how these funds were apportioned.

The DWAF reported that reducing environmental hazards was an ongoing function of the Department. As there was no specific project for the reduction of environmental hazards by the Department, the DWAF reported that it was difficult to provide budgetary allocations as requested in the protocol. However the DWAF provided figures on the money spent to develop the Minimum Requirements (MR). In total, R1,040 000 was spent by the DWAF, of which R220 000 was spent in 1998/1999, the final year of development of the MR.

Of the R15 million spent on the development of the National Waste Management Strategy, the DWAF contributed R2 million. Most of the costs for the implementation of waste collection action plans were to be borne by Local and Provincial Government and DEAT, with the aim of recovering these costs through the 'Polluter Pays Principle' where the actual generators have to pay for their refuse removal.

The DWAF spent R7,6 million on the Rural Sanitation Investment Programme in 1998/1999. The spending was specifically targeted at previously disadvantaged and vulnerable groups, with rural and poor households being the primary beneficiaries.

### ***Provincial level***

The provinces of Mpumalanga, Northern Cape and North West did not provide information on budgetary allocations for environmental rights.

The Eastern Cape Department of Environmental Affairs said that it did not spend or allocate a budget to reducing environmental hazards and no plan has been made to do so for the periods 1999/2000 and 2000/2001. However, the Department stated that community projects are initiated and implemented with a bias towards formally disadvantaged groups.

In the Free State, the Provincial Department of Environmental Affairs and Tourism reported that the annual budget for 1998/1999 was R26 million, an increase of R8 million from 1997/1998. The increased allocation was to provide for the management of the protected areas and enhancing eco-tourism. The Department further reported that casual jobs were created for the poor communities, which had a budget effect of R760 000 for 1998, R1,27 million for 1999 and a planned effect of R1,2 million for 2000.

The Department of Agriculture, Conservation and Environment in the Gauteng Province, reported that the budget for the Environmental Directorate for the year 1998/1999 was R5,386 000 and the budget for the Conservation Directorate was R20,904 000. The sum of R400 000 was allocated to the 'Special Project – World Heritage Site'.

Three responses were received from KwaZulu-Natal relating to the Local Agenda 21 Project, establishment of a Coastal Management Forum and implementation of the Green Wedges Policy for KwaZulu-Natal South Coast. In all the responses it was stated that the reduction of environmental hazards is not the line function responsibility of the Department of Agriculture and Environment.

The total budget for the Department of Agriculture and Environment in the Northern Province for the period 1998/1999 was R436 million, of which R80 million was allocated for Environment.

The Western Cape Department of Environment and Culture reported that no resources were allocated to integrated waste management, air pollution and soil pollution, as the central government had not assigned these functions to the Provinces.

## Commentary

### *National level*

Although information on spending to reduce environmental hazards was required by the protocol, a request was also made in the protocol for additional information on budgetary measures that impact on the right of access to a clean environment. The Department should have provided information regarding budgetary allocations towards various other programmes to allow for an efficient evaluation of the DEAT's financial position with regards to the environmental rights.

Nevertheless, according to the National Expenditure Survey for the Department,<sup>19</sup> it was estimated that a total of R400,725 000 would be spent on various programmes during 1998/1999 (See table below).

**Table 3.1: DEAT Expenditure by Programme Estimates**

<b>PROGRAMME</b>	<b>1998/1999 (R'000)</b>	<b>1999/2000 (R'000)</b>
Administration	28 700	31 200
Environmental management	122 000	123 700
Sea fisheries management and development	70 200	75 800
Weather bureau services	57 300	61 000
Promotion of tourism	77 200	126 700
Pollution control	13 100	14 400
Auxiliary and associated services	38 000	39 400
<b>TOTAL</b>	<b>406 500</b>	<b>472 200</b>

The above table indicates that in 1998/1999 it was expected that environmental management would account for a larger proportion (30%) of the DEAT's budget as opposed to pollution control (3.3%). Environmental management entails sustainable development, environmental impact management and the management of the natural environment. Key activities in this programme were the protection and controlled

<sup>19</sup> Department of Finance "Budget 99. National Expenditure Survey – Environmental Affairs and Tourism." (1999) at [http://www.environment.gov.za/white\\_paper/ipwm.htm](http://www.environment.gov.za/white_paper/ipwm.htm)

utilisation of the environment, through policy formulation and research. Pollution Control involved the implementation of pollution control policy aimed at preventing and combating environmental pollution. Air pollution was also monitored. Budgetary allocations for programmes aimed at addressing the protection and promotion of environmental rights for previously disadvantaged groups should have been provided.

The decrease in projected funding by the National DoH on reducing environmental hazards seems irrational. The National DoH has only recently begun implementing the National Environmental Health Implementation Strategy,<sup>20</sup> which would require an increased allocation of financial resources to achieve the objectives of the programme. Unless this analysis is based on insufficient information submitted to the Commission, the disparity between policy and budget appears to be another example of incongruence between planning and budgetary allocations in newly developed programmes.<sup>21</sup>

The DWAF provided a clear and concise account of budgetary allocations for the Department's different programmes that impact on environmental rights. Where other authorities (DEAT and Local Government) were responsible for the funding of programmes, this was adequately explained by the DWAF.

### ***Provincial level***

On the whole, the responses from the Provincial Departments of Environmental Affairs were poor and lacking in relevant information to assess whether budgetary allocations were sufficient to ensure that environmental rights are being *realised*. As many of the Provincial Environmental Directorates are coupled with other Directorates such as Agriculture and Tourism, the provision of the Total Departmental Budget was of little use.

### **Recommendations**

- The DEAT must provide additional information as an explanation of funding of programmes for vulnerable groups as requested in the protocols.
- Reasons for the variance in budgetary allocation over the years should be provided.

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<sup>20</sup> See '1. POLICY MEASURES, *National Department of Health*' above for the DoH's report on the National Environmental Health Implementation Strategy.

<sup>21</sup> One of the comments at a National Workshop on Economic and Social Rights was that "It's important to have a question on the extent to which programme managers are able to influence the budget. Questions in the protocols should address the problem that budgets are allotted, and then planning commences, whereas it is preferable for planning to precede the allocation of funds..." in SAHRC "SAHRC Economic And Social Rights Workshop 29 March 2000, Report Of Workshop Proceedings." (2000). Unpublished Report.

- The Directorates for Environment in the Provincial Departments must ensure that the budgetary allocation for Environmental Affairs is provided separately from that for other Directorates such as Agriculture and Tourism.
- Whilst the National DEAT may be responsible for the allocation of resources for reducing environmental hazards, the Provincial Departments of Environmental Affairs should provide information on budgetary allocations for specific provincial environmental projects.

## **OUTCOME MEASURES**

### **Summary of responses**

#### ***National Level***

The DEAT reported that there are communities that live in environmental conditions that fall below Departmental standards. These people live in areas without electricity and are exposed to harmful levels of smoke and sulphur dioxide, especially during winter. The DEAT is dealing with this problem through the national electrification programme and the development of a smokeless fuel. Communities living on the Highveld are affected the most, with people in this area exposed to air pollution levels, which are four times more than that of safe health levels.

Regarding steps taken to address the problems of atmospheric, soil and water pollution amongst communities, the Department reported that it launched clean up campaigns funded by the Poverty Relief Fund. The National Asbestos Summit was held and Commissions were established to address the issues of rehabilitation, environmental and health remediation, compensation and future use of asbestos. Preventative measures for these forms of pollution included the development of the National Waste Management Strategy and Action Plans. The Law Reform Programme of the Department addressed sectoral law reform needs and priorities with respect to pollution. To assist communities affected by pollution the Department set up Commissions of Enquiry for Macassar, AECI Fire, Thor Chemical and asbestos mining.<sup>22</sup> Compensation was also made available, but no details on the value or nature of the compensation were presented.

Hazardous waste totalling 200 000 tonnes was imported from November 1997 to December 1998. The imports came to South Africa for recovery under provisions of the Basel Convention that require environmentally sound management. Of this total, the Department reports that only lead acid batteries totalling 25 000 tonnes is listed as hazardous waste in terms of the Basel Convention.

The DEAT reported that all industries operating processes controlled in terms of the Atmospheric Pollution Prevention Act (APPA) have to meet emission standards set by

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<sup>22</sup> Although the DEAT referred to 'Commissions', the findings of the 'Commissions' were not presented.

the Department.<sup>23</sup> Using this Act the Department has issued 37 notices in terms of section 12 of APPA as a means of reducing emissions to acceptable levels or for companies to install efficient air cleaning equipment. The DEAT took legal action against four companies to stop them from operating plants that were not complying with requirements of APPA.

The dissemination of information to the public on their right to a clean and safe environment and the potential threats due to pollution and ecological degradation, were addressed by reports on the findings and recommendations of the Commissions of Enquiry. Furthermore, an information brochure informing the public of their environmental rights was made available. The DEAT also developed a popular guide for citizens on what their rights are, and how to take the appropriate action to prevent environmental damage in terms of the National Environmental Management Act (1998). A plain language version of the White Paper on Environmental Management Policy was also developed.

The National DoH reported that 42% of South Africans did not have access to electricity, which was deemed as living in environmental conditions below Departmental standards. Although it was acknowledged that there exist unacceptably high levels of air, soil, and water contamination in some residential areas, it was stated by the National DoH that data on the population affected was not available. Similarly, although pilot studies existed on the effect of lead pollution on residential areas, the findings were believed to be 'not applicable' to the entire population of South Africa.

On the Departmental quality control measures instituted to prevent different types of pollution, environmental health indicators were developed to monitor the population's access to quality water, good sanitation, food, and environmental health service. To address the effects of pollution, the National DoH reported that regulations regarding Conditions Detrimental to Health or Nuisance and measures for the management of medical waste have been developed.<sup>24</sup> Also, rural communities in particular were being targeted in a nation wide campaign of safety on practical measures and knowledge of pesticides and chemicals. As part of the global effort to raise awareness of the environment, different themes are highlighted annually on World Environment Day. Communities and in particular, school children were targeted in this effort.

The DWAF reported that rural communities exposed to harmful pollution were assisted to improve their accessibility to potable water and adequate sanitation. Fifty-three such projects were instituted in 1999. The projects were community driven, utilising local entrepreneurs with the aims of job creation and poverty alleviation. People had also been trained in communities to ensure the sustainability of projects on pollution control. Regarding information dissemination to the public on their environmental rights, it was reported that Water Quality Guidelines have been developed. In addition, the DWAF

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<sup>23</sup> The standards were not defined.

<sup>24</sup> Elsewhere in the DoH's submission (See '2. LEGISLATIVE MEASURES' above), the DoH stated that the guidelines are still to be published for public comment, and hence are still in the *developmental* stage.



provided information on pollution control, safety in the use of pesticides, and on water not fit for human consumption.

Measures to monitor atmospheric, soil and water pollution shall only be effected from 2000. No directives were given to companies to reduce their atmospheric, soil and water pollution, and no legal action was taken against companies who were responsible for pollution.

### ***Provincial Level***

The Departments responsible for Environmental Affairs in the Eastern Cape, KwaZulu-Natal, Mpumalanga, Northern Cape, North West and Western Cape did not submit sufficient information on outcome measures for environmental rights in the respective provinces.

The Eastern Cape Department of Environmental Affairs referred the Commission to the National DEAT and DWAF and the Eastern Cape Local Authorities for the relevant information. In the Free State, the Department stated that the information was being compiled for the State of the Environment Report (SoER). The Gauteng Department of Environmental Affairs reported that the information could be obtained from base-line research in the State of the Environment Report.

The Northern Province Department of Agriculture and Environment reported that although the number of communities living in areas affected by harmful atmospheric, soil and water pollution was not quantifiable, most of the communities were affected at varying extents. No data was available on the amount of toxic waste imported into the province. To address the problem of various types of pollution, environmental education is undertaken where necessary, and 'extensive engagement' may be taken within resource constraints in specific instances.

Concerning quality control measures used in the Northern Province to prevent pollution, the Department stated that legislation was drafted, environmental impact assessments were required and inspected for particular developments, and a permit system is utilised to prevent the over-exploitation of indigenous species. To address the effects of pollution, measures were instituted on a 'case-by-case basis', with limited 'clean-up type' action. Communities exposed to pollution are usually assisted by means of advice. Regarding the dissemination of information to the public on their right to a clean and safe environment, as well as potential threats due to pollution and ecological degradation, the Department reported that extensive environmental awareness campaigns are undertaken continually. Monitoring of pollution in the Northern Province is by means of assessing water and veld quality, species diversity, and a very limited sampling of atmospheric dust. The Department did not issue any directives to companies that had contributed to atmospheric, soil and water pollution for the year under review. No action was taken against any companies but where there were concerns, they were addressed 'bilaterally and in a co-operative spirit'.

## Commentary

### *National Level*

Overall, the response from the National DEAT was satisfactory. However, the DEAT did not provide information on the number of people or communities that live in areas affected by harmful atmospheric, soil or water pollution. Similarly, the information on the extent and the number of people adversely affected by these forms of pollution was also not made available. Also, the questions were not answered in relation to formerly disadvantaged and vulnerable groups as requested in the protocol.

Environmental protection is seen as an essential part of sustainable development as adopted in Principle 2 of the Rio Declaration on Environment and Development.<sup>25</sup> The DEAT has begun to address this challenge by compiling detailed information on the current state of the environment in South Africa. To this end, the DEAT has developed The National State of the Environment Report (SoER). The SoER was released in October 1999 and analyses the impact of social, economic, and political activities on biophysical components of the environment.<sup>26</sup> The report provides some of the information on water, atmospheric and soil pollution as requested in the protocol.

Due to the extent of *water pollution* in the country, the SoER reports that water pollution exaggerates the scarcity of both ground and surface water. South Africa is a semi-arid country, where water is scarce compared to most other countries. The driving forces affecting freshwater supply in South Africa are low rainfall and rapid evaporation, rapid population growth and socio-economic demands, and the water management policy of the country. Already, water is increasingly becoming the limiting resource of development in South Africa, in terms of both the amounts of water available and the quality of what is available. The major problem concerning the quality of water available at present is the pollution of many water resources by industrial effluents, domestic and commercial sewage, acid mine drainage, agricultural runoff and litter.<sup>27</sup> Although industrial effluents are acknowledged as being a principal pollutant, the amount of pollution has not been quantified. Acid mine drainage is also a recognised problem effecting freshwater resources in mining areas. Areas where the total suspended solids exceed the maximum recommended amount are in the Eastern Cape, northern KwaZulu-Natal, the Western Cape, and the Vaal River. Pollution of coastal waters is increasing, with higher levels of pollutants reported in fish stocks, threatening human health when eaten.<sup>28</sup>

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<sup>25</sup> 'Rio Declaration on Environment and Development at <http://sedac.ciesin.org/pidb/texts/rio.declaration.1992.html>

<sup>26</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/overview/english.pdf>

<sup>27</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/index.htm>

<sup>28</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/overview/english.pdf>

Concerning action taken against companies that contravene pollution control measures, the Navy and Air Force, which are responsible for monitoring pollution control, have increased the penalty from R200 000 to R500 000 or imprisonment not exceeding five years for companies in breach of these measures.<sup>29</sup>

Regarding the *extent of soil erosion* and ecological degradation, the SoER contends that terrestrial conservation is unsustainable due to soil erosion and alien vegetation encroachment.<sup>30</sup> Eight percent of South Africa is now covered by alien bush, and the rate of soil erosion exceeds that of soil formation. The average soil loss is 2.5 tonnes per hectare per year, which is more than eight times the rate of soil formation. Other sources also reveal that most of South Africa's soils are particularly unstable, as a result an estimated 500 million tonnes of topsoil are lost annually through erosion caused by water and wind.<sup>31</sup> About 80% of land in South Africa is used for farming, and of this only 70% is suitable for grazing. Overgrazing and erosion cause land degradation and as a result diminish the carrying capacity of the land. In total about 250 000 hectares of land in South Africa has been overgrazed and eroded.

The Northern Province, KwaZulu-Natal and the Eastern Cape are the provinces with the highest levels of soil degradation. Communal areas have twice the level of soil degradation as commercially managed areas. Fuel-wood collection in communal areas is a major pressure on soil degradation, whilst degradation rates in commercially managed areas have been contained due to soil and vegetation conservation policies. Figure 1 shows that in rural areas, wood is the preferred form of fuel, whilst electricity is the least utilised energy resource.

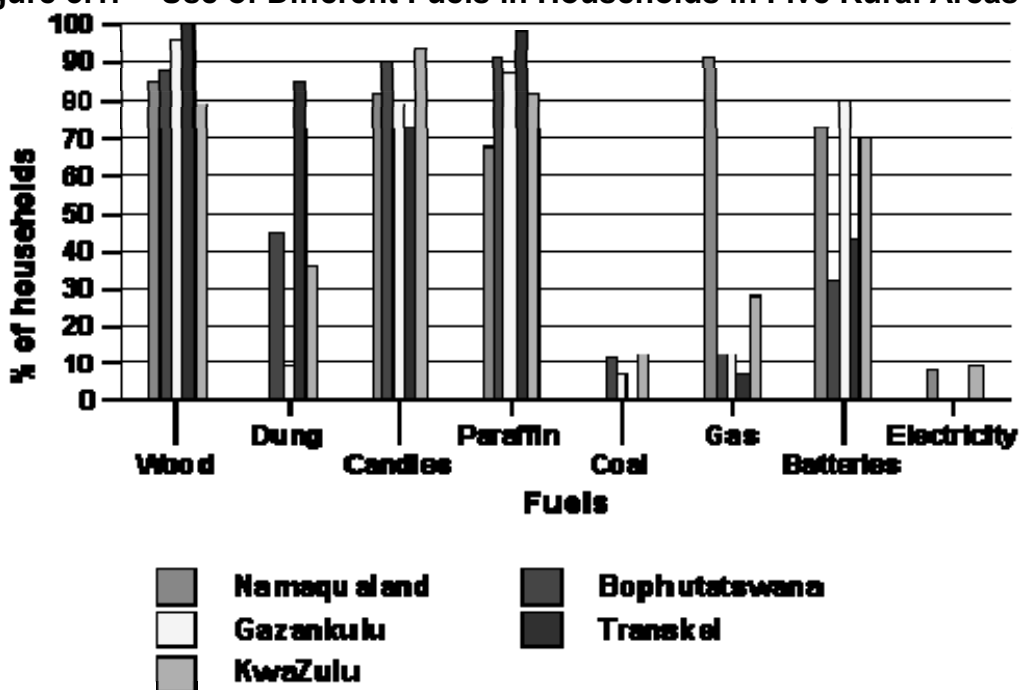
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<sup>29</sup> D Burger (ed) "South Africa Yearbook 1999." (1999) 138.

<sup>30</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/land/index.htm>

<sup>31</sup> D Burger (ed) "South Africa Yearbook 1999." (1999). 137.

Figure 3.1: Use of Different Fuels in Households in Five Rural Areas<sup>32</sup>



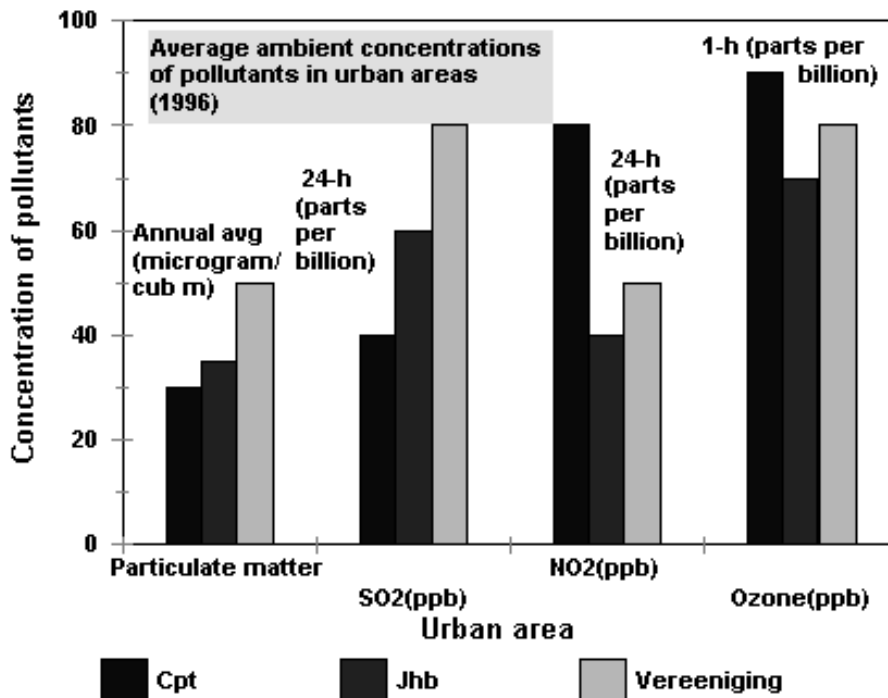
The SoER describes the following as key areas of concern for *atmospheric pollution*:<sup>33</sup> Carbon dioxide concentrations show an increase of approximately 0.6% per year. Lower atmosphere methane has increased by 8.3% from 1983 to 1998. The worst air quality occurs when wood, dung or coal is used as fuel inside poorly ventilated dwellings in informal settlements and rural villages adversely affecting human health.

Although the South African guideline exposure levels for any of the gases are not exceeded in any of the locations (see figure 2), people with respiratory problems are likely to experience effects such as wheezing and shortness of breath in the Johannesburg and Vereeniging areas. It has also been found that hospital admissions for respiratory effects commonly follow particulate matter levels above 40 µg/m<sup>3</sup>. The concentration of lead in the atmosphere has decreased in major urban areas, in spite of low penetration of unleaded petrol into the market.

<sup>32</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at [http://www.ngo.grida.no/soesa/nsoer/indicatr/fig5\\_12.htm](http://www.ngo.grida.no/soesa/nsoer/indicatr/fig5_12.htm)

<sup>33</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/land/pressur2.htm>

**Figure 3.2: The Average Concentration of Key Atmospheric Pollutants in Major South African Cities<sup>34</sup>**



Although the DEAT reported that only 200 000 tonnes of *hazardous waste* was imported into the country from November 1997 to December 1998, the SoER states that low level hazardous waste production and disposal is an area of concern.<sup>35</sup> Of the estimated 5 million cubic metres of low hazardous waste produced every year, only about 5% is disposed of appropriately, suggesting a high incidence of illegal dumping. Also, the production of solid waste per person per day is more in keeping with developed countries than developing countries. The main contributor to solid waste is mining waste (72,3%), followed by pulverised fuel-ash (6,7%), agricultural waste (6,1%), urban waste (4,5%) and sewage sludge (3,6%). Localised concentrations of waste as a result of urbanisation pressures have made the disposal of waste difficult. It is predicted that as a result of the high volume of waste production, five of the nine provinces will have waste landfill shortages within the next 10 years. Presently South Africa has eight hazardous waste (toxic waste) disposal sites and about half of the hazardous waste is disposed on these permitted sites, and the rest is exported for further treatment or disposed by incineration.<sup>36</sup>

The establishment of the National State of the Environment Report and City State of the Environment Reports by the Department of Environmental Affairs and Tourism should

<sup>34</sup> Source: Department of Environmental Affairs and Tourism “*The National State of the Environment Report*” (1999) at [http://www.ngo.grida.no/soesa/nsoer/indicatr/fig1\\_11.htm](http://www.ngo.grida.no/soesa/nsoer/indicatr/fig1_11.htm)

<sup>35</sup> Department of Environmental Affairs and Tourism “*The National State of the Environment Report*” (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/climate/index.htm>

<sup>36</sup> D Burger (ed) “*South Africa Yearbook 1999.*” (1999). 140.

be commended as a step in the right direction towards *realising* the environmental rights as provided for in the Bill of Rights. The project, if sustained, shall ensure that suitable environmental indicators are available to inform sustainable development, increase the awareness of environmental rights and issues, and facilitate the necessary interventions to improve the socio-economic conditions of all South Africans.

The National DoH did not respond sufficiently to all of the questions on outcome measures. Although some of the questions were not directly related to environmental health, the Departments submission reflects the confusion that exists between Departments on the status of economic and social rights. In this regard, the Department of Health was unaware of any toxic waste that was imported into the country, as reported by the DEAT. Furthermore, no mention was made on the disposal of medical waste, for which the National DoH is responsible.

Although the report by the DWAF did account for the special needs of rural people, the impact of policy implementation was not provided for other disadvantaged groups.

### ***Provincial Level***

The lack of provision of information by the Provincial Departments of Environmental Affairs is unacceptable. In the provinces of Gauteng, KwaZulu-Natal and Western Cape, this is all the more indefensible as these provinces were involved in the compilation of State of the Environment Reports for metropolitan areas in the respective provinces as part of the National Department's initiative.

With regards to *pollution of water*, the Eastern Cape is one of three provinces with unacceptably high levels of total dissolved solids in its rivers.<sup>37</sup> The Eastern Cape is also an identified fluoride risk area, where the fluoride concentration in groundwater exceeds the acceptable level. This is disturbing as it is estimated that only 53.4% of households in the province have piped water.<sup>38</sup> It is not surprising then, that the province has the highest Infant mortality and Under 5 mortality rates in the country.<sup>39</sup> Contaminated and polluted water is a well-known factor contributing to high mortality rates amongst infants and children.

Because of the orchestrated efforts during apartheid not to provide the Eastern Cape with infrastructure such as electricity and water, the population of the province is more reliant on natural resources for energy and water than any other province. For example, households in the province utilise wood as the primary source of energy, with almost 100% of households reliant on this source in certain areas.<sup>40</sup> The use of wood as a fuel

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<sup>37</sup> Department of Environmental Affairs and Tourism "*The National State of the Environment Report*" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/index.htm>

<sup>38</sup> Statistics South Africa "*Census in Brief, The People of South Africa, Population Census, 1996.*" at <http://www.statssa.gov.za/census96/HTML/CIB/Households/38.htm>

<sup>39</sup> Department of Health "*South African Demographic and Health Survey. Preliminary Report.*" (1998)

<sup>40</sup> Department of Environmental Affairs and Tourism "*The National State of the Environment Report*" (1999) at [http://www.ngo.grida.no/soesa/nsoer/indicatr/fig5\\_12.htm](http://www.ngo.grida.no/soesa/nsoer/indicatr/fig5_12.htm)

source is implicated as a primary cause of *soil degradation*.<sup>41</sup> The high incidence of communal farming and the overgrazing of livestock further complicate the problem.

Another area of concern in the Free State is the pollution of the Vaal River. The river exceeds the acceptable amount of total dissolved solids, and is also a major runoff area for mining effluent. The former is said to have a negative impact on agriculture, by reducing crop yields.<sup>42</sup> Similarly, the lowering of the pH due to acidification by mine drainage also affects farming. The situation is alarming, as it has been reported that in 1996 the water requirements in the Vaal, Lower Orange, Sundays, Great Fish, Olifants (Mpumalanga) and Crocodile/Limpopo Rivers exceeded the amount of water available.<sup>43</sup> Grazing areas in the Free State have not declined as in the case of grazing areas in other provinces, whilst the Free State has one of the highest percentages of cultivated areas.<sup>44</sup> The impact of farming on soil degradation in the Free State needs to be assessed.

With over 18% of the South African population residing in Gauteng, the challenges facing the province with respect to environmental rights are quite unique. In many ways, Gauteng reflects changes in the environment that are synonymous to those found in cities. The population is mainly urban (97%) compared to the national average of about 54%.<sup>45</sup> The population density of 448.4 people per km<sup>2</sup> is thirteen times greater than the national average, and almost five times greater than the next most populous province, KwaZulu-Natal.<sup>46</sup> Furthermore, 482 363 households representing 23.8% of the Gauteng population live in informal dwellings.<sup>47</sup> The high concentration of people living in informal settlements necessitates the establishment of a rigorous *environmental health* policy. Wood and coal-fuel use in these households are detrimental to health, being associated with a higher rate of respiratory illness.<sup>48</sup> Indoor-air quality constitutes a health hazard in poorly ventilated dwellings without chimneys, where coal, wood, paraffin or dung is used as fuel. Efforts to improve the air quality by promoting low-smoke fuels and educating the public on the dangers of open fires inside houses are necessary. The electrification of houses will improve the situation. The lack of potable water and sanitation, coupled with inadequate domestic waste removal also increases the incidence of health problems. The shortage of potable water in these communities is accentuated by the pollution of surface and ground water by mining and industries.

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<sup>41</sup> Ibid.

<sup>42</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/index.htm>

<sup>43</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/pressure.htm>

<sup>44</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/land/state.htm>

<sup>45</sup> Statistics South Africa "Census in Brief, The People of South Africa, Population Census, 1996." at <http://www.statssa.gov.za/census96/HTML/CIB/Population/24.htm>

<sup>46</sup> Ibid.

<sup>47</sup> Community Agency for Social Enquiry "Upgrading Gauteng's Informal Settlements: Volume 1." (1998).

<sup>48</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at [http://www.ngo.grida.no/soesa/nsoer/indicatr/fig1\\_11.htm](http://www.ngo.grida.no/soesa/nsoer/indicatr/fig1_11.htm)

Gauteng is also the industrial centre of the country, with numerous forms of manufacture and mining activities. The main pressures on water resources in the province are industrial effluents, domestic and commercial sewage, acid-mine drainage, and litter. The State of the Environment Report states that diffuse sources of *water pollution* are difficult to quantify. The increase in informal settlements, with high poverty levels and inadequate sanitation, may become one of the greatest localised pressures on water quality in South Africa.<sup>49</sup>

The Vaal Barrage catchments, which supplies the whole of the province, is subjected to numerous of these pollution pressures.<sup>50</sup>

- Acid drainage from 15 functioning and 29 closed gold mines is a recognised problem, increasing sulphate, suspended solids and metals, and decreasing the pH of the receiving water resources; the amount of this water entering the watercourses untreated has not been quantified.
- Of the 33 water care works that treat commercial and domestic effluents, only 60% of these works comply with the acceptable level of the phosphate standard.
- Although the level of pollution of streams by industrial plants is unknown, arsenic, COD, BOD, manganese and suspended solids are identified problem elements<sup>51</sup>
- Although no data is available, litter from unserved informal settlements and recreational visitors is a recognised problem.

Climatic changes and *atmospheric pollution* in Gauteng are also disconcerting. Sensitive individuals living in Johannesburg or Vereeniging are likely to experience effects such as wheezing and shortness of breath due to high levels of atmospheric pollutants, especially sulphur dioxide (refer to figure 3). The levels of Ultra Violet B, has been dangerously high for most of the past decade. Ultra Violet B is short wave radiation and causes eye damage and skin cancer in humans and animals and damages the photosynthetic pathways of plants.<sup>52</sup>

The density of the population in Gauteng, coupled with other socio-economic factors makes it imperative that a clear, functional policy on environmental conservation is implemented in the province. Also, the major pressures impacting on the environment in Gauteng is common to most metropolitan and urban areas in the rest of South Africa. Addressing these pressures in Gauteng will go a long way in directing policy on similar challenges for the rest of the country.

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<sup>49</sup> Department of Environmental Affairs and Tourism “*The National State of the Environment Report*” (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/pressure2.htm>

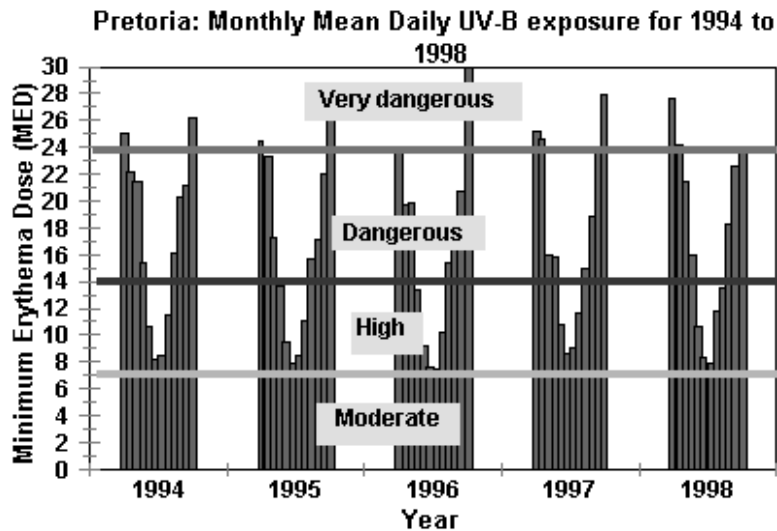
<sup>50</sup> Ibid.

<sup>51</sup> COD refers to Chemical oxygen demand, and is a measure of the oxygen requirement of organic matter in water. It is used as an indicator of dissolved organic carbon, often in conjunction with BOD. BOD refers to Biological oxygen demand being the amount of oxygen consumed by biota in water. It is a measure of the portion of organic carbon that is relatively easily oxidised by microorganisms.

<sup>52</sup> Department of Environmental Affairs and Tourism “*The National State of the Environment Report*” (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/climate/state.htm>



Figure 3.3:



The state of *water resources* in KwaZulu-Natal is also worrying. Rivers in northern KwaZulu-Natal have an unacceptably high level of total dissolved solids, which gives an indication of salinisation of water.<sup>53</sup> The resultant change of the environment due to abuse of water resources in the province has resulted in a loss of the natural wetlands.<sup>54</sup>

- Wetlands in the upper Mgeni catchments have been reduced by 66%.
- The Mfolozi Swamp, once the largest fluvial plain in South Africa, has been reduced through agricultural development to 43% of its previous extent.
- 93% of the wetlands in the Siyaya catchments in Northern KwaZulu-Natal have vanished.

It is estimated that there is less than 50% of natural wetlands left in KwaZulu-Natal. Regarding urban pressures on water resources, the Durban pilot study of the State of the Environment Report suggests that freshwater is increasingly becoming a scarce commodity.<sup>55</sup> The reasons cited are both the increased needs in potable water and waste disposal. To meet these needs, rivers have been modified, with the resultant loss of biodiversity of certain rivers and estuaries.

Over 1.8 million tonnes of waste is produced every year in the Durban area, which is mostly disposed of in landfill sites.<sup>56</sup> Affluent communities produce up to 13 times more waste per person than poor communities. Of the 6 landfill waste disposal sites, 4 are general waste sites and 2 are low hazard co-disposal sites. These sites meet current

<sup>53</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/state4.htm>

<sup>54</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/impact.htm>

<sup>55</sup> Durban Metropolitan Council "Durban Metro State of the Environment and Development: 1999" (1999) at <http://www.ceroi.net/reports/durban/issues/fshwater/index.htm>

<sup>56</sup> Durban Metropolitan Council "Durban Metro State of the Environment and Development: 1999" (1999) at <http://www.ceroi.net/reports/durban/issues/waste/index.htm>

waste disposal needs, but future capacity is limited. Small quantities of high hazard waste are exported out of the province to waste sites in the Eastern Cape and Gauteng.<sup>57</sup>

Although the Northern Cape is the largest of the provinces, representing almost 30% of the total area of the country, it is the most sparsely populated, with a population density of only 2.3 people per km<sup>2</sup>, which is seventeen times less than the national population density.<sup>58</sup> As such, the challenges to the province with respect to economic and social rights are quite different from the rest of the country. Whilst 73.1% of the population is urbanised, the vastness of the province makes it exceedingly difficult and costly to provide service delivery to the rural population.<sup>59</sup> Hence, rural people are far more reliant on exploiting the natural environment for water and fuel energy than their urban counterparts. The province has the highest amount of land that is used for grazing (96%)<sup>60</sup> of all the provinces and alien vegetation invasion of natural plant species have created additional pressures on *water resources* in the Northern Cape.<sup>61</sup> It is estimated that alien plants utilise 15% of the mean annual runoff.<sup>62</sup> The salinisation of water in the western section of the Northern Cape, and high nitrite and fluoride levels in areas of the province further compromise water resources in the province.<sup>63</sup>

Whilst the Northern Province Department of Agriculture and Environment was the only province to answer most of the questions for outcome measures on environmental rights, the responses provided were vague, with no specific data provided on the extent of pollution in the province. Details were not provided on specific measures used by the Department to ensure environmental rights in the Northern Province. The Department did not provide the relevant information with respect to environmental rights for formerly disadvantaged and vulnerable groups as requested in the protocol. This is of some concern as 89% of the population in the province live in rural areas.<sup>64</sup> In a recently published study, Hoffman and co-workers<sup>65</sup> found that soil in areas with a low rainfall, high temperatures and steep slopes are significantly more degraded than areas that do not meet these criteria. The Northern Province, KwaZulu-Natal and the Eastern Cape are the provinces with the highest levels of *soil degradation*, with communal farming exacerbating the problem in these areas. Soil is further degraded by fuel-wood collection by people reliant on wood for energy-fuel. Almost three-quarter of households

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<sup>57</sup> Ibid.

<sup>58</sup> Statistics South Africa “*Census in Brief, The People of South Africa, Population Census, 1996.*” at <http://www.statssa.gov.za/census96/HTML/CIB/Population/24.htm>

<sup>59</sup> Ibid.

<sup>60</sup> Department of Environmental Affairs and Tourism “*The National State of the Environment Report*” (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/land/state.htm>

<sup>61</sup> Department of Environmental Affairs and Tourism “*The National State of the Environment Report*” (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/land/impact2.htm>

<sup>62</sup> Mean Annual Runoff refers to the amount of water on the surface of the land that can be utilised, in a year.

<sup>63</sup> Department of Environmental Affairs and Tourism “*The National State of the Environment Report*” (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/state4.htm>

<sup>64</sup> Statistics South Africa “*Census in Brief, The People of South Africa, Population Census, 1996.*” at <http://www.statssa.gov.za/census96/HTML/CIB/Population/24.htm>

<sup>65</sup> T Hoffman, S Todd, Z Ntshona and S Turner “*Land Degradation in South Africa.*” (1999).

in the Northern Province utilise energy sources other than electricity to meet their needs.<sup>66</sup> Reliance on wood-fuel is even greater in rural areas (see figure 1, p 76). The soil degradation and erosion from excessive indigenous cultivation for energy needs impacts on both the sustainability of indigenous plants and the quality of available surface water. The main effect of soil degradation is a greater vulnerability of vegetation to drought, which impacts on food security, especially for the rural poor.

Many of the pressures impacting on the environment in Gauteng are also common to the North West Province. Mining, industries, and rapid urbanisation are the chief pressures on the environment in this province.<sup>67</sup>

The lack of provision of information for the Western Cape is peculiar, as much of the required information has been reported in the State of the Environment Report for the Cape Metropolitan Area.<sup>68</sup> The key findings of the report on *atmospheric pollution* in the Cape Metropolitan Area are:

- Up to 80% of informal dwellings had indoor pollutant levels in excess of WHO guidelines; people in these dwellings also had a higher incidence of respiratory illnesses and tuberculosis.
- Paraffin and wood are still being used in a significant proportion of informal households.
- Increases in industrial and vehicular activity are increasing the levels of atmospheric pollutants with consequential health risks to inhabitants.
- Lead, Nitrogen, and Sulphur Dioxide levels often exceeded acceptable limits (see Figure 2); children living close to heavily trafficked areas showed high blood lead levels.

The level of *water pollution* around the city is increasing due to untreated industrial and domestic drainage, and the lack of adequate sanitation in informal settlements.<sup>69</sup> Since 1995, the proportion of people in Khayelitsha that did not have access to water has increased from 2.9%, to 5% in 1999. In addition, 11% of these households do not have access to adequate sanitation. Also, certain rivers and vleis contain high tropic levels of algae, which pose significant health risks to potential users.

In terms of pressures on water resources for the entire Western Cape, the stress of a changing terrestrial ecosystem is impacting negatively on the availability of water. The Western Cape has one of the highest percentages of cultivated land (between 30 and 36%),<sup>70</sup> alien invasive vegetation,<sup>71</sup> and high salinisation levels of its rivers.<sup>72</sup> Changes

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<sup>66</sup> Statistics South Africa "Census in Brief, The People of South Africa, Population Census, 1996." at <http://www.statssa.gov.za/census96/HTML/CIB/Households/36.htm>

<sup>67</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/index.htm>

<sup>68</sup> Cape Metropolitan Council "Cape Metropolitan Area State of the Environment" at <http://www.cmc.gov.za/peh/soe/soehome.asp>

<sup>69</sup> Cape Metropolitan Council "Cape Metropolitan Area State of the Environment" (1998) at [http://www.cmc.gov.za/peh/soe/water\\_2.htm](http://www.cmc.gov.za/peh/soe/water_2.htm)

<sup>70</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/index.htm>

<sup>71</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/land/impact2.htm>

in biodiversity and replacement of indigenous plants by alien vegetation has seen these alien plants utilising about 16% of the mean annual runoff in the Western Cape. The resultant soil degradation by cultivation and invasion of alien vegetation also impacts on the quality of water in the province. As a result, salinisation is now a recognised threat in the Western Cape area.

## Recommendations

- Information on indicators requested in the protocol should be provided to the Commission in future as the National Department of Environmental Affairs and Tourism has created a database of information for the State of the Environment Report.
- Fuel-wood collection and usage has been implicated in causing ill health, soil erosion, and atmospheric pollution; a National Awareness Campaign should be initiated by the DEAT to address the issue of fuel-wood collection.
- The Department of Health should access information available to other Departments, for example the DEAT, thus ensuring a cohesive understanding on the state of the environment to inform the Department on environmental health.
- The Provincial Departments responsible for Environmental Affairs need to provide complete and relevant information to enable proper analysis of the situation in each province.
- In the provinces, environmental education campaigns should be initiated specifically on the use of fuel-wood and the impact of this energy source on soil degradation and environmental health. The use of low-smoke fuels as an energy source should be promoted; the service delivery of water and electricity in informal settlements and rural areas should be made a priority.
- Strategic interventions to reduce the amount of total dissolved solids in the Vaal River need to be developed and implemented in the Free State.
- In Gauteng, the impact of industrial contamination of water needs to be assessed and information on hazardous waste needs to be provided; environmental education campaigns should be initiated specifically on waste disposal, litter, and the use of low-smoke fuels as an energy source.
- Information on the state of the environment in rural KwaZulu-Natal must be provided; in urban areas, awareness campaigns should be initiated on waste management and recycling; the conservation and protection of wetlands in the province should be enforced.
- As the Orange River catchments area provides for a large percentage of the Northern Cape's water needs, the quality of water in this area must be closely monitored; alien vegetation poses a significant threat to the sparse water available in the Northern Cape and strategies to deal with this growing problem need to be identified and implemented.

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<sup>72</sup> Department of Environmental Affairs and Tourism "The National State of the Environment Report" (1999) at <http://www.ngo.grida.no/soesa/nsoer/issues/water/state4.htm>

- A comprehensive policy on environmental conservation for the Northern Province needs to be developed, rather than the stated 'case-by-case' approach followed at present.
- In the Western Cape, slow delivery of basic services such as water and electricity in informal settlements like Khayelitsha is impacting negatively on both the environment and environmental health; the situation is retrogressive, and alarming in terms of compliance with the progressive realisation of economic and social rights. Commercial farmers should be informed of the impact on water resources of alien vegetation cultivation as livestock fodder.

## LIST OF ABBREVIATIONS

<b>APPA</b>	Atmospheric Pollution Prevention Act
<b>CBOs</b>	Community-based Organisations
<b>CSD</b>	Commission for Sustainable Development
<b>CSIR</b>	Council for Scientific and Industrial Research
<b>DEAT</b>	Department of Environmental Affairs
<b>DoH</b>	Department of Health
<b>DWAF</b>	Department of Water Affairs and Forestry
<b>MR</b>	Minimum Requirements
<b>NGOs</b>	Non-governmental Organisations
<b>NWMS</b>	National Waste Management Strategy
<b>SoER</b>	The State of the Environment Report
<b>VIP(s)</b>	Ventilated Improved Pit Latrine(s)
<b>WHO</b>	World Health Organisation

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# CHAPTER FOUR

## FOOD<sup>1</sup>

*Everyone has the right to have access to sufficient food. The state must respect, protect, promote and fulfil this right and should thus take reasonable legislative and other measures, within its available resources, to achieve their progressive realisation.<sup>2</sup>*

### POLICY MEASURES

#### Summary of responses

##### *National Level*

The National Department of Agriculture (hereinafter National DoA) and National Department of Health (hereinafter National DoH) were required to provide information on the policy measures instituted to respect, protect, promote and fulfil the right to sufficient food. The questions also requested the departments to state the reasonableness and effectiveness of policies in progressively realising the right to have access to sufficient food. The impact the instituted policy measures had in providing access to sufficient food for vulnerable and previously disadvantaged groups, such as people living in rural areas, informal settlements, female-headed households, the aged, persons with disabilities, poor households, women, children and previously disadvantaged racial groups needed to be outlined.

The National DoA instituted the Food Policy in May 1998 as its central policy measure for the realisation of the right to have access to sufficient food. The policy is a product of an inter-departmental committee that was convened by the National DoA and included the DoH, the Department of Welfare, the Department of Water Affairs and Forestry, the Department of Trade and Industry, farmers' organisations and non-governmental organisations.

The Food Policy focused on food insecurity, food nutrition, employment creation, income generation, food production, food distribution process, food affordability and food import. One of the aims of the document is to identify rural people who are affected by food insecurity. The policy document also addresses food security for rural people and other vulnerable groups by providing food support, income support, food production, job and income creation, and aims to improve food distribution in rural areas.

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<sup>1</sup> The analysis of the responses is based on information received from government departments, and thus it sometimes differs for the provinces.

<sup>2</sup> Section 27(1)(b) and (2) of the *Constitution*, Act 108 of 1996.

The Food Policy was reasonable and effective in that the policy enabled a better understanding of the complex and complicated nature of the right to food. The policy measure was effective in that direct income and food support was available to small groups for a short time-span. For larger groups of people who are susceptible to food insecurity the policy offers capacity building. Generally the impact of the policy on vulnerable groups was seen as being slow.

The National DoH responded within the context of improving the nutritional status of all South Africans.<sup>3</sup> The National DoH acknowledged that adequate nutrition is a basic human right and a prerequisite for the attainment of people's full intellectual and physical potential.

The Integrated Nutrition Programme (INP) is the central programme utilised by the Department as part of primary health care to improve the nutritional condition of South Africans. The INP addresses nutritional problems via direct and indirect nutrition interventions and provides appropriate nutrition education and promotion to all people. The INP focused on:

- Disease-specific nutrition support and counselling
- Growth monitoring and promotion
- Nutrition education and promotion
- Food supplementation/feeding
- Micronutrient Deficiency Control
- Nutrition management of diarrhoeal and other infectious diseases
- Food Service Management
- Community-based nutrition development

For the respect, protection, promotion and fulfilment of the right to sufficient food, the National DoH developed and implemented the following measures:

- Broad Guidelines for the Implementation of the INP.
- Health Facility-based Nutrition Intervention Guidelines.
- National Breastfeeding Guidelines for Health Workers and Health Facilities.
- Policy Guidelines and Recommendations for Feeding of Infants of HIV positive mothers.
- Growth Monitoring and Promotion Guidelines.
- Guidelines for Parasite Control.
- Conditions for the use of INP Conditional Grant Allocation.

Although specific policy measures have not been formally evaluated by the National DoH, they have contributed to the progressive realisation of the right to sufficient food. For instance, the Broad Guidelines for the Implementation of the INP created an awareness of sound nutrition as a basic human right and as an integral component and

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<sup>3</sup> Whilst the right to have access to sufficient food for all South Africans is provided for in the Constitution (Section 27 (1) (c)), that of basic nutrition is extended only to children (Section 28 (1) (c)).



outcome measure of social and economic development. This measure also addresses the needs of vulnerable groups in a comprehensive and integrated manner.

The National Breastfeeding Guidelines for Health Workers and Health Facilities progressively realised the right to sufficient food. For instance, the annual National Breastfeeding Week created awareness on the protection, promotion and support of breastfeeding as a norm and motivated for health facilities to become baby-friendly. The policy resulted in practices and behaviours regarding breastfeeding in health care settings being monitored and good practices being encouraged.

The policy measure on the Guidelines and Recommendations for Feeding of Infants by HIV positive mothers facilitated an understanding of the issue. The Guidelines for Parasite Control prioritised the rights of children to survival, protection and development as expressed in the United Nations Convention on the Rights of the Child. The treatment of children exposed to parasites, and a survey in KwaZulu-Natal had commenced to collect baseline information concerning parasitic infections in the province.

The policy on the Health Facility-based Nutrition Intervention Guidelines offered direct and indirect nutrition interventions to vulnerable groups. The Growth Monitoring and Promotion Guidelines for Health Workers resulted in improved records of a child's health, nutritional status and development, and identification, referral and treatment of children who are malnourished or are at risk of becoming malnourished. The Growth Monitoring and Promotion Guidelines for Health Workers promoted the relationships between the health workers and parents/care givers of the children.

The vulnerable groups targeted by the INP includes children less than 60 months, especially malnourished children, pregnant women who are suffering from food insecurity and lactating women. Other groups targeted by the policy measure include persons suffering from chronic diseases of lifestyle or communicable diseases, at-risk older persons<sup>4</sup>, primary school children from poor household's and communities.

Regarding the reasonableness and effectiveness of the policy measures, the National DoH submitted that the Conditions for the use of the INP Conditional Grant Allocation<sup>5</sup> enabled the department to actively initiate and fund activities and projects that would benefit target groups and not just primary school learners. The Primary School Feeding Programme although initiated and funded by the National DoH is however managed and co-ordinated by the National Department of Education.

### ***Provincial Level***

The Provincial Departments of Health (hereinafter DoH), Provincial Departments of Agriculture (hereinafter Provincial DoA) and Departments of Welfare (hereinafter DoW) were also requested to provide information on the policy measures or programmes

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<sup>4</sup> No explanation was given for the phrase 'at-risk older persons'.

<sup>5</sup> This grant replaced the RDP Allocation for the Primary School Nutrition Programme in 1998/1999.

instituted for the progressive realisation of the right to have access to sufficient food. The reasonableness and effectiveness of the policies, and their impact on previously disadvantaged and vulnerable groups was supposed to be outlined. Different provincial departments, such as Agriculture, Health and Welfare, play a role in the provision of the right to have access to sufficient food.

The Western Cape DoH instituted the INP for the provision of the right to sufficient food, which is one of the measures instituted by the National DoH as mentioned above.

The Gauteng DoA instituted the Gauteng Farmer Settlement Programme (GFSP) and the Household Food Security Programme (HFSP). The GFSP was used to enhance the established smallholdings and commercial farmers' contribution to national food security, to promote skills transfer, to improve agricultural production and to promote full utilisation of available land for agricultural purposes'. The HFSP contributed to income generation through projects that promote the production and access of safe, affordable and nutritious food.

The HFSP enabled poor people to meet their household food needs through their own initiative. In this regard, the Gauteng DoA facilitates and creates an enabling environment through technical expertise and grants provision. Special considerations are given to all the vulnerable and previously disadvantaged groups as targeted beneficiaries of the programme. People living in rural areas were not yet benefiting from HFSP. The GFSP also provided extension services to resource-poor farmers in the rural areas. Both the GFSP and HFSP offer training, land and funds for production inputs to beneficiaries.

In KwaZulu-Natal the DoA instituted the Xoshindlala ('chase away hunger') Programme and White Paper on Agriculture as a means of providing the right to have access to sufficient food. The report also acknowledged the need for urban agriculture although no programme has been implemented. According to the report urban agriculture will assist in addressing the food needs of people living in informal settlements. The Department of Welfare (DoW) in KwaZulu-Natal provided information, which was irrelevant to the questions asked. The DoW of KwaZulu-Natal provided information on social assistance and relief.

The Mpumalanga DoW instituted the Poverty Alleviation, Poor Relief and Flagship programmes for the realisation of the right to have access to sufficient food. The report indicated that the programmes were effective in that several families were assisted. Through the Flagship programme, 46 women and 30 children were assisted. The report further mentioned that the Poverty Alleviation Fund funded 52 projects that were focusing on the disadvantaged groups.

The Northern Cape DoH provided information on the breastfeeding programme. This policy was introduced because the first form of food security for a newborn baby is breast milk, and the promotion of breastfeeding was the number one priority for the

department. The department to ensure that all mothers' rights to breastfeed are protected instituted this policy.

The Northern Cape DoH instituted the policy on the Provision of Food Supplements for vulnerable groups. The policy was meant to assist children who are at risk nutritionally as well as pregnant and lactating women. The policy provided pregnant and lactating women and children with access to food supplements in all the Primary Health Care (PHC) facilities and selected hospitals.

Another policy instituted by the Northern Cape DoH was on School Feeding for children from poor families. This policy targeted children from previously disadvantaged schools, which were in rural areas, farms and informal settlements. Through this programme children in the above mentioned schools received a daily nutritious snack.<sup>6</sup> Food gardens were also established in the schools to supplement this snack.

The other measure introduced by the Northern Cape DoH was the Community-based projects for Food Security. The project was established as a means of addressing household food insecurity problems faced by women from poor households. These women were mobilised to set up food production projects as well as other income generating projects.

The Northern Province DoA instituted the policy on Rehabilitation of Non-productive and Under-performing Irrigation Schemes and the departmental policy on Food Security/Community Food gardens. A large part of the province is rural, therefore most policy measures focus on rural households. For people living in informal settlements, the aged and poor households', plans are still being developed to identify strategies and resources to address the needs of these categories. The Northern Province DoA stated that the food security projects and community agricultural development programmes have a special focus on women. The policy measure on Irrigation Schemes addressed the needs of persons with disabilities. The Northern Province DoA also stated that lessons learned from the implementation of this scheme would inform the Department's approaches that will be used with other people and communities. The department had also planned to develop a policy on Youth in Agriculture, which will be completed by March 2000.

The North West DoA reported that its vision and mission statements best illustrate its policy orientation and priorities. The department's vision states that farmers and farming communities need to contribute in sustaining food security and economic growth for the province. The North West DoA will achieve this through providing effective and efficient agricultural development services. The services will assist in broadening access to and promoting optimal utilisation of agricultural land, finance, markets, resources, technology and skills in a sustainable manner.

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<sup>6</sup> No explanation was provided for what the 'nutritious snack' was.

The Eastern Cape DoA and Free State DoA did not provide any information on policy measures instituted to respect, protect, promote and fulfil the right to have access to sufficient food.

## **Commentary**

### ***National Level***

The report from the National DoA was brief and failed to capture all the issues related to the right to have access to sufficient food. For example, the report should have elaborated on the Departments' responsibility within the inter-departmental committee. Furthermore, the Department should have elaborated on the effectiveness and reasonableness of the policy in providing for the right to have access to sufficient food.

Other sources indicate that the National DoA's policy on food security was based on poverty alleviation with specific emphasis on rural development and small-scale farming.<sup>7</sup> This policy is compliant with the commitments of the Rome Declaration on World Food Security and World Food Summit Plan of Action.<sup>8</sup> Although South Africa has been meeting its food consumption requirements via domestic production, between 30 to 50 % of the population has insufficient food or an imbalanced diet due to low incomes. Hence programmes addressing food security are meant to have direct benefits (food support) and indirect benefits (job creation). Small-scale farming is seen as a means of both increasing the availability of safe and nutritious food, as well as broader economic benefits associated with sustainable livelihoods. The National DoA aims to ensure that female-headed households shall have at least equal access to programmes.

Small-scale agriculture was also seen as a means of both creating employment and improving food security amongst previously disadvantaged groups. The DoA intended to increase the number of small and medium scale farmers through initiatives in six areas.<sup>9</sup> The first area was ensuring that agricultural research is more accessible. The second area was about reforming agricultural extension services in terms of advice, technology and training. The third area of concern was on improving accessibility to rural finance, this includes policy and legal guidelines to the Land Bank, and guidelines for the operation and monitoring of a rural financial system. Fourthly to encourage farmer co-operatives and development partnerships aimed at moving away from subsidising farmers' organisations towards self-reliance amongst farmers' organisations that provide technical and managerial support to small-scale farmers via development co-operatives. Fifthly offer special support for small-scale livestock farmers, this would

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<sup>7</sup> National Department of Agriculture. *Agricultural Policy in South Africa. A Discussion Document.* (1998) 7-9.

<sup>8</sup> Commitment Two states "We will implement policies aimed at eradicating poverty and inequality and improving physical and economic access by all, at all times, to sufficient, nutritionally adequate and safe food and its effective utilisation" in the 'Rome Declaration On World Food Security And World Food Summit Plan Of Action' at <http://www.fao.org/wfs/policy/english/96-3eng.htm>;

<sup>9</sup> National Department of Agriculture. *Agricultural Policy in South Africa. A Discussion Document.* (1998) 37-64.

entail range management in communal areas and advisory services for health and welfare of small stock. Lastly the concern was about restructuring agricultural parastatals<sup>10</sup> to stimulate private sector investment in rural areas and improve their value to small-scale farmers.

The transformation of agricultural parastatals was based on three principles. Firstly, assets will be sold at market or productive values to the community with the government becoming a shareholder where communities cannot afford to purchase these assets. Ownership of assets shall only be transferred once a business plan and a partnership between the community and the private-sector investor organisation are in place. Secondly, the restructuring of the agricultural sector must benefit local communities. Finally, unviable projects will be shut down rather than refurbishing projects for potential new owners. Eligibility to purchase will be based on:

- The most directly involved, the most needy, and the community as a whole should benefit.
- Whether the potential beneficiaries have the necessary skills, economic resources and expertise to manage the project.

Whilst the submission by the National DoA centred on increasing food security amongst rural households and the poor, there are other areas that the Department needs to address. Firstly, the National DoA must institute measures to ensure that food is safe at all stages of the food chain.<sup>11</sup> Secondly, details of guidelines and objectives of the Food Policy document should be elaborated upon. For example, the criterion used for food support has to be provided.

The report by the National DoH report demonstrates a good understanding of the right, as well as the challenges that have to be addressed to realise both the right of access to sufficient food and that of basic nutrition for children. Also, the Department should be praised for implementing measures to promote the right to basic nutrition to all South Africans, and not only to children as per constitutional provisions.

Whilst the information provided on policy measures implemented was extensive, the National DoH needs to ensure that the measures instituted achieve the desired objectives. Although preliminary outcomes of the measures were provided, detailed data needs to be gathered on the progressive realisation, reasonableness and effectiveness of the policy measures. The major groups that have benefited from the INP appear to be children and pregnant women. With the INP Conditional Grant Allocation affording the National DoH the capacity to address the needs of all target groups rather than only primary school learners, more measures need to be introduced to ensure that the Department extends the right to other specific target groups.

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<sup>10</sup> There are 400 of these Government subsidised bodies.

<sup>11</sup> SAHRC *International Consultative Conference on Food Security & Nutrition as Human Rights. Conference Proceedings Report. 25-27 March 1999.* (2000) 122.

The National DoH acknowledged that malnutrition in South Africa is manifested in both undernutrition and overnutrition.<sup>12</sup> INP policy measures provided by the Department indicate a thorough understanding of the problems of malnutrition and stunting in children undernutrition. However, the DoH has implemented inadequate measures to address the problem of overnutrition that leads to obesity.

### ***Provincial Level***

Policy measures stated in the provincial reports were merely stated without explaining what they entailed, how they would achieve the objectives and whether they have been successful. Most reports declared that measures instituted addressed the needs of vulnerable and previously disadvantaged groups without explaining to what extent those designated groups benefited. For instance, the Gauteng Department failed to indicate what training it offered for the HFSP and the GFSP and the production inputs thereof. The same happened for KwaZulu-Natal DoA, where it failed to elaborate on how both the Xoshindlala and the White Paper assisted in realising the right of access to sufficient food with respect to the vulnerable and previously disadvantaged groups within the province. Annual reports for other provinces were unavailable, hence additional information could not be found for those provinces.

The annual report from Eastern Cape indicated that the Department of Agriculture and Land Affairs had instituted policies and programmes to address food security. Food security in the province is the responsibility of the Veterinary Services Directorate of the Agriculture and Land Affairs Department and is administered by an interdepartmental task team.<sup>13</sup> The following programmes and projects are aimed at addressing food security in the province:<sup>14</sup>

- Agricultural and Land Reform programmes helped expand the farming sector, improve food production and living conditions for people in rural areas.
- Extension Services<sup>15</sup> were established by the Department together with the Presidential Project Team. A total of 7 Farmer Support Centres were established to facilitate and improve the ability of farmers to increase agricultural production levels and improve the quality of produce. The Department estimated that 28 districts will be served and 3 893 farmers' villages will benefit.
- Through the Grant Assistance Programme R6,4 million of the budget of R9 million provided by the National DoA was utilised to assist small scale farmers. The money assisted 479 small-scale farms, of which 253 were poultry farms and 109 were community gardens.
- Veterinary Services, these included a Primary Health Care Programme and a Tuberculosis Eradication Campaign aimed at ensuring both food security through

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<sup>12</sup> The impact of undernutrition is dealt with in '5. Outcome Measures' below.

<sup>13</sup> Eastern Cape Department of Agriculture and Land Affairs. *Annual Report*. (1999) 5-6 at <http://www.ecprov.gov.za/documents/report/2000/annual.htm>

<sup>14</sup> Ibid, 7-26.

<sup>15</sup> See '1 Policy Measures' for initiatives used by the National DoA to increase the number of small and medium scale farmers.

livestock disease control, and also maintaining the Province's status as one of the major exporters of animal and animal products.

- Specialised programmes for Women such as the Women in Agriculture Organisation and the Women in Agriculture and Development have been established to empower women through training, with the long-term goal of increasing food production at a local and regional level. Memberships of these organisations are over 500 each and members are involved in various projects including vegetable projects.
- Specialised programmes for Youth attempt to get youth involved in agriculture at an early stage, with the aim of eradicating poverty and securing food for children from poor families. There are over 1 600 children participating in 4-H clubs, and the projects entail vegetable, fruit, poultry, homecraft/leather work and piggery.

The Northern Cape DoH failed to explain the procedure followed to establish food gardens and no details were provided on how the Community-based Food Security projects were set up and to what extent the projects were helpful in providing food security were not provided by the Northern Cape DoH.

### **Recommendations**

- When policy or programmatic measures are stated by the departments specific details such as the objectives, what is the measure trying to address and whether it is effective on the intended beneficiaries needs to be clearly outlined.
- The departments need to demonstrate the sustainability of these measures.
- The reports should also reflect on the shortcomings of the stated policy measures, and corrective measures that would be implemented.
- The period in which the policy measures were instituted needs to be clearly stated.
- The reports should reflect all the pertinent issues that relate to the right to have access to sufficient food.
- Reasons should be provided for failure to respond to some of the questions asked in the protocol.

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DoA and the National DoH are amongst the bodies that are responsible for the monitoring and implementation of the right to adequate food.

In terms of the report from the National DoA, there were no specific legislative measures instituted for the right to sufficient food because existing legislation addresses this right. The Department asserts that passing legislation has problematic implications for the state if the right to food is not realised.

The Directorate for Nutrition in the National DoH has reported that there are no legislative measures instituted for the right to sufficient food.

### ***Provincial Level***

The reports from the provinces indicate that majority of the provinces have not instituted legislative measures during the period under review. The provinces Eastern Cape, Free State and North West did not submit their reports. Gauteng Province made reference to Gauteng Farmers Settlement and Household Food Security Programmes approved by Gauteng Legislature. Mpumalanga Province made reference to Social Assistance Act 59 of 1992.

### **Commentary**

#### ***National Level***

International human rights law recognises the right to food or sufficient nutrition.<sup>16</sup> It is noted with content that the National DoH interprets the right to sufficient food from a broader concept of nutrition. However, the report does not provide sufficient information as requested in the protocols. All questions were uniformly answered by indicating that the Directorate Nutrition has not instituted any legislative measures. The whole report is not useful for the evaluation process.

The DoH has a central role to play in ensuring the realisation of the right to sufficient food. There are other responsibilities of the Department, which are inherently linked to the right to food. According to Devenish,<sup>17</sup> “easy access to clean and hygienic water, by its very nature, is a critical factor in relation to both nutrition and personal hygiene, therefore without it, the right to food is worthless.” All these factors constitute health and well being of the human person. The Department is supposed to play a leading role, considering the inherent link between its responsibilities. The Department has also omitted to reflect on the primary school nutrition program<sup>18</sup> as provided in the National Health Act of 1998.

The quality of the report is poor because there are no answers provided for the protocol questions, except the restatement of those questions. This points out that there is lack of appreciation and comprehension of the right to sufficient food. The Directorate for Nutrition is supposed to operate within a constitutional framework that warrants the passing of legislation that will advance the progressive realisation of the right to adequate food.

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<sup>16</sup> See, *inter alia*, Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights.

<sup>17</sup> See GE Devenish. *A Commentary on the Bill of Rights* (1999) 366.

<sup>18</sup> In the introduction of the report, the right of every child to basic nutrition is confirmed but it is not deliberated on what measures were taken to progressively realise this right.



The information provided in the report from the National DoA is not sufficient in terms of the questions in the protocol. Since the Department maintains that existing legislation is sufficient to address the right to sufficient food, the report should have explained which laws those are, and what impact they have had on the progressive realisation of the right. Despite the existence of these laws, the Central Statistical Services<sup>19</sup> has estimated that about 2.5 million South Africans are undernourished, particularly the previously disadvantaged groups and other groups that are especially vulnerable. Mere mention that there are laws addressing the problem does not help the monitoring process and therefore defeats the constitutional mandate according to Article 184(3) of the Constitution.

The protocol questions were in the main not answered. For example, information on special considerations for vulnerable and previously disadvantaged groups was not provided. It is also not clear from the report whether there was progressive realisation of the right occasioned by the alleged existing legislative measures. The assertion that passing legislation will result in problems for the state is unfounded. The constitution does not require immediate realisation, but a progressive realisation based on the availability of resources. The only way in which the Department can experience problems is when it does not take reasonable measures as required by the constitution.<sup>20</sup>

The constitution requires the institution of measures to *respect, protect, and promote* and *fulfil* all the rights in the Bill of Rights. Therefore, those legislative measures that are referred to as sufficient to address the right to sufficient food should account for these four core minimum obligations. If the report is silent about those legislative measures, then it cannot be determined whether there are measures that are sufficient in meeting the constitutional obligations. The report could have mentioned, for example, the Land Bank Amendment Act 1998, which enables previously, disadvantaged people to apply to the Land Bank for loans to assist them in planting crops.

The quality of the national report is poor on account of its failure to provide detailed information. The poor quality also depicts poor understanding of the right to sufficient food. The State is obliged to take specific legislative measures to realise this right, not just some legislative measures that are deemed to be addressing the right to sufficient food. The obligation to provide access to food means that the state must ensure the production and maintenance of a sufficient supply of food so that access to food is possible.

### ***Provincial Level***

It is disconcerting to learn that provinces are generally not committed to the realisation of the right to adequate food. This is shown by failure of the provinces to submit their reports. According to the National Action Plan for the Promotion and Protection of Human Rights, the Eastern Cape Province, for example, is one of the areas with acute

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<sup>19</sup> See the October Household Survey, Central Statistical Services (1994).

<sup>20</sup> Section 27(2) of the Constitution, Act 108 of 1996.

poverty, with a poverty rate of 70%. This presupposes a massive scarcity of food in the province. As such, the provincial government is faced with a mammoth task of improving the conditions in the province. This is particularly disturbing when it has been stated that along with the Northern Province and the Eastern Cape, the Free State Province, with a stunting rate of 28.7%, is one of the Provinces with the highest food insecurity and malnutrition.<sup>21</sup> Failure to submit a report indicates that there is no sufficient understanding and appreciation of the right to sufficient food. It also constitutes a violation of a constitutional obligation to provide information to the South African Human Rights Commission in terms of section 184(3) of the Constitution.

The GFSP and HFSP programmes, as mentioned in the Gauteng Report, are not legislative measures, despite the fact that the Provincial Legislature has approved their implementation. They are policies instituted by the Department. The Constitution requires not only policy measures to be instituted, but also legislative and other measures. Since GFSP and HFSP do not have the force of law, they cannot execute the protective constitutional obligation for the protection of the right.

There is clearly a need to address the poverty and malnutrition prevalent in the province by legislative measures. The National Action Plan stresses the need to address the needs of those who have been deprived of access to food for children who are stunted by malnutrition and children who die of hunger.<sup>22</sup> It is the primary duty of the State to create an enabling environment through which individuals are able to secure their own food needs. The provincial governments are not absolved from this constitutional duty. The national legislation should be seen, as setting a standard that should be followed by the provincial departments depending on their various regional backgrounds. It is unreasonable to think that national legislation can uniformly address provincial problems.

## **Recommendations**

- The departments should comply with the protocol as a matter of law. The monitoring process is a constitutional mandate, and therefore should be complied with.
- The departments should play an integral role in the realisation of the right to sufficient food and other inherently related services such as clean water, healthy environment and general hygiene.
- The departments should develop specific legislative measures for the realisation of the right to sufficient food. The challenges regarding the right to sufficient food as outlined in the National Action Plan should as well be considered when laws are made.
- The monitoring process is a constitutional mandate, and therefore should be complied with.

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<sup>21</sup> South African Situation Analysis – South African Government Department of Health – International Consultative Conference on Food Security and Nutrition as Human Right – Conference Proceedings Report p. 60

<sup>22</sup> National Action Plan for the Promotion and Protection of Human Rights p. 109

- The departments should in future provide details about all those laws that deal with the right to sufficient food. There should also be some explanation as to why such laws are regarded as sufficient to address the right to sufficient food. This will also enhance the quality of the report.
- The right to food should be interpreted as a right on its own as provided in the constitution. The fact that it has been grouped with other rights in section 27 does not make it any less important. The departments should also reckon the challenges outlined in the National Action Plan for the Promotion and Protection of Human Rights. The government should consider the adoption of a framework law as an instrument in the implementation of the national strategy concerning the right to food. This framework should outline its purpose, set targets and goals (benchmarks) to be achieved, as well as means and timeframes for the achievement of those targets.<sup>23</sup>
- The State should therefore design a proper agricultural production laws and regulations that are necessary for enforcement.
- The right to sufficient food is inherently linked to other rights such as clean water and social assistance. Failure to protect the right to sufficient food will affect the realisation of these other rights.

## **MONITORING**

### **Summary of Responses**

#### ***National Level***

The government departments were requested to provide information on the minimum standards established to define the right of access to sufficient food. The minimum standards were supposed to be on the specified minimum consumption per day and the minimum level of income needed to purchase this much food. The Departments were also required to provide the statistics collected and how these statistics were collected.

The National DoA in responding to the question on the minimum standards established to define the right to sufficient food stated that according to the Food Policy 2 000 kcal/day<sup>24</sup> was the minimum consumption per day.

The DoA responded to the question on statistics collected to monitor the progressive realisation of the right to food, by stating that data from Statistics South Africa and those by the Anti-Poverty Study Report from the office of the President were used. Data collected included information on hunger maps, household income, rural and urban job

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<sup>23</sup> This is one of the general comments adopted by the Committee on Economic, Social and Cultural Rights at its twentieth session in May 12, 1999. Though South Africa is not a party to the Covenant on Economic, Social and Cultural Rights, the comments made by the committee are instructive for the progressive realisation of the right to sufficient food. For further discussion, see General Comment No. 12 (1999) as adopted by the Committee on ESCR regarding Article 11 of the Covenant.

<sup>24</sup> One kilocalorie is equal to approximately 4,2 kilojoules.

opportunities, and food price indices. Such data is collected through surveys and secondary reports.

Information provided by the National DoH indicated that the household members have access to food needed for a healthy and active life. The minimum standard for dietary needs was defined as two thirds of the recommended dietary allowance for nutrients. The report indicated that two thirds of the recommended energy intake are the minimum standards.

**Table 4.1: Specified minimum consumption per day**

<b>Category (Years)<sup>25</sup></b>	<b>Average energy allowance Kcal/day</b>
Infants 0.0 – 0.5 0.5 – 1.0	650 850
Children 1-3 4-6 7-10	1,300 1,800 2,000
Males 11-14 15-18 19-24 25-50 51+	2,500 3,000 2,900 2,900 2,300
Females 11-14 15-18 19-24 25-50 51+	2,200 2,200 2,200 2,200 1,900
Pregnant Women 1 <sup>st</sup> trimester 2 <sup>nd</sup> trimester 3 <sup>rd</sup> trimester	+0 +300 +300
Lactating Women 1 <sup>st</sup> 6 months 2 <sup>nd</sup> 6 months	+500 +500

Other indicators used by the Department as minimum standards and criteria to monitor the right to sufficient food include the following:

<sup>25</sup> The Department did not indicate whether the category falls under weeks, months or years. The Commission has therefore used its discretion to the infant category and has categorised it as years.

- Number of children under two years of age receiving growth monitoring and promotion at least four times per year<sup>26</sup>
- Number of infants who are exclusively breastfed was from 4-6 months whilst infants of 12 months are still breastfed.
- Number of children under five years of age inflicted with stunting<sup>27</sup> and wasting.
- The essential elements of nutrients and vitamins including Vitamin A, iron and iodine; and
- The number of trained personnel.

The data collected was obtained through Primary School Feeding Projects and Community-Based Nutrition Development Projects including Poverty Alleviation Projects. The DoH also used financial indicators such as expenditure versus cash flow plan and budget, Integrated Nutrition Programme (INP) and Reconstruction and Development Programme (RDP) indicators to monitor progressive realisation of this right.

The INP was used to collect specific indicators, which included the total number of primary schools, and those targeted for school feeding. The Community-Based Nutrition Development Projects collected data on specific indicators such as the total number of targeted vulnerable communities where projects were operated. Other indicators collected were the total number of community-based nutrition development projects planned and the beneficiaries targeted and reached by these projects.

The RDP specific indicators used by the Department were the estimated number of jobs created in terms of standard labour practices and the number of compensated and non-compensated community members participating in primary school feeding intervention activities. Other RDP indicators used included the number of micro, small and medium product and/or service provider enterprises contracted for primary school intervention activities.

Information on primary school feeding projects and community-based nutrition development projects was collected through questionnaires. These are completed and collated at different levels by implementing agencies such as project committees, schools governing bodies, NGOs/CBOs, district, regional or provincial staff of provincial DoH. The report indicated that for monitoring and planning purposes, information is forwarded to the National DoH.

### ***Provincial Level***

The DoA in the Eastern Cape and Free State, the Mpumalanga DoW and the Department of Health and Welfare in the Northern Cape did not provide information for the monitoring section on the right to sufficient food. The Northern Province DoA reported that it relies on data from the DoH (DoH). The statistical data used in the

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<sup>26</sup> The DoH did not indicate how it monitors growth and promotion.

<sup>27</sup> Stunting: height for age under 2 standard deviations of the norm.

province was from the annual agricultural production levels, whereas 'yield data' was collected by extension services. The DoA North West reported that it did not have standards and criteria used to monitor the right to food. The Western Cape DoA calculated the minimum consumption of Kcal/day by using information from recommended dietary intakes for ages, sex and activity. The level of income is calculated annually using the minimum households' subsistence level.

The Gauteng DoA stated that there were no specified minimum requirements to indicate when the right to have access to sufficient food was realised. Poor households<sup>28</sup> have access to safe and nutritious food. Financial input needed to start the group projects was R3 000 per beneficiary. The Gauteng DoA indicated that data is collected from projects and weekly, monthly and quarterly progress reports. Departmental officials who have direct contact with beneficiaries collect these statistics. Officials are responsible for compiling weekly, monthly and quarterly reports.

The DoA in KwaZulu-Natal reported that the specific consumption per day was dependent on the age and gender of a person. The minimum income needed to purchase this much food was defined nationally as the "household subsistence level"<sup>29</sup> which was the minimum acceptable income for a family of 5. For Data collected for monitoring the right to have access to sufficient food, the Department stated that Key Performance Indicators (KPI) are in the process of being defined which will allow monitoring of achievement of food security.

## **Commentary**

### ***National Level***

The report from the National DoA was poor in that a detailed account on the minimum standards established was not provided, implying that measures for monitoring the right of access to sufficient food were not in place. The DoA should have provided specific details in terms of the food groups/ nutrients, which are essential for a 2 000 kcal/day diet. The DoA should have indicated the major nutrients that make up 2 000 kcal/day to ensure proper development of the body. Nonetheless, other sources reveal that the daily value for carbohydrates used in nutritional labelling was 60% of the total calories, which translates to 300 grams per day for a 2 000 kcal/day diet.<sup>30</sup>

The DoA did not provide information on the minimum income level required to purchase this minimum food. In its report the DoA acknowledged that the amount of R800 per month used by the labour movement is regarded as the average minimum wage required to purchase 2 000 kcal/day. It was also not indicated in the submission whether the amount provided was sufficient for each household to purchase food. Where this amount was deemed inadequate for the vulnerable and previously disadvantaged

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<sup>28</sup> The Gauteng DoA did not indicate what it means by 'poor households'.

<sup>29</sup> The Kwa-Zulu-Natal DoA did not indicate what it means by 'household subsistence level'.

<sup>30</sup> Nutrient information at <http://www.nutrition.org/nutiinfo/content/carb.shtml>. 1. The website was visited on the 10/05/2000.

groups, the DoA ought to have provided information on alternative measures and activities instituted in order to ensure that vulnerable groups also enjoy the right to sufficient and healthy food.

The Department failed to indicate how it monitors its progressive realisation of the right of access to food, because statistics provided to monitor progress on this right were not defined in detail. The report also did not indicate how the Department assesses the needs of the vulnerable groups. This should have been reported on in order to determine whether the vulnerable groups are taken into consideration. The Department was therefore expected to provide a complete report on the right to sufficient, nutritionally adequate and safe food and its effective utilisation.<sup>31</sup>

The National DoH's report was adequate in that the Department provided a thorough account of the measures taken for the progressive realisation of the right to food. The format of the protocol has been adhered to. The report indicated the specified minimum consumption of 2 000kcal/day, it failed to mention if this was adequate for an adult, a child or both. With regards to the 1<sup>st</sup> trimester for pregnant women no figure was provided on the average energy intake. The National DoH did not indicate the minimum level of income needed to purchase this food.

The statistical data collected by the National DoH was not sufficient in terms of providing a detailed explanation on how information was used to monitor the progressive realisation of the right of access to food. Various statistics and relevant information on this right has been collected, but the National DoH failed to indicate how it hopes to achieve progressive realisation of the right to sufficient food. The National DoH did not indicate how the vulnerable groups mentioned would benefit from the programmes mentioned in the report.

The National DoH also did not define some of the terms and abbreviations used in the report, such as SD thus some statements were difficult to understand. The National DoH should have reported on how it plans to monitor progressive realisation on the right to sufficient food.

### ***Provincial Level***

Most of the provincial Departments failed to provide minimum standards used to monitor the right to have access to sufficient food. The problem about the lack of information stems from the unclear mandate as to which Department is actually responsible for monitoring the provision of the right to food. The information provided by Gauteng, KwaZulu-Natal and Western Cape Departments indicated that the Departments do not collect the same statistical data, as a result standards used were different for the provinces.

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<sup>31</sup> FAO Agriculture and Economic Development Analysis Division, Economic and Social Development. Implementation of the World Food Summit Plan of Action. (1996) 24 in FAO of the United Nations. ***The Right to Food in Theory and Practice***. (1998).

## **Recommendations**

- The provincial departments should ensure that the reports are adequate and detailed enough to allow for proper assessment of the situation in the provinces concerning the right to food.
- Development of common standards and criteria in defining and monitoring the right to have access to sufficient food is necessary and important in order to assess progressive realisation of the right to food.
- Where additional information is available from the departments, it should be provided to assist in the evaluation process.

## **BUDGETARY MEASURES**

### **Summary of Responses**

#### ***National Level***

The departments were requested to provide information on the budgetary allocation for the resources instituted to respect, protect, promote and fulfil the right of access to sufficient food.

The National DoA reported that information on the budget was not available in the format requested in the protocols. However, the Department's expenditure was geared towards income generation, increased production, enhancement of productivity, increasing of competitiveness and facilitating entry into agricultural markets which all have a direct impact on food.

The National DoA further stated that budgetary allocations are targeted at youth, women and people who earn below a certain income level, people who possess assets below a certain level, and produce less than a certain quantity. The levels and assets were not explained.

The National DoH reported that budgetary measures on the right of access to sufficient food would be in respect of the Integrated Nutrition Programme (INP), Conditional Grant Allocation<sup>32</sup> and the Poverty Alleviation Projects.

The total Conditional Grant Allocation for 1998/99 was R525, 7 million of which 89% (approximately R465, 9 million) was allocated to projects for school feeding. Of the total amount allocated, R331, 6 was spent at R68.00 per capita. The allocation to the school-feeding programme amounted to 8.22% of the total departmental budget. This project is managed and co-ordinated by the Department of Education and in 1998 reached 5.2 million children in 14 000 schools nation-wide.

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<sup>32</sup> The Conditional Grant Allocation replaced the RDP Allocation for the Primary School Nutrition Programme in the 1998/1999 financial year.



Note should be taken that although in the previous financial year the Conditional Grant Allocation for the Integrated Nutrition Programme (INP) was less (R 496 million), the entire amount was allocated to the school feeding projects. However approximately R134 million was not spent for the reporting period. Reasons why the total allocation was not spent were not provided.

For Poverty Alleviation Projects R28 million was allocated for 1998/99 with R2,4 million going to actual projects. This allocation comprised 0.04% of the total departmental budget.

The National DoH also reported that the budgetary measures target women, children, the aged, and people living in rural areas, informal settlements and the disabled. The National Directorate of Nutrition was in the process of compiling geographical statistics on the provinces to establish areas of greatest need. This information about the population and poverty gap would be used to allocate the budgetary provisions for the provincial Health Departments.

### ***Provincial Level***

The Eastern Cape DoA did not provide any information on the budget allocation for the right to have access to sufficient food. The report only acknowledged that the Department was responsible for food security and self-sufficiency. There was no response on the right to have access to sufficient food from the Departments of Agriculture, Social Welfare and Health of the Free State province. The Gauteng Department of Agriculture, Conservation and Environment did not respond to the questions on budgetary measures instituted for the right to sufficient food. The Mpumalanga DoW did not provide information on this section but referred the Commission to the Department of Health of the province.

The KwaZulu-Natal DoA reported that the main source of funding is the State Expenditures' Provincial Budget allocation. For other sources of funding there are grants which the Department received from the National DoA. The funds received were as follows:

**Table 4.2: Grants received from the National DoA by the KwaZulu-Natal DoA**

<b>Year</b>	<b>Amount</b>	<b>Expenditure</b>
1996 - 1997	R56.2 million	R31 million for drought relief carried over from 1995/1996 R19.7 million for flood relief R5,5 million for special projects

For the year under review no money was received from grants administered by the National Department. The KwaZulu-Natal DoA received extra funds from the KwaZulu-Natal Provincial Treasury as a conditional grant for the Xoshindlala ('Chase away hunger') programme. This money will be distributed as follows:

**Table 4.3: Conditional Grants from the KwaZulu-Natal Provincial Treasury**

Year	Amount
1999 - 2000	R46.7 million
2000 - 2001	R39.6 million
2001 - 2002	R56.4 million

On spending for the realisation of access to food supplies the Department provided the following information:

**Table 4.4: Spending to Realise Access to Food supplies**

Year	Spending in Rands to realise access to food supplies	Allocation per capita in Rands after adjusting for inflation	Allocation as a % of the departments spending
1996 – 1997	309 541 000	32.36	100%
1997 – 1998	343 998 000	35.96	100%
1998 – 1999	243 264 000	25.43	100%
1999 – 2000	337 082 000	35.24	100%
2000 – 2001	361 962 000	37. 81	100%

Based on a family size of six, the Department estimated that there are about 400 000 rural households in KwaZulu-Natal that make a living partly from agriculture. The majority of these households are emerging farmers. A considerable amount of money amounting to 57.8% of the expenditure was spent on emerging farmers. Whereas 35% was spent on emerging and commercial farmers and only, 7.2% of the money was spent on commercial farmers projects.

**Table 4.5: Budget Allocation for the Department of Welfare and Population Development in KwaZulu-Natal**

Year	Spending in R 000's to realise access to food supplies	Allocation as a % of the department's spending
1996 - 1997	5 050	0.15%
1997 - 1998	4 500	0.12%
1998 - 1999	1 724	0.04%
1999 - 2000	5 750	0.15%
2000 - 2001	5 862	0.15%

With the assistance of the district offices the Department is able to provide people that are in dire need of food supplies with food vouchers that can be used to purchase basic food that will sustain them over the immediate period in question. However such assistance is reportedly extremely limited due to the lack of funds as displayed by the table above. The report stated that demand is greater than the supply and as such assistance is given very selectively, based on the funds available.

The Northern Cape Department of Health and Welfare provided information on the departmental spending on the right to food as summarised in the table below:

**Table 4.6: Budgetary Allocation for the Right to Food**

<b>Year</b>	<b>Spending to realise access to food supplies</b>	<b>Allocation as % of department's spending</b>
1998 - 1999	R13 279 000	3.7%
1999 - 2000	R10 435 000	2.9%
2000 - 2001	R10 096 000	2.7%

The North West Department of Agriculture, Conservation and Environment provided information on the departmental spending on the right to food as summarised in the table below:

**Table 4.7: Budgetary Allocation for the Right to Food**

<b>R's (actual and projected)</b>	<b>Spending to realise access to food supplies</b>	<b>Allocation per capita after adjusting for inflation</b>	<b>Allocation as a per cent of the GDP</b>	<b>Allocation as a per cent of the Department's spending</b>
1996-1997	10 078 736	2 882	45,1	2,7%
1997-1998	21 132 353	5 855	93,0	7,0%
1998-1999	26 997 383	7 249	113,8	13,8%
1999-2000	17 228 862	4 626	72,7	8,1%
2000-2001	6 000 000	1 611	22,7	2,7%

The budget allocations were meant specifically for the most vulnerable and previously disadvantaged. The aim is to redress the imbalances of the past. All the Field Service units of the Department target all people living in rural areas, the categories include most of the vulnerable and previously disadvantaged groups. The North West DoA has a special unit named the Kgora Institute, which was created to deal specifically with women, youth and food security, especially for poor households.

The information on the budget allocation provided by the Northern Province DoA, Land and Environment in the table below, was meant for agriculture (food included), land and environmental projects.

**Table 4.7: Budget Allocation for the Northern Province DoA, Land and Environment**

<b>Year</b>	<b>Budget allocation in R' millions</b>	<b>Personnel cost for the whole department in R millions</b>
1996 - 1997	R540	R258
1997 - 1998	R486 (plus Environment which is R74)	R347
1998 - 1999	R436 (plus Environment which is R80)	R413
1999 - 2000	R448 (plus Environment which is R85)	R450
2000 - 2001	R537 (anticipated)	R460 (estimated)

With regards to the disadvantaged and vulnerable groups the Department reported that due to the rural nature of the province, it has mainly focused on the rural households. Food security projects and community agriculture development programmes have specifically focused on women. The disabled are catered for through an irrigation scheme, which assists persons with disabilities.

The Western Cape Department received conditional grants from the National DoH together with the provincial allocation. The budget catered for Integrated Nutrition Programme activities and did not deal specifically with food. The information provided on the budget allocation was for the year 1999/2000 and it showed that conditional grants amounted to R27,5 million. Provincial allocation for the same period was R21,4 million and funds for Poverty Alleviation were R2,2 million. In terms of the measures taken to progressively realise the right to sufficient food for the disadvantaged and vulnerable groups, the report said that the policy instituted benefited the poor who have limited access to food.

The Free State Departments of Agriculture, Social Welfare and Health, which were sent the protocol on the right to food, did not respond.

## **Commentary**

### ***National Level***

The DoA did not give an adequate response to the questions asked on budgetary measures. The protocols did permit the Departments to give additional information. The Department should have provided the information using their own format as suggested in the protocol.

Information on budgetary measures taken in support of the activities mentioned such as the enhancement of productivity, increasing of competitiveness and facilitating entry into the agriculture markets would have been useful in terms of assessing the provision of the right to have access to sufficient food. The development of sustainable agriculture is

integral to food security. The DoA should have reported on whether any measures have been taken in these respects and the impact of these measures on the realisation of the right to have access to sufficient food.

Although the Department's budgetary policies were said to target certain vulnerable groups, no explanation was provided on what income or level of production entitles an individual to food security and assistance in terms of facilitating entry into the agricultural markets.

Other sources stated that the DoA reported that it recognised the importance of incomes to food security and refers to the deregulation of the domestic market, improvement of efficiency in the agricultural systems, from production to storage, to processing and distribution as some of its main goals. This would make food more affordable and maximise agriculture's direct contribution to employment, enabling more people access to income through jobs, which was fundamental for food security, especially for previously disadvantaged households.<sup>33</sup> The Department was further able to use this trade policy as a tool for attaining food security now that there has been a fundamental change in the market. Changes in trading policies have enabled the country's production system to be more efficient and has resulted in the reduction of the general level of food prices.<sup>34</sup>

The National DoH has given a reasonable response on budgetary measures taken to ensure access to sufficient food, especially since it reported within the context of improving the nutritional status of people in the country. It however failed to report on other aspects that require attention such as nutrition for non-school going children and for older children and adults particularly the homeless, those in informal settlements and rural areas, pregnant and lactating mothers and the elderly who are not at risk. The Department should have also reported on the budgetary measures that have been instituted to combat malnutrition in children and nutritional deficiencies in general.

### ***Provincial Level***

The Eastern Cape Department claimed to be responsible for food security and self-sufficiency, it failed to provide information on the money spent on those programmes. It is disconcerting to note that the Department had a responsibility of providing food security and self-sufficiency and yet did not have a budget for it.

Information from the Gauteng annual report indicated that the Department spent approximately R5, 8 million on the Household Food Security and Poverty Alleviation projects.<sup>35</sup> This money was spent on food security, income generation, agricultural training, improving access to safe nutrition, and making food prices more affordable for

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<sup>33</sup> SAHRC *International Consultative Conference on Food Security and Nutrition as Human Rights – Conference Proceedings Report 25-27 March 1999*. (2000) 67.

<sup>34</sup> Ibid.

<sup>35</sup> Gauteng Department of Agriculture, Conservation and Environment, *Annual Report*. 1999.

about 180 000 households.<sup>36</sup> No explanation was given to indicate the way in which the projects improved access to safe nutrition. Most of these projects mainly targeted women, the youth and the disabled. Information on the extent of the involvement and benefit for women, the youth and disabled in these projects was not provided.

From the information provided the KwaZulu-Natal DoA showed a decrease of about 10 % in the budgetary allocation for the year 1998/1999. No reasons were provided for the reduction in the budget. The last column in table 4.4 shows that there was a misunderstanding on the part of the officials who were responding to the protocols. It is not clear how much money from the total departmental budget was spent for food. The KwaZulu-Natal DoW should have provided more details on the criteria used to award people with food vouchers and the system used to distribute such vouchers.

Although the Northern Cape Department responded to some of the questions in the protocol, the report did not give a comprehensive account on how the vulnerable and previously disadvantaged groups benefited from the budget allocated for the realisation of access to food supplies. The budgetary provision of access to food consumes a small part of the Departments' budget (3.7%), thus signifying that it was not a major expenditure item for the Department. Other reports indicated that an amount of R350, 7 million was made available for health services, which represented an increase of 8% on the corresponding amount for 1997/98. Included in the allocation for 1998/99 was money to fund Primary School Nutrition Programmes (R9 million).<sup>37</sup> The information provided in the report did not indicate whether Primary School Nutrition Programmes are included in the budgetary allocation.

The DoA of the North West reported that the Kgora Institute was founded in order to help women and youth from poor households. No explanation was provided as to how this institute was going to assist in providing food security. Other sources indicated that an amount of R13, 4 million had been set aside for the establishment of five Community Production Centres in the rural areas.<sup>38</sup> The centres would offer users training on micro-enterprises, production facilities, raw materials (fresh produce) and post start-up counselling<sup>39</sup>.

The Western Cape Department's response failed to provide a breakdown on the budgetary allocation for the right to have access to sufficient food. There was no clear indication of how much money was allocated for providing access to food. The Department should have provided information on the extent to which the programmes assisted women and people with disabilities. A large portion of the Department's budget was used for personnel rather than on actual projects.

Most of the responses from the provincial departments provided insufficient information and some provinces such as the Western Cape provided information for the year

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<sup>36</sup> Ibid.

<sup>37</sup> [http://www.finance.gov.za/b/budget\\_98/prov/northcape/speech.htm](http://www.finance.gov.za/b/budget_98/prov/northcape/speech.htm), site visited 09/05/2000.

<sup>38</sup> [http://www.finance.gov.za/b/budget\\_98/prov/noweprov/speech.htm](http://www.finance.gov.za/b/budget_98/prov/noweprov/speech.htm), site visited 12/05/2000.

<sup>39</sup> No explanation was provided as to what post start-up counselling is.

1999/2000 only. The reasons for the failure to respond adequately were not provided by any of the Departments.

## **Recommendations**

- The departments must collate information on budgetary allocation for the right to sufficient food separately from other programmes for them to be able to respond adequately.
- The departments need to provide the % of budget allocation for food as compared to the total departmental budget. This would show whether food security consumes a major part of the budget or not.
- Reasons for variances in the budget allocation need to be provided.
- Mechanisms used to decide on which disadvantaged or vulnerable group will receive assistance need to be outlined.
- The extent to which the disadvantaged and vulnerable groups are positively affected by the budget allocation needs to be mentioned.
- Measures taken to provide food for the homeless, non-school going children, older children and homeless adults need to be stated.
- The Northern Province DoA needs to distribute the budget equally for programmes and personnel.

## **OUTCOME MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DoA did not provide any information for the questions posed in the outcome section of the protocol on the right to have access to sufficient food. The report stated that such detailed information was not available. The National DoH acknowledged that there was an estimated 39 % of the population vulnerable to food insecurity. The National DoH reported that a survey was conducted using indicators on food security. However the report was embargoed, and would only be made available later in the year. The National DoH provided only information on the number of families/persons assisted with access to food supplies. The information provided was in respect of 17 community-based nutrition pilot projects, which were implemented during the financial year. This information indicated that about 183 women, 215 children under the age of two years, 253 pre-schoolers and 4,9 million primary school learners were assisted with access to food supplies.

#### ***Provincial Level***

The Eastern Cape, Free State, and Western Cape Department's did not provide information as requested in the protocol. Similarly no responses were received from the

Departments in Mpumalanga on the outcomes section. The DoA in KwaZulu-Natal did not provide any information but stated that plans were underway to include families assisted with food supplies by the Department of Welfare and persons suffering from malnutrition from the Department of Health into the Department's Xoshindlala programme on a geographical basis.

The Gauteng DoA indicated that there were 141 Household Food Security (HFS) projects, each involving 30 direct beneficiaries on average.<sup>40</sup> The HFS projects were directed at urban black residents of Gauteng. The number of vulnerable groups assisted by the HFS projects was 60 women; 35 men; 5 youth and 2 people with disabilities.

In the Northern Cape Department approximately 160 000 people (about 20% of the population) were suffering from diseases caused by malnutrition. In response to the number of persons assisted with access to food supplies, the Department reported that 150 000 people were assisted for the reporting period of 1998/1999.

The Northern Province DoA said that other Departments, such as Health or Welfare should provide the information required, whereas the North West DoA did not respond to the protocol on the right to access to sufficient food. No explanation was given for non-submission.

## **Commentary**

### ***National Level***

The lack of information by the National DoA was unjustifiable, as the information required from the protocol was fundamental in assessing whether the right to have access to sufficient food was being realised. It is not clear how the Department monitors delivery of programmes in the absence of such information.

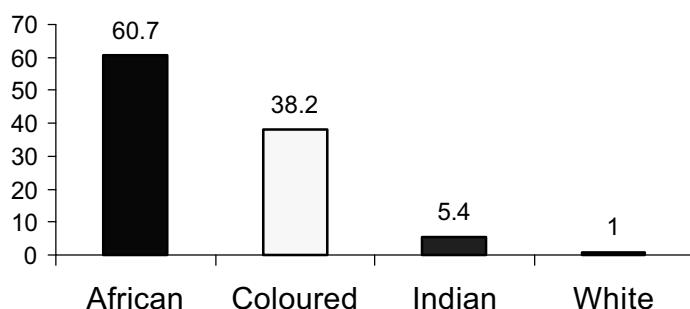
Whilst service delivery in apartheid South Africa was based on racial criteria, with the consequent perpetuation of socio-economic disparities extending to gender and geographical location, the current system was specifically directed at targeting those previously under-served groups. Hence specific information was requested on previously disadvantaged racial groups, female headed households, and rural people. It was difficult to comprehend how the Department aims to target these groups without being able to provide suitable indicators on the profiles of these groups. Regarding income levels for example, other sources indicate that poverty levels in South Africa still have a strong racial bias. The report on Poverty and Inequality in South Africa found that living standards are still closely related to race:

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<sup>40</sup> See '1. Policy Measures' above for details on the Household Food Security Projects/Programmes.



Figure 4.1: Poverty Rate (as a %) by Population Group<sup>41</sup>



This situation is worsened by differences in poverty between the urban and rural populations. Half of the population live in rural areas, 71.6 % of rural people live in poverty, compared to the overall poverty rate of 49.9 % for the entire country.<sup>42</sup> Food insecurity is closely related with poverty and poverty eradication is seen as being essential in improving access to food.<sup>43</sup>

Despite the constitutional provisions for the right to food, vulnerability to food insecurity continues to impact on the lives of many South Africans. Approximately 14 million South Africans are vulnerable to food insecurity. It was estimated that about 2.5 million South Africans are malnourished. Food insecurity and malnourishment was highest in provinces with large rural populations, and also amongst the African population.<sup>44</sup> Information presented at the International Consultative Conference on Food Security and Nutrition as Human Rights in 1999 included:<sup>45</sup>

- Approximately 53% of households earning less than R600 went hungry at least once a month.
- In urban areas, between 20%-26% of people reported experiencing hunger a few times a month in 1998; this response was 40% in informal settlements; in some urban areas, 5% of respondents report hunger on a daily basis.
- In rural areas, 45% of the population went hungry at least once a month and 17% at least once a week.
- It was estimated that 55 000 white farmers owned 102 million hectares of land, compared to 17 million hectares shared amongst 1.2 million micro farmers in the former homelands.

Although more than one in three South Africans are susceptible to food insecurity, the DoA has not provided an adequate submission on the rights concerning food. The brief

<sup>41</sup> J May (ed.) *Poverty and Inequality in South Africa* (1998) 27.

<sup>42</sup> Ibid. 29.

<sup>43</sup> FAO. *Rome Declaration On World Food Security And World Food Summit Plan Of Action*. (1996) at <http://www.fao.org/wfs/policy/english/96-3eng.htm>

<sup>44</sup> SAHRC *International Consultative Conference on Food Security & Nutrition as Human Rights. Conference Proceedings Report. 25-27 March 1999*. (2000) 60.

<sup>45</sup> SAHRC *International Consultative Conference on Food Security & Nutrition as Human Rights. Conference Proceedings Report. 25-27 March 1999*. (2000) 76-77.

situation analysis presented above suggests that food security is far from being realised.

The information provided by the National DoH on outcome measures was inadequate, and failed to comply with its obligations with respect to the right to have access to sufficient food. No indication was given as to how the estimation of 39% of South Africans being vulnerable to food insecurity was arrived at. The Department failed to provide information on the number of children who are vulnerable to food insecurity, and the number of children dependent on the Primary School Nutrition Programme (PSNP) to meet their minimum daily calorie requirements.

Other sources indicated that chronic malnutrition has resulted in the stunting of growth for one in four children under the age of six years in South Africa. Stunting of children from the poorest 20 % of households was estimated at 38 %, compared to the national figure of 23 %.<sup>46</sup> Indicators on the causes of malnutrition need to be researched by the DoH to maximise the effectiveness of programmes like the PSNP that aim to address food security and nutrition.

Interestingly, the DoH indicated that the minimum calorie consumption per day varied between 650 to 3 000 kilocalories depending on age.<sup>47</sup> According to the 1999 UNDP Human Development Report the daily per capita supply<sup>48</sup> of kilocalories in South Africa was 2 933.<sup>49</sup> This suggests that the *amount* of food available in South Africa was clearly sufficient to meet the minimum caloric needs for all South Africans despite over one-third of South Africans being vulnerable to food insecurity.<sup>50</sup>

Information on the aged, poor households, people living in informal settlements, rural areas and female-headed households were not provided. The Department also failed to provide details about the community-based nutrition projects, including the communities and areas (rural areas and informal settlements) that the projects serve.

### ***Provincial Level***

Most provinces did not provide information as requested in the protocol. In the Free State the poverty rate is 63.4 %, which is significantly higher than the National figure of 49.9 %.<sup>51</sup> As a result the nutritional status of children in the Free State as measured by indicators for wasting (4.5 %) was significantly worse than the national figure of 2.6 %.<sup>52</sup> Yet the contribution to domestic production of food in South Africa by the Free State was one of the highest. The province accounts for 27 % of all grain produced in South

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<sup>46</sup> J May (ed.) *Poverty and Inequality in South Africa* (1998) 117.

<sup>47</sup> See Table 1 in '3. Monitoring' above.

<sup>48</sup> Per capita supply represents the average supply available to the population as a whole and does not necessarily indicate what individuals consume.

<sup>49</sup> UNDP. *Human Development Report*. (1999) 213.

<sup>50</sup> SAHRC *International Consultative Conference on Food Security & Nutrition as Human Rights. Conference Proceedings Report. 25-27 March 1999*. (2000) 60.

<sup>51</sup> J May (ed.) *Poverty and Inequality in South Africa* (1998) 27-29

<sup>52</sup> See South African Health Review 1999 – Indicators at <http://hst.org.za/sahr/99/indic.htm>

Africa,<sup>53</sup> and is the major producer of white and yellow maize, at 42.6 % and 31.5 % respectively.<sup>54</sup>

Gauteng has over 18 % of the South African population residing in the province with about 90% of the population living in urban areas.<sup>55</sup> A survey on public perceptions of the realisation of economic and social rights revealed that 5 % of metropolitan respondents reported hunger on a daily basis.<sup>56</sup>

Failure to provide information from the KwaZulu-Natal Department made the evaluation of the right to have access to sufficient food extremely difficult and no reasons were provided for the omission. In KwaZulu-Natal, where an estimated 56.9 % of the population is classified as being rural,<sup>57</sup> poverty remains an impeding factor in realising socio-economic rights. The poverty rate of 51.9 % in the province was slightly higher than the national rate of 49.9 %.<sup>58</sup> However, the large rural population of the province indicated that there is a large % of rural 'poor', as the poverty rate in rural areas is more than double that of urban areas.<sup>59</sup> Therefore some 59.3 % of children in the province live in poor households.<sup>60</sup> It is a well-established fact that the incidence of illness and stunting amongst children from poor backgrounds is almost twice that of children from non-poor families.<sup>61</sup> The consequences of abject poverty in KwaZulu-Natal necessitate that food security should be addressed as a priority.

The non-provision of information by the departments in Mpumalanga was unacceptable because it rendered the evaluation process impossible. The submission by the DoH in the Northern Cape was not satisfactory, as it did not provide all the required information in the outcomes section on the right to access to sufficient food. The Department failed

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<sup>53</sup> Dept. of Agriculture, Free State Province. *Annual Report 1999/2000*. (2000) 17.

<sup>54</sup> See Crops and Markets No 900 at <http://www.nda.agric.za/>

<sup>55</sup> See Statistics South Africa 'Census in Brief, The People of South Africa, Population Census, 1996' at <http://www.statssa.gov.za/census96/HTML/CIB/Population/21.htm>

<sup>56</sup> SAHRC *Economic & Social Rights CASE Report*. (1998) 51

<sup>57</sup> See Statistics South Africa 'Census in Brief, The People of South Africa, Population Census, 1996' at <http://www.statssa.gov.za/census96/HTML/CIB/Population/21.htm>

<sup>58</sup> J May (ed.) *Poverty and Inequality in South Africa* (1998) 27-28.

<sup>59</sup> A detailed analysis of the term 'poverty' subscribed to in this evaluation is contained in J May (ed.) *Poverty and Inequality in South Africa* (1998) 26-27. In essence this follows the World Bank definition of poverty as 'the inability to attain a minimal standard of living' measured in terms of income (monetary) required to satisfy them.

The definition of 'poor' and 'ultra-poor' follows that of the Reconstruction and Development Programme (RDP): 'Poor' is defined as the poorest 40 % of households; 'ultra-poor' as the poorest 20 % of households. At the time of the RDP survey in 1995, these definitions meant that households who spend less than R352 per adult equivalent were poor households, and households who spend less than R194 per adult equivalent were regarded as ultra-poor households. Noting that the definition of 'poor' is based on households (poorest 40 %), this accounts for variances between the number of people and households; hence 50 % of the population (19 million people) are 'poor', living in 40 % of the poorest households; similarly, 27 % of the population (10 million people) are 'ultra-poor', living in the poorest 20 % of households.

<sup>60</sup> J May (ed.) *Poverty and Inequality in South Africa* (1998) 27-35.

<sup>61</sup> *Ibid.* 35.

to provide information on what specific measures were implemented to address the needs of previously disadvantaged groups. Also, the poverty profile of the province was not provided, nor was the number of rural households without access to land for farming. Furthermore, the figure of 150 000 of the amount of people being targeted by food assistance appears to be an estimate. The Department needs to provide the actual number of people assisted with access to food supplies. With the Northern Cape representing almost 30% of the total area of the country,<sup>62</sup> of which 96% of land was used for grazing,<sup>63</sup> food security for farm-workers should be a priority in the province. Remuneration for farm-workers remains disturbingly low,<sup>64</sup> therefore equity schemes, involving equity shareholding with farm-workers should be developed and community-based farms should be promoted.

Other sources indicate that in the North West there has been an increase from 40%-70% in the number of children benefiting from the Primary School Nutrition Programme (PSNP). There are now 334 500 children which were being fed daily through the PSNP in the province.<sup>65</sup>

Notwithstanding the lower poverty rates and more favourable food security situation in the Western Cape as compared to other provinces, there exist niche groups that are particularly susceptible to food insecurity in the province. Whilst 11% of households in the province do not have access to adequate sanitation, the proportion of households in Khayelitsha (an informal settlement) that did not have access to water has actually increased from 2.9% in 1995 to 5% in 1999.<sup>66</sup> It has been argued that food security is dependent on the delivery of other socio-economic rights.<sup>67</sup> To this end, whilst the position regarding food security in the province was favourable, the administration in the Western Cape should be wary of complacency in light of the growing proportion of people living in informal settlements and the deterioration of delivery of some essential services.

## Recommendations

- Relevant and correct information needs to be provided by the respective Departments.
- Suitable indicators need to be developed and utilised by the Departments of Agriculture, Health and Welfare to ensure that the rights concerning food are realised.

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<sup>62</sup> Statistics South Africa. *Census in Brief: The people of South Africa population census 1996.* (1998) Pretoria.

<sup>63</sup> National State of the Environment report at <http://www.ngo.grida.no/soesa/nsoer/issues/land/state.htm>

<sup>64</sup> SAHRC *International Consultative Conference on Food Security & Nutrition as Human Rights: Conference Proceedings Report. 25-27 March 1999.* (2000) 77.

<sup>65</sup> [http://www.finance.gov.za/b/budget\\_98/prov/noweproprov/speech.htm](http://www.finance.gov.za/b/budget_98/prov/noweproprov/speech.htm).

<sup>66</sup> Cape Metropolitan Area State of the Environment on [http://www.cmc.gov.za/peh/soe/water\\_2.htm](http://www.cmc.gov.za/peh/soe/water_2.htm)

<sup>67</sup> For a detailed analysis of factors influencing food security, see SAHRC *International Consultative Conference on Food Security & Nutrition as Human Rights. Conference Proceedings Report. 25-27 March 1999.* (2000)

- The DoH needs to provide detailed information on the impact of the Integrated Nutrition Programme, as well as other programmes instituted by the Department to ensure that the right of children to basic nutrition is realised.
- The impact of the PSNP needs to be assessed.
- Strategies to improve food security for farm-workers must be identified and implemented.
- Food security is dependent on other socio-economic factors; an integrated approach needs to be developed, whereby the access to food is tied into other socio-economic programmes in the province.

## LIST OF ABBREVIATIONS

DoA	Department of Agriculture
DoH	Department of Health
DoW	Department of Welfare
CBOs	Community Based Organisations
CRC	Covenant on the Rights of the Child
FAO	Food and Agricultural Organisation
GFSP	Gauteng Farmer Settlement Programme
HFSP	Household Food Security Programme
ICESCR	International Covenant on Economic, Social and Cultural Rights
INP	Integrated Nutrition Programme
NAP	National Action Plan
NGO	Non-governmental Organisation
PHC	Primary Health Care
PSFP	Primary School Feeding Projects
PSNP	Primary School Nutrition Programme
SD	Standard Deviation
RDP	Reconstruction and Development Programme
RtHC	Road to Health Chart
UN	United Nations
WFS	World Food Security

## LIST OF INTERNATIONAL INSTRUMENTS

Convention on the Rights of the Child, United Nations General Assembly, 1989.  
Covenant on Economic, Social and Cultural Rights, United Nations General Assembly, 1966.  
Universal Declaration of Human Rights, United Nations General Assembly, 1948.

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# CHAPTER FIVE

## HEALTH CARE SERVICES<sup>1</sup>

*Everyone has the right to have access to health care services. The state is obliged to respect, protect, promote and fulfil this right and should thus take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.<sup>2</sup>*

### POLICY MEASURES

#### Summary of responses

##### *National level*

The National Department of Health (hereinafter National DoH) initiated numerous policies on the right to have access to health care services during the response period. Whilst some existing policies like the Comprehensive Primary Health Care Package were refined and finalised, new policies were introduced to address specific areas of health care. These policies focused on the health needs of vulnerable groups and the development of information systems to facilitate health planning and management. Policies of note were the National Patients' Rights Charter, and an Operational Plan for HIV/AIDS and Sexually Transmitted Diseases (STDs).

The main objectives of the National Patients' Rights Charter developed by the Department were the:

- fulfilment of the rights of all patients as equal claimants to human dignity.
- monitoring and assessing the observance of patient's rights.
- promotion of respect for patient's rights.
- promotion of protection, development and attainment of patient's rights.

The Charter provides patients with the right to:

- a healthy and safe environment.
- participate in decision-making.
- receive timely emergency treatment and care.
- counselling.
- choice of health service.
- understand their insurance/medical aid scheme.
- confidentiality and privacy.
- refuse treatment.

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<sup>1</sup> The analysis of the responses is based on information received from government departments, and thus it sometimes differs for the provinces.

<sup>2</sup> Section 27 (1) (a) and section 7 (2) of the Constitution, Act 108 of 1996.



- be referred for second opinion.
- lodge a complaint about health care services.

The main objective of the Operational Plan for HIV/AIDS and STDs was to provide for a plan of action to maximise the use of available resources towards combating HIV/AIDS. The Department provided numerous examples of policy measures that were undertaken to *protect, promote, and fulfil* the right of access to health care for people living with HIV/AIDS. These included:

- involvement of people living with HIV/AIDS in the National AIDS programme through the 'FACES' project.<sup>3</sup>
- inclusion of specific HIV/AIDS rights issues in the Patients' Rights Charter.<sup>4</sup>
- mainstreaming of gender issues into all HIV/AIDS program activities.
- the Beyond Awareness Campaign, addressing awareness around acceptance, care, and non-discrimination towards people with HIV/AIDS.
- draft Code on HIV/AIDS in the Workplace.
- ethical guidelines on HIV/AIDS and research.
- draft clinical guidelines on HIV/AIDS care including adult and paediatric care, TB and HIV/AIDS, reduction of mother to child transmission of HIV, and infant feeding for HIV positive mothers.

Other policies reported on by the National DoH include a National Oral Health Policy, a National Prevention of Blindness Programme, and the National Health Information System.

Concerning the National Oral Health Policy, the report only mentioned that norms, standards and practice guidelines for primary oral health care have been drafted to 'ensure an increase in access to oral health care service.' The norms and standards referred to in the submission were not provided, and had not been implemented.

The DoH established the National Health Information System with a view towards promoting equity by utilising a framework to facilitate health planning and management. It is envisaged that the NHIS would aid in the identification of health needs for vulnerable groups, and in so doing, measure the implementation the above-mentioned policies.

### ***Provincial level***

Most of the policies adopted by the Provincial Departments of Health (hereinafter Provincial DoHs) on the right of access to health care services were informed by policies implemented by the National DoH.

The Eastern Cape Department of Health reported that policy measures for health in the province were guided by the White Paper on Transformation of Health Services in

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<sup>3</sup> The DoH did not explain the meaning or the objectives of the 'FACES' project.

<sup>4</sup> No examples were provided of the 'specific HIV/AIDS issues'.

South Africa. Specific for the Eastern Cape Province was the implementation of the EQUITY project. The project is a facility-based survey programme that monitors the availability of drugs on the Essential Drugs List in Primary Health Care facilities.<sup>5</sup>

Although the Eastern Cape DoH did not report on policies that address the health needs of previously disadvantaged and vulnerable groups, the Department stated that these measures catered for the needs of these groups:

- mobile Health Teams in rural areas.
- intersectoral collaboration with CBOs, NGOs, and other Departments.
- biasing of resources.
- community health workers being trained on community based projects.

The Free State DoH provided a detailed report segregated in terms of provincial policy measures for vulnerable groups. Protocols and policy guidelines were provided for environmental and occupational health, rehabilitation services, and HIV/AIDS. Furthermore, the Department acknowledged the need for education of health professionals on delivery of services and ran numerous projects directed at skills development in primary health care. The report also reflected a cohesive, structured, and multi-factorial approach to dealing with HIV/AIDS.

Numerous policies were listed by the Gauteng Department of Health but no details of what these policies entailed was provided.

Submissions on policy measures for health rights by the KwaZulu-Natal Department of Health were based on the Draft KZN Health Bill. The Department stated that the Bill addresses 'Affirmative action and Primary Health Care principles.'

Policy measures expanded upon by the Northern Cape DoH, were based on National policies. As a sparsely populated province, the Department has instituted innovative programmes to ensure that all people have access to health services. These included the Outreach/Flying doctor service, home-based care for People Living With Aids, and the strengthening of community-based psychiatric services.

The Northern Province DoH provided an impressive array of guiding principles on health policy in the province but did not provide information on specific policy measures or programmes of action on the delivery of health rights.

The North West DoH stated that health policies in the province were guided largely by the Policy on Transformation of the Public Service (Batho-Pele), which commits public servants to service delivery. The Department stated that the policy to improve service delivery entailed consultation with communities on resource allocation and minimum service standards. The process of consultation occurred in 17 of the 18 health districts.

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<sup>5</sup> The National DoH has defined a list of drugs that should be readily available in every health care facility, and is known as the 'Essential Drug List'.

The response by the Western Cape DoH was detailed and outlined the role of the Department in relation to the National DoH, taking into account the previously advantaged status that the region enjoyed in the past. Notwithstanding severe resource cuts due to the furtherance of intra-provincial equity in health, a detailed account of the programmes of action and policy measures for the delivery of health rights in the Western Cape was presented. For example, policy measures for Primary Health Care accounted for equity of access, community participation, comprehensiveness of services including referrals, whilst not compromising on the *quality* of care. Specific issues central to achieving equity in health were dealt with. Thus the health needs for rural communities in the province were being addressed by the provision of clinics in those areas, and the economic conditions of patients were accounted for in a sliding-scale fee structure. The DoH in the Western Cape also has a policy on evaluating the policies of the Department internally.

## **Commentary**

### ***National level***

The response of the National Department of Health, as in its previous response to the South African Human Rights Commission (hereinafter referred to as the Commission),<sup>6</sup> does not illustrate an adequate understanding of its obligations with respect to the right of access to health care services. At face value, this appears contradictory, as the Department has developed the National Patients' Rights Charter, and finalised the Comprehensive Primary Health Care Package. However, the presentation of the Department's response was arranged in terms of its directorates rather than the questions posed in the protocols, with inadequate or no information provided. The sub-standard quality of the Department's response is difficult to understand, as the Department has a directorate of Health Systems Research, Research Co-ordination and Epidemiology, which the Department indicated is specifically directed towards monitoring of policy implementation.

The National DoH provided no cohesive plan of action in terms of policy, with information on vital policies not provided. This includes the stated focal point of the Government's commitment to addressing the health needs of South Africans, namely Primary Health Care (PHC). Whilst the DoH stated that aspects of PHC were finalised and implemented, those measures were not explained. The provision of PHC services as defined by the White Paper for The Transformation of the Health System In South Africa is seen as an incremental programme that was to be implemented over a period of ten years. Hence, the DoH should have clearly stated what progress has been made in the implementation of PHC. It is difficult for the Commission to evaluate the Department's delivery on the right to access to health care services when key policies such as PHC were left unexplained.

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<sup>6</sup> See SAHRC "Economic & Social Rights 1997-1998. [Researcher's Evaluation of Government Responses Vol IV.](http://www.sahrc.org.za)" (1999) at <http://www.sahrc.org.za> (visited on 29/05/2000).

Other policy measures that received little or no mention were the Presidential Lead Programmes on Clinic Building and Upgrading Programme, the White Paper on the Transformation of the Health System, the White Paper on the Transformation of the Public Service (Batho-Pele), District Health Systems Policy, and a Policy on Community Service doctors. All of these policies were aimed towards achieving equity in health care in South Africa.<sup>7</sup>

The National Department of Health should be commended for the establishment of the National Patients Rights' Charter. Although the Charter was not implemented during the reporting period of 1<sup>st</sup> April 1998 to 31<sup>st</sup> March 1999, the Charter does go some way towards addressing some of the problems in the health sector like overcrowding and patient neglect. The success of the Charter in promoting a culture of, and protecting human rights and dignity in health care shall depend on its effective implementation.

The DoH's response with regards to HIV/AIDS as provided in the Operational Plan for HIV/AIDS and STDs was comprehensive and demonstrated a thorough understanding of the health challenges posed by the HIV/AIDS epidemic. One of the challenges that have not been addressed is a policy on the provision of anti-retroviral medication for people living with AIDS and for the prevention of mother to child transmission of HIV.

### ***Provincial level***

The information provided by most of the provinces did not provide a satisfactory explanation of policies instituted in the reporting period.

Whilst a few provinces expanded on specific policy measures that were adopted to augment the National DoH's transformation of health towards primary health care, policy measures reflecting particular needs of a province were in general not provided in the Department's report to the Commission. An analysis of shortcomings of National policy for respective provinces was not reflected (the exception being the Western Cape DoH), nor addressed by provincial policies. As a result of the sub-standard submissions by most provinces, comparisons between provinces and the evaluation of delivery of health rights between provinces was impractical.

A shortcoming of most of the provincial reports was that policy provisions for vulnerable and formerly disadvantaged groups were not addressed. This was most noticeable in the Eastern Cape and the Northern Province, where the health needs of the poor and rural people were not addressed in the respective responses.<sup>8</sup> The responses from the Departments of Health in Gauteng and the Northern Province underlines the observation that most Health Departments in the Provinces failed to understand questions posed in the protocol. For example, when the protocol requests information

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<sup>7</sup> See K Strachan "Healthcare is still far from equitable." The Sunday Independent: Reconstruct (December 12, 1999).

<sup>8</sup> Indicators suggest that the health status of people in the Eastern Cape and Northern Province is much worse than the rest of the country; for a detailed analysis of provincial differences in health status indicators, see section '5. OUTCOME MEASURES' below.

on *how* a right is protected or promoted, the answer from numerous Departments is that it is protected or promoted by the policy. The question requires specific explanations of policy measures designed to protect and promote the right to have access to health care services. This was not provided. It is not clear as to whether this is an indication of the lack of adequate information within these Departments, or whether the relevant officials completing the Departments response that not execute their duties satisfactorily.

The information provided by the Gauteng Department of Health was minimal. As in the case of the National DoH, the Department's policy on Primary Health Care was hardly dealt with.

While some information was furnished on a policy on HIV/AIDS by the Department of Health in KwaZulu-Natal, it is disturbing to note that despite the province having the highest incidence of HIV/AIDS in the country, a programme of action was not provided for in the report. Also, no information on policies directed towards the delivery of Primary Health Care was offered. Instead, the DoH merely stated that the policy measures instituted were based on the PHC principles of 'accessibility, availability, affordability of health services, community participation, equity and socio-economic development'.

Information provided by the Mpumalanga Department of Health is completely inadequate. The poor quality of the report suggests that either a junior official of the Department completed the report, or if the information is accurate, is a reflection of the appalling administration within the Mpumalanga Health Department. Policy measures were *interpreted* as meaning documents like the 'ANC Health Manifesto of 1994 and 1999', and the 'President's State of the Nation Address 1999'.

Consultation between the North West Department of Health and communities on the utilisation of resources and standards of care against the backdrop of striving towards the *progressive realisation* of the right to access to health care services is worth noting.

The report on policy measures by the Western Cape Department of Health, together with the additional information provided, demonstrates an excellent example of the quality of the response required by the Commission to evaluate the right to access to health care services. Detailed information was provided, and where necessary, explanations of measures unique to the province were furnished. The Department was honest about shortcomings and constraints.

## **Recommendations**

- Policy measures provided for by the National Department of Health were often not explained, with key information lacking. The Commission suggests that the Department designate its Health Systems Research, Research Co-ordination and Epidemiology directorate to provide all of the requested information, and that this directorate be responsible for co-ordinating the response to the Commission.

- Information on crucial policies such as the Primary Health Care Package and the Presidential Lead Programmes on Clinic Building and Upgrading Programme has to be provided.
- Reports on policy measures by Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, and the Northern Province were poor. These departments need to provide information on how the respective provincial policies cater for specific and distinctive circumstances that exists in their provinces.
- National and Provincial Departments of Health must provide information on policy measures that cater for the right to access to health care services for previously disadvantaged and vulnerable groups

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

#### ***National level***

Four pieces of legislation are provided for in the report from the National DoH with respect to the obligations to *respect, protect, and promote and fulfil* the right to access to health care services. The Acts are the Medical Schemes Act 131 of 1998, the Tobacco Products Control Amendment Act 12 of 1999, the South African Medicines and Medical Devices Regulatory Authority Act 132 of 1998, and the Sterilisation Act 44 of 1998. The report further makes mention of a new Mental Health Bill that is aimed at protecting the rights of mentally ill persons.

In terms of the rights of people with HIV/AIDS, no specific legislation has been cited. However, the Department of Health has proposed the following regulations, which await final drafting and promulgation:

- National Minimum Condom Standards.
- The Use and Disposal of Disposable Syringes and Needles.
- Introduction of Control Procedures in all health places.

#### ***Provincial level***

According to the reports from the Provincial Departments, the majority of the provinces were still engaged in the processes of rationalising their health systems inherited from previous homeland system. For example, the Gauteng Province had adopted the White Paper on the Transformation of Health System. Section 76 of Schedule 4 of the 1996 Constitution gave rise to certain powers and duties to the provinces to effect the rationalisation process of all fragmented health legislation. Hence, most of the Provincial reports cite National legislation such as the National Health Bill and Mental Health Bill as legislative measures instituted during the reporting period.

However, other provinces such as Eastern Cape and the Free State have their own provincial health laws as in the Eastern Cape the Provincial Health Act and Free State

Provincial Health Bill. The Eastern Cape Legislature has passed Provincial Health Act in order to rationalise and amend all the laws relating to health services after the re-incorporation of Transkei and Ciskei into South Africa in 1994. This law sets out guidelines for the province on how to comply with the constitutional obligations in terms of section 27 of the Constitution.

The Free State Health Department has promulgated the Provincial Health Bill, which was due to be finalised at the end of 1999. This Bill is set to establish, *inter alia*, statutory bodies that will ensure that communities have the right of governance and representation in health services. The Free State Province has also enacted the Free State School Health Services Act of 1998. This law is intended to impact positively towards the realisation of the right to basic health care in the sense that it enables health professionals to gain access to schools in order to render comprehensive primary health care to learners.

## **Commentary**

### ***National Level***

There is a need for specific pieces of legislation to deal with the rights of vulnerable and disadvantaged groups as cited in the protocols. The National DoH report has failed to capture the objective and purpose of the said pieces of legislation as it fails to quote the relevant provisions of all the cited acts. The explanation of the Acts mentioned fail to indicate specific sections on how the vulnerable groups and the previously disadvantaged groups may have benefited from those laws. What was expected from the report rather, is a thorough explanation of how these Acts assisted in the realisation of the right to access to health services. The Medical Scheme Act 131 of 1998, for example, has its main thrust on how to regulate the medical schemes business.<sup>9</sup> It says virtually nothing about how the majority of the people who do not belong to the formal sector in the labour market would benefit from the scheme in terms of access to health care services.

The Tobacco Products Control Amendment Act, which is reflected in the report, mainly focuses on the curtailing of the promotion of tobacco products within the market. Whilst the limitation to the promotion of tobacco products is appreciated, the Act deals with the issues relating to the promotion of tobacco products, but does not mention how it will assist in the realisation of the right to access to health care services.

The Sterilisation Act 44 of 1998 deals mainly with the regulation of fertility among people who have mental disabilities and are apparently not competent to make decisions pertaining to such issues. This Act is progressive in that the rights of the mentally disabled persons, in so far as the issues of fertility are concerned, are protected. However it does not have a direct contribution towards further realisation of access to health care services.

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<sup>9</sup> See the preamble of the Act 131 of 1998.

The South African Medicine and Medical Devices Regulatory Authority Act only regulates the standards of medicines and medical devices for all living organisms, but says nothing about the further realisation of the right to health care. Furthermore, the Act is reported to be 'putting traditional medicines on an equal footing with conventional medicines and thereby doing away with discrimination against traditional medicines.' Analysis of the Act reveals that it does not say anything about placing traditional medicine on an equal footing with conventional medicine. In respect of the rights of the children to basic health, the report alleges inadequacy of the ChildCare Act of 1983, however it also fails to elaborate on this aspect.

Section 27(1)(a) of the Constitution provides that everyone has the right to access to health care services including reproductive health care. This constitutional provision differs from the provisions of some of the international human rights instruments, which refer to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>10</sup> The Constitution has adopted a more realistic approach regarding the right to health care, as it qualifies the right to health as the right to access to health care services.<sup>11</sup>

### ***Provincial Level***

The quality of the National and Provincial reports is generally unsatisfactory in that the reports fail to capture some of the important aspects that the protocols had sought to elicit. The reports, especially those from the provinces, also fail to elucidate on the specific legislative measures that were taken to respect, promote, and protect and to fulfil the right of access to health care services.<sup>12</sup> Most provinces have cited National legislation, which is irrelevant for their reports. In so far as the pieces of legislation that are mentioned, they fall short of the requirements for adequate realisation of the right of access to health in terms of the language and spirit of section 184(3) of the Constitution.

### **Recommendations**

- The departments should follow the format of the protocol for purposes of presenting clear and detailed information.
- The reports should indicate in detail, how the legislative measures impact on the conditions of vulnerable and previously disadvantaged groups, including people with HIV/AIDS.

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<sup>10</sup> See International Covenant on Economic, Social and Cultural Rights in Article 12(1), African Charter on Human and Peoples' Rights in Article 16(1) and Convention on the Rights of the Child in Article 24(1). However, since South Africa is a party to both the African Charter and CRC, it is bound by the two instruments to take legislative measures towards the realisation of the right to the enjoyment of the highest attainable standard of physical and mental health. See also the WHO Constitution of 1948.

<sup>11</sup> Section 27(1)(a) of the Constitution.

<sup>12</sup> Section 7(2) of the Constitution provides for these four obligations.



## **MONITORING**

### **Summary of Responses**

#### ***National level***

In describing the minimum standards and criteria established to define adequate health care services, the National DoH indicated that the distance to Primary Health Care (PHC) facilities must be within a radius of 5km or an hour's walk. The standard for distance to an oral health facility was the same as for PHC facilities. The DoH collects statistics on the total number of PHC facilities and the number of PHC facilities where basic primary oral health care packages are available. The Department also collects the statistics for Oral Health from the nine Heads of Oral Health of the provinces. The Directorate of Health Systems Research, Research Co-ordination and Epidemiology was established to monitor the 'Nation's health care policy White Paper' and to provide greater access to comprehensive and integrated health care services to all South Africans.

The DoH stated that the minimum standards established for HIV/AIDS include:

- Guidelines on various aspects of clinical care for HIV/AIDS.
- National Minimum Counselling Standards, including standards related to selection, training, and provision of counselling services.
- Guidelines on Developing a Workplace HIV/AIDS Policy and Program.

Statistics collected on HIV/AIDS are:

- Annual antenatal survey to determine the number of pregnant women with HIV at public health antenatal facilities.
- Number of HIV/AIDS counsellors employed and counselling sessions.
- Number of HIV tests carried out.
- Treatment outcomes of all TB patients.
- Number of caregivers and patients being taken care of by home based care projects.
- Recording of patients who are HIV positive in medical wards.
- Knowledge and attitudes towards HIV/AIDS.

The statistics for HIV/AIDS were collected in a variety of ways. Antenatal surveys were obtained from the directorate of Health Systems Research. Counselling statistics were collected at a provincial level. TB statistics were collected through maintaining a register of all TB patients at each health care facility and forwarded to a district, and provincial level. Home based care statistics were collected by the individual home based care programs, and provided to the National HIV/AIDS and STD Directorate. Medical wards recorded patients who were HIV positive and these statistics were sent to the National DoH. Behavioural surveys conducted by the Beyond Awareness Campaign provided an indication of knowledge and attitude towards HIV/AIDS.

## ***Provincial level***

Most of the Provincial Departments of Health that responded adequately to the protocol defined the minimum standards in relation to the right to access to health care services according to those outlined by the National DoH. The acceptable distance to a PHC facility in most of the Provinces follow the National guideline of 'within a radius of 5 km'. The statistics collected and the reporting mechanism was also common, and was based on the District Health Care System, details of which are provided for below, from the submission by the Gauteng DoH.

The Eastern Cape DoH provided that 30.8% of the population lived beyond a 5 km radius of clinic catchments area, and 5.8% lived beyond 10 km. The number of people without a clinic within a 5 km radius was 1, 941 515 and 365 977 people live beyond a radius of 10 km from a clinic. Pertaining to the availability of resources, there were 3.7 hospital beds per 1000 people. There were 665 clinics, 130 mobile services, 31 satellite clinics, 31 community health centres, and 92 hospitals.

The Free State DoH reported that 21 clinics have been constructed, 33 clinics upgraded, 9 new clinics were still under construction, and 28 district hospital have been upgraded. Regarding health care professionals, the total number of professional nurses (senior and chief) was 2 958, whilst the number of staff nurses was 835. The number of Medical Officers was 513. In total, 4 306 health care professionals in the Free State public sector serve a population of 2,804 766 people. Other core indicators provided by the Department to define and monitor the realisation of this right include the perinatal mortality rate, TB cure rate, referral rate to doctors, the successful treatment of STDs, and the availability of a model for the District Health Authority. A variety of information systems were used to monitor some of the aspects of the provision of health care services in the province. The Department monitored the *progressive realisation* of the right by collecting information on notifiable medical conditions, HIV, Termination of Pregnancy (TOP), and statistics from PHC facilities, mobile clinics, private doctors, regional hospitals, academic hospitals and District Surgeons. For hospital statistics, a standard form was filled manually by all hospitals and sent to the information and research unit for processing on a monthly, quarterly and annual basis.

The Gauteng DoH reported that the criteria used to build clinics were done on the basis of the available services in each district, including the rural areas. The Department collects the following statistics in order to monitor the access to health care services:

- primary health care utilisation rate per age group, gender and referrals.
- minor ailments, maternal and obstetric units.
- Antenatal and school health.
- PEM scheme,<sup>13</sup> oral health.
- sexually transmitted diseases.

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<sup>13</sup> The 'PEM scheme' was not explained;

- HIV/AIDS; notifiable medical conditions; TB.
- immunisation; family planning; medico-legal services.
- mobile clinic statistics.
- mental health.

These statistics were collected daily from the facility, and sent to the district office at the end of the month. Information was collated and sent to the regional office for capturing.

The KwaZulu-Natal DoH reported that numerous aspects including population, accessibility, water supply, availability of staff and finance were considered prior to the erection of a new clinic. Statistics were submitted every month by clinics and hospitals to monitor the availability of services and the number of beds. Medication was reported to be available at all institutions although there was no reporting system on the amount issued.

The DoH in Mpumalanga reported that almost a third of the population in the province have relatively easy access to medical facilities and that 46% of the rural population live over 5 km from the nearest facility. The Department reported that Mpumalanga has 1,6 public hospital beds per 1000 people which was below the national average of 4 beds per 1 000 people. Statistics were collected at facility level on the daily PHC data collection tool and a summary sheet was sent monthly to the district office. The information manager for that particular district compiles the following reports:

- District based: Indicator Report, Health Service Report, Emergency Service Report, Oral Health Report and Notifications.
- Facility Based: Immunisation, STD's, TB Quarterly Reports, Hospital H15, and TOPs' Report.

The DoH in the Northern Cape Province reported that fixed PHC facilities should be within 5 km radius of the community and mobile clinics service the community where there were no fixed facilities. The ratio of facilities to population for the province is provided in table 1.

**Table 5.1: Health Infrastructure in the Northern Cape**

Item	Public	Private	Total	Facility/ Population Ratio <sup>1</sup>
<b>Clinics</b>	206	6	212	1:3 774
<b>Hospitals</b>	36	13	49	1:16 326
<b>Beds</b>	1 894	518	2 412	1:332
<b>Medication</b>	The norm is 2 items per prescription	Not known	N/A	N/A

Note: <sup>1</sup> The facility/population ratio includes private and public facilities.

The DoH in the Northern Province reported that a patient should not travel a distance of more than 5 km radius or walk for more than one hour to access the PHC service. The nurse to population ratio was 29.1:10 000 whereas the doctor to population ratio was 4.2:10 000. The rural nurse to population ratio was 19.92:10 000. The collection and reporting of statistics is similar to the Gauteng DoH, provided above.

The target of the DoH in the North West was to ensure that each citizen in the province visits a clinic 2.8 times in a year. The distance to PHC facilities should be within 5 km. Each clinic was required to report on the 'number of doctor/nurse working days for each month', the 'drug stock out for key indicator of people seen by age group', and catchments populations for each clinic as part of the new District Health Information System. This information was used by the Department to assess whether health services reach the communities, and to measure the extent to which communities have access to doctors and professional nurses.

The DoH in the Western Cape stated that the province was well provided in PHC facilities, with mobile clinics being used to reach some deep rural areas. The Department differs from the National and other Provincial DoH norm of PHC facilities being 'within a radius of 5 km' from communities. The rule applied by the Department was the 'Needs-Norms Model' that translates to 6 km maximum travelling distance. The Department estimates that over 90% of the population lies within that reach of facilities.

## **Commentary**

### ***National level***

The response from the National DoH is very poor in that it failed to provide information as requested in the protocols. The Department referred the Commission to a sub-directorate to obtain key information on infrastructure and human resources. This is unacceptable as the obligation rests with the DoH to provide and assimilate the necessary information as requested by the protocol.

In terms of the distance to the PHC facilities, the Department should have reported on how people who do not reside within the 5 km radius of a PHC facility gain access to these facilities. Concerning the availability of needed professionals, the Department also failed to mention the number of health professionals employed by Government, and whether there exists shortages of staff in the public health care sector. Research has shown that there has been a relative decrease in the health personnel in the public sector.<sup>14</sup> One of the reasons for this shortage is that a large proportion of health professionals were employed in the private sector. Shortages are also largely due to differences in distribution of professionals along the rural/urban divide in all provinces. To address these shortages, the Government committed itself to radical decentralisation and 'taking the services to the people',<sup>15</sup> and has established

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<sup>14</sup> D van Rensburg and N van Rensburg "Distribution of Human Resources." in N Crisp and A Ntuli (eds) "South African Health Review 1999." (1999).

<sup>15</sup> Ibid.

interventions to deliberately redistribute professionals. These include entering into agreements with other Government agencies for the supply of doctors whilst the capacity to use South African professionals is developed.<sup>16</sup> Four hundred and two Cuban doctors were deployed in eight provinces, particularly in the rural areas and thirty doctors were deployed in different speciality areas in five provinces. Fourteen (14) United Nations Volunteers were working in the Northern Province rendering a valuable community health services in the rural areas.<sup>17</sup> Although these programmes have been established, there still remains a problem with regard to health care professionals in most provinces.<sup>18</sup>

It was imperative for the Department to indicate the number of clinics and hospitals erected or upgraded in order to determine if there were adequate clinics and hospitals to serve the entire population in South Africa. Pertaining to the availability of clinics, the Annual Report of the DoH mentions that on average, each clinic serves a population of 10 000 people, which means that more than 5 million additional people now have ready access to PHC.<sup>19</sup>

### ***Provincial level***

Most of the Provincial DoHs failed to provide the necessary information as requested in the protocols. The type and means in which statistics were collected was generally not provided.

The Free State DoH failed to provide the ratio for the availability of needed health professionals to population and the number of people that reside outside the acceptable standard of a 5 km radius to a clinic.

The Gauteng DoH failed to provide the minimum distance to the PHC facilities, and on the availability and of clinics, hospital beds, medication, and health care professionals. The DoHs in KwaZulu-Natal, Mpumalanga also did not provide these criteria and indicators. Nonetheless, according to the South African Health Review, the Gauteng province has significantly better ratios of health care professionals to population than other provinces, whereas The Northern Cape is amongst the provinces known to have acute shortages in health professionals.<sup>20</sup>

The DoH in the North West should have provided information on the number of beds, clinics and medication available according to the defined standards in the province.

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<sup>16</sup> Department of Health "Annual Report, 1999." (2000) 57.

<sup>17</sup> Ibid.

<sup>18</sup> A detailed analysis of the distribution human resources in the public health care sector is provided in '5. Outcome Measures' below.

<sup>19</sup> Department of Health "Annual Report, 1999." (2000).

<sup>20</sup> D van Rensburg and N van Rensburg "Distribution of Human Resources." in N Crisp and A Ntuli (eds). "South African Health Review 1999." (1999).

The response from the Western Cape DoH was detailed, and provided a thorough reflection of the norms, standards and criteria used to define and monitor the right of access to health care services in the province.

Observations made are that almost all the departments did not report on how information or statistics gathered was used in the monitoring of the progressive realisation of this right. Concerning medication, the National Department of Health and most Provincial Departments did not respond to this question nor made any attempts to report on a manner that medication is given to people.

### **Recommendations**

- The National and Provincial DoHs should provide all the necessary standards and criteria utilised to define the right of access to health care services.
- Specifically, information on standards utilised for infrastructure (hospital beds per capita) and medication should be provided.

## **BUDGETARY MEASURES**

### **Summary of Responses**

#### ***National level***

The Department did not provide information on the allocation of budgetary resources for health services as requested in the protocol. Information provided was related to policy planning for the directorate of Health Systems Research, Surveillance and Epidemiology, and for the Department's HIV/AIDS programme.

For the year 1998/1999, the DoH reported that R37, 994 000 was allocated for the prevention of HIV/AIDS, and R1, 958 000 was allocated for the treatment of persons with HIV/AIDS.

#### ***Provincial level***

Most of the provinces did not submit adequate information on budgetary allocations for the right to access to health care services.

The Eastern Cape Department of Health reported that its Financial Management System (FMS) does not make it possible for budgetary allocations to be reported on in the format required, and provided limited information as contained in table 2:

**Table 5.2: Expenditure on selected Health Programmes in the Eastern Cape in Rands**

<b>Year</b>	<b>Construction of Clinics</b>	<b>District Health Services including Community and District Hospitals</b>
<b>1996-1997</b>	34,331,000	Unavailable
<b>1997-1998</b>	38,259,000	Unavailable
<b>1998-1999</b>	6,892,000	1,266,861,246
<b>1999-2000</b>	15,224,000	1,117,164,056
<b>2000-2001</b>	6,075,000	1,222,111,056

Although the Eastern Cape DoH reported that women and children were prioritised as a vulnerable group in the allocation of resources, details of the allocation was not provided.

Spending on the construction of clinics in the Free State as reported by the Provincial DoH amounted to R121, 151 495, and expenditure on District Health Services was R593, 000 000. The Department projected that the budget for construction of clinics would be reduced in 2000/2001. Spending on clinical services amounted to R57, 563 375 and R176, 963 000 was used on district hospitals. HIV/AIDS prevention expenditure amounted to R3, 150 000.

The DoH in Gauteng did not provide a breakdown of budgetary allocations on health programmes as requested, but reported that budgetary allocations were not adequate for the delivery of services, making it difficult to meet the needs of the people.

Expenditure on access to health care services as reported by the KwaZulu-Natal DoH is provided below:

**Table 5.3: Expenditure on Selected Health Programmes in KwaZulu-Natal in Rands**

<b>Year</b>	<b>Construction of Clinics</b>	<b>Available Hospital beds</b>	<b>New hospital beds made available last year</b>	<b>Delivery of Primary Health Care Services</b>
<b>1996-1997</b>	121,968 000	28 480	364	1,719,879 000
<b>1997-1998</b>	99,576 000	28,483	3	1,871,947 000
<b>1998-1999</b>	11,158 000	27 674	(809)	1,973,763 000
<b>1999-2000</b>	27,000 000	27 674	0	1,983,353 000
<b>2000-2001</b>	17,000 000	27 674	0	2,509,854 000

In 1996/97 and 1997/98, only R40, 769 842 and R65, 615 963 was funded by the province for the construction of clinics, with the majority of funding coming from the Presidential Lead Programme. For the period under review, R6, 998 000 was spent on the prevention of the spread of HIV/AIDS. Treatment of HIV/AIDS was integrated with other health services, as was family planning and services to pregnant and lactating

mothers. Specific funding at designated clinics and facilities was provided to supply persons with disabilities with prosthetic aids and rehabilitation.

The Mpumalanga DoH reported on the budgetary allocation for Health for the year 1999/2000 (outside the reporting period of 1998/1999), which was R1,068,366 691.

The DoH in the Northern Cape responded that the Financial Management System (FMS) used does not allow for budgetary information to be given in the format required by the protocol. The Department reported that R1, 748 455 had been spent on the construction of clinics, a clear improvement from the previous year when there was no expenditure on the construction of clinics. R232, 258 312 was spent on Hospital Services and R1,321 686 was received in Conditional Grants for HIV/AIDS prevention.

No figures on health expenditure were provided by the Northern Province DoH.

Expenditure of R1, 620,127 000 on the construction of clinics and R391, 232 000 on Primary Health Care Services was reported by the North West DoH. R4, 251 000 was spent on preventing the spread of HIV, and R 61, 294 000 on the treatment of HIV/AIDS. A further R44, 562 000 was spent on family planning. The Department reported that expenditure on personnel made it difficult to address all the health needs and expand services particularly to rural areas.

Spending on the construction of clinics as reported by the Western Cape DoH was R 10 million, showing a marked decline from the R 32, 2 million that was spent in 1997/98. The delivery of PHC services accounted for R 492, 434 000. The DoH spent R2, 022 080 on the prevention of the spread of HIV/AIDS and stated that treatment of people with HIV/AIDS as well as reproductive health formed part of the comprehensive service provided by the Department.

With regards to specific budgetary consideration for vulnerable groups, 'a large number' of the 52 new clinics or community health centres constructed over the past 4 years were in the vicinity of informal settlements. Funds were allocated to special programmes for persons with disabilities. These programmes were for both chronic care and disability. The Department allocated R5 million a year to the Orthotic and Prosthetic centre that produces orthotic and prosthetic devices. A new ambulatory rehabilitation centre in Paarl has been funded for 2000/2001 at about R2 million per year.

The budgetary allocations were reportedly insufficient to deliver adequate health services, with the hospital sector being most affected. This has resulted in the closure of 3 500 beds and the loss of 8 000 personnel. Furthermore, it was estimated that over R200 million was needed for equipment. Shortfalls in budget had also impacted negatively on Primary Health Care services. Most serious were shortages in medicines for chronic infections and the provision of assisted devices for persons with disabilities. Also facilities that have been built could not be commissioned because of budgetary constraints. Shortages in funds had also meant that HIV/AIDS and Tuberculosis, priority areas of the Western Cape DoH could only be addressed in a phased manner.



## Commentary

### *National level*

The response from the National DoH was poor and did not provide any information on the funding of the Departments activities.

Other sources reveal that the total budgetary allocation for health was R26.7 billion in 1998/1999, which amounted to 13.6% of the total national budget. This was divided between the National and the Provincial DoHs, with the National DoH receiving 20% (R 5, 340,000 000) of the total health budget.<sup>21</sup>

Regarding allocation of financial resources to different health programmes, District Health Services amount for one of the largest programme allocation increases (table 4). This was largely due to the post-apartheid Government's policy shift from secondary and tertiary levels of care to primary care. However, at the same time, tertiary care as represented by 'Academic Hospital Services' has also increased substantially.

**Table 5.4: Health budgets by programs R'000 (1996 Rands)<sup>1</sup>**

<b>Programme</b>	<b>1997/98</b>	<b>1998/99</b>	<b>1999/00</b>	<b>% Change</b>
<b>Administration</b>	569 048	726 981	666 305	7.1%
<b>District Health Services</b>	6,674 303	7,580 470	7,623 884	25.1%
<b>Provincial Hospital Services</b>	4,674 671	5,175 294	5,241 365	9.3%
<b>Academic Health Services</b>	3,645 191	3,800 990	3 946,447	19.9%
<b>Health Sciences</b>	310 392	387 570	388 684	9.7%
<b>Health Care support services</b>	513 943	347 957	617 843	51.4%
<b>Health Facilities Development and Maintenance</b>	702 188	709 261	501 262	-23.7%
<b>Total</b>	<b>18,018 158</b>	<b>18,728 522</b>	<b>18,985 791</b>	<b>11.4%</b>

Note: <sup>1</sup> Adapted from Table 3.6 in Idasa BIS "Intergovernmental Fiscal Review – Health" (1999) at [http://www.idasa.org.za/Final/publications/bis\\_igrnov99\\_health.htm](http://www.idasa.org.za/Final/publications/bis_igrnov99_health.htm)

Whilst the budgetary categorisation for health programmes show increased spending on PHC (District Health Services), a disproportionately high amount of this increased spending has been spent on personnel, to the detriment of non-personnel expenditure.

<sup>21</sup> S Robinson and S Masotera "Where Poverty hits hardest – Children and the Budget in South Africa" Children's Budget Project Information Sheet Section 2 No 2 of 5.

Whereas personnel expenditure has increased by 32.8% from 1996/1997 to 1998/1999, non-personnel expenditure decreased by 83% over the same period.<sup>22</sup>

### **Provincial Level**

Provincially, most of the DoHs did not provide all of the required budgetary information. The Northern Province did not provide any information, whilst Mpumalanga reported for the incorrect reporting period and information from Gauteng DoH was of no significance as a breakdown of the budgetary allocation as requested was not provided. The Eastern Cape, Free State and Northern Cape DoHs provided basic information that did not relate directly to the questions in the protocols. However, the DoHs in KwaZulu-Natal, North West and Western Cape provided excellent reports with textual clarifications and explanations of spending.

One of the objectives of the protocols was to ascertain whether expenditure on programmes by the various provinces were in compliance with the departments' obligations to the right of access to health care services. The lack of useful budgetary information from the provinces has rendered the evaluation difficult. However, information available from other sources<sup>23</sup> suggests that spending in most provinces does not meet the health needs of the people. As outlined earlier, the expenditure on health personnel consumes a disproportionately high portion of the health budget.<sup>24</sup> The information contained in tables 5 and 6 provide a comparison of expenditure in health between the provinces.

**Table 5.5: Provincial health budgets for 1998/1999 (1996 Rands)<sup>1</sup>**

	<b>Total Provincial Health Budget in R'000</b>	<b>% Change in Total Budget<sup>2</sup></b>	<b>Overspending on Provincial Budgets</b>	<b>Per Capita Expenditure In Rands</b>
<b>Eastern Cape</b>	2,521,699	1.9%	3.58%	464
<b>Free State</b>	1,417,764	-1.0%	2.84%	597
<b>Gauteng</b>	4,571,452	20.9%	3.46%	716
<b>Kwazulu-Natal</b>	3,855,334	23.7%	9.08%	531
<b>Mpumalanga</b>	809,916	6.1%	No figure	336
<b>Northern Cape</b>	302,558	-0.5%	11.05%	418
<b>Northern Province</b>	1,615,593	5.4%	7.14%	386
<b>North West</b>	1,119,496	9.1%	3.54%	387
<b>Western Cape</b>	2,506,072	4.1%	4.40%	735
<b>Total/Average</b>	<b>18,719,884</b>	<b>11.4%</b>	<b>5.23%</b>	<b>507</b>

<sup>22</sup> Idasa BIS "Intergovernmental Fiscal Review – Health." (1999) at [http://www.idasa.org.za/Final/publications/bis\\_ignov99\\_health.htm](http://www.idasa.org.za/Final/publications/bis_ignov99_health.htm)

<sup>23</sup> Refer to Tables 5 and 6 and the subsequent evaluation of health expenditure in the provinces.

<sup>24</sup> We do not maintain that the spending on personnel is excessive, as there is a shortage of health care professionals in the public sector (See '5. Outcome Measures' for an analysis of this shortage)

Note: <sup>1</sup> Adapted from Tables 3.3, 3.6 and 3.12 in Idasa BIS. "Intergovernmental Fiscal Review – Health." (1999) at [http://www.idasa.org.za/Final/publications/bis\\_ignov99\\_health.htm](http://www.idasa.org.za/Final/publications/bis_ignov99_health.htm)  
<sup>2</sup> Percent change in Total Budget is for between years 1996/7 to 1999/00.

All of the provinces have exceeded the allocated budgets. Perhaps most disturbing is the gross differences that occur with respect to per capita expenditure between the provinces. Whilst per capita expenditure is R735 and R716 in the Western Cape and Gauteng respectively, in other provinces the per capita expenditure is almost half that of Western Cape and Gauteng. Mpumalanga spends only R336, and the Northern Province R386 per person on health. The percentage change in total health budget for the provinces show that besides KwaZulu-Natal and Gauteng, most of the health budgets in the provinces did not increase substantially since 1996.

**Table 5.6: Provincial Expenditure on Capital, Medicine and Medical Supplies and Personnel for 1998/1999 in R'000 (1996 Rands) <sup>1</sup>**

	<b>Capital Expenditure</b>	<b>% Change in Capital Exp.<sup>2</sup></b>	<b>Medicine and Medical Supplies</b>	<b>% Change in Medical Exp.<sup>2</sup></b>	<b>Overspending On Personnel</b>
<b>Eastern Cape</b>	90,682	-38.4%	288,387	17.7%	6.97%
<b>Free State</b>	44,200	-55.1%	210,801	-36.4%	13.62%
<b>Gauteng</b>	471,277	6.7%	733,356	-2.9%	5.57%
<b>Kwazulu-Natal</b>	93,469	105.8%	558,330	-17.5%	0.90%
<b>Mpumalanga</b>	Na	Na	105,591	-46.0%	Na
<b>Northern Cape</b>	739	-43.9%	40,518	-12.4%	9.85%
<b>Northern Province</b>	208,288	-24.2%	209,867	-17.1%	22.79%
<b>North West</b>	115,520	5.0%	164,752	-24.7%	8.98%
<b>Western Cape</b>	11,588	-44.7%	371,435	-7.8%	1.86%
<b>TOTAL/AVERAGE</b>	<b>1,035,764</b>	<b>5.8%</b>	<b>2,683,038</b>	<b>-12.8%</b>	<b>6.35%</b>

Note: <sup>1</sup> Adapted from Tables 3.10, 3.11 and 3.13 in Idasa BIS "Intergovernmental Fiscal Review – Health." (1999) at [http://www.idasa.org.za/Final/publications/bis\\_ignov99\\_health.htm](http://www.idasa.org.za/Final/publications/bis_ignov99_health.htm)  
<sup>2</sup> Percent change in Capital and Medical Expenditure is for between years 1996/97 to 1999/00.

Capital expenditure has dropped significantly in the majority of the provinces, and the total capital expenditure appears to be skewed largely due to the allocation of funds for a new Academic Hospital in KwaZulu-Natal.<sup>25</sup> The sizeable reduction in spending on medicines and medical supplies over the three-year period (1996/97 to 1999/00) is of some concern. Although it appears that overspending on health care personnel is impacting negatively on expenditure on other aspects of health care services, the shortages in health care personnel in the public sector throughout the country necessitates increased funding for personnel.

<sup>25</sup> Idasa BIS "Intergovernmental Fiscal Review – Health." (1999) at [http://www.idasa.org.za/Final/publications/bis\\_ignov99\\_health.htm](http://www.idasa.org.za/Final/publications/bis_ignov99_health.htm)

## Recommendations

- The National DoH should provide its entire budget as well as the requested categorisation of spending on health.
- National and Provincial Departments of Health need to provide information on key programmes such as HIV/AIDS prevention and treatment.
- The Departments must ensure that accurate information is presented (for example, the Eastern Cape DoH provided National budgetary allocations for HIV/AIDS programmes in the province).
- Since most responses indicated that the health budget was inadequate to meet the health needs, the Departments must indicate how it shall fulfil the right to access to health care services under this constraint.

## OUTCOME MEASURES

### Summary of Responses

#### *National level*

The only relevant information provided by the National DoH was that there were 368 dentists in the public sector, and that 22.8% of all pregnant women attending public health facilities were infected with HIV.

#### *Provincial level*

The DoH in the Eastern Cape provided a comprehensive breakdown of health care professionals in the province (table 7).

**Table 5. 7: Health Care Professionals in the Eastern Cape public sector, 1998.**

Health Care Professionals	Total
Nurses	14 913
General Practitioners	874
Specialist Physicians	226
Dentists	51
Pharmacists	139
Ambulance Drivers	99

The Department reported that 30.8% and 5.8% of the population in the Eastern Cape do not live within 5 km and 10 km from a clinic respectively. This amounted to 1,914 515 people without a clinic within 5 km, and 365 977 people who did not live within 10 km from a clinic. There were 3.7 hospital beds per 1 000 population. There were 92 hospitals, 665 clinics, 130 mobile services, 31 satellite services and 31 community health centres. The prevalence of HIV was 15.9%, with 238 773 adult females, 128 277 adult males and 8 459 infants born in 1998 being HIV positive. The total number of

people who were HIV positive in the province was estimated at being 375 509. Parasites and worms were recognised as being common within rural and peri-urban populations, with up to 60% estimated as being infected. The DoH planned on measuring the prevalence of parasites in future annual surveys. Dysentery was recognised as an endemic problem, especially in the former Transkei region.

Regarding the delivery of health care services, the average number of days in hospital was given as 10.1.<sup>26</sup> Bed Occupancy was 72.5%, and the cost per patient per day was R264.50. Although secondary and tertiary care is not free like primary health care, the Department stated that it does not deny access to medical care because of fees. The total number of visits to Primary Health Care clinics for 1998 (January to December) was 13,061 784. It was estimated that most of deliveries of babies at home were not attended to by a skilled health care professional. The DoH reported that 7.1% of births in urban areas and 33.7% of births in rural areas took place at home.

The Free State DoH did not provide information in the format as requested from the protocol on the right to access to health care services, including reproductive health. Relevant information that was presented was that the HIV prevalence measured in antenatal surveys was 22.79%.

The Gauteng DoH said that there were 20 038 nurses, 3 006 general practitioners, 984 specialist physicians, 183 dentists and 246 pharmacists employed in the public health care sector in Gauteng.

The KwaZulu-Natal DoH reported that there were 23 218 nurses, 2 215 general practitioners, 448 specialist physicians, 54 dentists, and 294 pharmacists. Regarding the quality of services, there were 352.7 people per hospital bed and 366 clinics. The prevalence of HIV was 32% and the incidence of dysentery was 17.8%. The average number of days in hospital was 8 days and 9,806 472 visits were made to medical clinics. The number of births not attended by a skilled health care professional was 17.4%.

The DoH in Mpumalanga reported that there were 279 doctors and that 5 322 nurses were employed in the public health sector of the province.<sup>27</sup> There were 199 clinics, 92 mobile clinics and 24 community health centres. Roughly a third of the population lived within 5 km from a health care facility, and a further 46% lived over 5 km from the nearest facility. The number of approved hospital beds was 1.68 beds per 1 000 population, whilst the actual number of hospital beds per 1 000 population was 1.53 beds.

The DoH in the Northern Cape stated that there were 1 333 Medical Officers in the public health sector. Of the 1 819 nurses, 887 were professional nurses. There were 20 pharmacists and 5 dentists. The total human resources in the health care system of the Northern Province was 3 978. With regards to the quality of health care services,

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<sup>26</sup> For the time period January to September 1999.

<sup>27</sup> These figures were for July 1999.

there were 206 public clinics and 36 public hospitals, providing 1 894 beds. This amounted to 1 hospital bed for 332 people. The ratio of clinics (including private) to population was 1 to 3 774 people. Where clinics were not within a 5 km radius to a community, mobile clinics were used to service these areas. The total number of visits to medical clinics was 966 150 for 1998. The prevalence of HIV/AIDS was reported as 9.9%, and the average life expectancy was given as 60 years.

The Northern Province DoH reported that there were 8 162 hospital nurses, 3 791 health centre and clinic nurses, 329 general practitioners, 39 specialist physicians, 20 dentists, 90 pharmacists, and 213 emergency care officers employed in the public health care sector. There were 475 health clinics and health centres. The number of hospital beds per 1 000 population was 2 for community hospital beds, 1 for secondary hospital beds, 0.2 for tertiary hospital beds and 0.4 for chronic hospital beds. The average number of days spent in an acute hospital was 5 days, and 35 days in a chronic hospital. The average annual number of visits to health clinics was 11 178. The prevalence of HIV/AIDS was 11.5% for Africans. Maternal mortality was 52.8 per 100 000, and life expectancy at birth was 63.5 years.

The Department of Health and Developmental Social Welfare in the North West reported that there were 6 808 nurses in the public sector. Eighty percent of these nurses were rural. There were 371 general practitioners, 21 specialist physicians, 20 dentists, 58 pharmacists, 86 ambulance drivers, and 7658 other personnel in the public health sector of the province. The province has 436 medical clinics, and there were 2 hospital beds per 1 000 population. The average number of days in hospital per capita was 0.5 days.

In the Western Cape, there were 8 974 nurses in the public sector, and a further 1 983 rural nurses. Public sector general practitioners amounted to 1 267, and there were 499 specialist physicians, 64 dentists and 209 pharmacists.<sup>28</sup> There were 11 532 other personnel employed in the public health care sector.

Although the number of hospital beds per capita was not provided in total for the Western Cape, a regional breakdown of beds per capita was provided. There were 7 851 hospital beds in total. There were 666 medical clinics (provincial and local authority primary health care facilities) and it was estimated that over 90% of the Western Cape population was within easy reach of these facilities. There were 13,654 973 visits to medical clinics for the year. The average number of days in hospital per capita was 0.76 days. The HIV prevalence as measured by the 1998 antenatal survey was 5.2%. The prevalence amongst Africans was 11.7%, for Coloureds was 1.5%, and 6.5% for 'other'. There were 25 reported cases of Shigella dysentery, of which 18 were urban cases. It was believed that the number of cases was an underestimation, as the notification system did not achieve good coverage.

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<sup>28</sup> These figures were for filled posts on 1 May 1999.

## Commentary

### National level

It is difficult to understand why the National DoH did not provide the necessary information as most of the requested information is at the Department's disposal. Regarding the distribution of human resources in the health care system, other sources have revealed that there are vast disparities between the public and private sectors.<sup>29</sup> The problem is not a shortage of health care professionals in South Africa, but rather the unequal distribution between the public and private sector. For example, the ratio of medical practitioners to population of 1:1 500 compares favourably to other developing nations.<sup>30</sup> Compared to selected medium human development countries as defined by the HDI,<sup>31</sup> South Africa's doctor to population ratio of 1:1 512 is much better than Brazil (1:2 439) and Malaysia (1:2 325).<sup>32</sup> However, when the ratio of doctors to population for the public sector (1:4 452) is applied, the ratio is more in keeping with countries of low human development. Bearing in mind that 80% of the population of South Africa is dependent on public sector doctors, this is an area of concern.<sup>33</sup> As a generalisation, certain professionals are scarce in the public sector throughout the country. There is a shortage of pharmacists and dentists in almost all the provinces (table 8).

**Table 8: Comparison Of Selected Health Professionals Between Public and Private Sectors, 1998<sup>1</sup>**

	Total	Public	Private	Public Ratio <sup>2</sup>	Private Ratio <sup>3</sup>
<b>Nurses</b>	173 647 (100%)	102 200 (59%)	71 447 (41%)	1:332	1:109
<b>Medical Practitioners</b>	27 551 (100%)	7 616 (28%)	19 935 (72%)	1:4 452	1:389
<b>Dentists</b>	4 192 (100%)	324 (8%)	3 868 (92%)	1:104 653	1:2 004
<b>Pharmacists</b>	9 715 (100%)	1 184 (12%)	8 531 (88%)	1:28 638	1:909

Notes: <sup>1</sup> Adapted from Tables 3 and 6 in D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999).

<sup>2</sup> Refers to the ratio of health care professional to population in the public sector.

<sup>3</sup> Refers to the ratio of health care professional to population in the private sector.

Whilst the amount of nurses available in the public sector is not deemed as being a problem, shortages amongst other health care professionals increases the burden of

<sup>29</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999).

<sup>30</sup> UNDP "Human Development Report 1998." (1998) at <http://www.undp.org/hdro/health.htm>

<sup>31</sup> HDI refers to the Human Development Index which is a composite index developed by the United Nations Development Programme (UNDP) used as an indicator for development.

<sup>32</sup> UNDP "Human Development Report 1998." (1998) at <http://www.undp.org/hdro/health.htm>

<sup>33</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 214.

responsibility on nurses. Often work that ought to be conducted by specific professionals, has to be done by nurses.

Certain allied-medical professionals are also in short supply (table 9). These include health therapists (physiotherapists, occupational and speech therapists), radiographers and emergency care practitioners.<sup>34</sup>

**Table 9: Supplementary Health Care Workers (public and private) 1998<sup>1</sup>**

Description	Total
<b>Ambulance Emergency Assistants</b>	8 674
<b>Environmental Health Officers</b>	2 401
<b>Medical Technologists</b>	4 165
<b>Occupational Therapists</b>	2 197
<b>Optometrists</b>	1 830
<b>Physiotherapists</b>	3 940
<b>Psychologists</b>	4 341
<b>Radiographers</b>	4 035
<b>Speech Therapists and Audiologists</b>	1 213

Note: <sup>1</sup> Adapted from D Burger (ed) “*South Africa Yearbook 1999*” (1999). 389. and Table 4 in D van Rensburg and N van Rensburg “*Distribution of human resources.*” in N Crisp and A Ntuli (Eds) “*South African Health Review 1999.*” (1999).

To address shortages of medical practitioners in the country, the DoH has recruited foreign doctors, and made community service compulsory for locally trained doctors. Of the 7 616 doctors working in the public sector, 1 607 doctors (21%) are foreign. In 1999, 1 122 doctors, representing roughly 15% of public sector doctors, reported for community service. Interestingly, only 259 (24%) were placed in facilities that qualify for the rural allowance.<sup>35</sup>

In addition to the disparities that occur between the public and private sector, inequitable distribution is primarily an inter-provincial problem.<sup>36</sup> The provinces most favoured are Gauteng, Western Cape, and KwaZulu-Natal, whilst the least advantaged provinces are the Eastern Cape, Northern Cape, Northern Province and Mpumalanga. Within these provinces, the problem of misdistribution is accentuated between the rural/urban divide.<sup>37</sup>

Perhaps most disturbing about the lack of information by the DoH is that it impacts negatively on the Commission’s assessment as to whether access to health care services has improved. The Annual Report of the Department of Health reveals that

<sup>34</sup> Ibid 216.

<sup>35</sup> S Reid and D Conco “*Monitoring the implementation of community service.*” in N Crisp and A Ntuli (Eds) “*South African Health Review 1999.*” (1999) 239.

<sup>36</sup> D van Rensburg and N van Rensburg “*Distribution of human resources.*” in N Crisp and A Ntuli (Eds) “*South African Health Review 1999.*” (1999) 210 – 216.

<sup>37</sup> A detailed account of shortages in human resources is provided in the analysis of the respective provinces.



from April 1998 to December 1998, 68 new clinics were built,<sup>38</sup> bringing the total number of clinics to 2 604.<sup>39</sup> Also, 14 clinics were upgraded as part of the Clinic Upgrading and Building Programme. According to the Department, each clinic is meant to serve on average 10 000 people. Considering that 81% of the population is dependent on the public sector for health care,<sup>40</sup> there is a shortfall of almost 800 clinics in the country. Since September 1995 until December 1998, only 485 clinics were built and 215 mobile clinics were purchased.<sup>41</sup> Clearly, the rate of delivery has to be speeded up to address the backlog of clinics and expanding population of the country.

There were 343 public hospitals, providing 107 634 beds.<sup>42</sup> This translates to approximately 1 bed per 390 people. There were also 43 hospitals, 22 SANTA<sup>43</sup> centres, 10 clinics and 10 health units providing 7 622 beds as 'not-for profit' provincial-aided health facilities in the private sector. The 'for-profit' private health facilities consists of 162 hospitals and 74 day clinics, providing 20 908 beds.<sup>44</sup>

The HIV/AIDS epidemic remains a major threat to health amongst South Africans. The prevalence of HIV infection has risen dramatically in the last few years of the decade.<sup>45</sup> It was estimated that between 12% and 14% of the adult population were HIV positive in 1998. Approximately 3,6 million people were estimated as being HIV positive in 1998, compared to 2,7 million the previous year.

Estimates suggested that over 1 500 South Africans were being infected daily or 550 000 per annum. The prevalence differs in each province, with KwaZulu-Natal the highest at 26.9%, and the Northern Province the lowest at 8.2%. However, the annual rate of increase rose by 40.2% in the Northern Province in 1998. The HIV prevalence of pregnant women attending antenatal clinics in 1998 was 22.8%, having increased from 17% from the previous year. The prevalence amongst pregnant women is the highest for the age group 20 to 29 years. Alarmingly, the prevalence among pregnant women under 20 years of age rose by 65% from 1997 to 1998. It is estimated that the impact of the epidemic would reduce life expectancy from 60 to 40 years between 1998 and 2008, whilst infant mortality will rise from 50 per 1000 to 60 per 1000 in the same period, and that the number of AIDS orphans would increase to 2 million by 2010.

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<sup>38</sup> Department of Health "Annual Report 1999." 26.

<sup>39</sup> M Kawonga and S Knight "State-aided Hospitals." In N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 103.

<sup>40</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 214.

<sup>41</sup> Department of Health "Annual Report 1999." 26.

<sup>42</sup> M Kawonga and S Knight "State-aided Hospitals." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 103.

<sup>43</sup> SANTA is the South African National Tuberculosis Association.

<sup>44</sup> M Kawonga and S Knight. "State-aided Hospitals." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 103.

<sup>45</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 301-313.

The maternal mortality ratio<sup>46</sup> for 1998 was 150, while the infant mortality rate<sup>47</sup> of 45.4 in 1998 represents a drop from 56.1 for the period 1991 to 1996.<sup>48</sup> Of concern is the fact that the infant mortality rate for Africans (47.0) over this period has decreased by about 20%, whilst that for Whites (11.4) has dropped by 41%, therefore making extrapolation and interpretation of the national rate as an indicator inappropriate. Life expectancy in 1996 was estimated as 64.4 years, with Whites born in 1996 living until the age of 73 years, while Africans born in the same year living until 63 years of age.<sup>49</sup> However, numerous AIDS scholars argue that the impact of the epidemic would drop life expectancy by approximately 20 years to 40 years of age by the year 2008.<sup>50</sup>

Concerning the delivery of health care services and the utilisation of these services, 73% of respondents of a survey<sup>51</sup> said that they sought medical care when ill. Compared to the responses in the equivalent survey of 1994, people were less likely in 1998 to have sought needed medical care. The drop was most significant amongst Indians (from 86% to 72%), rural Coloureds (66% to 56%) and rural Africans (81% to 72%). Of those who did not seek needed care (27%), cost (66%) was given as the major reason for not seeking care, while the inaccessibility of services (23%) and the time spent seeking care (21%) were other important factors named.

**Table 5.10: Reasons for not seeking Health Care when ill<sup>1</sup>**

Reason For Not Seeking Care	1998
Could not afford care	66%
Service unavailable or inaccessible	23%
No time to get care	21%
Concerns regarding treatment	9%
No transport	6%

Note: <sup>1</sup> Adapted from Table 35 in Community Agency for Social Enquiry "The Second Kaiser Family Foundation Survey of Health Care in South Africa." (1999) 19.

With reference to the utilisation of health care facilities in the 12 months preceding the survey, 51% of South Africans attended a primary care facility (clinic or doctor), while 21% visited a hospital during the same period.<sup>52</sup> The likelihood of the respondents visiting either a public sector (49%) or a private sector (51%) primary care facility was about the same. In contrast, 85% of visits to hospitals were within the public sector. The utilisation of the two sectors varied greatly according to area type (urban or rural)

<sup>46</sup> Maternal mortality ratio: the number of women who die as a result of childbearing or within 42 days of termination of pregnancy in one year, per 100 000 live births during that year.

<sup>47</sup> Infant mortality rate: the number of children less than one year old who die in a year, per 1 000 live births during that year.

<sup>48</sup> N Crisp and A, Ntuli (Eds) "South African Health Review 1999." (1999) and A Ntuli (Ed) "South African Health Review 1998." (1998).

<sup>49</sup> A Ntuli (Ed) "South African Health Review 1998." (1998).

<sup>50</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 301-313.

<sup>51</sup> Community Agency for Social Enquiry "The Second Kaiser Family Foundation Survey of Health Care in South Africa." (1999).

<sup>52</sup> Ibid 8-10.

and race (table 11). Most Africans (59%) used the *public sector* for primary care, whilst most Whites (91%), Indians (79%) and Coloureds (57%) used *private services* when seeking primary health care. Also, Rural Africans were more dependent (68%) on *public facilities* for primary care than Urban Africans (54%).

Although the utilisation of public and private sector hospitals also varied according to race, for the most part, public institutions were used much more often (85%) than private hospitals. Whereas all other racial groups used *public* hospitals at least three out of four times, Whites used *private* institutions (75%) when seeking hospital care.

**Table 5.11: Use Of Public versus Private facilities By Race and area type<sup>1</sup>**

	Primary		Hospital	
	Public	Private	Public	Private
<b>African Urban</b>	54%	46%	93%	7%
<b>African Rural</b>	68%	32%	96%	4%
<b>Coloured Urban</b>	41%	59%	79%	21%
<b>Coloured Rural</b>	56%	44%	100%	0%
<b>African Total</b>	59%	41%	94%	6%
<b>Coloured Total</b>	43%	57%	82%	18%
<b>Indian</b>	21%	79%	77%	23%
<b>White</b>	9%	91%	25%	75%
<b>ALL</b>	<b>49%</b>	<b>51%</b>	<b>85%</b>	<b>15%</b>

Note: <sup>1</sup> Adapted from Table 13 and Figure 3 in Community Agency for Social Enquiry "The Second Kaiser Family Foundation Survey of Health Care in South Africa." (1999) 9.

### **Provincial level**

The submission from the DoH in the Eastern Cape was excellent with extensive information and reflects a thorough understanding of the obstacles that are faced in realising the right. Save for the ratio of nurses to population, the Eastern Cape is under serviced in all other health professional categories. For example, whilst the ratio of doctors to population in the public sector for South Africa and Gauteng in 1998 was 1:4 452 and 1:2 073 respectively, that for the Eastern Cape was 1:7 259.<sup>53</sup> It is strange therefore, that only 11.6% of doctors serving community service were allocated to the province,<sup>54</sup> whilst there exists a dire shortage of doctors in the Eastern Cape and the population of the province is 15.5% of that of South Africa. The prevalence of HIV in the Eastern Cape of 15.9% is lower than that of the national figure of 22.8%. However, the rate of increase in the province is high, at 26.2%.<sup>55</sup> It is also disturbing to note that over 30% of people in the Eastern Cape do not live within 10 km of a clinic. Also, it is

<sup>31</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 214-215.

<sup>54</sup> S Reid and D Conco "Monitoring the implementation of community service." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 239.

<sup>55</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 303.

estimated that only 61.2% of the population have access to Primary Health Care Services in the province.<sup>56</sup>

The response from the Free State Department failed to provide answers to most of the questions posed in the outcome measures section. Regarding health care professionals in the public sector in the Free State, the 1999 SA Health Review<sup>57</sup> reported that in 1998 there were 491 medical practitioners, 7 087 nurses, 15 Dentists and 66 pharmacists. In general, the ratios of different health care personnel to population in the Free State were similar to that of the national ratios. However, it is believed that doctors were unequally distributed in the Free State with a scarcity in the peripheral areas.<sup>58</sup>

The submission by the DoH in Gauteng was substandard with irrational information such as '99 nurses' presented as a reply to the question on the number of nurses in the public sector in Gauteng. A more accurate reflection on the number of health professionals based on reliable sources<sup>59</sup> is presented below.

**Table 5.12: Health Professionals in the Gauteng Public Sector, 1998**

	<b>GAUTENG DOH SUBMISSION</b>	<b>SA HEALTH REVIEW 1999<sup>1</sup></b>
<b>Nurses</b>	20 038	18 265
<b>Medical Practitioners</b>	3 006	2 183
<b>Specialist Physicians</b>	984	Not available
<b>Dentists</b>	183	126
<b>Pharmacists</b>	246	282

Note: <sup>1</sup> Adapted from Table 3 in D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999).

In all categories of health care professionals, the Gauteng public health services together with that in the Western Cape are better staffed than the other provinces. For example, there is a public sector ratio of 1 doctor to every 2 073 public dependents in Gauteng compared with 1: 9 780 in the Northern Province. Curious then, is the logic to allocate 169 (15.6%) Community Service doctors to Gauteng in 1999 whilst only 160 (14.8%) doctors served their community service in Northern Province.<sup>60</sup> Community service was identified by the National DoH as a means to address shortages in human resources, but the Government should be wary of perpetuating imbalances between

<sup>56</sup> Data provided to the SAHRC in the Eastern Cape Department of Health's response to the protocol on Basic Health Care Services for Children, 1998-1999; no explanation was furnished to define criteria used to measure access.

<sup>57</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 214-215.

<sup>58</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 217.

<sup>59</sup> Sources: PERSAL personnel administration system 09/03/1999; Health Professions Council of South Africa, 1998; Technical Report to Chapter 10 of the South African Health Review, 1998; South African Nursing Council, 1998.

<sup>60</sup> S Reid and D Conco "Monitoring the implementation of community service." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 239.

provinces by maintaining inequitable distribution of community service doctors and other health care professionals. The lack of provision of basic information like the prevalence of HIV and the number of clinics in the province is disconcerting. This information is readily available to the Department, and it is inexcusable that such information was excluded. The HIV prevalence at antenatal clinics in Gauteng in 1998 was 22.5%, a 31.6% increase from 17.1% in 1997.<sup>61</sup>

Information provided by the KwaZulu-Natal DoH appears to be incorrect. For example, the Department said that there were 2 215 general practitioners in the public sector in 1998. More reliable sources indicate that the figure was 1 800 and that the figure for most other health care professionals was overestimated.<sup>62</sup> Nonetheless, the ratios of health care professionals to population for KwaZulu-Natal closely approximates the corresponding national ratios. No account was given for the number of people that live within a 5 km or 10 km radius of PHC facilities. The prevalence of HIV of 32% provided reflects that for women attending antenatal clinics only. This is the highest prevalence of all the provinces and is substantially higher than the national average of 22.8%.<sup>63</sup> No data was provided for other adult females, adult males and children in KwaZulu-Natal. The large number of births not attended by a skilled health care professional (17.4%) is also disturbing as it impacts negatively on both infant and maternal health as measured by mortality rates.

The information provided by the Mpumalanga DoH was of little use. Other sources reveal that Mpumalanga is generally under-serviced by health personnel as compared to other provinces.<sup>64</sup> Table 13 shows that in general, the province has more people dependent on a health care professional than the national figure.

**Table 5.13: Ratio Of Public Sector Health Care Professionals to Population in Mpumalanga and South Africa, 1998<sup>1</sup>**

Personnel	Mpumalanga	South Africa
Medical practitioners	1:8 799	1:4 452
Nurses	1:469	1:332
Dentists	1:130 132	1:104 653
Pharmacists	1:38 633	1:28 638

Note: <sup>1</sup> Adapted from Table 3 in D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999).

<sup>61</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 303.

<sup>62</sup> Sources: PERSAL personnel administration system 09/03/1999;  
Health Professions Council of South Africa, 1998;  
Technical Report to Chapter 10 of the South African Health Review, 1998;  
South African Nursing Council, 1998.

<sup>63</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 303-304.

<sup>64</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 214-215.

The shortage in the number of medical practitioners is particularly severe, being almost double the national ratio. The allocation of 79 Community Service doctors to the province in 1999<sup>65</sup> may aid in redressing the shortage, but as only 7.3% of these doctors were deployed to the province, it does little to ensure equitable distribution of doctors within the public sector of South Africa. The prevalence of HIV in Mpumalanga is also cause for concern. HIV prevalence, as measured amongst antenatal attendees was 30% in 1998.<sup>66</sup> This is the second highest of all the provinces after KwaZulu-Natal. Moreover, the prevalence of the disease is increasing, and the annual rate of increase was 32.8%.

Regarding human resources in the Northern Cape health care sector, the ratio of health care professional to population in most categories is much higher than the national ratios.<sup>67</sup> Of particular concern is that of medical practitioners, which is almost double that of the national ratio, as well as the shortages in Dentists and pharmacists. Only 1.6% of Community Service doctors for 1999 were deployed in the Northern Cape.<sup>68</sup> This does not reflect equity in resource distribution, as the population of the Northern Cape is 2% of the National population with a backlog in the number of doctors in the public sector in the province.

The quality of the response by the Northern Province DoH was poor with some of the information provided being clearly incorrect. For example, it was submitted that the average annual number of visits to health clinics was 11 178. Specific information on health indicators for vulnerable groups was not provided. This is worrying as 89% of the population in the province lives in rural areas.<sup>69</sup> The information provided on the number of different health care professionals in the Northern Province public sector is incorrect. A more precise account on the number of health professionals based on reliable sources is presented below.<sup>70</sup>

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<sup>65</sup> S Reid and D Conco "Monitoring the implementation of community service." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 239.

<sup>66</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A, Ntuli (Eds) "South African Health Review 1999." (1999) 303.

<sup>67</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 214-215.

<sup>68</sup> S Reid and D Conco "Monitoring the implementation of community service." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 238.

<sup>69</sup> Statistics South Africa "Census in Brief, The People of South Africa, Population Census, 1996" at <http://www.statssa.gov.za/census96/HTML/CIB/Population/21.htm>

<sup>70</sup> Sources: PERSAL personnel administration system 09/03/1999;  
Health Professions Council of South Africa, 1998;  
Technical Report to Chapter 10 of the South African Health Review, 1998;  
South African Nursing Council, 1998.

**Table 5.14: Health Care Professionals in the Northern Province Public Sector, 1998**

	<b>Northern Province DoH Submission</b>	<b>SA Health Review 1999<sup>1</sup></b>
<b>Nurses</b>	11 953	11 816
<b>Medical Practitioners</b>	329	476
<b>Specialist Physicians</b>	39	Not available
<b>Dentists</b>	20	16
<b>Pharmacists</b>	90	94

The ratio of health care professionals to population in the Northern Province is appalling. The ratio of doctor to population is 1:9 780, which is more than twice the national figure of one doctor for every 4 452 people. There was only one Dentist for every 291 000 people and one pharmacist serves over 50 000 people. Community service for doctors, meant to address shortages of public health personnel, probably has little impact on the province. Although in 1999, 160 (14.8%) Community Service doctors were deployed to the Northern Province,<sup>71</sup> this is only marginally greater than needs of the province if one uses population as a discerning criterion for resource allocation.<sup>72</sup> The prevalence of HIV in the Northern Province of 11.5% as measured among antenatal attendees in 1998 is lower than that of the national figure of 22.8%. However, the annual rate of increase rose to 40.2% between 1997 and 1998. This is the highest rate of increase of all the provinces.<sup>73</sup> The Department's submission that no-one's access to health care services fell below the Departmental standards is not easy to accept. If this submission were true, the Department should have been able to provide the Commission with indicators on compliance with the Department's minimum standards. For example, no information was provided on the number of people without a medical clinic within a radius of 5 km.

Together with the Northern Province and the Eastern Province, the North West has the lowest proportion of health care professionals in most categories.<sup>74</sup> The health care professional to population ratio in the public sector is higher than the national figure for medical practitioners, Dentists, pharmacists and nurses. Interestingly, 54% of public sector doctors in the province are foreign.<sup>75</sup> Whilst meeting shortages of doctors by utilising foreign doctors in under-serviced areas is a noted National DoH strategy, unfortunately the same is not occurring with respect to the deployment of Community Service doctors. Notwithstanding the fact that the North West has a low doctor to

<sup>71</sup> S Reid and D Conco "Monitoring the implementation of community service." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 238.

<sup>72</sup> The population of the Northern Province is 12.4% of the national population (Statistics South Africa "Census in Brief, The People of South Africa, Population Census, 1996" at <http://www.statssa.gov.za/census96/HTML/CIB/Population/21.htm>).

<sup>73</sup> G Adler and O Qulo "HIV/AIDS and STDs." In N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 303.

<sup>74</sup> D van Rensburg and N van Rensburg "Distribution of human resources." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 214-219.

<sup>75</sup> Ibid.

population ratio, and that the population of the province represents 8.3% of the population of the country,<sup>76</sup> only 7.3% of community service doctors for the calendar year 1999 were deployed to the North West.<sup>77</sup> The Department should have provided data on health status indicators. The HIV prevalence of women attending antenatal clinics in the province is 21.3%, which is marginally less than that the national figure.<sup>78</sup> Life Expectancy in the North West was estimated at being 63.9, which is slightly less than the national figure of 64.4 years.<sup>79</sup>

A good account of measures taken to realise the right of access to health care services was provided by the Department of Health in the Western Cape. However, there are two areas in which the Department can improve on its submission. Firstly the statistics provided on the prevalence of HIV/AIDS may be misleading. It is believed that the figures provided are distorted due to inadequate data collection.<sup>80</sup> Also more detailed information should be provided in a categorised manner for vulnerable groups.

## Recommendations

- Shortages in Human Resources in the public sector should be addressed by devising strategies of co-operative alignment with those used in the private sector; Criteria used to allocate Community Service doctors to provinces should be reassessed, with more doctors being deployed to the Eastern Cape, Mpumalanga, Northern Cape, Northern Province and North West.
- Efforts have to be directed to address inter-provincial differences in Human Resources by fast-tracking transformation and alleviating disparities as a matter of urgency; models of best-practice management in successful provinces should be adopted.
- Community Service should be extended to pharmacists and other allied-medical professionals that are scarce in the public sector.
- The Clinic Building and Upgrading Programme must be accelerated. More mobile clinics should be provided, and consideration should be given to subsidising transport to clinics, as costs and accessibility remain major reasons for ill people not seeking care.
- The threat of the AIDS epidemic can only be addressed by translating political commitment into strong national and provincial programmes, based on past successful best-practices, utilising civil society to ensure a national effort against the epidemic; the high prevalence of HIV/AIDS in KwaZulu-Natal and Mpumalanga and the rapid rate of increase of HIV/AIDS in the Northern Province need to be prioritised

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<sup>76</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 399.

<sup>77</sup> S Reid and D Conco "Monitoring the implementation of community service." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 239.

<sup>78</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 303.

<sup>79</sup> A Ntuli (Ed) "South African Health Review 1998." (1998).

<sup>80</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 304.



as provinces that require urgent intervention; the prevalence of HIV/AIDS in the Western Cape should be re-assessed.

- Consideration should be made of the usage of anti-retroviral to reduce mother to child transmission of HIV.
- In the Eastern Cape, Primary Health Care facilities have to be made accessible to everyone in the province; strategies could include increasing the number of mobile clinics and subsidising transport to clinics that are not readily accessible.
- The Free State, Gauteng and Northern Province Departments of Health must ensure that a detailed composite submission on the right to access to health care services in the respective provinces is provided in the future.
- In general, most provinces need to report on outcome measures for vulnerable groups.
- A demographic and health survey needs to be conducted by the KwaZulu-Natal DoH; the survey should include the number of people who do not have access to basic health care services (PHC clinics), prevalence of parasitic infections (including malaria), maternal mortality and other key health indicators; the survey must account for special needs of vulnerable groups.
- The DoH in Mpumalanga needs to develop and implement strategies to address the rising HIV/AIDS epidemic in the province; Health personnel shortages should also be addressed as a matter of urgency.

## LIST OF ABBREVIATIONS

<b>AIDS</b>	Acquired Immunodeficiency Syndrome
<b>CBOs</b>	Community Based Organisations
<b>DoH</b>	Department of Health
<b>HIV</b>	Human Immunodeficiency Virus
<b>NGOs</b>	Non-Governmental Organisations
<b>NHIS</b>	National Health Information System
<b>PHC</b>	Primary Health Care
<b>STDs</b>	Sexually Transmitted Diseases
<b>TB</b>	Tuberculosis
<b>TOP</b>	Termination of Pregnancy

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# CHAPTER SIX

## BASIC HEALTH CARE SERVICES FOR CHILDREN<sup>1</sup>

*Every child has the right to basic health care services. The state is obliged to respect, protect, promote and fulfil this right and should thus take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.<sup>2</sup>*

### POLICY MEASURES

#### Summary of Responses

##### ***National Level***

In response to the question of policy measures instituted to *respect, protect, promote and fulfil* the right to basic health care services for children, the National Department of Health (hereinafter DoH) reported that free health care services were provided for children under five years and pregnant women. Poor communities were served by outreach services, and access to these services for vulnerable groups was improved by the erection of many new clinics.

Furthermore, the National Programme of Action for Children (NPA) based on the United Nations Convention on the Rights of the Child (CRC) developed a National Plan of Action as well as Provincial Plans of Action. The NPA is intersectoral in approach, dealing with child health and the management of childhood illness, early childhood development, social welfare, child protection, nutrition, and water and sanitation.

Regarding child health, the key strategy of the NPA is the Integrated Management of Childhood Illness (IMCI), which focuses on key causes of death and disease in children under 5 years of age. The strategy involves 'developing case management strategies, building health service capacity, and strengthening community partnerships.' The strategy had been implemented in six provinces and evaluation of the policy was under way in four of these provinces.

The National DoH considered the policy on free primary health care services for children as being *reasonable and effective* in that there had been a 'dramatic increase' in attendance of patients at primary care points. Problems associated

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<sup>1</sup> The analysis of the responses is based on information received from government departments, and

thus it sometimes differs for the provinces.

<sup>2</sup> Section 27 (1) (a) and section 7 (2) of the Constitution, Act 108 of 1996.

with free access to these services included ‘rapid consultation, out of stock medicines and long queues.’

The *effectiveness* of the IMCI strategy could not be determined because the strategy was reportedly in the implementation phase.

### ***Provincial Level***

The Departments of Health in the Northern Province and Western Cape did not respond to the protocol on the right of children to basic health care services.

The Eastern Cape DoH stated that since women and children constituted about 75% of the population, the Department prioritised planning and resource allocation in favour of health programmes directed towards them. Policy measures were based on the White Paper on Transformation of Health Services in South Africa. The provision of ‘universal access to free primary health care services and free general health care to all pregnant women and children’ was facilitated by the establishment of a District Health System (DHS) aimed at decentralising the Primary Health Care (PHC) services to a district level. Other measures included the:

- Essential Drugs Programme for PHC, to ensure the availability of safe, good quality essential drugs.
- Integrated Nutrition Programme for sustainable food security for the needy. Programmes that the DoH was involved in were the Primary School Nutrition Programme (PSNP), the Community-based Nutrition Programme (CBNP) and poverty alleviation projects.
- Development of a protocol for the treatment of malnutrition in hospitals that had ‘drastically reduced the death rates due to malnutrition’.
- Integrated Management of Childhood Illness (IMCI),<sup>3</sup> where professionals working in rural areas were targeted to ensure that sick children in the rural areas could have access to skilled professional care.
- Extended Programme on Immunisation (EPI), involving immunisation for Measles, Polio, Hepatitis B and Haemophyllus Influenza B.
- National Programme of Action for Children.

In the Free State, the following policy measures were instituted by the DoH to *protect, promote, respect and fulfil* the right of children to basic health care services:

- Provincial Programme for Children, which focused on issues that relate to substance abuse by children and child abuse.
- Integrated Nutrition Programme, that included the Primary Schools Nutrition Programme, the Lunch Box Project for school-going children and the Food Production Projects.
- Expanded Programme of Immunisation to protect children against other communicable diseases.
- Integrated Management of Childhood Illnesses Programme to equip doctors and nurses with skills to deal with various illnesses.

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<sup>3</sup> For more information on IMCI, see the summary of the National DoH above.

- AIDS Programme ‘to deal with broad issues’ relating to the AIDS epidemic.

The DoH in Gauteng provided an excellent overview of what was being done to provide for the right to health care services for children. Most of the policies adopted by the Department have been explained above. The Expanded Programme of Immunisation (EPI) contributed towards protection from infectious disease and decreased vulnerability to polio, tetanus and Measles. The Department stated that 101 935 children had been immunised. The School Health Services Policy was introduced for the screening of school children for vision, hearing and mental health problems.

The Department presented detailed information on vulnerable groups including steps taken to provide for children living in informal settlements and rural areas. Children in rural areas and informal settlements were served by mobile and container clinics. For the reporting period, 38 new clinics were built. Homeless children were referred to places of safety where PHC services were rendered. Community Based Rehabilitation services were provided to address the needs of children with disabilities and a policy to address the backlog on ‘assistive devices’ had been implemented. Through the Health Promotion Policy, education on all health related topics including HIV/AIDS were given to children with disabilities. Home-Based Care was offered for children living with HIV/AIDS, and the HIV/AIDS and STDs Prevention and Care Programme was introduced to educate children and youth about HIV/AIDS and to ensure adequate treatment and care of those infected and living with HIV/AIDS. Physically, psychologically and sexually abused children were admitted to institutions for protection, and a pilot crisis centre had been established.

The KwaZulu-Natal DoH provided the following programmes and projects as policy measures on the right of children to basic health care services:

- The Primary School Parasite Control Programme to treat children at regular intervals against helminths and bilharzia.
- The Protocols for the management of pregnant women and newborn infants.
- A Peri-natal Education Programme.
- Policy and Protocol for Child Abuse and Neglect.

The report also indicated that the ‘WHO/UNICEF approach’<sup>4</sup> was accepted as policy for the Province.

Some of the policies, protocols or guidelines that were instituted by the DoH in the Northern Cape include the Haemophilus Influenza type B Vaccine Protocol, Disease Surveillance Guidelines, BCG Vaccine Protocol, Integrated Management of Childhood Illness Guidelines and Vitamin A Protocols.

The Department of Health in the North West provided an extensive list of policy measures instituted to respect, protect, promote and to fulfil the right of children to basic health care services.

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<sup>4</sup> What this ‘approach’ means or the KwaZulu-Natal Department of Health’s understanding of the ‘WHO/UNICEF’ approach was not provided.

## Commentary

### ***National Level***

The report on policy measures implemented by the National DoH on the right of access to basic health care services for children was not satisfactory. Although the principal policies used by the Government to ensure that the right was being realised were mentioned, the Department failed to provide an adequate reflection of the aims and objectives, effectiveness, and difficulties associated with these measures. For example, the policy on free primary health care services has been linked to problems of overcrowding and shortages in medicines, which in turn have resulted in resentment of the policy by health care workers.<sup>5</sup> To this end, the Department has not accounted for the effect of these problems on the *quality* of health care for children.

Moreover, the DoH should have expanded on measures that were taken, or shall be taken in the future, to address these problems. The policy of free health care for pregnant women and children under five years was implemented in 1994, and the DoH should have identified and addressed some of the problems associated with the policy. The submission by the DoH did not address the questions relating to policy measures for vulnerable and previously disadvantaged children.

### ***Provincial Level***

In general, the provincial departments of Health did not provide a good account of policy measures for the right of children to basic health care services. The Eastern Cape and Gauteng apart, the departments did not address the issue of *how* the measures serve the health needs of vulnerable and formerly disadvantaged groups. The information provided by the North West DoH on policy measures seem to be directed towards social services rather than health rights for children. It is disappointing to note that most of the policies implemented at a Provincial level appear to be the same policies as National policies. Specific measures for the distinctive needs of a province were by and large not provided.

## Recommendations

- Policy measures mentioned by the National and Provincial Departments of Health should be explained in sufficient detail to demonstrate how the measures *respect, protect, promote, and fulfil* the right of basic health care services for children.
- Measures introduced to provide of the right for specific vulnerable groups such as children living in informal settlements should be provided.

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<sup>5</sup> D McCoy "Free health care for pregnant women and children under six in South Africa." (1996).

- The submissions by the National and Provincial Departments of Health should address the questions of *how* the policy measures address the *progressive realisation* of the right, and whether these measures were *reasonable and effective*.
- Provincial departments of Health should develop measures that serve the particular health needs of children in the respective provinces.

## LEGISLATIVE MEASURES

### Summary of Responses

#### ***National Level***

The report from the National DoH made reference to the Child Care Act of 1998. It further mentioned that bodies such as the Law Commission, government departments and non-governmental organisations were engaged in discussions to review and develop this Act with a view of promoting the protection of children's rights. To this end, inputs have been collected from the above-mentioned bodies and a combined report was being written which was intended to improve on the Child Care Act. The National DoH has also helped the National Department of Education in developing HIV/AIDS policy in schools, which was promulgated in December 1998.

#### ***Provincial Level***

The majority of the provincial departments did not submit their reports. Those that have submitted have only cited national legislation such as the Child Care Act and other health laws of general application.

### Commentary

#### ***National Level***

The measures instituted by the National DoH were not sufficient in meeting the constitutional obligations to *respect, protect, promote and fulfil* the right of children to basic health care services. The report describes the Child Care Act as inadequate, but fails to explain the impact this law has on the rights of the child in terms of section 28(1)(c) of the Constitution.

The Department did not address the question regarding special considerations for previously vulnerable and disadvantaged groups. South Africa has a problem of debilitating poverty occasioned by the apartheid past, which makes it necessary to provide special protection to children because of their acute vulnerability to violations of human rights arising out of socio-economic malaise.<sup>6</sup> It is the duty of the state to take legislative and other measures to protect children who are

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<sup>6</sup> See G E Devenish "A Commentary on the South African Bill of Rights." (1999) 376.



homeless, poor and those who generally need care from conditions that impacts negatively on their health and well-being.

### ***Provincial Level***

The failure of the provincial departments to submit reports on legislative measures constitutes a grave breach of constitutional obligation in terms of section 184(3). The right of access health care services should not be interpreted in a general perspective. Section 28 (1)(c) of the Constitution entrenches children's right to basic health care services. The right of children to basic health care services is an individual right that should be *respected, protected, promoted and fulfilled* as required by Section 7(2) of the Constitution. It is therefore incumbent upon the provinces to provide separate information on children's right to basic health care services as requested in a separate protocol sent to that effect.

Failure to provide information, especially by the provinces, caused uncertainty as to whether children's health rights are being *respected, protected, promoted and fulfilled* in terms of the Constitution. It can also not be assumed that there were legislative measures instituted during the reporting period.

The general quality of the information provided is poor as no details were provided. This shows lack of understanding of the content of the right of children to basic health care services.

### **Recommendations**

- There should be compliance in providing answers to all the questions in the protocol. The report should acknowledge the absence of information where certain answers are not provided.
- The State should endeavour to develop and implement laws that will ensure the full protection of children's rights to basic health care services. This should be done in consideration of the challenges outlined in the National Action Plan for the Promotion and Protection of Human Rights.
- The provincial departments should honour the protocol on the right of children to basic health care services for children as it is separately provided in section 28(1) (c) of the Constitution. This right should also be interpreted independently from the right to access to health care services.

## **MONITORING**

### **Summary of Responses**

#### ***National Level***

The National DoH did not provide information on monitoring of the right of children to basic health care services.

### ***Provincial Level***

Most of the provincial departments of Health did not provide submissions on monitoring with the exception of Gauteng and KwaZulu-Natal Departments of Health. However, the latter provided the same response on monitoring as that for the right to access to health care services.

In response to the minimum standards and criteria established to define the right of children to basic health care services, the Gauteng DoH reported that in urban areas, health facilities are located within a distance of 3 km to 10 km. In urban areas, the distance travelled ranged from 3 km to 10 km, whereas in rural areas it can stretch up to 20 km or more. Mobile clinics were provided to reach areas where there were no fixed PHC facilities.

The statistics collected by the Gauteng DoH to monitor the *progressive realisation* of the right to basic health care services for children were case numbers, sex, and age group for child abuse and rape. The DoH also collects statistics on children with disabilities and these include the type of disabilities, number of 'assistive devices' issued and needed, number of health facilities accessible to people with disabilities, number of accessible schools, number of skilled people with disabilities, and the number of people with disabilities employed. The statistics were collected through a designed tool for the collection of statistics and they were then sent to the Health Information System section for capturing.

### **Commentary**

#### ***National Level***

The National DoH should have reported on the distance to the PHC facilities, the availability of health professionals, the availability of resources, and the kind of statistics collected in order to monitor the *progressive realisation* of the right of children to basic health care services.

#### ***Provincial Level***

Similarly, all of the provincial departments of Health failed to provide adequate answers for monitoring of this right. It seems inconceivable that the DoH uses the same criteria to define the right and that the health indicators and statistics collected are the same as those for the right to access to health care services. Indicators such as the number of children receiving immunisations, stunting and wasting of children, are routinely measured on health charts and should have been provided.

This information on these indicators is crucial because it informs the Departments on areas that need to be addressed to ensure that the right of children to basic health care services is realised. For example, the availability of clinics, beds and

medication would provide the Departments with a means of assessing whether the policy of free primary health care for children is effective in the *delivery* of the right. The Gauteng DoH provided the actual conditions of the proximity of clinics to communities rather than the required departmental minimum standard for the distance of clinics from communities.

## **Recommendations**

- The National and Provincial Departments of Health must present a complete report with a detailed account of what measures have been implemented to define and monitor children's right to basic health care services.
- Details on the measures and activities including standards and norms adopted should be clearly reported on by the Departments of Health.

## **BUDGETARY MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DoH reported that there was no budgetary information available specifically for children. The DoH reported that free Primary Health Care targets children in rural areas, although no figures on the budgetary allocation for this prioritisation were provided.

As part of the Department's HIV/AIDS prevention budget, R1, 600 000 was set-aside for the Life Skills Programme that targeted the Youth.<sup>7</sup>

#### ***Provincial Level***

None of the Provincial Departments of Health could provide acceptable information on the budgetary allocation for the right of children to basic health care services. The provincial departments reported that specific figures of health expenditure for children were not available. Data presented was on programmes such as District Health Services and the delivery of Primary Health Care Services.<sup>8</sup> The Departments said that expenditure on these programmes included expenditure on health for children.

### **Commentary**

The National and Provincial Departments of Health did not report adequately on budgetary measures taken to ensure basic health services for children. Whilst acknowledging that there was no separate budget for health of children, and indeed most social services,<sup>9</sup> the Departments could have provided budgetary

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<sup>7</sup> The Department provided no analysis of the achievements of the Life Skills programme.

<sup>8</sup> Provincial expenditure on these programmes are reported on in 'Chapter 5, Access to Health Care Services, section 4. Budgetary Measures'.

<sup>9</sup> S Robinson "A First Call for Children: Do Children receive their Fair Share of the Budget?" (1998) 7 at <http://www.idasa.org.za/>

information on programmes that are particularly relevant to children. For example, although immunisation for children is part of the free primary health care policy, only 63% of one-year old children are immunised.<sup>10</sup> It is worth exploring whether the main contributory factor to low immunisation levels is due to insufficient financial resources to acquire vaccines. The Departments can only provide information of this kind, and should take the necessary steps to ensure that budgetary information is obtained for key programmes that impact on health rights of children.

### **Recommendations**

- A specific description of expenditure on the right of children to basic health care services is necessary.
- Budgetary allocations for projects such as the school feeding programmes, immunisation programmes and health education must be reported on.
- The Departments of Health should address programmes that target specific vulnerable groups in its report, especially children living in informal settlements and rural areas, and children with disabilities.

## **OUTCOME MEASURES**

### **Summary of Responses**

#### ***National Level***

In response to questions posed on outcome measures for the right of children to basic health care services, the National DoH stated that no child was denied medication as free health care was provided. Similarly, children were provided free medical assistance and access to medical services through the free health care policy for children. Regarding HIV/AIDS education in schools, teachers in most schools had received training, but there were some difficulties in the implementation of the HIV/AIDS education programme.

#### ***Provincial Level***

The Departments of Health in the Free State, Mpumalanga, Northern Province and Western Cape did not provide any information on outcome measures for the right of children to basic health care services.

The Eastern Cape DoH estimated that 61.2% of the Eastern Cape population had access to Primary Health Care facilities. Of the 13,061 784 visits to clinics in 1998, 75% were by women and children, and 15% (1,959 267) were by children under 5 years of age. The estimated number of children under 1 year of age who were HIV positive in 1998 was nine thousand. Tuberculosis prevalence was given as 504 per 100 000, and there were 126 notified cases of Measles for 1998. The Infant mortality rate was 61.2 per 1 000 live births,<sup>11</sup> and the Child mortality rate

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<sup>10</sup> Ibid 9.

<sup>11</sup> Infant mortality rate: the number of children less than one year old who die in a year, per 1 000 live births during that year.

was 80.5 per 1 000 babies born. The Maternal mortality ratio was given as 58 for Africans, 22 for Coloureds, 8 for Whites and 5 for Indian.<sup>12</sup> Measles coverage was 52%, and BCG (Tuberculosis) immunisation was 41%. The department reported that 759 619 children representing 12% of the Eastern Cape population were children under 5 years of age. The number of children under 5 years who were underweight was estimated as being about 60 000 and 3.2% of these children were undernourished and 16.8% of children under five years of age were Vitamin A deficient.

The Gauteng DoH reported that the HIV prevalence for children under 3 years was 70% and for the age group 15-25 years the prevalence was less than 20%. Although the prevalence for the age group 5-15 years was unknown, it was thought to be lower than the 15-25 year age group. It was estimated that AIDS information other than AIDS drama programmes had reached 30% of children, and 60% of schools have teachers trained on AIDS issues. AIDS awareness amongst children was also addressed via drama, and 688 000 children were reached by this vehicle of information. The incidence of Measles and Tuberculosis amongst children in Gauteng was given as 0.2 and 16.1 respectively. Maternal mortality was reported as 118 deaths per 100 000 live births.

The KwaZulu-Natal DoH said that the incidence of Measles in the province was 73 per 100 000 population, and that for pulmonary Tuberculosis was 448 per 100 000, and for 'other' Tuberculosis was 150 per 100 000. The Infant mortality rate and the Child mortality rate for the province was 52.1 and 74.5 per 1 000 live births. There were 4 944 stillbirths. The percentage of children under 5 years was 11.6%. The number of visits to clinics by children was 3,118 558.

The percentage of children less than 5 years of age in the Northern Cape was 10.6% as reported by the Province's Department of Health. For births at health facilities in 1998, 165 births were less than 2.5 kg, and 26 births were still born.

The North West DoH stated that the prevalence of HIV in children (under 20 years) was 11.5%. The incidence of Measles in children under 5 years was 26 per 100 000 population, and the incidence for Tuberculosis was 472 per 100 000 population of the province. The Infant and Child mortality rates were 37 and 9 per 1 000 live births respectively, and life expectancy was 64 years for males, and 70 years for females. The number of children under 1 year not immunised for Measles was 15 024, and 3 700 children under 1 year were not immunised for Tuberculosis. The Department stated that 3 451 children or 9.6% of children were born with low birth weight. Children under 5 years account for 11.1% of the province's population. Nutritional deficiency, as measured by stunting, affects 24.7% of children under 5 years. There were 1 656 stillbirths, representing 4.4% of all births.

## **Commentary**

### ***National Level***

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<sup>12</sup> Maternal mortality ratio: the number of women who die as a result of childbearing or within 42 days of termination of pregnancy in one year, per 100 000 live births during that year.

The response from the National DoH was poor, in that most of the requested information was not provided. The Department failed to provide information for vulnerable and previously disadvantaged groups. None of the important indicators on the health status of children and the delivery of health care services were provided. Whilst the Department contends that no child was denied medication because health care for children is free, this is not necessarily correct because policy does not always translate to delivery. Hence, questions on health indicators were specifically asked to assess whether stated policy measures such as free Primary Health Care for children resulted in the stated objectives of the policies.

Of the questions answered, the information provided was vague and does not provide an accurate reflection of the health status of children in South Africa. Instead, the National DoH referred the Commission to other sources where basic information such as health status indicators on morbidity and mortality was available. This is clearly unacceptable because the onus was on the DoH to furnish the required information to the Commission.

The Infant mortality rate<sup>13</sup> is alarmingly high at 45.4. The figure for Africans is 47.0, and for White South Africans, 11.4.<sup>14</sup> It is expected that the impact of HIV/AIDS would increase the Infant mortality rate to 60 by 2008.<sup>15</sup> Child mortality, as measured by the Under 5 mortality rate<sup>16</sup> is 59.4 for all South Africans, but 63.6 for Africans, 28.2 for Coloureds, and 15.3 for Whites.

Although no data is available on the immunisation against specific diseases such as Measles and Tuberculosis, immunisation coverage of children 12-23 months of age is 63.4%.<sup>17</sup> The coverage between provinces differs, with KwaZulu-Natal and the Eastern Province having the lowest coverage at 49.5% and 52.6% respectively.

The impact of HIV/AIDS on the health status of children in South Africa is projected as having disastrous consequences. Although the HIV prevalence amongst children is unknown, 35% and 20% of children admitted to Chris Hani Baragwanath Hospital in Soweto and Red Cross Hospital in Cape Town respectively are HIV positive.<sup>18</sup> Between 25% and 35% of babies born to HIV positive mothers are infected.

### **Provincial Level**

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<sup>13</sup> Infant mortality rate: the number of children less than one year old who die in a year, per 1000 live births during that year.

<sup>14</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) and A Ntuli (Ed) "South African Health Review 1998." (1998). 407.

<sup>15</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Ed) "South African Health Review 1999." (1999). 301-313.

<sup>16</sup> Under 5 mortality rate: the number of children under 5 years old who die in a year, per 1000 live births during that year.

<sup>17</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) and A Ntuli (Ed) "South African Health Review 1998." (1998). 407.

<sup>18</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Ed) "South African Health Review 1999." (1999). 301-313.

Regarding Provincial Departments of Health submissions, it was unclear as to whether the statistics provided were specifically for children in that particular province or whether it applied to the total population of the province, all children in South Africa, or the total South African population. For example, it is likely that the figures provided for the prevalence of Tuberculosis and Measles amongst children in the Eastern Cape are those for the entire Eastern Cape population.<sup>19</sup> Nevertheless, the incidence of Tuberculosis in the Eastern Cape is extremely high and second only to that of the Western Cape. It is disturbing to note that only 44% of clinics in the Eastern Cape had all Tuberculosis drugs available.<sup>20</sup> Immunisation coverage for Measles and Tuberculosis in the province is particularly poor. The shortage in supply of influenza vaccine is also worrying. Haemophilus Influenza B is recognised as being an important cause of death amongst infants, and it is hardly surprising that with such poor immunisation coverage, the Infant mortality and Child mortality rates in the Eastern Cape are the highest of all the provinces. Another cause for alarm was the high incidence (16.8%) of deficiency in Vitamin A in the Eastern Cape. Regarding nutritional deficiencies, a startling 28.8% of children less than 5 years suffer from stunting.<sup>21</sup> There is no doubt that the mortality rates and nutritional deficiencies for children in the province can only be addressed with an organised, intersectoral approach that combines pre, peri and antenatal care with food security, immunisation coverage, and access to health care facilities together with appropriate medication. Perhaps the first step then, would be to increase access to health care services from the estimated 61.2%.

The Free State is one of the provinces where the poverty rate of 63.4% is significantly higher than the national average.<sup>22</sup> Consequently, it comes as no surprise that the nutritional status of Free State children as measured by indicators for wasting and stunting is worse than the national figure.<sup>23</sup> Similarly, the Infant mortality rate of 50.5 and the Under 5 mortality rate of 68.1 are distressingly higher than the national figures of 45.4 and 59.4 respectively.

The Gauteng DoH failed to provide information on core indicators such as Infant mortality and Child mortality rates in the province. It is difficult to understand how the Department of Health hopes to realise this right in Gauteng if it cannot provide basic information that is essential for policy planning. Most of the information requested is available from other sources. The South African Health Review 1999 reported that the Infant mortality and Under 5 mortality rates were 36.3 and 45.3 per 1 000 live births in Gauteng.<sup>24</sup> This was significantly lower than the national average. However, extrapolation of these figures is dangerous, as gross economic disparities exist within the province. For example, 482 363 households representing 23.8% of the Gauteng population live in informal dwellings.<sup>25</sup> Hence, a detailed submission from the Department with indicators for vulnerable

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<sup>19</sup> L Bamford "Tuberculosis." in N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999). 319 and N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999). 401.

<sup>20</sup> Ibid. 326.

<sup>21</sup> Stunting: height for age under 2 standard deviations of the norm.

<sup>22</sup> J May (Ed) "Poverty and Inequality in South Africa." (1998) 28.

<sup>23</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 399-404.

<sup>24</sup> Ibid.

<sup>25</sup> Community Agency for Social Enquiry "Upgrading Gauteng's Informal Settlements: Volume 1." (1998).

groups would have proved useful in evaluating the health status of children in Gauteng. The high prevalence of HIV and ever-increasing rate of increase in the incidence of HIV infection is an area of concern. However, the information submitted by the Department appears to be ludicrous. Whilst the Department reported that that 70% of children less than 3 years attending antenatal clinics in Gauteng were HIV positive, other sources indicate that the figure was much lower.<sup>26</sup> For example, 35% of children admitted to Chris Hani Baragwanath Hospital in Soweto were found to be HIV positive.<sup>27</sup> It is thus doubtful as to whether any of the Department's figures provided on HIV/AIDS is accurate.

The submission provided on outcome measures by the DoH in KwaZulu-Natal on the right of basic health care services for children was poor. Statistics were either misrepresented<sup>28</sup> or not provided at all. Basic indicators like immunisation coverage were not provided. No account was given of indicators for vulnerable groups for children. Key issues like information on the impact of HIV/AIDS education programmes and nutritional deficiencies were not addressed.

Whilst the Mpumalanga DoH did not submit the necessary information on outcome measures, other sources reveal that the health status of children in the province is not acceptable.<sup>29</sup> The Infant mortality rate in the province is 37.2. Although this compares favourably to the National figure of 45.4, the Under 5 mortality rate of 63.7 is higher than the National figure of 59.4. One in five (20.4%) of children 6–71 months suffer from stunting.<sup>30</sup>

The information provided by the Northern Cape DoH was either irrelevant, or basic information like Infant mortality and immunisation indicators were simply not provided. Data available from other sources suggests that the right to health care services for children in the Northern Cape is far from being realised.<sup>31</sup> The Infant mortality rate in the province is 52.1 per 1 000 live births, the highest of all the provinces except for the Eastern Cape. The Under 5 mortality rate is also higher than the national average, at 55.5 per 1 000 live births. With regards to nutritional deficiencies, 22.8% of children between 6-71 months show stunting. Statistics also show that 20.9% of children who are in grades one and two (Primary School) in the Northern Cape are underweight, compared to the National average of 9%.

The failure by the Northern Province DoH to provide any information on the right to basic health care services for children is exceptionally worrying, as other sources indicate that the status of health amongst children in the Northern Province is poor, and much lower than children in other parts of South Africa.<sup>32</sup> The Infant mortality rate in the Northern Province of 47.3 is higher than the National figure of 45.4. A shocking 20.9% of children in grades 3 and 4 are

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<sup>26</sup> G Adler and O Qulo "HIV/AIDS and STDs." in N Crisp and A Ntuli (Ed) "South African Health Review 1999." (1999). 301-313.

<sup>27</sup> Ibid.

<sup>28</sup> Both Infant mortality and Child mortality rates were presented in a percentage form, as 52.1% and 74.5%, when these values are actually relative to 1 000 live births each. (52.1 per 1 000 live births and 74.5 per 1 000 live births).

<sup>29</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 399-404.

<sup>30</sup> Stunting: height for age under two standard deviations of the norm.

<sup>31</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 399-404.

<sup>32</sup> Ibid.



categorised as being under-weight.<sup>33</sup> Similarly, data on wasting and stunting for children in the province indicate that the health status of these children is generally worse than the rest of the country. More than one-third (34.2%) of children 6-71 months in the Northern Province are afflicted with stunting.

It appears that some of the information provided by the North West Department of Health was inaccurate. For example, the Infant and Child mortality rates are given as 37 and 9 per 1 000 live births respectively. However, the correct figure is actually 43.1 and 58.1 per 1 000 live births respectively.<sup>34</sup> As such, one doubts the accuracy of other figures provided that could not be verified.

Although the Western Cape Department of Health did not provide information on outcome measures, health indicators for children in the Western Cape imply that the health status of children in the province is better than that of most other provinces.<sup>35</sup> For example, the Infant mortality and Under 5 mortality rates of 30.2 and 40.3 per 1000 live births are the lowest of all the provinces. The immunisation coverage of children 12-23 months of 64.2% is marginally better than the national figure of 63.4%. There are areas of concern, though, in that the prevalence of underweight children in Grade 3 and 4 in the Western Cape of 12% is significantly higher than the National prevalence of 9%.

## Recommendations

- The National DoH should provide the necessary information, especially if other sources reveal that the information is available; these include indicators on:
  - the prevalence of HIV/AIDS;
  - the incidence of Tuberculosis; and
  - immunisation coverage for specific diseases.
- The Health Departments of Free State, Mpumalanga, Northern Province and Western Cape must provide information for the outcome section of the protocol on the right to basic health care services for children.
- The DoH in Gauteng, KwaZulu-Natal, Northern Cape and North West should ensure that the information submitted is accurate.
- The Eastern Cape DoH needs to address the following issues:
  - medication, especially for Tuberculosis, must be made available at all PHC clinics;
  - new statistics should be collated on the prevalence of diseases and wasting and nutritional deficiencies amongst children under 5 years; statistics collected should include indicators that are relevant to the Eastern Cape, for example, the prevalence of parasitic diseases;<sup>36</sup> and
  - access to health care services has to be increased from the estimated 61.2% of the population that benefit from the services.

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<sup>33</sup> Under-weight: weight for age under 2 standard deviations of the norm.

<sup>34</sup> N Crisp and A Ntuli (Eds) "South African Health Review 1999." (1999) 401.

<sup>35</sup> Ibid. 401-404.

<sup>36</sup> The present data is based on surveys conducted in 1994.

- Information systems on health indicators for children need to be developed by the KwaZulu-Natal DoH; research on the health status of children should be conducted in the province and used for policy planning.
- The Northern Cape DoH needs to outline appropriate programmes and interventions to improve the health status of children in the Northern Cape.<sup>37</sup>
- The assimilation of health indicators is central in determining strategies to improve the health status of children in the Northern Province; the Department must ensure that the appropriate indicators are collated.
- Although in general indicators show that children in the Western Cape are healthier than children in other provinces, the Department needs to provide specific health indicators for vulnerable groups, especially children living in informal settlements; other sources indicate that delivery of services like water that impact on health has actually worsened in these areas in the past four years.<sup>38</sup>

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<sup>37</sup> The high Infant mortality Rate is cause for concern.

<sup>38</sup> Cape Metropolitan Council "*Cape Metropolitan Area State of the Environment*" (1998) at [http://www.cmc.gov.za/peh/soe/water\\_2.htm](http://www.cmc.gov.za/peh/soe/water_2.htm)

## LIST OF ABBREVIATIONS

AIDS	Acquired Immuno-deficiency Syndrome
CRC	Convention on the Rights of the Child
DoH	Department of Health
DHS	District Health System
HIV	Human Immunodeficiency Virus
IMCI	Integrated Management of Childhood Illness
NPA	National Programme of Action for Children
PHC	Primary Health Care

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# CHAPTER SEVEN

## THE RIGHT OF ACCESS TO HOUSING<sup>1</sup>

*Everyone has the right to have access to adequate housing. The state must respect, protect, promote and fulfil this right and thus take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right.<sup>2</sup>*

### **POLICY MEASURES**

#### **Summary of Responses**

##### ***National Level***

The National Department of Housing (hereinafter, National DoH) indicated that the following policy measures were developed or still under development to fulfil the right of access to housing:

- National Policy in Support of the Peoples Housing Process
- Rural Subsidy: Informal Land Rights
- Subsidy Scheme to Support Disabled Beneficiaries
- Guidelines for Human Settlement Planning and Design
- National Norms and Standards in respect of permanent residential structures
- The Housing Code and
- Housing White Paper II.

The National DoH reported that the policy measures were intended to complement and improve the policy instruments already in place.

The National Policy in Support of the People's Housing Process was community-driven and largely spearheaded by the female-headed households. This has been regarded as one of the successful implementation of community-driven housing projects managed by women.

In order to address the legacy of poverty and inequality left by apartheid, the Department developed a comprehensive instrument providing a wide array of housing subsidies to a broad spectrum of eligible beneficiaries. The rural subsidy was formulated to overcome the housing problems in rural areas. People living in rural areas who previously could not access government housing funds could

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<sup>1</sup> Please note that the analysis of the right of access to housing is based on the responses submitted by the government departments.

<sup>2</sup> Section 26 of the Constitution, Act 108 of 1996.

now have access to housing subsidies. Households in informal settlements earning less than R3 500 per month are also provided with housing subsidies.

The Subsidy Scheme to Support Disabled Beneficiaries afforded persons with disabilities access to additional subsidy money for the improvement of their units such as ramps, special doors, handrails, and other design interventions. Specific provision for the aged had not been made. However, older persons could also apply for the subsidies.

### ***Provincial Level***

Provincially, with exception of the Eastern Cape, seven provinces responded to the protocols on the right of access to housing. Free State did not report on policy measures. In accordance with the constitutional obligations, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North West, and Western Cape reported on the policies that are largely similar to the National DoH policies. These were the National Policy in Support of the People's Housing Process, Housing Subsidy Scheme (HSS), Policy on the Variation of the Subsidy amount for disabled persons and Rural Housing Subsidy.

In respecting the right of access to housing, the KwaZulu-Natal DoH assisted vulnerable and previously disadvantaged groups with housing subsidies through the National Housing Subsidy Scheme (HSS). The National HSS is aimed at assisting the vulnerable groups in realising the right of access to adequate housing. Housing subsidy values for provincial subsidies were based on the basis of household income. The HSS provided various subsidy schemes to applicants who did not have access to housing opportunities. These included the Individual Subsidy allocated to qualifying beneficiaries and assisted people acquiring ownership of fixed residential properties for the first time. Project-linked subsidies provided housing opportunities for individuals on an ownership basis within housing projects approved by provincial housing development boards. Consolidation subsidies enabled the persons, who received housing assistance from the state in the form of ownership of serviced sites only, to apply for an additional benefit from the state to build or upgrade a house on the site. Facilitation Funding provided the necessary expertise to build their homes. Institutional Subsidies were made available to organizations or co-operatives in order to acquire and/or develop residential property. Relocation assistance provided an opportunity to obtain affordable housing with the assistance of the housing subsidy. This was meant for people who could not afford to buy back their repossessed houses or where the option of rehabilitating these houses was not affordable. The policy measures reported by the KwaZulu-Natal Department formed part of the Department's plan to realise the right of access to housing.

The KwaZulu-Natal and Mpumalanga Provinces have implemented the Hostel Redevelopment Programme, which was intended to upgrade hostels into dwelling units for rent or ownership. The KwaZulu-Natal DoH reported on

various policy measures implemented to realise the right to housing in order to address the shortcomings in existing policies for effective delivery. These were:

- Rapid Land Release that dealt with land invasions
- Policy on Joint Ownership - whereby two or more beneficiary families were awarded a subsidy for one property
- The Discount Benefit to help people purchase houses at discounted prices (up to R7 500).
- Transitional Housing Subsidy-provided people with temporary accommodation for the destitute and impoverished homeless people that live within the confines of urban areas.

Both KwaZulu-Natal and the Western Cape provinces developed an HIV/AIDS Policy, which was aimed at procuring housing assistance to people living with HIV/AIDS and their families.

The Gauteng DoH established other policy measures in order to redress the imbalances of the past. The New Wave Consolidation Subsidy provided people with site and services to the value of R8 000. In the Northern Cape and Western Cape provinces, a farm-workers housing subsidy policy had been developed to address the needs of farm-workers. This allowed farm-workers access to housing opportunities.

The KwaZulu-Natal, Gauteng and Western Cape indicated that special consideration has been given to all the vulnerable and disadvantaged groups in the realisation of the right of access to housing. For instance, women are now eligible to hold title in property regardless of their marital status. Beneficiaries in the rural areas would have access to housing subsidies, which would allow them to have adequate housing with access to basic amenities like water and sanitation. People living in informal settlements could access the consolidation subsidy, which has been designed for them. Persons with disabilities were provided with more convenient housing with the necessary structural facilities and features suitable for their needs. Poor households were provided with access to housing and security of tenure, which had been previously denied to these categories of people. The Department reported that other groups such as the aged, Africans (including Khoi and San), Coloureds and Indians were provided with subsidies and security of tenure.

The Gauteng, KwaZulu-Natal and Western Cape Departments reported that the policy measures implemented were effective and reasonable in that the vulnerable and previously disadvantaged groups have been catered for in terms of the right of access to housing. Vulnerable groups had been reached through the policy measures implemented and many people have access to housing.

## Commentary

### *National Level*

The submission made by the National DoH is not satisfactory in that the policies listed were not explained in detail in order to show how the instituted policy measures promoted the right of access to housing. The time frames in which these policies were developed were not incorporated in the report. The National Department referred to numerous significant policy developments without providing the objectives of some of these measures. In some of the policies reported upon, little or no attention was paid to them.

The National Housing Policy Supporting the People's Housing Process was adopted during May 1998 and was designed in recognition of the prominent role that women had traditionally played, and increasingly continue to play, in providing homes for their families.<sup>3</sup> This policy recognised the efforts and the initiatives of those poor families who are prepared to commit their resources, skills and energies in housing themselves. The policy encourages and supports families and communities in their efforts to fulfil their own housing needs by assisting them in accessing housing subsidies, technical, financial, logistical and administrative support regarding the building of their homes on a basis which is sustainable and affordable.

Guidelines for Human Settlement Planning and Design, also called the Red Book is a guide to users in relation to appropriate levels of engineering services, and provides guidance on planning and design practice and addresses services provision within the context of holistic human settlement development.<sup>4</sup>

National Norms and Standards in respect of permanent residential structures built with the assistance of state housing subsidies were approved in December 1998. The norms and standards apply to municipal services, which may be subsidised from the housing subsidy, i.e. water, sanitation, roads, storm water and street lighting, in exceptional circumstances subject to a funding limit of a maximum amount of R7 500 for the provision of the services and the acquisition of land.

Norms and standards in respect of permanent residential structures, special provision for disabled persons, and implementation of a provincially based bank guaranteed subsidy payment system. This policy has been enhanced to allow the implementation of a bank guaranteed system to replace the existing up-front payment to lenders and conveyancers who administer the pay-out of approved credit and non-credit lined individual subsidies. These subsidies are subject to

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<sup>3</sup> Department of Housing. 'Overview of housing within the context of Urban Development for the period April 1994 to December 1999', 64.

<sup>4</sup> *Ibid*, 13.

negotiations and consensus with lenders, conveyancers and other parties concerned. The subsidy has also been increased from R15 000 to R16 000.

The National Housing Code set policy, policy directives, and administrative guidelines for the implementation and application of national housing development policy, which would be binding on all levels of governments.<sup>5</sup>

A detailed account on how these policy measures benefited the poor was not indicated. Provision of policy measures point to the fact that the Department is committed to facilitate the right of access to housing. The National Department indicated that these policy measures are intended to comprehend and improve the policy instruments, but it was not clearly indicated how the new policies would add value to the current policies. It would therefore have been meaningful if the Department had reported on the contribution these policies made in order to show that it has promoted and fulfilled the right to adequate housing.

In terms of the contribution these policies made, the report indicated that 745 717 households had been provided with housing opportunities through the housing subsidy scheme. However, the Department did not provide more information to justify this figure.

The National Department should be commended for providing policy measures that took into consideration some of the vulnerable groups mentioned in the protocols. For instance, people living in rural areas have been offered the opportunity to have access to the rural housing subsidy, whereas for people in informal settlements, the housing programme provides all the households earning R3 500 per month and less with housing opportunities in formal housing developments within the limits of available resources. The Department however should have indicated the criteria used in this programme rather than just reporting that all households within a certain income bracket will have access to housing. What is not clear is whether the National DoH took into consideration the fact that millions of unemployed people do not have access to adequate housing. Therefore, the Department ought to have provided mechanisms which shall consider people who are not employed.

Persons with disabilities were also being considered in that the amended subsidy scheme allowed access to additional subsidy money for the necessary improvements to their units such as ramps, special doors, handrails and other design interventions. This shows that the National DoH is aware of its duty to address the needs of the vulnerable groups in terms of access to housing.

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<sup>5</sup> Housing Rights and Gender Working Group. *Executive Summary of Responses of Joint Submission on the Housing Bill, (1997) 7.*



Furthermore, a crucial point worth noting is that though the National DoH reported on policy measures that cater for most vulnerable groups, the Department did not provide information on policy developments that cater for people living with HIV/AIDS. The National DoH ought to have indicated the housing policy developments that will also address the needs of the people living with HIV/AIDS.

The National DoH seemed to have paid more attention to the gender analysis. The database of the Department, the Housing and Urbanisation Information System (HUIS) indicated that by August 1998, 37% of all approved subsidies in seven of the provinces were allocated to women<sup>6</sup>. In the Eastern Cape, Northern Province and Free State, approximately 45% of subsidies were registered to women.<sup>7</sup> It seems logical that priority is given to women in the allocation of subsidies since women are the part of the disadvantaged group in terms of access to services. However, the needs of other groups should not be ignored.

For other groups such as Africans (including the Khoi and San), Coloureds and Indians, the Department only managed to report that the subsidy scheme does not discriminate on the population groups. The impact and the contribution these policies have made were not presented. The National Department did not indicate in detail the effectiveness and reasonableness of the policies designed for other groups mentioned such as

- people living in rural areas;
- people living in informal settlements;
- persons with disabilities;
- poor households;
- Africans (including Khoi and San);
- the aged; and
- Coloureds and Indians.

Although the Department reported that the measures were reasonable and effective in addressing the special needs of the vulnerable groups, a detailed account on how it arrived at that conclusion was not provided. It is also not clear if the measures implemented contributed positively towards the progressive realisation of the right to housing, as the accomplishments were not indicated in the report. Hence it was difficult to provide a rational analysis of the effectiveness and reasonableness of the policy measures.

### ***Provincial Level***

With regard to the provinces, a point worth noting is that the Eastern Cape was not evaluated as it provided the same response as the National DoH. The South African Human Rights Commission (hereinafter, Commission) is taking up the

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<sup>6</sup> Targeting Housing Delivery (1999) in *Indicator South Africa*. The Barometer for Social Trends. Infrastructure Delivery. Vol. 17, no. 2 June 2000, 34.

<sup>7</sup> *Ibid*, 34

matter in that the MEC for housing in the province is being made to account for this.

Submissions made by the Free State, Mpumalanga, Northern Cape, Northern Province and North West were not sufficient in terms of realising the right of access to adequate housing. These Departments only reported on one or two policy measures without indicating the impact the policy measures had in addressing the needs of the vulnerable and previously disadvantaged groups in terms of the right of access to housing. The effect these policies had on the vulnerable and previously disadvantaged groups was not clearly indicated in the report. Hence this rendered the assessment of the housing situation in the provinces difficult. The reports offered little insight as to what policy measures were implemented as well as how those measures contributed towards the progressive realisation of the right of access to housing.

On the other hand, the Gauteng, KwaZulu-Natal and Western Cape Departments submitted satisfactory reports in that the information required was presented in an informative manner. Supporting documentation was provided. Where information could not be provided, acceptable reasons were furnished. This indicated that the Departments have an understanding of the core minimum obligations to “respect, protect, promote and fulfil” the right of access to housing. The contribution these policies made was evident in the reports from Gauteng, KwaZulu-Natal and the Western Cape provinces. This indicated that these Departments have given special consideration to the vulnerable and previously disadvantaged groups.

The shortcoming of the Provincial Governments is that though they were given the opportunity to determine the date of the implementation of the policy of the disabled persons in their respective provinces,<sup>8</sup> the time frames were not incorporated in the report.

Whilst the National DoH failed to indicate the effectiveness and reasonableness of the policies for the vulnerable groups, the Gauteng, KwaZulu-Natal and the Western Cape provinces provided a well-presented report on the effectiveness and reasonableness of the policy measures. This indicates the Departments’ commitment to fulfilling the right of access to housing.

## **Recommendations**

- The Departments should provide a detailed analysis on the policy measures instituted in the provinces for the progressive realisation of the right of access to housing.

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<sup>8</sup> Department of Housing. *Annual Report (1998)* 13.

- A detailed account on the contribution the policies made is significant in order to measure the effectiveness and reasonableness of the policies implemented.
- The actual period within which these policy measures were instituted should be indicated in order to assess if the policies have contributed towards the realisation of the right to adequate housing.
- The format of the protocols should be adhered to, and all the questions should be sufficiently answered.
- The National DoH should develop a policy that addresses housing needs of people living with HIV/AIDS.
- The Departments should not confuse policies with legislative measures.

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DoH has worked towards the promulgation of the Housing Act 107 of 1997, which came to effect as of 1 April 1998. This law provides for a legislative framework for the realisation of the right to adequate housing. Within the present monitoring period, the following pieces of legislation were also passed: the Housing Consumer Protection Measures Act 95 of 1998 and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1999. There are two laws, which are still under development. These laws are the Housing Rental Bill of 1999 and Community Reinvestment Legislation.

#### ***Provincial Level***

All the provinces, except Eastern Cape, Northern Cape and Northern province have instituted legislative measures during the reporting period. The Eastern Cape Department of Local Government and Housing has submitted the same report as the one submitted by the National DoH. The provinces have passed similar laws based on the National Housing Act 107 of 1997 in terms of providing a vehicle for the functioning of a holistic, sustainable and integrated housing policy development process in the provinces.

Pursuant to the National Housing Act 107 of 1997, Gauteng province has laid down a number of regulations with the aim of expediting housing delivery and development. Similar regulations were passed in Mpumalanga. The Mpumalanga Land Development Objective Regulations are intended to provide instructions to the Municipalities to compile land development objectives within the ambit of their budgets so as to ensure effective delivery of land. The Mpumalanga Housing Act 15 of 1998 was also passed to reinforce the National Housing Act, which repealed previously fragmented housing legislation.

## **Commentary**

### ***National Level***

The general quality of the responses was poor in the sense that answers were given in very brief detail. This shows that the National DoH is not informed of the type of information needed for executing the section 184(3) constitutional mandate. The question of whether the legislative measures in question were reasonable and effective in addressing the special needs of vulnerable and disadvantaged groups was not reflected in the report, besides the assertion that most subsidies have gone to previously disadvantaged groups. This vague account did not help the monitoring process to establish whether there was housing delivery in the country.

The contents of the above-mentioned pieces of legislation reflect positive measures for the advancement of the right to housing as they protect housing consumer rights as well as offering protection from illegal eviction. However, the reports failed to detail on how these laws were being implemented. It was also disconcerting to find that the legislative measures do not give special consideration to people living in rural areas, female headed households, older persons and persons with disabilities.

The information provided in the report did not account for the four core obligations to respect, protect, promote and fulfil. The pieces of legislation mentioned in the report have not been explained in terms of their impact on the right to housing, especially with regard to the vulnerable and formerly disadvantaged groups.

The reports have, in the main, accounted for the obligations to respect, promote and to fulfil. The obligation to protect was not clear from the report. The obligation to protect the right requires the state to have in place laws and regulations that grant individuals the legal status, rights and remedies required to ensure proper protection of the right.

### ***Provincial Level***

The Eastern Cape Provincial Government has failed to submit information as requested in the protocol. By submitting the same report as the one from the National DoH, the Eastern Cape province has shown lack of commitment and appreciation of the right to housing. This also has some criminal implications because the province has fraudulently misled the Commission by submitting a report that misrepresents the conditions in the province regarding the right to housing. According to a report by CASE<sup>9</sup>, only three percent of people who were interviewed in the Eastern Cape considered that new developments took place in the area of housing.

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<sup>9</sup> SAHRC Economic and Social Rights Report (1997/1998) vol. VI.

The Free State DoH failed to answer questions on legislative measures. The response is presented in such a way that the reasonableness and effectiveness of the measures cannot be established. The purpose and impact of the Provincial Housing Act on the right to housing are not explained. Only three questions were answered, though very insufficiently. The assertion that “measures are not special in anyway to give special consideration to the category of persons mentioned herein” reflects poor understanding of the right to housing. The report further asserts, without substantiation, that the measures are reasonable, adequate and effective to address general needs.

The report from Gauteng province did not indicate the sufficiency of the stated legislative measures. The sufficiency of these measures can only be determined from their implementation. The report is silent about the impact of these measures on the right to adequate housing. It only asserts that these regulations were prepared in terms of the framework under Housing Act of 1998 without reflecting on the actual application of these measures. The special needs and considerations for the vulnerable and the disadvantaged groups are not covered in the report. Nothing is being mentioned about the protection against forced evictions that are not in terms of the law.<sup>10</sup> The report should have commented on the availability of remedies for people whose housing rights have been infringed by way of arbitrary evictions.

The report from KwaZulu-Natal province provided detailed information on the National Housing Act. Since this is national legislation, it is irrelevant. Only the information on legislative measures instituted at provincial level is required. It was also inappropriate for the report to refer to the policy measures under legislative measures. This shows that the department does not understand the two types of measures. The report has provided only special considerations for the vulnerable and disadvantaged groups that were made at national level in terms of the National Housing Act of 1997. Article 2(1)(B)(iii) of the National Housing Act of 1997 provides that provincial housing departments must comply with the provisions of the constitution. This means that the provincial departments should also take specific legislative measures in addition to the measures taken at national level. Hence the protocols were sent to both national and provincial departments.

The report from Mpumalanga province did not provide information on legislative measures in terms of the core obligations to protect, respect, promote and fulfil the right to housing. Instead, it talks about land development and administration. Though land development and administration can facilitate the delivery of housing by making land available, the report, however, does not explain how this is beneficial to the progressive realization of the right to housing. The report further fails to explain who the beneficiaries/recipients of land from the municipalities are. Since these beneficiaries use the land to start housing

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<sup>10</sup> The Constitution, in Article 26(3), uses the term “arbitrary evictions.”

projects, it means that ordinary people who do not have sufficient capital to start projects cannot receive land.

The Northern Cape and Northern provinces failed to provide information in terms of section 184(3) of the Constitution. The Northern Cape DoH could not distinguish between policy and legislation. This is evident from the fact that the Department has submitted information on policy measures instead of legislative measures. The Northern Province Department of Housing has failed to answer most of the questions in the protocol. The information on legislative measures instituted in the province is the Housing Act 107 of 1997, which was incorrectly cited as Act No. 105. This law is irrelevant for two reasons: the National Assembly passed this law, and it falls outside the present monitoring period. Despite the irrelevance of this law, the department has failed to give an account on the impact of this law in as far as the progressive realisation of the right to adequate housing in the province is concerned. No measures have been taken according to the report.

Besides mentioning the North West Housing Development Act, the report from North West Province had mentioned other laws which were passed by the national legislature. For the purposes of the report, only legislative measures instituted by the provincial legislature should be considered. Another weakness in the report is that it has provided information that is more of a budgetary and outcome nature. There is little indication of how the Act assisted in the realisation of the right of access to housing.

The report from Western Cape province does not account for the core obligations to respect, protect, promote and fulfill. The purpose of the Provincial Housing Development Act is not clearly and adequately explained. The information regarding the reasonableness, adequacy and effectiveness of the measures is not provided in the report. The report reflects lack of understanding and appreciation of the right by the department.

## **Recommendations**

- For the purposes of providing information as requested in the protocols, it is important that government departments follow the format of the protocol questionnaire, and provide detailed answers to the questions.
- The reasonableness and effectiveness of the legislative measures can only be determined by the implementation of these measures. It is therefore recommended that the reports should account for what has been done to make those measures work.
- The report from the National Department of Housing should have explained the purposes of legislative measures instituted at national level, as well as to account for their reasonableness, adequacy and effectiveness with special reference to the vulnerable and formerly disadvantaged groups. The report

also failed to explain the legislative framework for realising the right to adequate housing as laid down by the Housing Act 107 of 1997.

- For future purposes, Provincial Departments should concentrate on providing information on measures instituted at provincial level.
- A distinction should be drawn between policy measures and legislative measures.

## **MONITORING**

### **Summary of Responses**

#### ***National Level***

The report from the National DoH indicated that the Minister of Housing approved norms and standards on 30 November 1998. These standards and norms are divided into municipal services, permanent residential structures and exceptions. The Department provided the minimum size of 30m<sup>2</sup> of the residential subsidised structure. Services such as water, sanitation, roads, stormwater and streetlight are also provided but are subject to a maximum subsidy of R7 500<sup>11</sup>.

The statistical data collected is on housing delivery, approval of subsidies, expenditure of the Provincial Departments of Housing, cashflows and conveyance funds. These statistics are collected on a monthly or quarterly basis.

#### ***Provincial Level***

The Provincial DoHs in all provinces, except the Eastern Cape, reported on similar minimum standards and norms in terms of monitoring the progressive realisation of this right. The minimum size of the top structure as reported by other provinces ranges between 30m<sup>2</sup> and 32m<sup>2</sup>, whilst it is 40m<sup>2</sup> in Free State province. The provinces indicated that the households have access to water, sanitation and electricity. Telkom provides telephones on request by the households. To monitor the progressive realisation of this right, the Departments reported that statistics are obtainable at Local Councils/Municipalities.

### **Commentary**

#### ***National Level***

Information provided by the Provincial DoHs was not sufficient in terms of monitoring the progressive realisation of the right of access to housing, as the Department did not clearly indicate the standards and norms used to monitor the progressive realisation of this right.

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<sup>11</sup> The National Department of Housing did not indicate the criteria for this subsidy.

The National DoH did not provide specific measures concerning services such as water supply and sanitation types. Generally, water supply and provision of sanitation is provided in various forms. Therefore the Department should have indicated specific measures for water and sanitation in order to assess if the Department is facilitating the right of access to adequate housing. However, according to Statistics in Brief<sup>12</sup> 1997, the main water source and sanitation used for households in South Africa include the following:

**TABLE 7.1: Water and Sanitary Facilities**

Main water supply	Toilet facilities
Piped water in dwelling	Flush or chemical toilet
Piped water on site or in yard	Pit latrine
Public Tap	Latrine with bucket system
Water-carrier/tanker	No facility
Borehole/rain-water tank/well	
Dam/river/stream/spring	
Other	

In terms of the water source, 45% of households in the country have a tap inside the dwelling, 20% use public taps, 13% use dam/river/stream, 17% of households have a tap on site, 5% use borehole/rainwater as a source of water, and 1.2% use water carriers to fetch water<sup>13</sup>. These figures do not include unspecified institution and hostels. It should be indicated which water sources and toilet facilities the households have access to as shown in table 1 in order to demonstrate if the Department promotes and fulfils the right of access to adequate housing.

According to Census in Brief, 47% of South African households mainly use electricity for cooking, while 23% mainly use wood and 22% paraffin. Similar to cooking, 46% of South African households use electricity for heating, while 28% use wood for heating, and 15% use paraffin. On the other hand, 58% of households use electricity for lighting purposes, while 29% use candles, and 13% use paraffin.<sup>14</sup>

The Department did not provide how it fulfilled the right of access to adequate housing. Instead, the Department reported that the design of water supply and the specification of devices such as taps, showers and toilets must be in accordance with the aims of the National Water Conservation Campaign<sup>15</sup>. However, research has revealed that water can be provided at a number of

<sup>12</sup> Statistics in Brief (1997). <http://www.statssa.gov.za/SABRIEF/TABLE5.HTM>. (visited on 7/12/2000).

<sup>13</sup> Census in Brief, 1996.

<sup>14</sup> *Ibid.*

<sup>15</sup> The Norms and standards of the National Water Conservation Campaign was not indicated by the DoHs.



levels of sophistication. This may fulfil the function of providing the community with adequate drinking water.

The criteria used for the monitoring and the realisation of the right to housing by the National Department was not adequately provided. The Department referred to norms and standards approved on 30 November 1998. Information on norms and standards used in the past was not provided. This would have helped in monitoring progress in terms of the norms and standards used to promote and fulfil the right of access to housing.

Another point of concern is that although the Department had set standards, there is no process established to monitor the compliance with these standards. Statistical information collected is also not adequate to monitor the progressive realisation of the right to housing. Consequently it was not possible to assess if the measures used were progressive and effective in ensuring that the right to housing is realized.

### ***Provincial Level***

The size as reported by the Provincial Departments is not the same in that information provided on the size of the top structure ranges between 30m<sup>2</sup> and 32m<sup>2</sup>, whilst Free State indicated that the size of the house was 40m<sup>2</sup>. The variation of size and value in the provinces was mainly because of the permissible deviations from the national norm because of adverse geo-physical conditions and market related geographic price variations.

The Provincial Departments of Housing indicated that all the households have access to services like water, sanitation and electricity. This is contrary to what other sources like Census in Brief reveal. The fact is not all the households in South Africa have access to these services. This suggests that the information provided by the Provincial Departments did not take into consideration the vulnerable and the disadvantaged groups, as many households living in informal settlements and rural areas do not have access to these services. The Departments should have reported on the services and standards offered to households who do not have these services as indicated in Table 1. It therefore appears that the Provincial Departments do not have sufficient monitoring tools to assess the progressive realisation of this right. The Housing White Paper also stated that work is under way to develop a comprehensive Housing and Services Information System, which will allow a much more detailed overview of housing conditions in South Africa.<sup>16</sup> Lack of appropriate monitoring systems in the Departments made it difficult to carry out a proper assessment on the right of access to housing.

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<sup>16</sup> [http://www.polity.org.za/govdocs/white\\_papers/housing.html](http://www.polity.org.za/govdocs/white_papers/housing.html) (visited on 30/11/1999).

## **Recommendations**

- The Departments should indicate specifically the norms and standards applicable to the provinces for the progressive realisation of this right.
- Data gathered should encompass indicators, which will help in the monitoring of the realisation of the right of access to housing.
- Definition of minimum standards in terms of electricity, water, sanitation and telephone need to be made to assess the realisation of the right to adequate housing.
- A detailed response with specific measures of the services provided in the provinces is imperative in order to ensure that the progressive realisation of the housing right is defined.
- Formal procedures of statistical data collections should be adhered to, and records should be kept and regularly updated.
- Specific consideration should also be given to the provision of housing in the remote areas.
- Roads and stormwater drainage are integral parts of residential communities and of development. The Departments should therefore report on these services and on the provision of the minimum levels of services in order to make a proper assessment.
- In view of the differences in the rural and urban areas, between municipalities and between provinces, some provinces have better structures and more capacity, and are able to deliver than others, Therefore, each province needs to design its planning around local capacity. The Departments should not report on measures that have not been implemented, but should report on measures instituted in order to effect the progressive realisation of the right of access to housing.

## **BUDGETARY MEASURES**

### **Summary of Responses**

#### ***National Level***

In order to fulfil the right of access to adequate housing, the National DoH reported that households who earn less than R3 500 receive subsidies. Table 2: below outlines the total national housing budget from 1996-2001.

**Table 7.2: Total National Housing Budget**

<b>Year</b>	<b>Allocation for housing (R' 000)</b>	<b>Per capita allocation after adjusting for inflation</b>	<b>Allocation as % of GDP</b>	<b>Allocation as % of DoH spending</b>
<b>1996-1997</b>	1 543,639	R34, 96	0,28 %	74,57 %
<b>1997-1998</b>	4 037,766	R89, 49	0,66 %	89,33 %
<b>1998-1999</b>	3 629,309	R78, 30	0,55 %	96,84 %
<b>1999-2000</b>	3 529,827	R75, 81	0,49 %	-
<b>2000-2001</b>	3 323,280	R70, 22	0,43 %	-

Budgetary allocations for housing amounted to R1, 543 billion in the period of 1996/1997. Funds were increased substantially in 1997/1998, and are expected to decrease in the subsequent years. The figure for 1998/1999 was R3, 629 billion which represents 0,55% of the GDP and 96,8% of the DoH's total spending.

**Table 7.3: South African Housing Fund for Housing Subsidies**

<b>Year</b>	<b>Allocation for housing (R' 000)</b>	<b>Per capita allocation after adjusting for inflation</b>	<b>Allocation as % of GDP</b>	<b>Allocation as % of DoH spending</b>
<b>1996-1997</b>	-	-	0 %	0%
<b>1997-1998</b>	2 408,8	R53, 38	0,39%	53,3 %
<b>1998-1999</b>	2 880,0	R62, 13	0,44%	76,8%
<b>1999-2000</b>	3 000,7	R63, 17	0,42%	-
<b>2000-2001</b>	3 000,7	R63, 39	0,39 %	

For the purposes of financing housing subsidies, funds were allocated to the South African Housing Fund (SAHF) project. It was indicated that in 1996/1997 there were no new funds received to finance housing projects because of the large amount of money carried over from the previous financial year. In 1997/1998, R2, 408 billion from the SAHF was allocated, while the figure for 1998/1999 was R2, 880 billion. These figures translate to 53% and 77% respectively, of the Department's total expenditure.

The report indicated that the Department also funded Special Integrated Presidential Projects. In 1996/1997, R619 million was allocated which accounted for 30% of the DOH's total budget. The budget was reduced to R419 billion in 1998/1999 which then represented 11% of the total budget.

In terms of the vulnerable and the previously disadvantaged groups, it was reported that over 92% of households that earned below R1 500 per month benefited from the Department's budgetary allocations. Additionally, 45% of subsidies were allocated to female-headed households

### ***Provincial Level***

The Northern province did not provide information on budgetary allocations as requested in the protocol in realising the right of access to housing.

In promoting the right of access to housing, the Table below demonstrates the amount allocated to the Provincial Departments from 1997-2000 in the realising the right of access to housing.

**Table 7.4: The Budgetary Allocations for Housing from 1997-2000 in R'million**

<b>Province</b>	<b>1997-1998</b>	<b>1998-1999</b>	<b>1999-2000</b>
Free State	not provided	207	207
Gauteng	971	934	939
KwaZulu Natal	815	570	579
Mpumalanga	168	177	161
Northern Cape	100	60	55
North West	227	218	90
Western Cape	410	378	351

From the figures presented in Table 4, funds allocated to the Provincial Departments for housing were drastically reduced during the reporting period in question. The funds for housing allocation in Gauteng and KwaZulu Natal are expected to increase in 1999/2000, whilst Mpumalanga, Northern Cape, North West and Western Cape Departments' allocation for the realisation of the right to housing are likely to be reduced in 1999/2000. There was no indication on the breakdown of the amount provided for 1997/1998 in the Free State Province. It was expected that the budgetary allocations for housing would remain the same for 1998/1999 and 1999/2000.

No indications were made on how the Department's budgetary allocations benefited the different categories of the vulnerable and previously disadvantaged groups.

## **Commentary**

### ***National Level***

Generally, it appears that the National DoH has progressively increased its financial resources to ensure adequate access to housing. For instance, for the period 1997/1998 the allocation of the Department's spending accounted to 89,33%, whereas for 1998/1999 the Department allocated its financial resources in such a way that spending on housing as a percentage of the total budget increased to 96%. Furthermore, the funds used to finance housing subsidies were also increased from 53% in 1997/1998 to 76% in 1998/1999.

In view of the fact that subsidies are mainly targeted at the previously disadvantaged groups, the Department's subsidy allocation of 92% to poor people and 45% to women is impressive. However, there are numerous shortcomings in the report. Firstly there was no indication of the resources that were instituted to service the needs of other vulnerable groups such as people with disabilities and people living with HIV/AIDS. The Department did not explain the criteria, other than income, that were used for granting subsidies. Although the Commission did not request this information, the Department should have provided additional information on changes in spending trends amongst the various programmes in housing.

### ***Provincial Level***

Whilst most of the provinces did not provide a percentage of the Department's total spending for the various years, the Gauteng Department reported that spending in 1997/1998 constituted 83% of total expenditure. The percentage of the total expenditure increased to 90% for 1998/1999 and 1999/2000 respectively. On the other hand the spending for North West province in 1998/1999 constituted 41% of the total budget of the Department. This is likely to increase to 48% in 1999/2000.

It should be noted that provinces receive their allocations directly from the national office and the allocation per province is based on need and the backlog in each province.<sup>17</sup> Unlike other provinces, Gauteng has been allocated a greater proportion for the period under review mainly because Gauteng has a large shortage of houses due to immigration and a high population growth rate<sup>18</sup>. During the period 1997/1998 funds for housing allocation were drastically reduced for almost all the provinces. However, for the year 1999/2000 allocations for housing are likely to increase particularly in the Gauteng and KwaZulu-Natal provinces.

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<sup>17</sup> Targeting Housing Delivery (1999) in *Indicator South Africa*. The Barometer for Social Trends. Infrastructure Delivery. Vol. 17, no. 2 June 2000, 32.

<sup>18</sup> *Ibid*, 32.

The deficit of the provincial reports is that the Departments did not indicate how the budgetary allocations benefited the different categories of the vulnerable and previously disadvantaged groups.

### Recommendations

- The Departments should provide information on changes in spending trends amongst the various programmes in housing.
- The Departments should provide the criteria used to grant subsidies such as the household income.
- Explanations should be provided where the Department failed to provide information as requested in the protocols.
- Figures for resources allocated to each category of the previously disadvantaged groups should be provided.
- The Departments should indicate how the budgetary allocations benefited the different categories of the vulnerable groups.

## OUTCOMES MEASURES

### Summary of Responses

#### *National Level*

The National DoH reported that the majority of people who do not have access to adequate water supply, adequate sanitation and without adequate electricity are mostly in the Eastern Cape province. The table below illustrates the number of dwellings without adequate water, sanitation and electricity by province.

**Table 7.5: Households Without Adequate Water, Sanitation and Electricity**

Province	Households without adequate water	Households without adequate sanitation	Households without electricity
Eastern Cape	607 651	394 660	910 243
Free State	32 486	56 822	267 925
Gauteng	58 156	59 446	401 256
KwaZulu-Natal	540 459	261 531	771 532
Mpumalanga	86 209	55 648	262 186
Northern Cape	14 894	20 494	54 848
Northern Province	230 937	213 386	622 668
North West	116 206	48 992	403 043
Western Cape	27 340	55 959	143 046
<b>TOTAL</b>	<b>1 714 338</b>	<b>1 166 938</b>	<b>3 836 745</b>

The Department did not indicate how many people are homeless, but only indicated that 1,45 million housing units would have to be built. Table 6 below indicates the number of households living in informal dwellings.

**Table 7.6: Number of Households Living in Informal Dwellings**

Province	Number of households living in informal dwellings
Eastern Cape	145 225
Free State	162 502
Gauteng	467 471
KwaZulu Natal	186 024
Mpumalanga	94 225
Northern Cape	26 177
Northern Province	48 140
North West	159 262
Western Cape	163 180
<b>TOTAL</b>	<b>1 452 206</b>

In terms of the number of dwellings constructed per year, the report mentioned that from 1 April 1998 to 31 March 1999, 231 181 housing units were completed. This can be seen in table 7 on statistical data on housing delivery by provinces as presented by the Department.

**Table 7.7: Statistical Data on Housing Delivery**

Province	1994 - 1997	1997-1998	1998-1999	1994- 1999
Eastern Cape	6 511	42 223	29 659	78 393
Free State	16 042	21 001	20 391	57 434
Gauteng	65 660	83 416	28 726	177 802
KwaZulu-Natal	17 553	78 468	53 105	149 126
Mpumalanga	19 884	10 873	16 838	47 595
Northern Cape	8 532	6 103	6 621	21 256
Northern Province	11 108	15 743	22 899	49 750
North West	21 287	20 977	18 367	60 631
Western Cape	25 321	43 834	34 575	103 730
<b>TOTAL</b>	<b>191 898</b>	<b>322 638</b>	<b>231 181</b>	<b>745 717</b>

The Department indicated that the budgetary allocations were not adequate to provide the right of access to housing. This is due to the fact that the Department's allocation for 1997/1998 was at 2,37% of the total national budget whilst for 1998/1999 the allocations dropped to 1,83%, which is way below the target in the Housing White Paper aimed at accessing 5% of the national budget by the year 2000. As a result of the budgetary constraints, the Department will only be able to provide subsidies to accommodate new households without significantly reducing the existing housing backlog.

### ***Provincial Level***

The Northern province did not respond to the questions on the outcome measures. While the Free State province only responded on the number of people living in illegal settlements and informal dwellings, the KwaZulu-Natal DoH indicated that information could not be provided as data pertaining to number of dwellings without water, sanitation, electricity and data regarding households living in informal housing is not kept in the department. However, the KwaZulu-Natal province acknowledged the fact that the department keeps records on the number of subsidies and dwellings provided to households, and this was not indicated in detail.

The Mpumalanga department also did not respond to the questions on the services and on households living in informal and illegal settlements, but only made assumptions that most of the disadvantaged groups would not have access to adequate water, sanitation and electricity. On the other hand, the Western Cape Department reported that information about the housing provision is not kept in separate categories as required in the protocols.

The Gauteng department reported that approximately 305 681 households do not have access to water, whilst 336 378 was the number of households without adequate sanitation, and 401 256 households were without electricity. In the Northern Cape, 16 496 dwellings were without water, 75 656 did not have adequate sanitation whilst 54 848 households did not have electricity. The North West DoH indicated that an estimated 51,4% of the total population did not have access to adequate water, whilst 75% of the households have no access to sanitation, and 66% did not have access to electricity.

Whether the budgetary allocation was sufficient to ensure service delivery in realising the right of access to housing, most of the departments responded that the housing budget was not adequate due to substantial cuts in the housing allocations.

### **Commentary**

#### ***National Level***

The National DoH acknowledged the fact that information is not disaggregated in terms of gender, and rural and urban areas. However, research is being commissioned to provide this information on the right to housing. Furthermore, information on the number of households unjustly evicted was not provided, but the Department indicated that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 1999 is aimed at addressing such problems.

There was no information for the number of dwellings that did not conform to departmental standards for the right to housing because the National Norms and



Standards policy only came into effect in April 1999. The department also failed to provide measures it has taken to address the problems of inadequate water, sanitary facilities and the provision of electricity to those households that do not have these services. With the exception of the homeless people, no mention was made of any measures the department will take or has taken to address the needs of other vulnerable groups.

The National DoH mentioned that there was a serious backlog in terms of housing delivery. However, means of trying to address this backlog through forming partnerships with Non Government Organisations (NGOs) have not been mentioned in the report. This is despite the fact that government has formed partnerships with institutions such as Mortgage Indemnity Fund (MIF), the National Home Builders Registration Council (NHBRC), National Housing Finance Corporation (NHFC), Social Housing Foundation (SHF), the National Urban Reconstruction and Housing Agency (NURCHA), Servcon Housing Solutions (SERVCON) and other organisations providing low cost housing and financial assistance to low income earners.<sup>19</sup>

The White Paper on Housing had set a target of accessing 5% of the budget by the year 2000 as a means of addressing the housing backlog. However, the Department's budget was half of that in 1997/98 at 2.37% and was even less at 1.83% for 1998/99. The Department has not mentioned any measures that shall be taken to address this backlog despite the reduction in budgetary allocation.

### ***Provincial Level***

The table on statistical data on housing delivery indicates that KwaZulu-Natal province has delivered more houses than Gauteng province during the reporting period. The trend shows that during 1997/1998 the delivery has risen to 322 638 whilst in 1998/1999 it has substantially decreased to 231 181. This may also be due to budget cuts in the housing allocations for 1998/1999. However, in some provinces like Gauteng and KwaZulu-Natal, it is anticipated that the pace of delivery for these provinces will increase in order to curb the escalating housing backlog.

The upward trend in the expenditure of provincial governments continued in the present financial year, with a total expenditure of R2,2 billion at the end of December 1998. It is expected that provincial governments will in the 1998/1999 financial year spend 99% of their allocation.<sup>20</sup>

In terms of appreciation and comprehension of the right of access to housing the responses were not sufficient in that neither the national nor the provincial departments indicated how they addressed the needs of the previously disadvantaged groups in terms of the right of access to housing. The provincial

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<sup>19</sup> Burger, D (ed). *South Africa Yearbook*. (1999) 378.

<sup>20</sup> Department of Housing. *Annual Report*. (1998) 28.

departments also did not mention how they aimed to address the needs of those people who do not have access to basic amenities such as water, sanitary facilities and electricity.

### **Recommendations**

- The departments should report on the improvements and obstacles to progress for proper assessment of the Departments.
- Indication on how the housing backlog would be addressed is necessary.
- The provincial departments should indicate if the budgetary allocations provided are adequate to provide the right to housing.
- The format of the protocols should be adhered to and the questions should be adequately answered.

## LIST OF ABBREVIATIONS

<b>DoH</b>	Department of Housing
<b>HIV/AIDS</b>	Human Immunodeficiency Virus /Acquired Immunodeficiency Syndrome
<b>HSS</b>	Housing Subsidy Scheme
<b>HUIS</b>	Housing and Urbanisation Information System
<b>MIF</b>	Mortgage Indemnity Fund
<b>NGOs</b>	Non-Governmental Organisations
<b>NHBRC</b>	National Home Builders Registration Council
<b>NHFC</b>	National Housing Finance Corporation
<b>NURCHA</b>	National Urban Reconstruction and Housing Agency
<b>SAHF</b>	South African Housing Fund
<b>SERVCON</b>	Servcon Housing Solutions
<b>SHF</b>	Social Housing Foundation

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# CHAPTER EIGHT

## THE RIGHT OF ACCESS TO LAND<sup>1</sup>

*Everyone has the right of access to land. The state must respect, protect, promote and fulfil this right and should thus take reasonable legislative and other measures, within its available resources to achieve its progressive realisation.<sup>2</sup>*

### POLICY MEASURES

#### Summary of Responses

##### *National Level*

In fulfillment of the right of access to land, the National Department of Land Affairs (hereinafter, National DLA) has implemented the land reform programme that includes land redistribution, land restitution and tenure reform. The departmental Policy Committee (POLCOM) approved sixteen policy documents whilst nine were returned pending further amendments.

The land redistribution programme is designed to assist the poor, labour tenants, farm-workers, women and emerging farm-workers. This policy makes it possible for poor and disadvantaged people to buy land with the help of government. To promote the right of access to land, significant policy measures have been developed under the land redistribution programme. The following were the policy developments implemented by the National DLA towards the progressive realisation of the rights pertaining to land:

- The policy and procedures for expropriation of land in terms of Act 126 and Extension of Security of Tenure Act (ESTA), 62 of 1997. This policy outlines a just and equitable approach to land expropriation, which directly benefits landless people.
- The land reform credit facility, which provides loans with a deferred repayment option for the development of commercially viable redistribution projects.
- The Post Transfer Production Grant aimed at improving the viability and sustainability of projects.

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<sup>1</sup> Please note that the analysis of the right of access to land is based on the responses provided by the government departments.

<sup>2</sup> Section 25 (5) of the Constitution, Act 108 of 1996.

Furthermore, the National DLA instituted the following achievements of the policy measures. These are:

- Donations of immovable property to beneficiaries of the land reform. Beneficiaries are now exempt from the payment of donations tax. Landowners are empowered by this programme to make a positive contribution to land reform by donating portions of land to their workers.
- The transfer of funds for land reform projects to community-based organisations, which outlines the manner in which funds should be transferred.
- The flexible application of the balance of the Settlement Land Acquisition Grant (SLAG) that accommodates purchase of a broader range of agricultural inputs. Beneficiaries are able to use the balance of the grants to purchase agricultural input items that will increase the productive value of the land.
- The Department has increased the SLAG from R15 000 to R16 000 to allow households to purchase land directly from willing sellers, including the state.

The restitution of land rights means giving back land where possible to those people who were removed by force from their land. The policy measure developed is geared towards 'the delivery of restitution of land rights and the implications for development support for restitution beneficiaries'. This measure allows the land claimants to apply for an optional grant of R3 000 in order to manage land or the settlement of persons on land that has been obtained through a negotiated settlement.

Tenure reform provides people with secure tenure and prevents arbitrary and unfair evictions. The policy document approved during the reporting period in terms of tenure reform is the procedure for the registration of Communal Property Associations (CPAs) in terms of section 2(1)(a) of the Communal Property Associations Act, 1996 (Act No 28 of 1996). This programme enables a speedier transfer of land to CPAs, which are land entities formed by land reform communities. The appointment of title adjustment commissioners in terms of the Land Title Adjustment Act, 1993 (Act No.119 of 1993) was another policy measure developed in order to determine the person to whom land title should be transferred. It also gives legal authority for the transfer of ownership.

The Department indicated that the policies implemented were reasonable and effective but acknowledged that older persons, persons with disabilities and people with the Human/ Acquired Immunodeficiency Virus (HIV/AIDS) were not factored into the policy measures. The report also indicated that there has been considerable improvement in terms of delivery because the number of women participants in redistribution projects has increased.

In order to promote the right of access to land, studies have been conducted to determine the impact of policy measures developed through a Quality of Life

(QoL) survey and project assessments. The findings were used to improve the quality and sustainability of existing and future projects. These findings contributed to a policy review and procedural aspects of the programme.

### ***Provincial Level***

The Provincial Departments dealing with land issues did not provide information on their understanding of their specific duties in respect of the right of access to land. Only two provinces provided information, and these were Free State and Gauteng, while other provinces did not respond to the questions as asked in the protocols.

On one hand, the Free State Department of Agriculture (hereinafter, DoA) implemented the Community Project Fund Support Programme which is aimed at assisting farmers. The Gauteng province reported on the Gauteng Farmer Settlement Programme (GFSP), which provides for the redistribution of agricultural land to the vulnerable groups, and the Household Food Security Programme (HFSP), which utilises vacant, underutilised, and donated land for food production.

### **Commentary**

#### ***National Level***

Information provided by the National DLA indicated significant policy developments for the land reform programme, which emphasised land redistribution.

While the Department indicated that eleven policy measures were developed during the reporting period, only seven policies were reported upon. The policy developments<sup>3</sup> not reported upon were as follows:

- The policy on exemption from payment of Transfer of Duty by land reform beneficiaries.
- Procedural guidelines for the development of small projects in order to simplify procedures and to reduce the amount of expenditure required in planning.
- A supply-led policy to allow the Minister to buy land and later dispose of it to beneficiaries who may not have been identified at the time of purchase.
- Policy and procedures for the transfer of funds to redistribution projects. The Department however is in the process of investigating the transfer of funds directly to beneficiaries.

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<sup>3</sup> Department of Land Affairs. *Annual Report*. (1998) 109.

The Department also did not report on redistribution courses presented regularly with an aim of updating personnel on new policy developments and to train new recruits as well. So far, 225 provincial office staff members attended the course.

The policy measures reported on showed the Department's awareness to promote and fulfill the right of access to land. This is evident in the redistribution programme which aims to assist vulnerable groups. The aim of this policy was to improve the quality and pace of the land reform programme, but this was not clearly indicated in the report. It is worth noting that almost all the policies listed by the Department were not explained in detail. For instance, the department indicated that it developed a policy geared towards delivery of restitution of land rights, but there was no indication on how this operates in order to ensure maximum benefit of the vulnerable groups in terms of the right of access to land. It also did not mention how these policy measures contributed towards the progressive realisation of the right of access to land.

Another point of concern relates to the problem that claimants encountered during the process of lodging land claims in relation to land restitution. The Department should have reported on how it promoted the right of access to land by indicating whether the policies informed vulnerable groups of the land reform programme, including the dissemination of information pertaining to land claims. However, to promote the right to land, the National DLA Annual Report indicated that the Department implemented the restitution "Stake your claim" 1998 campaign in order to inform potential claimants of their rights to lodge claims before 31 December 1998.<sup>4</sup> There was national and regional media coverage for this purpose. Workshops, rallies and road shows were also organised in townships and rural communities and throughout the country. In so doing, people were reached and informed of the land programme and have come to appreciate the land restitution programme. The report submitted to the Commission should have indicated this initiative.

The National DLA ought to have addressed issues pertaining to traditional leaders who control large portions of land in rural areas. The Department should have reported on measures taken to make land accessible particularly to the vulnerable groups. It is a fact that many people are still without land and large areas of land are not utilised. The report should have indicated how the Department plans to use privately owned land that is no longer in use for the promotion of the right of access to land.

The reasonableness and effectiveness of policy measures provided by the Department were not shown in the report. The Department arrived at a conclusion that its policy measures were effective due to the fact that women were involved, whereas this is not the case. The Department should not have measured the effectiveness of the policy measures developed solely on the basis

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<sup>4</sup> Department of Land Affairs. *Annual Report*. (1998/1999) 104.

of the involvement of women, but should also indicate the number of vulnerable groups that benefited from this project and the accomplishments made in realising the right of access to land.

Attempts to provide an explanation on what studies have been conducted to assess the impact of the policy measures through the QoL would have helped in assessing the effectiveness of these studies. The report mentioned that the findings of the studies conducted will be used for policy review and procedural aspects of the programme, but there is no clarity on what those findings are, and how these will fit in policy developments. The report ought to have indicated how vulnerable groups benefited from these studies and how these policies assisted these groups in realising the right of access to land.

### ***Provincial Level***

The information furnished by Free State and Gauteng provinces lacked sufficient detail to allow a meaningful assessment of the right. Consequently a coherent description of what each Provincial Department views as its specific role and functions in realising the right to land was not provided.

The provincial departments that failed to report on the right of access to land maintained that land issues fall within the competency of the National DLA and not of the provinces. This is not correct because provincial governments have the responsibility in a number of functional areas that are closely linked to land matters. For instance, the White Paper on South African Land Policy 1998 indicated that the chief purpose of provincial governments concern the implementation of the land reform programme. The exact form of these departments' functions and relationships will be determined by the conditions specific to each province. Provincial departments have the general responsibility to perform functions relating to land matters and these include:

- Provincial legislative programmes in respect of Schedule 4 functions of the 1996 Constitution of the Republic of South Africa;
- Executive authority assigned or delegated by the President or the Minister for Agriculture and Land Affairs;
- Powers of attorney or agency agreements;
- To provide the delivery of land-related services where third tier government is not available or unable.<sup>5</sup>

The provincial departments also perform tasks related to the implementation of the National Land Reform Programme. This entails the integration of land reform projects into regional, urban and rural development plans where no local government capacities exist. Another task is the development and administration of settlements established for beneficiaries of land reform projects; and the

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<sup>5</sup> Department of Land Affairs. *White Paper on South African Land Policy*. (1998) 99.



provision of ongoing support, development assistance and administrative services to settled communities.

In addition, the responsibility of the provincial governments might be located within one department, or may be split between different departments in the same province. In view of the responsibilities of the departments, this suggests that relevant provincial government departments have a mandate to execute land matters. The departments are therefore not absolved from reporting to the South African Human Rights Commission. The provincial departments should thus have reported on the activities carried out in their respective provinces. Furthermore, indication on the effectiveness and reasonableness of measures instituted to address the needs of vulnerable and previously disadvantaged groups is essential to assess the progressive realisation of the right of access to land. There was no adequate information provided by most provincial departments in this regard.

### **Recommendations**

- The National DLA should indicate the shortcomings of policy measures that are instituted to respect, protect, promote and fulfil the right of access to land.
- The departments should indicate the effectiveness and reasonableness of the policy measures implemented.
- The reports submitted by government departments should clearly indicate the period within which respective policy measures were instituted.
- The departments should report on how vulnerable and formerly disadvantaged groups benefited from the measures instituted in realising the right of access to land.
- The National DLA should assess the role of traditional leaders in relation to the land rights.
- Clarity on the role of different spheres of government on land rights is required. Assignments and delegations are desirable for either sphere of government.
- Provincial governments' responsibility for land matters should be clearly identified and staff capacity created to carry out the necessary functions.
- Close co-operation between National, Provincial and Local Spheres of Government is essential to ensure that beneficiaries of land reform enjoy services provided by the provinces as envisaged by Schedule 4 and 5 of the Constitution,<sup>6</sup> and to ensure the most appropriate and effective use of land.

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<sup>6</sup> *Ibid* 16.

## LEGISLATIVE MEASURES

### Summary of Responses

#### *National Level*

The National DLA has undertaken several amendments to legislation with a view to expedite the land reform process and delivery. The Provision of Land and Assistance Act 126 of 1993, formerly called the Provision of Certain Land for Settlement Act, No 26 of 1998, was amended in 1998 to provide more benefits to participants and a framework for speedy land delivery. Through these amendments, the relevant Minister is empowered to grant financial assistance for the acquisition, development and improvement of land or to secure tenure rights.

The Land Affairs General Amendment Act 61 of 1998 was enacted to amend the laws that were administered by the Department of Land Affairs. This law has amended the following pieces of legislation in 1998:

- Upgrading of Land Tenure Rights Act of 1991; to make it applicable to the whole country;
- Restitution of Land Rights Act of 1994; to provide for secondment of officers to the Land Claims Commission;
- Land Reform Act of 1996; to give authority to the Land Claims court to determine whether a person is a labour tenant or not;
- Communal Property Associations Act of 1996; to provide for further delegation to the CPAs;
- Interim Protection of Informal Land Rights Act of 1996; to give authority to the Minister to extend application of this law;<sup>7</sup>
- The Land Survey Act 1997; to rectify the difference between English and Afrikaans texts, and to make a division of survey related responsibilities, and
- Extension of Security of Tenure Act of 1997, to extend the definition of “court” to include special tribunals established under Special Tribunals Act of 1996.

The Transformation of Certain Rural Areas Act 94 of 1998 repealed the Rural Areas Act of 1987 by removing restrictions on the alienation of land. The former law provides for the transfer of land to municipalities and other entities, and puts fiduciary and management responsibilities on municipalities so that they become accountable to the people under their jurisdiction and to include them in decision-making regarding the transferred land.

The Deeds Registry Amendment Act 93 of 1998 was also passed during the present monitoring period. Regulations in terms of the Extension of Security of Tenure Act 62 of 1997 were promulgated in December 1998.<sup>8</sup> The act regulates

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<sup>7</sup> The application of this law was due to end in December 1998, but was extended to December 1999. The IPILRA protects people with informal rights to land, such as tribes, land invaders and occupiers of land under the homeland system.

<sup>8</sup> See Government Notice No. R1632 of 1999.

just and fair procedures for eviction from land, and makes unlawful eviction a criminal offence punishable by a fine or a term of imprisonment.

### ***Provincial Level***

The majority of provincial departments that deal with land issues have not submitted reports on legislative measures. The Eastern Cape asserted that it does not have the competency to deal with issues relating to legislation on land. Mpumalanga is the only province that has reported on legislative measures instituted during the reporting period. The Mpumalanga Land Administration Act 5 of 1998 was passed to promote the right to gain access to land in terms of making it possible for the transfer of land from the provincial government to municipalities. The main purpose of this Act is to provide for the acquisition and disposal of land owned by Mpumalanga Provincial Government and to provide for matters connected thereto. The Mpumalanga Department of Housing and Land has made it possible for the passing of the Mpumalanga Land Development Objective Regulations. These regulations oblige the municipalities to compile land development objectives in their respective jurisdictions. Public participation is essential in compiling the land development objectives. The final objectives are only revisable once a year over a period of five years.

### **Commentary**

#### ***National Level***

The National DLA has generally provided reasonable information on the laws that were enacted to realise the right of access to land. However, it has not covered crucial issues such as land restitution,<sup>9</sup> land redistribution and procedures regarding just compensation in cases of expropriation. The report only placed emphasis on land tenure reform. These issues are seminal to the entire land reform process.

Furthermore, although it was reported that in terms of the Provision of Certain Land for Settlement Act 26 of 1998, the Minister is empowered to grant financial assistance for acquisition, improvement and development of land, the Department did not indicate the criteria for awarding such grants. According to section 5(2) (a)-(c) of the Act, the Minister may grant financial assistance to persons that do not have access to land or those that wish to improve the conditions under which they live, and those that were dispossessed of land but do not have a right to land restitution.

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<sup>9</sup> Minister of Agriculture and Land Affairs tabled the Amendments to the Restitution Act 22 of 1994 before Parliament in February 10, 1999. These Amendments were intended to shift emphasis from a judicial to an administrative process in dealing with restitution claims. Presently, the Land Claims Court deal with all claims. It is believed that this paradigm shift will expedite delivery of land restitution. For more information, see Commission on Restitution of Land Rights. *Annual Report* (1999) 31.

The National DLA has proposed the Land Rights Bill of 1999.<sup>10</sup> According to this Bill, a system of land rights management in which right holders themselves manage their own land rights, shall be introduced. Land rights will thus vest in the persons who occupy the land and not to institutions such as traditional authorities and municipalities.<sup>11</sup> The report has failed to mention this important legislative proposal. This proposed law is crucial for the recognition of people's right of access to land. The same applies to the Sub-division of Agricultural Land Act Repeal Act 64 of 1998,<sup>12</sup> which was also excluded from the report. The purpose of this law is to repeal laws pertaining to the sub-division of agricultural land, and to provide for matters connected therewith.

There are a number of challenges facing the government with regard to the restitution, redistribution and security of land tenure.<sup>13</sup> The report of the National DLA does not indicate any measures taken for the provision of legal assistance to people making claims, and to simplify procedures for making claims. The question of redistribution was excluded from the report. Therefore, the challenge is to release state land to effect positive redistribution. Many people are insecure about their tenure of land because of past racially discriminatory laws. The protection of these people should be provided for in terms of legislation referred to in section 25(6) of the Constitution.<sup>14</sup> The report is not clear as to whether the particular law has already been passed or is still being developed as required by the Constitution.

The general quality of the national report is reasonable in terms of appreciation and comprehension of the right. However, the question of the progressive realisation of the right of access to land was not adequately dealt with. The constitutional obligations to respect, protect, promote and fulfil were not dealt with adequately. Further, there is no indication as to how the legislative measures have advanced the land reform process. In terms of the land reform, which was introduced by the government in 1994, the government must take reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis.<sup>15</sup>

### ***Provincial Level***

Almost all of the provinces have failed to submit reports on legislative measures for the realisation of the right of access to land. The Eastern Cape's assertion that legislative competency is only vested in the National DLA is not correct. Though there are no specific Provincial Departments of Land Affairs, the National

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<sup>10</sup> Tenure Newsletter, vol. 3, January 1999.

<sup>11</sup> *Ibid.*

<sup>12</sup> This law was assented to in September 16, 1998, but has not yet entered into force.

<sup>13</sup> The *National Action Plan for the Promotion and Protection of Human Rights* (1998) 116-7.

<sup>14</sup> The Constitution obligates Parliament to enact laws as provided in section 25(6).

<sup>15</sup> Section 25(5) of the Constitution. The objectives of the Land Reform Process should be considered when laws pertaining to land are enacted.

DLA has regional offices in each province. These offices have the obligation to report on legislative measures pertaining to land in each province. From the interpretation of Schedule 4 and 5 of the Constitution,<sup>16</sup> land is a functional area of which legislative competency is only vested in the national government. However, section 14(1) of Schedule 6 of the Constitution provides for assignment of legislative powers to the provinces by the President by way of a proclamation. This empowers the provinces to make laws regarding any matter listed in Schedule 4 and 5, which when the new constitution came into force, was administered by an authority within national executive. Land is an example of such matters, hence the Mpumalanga province passed the Mpumalanga Land Administration Act 5 of 1998, as well as the Mpumalanga Land Development Objective Regulations.

The Free State province has also passed the Free State Land Administration Act 107 of 1998 with the same purpose as that of Mpumalanga. There is also the Gauteng Land Administration Amendment Act of 1997 that provides powers to the Premier to expropriate land and to regulate the registration of land. The preamble of the Western Cape Land Administration Act 6 of 1998 provides that “whereas the province is the repository of legislative powers incidental to the powers vested in it in terms of Schedule 5 of the Constitution...” In conclusion, the provinces are not entirely without legislative competency to deal with land issues.

## **Recommendations**

- Legislative measures include laws that are still being developed, such as Bills and Regulations. The National DLA should provide all information on what it is doing in terms of advancing the progressive realisation of the right of access to land.
- In the process of instituting legislative measures, the National DLA should consider the challenges outlined in the National Action Plan for the Promotion and Protection of Human Rights.
- The constitutional obligations to respect, protect, promote and fulfil as entrenched in the Constitution should be accounted for.
- The provincial governments should provide information on legislative measures in terms of section 184(3) of the Constitution.

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<sup>16</sup> Act 106 of 1996.

## **MONITORING**

### **Summary of Responses**

#### ***National Level***

The minimum standards to define adequate access to land were not defined by the National DLA.

To monitor the progressive realisation of the right to land, the Department collected the following statistical data:

#### Redistribution

- Number of households involved;
- Number of female-headed households involved;
- Number of hectares involved; and
- Cost per project.

#### Restitution

- Numbers of claims lodged;
- Numbers of claims gazetted;
- Numbers of claims settled;
- Numbers of households affected; and
- Cost of settlement in terms of restoration and financial compensation.

#### Tenure Reform

- An Eviction Monitoring System is used to monitor tenure reform programmes.

The data is 'desegregated according to milestones in the project cycle, geographical location of the provinces or according to product type, which includes land for settlement or production'.

The National DLA indicated that the Monitoring and Evaluation (M&E) program exist. This is used as a tool for providing information and analysis to managers and implementers of land reform at a national, provincial and project level. This program consists of the Core Project Data (CPD) system, which is used to 'track projects through determined project cycles'.

The "Quality of Life" (QoL) Survey is another element used to monitor and evaluate the progress and impact of Land Reform Programmes on its beneficiaries according to various socio-economic variables. The household questionnaire is used to obtain data on the socio-economic life circumstances of rural households. The guidelines are in relation to age, gender, education, residence, and activity, income and expenditure patterns, wealth (as measured by assets and credit), employment, land use and agricultural production.

Other forms of data collection used are:

- Community Questionnaire (CQ)- which contains specific questions on local food prices, communal projects, community institutions and communal agricultural activities;
- Qualitative Appraisals (QA)- used to monitor programme implementation and the impact thereof;
- Environmental Impact Assessment (EIA)- used as a tool to measure the impact of land reform programmes; and
- Diagnostic Evaluation Studies (DES)- used for a quantitative appraisal of the implementation of programmes.

### ***Provincial Level***

The provincial departments dealing with land issues did not furnish information to assess how the progressive realisation of the right to land is monitored. It was reported that a Monitoring and Evaluation (M&E) Unit has been established to monitor progress of the provincial departments in terms of the delivery of land rights.

### **Commentary**

#### ***National Level***

A crucial point indicated by the National DLA is that monitoring tools such as M&E, CPD, QoL, EIA, DES, CQ, QA have been developed. This is a critical step in evaluating progress in terms of the delivery of land rights. However, the National DLA should have provided more detailed information on how these systems operate. It would also be useful to obtain further information on the effectiveness of these monitoring systems for the progressive realisation of the right of access to land.

The size of land needed per family as requested in the protocols was not indicated nor the standards to define adequate access to land. This would have assisted in assessing the promotion of the right of access to land.

While statistical data on redistribution, restitution, and tenure reform were collected, the Department did not provide in detail how it monitored progress regarding the right of access to land. Furthermore, the National DLA reported that an Eviction Monitoring System is in place to monitor the tenure reform programme, but the manner in which this system operates was not indicated.

Regarding objectives of redistribution to improve the pace and quality of land redistribution, the Department failed to indicate how it planned to improve this programme. It also failed to show progress in terms of what has been reported

upon namely the 'milestone in the project cycle, geographical location and product type'. However, according to the National DLA Annual Report progress recorded in land redistribution is tracked in terms of the number of projects, households and hectares that have been designated.<sup>17</sup> This indicates progress, which has been achieved over the years in terms of land redistribution.

### ***Provincial Level***

Whilst the provincial departments consider land rights as the competency of the National DLA, the national department maintains that the provincial departments are to a certain extent bound to the constitutional obligations.<sup>18</sup> The respective provincial departments reported that the M&E unit monitors the activities, policies, programmes and projects of the national and provincial departments. Nonetheless, the National DLA Annual Report only reported on the activities of the M&E unit and accomplishments instead of indicating how it monitors the land programme.

In terms of the quality of the report, the report is not satisfactory as the provincial departments failed to indicate how the progressive realisation of the right of access to land is monitored.

### **Recommendations**

- The departments should report on the minimum standards or size of land needed per family.
- A detailed account of indicators of the size of land required should be clearly outlined.
- The provincial departments should provide an explanation on how they monitor the progressive realisation of the right of access to land rather than referring to the M&E unit.

## **BUDGETARY MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DLA defined the budgetary allocation for the right of access to land as 'capital funds' spent on land reform programmes. However, the Department believed that supplementary spending on other projects such as deeds registration and surveys contribute towards the realisation of the right. Hence the

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<sup>17</sup> *Ibid*, 109.

<sup>18</sup> Please refer to policy section.



National DLA presented the budgetary allocation in terms of capital costs and total costs (See Table 1).

**Table 8.1: National Department of Land Affairs Expenditure on the Realisation of the Right of Access to Land**

Period	Spending on realisation of the right to land – capital expenditure on redistribution, tenure reform and restitution	Total DLA spending on the right to land, including deeds registrations, surveys, and all other costs
1996-1997	90 669	276 682
1997-1998	191 876	417 198
1998-1999	288 971	717 938
1999-2000 <sup>19</sup>	387 271	761 320
2000-2001	489 852	846 504

The report indicated that the 1999/2000 land reform budget was insufficient constituting only 0.34 % of the national budget.

#### ***Provincial Level***

The table below indicates budgetary allocations for the realisation of the right to land between 1996 and 1999 for the Gauteng province.

**Table 8.2: Gauteng Department of Agriculture Expenditure on the Right of Access to Land**

Period	Budget (000)	Spending on the realisation of the right to land ('000)	Department's spending
1996-1997	28 095	7 187	40 743
1997-1998	18 737	18 687	64 554
1998-1999	25 903	14 980	93 992

In Mpumalanga, the budget for the realisation of the right of access to land was R22 million in 1997/1998. In 1998/1999 the budget was drastically reduced to R15 million. During 1997/1998 the spending on the realisation of the right to land constituted 10% of total Departmental spending, while in 1998/1999 it constituted 11% of total spending.

<sup>19</sup> Budgetary figures presented for 1999-2000 and 2000-2001 represent planned expenditure.

The Mpumalanga Department's focus was on people living in rural areas, informal settlements and previously disadvantaged racial groups, such as Africans, Coloureds and Indians.

The Eastern Cape, Free State, KwaZulu Natal, Northern Cape, Northern Province, North West, and Western Cape Provinces failed to provide budgetary allocations for the realisation of the right to land.

## **Commentary**

### ***National Level***

The National DLA did not provide a satisfactory response in that all the questions asked in terms of the budgetary allocations of the realisation of the right to land were not answered.

Table 1 indicates that the National DLA has progressively increased funding for land reform programmes from 1996-2001. Nevertheless, the Department believes that funding for land reform was insufficient, as only 0.34 % of the national budget was allocated for land reform for 1999/2000.

A shortcoming of the response by the National DLA was that it was unable to provide information on the financial resources that were committed towards the realisation of the right amongst the different categories of the previously disadvantaged groups.

### ***Provincial Level***

Only Gauteng and Mpumalanga responded on budgetary allocations that were committed for the progressive realisation of the right of access to land. Gauteng spent R18 million on the realisation of the right to land whereas Mpumalanga spent R22 million for 1997/1998. However, budgetary allocations were drastically reduced to R14 million for Gauteng and R15 million for Mpumalanga respectively during the reporting period. It is worth noting that for Gauteng province, almost 100% of the budget for the realisation of the right to land was spent in 1997/1998, while less than half of 14 million was spent in 1998/1999. Thus, even though not specifically requested, it would have been useful if the provincial departments indicated where the bulk of the money was spent on during the period under review. Further, the provincial departments should also indicate if their financial resources were adequate to provide for the right of access to land.

Whilst Mpumalanga reported that the departments' focus was on the vulnerable and disadvantaged groups, the National and Gauteng Departments dealing with land issues did not account for the impact of the budgetary allocations on the previously disadvantaged groups as requested in the protocols. The departments did not also provide an account for monetary changes in the allocation of funds

between different financial periods. Hence, the information provided was not satisfactory.

The provincial departments in the Eastern Cape, Free State, KwaZulu Natal, Northern Cape, Northern Province, North West, and Western Cape did not make submissions on budgetary allocations for the realisation of the right to land. This rendered the evaluation process difficult, especially because information could not be found from other sources. These provinces should have provided information on the financial resources that were provided for the fulfillment of the land reform programme.

### **Recommendations**

- It is essential that the national and provincial departments provide information on the financial resources that were committed for the different components of land reform programmes.
- The departments must provide a specific explanation of how the different categories of the previously disadvantaged groups benefited from the resources allocated for the realisation of the right of access to land.
- The departments should account for monetary changes in the allocation of funds between different financial periods.

## **5. OUTCOME MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DLA provided information on the restitution, redistribution and tenure programmes. In terms of redistribution and tenure reform programmes, 494 projects were approved between April 1994 to October 1999. These projects benefited 56 760 households. Of the households that benefited, 7 278 of them were female headed and the programme resulted in the distribution of 1,4 million hectares of land.

By November 1999 the Department had under the land restitution process, restored land to 13 930 households, at a cost of R46 million for 264 868 hectares of land. Financial compensation of R32 million was given to 969 households. In total, the Department had in its restitution process settled 784 claims that benefited 14 899 households, translating to 89 518 people at a total cost of R78 million.

### ***Provincial Level***

Most provincial departments dealing with land issues failed to respond to the questions as requested in the protocol. Those who responded did not provide clear information to enable the Commission to make a proper analysis.

### **Commentary**

#### ***National Level***

The National DLA did not provide information on

- The number of rural households which do not have access to land for farming;
- The number of households that were removed from their land since 1913 and have not been compensated; and
- The area of state owned land and the area of land, which is not in use.

No explanation was given as to why this information was not provided.

The National DLA Annual Report reveals that between 1994 and 31 December 1998, 54 218 land restitution claims had been lodged with the DLA.<sup>20</sup> Of all these claims, 20 % of them were from rural areas, and the other 80 % were claims made in the urban areas. The Department had managed to verify and gazette 3 915 claims, and about 284 of the claims made were dismissed. The report further stated that by the end of 1998, 26 claims had been resolved, thus enabling 11 359 households to be beneficiaries of 167 534 hectares of land. In addition, at the end of 1998, 60 claims were presented before the Land Claims Court.<sup>21</sup> By April 1999 about 264 615 hectares of land had been transferred to dispossessed families and communities at a cost of R50 million.<sup>22</sup>

The South African Yearbook indicated that the complexity of the restitution process has led to the slowing down of the restitution process.<sup>23</sup> Because of this slowness, the Minister instituted a review of the entire process to investigate problems affecting the pace of delivery on the resolution of claims. The review included the investigation of the legislative framework on restitution, the structures and process, and all the institutions involved in the implementation of the restitution projects.<sup>24</sup>

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<sup>20</sup> National Department of Land Affairs, *Annual Report*. (1998/1999) 89.

<sup>21</sup> *Ibid*, 89.

<sup>22</sup> Burger, D (ed) *South African Yearbook* (1999) 358.

<sup>23</sup> *Ibid*, 358-359.

<sup>24</sup> *Ibid*, 359.

## ***Provincial Level***

It appeared that the provincial departments did not respond to the questions due to conflicting responsibilities between national and provincial departments. The provincial departments maintained that land rights are the competency of the National DLA, whilst the National Department indicated that provincial Departments are responsible for certain aspects of land delivery such as administrative issues and therefore are bound by constitutional obligations. This was also supported by the National DLA Annual Report which showed that the Mpumalanga province had nine designated distribution projects in 1998, which involved 1 068 households.<sup>25</sup> The total number of people who have benefited from the distribution programme in Mpumalanga was 34 000, which involved about 32 163 hectares of land. The Department had a further 140 projects underway, and they were in the pre-planning stage. The Mpumalanga Department of Land Affairs together with the Land Claims Commission had about nine restitution claims lodged. Out of these claims, four claims benefited 30 000 households.

For the monitoring period 48 applications were received through the redistribution programme, 146 labour tenant cases were registered, 110 eviction cases were dealt with. With the help of the Land Claims Commission the Provincial Department managed to handle 15 cases on redistribution and 35 tenure cases were registered during 1998. This suggests that the provincial departments also have a mandate to provide information on how the programmes implemented in the province promoted the right to land, and whether these programmes have taken into consideration the vulnerable and disadvantaged groups.

## **Recommendations**

- The departments need to provide complete and relevant information to enable a proper analysis of the situation in the provinces.
- The departments need to provide information as requested in the protocol, and provide reasons when information cannot be provided.
- Explanatory notes need to accompany the figures provided; especially with regards to the information on the sites made available to people previously denied access.
- The departments must provide information regarding the number and profile of people or households who were assisted.
- The departments should provide information as requested by the Commission in terms of its constitutional obligation provided by section 184(3) of the Constitution.

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<sup>25</sup> National Department of Land Affairs. *Annual Report*. (1998/1999) 147.

## LIST OF ABBREVIATIONS

<b>CPAs</b>	Communal Property Associations
<b>CPD</b>	Core Project Data
<b>CQ</b>	Community Questionnaire
<b>DES</b>	Diagnostic Evaluation Studies
<b>DLA</b>	Department of Land Affairs
<b>DoA</b>	Department of Agriculture
<b>EIA</b>	Environmental Impact Assessment
<b>ESTA</b>	Extension of Security of Tenure Act
<b>GDP</b>	Gross Domestic Product
<b>GFSP</b>	Gauteng Farmer Settlement Programme
<b>HFSP</b>	Household Food Security Programme
<b>HIV/AIDS</b>	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
<b>IPILRA</b>	Interim Protection of Informal Land Rights Act
<b>M&amp;E</b>	Monitoring and Evaluation
<b>POLCOM</b>	Policy Committee
<b>QA</b>	Qualitative Appraisals
<b>QoL</b>	Quality of Life
<b>SLAG</b>	Settlement Land Acquisition Grant
<b>UDHR</b>	Universal Declaration of Human Rights

## LIST OF TABLES

**TABLE 8.1:** National Department of Land Affairs Expenditure on the Realisation of the Right of Access to Land.

**TABLE 8.2:** Gauteng Department of Agriculture Expenditure on the Right of Access to Land.

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# CHAPTER NINE

## SOCIAL SECURITY AND SOCIAL ASSISTANCE

*Everyone has the right to have access to Social Security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.<sup>1</sup>*

### **POLICY**

#### **Summary of Responses**

##### ***National Level***

The National Department of Welfare (hereinafter National DoW) reported that the following measures were instituted during the reporting period in order to realise the right of access to Social Security and Social Assistance:

- Training for all Social Assistance staff. This policy measure is meant to uphold the Batho-Pele principle that seeks to promote a customer-focused service delivery and expedite the processing of applications for grants.
- Minimum standards and norms for service delivery for persons with disabilities were developed together with a charter of rights for persons accessing Social Assistance.
- Research was also commissioned into eligibility criteria for awarding grants to people with disabilities. It was envisaged that the findings of this research would inform the development of a policy for awarding grants to people with disabilities.
- The income benefits of the Social Assistance programme to help identify vulnerable and disadvantaged groups by implementing criteria and exclusion levels for those who can sustain themselves.

According to the National DoW over 2,8 million people have been targeted to benefit from Social Assistance policies.

##### ***Provincial Level***

Provincial trends could not be captured, as Provincial Departments of Welfare (hereinafter, Provincial DoW) did not respond appropriately to the policy section.

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<sup>1</sup> Section 27(1)(c) and (2) of the Constitution, Act 108 of 1996.

## Commentary

### ***National Level***

The main shortcoming of the National DoW's report hinges on the failure to report on how the policy measures have impacted on the various categories of the previously marginalised groups. The report should have explained how the instituted policy measures had assisted in redressing the injustices of the past and thereby delivering on welfare rights of people. Of concern is the failure to mention other policy measures that were initiated by the National DoW during the reporting period. These policy measures included:

- A policy on ageing. According to this policy, only frail older persons that cannot be cared for in their families are eligible for accommodation in old age homes. This policy seeks to protect the rights of the aged by alleviating abuse and neglect of the aged in residential care facilities. The emphasis is on cost effective and community-orientated methods of care, which represent a paradigm shift from expensive institutional models of care.<sup>2</sup>
- Allocation of funds (R100 million) for improving Social Security delivery and financial systems. It should be stated that the National Action Plan identified the development of mechanisms to discourage corruption and improve efficiency in service delivery as one of the challenges facing the Department of Welfare in its attempt to fulfil the right to access to Social Security and Social Assistance.<sup>3</sup>

The Department had estimated that 2,8 million people would benefit from Social Assistance policies. However, the Department did not provide further information to justify this figure, particularly in view of the fact that 49,9 % of households in South Africa are considered to be poor.<sup>4</sup> This figure translates to approximately 20 million. Clearly there are large numbers of needy people who would be excluded because they are not eligible for various forms of assistance. It was therefore incumbent upon the Department to state the grounds for non-eligibility, particularly in view of Section 27(1)(c) of the Constitution, which clearly states that "... everyone has the right to have access to Social Security, including if they cannot support themselves and their dependants, appropriate Social Assistance".<sup>5</sup>

Other than the reported eligibility criteria, the DoW is also faced with the challenge of developing community-based models of rehabilitation for people with disabilities<sup>6</sup>. In the same way, the Department should devise appropriate methods of intervention that will empower people living with HIV/AIDS to be able to help themselves.

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<sup>2</sup> Department of Finance. *National Expenditure Survey* (1999), 154.

<sup>3</sup> The National Action Plan for the Promotion and Protection of Human Rights. December 1998, 120.

<sup>4</sup> May, J (ed). *Poverty and Inequality in South Africa* (1998) 45.

<sup>5</sup> Section 27 (1) (c) of the Constitution 1996.

<sup>6</sup> Department of Finance. *National Expenditure Survey* (1999) 154.



The quality of the report submitted by the National DoW was not satisfactory. The four obligations to respect, promote, protect and fulfil the right to Social Security and Social Assistance were not dealt with adequately. The report also failed to show how the measures listed above had contributed towards the progressive realisation of the right to Social Security and Social Assistance. Information on the effectiveness of the instituted measures was also not forthcoming in the report.

### ***Provincial Level***

The Provincial DoW do not have policy-making powers over the levels of and eligibility criteria for grants. However, the provinces have powers to decide on strategies for implementing social grants. Therefore, the provinces cannot be absolved for failing to provide information on policy measures since they have powers to make policies regarding the administration of social grants.<sup>7</sup>

At the time of analysis, information on policy measures that were instituted by the various provincial departments could not be obtained from other sources.

### **Recommendations**

The Departments should:

- Report on the impact of policy measures on various categories of the previously disadvantaged groups.
- Report on how the instituted policy measures contributed towards the progressive realisation of the right to Social Security and Social Assistance.
- Describe how policy measures have assisted in discharging the core duties to respect, protect, promote and fulfil the right to Social Security and Social Assistance.
- Indicate whether corrective measures that have been introduced in order to improve efficiency and eradicate corruption in service delivery were successful.
- Devise appropriate methods of assisting needy people that are excluded on the basis of the criteria set for eligibility for Social Assistance.
- Develop appropriate models of community-based care for people with disabilities.
- Identify appropriate services, such as counselling and income generating projects for people living with HIV/AIDS.

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<sup>7</sup>Idasa BIS: *Intergovernmental Fiscal Review – Welfare*. November 1999 in <http://www.idasa.org.za/> (visited on 18 July 2000).

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

#### ***National Level***

The regulations of the Social Assistance Act 59 of 1992 regarding the requirements for the Child Support Grant (CSG) were amended in June 1999. Certain requirements pertaining to proof of identity of the applicant and child by a 13-digit bar coded identity document, the furnishing of proof of income, or making a sworn statement of unemployment were removed. The amendments to the regulations were intended to remove the impediments to eligibility for the child support grant.

#### ***Provincial Level***

The Provincial Departments have mainly cited the Social Assistance Act 59 of 1992, which was amended in 1998, and other national pieces of legislation such as the Welfare Amendment Act 106 of 1997 and the Social Work Amendment Act 102 of 1998. The Free State and the Northern Cape did not submit reports on this section.

### **Commentary**

#### ***National Level***

The National DoW failed to provide information in terms of the format of the protocol. Most of the questions were not answered. The better part of the information provided was irrelevant, as it did not fall within the reporting period. The report only discussed social assistance in terms of the rights of children.

The Special Pensions Amendment Act 75 of 1998, which came to force on November 27, 1998, was not referred to in the report. This piece of legislation amended the Special Pensions Act of 1996 to extend the right of pensions to those suffering from terminal illnesses. It further regulates matters relating to the payment of benefits, such as the advancement of the payment of benefits to the day the pensioner attains 35 years.

Another crucial law omitted from the report was the Aged Persons Amendment Act 100 of 1998. This law provides for conditions for subsidies to managers of registered old age homes and other institutions, the monitoring of compliance with the conditions for registered homes, and to provide for management committees and accessibility to old age homes. This law provided harsh sentences for those found guilty of abuse of the elderly.

The minimum obligations to *respect, protect, promote* and *fulfil* were not reflected in the report. Instead of providing information on how legislative measures gave special consideration to the interests of vulnerable and previously disadvantaged groups, the report only provided percentage figures

in terms of people who receive social assistance. This information is outcome based, and has no relevance in as far as legislative measures are concerned.

The National DoW lacks appreciation and understanding of the content of the right to Social Assistance. Social Assistance refers to needs based assistance financed by the state.<sup>8</sup> Accordingly, people have the right to social assistance if they cannot provide for themselves. However, the report failed to explain in detail how the interests of the vulnerable and disadvantaged groups were being dealt with.

### ***Provincial Level***

The Provincial Departments did not submit sufficient information on the right to Social Security and Social Assistance. The Social Assistance Act 59 of 1992, Aged Persons Amendment Act 100 of 1998 and Social Work Amendment Act 102 of 1998 are national statutes, and therefore are not directly relevant to provincial reports. The national laws should be viewed as setting the standards that oblige the provinces to bring their own legislative measures in line with those standards. Thus, following the crisis in the Eastern Cape, it was imperative that the province should legislate on issues where people were denied their rights to Social Security due to administrative problems.<sup>9</sup> Further, the provincial reports could not indicate the impact of the cited national laws on the realisation of the right to Social Security and Social Assistance.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides that the right to Social Security and Social Assistance is guaranteed without discrimination.<sup>10</sup> People classified as vulnerable and formerly disadvantaged groups should not be discriminated against in enjoying the right to Social Security and their special needs and circumstances should be considered when legislative measures are instituted. For instance, people located in the remote rural areas often encounter problems of access to Social Security services, especially when they try to make applications. Female-headed households are also not covered by the Social Assistance Act.

It is sad to note that the Social Assistance Act does not have any specific provision regarding the homeless. Social Assistance for persons without adequate resources, which includes a home, must also be provided as a right and not on the basis of discretion by the authorities.<sup>11</sup> This indicates that the law does not meet the constitutional obligations to provide for a progressive realisation of the right to social assistance.

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<sup>8</sup> G. Devinish, *A Commentary on the South African Bill of Rights*, (1999) 367-8

<sup>9</sup> See Outcome Measures.

<sup>10</sup> Article 5(e) (iv) of CERD.

<sup>11</sup> Section 27(1) (c) of the Constitution provides that Social Security includes people who are unable to support themselves and their dependants.

## **Recommendations**

- The departments should provide detailed and relevant information in compliance with the format of the protocol.
- The government should put into place positive legislative and other measures as required by the Constitution.<sup>12</sup>
- The provincial departments should provide information on legislative measures instituted at provincial level.
- The principles of equality and equity as embodied in the Constitution should be considered when laws are made, especially with regard to vulnerable and formerly disadvantaged groups. Special needs and considerations of the vulnerable and formerly disadvantaged groups should be a guiding principle in the application of legislative measures.
- Since the Social Assistance Act 59 of 1992 has shortcomings, the government, both national and provincial, should put into place laws that will ensure progressive realisation of the right to social assistance without any form of discrimination, especially with regard to vulnerable and formerly disadvantaged groups.

## **MONITORING**

### **Summary of Responses**

#### ***National Level***

In response to questions regarding the monitoring of socio economic rights, the National DoW submitted information that related to service delivery as the statistics that are collected by the Department.

According to the National DoW, all citizens have a right to information on Social Assistance. Citizens are provided with information on the eligibility criteria, means test and application procedures. The Department had reportedly set up a free telephone service to provide information on eligibility for Social Assistance and information on the status of applications.

The Department was also involved in attempts to establish service offices in each district. Methods of payments of grants, from which applicants could choose were also reported, namely cash payments at pay out points that are closer to beneficiaries, and cheque payments.

According to the information provided, the Ministry of Welfare in consultation with the Ministry of State Expenditure is responsible for determining the levels of grants.

The Department, through its Population Development Unit, collects statistics that are later used as the basis for developing indicators to monitor the progressive realisation of the right to Social Security and Social Assistance.

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<sup>12</sup> Section 27(2) of the Constitution 1996.

Other sources, such as the 1996 census data, household surveys and the Poverty and Inequality Report are also used.

### ***Provincial Level***

Only four Provincial DoW responded to questions on minimum standards for service delivery, namely Free State, Gauteng, Northern Province and Western Cape. According to the Free State and Western Cape's Departments of Welfare, a minimum standard for service delivery was defined as ensuring that applications for social grants are processed within 35 days from the date of receiving an application. The Gauteng Department of Welfare indicated that it was committed to "efficient customer care". The Northern Province stated that the minimum distance between communities and service points is about 5 kilometres. Other Provincial DoW failed to provide such information.

### **Commentary**

#### ***National Level***

The National DoW failed to provide detailed information on the services rendered. For instance, the Department failed to indicate minimum levels of income support for various grants, the minimum distance to points of service and minimum levels of service in order to ensure the progressive realisation of rights in respect of access to Social Assistance and Social Security. Importantly, the National DoW also failed to describe the criteria for either effecting cash or cheque payments.

According to the report on Poverty and Inequality in South Africa, people in the rural areas have either limited access or do not have access at all to welfare services provided by the government<sup>13</sup>. Paradoxically, in rural areas the burden of poverty is over two times than that of urban areas, with almost 71% of the rural population living in poverty<sup>14</sup>. It is these pertinent issues that the report from the National DoW should have addressed.

Another limitation of the report submitted by the National DoW relates to the statistics collected in order to monitor the progressive realisation of the right to have access to Social Security and Social Assistance. The Department only indicated the sources from which information is obtained without specifying the methodology and the type of data that is being collected. However, other sources showed that the Department collected statistics on the number of recipients of various social grants.<sup>15</sup>

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<sup>13</sup>May, J. (ed). *Poverty and Inequality in South Africa*. (1998) 122.

<sup>14</sup>*Ibid* 122

<sup>15</sup>Cash or Development in Indicator: *South Africa Barometer of Social Trends*. Vol. 17. No. 2. South Africa (1999) 28.

### ***Provincial Level***

Like the National DoW, the responses from the Provincial Departments of Welfare indicated that the minimum standards for defining the right to access to Social Security and Social Assistance have not yet been established. For example, while Free State, Gauteng and Western Cape were able to indicate minimum levels for service delivery, other Provincial DoW could not provide such information. However, the responses from the above-mentioned provinces were also incomplete and a number of questions were not answered. For instance, Gauteng did not explain what “an efficient customer care” entailed. Meanwhile, other sources reveal that recipients of social grants in Gauteng experienced difficulties in collecting grants due to distance and/or transport problems.<sup>16</sup> Clearly, the importance of determining the minimum standards for service delivery can hardly be emphasised.

It is unclear how the respective provincial departments monitor the realisation of the right to Social Security and Social Assistance when minimum standards for service delivery have not been determined.

### **Recommendations**

The Departments must:

- Establish a minimum distance to service points in order to ensure the realisation of the right to have access to Social Security.
- Establish minimum standards for service delivery.
- Collate information on the demographic characteristics of beneficiaries.
- Collect statistics on the number of approved and/or unsuccessful applications for grants.
- Report on the methodology used to collect statistics.

### **BUDGETARY MEASURES**

The Welfare budget is administered through Provincial Departments of Welfare.<sup>17</sup>

### **Summary of Responses**

#### ***National Level***

In order to fulfil the right to Social Security and Social Assistance, the National DoW reported that it spent over R15 748 million on Social Assistance in 1998/1999. Such expenditure accounted for 95% of the Department’s total expenditure since 1996 and was expected to remain at this level until 2000/2001. Real per capita<sup>18</sup> figures were not reported.

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<sup>16</sup> *Ibid.* 30

<sup>17</sup> *Ibid.* 26.

<sup>18</sup> Real per capita expenditure refers to per capita after adjusting for inflation.

It was also not indicated how the Department's budgetary allocations benefited the different categories of the previously disadvantaged groups.

### **Provincial Level**

In terms of provinces, the following Provincial Departments of Welfare did not submit reports on budgetary allocations for Social Security and Social Assistance: Gauteng, Northern Cape, Northern Province, North West and Western Cape.

Eastern Cape, Free State, KwaZulu-Natal and Mpumalanga submitted the following information on budgetary allocations:

**Table 9.1: Provincial Spending on Social Security in R million \***

<b>Province</b>	<b>1996/1997</b>	<b>1997/1998</b>	<b>1998/1999</b>	<b>1999/2000</b>
Eastern Cape	3 212	3 369	3 292	3 467
Free State	851	971	999	967
KwaZulu Natal	3 118	3 516	3 739	3 765
Mpumalanga	775	908	952	1 037

\*All four provinces did not submit real per capita figures.

**Table 9.2: Provincial Spending on Social Assistance R million \***

<b>Province</b>	<b>1996/1997</b>	<b>1997/1998</b>	<b>1998/1999</b>	<b>1999/2000</b>
Eastern Cape	105	99	115	120
Free State	755	472	224	484
KwaZulu-Natal	105	106	122	110

\*All three provinces did not submit real per capita figures.

### **Commentary**

#### **National Level**

Although the National DoW was specifically requested to submit figures for Social Assistance and Social Security for the periods ranging from 1996 to 1999, the Department provided spending on Welfare for these periods without providing a breakdown of how resources were allocated amongst the different programmes. As such, these figures did not refer specifically to Social Assistance and Social Security as required in the protocols. As the information submitted by the Department was limited it was impossible to determine the extent to which the Department has been able to deliver services to the targeted communities during the period under review.

In order to allow for an analysis on budgetary allocations of the National DoW, other sources of information were consulted<sup>19</sup> and the following expenditure patterns emerged.

<sup>19</sup> Cash or Development in Indicator: *Barometer of Social Trends. Vol. 17. No.2* June 2000. 27

**Table 9.3: Budgetary Allocations in the Department of Welfare in R million**

	1995/1996		1996/1997		1997/1998		1998/1999		1999/2000	
	Actual	%	Actual	%	Actual	%	Actual	%	Actual	%
Administration	773	5,4	223	1,4	150	0,8	183	1	177	1
Social Security	12 674	88	14 539	91	16 127	91	16 698	91	16 739	90
Social Assistance	71	5	754	4	753	4	792	4	828	4
Social Welfare	180	1	335	2	533	3	518	2	586	3
Social Development	8	0,1	22	0,1	31	0,2	52	0,3	62	0,3
Other	48	0,3	65	0,4	75	0,4	46	0,3	95	0,5
<b>Total</b>	<b>14 400</b>		<b>15 938</b>		<b>17 669</b>		<b>18 288</b>		<b>18 487</b>	

Adapted from Indicator South Africa: Cash or development. Barometer of Social Trends. vol. 17 No.2 (2000) 27.

The preceding table indicates that Social Security accounted for a greater proportion of the total budget of the National DoW since 1995. In 1998/1999 expenditure on Social Security accounted for R18 698 million, which translated to 91% of the total departmental budget. Between 1995/1996 and 1998/1999 financial years, funds that were allocated for Social Security increased by 3 percentage points. Old age pension grants had consistently constituted over 60% of the total budget for Social Security<sup>20</sup>. However, it was reported that the increases in the welfare budget since 1995 were below the inflation rate, and represented a real decline.<sup>21</sup>

Furthermore, even though per capita figures could not be obtained from other sources, it has been found that cash transfer payments to households in South Africa were below international standards.<sup>22</sup>

With regards to delivery of services to the poor, it is worth noting that the Auditor General's (A-G) findings indicated that 78% of over R1 billion budgeted for Welfare programmes in 1998/1999 was surrendered amidst failure to deliver services.<sup>23</sup> For instance, a thorough analysis of the A-G findings revealed that out of a total of over R213 million budgeted for Social Development<sup>24</sup>, only 3% (R6 313 000) of the budget was utilised. Furthermore, of the total budget allocated for Social Development R204 million was earmarked for anti-poverty strategy of which only 0,7% was utilised.

<sup>20</sup> Idasa BID: *Intergovernmental Fiscal Review*. November 1999 in <http://www.idasa.org.za/> (Visited on 19 July)

<sup>21</sup> *Ibid.* 26

<sup>22</sup> Cash or Development in Indicator: *South Africa Barometer of Social Trends*. Vol. 17. No.2 June 2000. 26

<sup>23</sup> Report of the Auditor-General on the Financial Statements of vote 37-Welfare for the Year ended 31 March 1999.

<sup>24</sup> Social Development programme includes anti poverty strategy, and human resource development



A total of over R151 million was budgeted for Strategic Policy Development and planning. Out of this budget, R100 million was allocated for Social Security but only 0,7% of the budget was utilised. Of great concern is that the Auditor-General noted the findings of Private Auditors that, amongst other things, there was no link between budget terms and objectives.<sup>25</sup> This conduct clearly violates the spirit of the Department's Financing Policy, which seeks to align expenditure on programmes to policy objectives.<sup>26</sup>

### **Provincial Level**

It was difficult to conduct a comprehensive analysis of this section because most provinces did not provide information. An alternative source of information was consulted to allow for an effective analysis.<sup>27</sup>

**Table 9.4: Social Security Expenditure in R'million**

<b>Province</b>	<b>1996/1997</b>	<b>1997/1998</b>	<b>1998/1999</b>	<b>1999/2000</b>
Eastern Cape	2 324 448	2 319 405	3 172 776	2 928 367
Free State	780 226	833 487	927 980	890 688
Gauteng	1 395 225	1 786 796	1 656 574	1 571 078
Kwa-Zulu Natal	2 892 825	2 924 473	3 262 897	2 924 372
Mpumalanga	643 438	750 213	861 270	799 223
Northern Cape	346 938	445 844	435 447	440 622
Northern Province	1 340 029	1 258 485	1 451 005	1 666 052
North West	944 219	913 826	1 066 998	1 059 295
Western Cape	1 770 391	1 808 643	1 676 741	1 524 246
<b>Total</b>	<b>12 437 739</b>	<b>13 041 171</b>	<b>14 511 690</b>	<b>13 803 946</b>

*Adapted from Idasa BIS: Intergovernmental Fiscal Review. November 1999.*

**Table 9.5: Social Welfare and Social Assistance Expenditure in R'million**

<b>Province</b>	<b>1996/1997</b>	<b>1997/1998</b>	<b>1998/1999</b>	<b>1999/2000</b>
Eastern Cape	192 059	180 216	147 890	165 546
Free State	89 515	83 474	80 082	82 155
Gauteng	284 243	334 177	285 593	298 294
Kwa-Zulu Natal	183 374	174 323	163 271	162 578
Mpumalanga	34 762	44 655	61 887	54 808
Northern Cape	39 259	38 547	40 973	39 837
Northern Province	75 063	68 855	55 338	43 181
North West	65 680	77 695	60 200	67 324
Western Cape	255 001	266 598	227 181	237 841

<sup>25</sup>Report of the Auditor-General on the Financial Statements of vote 37-Welfare for the Year ended 31 March 1999.

<sup>26</sup>Burger, D. (ed). *South African Year book* .(1999).

<sup>27</sup> Idasa BIS: *Intergovernmental Fiscal Review- Welfare*. November 1999 in [http://www.idasa.org.za/final/publications/bis\\_igrnov99\\_welfare.htm#s21](http://www.idasa.org.za/final/publications/bis_igrnov99_welfare.htm#s21). (Visited on 19 July 2000)

<b>Total</b>	<b>1, 218 956</b>	<b>1, 268 542</b>	<b>1, 122 415</b>	<b>1, 151 561</b>
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*Adapted from Idasa BIS: Intergovernmental Fiscal Review. November 1999.*

An analysis of Table 9.4 and Table 9.5 indicates that in 1998/1999 there was a general increase in the budget for Social Security, which correlates with a decrease in the budget for Social Welfare and Social Assistance. The decreased allocation for Social Welfare and Social Assistance was meant to accommodate overspending in the budget for Social Security. It was projected that almost all the provinces would decrease their spending on Social Security in 1999/2000. The projected decrease in the (1999/2000) budget for Social Security was attributed to corrective measures such as re-registration of beneficiaries, which were to be introduced by the various provinces.<sup>28</sup>

An inter-provincial analysis of Tables 4 and 5 shows that while most provinces committed more financial resources towards Social Security and Social Welfare and Assistance since 1996/1997, the Western Cape consistently reduced its budget. Thus, while the budget for Eastern Cape was projected to increase by 26% between 1996/1997 and 1999/2000, the budget for Western Cape would decline by 13% during the same period. The downward trend in the budget for Western Cape could be ascribed to the fact that Western Cape was historically over-resourced.

Provincial differences become obvious when per capita spending is considered. Thus Table 5 indicates that even though the Western Cape's budget had consistently been reduced, the province still spent more per person than the national average. Other provinces, such as Gauteng, Northern Province, Mpumalanga and North West spent less per person than the national average.<sup>29</sup>

**Table 9.6: Provincial Welfare Spending (in Rands) Per Person 1998/1999**

Eastern Cape	482
Free State	356
Gauteng	245
KwaZulu-Natal	369
Mpumalanga	301
Northern Cape	538
Northern Province	286
North West	303
Western Cape	441
<b>National Average</b>	<b>353</b>

Adapted from Robinson, S and Sadan, *Where Poverty Hits Hardest – Children and the Budget in South Africa*. Children's Budget Project Information Sheet Section 3 No 1 of 5.

<sup>28</sup> Idasa BIS: *Intergovernmental Fiscal Review- Welfare*. November 1999 at [http://www.idasa.org.za/final/publications/bis\\_igrnov99\\_welfare.htm#s21](http://www.idasa.org.za/final/publications/bis_igrnov99_welfare.htm#s21). (Visited on 19 July )

<sup>29</sup> Robinson, S and Sadan, *Where Poverty Hits Hardest – Children and the Budget in South Africa*. Children's Budget Project Information Sheet Section 3 No 1 of 5

## **Recommendations**

The Departments must:

- Align budgetary allocations with policy objectives.
- Provide real per capita figures.
- Show the impact of budgetary allocations on the previously disadvantaged and vulnerable groups, such as people with disabilities.
- Look into the possibility of providing inflation related social grants.
- Report on the difficulties experienced in administering social grants

## **OUTCOME MEASURES**

### **Summary of Responses**

#### ***National Level***

The National DoW submitted the following information.

**Table 9. 7: Indicators for Poverty**

Number of individuals with incomes inadequate to provide minimum food and shelter.	± 11 million
Number of individuals with no source of income.	± 5 million
Number of individuals classified as "poor"	19 million
Number of individuals with incomes below R300 per month	3 million
Percent of income going to the poorest 20% of households	95 %

The Department stated that the above information was extracted from the Poverty and Inequality Report March 1999 and Social Security Pensions (SOCPEN) system, October 1999. Regarding the information on the number of people that benefited from Social Security and Social Assistance, the figures provided fell within the 1999/2000, and not for the current monitoring period. Information was not provided on the different categories of the previously disadvantaged groups.

#### ***Provincial Level***

Seven out of nine Provincial Departments of Welfare and Social Services had either not responded to this section or provided information that was irrelevant for purposes of this report. Only Free State and KwaZulu-Natal submitted reasonable responses to this section.

#### **Free State**

The Free State DoW reported that the number of families, which were assisted through Social Security between 1996-1999, has steadily decreased as shown in the table below.

**Table 9.8: Number of Families Assisted Through Social Security**<sup>30</sup>

<b>YEAR</b>	<b>NUMBER OF FAMILIES</b>
1996/1997	187 585
1997/1998	180 288
1998 / 1999	169 272
1999 /2000	185 988
2000 /2001	247 741
<b>AVERAGE</b>	<b>194 175</b>

The Department did not provide information on various poverty indicators, as requested in the protocol. It was however stated that a number of unemployed persons had attempted to access Social Security even though they were not eligible for such assistance. It was also indicated that the levels of grants were not adequate to satisfy the needs of people.

### **Additional information**

The Department has initiated several processes in order to improve customer satisfaction, and they included the following:

- An extension of the new pension administration and payout system to other areas in the region.
- The installation of two toll free numbers that will handle enquiries from the beneficiaries and the public.
- Monitoring and correcting of administrative errors during pension applications.
- Computerisation of services for more efficiency in administration.
- The development of a policy document on service delivery.
- The promotion of stakeholder participation and intersectoral collaboration with private sector and other government departments.
- Raising community awareness and education on Social Security rights and obligations through the media and workshops.
- Instilling the culture of good customer service in all the officials

The period in which the above processes were initiated was not mentioned.

### **Kwazulu-Natal**

The KwaZulu-Natal DoW reported three categories of households with incomes that were inadequate to provide minimum food and shelter. There were 374 899 households with an income of less than R500 per month, and 205 969 households with an income of between R500 -R1000 per month. The number of households without a source of income was 248 844. The Department also submitted the following information:<sup>31</sup>

<sup>30</sup> According to the Department, these figures were estimated on the basis of the number of grants paid out to beneficiaries.

<sup>31</sup> These figures were obtained from SOCPEN on 25 October 1999, and relate to the number of individuals in receipts of grants. Accurate statistics are not available for previous years, and no information is available at a household level.

**Table 9.9: Number of Beneficiaries of Social Grants**

Social Security	387 977
War Veterans	1 225
Disabled people	139 215
Maintenance Grants	37 770
Care Dependency Grants	7 357
Child Support Grants	22 467

It was stated that due to high unemployment rates in the province, the demand for Social Security exceeded the available resources. The Department therefore embarked on a re-registration campaign to ensure that only eligible persons received assistance in the form of social grants.

### Commentary

#### *National Level*

According to the information submitted by the National DoW, there were about 19 million people that were regarded as poor. The Department, however, failed to indicate what would happen to the majority of poor persons if only 2,8 out of 19 million population of poor people were targeted to benefit from the Department's policies.<sup>32</sup> The Department also failed to submit information on the numbers of persons who benefited from both Social Assistance and Social Security. Nevertheless, as table 9.10 (below) indicates, it appears that the number of people who benefited from old age pensions exceeded the number of beneficiaries of other grants. It is also clear that most of the budget for Welfare was spent on old age pension grants.<sup>33</sup>

**Table 9.10: Number of Beneficiaries of Social Grants: 1998**

Type of Grant	Beneficiaries
Old-age pension	1 768 569
War Veteran grants	10 167
Disability grants	620 730
Grants in aid	9 002

*Adapted from Indicator South Africa: Cash or development. Barometer of Social Trends. vol. 17 No.2 (2000) 27.*

Two-thirds of the budget for old-age pension grants is spent on rural communities.<sup>34</sup> Further, 89% of the beneficiaries of pension grants are Africans, 60% of these beneficiaries live in three generation households, which suggests that there are other family members that are also dependent on pension grants.<sup>35</sup> Understandably, pension grants are an effective vehicle for redistributing wealth.

<sup>32</sup> Please refer to "Policy Measures" for detailed information.

<sup>33</sup> Refer to Budgetary Measures".

<sup>34</sup> Ardington E and Lund F, "Pensions and Development: Social Security as Complementary to Programmes of Reconstruction and Development", *Development South Africa*, 12 (4) 1995, cited in Poverty and Inequality in South Africa, 1998.

<sup>35</sup> Cash or Development in Indicator: *South Africa Barometer of Social Trends*. June 2000.

The report from the National DoW was also silent on whether there had been any difficulties experienced in trying to reach the intended beneficiaries. It was also not indicated whether there were persons that were eligible for Social Assistance but did not receive it due to administrative problems, lack of information and other related problems. These issues are central to the progressive delivery of the right to have access to Social Security and Social Assistance.

The response from the National DoW was unsatisfactory. The Department did not deal adequately with questions as requested in the protocols. As such it was difficult to determine the extent to which the Department was delivering on welfare rights.

### ***Provincial Level***

With regard to the in the Free State's submission, it was difficult to identify factors that could account for a decline in the number of people who depended on social grants, despite the reported high levels of unemployment in the province. However, the decline in the number of beneficiaries appeared to coincide with the period (1998/1999) in which the National DoW introduced stringent eligibility criteria for various grants.<sup>36</sup> Like the Free State, KwaZulu-Natal also reported high levels of unemployment in the province which further impact negatively on limited financial resources. Once more, the need for the government to indicate how it would cater for needy people that are not eligible for various forms of social assistance can hardly be emphasised.

In general, it was difficult to comprehend how the respective Provincial Departments service the previously disadvantaged groups without being able to provide pertinent information on these groups. For instance, it has been reported that in January 1998, the Eastern Cape DoW failed to pay social grants to 632 000 pensioners. It appeared that the number of eligible beneficiaries exceeded the amount of financial resources at the department's disposal. This was attributed to a lack of information on the number of eligible beneficiaries of social grants, fraud and corruption in the administration of social grants. A similar crisis was reportedly threatening other provinces.<sup>37</sup> The fact that provinces do not have information on the number of eligible beneficiaries of social grants suggests that it is not possible for provinces to determine whether financial allocations received from the National DoW would be sufficient to meet their respective needs.

### **Recommendations**

The Departments must provide:

- Accurate and detailed information in order to allow for an effective evaluation.

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<sup>36</sup> Please refer to Policy Measures.

<sup>37</sup> Robinson, S and Sadan, *Where Poverty Hits Hardest* – Children and the Budget in South Africa. Children's Budget Project Information Sheet Section 3 No 1 of 5

- Number and/or percentage of persons that have been assisted through Social Security and Social Assistance to allow for sound budget allocations and planning.
- Collect statistics on the demographic characteristics of recipients of social grants.
- Report on the effects of social grants on the poor.
- Report on the effectiveness of strategies employed to reduce corruption in the administration of social grants.
- Report on problems encountered in reaching intended beneficiaries.

## LIST OF ABBREVIATIONS

<b>A-G</b>	Auditor General
<b>CERD</b>	Convention on the Elimination of all Forms of Racial Discrimination
<b>DoW</b>	Department of Welfare
<b>SOCPEN</b>	Social Security Pension System

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# CHAPTER TEN

## BASIC SOCIAL SERVICES FOR CHILDREN

*Every child has the right to social services. The state is required to respect, protect, promote and fulfil this right and should in this regard, take reasonable legislative and other measures within its available resources to achieve progressive realisation of this right.<sup>1</sup>*

### POLICY MEASURES

#### Summary of Responses

##### ***National Level***

The National Department of Welfare (National DoW) reported that the following policy measures and/or programmes were instituted during the reporting period in order to respect, protect, promote and fulfil the right to Social Services for Children:

- Stepping Stones Youth Justice Centre. This is a restorative justice project, which is aimed at encouraging youth to take responsibility for their wrongs.
- Child Support Grant (CSG). This grant provides children between the age of zero and seven with a flat rate of R100 per child to meet their basic needs.
- Piloted the policy recommendations of the Inter-Ministerial Committee (IMC) on Young People at Risk. The aim of the IMC on Young People at Risk is to transform the child and youth care system.

With the exception of the Child Support Grant, the National DoW did not provide information on how the above policy measures had given special consideration to children from previously disadvantaged groups, such as Africans, Coloureds, Indians and children from poor families. Information was also not provided on the effectiveness of the reported measures.

##### ***Provincial Level***

The Eastern Cape DoW reported that mobile teams that deal with applications for social grants were introduced in the rural areas during the reporting period. The Department had also disseminated information through pamphlets on accessing social grants.

The Free State DoW instituted various policy measures, which included the following:

- Free State Provincial Policy on Services to Street Children. This policy was aimed at the rehabilitation of children living and/or working in the streets.

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<sup>1</sup> Section 28 (1) (c) of the Constitution, Act 108 of 1996.

- The Free State Protocol for Child Protection, which provides an inter-sectoral policy guideline for the services to children that need protection from sexual abuse, other forms of abuse and neglect.
- The Free State Provincial Programme of Action for Children, which is aimed at addressing the needs of all children with specific focus on their survival, protection, development and participation.
- The Free State Province Manual for Intermediary Services aimed at protecting child witnesses in the criminal justice system.

The North West DoW reported the following policy measures and programmes:

- The National Plan of Action that is aimed at protecting abused children and providing them with a safe environment.
- The Drug Master Plan, which outlined how children that are at risk of abusing drugs, can be helped.
- Reprioritisation on Welfare Services which seeks to ensure that the needs of African, Coloured and Indian children receive priority attention.
- Implemented the District Development Policy that is aimed at decentralising Welfare Services.
- Provision of alternate placement for homeless children and children living with HIV/AIDS in the form of foster care, adoption and institutionalisation.
- Provided funding for crèches.

The remaining provincial departments had failed to provide information on policy measures. The departments did not furnish reasons for not providing information.

## **Commentary**

### ***National Level***

Other than the reported policy measures, there were other policy initiatives, which the National DoW embarked on during the period under review. The Action Plan to Prevent and Combat the Commercial Sexual Exploitation of Children was implemented in 1998. Further, the National Strategy on Child Abuse and Neglect was also implemented during the reporting period.<sup>2</sup> However, the Department failed to mention these policy initiatives.

Also, the Department failed to indicate how the instituted policy measures have impacted on children from previously disadvantaged communities. However, it could be argued that the introduction of the means-tested and deracialised Child Support Grant, which is payable to the primary caregiver, represents a positive measure towards promoting the rights to Social Services for children by ensuring an equitable access to Social Services. Indeed the Child Support Grant is targeted at the poorest 3 million children under the age of seven, and a maximum of six children per household stands to benefit from the CSG. However, the Department failed to indicate whether a monthly allowance of R100 per child would suffice to cater for basic needs of children.

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<sup>2</sup>Department of Finance: *National Expenditure Survey*. (1999). 154

It should be stated that, although the decision to provide R100 per child was taken within the context of other programmes such as the Primary School Nutrition Programme, it is worth noting that the Child Support Grant has remained at this level since inception (1998), despite inflationary increases.

### ***Provincial Level***

While it appears that Free State and Eastern Cape introduced different measures in order to realise the rights to Social Services for children, the main shortcoming of their responses relates to failure to indicate whether the above-mentioned policy measures were initiated during the reporting period. Further, the Eastern Cape DoW failed to indicate whether the information dissemination campaigns were successful in terms of reaching the intended audiences. The languages in which pamphlets were produced were also not indicated. It is essential to produce pamphlets in languages that would be intelligible to the majority of the persons served by the Department in order to ensure increased access to Social Services. Nevertheless, in the Eastern Cape the “take-up” rate for the CSG increased from 9% in September 1998 when the actual payment started, to 29% in March 1999.<sup>3</sup> This suggests that the CSG was progressively becoming accessible to a number of children in the province.

The North West DoW reported that the instituted policy measures were effective in that there was a general increase in the awareness of Welfare Services available to children. The decentralisation of services has also ensured that services were accessible to all those who needed them. It was also stated that the funding of crèches ensured that children received a balanced diet, which improved their nutritional status.

Homeless children and children living with HIV/AIDS were also catered for through the provision of alternative placements to enhance their development. It is on these bases that the Department reported that the instituted policy measures and programmes have impacted positively on the lives of children living with HIV/AIDS and homeless children.

The North West DoW also reported on the limitations of some policy measures and programmes. For instance, it was stated that because funding for institutionalised children was uniform, this has made it impossible to cater for special needs of children with HIV/AIDS.

Generally, the response from the North West DoW was relatively sufficient in that it dealt with both the effectiveness and the limitations of instituted policy measures. However, the period in which the various measures were instituted was not clearly indicated in the report.

As stated previously, the responses from other provincial departments were not adequate as they failed to adhere to the format and content of the protocols. For example, instead of providing information on policy measures,

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<sup>3</sup> Department of Welfare: Province of the Eastern Cape: Annual Report (1998/1999) 9.

some provinces provided information on legislative measures. At the time of analysis, information from other sources could not be found.

## **Recommendations**

The Departments must:

- Report on all policy measures, including provincial measures that were introduced during the reporting period.
- Develop communication campaigns and/or materials in languages that would be intelligible to the targeted audiences in order to increase access to Social Services.
- Evaluate the effects of policy measures on previously disadvantaged children.
- Indicate whether the provision of a monthly allowance for the Child Support Grant at R100 per child is sufficient to cater for the needs of children.
- Appreciate the distinction between policy and legislative measures.
- Indicate the period in which policy and other measures were instituted.

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

#### ***National Level***

The national and provincial departments were asked to report on the legislative measures that were instituted to respect, protect, promote and fulfil the right of children to basic Social Services.

According to the National DoW, the Child Care Amendment Act 96 of 1996, which came into effect on 1 April 1998, aligned the Child Care Act 74 of 1983 with the Constitution and the International Convention on the Rights of the Child. The law was significant in transforming the child and youth care system in terms of setting out the rights of the child in residential facilities and in providing reunification services between children in alternative care and their families/communities. The statute provides for legal representation for children in Children's Court inquiries, in consideration of the best interest of the child. Further, this statute regulates the adoption of children, the medical treatment of children, and the notification in respect of injured children.

The Child Care Amendment Bill 14 of 1999 was passed by Parliament in March 1999. The Bill amends the Child Care Act of 1983 in that it provides for the right to appeal against orders made in the Children's Courts or refusal by the courts to make an order for the placement of a child in alternative care. The law also empowers the Minister to establish and maintain facilities for children awaiting trial or sentencing, and to impose severe penalties for sexual exploitation of children.

The National DoW and the South African Law Commission were reportedly in the process of formulating a comprehensive childcare legislation, which shall accommodate religious, and customary law issues and the provisions of the International Convention on the Rights of the Child. The process started in June 1998. The review of child legislation was discussed in the provinces. The review process was expected to be completed in 2000 with the completion of a discussion paper and the draft legislation.

The Department drafted the Adoption Matters Amendment Bill of 1998 in order to amend section 18(4)(d) of the Child Care Act 74 of 1983. This amendment was prompted by the Constitutional Court's decision in the Lawrie Fraser case, where the Court ruled that the denial of natural fathers to have a say in the adoption of children born out of marriage was unconstitutional. The National Assembly passed the Bill on September 2, 1998. Consequently, the Adoption Matters Amendment Act 56 of 1998 came into force in February 4, 1999. Rapists and incestuous fathers are excluded from the provisions of the Act.

### ***Provincial Level***

The DoW in Eastern Cape, Gauteng, Northern Cape and Northern Province have not submitted reports on the right of children to basic Social Services. The other provinces have cited the Social Assistance Act 59 of 1992 as the main legislative measure they have instituted. The Western Cape Constitution Act 1 of 1998 provides for the establishment of an office of the Commissioner for Children. Legislation to this effect was being prepared.

### **Commentary**

#### ***National Level***

The report of the National DoW provided abundant information, but it was not presented in accordance with the format of the protocol. Questions on whether special consideration was given to vulnerable and previously disadvantaged groups were also not answered. The report mainly focused on policy programs and projects instead of focusing on specific legislative measures regarding the right to Social Services for children. Information on both policy and legislative measures was combined, making it difficult to determine whether the questions have been adequately answered.

The report failed to mention other investigations that are being done by the South African Law Commission regarding children's rights. Issues such as the prevention of family violence, juvenile justice and child maintenance are central to the body of children's rights. The report omitted information on the developments made pertaining to the above issues. For instance, the Welfare Laws Amendment Act of 1998 and other regulations, which reflect the law as of April 1, 1998, are not mentioned in the report. The Maintenance Act 99 of 1998, which was assented to on 19 November 1998, was also not stated in

the report. This law is intended to restate and to amend certain laws relating to maintenance.

The Domestic Violence Act 116 of 1998 affords victims of domestic violence maximum protection from domestic abuse. This law is important for the welfare of children, and should not have been excluded from the report.

The minimum obligations to *respect, protect, promote* and *fulfil* the right to basic Social Services are not reflected in the report, and indicate a lack of understanding and appreciation of the right. The socio-economic rights located in section 28(1) (c) of the Constitution are not merely directive principles of state policy, but substantive rights.<sup>4</sup>

### ***Provincial Level***

It appears from the provincial reports that there were no legislative measures instituted since the Social Assistance Act 59 of 1992. The Welfare Laws Amendment Act of 1997 amended this law. The Social Assistance Act establishes the national mandate and criteria to qualify for pension, Disability Grants and Foster Care Grants. Since this is a law passed by the National Assembly, it cannot be referred to as a legislative measure instituted by the provinces.

The implementation of the Child Care Amendment Act 96 of 1996 is delegated to the provinces. The provinces have a duty to implement this law. Since none of the provincial reports has indicated this duty, it means that the provincial departments are failing to recognise their constitutional obligations.

### **Recommendations**

- The Department should put into place positive legislative and other measures as required by the Constitution.<sup>5</sup>
- The report should provide all information relevant to the process of legislating laws concerning the right of children to Social Services, including laws that are still being developed.
- For purposes of monitoring economic and social rights, the report should highlight the minimum obligations in terms of the Constitution.<sup>6</sup>
- Information should also be provided on the effectiveness of the instituted legislative measures.

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<sup>4</sup> GE Devenish *A Commentary on the SA Bill of Rights* (1999) 384.

<sup>5</sup> Section 27(2) of the 1996 Constitution.

<sup>6</sup> *Ibid*

## **MONITORING**

### **Summary of Responses**

The purpose of this section was to establish the minimum standards or criteria used to define the realisation of rights to Social Services for children. Questions were also asked regarding the type of data that were collected in order to monitor the progressive realisation of this right.

#### ***National Level***

The National DoW provided information on various indicators of minimum standards of service delivery. These indicators included standards of support and care for abandoned children, access to necessary professional counselling and minimum levels of nutritional and educational support for children.

Information was not provided on the data collected by the Department.

#### ***Provincial Departments***

Provincial Departments of Welfare had either provided information that was irrelevant for purposes of this report or not responded at all to this section.

### **Commentary**

The report submitted by the National DoW was not satisfactory as it failed to deal with questions pertaining to the monitoring of delivery of the right to basic Social Services for children. Failure to provide such information is suggestive of unavailability of minimum standards for defining the realisation of rights to Social Services for children. The same is true of provincial departments as they also failed to respond to this section.

With regards to the statistics collected, the national department's annual report indicated that data was collected on the number of children that benefited from social grants. Furthermore, the Department through the Registrar of Adoptions collected statistics on the number of adoptions per annum.<sup>7</sup> However, the methodology for collecting such data was not explained in the annual report.

Information on the minimum standards for defining the realisation of the Social Services for Children could not be obtained from other sources.

### **Recommendations**

The Departments must:

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<sup>7</sup> Department on Welfare: *Annual Report 1998-1999* at <http://www.welfare.gov.za/> (Visited on 26 July 2000).

- Establish minimum standards for defining the realisation of the rights of children to Social Services
- Submit information regarding the type of data collected as well as the methodology used.

## BUDGETARY MEASURES

### Summary of Responses

#### *National Level*

The National DoW submitted information on budgetary allocations to various programmes, as reflected in the table below.

**Table 10.1: National Department of Welfare: Budget for Children**

<b>Programme</b>	<b>Actual Expenditure in Rands</b>	<b>Planned Expenditure in Rands</b>
Child Protection	920 000	1 100 000
Child Care Legislation	500 000	500 000
Poverty Alleviation	10 200 000	-
Adoptions	140 000	150 000
Substance Abuse	300 000	1000 000
Family Advocate	200 000	200 000
Foster Care	140 000	150 000
Children with disabilities	250 000	300 000
Children affected by chronic illnesses (HIV/AIDS)	300 000	300 000

Table 10.1 indicates the financial resources that were committed by the National DoW towards the progressive realisation of the right to Social Services for children.

#### *Provincial Level*

Provincial Departments of Welfare provided inadequate responses to this section.

### Commentary

#### *National Level*

The budgetary allocations on children's programmes submitted by the National DoW did not show the period in which expenditure was incurred. However, the annual report provided the following information:<sup>8</sup>

<sup>8</sup>Department of Welfare: *Annual Report 19989-1999* at <http://www.welfare.gov.za/> (visited on 26 July 2000).



**Table 10.2: Budget for Child and Family Programmes for 1998/1999**

Maintenance Grants	Voted R'000	% of Budget
Child Support Grants	302 467	16%
Foster Care Grants	226 482	12%
Special Care Grants	22 297	1.2%

The above table indicates that 16% of the Department's budget was spent on Child Support Grants. It was stated that 45 000 children benefited from the CSG as at March 1999. It should be stated that, in order to reach an estimated target of 3 million children by 2003, the Department would be required to increase the budget for Child Support Grants substantially.

Trends in the allocation of financial resources towards children's programmes could not be established. The information that was available was specifically for 1998/1999.

It is worth noting that the findings of the Auditor-General indicated that out of a total budget of R27,5 million for the child support benefits that was allocated in 1998/1999, only R2 million was spent.<sup>9</sup> This suggests that a number of needy children could have been deprived access to Social Assistance.

Generally, the response provided by the national department was not satisfactory. The Department failed to adhere to the format of the protocol and consequently a breakdown of children's budget according to programmes was not provided.

### ***Provincial Level***

According to the National DoWs annual report, during 1998/ R18, 3 million out of a total of R27 million was allocated to provincial departments for the implementation of the CSG. Funds were reportedly allocated on the basis of the business plans submitted by the respective provincial departments.

**Table 10.3: Provincial Breakdown of Financial Resources Allocated towards CSG: 1998/1999**

Provincial Departments	Allocation
Eastern Cape	R3 125 000
Free State	R 740 600
Gauteng	R2 820 000
Kwa-Zulu Natal	R2 905 100
Mpumalanga	R1 894 200
Northern Cape	R1 756 600
Northern Province	R3 025 000
North West	R1 005 000
Western Cape	R1 052 000

<sup>9</sup> Report of the Auditor-General on the Financial Statements of vote 37-Welfare for the Year ended 21 March 1999.

From the information contained in Table 10.3 it appears that provinces with high levels of poverty, such as the Eastern Cape and Northern Province received more funding compared to other provinces.

Finally, it should be stated that it was appalling for the provincial departments to report that there were no funds that were specifically earmarked for children's programmes. This is unacceptable, as there are a number of social grants such as the CSG, which are specifically targeted at fulfilling the rights of children to Social Services.

## **Recommendations**

The Departments must:

- Align expenditure with policy objectives.
- Report on the financial resources committed towards fulfilling the rights of children.
- Measure the impact of budgetary allocations on the previously disadvantaged children, such as children from poor families.

## **OUTCOME MEASURES**

### **Summary of Responses**

Information was requested from the national and provincial departments on various indicators of access to Social Services and Social Assistance for children.

The National DoW did not provide information for this section. A number of provincial departments did not respond to this section, while others submitted scanty information, which impeded an effective analysis of delivery of Social Services for children. Most provincial departments stated that they had not yet implemented systems for data collection hence information was not available.

### **Commentary**

The CSG which was introduced in April 1998 was meant to reach 378 000 children in its first year.<sup>10</sup> However only 45 000 children were reached, nationally, by March 1999 due to a slow 'take-up' rate during the initial stages.<sup>11</sup> It appears that the slow 'take-up' rate resulted from stringent means tests, which were administered to determine eligibility for social grants, difficulty in obtaining birth certificates, identity documents and lack of infrastructure to reach children in deep rural areas. As a result, the "take-up" rate was reportedly only 40% in some provinces, whilst for others was as low

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<sup>10</sup>"The unsupported and the unsupportable: review of grants for children", *Rights Now*, August 1999, Issue no. 6

<sup>11</sup> Department of Welfare: Annual Report 1998-1999 at <http://www.welfare.gov.za/> (visited on 20 July 2000)

as 5%.<sup>12</sup> It is clear that a low “take- up” rate threatens an efficient delivery of the right to Social Services for children.

Finally, the responses received from the national and provincial departments were not satisfactory. It appears that the Departments lack systems for monitoring the progressive delivery of services to their respective communities. For instance, even though government has set itself a target of reaching 3 million children by 2003 with the CSG, provinces still lack adequate infrastructure for monitoring the realisation of this right.

### **Recommendations**

- The departments must develop a database of the recipients of Social Services.
- Provinces must implement systems for monitoring a progressive realisation of the rights to social services for children.
- The departments need to publicise the CSG and other social grants in order to increase the “take-up” rate.

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<sup>12</sup>“Basic Income Grant: *Some concerns*”, IDASA- Budget Information Service: Budget Briefs, October 1999.

## ABBREVIATIONS

<b>CSG</b>	Child Support Grant
<b>DoW</b>	Department of Welfare
<b>IMC</b>	Inter-Ministerial Committee

## LIST OF TABLES

- Table 1:** National Department of Welfare: Budget for Children.
- Table 2:** Budget for Children and Child Family Programme for the period 1998/1999.
- Table 3:** Provincial Breakdown of Financial Resources Allocated towards CSG: 1998/1999.

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# CHAPTER ELEVEN

## WATER<sup>1</sup>

*Everyone has the right to have access to sufficient water. The state is obliged to respect, protect, promote and fulfil this right and should thus take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.<sup>2</sup>*

### POLICY MEASURES

#### Summary of Response

The Department of Water Affairs and Forestry (hereinafter DWAF) reported that the Water Services Capital Programme, based on the 1994 White Paper on Water Supply and Sanitation and the Water Services Act 108 of 1997, was established as policy to *protect, promote, respect and fulfil* the right to have access to sufficient water.<sup>3</sup> The programme was aimed at serving rural people and did not give special consideration to any other vulnerable or previously disadvantaged groups. The programme provided people with basic water at the beginning of the project and thereafter provides for 'sufficient water' over time, thereby ensuring the *progressive realisation* of the right.

Since its inception in 1994, the Water Services Capital Program had provided 3,524 447 rural people with access to water to the RDP standard. Also, approximately 61 204 jobs 'in person years' had been created. Women accounted for 34 206 of these jobs, and 16 231 youth were employed.

#### Commentary

The report on policy measures by the DWAF was not satisfactory. The Department failed to provide policy measures that were instituted within the period under review. Furthermore, the policy measure of the Water Services Capital Programme was not described in sufficient detail.

Whilst the Water Services Capital Programme is aimed at serving people in the rural area, it would have been useful if the DWAF indicated what criteria were utilised in the selection of areas (villages, towns) to be serviced. Other anomalies in the Department's submission include:

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<sup>1</sup> The analysis of the responses is based on information received from government departments, and thus it sometimes differs for the provinces.

<sup>2</sup> Section 27 (1) (b) and section 7 (2) of the Constitution, Act 108 of 1996.

<sup>3</sup> Details of the actual policy measures instituted for the reporting period were not outlined, but the DWAF referred the Commission to the Water Services RDP 4 Business Plan on the Department's website at <http://www.dwaf.pwv.gov.za/directorate/waterservices/>

- the concept of ‘basic water’ used in the Capital Programme was not defined or differentiated from the Constitutional provision of ‘sufficient water’.
- the DWAF did not indicate how the provision of ‘basic water’ would *progressively* lead to the ‘sufficient water’ being made available by the programme.
- although over 3,5 million people have gained access to water in the past five years, the Department did not indicate whether *all* of these people still benefit from this service. Are all of the projects being *maintained* and *functional*?

Even though programmes such as the Working for Water programme are not directly aimed at providing access to sufficient water, the impact of such programmes and the consequential effect of community participation have a bearing on the sustainability of services. The indirect effects of the Working for Water and similar projects are thus relevant to the right to access to sufficient water, and the Department should have included these measures in its submission.

### **Recommendation**

- Policy measures should be provided in detail with a clear explanation as to what the project entails, an outline of the objectives, and how it relates to the right to access to sufficient water.

## **LEGISLATIVE MEASURES**

### **Summary of Response**

The DWAF has reported that the Water Services Act 108 of 1997 was promulgated in December 1997, and came into force within the reporting period in 1998. Articles 2 and 3 of the Act state that the purpose of the Act is to provide for the right to basic water supply and basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being.

Another piece of legislation that was instituted was the National Water Act 36 of 1998. The purpose of this law is to provide protection for national water resources and control their usage in a way that will ensure equitable access to water and meeting the basic human needs.

### **Commentary**

The report by the DWAF is not detailed in providing objectives of the stated legislative measures. For example, one of the objectives of the Water Services Act of 1997 is to ensure and define the rights of access to basic water supply and basic sanitation services.<sup>4</sup> The Department should have mentioned this objective to demonstrate an understanding of the content and obligations of the right of access to sufficient water.

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<sup>4</sup> D Burger (ed) “*South Africa Yearbook 1999.*” (1999) 62.

The report has generally provided satisfying responses to the questions, except those that deal with the vulnerable and formerly disadvantaged groups.

The objectives of the above mentioned measures are sufficient to meet the constitutional obligations, provided that these measures are fully implemented to achieve their outcomes. In instituting legislative measures, the DWAF should not overlook the needs and special considerations for the vulnerable and previously disadvantaged groups according to their various plights.

The general understanding of the right of access to sufficient water is prevalent in the report. However, the information is not provided in sufficient detail with respect to the obligations to *respect, protect, promote and fulfil* the right.

## **Recommendations**

- South Africa is a water-stressed country where water planners and managers are faced with increasingly complex issues.<sup>5</sup> It is therefore imperative that the DWAF should formulate more laws that will address these issues as well as the challenges outlined in the National Action Plan for the Promotion and Protection of Human Rights.
- The legislative measures should be in line with the newly developed multi-disciplinary approach to managing the country's scarce water resources that is based not only on technical considerations, but also on economic, social, political and environmental considerations.

## **MONITORING**

### **Summary of Response**

The DWAF stated that the criteria established to define adequate access to water, particularly in the rural areas is 25 litres per capita per day. Concerning the distance of tap from home, a uniform standard of a maximum distance of 200 m away from any household had been set and implemented as policy.

The quality of rural drinking water was based on SABS 241 'Specification for Water for Domestic Supply.' The Department stated that there was not much control that could be exercised by the DWAF from the 'supply side' on the affordability of water. From the 'demand side', the question of affordability is relative and was addressed by negotiation between the community and the DWAF. The community used its representative structure, the Project Steering Committee to negotiate on its behalf.

Direct and indirect statistics were collected. Project Management procedures, which monitor and evaluate engineering designs and specifications, were used as a means of 'hands-on project management'. Allocations, distance to taps, and cleanliness were

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<sup>5</sup> Ibid. 61.

addressed. These statistics were reported to the DWAF and corrective measures were issued on site. The DWAF also made use of indirect methods to monitor the right of access to water, including key performance indicators (KPIs) and milestones. KPIs address issues such as:

- Adequacy of water source.
- Delivery of water.
- Water quality.
- Sustainability.
- Assurance and reliability of supply.
- Cost effectiveness.
- Customer satisfaction.
- Level of user commitment (ability) to pay.

These statistics were collected and reported to the DWAF and included information on the progress of the project, discrepancies and corrective measures. For generic monitoring and evaluation, a comprehensive list of KPIs was provided on a monthly basis by a project 'Implementing Agent' to the Department. Technical and social consultants were tasked with collecting these indicators. Thus, the DWAF received up-to-date information on all projects. By means of these two methods of collecting data on projects, the Department believes it can direct and institute corrective measures to projects more decisively.

## **Commentary**

The DWAF submission on the quality of rural drinking water does not really inform the Commission about the quality of water except that the standards are based on SABS standards. These standards should have been outlined. Research has shown that the main thrust in protecting health hazards has been by means of water treatment.<sup>6</sup> The tests used to assess characteristics of waters for public water supplies measure turbidity, microbiological quality, ionic chemical composition, measures of acidity/basicity, hardness and radioactivity.

These are some of the standards that the DWAF should have provided, or alternatively details of what the SABS standards entail. As mentioned in another report,<sup>7</sup> the SABS Specification No. 241 of 1984 lays down the minimum physical, chemical and bacteriological requirements for 26 determinants for the purity of water for domestic supplies. The three-tier system for drinking water quality guidelines (i.e. Physical and organoleptical; Microbiological; and Macro-elements) is based on recommendations by the CSIR. The first level is the recommended or working limit, which is the goal or ideal. This limit is said to follow the recommended levels set by international standards and the SABS. Hence water conforming to these levels is considered to be safe for lifetime consumption. The second level is the maximum permissible level or maximum

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<sup>6</sup> M B van Ryneveld "An Introduction to the Provision of Physical Infrastructure, Water Quality." (1997).

<sup>7</sup> See M J Pieterse "Drinking-water quality criteria with special reference to the South African experience." *Water SA*, (1989) Vol 15, no 3, 169-178.



allowable level, whilst the third limit is called the crisis limit, the limit at which extreme action must be taken. If the foregoing standards are what the DWAF defined, then a thorough report should have been provided.

In understanding affordability, the DWAF should have indicated how the costs are incurred from the vulnerable groups. These are defined as 'ability to pay' and 'willingness to pay'. It has been reported that householders may be able to pay, but unwilling; alternatively they may be willing to pay, but unable to do so.<sup>8</sup>

### **Recommendation**

- Standards used by the DWAF on the quality of water must be provided for in detail.

## **BUDGETARY MEASURES**

### **Summary of Response**

The DWAF reported that R1,451,805 000 was budgeted for the realisation of the right of access to water. The allocation per capita was R798. The Department provides water to informal settlements that are in the rural and peri-urban areas, whilst these groups living in urban areas are serviced by the Department of Provincial Affairs and Local Government. Information on the other disadvantaged or vulnerable groups cannot be provided because the programmes do not differentiate between the groups.

### **Commentary**

The DWAF did not provide complete information as requested in the protocol. Information on the allocation as a percentage of the Departmental spending was not provided. Measures taken to address the right of access to water for the disadvantaged or vulnerable groups were not outlined because the Department stated that it does not cater for such groups separately.

In May 1998 the DWAF allocated an amount of R210 million to the KwaZulu-Natal province for the implementation of the rural water-supply projects.<sup>9</sup> It also contributed R35 million to the R105 million scheme to provide for domestic water supplies.<sup>10</sup>

Although the DWAF reported that the budgetary allocation for the realisation of the right to have access to water was R1,451,805 000 for 1998/1999, the expenditure survey showed that for 1998/1999, the Department spent R2,919,900 000, about twice the figure provided in the DWAF's report to the Commission.

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<sup>8</sup> See M B van Ryneveld "Costs and Affordability of Water Supply and Sanitation Provision in the Urban Areas of South Africa." *Water SA*, (1995) Vol. 21 No. 1

<sup>9</sup> D Burger (ed) "South Africa Yearbook 1999." (1999) 64.

<sup>10</sup> Ibid. 65.

## Recommendations

- A complete report with accurate figures is necessary for proper analysis; where information cannot be provided, this should be explained with appropriate reasons.

## OUTCOME MEASURES

### Summary of Response

In response to questions on outcome measures on the right of access to sufficient water, the DWAF reported that the number and percentage of persons, households and communities relying on unsafe water was not known. The Department also stated that its capital cost programme 'did not place a ceiling' on the cost per capita for the provision of sufficient water for rural people. A total of 3,524 447 people had gained access to water from 1994 until March 1999. The figure is only for people living in rural areas, and differentiation of data into other categories as requested was not available.

### Commentary

The DWAF did not respond sufficiently to all the questions on outcome measures. Although the Department stated that it could not provide categorised information as requested by the Commission, it failed to provide information on questions that could have been answered. Instead, it referred the Commission to Departmental documents where such information is available. This is not acceptable as the obligation rests with the DWAF to respond to the questions in their entirety, so that the Commission can focus its work on evaluating whether the right to have access to sufficient water is being *progressively realised*.

Whilst the DWAF reported that over 3.5 million people have gained access to water since 1994, it failed to provide information on a provincial basis. Table 1 provides a detailed provincial breakdown of this total, as well as the respective programmes used to provide access to water. The data contained is only for programmes providing access to water in rural areas. All of the presidential projects were completed by March 1999, except for one project in the North West that would have provided access to water to a further 210 000 people upon completion in December 1999.

The data in Table 1 shows that the Eastern Cape has received the bulk of water service delivery with 34% of the total people gaining access to water coming from that province. This is in keeping with the prioritisation of delivery to areas that are most in need, as the Eastern Cape had the least amount of households with piped water (53.4%) of all the provinces.<sup>11</sup> Other sources suggest that the amount of people that do not have access

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<sup>11</sup> Statistics South Africa "Census in Brief, The People of South Africa, Population Census, 1996." at <http://www.statssa.gov.za/census96/HTML/CIB/Population/21.htm>

to piped water is even greater. The Poverty and Inequality report<sup>12</sup> states that in rural areas, more than 80% of households have no access to piped water or sanitation.

**Table 1: Provincial breakdown of number of people who have gained access to water as at 31 March 1999<sup>13</sup>**

PROVINCE	PRESIDENTIAL LEAD PROJECTS	WATER SERVICES			TOTAL
		PROGRAMME 2	PROGRAMME 3	PROGRAMME 4	
Eastern Cape	112 000	482 612	237 539	378 148	1,210 299
Free State	90 000	65 386	24 800	13 500	193 686
Gauteng	-	-	-	-	0
KwaZulu-Natal	246 000	166 843	22 800	-	435 643
Mpumalanga	-	271 817	90 807	118 309	480 933
Northern Cape	-	11 408	13 524	-	24 932
Northern Prov.	190 000	279 063	41 730	108 982	619 775
North West	250 000	23 612	42 198	121 762	437 572
Western Cape	-	6 670	108 487	6 450	121 607
<b>PROGRAMME TOTAL</b>	<b>888 000</b>	<b>1,307 411</b>	<b>581 885</b>	<b>747 151</b>	<b>3,524 447</b>

Notes: Presidential Lead Projects commenced in the 1994/95 year.

Water Service Programmes 2, 3 and 4 commenced in the years 1995/96, 1996/97 and 1997/98 respectively.

Amongst rural Africans, 74% of all households need to fetch water on a daily basis, of which 21% have to travel more than 500m to fetch water. The provinces with the largest percentage of rural people are the Northern Province (88.1%), North West (65.2%), Eastern Cape (62.7%) Mpumalanga (61.7%) and KwaZulu-Natal (56.5%).<sup>14</sup>

In the same way as the Eastern Cape, other provinces with a low percentage of piped water were prioritised for service delivery. Those provinces that received preferential delivery were the Northern Province, Mpumalanga, KwaZulu-Natal, North West and the Free State.

It is disappointing that the DWAF did not provide information on service delivery of water in all areas, including urban areas and informal settlements. The need for piped water in informal settlements is as great as that for rural areas. In fact, recent evidence

<sup>12</sup> J May (ed) "Poverty and Inequality in South Africa." (1998) 139.

<sup>13</sup> Adapted from 'Department of Water Affairs and Forestry. Progress Report March 1999' at <http://www.dwaf.pwv.gov.za/directorate/waterservices/pds/progprep/reports/March99.htm>

<sup>14</sup> Statistics South Africa "Census in Brief, The People of South Africa, Population Census, 1996." at <http://www.statssa.gov.za/census96/HTML/CIB/Population/21.htm>

suggests that service delivery of water in some informal settlements has actually deteriorated. For example, the proportion of people in Khayelitsha that did not have access to water has increased from 2.9% in 1995 to 5% in 1999.<sup>15</sup>

### **Recommendations**

- The onus is on the DWAF to categorise data into provinces, rather than referring the Commission to source documents.
- Information on service delivery for all areas especially informal settlements must be provided.

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<sup>15</sup> Cape Metropolitan Council “*Cape Metropolitan Area State of the Environment*” at [http://www.cmc.gov.za/peh/soe/water\\_2.htm](http://www.cmc.gov.za/peh/soe/water_2.htm)

## LIST OF ABBREVIATIONS

CSIR	Council of Scientific and Industrial Research
DWAF	Department of Water Affairs and Forestry
KPIs	Key Performance Indicators
RDP	Reconstruction and Development Programme
SABS	South African Bureau of Standards
WHO	World Health Organisation

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# CHAPTER TWELVE

## LIVING CONDITIONS OF PRISONERS

*Everyone who is detained including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment. The state is obliged to respect, protect, promote and fulfil this right and should thus take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.*<sup>1</sup>

### POLICY MEASURES

#### *Accommodation*

#### Summary of Response

In response to the policy measures implemented to *fulfil* the right of prisoners' to adequate accommodation, the Department of Correctional Services (hereinafter DOCS) reported that prisoners are accommodated in single or communal cells. Prison items such as floor space, cubic content of air, ventilation, natural and artificial light, ablution and sanitary facilities are governed by rules framed to comply with local health regulations and by-laws, issued under the public health legislation. The Department indicated that these provisions are applicable to all the prisoners and are in accordance with Rule 9 of the Standard Minimum Rules.<sup>2</sup>

Specific accommodation provisions exist for females who are detained with their children. Incarcerated mothers with infants are placed in the Mother and Child Unit.

#### Commentary

The submission made by the DOCS is not sufficient and does not allow for effective assessment of prisoners' right to adequate accommodation. Rules utilised as policy measures were not indicated in the report. The time frames within which the policy measures were developed or implemented were not incorporated in the report.

The report did not indicate how the measures gave special consideration to

- prisoners with HIV/AIDS.
- persons with disabilities.
- the older persons prisoners.

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<sup>1</sup> Section 35 (2) (e) and section 7 (2) of the Constitution, Act 108 of 1996.

<sup>2</sup> Neither Rule 9 nor the Standard Minimum Rules were explained.

It also did not mention how these measures contributed towards the *progressive realisation* of the right of prisoners' to adequate accommodation and whether these measures were *reasonable and effective* in addressing the special needs of the vulnerable and formerly disadvantaged groups. Although female prisoners with children and pregnant prisoners are offered separate accommodation, a detailed explanation on how the measures contributed towards the realisation of the right of prisoners to adequate accommodation was not provided.

In terms of appreciation of the right to adequate accommodation, the report is not sufficient as it did not demonstrate how the measures implemented addressed the needs of the vulnerable and previously disadvantaged groups. The contribution these policies made in addressing the needs of the prisoners is not forthcoming in the report.

### **Recommendations**

- The Department should provide a detailed analysis on the policy measures instituted in realising the right to adequate accommodation for prisoners.
- A detailed explanation on how the needs of the vulnerable groups are addressed should be provided.
- The *effectiveness and reasonableness* of the policy measures must be indicated in the report.

### ***Nutrition***

#### **Summary of Response**

The DOCS stated that policy measures for the adequate nutrition of prisoners and detained persons were guided by the Correctional Services Act, 1998 (Act 111 of 1998). The Act provided for prisoners' right to adequate meals three times a day, with meals served four-and-a-half hours apart during the day, and that only fourteen hours must pass between the last meal and breakfast. The nutritional needs of prisoners were determined by compliance with the recommended daily allowances prescribed by the American Nutritional Council and the World Health Organisation.

The Department of Correctional Services has specific dietary provisions for the following vulnerable groups:

#### ***(a) Prisoners with HIV/AIDS***

A medical practitioner prescribes a high protein and kilo-joule diet depending on the nature of the illness.

#### ***(b) Pregnant prisoners and female prisoners with children***

A distinctive dietary scale was offered to pregnant and lactating female prisoners. Infants are provided with a specific diet for infants and a medical practitioner may prescribe a special diet on medical grounds. Cooking apparatus was also made available for after-hour's use.

#### ***(c) Prisoners with disabilities and the aged***

No specific policy exists for the nutritional needs of disabled and aged prisoners. Dietary changes are carried out upon instruction from a medical practitioner.

*(d) Africans, Coloureds and Indians*

Provision was made for cultural and religious meal preferences.

Concerning the *progressive realisation* of the right, the DOCS was of the view that the policy measures contributed to the 'general upliftment of good health amongst the prison population'. Furthermore, nutritional policy measures were deemed to be *reasonable* and *effective* in that the specific measures for different groups of prisoners catered for their particular nutritional needs, and improved the general health of the recipients.

### **Commentary**

Policy measures utilised during the reporting period by the DOCS on the right to adequate nutrition for prisoners were satisfactory, and comply with the Constitutional obligation of providing for the right to adequate nutrition for prisoners and detained persons. The Department followed the format of the protocol, and provided the necessary information for vulnerable groups.

Whilst the policy measures that exist seem to be comprehensive in ensuring that the right of adequate nutrition for prisoners was realised, the DOCS should assess whether these measures achieved the desired effect. The *effectiveness* of these measures necessitates appropriate monitoring tools and formal evaluation. For example, despite the fact that Departmental policy provides for three meals a day, theft of food amongst prisoners was a recognised problem. Thus the Department needs to find measures that will be taken to address this problem.

Also, nutrition is a broader concept than food, and encompasses the utilisation of food *and* essential nutrients for the maintenance of life, growth and normal functioning. As such, the DOCS should provide detailed information on the dietary composition (carbohydrates, protein and fat) and the daily allowances of micronutrients (vitamins, minerals and trace elements).

### **Recommendations**

- The DOCS should develop a comprehensive policy that addresses both the provision of adequate food and nutritional needs for prisoners and detained persons.
- The Department needs to outline the measures being taken to address the problem of overcrowding in prisons, as congestion impinges on the provision of food.

### **Reading Material**

No questions were directed at the DOCS for policy measures associated with the provision of reading material. However, the section on 'Outcome Measures' of the protocol requested information on policies and measures pertaining to the provision of



adult basic education and education of child prisoners.<sup>3</sup> The Department's response is summarised in the outcome section below.

### ***Medical treatment***

#### **Summary of Response**

In responding to the measures instituted to *protect, promote, respect and to fulfil* the right of prisoners to adequate medical treatment, the DOCS reported that all prisoners have access to medical care.

The policy of the Department is to provide for an ethical and clinically independent health care service, 'accentuating the Primary Health Care Strategy of preventive and promotive health care,' including health education. Prisoners are also allowed to request for a consultation with a medical practitioner.

All provinces have access to a regional hospital, which provides for the rendering of a 24-hour nursing service. Larger prisons have pharmacies and theatre facilities.

The Department has specific policy measures for the medical treatment of vulnerable groups.<sup>4</sup>

#### **Commentary**

The DOCS submitted a comprehensive report, with detailed information on measures taken to provide for medical treatment of sentenced prisoners and detained persons. The Department's response suggests a good understanding of its constitutional obligations. Although the Department did not differentiate directly between the obligations to *respect, protect, promote and fulfil* of the right, the response was nevertheless inclusive of these measures with numerous examples of Departmental policy programmes and legislation aimed at ensuring delivery on the right to health care for prisoners. However, the verification of policy measures can only be assessed in terms of the evaluation of indicators on the health status of prisoners.

Whilst the policy measures reported on by the DOCS appear to address prisoners' right to medical treatment in detail, the *effectiveness* of these policies could not be established. For example, although policy provides for every prisoner with the right to request a consultation with a medical practitioner, the DOCS did not indicate whether this request is always fulfilled.

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<sup>3</sup> Whilst section 35 (2) (e) of the Constitution provides for the right to reading material for prisoners and detained persons, section 29 (1) (a) provides for the right to a basic education, including adult basic education to all citizens.

<sup>4</sup> See '5. OUTCOME MEASURES' below for a summary and critique of policy measures for vulnerable groups.

## **Recommendation**

- The Primary Health Care policy subscribed to by the Department of Correctional Services should be evaluated to ascertain the *effectiveness* of these measures.

## **LEGISLATIVE MEASURES**

### ***Accommodation***

#### **Summary of Response**

The present Correctional Services Act 111 of 1998 was produced after the rewriting of the Correctional Services Act 8 of 1959 in line with the provisions of the White Paper on Correctional Services. The purpose of changing the 1959 law was to align it with the Constitution. Section 7(2) of the Correctional Services Act of 1998 provides for the separation of prisoners in terms of age, gender and sentenced and un-sentenced prisoners. Female prisoners are now permitted to give birth in prison, and to live with their children until the age of five.

The Act also provides that under practical circumstances, the Commissioner of Correctional Services must ensure that a mother and child unit is available for the accommodation of female prisoners and their children. The Act also provides for the screening of prisoners for contagious diseases, including HIV/AIDS in consideration of accommodation interests of the aged, female prisoners and children.

#### **Commentary**

The DOCS has submitted a reasonable response to the protocol questionnaire. The Correctional Services Act of 1998 appears to be in the interests of the prisoners in as far as the right to adequate accommodation is concerned. This was evident from the report in terms of the way the Act considers the interests of the vulnerable and disadvantaged groups, especially women and children. Section 7(1) of the Act provides that prisoners must be held in cells, which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations, and general health conditions. However, the report by the DOCS has not mentioned this important provision.

The report has also failed to mention the appointment of an independent judicial inspectorate, which regularly inspects all prisons, and report on conditions and treatment of prisoners.<sup>5</sup> Former President Nelson Mandela appointed the Inspectorate on 1 June 1998.

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<sup>5</sup> See section 85 of the Correctional Services Act 111 of 1998.

It should be commended, however, that the report has provided information on those measures taken into consideration of the special needs of the groups mentioned in the protocols, especially women and children. On the basis of the responses to the protocol questions, the DOCS has shown appreciation and understanding of the right to accommodation/ housing for the prisoners.

Notwithstanding the above comment, the report failed to explain the problem of increasing prisoner population, which threatens the availability of adequate accommodation/ housing. However, the report acknowledged the presence of this problem, that overcrowding leads to the over-utilisation of facilities, which often causes breakage. This affects the *reasonableness and effectiveness* of the legislative provisions.

The Correctional Services Act 111 of 1998 empowers the Minister to contract out some prisons to the private sector. The private sector partners will be responsible for the financing, design, building, maintenance, staffing and operation of the prisons according to standards defined and monitored by the Departments of Public Works and Correctional Services.<sup>6</sup> This is some of the critical information, which the report has failed to mention.

The report has, in the main, accounted for the obligations to *respect, promote and to fulfil*. The obligation to *protect* was not reflected in the report. The obligation to *protect* the right requires the state to have in place laws and regulations that grant individuals the legal status, rights and remedies required to ensure proper protection of the right.

## **Recommendations**

- It is recommended that the DOCS, in consultation with the Department of Justice and other relevant structures, put into place measures, which could alleviate prison over-crowding.
- Rules and regulations with regard to legal recourse for inmates concerning incidents of violations of the right to adequate accommodation should be developed.

## ***Nutrition***

### **Summary of Response**

The DOCS has reported that Section 8 of the Correctional Services Act 111 of 1998 states that each prisoner must be provided with an adequate diet to promote good health, as prescribed in the regulations. Special attention was given to persons with disabilities and older persons.

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<sup>6</sup> D Burger (ed) "South Africa Yearbook 1999." (1999) 237.

## Commentary

The report did not clearly categorise the prisoners' rights to accommodation, nutrition and medical treatment. Though the protocol had combined the questions on all these rights, the report was supposed to have provided information on each of the rights in a more distinct manner. This is because each of these rights is an independent right that should be separately monitored. The provision of information *en masse*, as provided in the report, failed to answer questions on each of the rights, which resulted in other important aspects not covered in the report.

Section 8 of the Correctional Services Act, which specifically provides for nutrition for prisoners, was not emphasised in the report. The DOCS has a responsibility to provide nutritious meals to all those who are entrusted to its care. The main objectives are to:<sup>7</sup>

- Provide all prisoners with a balanced diet on a daily basis, as prescribed.
- Prepare meals in adequately and suitably equipped food preparation areas, under conditions conducive to a high standard of hygiene.
- Distribute meals in three serving sessions.

The report did not reflect these objectives and the commitment of the Department as outlined in the South Africa Yearbook of 1999. This reflects the DOCS failure to provide detailed information on the legislative measures that were instituted to achieve the above-mentioned objectives. The impact of the Correctional Services Act on the right of prisoners to adequate nutrition was not thoroughly explained in terms of the constitutional obligations to *respect, protect, promote and fulfil*.

## Recommendations

- The DOCS should carry out its objectives to provide nutritious meals to detained and sentenced prisoners. These objectives should be executed on the basis of a proper legislative framework.
- For future purposes, the DOCS should clarify the role of available legislation in the realisation of the right to adequate nutrition for prisoners.

## Reading Material<sup>8</sup>

### Summary of Response

The DOCS did not provide information on legislative measures that were instituted to *respect, protect, promote and fulfil* the right of prisoners to education and adequate reading material.

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<sup>7</sup> Ibid. 240.

<sup>8</sup> The question in the protocol did not relate to the section 35 (2) (e) of the Constitution, that provides for the right to adequate reading material for prisoners and detained persons, but to section 29 (1) (a) that provides for the right to a basic education, including adult basic education to all citizens. For the purposes of conformity and congruence to other sections, the heading 'Reading Material' has been used.

## Commentary

Section 18 of the Correctional Services Act 111 of 1998 makes provision for prisoners right of access to available reading material of their choice. This right is limited if such material constitutes a security risk or is not conducive to their rehabilitation. The reading material could be obtained from prison libraries or may be sent from outside prison in a manner prescribed by regulation.

According to the South Africa Yearbook,<sup>9</sup> the DOCS strongly encourages literacy education for prisoners. Education for prisoners includes literacy tuition for illiterate prisoners, primary, secondary and tertiary education, and preparedness and recreational programmes. The DOCS offers the following training programmes:<sup>10</sup>

- Vocational training in a variety of trades in which a prisoner is given the opportunity to obtain a diploma or a certificate.
- Occupational skills training, which involves training as cooks and waiters, clothing manufacturing and agriculture.
- Constructive and unskilled labour that enables those prisoners who cannot receive formal training to take part in a variety of other work opportunities such as farming, gardening and maintenance of prison premises.
- Literacy and adult education, in which prisoners are trained in business skills in order to set up their own businesses after they are released.

The above information indicates that the DOCS is engaged in the provision of education and reading material to prisoners. The DOCS was aiming to involve 90% of juveniles prisoners in mainstream education, and 45% of adult prisoners who are serving a sentence of two years or less, while 13% of those with a sentence of more that two years must do at least one skills course.<sup>11</sup> The DOCS should have provided this information to the Commission.

## Recommendation

- Specific laws that ensure the *respect, protection, promotion and fulfilment* of prisoner's rights to reading material should be passed.

## Medical Treatment

## Summary of Response

The DOCS has developed a White Paper on Correctional Services, which resulted in the amendment of the Correctional Services Act 8 of 1959 and the promulgation of Correctional Services Act 111 of 1998. These amendments were intended to align the

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<sup>9</sup> D Burger (ed) "South Africa Yearbook 1999." (1999) 241.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

1959 law with the Constitution. The Correctional Services Regulations were in the process of being drafted.

The DOCS is responsible in terms of the Correctional Services Act 111 of 1998 for the provision of medical care.<sup>12</sup> The Act also provides for the screening of prisoners for contagious diseases such as HIV/AIDS.

### **Commentary**

The report did not provide adequate information on the right of prisoners to adequate medical treatment. Physical care of prisoners is an important responsibility of the DOCS, and includes personal health care, nutrition and accommodation.<sup>13</sup> Since the DOCS endorses the fundamental rights and privileges of all prisoners,<sup>14</sup> it should have provided information on legislative measures that were taken to that effect.

It is not clear from the report as to whether the measures give special consideration of the vulnerable and formerly disadvantaged groups. Instead of providing what the measures have considered for each vulnerable group, the report provides the same response for each group, namely the screening of prisoners, provision of adequate diet and access to health care. Each of these groups needs to be provided for specifically. The report has also failed to account how access to health care is provided as required by the legislative measures, and what standards are applicable in terms of the Correctional Services Act 111 of 1998. The DOCS also failed to indicate whether this law is *reasonable and effective* in the *progressive realisation* of the right to adequate medical treatment of prisoners. The DOCS also did not draw a distinction between policy and legislative measures.

The Correctional Services Act 111 of 1998 is a reasonable measure instituted by the DOCS. If it can be implemented accordingly, it can be a very significant measure to meet the constitutional obligations. It is apparent from the report that the law is not fully implemented, especially regarding nutritional and medical issues that affect prisoners. The HIV/AIDS pandemic is a critical issue affecting living conditions in prisons, but the report has down-played this issue, save for stating that prisoners are screened for such diseases and that there are people trained to look after HIV/AIDS infected prisoners. Nothing is said about provision of medical treatment to HIV/AIDS prisoners. Section 12 of the Act, which outlines several entitlements of prisoners to medical treatment, was not referred to in the report.

The quality of the report is poor and the DOCS failed to explain the impact of the instituted measures on the rights of prisoners. The Correctional Services Act of 1998 is the only measure instituted, but its impact is not detailed in the report.

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<sup>12</sup> Section 12 of Act 111 of 1998 states that “the Department must provide, within its available resources, adequate health care services based on the principles of primary health care, in order to allow every prisoner to lead a healthy life.”

<sup>13</sup> D Burger (ed) “*South Africa Yearbook 1999.*” (1999) 239.

<sup>14</sup> *Ibid.*

## Recommendations

- The DOCS should indicate in the report what impact the particular measures mentioned have on the *progressive realisation* of the right to adequate medical treatment.
- Policy and legislation should be clearly separated in the DOCS report to the Commission.
- The Correctional services Act 111 of 1998 should be fully implemented to meet the constitutional obligations to *respect, protect, promote and fulfil* the right of prisoners to adequate medical treatment.
- The state should develop laws for a framework of ensuring that prisoners receive adequate medical treatment based on the principles of primary health care.

## MONITORING

### *Accommodation*<sup>15</sup>

#### Summary of Response

In defining the prisoner's right to decent living environment, the standards used by the DOCS is the minimum floor space of 3,344m<sup>2</sup> and 8,5m<sup>2</sup> for cubic air space.

The DOCS indicated that all prisoners must have access to running water and flushing toilets. In cells where these facilities cannot be provided, water containers and sanitary buckets are provided. These buckets are cleaned and disinfected on a daily basis.

Statistical data collected includes approved accommodation of prisons and the prison population figures. These are gathered on a monthly basis and are captured on a computerised system.

#### Commentary

The report submitted by the DOCS was not satisfactory in terms of monitoring the prisoner's right to decent living conditions. A detailed analysis illustrating the decent living environment was not provided.

The DOCS did not indicate whether the facilities cater for persons with disabilities. Another shortcoming from the response was that the DOCS did not indicate whether prisoners have access to electricity and telephones. Data such as age group of prisoners, gender, race, escapees, number of prisoners who have committed suicide, number of prisoners with special needs, persons with disabilities are amongst essential statistics that should have been indicated.

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<sup>15</sup> The question in the protocol related to prisoners' right to a decent living environment, and not only to adequate accommodation.

In the main, the report was not satisfactory as it failed to provide adequate information indicating the *progressive realisation* of the right to a decent living environment.

### **Recommendations**

- A detailed account on whether the facilities provided address the needs of the vulnerable groups is essential.
- The DOCS must indicate how these standards contributed to the *progressive realisation* of the prisoner's right to a decent living environment.
- Statistical data is essential in the defining and monitoring of the *progressive realisation* of this right; therefore, the DOCS should indicate the data gathered for the reporting period to monitor the right.

### **Nutrition**

No monitoring measures or indicators were required from the DOCS by the protocol with respect to the right of detained persons and prisoners to adequate nutrition. Although no measures were requested in the protocol, the Departments' Correctional Services Act, 111 of 1998 has general requirements, which must be met in providing the right to food.<sup>16</sup>

### **Reading Material<sup>17</sup>**

### **Summary of Response**

The DOCS in responding to the minimum standards established to define the right of access to basic education stated that every prisoner, as a prerequisite for development, should have a basic education. The DOCS offers an education programme, which includes formal and non-formal educational opportunities to prisoners.

The main guideline with regard to the presentation of education within prisons, is that it should be provided in an 'acceptable, adjustable, need-orientated, affordable, timely and responsible manner and in co-operation with other role-players.' The recreational programme, which forms part of the education programmes, includes participating and training in different sports and games. Larger prisons have libraries, which prisoners are encouraged to make use of.

### **Commentary**

The response was reasonable in terms of the information requested from the DOCS. The Department shows a commitment to the provision of education. However, the report failed to give an indication of whether there are classrooms or areas reserved

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<sup>16</sup> A detailed account of these requirements can be found in the policy section.

<sup>17</sup> See Note 8 above.



only for teaching, or whether prisoners rely mainly on correspondence study and self-application. If there are classrooms, the Department should have indicated the minimum amount of people needed to make up a class, and the student/educator ratio. Furthermore no information was provided on the form of teaching provided for juvenile prisoners.

The report failed to mention the time set aside for educational programmes, for both adults and juveniles.

### **Recommendations**

- The DOCS needs to provide details on areas designated for teaching and the student/ educator ratio for juvenile prisoners.
- Time -frames for the educational programmes need to be provided for better assessment on the provision of the right to have access to education.

### ***Medical Treatment***

The DOCS did not describe the minimum standards or criteria established for prisoners' access to basic medical care as required by the protocol, but said that the provision of nurses and medical practitioners and the establishment of prison clinics address access to basic medical care.

## **BUDGETARY MEASURES**

### ***Accommodation***

No questions were asked specifically on budgetary allocations for adequate accommodation for prisoners and detained persons.

### ***Nutrition***

### **Summary of Response**

The DOCS reported that a total of R256,046 823.47 was allocated for food for prisoners for the period 1998/99. The per capita daily allocation after adjusting for inflation was R4.91 and the total amount comprised 43.52% of the total departmental budget. The DOCS gave no indication as to whether the funds allocated were adequate or not.

### **Commentary**

The DOCS reported adequately on budgetary measures taken to realise the right of prisoners to sufficient food. The Department reported that 43.52% of the budget was spent on food, but no indication was given as to whether this amount was adequate,

especially with the problem of overcrowding in prisons. Information on the allocation of resources for the needs of those with special dietary requirements such as pregnant and lactating mothers and the infirm was not provided. The DOCS should also have reported on how the dietary requirements of children between 0-5 years in detention are catered for and whether they have access to the feeding programmes available to children who are not living in prisons.

### **Recommendation**

- The DOCS should report on the breakdown of its spending on food and whether the resources allocated were sufficient to meet its needs.

### ***Reading Material***

The protocol did not request information on budgetary allocations for reading material from the DOCS.

### ***Medical Treatment***

### **Summary of Response**

The DOCS reported that the total spending for medical care for prisoners for 1998/1999 amounted to R163,703 000, which represented 27.83% of the total Departmental budget. This translated to R3.14 per prisoner per day (R1 145 per prisoner per year).

The DOCS did not report on spending on special categories of prisoners such as older persons, youth and children, pregnant and lactating women and prisoners with HIV or AIDS.

### **Commentary**

The Department did not respond adequately on measures taken to ensure medical treatment for those in detention.

According to the Annual Report of the Department of Correctional Services,<sup>18</sup> the budgeted cost for ensuring the humane detention and treatment of prisoners for 1998/1999 amounted to R537,039 000 which was 12 percent of the total Departmental budget of R4,515,518 000. The unit cost or per capita cost per day amounted to R8,02. This included the cost of medical care, nutrition, personal care, guarding (transport to courts), day-to-day maintenance to buildings and gratuity. Spending specifically on medical care was reported as R1.79 per prisoner per day, which is well below the amount provided in the response to the protocol.

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<sup>18</sup> Department of Correctional Services "Annual Report 1998 Department of Correctional Services." (1998). 16.

According to the Annual Report,<sup>19</sup> female prisoners are allowed to care for their infants or young children who accompany them into detention or are born in detention. The DOCS is responsible for the sound physical, social and mental care and development of the infant during its stay. In spite of this, no budgetary information has been given detailing the financial implications of this responsibility or if they are being met at all.

Youth below the age of 21 years and children below 18 years are regarded as a unique category and are addressed specifically. However, no budgetary information has been given on detained youth and children to ensure that they receive adequate medical care.

The DOCS has attempted to address the issues of Tuberculosis (TB), Sexually Transmitted Diseases and HIV/AIDS. It is reported that as of December 1998, there were 1 745 HIV positive prisoners and 107 with AIDS, while 1577 had been diagnosed with TB.<sup>20</sup> The DOCS established clinics in various prisons to provide education and counselling and to issue condoms to prisoners and personnel, with professional nurses appointed to manage the HIV/AIDS programme. Once again the Department did not give information on the financial implications of this programme. No mention was made either of whether or not special budgetary allocations were made towards the dietary and medicinal needs of these prisoners and if not, were the per capita allocations sufficient to ensure that these persons receive an adequate supplemented diet and the special medical care that they may have needed.

It is important that the DOCS addresses all these issues to ensure that they meet the medical needs of all prisoners including prisoners from vulnerable groups.

## **Recommendations**

- The DOCS needs to respond with details on its spending on youth and children in detention and HIV/AIDS programmes.
- The DOCS should also indicate the problems and constraints that it faces, if any, in ensuring medical care for prisoners.

## **OUTCOME MEASURES**

### ***Accommodation***

#### **Summary of Response**

The DOCS did not respond to the questions on outcome measures in terms of the prisoner's right of access to a decent living accommodation.

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<sup>19</sup> Ibid 15.

<sup>20</sup> Ibid. 13.

## **Commentary**

Information required by the Commission in terms of assessing the progressive realisation of the prisoner's right to a decent living environment was on the:

- average number of prisoners per cell
- average number of prisoners per ward
- average number of prisoners per toilet/shower
- number of prisoners in over-crowded conditions.

The proper assessment of the outcome section was not made since the DOCS failed to provide information on the outcome section in relation to the prisoner's right to a decent living environment.

In order to assess the possibility of overcrowding in prisons, the DOCS should have responded to the questions as asked in the protocols. Furthermore, the Department should have indicated if the services provided in prisons address the needs of the vulnerable and previously disadvantaged groups. This would have helped in assessing if the DOCS *respects, protects, promotes and fulfils* prisoners' right to adequate accommodation.

## **Recommendations**

- It is essential that the DOCS respond to all the questions asked in the protocols.
- The Constitution states that prisoners should be provided with adequate accommodation.<sup>21</sup> Therefore, the Department should report on the conditions in prisons in order to assess the prisoner's right of access to a decent living accommodation.
- The Department needs to report on how it addresses the needs of the vulnerable and previously disadvantaged groups in the realisation of this right.

## ***Nutrition***

### **Summary of Response**

Concerning the quality of food for detained persons, the DOCS reported that the food quality was 'generally acceptable.' Since many prison kitchens do not have trained caterers, the quality of food between prisons varies. Detained persons with HIV/AIDS receive a special high protein and high kilojoule diet, with diets amended at the recommendation of the medical doctor. Pregnant women and breast-feeding mothers have their own prescribed ration scale, which differs from the normal diet for detained persons. The portion sizes and nutritional value of diets for pregnant women and breast-feeding mothers was evaluated annually by the National Department of Health.

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<sup>21</sup> Section 35 (2)(e) of the Constitution Act 108 of 1996.

## **Commentary**

The submission by the DOCS was satisfactory. However, whilst the DOCS suggested that the quality of food was generally acceptable, the Department did not indicate what criteria were used to reach this conclusion. The report should have provided information on energy content, portion sizes and the quality of food on the special dietary provisions for vulnerable groups like HIV positive and pregnant prisoners. Also, as some meals are packed meals for consumption in prison cells rather than designated meal areas, the DOCS should indicate what measures are in place to limit theft of these meals by others.

## **Recommendations**

- The DOCS must indicate how it assesses the nutritional requirements of food received by detained persons.

## ***Reading Material*<sup>22</sup>**

### **Summary of Response**

The DOCS believes that education and training should be made available to every prisoner or probationer for eventual rehabilitation. One of the measures that will be instituted involves the DOCS finding ways of reducing the rate of illiteracy amongst all offenders, which currently stands at 37 %.<sup>23</sup>

The Department offers Education and Training programmes that include formal and informal educational opportunities to prisoners, in line with requirements of the South African Qualifications Authority and National Qualifications Framework. These programmes consist of ABET,<sup>24</sup> further education and training programmes in partnership with the Department of Education, and higher education and training programmes through distance education in partnership with different tertiary institutions and professional institutions, and recreational training programmes.

The DOCS literacy programmes are integrated in the ABET programmes which incorporates literacy and numeracy. This is different from the conventional approach, which provided the most basic and elementary education (some language and a bit of numeracy). On completion of the ABET programme prisoners obtain a General Education and Training Certificate.

The DOCS bases the above-mentioned approach on the premise that all adults, including prisoners, need a general level of education and training if the investment in learning is to be sustained. This is also seen as a way of empowering prisoners so that

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<sup>22</sup> See Note 8.

<sup>23</sup> The illiteracy rate for the whole country is 33%.

<sup>24</sup> Adult Basic Education and Training (ABET).

they will not regress to illiteracy, and criminal behaviour. The DOCS also believes that the curricula of these learning programmes must link to the economic, social and political developmental needs of the country.

The DOCS works with a number of organisations in order to provide the above-mentioned programmes that rehabilitate and prepare prisoners for eventual re-integration back into society. Technical training under the guidelines of the South African Qualifications Authority and recognised standards-setting bodies is also offered and categorised into:

- Vocational training - training where artisan status can be obtained.
- Occupational skills - training where specialised training is acquired and is aimed at equipping prisoners with basic technical skills.
- Computer based Training - training which offers basic and advanced computer skills through a variety of courses.

Recreational programmes include participation and training in a variety of sports, recreational, arts and cultural activities. Library and information services are offered in partnership with provincial education departments. The libraries offer support for formal education programmes and leisure time reading. In some prisons there are no fully functioning libraries because of lack of funds.

The average number of prisoners who are involved in educational programmes is as follows:<sup>25</sup>

- Formal Education programmes - 11 985
- Informal Education programmes - 102 690

The Education and Training Directorate aims at increasing the numbers of prisoners involved in the education and training programmes by vigorously marketing the programmes.

### **Commentary**

The information provided is sufficient in terms of the questions asked. The information provided indicates that the DOCS is addressing adult basic education for prisoners. However the Department did not show how basic education is provided to children who are in prisons.

Although the DOCS supports the provision of basic education to prisoners on principle, the Department should have indicated whether basic education is accessible to all prisoners. Considering that the prison population for 1998/1999 was 143 000, and that 37% of prisoners were illiterate, the 11 985 prisoners in formal education programmes represents only 23% of the illiterate prison population receiving basic education. The DOCS must indicate what steps are being taken to reduce the illiteracy rate.

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<sup>25</sup> An audit done by the Directorate on Education and Training, DOCS.

## **Recommendation**

- The Department needs to provide specific details as to what measures are instituted to promote the right to education for child prisoners.

## ***Medical Treatment***

### **Summary of Response**

Concerning HIV/AIDS cases in prisons, the DOCS developed a Management Strategy for AIDS in prisons. The objectives of the policy are to maintain confidentiality of the patient's diagnosis, to counsel the patient and relatives, as well as practising of aspects of universal precautions for nurses when treating HIV/AIDS prisoners.

Furthermore, the policy addresses the following issues concerning HIV/AIDS in prisons:

- Health Education – nursing staff are required to educate prisoners on the spread of AIDS.
- Hospital Nursing Care – individualised nursing of HIV/AIDS prisoners who require specialised care, including prisoners who are incontinent, with bleeding tendencies, unconscious, with Tuberculosis, mentally disturbed, and post-operative patients.
- Medical Treatment – AZT and other retrovirals have been discontinued because of their side effects; prisoners with suspected HIV/AIDS may consult a specialist for a second opinion, and is prescribed treatment based on the policy of the Department of Health.
- Hospitalisation of HIV/AIDS prisoners – the Departmental policy provides for the treatment of prisoners at public hospitals. If a bed is not available, a prisoner may be referred to a private hospital, after gaining authorisation from the Provincial Office of Correctional services.
- Cost implications – the Department is responsible for both public and private hospitalisation of prisoners with HIV/AIDS. This includes paying for the screening for the disease, and the treatment of secondary diseases associated with HIV/AIDS.

The DOCS also makes specific provisions for medical treatment of pregnant women. Every pregnant prisoner is allowed to consult a medical practitioner at least once a month, and weekly in the last month of pregnancy. Before delivery, the prisoner is moved to a place with adequate facilities. Female prisoners are also offered basic health education including family planning and childcare needs, and a pre-natal and postnatal education programme.

Specific policy exists for the needs of female prisoners with children. A medical practitioner, upon admission of the mother examines all infants, and the nutritional and health status indicators of the infant are recorded. The costs for the necessary care concerning medical requirements, health, psychological needs and hospitalisation of an infant of a prisoner are borne by the DOCS. These include:

- Babies with HIV/AIDS – the Departmental policy on HIV/AIDS is applied.

- Circumcision – infant boys may not be circumcised unless medically indicated.
- Immunisation – an immunisation programme is followed to prevent childhood diseases. The nurse at the correctional facility administers it, or alternate arrangements (local clinic/District Surgeon) are made if a health care worker is not available at the facility.

### **Commentary**

The DOCS provided a good and detailed account of the policies pertaining to the medical treatment of prisoners. It is encouraging to note that specific policies exist for prisoners with HIV/AIDS, as well as for female prisoners with children and pregnant women.

Although it was not required by the protocol, there exists a need for the DOCS to assess how these policies are being implemented. For example, in facilities that do not have health care personnel, the Department must ensure that prisoners' right to medical treatment is being fulfilled. This is particularly applicable to detained people awaiting sentencing in small towns and rural areas.

### **Recommendation**

- The implementation of policy pertaining to medical treatment of prisoners should be assessed.



## LIST OF ABBREVIATIONS

<b>ABET</b>	Adult Basic Education and Training
<b>AIDS</b>	Acquired Immunodeficiency Syndrome
<b>AZT</b>	Azido-deoxythymidine
<b>DOCS</b>	Department Correctional Services
<b>HIV</b>	Human Immunodeficiency Virus
<b>TB</b>	Tuberculosis

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# CHAPTER THIRTEEN

## FINANCE

### POLICY MEASURES

#### National Departments

Various government departments were asked to report on the policy measures that were instituted in order to respect, protect, promote and fulfil socio-economic rights during the reporting period.

#### Department of Finance

##### Summary of Responses

According to the report submitted by the National Department of Finance (hereinafter referred to as National DoF), the Department is not responsible for the delivery of social services. Therefore it reported that there was no policy that was instituted during the period under review, which was aimed at protecting, promoting, respecting and fulfilling social and economic rights. It was stated that the National DoF together with the Department of State Expenditure co-ordinate the budget allocation process for all government departments and provinces.

Provinces and the National Departments are allocated their own separate budgets on the basis of information submitted by these Departments. It was stated that the recipients of such funds would be in a better position to give an account of the programmes that were instituted with the aim of contributing towards the realisation of social and economic rights.

It was stated that the new democratic government developed the Medium Term Expenditure Framework (MTEF) in order to address problems that were inherent within the DoF. The MTEF serves as a tool for assisting National and Provincial Departments to assess and plan their expenditure adequately. The MTEF operates on a three-year planning, which is for the immediate financial year and projections for the next two financial years.

##### Commentary

It appears that the Department allocated funds to various government departments on the basis of the information received from these Departments. However, the DoF failed to indicate how expenditure by government departments to ensure the delivery of social and economic rights was monitored. Furthermore, the criteria for allocating budget to the different government departments were not stated. It was also not indicated whether

there were funds that were specifically earmarked for uplifting previously disadvantaged groups, such as people with disabilities, poor communities and/households, etc.

### **Recommendation**

- The Department of Finance should report on how the expenditure of funds towards delivery of socio economic rights by government departments was monitored.

### **Department of Labour**

#### **Summary of Response**

It was indicated that the Provincial Benefit Committees were appointed in ten regions, which were not mentioned. These committees were constituted of an equal number of representatives from labour movements and business. The committees were reportedly responsible for handling appeals against decisions not to award unemployment insurance benefits. The Unemployment Insurance Board was reportedly the highest decision making body, which has the powers to either uphold or dismiss the outcomes of the committees.

It was also reported that 140 000 booklets on Unemployment Insurance Act, which explained the rights, responsibilities and benefits from the Act, were produced and distributed throughout the country. These booklets were produced in English. The report also indicated that more offices were opened countrywide, including rural areas, in order to improve access to unemployment insurance benefits. In the same vein, it was stated that the Department of Labour (DoL) served people in the language of their preference in order to ensure access to unemployment benefits.

In order to address the needs of the previously disadvantaged groups, the DoL had negotiated with the First National Bank to pay cash grants, on behalf of the DoL, to all beneficiaries who were previously denied access to banking accounts.

#### **Commentary**

Although the DoL had demonstrated that the implemented policy measures were targeted at members of the previously disadvantaged groups, it was not stated whether these policy measures were instituted during the reporting period.

Similarly, even though the DoL had reportedly produced 140 000 booklets informing people about their rights and benefits, it is unlikely that the supply of such communication materials was sufficient to meet the needs of the entire country. Another limitation regarding communication materials relates to language that was used to produce materials. It appears that only people who were able to read and understand English were able to access information on Unemployment Insurance Act.

Nevertheless, the DoL should be commended for delivering services in the language preferred by beneficiaries. In addition, it appears that the DoL strives to increase accessibility to unemployment insurance benefits by establishing satellite offices.

### **Recommendations**

- It is important to indicate the period in which policy measures were instituted.
- Develop communication materials and messages in the language that would be intelligible to the target audience.

## **Department of Trade and Industry**

### **Summary of Responses**

Asked about policy measures that were instituted to ensure a progressive realisation of socio-economic rights, The Department of Trade and Industry (DTI) mentioned the White Paper on National Strategy for Development and Promotion of Small Business in South Africa. According to the report, the main objective of the White Paper was to create an enabling environment for small business enterprises by making finances and markets accessible, and by creating a favourable regulatory environment for small business to thrive.

There were other projects that were reportedly initiated by the DTI through Ntsika Enterprise Promotion Agency, which were meant to promote the well being and development of the disadvantaged groups. These projects included:

- School Leavers Opportunity Training Programme.
- Innovative Business for the Disabled.
- Agriculture Based Products Project.
- Product Improvement Projects.
- Project Grime Buster project.

The above-mentioned projects were reportedly aimed at promoting small businesses with the view of creating employment and thus contributing to economic development.

### **Commentary**

The main shortcoming of the report submitted by DTI relates to failure to demonstrate the manner in which the above-listed initiatives have contributed towards uplifting members of the previously disadvantaged group. For instance, it would have been useful to provide information regarding the success rate or effectiveness of the above-listed projects, in terms of creating employment and economic empowerment of the previously disadvantaged groups. Also, information should have been provided regarding the number of people who were reached through these projects. Furthermore, these projects were listed without explaining what they entailed.

Failure to provide detailed information on the instituted measures made it difficult to determine the role of the DTI in advancing delivery of socio-economic rights. At the time of analysis information from other sources could not be obtained.

### **Recommendations**

- The report should focus on policy measures that were instituted during the period under review.
- The Department should indicate the effectiveness of instituted measures in addressing the plight of the previously disadvantaged groups.

### **Provincial Departments**

#### **Summary of Responses**

The Eastern Cape Department of Economic Affairs, Environment and Tourism only stated that a policy document and a strategic economic plan were developed to progressively realise economic and social rights. The Free State Department of Finance, Expenditure and Economic Affairs reported that its core function does not include service delivery, but involved the overall management of Provincial funds and the promotion and facilitation of investment and economic development. The Department further stated that its mandate and competence falls only within the consumer and producer rights. The Free State Department has however established a Departmental Transformation Unit in order to guide the transformation process. Further, the Department has also established a Special Programmes Division, which is responsible for gender, affirmative action and disability issues. It also aims to empower the vulnerable and previously disadvantaged groups through Small, Medium and Micro Enterprises (SMME) programmes and projects. According to the report, there were no special programmes to address the needs of the following groups:

- People living in informal settlements
- Children
- Older persons
- Poor persons.

The Gauteng Department of Finance and Economic Affairs in response to questions on policy measures that were instituted to protect, promote, respect and to fulfil socio-economic rights indicated that it was not in a position of providing any policy measures. The reason for not responding to the protocol was that the Department does not deliver services directly to people. The Department however indicated that it does have policies that deal with the procurement of goods and services and policies on Small Medium and Macro Enterprises (SMMEs). These two policies are meant to give preference to those categories of society that are vulnerable and were previously disadvantaged. It is through these policies that past imbalances would be corrected.

The DoF in Mpumalanga reported that its function was to oversee financial management and to enhance effective and efficient financial control amongst government departments. It also indicated that for the financial year 1998/99 the Department had a budget allocation of R263 million.

The Department also indicated that although it does not have direct contact with communities, it linked up with them through the activities of the Provincial Tender Board, which administered government tenders. According to the report, the main objective of the Tender Board is to promote participation of the vulnerable and previously disadvantaged groups in the economic activities through SMME. This objective is realised either by the preference system that the Board uses when awarding tenders. A number of satellite offices were opened to facilitate this objective and to increase access in the rural areas. The report further indicated about 117 projects with a total value of R60 million were awarded to the vulnerable and previously disadvantaged groups.

The Northern Cape Department of Finance mentioned the Preference Point Tendering System as a measure that was introduced in order to ensure a progressive realisation of socio-economic rights. This System was reportedly adopted by the national government to be implemented by provincial governments. According to the report, people living in rural areas benefited from this System in that Tender Notices were advertised in newspapers and Notice Boards. Women and other groups from previously disadvantaged backgrounds were given preference. The report also indicated that the poor and the unemployed could also participate in the tendering. The report also indicated that when tendering, the Preference Point System as instituted by government promotes the interests of members of the previously disadvantaged groups in that it gives them preferences when tendering.

The DoF in the Northern Province in its response to the policy measures that were instituted to protect, promote, respect and to fulfil the social and economic rights provided the following list of programmes:

- Provincial Growth and Development Strategy
- Provincial Economic Strategy
- Provincial Flagship Projects Document
- Northern Province Spatial Rationale
- Northern Province Tender Board Policy on Procurement System
- Macro Tourism Development Framework
- Producers Co-operatives
- Targeted Assistance Programme

The report indicated that these policies were developed in consultation with all stakeholders. It was further indicated that these measures had contributed immensely in creating an enabling environment for the vulnerable and previously disadvantaged groups to participate in the growth of the economy. Thus, the vulnerable and previously disadvantaged groups are now able to compete with the previously advantaged groups.

The report stated that the above-mentioned measures were effective in that they helped to redress the economic inequalities and therefore ensure the redistribution of wealth.

The DoF in the North West reported that policy measures for the development and social upliftment of communities were designed by the National Government. The Department was reportedly only responsible for implementing those policies. The report stated that the main policy measure that was undertaken and implemented, was the policy on SMMEs. The Department developed a five-year strategy, which outlined the ways in which SMME's, will be supported.

The Innovative Disabled Entrepreneur Award Scheme was introduced to accommodate people with disabilities. In addition, the Millennium 2001 Fund was developed, which was aimed at assisting women, youth the disabled. With regard to the rural poor and the unemployed, a special Fund was reportedly set up to cater for this group of people. However, the name of the Fund and its objectives were not provided.

The DoF in KwaZulu-Natal did not respond to the protocol, whilst the Western Cape Department of Economic Affairs, Agriculture and Tourism provided information that was irrelevant for purposes of this report.

### **Commentary**

Most departments did not indicate the period within which the policy measures were instituted. The departments did not reflect on how the policy measures impacted on the vulnerable and previously disadvantaged groups. Given the fact that the departments indicated that they dealt with the allocation of the budget to various departments within their provinces, the criteria for allocation of funds into various programmes that relate to socio-economic rights should have been reported. In the same vein, most departments did not report on the effectiveness of instituted policy measures as requested in the protocols.

The Eastern Cape Department failed to state the name of the policy document and the strategic plan. Furthermore information was not provided on what the policy and strategic plan entailed. The Free State Department indicated that it dealt with consumer and producer rights. However, was also not clear how this mandate was utilised to contribute towards the realisation of socio-economic rights. It was also mentioned in the report that there were programmes and projects that were aimed at empowering the vulnerable and previously disadvantaged groups, however, an explanation was not provided of what these programmes entailed.

The Gauteng Department of Finance and Economic Affairs provided an insufficient and inadequate report. There was no indication of the period within which the two mentioned policies were instituted. Although the Gauteng Department concedes that it does not deal directly with issues relating to socio-economic rights, it does however have policies that give preference to the previously disadvantaged sectors of society, such as people with disabilities, through the provision of Small, Medium and Macro Enterprises

(SMMEs). The policies that were mentioned in the summary above, particularly on the SMMEs do have a direct bearing in contributing in the realisation of socio-economic rights for the vulnerable and previously disadvantaged groups. It was therefore imperative for the Department to provide details on these policies. Whilst the Department indicated that the policy measure on SMME was meant to give preference to the vulnerable groups, there was no elaborate information provided to that effect.

The Mpumalanga Department stated that 117 projects valued at R60 million were established, however, it was not stated what these projects entailed. It was also not indicated what criteria were employed to fund projects.

Although it is mentioned that the only means of contact that the Department had with communities was through the Provincial Tender Board, the exact role of the Department was not clearly spelt out in the report. Information regarding policy measures that were instituted to respect, protect, promote and fulfil socio-economic rights was also not provided in the report. With regards to budgetary allocation, the report did not indicate how funds were utilised to ensure a fulfilment of socio-economic rights.

According to the report submitted by the Northern Cape, there were no other policy measures that were instituted except for the Preference Point System. The Department failed to indicate whether the Preference Point System mentioned was instituted during the period under review. It could be said that the Preference Point System contributed towards a progressive realisation of socio-economic rights by giving people from disadvantaged backgrounds preference when awarding tenders.

The Northern Province reported that the policies were developed in consultation with all stakeholders. The report failed to elaborate on the “conducive environment” created for the vulnerable groups to participate in economic growth. It was also reported that previously marginalised groups were afforded an opportunity to compete with the previously advantaged groups. However, this issue was also not elaborated in the report.

The report also indicated that the province had developed a five-year strategy which outlined ways in which SMME’s would be supported, however, there was no further elaboration on this strategy. The same applied with regards to the special Fund that was set up for people with disabilities and the unemployed. In addition, it was also not explained how people with disabilities benefited from the Innovative Disabled Entrepreneur Award Scheme.

The report submitted by the Western Cape Department was inadequate in that it did not bear any direct relevance to the requirements stipulated in the protocol.

## **Recommendations**

- The Departments should reflect on how the measures mentioned above contributed in the realisation of socio-economic rights.



- Only measures that were instituted during the period under review should be reported.
- The reports should concentrate mainly on measures that directly impact on the vulnerable and previously disadvantaged groups.

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

The National DoF has instituted the Public Finance Management Act of 1999 (PFMA). This law is intended to make a significant, though indirect, contribution to government's support for social and economic rights.

The National DTI has instituted the Small Business Act in line with the legislative framework created by the National Strategy. The Act provides for an institutional framework for the promotion and development of small business.

This Act has brought about institutions such as Ntsika Enterprise Promotion Agency and Khula Enterprise Promotion Agency. It also provided functions for these institutions.

The National DoL has pleaded lack of capacity to respond to the protocol. At provincial level, only Eastern Cape and Gauteng have instituted legislative measures. KwaZulu-Natal Province did not submit a report, as well as Free State, which pleaded lack of mandate to address economic and social rights. Other provinces did submit the reports, but they mainly cited national legislation.

The Eastern Cape Legislature has passed Development Corporations Act, Gaming Betting Act, and Tourism Board Act. These laws are intended to establish parastatals in line with the economic policy document. The Gauteng DoF and Economic Affairs has tabled before the Provincial Legislature the Tourism Act, which is designed to direct tourism promotion and development in the province. The Act provides that certain percentages of the revenues raised shall be utilised towards the development of the previously disadvantaged groups. The coming into force of the Act awaits the completion of Regulations. The implementation of this law was expected at the beginning of 2000.

### **Commentary**

The information provided by DoF is not sufficient in terms of providing answers to the questions asked in the protocol. Some of the questions were not answered, such as the one on special considerations regarding vulnerable and previously disadvantaged groups. The Department did not indicate how it structured budget in consideration of the plight of the vulnerable and formerly disadvantaged groups. The report showed that the Department does not take the interest of the above-mentioned groups into consideration.

The objectives and purposes of the PFMA were not clearly explained. The impact that the PFMA had on the realisation of economic and social rights was not clarified. The Department asserted that PFMA is concerned with the promotion of modernised financial management in the public sector, but did not explain how this was achieved. The report has very good concepts such as transparency, public expenditure, revenue, assets and liabilities. However, it failed to give an account on how the PFMA will effect these concepts in a manner that advances the progressive realisation of socio-economic rights.

There are several Bills that were passed during 1997/8, that are aimed at reforming the government's financial management. Some of these were passed into law,<sup>1</sup> such as the Division of Revenue Acts of 1998 and 1999, which gave effect to section 214 of the Constitution. The purpose of these laws is to divide nationally raised revenue among all spheres of government. This is some information that the report was supposed to have provided because it is the main duty of the DoF to distribute national revenue to all levels of government.

The government has aimed at reprioritising its spending to meet the reconstruction and development objectives. This was clear from its commitment to finance, *inter alia*, low-income housing, water and sanitation projects, free primary health care and enhance small business support.<sup>2</sup> The National DoF is therefore obliged in terms of the law<sup>3</sup> to institute legislative measures that will ensure the realisation of these aims, and to provide information on those legislative measures to the Human Rights Commission.

The information provided in the report from DTI is not sufficient in terms of the questions in the protocols. The responses are to a larger extent irrelevant and not detailed. Some of the questions were not answered. The DTI has failed to provide information on how it has instituted legislative measures to respect, protect, promote and fulfil socio-economic rights. The Department should play an important role in terms of distributing resources, especially finance, with the objective of realising all socio-economic rights provided in the Bill of Rights.

The Small Business Act did not directly advance the realisation of economic and social rights. It mainly promoted the development of small business, and not necessarily socio-economic rights of the public in general. It does not cover the advancement of socio-economic rights at grass root level in terms of considering the circumstances and special needs of the vulnerable and previously disadvantaged groups. Efforts should be directed at the realisation of all the socio-economic rights in the Bill of Rights, and not just to advance business opportunities. Therefore, the measures as stated in the report are not sufficient to meet the constitutional obligations.

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<sup>1</sup> Burger, D (ed). *South Africa Yearbook*. (1999) 310

<sup>2</sup> *Ibid.* 310

<sup>3</sup> Article 7(2) of the Constitution.

According to DTI report, the legislative measures only cater for small entrepreneurs. This shows that the contents of socio-economic rights are not appreciated and comprehended. All these rights belong to everyone, which makes it imperative for the government to develop and implement laws that will protect the rights of everyone.

The DoL has a significant role to play in the realisation of economic and social rights. The assertion that legislative measures for the respect, protection, promotion and fulfilment of socio-economic rights are not applicable to it is not true. Employment is also a socio-economic right that is implicit in the Constitution. There is a right to work in order to improve the quality of life of South African citizens. This right is also recognised under international law.<sup>4</sup> The Department therefore has a responsibility to respect, protect, promote and fulfil this right.

The Department failed to mention important measures instituted during the period under review, such as Basic conditions of Employment Act of 1998, the Employment Equity Act of 1998, and Skills Development Bill of 1998. These measures can, if implemented appropriately, address challenges<sup>5</sup> of dealing with high level of unemployment, job creation, discrimination issues, and difficulties faced by previously disadvantaged groups, especially rural women.

The right to work should be seen as a measure by which the people can improve the quality of their lives. Poverty is inherent in societies that have a high number of unemployed people.

The right to work is linked to other rights such as equality at workplace, adequate standard of living and social security. In many instances, people who are employed are enabled to access certain services such as adequate health, education and housing. Getting people employed, is a way of empowering them to make a good living for them. Though the Constitution does not specifically provide for the right to work, this right is implicit, especially in the preamble.<sup>6</sup> In addition to this, South Africa's membership to the International Labour Organisation and its ratification of the African Charter create an obligation for the state to respect, protect, promote and fulfil the right to employment.

The Provincial Departments that instituted legislative measures are Eastern Cape, Gauteng, Northern Province and Western Cape. However, the instituted measures are irrelevant in as far as the realisation of socio-economic rights is concerned. For instance, the Development Corporations Act, Gaming and Betting Act, and Tourism Board Act passed by the Eastern Cape Legislature are not relevant. The report did not explain the purpose of these laws with regards to the realisation of economic and social rights.

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<sup>4</sup> See Article 6 of International Covenant on Economic, Social and Cultural Rights, and Article 5 of the African Charter.

<sup>5</sup> The National Action Plan for the Promotion and Protection of Human Rights, 96

<sup>6</sup> *Ibid*, 94

Gauteng Department of Finance and Economic Affairs has introduced before the Provincial Legislature the Tourism Act. Though the Act provides that certain percentages of the revenues raised from tourism shall be utilised towards the development of the previously disadvantaged groups, it does not directly enforce the respect, protection, promotion and fulfilment of economic and social rights in terms of setting a legislative framework that will ensure the financing of socio-economic rights delivery. The Department of Finance, Economic Affairs and Tourism in the Northern Province has mainly cited national legislation, of which is irrelevant to its report. The report from Western Cape Department of Economic Affairs, Agriculture and Tourism could not show the relevance of the Traffic Act and the Western Cape Land Administration Act in as far as the realisation of socio-economic rights is concerned.

## Recommendations

- Both National and Provincial Departments should live up to the commitments of the government to a sound public finance system.<sup>7</sup>
- In providing responses to the protocol, there should be compliance with the format of the protocol. If there are no legislative measures instituted during a particular reporting period, this should be acknowledged in the report. The report should entail all legislative measures instituted during the reporting period.
- Looking at the central role the DoF is to play, most importantly to distribute financial resources to other Departments, there should be laws that will ensure that the distribution of funds are aimed at enabling other Departments to meet their constitutional obligations to progressively realise economic and social rights. Regard should also be taken of the challenges in the National Action Plan that face the government in addressing these rights.
- Legislative measures should be implemented for the benefit of everyone, not only a class of certain people in the society.
- Since it appears generally from both the national and provincial, that there are no adequate legislative measures instituted, the government should endeavour to formulate legislation that will ensure the realisation of socio-economic rights, especially to address the challenges as mentioned in the National Action Plan for the Promotion and protection of Human Rights.
- The National DoL should not disclaim responsibility to institute legislative measures for the realisation of socio-economic rights. All government departments have the responsibility to respect, protect, promote and fulfil economic and social rights.<sup>8</sup> Further, they are obligated in terms of Article 184(3) of the Constitution to provide information on those measures they have taken to fulfil this obligation.
- The right to work should be considered as a right belonging to socio-economic rights group because it also covers other rights such as social security and adequate standard of living.
- The Provincial Departments should draw a distinction between provincial legislation and national legislation. The former should form the significant part of their reports, while the latter could be referred to where it is of relevance.

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<sup>7</sup> Burger, D (ed). South African Yearbook. (1999) 307

<sup>8</sup> Article 7(2) of the Constitution.

## **LIST OF ABBREVIATIONS**

<b>DOF</b>	Department of Finance
<b>DOL</b>	Department of Labour
<b>DTI</b>	Department of Trade and Industry
<b>MTEF</b>	Medium Term Expenditure Framework
<b>PFMA</b>	Public Finance Management Act
<b>SMMEs</b>	Small Medium and Micro Enterprises

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5. Convention on Economic, Social and Cultural Rights, United Nations General Assembly, 1966.

# CHAPTER FOURTEEN

## GENERAL CRITIQUE AND RECOMMENDATIONS

The process of compiling the second Economic and Social Rights Report serves to illustrate the challenges that need to be met in ensuring the *progressive realisation* of economic and social rights. Of importance here, is to differentiate between the steps taken by organs of the state in meeting these challenges, and problems associated with the reporting process. Whereas the former is addressed in the 'Commentary' and 'Recommendation' sections of the respective chapters, the common shortcomings of most responses is dealt with in this chapter.

In using government responses to the protocols as the primary source material for monitoring and assessing the realisation of economic and social rights, the Commission's evaluation of government's performance was largely constrained by the *quality* of the responses. The generally poor quality of the responses and difficulties associated with obtaining responses is not new and was identified in the first Economic and Social Rights Report. In this regard, the lack of collaboration by most departments was particularly distressing. In spite of being given two months to compile their responses, sixty-eight departments did not submit their responses on the due date. After granting an extension of six weeks, thirty-six departments had still not submitted their responses within the requisite period. In fact, it was only when the Commission served these departments with subpoenas requesting responsible officials to appear before the Commission that most of the outstanding reports were submitted. Most of the departments did not furnish any reasons for the late submissions.

### GENERAL CRITIQUE

#### *Factors affecting the quality of responses*

1. The format of the protocols was not followed by most of the departments and no reasons were provided for this situation.
2. Most responses were not presented in a clear, comprehensive and accurate manner and failed to show how the departments' functions relate to the relevant economic and social rights.
3. The information provided on measures implemented by most departments did not fall within the reporting period.
4. Measures instituted by most departments were listed without describing *how* such measures relate to the right in question. Other information and documents were referred to without an explanation of their relevance to the questions in the protocols.

5. Pertinent information on policy and legislative measures was often omitted.
6. Specific measures on the position of vulnerable and formerly disadvantaged groups were often not provided by most government departments. Data and measures for these groups, especially on rural people, females, poor households and those living in informal settlements, was neither adequately desegregated nor sufficiently addressed.
7. Information on difficulties experienced by the departments on the realisation of economic and social rights as requested in the protocols was not provided.
8. The quality of the information suggests that many of the officials collating the responses were junior officials or that the task was assigned to one or few officials. The effect of this was that most departments did not adequately outline the functions of the departments in the realisation of economic and social rights.
9. Provincial responses were frequently a repetition of national information. Where competency was concurrent with national government, most provinces referred to the respective national departments for the pertinent information. A clear assessment of the state of economic and social rights in the provinces was thus not adequately provided.
10. Most of the responses did not forward reasons for the failure to provide the relevant information as requested by the Commission.

The understanding of specific sections of the protocols was not adequately reflected in the responses. This is highlighted below:

### ***Policy and Legislative measures***

1. Policy and legislative measures were frequently confused and the terms often used interchangeably. When legislation was referred to as policy, the departments did not demonstrate how these laws were given effect by means of policy.
2. The departments did not show how the constitutional provision to *respect, protect, promote and fulfil* the right were taken into consideration when implementing policy and legislative measures.
3. The *effectiveness and reasonableness* of these measures were not satisfactorily outlined. Similarly, the *progressive realisation* of these measures was not adequately discussed.
4. National measures provided did not adequately address inter-provincial differences.

5. National policies were generally regarded as being uniformly applicable in the provinces. However, most provincial departments did not account for the particular conditions of the provinces by indicating which aspects of national policy were relevant to specific provinces.

### **Monitoring**

1. The criteria that was utilised to define the minimum standards were seldom provided or explained; for example, it is not clear what criteria was utilised to define the distance to a health care facility as being within 5 km to a community.
2. Most departments failed to report on statistics used to monitor the *progressive realisation* of relevant socio-economic rights.
3. Minimum standards were interpreted as being the actual condition rather than the requirement of the departmental standard; for example, in education most provinces provided the actual student/teacher ratio, instead of the minimum student/teacher ratio set by the department.
4. Provinces did not state whether the national departments defined the standards used, or whether the provincial departments had developed their own standards.

### **Budgetary**

1. Budgetary information provided by most departments was not in the format requested. It appears that the departments could not desegregate budgetary allocations as required. Nonetheless, basic information such as the total departmental budget was excluded. Alternative information on budgetary allocations separated according to the departments' programmes that could have informed the Commission on spending for a right was also not furnished.
2. Variances in budgetary allocations between financial years were generally not explained. These differences should have been related to the implementation or curtailing of policies that impacted on spending.
3. The allocation of financial resources for programmes addressing the needs of vulnerable groups were generally not outlined.
4. From the available information, expenditure on personnel consumes a significant proportion of spending on social services (education, health and social security).

### **Outcomes**

1. Available data on most indicators was not provided. This includes basic information such as mortality rates and the number of children benefiting from child support grants.



2. Information on vulnerable groups, especially rural people and the poor was not provided.
3. The departments stated that the required desegregated data could not be provided because they rely on other institutions such as Statistics South Africa for the information. However, it seems inconceivable how the departments can plan and implement policies without such data; for example, the National Department of Health could not provide the number of people who do not live within 5 km of a health care facility (the department's standard), yet it has a Clinic Building Programme aimed at improving access to health care services. How the Department of Health assesses which communities are allocated new clinics without this information is difficult to comprehend.
4. Data from available indicators suggests gross disparities between provinces on the status of economic and social rights.

## GENERAL RECOMMENDATIONS

In order to improve the reporting to the Commission and the *realisation* of economic and social rights, relevant organs of state (national and provincial governments) should ensure that:

1. The responses to future protocols are submitted on time and that the information provided is presented in the required format and in an accurate and complete manner. The information should clearly reflect the departments' role in *respecting, protecting, promoting and fulfilling* the appropriate economic and social rights.
2. Accounting officers (Directors-General at national level and the respective Heads of Provincial Government Departments) should ensure that the official(s) tasked with compiling the responses do so comprehensively and have the necessary support and expertise.
3. Inter-departmental co-operation and understanding of responsibilities for rights that are not clearly designated to the competency of one Department is developed. The rights concerning food and the environment require attention in this regard.
4. National and provincial spheres of competencies are clearly outlined and understood especially in relation to the rights concerning food and land.<sup>1</sup>

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<sup>1</sup> Provincial Departments of Land maintained that the land issue falls within the competency of the National Department of Land Affairs and not of the provinces. This is incorrect because provincial governments have functional responsibilities in land affairs. The White Paper on South African Land Policy 1998 indicated that the chief purpose of provincial governments concern the implementation of the land reform programme.

5. The achievements, shortcomings and obstacles in realising socio-economic rights particular to a province are clearly reflected in the provincial responses.
6. Reporting on economic and social rights at the level of local government is facilitated. The tier of local government represents the 'coal-face' of service delivery, and is essential in the monitoring of the realisation of socio-economic rights.<sup>2</sup> National and provincial governments must collate information on local governments, as the Commission does not have the resources to analyse the numerous responses from a local level.
7. Submissions on improving the Commission's reporting process including the development of new protocols are made to the Commission.
8. Government responses account for the impact of South Africa's macro-economic policy on economic and social rights.<sup>3</sup>
9. Government departments improve their understanding of economic and social rights. In reporting to the Commission, departments should not view the process as a burden. The effective reporting to the Commission on economic and social rights would also help in:
  - assessing government's performance to the challenges outlined in the National Action Plan for the Protection and Promotion of Human Rights.
  - government's obligation to report to International Treaty Bodies.
10. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is ratified as a matter of urgency.<sup>4</sup>

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<sup>2</sup> In the first cycle of monitoring of economic and social rights by the Commission, the protocols were sent to local authorities to which only the Greater Johannesburg Metropolitan Council responded. For the second cycle, the protocols were sent to the National Department of Provincial and Local Government and the Provincial Departments of Local Government. No responses on Local Government were received.

<sup>3</sup> Most of the economic and social rights provided for in the Bill of Rights is subject to the limitation of "within its [the state's] available resources." In this regard, the 3<sup>rd</sup> set of protocols requires specific information on the government's macro-economic policy. In the future, the Commission also aims to assess the influence of the private sector on the realisation of socio-economic rights.

<sup>4</sup> South Africa signed the ICESCR in 1994, but has not ratified the Covenant despite approval of ratification by the South African Cabinet.

# APPENDIX ONE – SAMPLE PROTOCOL<sup>1</sup>

**For Period: April 1998 to March 1999**

## **Access to Health Care Services**

Relevant Organ of State: National Department of Health

*Everyone has the right to have access to health care services including reproductive health care. The state must respect, protect, promote and fulfil these rights and should thus take reasonable legislative and other measures within its available resources to achieve their progressive realisation.*

### **1. Policy Measures**

- 1.1 What policy measures were instituted to respect, protect, promote and fulfil the right of access to adequate health care services including reproductive health care? **(Please specify policy measures for each of these constitutional provisions)**
  - 1.1.1 How did these measures give special consideration to the following vulnerable and previously disadvantaged groups?
    - a) people with HIV/AIDS
    - b) people living in rural areas
    - c) people living in informal settlements
    - d) homeless people
    - e) women
    - f) persons with disabilities
    - g) poor people (including those where social grants are the main source of income)
    - h) Africans (including the Khoi and the San)
    - i) Coloureds
    - j) Indians
  - 1.2 How did these policy measures contribute towards the progressive realisation of the right of access to adequate health care services including reproductive health care?
    - 1.2.1 How did these measures affect the following vulnerable and previously disadvantaged groups?
      - a) people with HIV/AIDS

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<sup>1</sup> The protocols for all the socio-economic rights can be accessed under 'Major Projects' on the Commission's web-site at <http://www.sahrc.org.za/>

- b) people living in rural areas
- c) people living in informal settlements
- d) homeless people
- e) women
- f) persons with disabilities
- g) poor people (including those where social grants are the main source of income)
- h) Africans (including the Khoi and the San)
- i) Coloureds
- j) Indians

1.2.2 Were the above mentioned policy measures reasonable and effective in respecting, protecting, promoting and fulfilling the right to access to adequate health care services including reproductive health care? Please give reasons for your response.

1.2.3 Were the above measures reasonable and effective in addressing the special needs of the following vulnerable and previously disadvantaged groups? (Please give reasons for your response).

- a) people with HIV/AIDS
- b) people living in rural areas
- c) people living in informal settlements
- d) homeless people
- e) women
- f) persons with disabilities
- g) poor people (including those where the social grants are the main source of income)
- h) Africans (including the Khoi and the San)
- i) Coloureds
- j) Indians

## 2. Legislative Measures

2.1 What legislative measures were instituted to respect, protect, promote and fulfil the right of access to adequate health care services including reproductive health care? **(Please specify legislative measures for each of these constitutional provisions)**

2.1.1 How did these measures give special consideration to the following vulnerable and previously disadvantaged groups?

- a) people with HIV/AIDS
- b) people living in rural areas
- c) people living in informal settlements
- d) homeless people
- e) women
- f) persons with disabilities

- g) poor people (including those where the social grants are the main source of income)
  - h) Africans (including the Khoi and the San)
  - i) Coloureds
  - j) Indians
- 2.2 How did these legislative measures contribute towards the progressive realisation of the right of access to adequate health care services including reproductive health care?
- 2.2.1 How did these measures affect the following vulnerable and previously disadvantaged groups?:
- a) people with HIV/AIDS
  - b) people living in rural areas
  - c) people living in informal settlements
  - d) homeless people
  - e) women
  - f) persons with disabilities
  - g) poor people (including those where social grants are the main source of income)
  - h) Africans (including the Khoi and the San)
  - i) Coloureds
  - j) Indians
- 2.3 Were the above mentioned legislative measures reasonable and adequate in realising the right of access to adequate health care services including reproductive health care? Please give reasons for your response.
- 2.4 Were the above measures reasonable and effective in addressing the special needs of the following vulnerable and previously disadvantaged groups?:
- a) people with HIV/AIDS
  - b) people living in rural areas
  - c) people living in informal settlements
  - d) homeless people
  - e) women
  - f) persons with disabilities
  - g) poor people (including those where social grants are the main source of income)
  - h) Africans (including the Khoi and the San)
  - i) Coloureds
  - j) Indians

### 3. Defining and Monitoring the Realisation of Human Rights

- 3.1 Please describe the minimum standards/ criteria established to define adequate health care services. These standards should include the following:
- Distance to primary health care facilities.
  - Availability of needed professionals. Numbers per population of nurses, rural nurses, doctors etc.
  - Availability, per capita, of clinics, beds and medication.
- 3.2 Please describe **what** statistics are collected which allow the Department to monitor the progressive realisation of this human right
- 3.3 Please describe **how** statistics are collected which allow the Department to monitor the progressive realisation of this human right.

### 4. Budgetary Measures

- 4.1 Please provide information on budgetary allocation for resources instituted to respect, protect, promote and fulfil the right of access to health care services and reproductive health care.

Please provide this information as specified in the tables below. When providing quantitative information please indicate the source.

R (000)'s (actual and projected)	Construct ion of Clinics	Available Hospital Beds	New Hospital Beds made Available last Year	Delivery of Primary Health Care services
1996-1997				
1997-1998				
1998-1999				
1999-2000				
2000-2001				

R (000)'s (actual and projected)	Prevention of the spread of AIDS/HIV	Treatment of Persons with AIDS/HIV	Delivery of Family Planning Information	Delivery of services to pregnant women	Delivery of services to lactating women
1996-1997					
1997-1998					
1998-1999					
1999-2000					
2000-2001					

- 4.2 Are budgeted allocations targeted to benefit the following vulnerable and previously disadvantaged groups? Please give reasons for response.
- a) people with HIV/AIDS
  - b) people living in rural areas
  - c) people living in informal settlements
  - d) homeless people
  - e) women
  - f) persons with disabilities
  - g) poor people (including those where social grants are the main source of income)
  - h) Africans (including the Khoi and the San)
  - i) Coloureds
  - j) Indians

## 5. Outcome Measures

- 5.1. Please provide quantitative information according to the tables below.

When providing the information required please indicate the time period Covered and also indicate the source of the information.

As far as possible please present the data according to the following categories:

- a) Race (Africans (including the Khoi and the San), Coloureds, Indians and Whites)
- b) Province
- c) Gender
- d) Urban and Rural

- 5.1.1 Where figures are not divided according to these categories, please state this and give reasons thereof.

### Health Care System

Number of Health Care Professionals (provide separately the number of private and public Health Care Professionals)
Nurses
Rural Nurses
General Practitioners
Specialist Physicians
Dentists
Pharmacists

### Quality of the Services

Number of citizens whose access to health care services is below the Departmental standards.
Hospital beds per capita
Number of medical clinics
Population without a medical clinic within x kilometres
Number of ambulance drivers
Number of other personnel

### Health Status Indicators

Prevalence of HIV/AIDS
Prevalence of Population with Parasites
Incidence of Dysentery
Maternal Mortality
Life Expectancy

### Delivery of Health Care Services

Average Annual Number of Days in Hospital per Capita
Average Annual Number of Visits to Medical Clinics
Number denied access to Medical Services because of fees.
Number of births not attended by a skilled health care professional

- 5.2 Where possible provide the data separately for the following vulnerable and previously disadvantaged groups:
- people with HIV/AIDS
  - people living in rural areas
  - people living in informal settlements
  - homeless people
  - women
  - persons with disabilities
  - poor people (including those where social grants are the main source of income)
- 5.3 Where such information is not available, please outline measures taken by your Department to ensure that such information becomes available.
- 5.4 Are the budgetary allocations adequate for the delivery of Health Care Services? Please give reasons for your response.
- 5.5 Have you encountered any problems as a result of these budgetary allocations? Please give reasons for your response.

## 6. Additional Information

- 6.1 Please provide us with any other information relevant to the realisation of Socio-economic rights.



