

# S184(3) Report

## *South African Human Rights Commission*



Report on Economic and Social Rights

2012 – 2013

## INTRODUCTION BY THE HEAD OF PROGRAMME

The 2012-2013 financial year was a very eventful one for the South African Human Rights Commission. It embarked on its first provincial public hearings in more than five years, on the right to water and sanitation. These hearings highlighted a lack of service delivery in the poorest districts in the poorest provinces in the country. The hearings also highlighted a severe lack of engagement between government officials and the public, a lack of access to information and the feeling of helplessness that many communities experience. The significance of chapter nine institutions, such as the Commission, was acutely emphasised through these visits, not just for the role it has as a government watchdog, but as an institution that provides a platform to communities to express their concerns and lay complaints.

In attempting to compile this report, the Research Programme at the Commission sent questionnaires to seven government departments to assess the steps that they had taken towards the realisation of various economic and social rights in the previous year. The response rate was very poor and it was not until two departments were threatened with legal action, did they respond to the Commission's request for information. This is an extremely concerning trend, given the essential role that institutions such as the Commission, play in monitoring the realisation of human rights. This is particularly concerning in light of the fact that communities themselves do not have an outlet for their grievances and see the Commission as a conduit between government and themselves.

It is hoped that in the coming years, government departments are more aware of the role of the Commission and more responsive to requests for information. To this end, the Commission plans to meet with individual departments to discuss the need for mutual cooperation. It is hoped that these meetings will lay the foundation for a free and candid exchange of information on the realisation of rights.

Also essential, will be the role of civil society organisations that not only act as government watchdogs, but play the important role of highlighting issues of poverty and inequality in South Africa and the ensuing impacts on communities. The Commission will continue to foster its relationship with these organisations and in the future, the process of compiling this report will be a more collaborative one.

Yours sincerely



Karam Singh

Head of Programme: Research

**ACRONYMS**

AQA	National Environmental Management Air Quality Act, 39 of 2004
CARMMA	Campaign on Accelerated Reduction of Maternal and Child Mortality
CHH	Child-Headed Household
CO <sub>2</sub>	Carbon Dioxide
CoGTA	Department of Cooperative Governance and Traditional Affairs
CoMMIC	Committee on Morbidity and Mortality in Children (< five years)
Commission	South African Human Rights Commission
Constitution	Constitution of the Republic of South Africa Act, 108 of 1996
CSG	Child Support Grant
CSO	Civil Society Organisations
DDB	Demand Data Base
DEA	Department of Environmental Affairs
DMR	Department of Mineral Resources
DoHS	Department of Human Settlements
DoSD	Department of Social Development
DRDLR	Department of Rural Development and Land Reform
DWA	Department of Water Affairs
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESR	Economic and Social Rights
GMF	Genetically Modified Food
GMO	Genetically Modified Organism
HBRC	Home Builders Registration Council
ICROP	Integrated Community Registration and Outreach Project
IPIC	Interdepartmental Implementation Plan
MDG	Millennium Development Goal

MEC	Member of the Executive Council
MNCWH	Strategic Plan for Maternal, Newborn, Child and Women's Health
MPRDA	Minerals and Petroleum Resources Development Act 20 of 2002
NaPEMMCO	National Perinatal Morbidity and Mortality Committee
NCCEMD	National Committee on Confidential Enquiries into Maternal Deaths
NDP	National Development Plan: Vision for 2030
NEAS	National Environmental Authority System
NEMA	National Environmental Management Act 107 of 1998
NHC	National Housing Code
NISIS	National Integrated Social Information System
NPA	National Prosecuting Authority
NPC	National Planning Commission
OVA	Orphaned and Vulnerable Children
PHC	Primary Healthcare
RDP	Reconstruction and Development Programme
SAIRR	South African Institute for Race Relations
SASSA	South African Social Security Agency
SDF	Spatial Development Framework
SIU	Special Investigating Unit
SLP	Social Labour Plan
StatsSA	Statistics South Africa
ToP	Termination of Pregnancy
TRA	Temporary Relocation Area
UNDP	United Nations Development Programme

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## 1. INTRODUCTION

### 1.1. Mandate of the South African Human Rights Commission

Established under Chapter 9 of the Constitution of the Republic of South Africa Act, 108 of 1996, (the Constitution) the South African Human Rights Commission (the Commission) is a national institution established to develop and advance constitutional democracy through the promotion and protection of human rights. As such the SAHRC is mandated to:

- Promote respect for human rights and a culture of human rights;
- Promote the protection, development and attainment of human rights; and
- Monitor and assess the observance of human rights in South Africa.

The Constitution also sets out the powers attributed to the Commission necessary for it to undertake its function including the powers to:

- Investigate and to report on the observance of human rights;
- Take steps to secure appropriate redress where human rights have been violated;
- Carry out research; and
- Educate.

Section 184 (1) and (2) clearly outlines the mandate, functions and powers of the Commission whereas section 184 (3) is specific in respect of the Commission's requirement to monitor and assess Economic and Social Rights (ESR). In particular, section 184 (3) requires that:

*Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment.*

However, such monitoring and assessment is not only for the purposes of constitutional compliance, but to ensure the advancement of ESR so that society, particularly the most poor and vulnerable, may enjoy the full benefits of democracy. This will include the specific objectives of:

- a) Determining the extent to which the organs of the state have respected, protected, promoted and fulfilled human rights.



- b) Determining the reasonableness of measures including legislation, by-laws, policies and programmes adopted by organs of the state to ensure the realisation of human rights in the country.
- c) Making recommendations that will ensure the protection, development and attainment of human rights.

## 1.2. The Section 184 (3) Report

During the Commission's strategic planning for the 2011/12 financial year, the challenges attached to the then current ESR methodology, were discussed. The methodology comprised of the collection of information on the realisation of ESR every three years, via public hearings. It was determined that this strategy did not do justice to the Commission's critical monitoring mandate. In addition, the Commission felt that it was important to have a real understanding not only of the lived experience of the most vulnerable, but also of the various gatekeepers to the realisation of ESR. Consequently, the following resolutions were adopted:

- There will be two reports produced by the Commission annually - a section 184(3) report and a strategic focus area report.
- The primary methodology for obtaining information for the purpose of compiling the section 184(3) report will be based on the submission of protocols, or questionnaires, for requesting information to relevant organs of state.
- The methodology for collecting information for the strategic focus area report on the other hand, will be based on conducting primary research with regard to the realisation of a particular right(s).

Reliance only on information provided by the very state organs which are being monitored raises questions regarding the credibility of the information obtained and therefore reflects on the ability of the Commission to determine with any level of confidence, the extent to which interventions based on the information provided will address the real need of vulnerable and poor communities in South Africa. To avoid this, the Commission chose to implement its own process of independent assessment and monitoring.

If progressive realisation of rights in South Africa is to be achieved over time, what is needed, in addition to *ad hoc* research projects, is the continuous assessment and monitoring of the achievement of rights throughout South Africa. Having such a monitoring system in place, will enable the Commission to provide government, and in particular Parliament, with a **comprehensive** picture in terms of observance of human rights while ensuring the Commission is

**pro-active** in terms of making recommendations and securing appropriate redress where human rights are being violated.

### 1.3. Monitoring Methods

The Commission uses multi-pronged research techniques to collect information nationally and internationally on the realisation of human rights. Occasionally, quantitative data is collected and supplemented by information collected via interviews and other secondary sources such as complaints. In terms of this report, the primary methodology used as the basis for compiling information were questionnaires that were sent to seven government departments in December 2012, to request information on the realisation of a particular economic and social right. The questionnaires contained mainly open-ended questions that required analysis in respect of national legislation and policies and findings from previous ESR questionnaires. Copies of the questionnaires are provided as appendices.

### 1.4. Response from Government Departments

All questionnaires were emailed and hand delivered to government departments on Tuesday, 18 December 2012. The table below provides an indication of when the various government departments responded.

**Table 1: Date of Submission for Relevant Government Departments**

Department	Acknowledgment	Completed Questionnaire
Agriculture, Forestry and Fisheries	18 December 2012	20 June 2013
Basic Education	18 December 2012	19 February 2013
Environmental Affairs	19 December 2012	14 March 2013
Health	08 February 2013	15 February 2013
Human Settlements	None	19 February 2013
Social Development	None	14 June 2013
Water Affairs	19 December 2012	12 February 2013

All of the departments submitted their responses after the initial deadline and some departments, including Social Development and Agriculture, Forestry and Fisheries had to be threatened with legal action before a response was received. The Commission aims to build stronger relationships with these departments to ensure smoother collaboration and compliance in the future.

## **1.5. Structure of the Report**

While this chapter provides a summary of the Commission's aims and strategy with regards to the monitoring of economic and social rights, this 9<sup>th</sup> section 184(3) report on economic and social rights provides an analysis on the responses to the questionnaires that were submitted by seven government departments. The analysis compares the responses with submissions, if any, from the previous financial year, media reports and other research to ascertain the progress made and commitment towards the realisation of economic and social rights. The chapters are presented in alphabetical order and provide recommendations on the way forward for the relevant government department.

## 2. THE RIGHT TO ADEQUATE HOUSING

The right to adequate housing is part of the right to an adequate standard of living, recognised by the Universal Declaration of Human Rights. It cannot be reduced to a roof and four walls, but should be understood in broad terms as including the right of every person to have access to a home and community, to enjoy physical and mental health, and to live in safety, peace and dignity.<sup>1</sup> The right to housing is enshrined in section 26 of the Constitution, which states that:

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

### 2.1. Recommendations on the Realisation of the Right from the 8<sup>th</sup> ESR Report

- a) All housing developments and upgrades must be accompanied by meaningful public participation and access to information.
- b) The implementation of the Demand Data Base (DDB) must be reviewed to obviate the unintended consequence of prejudice.
- c) The Department of Human Settlements (DoHS) must develop a strategy to adhere to the fundamental principles of the National Housing Code.
- d) Standards and regulations in respect of the housing tender process must be reviewed and tightened.

### 2.2. Findings on the Realisation of the Right

#### 2.2.1 Awareness of the Right

In its protocol submission, the DoHS indicated that it was providing funding to provinces for the education of beneficiaries and awareness around the right to housing, with specific attention on home ownership. Social housing institutions are also provided with the mandate and a resource to educate on social housing polices and rental housing, but the names of these institutions are not provided. The DoHS added that there is evidence “*that consumers are not adequately informed of their rights, obligations and intentions of government towards addressing their rights,*”<sup>2</sup> which it attributes to low levels of literacy, and a lack of access to information and uninformed decision

<sup>1</sup> [http://direitoamoradia.org/?page\\_id=46&lang=en](http://direitoamoradia.org/?page_id=46&lang=en)

<sup>2</sup> Department of Human Settlements Response to SAHRC 9<sup>th</sup> ESR Questionnaire (22 February 2013)

making, which in turn leads to *“land invasions leading to informal settlements with inadequate housing structures with tenure insecurity.”*<sup>3</sup> However, there are no sources cited for this information, and it is not evident if this link has been determined by research or assumption.

The DoHS states that providing guidance through training is important to consumer education to *inter alia “reduce the exploitation of existing homeowners and tenants by unscrupulous contractors and landlords,”*<sup>4</sup> but does not speak to a process of identifying and prosecuting officials that engage in such unscrupulous activities. Importantly, the DoHS has embarked on a training programme for councillors when they are elected on DoHS’s policies, legislation and housing programmes as per the Housing Code. The Commission welcomes this initiative as the findings from the Commission’s recent public hearings on the right to water and sanitation showed that ward councillors were poorly educated and unhelpful to the public that they represented.

These training initiatives are in line with the DoHS’s Capacity Development Strategy, which in addition to the above, makes provision for *“entering into partnerships with other sector departments to address service delivery imperatives and private institutions for the advancement of communities and individual beneficiaries.”*<sup>5</sup> It is hoped that there is sufficient training of private companies of the DoHS’s mandate and a human rights-based approach to service delivery. The DoHS will also embark on a programme of training trainers, or community development workers (CDWs) to assist in the education of beneficiaries at a grassroots level and a mass media campaign delivered in the language spoken by most recipients.

Some attention will be required to ensure that beneficiaries are aware of their options of recourse in the event of a violation of a right. Currently, information is provided via the DoHS’s website and call centre. This information should be provided by CDWs to beneficiaries during training programmes as many beneficiaries do not have access to a computer or the internet.

### **2.2.2 The National Housing Code**

The current size of Reconstruction and Development Programme (RDP)-approved housing is 40m<sup>2</sup>. When asked about the rationale for this size, the DoHS responded that the size was based on scientific research on the thermal performance of dwellings and the need to accommodate at least two bedrooms in each house. While the Commission appreciates the cost of providing free housing to destitute people in South Africa, it must be noted that some families require homes that are larger than 40m<sup>2</sup> because of the size of the family, and with consultation, the DoHS should find a solution to the problem of small housing. Part of the reason why occupants of RDP housing

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<sup>3</sup> DoHS (note 2 above)

<sup>4</sup> DoHS (note 2 above)

<sup>5</sup> DoHS (note 2 above)

demolish the toilets from within the dwelling is the small size of RDP housing and the desperate need for space.

A positive initiative by the DoHS is the revision of the National Ministerial Norms and Standards to ensure compliance with new National Building Regulations in respect of energy efficiency. This means that all RDP homes will include the installation of ceilings, above-ceiling insulation and plastered walls within the dwelling. This will ultimately save on heating and cooling costs and have a positive impact on the health and welfare of occupants.

### 2.2.3 Housing Backlog

The national housing backlog figures refer to dwelling types that are deemed inadequate, including shacks in backyards, all shacks in informal settlements and a 30% share of traditional dwellings. The DoHS has a method to re-estimate the country's housing need on an annual basis. The table below provides an indication of the current housing backlog according to Statistics South Africa (StatsSA).

**Table 2: Housing Backlog per Province**

Province	Housing Need	Housing Need (%)
Eastern Cape	273 277	12%
Free State	134 851	6%
Gauteng	743 875	32%
KwaZulu-Natal	356 536	15%
Limpopo	92 904	4%
Mpumalanga	131 292	6%
Northern Cape	42 457	2%
North West	230 235	10%
Western Cape	299 283	13%
<b>National</b>	<b>2 304 708</b>	<b>100%</b>

While the provincial housing backlog is the highest in Gauteng, this can be attributed to some extent on migration patterns. Of concern are the provinces of the Eastern Cape, Kwazulu-Natal and North West, as these are considered poor provinces and the housing backlog estimates in these provinces has not decreased since last year's reporting.

When questioned about the how the DoHS planned to address the housing backlog, it indicated that a plan had been developed in this regard, which entailed a “*systematic approach towards addressing the housing needs of our communities*,”<sup>6</sup> which would ensure that the priorities of the neediest would be addressed. As such, the main focus in the short term would be on the upgrading of informal settlements, where “*the most desperate living conditions are found and where households need urgent access to basic services*.”<sup>7</sup> The aim of the DoHS is to build 400 000 households by 2014 for people living in informal settlements, 80 000 rental units by 2014 for people who require rental housing in urban areas and approximately 600 000 credit-linked houses for people who are able to access mortgage loans but require assistance in that regard. The latter will be done via a Financed Lined Individual Subsidy Programme. The DoHS does not specify if preferential interest rates will be applied and what assistance homeowners will have in the event that they are unable to make repayments on the loan.

While these goals are admirable, the DoHS must ensure that local government departments are well capacitated to deliver on the national Department’s mandate, and that all service delivery projects are centred on human rights, which will assist to avoid or alleviate some of the problems that have been experience with housing developments in the past.

#### **2.2.4 Demand Data Base**

It is evident that the Commission did not have an accurate understanding of the purpose of the DoHS’s DDB and the availability that residents have to the DDB as a resource that indicates progress with service delivery. According to the DoHS, there was never an official ‘waiting list’ in the past and the new DDB is a tool established by the National DoHS to aid with planning and provides information to provincial departments on the housing backlog. In other words, it is a planning tool for the DoHS for development purposes.

As such, there is no list that exists that can provide information to individuals that have applied for government housing on the status of their application. This is problematic because people do not have this information, are unable to obtain this information from local and provincial departments and often feel that housing is unfairly provided to others that applied for it after they did (i.e. through corruption or favouritism). The DoHS does not have a list that can prove otherwise. Clearly, an alternative system is required, where people are provided with a traceable reference number when they apply for government housing, which puts them on a central waiting list, and the reference number can be used to access information from any DoHS office or the internet and toll free telephone line. Information on the housing need was only provided for four provinces.

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<sup>6</sup> DoHS (note 2 above)

<sup>7</sup> DoHS (note 2 above)

**Table 3: Housing Need as Per the Provincial Demand Lists**

Province	Housing Need (2010)	Housing Need (2013)
Eastern Cape	643	34 481
Mpumalanga	100 449	112 316
Northern Cape	15 853	50 830
Western Cape	100 136	261 476

### 2.2.5 Breaking New Ground

The DoHS explanation of the process used to upgrade informal settlements is comprehensive and participatory. However, it is evident that in reality, participation by communities on the projects that directly affect them is limited. Many communities around South Africa complain about the lack of consultation during service delivery implementation and the fact that they have limited access to information on the projects. Therefore, the national DoHS must put in place a monitoring programme to ensure that provincial and local government departments are complying with the standards for upgrading the public participation guidelines. It is also important to note that public participation must occur during all phases of an upgrading project and should not be isolated to a 'public participation' phase. Monitoring is also required to ensure that those displaced 'temporarily' during settlement upgrades are moved back to the upgraded settlement. This will ensure that settlement upgrading does not become a process of forced evictions.

It is important to note that the DoHS, in its response to the Commission's questionnaire, states that the Ministerial Norms and Standards for the provision of basic services via a settlement upgrade includes *inter alia* a single standpipe per stand (metered) as opposed to a standpipe within 200 meters of a stand.

### 2.2.6 Human Rights Planning

The DoHS states in relation to public participation that the responsibility to implement community participation programmes lies with provincial departments of Human Settlements and that the National DoHS is not responsible for the implementation thereof. The Auditor-General is also tasked with monitoring compliance to this requirement. However, some form of monitoring should be done at a national level to ensure that provincial offices are complying with participation guidelines. The DoHS only addressed the issue of public participation under the question about service delivery in the absence of a rights-based framework.



### 2.2.7 Clarity on Ownership

One of the findings from the Commission's study on access to basic services in Makhzaza, in the Western Cape, was that many residents believed that they owned the home they were occupying, but did not hold the title deed to the home. Some also stated that they had been informed that a RDP stand or house had been allocated to them, but they had no additional information regarding the location and current occupants. This may be because households were not receiving or paying municipal bills for the provision of services.

As such, the Commission suggested an audit of ownership in townships across South Africa. The DoHS indicated that there was no need for an audit as such an exercise was recently undertaken (no further details were provided), and that the matter was being addressed by provincial departments. Furthermore, the DoHS stated that *"housing developments took place on state owned land and that although the required transfer of ownership process has not been concluded the approved housing subsidy beneficiaries do have security of tenure of their properties as the state will not deprive them of their properties."*<sup>8</sup>

The Commission will follow up with the DoHS on the findings of the audit that they commissioned.

### 2.2.8 Quality

The DoHS acknowledged that there was a problem in the past with the quality of government housing, which was attributed to a lack of expertise and capacity of contracted companies and a failure to comply with governmental standards. Since 2002, all contractors must be registered with the National Home Builders Council (NHBC) and all homes are covered with a five year warranty against structural failure. The NHBC also maintains quality control during construction. However, the DoHS did not provide information on the recourse available to beneficiaries who experience structural deficiencies with their home and how they could access such recourse. The DoHS did not provide information of the cost or number of houses that were demolished or repaired during the 2011/2012 financial year. This might have provided some indication of the success of the registration project. The DoHS is investigating cases of corruption in the awarding of tenders with the Special Investigating Unit (SIU) and the National Prosecuting Authority (NPA).

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<sup>8</sup> DoHS (note 2 above)

### **2.2.9 Backyard Dwellers**

A study will be conducted during the 2013/2014 financial year on the status of backyard dwellers, but the DoHS currently views backyard dwellers as other residents without access to housings, who should register with the DoHS for government housing.

### **2.2.10 Accreditation System**

The accreditation system conducted by the DoHS is aimed at devolving the power from provincial departments to local departments for the provision of housing. To date, eight municipalities have been accredited to administer national housing programmes and a further eighteen are awaiting accreditation. According to the DoHS, it has assembled a panel of expertise to guide provinces to assist municipalities with the process leading to accreditation. This does not speak to the problems that local government departments have experienced in the past over a lack of capacity and expertise to deliver on their expected mandates. Furthermore, the role of the national government seems far removed from two spheres of government that in the past, have been notoriously ineffective and poor at delivering on intended mandates.

### **2.2.11 Transitional Housing**

The DoHS acknowledges that people living in informal settlements and defunct buildings in urban areas are at health risk and has therefore prioritised settlement upgrading and provisions for emergency housing. However, the DoHS's response does not provide an adequate recourse for those people who will be located in an informal settlement for the foreseeable future and do not have access to services including water, sanitation and healthcare. This creates a concern over the health of the population in informal settlements and defunct urban housing, which is not adequately addressed by the DoHS. It is, however, considering the revision of its Emergency Housing programme, which the Commission encourages.

### 3. THE RIGHT TO HAVE ACCESS TO EDUCATION

Education rights are set out in section 29 of the Constitution (Act 108 of 1996):

- Section 29 (1) (a) states that everyone has the right to basic education, including adult basic education.
- Section 29 (1) (b) states that everyone has the right to further education which the state must make progressively available and accessible through reasonable measures.
- Section 29 (2) provides for the right everyone has to receive education in the official languages of their choice in public educational institutions where it is reasonably practicable.
- Section 29 (3) and (4) states that everyone has the right to maintain education institutions at their own expense and provides guidance around how this is to be carried out.
- Section 29 (1) (a) is an unqualified socio-economic right and section 29 (1) (b) is qualified. The unqualified nature of the basic right to education means that it is an immediately enforceable right and therefore, when reviewing it, the ‘reasonableness test’ is not appropriate.<sup>9</sup> In other words, it should have no limitation with regard to progressive realisation.

#### 3.1. Recommendations on the Realisation of the Right from the 8<sup>th</sup> ESR Report

The Department of Basic Education (DoBE) did not provide a response to the Commission’s 2011-2012 ESR questionnaire.

#### 3.2. Findings on the Realisation of the Right

##### 3.2.1. No-Fee Schools

The DoBE agrees that the system of ranking by geographic location as opposed to poverty level is flawed and is considering collapsing one two and three into one category and quintiles four and five into another category. The success of this method will depend on the consistency of the application of the ranking system per province. The DoBE does not indicate if this will solve the problem of all schools being wrongly ranked, as South Africa is known for the juxtaposition of rich and poor areas. Furthermore, the DoBE indicated that if a school is unhappy with its ranking, it can apply for reconsideration.

<sup>9</sup> Khoza S. (ed) Socio-Economic Rights in South Africa: Resource Book (2nd Ed.), 2007, 417

### 3.2.2. Delivery of Learning Materials

The DoBE's response on the delivery of learning materials is somewhat ambiguous.

Firstly, the DoBE indicates that on realising the challenges associated with the delivery of learning and teaching materials, it centralised the planning, procurement and distribution of materials to schools. However, the centralisation process hasn't occurred in all provinces as this decision to move to a centralised system is made by the individual province (apart from in the two provinces that are under national administration).

In response to a question about the contingency measures taken by the DoBE for children without access to learning materials, the DoBE's response was that "*currently there are no schools without learning and teaching materials in the schooling system.*" However, their response to the previous question indicated that "*all provinces have reported over 90% delivery of textbooks and over 80% delivery of stationery to schools.*" It is therefore unclear how the DoBE arrived at the assumption that there are no schools without learning and teaching materials. Furthermore, the Commission's investigations into the delivery of resources to schools indicate that not all schools have access to learning materials in the country.

### 3.2.3. School Nutrition

The DoBE acknowledges that there have been problems with the provision of nutrition to learners, particularly in poorer provinces. Some provinces have not been able to ensure the implementation of the prescribed menus, generally because of corruption in some provinces and the lack of capacity in others. Some schools do not serve the correct food as per the provincially prescribed menus. There are areas where the diet is poor, where the portions are not enough, where there is a halt in the delivery of food due to disputes with tenders and the education offices, and where food handlers and/or cooks are absent, which results in children not being fed.

The importance of compliance with menu items and combinations needs to be emphasised to both service providers and school nutrition coordinators as this can potentially impact on the nutrient levels intended. The DoBE indicated that it has strengthened its monitoring mechanism to ensure compliance in all schools, but more information is needed on how this is being done and what the results are.

### 3.2.4. Violence in Schools

The problem of violence in schools is multi-faceted and the Commission requires a comprehensive but versatile response from the DoBE.

In terms of sexual violence, the DoBE indicated that it recently (not specified exactly when) distributed its Guidelines for the Prevention and Management of Sexual Violence and Harassment, the purpose of which was to educate learners on sexual harassment and violence and its implications and to provide guidance to schools in dealing with victims and perpetrators of such crimes.

In relation to educator-learner violence, section 17 of the Education Laws Amendment Act, No 53 of 2000 provides for dismissal of a teacher should he or she be found guilty of committing an act of sexual assault on a learner, student or other employee; or having a sexual relationship with a learner of the school where he or she is employed. There is also a Code of Professional Conduct of the South African Council for Educators, which allows an educator to be charged with misconduct if they have committed sexual harassment or any other form of harassment. While the DoBE has circulated materials with contact information for reporting sexual harassment or violence, it has not indicated any initiatives to educate learners via learning programmes and awareness campaigns.

In an effort to deal with safety and security, the DoBE provided fences and gates, security guards for six months, CCTV cameras, hand-held metal detectors and high-mast security lights to 585 schools across the country that have previously experienced high levels of crime and violence. Some provinces extended this provision further. The DoBE also indicated that it had, in conjunction with the Centre for Justice and Crime Prevention, held training workshops on an early warning system on security threats. No information was provided on the number of schools trained and when this occurred. The DoBE is also implementing a “Care and Support in Teaching and Learning” programme to assist learners and educators with substance abuse problems, so that they may be referred appropriately.

The DoBE was asked to also provide information on addressing corporal punishment in schools, but this was not done.

### 3.2.5. Access for Vulnerable Groups

The questionnaire asked the DoBE about mechanisms that it has implemented to ensure that children with disabilities, children who are infected and affected by HIV/AIDs, children from child headed households and non-national children are afforded proper access to basic education.

In terms of learners with disabilities, the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment of 2010 provides specifications for universal design principles, ensuring that new schools are built to these standards and that existing schools are modified to include these provisions. According to the DoBE, *“by July 2011 108 such ordinary schools (called full-service schools) had been converted to serve as model sites of inclusive education and resource nodes within districts. A further 405 have been identified for conversion by 2014. A Guideline for Universal Access has been developed and is in the process of being finalised as a policy document.”* Specifications for accessible school buses have also been developed but the response from the DoBE indicated that only the KZN province had acquired any of these buses.

The percentage of children with disabilities attending schools had dropped from 93.5% in 2010, to 92.4% in 2011. These figures do not indicate the percentage of the total population of children with disabilities that attend school. However, according to the Deputy Minister for Women, Children and People with Disabilities, there are just under 500 000 children with disabilities that are not attending school.<sup>10</sup> This indicates that physical access is not sufficient to ensure that children with disabilities receive an education.

On an annual basis the DoBE provides reports on the prevalence of orphans and vulnerable children (OVCs), including assistance given to OVCs such as exemptions from school fees and the provision of uniforms and food at schools. However, the DoBE did not provide information on how these reports are used and if the DoBE works with the Department of Social Development to reach OVCs that do not have access to education. The DoBE further stated that *“in 2011, 7% of children attending schools were orphans [meaning] that they had lost both parents. This figure seems to [have] increase[d] from just 3% in 2002 to 7% in 2011. This indicates some of the socio-economic factors that are faced by children of school going age in the country.”* The response does not speak specifically to children from child-headed households.

The DoBE states that according to the National Education Policy Act 27 of 1996, learners who are non-South African nationals can be admitted to public schools provided that:

<sup>10</sup> ‘467 000 disable children not attending school’ *Times Live* (21 November 2012)

- (a) they entered the country on a study permit and presents the study permit on admission to the public school;
- (b) their parents are in possession of a permit for temporary or permanent residence issued by the Department of Home Affairs; or
- (c) If they or their parents are classified as illegal aliens, evidence can be provided to the fact that they have applied through the Department of Home Affairs to have their stay in the country legalised.

These provisions seem at odds with the Constitution and jurisprudence, which provides that everyone has the right to basic education, particularly children that have no control over their situation. In practice, learners who are undocumented can be admitted to schools even in the absence of the stipulated criteria.

Finally, there are issues noted with regards to the school readiness of children taught only in their home language. Provinces have started a process whereby they ensure the mainstreaming of more than one language from an early age to obviate these difficulties. This is ultimately with a view to improving pass rates and to ready learners for the higher grades within the basic education system or the higher education system.

### 3.2.6. Quality of Education

Information provided by the DoBE below indicates that the educator to learner ratio has decreased marginally between 2008 and 2012, which is a positive trend in terms of access to quality education.

**Table 4: Learner to Educator Ratios (2008-2012)**

Province	2008	2009	2010	2011	2012
Eastern cape	31.7	30.1	30.1	29.0	29.1
Free state	28.9	27.2	27.8	27.6	27.1
Gauteng	32.4	31.5	30.9	31.3	31.4
KwaZulu-Natal	32.5	32.3	31.4	31.4	31.2
Limpopo	31.2	29.4	29.7	29.6	30.1
Mpumalanga	31.6	29.9	30.5	30.8	31.1
North west	29.8	29.7	29.8	30.1	30.6
Northern cape	29.8	29.8	30.9	31.3	31.8
Western cape	30.0	31.8	30.1	30.3	30.6
<b>National</b>	<b>31.4</b>	<b>30.6</b>	<b>30.3</b>	<b>30.3</b>	<b>30.4</b>

Also, the percentage of qualified educators, as indicated below, has increased between 2008 and 2012. With the exception of KwaZulu-Natal, the percentage of qualified educators is above 95%. Only in the Western Cape has the ratio increased during this period.

**Table 5: Percentage of Qualified Educators by Province**

Province	2008	2009	2010	2011	2012
Eastern Cape	95	95	98	97	99
Free State	91	92	95	96	96
Gauteng	98	98	99	99	99
KwaZulu-Natal	88	87	89	90	92
Limpopo	97	98	99	99	100
Mpumalanga	95	96	98	99	99
North West	93	94	99	99	99
Northern Cape	92	92	93	94	95
Western Cape	95	94	94	96	97
<b>Total</b>	<b>94</b>	<b>94</b>	<b>96</b>	<b>96</b>	<b>97</b>

The DoBE has also implemented the following initiatives:

**a) Delivery Agreement with the Presidency**

The Delivery Agreement on government's Outcome 1 aims to improve the quality of basic education. The signatories to the Delivery Agreement are the national Minister of Basic Education, the national Deputy Minister of Basic Education, the nine provincial Members of the Executive Council (MEC) for Education, and an additional 17 ministers whose departments have a direct or indirect role to play in the improvement of basic education.

**b) Review of the curriculum**

Following negative public perceptions about Outcomes-based-Education in South Africa, the Minister of Basic Education established a Ministerial Committee in 2009 to undertake a review of the curriculum and in response to the recommendations of the committee to streamline and clarify the curriculum policy, national Curriculum and Assessment Policy Statements have been developed for each subject listed in the NCS for Grades R to 12.



**c) Teacher development**

The DoBE in collaboration with relevant stakeholders have developed an Integrated Strategic Planning Framework for Teacher Education and Development in South Africa, 2011–2025. The primary outcome of the Plan is to improve the quality of teacher education and development in order to improve the quality of teachers and teaching.

**d) Initial teacher education**

Recognising the need to encourage more able students to consider the teaching profession, the DoE introduced the Funza Lushaka (Teach the Nation) bursary programme in 2007. Awarded on a “work back” basis, the full-cost bursary provides students of high ability with the opportunity to complete a full teacher education programme at a university of their choice, but obliges them on graduation to work back the number of years they received a full bursary by teaching in public schools in a provincial education department.

**e) Accelerated Schools Infrastructure Delivery Initiative (ASIDI)**

The Accelerated Schools Infrastructure Delivery Initiative (ASIDI) forms part of a broader infrastructure programme, aimed at achieving a level of optimum functionality in targeted schools over the next five years.

**f) Learner transport**

The Learner transport aims to provide free transport to learners who live far away from schools. Budgets of provincial education departments indicate an upward trend in allocations for the provision of learner transport. Government is in the process of developing a policy on Learner Transport, which aims to promote equity in the provisioning of learner transport across all provinces. The Commission will continue to monitor access to transport for learners that require it most.

**3.2.7. Drop-Out Rates**

The table below indicates the drop out percentages of learners from 2007 to 2011. In the first age category, 7 to 15 years old, the drop-out rates are relatively low for both males and females and have decreased steadily since 2007. For the second age category, 16 to 18 years, the drop-out rate initially decreased but then increased again. And the drop-out rate is higher for females than for males, which is concerning.

**Table 6: Drop-Out Rates by Province in Two Age Groups**

Year	Male	Female	Total	Male	Female	Total
	7 to 15 years			16 to 18 years		
<b>2007</b>	2.4	1.8	2.1	13.4	16.3	14.8
<b>2008</b>	2.2	1.9	2.1	15.5	16.9	16.2
<b>2009</b>	1.7	1.4	1.5	15.9	17.5	16.7
<b>2010</b>	1.4	1.3	1.3	15.2	19	17.1
<b>2011</b>	1.3	1.2	1.2	14.3	16	15.1

If it already hasn't, the DoBE must Commission research into the dropout rates at age sixteen, especially as the child support grant covers children to the age of eighteen. The study should also concentrate on the reason for the higher dropout rate for girls than boys. Findings from a recent study on access to water and sanitation by the Commission in the country showed that many young girls drop out of school because of a lack of adequate water and sanitation facilities.

Findings of this study must be made widely available to the public and a clear strategy to decrease dropout rates must be developed and implemented without haste.

#### 4. THE RIGHT TO ENVIRONMENT

The right to a healthy environment is fundamental to the enjoyment of all human rights and is closely linked with the right to health, well-being and dignity. It is clear therefore that the right to a healthy environment is a fundamental part of the right to life and to personal integrity. Environmental destruction can result in discrimination as the effects of environmental change are felt mostly by socially and economically disadvantaged groups. The right to a safe and healthy environment is enshrined in section 24 of the South African Constitution, which states that everyone has the right –

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Section 24 of the Bill of Rights makes provision for the protection of the environment from a human health perspective to ensure that an individual's right to a healthy environment is met. It further recognises the rights of future generations, which has implications on the current management of the natural environment and utilisation of natural resources. The Constitution therefore recognises the need for the protection of the natural environment purely for conservation purposes.

##### 4.1. Recommendations on the Realisation of the Right from the 8<sup>th</sup> ESR Report

- a) Awareness of the right should be promoted, particularly in rural and outlying areas and with people who are marginalised and have limited access to information. Awareness of recourse should be improved, so that it can be accessed in the case of a violation.
- b) The urgent amendment of the Minerals and Petroleum Resources Development Act (MPRDA) and National Environmental Management Act (NEMA) is needed to ensure that the jurisdiction for granting mining or prospecting licence falls with the Department of Environmental Affairs (DEA).
- c) Regional spatial plans should be integrated more effectively at a local level. This means that planners should not just be compelled to consider regional plans, but should be compelled to integrate them into decision-making at a local level.

- d) Greater education and transparency is required around the National Environmental Authority System (NEAS).
- e) Registrations for Environmental Assessment Practitioners (EAP) should be extended to specialists as well. Greater awareness around penalties for transgressors is required.
- f) A transparent scoring system for Environmental Impact Assessments (EIAs) should be developed and made public.
- g) In addition to amendments to the MPRDA and NEMA, public participation guidelines should be drafted, with close interaction with CSOs and other interested and affected parties.
- h) Checks and balances are required to ensure that due process is followed for applications for mining and prospecting licences to ensure that all necessary criteria and processes are followed.
- i) Greater involvement by the DEA is required on the issue of Acid Mine Drainage (AMD) as it is an environmental and resources management issue.
- j) Greater information is required on air pollution cases and monitoring of carbon dioxide (CO<sub>2</sub>) emissions and low carbon energy strategies in the future.

## **4.2. Findings on the Realisation of the Right**

### **4.2.1. New Framework Policies, Strategies and Legislation**

While the DEA's response provided a substantive list of new legislative developments in order to realise the right, most of these developments took place outside of the reporting period and some important legislative developments were omitted. For example, on 23 November 2012, the DEA gave notice of the intention to amend the list of activities which result in atmospheric emissions, which have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage (the listed activities). The list was published in terms of section 21 of the National Environmental Management: Air Quality Act, 39 of 2004 (AQA). The listed activities are integral in controlling and monitoring harmful or potential atmospheric emissions, and in meeting the AQA's objective of protecting the environment and human health. The proposed amendments to the listed activities would make significant and substantive changes to the current list. Several, if not all, of the changes constitute a relaxation of previously published limits. The effect of such amendments would be to permit greater volumes of atmospheric emissions which have or may have significant detrimental impacts on health and wellbeing.

South Africa's Environmental Impact Assessment (EIA) process has a well-developed legislative and policy framework, which has attempted to strengthen environmental governance and the

sustainability of our developmental growth path. This procedure has resulted in the creation of an EIA regime, contained in Chapter 5 of the NEMA, which provides for integrated environmental management. Whilst the EIA is recognised locally and globally as a key support tool for sustainable development, balancing local socio-economic, political and ecological priorities, aspects of its process implementation remains particularly challenging and has faced a number of critiques. The DEA hosted public hearings from April to May 2013 on the EIA regime, specifically looking at the difficulties experienced with EIA processes and the manner in which South Africa could achieve a balanced EIA regime. The findings have yet to be released.

#### **4.2.2. Awareness of the Right**

While it seems that the DEA has done much in the way of exploring different communication strategies, it is not convincing that these strategies are appropriate for communities in rural and outlying areas or people without access to the internet. This is the same concern that the Commission noted in the previous reporting period, that while great strides are being made to enable information-sharing and networking opportunities around environmental issues for more privileged people, there is not enough that is being done to communicate these issues to the people who are most affected by environmental change and environmental decision-making, particularly in rural and outlying communities.

For example:

- a) A knowledge management system/repository via the intra-and internet: while this is an excellent idea, it is not necessarily appropriate for rural communities who may not have access to the internet. Further, there is a need to include rural and indigenous knowledge in these knowledge management repositories.
- b) A conference on Global Change: while laudable, this conference was not aimed at disseminating information to rural and outlying communities. The Commission emphasises that while it may seem excessive to request the DEA to go beyond what they are currently doing in terms of communication strategies, it is imperative that rural and outlying communities be targeted to gain and share information around environmental issues. Their voices are extremely important in the context of natural resources and the environment and the Commission thus calls on the DEA to further its communication objectives in these areas.
- c) The DEA indicates that they have published a research development and evidence framework on the internet (via the Department's website) and again, there should to be a more appropriate method of dissemination to people without access to computers and the internet. The DEA further indicated that hard copies of this framework are being distributed

‘on an on-going basis’. It is not clear where this framework can be accessed, where it is being distributed, what format this framework takes (i.e. voluminous text or easy-to-understand wording), and in what languages this document is available.

#### 4.2.3. MPRDA and NEMA Amendments

The Commission acknowledges the DEA’s efforts to deal with the amendment of the above legislation. However, the Commission remains concerned that the decision-making authority for mining remains the Department of Mineral Resources as the impact on the natural environment may not necessarily be adequately considered. The Commission is also concerned that the processes around the establishment of the Inter-departmental Implementation Plan (IPIC) and its various task teams are not timeous nor are they clear. The response indicates that “*progress has been made by the task teams and there have been several interactions regarding legislation.*”<sup>11</sup>

This information does not provide any indication as to what this progress entails, nor what the outcomes of the interactions have been. The Commission believes that the DEA has an incredibly important role to play and thus should provide precise information around anything involving natural resources (as mining activities impact heavily on the natural and social environment). While continued action with regard to streamlining and improving legislative processes that impact on environmental rights has occurred, the description provided in the response needs to be improved with regard to providing tangible evidence of discussions and forward progression to conclude this issue and ensure that indeed these gaps and legislative amendments are expedited and implemented.

#### 4.2.4. Water-Use Licences

The Commission regularly receives complaints on mines across South Africa that continue to operate without licences and/or not complying with the conditions under which the mining or prospecting licence was granted. The Commission acknowledges the DEA’s response that “*Administrative Enforcement Action*” is taken against non-compliant mines. However, the incidents of non-compliance and non-action by the relevant departments and authorities continue unabated. This impacts negatively not only on the environment, but on a number of related human rights. As such, the Commission would like to see more tangible information on the number of mining companies operating without water-use licences and the penalties that have been imposed on these companies. The Commission is also interested in the “*joint initiatives*” that are implemented by the Department of Water Affairs and DEA.

<sup>11</sup> Department of Environmental Affairs (DEA) Response to SAHRC 9<sup>th</sup> ESR Questionnaire (14 March 2013)

#### 4.2.5. South-Durban Industrial Basin

The DEA indicated that in 2012, the provincial DEA decided to take administrative enforcement action against Engen, a company in South Durban that was accused of various environmental violations. The DEA did not provide information on the outcome of this process but did mention that it attends quarterly meetings at the refinery. More information is required from the DEA on the outcomes of this process.

In relation to a proposed dug-out port near the South-Durban industrial basin, the DEA indicated that it had not received the EIA application, but is aware of it. This is contrary to information provided by the South Durban Community Environmental Alliance and the Commission will have to follow up on the information provided by the DEA.

#### 4.2.6. Climate Change

No clarity has been provided on the steps that the DEA has taken in order to implement the National Climate Change Response Strategy.

The response from the DEA is not sufficient in terms of providing the Commission with information regarding meaningful and measurable actions that have been taken. It is well known that climate change will impact most on vulnerable communities whose contribution to the phenomenon is negligible. The effects are already being felt particularly for small-scale and subsistence farmers. As such, it is crucial for the DEA to take immediate steps in order to assist communities in building the necessary resilience to climate change, especially in rural communities. It is the duty of the DEA to ensure that these steps are taken as such resilience augurs well for mitigation and adaptation objectives for these vulnerable communities and the country as a whole. It is unacceptable that, more than one year since the country committed itself to the fight against climate change, no physical evidence can be seen as to how the DEA is implementing its various related strategies as promised. Without action, these strategies are meaningless.

## **5. THE RIGHT TO HAVE ACCESS TO FOOD**

Section 27 (1) (b) of the Constitution of the Republic of South Africa states that, “*everyone has the right to have access to sufficient food and water.*” This obligation is extended in section 27 (2), according to which the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights. In section 28 (1) (c) the right to food is expanded as a right to basic nutrition for children and in section 35 (2) (e) as a right for detainees and sentenced prisoners.

Section 25 (4) (a) further speaks of a commitment to land reform and reforms to bring about equitable access to all South Africa's natural resources, while determining that fair compensation must be paid in the event of land being expropriated for a public purpose. Where the state takes land from people that they use to produce food for themselves, the constitutional right to food will be relevant in determining what fair compensation would be.

### **5.1. Recommendations on the Realisation of the Right from the 8<sup>th</sup> ESR Report**

The Department of Agriculture, Forestry and Fisheries (DAFF) did not submit a response to the Commission's ESR questionnaire in 2011-2012.

### **5.2. Findings on the Realisation of the Right**

#### **5.2.1. Awareness of the Right**

Every year on 16 October, the DAFF commemorates World Food Day, as a way of creating awareness and disseminating information on food security. The DAFF recently supported the Urban Food Security Summit in Khayelitsha in Cape Town. The Commission does not believe that these awareness campaigns are sufficient to ensure that the greater public is aware of their right to food and what that right entitles them to. In addition, there should be greater awareness around services available to people that are unable to feed themselves (i.e. social grants).

#### **5.2.2. Access to food**

Based on the general household survey of 2012, the DAFF provided the following results on food access:



**Table 7: Proportion of Population with Access to Inadequate Food, by Province<sup>12</sup>**

Province	Food Access Severely Inadequate	Food Access Inadequate	Total
Western Cape	6.8%	16.6%	23.4%
Eastern Cape	7.7%	17.3%	25.0%
Northern Cape	10.4%	19.3%	29.7%
Free State	8.0%	14.7%	22.7%
KwaZulu-Natal	4.1%	13.1%	17.2%
North West	9.3%	23.6%	32.9%
Gauteng	5.9%	12.6%	18.5%
Mpumalanga	8.9%	17.2%	26.1%
Limpopo	5.4%	7.6%	13.2%

Problems with access to food are most dire in the North West and Northern Cape, where just under one-third of residents don't have access to an adequate food supply. This is followed by Mpumalanga, Eastern Cape, the Western Cape and the Free State; where approximately one-quarter of residents do not have access to an adequate food supply. Although the above survey was not disaggregated by urban or rural area, a National Food Consumption Survey conducted by the DoH in 2005 indicated that child hunger had increased significantly in urban areas since 1999, and there was no indication that it had decreased since. The DAFF does not collect information on children that go without breakfast on a daily basis, but the above survey showed that in 2005, 18% of South African children were stunted. Stunting was higher in formal rural areas than tribal areas or informal urban areas, and decreased with age.

The Commission notes with concern how outdated some of the above information is.

### 5.2.3. Reasons for Food Insecurity

The DAFF provided the following main reasons for food insecurity in South Africa:

- a) **Unemployment:** because many South Africans, particularly in urban areas acquire their food by purchasing it, unemployment impacts greatly on access to food and the ability to feed oneself and one's family.

<sup>12</sup> Department of Agriculture, Fisheries and Forestry Response to SAHRC 9<sup>th</sup> ESR Questionnaire (21 June 2013)

- b) **Migration:** there is a high rate of migration from rural to urban areas. Coupled with a growing population, there is a competition for scarce resources, which leads to food insecurity.
- c) **Food Prices:** evidence shows that rural consumers pay more for food than urban consumers. This poses a challenge for poor and unemployed people to access food.
- d) **Limited Dietary Diversity:** less than 50% of all South African households are consuming food from all nine food groups. As such, the price of staple foods is affected as is the inflation on certain food products.
- e) **Poor Agricultural Production:** the DAFF states that according to the General Household Survey, less than one quarter of South African households are involved in agricultural production. Therefore most households are consumers rather than producers.

#### 5.2.4. Food Security Programmes

The DAFF developed three notable programmes to address the need for community-based food security initiatives.

- a) **Adoption of the Livelihoods-Based Approach:** which generates information on food security, particularly the mechanics of how people meet their food and other needs and the factors that are likely to make them vulnerable? With this information, the DAFF aims to make informed policy decisions relating to food security.
- b) **Market-Orientated Programmes:** is designed to stimulate the need for produce from smallholder farmers so that they can compete with large commercial food producers. For example, the Food Bank of South Africa ensures that food procured from these smallholder farmers for government institutions, retailers and wholesalers.
- c) **Provision of Inputs Support:** is a programme that provides what it calls agricultural production inputs to subsistence and smallholder farms such as starter packs and infrastructure and financial support.

In the table below, the DAFF provided numbers of food security initiatives by province, but these figures were not for the financial year in question. Nevertheless, if one does compare the information provided to the levels of food insecurity per province (Table 7 above), one can clearly see that there is a disparity between the number of food security projects and food security in the province. For example, the North West province is the most food insecure, but only has 22 established household gardens and provision of support is only provided for 30 food gardens.

There are no institutional gardens. The figures are more promising in the Northern Cape, but again, provision of support for established food gardens is lacking.

**Table 8: Food Security Initiatives by Province**

Province	Established Household Gardens	Established Community Gardens	Provision of Support for Established Food Gardens	Institutional Gardens
Eastern Cape	1241	3319		
Free State	1323		91	46
Gauteng	181	57	12404	118
KwaZulu-Natal	186133	409	40000	223
Limpopo	84			
Mpumalanga	39261			
Northern Cape	423	8		12
North West	22	7	30	
Western Cape	834	63		
<b>TOTAL</b>	<b>228325</b>	<b>3863</b>	<b>52525</b>	<b>409</b>

### 5.2.5. Extension Officers

The questionnaire asked whether the DAFF provides any extension support to food insecure households and if so, to describe the support provided. The DAFF responded that extension officers were assigned to different wards in the country and that these extension officers provide advisory support to households at a local level. Because there are not enough extensive officers across the country, the DAFF also developed an Extension Recovery Plan that focuses on recruitment, capacity building and the provision of necessary tools and equipment. In 2007, there were 2210 extension officers nationally and in 2008 there were 3310. There is no recent information on the number of extension officers provided.

Extension officers should have a minimum qualification of a bachelor's degree at a university or technikon level and should have a good understanding of public service regulations.

### 5.2.6. Production Assets

Due to the lack of access to production assets such as land, water and credit, many farmers face major challenges in food production. When asked what the DAFF was doing to mitigate these

challenges, it responded that it was exploring new production technologies to deal with the lack of access to resources by some farmers, through provincial and district offices and with the assistance of extension officers. *“The [DAFF] aims at assisting farmers with water-saving ways of farming such as Permaculture technologies that enable farmers with limited space to produce food by means of Earth Boxes. Rain water harvesting and the usage of grey water for irrigation crops is encouraged in areas where a water shortage is a problem.”*<sup>13</sup>

### **5.2.7. Genetically Modified Foods (GMFs)**

Although the DAFF has not conducted any studies to assess the long-term viability and impact of GMFs, it considers all genetically modified organisms (GMOs) safe and in line with international best practice. The DAFF indicates that all GMOs that are approved for commercial release in South Africa are considered as safe as their commercial counterparts and that potential environmental impacts are managed via a comprehensive risk assessment framework by the DEA, which will also monitor the long term environmental impacts of GMOs. The DAFF believes that concerns on GMOs noted by the public and civil society are without scientific basis.

However, the Commission remains concerned about the potential impacts of GMOs both on the natural environment and human health and would prefer if a more precautionary approach was taken in a country that is now flooded with GMFs. The Commission will be liaising with researchers on this matter.

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<sup>13</sup> DAFF (note 12 above)

## 6. THE RIGHT TO HAVE ACCESS TO HEALTHCARE

In line with this international human rights law framework, the Constitution under section 27 specifies that all South Africans have the right to access health care services (including reproductive health care) and emergency medical treatment. It furthermore entrenches that:

- Everyone has the right to bodily and psychological integrity through informed decision making and consent (section 12.2);
- Everyone has the right to an environment that is conducive to health and wellbeing (section 24a);
- Every child is entitled, through section 28, to basic health care services; and
- Detainees have the right to access adequate medical treatment (section 35).

The realisation of these rights is enhanced by the National Health Act (61 of 2003) which, apart from those rights entrenched in the Constitution, emphasises the right to free health care for specific groups<sup>14</sup> and the right to report health care services that have inadequately satisfied a person's needs.

### 6.1. Recommendations on the Realisation of the Right from the 8<sup>th</sup> ESR Report

The Department of Health (DoH) did not submit a response to the Commission's 8<sup>th</sup> questionnaire on the right to have access to healthcare.

### 6.2. Findings on the Realisation of the Right

#### 6.2.1. New Legislation and Policies

The DoH promulgated a number of policies and strategies during the financial year in question. Of particular significance were the following policies:

- a) **Policy on the Management of Public Hospitals:** aimed at ensuring that the management of hospitals is underpinned by the principles of effectiveness, efficiency and transparency. Overall, this policy is designed to improve the management of hospitals, the effectiveness and quality of services and ensure that hospitals are managed by competent, skilled individuals.
- b) **Primary Health Care (PHC) Re-Engineering:** places greater emphasis on the community, schools, family, and households; focuses on promotion and prevention, rehabilitative and

<sup>14</sup> All except those on medical aid schemes and those receiving compensation for occupational diseases are entitled to these services. Pregnant and lactating women and children under the age of six are particularly accounted for. Furthermore, all those seeking termination of pregnancy services are entitled to these free services.

referral services, as well as improving the quality of clinical care; avoids fragmentation that results in multiple health care providers visiting families, and ensures that a single integrated team establishes relations with families in the catchment area.

- c) **Primary Health Care Package:** defines the range of services that are to be provided in primary level facilities namely, community based services, Mobile Health Services, Clinics and Community Health Centres.
- d) **Policy guidelines on seclusion and restraint of mental health care users:** provides guidelines on the use of seclusion and restraint of mental health care users to ensure that the human rights of mental health care users are upheld.

The DoH also developed national core standards for healthcare facilities to ensure that the right of users to decent, safe and acceptable care is realised.

Finally, the DoHS explained that the Libreville Declaration was signed by the member states of the World Health Organisation (WHO) in the African Region. The purpose was to address the following as Africa's health and environment top priorities for the years to come:

- Provision of safe drinking water.
- Provision of sanitation and hygiene services.
- Management of environmental and health risks related to climate variability and change including rise in sea level particularly affecting Small Island Developing States.
- Sustainable management of forests and wetlands.
- Management of water, soil and air pollution, and biodiversity conservation.
- Vector control and management of chemicals (particularly pesticides) and wastes (including biomedical, electronic and electrical wastes).
- Food safety and food security including the management of genetically modified organisms in food production.
- Environmental health of children and women.
- Health in the workplace.
- Management of natural and human-induced disasters.

### **6.2.2. Awareness of the Right**

The DoH has a national awareness programme on various public health issues, such as communicable and non-communicable diseases. The DoH reaches its target audiences through direct communication campaigns, such as Expanded Immunisation Programme and Healthy Lifestyles Campaigns. It also employs mediated communication campaigns via electronic, print

media and social media. It is unclear how rural and marginalised communities are reached and how effective these awareness programmes are.

### 6.2.3. The Right of Access

The department believes that “*universal coverage is most appropriate definition of the progressive realisation to health care.*”<sup>15</sup> This means that if there is a primary health care facility within a five kilometre radius from one’s living quarters, then the right of access is realised. In addition, “*hospital services are free for pregnant and lactating women, children under five as well as people with disabilities. However, no one may be denied health care in the public health sector because of inability to pay for services.*”<sup>16</sup> The definition does not speak to human rights-based criteria for access such as acceptability, affordability, appropriateness and quality.

The DoH indicates that the progressive realisation of the right to healthcare must include communities on health matters,

### 6.2.4. Maternal, Infant and Child Mortality

Three Ministerial Advisory committees have been established to deal with maternal, infant and child mortality. These committees have been able to highlight the causes of mortality rates and provide information on the rates per annum, showing an overall decrease in the number of mortalities over the last three years.

**Table 9: Maternal, Infant and Child Mortality Rates (2009-2011)**

Mortality Rate	2009	2010	2011
<b>Maternal</b>	-	176 / 100 000	153/ 100 000
<b>Infant</b>	40 / 1000	37 / 1000	30 / 1000
<b>Child</b>	56 / 1000	52 / 1000	42 / 1000

For example, through the National Perinatal Morbidity and Mortality Committee (NaPeMMCO) and the Committee on Morbidity and Mortality in Children under five years (CoMMIC), the causes of infant and child mortality have been identified as pneumonia, diarrhoea, malnutrition, HIV related illness and tuberculosis. To deal with these illnesses, the DoH introduced two vaccines in 2009 against pneumonia and diarrhoea and preliminary data shows that death from these two diseases is declining. To deal with malnutrition, the DoH has developed a policy directive to promote and support breastfeeding. The DoH also developed District Clinical Specialist Teams, consisting of

<sup>15</sup> Department of Health (DoH) Response to SAHRC 9<sup>th</sup> ESR Questionnaire (15 February 2013)

<sup>16</sup> DoH (note 15 above)

nurses; obstetricians; paediatricians; family physicians; anaesthetists and advanced midwives, with produced guidelines to reduce neonatal and maternal deaths. “*The role of these teams is to improve clinical governance and to help front line health workers to reduce mortality rates.*”<sup>17</sup>

The causes of maternal mortality, according to the National Committee on Confidential Enquiries into Maternal Deaths (NCCEMD) are HIV/AIDS, obstetric haemorrhage, complications relating to hypertension in pregnancy, pregnancy-related sepsis and medical and surgical disorders. In addition to the Campaign on Accelerated Reduction of Maternal and Child Mortality in South Africa (CARMMA) and the development District Clinical Specialist Teams, the DoH created the Strategic Plan for Maternal, Newborn, Child and Women’s Health (MNCWH) and Nutrition in South Africa 2012-2016, which clearly outlines the priority health interventions for reducing maternal and child mortality and morbidity in South Africa.

Overall, it does seem like the DoH has taken concrete steps to reduce infant, child and maternal mortality rates. However, external research indicates that that maternal mortality rates have not decreased, but rather increased to 310 deaths per 100 000 live births,<sup>18</sup> and infant and child mortality rates have decreased marginally. On child mortality, there is conflicting information available, but a presentation by the DoH to the Select Committee on Social Services on 5 March 2013 puts the 2011 child mortality rate at 47 per 1000 live births.

It will be important for the Commission and civil society organisations to monitor these rates in relation to the preventative programmes initiated and engage with the DoH over research done in the area.

### **6.2.5. Child Deaths in Hospitals**

The DoH acknowledged the death of babies in three hospitals (namely the George Masebe, Jubilee and Charlotte Maxeke hospitals) and provided a report on the death of babies at George Masebe, but not of an investigation at Jubilee or Charlotte Maxeke. The report on George Masebe hospital found that there was inadequate governance at the hospital, inadequate management of medical staff, the staff acted unprofessionally and that there was inadequate access to facilities and equipment. Also, there was poor clinical care, particularly after hours. The report provided recommendations on the way forward including *inter alia* the appointment of a permanent Chief Executive Officer and competent medical manager, which were missing at the time of the deaths.

In 2011-2012, the DoH developed the National Core Standards for Health Establishments in South Africa and a subset of these focusing on six priority areas, which included cleanliness. The norms

<sup>17</sup> DoH (note 15 above)

<sup>18</sup> <http://www.unaidsrstesa.org/south-africa-launches-campaign-reduce-maternal-mortality>



and standards, however, do not concentrate on the health and wellbeing of a particular subset of the population. As such, special medical attention is not given to children or other vulnerable groups. The DoH also produced extensive guidance for health establishments regarding appropriate diagnosis and treatment, knowledge and skills, and drugs and equipment to reduce mortality rates. However, the DoH did not indicate how it would monitor the success of such a programme.

#### **6.2.6. Access for Vulnerable Groups**

According to the DoH, its policies prioritise the health of women, children and lactating mothers and the DoH has a joint project with the Department of Correctional Services to ensure access to health care for prisoners. In terms of older persons and people with disabilities, the DoH believes that this will be achieved through the revitalisation of PHC facilities and ward-based outreach programmes. The DoH did admit, however, that *“it is possible that the rapid growth in the population of South Africa has outpaced the health delivery infrastructure.”*<sup>19</sup>

The DoH indicated that it was producing information in the form of recordings and information in Braille for people with sensory disabilities. Limited information was provided on the steps taken to provide access to health care for people with physical disabilities and the DoH admits that although much progress has been made in this regard, more work is still needed. The DoH indicated that the development of norms and standards for rehabilitation infrastructure will go a long way in addressing the challenge of access for people with disabilities.

The DoH has developed and implemented a number of the national strategic plans that makes provision for access for all South African citizens to healthcare and treatment, regardless of legal status and geographical placement. This means that all migrants and non-nationals, including those who are incarcerated, must receive health care services at the facilities and institutions in which they are held.

#### **6.2.7. Primary Health Care**

Statistics presented by the DoH indicates that South Africa has the following:

- 1 Clinic per 13,718 population (WHO norm is 1 clinic per 10,000 population)
- 1 Community Health Centre per 148,533 population (WHO norm is 1 CHC per 60,000 population)

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<sup>19</sup> DoH (note 15 above)

While South Africa is improving in terms of access to clinics, access to community health centres remains concerning especially given the need for healthcare in rural and outlying areas. According to the DoH, the reason patients' by-pass PHC facilities, when they do have access, is the lack of medicines and trained doctors at a primary health care level. To combat this, the DoH has erected gateway clinics at hospitals to see patients that bypass PHC facilities, as a screening process. It seems that an awareness strategy around the services offered at PHC facilities is needed, along with incentives for visiting them. In addition, the DoH must ensure that PHC facilities are well stocked and have trained health care workers to assist patients.

The current vacancy rate at PHC facilities for both funded and unfunded posts is 39% and this vacancy rate will have to be curbed if the DoH wants to gain public confidence in PHC. The DoH has implemented various initiatives/programmes in an effort to secure the services professionals, but will need to monitor the vacancy rate to assess if these initiatives are working. The DoH has provided the following:

- Rural and Scarce Skills allowances.
- Occupation Specific Dispensation, which is a comprehensive retention strategy, but which also, had a policy objective of encouraging health care providers to remain at the coalface of service delivery, rather than aspiring to management or administrative posts, which were perceived as providing better remuneration packages.
- Mandatory community service for most categories of health care providers.
- Training of doctors: increase in local medical school intake as well as training SA students in Cuba and country to country arrangements in employing doctors from countries with a surplus, such as Cuba.

#### **6.2.8. Termination of Pregnancy Facilities**

Although the DoH acknowledges that there is limited access to Termination of Pregnancy (ToP) facilities in South Africa, it believes that the solution to this problem is to increase access to contraception services and reproductive health services. While the Commission agrees that access to contraception and reproductive health information and services is essential, access to ToP facilities is equally essential. Given that South Africa has made abortions legal and is committed to provide termination of pregnancy services, there should be an adequate number of working ToP facilities in each province, which are accessible to people in rural areas.

### 6.2.9. National Health Insurance

The DoH states that the main purpose of National Health Insurance (NHI) is to:

*...ensure universal access to health care for all citizens of South Africa. In the implementation thereof it aims to ensure that all persons have access to effective, efficient, appropriate and high quality health services through changes in the institutional and organisational components of the health system, including the health services delivery platform and management systems.*

The DoH hopes that through the model of the NHI and access to healthcare, particularly PHC, the “health outcomes of the nation and especially that for women and children will improve.” It is predicted that this will include improvements in the rates of infant mortality, child mortality and maternal mortality.

Regarding the lack of budgeting by National Treasury in the last two budget allocations for the NHI, the DoH explained that “implementation is planned to be rolled out over a number of years. The allocation towards the piloting of NHI in the current financial year was R150 million and future funding allocations from the National Treasury over the MTEF period to the Department of Health will be R339.5 million and R490 million for the 2013/14 and 2014/15 financial years respectively.”

The primary purpose of NHI is to improve services for all South Africans, including disadvantaged individuals and groups and to improve accessibility of quality health care services; therefore, access to healthcare for all citizens will hopefully be achieved, particularly for vulnerable and marginalised groups.

## 7. THE RIGHT TO HAVE ACCESS TO SOCIAL SECURITY

The basis of the human right to social security under law in South Africa is set out in S27 (1) of the Bill of Rights in the Constitution which states that everyone has the right to have access to:

- c) social security, including if they are unable to support themselves, appropriate social assistance.

Critically, S27 (3) provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the *progressive realisation* of this right.

### 7.1. Recommendations on the Realisation of the Right from the 8<sup>th</sup> ESR Report

- a) The Department of Social Development (DoSD) should develop a comprehensive road map for social security that clearly articulates the how the right is to be progressively realised.
- b) The DoSD should consider the emancipatory potential of the Basic Income Grant and how it can empower citizenship and to reduce the depth of poverty.

### 7.2. Findings on the Realisation of the Right

#### 7.2.1. Awareness of the Right

The DoSD embarked on various awareness campaigns during the 2011-2012 financial year to increase awareness of social assistance in rural areas. The DoSD held *imbizos* and media awareness initiatives such as radio shows, newspaper inserts and advertisements and communication via local leadership such as councillors and traditional leaders. Also, the South African Social Security Association (SASSA) developed and continues to implement the Integrated Community Registration and Outreach Project (ICROP). The ICROP aims to enable potential applicants in rural areas to gain access to social assistance and involves employees from SASSA, the Department of Home Affairs and the South African Police Services equipped with all the necessary resources to process applications in remote locations.

However, the DoSD has not indicated any initiative to increase awareness of the DoSD's services, other than social grants.

### 7.2.2. Progressive Realisation

The DoSD's definition of progressive realisation was quite forward thinking, particularly with compared with the views of other departments. The DoSD notes that "*measures to attain the goal must be determined expeditiously and effectively within available resources*"<sup>20</sup> and cites Constitutional Court precedents on the realisation of economic and social rights such as *Grootboom*<sup>21</sup> and the *Treatment Action Campaign*<sup>22</sup> cases. The DoSD succinctly states that "*the Constitution obliges the state to ensure universal access to social security, whilst at the same time, grants the state some latitude, one of which is the progressive realisation of the right by taking reasonable measures within the availability of resources. Section 27 requires that the development of a comprehensive social security system for all be financially viable.*"<sup>23</sup>

### 7.2.3. A Social Security Road map

The DoSD agreed with the commission that a social security roadmap is necessary and explained that a comprehensive social security paper had been prepared and submitted to Cabinet by the Inter-Ministerial Committee on Social Security (chaired by the Minister of Finance). The purpose of this was to highlight and discuss government's long term social security plans. This is also alluded to in the National Development Plan (which seeks to provide some high level insight into such a 'road map'). As the responsibility for developing this plan was assigned to the Inter-Ministerial Committee on Social Security, the DoSD claimed that it was not in a position to provide timeframes on the development of such a road map.

### 7.2.4. Measure of Poverty

The DoSD indicated that the country does not have a regulated poverty line and in the absence of such a poverty line, when undertaking research the DoSD uses either the World Bank's 2 US dollars a day poverty line, as was the baseline used for the Millennium Development Goal's to reduce poverty in half by 2015 or the poverty line as determined by the National Planning Commission for their National Development Plan (i.e. about R418 (in 2009 prices) per person per month).

<sup>20</sup> Department of Social Development (DoSD) Response to SAHRC 9<sup>th</sup> ESR Questionnaire (14 June 2013)

<sup>21</sup> Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169 (CC)

<sup>22</sup> Minister of Health and Others v Treatment Action Campaign and Others 2002 (10) BCLR 1075 (CC)

<sup>23</sup> DoSD (note 20 above)

### 7.2.5. Impact of Social Grants

According to the DoSD, South Africa does not have a comprehensive social security package and the parts that are available are fragmented across five different departments. As such, no comprehensive study has been done on the impacts of the South African social security system on poverty in the country.

Some research has been done however, on individual grants. During the course of the year the Child Support Grant (CSG) impact assessment demonstrated the positive impact the transfers have on nutrition, education and health. It also illustrated that adolescent recipients of the CSG were more likely to have positive educational outcomes, less likely to experience child labour and less likely to engage in risky behaviour. The study also showed a positive impact of the CSG in reducing the impact of poverty and vulnerability.

The DoSD does play a coordinating role in the social sector Expanded Public Works Programmes, food banks and community development to some extent. However, the DoSD concedes that *“poverty reduction requires a much larger effort from Government as a whole. Social grants remain the departments (and governments) largest contribution to the reduction of poverty. A central coordinating department such as the Department of Monitoring and Evaluation is better suited to provide a clearer picture of all the poverty reduction initiatives of government.”*<sup>24</sup>

### 7.2.6. Social Relief of Distress Fund

The Social Relief of Distress Grant (SRDG) is not automatically offered to every applicant that applies for another grant, as *“not everyone who applies for another grant is destitute and requiring social relief of distress.”*<sup>25</sup> However, the SRDG is offered to people that qualify for it and apply for another grant. *“Social relief of distress is also offered to other people who meet the criteria, but who are not applying for social grants.”*<sup>26</sup> According to regulation, the SRDG may be extended for a period not exceeding three months, once the original grant has expired. In total, the SRDG cannot be issued for a total period exceeding six months.

### 7.2.7. Rural Area Initiatives

According to the DoSD, the service delivery provision of the SASSA extends across the entire country. *“There are 331 local offices and 917 service points at which citizens can access*

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

*social grant services.*<sup>27</sup> In areas where there is no service point or local office, the SASSA provides mobile outreach services. For the 2013-2014 financial year, the SASSA has made a commitment to provide outreach services in 250 of the most deprived wards throughout the country, which are located in the 23 district municipalities that have been identified by the Presidency as requiring improved government services.

According to the DoSD, the above outreach programme reached 495 rural wards and provided access to social security for about 98 000 people. However, this indication is unqualified unless compared with the number of poor people in the country that require access to social security. This information is however not provided.

### **7.2.8. Governance**

The Commission raised the issue of poor governance at pay points, based on complaints submitted to the Commission, particularly during the study of Makhaza in Khayelitsha in the Western Cape. The DoSD did not adequately respond to all the issues of governance raised by the Commission, particularly issues of compliance at the SASSA pay-points and access to social security for vulnerable groups of people.

The DoSD did indicate that it was encouraging people, in association with the South African Post Office, to open Postbank accounts or other bank accounts to improve the disbursement of funds. Although beneficiaries did indicate their preferred method of payment when applying for the grant and the elderly tend to prefer cash payments.

In relation to security at the SASSA pay-points, the contracted service providers are required to secure the perimeter of the pay-points using armed security personnel and control access to pay-points with perimeter fencing.

### **7.2.9. Child-Headed Households**

Contrary to past policies, the DoSD does not seek to eliminate child-headed households (CHH) but rather seeks to empower these households by ensuring adult supervision of the household. *“The Children’s Act (Act 38 of 2005) provides for the care and protection of children in CHHs and section 137 allows for a child to be recognised as a head of a household, and the conditions under which this may occur.”*<sup>28</sup> However, the DoSD did not

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

provide figures of CHHs in South Africa nor did it elaborate extensively on support provided to CHHs.



## **8. THE RIGHT TO HAVE ACCESS TO WATER**

Section 27(1) (b) of the Constitution provides that “*everyone has the right to have access to sufficient food and water.*” This obligation is extended in section 27 (2), according to which the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights. The right to sufficient water intersects with environmental rights and is an enabling right for the enjoyment of other rights such as health and education.

The right to water is a shared competency of national, provincial, and local government. The national government, through the DWEA is responsible for setting national policy frameworks and standards for the delivery of water services, while provincial government must monitor and support local government, which is responsible for the actual delivery of water and sanitation services. Other key role-players are the Water Research Commission, the Water Institute of South Africa and NGOs like the Mvula Trust. Several municipalities have also involved the private sector in the delivery of water.

### **8.1. Recommendations on the Realisation of the Right from the 8<sup>th</sup> ESR Report**

The Department of Water Affairs (DWA) did not submit a response to the Commission’s ESR questionnaire in 2011-2012.

### **8.2. Findings on the Realisation of the Right**

#### **8.2.1. Access to Water and Sanitation**

The DWA considers the right to water and sanitation fulfilled when the basic service at an RDP-acceptable level is provided, but wants to see services continually improved. In terms of progressive realisation, service must be continually improved until an ideal is achieved. However, the DWA sees this as optional. The DWA also believes that six kilolitres per household per month, as a family of eight people, is sufficient, calculated by providing 25 litres per person per day. However, it does not indicate procedures for provision for a family larger than eight.

The DWA does believe that residents with access only a communal standpipe are able to access 6 kilolitres per month but is not able to assess or confirm this. Instead, it indicates that water services authorities are supposed to meter the standpipes.

**Table 10: Access to Water by Province (2012)**

Province	RDP-Acceptable			Not RDP-Acceptable	
	Piped Water within Dwelling	Piped Water within Stand	Piped Water within 200 Meters from Stand	Piped Water more than 200 Meters from Stand	No Access to Piped Water
Eastern Cape	32.8%	16.6%	18.6%	9.9%	22.2%
Free State	44.8%	44.3%	6.2%	2.6%	2.2%
Gauteng	62.1%	27.3%	6.0%	2.8%	1.8%
KwaZulu-Natal	40.0%	23.6%	14.8%	7.6%	14.1%
Limpopo	18.4%	33.9%	20.5%	13.2%	14.0%
Mpumalanga	35.7%	36.0%	9.2%	6.6%	12.6%
North West	29.3%	40.0%	14.3%	8.0%	8.4%
Northern Cape	45.8%	32.3%	12.8%	6.6%	2.6%
Western Cape	75.1%	13.3%	8.3%	2.4%	0.9%
South Africa	46.3%	27.1%	11.7%	6.2%	8.8%

According to the Key Results from the 2011 StatsSA Census, 46.3% of households in South African have access to piped water and just over 85% have access to water that is of a RDP-acceptable level.<sup>29</sup> This level of access, however, is not reflected across all provinces in the country. In Eastern Cape, less than 70% of households have access to piped water in their dwelling, stand or within 200 meters from their stand, while just over 72% of households in Limpopo have the same level of access.

Both the DWA and the DoHS accept ventilated pit latrines (VIPs) as an acceptable form of sanitation and cite the White Paper on Sanitation that imposes VIPs as a minimum standard. In addition, the DWA states that “a VIP can be constructed in any weather condition whether humid or dry if it constructed according to the right SANS 10365-1:2003.” Research by the Commission and other organisations, however, indicates VIPs become full very quickly and are not maintained by municipalities.<sup>30</sup> As such, they pose a serious health risk to communities. The DWA states that in some areas, such as rural and peri-urban, it is difficult for water-borne toilets to be constructed, but waste removal in rural areas is difficult and local government often does not rise to the challenge.

<sup>29</sup> Acceptable level according to the 1994 Reconstruction and Development Programme, still in use currently.

<sup>30</sup> Kathy Eales in Bond, P. *The Neoliberal Loo*, 19 February 2008

**Table 11: Access to Sanitation by Province (2012)**

Province	RDP-Acceptable			Not RDP-Acceptable		
	Flush Toilet	Chemical Toilet	Ventilated Pit Latrine	Unventilated Pit Latrine	Bucket Latrine	None
Eastern Cape	43.0%	3.0%	13.9%	20.2%	2.3%	12.7%
Free State	67.1%	0.6%	87.0%	13.5%	5.5%	3.1%
Gauteng	85.4%	1.1%	2.4%	7.4%	1.8%	1.1%
KwaZulu-Natal	45.0%	8.2%	14.4%	20.7%	1.7%	6.3%
Limpopo	21.9%	0.9%	15.1%	52.9%	0.6%	7.2%
Mpumalanga	43.8%	1.4%	12.1%	33.9%	0.9%	6.3%
North West	45.4%	0.8%	11.3%	34.2%	1.0%	5.8%
Northern Cape	66.0%	0.6%	9.1%	10.7%	4.0%	8.0%
Western Cape	89.6%	0.9%	0.6%	0.6%	3.7%	3.1%
South Africa	60.1%	2.5%	8.8%	19.3%	2.1%	5.2%

Information from the most recent StatsSA census shows that just over 60% of households have access to sanitation via a flush toilet, while just over 70% of households have access to sanitation that is of an RDP-acceptable level. Again, this level of access is not enjoyed across the country. Almost two-thirds of Limpopo does not have access to sufficient sanitation, while just under half the population in the Mpumalanga and North West provinces do not have sufficient access. KwaZulu-Natal also has a below average level of access to sanitation. Of particular concern is the Eastern Cape, where 12.7% of households do not have access to any form of sanitation and the Free State, Northern Cape and Western Cape provinces, which have a large number of households still using a bucket for sanitation. It is important to note that the bucket system should have already been completely phased out by government.

It is clear that the DWA views access to water and sanitation purely as 'physical' access, which is very narrow in the Commission's view. Access must encompass widely parameters such acceptability, appropriateness and adaptability. Furthermore, service delivery must be conducted with sufficient engagement with communities and access to information.

Findings from the Commission's public hearings on the right to water and sanitation in 2012 showed that municipalities did not consider integral aspects of provision such as access for women and girls, who were often victims of assault when using facilities that were at a distance from their homes. People with disabilities also suffered from a lack of access to appropriate facilities and

were unaware of policies to integrate their needs into service delivery. It is necessary that the DWA assess access from a more holistic perspective to ensure that the right is being fully realised.

### **8.2.2. Infrastructure**

When asked about the maintenance of infrastructure, the DWA indicated that monitoring occurred via community mobilisation, where complaints are shared with municipalities, who then take responsibility for operations and maintenance. Findings from the Commission's hearings on the right to water and sanitation showed that much of the lack of access to water and sanitation is due to poor infrastructure and maintenance. Municipalities often do not have the resources or capacity to deal with maintenance and contractors are often paid for jobs that are incomplete or of poor quality.

### **8.2.3. Support to Local Government**

Since March 2011, the DWA has a more structured approach to dealing with municipalities, which is described in the concept paper *Enhanced Local Government Support Approach*. The project concentrates on revitalising and strengthening the collaboration between national and provincial departments. The DWA is liaising with the Department of Cooperative Governance and Traditional Affairs (CoGTA) and the South African Local Government Association (SALGA) to capacitate water services authorities to improve service delivery at a local level. When the Commission held its water and sanitation hearings in all provinces in South Africa, it found that local government was failing in its mandate to provide and maintain services in communities. Given that the above project was launched in 2011, the Commission hopes that some improvement is noted in the near future. Also during the 2011-2012 financial year, the DWA held training programmes to develop water services authorities and councillors with a broader understanding of the water sector. The DWA has also set up a Rapid Response Unit to deal with the poor state of water and wastewater systems and failures.

### **8.2.4. Quality**

Blue drop certification is an indication of water quality and green drop certification is an indication of the quality of wastewater treatment at a particular plant. In terms of blue drop assessment, the higher the score, the better the quality of drinking water, but in the case of the green drop assessment, the higher the score, the higher the risk.

**Table 12: Blue Drop and Green Drop Score per Province (2012)**

Province	Blue Drop	Green Drop
Eastern Cape	82%	75%
Free State	74%	84%
Gauteng	98%	63%
KwaZulu-Natal	92%	58%
Limpopo	79%	78%
Mpumalanga	61%	69%
North West	79%	60%
Northern Cape	68%	66%

The level of water quality in Mpumalanga, the Northern Cape and the Free State is extremely concerning and the same can be said of wastewater treatment in most provinces except for KwaZulu-Natal, the North West, Northern Cape and Mpumalanga. Using these figures as a baseline, the Commission will have to liaise with the DWA on initiatives to address these concerns and to assess improvements in water quality and wastewater treatment.

In addition, the Commission heard many complaints from both communities and municipal officials about the poor state of water and waste water treatment plans in provinces, and has since engaged with the DWA over plans to refurbish and maintain these facilities. These plans will be closely monitored.

#### **8.2.5. Strategic focus area 2012-2013: Water and Sanitation**

Each year the Commission selects a particular right, which it will give specific attention to during the next fiscal year. The Commission selected the rights to water and sanitation as its strategic focus area for the period 2012 to 2013. Following extensive investigations into the rights to water and sanitation (as mentioned above), the Commission compiled a report in which it made specific findings and recommendations for government departments to address challenges related to these rights.

The Commission found that despite government's assertions that access to water and sanitation across the country is substantive and adequate, poor communities in South Africa suffer from a severe lack of access to basic services. It is evident that while national statistics exhibit a high level of service delivery, access at local levels, particularly in poor and rural communities, is below the national averages. In addition, many homes have broken or inoperable infrastructure, which might

have been recorded as a “serviced” household, but does not in fact have access to water and sanitation.

Some households have never had access to any form of service, some still utilise buckets as sanitation facilities, and most have infrastructure that is not operational or is broken, which effectively amounts to a lack of access. Overall, infrastructure in the areas that the Commission visited is in an appalling state, with communities complaining of broken taps and pipes, broken toilets, overloaded and un-cleaned sanitation facilities and raw sewerage in the streets and in water sources. Residents accessed water from untreated water sources such as rivers and dams and used unventilated pit latrines, buckets or open fields for sanitation. The state of water and waste water treatment plants was equally concerning.

A lack of access to adequate water and sanitation impacted most of peoples’ right to education, health and environment. A lack of access to water meant that communities had no means of ensuring personal hygiene or caring for ill family members and friends. A lack of sanitation facilities at school led to illnesses, some contagious and prolonged ill health. Female learners were inclined to miss school during their menstrual cycle, due to a lack of adequate water and sanitation facilities.

There were complaints from all provinces on the lack of effective implementation of projects and monitoring by government departments. Most criticism was directed at ward councillors and municipalities for a lack of monitoring and action to solve problems. There was a lack of monitoring of the work of contractors that were hired by municipalities, which also led to allegations of corruption. As such, contractors often under-performed or violated the conditions of their contracts with no follow-up or recourse. There were also allegations of corruption leveled at government officials. In addition to being non-responsive, communities and CSOs complained that government does not engage sufficiently with communities and that there is complete lack of communication and access to information. There was also an alleged lack of education and awareness on the rights of people and on the use of facilities that were provided. It is because of this lack of a rights-based approach to service delivery that many inappropriate decisions are made by local government departments.

Women, children and people with disabilities were specific groups of people especially affected by the lack of access to water and sanitation. As the main caregivers in a home, women engage in activities like cleaning, cooking, caring for ill family members or friends, washing and caring for children, all of which are impacted on by a lack of access to water. Women and girls often use fields for sanitation in the dark as they are embarrassed to do so during the day, and are then prone to assault.

On 31 July 2013, the Commission held a roundtable discussion with government departments of which the purpose was to present the key recommendations and hear from government officials if the recommendations were reasonable and achievable. Based on discussions from this event and a further interactive process of engagement between government departments and the Commission, the recommendations were finalised. It was agreed that in a consolidated effort to overcome the challenges related to accessing the rights to water and sanitation, the relevant parties would endeavour to implement these recommendations. The recommendations included *inter alia* the following:<sup>31</sup>

- The Presidency, through the DPME, will engage with existing government multi-department structures that deal with water and sanitation on the perceived lack of coordination and oversight in relation to the provision of water and sanitation. Solutions to these problems must be communicated to the Commission. (DPME)
- It is evident that some service delivery policies that are implemented at a local level do not have a human-rights focus or are not implemented from a human rights-based approach. It is necessary for CoGTA to conduct an audit of relevant policies and liaise with the Commission to reformulate those policies that are not in line with the Constitutional principles of human rights. (CoGTA)
- CoGTA and the DSD are requested to review the national indigent policy to consider ways in which it can be refined and improved to ensure that the poor in the country are accessing free basic services. CoGTA must work with local government departments to ensure that there is consensus and uniformity in the application of the indigent policy across municipalities in the country. (CoGTA, DSD)
- It is evident that there is too much pressure on local government in terms of its responsibilities and functions, without the associated level of oversight and accountability from provincial and national government. Despite the fact that water and sanitation service delivery is the competency of local government, many municipalities, particularly in poor or rural areas, do not have the skills and capacity to implement their mandate. Therefore, greater oversight and support is needed from national and provincial government. If vacancies remain unfilled or there is a lack of capacity and skill at a local level, redeployment from other municipalities or national and provincial departments might be necessary. (CoGTA, All)

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<sup>31</sup> Report on the Right to Access Water and Sanitation, SAHRC (2012 – 2013).

- The DWA should begin a process to upgrade water and waste water treatment plants, including budget allocation, project management, and monitoring and evaluation from national government, with appropriate timelines allotted to this process. Information on the implementation of such programmes must be communicated to the affected municipalities, communities and the Commission. (DWA)
- Information on contracts with the private sector should to be readily available to all public bodies, civil society organisations and communities and publicised on relevant government websites. (CoGTA)
- Private companies and contractors that contravene agreements must be penalised by the relevant government departments. (National Treasury, DWA, DoHS, Presidency, CoGTA, DPW)
- The “bucket system” should be eradicated as soon as possible in all provinces. The relevant government departments should agree on plans with timelines for the eradication of buckets in all existing settlements. This plan must be communicated to affected communities and the Commission once finalised (DoHS, DWA)



## 9. CONCLUSION AND RECOMMENDATIONS

The South African Human Rights Commission, annually, requests information from government departments on the steps that they have taken towards the realisation of economic and social rights. In December 2012, questionnaires were sent to seven government departments requesting information on specific rights, including, the right to adequate housing, basic education, environment, food, health, social security and water and sanitation. The Commission received responses to all questionnaires by June 2013, and was able to complete this report on the realisation of economic and social rights as required by S184(3) of the Constitution of the Republic of South Africa.

### 9.1. The Right to Adequate Housing

#### 9.1.1. Findings

- 9.1.1.1 The Presidency, through the DPME, will engage with existing government multi-department structures that deal with water and sanitation on the perceived lack of coordination and oversight in relation to the provision of water and sanitation. Solutions to these problems must be communicated to the Commission and progress reports submitted. (DPME)
- 9.1.1.2 A national human rights campaign, funded by national government, should be rolled out in all provinces, which will focus on the drafting and enforcement of budgets and Integrated Development Plans (IDPs). This will allow communities to hold government departments to account more effectively by scrutinising spending and assisting monitoring bodies. Although the Commission has an advocacy mandate, the current capacity and funding does not allow for a national campaign of this nature. It should run for at least two years. (National Treasury, CoGTA)
- 9.1.1.3 The DoHS acknowledged that consumers were not adequately informed of their rights and that education should be a priority.
- 9.1.1.4 When providing an RDP home, the DoHS did not consider the number of occupants in relation to the size of the house.
- 9.1.1.5 The DoHS was revising the national norms and standards for housing to ensure compliance with National Building Regulations in terms of energy efficiency.
- 9.1.1.6 The housing backlog has not been decreased at all in some provinces, despite attempts by the DoHS to eradicate the backlog. The provinces of Gauteng, Eastern Cape, KwaZulu-Natal and the North West were the worst off.

- 9.1.1.7 The DoHS's demand data base is merely a tool for planning at a provincial level and currently, there is no list that beneficiaries can access to assess their position on the waiting list or time before a house will be delivered.
- 9.1.1.8 Service delivery, particularly at a local level is not framed from a human rights perspective. As such, communities are often excluded from decision-making on developments that affect them.
- 9.1.1.9 The DoHS did recently perform an audit of ownership of home in South African townships, but no details or findings of the audit were provided.
- 9.1.1.10 In relation to the quality of housing, the DoHS indicated that all contractors must now be registered with the National Home Builders Council.
- 9.1.1.11 No information was provided on the number of houses that were demolished due to poor quality during the 2011/2012 financial year or the cost to the DoHS of poor quality housing.
- 9.1.1.12 A study will be conducted during the 2013/2014 financial year on the status of backyard dwellers, but the DoHS currently views backyard dwellers as other residents without access to housing, who should register with the DoHS for government housing.
- 9.1.1.13 The accreditation system conducted by the DoHS is aimed at devolving the power from provincial departments to local departments for the provision of housing. To date, eight municipalities have been accredited to administer national housing programmes and a further eighteen are awaiting accreditation.
- 9.1.1.14 The DoHS acknowledges that people living in informal settlements and defunct buildings in urban areas are at health risk and has therefore prioritised settlement upgrading and provisions for emergency housing.
- 9.1.1.15 The DoHS's response does not provide an adequate recourse for those people who will be located in an informal settlement for the foreseeable future and do not have access to services including water, sanitation and healthcare.

### **9.1.2. Recommendations**

- 9.1.2.1 The DoHS must work with the DoBE on adult education when planning awareness campaigns, to ensure that beneficiaries that are illiterate get the full benefit of the campaigns.
- 9.1.2.2 Media campaigns must be conducted in local languages.
- 9.1.2.3 Ward councillors and local government departments must receive training in human rights and service delivery.
- 9.1.2.4 The DoHS must conduct a process of identification and prosecution of unscrupulous officials to alleviate corruption in the housing sector.
- 9.1.2.5 Clarity on the demand data base is required.

- 9.1.2.6 Provisions for an RDP house should be revised to consider the size of a family.
- 9.1.2.7 National norms and standards for construction must be revised expeditiously.
- 9.1.2.8 The DoHS must put in place and communicate on strategies to alleviate housing backlogs in urban areas and areas of high migration, such as larger cities.
- 9.1.2.9 The Commission will request from the DoHS, information on the audit undertaken in South African townships.
- 9.1.2.10 The DoHS must continue to work with CoGTA and the DWA to improve service-delivery at a local level.

## **9.2. The Right to Basic Education**

### **9.2.1. Findings**

- 9.2.1.1 The DoBE agrees that the system of ranking by geographic location as opposed to poverty level is flawed and is considering collapsing one, two and three into one category and quintiles four and five into another category.
- 9.2.1.2 It is unclear how the DoBE arrived at the assumption that there are no schools without learning and teaching materials.
- 9.2.1.3 The Commission's investigations into the delivery of resources to schools indicate that not all schools in the country have access to learning materials.
- 9.2.1.4 The DoBE acknowledges that there have been problems with the provision of nutrition to learners, particularly in poorer provinces. A number of provinces have not been able to ensure the implementation of the prescribed menus, generally because of corruption in some provinces and the lack of capacity in others.
- 9.2.1.5 The DoBE recently circulated Guidelines on dealing with sexual harassment and violence and had already promulgated laws for prosecuting educators guilty of these offences.
- 9.2.1.6 In an effort to deal with safety and security, the DoBE provided fences and gates, security guards for six months, CCTV cameras, hand-held metal detectors and high-mast security lights to 585 schools across the country that have previously experienced high levels of crime and violence.
- 9.2.1.7 The DoBE was asked to also provide information on addressing corporal punishment in schools, but this was not done.
- 9.2.1.8 There are 457 000 learners with disabilities that do not have access to education.
- 9.2.1.9 The provisions to access education for non-national children seem at odds with the Constitution and jurisprudence provides that everyone has the right to basic education, particularly children that have no control over their situation or whether their nationality.
- 9.2.1.10 The learner to educator ratio had decreased since 2008 in public schools, while the percentage of qualified educators had increased.

- 9.2.1.11 There were also various programmes implemented to improve the quality of education in schools.
- 9.2.1.12 The drop-out rate for children under fifteen was low, but increased considerably for children aged sixteen to eighteen, particularly girls.

### **9.2.2. Recommendations**

- 9.2.2.1 The DoBE must revise its ranking system to ensure that all schools with learners that live in poverty are exempt from fee payments.
- 9.2.2.2 A thorough audit of the level of access to learning materials and resources must be conducted in every school in South Africa. The DoBE cannot rely solely on information from provincial offices.
- 9.2.2.3 The DoBE must work with the DoSD to ensure that nutrition is provided in schools that require it.
- 9.2.2.4 The DoBE must collect and disseminate information on the level of corporal punishment in schools and strategies to address this.
- 9.2.2.5 The DoBE must revise its services in relation to learners with disabilities to increase the level of access.
- 9.2.2.6 The DoBE must assess the causes of the high drop-out rate for learners' aged sixteen to eighteen and implement programmes to combat this.
- 9.2.2.7 Access for female learners must be sustainably promoted.
- 9.2.2.8 Education and awareness strategies must be revised to include access to people in rural areas and people without access to the internet.

## **9.3. The Right to Environment**

### **9.3.1. Findings**

- 9.3.1.1 Although the DEA has implemented numerous communication strategies, these strategies are not appropriate for communities in rural and outlying areas or people without access to the internet.
- 9.3.1.2 Although the DEA and DMR has reached an agreement on the amendment of the MPRDA and NEMA in relation to mining regulations, the decision-making authority lies with the DMR, which is concerning for the environment and communities situated around mines.
- 9.3.1.3 Little or no information was provided on the steps that the DEA is taking, with the DWA and DMR, to address or charge mines that are operating without water licences.

- 9.3.1.4 The DEA indicated that in 2012, the provincial DEA decided to take administrative enforcement action against Engen, a company in South Durban that was accused of various environmental violations. The DEA did not provide information on the outcome of this process.
- 9.3.1.5 No clarity has been provided on the steps that the Department has taken in order to implement the National Climate Change Response Strategy.

### **9.3.2. Recommendations**

- 9.3.2.1 Synergy between process of application for mining or prospecting licenses and water-use licenses is required and the DEA must work with the DWA and DMR to ensure this.
- 9.3.2.2 More information on the DEA's liaison with Engen in the South Durban industrial basin is required.
- 9.3.2.3 The DEA must ensure that the climate change response strategy is implemented in all provinces without delay.

## **9.4. The Right to Food**

### **9.4.1. Findings**

- 9.4.1.1 Problems with access to food are most dire in the North West and Northern Cape, where just under one-third of residents have access to an inadequate food supply.
- 9.4.1.2 A National Food Consumption Survey conducted by the DoH in 2005 indicated that child hunger had increased significantly in urban areas since 1999.
- 9.4.1.3 The survey also showed that in 2005, 18% of South African children were stunted.
- 9.4.1.4 Stunting was higher in formal rural areas than tribal areas or informal urban areas, and decreased with age.
- 9.4.1.5 Reasons for poor food security includes unemployment, migration, high food prices, limited dietary diversity and poor agricultural production.
- 9.4.1.6 The DAFF has implemented various programmes to address issues of poor food security in South Africa.
- 9.4.1.7 The DAFF also employed extension officers that provide advisory support to households in terms of agricultural production and access to food.
- 9.4.1.8 The DAFF is exploring new production technologies to deal with the lack of access to resources by some farmers, through provincial and district offices and with the assistance of extension officers.

9.4.1.9 Although the DAFF has not conducted any studies to assess the long-term viability and impact of GMF's, it considers all genetically modified organisms (GMOs) safe and in line with international best practice.

#### **9.4.2. Recommendations**

9.4.2.1 More recent information on the level of access to food, access to food for children and the rates of stunting is required.

9.4.2.2 Impact assessments must be done on programmes implemented to address issues of food security.

9.4.2.3 Impact assessments must be done on the programme to improve production technologies to deal with the lack of access to resources

9.4.2.4 The DAFF must conduct independent studies on the impact of GMOs on the health and well-being of people and on the environment.

### **9.5. The Right to Health**

#### **9.5.1. Findings**

9.5.1.1 The DoH indicated that infant, child and maternal mortality rates have fallen.

9.5.1.2 External research indicates that maternal mortality rates have increased.

9.5.1.3 Three Ministerial Advisory committees have been established to deal with maternal, infant and child mortality.

9.5.1.4 The causes of infant and child mortality have been identified as pneumonia, diarrhoea, malnutrition, HIV related illness and tuberculosis.

9.5.1.5 The causes of maternal mortality are HIV/AIDS, obstetric haemorrhage, complications relating to hypertension in pregnancy, pregnancy-related sepsis and medical and surgical disorders.

9.5.1.6 The DoH developed the National Core Standards for Health Establishments in South Africa and a subset of these focusing on six priority areas, which included cleanliness.

9.5.1.7 The DoH states that its policies prioritise the health of women, children and lactating mothers and the DoH has a joint project with the Department of Correctional Services to ensure access to healthcare for prisoners.

9.5.1.8 Access for older persons and people with disabilities will be achieved through the revitalisation of PHC facilities and ward-based outreach programmes.

- 9.5.1.9 While South Africa is improving in terms of access to clinics, access to community health centres remains concerning especially given the need for healthcare in rural and outlying areas.
- 9.5.1.10 The reason patients by-pass PHC facilities, when they do have access, is the lack of medicines and trained doctors at a primary health care level.
- 9.5.1.11 The current vacancy rate at PHC facilities for both funded and unfunded posts is 39%.
- 9.5.1.12 Although the DoH acknowledges that there is limited access to Termination of Pregnancy facilities in South Africa, it believes that the solution to this problem is to increase access to contraception services and reproductive health services.
- 9.5.1.13 The primary purpose of the NHI is to improve services for all South Africans, including disadvantaged individuals and groups and to improve accessibility of quality health services.

## **9.5.2. Recommendations**

- 9.5.2.1 Infant, child and maternal mortality rates must be monitored to assess the impact of initiatives to reduce these rates.
- 9.5.2.2 Incentives should be provided for users of PHC facilities.
- 9.5.2.3 The DoH must ensure that PHC facilities are well-resourced so that they are utilised more often.
- 9.5.2.4 Access to health for vulnerable groups, such as migrants, domestic workers and people with disabilities must be monitored more effectively.
- 9.5.2.5 The vacancy rate at PHC facilities must be addressed.

## **9.6. The Right to Social Security**

### **9.6.1. Findings**

- 9.6.1.1 Although the DoSD has implemented various awareness-raising campaigns, there is no targeted awareness around services other than social grants.
- 9.6.1.2 The DoSD's definition of progressive realisation was quite forward thinking, particularly when compared with the views of other departments.
- 9.6.1.3 The DoSD agreed with the commission that a social security roadmap is necessary and explained that a comprehensive social security paper had been prepared and submitted to Cabinet by the Inter-Ministerial Committee on Social Security.
- 9.6.1.4 The DoSD indicated that South Africa does not have a regulated poverty line and usually uses the World Bank's standard of 2 US dollars a day.

- 9.6.1.5 No studies, by the DoSD, were done on the impact of the social security system as a whole on poverty in South Africa.
- 9.6.1.6 Studies by civil society demonstrated the positive impact the transfers have on nutrition, education and health.
- 9.6.1.7 The service delivery provision of the SASSA extends across the entire country.
- 9.6.1.8 Where there is no service point or local office, the SASSA provides mobile outreach services.
- 9.6.1.9 The DoSD was encouraging people, in association with the South African Post Office, to open Postbank accounts or other bank accounts to improve the disbursement of funds.
- 9.6.1.10 The DoSD seeks to empower child-headed households by ensuring adult supervision of the household.

## **9.6.2. Recommendations**

- 9.6.2.1 The DoSD must take steps to ensure that the social security roadmap is passed by the Ministerial committee and circulated widely for public comment.
- 9.6.2.2 An impact and sustainability study is needed on the social security in South Africa.
- 9.6.2.3 The DoSD must continue to monitor the quality of SASSA offices and service delivery to beneficiaries of social grants.

## **9.7. The Right to Water and Sanitation**

### **9.7.1. Findings**

- 9.7.1.1 In terms of the progressive realisation of water and sanitation, services must be continually improved until an ideal is achieved. However, the DWA sees this as optional.
- 9.7.1.2 The DWA does believe that residents with access only to a communal standpipe are able to access six kilolitres per month, but is not able to assess or confirm this.
- 9.7.1.3 According to 2011 Census, 46.3% of households in South Africa have access to piped water and just over 85% have access to water that is of a RDP-acceptable level.
- 9.7.1.4 The census also shows that just over 60% of households have access to sanitation via a flush toilet, while just over 70% of households have access to sanitation that is of an RDP-acceptable level.
- 9.7.1.5 The DWA indicated that monitoring of infrastructure should occur via community mobilisation, where complaints are shared with municipalities, who then take responsibility for operations and maintenance.



- 9.7.1.6 Since March 2011, the DWA has a more structured approach to dealing with municipalities, and concentrates on revitalising and strengthening the collaboration between national and provincial departments.
- 9.7.1.7 The DWA is also liaising with the CoGTA and the SALGA to capacitate water services authorities to improve service delivery at a local level.
- 9.7.1.8 The level of water quality in Mpumalanga, the Northern Cape and the Free State is extremely concerning.
- 9.7.1.9 Wastewater treatment is a concern in most provinces except for KwaZulu-Natal, the North West, Northern Cape and Mpumalanga.

## **9.7.2. Recommendations**

- 9.7.2.1 The DWA must revise its conditions for progressive realisation to ensure that services are continually improved.
- 9.7.2.2 Access to services in poorer provinces must be addressed.
- 9.7.2.3 The DWA must work with the DWA and the DMR to prosecute mining companies that are operating without water use licenses.
- 9.7.2.4 The DWA must continue to strengthen the efficiency and capacity of local government departments to improve services at a local level.
- 9.7.2.5 Improved monitoring of water and sanitation infrastructure is required.
- 9.7.2.6 A coordinated strategy for the improvement of water and wastewater treatment plants is required.
- 9.7.2.7 The Commission also requires more direct and simple information on tariffs charged to domestic users, industry and other private sector users.