

2nd Economic & Social Rights Report 1998 – 1999

EXECUTIVE SUMMARY



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A INTRODUCTION

The Constitution of the Republic of South Africa Act 108 of 1996 calls on the state to “respect, protect, promote and fulfil the rights in the Bill of Rights.”¹ It goes further, however, by establishing a mechanism for monitoring and assessing the realisation of the economic and social rights. Section 184(3) thus empowers the South African Human Rights Commission to require relevant organs of state to provide the Commission with measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.² The Commission has also included the rights pertaining to land and prisoners in this process.

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

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

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

The executive summary provides an overview of the monitoring process and highlights some of the achievements and challenges for each of the economic and social rights. The summary also contains general recommendations to improve the monitoring process and the steps that government must take to respect, protect, promote and fulfil the realisation of economic and social rights.

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

N. Barney Pityana
CHAIRPERSON
South African Human Rights Commission

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

² Section 184(3) *ibid.*

B THE MONITORING PROCESS

The economic and social rights monitoring process for the period 1st April 1998 to 31st March 1999 began with the development of socio-economic rights protocols (questionnaires). These protocols are used as monitoring instruments for eliciting information from state organs. The protocols were developed in consultation with a Canadian expert in the analysis of health, economic and social policy. Inputs from government departments and non-governmental organisations were also considered.

The protocols covered questions on policy, legislation, budget, monitoring and outcome measures that were instituted by state organs during the reporting period of April 1998 to March 1999. Each right, as listed in section 184(3), has its own protocol which includes questions on measures that were instituted towards the realisation of economic and social rights for socially and economically vulnerable groups. The protocols also required any additional information that is not covered by the protocols but pertinent to the realisation of economic and social rights.

The protocols were sent to both National and Provincial Departments in August 1999. Letters were sent to Cabinet Ministers, Premiers and Directors-General to inform them about the monitoring process and to establish contact with the relevant departments in order for the Commission to obtain the information required in terms of section 184(3) of the Constitution.

The response rate by many government departments to the Commission's protocols was not satisfactory. Most departments failed to submit the required reports within the stated time frames. Some departments requested extensions in submitting their reports and the Commission granted a month's extension. However, many departments failed to comply with this extension and did not submit their reports in time.

In order to address this problem, subpoenas were served by the Commission on departments that failed to submit the reports. The subpoenas required concerned departments to appear before the Commission and to provide reasons for their failure to provide the required responses to the protocols. In response to the subpoenas, most departments sent their reports immediately thereafter and were therefore released from the obligation to appear before the Commission.

The Eastern Cape Department of Health and the Northern Province Department of Education were the departments that appeared before the Commission. In its rulings after the hearings, the Commission ordered these departments to submit the requisite reports. It also indicated with emphasis that failure to comply with the extension would result in the Commission instituting criminal proceedings in terms of section 18(a) and (i) of the Human Rights Commission Act of 1994.

One of the major concerns in the process was the conduct of certain government officials in the Eastern Cape Department of Housing and Local Government. The officials submitted the same report as the one from National Department of Housing.

The Commission has found this conduct fraudulent, dishonest and a criminal offence in terms of section 18 of the Human Rights Commission Act. In response to this conduct, the Commission requested the Director of Public Prosecutions to institute criminal proceedings against the concerned officials.

Despite all the problems, the process of evaluation of government responses began in mid-December 1999. The evaluation was based on the Commission's protocols, and an attempt was also made to verify the information received. The analysis of each economic and social right is divided into five main sections of the protocols; these being policy measures, legislative measures, monitoring, budgetary measures, and outcome measures. The sections were further subdivided into 'summary of the responses', 'commentary' and 'recommendations'. The subsection on commentary covers the critique or analysis of the responses from government using where possible relevant supplementary information on the socio-economic right. Recommendations on how to address the challenges for each of the economic and social rights were also made. The final chapter of the report provides a general critique of the government responses and the process, and makes general recommendations on improving both the reporting process and the realisation of economic and social rights.

C SUMMARY OF RIGHTS

The summaries are a synopsis of the major achievements and challenges for the respective economic and social rights. The detailed responses of government to the protocols and the analysis of these responses are provided in detail in the report.

i) EDUCATION

The National Department of Education (NDE) has made significant progress in policy developments. The programme on Early Childhood Development (ECD) has reached about 2 800 non-governmental Early Childhood Learning sites serving approximately 70 000 disadvantaged learners. The Eastern Cape has established community-based centres on ECD as pilot projects, while the Northern Cape has developed a funding and admission policy for ECD centres.

ABET, which addresses the problem of adult illiteracy, is seen by government as an important tool for social participation and economic development. The government aimed at expanding ABET from being available to 370 000 in 1997 to becoming available to 691 875 people by 2001. Provincially the Eastern Cape provided ABET through community based centres and the Western Cape has established learning centres for adults and youth. Gauteng and KwaZulu-Natal have developed policy measures that will intensify the delivery of formal ABET programmes. Gauteng has also opened inner-city schools for homeless people and street children. Mpumalanga developed a policy which would guarantee the provision of ABET in existing schools and the Northern Cape has established rural adult learning centres.

The policy on Outcome Based Education (OBE) introduced by the NDE aimed to make education more skills based for greater social participation and economic development and with the resultant restructuring of formal education. The Culture of Learning, Teaching and Service (COLTS) campaign aimed to establish and strengthen governing structures, initiate institutional re-organisation and undertake human resource capacity building for dysfunctional educational institutions.

The Education for Learners with Special Education Needs (ELSEN) policy is meant to make education more responsive and sensitive to learners with special education needs. The objectives of ELSEN entail sensitising educators and providing the necessary infrastructure for the needs of learners with disabilities. In KwaZulu-Natal there are 58 ELSEN schools with the necessary support resources and the Western Cape instituted a policy on the inclusion of learners with disabilities into mainstream schools.

The South African Schools Act 84 of 1996 provides for compulsory education for learners between the ages of seven to fifteen years. The adoption of national norms in April 1999 has meant that no learner can be denied education due to inability to pay school fees. However, it is still not clear as to whether primary education is free and

compulsory. The national norms and standards policy has assisted in removing inequities in the distribution of public resources for education, within and across provinces providing for more funds to the poorest schools.

Gender Equity Units (GEU's) were meant to have been established nationally and at the provincial levels. Some progress has been made in the Eastern Cape where a gender sub-unit was established and in KwaZulu-Natal where a policy on gender and race equity was developed to balance gender and race registration in schools. The Mpumalanga province established GEUs in the provincial, district and local offices and also in schools. Lastly the Western Cape has established informal structures that would co-ordinate gender equity in education.

Expenditure for education constitutes almost 22% of the country's total budget and compares favourably with other developing countries. The allocation of funds for both primary education and ECD has steadily increased in line with the provision of compulsory basic education and the NDE's rationalisation of financial resources into priority areas. However, schools spend more money on personnel than on non-personnel issues. The provision of facilities to ensure the right to a basic education remains the central challenge:

- 43% of young adults and 17% of the youth are illiterate.
4 407 schools are in a "poor" or "very poor" condition.
- 9% of schools have a shortage of classrooms. 64 742 classrooms are needed.
2,3 million learners attend schools that do not have water within walking distance.
-
- Only 11% of primary schools and 36% of secondary schools have recreation

ii)

adopted in Principle 2 of the Rio Declaration on Environment and Development. To this end, the environmental management, sustainable coastal development, and integrated pollution and waste management which are based on the White Paper on Environmental
a. Special measures for certain vulnerable groups were provided and relate to issues of access to resources, participation in governance,

Strategy (NWMS) presents a long-issues, needs and problems in the area of waste management.

The policy measures of the Department of Health (DoH) on environmental rights to ensure that an equitable, affordable environmental health service was made accessible to all South Africans. However, the DoH made no mention of the disposal of medical waste, for

which the DoH is responsible and did not provide any information on toxic waste that was imported into the country.

The Department of Water Affairs and Forestry's (DWAF) major initiative on environmental rights is the Rural Sanitation Investment Programme that meant to 'ensure at least basic sanitation for all before investing in a high level of service for some.' The DWAF was also involved in the development of the NWMS and the DWAF's priority in this regard is to offer sustainable refuse removal to 300 000 households of formerly disadvantaged groups, and to provide a 'sustainable and environmentally acceptable refuse removal' to everyone. The DWAF has also set minimum standards that need to be met to prevent pollution of the environment from waste that could be harmful to human health or well-being and to allow communities to enforce closure of sites where the sites have been found to be detrimental to the environment or community.

Although information on indicators for the state of the environment was not adequately provided by the DEAT, the department has developed the National State of the Environment Report (SoER) which analyses the impact of social, economic, and political activities on biophysical components of the environment. The main findings of the SoER that relate to water, atmospheric and soil pollution as requested in the protocol are analysed in Chapter 5 of the 2nd Economic and Social Rights report. Some of the major challenges that need to be addressed are:

- Fuel-wood collection and usage has been implicated in causing ill health, soil erosion, and atmospheric pollution; the use of low-smoke fuels as an energy source should be promoted and the service delivery of water and electricity in informal settlements and rural areas should be made a priority.
- Industrial contamination of water needs to be assessed and information on hazardous waste needs to be provided.
- Alien vegetation poses a significant threat to the sparse water available in certain areas and strategies to deal with this growing problem need to be identified and implemented.

iii) FOOD

The right to sufficient food is the responsibility of numerous departments. The National Department of Agriculture (DoA) developed the Food Policy, which focuses on food insecurity, food nutrition, employment creation, income generation, food production, food distribution, food affordability and food import, targeted at rural people and other vulnerable groups. The National Department of Health (DoH) implemented the Integrated Nutrition Programme (INP) and numerous other programmes and policies. These include the Broad Guidelines for the Implementation of the INP which created an awareness of sound nutrition as a basic human right, the National Breastfeeding Guidelines for Health Workers and Health Facilities for the awareness, protection, promotion and support of breastfeeding. The Policy on the Health Facility-based Nutrition Intervention Guidelines offered direct and indirect nutrition interventions to

Feeding of Infants by HIV positive mothers, the Guidelines for Parasite Control and the also implemented 17 community-

the progress has been achieved in terms of providing access to food. The Gauteng DoA implemented 141 Household Food Security 150 000 people were assisted for the reporting period of 1998/1999.

Standards established to define the right to have access to sufficient food by the Food Policy, 2 000 kcal/day was the minimum consumption per day, while the National standard for dietary needs.

There was no clarity on the extent of the provided by the National DoA for the implementati National DoH allocated approximately R466 million to projects for school feeding of which R331,6 million children in 14 000 schools in 1998.

Approximately 14 million South Africans are vulnerable to food insecurity and about 2.5 highest in rural areas and amongst the African population.

Despite the constitutional provisions for the right to food, vulnerability to food insecurity

addressed to improve on the right to have access to sufficient food are that:

- More policies areas (including farmers) and informal settlements.
- School feeding programmes need wider coverage.
-
- Providing an enabling environment for people to gain access to food.

HEALTH CARE SERVICES

Central to the government's provision of health care services has been the primary health care (PHC). The process has not been without problems. Effective -making and the development of of Health (National DoH) established the National Health Information System to facilitate

In response to the impact of the HIV/AIDS epidemic, the National DoH developed an Operational Plan for HIV/AIDS and Sexually Transmitted Diseases (STDs) to maximise the use of available resources towards combating HIV/AIDS. The Operational Plan addresses issues concerning HIV/AIDS awareness, ethical guidelines for research, and clinical guidelines for the reduction in mother to child transmission of HIV. The approach to the provision of health care services in the provinces is largely based on policy measures implemented at a national level.

The Medical Schemes Act 131 of 1998 limits the private sector from using high premiums to exclude low-income seriously ill patients from medical schemes.

District Health Services accounted for one of the largest programme allocation increases in spending. However, a disproportionately high amount of the budgetary increases has been spent on personnel, to the detriment of non-personnel expenditure. Whereas personnel expenditure increased by 32.8% from 1996/1997 to 1998/1999, non-personnel expenditure decreased by 83% over the same period. The distribution of financial resources for health to provinces has resulted in some of the historically poorer provinces experiencing an increased allocation at the expense of some previously favoured provinces. However, except for Gauteng and KwaZulu-Natal, the percentage change in total health budget for the provinces has not increased substantially since 1996. The per capita expenditure on health in Mpumalanga and the Northern Province is almost half of that for the Western Cape and Gauteng.

From September 1995 until December 1998, 700 new clinics were provided. It is estimated that there is a shortfall of almost 800 clinics in the country. The rate of delivery of clinics has to be speeded up. Indicators for human resources show gross disparities both between the private and the public health care sectors and between provinces. For example, in the public sector the ratio of medical practitioners to population is 1:4 452 compared to 1:389 in the private sector. The shortage in pharmacists and dentists in the public sector is particularly severe. To address the shortage of doctors, the government has recruited foreign doctors and made community service compulsory for locally trained doctors. However, the criteria used to allocate community service doctors to different areas needs to be developed. Only 24% of these doctors were placed in rural facilities.

The HIV/AIDS epidemic remains a major threat to health amongst South Africans with life expectancy estimated to drop from 60 to 40 years between 1998 and 2008 whilst infant mortality will rise from 50 per 1000 live births to 60 per 1000 in the same period. The number of AIDS orphans would increase to 2 million by 2010. The prevalence of HIV infection is estimated at between 12% and 14% of the adult population, with KwaZulu-Natal the highest at 26.9%. Approximately 3,6 million people were estimated as being HIV positive in 1998, compared to 2,7 million the previous year.

Data on infant mortality rates and immunisation coverage indicate wide variation between provinces. These figures suggest that in some areas the standard of health care is much lower than other poorer sub-Saharan countries.

v) **BASIC HEALTH CARE SERVICES FOR CHILDREN**

The Department of Health's (DoH) policy measures for the right to basic health care White Paper on Transformation of Health

(PHC) services and free general health care to all pregnant women and children. Other policy measures include:

- National Policy on Nutrition for Children (NPA) based on the United Nations Convention on the Rights of the Child (CRC) which deals with health and the management of childhood illness, early childhood development, social welfare, child protection, nutrition, and water and sanitation.
Integrated Management of Childhood Illness (IMCI) which causes of morbidity and mortality in children under 5 years of age and has been implemented in six provinces.
- Essential Drugs Programme for PHC, to ensure the availability of safe, good quality medicines for the needy.
- Extended Programme on Immunisation (EPI), involving immunisation for Measles, Polio, Hepatitis B and Haemophilus Influenza B.

Some of the problems are the lack of funding and shortages in medicines, which has resulted in resentment of the policy by health care workers and the deterioration in the quality of care.

The funding allocated for the provision of health care services for children and the provision

of services. One of the major shortcomings of the DoH's understanding of the right is the erroneous

assumption that the right is being fulfilled. In the Eastern Cape for example, only 61% of the population have access to health care services according to the departmental criteria.

Health indicators such as the infant mortality rate³

in 2008 due to the impact of HIV/AIDS. Immunisation coverage of children 12-24 months of age is 63.4% with KwaZulu Natal and the Eastern Province having the lowest coverage at 49.5% and 52.6% respectively. The nutritional status of children under 6

years of age⁴ is cause for concern. Nationally, over one in five children are afflicted by stunting and in the Northern Province one in three children suffer from stunting. The mortality rates and nutritional deficiencies for children can only be addressed by a departmental approach that combines

Infant mortality rate: the number of children less than one year old who die in a year, per 1 000

prenatal, perinatal and antenatal care with food security, immunisation coverage, and access to health care facilities together with appropriate medication.

In *respecting, protecting, promoting and fulfilling* the right to basic health care services for children, the DoH needs to ensure that:

- Access to health care services has to be increased
- Essential drugs are made available at all PHC clinics;
- Information systems on health indicators for children need to be developed especially in the provinces of Eastern Cape, KwaZulu-Natal and Northern Province.
- Mother to child transmission of HIV needs to be addressed.

vi) ACCESS TO HOUSING

In 1994, the government set a target of providing 1 million houses within a five-year period. This was not achieved for a variety of reasons. The government inherited a fragmented system consisting of numerous departments, without an integrated subsidy scheme complicated by the stratification of provisions along racial lines. To address these problems, the White Paper on Housing was developed with the principal aims of stabilising the housing environment and providing subsidised affordable homes to the disadvantaged.

The Department of Housing (DoHs) implemented the National Policy in Support of the People's Housing Process which encourages and supports families and communities in their efforts to fulfil their own housing needs by assisting them in accessing housing subsidies and technical, financial, logistical and administrative support for the building of their homes on a sustainable and affordable basis. A wide array of housing subsidy schemes was developed. The schemes are directed at serving households earning R3 500 per month and less with subsidies. 92% of the recipients of subsidies were "poor" and 45% of subsidies were allocated to women. The amended subsidy scheme allows persons with disabilities access to additional subsidy money for the necessary improvements to their units such as ramps, special doors, handrails and other design interventions.

Legal protection from illegal eviction and the provision of housing consumer rights was instituted by the passing of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1999 and the Housing Consumer Protection Measures Act 95 of 1998.

The National Norms and Standards for subsidised permanent residential structures was approved for the acquisition of land and the provision of municipal services (water, sanitation, roads, storm-water and street lighting) to a funding limit of R7 500. The majority of people who do not have access to adequate water supply, adequate sanitation and adequate electricity are mostly in the Eastern Cape Province. There was no information for the number of dwellings that did not conform to departmental standards for the right to housing because the National Norms and Standards policy

informal settlements, was neither adequately disaggregated nor sufficiently addressed.

7. Information on difficulties experienced by the departments on the realisation of economic and social rights as requested in the protocols was not provided.

The 2nd Economic and Social Rights Report 1998 – 1999 is available on the Commission’s web-site at <http://www.sahrc.org.za>

⁶ In the first cycle of monitoring of economic and social rights by the Commission, the protocols were sent to local authorities to which only the Greater Johannesburg Metropolitan Council responded. For the second cycle, the protocols were sent to the National Department of Provincial and Local Government and the Provincial Departments of Local Government. No responses on Local Government were received.

⁷ Most of the economic and social rights provided for in the Bill of Rights are subject to the limitation of “within its [the state’s] available resources.” In this regard, the 3rd set of protocols requires specific information on the government’s macro-economic policy. In the future, the Commission also aims to assess the influence of the private sector on the realisation of socio-economic rights.

⁸ South Africa signed the ICESCR in 1994, but has not ratified the Covenant despite approval of ratification by the South African Cabinet.