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The South African Experience on Legal, Institutional and Operational Aspects of the Rights to Water and Sanitation

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Abstract

This article describes the policy and legislative developments that have made the rights to water and sanitation a reality in South Africa since apartheid ended in 1994. A household survey as part of the formal national census in 2011 indicated that a remarkable 91.2 per cent of households already had the benefit of piped water in the house or yard. The key success factors over the last 20 years include a strong political will and commitment, sufficient funding, sound and practical policies, good planning and monitoring of progress. The progressive principle is applied to not only provide access but also to continuously improve the quality of service, such as water closer to homes or safe water at the tap. A number of challenges remain such as poor operation and maintenance, limited capacity in some municipalities, poor payment of water over and above the basic free volume and inadequate regulation to enforce the service standards.

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1. Introduction

This article covers a period of almost 20 years of the practical realisation of the rights to water and sanitation in South Africa, moving from policy and legislation to rapid implementation. Over this time millions of people have been provided with access to a basic water supply. The main purpose of this article is to share the key success factors that contributed to these impressive achievements as well as to objectively highlight the challenges and risks that are becoming evident. All these can serve as real-life lessons that other countries and practitioners can learn from and hopefully improve as a result.

2. Policy relevance of this article

The General Assembly of the United Nations passed resolution 64/292 in 2010: The human right to water and sanitation (United Nations General Assembly, 2010), and thereby called “upon States and international organisations to provide financial resources, help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all”. But as early as 1994, several years before the signing of this international agreement in 2010, these principles had already been implemented at national level in South Africa.

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3. The challenge at the dawn of democracy in South Africa (1993 to 1994) and development of new policies

The challenges faced by the first democratic government in 1994 were enormous and it immediately set out policies and actions to address the service disparities inherited from the apartheid years.

The Reconstruction and Development Programme (RDP) was the policy foundation of the new government. 'Meeting basic needs' was one of the four pillars of the RDP and within this, access to water supply and sanitation services for all citizens was made a priority. This policy was made widely available to the public, with booklets printed and sold in bookstores across South Africa (African National Congress, 1994: 28-31). In the same year a new water supply and sanitation policy was published as a White Paper giving more detailed policy directions than the RDP document (Republic of South Africa, 1994)

In 1994 it was estimated that some 14 million people across the country lacked adequate water supply, while some 21 million – half of the total country population in 1994 – were without adequate sanitation facilities. These problems were more severe in poorer rural areas than they were in more affluent urban areas (Republic of South Africa, 2004). Further to the enormous shortfalls in service levels, the fragmented institutional arrangements created by apartheid across South Africa posed a huge challenge. According to the new Constitution as adopted in 1996, South Africa had to be restructured into nine new provinces from four provinces and ten so-called 'independent' and 'self-governing' Bantustans.

With regard to water supply and sanitation services, the previous system did not provide for one dedicated department taking responsibility for water supply and sanitation. It was left to each homeland government and local municipality to decide whose responsibility this was to be.

4. A new constitution for South Africa cements the right to water and sanitation as basic human rights

The new Constitution of South Africa, which came into effect as Act 108 of 1996, was a masterpiece of successful negotiations and careful drafting by constitutional experts and has since been credited internationally. Chapter 2 of the Constitution (Republic of South Africa, 1996) is devoted to the Bill of Rights and set an international example on the right to water and sanitation. There are three clauses (24, 26 and 27) that are of particular importance and which will now be discussed in more detail.

Clause 24 deals with the environment as well as sanitation: "Everyone has the right.....to an environment that is not harmful to their health or well-being; and....." (Republic of South Africa, 1996: Clause 24), while Clause 27(1) deals specifically with health care, food, water and social security: "Everyone has the right to have access to.....sufficient food and water; and....." (Republic of South Africa, 1996: Clause 27(1)(b)) and the Constitution also put responsibility solidly with government by stating: "The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of these rights" (Republic of South Africa, 1996: Clause 27(2)).

What is important here is that while the right to water and sanitation is enshrined, it is clearly acknowledged that this is not an unfettered right and it must be realised that the full effect of such rights will only happen over time and progressively, not on day one.

The roles and responsibilities of the different spheres of government in the realisation of these rights are also set out in the Constitution by specifying which functions are 'local government matters' and declaring "water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems" are listed as a function of local government (Republic of South Africa, 1996: Schedule 4 – Part B).

5. Right to water and sanitation captured in water legislation: the Water Services Act, National Water Act, standards and regulations

5.1 Water Services Act (Act 108 of 1997)

While the Constitution laid down the "right to sufficient water" this was definitely not specific enough for practical implementation. The Water Services Act (WSAct) of 1997 went one step further by defining what is now generally termed 'basic water supply' and 'basic sanitation' (Republic of South Africa, 1997). Basic sanitation is defined as

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