



Water Scarcity, Sanitation & Hygiene

1. Introduction

South Africa is one of the few countries in the world that explicitly recognises the right to sufficient water in its Constitution.¹ Access to sufficient water is a gateway to the progressive realisation of other fundamental human rights such as the right to a clean environment, and ultimately, the right to living a dignified life.

In a country that has always been water scarce, climate change, poor water management and use, and infrastructure deficiencies are threats to proper sanitation which is essential to people's health. It is therefore imperative to maintain a consistent commitment to our constitutional mandate, which includes the improvement of water infrastructure to guarantee everyone's right to sufficient, accessible and reliable water.

2. The Right to Water and International Law

The South African Constitution obliges our courts to consider international law when interpreting any provision in the Bill of Rights.² Further, Parliament can adopt international law so that it is binding and enforceable between people at the domestic level.³ It is therefore important to consider the international standards and norms that the South African government has accepted in striving to provide water and sanitation services to communities around the country.

The Universal Declaration of Human Rights (UDHR) is a pivotal document that asserts the fundamental human rights that are to be universally protected, and it was also an inspiration for the South African Bill of Rights.⁴ The human right to water is not explicitly stated in the UDHR, which was crafted in 1948 before environmental rights were a global priority in policy and law making.⁵ However, the

International Covenant on Economic, Social and Cultural Rights (ICESCR) states that everyone has a right to an adequate standard of living and to the continuous improvement of living conditions.⁶ South Africa has ratified this treaty, which means it has committed to working towards meeting internationally accepted standards of living.

In 2002, a treaty body responsible for monitoring compliance with the ICESCR determined that the provision of water and sanitation form part of an adequate and dignified standard of living for everyone. A general guideline is that the right to water entitles everyone to sufficient, safe, acceptable and physically accessible water that is affordable, for personal and domestic uses.⁷ Additionally, an 'adequate amount of safe water' means the water necessary to stop death from dehydration, to provide for domestic hygienic requirements, and to reduce water-related diseases.⁸

In 2010, South Africa voted in favour of a UN resolution that recognised clean and safe drinking water and sanitation as not only fundamental human rights, but also as essential for the full enjoyment of all other human rights.⁹ Additionally, the resolution called upon States to provide financial resources to build the capacity necessary to improve access to safe, clean and affordable drinking water and sanitation for all.

At the regional level, the right to water is explicitly recognised in the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. South Africa has ratified all these conventions, meaning it has committed to itself to considering these regional legal instruments when interpreting its obligation to provide water to schools and rural areas, where children and women bear the brunt of

inadequate water provision and collection.

Evidently, international law has developed over the years to give content to the meaning of an adequate standard of living that States such as South Africa must seek to promote. Access to clean and adequate water is now explicitly recognised as a universal human right that is essential to leading a dignified life.

3. The Right to Water and South African Law

In our Constitution the right to water is tied to the right to food, in recognition of the interrelatedness of these two rights.¹⁰ Another closely related provision in our Constitution is the right to an environment that is not harmful to one's health or wellbeing.¹¹ Notably, the right to a healthy environment encompasses measures such as preventing pollution and promoting the sustainable use of natural resources through an appropriate legal framework.

It is clear that our law explicitly recognises that water is a natural resource that is essential to sustaining a clean and healthy environment for our communities. This means that water is an environmental good that is indispensable in securing other fundamental human rights. It follows that poor water management and use seriously threaten all the other interrelated human rights enshrined in our Constitution, including the right to health care services, to sufficient food, and ultimately, to dignity.

4. Jurisprudence on the Right of Access to Water

Significantly, our Bill of Rights does not define what exactly constitutes 'sufficient water.' Additionally, the rights to water and a clean environment are not immediately realisable. Instead, the State must balance the gradual realisation of socio-economic rights with the financial constraints it faces when building the infrastructure necessary to fulfil the rights.

The State's balancing act is known as the 'progressive realisation' of rights. This notion was illustrated in a landmark judgement delivered by the Constitutional Court in 2009, where the meaning of the 'right of access to water' was disputed by residents of a township in Soweto and the City of Johannesburg Metropolitan Municipality.¹² In this case, the residents challenged the constitutionality of

installing prepaid water meters meant to conserve water, and they also challenged the 6000 litre limit on free basic water.

The judges found that pre-paid water meters and the 6000 litre free water limit were reasonable limitations on the residents' constitutional rights of access to sufficient water. This was because the limitations were mechanisms put in place by the municipality to conserve the limited amount of water and to promote its sustainable usage.

Moreover, while the court held that the State indeed had a positive obligation to promote the socio-economic rights enshrined in the Constitution, the scope of the obligation was subject to the availability of resources, and was not a minimum threshold. This means that our courts will not prescribe the minimum amount of water the State needs to supply to fulfil its obligation to supply 'sufficient' water to communities in need. Instead, the responsibility lies with Parliament and the executive to set out targets that they deem achievable as they strive to promote socio-economic rights, given the limited resources.

5. The Water Crisis in South Africa

Since the landmark judgement in 2009 provinces, most notably Gauteng, are experiencing worsening water outages.¹³ Reports over the years have shown that, despite increases in water tariff collection, the Johannesburg water budget is insufficient to deal with the ageing infrastructure which is exacerbating the water crisis.¹⁴ The backlog in infrastructure maintenance is leading to pipe breakages which release large quantities of water before it reaches communities in need, including schools.

Such water leakages form part of non-revenue water (NRW), which refers to water that is pumped but subsequently lost or not accounted for. Globally, the aggregate level of NRW is 30%, but in South Africa, 47% of municipal water is classified as NRW due to broken pipes, faulty meters and illegal connections.¹⁵ A technical overview of the country's drinking water supply also found that there had been a decline in the quality of drinking water, which poses a serious threat to human health and healthy food. Water left untreated is also a form of pollution, which has negative effects on our environment.¹⁶

Over the years, it has become ever more apparent

how infrastructure deficiencies are compromising access to clean water, health and sanitation, fundamental human rights entrenched in our Constitution.

6. Poor Water Management

The discharge of untreated sewage by a local municipality led to the pollution of the Vaal River in 2023. The river is a crucial water source for approximately 19 million people in the Gauteng area.¹⁷ The pollution was a consequence of the mismanagement of the wastewater treatment infrastructure in the region, which ultimately threatened the communities' access to safe and clean drinking water. Fortunately, an NGO successfully obtained a court order to stop the municipality's sewage pollution, and which required authorities to upgrade and refurbish water infrastructure as a matter of urgency.

The dire water situation in Gauteng is a microcosm of what is happening in other provinces where ageing infrastructure is left unattended for decades, or where new infrastructure is yet to be installed to meet the needs of the growing population. For instance, households in the Western Cape are more likely to have access to piped water inside their homes compared to households in Limpopo and the Eastern Cape.¹⁸ This disparity highlights the skewed investment in water infrastructure and presents an opportunity where the executive and Parliament can direct their efforts in fulfilling the objects of our Bill of Rights.

7. Climate Change and Water Scarcity

South Africa is generally a water scarce country with a high evaporation rate and an average rainfall of only 465mm, which is half of the world's average. Climate change scenarios indicate that the western parts of the country are likely to become drier and hotter, while the eastern parts of the country are likely to become wetter and warmer. Although there is uncertainty regarding rainfall patterns, temperatures are likely to increase as we approach the year 2050.¹⁹ Increases in temperature lead to more water evaporation, which will negatively impact the quantity of water available to meet the population's needs.

It is clear that climate change-driven water scarcity exacerbates the challenges communities are already facing due to poor water management and infrastructure deficiencies. The negative effects are particularly evident in the agricultural industry, which is the largest user of water resources in the country, followed by municipal and domestic use.²⁰ Thus, the ongoing lack of access to sufficient water not only jeopardizes a healthy environment but also threatens food security.

8. Water Resource Management

Bearing in mind the ongoing poor infrastructure and climate change-driven water scarcity, the Department of Water and Sanitation has recently published a *National Water Resource Strategy Third Edition* (NWRS-3), outlining the water sector's priority focus areas for 2020 to 2030. The NWRS-3 seeks to balance supply- and demand-driven approaches in realising the human right to sufficient water, which includes accessible, affordable and reliable water and sanitation, before 2030.

Notably, previous reports have already found that municipalities need to improve the operation and maintenance of water infrastructure, as well as meter billing and revenue collection. The NWRS-3's broader vision is to create effective water sector institutions that are grounded in the concepts of sustainability, equity and affordability. It is commendable that there has been investment in countrywide technical surveys; however, implementation of the findings is what remains essential in guaranteeing the water-related human rights set out in our Constitution.

9. Conclusion

Access to affordable, clean and safe drinking water, proper sanitation, and a healthy environment are indispensable conditions for leading a dignified life. The progressive realisation of the right to sufficient water and a clean environment is predicated on the consistent and proper management of water resources across the country, but authorities at all levels of government have failed to perform adequately in this regard. As we enter a new era of national unity governance, the State must move forward, and not backwards, to ensure access to sufficient water.

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- ¹ Section 27(1)(b) of the Constitution of the Republic of South Africa, 1996
- ² Section 39(1)(b) of the Constitution
- ³ Section 231 of the Constitution.
- ⁴ <https://southafrica.un.org/en/211139-10-december-marks-two-anniversaries-south-africa%E2%80%99s-constitution-and-universal-declaration#:~:text=The%20Freedom%20Charter%2C%20which%20greatly,Universal%20Declaration%20of%20Human%20Rights.>
- ⁵ E Fantini 'An introduction to the human right to water: Law, politics and beyond' <https://wires.onlinelibrary.wiley.com/doi/full/10.1002/wat2.1405>
- ⁶ Article 11 of the International Covenant on Economic, Social and Cultural Rights.
- ⁷ Committee on Economic, Social and Cultural Rights, General Comment 15, The rights to water.
- ⁸ Ibid.
- ⁹ Resolution adopted by the General Assembly on 28 July 2010. A/Res/64/292.
- ¹⁰ Section 27(1)(b) of the Constitution.
- ¹¹ Section 24 of the Constitution.
- ¹² *Mazibuko and Others v City of Johannesburg and Others (Centre on Housing Rights and Eviction as Amicus Curiae)* 2010 (4) SA 1 (CC)
- ¹³ <https://theconversation.com/johannesburgs-water-crisis-is-getting-worse-expert-explains-why-the-taps-keep-running-dry-in-south-africas-biggest-city-223926>
- ¹⁴ <https://www.dailymaverick.co.za/article/2023-06-13-sas-largest-city-may-not-be-able-to-pay-its-debt-warns-johannesburg-finance-boss/>
- ¹⁵ <https://www.gov.za/news/media-statements/water-and-sanitation-releases-2023-full-blue-drop-report-05-dec-2023>
- ¹⁶ <https://www.gov.za/news/media-statements/water-and-sanitation-releases-2023-full-blue-drop-report-05-dec-2023>
- ¹⁷ <https://mg.co.za/the-green-guardian/2023-07-04-ngo-wins-court-order-against-ministers-to-stop-vaal-river-sewage-pollution/>
- ¹⁸ <https://www.gov.za/about-sa/water-affairs>
- ¹⁹ [https://www.dws.gov.za/Documents/Gazettes/Approved%20National%20Water%20Resource%20Strategy%20Third%20Edition%20\(NWRS3\)%202023.pdf](https://www.dws.gov.za/Documents/Gazettes/Approved%20National%20Water%20Resource%20Strategy%20Third%20Edition%20(NWRS3)%202023.pdf)
- ²⁰ [https://www.dws.gov.za/Documents/Gazettes/Approved%20National%20Water%20Resource%20Strategy%20Third%20Edition%20\(NWRS3\)%202023.pdf](https://www.dws.gov.za/Documents/Gazettes/Approved%20National%20Water%20Resource%20Strategy%20Third%20Edition%20(NWRS3)%202023.pdf)