

# Six / The right to water

Anton Kok\*

Malcolm Langford\*\*

## 1 Introduction

Water, an essential part of the human diet and integral to survival, has been recognised as a right in the Constitution of the Republic of South Africa.<sup>1</sup> Since access to water in South Africa has largely been conditional upon land ownership and wealth (and race), the majority of South Africans have struggled to secure the right to water. Few international standard-setting documents give separate recognition to the right of (access to) water, although there are some significant and notable exceptions.<sup>2</sup>

The right to water is also an indispensable element of other rights, particularly the rights to adequate food or nutrition,<sup>3</sup> to health and a clean and/or healthy environment<sup>4</sup> and water conservation.

\* I thank Bronwen Morgan, Centre for Socio-Legal Studies, Oxford, for her helpful comments on an earlier draft of this chapter.

\*\* I thank the Lionel Murphy Foundation for funding earlier research on the right to food and water.

<sup>1</sup> Constitution of the Republic of South Africa, 1996 (1996 Constitution).

<sup>2</sup> Eg, the Convention on the Elimination of Discrimination Against Women (1979) (CEDAW) and the Convention on the Rights of the Child (1979) (CRC). Other principal documents include the 1977 Mar del Plata Declaration and the recent General Comment on the Right to Water by the UN Committee on Economic, Social and Cultural Rights (General Comment No 15 *The right to water (arts 11 & 12 of the Covenant)* (29th session, 2002) [UN Doc E/C 12/2002/11]). See sec 2 of this chapter.

<sup>3</sup> Water forms a multidimensional relationship with the right to food: It is a liquid food, a component of semi-liquid foods and it is necessary for the preparation and production of food. See the discussion in M Vidar & MA Mekouar *Water, health and human rights. World Water Day* <http://www.worldwaterday.org/2001/thematic/hmnrights.html> (accessed 30 June 2004).

<sup>4</sup> See UNICEF *Strategies in water and environmental sanitation* (<http://www.unicef.org/programme/wes/pubs/sp/spen.pdf>) which states at B6: '[H]uman health and wellbeing depend on a healthy environment, including clean water, sanitary waste disposal and an adequate supply of food.' Also see para B35 of Item 14(a) (Social and human rights questions: Advancement of women) of the provisional agenda of the Economic and Social Council E/1999/66-A/54/123: 'Water is both a basic human need and an important productive resource. It helps to improve domestic hygiene and health and enhances child care as well as crop and/or animal care' (our emphasis). Compare I Woolard & C Barberton 'The extent of poverty and inequality' in C Barberton *et al* (eds) *Creating action space: The challenge of poverty and democracy in South Africa* (1998) 31: 'Access to water, electricity and sanitation impact directly on quality of life. Access to clean water and sanitation has the most obvious and direct consumption benefits in reducing mortality and poor health and increasing the productive capacity of the poor. For example, the poor (especially women) must commit large shares of their income or time to obtaining water and firewood. This time would be better used in child care or income-generating activities.'

Other human rights, such as housing and education, may also protect specific aspects of the right to water.<sup>5</sup> Therefore, legal documents that give expression to these rights indirectly protect the right of access to sufficient water.

While the right to water purportedly provides the normative and ethical framework for recent South African legislation in the water sector, only a small number of judgments have addressed the constitutional right to have access to sufficient water. This chapter therefore firstly provides an overview of the international and comparative right to water standards, which may guide constitutional interpretation, as well as an analysis of the constitutional right itself. A brief comment is also made on the important and related right to sanitation.

## 2 International, regional and comparable national law

### 2.1 International law

The right to water does not enjoy wide-ranging explicit recognition at international level. The right to water, or the right to have access to water is mentioned by name in only a few, albeit important, international documents. Where the right is explicitly mentioned, it is in most cases restricted to access to water for drinking and other domestic purposes.<sup>6</sup> Nevertheless, it is important to remember that other internationally recognised human rights, for example food or a healthy environment, may entitle an individual to water for other purposes.

Because of the close link between water, food (nutrition), health and hygiene, international documents that protect these rights are also relevant.

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (CESCR) proclaims:

The States Parties to the present Covenant recognise the right of everyone to an *adequate standard of living* for himself and his family, including adequate food, clothing and housing ...

In November 2002, the body responsible for the oversight of the Covenant, the United Nations (UN) Committee on Economic, Social

<sup>5</sup> Eg the Committee on Economic, Social and Cultural Rights commented that the right to housing includes the right to sustainable household access to facilities for obtaining water, and the right to education implies the presence of drinking facilities within schools. See General Comment No 4 *The right to adequate housing (art 11(1) of the Covenant)* (6th session, 1991) [UN Doc E/1992/23] para 8(b) and General Comment No 13 *The right to education (art 13 of the Covenant)* (21st session, 1999) [UN Doc E/C.12/1999/10] para 6(a) of the Committee.

<sup>6</sup> Gleick states: 'Moreover, several of the explicit rights protected by international rights conventions and agreements, specifically those guaranteeing the rights to food, human health, and development, cannot be attained or guaranteed without also guaranteeing access to basic clean water.' PH Gleick 'The human right to water' (1999) 5 *Water Policy* 487-503 (available at <http://www.pacinst.org> 4 (accessed 30 June 2004)).

and Cultural Rights (Committee on ESCR or Committee), interpreted this article to include an independent right to water for personal and domestic uses. After noting that the listed rights in the article (ie, food, clothing and housing) are non-exhaustive due to the use of the word 'including', the Committee stated:

The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.<sup>7</sup>

In support of its interpretation, the Committee referred to other international documents and its own long history in monitoring steps taken by states to ensure all persons in their jurisdiction had access to water. The General Comment - an authoritative but not legally binding interpretation - also provides an extensive interpretation of the implications of the right to water for state parties in terms of the duties incumbent upon them to realise the right.

The Committee also appears to derive the stand-alone right to water from health provisions of CDESCR. Article 12(1) provides for the right of everyone to the highest attainable standard of health,<sup>8</sup> and article 12(2)(c) obliges state parties to aim for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. In an earlier General Comment, the Committee had only stated that the underlying determinants of the right to health include potable water.<sup>9</sup> Moreover, the Committee in General Comment No 15 elaborated on a number of other aspects of water under the right to health, beyond those of direct access to water for personal and domestic needs. Article 12(2)(b) provides that state parties to the treaty must aim to improve all aspects of environmental and industrial hygiene. The Committee notes that this duty 'encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions'.<sup>10</sup>

Article 14(2)(h) of the Convention on the Elimination of Discrimination Against Women (1979) (CEDAW) obliges state parties to ensure to rural women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Articles 24(1) and (2)(c) of the Convention on the Rights of the Child (1989) (CRC) oblige state parties to implement children's rights to health by taking appropriate measures to combat disease and malnutrition within the framework of primary health care. It specifically requires that readily available technology should be applied, and that adequate nutritious food and clean drinking water

<sup>7</sup> See para 3 of General Comment No 15 (n 2 above).

<sup>8</sup> The title of the General Comment includes the right to health, along with the right to an adequate standard of living, and the Committee states: 'The right to water is also inextricably related to the right to the highest attainable standard of health' (see General Comment No 15 (n 2 above) para 3).

<sup>9</sup> See paras 11, 12, 15, 34, 36, 40, 43 & 51 of the Committee on ESCR's General Comment No 14 *The right to the highest attainable standard of health (art 12 of the Covenant)* (22nd session, 2000) [UN Doc E/C 12/2002/4].

<sup>10</sup> General Comment No 15 (n 2 above) para 8. See also General Comment No 14 (n 9 above) para 15.

should be provided, taking into consideration the dangers and risks of environmental pollution.

International humanitarian law provides extensive protection during armed conflict with respect to water. Sufficient drinking water is to be supplied to prisoners of war and other detainees.<sup>11</sup> They are to be provided with shower and bath facilities as well as water, soap and other facilities for their daily personal toilet and washing requirements.<sup>12</sup> The Additional Protocols to the Geneva Conventions of 1977 also prohibit the destruction of 'objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works'.<sup>13</sup>

A number of international conferences on international environmental issues and/or water have taken place. The Preamble to the Mar del Plata Declaration of the 1977 United Nations Water Conference states:

[A]ll peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and a quality equal to their basic needs.

In 1991 the UN General Assembly adopted the United Nations Principles for Older Persons.<sup>14</sup> The Principles are divided into five sections that correlate closely with the rights recognised in CESC. The section entitled 'Independence' *inter alia* states that 'older persons should have access to adequate food, water, shelter, clothing and health care'.<sup>15</sup> Access should be brought about 'through the provision of income, family and community support and self-help'.<sup>16</sup>

The 1992 Dublin Statement on Water and Sustainable Development<sup>17</sup> recognised 'the basic right of all human beings to have access to clean water and sanitation at an affordable price'.<sup>18</sup>

Action programmes adopted by states at such conferences, such as the 1992 Agenda 21 and the Programme of Action of the 1994

<sup>11</sup> See arts 21, 25 & 46 Geneva Convention III; arts 89 & 127 Geneva Convention IV; and art 5 Additional Protocol II.

<sup>12</sup> See art 29 Geneva Convention III and art 85 Geneva Convention III.

<sup>13</sup> See art 54 Additional Protocol I and art 14 Additional Protocol II.

<sup>14</sup> The principles were adopted as part of General Assembly Resolution 46/91 of 16 December 1991, entitled 'Implementation of the International Plan of Action on Ageing and Related Activities'.

<sup>15</sup> Also see para 5 of the Committee on ESCR's General Comment No 6 *The economic, social and cultural rights of older persons* (13th session, 1995).

<sup>16</sup> Also see para 32 of General Comment No 6 (n 15 above).

<sup>17</sup> The statement was issued by government-designated experts from 100 countries and representatives of 80 international, intergovernmental and non-governmental organisations at the International Conference on Water and the Environment.

<sup>18</sup> Principle No 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (1992).

International Conference on Population and Development, have likewise included the right to water.<sup>19</sup>

As stated earlier, the right to water could be derived from other human rights. Article 25(1) of the Universal Declaration of Human Rights (Universal Declaration) states that 'everyone has the right to a standard of living *adequate* for the *health* and well-being of himself and his family, including *food ...*'.<sup>20</sup>

The World Health Organisation (WHO) and the UN Children's Fund (UNICEF) have developed concrete standards to give meaning to the right to have access to 'adequate' water. The WHO and UNICEF prescribe at least 20 litres safe drinking water per person per day that must be located within a reasonable distance from the household.<sup>21</sup>

## 2.2 Regional law

The European Social Charter, ratified by the majority of the members of the Council of Europe, does not explicitly refer to a right to nutrition or water. Article 11 states that contracting parties to the Charter should, either directly or in co-operation with public or private organisations, *inter alia* remove as far as possible the causes of ill-health and prevent as far as possible epidemic, endemic and other diseases. This obligation clearly links with a need to ensure proper sanitation and a clean water supply.<sup>22</sup> Similar logic can be applied to article 31 of the Revised European Charter, currently accepted by eight member states, where state parties are obliged to 'promote access to housing of an adequate standard' to ensure the 'effective exercise of the right to housing'. This obligation is enforced by means of a reporting and collective complaints mechanism.

<sup>19</sup> See para 18.47, Agenda 21, *Report of the United Nations Conference on Environment and Development* (1992) and Principle No 2, Programme of Action of the United Nations International Conference on Population and Development.

<sup>20</sup> Our emphasis.

<sup>21</sup> WHO/UNICEF *Global Water Supply and Sanitation Assessment 2000 Report* (2000) 77. The Pan-American Health Organisation has interpreted 'reasonable distance' as 'in an urban environment ... at a distance not farther than 200 meters from a house or to a public stand post. In rural areas, the definition is more flexible and may vary with the topography of the area.' See 'Mid-decade evaluation of water supply and sanitation in Latin America and the Caribbean', conference held by the Pan-American Health Organisation and WHO in Washington DC, 1997, available at <http://www.cepis.org.pe/muwww/fulltext/aguabas/mideca/mideca.html> (accessed 30 June 2004). The World Bank has defined 'reasonable access' as 'in the home or within 15 minutes' walking distance'. A proper definition should be adopted taking local conditions into account: in urban areas; a distance of not more than 200 metres from a house to a public stand post may be considered reasonable access; in rural areas, reasonable access implies that the housewife does not have to spend a disproportionate part of the day fetching water for the family's needs. See [http://poverty.worldbank.org/files/4237\\_annex\\_s.pdf](http://poverty.worldbank.org/files/4237_annex_s.pdf) (accessed 30 June 2004).

<sup>22</sup> See the WHO definition of environmental sanitation: '(a) the promotion of hygiene and (b) the prevention of disease and other consequences of ill-health, relating to environmental factors'. See WHO *What is environmental sanitation?* (2004) available at [http://www.who.int/docstore/water\\_sanitation\\_health/Environmental\\_sanit/envindex.htm](http://www.who.int/docstore/water_sanitation_health/Environmental_sanit/envindex.htm) (accessed 7 September 2004).

In any case, the Committee of Ministers of member states of the Council of Europe have recognised that:<sup>23</sup>

[E]veryone has the right to a sufficient quantity of water for his or her basic needs. International human rights instruments recognise the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families. It is quite clear that these two requirements include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene. Social measures should be put in place to prevent the supply of water to destitute persons from being cut off.

Article 11 of the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 states that 'everyone shall have the right to live in a healthy environment and to have access to basic public services'.

Article 16(2) of the African Charter on Human and Peoples' Rights (African Charter or Charter) proclaims that state parties to the Charter must take the necessary measures to protect the health of their people. Access to water is not explicitly mentioned, but the obligation to protect the health and environment of its citizens would imply that a state party must ensure that its subjects enjoy basic water and sanitation services. The African Commission on Human and Peoples' Rights (African Commission) has previously derived rights such as food and housing from the right to health and other Charter rights.<sup>24</sup> Further, in *Free Legal Assistance Group & Others v Zaire*,<sup>25</sup> the Commission held that the 'the failure of the government to provide basic services such as safe drinking water and electricity and the shortage of medicine as alleged in Communication 100/93 constitutes a violation of article 16 [right to health]'.<sup>26</sup>

Article 14(1) of the African Charter on the Rights and Welfare of the Child provides that every child has the right 'to enjoy the best attainable state of physical, mental and spiritual health'. Article 14(2)(c) is explicit in its protection of the right:

States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures to ensure the provision of adequate nutrition and *safe drinking water* (our emphasis).

Article 15 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa states that:

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:  
 (a) provide women with *access to clean drinking water*, sources of domestic fuel, land, and the means of producing nutritious food;  
 (b) establish adequate systems of supply and storage to ensure food security (our emphasis).

<sup>23</sup> Para 5, Recommendation Rec (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources. See also para 19.

<sup>24</sup> *SERAC and CESR v Nigeria*, Communication 155/96, decision made at the 30th ordinary session, Banjul, The Gambia, from 13 to 27 October 2001.

<sup>25</sup> (2000) AHRLR 74 (ACHPR 1995).

<sup>26</sup> Para 47 of the English version. (The French version is more detailed and contains more paragraphs (64 paragraphs versus 48 paragraphs).)

## 2.3 Comparable national law

The right to water has also been recognised in national constitutions. Supplying potable water is an obligation or directive principle in many constitutions, while numerous constitutions protect the related rights to health and environmental health.<sup>27</sup> In a number of countries the right to water has been derived from other constitutional rights.<sup>28</sup>

The right to drinking water has been tested in national courts, including India and Brazil.<sup>29</sup> In *FK Hussain v Union of India*,<sup>30</sup> the High Court of Kerala found that the extraction and pumping of groundwater on the Lakshadweep islands must not threaten water needed for drinking. Finding that the 'right to sweet water, and the right to free air, are attributes of the right to life, for these are the basic elements which sustain life itself', the Court ordered that the authorities submit their plans for pumping groundwater to the Ministries for Environment and Science for approval. If the pumping was to proceed, an agency should be established to monitor the project to make sure it complied. In Brazil, the Special Jurisdiction Appellate Court of Paraná found that the disconnection of a water supply, even for non-payment, violated constitutional rights to essential services.<sup>31</sup>

## 3 South African law

### 3.1 Recognition of the right in section 27

#### 3.1.1 'Sufficient'

Section 27(1)(b) of the 1996 Constitution states that 'everyone has the right to have access to ... sufficient ... water'. Section 27(2), according to the Constitutional Court, qualifies this right: 'The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.'<sup>32</sup>

<sup>27</sup> The right to water is explicitly protected in the Constitutions of The Gambia, Uganda and Zambia. A number of draft constitutions (eg Kenya) also contain the right. For a comprehensive overview, see (forthcoming) M Langford *et al* *Legal resources for the right to water: National and international standards* COHRE 2004; <http://www.cohre.org/water> (accessed 30 June 2004).

<sup>28</sup> See eg Arrêt n° 36/98 du 1 Avril 1998, Commune de Wemmel, *Moniteur belge*, 24/4/98, where a Belgian Court of Arbitration recognised the right of everyone to a minimum supply of drinking water utilising art 23 of the Constitution (the right to the protection of a healthy environment): See H Smets 'Le Droit à l'eau' *Rapport de l'Académie de l'eau 2002*; [http://www.oieau.fr/academie/gege/DroitALEau\\_01.PDF](http://www.oieau.fr/academie/gege/DroitALEau_01.PDF) (accessed 30 June 2004).

<sup>29</sup> For jurisprudence from other countries, see Langford *et al* (n 27 above) 31.

<sup>30</sup> OP 2741/1988 (1990-02-26).

<sup>31</sup> Bill of Review 0208625-3.

<sup>32</sup> *Minister of Health & Others v Treatment Action Campaign & Others (No 2)* 2002 5 SA 721 (CC) (TAC).

The Constitution does not provide explicit guidance as to the meaning of 'sufficient' water, and in particular does not prescribe the quantity and quality of water each individual is entitled to access. The meaning of 'sufficient' is yet to be considered by a South African court. Little guidance can be derived from judicial rulings in this respect since South African courts, notably the apex court, have shied away from (or neglected) examining the precise content of economic and social rights.<sup>33</sup> Yet, the issue is critical for evaluating programmes and policy and the crafting of appropriate court orders (for example in disconnection cases).

The use of the word 'everyone' in section 27(1)(b) suggests that 'sufficient' should be interpreted in a universalist fashion - in other words, access to water for uses and purposes relevant to all individuals. This accords with one of the purported central requirements for asserting a human right, namely that the claimed right can be universally enjoyed.<sup>34</sup>

The Committee on ESCR has adopted such a universalist or individualist approach. It states that:

The water supply for each person must be sufficient and continuous for personal and domestic uses.<sup>35</sup> These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organisation (WHO) guidelines.<sup>36</sup>

The final version of the General Comment (as opposed to an earlier draft made public) does not define precise quantities, although it references scholarship from the WHO and other experts which suggests that the above uses require approximately 50 litres per person per day or the minimum essential level (approximately 20 litres) where the state party is suffering from resource constraints.<sup>37</sup>

<sup>33</sup> See critique by D Bilchitz 'Towards a reasonable approach to the minimum core: Laying the foundations for future socio-economic rights jurisprudence' (2003) 19 *South African Journal on Human Rights* 1.

<sup>34</sup> See M Cranston *What are human rights?* (1973) as discussed in A Devereux 'Australia and the right to adequate housing' (1991) 20 *Federal Law Review* 232-233. According to Cranston, the other two tests for an alleged human right is that the right is of paramount importance and can be ensured in practical terms. Also see an analysis of different possible approaches in M Langford 'The right to water and the International Covenant on Economic, Social and Cultural Rights' available at <http://www.cohre.org/water> (accessed 30 June 2004).

<sup>35</sup> 'Continuous' means that the regularity of the water supply is sufficient for personal and domestic uses - fn 12 to para 12 of General Comment No 15 (n 2 above).

<sup>36</sup> See paras 12 & 37(a) of General Comment No 15 (n 2 above). The footnoted references (in fn 14 to the paragraph) are J Bartram & G Howard 'Domestic water quantity, service level and health: What should be the goal for water and health sectors' WHO 2002; and PH Gleick 'Basic water requirements for human activities: Meeting basic needs' (1996) 21 *Water International* 83-92.

<sup>37</sup> General Comment No 15 (n 2 above) para 12. Gleick (n 6 above) states that 'some basic amount of clean water is necessary to prevent death from dehydration, to reduce the risk of water-related diseases, and to provide for basic cooking and hygienic requirements' (p 5 of the internet version). Gleick has recommended 25 litres per person per day with an additional 15 litres for bathing and 10 litres for cooking. The Comprehensive Assessment of the Freshwater Resources of the World prepared for the Commission on Sustainable Development of the UN provides a qualitative assessment: '[A]ll people require access to adequate amounts of clean water, for such basic needs as drinking, sanitation and hygiene ...' (available at <http://www.un.org/esa/sustdev/freshwat.htm> (accessed 30 June 2004)).

This interpretation generally accords with, but slightly extends, prior WHO and UNICEF guidelines. These organisations have recommended that individuals should be able to secure a certain quantity and quality of water for meeting basic domestic needs. WHO has recommended 20 litres per person per day.<sup>38</sup>

Neither the Committee nor WHO prescribe exact standards for quality, but only require that the water should be safe for each purpose.<sup>39</sup> This may mean that the required quality of water may vary depending on the purpose for which it is to be used. In the case of drinking water a very high standard is required. The Committee also states that water must 'be of an acceptable colour, odour and flavour'.<sup>40</sup> This latter requirement may not be necessary for health, but it is certainly consistent with the notion of human dignity contained in section 1 of the Constitution.

However, the above approach is subject to the criticism that it suffers from a Western or urban bias. In certain rural areas, particularly water for livestock, for example, may be more important than water for sanitation where water-based systems may not be utilised. This objection is not significant if we consider that the definitions above are flexible enough to allow for cultural variation. From a theoretical perspective, water for more situational needs, such as livelihoods, could be claimed under other rights such as the right of access to sufficient food. This latter approach was adopted in the General Comment on the right to water where it states: 'The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realise the right to adequate food.'<sup>41</sup>

The Water Services Act of South Africa<sup>42</sup> recognises the right to access to a basic water supply,<sup>43</sup> which could include a range of fundamental needs. The Act defines 'basic water supply' as 'the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene'. The relevant regulation<sup>44</sup> provides that:

The minimum standard for basic water supply services is ... a minimum quantity of potable water of 25 litres per person per day or six kilolitres per household per month at a minimum flow rate of not less than 10 litres per minute; within 200 metres of a household; and with an effectiveness

38 WHO/UNICEF (n 21 above).

39 The WHO does not propose a health-based guideline value for taste and odour, turbidity, aluminium, ammonia, chloride, hardness, hydrogen sulphide, iron, dissolved oxygen, pH, sodium, sulphate, total dissolved solids or zinc. Health-based guidelines values are proposed for manganese, toluene, xylenes, ethyl benzene, styrene, monochlorobenzene, dichlorobenzene, trichlorobenzene, synthetic detergents and chlorine. See WHO *Guidelines for drinking water quality* (2003) para 10.

40 General Comment No 15 (n 2 above) para 12(b).

41 See para 7 of General Comment No 15 (n 2 above).

42 108 of 1997.

43 Sec 3(1).

44 *Government Gazette* 22355, 8 June 2001, Government Notice R509, Regulation 3.

such that no consumer is without a supply for more than seven full days in any year.<sup>45</sup>

The National Water Act<sup>46</sup> covers water for other purposes, such as livelihoods, and a system of licences has been established for securing access to water.<sup>47</sup>

### 3.1.2 'Access'

The manner in which the right has been framed makes it clear that the state is not obliged to provide every inhabitant of South Africa with a *free* water supply. The state's duty towards those individuals who have the ability to pay for water services entails that the state must create the conditions and opportunity to ensure that those individuals have 'access' to sufficient water.<sup>48</sup>

'Access' to water entails economic and physical access.<sup>49</sup> With regard to *economic* access, the Committee on ESCR has commented that 'water, and water facilities and services, must be affordable for all' and state parties must adopt:<sup>50</sup>

[T]he necessary measures that may include, *inter alia*: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

<sup>45</sup> L Niklaas & R Stein 'Negotiating the rights of access to sufficient water through the courts' 2nd WARFSA/WaterNet Symposium: Integrated Water Resources Management - Theory, practice, cases, Cape Town, 30-31 October 2001 268 question whether this blanket allocation is sufficient to meet the demands of the Constitution. They point out that poor households often consist of more than eight people and that the allocation of free water should depend on the number of people per household. They concede this approach has practical difficulties and suggest that people who cannot afford and prove that they cannot afford to pay for water must be exempt from water cut-offs. The new Strategic Framework for Water Services (released 1 October 2003, available at <http://www.dwaf.gov.za> (accessed 30 June 2004)) uses 25 litres per person per day for communal water sources (standpipes) as a standard for basic service, and six kilolitres per formal household per month (yard or house connections).

<sup>46</sup> 36 of 1998.

<sup>47</sup> In general, see secs 27-31 and 39-55 of the Act. In issuing a licence, the responsible authority must *inter alia* take into account factors such as the need to redress the results of past racial and gender discrimination, efficient and beneficial use of water in the public interest and the resource quality objectives of the water resource. The responsible authority may attach conditions to a licence *inter alia* relating to the protection of the water resource, water management, return flow and discharge or disposal of waste.

<sup>48</sup> In *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC) para 36, the Constitutional Court described this obligation as having to 'unlock the system' by *inter alia* providing a legislative framework.

<sup>49</sup> General Comment No 15 (n 2 above) para 12.

<sup>50</sup> As above, paras 12 & 27. *Grootboom* (n 48 above) paras 35-37 is less generous in that it does not explicitly recognise subsidised or free services for those who cannot afford it. The Court (merely) states that the state must 'create the conditions for access to adequate housing *at all economic levels of our society*', that 'issues of *development and social welfare* are raised in respect of those who cannot afford to provide themselves with [services]' and that 'the poor are particularly vulnerable and their needs require *special attention*' (our emphasis).

Regarding *physical* access, the Committee states that water must be within the 'safe and physical reach' of everyone,<sup>51</sup> meaning 'within, or in the immediate vicinity, of each household, educational institution and workplace'.<sup>52</sup> Special attention should also be paid to those persons who face particular difficulties in physically accessing water.<sup>53</sup>

The conditions for access can be created by, for example:

- building the necessary infrastructure and effectively maintaining facilities and equipment;
- subsidising existing water services or ensuring that water services are affordable to poverty-stricken South African inhabitants;<sup>54</sup>
- ensuring that drinking water is unpolluted;
- ensuring that water resources are not monopolised by powerful groups; and
- ensuring an equitable allocation of water.

<sup>51</sup> General Comment No 15 (n 2 above) para 8.

<sup>52</sup> n 51 above, para 12(c)(i). See also General Comment No 4 (n 5 above) para 8(b), General Comment No 13 (n 5 above) para 6(a) and General Comment No 14 (n 9 above) paras 8(a) & (b). 'Household' includes a permanent or semi-permanent dwelling, or a temporary halting site.

<sup>53</sup> The Committee comments in para 16 of General Comment No 15 (n 2 above) that attention should also be given to those who face difficulty in physically accessing adequate drinking water, including people with disabilities, older persons, children, women, persons in detention, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands. The statutory framework in South Africa also facilitates attention to a variety of access difficulties: Sec 9(2) of the Water Services Act allows national standards on water service provision to differentiate between different users as well as different geographic areas, the latter on both socio-economic and physical grounds; and sec 9(3) subjects such differentiation to, *inter alia*, an obligation to consider the need for equitable access to water services. Sec 10 allows analogous approaches in the case of setting tariffs.

<sup>54</sup> Compare para 3 of the Committee on ESCR's General Comment No 1 (*Reporting by state parties* (3rd session, 1989) [UN Doc E/1989/22]) that notes that special attention must be given to 'any worse-off regions' and to 'any specific groups or subgroups' which appear to be particularly vulnerable or disadvantaged. Para 9 of General Comment No 2 (*International technical assistance measures (art 22 of the Covenant)* (8th session, 1990) [UN Doc E/1990/23]) requires that the goal of protecting the right of the poor and vulnerable should become a basic objective of economic adjustment. Para 12 of General Comment No 3 (*The nature of state parties' obligations (art 2, para 1 of the Covenant)* (5th session, 1990) [UN Doc E/1991/23]) notes that even in times of severe resource constraints (eg as a result of an economic recession), the vulnerable members of society must be protected. This comment was reiterated in para 10 of General Comment No 5 (*Persons with disabilities* (11th session, 1994)) and para 17 of General Comment No 6 (n 15 above). Para 13 of General Comment No 12 (*The right to adequate food (art 11 of the Covenant)* (20th session, 1999) [UN Doc E/C 12/21999/5]) notes that socially vulnerable people such as landless persons and other particularly impoverished segments of the population may need attention through special programmes. Para 28 of the same Comment states that measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals. The same should apply in the context of access to water. Limburg Principle 14 notes that special attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups. In a South African context, this would especially be black rural women. (Compare para 20 of the Maastricht Guidelines.) The Maastricht Guidelines have been published in (1998) 20 *Human Rights Quarterly* 691-701 and the Limburg Principles are available at <http://www.law.uu.nl/english.sim/specials/no-20/20-10.pdf> (accessed 30 June 2004). Also see para 27 of General Comment No 15 (n 2 above).

### 3.1.3 Obligations of the state

At the very least, the state may not interfere with existing access to water. The state may not prevent people from using their own available resources to satisfy their individual water needs. The state must also ensure that individuals do not deny other individuals their right to have access to adequate water.

The Constitution permits the progressive realisation of the right, but does not permit inaction - expeditious and effective steps must be taken to realise the right.<sup>55</sup> The state should develop:

- clear goals;
- realistic strategies for the achievement of these goals;<sup>56</sup>
- time-related benchmarks to measure progress;<sup>57</sup>
- monitoring and review mechanisms by which progress in the realisation of the right may be measured.<sup>58</sup>

The right to have access to water will be violated if the state's water policy leads to a deliberate decline in the provision of water to South African inhabitants.<sup>59</sup>

The duty to realise progressively the right of access to sufficient water in section 27(2) is limited by the phrase 'within its available resources'. The Committee on ESCR has interpreted this qualification to include resources existing within a state as well as resources available from the international community through international assistance and co-operation.<sup>60</sup> The Constitutional Court has indicated that it will be slow in interfering with budgetary decisions and

<sup>55</sup> Sec 27(2) 1996 Constitution. The term 'progressive realisation' was borrowed from international documents. According to para 9 of General Comment No 3 of the Committee (n 54 above), this phrase should be interpreted to oblige a state to 'move as expeditiously and effectively as possible' towards the full realisation of the particular right. The Constitutional Court held that this interpretation is in harmony with the demands of the South African Constitution in *Grootboom* (n 48 above) para 45. Gleick (n 6 above) has noted the following: 'The specific number [of the required minimum standard of water] is less important than the principle of setting a goal and implementing actions to reach that goal' (p 9 of the internet version).

<sup>56</sup> Para 4 of General Comment No 1 of the Committee on ESCR (n 54 above) speaks of 'principled policy-making'.

<sup>57</sup> Compare para 6 of General Comment No 1 (n 54 above) of the Committee on ESCR. The Committee notes that global benchmarks are of limited use in this regard and that national or other more specific benchmarks can provide an 'extremely valuable' indication of progress. The Department of Water Affairs has a variety of time-related targets, including some that are sensitive to distribution across rural and urban areas.

<sup>58</sup> Compare sec V of General Comment No 15 (n 2 above).

<sup>59</sup> A deliberately retrogressive measure that reduces the extent to which the right to access to sufficient water is guaranteed will violate the right according to para 14(e) of the Maastricht Guidelines (n 54 above). Para 9 of General Comment No 3 (n 54 above) of the Committee on ESCR states that 'any deliberately retrogressive measures ... would require the most careful consideration and would need to be fully justified ...'

<sup>60</sup> Compare para 13 of General Comment No 3 (n 54 above) of the Committee on ESCR. In para 18 of General Comment No 15 (n 2 above), the Committee makes the observation: 'Realisation of the right should be feasible and practicable, since all States Parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.'

allocation of resources by the state,<sup>61</sup> although recent cases suggest the Court is willing to be more intrusive.<sup>62</sup>

Section 7(2) of the 1996 Constitution provides that '[t]he state must respect, protect, promote and fulfil the rights in the Bill of Rights'.

The duty to *respect* entails that the state must refrain from interfering with the right of access to sufficient water.<sup>63</sup> This would mean that the state must refrain from arbitrarily depriving people of their right of access to sufficient water, or denying or obstructing the right of access to sufficient water, or unfairly discriminating when allocating water resources.

The obligation to respect has been tested in at least two High Court decisions dealing with the disconnection of existing water services. In *Manqele v Durban Transitional Metropolitan Council*<sup>64</sup> the applicant, an unemployed woman who occupied premises with seven children, sought a declaratory order that the discontinuation of water services to the premises was unlawful. She argued that the by-laws in terms of which the water service was disconnected were *ultra vires* the Water Services Act. The applicant relied on her right to a basic water supply as referred to in the Act and did not rely on the Constitution. The respondent argued that as no regulations have been promulgated to give meaning to the right to a 'basic' water supply, the right the applicant relied on had no content. The Court agreed with the respondent's argument. De Visser notes that the decision was 'regrettable', and had constitutional arguments been advanced, the Court would have been confronted with assessing the scope of the right to basic water supply under the Act.<sup>65</sup>

In *Residents of Bon Vista Mansions v Southern Metropolitan Local Council*,<sup>66</sup> the applicants sought interim relief on an urgent basis for the reconnection of their water supply. The applicants relied directly on the Constitution in this matter. The Court held that the obligation

<sup>61</sup> *Soobramoney v Minister of Health, Kwazulu-Natal* 1998 1 SA 765 (CC) para 29. The judgment contains few safeguards against government decisions: the decision must be 'rational' and must be taken 'in good faith'. If these requirements are met, courts will not interfere with a particular decision. The state will not act rationally if it allocates grossly inadequate or no resources to the realisation of a particular socio-economic right, but barring such extreme examples, the state has a free hand in the allocation of resources.

<sup>62</sup> See *Grootboom* (n 48 above) and *TAC* (n 32 above). In *Grootboom* para 68, the Court states that the national government must provide *adequate* budgetary support, which appears to be a more stringent test than rationality. *TAC* para 38 held that the state has to take *reasonable* measures that may have *budgetary* implications. This statement could be read to indicate that the state must provide *reasonable budgetary support*, which also sets a more stringent test than mere rationality.

<sup>63</sup> P de Vos 'Pious wishes or directly enforceable human rights?: Social and economic rights in South Africa's 1996 Constitution' (1997) 13 *South African Journal on Human Rights* 67 79-81. Compare para 6 of the Maastricht Guidelines and para 15 of General Comment No 12 of the Committee on ESCR (both n 54 above).

<sup>64</sup> 2001 JOL 8956 (D); 2002 6 SA 423 (D); referred to by Niklaas & Stein (n 45 above) 267.

<sup>65</sup> See J de Visser 'Disconnection of water supply' (2001) 3(1) *Local Government Law Bulletin*. 'Basic water supply' has since been given statutory content - see nn 41-44 above.

<sup>66</sup> 2002 6 BCLR 625 (W), referred to by Niklaas & Steyn (n 45 above) 266.

to respect existing access entails that the state may not take any measures that result in the denial of such access. By disconnecting the water supply, the council had *prima facie* breached the applicants' existing rights. The Court referred to the Water Services Act and noted that the Act provides that a water service provider may set conditions under which water services may be discontinued. The Act states further that the procedure according to which water services may be discontinued must be fair and equitable and must provide for reasonable notice of the intention to discontinue the service and must provide for an opportunity to make representations. Where a person proves to the satisfaction of the relevant water services provider that he or she is unable to pay for basic services, the service may not be discontinued. The Court held that a *prima facie* violation of a local council's constitutional duty occurs if a local authority disconnects an existing water service, and that such disconnection therefore requires constitutional justification. The *Bon Vista* decision appears more consistent with international jurisprudence.<sup>67</sup>

Interference with water supplies in some situations may require a court order in advance. If the disconnection, denial or limitation of access to water services or supplies amounts to a constructive eviction - a resident is forced to leave his or her home as a result - then it is arguable that this cannot occur without a court order. Under section 26(3) of the Constitution, an eviction cannot proceed without judicial sanction. The Land Claims Court has suggested that restricting the use of land may amount to an eviction.<sup>68</sup>

We submit that the duty to *protect* the rights in the Bill of Rights also entails that the state must prevent violations of the right of access to sufficient water by third parties.<sup>69</sup> For instance, if a farmer unreasonably and arbitrarily cuts off the access to water of lawful occupiers of his property, the state must act to restore access to sufficient water to the occupiers.

<sup>67</sup> The Committee on ESCR states in para 56 of General Comment No 15 (n 2 above): 'Before any action that interferes with an individual's right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies (see also General Comments No 4 (n 5 above) and No 7 (*The right to adequate housing (art 11.1 of the Covenant): Forced evictions* (16th session, 1997)). Where such action is based on a person's failure to pay for water, their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.'

<sup>68</sup> See *Van der Walt v Lang* 1999 1 SA 189 (LCC) and *Dhladhla v Erasmus* 1999 1 SA 1065 (LCC) as cited and referred to in S Liebenberg & K Pillay (eds) *Socio-economic rights in South Africa: A resource book* (2000).

<sup>69</sup> Compare para 6 of the Maastricht Guidelines (n 54 above).

Likewise, water services operated by private operators must be sufficiently regulated by the government to ensure the right to water is not interfered with.<sup>70</sup> The previous discussion of rights arising in the event of disconnection by government actors applies equally to such actions by private actors.

In the context of the right of access to sufficient water, the state's duty to *promote* the rights in the Bill of Rights would *inter alia* mean the promotion of educational and informational programmes designed to enhance awareness and understanding of the right of access to sufficient water.<sup>71</sup>

The government's duty to *promote* a right also provides a shield against claims arising from other legal provisions or constitutional rights.<sup>72</sup> In *Minister of Public Works and others v Kyalami Ridge Environmental Association & Others*,<sup>73</sup> for example, the right to adequate housing assisted the national government in defending its right to create temporary housing for flood victims, despite assertions by neighbouring residents that property values would fall and their peaceful environment would be disturbed. In the case of water, such protection is buttressed by section 25(8) of the Constitution:

No provision of this section may impede the state from taking legislative and other measures to achieve land, *water and related reform*, in order to redress the results of past racial discrimination ... (our emphasis).

In order to *fulfil* the rights in the Bill of Rights, the state must take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of the right.<sup>74</sup> It also means that the state carries a duty to facilitate and provide access to sufficient water. The state must proactively engage in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood. When an individual or a group is unable to procure sufficient water, the state has a duty to fulfil the right directly.<sup>75</sup>

<sup>70</sup> Compare para 24 of General Comment No 15 (n 2 above): 'Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States Parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses, an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.'

<sup>71</sup> Compare para 3(a) of General Comment No 10 of the Committee on ESCR (*The role of national human rights institutions in the protection of economic, social and cultural rights* (19th session, 1998) [UN Doc E/C 12/1998/25]). Also see Madala J's comment in *Soobramoney* (n 61 above) para 49: 'Perhaps a solution may be to embark upon a massive education campaign to inform the citizens generally ...'

<sup>72</sup> See G Budlender 'The justiciability of the right to housing: The South African experience' available at <http://www.lrc.org.za/4Pub/Papers/delhi%20paper.pdf> (accessed 30 June 2004).

<sup>73</sup> 2001 3 SA 1151 (CC).

<sup>74</sup> Compare para 6 of the Maastricht Guidelines (n 54 above).

<sup>75</sup> See para 25 of General Comment No 15 (n 2 above). This would of course be subject to the slightly more nuanced analysis of maximum available resources in paras 17-19 of General Comment No 15 and more particularly as presented in General Comment No 3 of the Committee.

The Constitutional Court has held that sections 26(2) and 27(2) qualify the section 7 obligations in the context of socio-economic rights.<sup>76</sup> The obligation to respect, protect, promote and fulfil the right of access to sufficient water must therefore be read subject to the internal qualifiers discussed above. The obligation to 'respect' is, however, primarily a negative obligation and it is difficult to imagine what role the internal limitations in sections 26(2) and 27(2) will play in qualifying this obligation.

Further, the Constitutional Court has interpreted section 27(2) to qualify the section 27(1) right in that the two subsections must be read together in defining the scope of the positive rights that everyone has.<sup>77</sup> In *Minister of Health v Treatment Action Campaign (TAC)*, the Court rejected an argument that section 27(1) confers an individual right to a minimum core entitlement to which every person in need is entitled.<sup>78</sup>

### 3.2 Interrelationship with other rights

As stated earlier, an obvious link exists between adequate food or nutrition, a clean and healthy environment, water conservation and water. The sections in the 1996 Constitution dealing with these rights, therefore, also have direct relevance when discussing access to water.

Section 28(1)(c) states that every child has the right to 'basic nutrition', which arguably includes sufficient water for drinking, food preparation and even food production. This right differs from the socio-economic rights listed in sections 26 and 27 in that the state immediately has to respect, protect, promote and fulfil it.<sup>79</sup> The Constitutional Court held in *Grootboom* that, in the context of access to housing, sections 28(1)(b) and 28(1)(c) must be read together and that the obligations set out in section 28(1)(c) primarily rest on the parents or family of the child and only alternatively on the state, for example in the case where children are removed from their families.<sup>80</sup> In *TAC*,<sup>81</sup> in the context of providing health care, the Court made it clear that the state would carry a primary obligation to ensure that children born to mothers who are indigent and unable to gain

<sup>76</sup> *TAC* (n 32 above) para 39.

<sup>77</sup> *Grootboom* (n 48 above) para 34; *TAC* (n 32 above) para 39.

<sup>78</sup> The first and second *amici's* argument to this effect was rejected on the flimsiest of grounds - in effect the Court said that the *amici's* interpretation could not be accepted as it did not accord with the Constitutional Court's interpretation in *Grootboom*, but the *amici* expressly argued that the Court's interpretation in *Grootboom* was wrong. Also see Bilchitz (n 33 above) 6.

<sup>79</sup> Sec 28 does not contain a qualifier similar to secs 26(2) & 27(2).

<sup>80</sup> *Grootboom* (n 48 above) paras 76-79.

<sup>81</sup> Para 79.

access to private treatment which is beyond their means, enjoy basic health care services. Applying these guidelines by analogy to the right of access to sufficient water would mean that parents carry the primary obligation to provide access to sufficient water to children in their care, but where they are financially unable to do so, the state would have to step into the breach.

Section 35(2)(e) proclaims that everyone who is detained, including every sentenced prisoner, has the right to 'conditions of detention that are consistent with human dignity, including at least exercise and the provision, *at state expense*, of *adequate* accommodation, *nutrition*, reading material and medical treatment'<sup>82</sup> (our emphasis).

Section 24 states that everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. Clean and clear water links closely with an environment that is not harmful<sup>83</sup> and the need to prevent pollution.<sup>84</sup>

Other relevant rights include the rights to equality,<sup>85</sup> dignity,<sup>86</sup> life<sup>87</sup> and administrative justice.<sup>88</sup>

### 3.3 General guidelines

On the basis of the above, the following general guidelines may be laid down:

- Every South African inhabitant should have access to water. The state should prioritise improvement of access to water in those areas where the greatest need exists.
- Every inhabitant should have access to enough water to meet basic needs.
- Such water should be of adequate quality.
- Water sources should be as close as possible to households.
- Water should be available on a daily basis.

<sup>82</sup> Sec 35(2)(e) is the only section in the Constitution dealing with socio-economic rights that explicitly obliges the state to provide the rights listed in this subsection at its own cost.

<sup>83</sup> Sec 24(a).

<sup>84</sup> Sec 24(b)(i).

<sup>85</sup> Sec 9.

<sup>86</sup> Sec 10.

<sup>87</sup> Sec 11. However, according to the Constitutional Court's judgment in *Soobramoney* (n 61 above), sec 11 should be read subject to the specific formulation of the socio-economic rights in secs 26 & 27. According to the Constitutional Court's approach, sec 11 has almost nothing to add to the interpretation of the socio-economic rights.

<sup>88</sup> Sec 33. Niklaas & Stein (n 45 above) argue that local authorities must provide an opportunity to defaulting consumers to make representations before their water supply is discontinued.

- Water provision services must be easily maintainable, effective, reliable and must be flexible enough to upgrade easily.
- Water should be as affordable as possible, especially to the disadvantaged and vulnerable members of South African society.
- Adequate policy measures must be developed and monitored to prevent pollution of water resources and to encourage water conservation.
- Water use must be managed and controlled adequately.
- The state must monitor the right to water and provide, as far as possible, effective remedies for violations.

#### 4 Basic sanitation

The right to basic sanitation is not mentioned explicitly in the South African Bill of Rights. The right to an amount of water for sanitation purposes is included in the right to water as discussed above. Moreover, a right to sanitation could be derived from section 24(a) (the right to a clean environment) read with the right of access to adequate water.<sup>89</sup> Failure to control sanitary excreta disposal is one of the major causes of environmental pollution and water diseases. The WHO guidelines prescribe 'sanitary excreta disposal' to be the isolation and control of faeces from both adults and children so that they do not come into contact with water sources, food or people. The Committee on ESCR has noted the importance of sanitation for the right to water and considers it an element of the rights of housing and health.<sup>90</sup>

#### 5 Conclusion

The measure of neglect of the right to water in international and national jurisprudence stands in contrast to the severity of the plight of the millions without proper access to water. However, lately this gross deprivation has resulted in the increased conceptualisation of water access issues in human rights terms. This in turn has led to new international and national legal standards about access to water being developed. On this basis a right to water jurisprudence is fast developing, both in international and regional law, and within domestic jurisdictions such as South Africa.

<sup>89</sup> Sec 3 of the Water Services Act 108 of 1997 recognises every South African inhabitant's right of access to basic water supply and basic sanitation. 'Basic sanitation' is defined as 'the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste water and sewage from households, including informal households'. This definition recognises the state's obligation to the poorest and most vulnerable members of South African society.

<sup>90</sup> See para 29 of General Comment No 15 (n 2 above): 'Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources. In accordance with the rights to adequate housing and health ... States Parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.'