



**CAMPAIGN:  
RIGHT TO AGRARIAN REFORM FOR FOOD SOVEREIGNTY**



HUMAN RIGHTS COMMISSION  
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**COMPLAINT TO THE HUMAN RIGHTS  
COMMISSION ON THE CULPABLE LACK OF  
SERVICE DELIVERY BY MUNICIPALITIES AND  
LOCAL GOVERNMENTS WITH RESPECT TO  
SMALL AND EMERGING FARMERS AS WELL AS  
RURAL DWELLERS**

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We are aware that the SAHRC briefed the Parliamentary Select Committee on Agriculture and Land Affairs on the findings of the 2003 farming inquiry on 1 June 2005. The SAHRC also made a further submission to the select committee which focused on the eviction of farm dwellers on 27 February 2007.

We sadly note that few or none of your recommendations especially the creation of a **Farming Community Forum**, in the office of the Presidency, has been implemented. Rural communities continue to suffer from insecure tenure, evictions, landlessness, government policies and officials that are insensitive to their needs.

Government policies remain incoherent and unclear which leads to distrust and this strains the relationship between civil society, NGO's and government. The adoption of macro economical policies that are market driven coupled with a decline of 45% in agricultural spending since 1998 seems to contradict government commitment towards agrarian and land reform.

Land is Power and without it one's life has very little worth. In rural areas, land is considered a major asset and input in the agrarian system. One cannot start farming without land. Provision of shelter also requires land. Agriculture continues to be the main source of income to many agrarian economies and consequently rural communities in many parts of the world. A reformation of

rural economies to improve standards of living therefore has a strong relationship to agrarian reform. Land redistribution is a very important component of agrarian reform and consequently redistribution of wealth in rural areas. In South Africa, agriculture currently forms a small share of total incomes of rural Africans.

However, agricultural incomes are higher for those Africans with access to land than for the whole rural African population. To redistribute income and improve standards of living in rural areas therefore require access to land.

The emerging failure of land reform to meet the expectations of rural black citizens undermines the long-term stability of South Africa. Conflicting mandates, policies, and processes of different levels of government and ministries, are the main causes for confusion and conflict over land. Government support to black enterprise development in rural areas is exacerbating existing land conflicts and further disenfranchising poor rural black communities.

The slow pace of land reform has been attributed to a number of factors (SAHRC 2004), including:

- Staff and financial constraints within government ministries responsible for land redistribution
- Complex and long processes involved in sale of land
- Lack of willing sellers at fair market price
- Scarcity of arable land within the possession of the State

The main objective of land reform must be to bring a just and equitable transformation of land rights in South Africa. This objective has a number of dimensions. Firstly, land

reform must address the gross inequality in landholding. Secondly, it must provide sustainable livelihoods in ways that contribute to the development of dynamic rural economies. Thirdly, particular attention must be given to the needs of marginalized groups, especially women, in order to overcome past and present discrimination. Fourthly, rural people themselves must participate fully in the design and implementation of land reform policies.

Land is a primary means of subsistence and income generation in rural economies.

Access to land allows rural families to put their labour to productive use in farming, while providing a supplementary source of livelihoods for rural workers and the urban poor.

Land can be loaned, rented or sold in times of extreme distress, thus providing a degree of financial security.

Importantly, as a heritable resource, land is the basis of wealth and livelihood security of future rural generations.

Rights in land and access in land are major determinants of a household's capacity to choose and plan its own level of farm employment.

Access to land also strengthens the hand of the rural poor in their participation in the labor market, while contributing significantly to rural employment

There are an estimated 14 million households vulnerable to food insecurity in South Africa and an estimated 2.2 million food insecure households in

South Africa (Ministry of Agriculture 2006).

To this day, land ownership remains grievously skewed, with approximately 5% of the white population owning 87% of the land. White South Africans are the predominant owners of the 15% of land classified as arable. Poverty is a distinctly rural phenomenon with an estimated 75% of South Africa's poor living in rural areas. Though agricultural production represented only 3.1% of GDP (World Bank 2005), the contribution of farms to employment and to the livelihoods

and nutrition of poor households remains significant, particularly in communal areas.

We require the input of the SAHRC to support civil society as well as NGO's to bear pressure on the government to accelerate and scale up the process of land reform in order to address long-standing grievances and implement policies that effectively alleviate the poverty of rural people. And in particular:

- Pass legislation recognizing customary claims to land in order to secure the rights of smallholders
- Accelerate the process of adjudication and restitution of existing land claims which are severely backlogged
- Reform and simplify the processes required to buy, sell or otherwise transfer land ownership
- Secure and exercise the government's "first right of purchase" of commercial farmlands that are offered for sale to expedite redistribution
- Expand the use of compulsory acquisition with compensation for unused or under-utilized land
- Empowering local government to utilize state owned land
- Increase taxation on unused and under-utilized private land to encourage sale by absentee landlords and increase revenues for future BLA acquisition
- Expand agricultural extension, credit, and grant services and invest in rural productive infrastructure to ensure land access translates into gains in productivity, income and nutrition
- Under a cohesive framework, plan and coordinate land and tenure reform and associated services among different levels and ministries of government, linking efforts in rural areas and urban townships.

Having access to land is useless in the absence of essential services and it is in this regard that municipalities need to step up to the plate as they are the implementers of constitutional guarantees.

**The Municipal Systems Act 32 Of 2000** s 1(1) defines the concept of basic municipal services as a service that “ is necessary to ensure an acceptable and reasonable quality of life and if not provided would endanger public health and safety or the environment”. In relation to food security there is a duty on government to remove impediments to food security. In the case of **Mashava v The President of the Republic of South Africa 2004(2) SA 476 CC inefficient administration** resulted in a disability grant not being paid. This money was the only means whereby the Mashava family could secure food. Although not couched in these terms, the Mashava decision is authority for the proposition that the state must give effect to the duty to respect the right to food by removing impediments to the effective enjoyment of the right.

Small and emerging farmers make up a significant constituency. Figures quoted in 2007 by Agri SA quotes 4000000 people as depending on farming to obtain food or that uses farming as an additional means of securing food. Insecure tenure, lackluster service delivery and indifferent treatment of small and emerging farmers are in effect condemning them to poverty and starvation. With very little or no recourse to expensive and protracted legal battles, the only hope of these communities are the independent monitoring institutions created by law, or public interest law firms or NGO’s to raise attention to their plight.

In a society in transformation the South African Human Rights Commission, as a constitutionally created institution, is tasked with investigating and reporting on human rights fulfillment, take steps towards remedies for human rights violations, carry out research and to educate. The SAHRC’s role in monitoring social and economic rights is critical for the integrity of our constitution. If social and economic rights do not become real and tangible and assume its proper place in government priorities; our constitution will

be a worthless piece of paper and lose its transformative nature, forfeiting its legitimacy and respect amongst the masses.

The current economic and financial crisis threatens to wipe out the relative progress made in poverty eradication in the past. More than half of the world is likely to see an increase in individuals living in extreme poverty, In this context, the linkages between poverty and human rights must be clearly acknowledged.

Poverty is as much a cause as it is a consequence of human rights violations. Small and emerging farmers as well as poor rural dwellers find themselves between a rock and a hard place, in the sense that whereas it is the law that is responsible for them being in their perilous position it is expected of them to use the same law to undo these shackles. The reality of our situation is that poor and landless people can seldom access the courts and when they can; they don't always have the guarantee that should they obtain a victory that the government will respect the courts judgment. Government is on record for filing appeals on technical grounds in order to stall on service delivery. In the face of such callousness; how long can the poor and destitute be expected to remain calm about being decimated.

It is time to take the discussion on poverty and human rights from the margin of policy debates and development strategies to the forefront. Less debating and more doing. We must collectively accept that poverty affects us all and demands greater action from us all. Greater public participation needs to be facilitated and we need a proactive approach from institutions such as the South African Human Rights Commission; whose core responsibility lies in ensuring the protection and development of human rights. It is understood that the SAHRC function under the strain of limited resources yet it is in a much better position than

rural landless people to bring lack of service delivery, that results in compromising respect for human rights and dignity, to the attention of the relevant competent authorities.

The South African Human rights Commission is challenged to embrace a more proactive role in bringing human rights violations to the attention of the Municipalities, courts as well as the legislature. It is this context that emerging small farmers and landless rural dwellers approaches the SAHRC. The failure of local government and municipalities from South to Northern Cape, to provide rural dwellers with the most basic of rights and amenities is criminal and represents a real danger to the livelihood of millions of people. In particular we want to bring to your attention to :

- 1 The failure of Municipalities to provide small and emerging farmers access to commonage.
- 2 The lack of clear guidelines as to the allocation of commonage, which result in big commercial farmers still leasing commonage in contravention of the stated government objective with respect to municipal commonage.
- 3 Not providing enough opportunity for public participation or input
- 4 Not respecting administrative justice provisions which demand that rural dwellers be treated fairly.
- 5 Not providing real opportunities to access food or to assist farmers in planting food.
- 6 Poor or non existence of extension supports
- 7 The extension support that exists is skewed towards the chemicalized industrial model of agriculture that is responsible for soil degradation, pollution and environmental decay. Extension support for organic farming which is a most viable option for emerging farmers, just does not exist as a result of lack of integration between land reform and agriculture.

- 8 Lack of training by government officials in alternative cultivation methods.
- 9 Access to water is a severe problem for emerging farmers as big commercial farmers get preferential treatment.
- 10 Some communities are still forced to depend on the bucket system as the cost of installing flush toilets for these communities are deemed to high and as an alternative local governments wants these communities to move to urban areas.
- 11 The dry pit toilets that is characteristic of the whole Namaqualand and Hantam Karoo area poses serious health and environmental risk.
- 12 Poor infrastructure to contain remove sewage and excretion, as in Wupperthal, resulting in health threats to the community.
- 13 Certain communities such as the Transnet Karoo settlements are not even part of existing municipalities and they thus lack access to basic amenities
- 14 Evictions of farm dwellers with impunity and a reluctance to prosecute farmers who are guilty of these practices. We also note the observation by the SAHRC in your 2007 report that the majority of farm evictions apply to females and children and that a significant minority of these evictions happened through the courts.

We will focus on these with reference to the duties of local government and whether local government and/or municipalities are fulfilling their developmental role as prescribed by the Sec 139 of our Constitution Act 108/96, The Municipal Systems ACT 32 of 2000, the Promotion of Access to Justice as well as Information acts.

These issues are presented as they do not in essence require the immediate entitlement of relief for individuals but rather an attempt to evaluate whether local government satisfies its constitutional role in a reasonable

manner and that it is working towards the progressive achievement of policies.

The charge is that local governments and municipalities, especially in the Namaqualand, Hantam Karoo, Cederberg, West Coast, Southern Cape and Matzikama areas to name but a few; are in violation of their constitutional duties in that they fail in the important responsibility to provide basic services in a sustainable, integrated and progressive manner. This is criminal in a society that are still deeply divided in our towns, the scars of spatial apartheid and the fact that many communities still cannot access even the most basic of rights such as food, water, sewerage, refuse collection, electricity and paved roads. It is not because of a lack of funds that these services are not rendered but rather that the provision of these services does not conform to our transformation imperative. Whereas the approach of service providers should be proactive and pro development; we find that officials are reactive, with policies still favouring the haves and being dismissive of the cries of poor and suffering people.

Municipalities are tasked with ensuring that their policies and practices have maximum impact on economic growth and the social development of their communities. Municipalities should thus build social capital and stimulate the finding of local solutions for increased sustainability. The notion of developmental local government must be the context in which the constitutional mandate of municipalities must be seen.

There are four arguments for commonage being an important aspect of land reform.

Firstly, commonage land is often the only natural resource available for poor urban communities, particularly in land-locked areas without access to fisheries. Commonage is readily accessible to the poor, because it is located

close to residential areas, and does not require much capital to develop. It should therefore be a first-line strategy for supporting household food production.

Secondly, municipalities already own commonage land. It does not have to be purchased at great expense. This suggests that commonage development has *prima facie* importance as a component of land reform.

Thirdly, commonage development has – in theory – great potential for spin-off economic development, such as local markets, local capital accumulation, local skills training, and linkages between farms and non-farm activities.

Non-farm activities are important to the welfare of farm households in sub-Saharan

Africa, for immediate food security through providing money to buy food, to buy farm inputs, and to provide outlets for production.

Fourthly, it offers a valuable opportunity for experience and learning in collaborative or co-operative social institutions, such as commonage committees, farmers' associations, banks and co-operatives. These institutions are typically located in the small towns. Commonage is therefore a valuable "school for economic citizenship" for people who have been marginalised and disempowered for almost all their lives. It can also help in creating a new generation of young farmers, and thereby restore the image of agriculture as an attractive career option.

As part of the Government's land reform programme, funding was made available to municipalities to purchase private farms to add to their commonage holdings. Between 1996 and 2002, 78 commonage projects were funded by DLA, and a total of 420 812 ha were acquired by municipalities in terms of the *Provision of Land and Assistance Act* (Act 126 of 1993). This funding pattern has recently slowed significantly, perhaps indicating an official ambivalence about the merits of commonage as a part of land reform.

The commonage management system in the municipalities mentioned is extremely fragmented and unclear. Each town in the municipality still manages its commonage in terms of contracts drafted before 2000, or those concluded on an *ad hoc* basis since then. There is no commonage management policy.

During 2006, DLA drafted a new set of commonage guidelines, with *pro forma* contracts and regulations. But these have not yet been officially promulgated and have therefore not yet made any impact on municipal practice.

In interpreting the obligation to fulfill socio-economic rights, as qualified with reference to reasonable measures, progressive realization and available resources, our constitutional court have stated that no individual can demand immediate relief and thus refused to require a minimum core obligation that would require the provision of a commodity. Our courts have however been willing to review the reasonableness of policies, legislation and other measures that are said to reflect the state's commitment to the discharge of socio-economic rights

Reasonableness would be guided by the following criteria.

- A there must be a comprehensive, coherent and coordinated program to give effect to a right or entitlement.
- B the program must be capable of facilitating the realization of the right in the long term.
- C the program must be reasonable in conception and implementation
- D the program must be able to meet both short, medium and long term needs

- E the program must be able to provide relief for those in desperate circumstances albeit not immediate relief.

The mentioned municipalities policies on providing access to commonage are in clear contravention of the developmental framework of local government and of the reasonableness standard as required by our courts. The SAHRC should require of these municipalities to provide a checklist of how they are implementing their constitutional mandate with reference to facilitating access to commonage as well as the extension support delivered.

In the absence of clear standards and policies; the Human rights commission is requested to demand of the municipalities mentioned that they conceive of a program that responds to the needs of those communities that are facing desperation.

### **PUBLIC PARTICIPATION**

- Spaces for engagement need to be challenged and refined – current mechanisms and forums for public participation are not accessible (design and location); do not improve access to social goods; nor are they empowered, that is they are not sufficiently connected to “real” decision-making – process vs locus
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- Current mechanisms are also not empowering - do not enable the distilling of local knowledge, or challenging of existing power imbalances, whether between state and non-state actors, or among civil society stakeholders themselves (women’s participation) – issues of representation and voice.
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Clearly, there is a need for engagement on citizens’ terms, not the state’s – people choose their modes of participation.

Our constitution “resonates with concept of governance by discussion” – from the “will of the people”; to principles of accountability, responsiveness, and openness; and obligations on legislatures, public administration and local authorities to engage communities in their processes, as well as the right to access to information. At this stage, researchers, policy makers and program managers know little or nothing about the existing knowledge base of commonage users. Various research and conservation initiatives have been undertaken in the Karoo, but these mostly involve established commercial farmers. Virtually no research has been done on commonage users’ agricultural skills, or their knowledge of the environment.

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  - Provisions in White Paper on LG; National Policy Framework on PP; Municipal Structures and Systems Acts, MFMA, MPRA providing for public participation in all aspects of municipal functioning, from planning and financial management processes, to service delivery and performance evaluation
  - We have significant opportunities provided by this vibrant policy framework – yet how is this experienced by communities? The reason why this is not being implemented in a meaningful way; is because of a technocratic approach coupled with compliance tendencies marked by defensiveness and contestation.
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- Right to participation is the entry point to the realisation of all other rights
  - Meaningful PP open space for new and marginalised voices
  - Communities should be involve in monitoring all participants

- People should be given quality information and ensuring gender equality in all rights.

The Human Rights Commission with its mandate to anticipate and address human right violations must hold public officials bound to the highest standards and must, through its assessment, evaluating and reporting procedures challenge lacklustre official response to public enquiries.

### **EXTENSION SUPPORT FOR SMALL AND EMERGING FARMERS**

As argued earlier, local people's knowledge is an essential ingredient of people-centred sustainable livelihoods projects. Knowledge is a critical asset, which can and should be recognised, amplified, maximised and built upon. Even more significantly, it creates a zone of confidence for local people, who are thereby encouraged to trust their own judgment, take pride in their own achievements, and select and add new knowledge in ways that are compatible and integrated with their own inherited knowledge bank'.

How, then, can we understand local people's knowledge base more effectively?

Ethnobotany refers, simultaneously, to a scientific study of local knowledge, as well as that local knowledge itself. Systematic research into local ecological knowledge allows us to create the conditions for local people, individually or collectively, to contribute to rural development and conservation projects.

There is a definite urgency to record the ecological knowledge (and biological specimens) before they disappear forever.

What is needed is a methodology for agricultural extension workers and environmental officials, so that they can engage

meaningfully with commonage users to determine their current level and type of environmental knowledge. On the basis of this assessment, appropriate participatory land management mechanisms can be developed.

The most urgent priority is to find out what commonage users *actually know*. This suggestion depends, fundamentally, on the argument that land users with substantial environmental knowledge would have very different skills, motivation and interest in long-term environmental sustainability than would land users with little or no environmental knowledge. It is likely that people with environmental knowledge would have a more intrinsic and enthusiastic appreciation for environmental dynamics, and a greater willingness or passion to maintain or restore biodiversity on the land. Conversely, it is hypothesised that people with little environmental knowledge would tend to use the land more exploitatively, for short-term gain. There may be a direct causal link between the 'tragedy of the commons' and the lack of environmental knowledge.

Extension services provided by officials in the Department of Agriculture tends to focus on advice giving as opposed to engaging with local farmers on a level that treat them not as passive learners but as significant contributors towards creating sustainability.

*A more sustainable approach is to empower people by learning a process of thinking, questioning, doing and evaluating that can enable them to initiate and manage their own learning needs.*

There are several ways in which extension officers can facilitate the use of indigenous knowledge:

- *Recording*: Recording as much indigenous knowledge as possible, with reference to specific sites and conditions, and local refinements (the techniques of ethnobotany will be particularly useful).
  - *Interacting*: Conducting on-farm farmer-oriented research; discussing all problems and solutions from the point of view of the local people; facilitating village-level experimentation workshops; and deciding which non-indigenous interventions would be compatible or useful in the local context.
  - *Research*: Establishing participatory research stations in as many localities as possible.
  - *Data collection and dissemination*: Establishing indigenous knowledge resource centres and data banks, to collect information, design training and dissemination materials, and to establish links between local people and development workers.
  - *Training*: Designing training programmes for development workers regarding indigenous knowledge.
  - *Capacity-building*: Strengthening indigenous organisations by promoting off-farm income generating activities, co-operative marketing, farmer-to-farmer seed and technology exchange, and tree planting.
- In the Karoo, with its fragile natural environment, such people-centred extension techniques can be a breakthrough in creating co-operation between commonage users and development specialists. The most urgent interventions would be to conduct systematic environmental assessments of the current condition of all commonages, with the participation of the commonage users. This will require a common scientific methodology, but there must be room for flexibility to accommodate local preferences. It would be an ideal project for post-graduate students in the fields of environmental management and agriculture.

This research process would involve collecting and classifying veld types, veld condition and ecological features from the point of view of scientist as well as commonage users.

Extension officers need to be trained in alternative methods of cultivation and extension support cannot just support a chemicalized and industrial model of agriculture. This approach is in contrast to freedom of choice, sound environmental principles, as well as a plethora of other similarly important human rights. Adequate extension services (enough personnel and resources) should be available for farmers that want to adopt more agro-ecological practices, such as organic farming.

International and South African innovations show that people-centred extension services may have more success in promoting conservation farming than the conventional didactic approaches of extension officers. But this new approach will depend, fundamentally, on asking questions about the knowledge base of farmers, as well as a readiness to accept the validity and usefulness of their knowledge. The NBI project has begun to take important steps in this direction. What is now necessary is to bring these insights and skills to municipal commonage, for the sake of rapid but sustainable land reform.

We believe that the SAHRC as a respected human rights watchdog, is ideally suited and mandated to demand that municipalities incorporate these principles in their administrations because refusal to do so would seriously impact on the sustainability of commonage, thus compromising food sovereignty.

### **THE RIGHT TO WATER AND PROPER SANITATION.**

Section 7(2) of the Constitution provides that '[t]he state must respect, protect, promote and

fulfil the rights in the Bill of Rights'. The duty to respect requires the state to desist from interfering with the enjoyment of the right of access to sufficient water (General Comment 15, para 21). The state must refrain from engaging in any practice or activity that denies or limits equal access to adequate water and desist from arbitrarily interfering with customary or traditional arrangements for water allocation (General Comment 15, para 21). The state must also not unfairly discriminate when allocating water resources.

The duty to *promote* the right of access to sufficient water involves, among other things, the promotion of educational and informational programmes aimed at generating awareness and understanding of the right (see General Comment 15, para 25). The obligation to *fulfil* requires states to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of the right (*Maastricht Guidelines on Violations of Economic, Social and Cultural Rights of 1997*, para 6; General Comment 15, para 26).

A practical and effective way of targeting free basic services such as water to those who cannot afford to pay for them has been through the indigent register policy adopted by local government (*City of Johannesburg and Others v Lindiwe Mazibuko and Others* Case No 489/08 [2009] ZA (SCA) 20 (paras 42 and 46) [Mazibuko (SCA)]). Municipalities are responsible for identifying households that are eligible to receive free basic services. Of the estimated 5.5 million indigent households in the country, over 4 million (73%) are registered on municipal databases and currently receive free basic water (Presidency, 2008: 50). In *Mazibuko and Others v City of Johannesburg and Others* 2008 JOL 21829 (W), the High Court found that the

use of prepayment water meters was unlawful as it was not authorized by the City of Johannesburg's bylaws (para 105). It also held that the use of prepayment meters for poor and black residents in

Soweto constituted unfair discrimination in that it did not give the applicants an opportunity to make representations before disconnection, an opportunity available to more affluent Johannesburg residents (paras 91–92). Furthermore, it held that 25 litres per person per day or six kilolitres per household per month was insufficient to meet the applicants' daily needs and ordered that the City provide a minimum of 50 litres per person per day.

The failure to take into account the impact of particular conduct on a vulnerable community, could in appropriate circumstances amount to unfair discrimination.

With respect to rural farmers, water is essential for livestock and farming and a failure to take into account structural inequalities in society would amount to a breach of the equality principle as enshrined in sec9 of our constitution.

The Court further held that assessing the quantity of water needed for a dignified existence required a context-sensitive evaluation that took into account, for example, whether people needed additional water because they relied on flush toilets (such as the Phiri residents). It found that the 25 litres standard could not have taken into account the water needs of communities relying on waterborne sanitation (para 18). The Court proceeded to consider the quantity of water which would meet the abovementioned standards of sufficiency in respect of the Phiri residents. Taking into account the quantity of water required for various household needs such as drinking, food preparation, bathing and toilet flushing, the Court held that 42 liters of water per person per day would constitute sufficient water for the Phiri residents in terms of section 27(1) of the Constitution (para 24). The next major issue considered by the Court was whether the City was obliged to provide 42

liters (or a lesser quantity of water) free of charge. The City contended that there was nothing in the Water Services Act or regulations that obliged them to provide 'free' water. In interpreting the phrase, 'access to', in section 27(1)(b), the Court endorsed the Covenant on Economic Social and Cultural Rights's stipulation that 'access to water entails both physical and financial access' (General Comment 15, para 12(c)). In other words, water should be affordable for all 'and must be accessible to all including the most vulnerable or marginalized sections of the population, in law and in fact' (para 28). The contention that the City was not obliged to provide at least some quantity of water free of charge was rejected on the basis of the Court's interpretation of the Act, the FBW policy of the government and the City, and the obligation to ensure that water was economically accessible in terms of section 27(1) of the Constitution. In determining the extent of the obligation to provide water free to people living in poverty, the SCA stated that the key criterion was what would be reasonable, taking into account the City's available resources and other competing claims.

The Court considered the fact that the City had various other claims on its budget. It concluded, however, that the City's decision to provide only six kilolitres of water per household (or 25 litres per person per day) was 'materially influenced by an error of law' and fell to be set aside on that basis (para 38). Essentially, the City had failed to appreciate that it had both statutory and constitutional obligations to provide a sufficient amount of water, including, reasonable provision of free water for those who could not afford to pay for it.

Having set aside the City's FBW policy, the Court ordered the City to formulate a revised water policy 'in the light of the finding that it is constitutionally obliged to grant each Phiri resident who cannot

afford to pay for water access to 42 litres of water per day free in so far as it can reasonably be done having regard to its available resources and other relevant considerations' (para 43). As an incentive to the City to adopt a revised free water policy as soon as possible, and to cater for those in dire need of water, the City was required to provide each account holder in Phiri who is registered with it as an indigent with 42 litres of free water per day per household member.

There are certain positive features of the Court's reasoning in relation to this aspect. These include its willingness to engage with the substantive interests and values that affect water as a human right, and to articulate normative standards against which the sufficiency of the water supply to an impoverished community must be measured. The Court was also unambiguous in affirming that the right of 'access to' water was not equivalent to access through exclusively commercial mechanisms. It included a constitutional obligation to ensure that water is economically accessible to the poor, including an obligation to supply free water to meet basic needs. Relevant organs of state remain under an obligation to take reasonable measures towards the full realisation of the right as defined in section 27(1)(b). The assessment of the reasonableness of the measures adopted by the state at a particular juncture should take into account the lived realities of poor communities and the impact of a lack of water on their lives, and the implications of a lack of water for women and the ability of poor communities to participate fully in the activities of society. Moreover, this assessment cannot occur without a prior normative understanding being developed of the right to sufficient water and the interaction between the right to equality and the need for ecologically sustainable development and use of natural resources. It is only against this normative and

contextual background that a proper judgment can be made on whether a reliance by organs of state on resource constraints can be deemed reasonable.

### **BASIC SANITATION**

There are no specific right in our Bill of Rights that relate to sanitation however it is seen as one the sticks in a bundle of water rights. Sec3 of the Water Services Act defines basic sanitation 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 households.

Government Notice R509 regulation 2 defines basic sanitation :

- a The provision of appropriate health and hygiene education;
- b a toilet that is safe, reliable, environmentally sound easy to clean, provides privacy and protection against the weather, well ventilated, that keep smells to a minimum and prevents the entry and exit of flies and other disease carrying pests.

Government promised 5 communities known as the TRANSNET SETTLEMENTS OF THE KAROO that the bucket system would be phased out by December 2007 yet residents in 2009 still have to use these primitive ways of disposing of their excretion. There is no attempt on the part of local government to evaluate alternative means of waste disposal such as waterless sewage energy measures or water tanks. Such inaction on the part of local government is inexcusable bearing in mind that is not a lack of resources, but an inability to take the plight of rural land dwellers serious. These communities stand no chance against intransigent and arrogant officials that stifle service

delivery and override communal input and participation. This conduct effectively undermines these citizens in the exercise and enjoyment of their basic human rights. Intervention is required and not necessarily the judicial kind. SAHRC can require that Transnet and the responsible municipality provide them with an integrated development program addressing these issues, on the basis that all authorities must be pro active in progressively realizing the full enjoyment of fundamental human rights.

### **CONCLUSION.**

People are desperate and increasingly are growing more frustrated. We seem to be on the brink of civil unrest and mass uprising. People can only bear so much. We are still confident that reason can prevail and thus request the Human Rights Commission to use its mandate to assist us in bringing about this pressure.

**SUBMITTED BY THE TASKTEAM FOR AGRARIAN REFORM FOR FOOD SOVEREIGNTY ON THIS 16<sup>TH</sup> DAY OF OCTOBER 2009.**