

# Perspectives on KwaZulu-Natal

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## Measures taken towards the realisation of rights

One role of the South African Human Rights' Commission is to receive information from relevant organs of state on measures that they have taken towards realising the housing, health care, food, water, social security, education and environmental rights in the Bill of Rights. This information is published in the form of the annual Economic and Social Rights Report, which assesses information provided by the various bodies. The Commission states that the report is intended to inform the public, organs of civil society and Parliament on the way legislative and other measures taken by organs of state have affected the obligations of the state to respect, protect, promote and fulfil economic and social rights as required by the Constitution. The third report - which covers the period from April 1, 1999 to March 31, 2000 was completed late in 2001 and will be available from the Commission this month.

In order to obtain the information, the Commission sent letters to relevant cabinet ministers, premiers and members of executive councils of provinces. The directors-general at the national level and heads of departments in provinces were sent protocols and were required to provide names of contact persons from their relevant departments who would liaise with the Commission. The departments were given two months to compile responses to the protocols (until August 31, 2000), but extensions up to another two weeks were granted (until September 15, 2000). However, after this date some departments still had not submitted reports and a further extension was granted until October 31, 2000.

Out of the 68 departments sent protocols, only 15 submitted reports on time. Of the KwaZulu-Natal departments that submitted reports, the departments of housing and finance submitted reports by the initial deadline. The department of health submitted a report during the two-week extension period. The department of social services and population development submitted its report by the final deadline of October 31, 2000. Three KwaZulu-Natal departments - Agriculture and Environment, Traditional Affairs and Local Government, Education and Culture - were subpoenaed after the Commission failed to receive reports by the final deadline date. However, the subpoena for the department of agriculture and environment was withdrawn after the department produced proof that its report had been submitted by the September deadline date. The department of traditional affairs and local government submitted a report on January 30, 2001, the day of a scheduled hearing of the Commission. The Department of Education and Culture produced its report only on February 23, 2001.

### Social security, social assistance and social services for children

The Commission states that the long history of fragmentation in South Africa has resulted in

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inconsistencies in the levels of benefits and quality of service delivery among different race groups, with the black population suffering the greatest discrimination as beneficiaries of social security. "Children also suffered the harsh reality of apartheid where they bore the brunt of political violence, forced removals and high rates of urbanization. Destruction of the family that result partly from the migrant labour system had negative impacts on the social and psychological development of children. The results of these processes included the prevalence of child labour, poverty and homelessness amongst children, drug abuse, gangsterism and child prostitution.

The Constitution states that "everyone has the right of access to social security including if they are not able to support themselves and their dependents, appropriate social assistance" and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of access to social security and social assistance. Another section provides for the right of children to social services.

KwaZulu-Natal received the highest allocation towards social welfare with R3.8 million followed by the Eastern Cape and Gauteng. The national department found that this budget allocation was inadequate for a province where dependency ratios and unemployment rates were high. In addition to the budget allocation, there were special allocations or conditional grants made. These included the Poverty Relief Fund, HIV/Aids allocation, implementation support for the child support grant and the victim empowerment programme. With regards to the disability grants, the Commission states that there is a high volume of temporary disability beneficiaries who move in and out of the system. There were several hundred cases in KwaZulu-Natal taken to court by beneficiaries because of inaccessibility and violation of human rights.

The KwaZulu-Natal department of social welfare provided little information. The Commission expressed disapproval at the lack of information in the hands of provincial departments, including "information as basic as the number of people who were eligible for social security". The Commission states: "Provincial departments were responsible for the implementation of the policy of the state. It is difficult to see how this role can be played effectively if government does not have sufficient information to assess the degree of progress with implementation. Government has said in a number of policy documents that it purports to target its support to the vulnerable members of society who lack access to sources of income. It seems inconceivable that policy can be planned on effective ways of providing this form of support without a basic idea of who the vulnerable are, where are they and what type of support they need. Provincial departments were therefore required to develop the required informational management system to collect this information."

The KwaZulu-Natal department claimed to have made the child support grant and poverty alleviation programmes available to children living in rural areas and informal settlements and children from low-income groups. It also said it placed homeless children in places of safety, subsidised street children and provided services for foster children or subsidised non-governmental organisations. However, the Commission said that the responses by the departments were inadequate. "Policies and programmes mentioned were identified but not fully described...Responses by the various departments suggest that the constitutional obligations to respect, protect, promote and fulfil were not understood...There is a need for provincial departments to provide information on the number of foster care facilities established in the province and the number of children that benefited from services provided in foster care facilities...Reports did not explain how affected children were being assisted through the instituted policies and programmes. There was no indication of whether the instituted measures were reasonable and effective, and how they assisted in advancing the right to social services for children."

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The Commission stated that under reporting and the omission of information showed that departments did not have the kind of information required due to the non-existence of a proper monitoring system. The Commission found that allocations towards foster care grants and care dependency grants were unsatisfactory because they failed to grasp the full impact of Aids on the budget. "There was no specific allocation for the care of Aids orphans whether in foster care or in centres of care. There was also no indication of the impact of the allocation on child-led households."

## **Education**

The Commission states: "The post-1994 government inherited an education system riddled with inequalities. The system was racially fragmented and characterized by a disproportionate distribution of resources with former white schools receiving more resources than schools of other racial groups. Multiple education authorities caused duplication and inefficiency. The system was also marked by lack of properly qualified educators for the vast majority of learners." The right to education, according to the Commission, imposes an obligation on the state to put in place and maintain an education system, with educational programmes available in all its forms and at all levels.

KwaZulu-Natal was missing from the list of provinces that had instituted the HIV/Aids policy measures, as well as the admissions policy for ordinary public schools, national norms and standards for schools funding and the ABET policy. However, the province, regarded as one of the most disadvantaged, did benefit from several additional grants provided by the national department.

With regard to early childhood development programmes, the KwaZulu-Natal department found that the allocation catered only for subsidies to 250 sites and targeted only grade R learners (six year olds) and no funding was allocated for children from birth to aged five. As a result of the allocation, 80 000 six year old children out of 240 000 had access to these programmes.

The department found that the budget allocation for primary education fell far short of the required amount. "As a result the province had a high learner/educator ratio compared to all other provinces, and many supervisory and advisory posts were frozen. To try and address this problem the KwaZulu-Natal department of education directed funding to the most needy schools in the province. The redeployment and rationalization process in the province had ensured that disadvantaged areas were better staffed."

Personnel costs made up about 89.6% of the total budget for the KwaZulu-Natal department in 2000/2001. This had dropped slightly from 91.2% in 1998/1999. However, the Commission stated that not much progress had been made towards reaching the norm of 85% and that provincial departments need to reduce the proportion of personnel costs to enable improved financing of non-personnel education services whose distribution was inadequate and inequitable.

The Commission found that the KwaZulu-Natal department did not provide certain statistics. For example, information on the number of children excluded due to lack of school fees, as well as the number of children excluded due to lack of school uniforms, was not provided. Such a lack in information from KwaZulu-Natal made it impossible to assess the realisation of the right to education, according to the Commission.

KwaZulu-Natal reported that it had 5 969 schools, including 4 742 in urban areas and 1 227 in rural areas. Of these 1 528 or 25% were in a state of disrepair. The majority - 1 352 - were in

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urban areas. More than 60% of the schools in KwaZulu-Natal have classroom shortages, including 3 106 in urban areas and 262 in rural areas. The department did not provide information on the number of schools that had inadequate textbooks. In addition, no information was provided on learners that reside beyond the five kilometre radius from schools.

The Commission found that measures to realise the right to education seem not to have been implemented properly. It stated that until all the intended beneficiaries are reached in the provision of education, the goal of making education accessible for every one would remain a distant goal, especially for those who need it most.

## **Food**

According to the Commission, South Africa as a country is self-sufficient in terms of the amount of food available, but distribution still remains a problem due to poverty and past inequalities that are major impediments to food security. "The majority of people either do not have the means of production such as land, water and agricultural expertise needed for farming, or the financial means to purchase adequate food."

Responsibilities for the realisation of the right to food are dispersed widely within the state machinery, but the departments of health and agriculture are key in this regard. The agriculture department's range of activities in this area have focused on the right to sufficient food, while the department of health's activities have paid specific attention to basic nutrition for children.

The KwaZulu-Natal department of health reported that staff were implementing different elements of the integrated nutrition programme. Infants and children suffering from malnutrition to the protein energy malnutrition scheme, the Vitamin-A supplementation programme, parasitic control programme, and the primary school nutrition programme in schools. The department found that the primary school programme resulted in improved learner attendance at school and improved end of year results. However, the department stated that the late submission of relevant documentation pertaining to applications for this programme and payment procedures had led to interrupted feeding. There was also fraud and inaccessibility of schools in rural areas had hampered the regular monitoring of service delivery and limited the choice of suppliers.

The Commission said that with proper implementation these nutrition programmes could be effective in addressing the nutritional needs of the country. "Information provided suggests that in terms of implementation there is more emphasis on providing assistance in health care facilities and through the primary school feeding programme only. Other deserving children who are not in school, such as those in early childhood development centres run by non-governmental organisations, and homeless children are not being reached. Reports from the provinces imply that the primary school nutrition programme has been effective because there has been reduced absenteeism in primary schools, more participation in class and improved end of year results. Nonetheless, the Food Consumption Survey reported that 88% of children do not eat on a regular basis in the feeding scheme meaning that the service is not being provided regularly."

This survey showed that only children living in urban areas and in the Western Cape had the recommended intake of Vitamin A. Children in all other provinces fell below the recommended daily allowance. This indicated that the food children consume does not provide the necessary nutrient composition for healthy growth.

The Commission stated that measures reported by provinces including KwaZulu-Natal showed a commitment to fulfilling the right to basic nutrition. The province reported that 1 148 585 primary

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school children were reached by the school feeding programme.

The KwaZulu-Natal department stated that infant mortality was at 52.1 per 1 000 live births, 4.6% of children were underweight, the vitamin deficiency rate was at 38%, 15.7% of children were stunted and 4.2% wasted.

The KwaZulu-Natal department of agriculture claimed to have been effective in reaching about 38 653 households to improve food security. Many of these households were headed by women resulting in assistance going beyond agricultural advice, and including empowerment of women through capacity building. Projects for food security targeted mainly people living in rural areas.

### **Health care services**

The post-apartheid South African government inherited a health system with huge inequalities in access to services, according to the Commission. The result included high infant mortality rates especially amongst blacks, high maternal mortality rates, high rates of communicable diseases such as measles and inequitable access to medical insurance.

A national issue raised by the Commission related to the theft of state medicines. In KwaZulu-Natal, a state pharmacist who reported a number of suspected thefts from the state hospital in which he worked was poisoned. In a separate incident, state medicines estimated to be worth thousands of rands were found in the possession of a nurse who worked at kwaMaphumulo Hospital. The Commission said that the theft of drugs is also believed to be the work of crime syndicates and costs the pharmaceutical industry close to R2 billion per year. "Alarmingly, it is estimated that half of all state medicines are stolen. In an effort to address overwhelming theft from hospitals and clinics, medicines destined for state hospitals were to be packaged differently to distinguish them from drugs intended for the private sector."

The Commission said that the KwaZulu-Natal department of health was one of several that provided the same answers as for the previous Economic and Social Rights Report with slight variations and additions. The Commission said that in the previous report it was noted that KwaZulu-Natal, which faced one of the highest rates of HIV/Aids, did not present information on how it dealt with the pandemic. This information was again not provided by the department.

The Commission also noted that most provinces, including KwaZulu-Natal were silent on the implementation of the Patient's Rights Charter despite the centrality of the charter in entrenching a human rights culture in the provision of health care services.

The KwaZulu-Natal department reported that there was insufficient funding in the budget to fill vacancies, maintain stocks of medicines, provision purchase, replace essential equipment and maintain buildings. Measures taken to deal with the problems included freezing of posts resulting in unacceptable pressure on key personnel and reduction of stock levels.

KwaZulu-Natal had the highest number of nurses employed in the public sector with 130 474 and the second highest number of doctors with 1 338. In addition, the province had 220 specialists, 33 dentists and 218 pharmacists. The province did not provide statistics regarding public clinics, hospitals, termination of pregnancy, rates of HIV infection or life expectancy.

The Commission said that it was clear from the varying quantity and quality of responses from provinces that it takes a certain level of commitment and will on the part of government departments to make the required information available to the Commission. "The KwaZulu-Natal

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department of health should provide information on public clinics...The Mpumalanga, Gauteng and KwaZulu-Natal departments should report on the number of hospitals in the provinces." The Commission said that there was a need for the close monitoring of the implementation of the Termination of Pregnancy Act of 1996.

With regard to health services for children, the Commission reported that the latest figures suggest that infant mortality remained high in KwaZulu-Natal, as well as the Eastern Cape and the Free State. Infant mortality rates were higher in rural areas, when babies were born to mothers with no formal education and in cases of shorter birth intervals.

### **Adequate housing**

When the new government came into existence in 1994 it inherited a huge housing backlog, the Commission states in its report. "In its attempt to reduce the backlog, the government committed itself to building one million houses during its first term of office. By December 1999, 980 000 houses were under construction or had already been completed...Notwithstanding the number of houses built, the housing situation in the country remains unsatisfactory.

The KwaZulu-Natal department of housing reported that the housing delivery programme largely addressed the needs of people living in informal settlements. The department realised the urgent need to move away from the developer driven to a department driven approach to housing delivery because the latter focuses on optimising services to housing recipients rather than maximising profits for shareholders.

The Commission found that the department had a fairly satisfactory understanding of the obligations to respect, protect, promote and fulfil the right of access to adequate housing. Of the provinces that produced delivery statistics, KwaZulu-Natal awarded the highest number of state subsidies.

The number of households living in informal settlements increased by 15 930 in KwaZulu-Natal in comparison to the 1998/1999 report. Looking at the provincial population gains scenario for 1995 to 2025, the Commission states that figures indicate that the highest increase in the population in urban areas was expected in KwaZulu-Natal at 64%. "With increasing numbers of households living in informal settlements and the decreasing amounts of funding, a comprehensive rehabilitation strategy needs to be engaged. Rehabilitation of existing settlements by providing the necessary infrastructure and facilities to enhance sustainable human settlements is an option. Departments should also start looking at establishing social housing clusters," the report states.

The Commission found that the failure of the national and provincial departments to provide adequate information made it difficult to make a sound analysis of housing delivery in South Africa.

### **Land**

The Commission states that the historical denial of access to land to the majority of South Africans is well documented. "This is manifested in the lack of access to productive land, homelessness, and high levels of insecure tenure. The post-apartheid government developed a land reform programme which focused on three important areas: land redistribution to address lack of access to land for productive and residential purposes; land restitution to restore land to those who lost land due to previous discriminatory laws; and secure tenure to those whose tenure is insecure.

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The Commission found that the developments that occurred during the reporting period only marginally contributed to the realisation of land rights contained in the Constitution.

"Administrative changes introduced in the restitution programme increased the number of restitution claims. However, none of the developments addressed some of the deep-seated problems in the restitution programme, such as the continued urban bias. Legislative measures, while they reach a neglected segment of the South African society, fail to deal with the overall ineffectiveness of the implementation of existing legislative measures, especially those that relate to tenure reform, which results in especially farm workers being evicted."

The Commission stated that perhaps the greatest area of concern was that the national department of land affairs had consistently and across programmes failed to utilise the entire budgetary allocation for land reform pointing to inefficiencies in the application of financial resources for programmes. "Such under-expenditure cannot be justified given the dire need for land reform in the country."

## **Water**

"Before the 1996 constitutional dispensation there were huge disparities and inequalities with respect to access to services including water. The laws governing water in this country were shaped and developed by the needs and aspirations of whites, who influenced and enacted laws that served their domestic, agricultural and industrial needs. The vast majority of black people especially those in rural areas had limited access to water services," the Commission's report states.

By the end of 1999, more than 4.4 million people in rural areas had gained access to water. During the year under review water was delivered to South Africa via the Lesotho Highlands Water Project which augments the water supply in the Vaal system and generates hydro electricity for Lesotho. "An issue that has come to the fore in recent times, according to the Commission, is the sustainability of water delivery. Some of the water provision projects have become dysfunctional or fallen into disrepair. The pipes ended up delivering dirty water thus forcing people to use alternative sources such as rivers and streams." The Commission stated that this was the result of many factors, one being the inability of people in the rural areas to pay for water service.

The Commission describes the lack of water and sanitation as a public health crisis that deprives people their right to live in dignity. The outbreak of cholera in provinces including KwaZulu-Natal highlighted the fragile and limited infrastructure for safe water supply and sanitary health, according to the Commission.

"The spread of the cholera epidemic that began in August 2000 increased costs and the burden on health care services and has resulted in the loss of productivity for the economically active population. The (national) department (of water affairs and forestry) should develop more short-term solutions because any long-term delivery plans, especially for the provision of basic services will result in more money being spent on treating people suffering from water-borne diseases and the rehabilitation and maintenance of existing over-burdened infrastructure."

The KwaZulu-Natal department of local government experienced problems in this area due to lack of capacity and insufficient budget allocation for local authorities tasked with the provision of water and sanitation facilities.

The Commission found that the responsibility for the provision of water was split between various spheres of government, which resulted in serious challenges in terms of the co-ordination of the

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delivery of services. The supply of retail water (piped or tap water to individual consumers), for example, is the responsibility of the municipalities. "Better co-ordination between all the role players, namely national, provincial and local government including parastatal organisations should be addressed and co-ordination of these roles and functions would enable the government to ensure, within available resources, the progressive realisation of access to sufficient water."

## **Environment**

The Commission reports that environmental problems in South Africa have undoubtedly been exacerbated by past apartheid policies. "Bad town planning and racially discriminatory urban designs during apartheid ensured that previously disadvantaged communities felt most of the negative impacts of environmental degradation. Most black designated residential areas were located close to dumping sites, mines or industrial areas. Today most communities situated in these areas continue to be exposed to environmental hazards without adequate access to essential services such as adequate sanitation, quick and safe transport, safe and healthy working environments."

According to the Commission, in the past few years, South Africans have witnessed progress and commitment from the government's side where legislation pertaining to protecting the environment and conserving the country's limited available resources was passed. "Government is also in the process of striving to change people's attitudes to the environment, which have been strongly influenced by the past when environmental concerns were viewed by many as concerns of the privileged only.

The KwaZulu-Natal department of agriculture and environmental affairs placed particular emphasis on previously disadvantaged communities, according to its report to the Commission. However, it experienced difficulties in the implementation of measures due to capacity and institutional constraints.

The Commission found that at both national and provincial levels of governance, budget allocation, human resource and capacity constraints were major hindrances on departments executing their respective mandates effectively and efficiently. "Whilst enabling legislation has been passed, insufficient budgetary allocations for programmes are the fundamental constraints. Furthermore, reliable social impact indicators of environmental rights for vulnerable groups are lacking."

## **Prisoners' rights**

According to the Commission, the South African prison system formed part of the state apparatus of a minority government based on racial discrimination. The 'pass laws' required blacks to carry passes at all times and failure to do so meant a jail sentence. As a result South Africa had one of the highest prison populations in the world and prisons were often overcrowded. "Most prisons are still overcrowded and this has resulted in many other problems such as the increased burden on infrastructure and the provision of toilets, showers and beds. The safety and security of prisoners have also been compromised. Adding to this is the outbreak of the Aids epidemic, which requires costly medical intervention.

By December 1999, there were 58 231 prisoners not yet sentenced out of 162 638. Male juveniles accounted for 13 882 and female juveniles for 248 of the total. By December 1999, available cell accommodation capacity had been exceeded by 62.9%.

One of the problems reported by the national department of correctional services related to the

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fact that children awaiting trial were referred back to prisons. Children were often remanded into custody for periods exceeding six weeks while awaiting referral to places of safety. The children ended up spending a long time in prison.

The Commission concluded that the provision of conditions consistent with human dignity including adequate accommodation, nutrition, education and medical treatment still remained a challenge to prison authorities. The main problem of overcrowding seemed to be ongoing with no solutions on the horizon. "The challenge is now on reducing the number of unsentenced prisoners, since they cost the state millions of rands and deprive sentenced prisoners of adequate facilities and the right to humane conditions of detention. Although most prisons are overcrowded, the solution is not to build more prisons but to actually look at finding alternative forms of punishment."

### **Financing economic and social rights**

"The challenges of financing and delivering economic and social rights in South Africa can only be understood in the context of the history of colonialism, racial discrimination and the legacy of apartheid. Not only were the overwhelming majority of the population subjected to gross human rights violations but were also deprived of accessing the material benefits of society. The results of past discriminatory practices are evident in uneven income distribution, availability and delivery of social and basic services, distribution of infrastructure and access to economic opportunities necessary for an adequate standard of living," states the Commission.

The democratic government that came into power in 1994 inherited an inefficient and discriminatory budget system in which allocations were spread over 15 budgets (for the four provinces and the areas known as homelands).

The Commission said that it appeared that many departments of finance were unaware of their Constitutional obligations with regard to the realisation of economic and social rights. It has been a long standing convention between the provinces and the national treasury that provinces articulate at least 85% of their appropriated budgets to the three social service departments of education, health and social welfare in view of the fact that it is in these areas that the backlogs and current needs are the greatest.

KwaZulu-Natal's finance minister indicated that all departments must give priority to meeting personnel expenditure before funding other programmes. He pointed out that excessive spending on personnel constitutes the overwhelming constraint in the effort to provide social and economic rights. The department also indicated that funds allocated for the delivery of socio-economic rights were 'ring fenced' so as to ensure that they were not utilised for non-prioritised services. Those funds allocated to the larger social service departments were reported separately to the provincial treasury.

The Commission commended KwaZulu-Natal for the effort put into responding. The province in fact submitted two reports - one signed by the head of department and one by the minister. However, the Commission stated that the delivery of economic and social rights was not seen as a priority by many of the departments of finance. "The national and provincial departments of finance clearly play an important role in the budgetary process and have the power to influence policy decisions taken at both provincial and cabinet level. Economic and social rights issues can further be highlighted at key nodal points in the budget process."

The Commission found that all the departments quoted only education, social welfare and health

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care as the three areas prioritised by cabinet. None mentioned any of the other rights such as the right to food, water, the environment and others stipulated in the Bill of Rights. The Commission states: "This may be an oversight or it could be interpreted to mean that they are not aware that these too constitute economic and social rights."

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