

Good Practices Related to Access to Safe Drinking Water and Sanitation

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Legislative Background

The South African Human Rights Commission (hereinafter “the Commission”) has a specific mandate in terms of section 184 (3) of the Constitution to monitor and assess the realisation of economic and social rights. Section 27 (1) (b) of the South African Constitution provides that “*everyone has the right to have access to sufficient food and water.*” This obligation is extended in section 27 (2), according to which “*the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.*”

Eradicating Poverty

“*It is now widely recognised that effective poverty reduction is not possible without empowerment of the poor.*”¹ It is also recognised that poverty is multidimensional and not just about the lack of income. “*Poor people live without fundamental freedoms of action and choice that the better-off take for granted. They often lack adequate food and shelter, education and health, deprivations that keep them from leading the kind of life that everyone values.*”²

The development of the Free Basic Services (hereinafter “FBS”) policy is therefore framed from the perspective that access to rights is essential to poverty alleviation and development and that one cannot assume that by lifting people out of poverty you will enable them to access their rights. Nor can one assume that access to rights will trickle-down via a top-down approach from those members of society that are more privileged in ownership, freedom and access to human rights.

¹ <http://portals.wi.wur.nl/files/docs/ppme/rdr15pdf.pdf>

² World Development Report, 2000/01. *Attacking Poverty*. The World Bank.

What is an Indigent and Indigent Policy?

The national framework indicates that the term 'indigent' means 'lacking the necessities of life. The framework continues to say that the Constitution provides a guide as to what the necessities of life are:

- Sufficient water
- Basic sanitation
- Refuse removal in denser settlements
- Environmental health
- Basic energy
- Health care
- Housing
- Food and clothing

Anyone who does not have access to these goods and services is considered indigent. One cannot define an indigent too narrowly as this may exclude those individuals or households who truly require poverty alleviation, and one cannot define who is an indigent too loosely as this may result in a unfair inclusion of individuals and household who can in fact afford the basic services.

The South African DPLG Guidelines for the Implementation of the National Indigent Policy by Municipalities states that *“due to the level of unemployment and poverty within municipal areas, there are both households and citizens who are unable to access or pay for basic services; this grouping is referred to as the ‘indigent’. A municipality therefore needs to develop and adopt an indigent policy to ensure that the indigent can have access to the package of services included in the FBS programme.”*

An indigent policy is designed to allow municipalities to target the delivery of essential services to citizens who experience a lower quality of life. These services include, *inter alia*:

Free Basic Water: a minimum of 6 kilolitres of water per household per month;

Free Basic Energy: a minimum of 50 kilowatt hours or coal equivalent of ZAR55 per household per month;

Sanitation: ventilated improved pit latrine or toilet connected to a septic tank or to water-borne sewerage;

Waste: collection and disposal of refuse;

Health: access to clinics and voluntary testing and counselling.

Good Practice Criteria

Availability: This practice meets the requirement of availability to a limited extent. While initial availability is ensured for households that might otherwise lack access to water and sanitation in its entirety, availability is limited. All indigent households are allocated a specific amount of free water per month and the policy does not take into account the number of people per household, health issues or climatic conditions. This lack of household-specific allocation is particularly problematic in South Africa, where the rate of infection of HIV and AIDS is very high and access to water is essential for the care of AIDS sufferers.

It must be noted, however, that the prescribed level of water and sanitation provision is a basic prescribed minimum and that municipalities are not dissuaded from providing a higher level of service if they can afford to do so and can sustain this level. This works at an advantage at a local level and disadvantage at a national level. At a local level, it means that residents may benefit from a higher level of service provision than expected but from a national perspective, it means that there is a discrepancy in the level of service provided to different citizens from different municipalities in the same country.

Accessibility: The practice of FBS provision for indigent households is only applicable to those households that have existing infrastructure in place to allow access to water. Those households that do not have the proper infrastructure in place are added to a waiting list for a government house before FBSs can be accessed.

Accessibility for those people with proper infrastructure will be met as a household would have to have access to a tap within the household or stand or access to standpipe within 200 meters from the household. It must be noted, however, that if a household has to access water from a common standpipe, it is unlikely that it will have access to the full amount of free basic water due to it per month.

Unfortunately, the current system used in South Africa requires that indigent households identify themselves and approach their relevant municipality to be listed on the indigent register. If a poor household is not aware of the practice or is afraid of being stigmatised, accessibility is compromised.

Affordability: the main aim of the practice of free basic services for indigent households is based on the issue of affordability, or the lack thereof. As such, those households that are unable to afford to pay for water and sanitation are provided with free basic services. Unfortunately, this practice provides a set free basic amount of water per household per month, and a prescribed number of toilets per households regardless of the number of people living in each household. So once the free basic water supply is exhausted every month, affordability again becomes an issue. And if there are a large number of people inhabiting a stand, the number of toilets in the area may not be sufficient.

Quality / Safety: depends on the state of water supplies at a municipal level. Indigent households will have access to the same water that paying customers have access to. Water quality is monitored by the municipality using nationally-approved standards. The results of regular water tests are sent to national government for assessment and monitoring. Safety is sometimes compromised when water is transported from a standpipe to a household.

Acceptability: the practice does not take into account the fact that many indigent households are shared by extended families and can therefore consist of 15 or more people. The amount of free basic water is calculated on an average household size of four or five and therefore falls woefully short of the true composition of indigent households in South Africa.

Socially, the policy does not take into account the fact that households with HIV / AIDS sufferers require a consistent supply of clean water, and often consumes more water than the average person. The amount of free basic water can therefore sometimes be much less than is required in certain households.

Non-Discrimination: as mentioned previously, the onus is on the member(s) of the indigent household to present themselves at their relevant municipality and to declare themselves indigent. This practice is discriminatory based on economic status and class, as poor households are often stigmatised and therefore refuse to present themselves as indigent.

Furthermore, the practice does not make special provision to those users who require more water than the average person and special services, such people living with HIV / AIDS, people with other health complications, people with disabilities and older persons.

Participation: while policy does make compulsory provisions around public participation, this referred more to public awareness and not on free basic service levels and definitions of an

indigent. Currently, there is very little opportunity for participation, consultation and access to information for users of the indigent policy. Monitoring is done mainly by civil society and human rights organisations. There is therefore room for greater participation and consultation.

Accountability: currently, there are systems in monitor and evaluate systems for the richer urban municipalities. This is done internally, by municipalities and national government, as well as civil society. Poorer and rural municipalities however do not have M&E systems in place and very few CSOs are able to monitor delivery in these areas. It is a geographic problem, reminiscent of apartheid planning, exacerbated by capacity and resource problems. Greater monitoring is required both of enforcement of the policy and impact on the poorest citizens of South Africa.

Impact: A tangible impact has been noted with the percentage of poor households with access to free basic water and sanitation. However, it currently falls short of the potential impact that the practice could have on the poorest and most marginalised communities in South Africa due to the flawed method of identification of indigents. As mentioned previously, greater monitoring is required both of enforcement of the policy and impact on the poorest citizens of South Africa.

Sustainability: while the practice in itself is sustainable, it not sustainable to provide free basic services to indigent households indefinitely, without some interventions to assist households to become more self sufficient. All indigents have access to a package of services to enable poverty alleviation, growth and development. It should also be accompanied by national efforts towards job creation and stimulation.

“Municipalities need to start planning realistic exit strategies for their indigent populations to exit from the indigent registers and subsidies. This will entail that the living circumstance of the indigent has improved significantly so that the indigent can afford to pay for their service. What this implies is that municipalities should integrate their FBS delivery with structured poverty alleviation programmes.”

It must also be noted that municipalities are expected to offer FBSs in a manner that is sustainable and within its available financial and capacity resources.

Challenges

- Municipalities apply the policy consistently;
- Cultural and social aspects are considered, such as household size and health conditions;
- Another, more effective way of targeting / identifying indigent households is formulated, one that does not require households to identify themselves. Geographic mapping is considered a more equitable and less bureaucratic process.
- Alignment needed between indigent policies and Local Economic Development (LED)