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Occasional Paper

Within its available resources –

An assessment of South African government spending on socio-economic rights from 2008/09 to 2017/18

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Preface and acknowledgements

The Studies in Poverty and Inequality Institute (SPII) is an independent research think tank that focuses on generating new knowledge, information and analysis in the field of poverty and inequality studies.

This budget review has been undertaken as part of the "Socio-Economic Rights Monitoring Tool" project conducted by SPII in partnership with the South African Human Rights Commission (SAHRC). The objective of this project is to develop accessible and effective tools that provide critical information on the progressive realisation of socio-economic rights. The Tool is intended for use by policy makers, oversight and regulatory bodies, including Parliament and Chapter Nine institutions (notably the SAHRC), public interest litigants and civil society. It is also intended to assist regional and international partners and stakeholders in further understanding the progressive realisation of socio-economic rights and how it relates to poverty and inequality, and to assist in the development of similar tools outside of South Africa.

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CHAPTER 1

INTRODUCTION

1.1. Background and Context

The inclusion of socio-economic rights in South Africa's first democratic constitution envisioned the reconstruction and transformation of a divided and deeply unequal society. These socio-economic rights to education, social security, health care, housing, food, water and sanitation, a healthy environment, land and, crucially, redress for past racial discrimination,[1] read together with the rights to life, dignity and equality,[2] establish a framework to *Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights*.[3]

However, unsustainable levels of poverty and inequality, compounded by widespread unemployment and inadequate access to basic services for many poor communities, continue to violate people's rights, resulting in persistent social and economic unrest. The development of economic policies that appear to advance the interests of the economic elite, has led to growing inequality, at the expense of basic needs to which vulnerable and marginalised communities are entitled as per the Constitution. South Africa finds itself located in a broader global social, political and economic order, confronting global financial crises, conflicts, gender-based and other forms of violence, food insecurity and climate change. [4] Yet the violations that ensue as outcomes of these social phenomena, such as illiteracy, malnutrition, preventable diseases and homelessness can be avoided.[5] While the obligation to realise rights traditionally rests with the State, addressing these multidimensional factors in a manner that advances human rights for those who require its protections the most, is dependent upon the actions of both State and non-State actors.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) expressly provides that States parties to the ICESCR must progressively realise socio-economic rights using the *maximum of their available resources*.[6] However, inequalities between countries further impact on the ability of governments to implement macro-economic policies that prioritise the advancement of human rights – and socio-economic rights in particular – through utilising maximum available resources.[7] On the African continent, under-taxed and illicit financial flows continue to impede the ability of governments to raise the revenues required to meet the socio-economic needs of their people. As noted in a 2016 report,[8] over the last 50 years, the continent is estimated to have lost revenue in excess of $1 trillion through illicit financial flows, equivalent to roughly the total development assistance received over the same period. On a continent estimated to have the largest youth population in the world, inadequate economic growth and high levels of unemployment place more pressure on African governments to ensure that they

[1] The Constitution of the Republic of South Africa, 1996 (Constitution), sections 25-29.
[2] Ibid, sections 9-11.
[3] Ibid, *preamble*.
[4] Balakrishnan, R., Heintz., J. & Elson, D. (2016) "What does inequality have to do with human rights?", *Rethinking Economic Policy for Social Justice*, 30-51
[5] Eitan Felner (2009) "Closing the 'Escape Hatch': A Toolkit to monitor the progressive realization of economic, social and cultural rights", *Journal of Human Rights*, 1(3), 402 - 435
[6] International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), Article 2.
[7] Balakrishnan, R., Heintz., J. & Elson, D. (2016) "What does inequality have to do with human rights?", *Rethinking Economic Policy for Social Justice*, 30-51.
[8] Mbeki, T. (2016) "Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa", *Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development*, available at www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf

develop the necessary measures to recover these losses in order to provide the basic needs required by young people to live a life of dignity and opportunity.

Few people would disagree that the realisation of socio-economic rights is key to overcoming South Africa's ongoing struggle with poverty and inequality. Although the courts can be approached if affected parties feel that these rights are not being respected, protected, promoted or fulfilled (section 7(2)), the Constitution (with the exception of the rights to basic education, environment, and the rights of children) limits the state's obligation to taking: *reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights*.[9] The limitation clause is silent on the content of these rights, what measures the state should take, how it should finance access to socio-economic rights, and the timeframes within which they must be realised.

The challenge for policy-makers and oversight bodies alike is: how best to evaluate government programmes and budget allocations against the binding obligations imposed by both the ICESCR and the Constitution, if there is no methodology for monitoring and addressing critical issues relating to the progressive realisation of these rights? It is for this reason that Studies in Poverty and Inequality Institute (SPII), in partnership with the South African Human Rights Commission (SAHRC), has developed a Socio-Economic Rights Monitoring Tool: integrating policy and budget analysis with statistical indicators to monitor and evaluate the progressive realisation of SERs in South Africa.

This paper focuses on the budgetary aspect of the South African government's socio-economic obligations. It assesses the extent to which the government has effectively and equitably raised and utilised the resources available to it to facilitate access to and fulfilment of the socio-economic rights enshrined in the Constitution and the ICESCR, which South Africa ratified in 2015 and is thus also legally bound to implement and enforce.

1.2. Purpose of the research

The primary purpose of this Working Paper is to provide a consistent framework for socio-economic rights budget analysis. The South African government has in the past acknowledged that state budgets include human rights processes, which require the government to allocate funds in compliance with State obligations toward the full realisation of human rights, and that these obligations should guide the priorities underlying economic and administrative decisions reflected in the national budget.[10] However, despite growing revenue and sustained GDP growth for much of the post-apartheid period, poverty has persisted in South Africa and income inequality has actually increased,[11] as the gains of this growth accrued in the main to those who already stood to benefit during apartheid (the employed, the educated and the owners of property and capital). As a result, 23 years after the dawn of democracy, the majority of South Africans continue to experience daily socio-economic rights violations. It has become increasingly apparent that for human rights researchers and advocates to hold the government accountable for these violations, budget analysis is required to establish whether or not human rights are indeed a priority for the government.

We recognise that state budgets are not static, but are dependent on a variety of political, economic and social factors that shape them. Consequently, while a variety of tools are provided for human rights advocates and practitioners to monitor the advancement of socio-economic rights through budget analysis, this Working Paper will be updated periodically to ensure its continued relevance. We also recognise

[9] Constitution, sections 26(2) and 27(2).
[10] Information Services Section, Research Unity, Parliament of the Republic of South Africa (2011). Budget Analysis Manual. Cape Town, Parliament of the Republic of South Africa.
[11] Leibbrandt, M, et al (2010) "Trends in South African Income Distribution and Poverty since the Fall of Apartheid", OECD Social, Employment and Migration Working Papers, No. 101.; See also: Statistics South Africa (2017) Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015; in terms of population groups living below the upper bound poverty line of R992 per person per month in 2015, white people constituted just 0,1%, while black people constituted 64,2%, Coloured people 41,3% and Indian people 5,9%..

that adopting a purely quantitative approach to measure the advancement of socio-economic rights poses the risk of narrowing the lens of analysis in a manner that reduces the complexities of reality, thus overlooking significant contextual factors. We thus propose SER budget analysis as a tool to complement existing qualitative and quantitative methods used to monitor the advancement of socio-economic rights.

Tools of measurement have been identified on the basis of the impact they may have in advancing the basic needs of those most vulnerable in society, on the basis of their gender, race, sexual orientation or gender identity, class, and other social factors. It is also hoped that the tools provided will serve to strengthen the capacity of national, regional and international partners and stakeholders to develop similar tools to monitor the advancement of socio-economic rights through budget analysis within their various jurisdictions. It further aims to assist the government in meeting its regional and international socio-economic rights reporting obligations, as provided for in the guidelines issued by the UN Committee on Economic, Social and Cultural Rights and the African Commission's Working Group on Economic, Social and Cultural Rights.

The Working Paper forms part of a larger project undertaken by the Studies in Poverty and Inequality Institute (SPII) and the South African Human Rights Commission (SAHRC), to develop a comprehensive monitoring tool to measure and guide the progressive realisation of socio-economic rights.

1.3. Methodology

Effective monitoring of State compliance with the ICESCR (and in South Africa, the Constitution) must entail an assessment of both the availability, distribution and expenditure of resources (hereinafter SER budget analysis). Doing so requires a methodology that is simple enough to make general comparisons between States, but comprehensive enough to allow for the contextual nuance of each State party to the ICESCR to be accounted for.[12]

Monitoring socio-economic rights thus requires a tool with specified quantitative measures that are capable of tracking over time in terms of progress, gaps and regression, are able to identify strong and weak performance. It also needs to explore policy-relevant questions and be rooted in international human rights norms. At the same time, the tool must be shielded from the influence of political and economic interest groups.[13] Importantly, the effectiveness of the tool is dependent on objective data and a methodology that is transparent and accessible to a wide range of users.[14] Existing mechanisms to monitor socio-economic rights include comparing social indicators with gross domestic product (GDP) per capita, analysing resource allocations, and analysing expenditure per capita.

This Working Paper makes use of the following guidelines required for effective budget analysis: understanding the process through which the budget is prepared; becoming familiar with terms used in the budget; learning how to read the budget; and analysing the government's development plans.[15]

The Working Paper was informed by the development of a framework to conduct budget analysis incorporating human rights principles and an analysis of various budget reports, including the annual National Budget Review, Estimates of National Expenditure, Estimates of Provincial Revenue and Expenditure, reports to the Fiscal and Finance Commission, the Auditor General Report and the reports of government departments. In addition, a reference group comprising of researchers, practitioners and academics conducted a peer-review of the Paper.

[12] Eitan Felner (2009) "Closing the 'Escape Hatch': A Toolkit to monitor the progressive realization of economic, social and cultural rights", Journal of Human Rights, 1(3), 402 - 435
[13] Fukuda-Parr, Chapter 1.
[14] Fukuda-Parr, Chapter 1.
[15] Information Services Section, Research Unity, Parliament of the Republic of South Africa (2011). Budget Analysis Manual. Cape Town, Parliament of the Republic of South Africa.

1.4. Structure of the Paper

The paper begins in **Chapter 2** by unpacking the crucial phrase that underpins the Constitution's vision for how socio-economic rights should be budgeted for, that is: "within its available resources". Readers will note that this phrase is in fact indistinguishable from its sister phrase used in the ICESCR – "to the maximum of its available resources", and should not be viewed merely as a limitation clause, but as an obligation to ensure that the state generates and utilises its resources in such a way as to maximise their impact on the enjoyment of socio-economic rights on an equitable basis. It will also provide a conceptual framework for assessing government budgets against constitutional, regional and international obligations. **Chapter 3** provides an overview of the budget process in South Africa, explaining the frameworks that inform government revenue generation, allocation and expenditure across the three spheres of government. It will also consider the extent to which budgetary information is transparent and accessible. **Chapter 4** will provide an overview of the fiscal and monetary policy in South Africa, including interest and inflation rates and the impacts these have on government's ability to meet its socio-economic obligations. It will also consider the progressivity of the tax system and revenue generation. **Chapter 5** will consider overall allocation and expenditure on socio-economic rights, including total expenditure on socio-economic rights from 2008/09 – 2016/17, a comparison between different socio-economic rights at a national level, and a comparison of SER allocation and expenditure between different countries with similar per capita GDP, assessing the key trends that have emerged. The paper will conclude by noting the further areas of budget research and advocacy that can further advance the cause of socio-economic budget justice in South Africa.

CHAPTER 2

SOCIO-ECONOMIC RIGHTS AND GOVERNMENT BUDGETS

2.1. Legal and Conceptual Framework

2.1.1. International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 2 of the ICESCR provides that States must take steps to progressively achieve the full realisation of socio-economic rights by all appropriate means, including legislative measures. This overarching obligation is similar to that provided in the Constitution, which requires the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of socio-economic rights. In addition, measures taken to fulfil socio-economic rights must incorporate human rights principles of equality and non-discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Both the Constitution and the ICESCR require government to respect, protect, promote and fulfil socio-economic rights. Fitting within this broad framework, the four overarching socio-economic rights obligations are:

(1) Progressive realisation: requires the full realisation of socio-economic rights *over time*.[16] This obligation is both context and resource dependent.[17] While there is room for discretion depending on a State's level of development, available resources, and presence of extenuating circumstances - such as armed conflict or economic crisis - States remain obligated to take steps that are "deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant."[18] The flip-side of the obligation of progressive realisation is the obligation of non-retrogression. This means that States may not deliberately stall or diminish socio-economic rights realisation, unless there is a real emergency, which must be proven, rather than simply asserted.[19] The United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) has set out four requirements for retrogressive policies to ensure that such policies do not violate human rights.[20] They must be justifiable on the following grounds: (1) be temporary, covering only the period of crisis; (2) be necessary and proportionate, meaning that any other policy or a failure to act would be more detrimental; (3) not be discriminatory and comprise all possible measures, including tax measures, to ensure that their burden and impact is not unfairly shared within the population; and (4) it should identify a social protection floor (minimum core for socio-economic rights) that will not be breached.[21]

(2) Maximum available resources: requires States to demonstrate they have utilised all of their available resources to fulfil socio-economic rights;[22]

[16] Rory O'Connell, et al., *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (New York: Routledge, 2014) 67. *See also* Helena Hofbauer and Ann Blyberg, *Article 2 & Governments' Budgets*, International Budget Partnership (2014) available at www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.

[17] Chapman, *A 'Violations Approach' for Monitoring the International Covenant on Economic, Social and Cultural Rights*, 23, 28.

[18] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3:The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at www.refworld.org/docid/4538838e10.html.

[19] O'Connell et al., *Applying an International Human Rights Framework to State Budget Allocations*, 74.

[20] Committee on Economic, Social, and Cultural Rights, 'Letter from CESCR Chairperson to States Parties in the context of economic and financial crisis', CESCR/48th/SP/MAB/SW, 16 May 2012.

[21] Ibid.

[22] Hofbauer and Blyberg, *Article 2 & Governments' Budgets*, International Budget Partnership (2014) available at www.internationalbudget.org/wp-content/uploads/Maximum-Available-Resources-booklet.pdf. *See also* Chapman, *A 'Violations Approach' for Monitoring the International Covenant on Economic, Social and Cultural Rights* 31; and O'Connell et al., *Applying an International Human Rights Framework to State Budget Allocations*, 67.

(3) Non- discrimination (substantive equality): States must eliminate both *formal* discrimination (unequal access to rights in law) and *substantive* discrimination (unequal enjoyment of rights in reality). Positive discrimination is recognised as necessary to eliminate substantive and systemic inequality, which may require that greater resources are allocated to disadvantaged and marginalised groups (the South African Constitution also requires the government to provide redress for past racial discrimination);[23]

(4) Minimum core obligations: set a threshold for the "minimum essential levels of each of the rights" which must be immediately ensured and at all times maintained by States.[24] When any "significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education," there is a *prima facie* violation of the ICESCR.[25] The 'minimum core' threshold has not been adopted in South Africa. While cases regarding the content of 'minimum core obligations' have been brought before domestic courts, we argue courts have erred on the side of caution by not being too prescriptive to government on how to prioritise the advancement of SERs. In *Mazibuko & Others v City of Johannesburg & Others*,[26] the Constitutional Court found that it was uncomfortable specifying what the minimum core of SERs ought to be, and that doing so would violate the separation of powers by overstepping into the roles of the executive and legislature. Although reference to "minimum core obligations" was made in the *Grootboom* judgment, this was confined to a determination of what may be reasonable in the circumstances of a case, rather than providing standards of what a minimum core should be in relation to socio-economic rights delivery.[27] We have therefore not assessed the state's expenditure on socio-economic rights in terms of the internationally recognised "minimum core obligations".[28]

A closer look at Maximum Available Resources

In considering whether a government has utilised "maximum available resources" to advance the realisation of socio-economic rights, it is crucial to also consider the principles of "progressive realisation" (which includes non-retrogression) and "non-discrimination".[29] As noted in General Comment 20 issued by the CESCR, despite significant economic growth, discrimination continues to undermine the advancement of socio-economic rights and the achievement of substantive equality for a significant portion of the world's population,[30] relegating billions to endure the brutal brunt of socio-economic inequality and ensuing poverty.

The obligation to use the maximum available resources (MAR) requires a government to generate maximum resources to progressively realise socio-economic rights. This includes generating revenue through efficient tax collection, but also extends to international assistance, including investment and where necessary, foreign aid. Allocation and expenditure of the revenue generated should be directed to socio-economic rights-related areas as a matter of priority. This can include the development of infrastructure that is required for the advancement of socio-economic rights, such as building roads to reach a hospital or school. Importantly, funds allocated to socio-economic rights must not be diverted to other non-socio-economic rights-related areas.[31]

Phenomena such as illicit financial flows (IFF) – defined as money that is illegally earned, transferred or used – impact significantly on a government's ability to utilise the maximum available resources at its disposal toward the advancement of socio-economic rights. This is a global problem that is particularly hard-felt in the African context.[32] In addition to reducing the amount of revenue available for governments

[23] Committee on Economic, Social and Cultural Rights, General Comment 20: Non-Discrimination in Economic, Social and Cultural Rights (Art 2, para 2), E/C.12?GC/20, 10 June 2009.
[24] International Commission of Jurists (ICJ), *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 26 January 1997, available at www.refworld.org/docid/48abd5730.html.
[25] Ibid.
[26] CCT 39/09 [2009]
[27] Chenwi, L. (2013) "Unpacking "progressive realisation", its relation to resources, minimum core and reasonableness and some methodological considerations for assessing compliance", *De Jure*.
[28] Since the South African government has now ratified the ICESCR (in 2015) and therefore accepted the binding nature of its provisions within domestic law, South African courts will have an opportunity to reconsider their position on minimum core obligations if a new case is brought before them arguing for such an approach to be taken, based on the ICESCR.
[29] Blyberg, A. & Hofbauer, H (2014) "The Use of Maximum Available Resources", *Article 2 & Governments Budgets*, available at www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.
[30] UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: www.refworld.org/docid/4a60961f2.html.
[31] Blyberg, A. & Hofbauer, H (2014) "The Use of Maximum Available Resources", *Article 2 & Governments Budgets*, available at www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.

to adhere to their socio-economic rights obligations, the global landscape has also seen a reduction in development assistance being provided to developing economies. This, coupled with inadequate economic growth, in turn reduces the ability of governments to provide the resources required to reduce poverty and inequality.[33] Consequently, while the obligation may rest with governments to ensure the allocation of MAR toward the advancement of socio-economic rights, the ability of a government to adhere to these requirements can be severely limited by the actions of non-state actors.

Inefficient and wasteful expenditure may also amount to a failure to utilise MAR. When a government pays more than it should for goods and services, or spends merely to meet fiscal targets even when such spending is on socio-economic rights-related issues, or when the services provided are not of sufficient quality, for example, it cannot assert that it has met its socio-economic rights obligations in terms of MAR.[34] Such expenditure must effectively demonstrate the advancement of the enjoyment of socio-economic rights to meet the requirements of utilising MAR.

Conversely, under expenditure, or 'under-spending' on socio-economic rights may not always result in a failure to comply with MAR obligations. Governments may be confronted with under-spending by departments due to poor planning, coordination and / or a lack of capacity. Programme design and implementation may be inaccessible to intended beneficiaries, or a government department may receive additional funding toward the end of the fiscal cycle or donor funding may not have been anticipated.[35] While the UN CESCR has stated that funds allocated to socio-economic rights must be fully spent, in order to avoid a failure to comply with its socio-economic rights obligations, a government must provide reasons for such under-spending and take the necessary steps to address the causes of under-spending.[36]

Essentially, States are required to both progressively and *effectively* achieve socio-economic rights, as expeditiously as possible.[37] Increased State allocation and expenditure is therefore not always the most *effective* or *efficient* way towards the realisation of socio-economic rights.

Indicators used to measure Progressive Realisation

In addition to the development of budget analysis as a tool to monitor socio-economic rights, quantitative indicators and benchmarks are used to measure State compliance to progressively realise socio-economic rights. Indicators provide a measure of 'how much', 'how many', 'to what extent', or 'what size'[38]. The UN Office of the High Commissioner for Human Rights (OHCHR) has developed structural, process and outcome indicators with a view of elaborating the normative content of socio-economic rights in order to do comparative analysis.[39] Commonly referred to as the "4AQ" approach – measuring adequacy, accessibility, availability, affordability and quality – these indicators aim to measure a State's performance in a manner that is streamlined, transparent, temporally and spatially comparative, and effective[40]. Benchmarks are used to measure State performance over time, by comparing a country's performance to other countries that are similar in various aspects.[41]

Historically, the progress of countries and people has been measured by economic production and consumption, illustrated through indicators such as gross domestic product (GDP). A human rights-based approach proposes that States should instead be judged in accordance with how well they translate their resources into expanded freedoms, and the ability of people to live their lives with dignity.[42] The Social and Economic Rights Fulfilment (SERF) index identifies six core rights that inform

[32] Mbeki, T. (2016) "Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa", *Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development*, available at http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf
[33] Ibid.
[34] Blyberg, A. & Hofbauer, H (2014) "The Use of Maximum Available Resources", *Article 2 & Governments Budgets*, available at www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.
[35] Ibid.
[36] Ibid.
[37] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at www.refworld.org/docid/4538838e10.html.
[38] Center for Economic and Social Rights. "The OPERA Framework: Assessing compliance with the obligation to fulfil economic, social and cultural rights" (OPERA Framework), p13.
[41] OPERA Framework, p13.
[42] OPERA Framework, p7.

an individual's dignity and are articulated in the Universal Declaration of Human Rights (UDHR), namely, food, health, education, housing, work and social security. Through the development of the *'Achievement Possibilities Frontier'*, the SERF Index aims to assess socio-economic rights performance by comparing the level of rights enjoyment actually achieved, against what the country could feasibly achieve within its available resources, based on historical data.[43]

Reporting to the UN Committee on Economic, Social and Cultural Rights

State parties to the ICESCR are required to report to the CESCR on progress made in advancing socio-economic rights. In terms of the guidelines issued by the CESCR State parties are required to report on, inter alia:

i) Laws, policies and strategies for the implementation of each right contained in the ICESCR, and identify the resources made available for that purpose, including the most cost-effective ways of using such resources;

ii) Any mechanisms in place to monitor progress towards the full realisation of the ICESCR, including indicators and benchmarks in line with the framework developed by the Office of the UN High Commissioner for Human Rights;

iii) Mechanisms in place to ensure that State obligations under the ICESCR are fully taken into account when engaging with international organisations and international financial institutions, and when negotiating and ratifying international agreements, to ensure that economic, social and cultural rights, and particularly those of the most disadvantaged and marginalised groups, are not undermined;

iv) The incorporation and direct applicability of each socio-economic right specified in the ICESCR in the domestic legal order, with reference to specific examples of relevant case law;

v) Judicial and other appropriate remedies in place which enable victims to obtain redress when their rights have been violated;

vi) Structural or other significant obstacles arising from factors beyond the State party's control which impede the full realisation of the rights contained in the ICESCR; and

vii) Statistical data on the enjoyment of each ICESCR right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over a five year period.[44]

While South Africa already has in place various legal and policy frameworks stemming from its Constitutional obligations to implement socio-economic rights, including judicial recourse, the recent ratification of the ICESCR will require the government to report on the advancement of socio-economic rights in accordance with the CESCR reporting guidelines. In particular, the government will have to provide an overview of its resource generation, allocation and expenditure, demonstrating that the advancement of socio-economic rights is a priority. In order to comply with its international obligations, the information required as per the guidelines will compel the government to increase transparency and data accessibility, as well as strengthen institutional capacity-building – all of which are necessary to reduce poverty and inequality.[45]

[43] OPERA Framework, p7.
[44] Fukudu-Parr, S., Lawson-Remer, T. & Randolph, S. (2015) *Fulfilling Social and Economic Rights*
[45] Fukudu-Parr, Chapter 1 UN Committee on Economic, Social and Cultural Rights (CESCR), *Guidelines on Treaty-Specific Documents to be submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, 24 March 2009, E/c. 12/2008/2. African Commission on Human and People's Rights, *State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Carter on Human and People's Rights (Tunis Reporting Guidelines).*

2.1.2 African Charter on Human and People's Rights

The African Charter on Human and People's Rights (ACHPR) guarantees the rights to property, work, health care (which includes food, water and sanitation), education and culture, and the protection of family, women, children and the disabled (including housing and social security). Importantly, the ACHPR makes direct reference to the all-encompassing right to development. The Guidelines on reporting to the African Commission on Human and People's Rights on the advancement of economic, social and cultural rights in many respects mirror the CESCR Guidelines. States that are party to the ACHPR are required to, *inter alia*, report on laws and policies adopted to advance rights articulated therein; identify the resources available for each right, including the most cost-effective ways of using such resources; the provision of indicators and benchmarks to monitor the progressive realisation of the right; incorporate case law demonstrating direct applicability of the right; judicial and other appropriate remedies in place to address violations of the right; and structural limitations beyond the State's control which may impede the ability of the State to realise the right.

In 2015, South Africa submitted its combined Report under the African Charter on Human and People's Rights and under the Protocol to the African Charter on the Rights of Women in Africa.[46] The comprehensive Report provides a substantive overview of the legal framework and policies that govern the advancement of the rights under review, and the various remedies available should those rights be violated. It also provides reference to specific case law and insights into the structural barriers that impede the government's ability to fulfil various rights. However, while reference is made to statistical data and nominal amounts utilised to advance the rights under review, the data provided is not sufficiently disaggregated to make a determination as to whether the government has made use of the maximum available resources available to it to advance socio-economic rights as a priority.

2.1.3 South African Constitution

Although the Constitution places the onus on the government to advance socio-economic rights "within its available resources" (WAR), as opposed to the "maximum of its available resources" as provided for in Article 2 of the ICESCR, we contend that these concepts are not distinctly different. The ICESCR should be seen as adding weight and content to existing constitutional obligations. The ICESCR provides for non-discrimination, progressive realisation, MAR, and "minimum core" obligations. Article 2 further states that developing countries can determine the extent to which they will guarantee SERs to non-nationals.[47] On the other hand, the Constitution provides for substantive equality, progressive realisation, WAR, and guarantees SERs to everyone (with the exception of the right to land).

The South African courts have in the past interpreted State obligations as defined in the Constitution in a manner that mirrors those contained in the ICESCR in seminal judgments. For example, the equality provision in the Constitution provides that the State may not unfairly discriminate against anyone on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.[48] In *Khosa & Others v Minister of Social Development & Others*[49], the Constitutional Court applied principles of non-discrimination as provided for in the ICESCR, by holding that the Constitution vests the right to social security in "everyone", including non-citizen permanent residents that are not citizens. The exclusion of permanent residents from the scheme would be discriminatory, unfair and infringe the right to equality.

[46] *Republic of South Africa Combined Second Periodic Report under the African Charter on Human and People's Rights and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa*, August 2015.
[47] ICESCR, 1966, Article 2(3).
[48] Section 9 of the Constitution of the Republic of South Africa, 1996.
[49] CCT 13/03, CCT 12/03 [2004].

Notably, the South African courts have made minimal distinctions between MAR and WAR. In fact, in Grootboom,[50] the Constitutional Court explicitly states that the ICESCR imposes an obligation on the State to move as expeditiously and effectively as possible toward the goal of the full realisation of socio-economic rights. Any deliberate retrogressive measures requires careful consideration and must be fully justified in reference to the totality of the rights provided for in the ICESCR and in the context of the full use of maximum available resources.

In *Minister of Health & Others v Treatment Action Campaign & Others*,[51] the Constitutional Court acknowledged that while the South African government faces huge demands in relation to access to education, land, housing, health care, food, water and social security, which may be an extraordinarily difficult task in light of the country's history, it is nonetheless under an obligation to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of these rights. This was further enunciated in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties39 (Pty) Ltd & Another*,[52] concerning the provision of alternative accommodation to poor people who had faced evictions. The same Court held that local State municipalities have an obligation to plan and procure resources to meet emergency housing needs within their area of jurisdiction. Importantly, a municipality cannot rely on a lack of available resources to justify not meeting this obligation; it must at the very least acknowledge its obligations and attempt to find resources to allocate to emergency housing projects.

Although the government regularly refers to budget information in various reporting and budget documents – including the annual National Budget Review, Estimates of National Expenditure, Estimates of Provincial Revenue and Expenditure, reports to the Fiscal and Finance Commission and the Auditor General Report – these do not highlight expenditure on the advancement of socio-economic rights in particular as a matter of priority. In terms of Section 184 of the Constitution, the SAHRC is required to report annually on the measures undertaken by the government toward the realisation of the rights to housing, health care, food, water, social security, education and the environment. However, this approach is not integrated into the reporting documents produced by National Treasury and other relevant State departments.

Distinguishing between "minimum core" and "immediately realisable" rights

In terms of the CESCR General Comment 3, priority should be given to "minimum core" socio-economic rights obligations – such as the rights to education, shelter, food and healthcare – in order to comply with the requirements of MAR. A State party that fails to meet at least these "minimum core" obligations on the basis that it lacks available resources must demonstrate that every effort has been made to use all the resources that are at its disposal in an effort to satisfy those minimum obligations as a matter of priority.[53]. While the South African courts have been careful not to be too prescriptive to the government on how it ought to prioritise its budget, the recent ratification of the ICESCR may compel the South African government to adhere to these provisions, and the General Comments relating thereto. A failure by the government to do so may present an opportunity for the domestic courts to reconsider their position.

The South African Constitution does, however, make provision for "immediately realisable" rights. In *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. & Others*,[54], the Court explains that the right to basic education is

[50] 2001 (1) SA 46 (CC).
[51] (No 2) (CCT8/02) [2002], par 94.
[52] CCT 37/11 [2011].
[53] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3:The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at www.refworld.org/docid/4538838e10.html.
[54] CCT 29/10 [2011], par 37.

not subject to the internal limitations of "progressive realisation", "within available resources", or subject to "reasonable legislative measures". The recognition of "immediately realisable" rights places emphasis on the importance of certain socio-economic rights, such as education, in transforming society based on the values of human dignity, equality and freedom.

2.2 A Conceptual Framework for assessing government budgets against constitutional, regional and international human rights obligations

The goal of SER budget analysis is to measure State compliance and provide substantive evidence to prove that the government is, or is not, meeting its obligations to ensure socio-economic rights. Conducting SER budget analysis requires the conversion of legal obligations such as progressive realisation, maximum available resources and non-discrimination into measurable components. The table below connects overarching socio-economic rights obligations in legal terms with correlating measures of compliance.

Framework (with example indicators) for monitoring South Africa's compliance with its obligations to fulfil socio-economic rights through the budget

BUDGET PROCESS	HUMAN RIGHTS OBLIGATIONS			
	Progressive Realisation	**Maximum Available Resources**	**Non-Discrimination**[55]	**Process**
GENERATION of revenue	■ Economic growth translates into higher revenue generation (revenue, real annual % change; revenue as a % of GDP)	■ Surplus finance re-invested in SER-related programmes and policies ■ Inclusivity and efficiency of the tax system (e.g. at minimising tax evasion and illicit financial flows)	■ Progressivity of revenue mix (companies, income earners, consumers and investors all pay a fair share in tax) ■ Progressivity of tax system (proportion of total income paid in tax by lower and higher income earners) ■ Progressivity of user fees for social services (proportion of income spent on user fees by different population groups)	Budget processes guarantee public participation, are transparent, provide access to information and ensure accountability.
ALLOCATION of revenue	■ Allocations to SER- related areas increase in real terms as available resources increase (growing revenue translates into more resources allocated for SERs) ■ Social (SER) spending increases faster than non-social spending ■ Increase in number of beneficiaries of SER- programmes over time	■ Allocations to SERs reflect the needs of intended beneficiaries and the expected costs of successful interventions (assessment conducted of the needs of beneficiaries and the demand for and cost of services)	■ Allocations prioritise reducing inequalities in the enjoyment of rights between different groups (per capita expenditure on different groups, disaggregated by geography, race, income, gender, disability and other variables) ■ Assessments conducted of the needs of different groups and resources allocated based on this assessment. ■ Sufficient funds are allocated to cover emergencies.	
EXPENDITURE of revenue	■ Decrease in financial mismanagement over time (levels of under-expenditure on SER-related areas decreases each year) ■ Increase in outputs, outcomes and impacts (i.e. the quality) of SER-related services delivered	■ % of funds allocated to SER-related areas under- or wastefully spent	■ Under-expenditure on SER programmes does not automatically lead to a reduction in allocation % of funds allocated towards capacity building (which is necessary for spending funds effectively)	

[55] Non-discrimination is a crucial component for the advancement of substantive equality and the achievement of redress for past discrimination.

CHAPTER 3

OVERVIEW OF THE BUDGET PROCESS IN SOUTH AFRICA

State budgets are political, economic, administrative and human rights documents. Budgets are a reflection of (i) how a government responds to competition between groups or social classes with varied interests in a context of limited resources; (ii) government socio-economic policy priorities through resource allocation; (iii) administrative processes including planning, coordinating, controlling and evaluating the activities of a government, and a means of financing those activities; and (iv) whether a government is allocating funds in compliance with its domestic, regional and international obligations toward the full realisation of human rights enjoyment by all individuals, utilising all tools and funds at its disposal. The core functions of the budget are to allocate resources, distribute income and wealth, and stabilise the economy.[56]

Key stakeholders involved in the budgeting process include the National Treasury, Minister's Committee on the Budget, Provincial Treasuries, Medium Term Expenditure Committee, National and Provincial government departments responsible for the delivery of socio-economic rights, Department of Monitoring and Evaluation, Financial and Fiscal Commission, Parliamentary Committees in the National Assembly, Parliamentary Committees in the National Council of Provinces. Members of the public, organised interest groups, labour unions and civil society organisations also have opportunities for input into the budget process.

3.1. Intergovernmental Budgeting

Section 215(1) of the Constitution states that: *"National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector"*. Human rights principles of transparency, accountability, participation, equity, non-discrimination and equality inform this constitutional obligation.

Transparent budgets that are accurate, true and portray the genuine state of the economy allow for informed analysis of government policies and facilitates the identification of weaknesses and areas in need of reform. Public participation in the budget process is likely to result in more equitable expenditure patterns, through which programmes or policies that pose a threat to the enjoyment of guaranteed constitutional rights can be challenged. State officials must be held accountable for the manner in which State funds are allocated and spent, and the allocation of funds should be fair and just, available to all citizens equally regardless of social factors such as gender, race, or class, with a particular emphasis on protecting the needs of vulnerable groups in society.[57]

[56] Information Services Section, Research Unit, Parliament of the Republic of South Africa (2011). Budget Analysis Manual. Cape Town, Parliament of South Africa, p11

[57] Ibid.

South Africa's three spheres are government – national, provincial and local – are distinctive, interrelated and interdependent. National government, comprising of national parliament and the executive, has as its primary responsibility the development of laws and policies that aim to advance the Constitution, including socio-economic rights. South Africa's decentralised approach to governance requires implementation of national laws and policies by the country's nine provincial governments, and its 278 municipalities (comprising of eight metropolitan, 44 district and 226 local municipalities). With respect to socio-economic rights, advancing the rights to education, social security, health care, housing, food, environment and land fall under the scope of provincial and local government. Local government has as its core function the provision of effective service delivery, which includes the delivery of access to water and sanitation.

Further detail regarding the intergovernmental process in South Africa has been provided in the table below.

The main stakeholder's involved and key documents produced in the budget process:

- **Minister's Committee on the Budget (Mincombud)** – a subcommittee of the Cabinet, Mincombud discusses the overall budget environment and advises cabinet, which is responsible for the final approval of the budget.
- **National Treasury (NT)** – led by the Minister of Finance, NT is responsible for managing the government's finances and the budget process. This includes advising cabinet on the state of the economy and the government finances, overseeing expenditure by national departments and monitoring the implementation of provincial budgets. NT also develops a three-year Medium Term Expenditure Framework (MTEF), which is the basis for discussions with departments, which in turn leads to the Medium-Term Budget Policy Statement (MTBPS), which is tabled at least three months before the budget speech and sets out the government's financial plans for the next three years. NT also issues guidelines for departments to complete their own MTEF and Estimates of Expenditure. Finally, NT prepares the Division of Revenue Bill, Appropriation Bill, Estimates of National Expenditure and Budget Review for presentation to parliament in the annual budget speech.
- **Provincial Treasuries** – led by each provinces **MEC for Finance**, provincial treasuries are responsible for managing provincial government finances and budget processes, including facilitating each province's MTBPS and the provincial budget, which includes an Appropriation Bill and Estimates of Provincial Revenue and Expenditure (EPRE). Provincial Treasuries also monitor and support the implementation of the provincial budget by provincial departments. Just out of curiosity, what about local? Sorry, my comment function seems to have died. Because we only focused on national and provincial, we didn't delve into local analyses.
- **Medium Term Expenditure Committee (MTEC)** – consists of senior officials from NT and other government departments. It is responsible for hearing and scrutinising the budget submissions made by each department to ensure they are aligned to the Cabinet's policy and budgetary priorities. In addition, there

are eight Formal Functional MTEC's based on functional groupings known as 'clusters' (for example the 'Social Cluster'), which also scrutinise and help departments develop budgets that are in harmony with the plans and priorities of other departments in that cluster.

- **10x10 working groups** – the management and provision of socio-economic rights through service delivery is a concurrent function, carried out by the responsible national department together with provincial departments. To ensure a cohesive planning and budgeting process, the 10x10 working group is convened by NT to bring the chief role-players in national and provincial departments together with national and provincial treasuries. The 10x10 group therefore includes the national ministers and the nine provincial MECs responsible for the delivery of particular socio-economic rights, plus representatives from NT and the nine provincial treasuries, hence the name of the group: "10x10".
- **National Departments** – provide strategic oversight, including the implementation of national legislation and regulations by provinces, and manage conditional grants to provinces together with NT.
- **Provincial Departments** – led by each province's MEC, provincial departments oversee and manage the delivery of socio-economic rights through the provision of various services within their jurisdiction, including the provincial budget.
- **Department of Planning, Monitoring and Evaluation (DPME)** – located in the presidency, the DPME is responsible for planning and monitoring the implementation of national priority outcomes as identified in the National Development Plan (NDP) and elaborated every five years in the Outcome Agreements of the Medium Term Strategic Framework (MTSF). The DPME takes part in Mincombud, MTECs and 10x10 working groups to ensure that the Outcome Agreements are given effect to in the budget process.
- **Financial and Fiscal Commission (FFC) –** the FFC is mandated by Chapter 13 of the Constitution to provide independent advice to government on financial and fiscal matters. The FFC conducts research and investigations into budgeting and expenditure and makes recommendations to National Treasury, MTEC, the 10x10 working group members and Parliament's Portfolio Committees.
- **Parliamentary Committees in the National Assembly** – consisting of 15-20 MPs broadly representative of the parties in the National Assembly, Parliamentary Committees monitor the activities and budgets of national departments and hold them accountable. Committees also debate and provide input into the development of bills and can receive petitions from members of the public and often issue calls for comment by the public on proposed bills as well as issues relating to the budget. The committees therefore provide a platform for the public to put their views across directly to MPs.
- **Parliamentary Committees in the National Council of Provinces (NCOP)** play a similar role to the National Assembly committees but at the provincial level. They are made up of provincial MPs and also hear public petitions and comments on the budget and proposed bills.
- **Members of the public, interest groups and civil society organisations** can participate in various stages of the budget process, including by making petitions or submissions to many of the bodies listed above.

3.2 Vertical and Horizontal Division of Revenue

Section 214 of the Constitution requires the equitable division of revenue across and within the national, provincial and local spheres of government. This applies to the vertical division of revenue between the three spheres of government (national, provincial and local) and the *horizontal* division of the provincial share between the nine provinces and the local share between the 278 municipalities. Every year, after extensive consultation between the national, provincial and local spheres of government, the Division of Revenue Act (DoRA) is enacted to provide for the equitable division of revenue generated nationally across South Africa's provinces and municipalities. The process also takes into account the powers and functions assigned to each sphere of government as per the South African Constitution.[58]

The DoRA is useful for identifying the following:

(i) national interests and the division of resources, guided by the country's National Development Plan and Medium Term Expenditure Framework;

(ii) provision for debt costs;

(iii) national government's needs and interests, as provided for in the Constitution;

(iv) provincial and local government basic service delivery obligations and functions, including education, healthcare, social development, housing, water and electricity, and municipal infrastructure;

(v) equitable shares to provincial and local governments, together with conditional grants for basic service delivery;

(vi) developmental needs encapsulated in the equitable share formulas used to divide revenue across the provincial and local spheres of government;

(vii) provisions made for economic disparities; and

(viii) flexibility to respond to emergencies and unforeseeable events, such as natural disasters.[59]

3.3 Public Finance Management

The primary purpose of the Public Finance Management Act, 1999 (PFMA) is to maximise service delivery through the effective and efficient use of limited resources. The PFMA covers national and provincial government departments. It aims to ensure that public sector officials are held accountable and eliminate waste and corruption in the use of public assets. The PFMA further confers powers to accounting officers of public departments for monitoring and managing budgets, while the politically appointed head of the department is responsible for policy choices and outcomes.

Importantly, the PFMA makes direct reference to financial misconduct. This includes fruitless and wasteful expenditure, which could have been avoided had reasonable care been exercised; irregular expenditure that is not in compliance with legislation; and unauthorised expenditure that is not in accordance with a vote. Financial misconduct can be grounds for dismissal, suspension or other appropriate sanctions. The PFMA therefore entrenches human rights principles of fairness, accountability and efficiency in the management of state finances.

[58] National Treasury, Republic of South Africa (2016). Explanatory memorandum to the division of revenue. Available at www.treasury.gov.za/documents/national%20 budget/2016/review/Annexure%20 W1.pdf.
[59] Ibid.

In addition, the objective of the Municipal Budget and Reporting Regulations is to secure sound and sustainable management of the budgeting and reporting practices of municipalities – which are tasked with socio-economic rights implementation – by establishing norms and standards that ensure transparency, accountability and appropriate lines of responsibility in the budgeting and reporting processes of those institutions.

3.4 Access to Information and Data Transparency

Section 32 of the Constitution states that everyone has the right of access to any information held by the State and any information held by another person required for the exercise or protection of any right. The preamble of the Promotion of Access to Information Act, 2000 (PAIA), which gives effect to the constitutional provision, recognises that prior to South Africa's transition in 1994, a secretive and unresponsive culture in public and private bodies often led to an abuse of power and human rights violations. Access to budget data that is transparent and easy to interpret and use is the foundation for conducting budget analysis that adequately assesses the advancement of socio-economic rights.

For the past 10 years, South Africa has been ranked amongst the top-six countries in the world for the transparency of its budget process by the international Open Budget Index (OBI). However, effective SER budget analysis also requires data that is relevant, disaggregated (for example by race, gender and class) and free in order to guarantee access by disadvantaged groups. For budgeting to be participatory it must involve interaction between people with all spheres of government: national, provincial and local. Affected communities must be able to hold the government directly to account, particularly at a local or municipal level. For this to happen budgets need to be clear, transparent and easily understandable and information on budgets readily available. In particular, citizens need the following information to be published and disaggregated at a municipal level: (1) the assessment of community needs undertaken by the government; (2) an understanding of what the government has undertaken to deliver; (3) the exact budget allocated to deliver the need; (4) the agent or entity contracted by government and responsible for implementing the need; (5) actual government allocation and expenditure by the implementing agent or authority; and (6) reported delivery by government as contained in annual reports.[60]

The lack of a cohesive open data policy between government departments impacts on budget data quality. While budget data is available, it is not always relevant or effective in providing insight to understanding the incremental steps taken by the government to advance socio-economic rights, nor is it always user-friendly.[61] Ideally, access to online data ought to be comprehensive in terms of the expenditure and revenue information available. Large datasets should be easily accessed and explored; information should be reliable with the necessary sources referenced and changes to datasets disclosed; and online feedback systems should be available for government to facilitate citizen voice and meaningful participation.[62]

Thus, despite South Africa's high transparency ranking, reliance is still placed on utilising access to information laws to acquire relevant data, which is a cumbersome process. The aim of government should be to provide broad, non-discriminatory, and free access to data so that any person can access information relevant to them without having to identify themselves or provide any justification for doing so.[63]

[60] McLaren, D (2016) "Public Monitoring of Government Food Security Services in South Africa: What data needs to be produced and published?", *Studies for Poverty and Inequality Institute & International Budget Partnership*.
[61] Razzano, G (2016) "Open Information and Accessibility", *Presentation made at SAHRC / SPII Roundtable Discussion: Budget Analysis for Advancing Socio-Economic Rights, 17 November 2016*.
[62] International Budget Partnership *et al* (2015) "Online Budget Information Assessment – 2015", Draft Report
[63] Ibid.

3.5. Conclusion – Is the government meeting human rights obligations of conduct and process?

On the one hand South Africa's high score on the OBI - ranking third in 2015 – presumably indicates a healthy and strong democracy, providing necessary information to acquire favourable credit ratings and the improvement of quality service delivery. However, as numerous court cases and controversial political decision-making involving public finances demonstrate, the provision of high-level budgetary data required for OBI assessment does not contain the necessary detail for citizens to hold the government accountable.

Budgetary documents provided by National and Provincial Treasury provide information regarding allocation and expenditure on various government functions, including socio-economic rights at national, provincial and municipal/district level. However, insufficient detail is provided as to how much is spent on a specific school, hospital or housing project, for example. Affected citizens therefore are not able to assess whether what has been allocated has in fact been spent on the advancement of socio-economic rights. In addition, there is insufficient interrogation of the public procurement process; namely government outsourcing for the delivery of basic services. Consequently, citizens are unable to engage meaningfully with the government over issues of mismanagement of service contracts or wasteful expenditure.[64]

South Africa has the requisite laws and processes in place to meet its human rights obligations in terms of conduct. However, although publicly accessible, these budget processes remain elusive to the public. Although much information can be obtained online, including simplified guides to the budget published on an annual basis, the majority of South Africans have limited ability to access this information (which is dependent for example on whether they have internet access). The ability to actively participate and influence budget processes is also dependent on how information is presented and whether it is relevant to the needs of the reader. Much work is thus to be done to ensure that all South Africans are actively able to participate in government budget processes that directly affect them.

[64] Van Zyl, A. & Kruuse, J (2015) "SA's budget still transparent, but devil is in lack of details", *Business Day*.

CHAPTER 4

GENERATION OF REVENUE IN SOUTH AFRICA

4.1. Fiscal Policy

Fiscal policy refers to spending by the state. In the South African context, this is determined by the National Treasury, which is responsible for managing the government's finances and budget processes. These processes include advising cabinet on the state of the government finances, overseeing expenditure by national departments and monitoring the implementation of provincial budgets.

When government spending exceeds the total revenue generated, it results in a budget deficit, which requires the government to borrow funds to cover the difference. Loans can be sourced from other governments, issuing bonds to investors, commercial banks and international financial institutions such as the World Bank or IMF. In order to establish whether borrowing is advancing or hindering human rights, it is important to consider whether the government is using the debt to create assets or finance the realisation of socio-economic rights.[65] If assets are not improving human rights processes or outcomes, then such borrowing ought to be questioned. Also, the assets should generate income for the government through increased economic activity. Investments such as in quality health care and education can lead to more people being productive in the economy, resulting in more outputs. If these outputs are taxed, a higher tax revenue can be used to service the debt.[66]

In 2014, the World Bank released a report looking at whether South Africa's fiscal policy was redistributive and contributing towards tackling poverty and inequality. The report found that while the South African government has utilised its tax resources to expand social assistance programmes, education and healthcare, and thus reduce poverty, it has been unable to significantly reduce inequality. Income inequality in the country has in fact grown since the fall of apartheid, leaving South Africa as the most unequal society in the world by this measure.[67] However, the report asserts that South Africa uses its fiscal resources in a manner that has cut extreme poverty by half, with the share of the population living on USD 1.25 decreasing from 34.4 percent to 16.5 percent, largely reflecting the positive impact of free basic services. The report goes on further to say that the tax system in South Africa is slightly progressive, and spending is highly progressive. The rich in the country contribute significantly more of their personal income toward tax generation, which the government redirects to the poorest segments of society to raise their income.[68]

However, how poverty is measured is determined by a number of baselines. For example, the World Bank Report uses a very conservative poverty baseline of R473 per month, based on South Africa's 2011 poverty census. Yet, for that year StatsSA found that food plus essentials amounted to R779 per month, and the percentage of South Africans living below that line was 53%. Essentially, what this means is that the

[65] Balakrishnan, R., *et al* (2011) "Maximum Available Resources & Human Rights".
[66] Ibid.
[67] Oxfam (2017) "Even it up: Time to end extreme inequality"
[68] World Bank (2014) "South Africa Economic Update: Fiscal Policy and Redistribution in an Unequal Society".

economy is not growing at a rate that is in line with what it costs to survive. Moreover, the World Bank Report did not calculate pro-corporate State subsidies that raise the income of wealthy companies and individuals through, inter alia, capital gains, thus making the South African government an active contributor toward the inequality gap. Losses through illicit financial flows from South Africa have been estimated to cost South Africa USD 21 billion per year between 2004 – 2013, peaking at $29 billion in 2009. State sanctioned international trade agreements are also often riddled with accusations of corruption. It would seem then, that South Africa's tax system is not as progressive as international organisations such as the World Bank purport it to be.[69]

Arguments have been posed that the introduction of a "wealth tax" in South Africa could reduce the ongoing effects of inherited social injustices resulting from its apartheid past, and post-apartheid macro-economic policies that have de facto increased the wealth of an economic elite. It has been proposed that a "wealth tax", that would require wealthy individuals to declare all assets, could address the challenges of joblessness, poverty and inequality, provided it is managed by competent individuals and institutions. The declaration of assets by wealthy individuals would allow the government to identify with more certainty who owned what, and how the value of those assets increase over time. This would allow the government to formulate a more concrete policy for reducing inequality. Currently, and as highlighted by economist Thomas Piketty, South Africa lacks specific data regarding the concentration of wealth and wealth inequality since the fall of apartheid.[70]

4.2 Monetary Policy

Monetary policy, which is determined by the South African Reserve Bank (SARB), directly affects the resources available for the realisation of socio-economic rights. It includes inflation targets, interest rates, exchange rates and the amount of credit available in the economy. Higher interest rates set by central banks discourage borrowing by making credit more expensive; consequently, economic activity slows down and there is less job creation. High interest rates can also contribute to unemployment by stifling productive business investment.[71]

In recent years, monetary policy has also begun to prioritise price stability in the economy through, among other measures, inflation targeting, rather than promoting economic growth and aiming toward full employment. The emphasis by central banks to maintain price stability affects interest and exchange rates which can have a negative impact on the realisation of some socio-economic rights. For example, interest rates impact on the ability to access affordable housing, food, fuel and employment outcomes, which are also affected by trade agreements. Of course, these negative outcomes impact on vulnerable and marginalised aspects of society disproportionately. Policy choices that result in job losses affect men and women differently, particularly when choices are made as to which industries are essential to economic growth.[72] South Africa formally introduced inflation targeting in 2000, wherein the SARB announces an explicit inflation target and implements policies to achieve this target directly. It is argued that one of the features of inflation targeting is that it brings more transparency to monetary policy. However, it is also acknowledged that monetary policy cannot contribute directly to economic growth and employment creation in the long term.[73]

[69] Bond, P. (2010) "The harsh realities about South Africa that the World Bank dare not speak", *The Conversation*, 19 February 2016.
[70] Fabricus, P. (2015) "Thomas Piketty proposes wealth tax, minimum wage", *IOL*, 3 October 2015; see also: News24 (2016" "How South Arica can use wealth tax to cut poverty and unemployment", 13 August 2016.
[71] Balakrishnan, R., *et al* (2011) "Maximum Available Resources & Human Rights".
[72] Ibid.
[73] South African Reserve Bank. "Inflation Targeting Framework".

4.3 Overall revenue mix

Below we provide an overview of revenue generation in South Africa between the 2011/2012 - 2016/2017 fiscal years. The pie charts below highlight the three main sources of revenue generation in South Africa; namely Personal Income Tax, Corporate Income Tax and Value Added Tax. Other sources of revenue include transfer duties, customs and excise duties; skills development, fuel and electricity levies; mineral royalties.

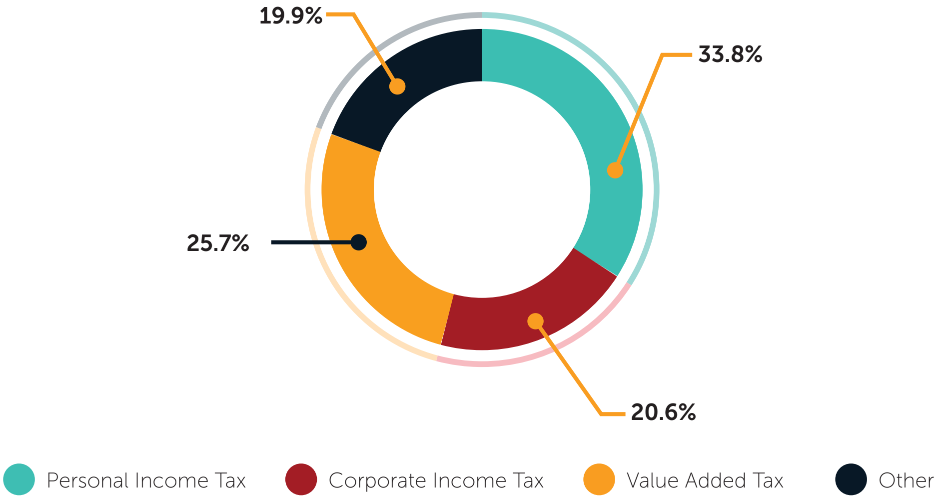


Figure 1 – Total Revenue Collection 2011/2012 – R742.6 billion (Source: South African Revenue Service)

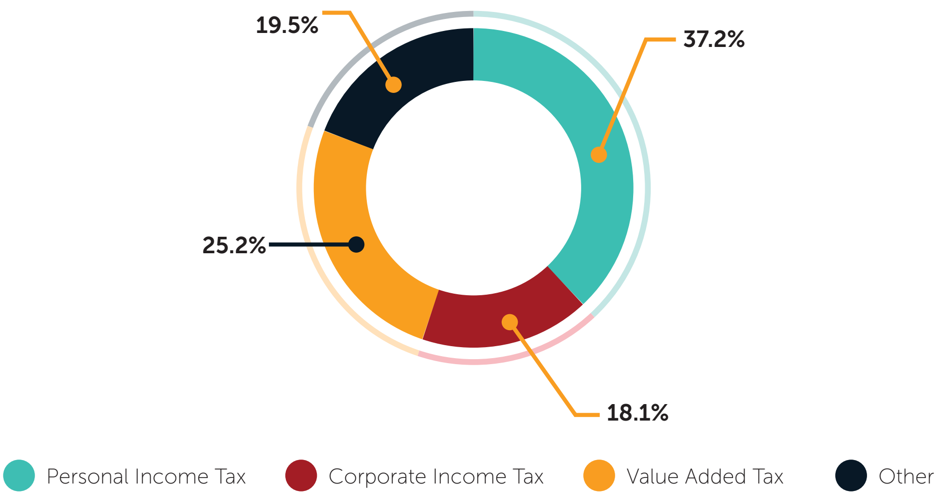


Figure 2 - Total Revenue Collection 2016/2017 – R1.144 trillion (Source: South African Revenue Service)

Indeed when one considers the figures presented by the government, and in accordance with human rights indicators used to measure the advancement of socio-economic rights through the budget, it appears as though there has been progressive generation of revenue on an annual basis. Personal Income Tax (PIT) is consistently the biggest revenue source, the bulk of which comes from higher income earners (see table below). Although PIT makes up roughly just over one third of the revenue generated, there does appear to be an even spread between companies, consumers and other investors in their contributions to the revenue base. This could be viewed as another indication of a progressive tax system that applies human rights principles of non-discrimination. One could then assume that the government is generating more revenue on an annual basis, required to redistribute toward the advancement of socio-economic rights, as is suggested in the World Bank Report.

Tax rates are further disaggregated according to income, with wealthier registered tax payers contributing more. For example, for the 2017/2018 financial year, the tax rate for individuals is:

Taxable Income (ZAR)	Rates of Tax (ZAR)
0 – 189 880	18% of taxable income
189 881 – 296 540	34 178 + 26% of taxable income above 189 880
296 541 – 410 460	61 910 + 31% of taxable income above 296 540
410 461 – 555 600	97 225 + 36% of taxable income above 410 460
555 601 – 708 310	149 475 + 39% of taxable income above 555 600
708 311 – 1 500 000	209 032 + 41% of taxable income above 708 310
1 500 001 and above	533 625 + 45% of taxable income above 1 500 000

Source: South African Revenue Services, Rates of Tax for Individuals 2017/18

In addition, while the bulk of tax payers fall in the income group earning between R70 001 – R350 000 per annum, the majority of tax generated through PIT in South Africa is paid by the higher income groups earning more than R500 000 per annum.

Tax year	2015			
Income group	**Number of taxpayers**	**Income before deductions (R million)**	**Deductions allowed (R million)**	**Taxable income (R million)**
<= 0	131 110	-16 011	29	-16 040
1 – 70 000	478 495	18 099	231	17 869
70 001 – 350 000	3 012 171	581 717	24 989	556 728
350 001 – 500 000	527 958	218 510	13 195	205 315
500 000 +	638 600	621 427	38 021	583 406
Total	**4 788 334**	**1 423 743**	**76 465**	**1 347 278**

Source: South African Revenue Services, Assessed Individual Taxpayers by Income Group, 2015

However, the contribution of VAT to the overall revenue mix has progressively increased between 2011/2012 – 2015/2016, while the contribution of Corporate Income Tax (CIT) has decreased. VAT continues to constitute just over a quarter of South Africa's overall revenue mix, with potentially unfair consequences for poor South Africans. As early as 1991, South Africa adopted zero VAT rate policy applicable to certain basic products, under the auspices that a broad-based consumption tax would produce a more efficient tax system and improve revenue collection, and alleviate the burden on the poor who spend a greater proportion of their income on consumption goods. However, zero rating of some consumer goods does not always lead to the reduction of inequality or an effective combatant of poverty, as zero-rated goods are used by both rich and poor consumers. While poorer may spend a higher proportion of their income on zero-rated goods (e.g. Brown bread, maize meal and rice), thus supporting the argument that such a policy would be of benefit to poor people, higher income households spend more on these goods in absolute rand terms than lower income households. The rich therefore benefit quite substantially from a zero-rated VAT system, resulting in regressive tax measures.[74]

In addition, when one compares South Africa's tax rate with a mix of other upper middle income countries (as defined by the World Bank), it is only similar to China where the tax rate on individuals' personal income is significantly more than that charged to corporates. In Angola, Brazil and Russia, the corporate income tax rate is higher than the personal income tax rate, while the personal income tax rate in Russia is significantly lower than that of South Africa. The intention is not the political, economic and social factors that may influence the determination of tax rates, but simply to highlight that the tax rate assigned to individuals in South Africa is considerably higher when compared to other middle income countries.

Personal and Corporate Income Tax Rates, Selected Middle Income Countries[75]

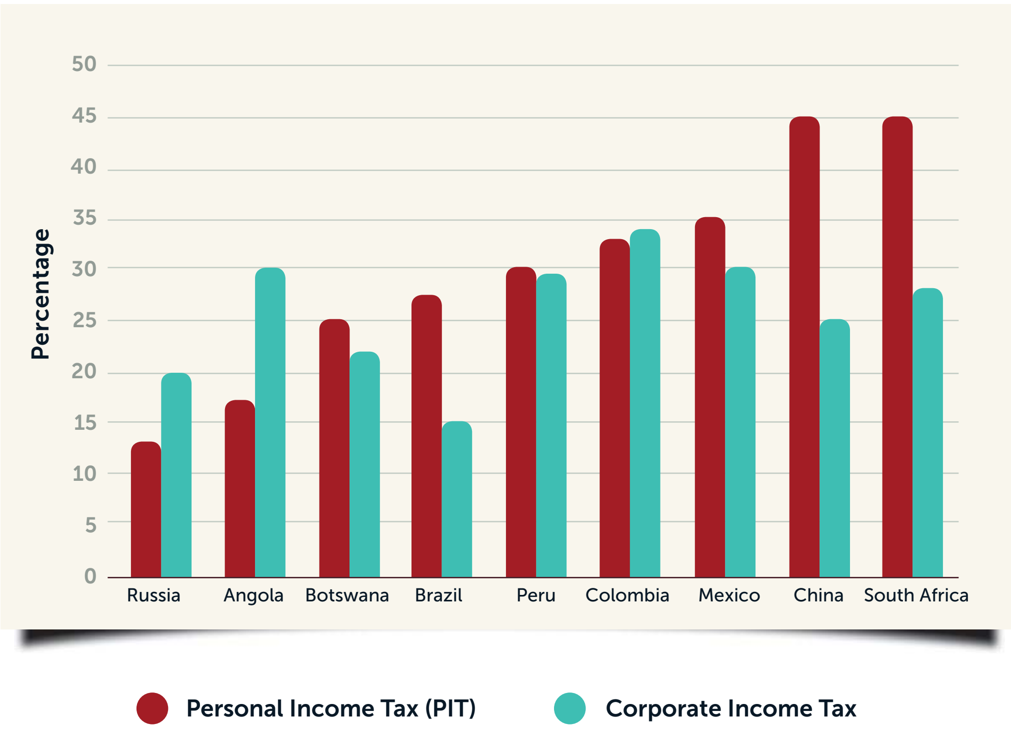


Figure: 3

[74] Jansen, A & Calitz, E (2015) "How effective is VAT zero rating as a pro-poor policy?", *Econ3x3*.
[75] Source: Price Waterhouse Cooper Worldwide Tax Summaries, available at www.pwc.com/gx/en/services/tax/worldwide-tax-summaries.html

4.4 Is the tax system and revenue generation in South Africa as progressive as it could be?

In South Africa, much emphasis has been placed on the notion of 'inclusive growth' to ensure that all South Africans are able to benefit from its economy. In terms of the parameters set out by the United Nations Development Programme, inclusive growth allows for the participation of everyone in the growth process and equitable sharing of the benefits of growth.[76] However, notwithstanding the measures the South African government has undertaken to presumably develop a progressive tax system, earnings inequality has increased, with earnings at the top end having increased faster than earnings at the bottom, resulting in inequality persisting between groups and across generations. While wage income, including self-employment income constitutes a dominant share of income in the country, there is a high correlation between wage income and total household income.[77] Individuals stemming from wealthier households are therefore likely to earn higher wages. In addition, the low labour force participation and a lack of access to employment are important components of the dominance of the labour market in driving South African inequality.[78]

Researchers have frequently emphasised that addressing the gaps in social policy, such as improving the education system and tackling the spatial legacy of apartheid[79]. In other words investment in the advancement of socio-economic rights as contained in the Constitution is not only a human rights issue, it is crucial for the achievement of an inclusive economy.

Wasteful expenditure caused by corruption and illicit financial flows further demonstrates weaknesses in the structures and accountability measures in place that should monitor effective revenue generation. The government has acknowledged that more needs to be done to combat illicit financial flows, tax evasion, money laundering and corruption. Laws, coupled with strong institutions and capacity to implement them, is still a challenge confronting the government. In 2016, the South African government launched its Special Voluntary Disclosure Programme, which provides a window period for individuals and companies to regularise undisclosed or unauthorised foreign policy. While this is a useful first step, until systems are in place to ensure that the government is able to collect all of the revenue owed to it but lost through illicit financial flows, it will not meet the human rights standards of progressively generating revenue required to advance socio-economic rights, notwithstanding its ability to demonstrate an increase in revenue generation on an annual basis.

The tax system is therefore not as progressive as it could be, nor does it prioritise advancing socio-economic rights as provided for in the Constitution. Instead, through choices made in its fiscal and monetary policies, and the lack of systems and accountability measures to avoid wasteful expenditure and illicit financial flows, the South African government falls short of meeting both its domestic and international legal obligations in terms of revenue generation.

In 2013, the Department of Finance established the Davis Tax Committee (DTC). According to the government, South Africa's tax policy and tax administration compares favourably in relation to many developed and emerging economies. However, the government also recognises the impacts of globalisation, the 2008/2009 global recession, and the persistent challenges presented by unemployment, poverty and inequality, which requires a review of the current tax system that promotes inclusive economic growth, employment creation, development and fiscal sustainability. The DTC has since made recommendations to the Minister of Finance, with the idea of achieving the long term objectives of the NDP. While the DTC focuses to a large extent on tax reform in certain sectors of the economy, we await the outcome of how such reform will impact on tax redistribution that prioritises the advancement and attainment of socio-economic rights.[80]

[76] International Policy Centre for Inclusive Growth "What is Inclusive Growth?" available at www.ipc-undp.org/what-inclusive-growth?active=1
[77] Leibbrandt, M, *et al* (2010) "Trends in South African Income Distribution and Poverty since the Fall of Apartheid", *OECD Social, Employment and Migration Working Papers*, No. 101
[78] Ibid.
[79] Liebbrandt, M & Green, P. (2017) "REDI 3x3 Conference: Policies for inclusive growth", *Econ3x3*, available at www.econ3x3.org/node/364
[80] See "The Davis Tax Committee" at http://www.taxcom.org.za/

CHAPTER 5

ALLOCATIONS AND EXPENDITURE ON SOCIO-ECONOMIC RIGHTS[81]

This chapter will first discuss the division of revenue system in the South African context. It will then consider overall allocation and expenditure on socio-economic rights, including total expenditure on socio-economic rights from 2008/09 – 2016/17, a comparison between different socio-economic rights at a national and level, and a comparison of socio-economic right allocation and expenditure between different countries with similar GDP, assessing the key trends that have emerged. Data used to inform the analyses was sourced from the National Treasury, publicly available online, and includes the annual national Budget Review (BR), Estimates of National Expenditure (ENE), Estimates of Provincial Revenue and Expenditure (EPRE) and various annual and provincial reports.

Typically, in the annual budget review, the annual consolidated spending includes the following line items: Economic Affairs, Defence, Public Order and Safety, General Public Services (including debt service costs), and Recreation and Culture, in addition to socio-economic rights expenditure. Socio-economic rights have been identified based on how they have been defined as line items in the budget. These include: Basic Education; Housing and Community Amenities (which includes water and sanitation, and in some instances rural development and land reform); Health; Social Protection; Post-School Education and Training; Agriculture (which includes forestry, fishing and hunting, and in some instances rural development and land reform); and Environmental Protection.

The table below provides a summary of how we have matched the socio-economic right under review with the corresponding budget line item, or policy function areas.

Socio-Economic Right	Corresponding Budget Line Item
Education	Education
Social Security	Social Protection
Health Care	Health
Housing	Housing and Community Amenities
Food	Agriculture
Water and Sanitation	Housing and Community Amenities
Environment	Environmental Protection
Land	Housing and Community Amenities, Agriculture

While this Chapter provides a general overview of how the government prioritises its budget toward the advancement of socio-economic rights, it must be noted that policy changes result in the redirection of the allocation of funds and the components that make up certain line items. This will be discussed in more detail when we engage with rights-specific analysis further below. However, it is worth noting that it is these practicalities, namely, the inconsistencies of line items and changes in how budgets are presented from one financial year to another, which causes much confusion and limits the ability for citizens to adequately monitor the government's commitment toward the progressive realisation of socio-economic rights as a priority.[81]

5.1 Division of Revenue

5.1.1. Vertical Division of Revenue

The budget process, informed by the South African Constitution, recognises that the three spheres of government – National, Provincial and Local – have their own sets of functions to perform. The division of national tax revenue is intended to ensure that each of these spheres is able to meet its constitutional responsibilities. Prior to the division of revenue, however, provision is made for an emergency reserve, the repayment of national debt, and for meeting particular policy priorities.

The table below provides an overview of the vertical division of revenue between the three spheres of government for the financial years 2012/2013 – 2017/2018.

	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
National	47.9%	47.9%	48.2%	48.9%	48.1%	47.5%
Provincial	43.4%	43.4%	43.2%	42.2%	42.9%	43.4%
Local	8.7%	8.7%	8.6%	8.9%	9%	9.3%

Source: Explanatory memorandum to the division of revenue, 2016 Division of Revenue Bill

The justification proffered for local government receiving such a small portion of the national revenue, despite the essential role these structures play as primary implementers of socio-economic rights, is that local governments have the authority to generate revenue through property taxes and electricity levies.[82] While municipalities that house wealthier portions of the population may benefit from this arrangement, it is to the detriment of poorer and more rural local municipalities, who depend almost entirely on national government in order to operate. The government asserts that there has been strong growth in allocations to provincial and local governments, reflecting the emphasis on the delivery of services, including health, education and other basic services, and to account for the rising costs of these services. As such, local municipalities have been provided with more resources by the national government, in addition to local governments' revenue-raising powers.[83] This notwithstanding, despite the Constitution assigning various responsibilities on local government with regard to the delivery of basic services in particular, and its efforts to ensure that the national, provincial and local spheres of

[81] Ndifuna Ukwazi (2012) "Engaging with Government Budgets: An Activist's Guide to South African Government Budgets at Local, Provincial and National Level".
[82] Ndifuna Ukwazi (2012) "Engaging with Government Budgets: An Activist's Guide to South African Government Budgets at Local, Provincial and National Level".
[83] National Treasury (2016) Explanatory memorandum to the division of revenue, 2016 Division of Revenue Bill, p3.

government are able to operate autonomously, it appears that there has not been a significant attempt at reducing the vertical division of revenue allocated to national government to redistribute to the provincial and local spheres of government to comply with their constitutional obligations.

5.1.2. The Equitable Share Grant and Horizontal Division of Revenue

In terms of Section 214 of the Constitution, all revenue raised nationally is to be divided equitably between the three spheres of government – national, provincial and local, intended to provide free basic services to poor households. Allocations are determined by a number of factors including the size of the population and the number of people who are poor and require services.

- Equitable share grants were first introduced in 1998. Initially, the equitable share formula devised by National Treasury comprised of the following components:
- *Education component* (weighted: 41%) based on the average size of the school-age population (ages 6-17) and the number of learners enrolled in public ordinary schools;
- *Health component* (weighted: 19%) based on the proportion of the population without access to medical aid funding;
- *Social security component* (weighted: 17%) based on the estimated number of people entitled to social security grants – the elderly, disabled and children – weighted in accordance with the poverty index;
- *Backlog component* (weighted: 3%) based on the distribution of capital needs as captured in the schools register of needs, the audit of hospital facilities and the share of the rural population;
- *Basic component* (weighted: 7%) derived from each province's share of the total population of the country;
- *Economic output component* (weighted: 8%) based on the distribution of total remuneration in the country; and
- *Institutional component* (weighted: 5%) divided equally among the provinces.[84]

The equitable share formula has since been revised to account for the most recent data obtained through the national Census and Household surveys, amongst others. For the 2016 Budget, the formula components are set out as follows:

- Education component (weighted: 48%), based equally on the size of the school-age population in each province and the number of learners enrolled in public ordinary schools.
- Health component (weighted 27%) based on province's risk profile and health system case load
- Basic component (weighted 16%) derived from each province's share of the national population
- Institutional component (weighted 5%) divided equally between the provinces
- Poverty component (weighted 3%) distributed progressively based on the number of people living in each province who fall in the lowest 40% of household incomes
- Economic output component (weighted 1%) distributed regressively based on regional GDP.[85]

[84] National Treasury of the Republic of South Africa (1999) "Chapter 5: Division of Revenue", *1999 Medium Term Budget Policy Statement*.
[85] National Treasury of the Republic of South Africa (2106) "Annexure W1: Explanatory memorandum to the Division of Revenue"

In addition, conditional grants are provided by the national government to provincial and local governments for specific purposes. The funds are administered at a national level, which determines what the funds can be used for and the conditions attached thereto. In this manner, the national government is able to retain control over how funds are spent, and withhold funds if they are underspent.[86]

However, although the equitable share formula aims to prioritise poorer segments of the South African population through the provision of basic services, the formula has been criticised for being lopsided and biased against the country's more rural and poorer provinces. For example, the formula does not sufficiently take into account the disparities in the various populations across the provinces that may need access to basic services, or the varying costs of delivering such services in rural versus urban settings, for instance. In addition, the formula does not adequately account for the unequal starting points of historically disadvantaged population groups, and while conditional grants, administered by the national government, have been allocated with the intention of improving basic services, these make up a very small proportion of provincial spending. Moreover, the poverty component of the formula at just 3% - to address the needs of roughly 57% of the population considered to poor according to StatsSA – is arguably insufficient.[87]

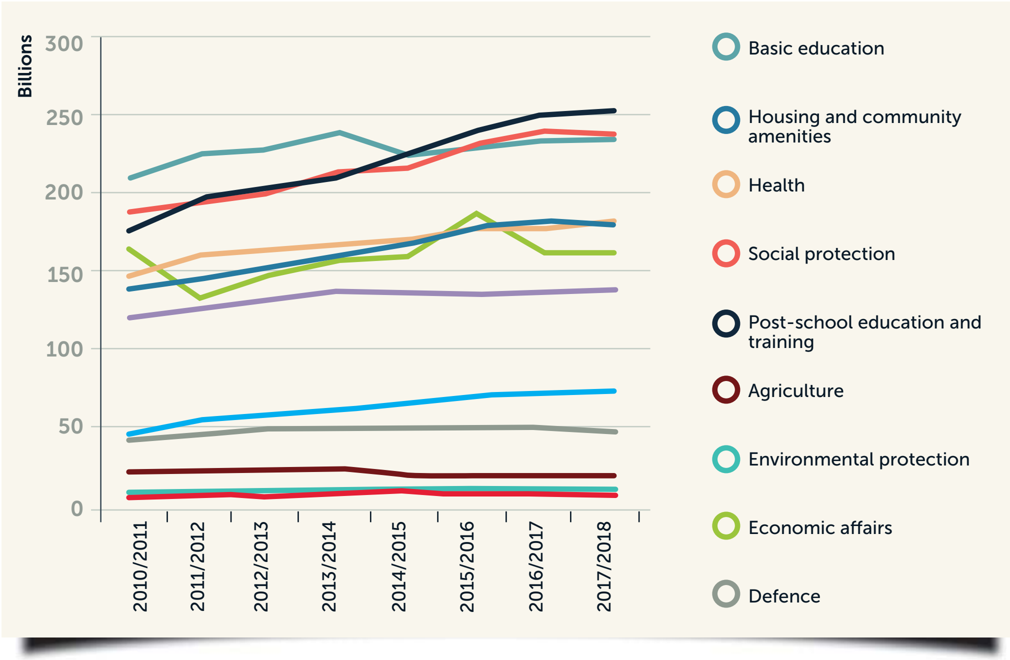
These disparities will be highlighted in greater detail in the right-specific analyses that follows below.

5.2 Total Socio-economic Rights Allocation and Expenditure between 2010/11-2017/18

Below we provide a general overview of socio-economic rights allocation and expenditure commencing in 2010. This is largely to account for the split in the Department of Education into the Departments of Basic Education and Higher Education respectively during the 2009 financial year, which consequently resulted in changes in the manner in which both National and Provincial Budgets were presented. Thus, in order to ensure consistency in the data sourced, we have limited our analysis to begin in 2010/11 financial year. All figures have been adjusted to account for the annual inflation rate to reflect 2017/2018 prices, or Consumer Price Index (CPI), as provided for in the annual budget review forecast, thus taking into account the annual increases in goods and services.

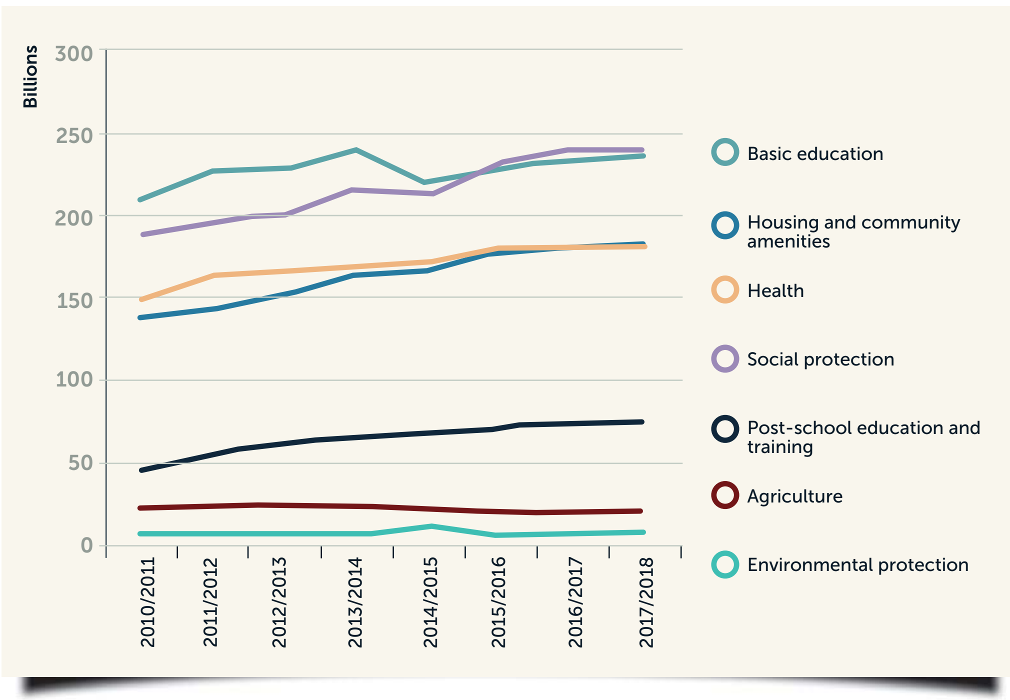
[86] Ibid.
[87] Ally, N. & McLaren, D. (2016) "Education funding formula needs to be fixed", *GroundUp*, available at https://www.dailymaverick.co.za/article/2016-08-01-groundup-op-ed-education-funding-formula-needs-to-be-fixed/#.WP-c5_mGPIU

Figure 4: Government expenditure and allocation on socio-economic rights and other main expenditures, 2010/11 – 2017/18[88]



When considering the above graph, the government has consistently allocated the highest portion of its budget to Basic Education and Social Protection. Health and Housing and Community Amenities have also consistently received a significant portion of the budget. All of these functions have consistently increased over time. A large proportion of the budget is also allocated to General Public Service, which includes debt costs, and Economic Affairs. However, what is notable is how little is allocated to Agriculture and Environmental Protection, considering South Africa's international obligations with respect to the environment in particular, and that Defence is allocated more than these, progressively increasing over time. In addition, it is evident that although allocations to higher education has increased over time, this line item is not a high priority for the government.

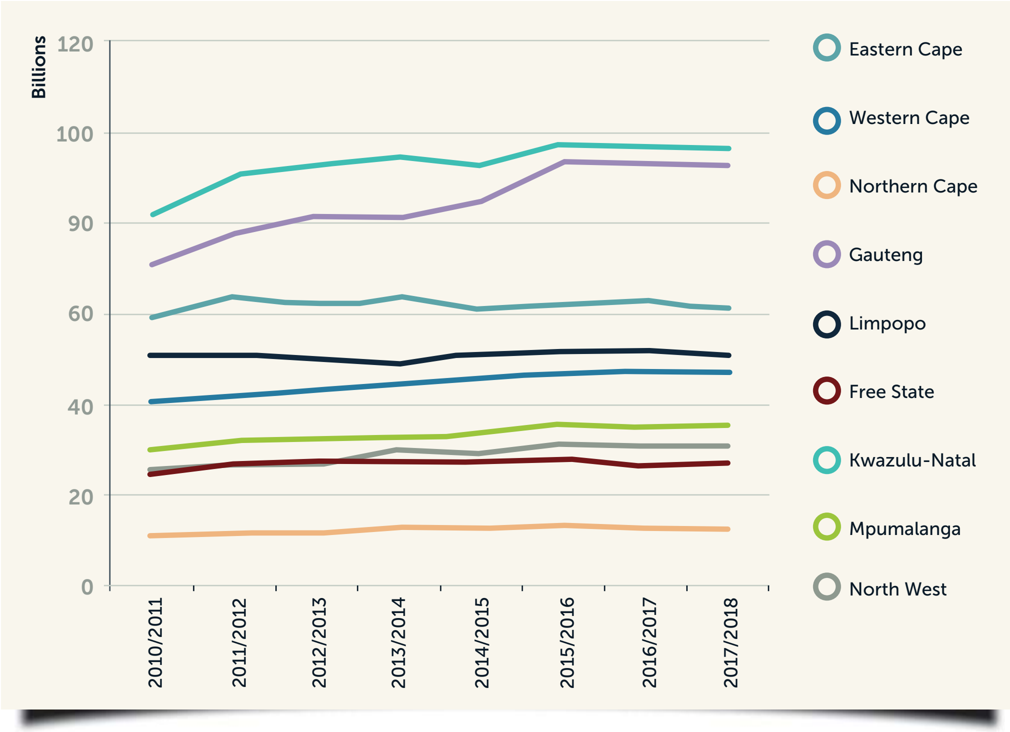
Figure 5: Expenditure on specific socio-economic rights, 2010-2011-2017/18[89]



[88] Source: 2014 Annual Budget Review, 2010/11-2013/14; 2016 Annual Budget Review, 2014/15 – 2017/18
[89] Source: Estimates of Provincial Revenue and Expenditure)

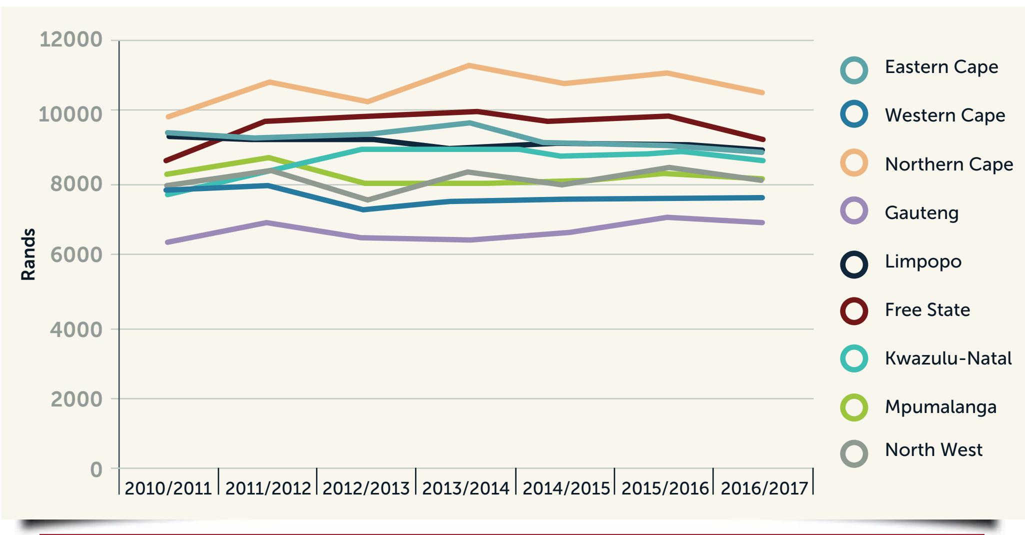
When reflecting of the government's expenditure of socio-economic rights taking inflation into account, basic education, social protection, health, and housing and community amenities appear to be the government's core priorities.

Figure 6: Provincial expenditure on socio-economic rights, 2010/11-2017/18[90]



The sequence of provincial expenditure on socio-economic rights is as follows: KwaZulu-Natal, Gauteng, Eastern Cape, Limpopo, Western Cape, Mpumalanga, North West, Free State and Northern Cape. Despite higher expenditure on socio-economic rights in historically poorer provinces such the Eastern Cape and Limpopo, these provinces remain riddled with governance and administration failures, particularly in the health and education policy functions, both of which have consistently received progressive increases in budget allocations. In addition, the wealthier provinces of Gauteng and the Western Cape, which although have progressively increased their expenditure on socio-economic rights, remain highly unequal, with the poorer portions of the population regularly confronting basic service delivery failures.

Figure 7: Per capita provincial expenditure on socio-economic rights, 2010/11 – 2016/17[91]



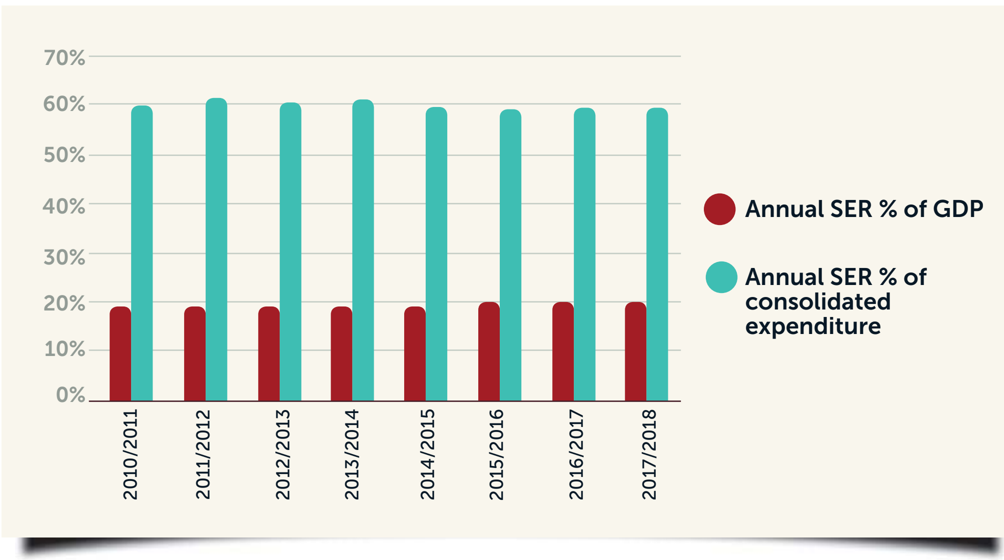
[90] (Source: Estimates of Provincial Revenue and Expenditure)
[91] Source: calculated using mid-year population estimates, available at StatsSA.

When one considers the provincial per capita (or Rand per head) expenditure on socio-economic rights, the sequence differs significantly to that of the total provincial allocation and expenditure on socio-economic rights detailed above. Instead, the sequence is roughly as follows: Northern Cape, Free State, Eastern Cape, Kwa Zulu-Natal, North-West, Mpumalanga, Western Cape, and Gauteng. This suggests that a substantial component of the national revenue is redistributed to the country's rural provinces, while urban centres (Western Cape and Gauteng) receive a lower per person allocation. This pattern is largely due to the composition of the education and health components of the equitable share. In respect of education, the component is based on the school-age population and school-going population, and younger people account for a larger share of rural populations. In respect of health, the formula includes the "uninsured" (i.e. those not covered by medical aid) as a proportion of the population, and this share is higher in poorer (and more rural) provinces.[2]

However, it has been argued that prioritising under-served areas will not, by itself, compensate for rural disadvantage. While there are many shared characteristics between rural areas and "underserved" areas more generally, separate consideration of rurality allows for the specific challenges – such as long distances and less dense populations – to be taken into account. The emphasis is therefore on the defining characteristics of rural areas rather than the fact that they are "deprived". In addition, Stats SA defines as rural those areas that do not have urban characteristics (historically those not included in municipalities when municipal coverage was not "wall-to-wall"). Within rural, Stats SA distinguishes between former homeland areas (also referred as "traditional", "tribal", "deep rural" or "informal"), and what were formerly white commercial farming areas (also referred to as "formal"). For the category of urban, Stats SA sometimes used to distinguish between formal and informal but no longer seems to do so. The distinctions are important because there are significant differences between the characteristics of the population of formal and informal urban areas and also between the former homeland and commercial farming rural areas. While the populations of both the latter are disadvantaged in a range of ways, it is those in the former homeland areas who generally fare worst.[93]

Consequently, wealthier individuals residing in "rural" provinces receive a higher per person allocation of the national revenue toward the advancement of socio-economic rights, while poorer individuals in urban centres receive a substantially lower share.

Figure 8: Socio-economic rights expenditure as a total of consolidated government expenditure and GDP, 20010/11 – 2017/18



[92] McLaren, D. "Adjusting the equitable share formula to improve opportunity for education across rural and urban areas" (forthcoming).
[93] Ibid.

Interestingly, while the total expenditure on socio-economic rights has been roughly two thirds of the government's total consolidated expenditure on an annual basis, when one considers socio-economic rights expenditure in relation to GDP, it is on average only 20%. GDP measures the total monetary value of all goods and services produced in a country, and general economic activity. Roughly 48% of South Africa's GDP is used to service government debt.[94]

[94] National Treasure (2017) "Minister Pravin Gordhan: 2017 Budget Speech"

CONCLUSION

South Africa's seemingly increasing levels of poverty and inequality are not only problematic for economic growth but also perpetuate exclusion and the ability of the majority of the country's population to access political and economic institutions, and influence social change that prioritises the advancement of human rights. Ensuring that all available resources are utilised in a manner that advances human rights further requires strong and accountable institutions of governance to combat phenomena such as IFF, or for the introduction of a "wealth tax". In order to do so, budgets that are easily accessible and easy to interpret by all South Africans on socio-economic issues that affect them the most, such as school or housing projects, must be made more readily available.

Moreover, noting South Africa's recent ratification of the ICESCR, the current conservative approach to the State's "minimum core obligations", particularly as they relate to essential foodstuffs, primary health care, basic shelter and housing, including water and sanitation, and basic education must be tested.

Adopting a rights-based approach to analysing State budgets that prioritise the human rights principles "progressive realisation", "maximum available resources", "non-discrimination", and in a manner that ensures transparency, public participation, accessibility and accountability, can be an effective tool that ensures that the constitutional rights to which all South Africans are entitled become a lived reality.

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