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Can Government Policies Be Said to Be Pro-poor? An Exploration of Policy Working Paper No. 4



POVERTY AUDIT PROJECT

Can Government Policies Be Said to Be Pro-poor?

An Exploration of Policy

Studies in Poverty and Inequality Institute
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Table of Contents

Executive Summary.....	1
Section 1: Introduction.....	5
1.1 Globalisation.....	5
1.2 Socio-economic rights.....	6
1.3 Audit objectives.....	6
1.4 Audit approach and methodology.....	6
1.4.1 Scope of the audit.....	6
1.4.2 Policy and legislation analysis.....	7
1.4.3 Budget analysis.....	7
Section 2: Towards a definition of pro-poor.....	8
2.1 Introduction.....	8
2.2 Towards a definition of pro-poor.....	8
2.3 Poverty is multi-dimensional.....	8
2.4 The Constitution of South Africa.....	10
2.5 Institutional alignment.....	10
2.6 Applying the pro-poor definition to the policies.....	11
2.7 Targeted departments.....	11
Section 3: Education.....	13
3.1 Introduction.....	13
3.2 Legislation and policy principles.....	13
3.2.1 National Policy Act of 1996.....	14
3.2.2 Policy principles.....	14
3.2.3 Institutional framework.....	15
3.2.4 Institutional alignment.....	16
3.3 A unified system of education.....	16
3.4 Equitable distribution of resources.....	17
3.5 Equal access to quality education.....	17
3.5.1 Early childhood development.....	17
3.5.2 School fees exemption.....	18
3.5.3 School Nutrition Programme.....	18
3.5.4 Curriculum 2005.....	19
3.5.5 Higher education.....	19
Section 4: Health.....	21
4.1 Introduction.....	21
4.2 Medicine prices.....	22
4.3 Health services fees.....	23
4.4 Good quality of services.....	24
4.4.1 Preventative measures.....	24
4.4.2 Primary Health Care.....	24
4.4.3 Equity in resources allocation.....	25
4.5 HIV and AIDS.....	25
4.5.1 Minister of Health v Treatment Action Campaign & Others CCT 8/02.....	26
4.6 Policy principles.....	27
4.7 Institutional framework.....	27
4.8 Institutional alignment.....	28

Section 5: Housing	30
5.1 Introduction	30
5.2 State resources for the poorest	31
5.2.1 Emergency housing framework.....	31
5.2.2 Housing credit	32
5.2.3 Establish a housing procurement policy.....	33
5.2.4 Opening up space for the private sector	34
5.3 Legislative and policy principles	34
5.4 Institutional framework.....	35
5.5 Housing delivery targets against the White Paper	35
Section 6: Social Development	38
6.1 Introduction.....	38
6.2 Social Security Grants	39
6.2.1 Old Age Grant	39
6.2.2 Foster Child Grant.....	39
6.2.3 Child Support Grant	39
6.3 Rationalising welfare funding.....	40
6.4 Target beneficiaries and distribute benefits equitably	40
6.5 Legislative and policy instruments	41
6.5.1 Policy Principles	41
6.6 Institutional Context	42
6.6.1 Coverage and scope	42
6.6.2 Economic Assumptions	42
6.7 Institutional framework.....	43
Section 7: Transport	44
7.1 Introduction.....	44
7.2 Infrastructure development and employment creation.....	45
7.3 Legislation and Policy principles	46
7.3.1 White Paper on National Transport of 1996	46
Section 8: Overall conclusions	48
8.1 Introduction.....	48
8.2 Education.....	48
8.3 Health system.....	49
8.4 Housing	49
8.5 Social development	49
8.6 Public transport.....	50
Section 9: Overall recommendations	51
9.1 Monitoring and evaluation.....	51
9.2 Education and training	51
9.3 Development approach to social security	51
9.4 Safe and affordable public transport.....	52
Bibliography	53

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Executive Summary

The publication of the Studies in Poverty and Inequality Institute's (SPII) Fourth Working Paper could not have come at a more opportune time than currently, given the renewed emphasis on poverty eradication through various interventions, especially the institution of central planning and monitoring and evaluation government machinery. Underpinning the policy and implementation exploration which forms the basis of this work is the need to ascertain the extent to which the constitutionally sanctioned rights are translated into everyday experiences of South Africans, particularly the poor.

Although scientifically sound and as vigorous as possible, this edition of the Poverty Audit Project lays no claims to be of similar auditing nature to the classic accounting professions. It does however share a similar intention in spirit, namely, the intention to interrogate the gap between inputs and outputs in the implementation of pro-poor policies. This Fourth Working Paper: *Can Government Policies Be Said To Be Pro-poor* thus attempts to interrogate those departments whose responsibilities are intrinsically linked to specific socio-economic rights. What this research hopes to achieve, as well, is to provide a foundation for further thinking and input into the expansion of socio-economic rights in future policy making and implementation, specifically those aspects that are intended to alleviate and ultimately eradicate poverty in South Africa.

This research report has two broad thrusts. It firstly reviews some of the main policies which seek to alleviate and eventually eradicate poverty and its causes and, secondly, the report provides a budget and benefit incidence analysis which puts a spotlight on the figures behind the policies. Five departments were chosen as the subject of the poverty audit review and they are the national and provincial departments of education, health, housing, social development and transport. The reasons for the choice of the latter department are set out elsewhere in this report.

Overall Conclusion

The overall conclusion this study finds is that most of the national policies of the departments do reflect a pro-poor orientation in their rhetoric. This is evident in references to the respective socio-economic rights, the acknowledgement of the need to redress past imbalances of the past and to create an equal society, the need for equitable distribution of resources, and the unification of systems of delivery in each department in order to alleviate poverty through the alignment of policy objectives with budgeting and institutional arrangements. However outside the general rhetoric, the policies do not provide for satisfactory implementation. They are often silent on how the aims and objectives are to be met in a comprehensible manner and the responsibilities of lead departments tasked with their respective responsibilities do not sufficiently provide a coherent roadmap for policy implementation. Ordinarily, each branch and sphere within each department comes with specific duties and powers for the fulfilment of its constitutional and legislative mandate.

In general, poor intergovernmental relations seem to be a contributing factor to the major problems that negatively affect the alignment of institutions. This limits effective communication and synchronisation of processes and duties. These challenges are exacerbated by concerns that some government officials in crucial positions at times lack the necessary capacity to understand and implement the policies. Adding insult to injury are common reports of service delivery institutions that are fraught with cases of mismanagement of funds, corruption and theft of assets and the increasing demands of public servants for higher salaries without the attendant improvements in public service productivity. At the same time, it needs to be noted that the matter of working conditions for public servants is as pressing as the service delivery challenges they are meant to address. Complaints of poor working conditions resulting from lack of equipment such as stationery at schools or medical supplies, also seem to be rife and often unattended to.

Overall Recommendations

Monitoring and evaluation

Departments typically illustrate alignment between policy, the budget, institutional arrangement and socio-economic rights as well as the aim for the equitable distribution of resources. It is in this sense that the departments in review could be said to meet the standard of being pro-poor in terms of the operational definition. By contrast, the departments display a dearth of, or little conscious reflection on, the constitutional requirement for a coherent and progressive realisation of individuals' constitutional rights over time.

Perhaps the most obvious weakness in terms of the above is the absence of a clear accounting process or system which details the implementation of the pro-poor policies and the charting of progress on a continuous basis. Such measures should include roadmaps for planning and implementation, monitoring and evaluation tools and the capacitation of public servants. Planning should identify those most in need of services; prioritise deliverable services and direct resources accordingly. Without any doubt this exercise would require thorough scoping exercises or research in order to answer questions such as: Who are the needy?

The significance of monitoring and evaluation cannot be overstated. It ensures accountability, improves performance and encourages officials to go that extra mile. Useful monitoring and evaluation, however, further depends on functional intergovernmental relations and communication. Chapter Nine institutions such as the Human Rights Commission (SAHRC) can play important external roles in as far as the monitoring and evaluations of government's pro-poor policies are concerned. It is in this respect that this research report recommends that the role of the SAHRC be greatly strengthened in carrying out its constitutional mandate to annually *"require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment."*

Education and Health Care

Improving the standard of education requires specific interventions, beginning with investments in Early Childhood Development (ECD) up to the tertiary levels of education to ensure long-term acquisition of the skills for absorption into the increasingly competitive labour market. Investment in social services such as the provision of water, health and electricity also need to be put at the forefront of service delivery by harnessing appropriate resources, including human and financial capital. In the case of the health sector, specific attention needs to be given to the current brain-drain from the system by addressing complaints relating to conditions of service. Some of the interventions underway in this regard include the current breakthrough on sectoral Occupation Specific Dispensation (OSD) agreements through which both the labour force and the state as an employer hope to reach amicable resolutions to issues relating to working conditions in the public service.

Social Security and Housing

Government has made strides in the area of social development interventions targeted at the most vulnerable sections of society. There is furthermore a need for the appraisal of social grants that interrogates their exact use. Indications are that the grant amounts are in reality not used for the specific needs of the targeted beneficiaries only but are instead often used to meet the basic needs of whole households, which warrants an investigation into the social needs of those people who are not covered by grants such as the unemployed or young people who are over 18 years old. Assistance in this regard could come in the form of cash transfers that would provide people with the means to acquire skills or search for jobs.

For purposes of achieving long-term and sustainable development, such stop-gap measures need to be complemented by programmes focusing on health, nutrition, education, housing, employment creation, rural and

urban development and land reform programmes. Housing provision remains a matter of serious concern nation-wide and calls for investigative research on planning processes and intergovernmental relations in order to reduce delays in tender adjudication and approval of projects.

Safe and Affordable Transport

The prevention of crime at transport hubs needs to be factored in from the onset of the planning, design and management of transport initiatives. The success of such initiatives is conditional on the full participation of law enforcement agencies and community policing as well as improved co-operation between the transport department, transport providers, municipalities, the private sector and commuters. The establishment of a cabinet portfolio with the task of reversing the rural/urban bias after the April 2009 election was a long overdue step as the high-level location of rural development will hopefully result in more focus on the development of infrastructure in the often neglected rural areas.

Access to Information and Just Administrative Action

In the final analysis, the policies under review have individually unique hindrances when it comes down to the details of implementation. Nonetheless there are general basic measures that need the attention of all parts of government, including the building of capacity, improved availability of resources and improved communications within departments and better intergovernmental relations. These generic solutions can be used as a starting point in attempts to improve the efficient and effective delivery of services and the progressive realisation of the rights to education, health care, adequate housing and social security and general human development.

Insights gleaned from some of SPII's recent work, which use a community based participative research methodology, point to an almost total communication breakdown between government and the grassroots beneficiaries of public services. As result, information on people's rights, specifically those sanctioned by the Constitution is, where it is provided, often mangled and complex, resulting in a lack of implementation of policies that are aimed at improving access at provincial or local government levels.

Finally, the right of people to just administrative action is also a priority. Few people are aware of what their rights to recourse are because the processes are obscure. Frequently the only point of information in respect of the right to an appeal or review of perceived unjust administrative action is the very official that people feel has abused their rights. The Department of Justice and Constitutional Development is set to roll out its Administrative Justice magistrate's courts next year. It is hoped that this will be done with as high profile and as much support as possible to enable those most in need to access this relief.

Section 1: Introduction

Poverty, inequality and high unemployment remain the greatest challenges facing South Africa and most analysts using the \$1 a day poverty measure place the figure of South Africans living in poverty at approximately 40% of the country's populationⁱ. Aside from the challenges of the fact that the majority of the population is living in poverty, a contributing factor to this is that South Africa is also one of the most unequal societies in the world with a Gini coefficient of 0.73ⁱⁱ.

Successive African National Congress (ANC) led governments have since the advent of democracy in 1994 consistently put poverty reduction at the centre stage of their transformation agendas. The impact of their responses through the allocation of fiscal resources to the mounting and persistent poverty related challenges, however, remains an area of much debate and contestation. It is with the hope of making some contribution to this largely unexplored area of public discourse that the Poverty Audit Project seeks to answer the question: *Can Government Policies Be Said to Be Pro-poor?*

In South Africa the drivers of poverty and inequality are rooted in the country's apartheid past which was defined by unequal access to productive assets including land, basic infrastructure, capital and education and skills developmentⁱⁱⁱ. Apartheid policies and their attendant inequalities further determined access to goods and services, determining the quality of food people ate as well as creating spatial distances between home, school, work and health facilities.

1.1 Globalisation

South Africa's transition from apartheid to an inclusive and non-racial democracy had an effect of catapulting the country into the global fold following years of isolation. The new South Africa's acceptance into the international community included presiding over the folding of the General Agreement on Trade and Tariffs (GATT) and the ascendancy of the World Trade Organisation (WTO) in 1994. While re-acceptance into global forums such the WTO had its own benefits, the hard push for unfettered market liberalisation was often at the expense of poor and developing countries of the South like South Africa.

Some of the (un)intended consequences of global trade imperatives and market liberalization have had a negative impact in some industrial sectors. South Africa's old textile industry was, for example, plunged into a job-shedding crisis as the influx of cheap imported clothing triggered by market liberalisation undermined the sector. Increased global specialisation and competition in the labour market have marginalised those workers who lack certain skills for opportunities in work areas that are in demand.

Although South Africa has up until 2007 (the official beginning of the latest global recession) experienced positive economic growth, averaging 4% annually for the past fifteen years, poverty seems to be a persistent societal feature as a result of historical, structural and global factors. The combined impacts of the jobless growth and apartheid legacies have thrown millions of South Africans off the margins of survival into the depths of absolute poverty. It is from this context that South Africa derives its declared commitment to redress the imbalances created by the past by rechanneling state resources in favour of the poor.

1.2 Socio-economic rights

The Constitution places an imperative on the state to actively realise socio-economic rights and strive for the dignity and equality of all people. Section 7 specifically states that the state must promote, protect, fulfil and respect the rights in the Bill of Rights. The Constitution also states that any law or action that is in conflict with the provisions of the Constitution is invalid. In other words, should the state fail to realise Section 7 rights as enshrined in the Constitution, such dereliction of responsibility would be deemed unlawful and inconsistent with the Constitution. However, specific provisions for certain rights and Section 36 of the Constitution, place a limitation on socio-economic rights. These passages provide a proviso for the state to take *reasonable* legislative and other measures to realise the rights on a progressive basis and within available resource constraints.

It has been widely argued that the constitutional provisions which curb the state's obligations have an effect of diluting people's socio-economic rights. These sections do not require the state to divulge specifics, such as resource availability and other constraints, or to justify its failure to fulfil its constitutionally sanctioned socio-economic obligations. Nonetheless, the 2000 Constitutional Court decision involving Mrs. Grootboom and others shed light on what is meant by "reasonableness". The Constitutional Court judgment stated that "reasonable" implementation programmes should include clear allocations of responsibilities to each of the three spheres of government so that appropriate financial and human resources are made available.^{iv}

1.3 Audit objectives

The fourfold objectives of the research audit are the following:

- To analyse state policies from a rights-based perspective
- To explore the budget process and take note of where rights fit in
- To explore the feasibility of developing a monitoring and evaluation tool
- To serve as a stand-alone research output

1.4 Audit approach and methodology

The Poverty Audit Project was essentially desktop research, investigation and analysis that involved looking at progressive realisation of socio-economic rights and clarifying the 'reasonable' extent of the state's obligations in terms of the Constitution. The research investigation not only reviewed the budget, but departmental policies and legislation as well in order to ascertain how the state is addressing poverty on a progressive basis. To make a comprehensive analysis, the Poverty Audit Project went beyond just interrogating government anti-poverty programmes; it looked at the extent of their funding as well. What needs to be emphasized from the onset is the fact that the audit research project was conducted before the 2009 administration came into power, and therefore reflects the pre-2009 departmental structure and names.

1.4.1 Scope of the audit

The research constituted an audit of legislative and policy measures that the state has taken in its bid to progressively realise rights in the Bill of Rights. A critical aspect of the methodological approach to the audit was the identification and recognition of overlapping rights, or those rights that encompass within them the provision of others. The right to a safe and healthy environment, for example, is implied in the right to access to adequate housing.

It was in view of these overlapping or related rights that the audit scaled down its research scope to five key departments that have as their core service delivery responsibilities the realisation of socio-economic rights in terms of the Constitution. The departments under audit are education, health, housing, social development and transport. While transport is not specifically provided for in the Constitution, the Constitution places an obligation on the state for ensuring infrastructure and human development, in their broadest sense. It is argued that the realisation of these basic rights or optimum social goods in general, hinges on well developed physical infrastructure to the same extent that it depends on finances, human, and other resources.

1.4.2 Policy and legislation analysis

The operational definition of “pro-poor” was applied to policy papers and legislation. This involved determining whether the language within the documents reflected recognition of the relevant right to each department as well as the need to eradicate poverty. Also to be determined from the rhetoric was whether there existed references for officials to act in aligning policies with the budget, institutions, rights and expenditure. Most policies, those of the department of transport being the exception, made references to the rights related to the services each department is responsible for delivering. The policies and legislation also state that the imbalances caused by past policies are to be redressed through equitable redistribution of resources.

The project considers the obligations placed by the Constitution, maps the policy commitments and legislative principles of main acts, considers institutional alignment, concludes as to whether these are pro-poor, and shows the reasons for such findings. Conclusions of this project show that the policies of the five departments are overall pro-poor in rhetoric, but that implementation is lacking in most. The project makes recommendations to remedy the implementation problem by filling the gaps identified within the policies through financial and human resources provision and the capacitating of state officials at all spheres.

1.4.3 Budget analysis

The Poverty Audit Project research differs from past work in that it uses a rights-based framework to analyse state policies and spending across the spectrum of the public service. At the core of the investigation was whether the rights in the Bill of Rights are given effect through the budget, taking into account the budgeting process and the allocations. The study, therefore, set out to ascertain whether budgeting processes consciously took into account of or were informed by a rights-based budgeting framework. Similar studies on the national budget include the following initiatives:

- The analysis of the macroeconomic policy by the People’s Budget Campaign (PBC), which aims to produce a budget that provides for the people on an annual basis under a sustainable macro-economic framework.
- The analysis of targeted resources for specific beneficiary groups by the Women’s Budget Initiative.
- The South African Children’s Budget Unit at the Institute for Democracy in South Africa analyses the budget from the perspective of children’s socio-economic rights.

References

ⁱ J P Landman, J.P; Bhorat, H.; van der Berg, S. & van Aardt, C. (2003) Breaking the grip of Poverty and Inequality in South Africa 2004-2014.

Current trends, issues and future policy options

ⁱⁱ Frye, I. (2008). Levels of poverty and inequality and unemployment in South Africa

ⁱⁱⁱ www.dti.gov.za

^{iv} Government of Republic of South Africa and Others v Grootboom and. Others 2000 (11) BCLR 1169 (CC) (para 39)

Section 2: Towards a definition of pro-poor

2.1 Introduction

Some work has been undertaken on budget analysis, notably by the People's Budget Campaign and the Women's Budget Initiative and the South African Children's Budget Unit at the Institute for Democracy in South Africa. Unlike their approach to the research questions, this poverty audit adopts an exclusively rights-based framework in its analysis of state policies and their attendant fiscal implications across the service delivery spectrum. At the core of the audit is whether the rights in the Bill of Rights are given effect through budgeting processes and eventual financial allocations. In other words, it seeks to ascertain whether the development processes consciously in the service delivery areas under review incorporate a rights-based framework. And if so, it interrogates whether the budget drafting processes reflect the need to realise people's socio-economic rights.

2.2 Towards a definition of pro-poor

A natural starting point for a project of this scope was necessarily to fashion a definition of "pro-poor". The definitional exploration was made in the context of the human and constitutional rights framework. Writing on "pro-poor growth", Methi (2006) states that:

"Like many political goals, pro-poor growth means different things to different people. In the absence of a consensus view of what pro-poor is, policy makers whose job it is to design and implement pro-poor policy, are hampered in their efforts to do so by the lack of clarity of what is to be achieved by the policy."

In the case of the Poverty Audit Project, it is exactly due to the adoption of the rights framework that its definition of poverty achieves the clarity of vision that Methi says is so essential for policy makers. Any enquiry into the extent to which state policies and spending could benefit the poor, must necessarily begin by defining what is meant by poverty in the given situation. South Africa has not yet adopted an official poverty definition or poverty line. But the South African government has had extensive debate regarding the need for such a definition so as to monitor its progress in poverty alleviation.ⁱⁱ There is, however, a prior step that is required to in order to define and then measure poverty, which is the need to first conceptually understand what "poverty" poverty is.

2.3 Poverty is multi-dimensional

There are three ways in which poverty is conceived of by mainstream analysts, namely: absolute poverty, relative poverty and capabilities poverty. They vary in their respective focuses on the quality of life, social participation and the fulfilment of needs. *Absolute poverty* means that the person involved lives on subsistence, or below what is minimally required to live an integrated life. *Relative poverty* makes a comparison between the lowest income group and a higher income group's living conditions. It thus captures the relative inequalities in a given study, and can include some normative analysis of acceptable levels of inequality. *Capabilities poverty* refers to an understanding that people need to have the wherewithal to meet basic needs in a manner and to a degree that enables them to participate socially and economically.

Poverty is multi-dimensional in nature and refers to an aggregation of lack or deprivation that will always differ between people and communities. Because of this, it is difficult to pinpoint one definition that is applicable to every situation and across time. Measures are essentially the operationalisation of a definition. Measures clearly are influenced by both the conceptualisation and the definition of poverty. Attempts to measure poverty or deprivation

often resort to agglomerated indices in order to reflect the multiple domains of poverty, and the threshold of need for each domain. A much blunter but far simpler measure is that used most frequently – namely a poverty line. A poverty line is (always) an arbitrary line drawn against which people's incomes is compared. In this way, the composite value of the various thresholds and domains are costed in money terms and these, when added together, provide a money-based (money-metric) proxy of povertyⁱⁱⁱ. In the absence of an official poverty line or any other measure in South Africa, differing views are held regarding the number of people living in poverty as would be expected. Meth and Van der Berg are two key authors who have brought forward different estimates. While Meth proposed that 19.5-million people lived in poverty in 2000, Van der Berg^{iv} said 18.5-million were poverty-stricken that year, and Meth found that 18-million lived in poverty in 2004, while Van der Berg stated that it was 15.4-million^v. Income inequality has also been on the increase from 1994 at a Gini Coefficient of 0.68 to 0.73 in 2001^{vi}. Currently the Gini Coefficient is at 0.73, whereas it would be 0.80 if the social grants did not serve as added income for beneficiaries^{vii}.

Furthermore, South Africa is a signatory to the 1995 United Nations Copenhagen Declaration which adopted two different definitions of poverty – a narrow, absolutist definition and a broader one that referred to the reduction of "overall poverty". In terms of the first, absolute poverty was defined as *"a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services."* On the other hand, overall poverty takes various forms, including *"lack of income and productive resources to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments and social discrimination and exclusion. It is also characterised by lack of participation in decision making and in civil, social and cultural life. It occurs in all countries: as mass poverty in many developing countries, pockets of poverty amid wealth in developed countries, loss of livelihoods as a result of economic recession, sudden poverty as a result of disaster or conflict, the poverty of low-wage workers, and the utter destitution of people who fall outside family support systems, social institutions and safety nets"*^{viii}.

South Africa's Draft National Anti-Poverty Strategy, "Towards an Anti-Poverty Strategy for South Africa", refers to this essential issue thus:

The definition and measurement of poverty, the world over, remain a contested terrain. It seems, however, generally accepted that poverty implies a deficiency in an individual's socio-economic capabilities. Its dimensions include factors such as income, access to basic services, access to assets and human capital, and social capital. This broad approach to poverty allows for engagement with the reality of poverty and the combination of interventions that should be implemented to deal with it^{ix}.

In essence, any pro-poor policy should contribute disproportionately in favour of poorer people, and address the causes and drivers of poverty so as to effect longer term poverty eradication. The democratic government's motivation for poverty alleviation is to redress past injustices that entrenched racial, social and economic inequality by the apartheid and earlier colonial regimes. The unequal nature and structure of South African society stems from a system of racial capitalism under English colonial imperialism and later apartheid rule which deliberately restricted human development and accumulation of capital by black South Africans via the racial stratification of education, labour, spatial planning and migration and through the use of laws restricting business activities of blacks^x. All state expenditure, including the provision of social services was biased towards white South Africans. Spatial inequality physically placed black people in locations far from economic activity making the cost of transport a burden added to other expenses for education, health, and so forth.

2.4 The Constitution of South Africa^{xi}

Since 1994 there have been a multitude of policies aimed at poverty alleviation. For any policies to be “pro-poor” they would have to be crafted with a desire to benefit those with a deficit of goods and services in at least as deliberate a way as impoverishment was imposed. However, for them to satisfy legal requirements, these policies would also have to implement and further the objectives as set out in the Constitution. How, if at all, can two such imperatives complement each other? The Preamble of the Constitution which is the supreme law of the Republic of South Africa reads as follows:

“We, the people of South Africa, recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and deepen our country; and Believe that South Africa belongs to all who live in it, united in our diversity ... We therefore, ..adopt this Constitution... so as to – Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights...”

The founding provisions of South Africa's Constitution are based on the ideals of human dignity, equality and the advancement of human rights and freedoms. The Constitution contains both justiciable and non-retractable rights to equality (Section 9), human dignity (Section 10) and life (Section 11). They are furthermore base on justiciable rights of access to specific socio-economic rights which include the rights to adequate healthcare (Section 27 (1) (a)), education (Section 29), social assistance (Section 27 (10(c)) and housing (Section 26). The Constitution requires these rights to be protected, promoted, respected and fulfilled by the state (Section 7(2)). The nub of the rights which form the basis of pro-poor policies lies in the rights to dignity and equality. Section 9(2) reads as follows:

“Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.”

In other words, the state is empowered to develop and implement policies that prefer and privilege those who because of past discrimination are not able to enjoy their current rights. These include rights to dignity, life as well as those relating to an individual's socio-economic standing. It needs to be noted that the definition of poverty, in terms of the Constitution, is not merely based on income deficiency. It also refers to limits placed on all aspects of life including general wellbeing and availability of opportunities. Furthermore, the fact that while addressing the colonial and apartheid legacies is the responsibility of the current government, the Constitution also places the obligation for redress squarely on the shoulders of both the state and he population. ^{xii}

2.5 Institutional alignment

Any definitions of “pro-poor” must not only take into account rights and desired outcomes, but also of the institutions required to achieve these. A larger part of the audit was to critically examine the national budget development process in order to determine when, if at all, during this process, poverty reduction strategies emerge as a priority for policy makers and to enable us to identify the main actors in terms of institutional alignment within the process. Institutional alignment, in the context of the audit, refers to the linking of strategy, culture, processes, people, leadership and systems put in place to achieve the purpose of the organisation. The alignment of an institution, on the other hand, refers to institutions whose performance influences are mutually supportive and are focused on effective and efficient delivery of results. A key indicator in measuring the success of policy is being able to link it

back to outputs. Policy is, therefore, defined here as a statement of intent within government's agenda that advances the values of dignity, freedom and equality¹.

Primary amongst the different policy instruments available to government is legislation. Legislation is the instrument that confers various mandates and legal obligations for government departments to meet. Such mandates require the development of policies to address key aspects of those obligations. For example, the Department of Housing is mandated to provide housing, aspects of which include the provision of free RDP houses, the provision of housing subsidies for low- to medium-income earners and administrative and finance issues. For the purposes of this discussion, legislation is deemed to be a component of policy as it provides its legal backbone. Thus in the light of the preceding sections, the audit adopted the following as its operational definition of monitoring and evaluating government "pro-poor" policy implementation efforts:

"State interventions shall be deemed to be pro-poor when alignment exists between budgets, policy, expenditure, institutions and rights to give effect to the Constitution."

2.6 Applying the pro-poor definition to the policies

The Poverty Audit Project involved a review of five departments responsible for the delivery of some of the main services that are essential to uplift people from poverty. Government has recognised that the provision of services and infrastructure was historically skewed to the benefit of one race group to the detriment of others and has expressed commitment to redress such imbalances.

The Poverty Audit Project looks at the importance of these services as rights afforded by the Constitution and how the departments assigned to the progressive realisation of these rights have performed their mandates since the achievement of democracy. Service delivery trends over the past fifteen years of democracy seem to indicate that, in general, the availability and accessibility to government services tend to benefit those people who are already benefiting from the advantages borne by better education, health, wealth and general social security, amongst other factors.

2.7 Targeted departments

The audit focuses on five line departments responsible for the constitutionally sanctioned progressive realising of basic socio-economic services. It retains the departments' names prior to their restructuring just after the April 2009 elections. The following is a summary of the respective line departments in relation to their responsibilities in the attainment of socio-economic rights:

- The Department of Education is responsible for progressively realising the right to basic education, including adult basic education and further education. Education is an important tool to help discontinue intergenerational poverty. It presents certain opportunities that would not otherwise be available, such as securing decent employment and other forms of generating income. The standard of education is important as it determines how successfully a person is able to compete in the labour market and be able to escape the poverty trap.
- The Department of Housing must progressively realise the right to access to adequate housing. Adequate housing can provide safe and healthy environments as it offers protection from the elements,

¹ Barker et al cited in Van Shaik & Van Shaik (2006). *Improving Public Policy: from theory to practice*. Second Edition

safe energy sources and adequate sanitation. Furthermore, appropriately located housing brings people closer to places of economic activity and education and healthcare facilities. Adequate housing thus presents economic opportunities because the burden of travel and other costs related to unsafe and unhealthy circumstances is relieved.

- The Department of Health is required to progressively realise the right to healthcare services, including reproductive healthcare. Healthcare service provision for the poor is important for an improved standard of living. Furthermore, people rely on their bodies to be fit for work in order to generate income. Many households have only one person who is employed and that breadwinner's work comprises most commonly of manual labour. Physical incapacitation often translates into loss of income for a whole household.
- The Department of Social Development is tasked with the progressive realisation of the right to social security including appropriate social assistance to those who cannot support themselves and their dependants. Social security is one of the most important forms of the prevention and reduction of poverty. Cash transfers in the form of social grants and insurance funds and benefits-in-kind, such as food parcels and welfare services, reduce the impacts of loss or the inability to generate sufficient income. The effects of poverty are thus reduced and restore the dignity of people.
- The Department of Transport is responsible for providing safe and affordable transport as well as infrastructure and development. Apartheid spatial patterns have resulted in the majority of poor people being relegated to the periphery of economically active areas. An affordable and reliable transport system with appropriate infrastructure support can relieve the high costs in terms of time and money for commuters. The affordability, reliability, safety and security of the transport system will not only benefit those travelling to work, school and to other places but also those who need to transport goods in order to be economically active.

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^{xii} The Constitution has both a horizontal as well as a vertical application.

Section 3: Education

3.1 Introduction

The Apartheid system created 15 different education ministries with varying levels of competence. Apartheid policies systematically excluded blacks from accessing adequate education. This was to prepare black people for hard intensive labour to fulfil the needs of their white counterparts. Education instituted hierarchies of progression along racial lines. Such institutionalised discrimination was manifest through the gross inequity in the funding of schools and the limited access of black learners to higher educationⁱ. The educator/learner ratios ranged from 1:18 in advantaged schools to 1:70 in poor rural areasⁱⁱ. The vast discrepancy in the learner to educator ratios meant that white learners could benefit from individualised attention from educators. Educators at black schools were overwhelmed and they were forced to teach in a language foreign to them (Afrikaans). The quality of 'bantu education' was diminished by the fact that educator qualification levels for black schools were also less than that required at white schools. Consequently, black learners struggled to perform well as a result of a combination of factors, which sparked the 1976 Soweto uprising that flared into a national education crisis in black areas. Aside from the issue of language, the provision of resources was also skewed in favour of white learners. The per capita learner expenditure was as much as R5, 403 for Whites and as little as R1, 053 for Blacks, with that of Indians and "Coloureds" being R4, 687 and R3, 687 respectively.ⁱⁱⁱ The political system prioritised the white race and dictated who was to receive the best quality education and eventually secure the best standard of living.

That quality education has a potential to effectively lift people out of the depths of poverty is a widely acknowledged truism. But for education to serve as an effective anti-poverty tool depends on a range of factors, chief of which is the provision of well-developed educational infrastructure. The state's responsibilities in this regard entail the provision of diverse resources, underpinned by well-oiled education machinery and coupled to quality human and financial resources. South Africa's education system mirrors the "two nations" theory that divides the country into rich communities and their poor counterparts with an educational landscape that remains largely unchanged. Like in most aspects of South African life, education is not exempted from matters of past inequities and the need for state-driven redress.

3.2 Legislation and policy principles

Section 29 of the Constitution provides the legislative and policy foundation that requires the state to progressively realise the right to basic education. (which includes adult basic education) and further education. It provides for people with the right to be taught in the official language of their choice, with the provision that such a preference is practical, takes into account issues of equity, redress and is non-discriminatory. Subsection 3 of the Constitution grants the right to establish and maintain independent educational institutions provided that their policies are not racially discriminatory and that they are registered with the state and offer educational standards that are comparable to those provided in state-run educational institutions^{iv}. Echoing the South African Constitution, matters relating to the country's education system are further governed by over a dozen pieces of legislation and policy instruments which include the following:

- South African Schools Act, 1996
- National Policy Act, 1996
- Higher Education Act, 1997
- Programme for the Transformation of Higher Education (Education White Paper 3)
- Education White Paper, 1998
- Norms and Standards for School Funding, 1998

- National Students Financial Aid Scheme, 1999
- Adult Basic Education and Training Act, 2000
- National Policy of Whole School evaluation, 2000
- Education White Paper of Early Childhood Development, 2001
- Improving Access to free and quality Basic Education for all
- Education Laws Amendment Act, 2005
- National Education Policy Act of 1996

3.2.1 National Education Policy Act of 1996

Education is defined by the 1996 National Policy Act as: “education and training provided by an education institution, other than training as defined in section 1 of the Manpower Training Act, 1981”. The National Policy for General Education Affairs Act of 1984 contains certain definitions and policy on the determinations of working conditions and salaries of educators that the 1996 Act seeks to substitute. The National Policy Act of 1996 expresses its purpose of facilitating democratic transformation of the previously fragmented national education system into a single system which serves the needs and interests of all and upholds fundamental rights. The Act was also enacted to provide for the determination of national education policy by the Minister of Education in accordance with the principles of the Constitution. The Act further requires that consultative bodies be established by the Minister with the aim of providing input before policies are determined. The national policy referred to is required to provide for planning, financing, staffing, coordination and the general well being of the education system. The Minister, according to the Act, may determine policy for a number of other issues including:

- admission of students to education institutions, including the determination of the age of admission to schools
- the ratio between educators and students
- co-ordination of the school dates among provinces
- education management information systems including the provision of data in accordance with the state’s international obligations
- the professional education and accreditation of educators
- finance and development plans that are guided by advice from the Financial and Fiscal Commission
- curriculum frameworks, core syllabuses and education programmes, learning standards, examinations and the certification of qualifications
- control and discipline of students at education institutions provided that no person shall administer corporal punishment
- education support services, including health, welfare, career and vocational development, counselling and guidance for education institutions, within the functional responsibility of a department of education
- compulsory school education.

3.2.2 Policy principles

The Act states that policy must aim to advance and protect the rights in the Constitution and rights guaranteed in terms of international conventions ratified by Parliament. Such rights include the following:

- to be protected against unfair discrimination within or by an education department or education institution on any ground

- to basic education and equal access to education institutions, equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women
- to be instructed in the language of the learner's choice where it is reasonably practicable to the freedoms of conscience, religion, thought, belief, opinion, expression and association within an education institution
- to establish, where practicable, education institutions based on a common language, culture or religion, as long as there is no discrimination on the ground of race.

The education system is required to enable and contribute to the full personal development of each student. Other critical areas of development identified by the Act are the moral, social, cultural, political and economic development as well as the advancement of democracy and human rights. It is also provided that physical disability must not be a barrier to quality education. More specific provisions made by the Act include:

- achieving an integrated approach to education and training within a national qualifications framework
- cultivating skills, disciplines and capacities necessary for reconstruction and development
- encouraging independent and critical thought
- promoting a culture of respect for teaching and learning in education institutions
- promoting enquiry, research and the advancement of knowledge
- enhancing the quality of education and educational innovation through systematic research and development on education
- monitoring and evaluating education provision and performance, and training educators and education managers
- ensuring broad public participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system
- achieving the cost-effective use of education resources and sustainable implementation of education services.

3.2.3 Institutional framework

In terms of the Act, the Minister of Education is required to consult with the Minister of Finance on education matters which might have a bearing on government expenditure and a variety of stakeholders (including the Council of Education Ministers, national organisations representing college rectors, the organised teaching profession and national organisations representing parents amongst others) with regard to policy development or review processes. It further calls for close co-operation between the national and provincial governments in the implementation of education policies. Monitoring and evaluation is a crucial aspect of the multi-stakeholder relationship in which the Minister of Education is at the helm and overseer of the executive functions of the education system. The Minister directs the standards of education provision, and the monitoring and evaluation of service delivery and performance, which is carried out by the national department either annually or at other specified intervals.

The object of monitoring and evaluation is to assess whether the provisions of the Constitution and national policy are complied with throughout the country, using data gathered through the education management information system in cooperation with Provincial Departments. In cases of non-compliance and poor performance by a province, the political head of education must submit within 90 days a plan to remedy such non-compliance. The plan must be prepared by the provincial department in consultation with the National Department and the Minister must within 21 days of receipt table the plan and the Minister's comments in Parliament.

3.2.4 Institutional alignment

Education receives the largest slice of the budget cake: R105.5-billion for 2007/08^v. This is 5% of the Gross Domestic Product. Some suggest that this illustrates the fact that allocation to education may be sufficient to meet the financial resource needs of the Department. It is said that the outcomes of the education system do not reflect the amount of money invested in the Department and that the challenges lie with its institutional capacity. Many schools still experience learning materials and infrastructure backlogs. The allocations to schools in poor quintiles is based on the discretion of officials, so one finds that one school in the same quintile as another will be deemed a “no fee” school and be funded accordingly while the other school equally in need of resources will not benefit from the policy^{vi}. This can be attributed to the discretion afforded to officials^{vii}.

The current levels of poverty in South Africa mean that many people are not able to access the quality of education that others can. There are two parallel systems of education: public and private education. In a 2008 survey in which 97% of functioning schools participated, there were 12,239,363 learners in both private and public schools attending 25,875 schools employing 400,953 educators and ^{viii}. 1,124 Private schools cater for 366,201 learners while 24,751 public schools cater for 11,873,162 learners. The learner to educator ratio in public schools was 32: 1 whereas it was approximately 16:1 in private schools in 2007^{ix}. Through an assessment by the Children’s Institute, evidence came to light that there was a decrease in learner numbers from 2007-2008 and an increase in educators. The qualification and motivation of teachers as well as learner to educator ratios determine in large part the learning outcomes^x. This illustrates the disparities present in the national education system. Learners at private schools have better access to infrastructure as well as individual attention from the educators. The quality of education is therefore higher in private schools. Public schools have to cater for more children than they can and the learner to educator ratio is too high for educators to sufficiently attend to individual learners. The public system with regards to infrastructure and human capacity is failing to provide for learners.

In light of the apparently massive financial resources channelled towards education, the spotlight is increasingly being trained on factors other than money to explain poor performance within the education system such as a lack of coordination and clarity in terms of the distribution of resources or localised challenges to education. Adopted in 2001, the Whole School Evaluation Policy was introduced by the Department to monitor and evaluate the progress of schools in their compliance with maintaining the standard of schooling required by national policy. Although the 2001 policy objective is to introduce accountability at school level and specifically targets educator performance, it equally incorporates support and measures remedy underperformance. The policy has, however, been roughly criticised by some teachers’ unions, more specifically the South African Democratic Teachers’ Union (SADTU) which opposes the policy on the grounds that it is more punitive than developmental and compares it to the Bantu education inspectorate which was solely meant to enforce apartheid policies^{xi}. Those who hold a contrary opinion on the policy point to its support and remedial aspects as an indication of the policy’s developmental orientation.

3.3 A unified system of education

The foundations of post-apartheid education were based on the need to address inequality and the construction of a unitary system. This began with the moulding of some 15 departments of education from the former Bantustans and white South Africa into one national education system. The feature of the current system is that it seeks to locate all schools under one national umbrella^{xii}. In terms of this set-up, provinces are required to implement national policies and make budgetary allocations to schools using designated income quintiles, with school governing bodies taking up the responsibility of dealing with issues of the payment of school fees and other administrative procedures.

Although the Department of Education has a stated a policy for a unified education system, it is apparently contradicted by the existence of two parallel systems, namely, the public and private sectors. Section 29(3) of the Constitution provides for the establishment of independent educational institutions, allowing for the possibility of parallel education systems. The two systems are, however, marked by massive disparities between them in terms of human and financial resources, which tend to result in disparities in the quality of education outcomes as well. The gulf between private and public schooling is further widened by huge differences in learner to teacher ratios which result in differences in the quality of education coupled with differing capacity to raise private funds. Over and above these, academics specialising in education note the fact that there is duality within the public sector schooling itself, with some public schools being even better off than some private schools.

3.4 Equitable distribution of resources

The poorest 40% of schools in each province are those that fall under the first and second quintile which are the poorest and therefore receive the most state funding. These schools are also categorised as “no fee” schools as none of the learners pay school fees because the state covers all costs^{xiii}. In his 2009 Budget Speech, the former Minister of Finance stated that this will be raised to 60% of schools^{xiv}. The stated increase not only illustrates the incremental nature of the provision of education. It also reflects the arbitrariness of allocations of resources, especially when the fact that 70% of South African children live in poverty, which suggests the need for more investment in education as a long-term strategy to fight poverty^{xv}.

In 2004, the personnel funding and non-personnel funding ratio was set at 85:15 to begin in the year 2005. The policy objective was to provide sufficient numbers of teachers according to phase or subject to accommodate the number of learners at each school. The stated policy is contradictory as it simultaneously makes assertions that posts for teachers are allocated in accordance with budgetary constraints^{xvi} and makes it impossible to allocate teachers according to the needed capacity allowed by allocations within the limits of the available budget.

Another distribution instrument was the development of a National School Register of Needs in 2000. The register informs government on the state of schools, taking into account classroom crowding and the availability of facilities in schools which in turn determine funding norms. While theoretically sound, the major downside associated with the register fundamentally lies with its administrative complexity, which leads to high levels of non-compliance. On the other hand, those schools that do comply often complain of a lack of feedback from Provincial Departments of Education responsible for processing the register and allocating resources accordingly. The interplay of complex bureaucratic processes, and the lack of institutional alignment between the national department, its provincial counterparts and schools, undermine the objective of the register and further discourage compliance as often there are no guarantees that compliance leads to securing adequate support from other institutions within the system.

3.5 Equal access to quality education

3.5.1 Early childhood development

Early childhood development (ECD) is defined in the White Paper 5 of 2001 as a comprehensive approach to policies and programmes for children from birth to nine-years of age. It is meant to nurture active participation of both the parents and communities to protect the child’s rights to develop his or her full cognitive, emotional, social and physical potential. The policy seeks to achieve this through a poverty-targeted approach that uses grants-in-aid to primary schools and subsidies to selected community-based ECD sites within conditional grants and provincial budgets. The policy also had a target that by 2010 all learners who enter Grade One will have participated in an accredited reception year programme. In 2009, the President revised the target when he announced that this will be achieved only in 2014^{xvii}.

In 2005, only 13% of children had access to ECD due to scant resources allocated to the programme^{xviii}. Less than 1% of the education budget is committed to grade R^{xix}. Progress with regards to provision of ECD to the poor is thus very slow. This consequently limits the academic capabilities of poor children and their future prospects as children from poor backgrounds tends to lag behind their well-off counterparts with respect to academic performance.

3.5.2 School fees exemption

The school fee exemption policy applies to primary and secondary schools through the granting of partial or full exemption from paying fees by parents subject to means-test qualification^{xx}. If both the parents of a learner earn a total annual income that is equal or less than ten times than the annual school fees, they can apply for full exemption. If their annual income is equal to or less than 30 times the annual school fees, they can apply for partial exemption². In 2007, Child Grant beneficiaries became automatically exempt from paying school fees^{xxi}. Below are examples of the calculations that are made to assess whether the incomes are less than 30 times the annual school fees:

Example 1: If a parent earns R800 per month then s/he will earn R9, 600 per year. If the school fees are R1000 per year, then ten times the school fees is R10, 000. This is more than the parent earns in a year. S/he is therefore entitled to an exemption or a reduction in fees.

Example 2: If the joint income of the mother and father is R1, 500 per month and the annual school fee is R700: $12 \times R1500 = R 18,000$ per year and $30 \times$ the school fees of R700 = R 21,000. Because their total income is less than 30 times the fees they will qualify for a partial reduction of fees.

Source: <http://www.etu.org.za/toolbox/docs/government/schoolfees.html>

The department of education has not been able to enforce the exemption policy due to a failure by schools to adopt and implement exemption policies. The nub of the failure to implement exemption policies is the fact that schools do not get compensated for approved exemptions^{xxii}. As a result, schools do not actively promote the policy as this means the more parents apply and qualify for exemptions the fewer the resources are at the school's disposal. Naturally this state of affairs has a negative impact on both access and the quality of education provided by schools, which calls for a reciprocal instrument to mitigate the loss of income incurred by the schools in the implementation of the policy. The means-testing procedures have been slated for allegedly forcing parents to parade their poverty and thus eroding their dignity and self worth^{xxiii}. The other disadvantage of means-testing is the administrative burden placed on officials responsible for processing applications and the lack of sufficient staff. Furthermore, the criteria appears to be arbitrary in that there is a calculation of income in relation to the school fees, but there is no basis or justification for the method of calculation offered by the policy.

3.5.3 School Nutrition Programme

The introduction of the School Nutrition Programme was a response to the fact that although the barrier created by school fees to education could be eliminated, poverty remains a major obstacle to access to education. Even if the quality of education in public schools can be improved, 70 %^{xxiv} of children in the country are affected by poverty. According to 2003 figures, 13.9% of the country's population lacks running water; 21.3% lacks electricity and 43.3% lacks adequate sanitation^{xxv}.

It is generally acknowledged that the many manifestations of poverty inhibit academic performance and have a huge bearing on school attendance as well. During the 2006/07 financial year, the Department spent over R1-billion under

² <http://www.etu.org.za/toolbox/docs/government/schoolfees.html>

the School Nutrition Programme to ensure that learners receive at least one meal per school day and 6-million meals covering 18,000 schools nationally were served^{xxvi}. The school nutrition initiative undoubtedly plays a major role not only in alleviating this aspect of poverty; it more importantly eliminates hunger as a major barrier to learning.

3.5.4 Curriculum 2005

The Education Laws Amendment Act of 2002 was enacted to, among other provisions, provide for a national curriculum and the process for the assessment of learner achievement in public and independent schools. The curriculum is based on Outcomes Based Education (OBE) and is known as Curriculum 2005. OBE starts with the belief that all children can learn and succeed. It focuses on the student outcomes when they leave school and the curriculum is designed to foster entrepreneurialism. The success of the programme is very reliant on the educator's capabilities in supplying appropriate learning experiences^{xxvii}.

Before OBE was adopted, learning experiences of students were more theoretical and OBE requires practical oriented approaches. OBE is adapted from the British and Australian outcomes models. Academics question whether South Africa is equipped with the capacity to successfully implement a curriculum that was designed for middle income countries^{xxviii}. Public schools that lack such resources are not able to deliver the curriculum successfully. Initial criticisms of OBE revolved around the poor orientation and support of teacher for the purposes of implementing the curriculum and shortages of textbooks. The most positive outcomes based on the new curriculum seem to have been mostly from private schools, while children in many poor schools still struggle with basic literacy and applied mathematics.^{xxix}

It is then possible that until the backlogs in terms of learning materials are addressed and educators are sufficiently trained, the curriculum will fail learners regardless of whether it is outcomes based or otherwise. Concerns have been raised about the fact that students are often promoted to higher grades even when they have not academically performed well, which results in learners leaving school with less than adequate literacy and numeracy skills due to the OBE system.

3.5.5 Higher education

In line with the broader educational system, higher education is planned, governed and funded as a single national co-ordinated system. Policy regarding higher education seeks to address disparities between historically black and historically white institutions of higher learning to allow equal opportunities for academic development and entry into the labour market. And one of the critical instruments towards the attainment of this objective is the National Student Financial Aid Scheme (NSFAS) which disburses grants and loans at public higher education institutions to ensure access.

A critical administrative flaw of NSFAS, according to Valley,^{xxx} is that the administration of the applications and its means-test threshold, coupled with the discretion of fund administrators, exclude many students who might benefit from the loans or bursaries. The threshold is problematic because earnings that are just R10 above the threshold disqualify an application for funding. The threshold also takes no cognisance of other expenses that students cover with their income; NSFAS loans do not provide for accommodation, transport and food costs, all of which have a huge bearing of the academic performance of students. Therefore, the means-test should be reconsidered and a needs-based approach adopted instead.

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Section 4: Health

4.1 Introduction

Health is a vital to a person's quality of life and, in the context of the Poverty Audit Project, health determines a person's capacity to work and generate income. Like in the other rights that are sanctioned by the Constitution, the State has the responsibility to progressively realise the right to healthcare services just as is the case with other constitutionally sanctioned rights. The National Department of Health is the lead agency responsible for developing and implementing pro-poor policies in the health sector through alignment policy, institutions and requisite expenditure to meet its constitutional obligations.

Section 27 of the Constitution requires the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of people's right to have access to:

- healthcare services, including reproductive health care;
- sufficient food and water;
- social security including appropriate social assistance for those who are unable to support themselves or their dependants
- emergency medical treatment.”ⁱ

South Africa's health system is also governed by the following legislation and policies over and above the provisions in the Constitution:

- National Health Plan, 1994
- The National Drug Policy, 1996
- The White Paper for the Transformation of the Health System for South Africa, 1997
- HIV/AIDS Strategic Plan of 2000
- Health Research Policy in South Africa, 2001
- National Health Act of 2003
- Human Genetics Policy Guidelines for the Management and Prevention of Genetic Disorders, Birth Defects and Disabilities
- South African National Oral Strategy
- Strategic Priorities for the National Health System 2004-2009
- Patients Rights Charter of 1999
- National Policy on Quality, 2001
- The Charter of the Public and Private Health Sectors of The Republic Of South Africa

The South African health sector prior to 1994 was true to apartheid form in that it was characterised by racial and attendant spatial disparity, with mainstream white South Africa's health system operating parallel to its semi-autonomous Bantustan counterparts. It was made up of 14 health departments and associated institutions and was, needless to say, marked by fragmentation, duplication and inequalities as a result of differential expenditure based on racial discrimination. The per capita investment in health was higher the paler an individual's skin got, with whites accounting for the largest share of health expenditure, followed by Indians, Coloureds and Africans respectively. The two parallel systems were also distinct for their gross administrative and cost inefficiencies which were manifest in the extremities of over-servicing and under-servicing amongst racial groupings.ⁱⁱ

Post apartheid South Africa, led by the ruling ANC, introduced a National Health Plan aimed at restructuring the fragmented national health system into a unified system. A single national Ministry of Health became responsible for the management of decentralised health services, which included a comprehensive community-based healthcare network of services that would be accessible through newly established primary health centresⁱⁱⁱ.

4.2 Medicine prices

The promulgation of the National Health Act of 2003 sought to redress socio-economic injustices and inequities of health services of the past by legislating on diverse health related matters to ensure the affordability of, and equitable access to, hospitals and clinics and the acceptable quality of services. It also provided for free public health services to pregnant women and children up to the age of six years old.^{iv} Early efforts toward ensuring affordable healthcare by bringing down the prices of medicines were not without conflicts.^v The promulgation of Pricing Regulations in 2004 sparked a legal battle between the state and representatives of pharmaceutical companies in the Constitutional Court case involving the Minister of Health and Another v New Clicks South Africa CCT 59/04. The Court stated the facts of the case as follows:

- The Medicines Act of 1965 was amended in 1997 to make medicine more affordable so that the state meets its constitutional obligation of realising the right to health care. The new sections made provision for controls to be introduced in respect of the production, importation, distribution and sales of medicines, the relaxation of certain patent restrictions, the promotion where possible of generic substitution of medicines and the establishment of a pricing committee to make recommendations for the introduction of a pricing system for all medicines sold in the country. Pricing Regulations were created through recommendations by the pricing committee. The Pricing Regulations were promulgated in terms of the Medicines and Related Substance Control Act.
- The pharmacies sought an order declaring that the regulations were unlawful and of no force and effect as it was argued that they would destroy the pharmaceutical industry and retard access to health care.
- The Court stated that government is entitled to adopt measures to make medicines more affordable and that this was not an issue here. The question the Court sought to answer was whether the regulations had been made in accordance with the Constitution and the Medicines Act.
- The Court found that some of the regulations by virtue of their language were inconsistent with the Medicines Act and accordingly with the Constitution. The Court found that other regulations required “reading in” so as to be given an interpretation that is consistent with the Medicines Act and the Constitution. The Minister of Health was ordered to republish the Regulations Relating to a Transparent Pricing System for Medicines and Scheduled Substances contained in Government Notice No R553 of 30 April 2004 duly amended in compliance with this order. An out of Court settlement subject to a Court judgment is said to have been reached regarding the newly published regulations, but there may be further litigation^{vi}.
- Since pharmaceutical companies vigorously opposed the new medicines pricing regime on the basis of potential loss of income, an investigation into possible areas of consensus between the conflicting interests of the private sector and those of the public health sector was recommended.

4.3 Health services fees

Another area of intervention with regard to the affordability of health service was the passing of the Uniform Patient Fee Schedule (UPFS) of 2000 policy, which sought to provide a consistent approach to the billing of hospital services in public hospitals. The policy divided patients into separate categories of subsidisation,^{vii} according to whether the service required was for primary healthcare, termination of pregnancy, mental disorders or for infectious and notifiable diseases. Services for the last category of ailments are provided free of charge. Patients who are formally unemployed and those who receive any of the social grants receive free services^{viii}.

Individuals who earn annually R36,000 or less, or are from households with a combined annual income of R50,000 or less, pay only 20% of the consultation fees and 5% of emergency transport in cases where such transport services were used. These are categorized as H1 patients. H2 patients are those who individually earn less than R72, 000 annually, or are from households where the combined annual income is less than R100, 000. They pay two or three times as much as H1 patients. H3 patients are those who earn more than R72, 000 annually or come from households with an annual income of more than R100, 000. H3 patients are also those who are not South African citizens, have medical aid or are treated on account of foreign governments, local authorities or an employer, as well as those patients who are treated by a private practitioner at a public health facility. These patients pay full price^{ix}.

Actual prices paid by H1 and H2 patients for various services offered at public facilities as at the 2002 fee structures:

Service	H1		H2	
Consultations				
Routine, General Practitioner	R20	R20	R70	R85
Emergency, General Practitioner	R20	R20	R145	R155
Inpatient day				
General ward, GP	R50 per 30d	R60 per 30d	R50 per day	R60 per day
ICU, GP (per 12hours)	R50 per 30d	R60 per 30d	R 110 per 12h	R135 per 12h
Procedure, Imaging & Oral Health				
Ambulatory procedure Cat A (GP)	Free	Free	R155	R170
Theatre procedure Cat C (GP)	Free	Free	R1 420	R1 643
Category A X-ray (Radiographer)	Free	Free	R30	R35
Category B Oral Health (Non specialist)	Free	Free	R40	R45
Patient & Emergency Transport				
Patient Transport (per 100km)				
Basic Life Support (per 50km)	R10	R10	R25	R25
Intermediate Life Support (per 50km)	R25	R25	R70	R70
Advanced Life Support (per 50km)	R30	R30	R95	R95
	R50	R50	R155	R155

Source: <http://www.doh.gov.za>

In terms of fees payable by H3 patients, prices for various procedures range from as little as R 35 to as much as R6, 000^x. The Department has therefore tried to make services affordable by adopting the above interventions through policy. As will be discussed below, the extent of implementation of such policy is uneven. While policy provides for a

host of duties and benefits, only some are complied with. It is possible that this stems from the culture adopted at each facility. If the emphasized objective is revenue collection in terms of the Uniform Patient Fee Schedule (UPFS), the subsidising of patients loses rank.

4.4 Good quality of services

A survey was conducted between 2006 and 2007 in district hospitals to determine whether the UPFS and the Patients' Rights Charter (PRC) are implemented and to what extent^{xi}. At one hospital, which in an area where unemployment is prevalent, the research revealed that the clerks responsible for implementing the UPFS addressed patients who had outstanding accounts and who were seeking further medical attention in a condescending tone. Patients were not made aware of the fee exemption option, instead they were granted accounts if they proved not to be able to pay for consultation. The staff's key objective in implementing the policy was revenue collection over all the other provisions. This may be attributed to the culture imposed by the institutional arrangement or the discretion allowed to officials. With regard to the implementation of the PRC, staff members reported that a number of initiatives, such as going into communities to create awareness had been undertaken. When interviewed by the researchers, almost all the patients had no knowledge of the Charter. The researchers were informed by patients that they were treated with respect by some staff members at the hospital. There was evidence of preferential treatment for those who knew staff members personally, so the requirement of equity within hospitals was not met. From this it can be argued that public servants cannot be relied on to be honest because the patients had nothing to gain in submitting false statements, whereas the hospital's reputation was at stake. In general it seems that patients' rights are observed only in some instances.

4.4.1 Preventative measures

In 1994, the Department introduced an Integrated Nutrition Programme (INP) to prevent malnutrition in children. A national survey was conducted in 1995 and revealed that one in every four children suffered from chronic malnutrition. Malnutrition is most prevalent in the Eastern Cape, Northern Province and the Free State. The most significant causes of malnutrition are inadequate food intake and illness caused by poor access to food, inadequate maternal and childcare, poor access to basic health services or an unhealthy environment where there is a lack of access to clean water and sanitation^{xii}. The INP's focus is nutrition promotion through advocacy and policy development. Its priority areas are food fortification, the promotion of breastfeeding and the provision of food supplementation^{xiii}.

Ensuring that the population is not malnourished is an efficient preventative measure against ill health because the public health system is already overburdened by catering for 80% of the population with limited resources. Because poverty is the major contributor to poor health and malnutrition, services such as clean water, sanitation, adequate housing and food provision must be provided as efficiently as possible so as to reduce the challenges faced by the country. The Department states that HIV/AIDS is the biggest challenge facing South Africa. There are state-driven prevention and treatment awareness campaigns in place. The Department works in collaboration with the Education Department in creating awareness at schools and also ensures the continual supply of free condoms at locations such as healthcare, education and other public facilities. A more prevention oriented Department of Health would go a long way in solving some of the major problems facing the Ministry. Academics such as Bradshaw find that the bulk of health services are still curative or reaction oriented.

4.4.2 Primary Health Care

Primary Healthcare (PHC) is the point of entry to health services for those who use public facilities. PHC services are run by nurses at local clinics and community health centres, although doctors visit many clinics regularly. These

facilities treat people who are able to walk and do not need to be confined to bed. Since April 1996, services at this level were free of charge. If a more specialised level of care is needed, patients have to be referred to hospitals by clinic staff. There are, however, challenges in the delivery of PHC at public clinics. Bradshaw^{xiv} suggests that challenges to PHC implementation include medical migration, health worker shortages, a deep-seated imbalance of resources, a curative oriented health service and a lack of managerial capacity at all levels. The Democratic Nurses Union of SA (Denosa) has voiced out dissatisfaction with government's "scarce skill allowance", which offers certain categories of nurses extra money as an incentive to retain them. The allowance excludes PHC nurses though there are suggestions that they are the most over-burdened staff^{xv}. Such incentives should be afforded to PHC nurses as well. Considering that PHC is the point of entry into the health system, a collapse at this point means that the whole health system is compromised. PHC is the level where the Department should start in trying to improve the health system.

4.4.3 Equity in resources allocation

Since 1997, provinces have been allocated universal budgets from which to determine the allocation between different sectors or functions. There were still inter-provincial inequities in health budgets in 1998^{xvi}, but there has been a slight change. The gap between the most and least deprived districts has diminished, even though more resources are absorbed by those with the least needs^{xvii}. The 1997 White Paper for the Transformation of the Health System in South Africa lists equity as a key policy objective, but there are no attendant tools for routine monitoring of equity in health financing and expenditure patterns^{xviii}. The state contributes about 40% of all expenditure on health, which is figure is not commensurate with the fact that the public health sector deliver services to about 80% of the population. In contrast, most of the country's health resources are concentrated in the private health sector, which sees to the health needs of the remaining 20% of the population. In 2000, about R8.25-billion was spent on drugs in South Africa, with the state accounting for only 24% of this spending. This means that R59.36 was spent on drugs per person in the state sector as compared to R800.29 on drugs per person in the private sector^{xix}.

The disparities between the public and the private sector are most evident here because the availability or accessibility of medicines determines whether a person can receive adequate treatment for their ailments. Staff shortages in the public sector are caused by migration into either the private sector or to other countries. This also reduces the level of care from health professionals found at public healthcare facilities. Although policy purports to retain skills in the public sector, this objective is not reflected in financial, human and other resource allocations. Budgeting and expenditure are not in alignment with one another and not in alignment with policy and the Department's constitutional obligations.

4.5 HIV and AIDS

HIV/AIDS is one of the biggest health challenges the country faces. Between 1990 and 2003, HIV/AIDS prevalence rose dramatically, causing the country to fall by 35 places in the Human Development Index. South Africa ranks 121st out of 177 countries^{xx}. In 2007, approximately 5.7 million (18.8% of the population) people were HIV-positive in South Africa and only 28% had access to ARV treatment. 71% of the AIDS deaths are among those aged between 15 and 49. According to UNAIDS, in 2007 there were around 280,000 children, aged below 15, living with HIV and an estimated 1.4 million South African children were orphaned by AIDS^{xxi}. The countrywide provision of the drug Nevirapine became possible after a judgment was handed down by the Constitutional Court against the government.

4.5.1 Minister of Health v Treatment Action Campaign & Others CCT 8/02

Before addressing the main subject of whether government had failed its constitutional obligations with respect to progressively realising the right to access to health care, it is important to address the issue of separation of powers, particularly between the judiciary and the executive. The Court in this case stated that the separation of powers was relevant in two respects. The first reason related to the due respect that the judiciary should give to the executive's prerogative to formulate policy, the second being whether the court could pass judgments on the failure of the executive's policy formulation and implementation in as far as meeting its constitutional obligations was concerned. In response to these concerns, the Court reaffirmed the need to uphold its powers as provided by the Constitution, especially on justiciability, and consequently decided to meet its Constitutional obligations and adjudicate over the matter. The Court stated the facts of the facts as follows:

The Department of Health acknowledges that HIV/AIDS is the biggest challenge facing the country since 1994 and states that fighting against it is government's top priority. This was an appeal against the High Court judgment where the Court found that the Department had not reasonably addressed the need to reduce the chances of the transmission of HIV from positive mothers to their unborn babies. The state had refused to make nevirapine available at health facilities in the public sector and had not provided a timeframe for a national programme for preventing mother to child transmission. Government defended its actions by stating that there were concerns about the efficiency and safety of the drug even though it had already been registered by the Medicines Control Council in 1998. By definition, registration of a drug in terms of the Medicines and Related Substances Control Act entails a positive finding as to its safety, efficiency and quality. It is to be kept in mind that the manufacturers of nevirapine had offered to make it available to government free of charge for a period of five years.

The Department also stated that substituting breast-feeding with formula milk would trigger social, economic and public health implications. Such substitution also had cultural and financial considerations attached to it. Such an instance would prompt a need for a complex, comprehensive package of healthcare throughout the country. The Department was not prepared for the undertaking due to cost and administrative implications. Government had, therefore, decided to establish two research sites in each of the nine provinces for a period of two years to gain better understanding of the operational challenges involved in introducing the programme on a wider scale. By the time this matter had been referred to this Court, some of the provinces had not yet established research sites; when the programme would be introduced countrywide, therefore, could not be determined.

In the judgement, the Court ordered that the Department make Nevirapine available to pregnant women living with HIV who give birth in the public health sector, and to their babies, in facilities to which the Department's programme for the prevention of mother-to-child transmission of HIV had not yet been extended. The Department was also ordered to plan an effective comprehensive national programme to prevent or reduce the mother-to-child transmission of HIV. This had to include the provision of voluntary counselling and testing, and where appropriate, Nevirapine or other appropriate medicine, and formula milk for feeding, which programme would have to provide for its progressive implementation to the whole of the Republic. Since this case, Nevirapine and other medication for the treatment and prevention of HIV/AIDS must be available at all public healthcare facilities. This has had budgetary implications in the sense that allocation had to be progressively increased.

The national budget allocation for HIV and AIDS rose from R4.3-billion in 2006 to R5.2-billion for the years 2007/2008. Government healthcare facilities offering VCTs (Volunteering Counseling Testing) increased from 88% in 2005/2006 to 90% in 2006/2007. In 2007, among the estimated 889,000 HIV-positive persons (out of 5.7-million) in need of antiretroviral therapy (ART), 371,731 (42%) were reported to have started treatment. The lack of access to ARV treatment is a publicly known fact. In 2008, there were reports that the Free State Province experienced a shortage of medicines including ARVs and this resulted in people who were to begin treatment being placed on a

waiting list of over 15,000 people. In the KwaZulu-Natal province, staff shortages were the reason that people could not access the drugs^{xxii}.

4.6 Policy principles

The strategic thrust of the White Paper for the Transformation of the Health System in South Africa, 1997, is to articulate key policies that were informed by recommendations from various ministerial task teams and committees with wide representation. Such recommendations were collated in the process of the drafting of the White Paper which comprises a set of policy objectives and principles upon which the unified national health system of South Africa would be based. The White Paper states that the Reconstruction and Development Plan (RDP) set the health framework which would benefit all South Africans. It further recognises poverty as a major determinant of the health status of individuals, households and communities and emphasises the empowerment of individuals with the necessary knowledge to care for themselves as this is a major contributor to prevention of ill health. The RDP's specific emphasis on women in the planning and implementation of human resource development is said to be essential to the improvement of health. The White Paper states that the implementation of the RDP in terms of meeting basic needs, and the development and improvement of housing and services such as water and sanitation, the environment, nutrition and healthcare will inform trends in public health which will in turn act as indicators of the success of the RDP.

The distribution of certain roles and functions among the provincial and municipal levels, according to the White Paper, will be in accordance with the provisions of the Constitution. The White Paper therefore establishes a district health system where the responsibility for service delivery will lie. The Constitutional provisions the White Paper concerns itself with are those where the responsibilities are outlined. It makes no mention of the Constitutional right to health of the public. Details of the proposed health sector strategies are based on a common vision which reflects the principles of the RDP, namely:

- promoting equity in districts as the major locus of implementation, and emphasise the primary healthcare (PHC) approach through which an integrated package of essential PHC services must be available to the entire population at the first point of contact.
- the three spheres of government, NGOs and the private sector must unite to play distinct and complementary roles in the promotion of common goals at national, provincial and district levels.

More detailed requirements by the White Paper include:

- decentralise management of health services, with emphasis on the district health system to increase access to services by making primary healthcare available to all our citizens;
- to unify the fragmented health services at all levels into a comprehensive and integrated National Health System (NHS);
- to develop a National Health Information System (NHIS) to facilitate planning and management;
- to ensure the availability of safe, good quality essential drugs in health facilities;
- to develop an Integrated Nutrition Programme which would focus on sustainable food security for the needy;
- to rationalise health financing through budget reprioritisation.

4.7 Institutional framework

The White Paper requires that mechanisms should be developed to enhance intersectoral collaboration at the national, provincial, district and community levels. It outlines the roles and functions of the national department, the provincial departments and the district and local levels. The White Paper establishes an organisational structure for the Department of Health and provides that the staffing pattern will reflect the national demographic of the country. In

terms of its provisions, private health practitioners are not exempted from policy obligations. Practitioners who are listed include private midwives, general medical and dental practitioners, specialist obstetricians and gynaecologists, paediatricians and private pharmacists. Services delivered by occupational health practitioners, and prison and military health authorities are also covered by the scope of the policy.

A Maternal, Child and Women's Health (MCWH) management team is to oversee both public and private sector delivery at all organisational levels so that a comprehensive and integrate MCWM service is delivered. Private practitioners are required to meet national training standards with regard to services rendered at each level of care. The White Paper also requires that they be encouraged to assist in the development of standardised clinical management protocols and to also follow such protocols. The private and public sector are to be required to provide information to the National Health Information and Audit Systems. All equipment is to be procured through a system of control, used optimally and properly maintained. Where required, purchasing services from the private health sector and accredited providers will be the responsibility of provincial health departments and health districts.

The White Paper provides implementation strategies for the integration of private practitioners, the involvement of communities and for the functions it provides for all the spheres in the Department. The Department is also required to provide the public with regular updates on its progress and issues that emerge. The White Paper further requires the Department to ensure that the public participates in the formulation of national policy. Primary Health Care, which is the point of entry into the health system to be provided in the district health system, is said to be a more effective way to improve the health of the public. The White Paper proposes that this is the reason that Primary Healthcare acts as the centrepiece of the national health system.

South Africa's health system is one of the most inequitable in the world, with a percentage of about 20% having access to the best healthcare while the majority rely on a struggling public health system. In 2000, the World Health Organisation ranked South Africa 175 out of 191 countries in its health report. The ranking was not only based on the amount of money spent on the public health system, but also the country's inability to regulate the private sector and in turn control the widening gap between rich and poor^{xxiii}. Costs in medical schemes have soared since 1994 even though the schemes have been regulated. Many as a result do not have access to the best quality health care and are forced to rely on the understaffed and under resourced public health care system. A National Health Insurance System (NHIS), which was in the process of implementation at the time of finalising this audit, is meant to ensure equitable access to quality healthcare through the redistribution and sharing of resources between the public and private sectors.

4.8 Institutional alignment

The Women's Budget Initiative conducted research on policy reforms since 1994 through to budgeting and policy implementation. Interviews with stakeholders in the public health system revealed that some regional managers felt that consultation among the three spheres was inadequate and inconsistent. The time frames set for policy implementation were also found by the stakeholders to be unreasonably short as there was barely any time for training. Informants from local government stated that policy makers were unaware of circumstances at grassroots level. This is to say that policy makers assume that those responsible for implementation have the tools in place to act accordingly, whereas they do not. It also means that the district level officials who are responsible for the implementation of policies are not necessarily taken into consideration in terms of whether they conceptually grasp the policies.

Medical professionals responsible for service delivery seem to not be getting the support they need from both the National Department and the provincial departments. Staff shortages and, therefore, being overworked and underpaid are amongst the common complaints. There is also a lack management capacity, which leads to huge problems in policy implementation.

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Section 5: Housing

5.1 Introduction

The Housing Act of 1997 defines housing development as: “the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities ...” “Adequate housing” also implies access to security of tenure, affordability, privacy, safety and adequate infrastructure including potable water, sanitary facilities, domestic energy supply and access to social facilities like schools, libraries, clinics and hospitals that is so desperately lacking for people living in informal settlements or rural areasⁱ. The asset-based approach to housing taken by the government is a significant strategy because of the multidimensional benefits associated with access to adequate housing.

The National Housing Scheme was a significant anti-poverty strategy after 1994 and represents the largest government asset transfer to poor householdsⁱⁱ. Between 1994 and 2004, the government spent R50-billion on providing RDP houses and had built 2.3-million houses by 2007ⁱⁱⁱ. However, millions of Rands have been allocated and spent on refinancing the revamping and completion of unfinished RDP houses that were either abandoned or not built at all^{iv}. This has been attributed to unscrupulous developers as well as state officials. The Department is aware of existing corruption within its institutions and there have been a number of litigations against suspected and guilty parties. Research results from the South African Institute for Race Relation (SAIRR 2007/8 Survey) indicated strong evidence of continued disparities between the provision of formal housing and basic services between urban areas and rural areas and between provinces. The SAIRR found that the provision of adequate housing appears to be biased in favour of urban areas.

Section 26 of the Constitution lays the foundation for the state to progressively realise the right to access to adequate housing and obliges the state to take reasonable legislative and other measures, within its available resources, to achieve this. The provisions further state that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”^v

There were 20 different housing subsidy schemes that existed during apartheid. Under apartheid, black people were forced to live in harsh and inhospitable conditions that were located far from places of economic activity as well as health and educational facilities^{vi}. The newly elected in government in 1994 inherited these spatial inequities and problems associated with poor living conditions. The post-apartheid government’s initial response to the housing challenge was guided by the virtual manifesto of the ruling ANC, the RDP, which promised the delivery of 1-million houses by April 1999 and set acceptable standards for minimum requirements for adequate housing. The new government took three broad approaches to addressing the housing crisis:

- welfare approach to housing: state provision of public rental housing, with ongoing subsidisation
- bottom-up approach housing: tends to be community-driven, participatory, grassroots and marked by self-help and mutual-help housing processes
- Neoliberal World Bank approach to housing: facilitating private sector involvement, using once-off capital subsidies and focusing on individual ownership

South Africa’s housing programme has elements of the first two approaches, but overwhelmingly follows the third approach. Although all three approaches are theoretically pro-poor, it can be argued that a participatory, community-driven approach to housing would be the most pro-poor housing strategy^{vii}. In 2005, the state signed the Social Contract for Rapid Housing Delivery with the private sector, including banks and property developers, to address the

housing backlog. The contract binds the parties to work together to remove bottlenecks in housing delivery, invest more resources in low-cost housing and fast-track delivery. By October 2008, the four major banks informed the Minister of Housing that they had spent R38-billion of the R42-billion they committed to the Finance Services Charter. These funds were said to be directed to those people earning between R3, 000 and R8, 000 a month.

5.2 State resources for the poorest

Government's post apartheid attempts at addressing housing inequities and backlogs have taken three broad strategic policy approaches, which include: 1) focus state resources on the poorest section of the population 2) housing credit and 3) instituting housing procurement policy. Housing policy states that government aims to provide housing for all South Africans particularly the poor. Government aims to provide free houses in terms of the RDP and to facilitate the renting and buying of houses by low- to medium-income groups. Government has not been able to provide as many houses as it expressed intention to and has failed to progressively realise the right to adequate houses for many people.

5.2.1 Emergency housing framework

The Emergency Housing Policy Framework was an outcome of the Grootboom judgment^{viii} and was conceptualised and instituted in terms of section 3(4) (g) of the Housing Act 107 of 1997, which provides for the establishment and funding of housing programmes. The Framework's objective is to assist or relieve people with urgent housing problems owing to circumstances beyond their control. Such housing emergencies include natural disasters, evictions or threatened evictions, demolitions or imminent displacement or immediate threats to life, health and safety. Some critics have cynically argued that the Framework should have covered people residing in "permanent" housing crisis situations such as informal settlements where living conditions are intolerable (SAHRC, 2004).

The policy offers only temporary relief which means those who need urgent housing will not necessarily be provided with adequate housing and there is the possibility of them residing in temporary structures indefinitely. On the other hand, there are reported instances where victims of shack fires are fast-tracked to be provided with RDP houses but at the expense of those on waiting lists. The Department's slow delivery has led poor citizens to feel even more marginalised. This has caused resentment and anger. People have moved into areas that were earmarked for victims of shack fires^{ix}. A case of residents was reported in Johannesburg who broke into unoccupied RDP flats because the flats looked finished and the residents wanted access to the flats before they could be allocated to other people^x. The "invading" residents had been housed in a factory building as a temporary measure. Over 12 years had passed for some of them since their "temporary" relocation to the rat-infested building occupied by an estimated 300 people where they had to share a single cold water tap and two toilets, amidst a leaking sewage pipe and piling rubbish^{xi}. Would not the residents living under such obvious health risks associated with such poor water and sanitation qualify for assistance under the Emergency Housing Policy Framework? Or is their illegal occupation of RDP housing justified given their dire living conditions and years of seeming government inaction?

A recent Constitutional Court judgement involving a private company responsible for developing the Joe Slovo informal settlement in Cape Town, the Western Cape provincial government and the National Minister of Housing, collectively the respondents in the case, confirmed an eviction order granted by the High Court against the residents of Joe Slovo settlement (applicants). According to the High Court order, the applicants were to be relocated 15km away, a decision the Constitutional Court was immediately requested to address, focusing on the following issues:

- Whether, at the time the eviction proceedings were launched, the applicants were "unlawful occupiers" within the meaning of the Prevention of Illegal Evictions (PIE) Act and whether it was just and equitable to issue an eviction order.

- Whether the respondents had acted reasonably within the meaning of Section 26 of the Constitution in seeking the eviction of the applicants.

The Court described the circumstances in which the residents lived in as deplorable and unfit for reasonable human habitation. The settlement was identified as one of the informal settlements to be eliminated in terms of the national Breaking New Ground policy. The respondents sought to implement the housing development known as the N2 Gateway project in the area of the settlement, in three phases. They were able to complete phase one and provide rental housing for the people. Community leaders had been informed, prior to people voluntarily vacating the area to make way for the first phase, that rent would be between R150 and R300. The community had found the price acceptable. When Phase One was completed, the rent payable varied between R600 and R1, 050 per month. Phase Two of the project constituted bonded housing and made no provision for the poor.

The applicants refused to be relocated because they feared that the respondents would not allocate 70% of the new houses to the residents as had been promised because the promises made by the respondents in respect of the first two phases had not been honoured. The Constitutional Court stated that a fundamental requirement for any eviction of any person in terms of the PIE Act^{xiii} is that the person concerned must be an unlawful occupier of the land. An unlawful occupier is defined as a person occupying land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land. The Court found that there was no consent from the City of Cape Town for the residents to occupy the land and no right to occupation had been conceded by the City of Cape Town. The Court also found that the eviction was reasonable in that it is a reasonable measure to facilitate a housing development. It stated that it found engagement between the applicants and the respondents to have been reasonable.

The Court based this finding on the facts of the case and a statement that was made in the Grootboom case regarding reasonableness. The Court in that case stated that measures must establish a coherent public housing programme directed at the progressive realisation of the right of access to adequate housing within the state's available means and such measures must be reasonable. It was also stated in that case where the state had failed to meet its obligations, the question a court would ask would not be whether other more favourable measures could have been adopted, but whether the measures that had been adopted are reasonable. The Court in the Joe Slovo settlement case ordered the applicants to vacate the land in accordance with the timetable attached to the order, and for there to be meaningful engagement between the parties. The Court also ordered that the respondents provide temporary residential accommodation that was to meet the criteria set by the Court.

5.2.2 Housing credit

According to the Housing Ministry, about 70% of households in the country do not have access to housing credit through the formal banking sector. The Department seeks to provide houses for the lower 40% of households that cannot access credit through the housing subsidy scheme. The upper 30% income bracket of the subsidy scheme requires end-user finance to access housing^{xiii}. The scheme provides amounts that range from R18, 400 to R5, 500; the amount to be granted to each household is determined by the joint income of a household. There is a discretionary additional 15% subsidy that applies in areas with abnormal geotechnical or topographical conditions^{xiv}. The following are the criteria that housing applicants must meet in order to access a housing subsidy:

- Joint household income of less than R3,500 per month;
- South African citizenship;
- Older than 21 years;
- If single, must have dependents;
- Not have owned property;
- Not have received a subsidy for government before.

Also through the national subsidy scheme, developers, a local authority or a non-profit organisation can apply to a Provincial Housing Development Board for a housing subsidy for eligible beneficiaries^{xv}. With good intentions and a large measure of success, government initiatives such as the housing subsidy scheme and the provision of RDP houses have brought about unintended negative reactions from beneficiaries. Some of the complaints have to do with the small sizes of houses, the lack of an electricity supply as well as their location far from facilities such as schools and clinics^{xvi}. While poor official communication on the subsidy scheme process led to much exclusion, government officials have been found to be less than forthcoming about timeframes and the status of the housing waiting lists and would not give reasons for the exclusion of housing applicants^{xvii}.

In 1999, applications for housing subsidies in the Western Cape amounted to R800-million, which was more than double the R 351-million budget for housing^{xviii}. This meant that budgeting was not performed according to need as the Department claims^{xix}, which is one of the factors explaining the persistence of the housing backlogs. Other factors associated with crippling housing backlogs are the uneven flow of funding; poorly coordinated and inequitable subsidisation; the fact that the value of subsidies do not keep up with inflation; complicated processes involved with application approvals and payout mechanisms, and inappropriate targeting^{xx}. In its fifth report on socio-economic rights, the South African Human Rights Commission (SAHRC) stated that the Department had reported that failure to implement its policies was due to failure in securing suitably located land; delays in tender adjudication; delays in approvals of projects; corruption; incompetence and staff shortages^{xxi}. The government had stated that South Africa's housing backlog had widened due to growing urbanisation and housing demand even though 1.9-million new homes had been built for the poor since 1994^{xxii}.

In 2007, the housing backlog stood at 2.4 million houses. The Housing director-general stated to the press that: "We didn't understand the depth of need by people and recently when we reviewed progress made in the past ten years, we found that gaps in our delivery process had to do with planning." The official in this instance failed to mention corruption as one of the major stumbling blocks to the delivery of housing. In 2008, the Special Investigating Unit (SIU) identified 31,259 potentially irregular housing subsidy transactions awarded to government employees. 29 Cases had been finalised, with sentences including the payment of the value of the houses delivered. The total amount of debt the Department expected to recover was R6, 827,036 and a cash amount of R1, 103,772 had been paid back^{xxiii}. In 2009, the Special Investigating Unit identified more than 50,000 government officials who fraudulently received the state's low-cost houses. 554 public servants were convicted of the crime out of the 772 who had been charged^{xxiv}. The Department has signed a further Service Level Agreement with the SIU mandating them to investigate fraud, corruption and maladministration in low-income housing contracts^{xxv}. If the efforts of the SIU are able to discourage corruption, it will be a huge step towards better delivery of housing in quantity and in quality.

5.2.3 Establish a housing procurement policy

The Housing Act requires that a procurement policy for housing development must be in line with Section 217 of the Constitution that states that when an organ of state contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. The Section also provides that procurement policy may provide for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. In accordance with this provision, the state has developed an affirmative procurement policy that uses procurement as an instrument of social policy to meet the state's obligations in terms of the RDP.^{xxvi} Provinces and local governments establish their own policies through which proposals are evaluated on a comparative and competitive basis. Additional elements in the evaluation process are how proposals intend enhancing the end-product (the house) and promote the provision of facilities other than basic residential structures.^{xxvii} The adopted procurement policy seeks to deliver houses for the poor and at the same time provide economic opportunities to entrepreneurs who come from disadvantaged backgrounds.

The People's Housing Process is a government housing delivery mechanism that supports households that wish to enhance their subsidies by building their own homes or organising amongst themselves the building of their homes. The process allows beneficiaries to establish a housing support organisation that will provide them with organisational, technical and administrative assistance. The assistance includes training and guidance to the beneficiaries to build their own homes. In this sense, the process is an empowering mechanism and ultimately ensures a sense of ownership over the achievements relating to the delivery of housing in their communities. It also boosts morale and pride of accomplishment which further encourages communities to actively participate in the fulfilment of their developmental needs.

5.2.4 Opening up space for the private sector

The government's fight against the rising housing provision backlogs also creates space for the role of the private sector in the provision of affordable rental and ownership of housing, especially for middle- and lower-income people through the Inclusionary Housing Policy of 2007. The houses for people in these income groups are usually located in areas where black people would otherwise be excluded as a result of the dynamics of the land market or and the legacy of residential segregation.

This policy also seeks to achieve balance of race and class in new residential developments. The state has thus identified the spatial inequities that exist and has attempted to not only deal with the inequities through transport provision, but undertaken to relocate marginalised people so that they are not confined to typically poorly located areas. It has been suggested that transport policy should be aligned with housing policy and spatial development frameworks^{xxviii}. To date, low cost housing has been provided in peripheral areas, resulting in high transport costs for both the public and the state which has to subsidise public transport^{xxix}.

5.3 Legislative and policy principles

The evolution of South African housing legislation and policies can be traced back to pre-1994 policy development processes which resulted in the Housing White Paper. The National Housing Forum (NHR) was established in 1992, bringing together the key stakeholders in the housing sector for the purposes of developing a new housing strategy and housing policy for the new South Africa. In 1994, the Forum hosted a National Housing Summit in Botshabelo, in the Free State province, with the aim of building a national consensus on housing and of harnessing the skills, resources and energy needed to direct housing policy formation. Most of the output from the housing summit went towards developing the White Paper of 1994, which laid the ground for subsequent housing legislation and policies in the following historical contexts amongst others:

- states that government strives to establish viable, socially and economically integrated communities that are situated in areas with convenient access to economic opportunities and, health, educational and social facilities. According to the White Paper, government has the duty to effectively realise the right to housing for all and acknowledges that a person has a right to live in dignity, in habitable circumstances.
- that it is vital that future housing policy and strategy be developed in accordance with the vision and guidelines of the Reconstruction and Development Programme as housing policy will have a direct bearing on the five key programmes of the RDP, namely meeting basic needs, developing human resources, building the economy, democratising the State and society, and implementing the RDP.
- identifies constraints that were inherited from South Africa's history that it seeks to overcome. These include the high rates of urbanisation that have concentrated housing needs in urban areas; the geographic segmentation of living areas according to race and class, urban sprawl, and disparate levels of service provision and access to amenities in different areas that make South Africa's cities very inequitable, inefficient and relatively expensive to manage and maintain; and the dispersed nature of many rural settlements that hamper servicing and make access to socio-cultural amenities problematic.

- It is therefore stated that policy must address large disparities in housing conditions between rural and urban areas, as well as between different provinces and the fact that the low-incomes of large proportions of the population imply that many people are unable to afford adequate housing using their own financial resources alone.

Supplementary and subsequent legislation and policies dating back to the watershed summit in 1994 include the Housing Act of 1997, the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, 1998, and the Housing Amendment Act of 2001, which, along with the Constitution, laid out the following policy principles in the provision of housing: 1) stabilising the housing environment 2) supporting the housing process 3) mobilising housing credit 3) subsidisation, to alleviate affordability constraints 4) institutional arrangements 5) issues of land, and 6) the coordination of development efforts and fund allocation within the State.

5.4 Institutional framework

The past institutional framework governing housing was at best dysfunctional, that is, in relation to the need of the majority of South Africans. It was wasteful with regard to the deployment of the national fiscus. Geographic and institutional demarcations were rationalised after 1994. On the other hand, the transformation of the pos-1994 local government dispensation, which is the locus of housing development, remained excruciatingly slow, resulting in significant delays to the housing provisioning process. Although the 1994 White Paper anticipated challenges at local government in terms of the legislation and procedures that were being developed at the time, it did not expect the scale of the collapse of local government in many areas that occurred.

It is also stated that because of the mutually reinforcing or potentially destructive relationship between the housing process and the local government process, a high level of policy-coordination was essential between the relevant national and provincial departments. There were, for instance, critical policy challenges with regard to the planned maximum devolution of functions and powers to provincial and local government tiers through concurrence between national and provincial governments, which necessitated the adoption of the principle of subsidiarity (to the national department) that would in time ensure effective empowerment at provincial and local government.

5.5 Housing delivery targets against the White Paper

The White Paper stated that in developing a national housing strategy certain key factors had to be reconciled. Such factors included that the existing (at the time) housing backlogs required about 200,000 households to be housed annually in order for the backlog to be eradicated over a 10-year period. A new household formation would require a further estimated 350, 000 households to be housed to ensure that backlogs would not increase. The State housing budget at the time of R1.4-billion per annum (>1% of the total state budget) had to subsidise the 45 –to 55% of households that were in need of housing while being unlikely to afford or access credit. It further put forward that the required annual delivery rate (of approximately 338,000) against budgetary constraints did not enable the construction, at state expense, of a minimum standard, complete house for each household not able to afford such a house. It was, therefore, stated that only a limited state subsidy contribution toward the cost of a house would be possible. Government's goal, according to the White Paper was to increase housing's share in the total state budget to five percent and to increase housing delivery on a sustainable basis to a peak level of 338,000 units per annum, within a five year period, to reach the target set by the Government of National Unity of 1,000,000 houses in five years.

The state insists that it aims to speed up delivery of housing for the poor and have all citizens accommodated in formally planned settlements by 2014.^{xxx} But an assessment of the extent of housing delivery throughout the country seems to be uneven and differs from province to province, as the following figure show:

- 22% of children and 14% of adults in the country live in traditional dwellings in rural areas. Traditional housing may offer adequate accommodation, but municipal services are often lacking.^{xxxi} Although the number of households in traditional housing has decreased from 1,644,388 to 1,459,380 between 1996 and 2007,^{xxxii} many are still without the basic services that formal houses provide.
- There are geographical disparities in housing, with the Western Cape and Limpopo having the highest proportion of formal housing at 83.4% and 83.2% respectively; the lowest proportion of formal housing is in the Eastern Cape and KwaZulu-Natal at 54.7% and 60.5% respectively. The highest proportion of traditional housing is prevalent in Eastern Cape and KwaZulu-Natal, which are among the poorest provinces in the country. The highest proportion of informal dwellings is found in one of the poorest provinces, the North West, at 23.8% and in the country's wealthiest province, Gauteng, at 22.7%.^{xxxiii} The prevalence of informal settlements in Gauteng can be explained by the high population density in this, the smallest province in size and the fact that it is the economic hub of the country.
- Access to piped water is also unevenly distributed, with the Free State, Gauteng and the Northern Cape having more than 90% of households with access to piped water either in the house, or on- or off-site. In the Eastern Cape, only 72.8% of households have access to piped water.^{xxxiv} Poor people in the province, therefore, are commonly forced to collect water from communal taps and from local streams. This is predominantly the work of women and children, stemming from their customary positions within the family unit. The lack in infrastructure for piped water and for transport to collect water poses safety and health risks. Women are particularly vulnerable to attacks by criminals en route to water sources and the heavy loads of water they carry are physically debilitating. These factors reduce the quality of life enjoyed by the poor.
- 24.2% of households in the Eastern Cape do not have access to sanitation facilities or use the bucket system; in the Free State this proportion is 14% and in Limpopo 10.5%. In all the other provinces, less than 10% of households lacked sanitation. Countrywide 8.3% of households used the bucket system or lacked sanitation in 2007.^{xxxv} This means that 8.3% of households are at risk of contracting infectious diseases that can be prevented by simple cleanliness. This is a preventable burden on the already buckling public health system that the poor rely on.
- Many households are without electricity and use energy sources such as wood, paraffin and candles for lighting, cooking and heating. The Eastern Cape, KwaZulu-Natal and Limpopo have the highest proportions of households that are without electricity at 34.1%, 28.5% and 18.8% respectively. The lowest proportion of households without electricity is found in the Western Cape.^{xxxvi} Hazardous sources of energy are also risk factors for injuries and illness. Every year one hears of shack fires where lives and possessions are lost. Since 1999, shack fires have killed 235 people and displaced 152,495 in the Western Cape alone.^{xxxvii} They occur mainly in urban areas where paraffin and candles are commonly used for cooking indoors and lighting. Electricity should be provided at affordable prices to lift the standard of living of the poor.
- The ownership of formal housing increased between 2002 and 2007 from 63.4% to 69.8% and ownership of informal housing decreased from 65.8% to 59.6% in the same period. These are signs of improvement, but it is imperative that affordable services also be made available.

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Section 6: Social Development

6.1 Introduction

Mounting poverty remains one of the biggest threats to the democratic dispensation begun in 1994. Almost half of the population is marginalised and is without access to basic services. Over half of the population in all provinces, except Gauteng and the Western Cape, live in poverty, with the Eastern Cape and Limpopo displaying the severest conditions of poverty. Using the September 2007 official definition, unemployment stood at 23.0%, while the expanded definition places the rate at 34.3%ⁱ. Unemployment is more prevalent among young people of the 15 to 24 age group and stands at the rate of about 50%ⁱⁱ. The official measure of unemployment is narrow as it defines unemployed persons as those aged 15–64 years who 1) were not employed in the reference week 2) actively looked for work or tried to start a business in the four weeks preceding the survey interview and 3) would have been able to start work or would have started a business in the reference week.ⁱⁱⁱ The limitations of the official definition lies in the fact that it does not take into account the barriers people are confronted with in either pursuing employment or income generating activities.

Government's interventions in the unemployment and poverty crisis have seen massive investment in social security spending over the past fifteen years. Under the leadership of the Department of Social Development, government has assumed the responsibility for providing support to people in need in the form of various social grants and food parcels. It also facilitates private assistance towards the same ends by, for example, assisting non-profit civil society organisations which provide communities with services such as home-based care, early childhood development and shelters for the homeless and victims of abuse.

Social security is defined by the Social Security Agency Act of 2004 as including both social assistance and social insurance. The Act defines social insurance as contribution-based benefit payments aimed at income maintenance. The Social Assistance Act of 2004 defines social assistance as a social grant including social relief of distress. Section 27 of the Constitution provides that the state must progressively realise the right to have access to social security and says that “everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance”. It further obliges the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”

During the apartheid years, provision of social security was racially discriminatory^{iv}. Social assistance was in the form of an old age grant, a disability grant, a war veteran's grant and the state maintenance grant. In 1965, the amount of the old age grant paid to whites was 7.5 times more than that paid to blacks^v. Benefits were never the same for all race groups until just before the first democratic elections. Today, the state seeks to provide support to all who live in poverty regardless of race.

The South African Social Security Agency Act established the agency to be responsible for administration and payment of social assistance. In terms of the Social Assistance Act, the following social assistance grants, which involve cash transfers, are available for those who qualify: 1) The Old Age Grant 2) Disability Grant 3) Care Dependency Grant 4) Foster Child Grant 5) Child Support Grant 6) Grant-in-Aid 6) War Veteran's Grant and the 7) Social Relief of Distress Grant

6.2 Social Security Grants

6.2.1 Old Age Grant

In particular, intervention through the Old Age Grant has gotten praise for providing support for many impoverished households, especially in rural areas.^{vi} By definition rural areas tend to be the most underdeveloped areas in the country, trailing behind in almost all development indicators compared to urban areas. Their almost non-existent economic base creates heavy reliance on government services which are often not forthcoming due to complex issues of service delivery processes including lack of capacity and meagre infrastructure. As a result, cash transfers have been the best mode of service delivery the state could provide since establishing the South African Social Security Agency.

6.2.2 Foster Child Grant

Even though the Foster Child Grant (FCG) is the only grant that does not require a means-test as a condition for access, it remains difficult to apply for due to the limited number of social workers and the courts. Many children with poor background are orphans whose upbringing usually becomes the responsibility of grandparents who rely on their state pensions for income. Though totally insufficient to cover the expenses of whole households, there have been numerous cases where children are denied access to grants by courts by virtue of the fact that they have the grandparents to depend on. When it comes to orphans, grandparents are legally responsible for their grandchildren, the fact of which is often interpreted to mean that no compensation is required for them to care for the grandchildren. A profile of social security beneficiaries released in 2006 revealed that almost 50% of FCG beneficiaries resided in rural areas. This illustrates the prevalence of children in rural areas who do not have parental support and the fact that rural areas suffer the worst impacts of poverty.

6.2.3 Child Support Grant

The value and cut-off age of the Child Support Grant has steadily risen since its introduction in 1997 from R100 a month and seven years of age to currently R240 and fifteen years of age. Government is contemplating raising the cut-off age to eighteen years^{vii}. Liebenberg argues that the cut-off age should be consistent with the age of the child as defined in the Social Assistance Act and the Constitution^{viii}. Legislation defines a child as a person under the age of 18 years.

The income and asset threshold for the means-test as at August 2008:

Asset threshold		
Single person	R451 200	
Married persons	R902 400	
Income threshold		
	Social Grant	
Single person		R26 928
Married persons		R53 856
	Child Support Grant	
Single person		R25 200
Married persons		R50 400

	Care dependency Grant	
Single person		R112 800
Married persons		R225 600

Source: www.dsd.gov

6.3 Rationalising welfare funding

Most of the Department's budget is absorbed by the targeted social grants, but the departmental budget also makes dedicated funding for the provision of shelter and empowerment to victims of abuse^x. It was stated recently that 40 to 50 % of the Department's budget is now absorbed by civil society^x. A list of services provided by the Department includes funding for Early Childhood Development centres; admission to old age homes; home-based and community-based care (for people living with HIV/AIDS); foster care; admission to children's homes; child protection services; adoption services; maintenance; services to the youth; services to women; services to older persons with disabilities; funding and training of non-profit organisations; and registration of shelters and drop-in centres. The organisations do well to take on such a responsibility because the main beneficiaries are the public and these organisations ease the burden of the state. More is, however, required in the way of government support in the form of capacity building and financial resources for effective delivery of the services.

The work of non-state players is regulated by the Policy on Financial Awards to Service Providers. In terms of the policy, organisations are required to adopt a transformation and developmental welfare approach, incorporating prevention and early intervention services. Organisations have to meet four criteria in order to prove that they have transformed and the policy is designed in a way that chances of receiving funding depends on how much the organisations have adopted the above mentioned approaches. The four criteria are as follows: 1) Implement programmes aimed at early intervention and prevention 2) Provide services to people regardless of their race, gender and ability to pay for services 3) Keep beneficiaries in their homes and communities 4) Redirect services to previously disadvantaged communities and prioritise the most vulnerable.

Civil society has criticised these criteria by stating the following concerns^{xi}:

- Prevention and early intervention programmes are the first to be removed when organisations work with limited budgets because situations that are already dire are prioritised and absorb resources.
- Many organisations rely on beneficiaries to pay for services in order to keep functioning.
- In most instances, communities from which beneficiaries come from lack prevention and early intervention services; therefore, it is usually best to move beneficiaries to locations with protection services.
- Previously disadvantaged communities are mostly in the rural areas and urban-based organisations cannot extend their reach to rural areas due to their limited resources.

The capital expenditure that is to be committed on energy might have significant impacts on the current social expenditures^{xii}. It was reported earlier in 2009 that Eskom would receive a R30-billion loan from the South African government in the year 2010^{xiii}. Eskom will still face a funding shortfall of R25.7-billion^{xiv}. It can be assumed that the parastatal will look to consumers to make the difference. Eskom required a tariff hike of 34%, but was granted 31% which will cost the economy an additional R 9-billion a year. The costs to the state could mean a reduction in social spending and the public will struggle to afford electricity even more than presently.

6.4 Target beneficiaries and distribute benefits equitably

The National Policy Framework for Families of 2001 states that poor families are to receive first priority in the allocation of resources, the transfer of information and skills, and the determination of priorities for socio-economic

development. The government recognises that skewed allocations in favour of the poor can reduce socio-economic disparities. Social assistance policy identifies certain vulnerable groups for the provision of social grants such as people with disabilities so severe that they are unable to secure employment; children up to the age of 14 and persons older than the age of 60. Able-bodied persons of working age who are unemployed have no form of social assistance from the government. Poor households as a whole benefit from the state's social assistance where one or more of their members receive a social grant. The Social Relief of Distress Grant offers little relief on a short-term basis and is provided only in cases where there is temporary loss of income. It is provided in the form of food parcels to beneficiaries for a period of three months, subject to renewal. R500-million was spent on delivering this type of grant in the past year and has had a significant impact on poverty. More needs to be done to provide for those not targeted for social assistance benefits and on a longer-term basis.

6.5 Legislative and policy instruments

The social security machine is driven by several pieces of legislation and policies which include: (1) Compensation for Occupational Injuries and Disease Act of 1993 (2) Road accident Fund Act of 1996 (3) White Paper for Social Welfare of 1997 (4) Promotion of Administrative Justice Act of 2000 (5) National Policy Framework for Families draft of 2001 (6) Unemployment Insurance Act of 2001 (7) South African Social Security Agency Act of 2004 and the (8) Social Assistance Act of 2004. The Welfare White Paper of 1997, however, remains the bedrock of the battery of social security legislation and policies. The Welfare White Paper was drafted after wide consultations with different sectors in South Africa and is in line with the guidelines from the United Nations World Summit for Social Development 1995. Its major intention is to shift social security policy from the previous limited "welfarist" orientation to a more "developmental" approach by fostering and supporting interventions that would support people to "promote their own well-being and to contribute to the growth and development of our nation". Its core principles were informed by the Reconstruction and Development Programme (the RDP) which were then fleshed-out in the first five-year plan of the Department of Social Development (DSD). The plan was to incorporate a declaration of a "War on Poverty" as the rallying point for addressing the structural causes of poverty as well as the symptoms of "additional social problems such as family disintegration, adults and children in trouble with the law and substance abuse".

6.5.1 Policy Principles

Broader social welfare policies were to be based on the following principles:

Securing basic social security rights - the government will take steps to ensure the progressive achievement of social security for all including appropriate social assistance for those unable to support themselves and their dependents.
Equity
Non-discrimination
Democracy - incorporating appropriate and effective mechanisms will promote the participation of the public and all social security constituencies in decision-making about programmes which affect them
Improving the quality of life
Promoting human rights as articulated in the Constitution of the Republic of South Africa
Promoting people-centred policies
Investment in human capital, which in turn contributes to economic development
Sustainability
Partnership
Intersectoral collaboration
Decentralization of service delivery
Quality services
Transparency and accountability
Accessibility

Appropriateness
Ubuntu
Social security principles more specifically were to be based on four pillars, namely:
Private savings
Social insurance
Social assistance
Social relief, more specifically crisis funds to individuals or communities.

More specifically social security principles were based on four pillars: 1) private savings 2) social insurance 3) social assistance, and 4) social relief for individuals or communities in crisis. The pillars of social security would thus ensure “universal access to an integrated and sustainable social security system” so that “every South African should have a minimum income, sufficient to meet basic subsistence needs, and should not have to live below minimum acceptable standards”.

6.6 Institutional Context

Social welfare (as it was then called) was spread across fourteen different departments during the apartheid era. It was critical that these departments be harmonised and streamlined for the most effective policy design and delivery systems to be implemented. Many of the extant programmes and interventions were at the time seen as being “rehabilitative” rather than preventative or developmental. The White Paper explicitly acknowledged the division of powers and functions between national and provincial governments, as provided for in the Constitution. It equally acknowledged the impact that this would have between the development of national policy and guidelines and implementation at provincial level.

6.6.1 Coverage and scope

The White Paper notes that at the time of drafting, there were then 18-million people living in poverty, including one third of all households, 54% of children, and with most poverty being experienced in rural rather than urban areas. A total of 2.8-million people were receiving some form of social assistance as at 31 May 1995. This approximated 7.5% of total government spending, but, the White Paper acknowledges, the level of this assistance was in fact very low in relation to the cost of living. The White Paper further acknowledges that very little was known at the time about the “significant role played in the past by social assistance money in alleviating poverty”.

6.6.2 Economic Assumptions

The White Paper is clear about the need to address poverty and improve people’s well-being. It also acknowledges that people’s well-being will not automatically follow the achievement of economic growth. It however sets out unambiguously that there is a need for certain fiscal tradeoffs to ensure that social spending does not restrict economic growth. Furthermore, it maintains that any expansion of social services will be conditional upon economic growth. As a result of this, the White Paper take a view that the “high expectations of many people for the new democratic Government to deliver welfare services and programmes to address pressing needs cannot be fully met in the short term”. The policy paper further states that “in view of fiscal constraints, it is not possible for the welfare function to grow in the medium term. Real growth will be accommodated by restructuring the welfare function”. The White Paper, published in the same year as the commencement of the Constitution, also outlines the policy contradictions that will determine the shape and form of social assistance policy in the coming years. It emphasises that the desire to expand social security and social assistance is at one and the same time constrained by the concern that drives the macro-economic conservatism of GEAR (Growth Employment and Reconstruction) policies.

6.7 Institutional framework

Implementation of policies has been made much clearer and simpler since the establishment of the South African Social Security Agency (SASSA). Not that there have not been any problems since, though. Many face difficulties when applying for social grants, with applications being declined even when they qualify for social assistance. Applicants have been turned away and told to open bank accounts, the processing of applications is often delayed and officials have used undetermined discretion in the process of approving or refusing applications. The Agency has mechanisms in place for complaints and appeals in the form of the Inspectorate for Social Assistance but the extent of the usefulness of this recourse is unclear given the disempowerment that is often associated with poverty. Over and above these, the Department of Home Affairs has also come under fire for creating barriers to accessing social assistance. Applicants need formal documentation such as Birth Certificates and ID's and the characteristic delays associated with the Department often leads to frustrations as was the case with a young man who held Home Affairs officials hostage due to the frustration caused by a two-year delay^{xv}. In May 2008, the Minister announced that child grants and social relief of distress grant applications without a valid South African Identification Document could be approved where affidavits confirming personal details were provided by applicants. He promised that this would be extended to other forms of social grants.

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Section 7: Transport

7.1 Introduction

The transport sector is comprised of the transport modes that include rail, road, maritime and aviation transportⁱ. Transport plays a vital part in the lives of all who live in South Africa. Everyday people travel to work, school, for social reasons and to access certain services. Transport is also important for freight purposes for those who have to have goods transported to certain destinations for economic and other purposes. The transport system has a large impact on the poor owing to their spatial locations. The poor are mainly located on the outskirts of urban areas and the rural areas. In order to reach places of economic opportunities, non-motorised modes of transport are insufficient and where they are used infrastructure is normally lacking. The process of addressing spatial inequities that exist in society make transport a vital tool to access income and basic services such as grant payments, municipal services, educational facilities and health facilities.

South Africa's unique spatial realities are a result of the country's apartheid past. Townships for black people were established far from places of economic activityⁱⁱ with their population increasingly swelled by migration by black migrants in search of employment opportunities from the former Bantustans that were poverty stricken. The majority of poor people live relatively far from their places of employment, thus resulting in them spending large amounts of time and money travelling by public transportⁱⁱⁱ. The amount of time they spend travelling opens them up being victims of crime. This discourages many people from using public transport, which in turn decreases revenue in the transport system. To encourage the use of public transport and increase revenue to supplement state allocations that serve to provide the service, modes of transport must be safe. The safety of public transport can be achieved through development of adequate infrastructure among other things.

The transport system that the government inherited in 1994 had planning, operational and management problems^{iv}. Transport systems were underdeveloped in rural areas and former homelands and well developed in urban areas for the industry and convenience of white South Africa. Rural areas still face challenges in terms of transport infrastructure^v. Spatial inequities are, therefore, a priority area that the Department still needs to address, in an attempt to modernise transport policy that had not been reformulated since the 1980's. The White Paper on National Transport identifies safety and affordability as some of the Department's main goals in providing an improved transport system. For these goals and others that are discussed later to be achieved, transport policy must align itself with the budget, socio-economic rights and institutional arrangements. If such alignment exists and implementation is achieved, policy will be deemed to be pro-poor and the Department will be recognised as progressively realising the socio-economic rights as enshrined in the Constitution's Bill of Rights.

Government also acknowledges that the South African transport system is inadequate to meet the basic needs to commute to work, healthcare facilities, schools and to shops. It is stated in policy that the needs of vulnerable groups will be identified and such needs will be provided for through planning that involves consultation with such groups. The Department subsidises mass modes of transport that includes buses, railway and aviation so that more people can afford the costs of public transport. While in partnership with the Department of Education, the Transport has a stated objective to develop a policy to ensure that learners are provided with transportation for school-going purposes. Before 1994, each department of education in the former homelands and in mainstream white South Africa subsidised learner transport through its own approach, criteria and funding formula^{vi}.

It was only after 1994 with the unification of the disparate education systems under the Department of Education that efforts were made towards the coordination of learner transport policies and implementation. But even then, the Department of Education found that there were almost no structures that could co-ordinate, plan implement or regulate the learner transport system. Thus the MEC's for Education and Transport in Gauteng appointed a task

team to undertake a study and develop a learner transport subsidy policy based on the study^{vii}. Other Provinces also offered learners transport subsidies. There are formal Department of Education provincial policies in this regard in Gauteng, Eastern Cape, Mpumalanga, Northern Cape and Western Cape^{viii}. The policies in KwaZulu-Natal, Free State and Limpopo are informal. In North West the subsidy is managed by the Provincial Department of Transport^{ix}. The Department of Education reported in 2003 that only 200,000 learners benefited from the subsidy and R440-million was spent for that purpose while 560,000 more learners walked more than one hour to get to school^x. The Department of Education has suggested that the system needs improved procurement, management, funding and contract management, and that the Department must pay for quality, safe and sustainable solutions to ensure investment by the private sector^{xi}. The Department of Transport also provides bicycles through the Shova Kalula project^{xii}. The efforts of the two departments to remove the barrier to education posed by the lack of transport is a good approach, but to still have 560,000 children walking more than an hour is disheartening. A solution should either be providing schools closer to the disadvantaged children's places of residence or providing adequate transport and appropriate infrastructure. If the Transport Department provides bicycles, the infrastructure suitable for bicycle riding should be in place and the route should be safe for children to use.

7.2 Infrastructure development and employment creation

Most transport policies are geared towards infrastructure development, a particular drive being the preparations for the 2010 FIFA World Cup that South Africa will host. The event is expected to create employment opportunities through transport networks, developments and a booming tourism industry. Policies regarding tenders promote healthy competition and offer a guide to prepare proposals for the inexperienced^{xiii}. Keeping in mind the multiple opportunities that have arisen with the 2010 event, such a policy should be able to prevent monopolies in the industry and encourage diverse entrepreneurship as tenders given to a broad spread of contractors can ensure the creation of employment.

South Africa has enjoyed some economic growth since the advent of democracy in 1994 and it was the expectation of the government that this would result in employment creation. Viljoen argues (2005) that despite economic growth and the fact that South Africa's cities have increased their absorption rates and job creation, the industrial sector has not been able to meet the huge demand for employment. He further argues that if the urban areas have indeed exhausted their capacity for employment creation, the industrial sector should redirect its focus to the rural areas that need more service delivery in any case. The increase in urbanisation and trenchant urban poverty suggests a need for not only urban transport but also low-cost modes of travel^{xiv}. In some instances the distances that people have to travel are not too far that walking would not suffice. Walking and cycling should be encouraged, but should be coupled with the proper infrastructure and safety measures.

The unemployed find it hard to secure employment because of a lack of access to transport due to associated costs. Triegaardt (2007) opines that the unemployed should receive transport subsidies and user-friendly transport should be provided to those with disabilities and to facilitate the efforts of work seekers. In 2009, the Western Cape Province announced that the youth would gain free access to trains on Wednesdays, provided they produce a valid South African Identity Document. The Department of Social Development offers transport relief to two groups of people: persons who have been informed by their doctor or clinic that they need special medical treatment, but who cannot afford transport to get to the relevant health facility, must obtain a recommendation from a social worker for transport relief. People who have been promised employment, but cannot afford transport to get to the place of employment also qualify for the relief. This illustrates the fact that government departments can do more to solve societal problems when they work together or share similar goals.

7.3 Legislation and Policy principles

The hub of the new South Africa's transport policies and system is the White Paper on National Transport Policy of 1996. It is in turn supplemented by several policies and legislation including the: 1) Policy of the South African Roads Board in Respect of Unsolicited Bids of 1997; 2) Road to Safety 2001-2005; 3) National Commercial Ports Policy White Paper of 2002; 4) National Land Transport Strategic Framework 2006-2011; 5) Public Transport Action Plan 2007-2010.

7.3.1 White Paper on National Transport of 1996

The process of the development of the white paper involved consultations with stakeholders through working groups and plenary sessions and resulted in the development of a green paper which was released to the public. It also states that the policy development process was not without some contrary views, forcing the national Department of Transport to make the final decisions in some areas regarding the formulation of policy in its capacity as the guardian of the country's transport system. In the White Paper, the Department states that provincial and local governments participated at each stage of document's formulation and that they should use the broader policy framework to develop their own more detailed and localised policies accordingly. The White Paper states that government recognises transport as one of its main priority areas for socio-economic development and also recognises the fact that policy should not be static, but should rather be perceptive to the environment and be reviewed and where necessary revised on a continuous basis. Its stated vision for transport is of a system that will: "Provide safe, reliable, effective, efficient and fully integrated transport operations and infrastructure which will best meet the needs of freight and passenger customers , [while] improving levels of service and cost in a fashion which supports government strategies for economic and social development whilst being environmentally and economically sustainable." The goals and objectives of the White Paper are the following: 1) To support the goals of the RDP for meeting basic needs, growing the economy, developing human resources and democratising decision making; 2) To enable customers requiring transport for people or goods to access the transport system in ways which best satisfy their chosen criteria; 3) To improve the safety, security, reliability, quality and speed of transporting goods and people; 4) To improve South Africa's competitiveness and that of its transport infrastructure and operations through greater effectiveness and efficiency to better meet the needs of different customer groups locally and globally; 5) To invest in infrastructure or transport systems in ways which satisfy social, economic or strategic investment criteria and 6) To achieve the above goals in a manner which is environmentally sustainable and minimises negative side effects.

With regards to strategies for the implementation of these goals, the White Paper states that the assurance of modal, spatial, institutional and planning integration is vital for the policy to be successful. Depending on the nature of the decisions to be made, various stakeholders in the private sector, government departments and consumers will be called upon in the decision-making process. The roles and responsibilities of stakeholders and service providers are to clearly define the policy principles captured below, noting that the White Paper states that the roles and responsibilities of the three spheres of government are provided for in the Constitution through the provision of concurrent competences in schedule 4. Government seeks to play a different role than the one it has played in the past, which was as regulator of bureaucratic detail and as a provider of infrastructure and operator of transport:

- Focus on policy and strategy formulation
- Substantive regulation
- Reduce direct involvement in operations

- Provision of infrastructure and services
- Retain a regulatory role in terms of safety and quality
- Control market access for transport operators
- Prohibit excessive tariffs in the case of monopolies

In terms of institutional principles, the White Paper states that broader policy formulation takes place at all levels of government where national policy articulates with provincial and local policy that provide more detail for implementation purposes. It further makes provisions for relationships between the levels of government and the structures for non-government and statutory transport bodies. The financial aspects of the policy principles begin with the recognition that financing approaches do not have to be consistent throughout the whole infrastructure and operations spectrum, but that internal consistency is paramount. Elements of infrastructure and operations where users pay charges for railways, primary roads, airports, ports and pipelines are provided for as well as the financial returns from the fuel levy that covers maintenance of roads. It also lists instances where users will not be charged, which instances include cases where government must provide socially necessary infrastructure, operations and services. In such instances financing will take place in the form of appropriations, grants or subsidies to ensure equitable distribution of resources.

The White Paper states that in the long-term, government seeks to reduce the cost in state subsidisation of transport operations where an effective and efficient public transport system will be developed. Below are some of the results of a survey conducted by the Department to determine the profile of transport customers so as to create policy that meets the demands that exist:

Trip purpose on a normal day in South Africa

Trip purpose	Male	Female	Total number of trips reported
Education	51%	49%	14 302 519
Shops	50%	50%	10 472 047
Visiting	50%	50%	9 992 995
Church	43%	57%	4 024 578
Work	58%	42%	9 952 306
Sport, recreation and entertainment	62%	38%	2 736 570
Medical services	42%	58%	2 550 389
Looking for work	51%	49%	1 853 638
Welfare offices	50%	50%	903 055
Other	17%	83%	500 349

Trip purpose	Male	Female	Number of people
Did not travel at all	27%	20%	11 168 173

Source: Mokonyama

The survey results suggest that almost 2-million people travelled for the purposes of visiting welfare offices or searching for employment, while over 11-million did not travel at all. Lack of employment opportunities or of economic activity can account for of the sedentary millions. Literature relating to rural transport focuses on gender equity in as

far as women disproportionately bear the brunt resulting from inadequate transport provision. Consequently, there is more literature on rural women who are forced to collect water and firewood where infrastructure is very limited^{xv}. Women in the rural Eastern Cape still walk long distances to collect water and firewood and experience neck and back pains from head-loading. In addition, they had fears of being attacked while performing these chores in isolated areas. In terms of motorised transport, bus stops were reportedly far from households and offered little if any protection from the elements and available buses and taxis were often overcrowded and not roadworthy. The women also said that they did not seek medical attention when they were ill due to high costs or unavailability of transport. It is possible that this applied to men as well.

Section 8: Overall conclusions

8.1 Introduction

Most of the national policies of the departments reflect a pro-poor orientation in their rhetoric. Much of this is evident in the references to the socio-economic rights; the acknowledgement of the need to redress past imbalances and to create an equal society; the need for equitable distribution of resources; the unification of systems of delivery in each department; and the alignment of policy objectives with budgeting and institutional arrangements. However, outside the general rhetoric the policies do not provide for satisfactory implementation. They are often silent on how the aims and objectives are to be met in a comprehensible manner and the responsibilities of lead departments tasked with their respective responsibilities do not sufficiently provide a coherent roadmap for policy implementation. Ordinarily, each branch and sphere within each department comes with specific duties and powers for the efficient fulfilment of its legislative mandate. The duties and powers are there to provide for governance, administration and management of programmes and strategies, including norms and standards that exist for the purposes of improving the overall performance of the department in progressively realising the rights assigned to it. These duties, powers and responsibilities express an attempt by legislation to link strategy with processes, people, leadership and systems to best fulfil the mandate collectively and perfect institutional alignment within departments.

In general, the poorness of intergovernmental relations seems to be a contributing factor to the major problems affecting the alignment of institutions. It limits effective communication and synchronisation of processes and duties. These challenges are exacerbated by concerns that some government officials in crucial positions at times lack the necessary capacity to understand and implement the policies. Adding insult to injury are common reports of service delivery institutions that are fraught with cases of mismanagement of funds, corruption and theft of assets, including public funds, and the increasing demands of public servants for higher salaries without the attendant improvements in public service productivity. It needs to be noted, however, that the matter of working conditions for public servants is as pressing as the service delivery challenges they are meant to address. Complaints of poor working conditions resulting from lack of equipment such as stationery at schools and medical supplies also seem rife and unattended, leading to low morale and resignations of public servants.

8.2 Education

Generally policy of the Department of Education recognises the inequities that were inherited in 1994 and commits the Department to redressing the imbalances through a skewed allocation of resources to benefit schools in the poorest quintiles, the provision of free education in “no fee” schools and the food nutrition scheme in partnership with

the Department of Social Development. It has a particular policy bias toward poorer schools when it comes to resource allocation which is indicative the Department's pro-poor orientation. Chronic cases of non-delivery in terms of the Education Department's policy promises make a mockery of its Constitutional obligation of progressive realisation of the right to education.

8.3 Health system

Health policy equally acknowledges past imbalances and expresses commitment to equitable distribution of healthcare through ensuring that healthcare is affordable and accessible. To this end the Department has put in place legislation and regulations to ensure reasonable pricing of medicines, dignified treatment of patients and allowances for those who cannot afford the costs of medical treatment. In terms of budgeting, the policy calls for equitable funding of health institutions but offers no further specifics. As with the Education Department, attempts at equitable distribution of resources are conceptualised at the policy-making stage and enter the realm of implementation with much difficulty.

8.4 Housing

The intended objectives of the Department of Housing's policy are largely focused on poor South Africans with little or no-income that as a result fall outside the fold of the private housing finance industry. Government housing policies seek to address the legacy of apartheid housing backlogs and spatial reorganisation through subsidies. The construction of houses is done in partnership with private developers and has a policy bias towards previously disadvantaged black entrepreneurs.

Although the allocations are made to all the programmes and relevant institutions, the Department still faces a huge backlog of housing delivery. On the surface, there seems to be an alignment with regard to the budget, the institutions, the policy and the right to access to housing in terms of policy, but the actual realisation of the right has been fraught with challenges. Though the provision of housing has been largely successful, reports of unhappy RDP housing beneficiaries are a regular feature of the evaluation of government's housing programmes. Specific complaints mostly have to do with the size, distance from social facilities and the quality of materials used to build the houses.

8.5 Social development

The social security policies of the Department of Social Development involve social assistance in the form of cash transfers to identifiable vulnerable groups. Grants are also provided to fund private welfare organisations that deliver services in their communities. Translation policy into implementation has been notable in the extent and geographic scales of the Department's disbursement infrastructure, particular after the establishment of SASSA. Means-testing remains a contentious point with some arguing that its unnecessary stringency and the discretionary powers of government officials (who might not always have the interests of applicants at heart) exclude many people.

The alignment between policy, budgeting, institutions and the right to social security is evident in so far as it benefits the targeted groups by supplementing their income. There is however the question as to what extent are the social grant amounts are based on consideration of the fact that the grants form total income as opposed to supplementary income as envisaged by policy. The failings of the grant criteria have also been identified in the failure to provide for able bodied men and women of working age who experience long term unemployment or are chronically ill.

8.6 Public transport

The Department of Transport's policy places large emphasis on human, capital and infrastructure development. The centrality of public transport and infrastructure hinges on its instrumental role in accessing services such as health and education as well the job market. Government transport policies are aimed at making transportation affordable, through the subsidisation of road and railway forms of transportation, and accessible, through infrastructure development.

Similar to the other public service sectors, the nub in the implementation of transport policies is in their continued urban bias. While backlogs are sky-high in rural areas, urban areas are bustling with construction sites.

Transport policy can be said to be pro-poor because the necessary alignments exist. There is subsidisation for learners' transport based on the distance a learner must cover to reach school. Overall the transport subsidies make transport more affordable for those who rely on public transport. The backlogs mentioned earlier, however, show evidence that those in areas that need resources the most are not the highest priority and for them the promises of human, capital and infrastructure development are empty. The Department, therefore, fails its constitutional obligation in this regard.

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Section 9: Overall recommendations

9.1 Monitoring and evaluation

While the policies of the departments illustrate alignment between policy, the budget, institutions and socio-economic rights, they also aim at equitable distribution of resources. They meet the standard of pro-poor in terms of the operational definition. The policies are, however, not sufficient for the progressive realisation of socio-economic rights and the rights to equality, life and human dignity. For the rights to be given full effect, measures for the implementation of the policies and continuous progress in this regard must be put in place. Such measures include roadmaps for planning and implementation, monitoring and evaluation tools and the capacitating of public servants. Planning should identify those most in need of services, prioritise services to them and direct resources accordingly. This will need research to be undertaken to find out who the needy are, what it is they need and how much of it they need. After the proper human and financial resources have been allocated to begin the delivery process, a tool to measure and evaluate progress must be developed. Monitoring and evaluation can ensure accountability, improved performance and encouragement to do more. Intergovernmental relations must also be improved for effective monitoring and evaluation as well as effective communication to be achieved. Such improvements would support interventions of different departments that complement one another.

These recommendations can be adopted by any department, but each department has problems that are related to the nature of the mandate involved and thus require solutions specifically designed for each problem.

9.2 Education and training

Improving the standard of education needs specific interventions such as investment in Early Childhood Development and learning equipment for all education levels to ensure that children develop the skills that they will need once they need to compete in the labour market. The provision of facilities such as water and electricity must also be at the forefront of public service delivery. Public healthcare institutions must also be equipped with the human and financial resources to provide quality healthcare. The continued loss of health professionals from the public sector must come to an end. This can be achieved by providing them with a platform on which they can express their concerns and resolve their grievances.

9.3 Development approach to social security

Social development interventions must be complemented by interventions led by other government departments in the form of health, nutrition, education, housing, employment-creation, rural and urban development and land reform programmes. The social grant amounts need to be reconsidered so that they reflect the reality of what they are indeed used for. They are used to support whole households instead of the older person, or the child or the disabled person alone. There has to be a safety net for those who are currently excluded from receiving social grants. This can be done through cash transfers to allow them means to travel in search for jobs and to sustain them until they secure employment.

The housing backlog is also caused by a host of issues that can be remedied given adequate attention. The lack in knowledge of the depth of need that hindered planning processes must be remedied by conducting extensive research. Improved relations between all three spheres of government departments would reduce the delays in tender adjudication and approval of projects. The incompetence of staff must be addressed by capacitating them and monitoring of their progress. The problems experienced with securing suitably located land can be remedied by a

more rigorous land reform process, because such a process would make land available to build adequate houses. It would also be helpful for officials to meaningfully consult with communities because communities feel left out of the process and frustrated. They must be informed of the progress made and brought to the decision-making process.

9.4 Safe and affordable public transport

Presence or absence of adequate transportation affects productivity and quality of life. Safety of the environment plays a large role as well. The prevention of crime at transportation sites can be achieved through appropriate planning, design and management initiatives, coupled with law enforcement and community policing. This initiative will require co-operation between the Transport Department, transport providers, municipalities, the private sector and commuters. In terms of rural development, providing infrastructure will require government, civil society and the private sector to pull together their resources and work in a collaborative manner. Such resources include local materials, appropriate technology and local labour. Community participation will ensure that interventions reflect the needs of the beneficiaries.

In the final analysis, the policies under review have individually unique hindrances when it comes down to the nitty-gritties of implementation, but there are basic measures that can apply to all, such as capacity building, improved availability of resources and improved communications within departments and better intergovernmental relations. The generic solutions can be used as a starting point to achieve efficient and effective delivery of services and the progressive realisation of the rights to education, health care, adequate housing and social security, and the achievement of human development.

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