

International Covenant on Economic Social and Cultural Rights (ICESCR)

Gap Analysis Report and Performance Monitoring Framework

Submitted by:

Studies in Poverty and Inequality Institute (SPII)

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Sections 5.1.2 and 5.1.3 of the agreement between SPII and the SAHRC state that the second and third of three deliverables to be submitted by SPII are:

5.1.2 A Gap Analysis Report setting out the extent to which the core content of Economic, Social and Cultural rights have been reflected in the current South African policy and legislative framework, with recommendations of further policy and/or legislative reform. This will be based on previous collaborative work between the parties and will be utilised to develop the understanding and co-operation of relevant inter-ministerial committees;

5.1.3 A Performance Monitoring Assessment Framework (including indicators and data-gathering tools) than can be used as an assessment, monitoring and evaluation tool for state compliance with the ICESCR.

1. Background

Studies in Poverty and Inequality Institute (SPII) has for several years been undertaking innovative analysis on the progressive realisation of constitutionally enshrined socio-economic rights in South Africa. In April 2015, the South African government ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ratification of the ICESCR provides new opportunities for citizens and the government to engage in dialogue and actions to enhance the promotion, protection and realisation of socio-economic and cultural rights in South Africa. Over the past year, the SAHRC, with the assistance of SPII, has undertaken numerous activities to assist the state and non-state actors to take the necessary steps to implement this treaty, which would include the completion of an Initial Report to the Committee on Economic, Social and Cultural Rights (CESCR) on its implementation of the Covenant by April 2017.

SPII's experience in the field of monitoring the implementation of socio-economic rights (SERs) has enabled us to provide significant expertise and input into this process as it has unfolded. Our Inception Report to the SAHRC (submitted on 05 July 2016) details the key stakeholders involved in this process and the scope, methods and approaches to be taken in developing this Gap Analysis and Performance Monitoring Framework.

This report will therefore go straight into the Gap Analysis of South Africa's compliance with the ICESCR, with recommendations for further policy and legislative reform. This analysis will be broken down by the rights and articles in the Covenant, for ease of reference.

The Gap Analysis will be followed by a presentation of the Performance Monitoring Framework developed by SPII, which focuses on key indicators and for each of the rights in the Covenant that can be tracked and monitored by the SAHRC and other stakeholders now and in the future.

2. Gap Analysis Report

This Gap Analysis will set out the core obligations contained in the ICESCR and assess the extent to which these are adequately reflected in the policy and legislative framework in place in South Africa. Where there are gaps, these will be highlighted and recommendations will be made for areas of policy and legislative reform to bring South Africa in to compliance with these obligations. Likewise, where policies and legislation provide adequate and substantive protection and promotion of the rights recognised in the ICESCR, these successes will also be recorded.

The analysis will proceed on a right –by right basis with reference made to the guidance of the CESCR in interpreting these rights as provided for in the General Comments issued by the CESCR from time to time. The analysis will respond directly to the questions posted by the CESCR in their *Guidelines*.² This will ensure that the gap analysis responds to the critical areas of concern for each right. The analysis will therefore provide the following information for each right:

- The full text of the article in the Covenant
- A mapping of the relevant section in the Constitution, NDP Outcome and responsible Department
- Information related to right-specific questions asked in the CESCR Guidelines
- Analysis of Gaps and Recommendations for further legislative reform

The assessment of South Africa's policy efforts will be based on the policy analyses developed by SPII in collaboration with the SAHRC as part of Step-1 of our SER monitoring tool (see Inception Report). We have to-date developed policy reviews of the rights to health care, social security, housing, food, and basic education. During the period of this Contract, we have also been developing policy reviews of the right to a healthy environment and the right to water and sanitation. The only rights provided for in the ICESCR for which SPII and the SAHRC have undertaken no research on to-date are the rights to work and self-determination / land. Analysis of the policy framework for these rights will only be possible once this research has been undertaken by mid-2017 and late-2017 respectively.

2.1. ARTICLE 9 – THE RIGHT TO SOCIAL SECURITY

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

² Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?key=92g0+9FnI5fX/ePqHxWOObPpm//kusKEXT+B4cp/uCKqWAFsFrDexWgk2iQgS46+H&Lang=en.

ICESCR	Constitution	NDP Outcome	Responsible Department
Article 9. The right of everyone to social security, including social insurance	Section 27 (1) Everyone has the right to have access to – (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. Section 28 (1) Every child has the right to - (c) ... basic ... social services.	Outcome 13: An inclusive and responsive social protection system	Social Development

Indicate whether there is universal social security coverage in South Africa. Also indicate which of the following branches of social security are covered: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.³

Indicate whether the social security system also guarantees non-contributory social assistance allowances for disadvantaged and marginalized individuals and families who are not covered by the contributory schemes.⁴

Section 27(1) of the South African Constitution guarantees the right to social security to everyone in South Africa:

Section 27

(1)(c) Everyone as the right to have access to...social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

While universal social security and social assistance are guaranteed in the Constitution, this right is subject to progressive realisation within the state's available resources.

The social security framework adopted by South Africa since the democratic transition in 1994 is a two pillar system. The first pillar is made up of state revenue funded social assistance programmes (grants), and contributory social insurance. Social grants include the Old Age Grant (OAG), War Veteran's Grant

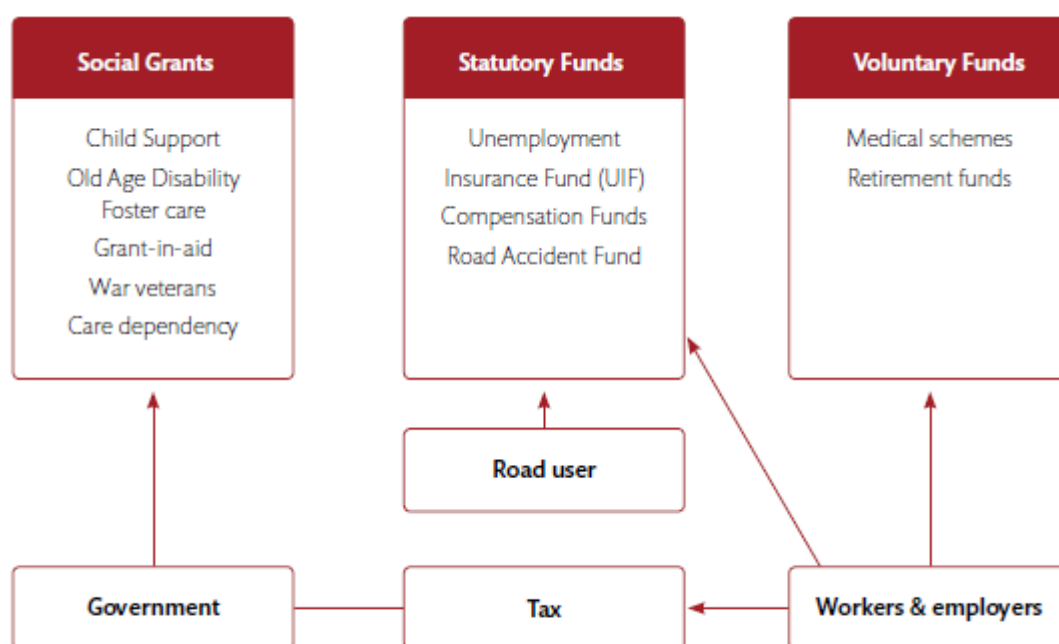
³ General comment 19, para. 12 (a) to (i).

⁴ Ibid., paras. 4 (b) and 50.

(WVG), Disability Grant (DG), Grant in Aid (GIA), Foster Child Grant (FCG), Care Dependency Grant (CDG), and Child Support Grant (CSG). In addition, people can apply for the Social Relief of Distress Grant (SRD) for a limited period of time when in an unforeseen and dire situation. Whether an applicant is eligible for receiving a grant is determined by the South African Social Security Agency (SASSA) on the basis of a means and income test in accordance with set regulations.

The state is also responsible for managing the three primary social insurance funds: the Unemployment Insurance Fund (UIF), the Compensation Funds, and the Road Accident Fund (RAF). Government also regulates and provides tax incentives for voluntary saving, retirement and insurance schemes offered by private companies. This is in order to take some pressure off the state's social insurance scheme.

The following figure represents the structure of social security in South Africa⁵



The main legislative and policy instruments governing social security include:

- The Pensions Fund Act of 1956 (as amended)
- The Compensation for Occupational Illness and Diseases Act of 1993 (COIDA)
- The Road Accident Fund Act of 1996
- The Medical schemes Act of 1998
- The Unemployment Insurance Act of 2001
- The Social Assistance Act of 2004 and its amendments and regulations
- The South African Social Assistance Agency Act of 2004

⁵ Stephanie Brockerhoff 'A Review of the Development of Social Security Policy in South Africa' (2013) SPII Working Paper 6. Available at: http://spii.org.za/wp-content/uploads/2014/01/Working-Paper-6_Social-Security-policy-review.pdf.

At the time of writing, almost 17 million South African's receive non-contributory social grants. 11.9 million of these receive the Child Support Grant (CSG), 3.2 million receive the Old Age Grant (OAG) and 1.1 million receive the disability grant.

All social grants are means tested. Crucially, no grants exist for able-bodied persons between the ages of 18 and 59 (the Child Support Grant ends before the age of 18, and the Old Age Grant begins at 60). This means that there is not universal social security coverage in South Africa. This is a major concern given the stubbornly high unemployment rates in the country, which stood at 34% in 2016, while for historically marginalised groups, the proportion of people unemployed is even higher.

A move towards a Comprehensive Social Security scheme for South Africa, guaranteeing a universal basic benefits package for all, has been on the government's agenda for several years. However, there have been long delays to this process, including a failure by government to release its plans for comprehensive social security. In order to resolve this gap, government must release the Comprehensive Social Security Discussion Document for public comment as soon as possible.

GAPS IN SOCIAL SECURITY AND ASSISTANCE COVERAGE

The major gap in South Africa's social security system is the lack of access to social assistance for able-bodied people between the ages of 18 – 59. With only half of this age group engaged in formal work, this is a major gap that needs to be rectified if the Constitutional guarantee of universal access to social security is to be fulfilled.

The question of whether the disability grant covers HIV/AIDS or TB infected persons remains ambiguous. To-date the system has enabled some people suffering from chronic illnesses to access a temporary disability grant for 6 or 12 months, but the potential for more people suffering from chronic illnesses to access this grant is unclear.

The Unemployment Insurance Fund covers recently unemployed people for a maximum period of six months. However, workers in the informal sector, self-employed or consultants are not covered by the fund. It is obvious that these premises are still based on the assumption that unemployment is a temporary problem and that people will quickly move from one job to the next. Whilst this was largely the case for the white population under apartheid for which this system was set up, this is not necessarily the case today.

South Africa does not have a mandatory requirement for pension provision, or death and disability insurance. This has resulted in a very uneven coverage of retirement and insurance funds with workers' access to an occupational fund dependent on factors such as income, employer size and economic sector.

Another major problem is beneficiaries experiencing 'unauthorized' and 'unlawful' deductions of their grants, often in the form of micro-loans, which exceed the regulations as stipulated in the Social Assistance Act of 2004 that deductions for funeral schemes should not exceed 10% of the value of the grant.⁶ SASSA has made various efforts to curb the deductions of grants, notably the introduction of a new automated biometric based grant payment system. As of 1 June 2013, SASSA will only allow deductions of up to 10% of grant for funeral insurance policies, with SASSA taking no responsibility for the repayment of installments for micro-loans.⁷

Indicate whether there are legally established and periodically reviewed minimum amounts of benefits, including pensions, and whether they are sufficient to ensure an adequate standard of living for recipients and their families.⁸

It has been estimated that the minimum monthly income required for an average household to live beyond the poverty line is R4 125 per month.⁹ In 2016, social grants were paid monthly at the following amounts:

• Old Age Grant	R1 505
• War Veterans Grant	R1 525
• Disability Grant	R1 505
• Foster Care Grant	R890
• Care Dependency Grant	R1 505
• Child Support Grant	R350

Clearly, these grants on their own do not come close to providing an income sufficient for an adequate standard of living for recipients and their families. There appears to be very little reference to empirical evidence of need in the setting of grant values. The increase of grant values is meant to keep pace with inflation, but this has not always been the case. In the 2016 Budget, the percentage increase ranges from 3.5% for the Foster Care Grant to 6.4% for the Old Age, Disability and Care Dependency grants. Inflation for this year was estimated by National Treasury to be 6.6%.¹⁰

⁶ Beukman, R., 2013, Social Grant payment system: deduction changes, UCT workshop on social security, 27-28 May 2013.

⁷ Ibid.

⁸ Ibid., paras. 22 and 59 (a).

⁹ Finn, Arden. 2015. "A National Minimum Wage in the Context of the South Africa Labour Market." Working Paper Series 1. National Minimum Wage Research Initiative. University of the Witwatersrand.

¹⁰ 2016 Budget Review, p 30 and 65. Available at www.treasury.gov.za.

Indicate if there is equal enjoyment by men and women of pension rights as regards the age of access,¹¹ qualifying periods and amounts.

Neither the Department of Social Development nor the South African Social Security Agency have published the proportion of men and women that receive social grants since 2013. The figures for that year showed that in all but one province, more women than men were accessing the grants as both beneficiaries and care givers.

Provide information on social security programmes, including informal schemes, to protect workers in the informal economy, in particular in relation to health care, maternity and old age.¹²

The largest group excluded from the targeted system of social assistance are poor people who are unemployed or underemployed, are able-bodied and between the age of 18 and 59. The current social assistance system does not provide any type of support for people in this age group. As structural poverty in South Africa is extremely high, extending some form of social security and assistance to this group is of crucial importance. as many people in this age group will always struggle to find decent work and thus never generate regular or sufficient income for themselves and their families.

Indicate to what extent non-nationals benefit from non-contributory schemes for income support, access to health care and family support.¹³

Since 1 April 2012 recognised refugees and permanent residents are able to access all grants as a result of the promulgation of the Social Assistance Act (13/2004): Amendment: Regulations: Application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance . This increase in coverage was partly a result of sustained advocacy from various rights groups, including strategic litigation that ended with the Constitutional Court's verdict in *Khosa & Others v Minister of Social Development & Others*¹⁴, which led to the extension of social assistance to these groups.

SUMMARY OF RECOMMENDATIONS FOR FURTHER LEGISLATIVE REFORM

- There is an absence of a detailed and targeted plan designed to arrive at a comprehensive universal social security system that meets the constitutional obligations of achieving access to social security

¹¹ General comment 16, para. 26 and general comment 19, para. 32.

¹²General comment 19, paras. 16 and 34.

¹³Ibid., para. 37.

¹⁴ CCT 13/03, CCT 12/03 [2004].

for all and social assistance for those who cannot provide for themselves. There is room to strengthen the policy making process through the development of a coherent roadmap that sets out the timeframes, programmes, targets and resource assumptions for the achievement of the universal right to social security as set out in the Constitution and the ICESCR.

- Such a comprehensive plan should include not only state funded social assistance, but ought to also set out the role of contributory social insurance schemes, potential private pensions and other schemes that contribute to the well-being and income maintenance of people living in South Africa.
- Ad hoc reforms to social security policy have diluted the constitutionally driven, universal, rights-based approach to social security, which is based on social democratic notions of solidarity and citizenship. Where the state extends cover to vulnerable groups that share exclusive characteristics (children, older persons etc), this affirms a more residual approach of targeted interventions to the ‘most vulnerable’ or the ‘poorest of the poor’. It is important to remember that the Constitution and ICESCR do not tie access to social security to notions of “deserving support”, but rather establish a universal right of access.
- The gaps in coverage in the South African social security system have led to a lack of access to social security for one group in particular – unemployed adults between the age of 18 and 59 who are able-bodied and not primary care givers of young children. This is not only discriminatory, but also condemns a certain part of the population to a life in poverty. Given the South African jobs crisis the argument that these “able-bodied people” should help themselves and find employment to generate an income is unrealistic and without foundation. Government must face up to the fact that most people in this category will not be able to help themselves in the near-to-medium term. Policy development in the future must reflect this.

2.2. ARTICLE 11 – THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

2.2.1. ARTICLE 11 – THE RIGHT TO ADEQUATE FOOD

ICESCR Article 11	Constitution	NDP Outcome	Responsible Department
The Right to Adequate Food	Section 27 (1) Everyone has the right to – (b) sufficient food and water. Section 28 (1) Every child has the right – (c) to basic nutrition	Outcome 7: Comprehensive rural development and land reform	Rural Development and Land Reform; Agriculture, Forestry and Fisheries; Social Development; Health; Education; StatsSA; Planning, Monitoring and Evaluation; Trade and Industry

Provide information on the measures taken to ensure the availability of affordable food in quantity and quality sufficient to satisfy the dietary needs of everyone, free from adverse substances, and culturally acceptable.¹⁵

South Africa is one of only twenty-three countries that explicitly recognise the right to food in a foundational document or Constitution, and one of only two countries with provisions that are justiciable:¹⁶

Section 27 of the Constitution provides that:

- (1) Everyone has the right to have access to –
- (b) sufficient food and water;

- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

¹⁵ General comment 12, para. 8.

¹⁶ Knuth, L and Vidar, M ‘Constitutional and Legal Protection of the Right to Food’ (2011) FAO.

While Section 28 provides that:

- (1) Every child has the right-
- (c) to basic nutrition

Evolution of policy and legislation on the right to food

Certain key legislation relevant to the right to food, particularly around food safety, was enacted prior to 1994 and is still in force. However, a range of policies have been developed subsequently, including some which are explicitly directed at realising the right to food, and those which impact on it, such as through micronutrient supplementation or the provision of social grants. This chronology illustrates two things: the first is the continuing focus on agricultural production; the second is the general lack of legislation providing for the right to food, particularly framework legislation.

Year	Policy/legislation	Focus	Department / organisation
1972	Regulations in terms of the Foodstuffs, Cosmetics and Disinfectants Act No 54. While potentially out of date, this piece of legislation remains particularly relevant to food security discussions in South Africa. While the right to food debate usually centres very heavily on production, storage and food safety also feature, and this piece of legislation remains key.	Food safety	Legal
1992	Kassier Committee of Inquiry on agricultural control schemes. The report of this committee was crucial in deregulating the agricultural market.	Agriculture	Formal inquiry
1993	ANC Policy Brief on Food Security and Food Policy This paved the way for the ANC's understanding and definition of food security, which has changed little in the subsequent years.	Food security (production and land redistribution, with some mention of economic access and markets)	ANC
1995	Amendment to Act 54 by the Department of Health, mandated iodation of food grade salt to combat the high prevalence of iodine deficiency among children.	Nutrition supplementation	Department of Health (legislation)

Subsequently, iodine deficiency disorder has been virtually eradicated.¹⁷

1997	Department of Agriculture's Discussion Document on Food Security. This came out of the energy generated by the World Food Summit. This document strongly reflects the location of its writing, within the Department of Agriculture, and largely failed to integrate the more political dimensions of food security that emerged from the World Food Summit.	Food security (production)	Department of Agriculture
2000	Department of Health introduces vitamin A supplementation programme. This was developed to address high levels of vitamin A deficiency, particularly in children.	Nutrition supplementation	Department of Health
2002	Department of Agriculture's Integrated Food Security Strategy (IFSS). This strategy aimed simultaneously to ensure all South Africans have access to productive resources or incomes to allow them to access nutritious and safe food. This was the first broad, interdepartmental initiative on food security and will be examined later in this chapter.	Food security (broad scope)	Multi-sectoral under Department of Agriculture leadership
	Cabinet announced a special relief package amounting to R400 million drawn from its contingency reserve as a response to dramatic food price increases at the end of 2001.	Once off food transfer	
2003	Department of Agriculture established the Food Price Monitoring Committee under the National Agricultural Marketing Council (NAMC). The objective of the Committee is 'to act as a watchdog that will serve to protect the consumer against unfair price rises that have a detrimental effect on food security for the poor.'	Consumer protection (food prices)	Department of Agriculture
2004	Social Assistance Act paved the way legislatively for the existing social grants system, which plays a critical role in alleviating hunger for beneficiaries.	Social security grant	Department of Social Development
2009	ANC manifesto. Food security played a prominent role in the 2009 ANC manifesto, which stated that 'Rural infrastructure	Rural development, production and land reform,	ANC

¹⁷ Jooste, Peter. 'Solving Iodine Deficiency in South Africa: so near - and yet so far. Medical Research Policy Brief 2, 2000. Available at www.mrc.ac.za/policybriefs/2polbrief2000.htm.

development and agricultural reforms are at the heart of our plan to improve our country's food security’.

Zero Hunger Strategy/ Food for All Campaign was modelled off the Brazilian initiative. The campaign was launched in 2009 but barely implemented.

DPME Outcome 7 is entitled ‘Vibrant, equitable and sustainable rural communities and food security for all’. The delivery agreement for this Outcome frames food security around the general recognised standards of availability, access, utilization, and affordability. However, the Outcome still follows a largely production-based understanding of food security.

largely focusing on supporting small-scale farming.

Focus on small-scale agriculture and food access – **not implemented.**

Rural development and land reform (production)

Department of Agriculture

Department of Rural Development and Land Reform

2010

Investigations and prosecution of bread companies accused of price fixing by the **Competition Commission**. Key corporations settled on large fines paving the way for further antitrust work.

Consumer protection (food prices)

Competition Commission

National Development Plan (NDP), locates food security under the chapter on rural development. It includes a few economic and market based elements of food security, such as reducing the urban/rural price gap, but does not go far enough to expand the framing of food security from a health / nutrition / supplementation and economic access approach.

Rural food security (food production)

Multi-sectoral

2013 / 14

National Policy on Food and Nutrition Security (NPFNS). This is the current reference point for coordinated government work on food security, serving as a successor to the IFSS. However, it remains largely void of content beyond background information. Legislation and policy are both contained in half a page recommending the development of a Green Paper and White Paper.

Not clear

Department of Agriculture and Department of Social Development

National Aquaculture Policy Framework for South Africa. While this policy framework considers the role of large and

small-scale fishers in food security, it is limited in scope by merit of its narrow focus, though it does go further than some previous work in building links between local demand, food security, and economic development.

Food security
(production and
some economic
access)

Department of
Agriculture

The above timeline illustrates that, while food security has featured in numerous policies, there remains no clear, coordinated national strategy to end hunger and malnutrition. Although a new initiative has been launched every two or three years since 1994, activities have taken place across different government departments and the actions and programmes have not been well coordinated. While specific initiatives and programmes have evolved over the past decade, the broad governmental functions and areas of responsibility remain the same. Even with the mandates assigned by the IFSS and the NPFNS, food security has been a minor consideration for a number of departments and departmental approaches and responsibilities to the right to food have often been fragmented.

Government departments and responsibilities for food security

Department	Programme/Function
Department of Health	<ul style="list-style-type: none"> • Integrated Nutrition programme • HIV/AIDS related food programmes • Food Fortification • Regulation of Food Quality, Safety and labelling
Department of Agriculture and Land Affairs (including its agencies the ARC, NAMC and Land Bank)	<ul style="list-style-type: none"> • Various agricultural credit and production programmes • Land Reform Programme • Regulating Agricultural Products Standards • Monitoring the effects of deregulation • Monitoring food prices
Department of Trade and Industry (including its agencies the BTT, CSIR, SABS and IDC)	<ul style="list-style-type: none"> • Trade policy and Tariff regime • Supply side-measures for food enterprise • Trade Metrology • Consumer Protection
Department of Social Development	<ul style="list-style-type: none"> • Grants and pensions • Social grants
Department of Labour	<ul style="list-style-type: none"> • Minimum wage determinations • Enforcement of labour laws

Department of Environmental Affairs and Tourism	<ul style="list-style-type: none"> • Environmental regulations • Enforcement of labour laws and mitigate effects of drought
National Treasury	<ul style="list-style-type: none"> • VAT zero-rating of basic foodstuffs • Other taxes and tax incentives in relation to food
Department of Transport	<ul style="list-style-type: none"> • Port and rail tariffs • Rural roads
Department of Water Affairs and Forestry	<ul style="list-style-type: none"> • Catchment management and water pricing • Dams and irrigation schemes • Sanitation and waste-water system

Indicate the measures taken to disseminate knowledge of the principles of nutrition, including of healthy diets.

The third ‘pillar’ of the NFNSS targets improved nutrition education, including District level nutrition services to assist households and communities monitoring nutritional indices, promoting consumer literacy and assisting with better food management and improved meal planning.¹⁸ Implementation of this pillar has however been delayed pending the adoption of a ‘Strategy document’ outlining the programmes and activities which will contribute to the achievement of this goal.

*Indicate the measures taken to promote equality of access by the disadvantaged and marginalized individuals and groups, including landless peasants and persons belonging to minorities, to food, land, credit, natural resources and technology for food production.*¹⁹

A key concern with the NPFNS is that it has not paid any special attention to the needs of children and other vulnerable groups. As mentioned above, the Constitution gives children the right to basic nutrition, which places immediate obligations on the state to prioritise child health and nutrition in policies and programmes. The National Policy fails to mention the right of children to basic nutrition, which is a serious oversight for a national food and nutrition security policy. This indicates that the needs of children were not at the forefront of the drafter’s minds, and highlights the absence of civil society and the public from the policy formulation process.

¹⁸ The National Policy on Food and Nutrition Security for the Republic of South Africa, 2013, p8. Available at: www.nda.agric.za/docs/media/NATIONAL%20POLICYon%20food%20and%20nutrition%20security.pdf.

¹⁹ General comment 15, para. 7.

The Department of Agriculture and Department of Rural Development and Land Reform have undertaken a range of programmes aimed at promoting equality of access to food, land and technology for food production. The largest of these is the Comprehensive Agricultural Support Programme (CASP).

CASP arose due to the acknowledgement of the failure of land reform to improve the livelihoods of rural households in the absence of post-settlement support including access to credit, skills, infrastructure and markets. CASP aims to ‘provide post settlement support to the targeted beneficiaries of land reform and to other producers who have acquired land through private means and are, for example, engaged in value-adding enterprises domestically or involved in export’.²⁰ It endeavours to reach this aim through a variety of capacity building initiatives with one of the expected outcomes being ‘improved national and household food security.’²¹

There have been criticisms of CASP, such as the time it takes for small-scale farmers to receive support, as well as on the nature and extent of the support provided. A study by PLAAS has found that instead of CASP’s resources being allocated to a large number of small-scale farmers, in fact a small pool of farmers are receiving large capital injections, which means that CASP is struggling to address inequalities in the agricultural sector.²² This is exacerbated by the fact that providing extension support to small scale-farmers is a labour-intensive, expensive endeavour and CASP’s human, administrative, and financial resources are just not sufficient for the task at hand.

Indicate whether South Africa has adopted or envisages the adoption, within a specified time frame, of the ‘Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security’.²³ If not, explain the reasons why.

The Voluntary Guidelines were not mentioned in the NPFNS. This can only indicate either a lack of knowledge of the Guidelines or an unwillingness to adopt them into the South African policy framework.

In relation to this right, please indicate whether South Africa has adopted a national framework law, policies and strategies for the implementation of the right, identifying the resources available for that purpose and the most cost-effective ways of using such resources;

While South Africa’s policy response to socio-economic rights has generally been robust, the right to food has in many ways been left behind. This is most evident in the fact that it remains the only right not to have

²⁰ CASP, available at: www.nda.agric.za/docs/CASP/casp.htm.

²¹ Ibid.

²² Hall & Michael (2010) ‘The case for re-strategizing spending priorities to support small-scale farmers in South Africa’, PLAAS. Available at: www.plaas.org.za/plaas-publication/wp-17.

²³ Adopted by the 127th session of the Council of the Food and Agriculture Organization of the United Nations, November 2004.

been legislated. The desirability of a framework law on the right to food has been mentioned in many places: most recently in governments recent National Food and Nutrition Security Policy (2013), but also over a decade earlier. The National Food and Nutrition Security policy was released in 2013, replacing the largely moribund Integrated Food Security Strategy that had been in place since 2002. The new policy does provide some new thinking and guidance on government work around food security. The coordination of a Food Security Bill is one of the actions covered in the Department of Agriculture's current strategic plan,²⁴ though there have been references to planned legislation over the years that have not materialised. Concrete steps remain to be taken to develop such a law.

2.2.2. ARTICLE 11 – THE RIGHT TO WATER AND SANITATION

ICESCR Article 11	Constitution	NDP Outcome	Responsible Department
The Right to Water	Section 27 (1) Everyone has the right to – (b) sufficient food and water.	Outcome 7: Comprehensive rural development and land reform	Rural Development and Land Reform; Water and Sanitation; Cooperative Governance and Traditional Affairs; Environmental Affairs

Indicate:

*(a) The measures taken to ensure adequate and affordable access to water that is sufficient and safe for personal and domestic uses for everyone;*²⁵

Section 27 of the Constitution recognises the right to water and requires the state to progressively realise this right within its available resources. Although Section 27 addresses the right to water, it does not explicitly provide for the right to sanitation. The right to sanitation can however be derived from other sections in the Constitution such as environment, health and dignity.

Section 27: the rights to food, water, health care and social assistance

(1) Everyone has the right to have access to-

- (a) health care services, including reproductive health care;
- (b) sufficient food and water; and
- (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

²⁴ National Department of Agriculture, 'Strategic Plan 2012-2016'. Available at: www.nda.agric.za/doaDev/topMenu/StratPlan201213-201617.pdf.

²⁵ General comment 15, paras. 12 (a) and 37 (a); general comment 14, para. 43 (c).

Section 24: Environment

Everyone has the right to:

- (a) an environment that is not harmful to their health or well-being;
- (b) the environment protected for present and future generations, through legislative and other measures that -
 - (i) Prevent pollution and ecological degradation

Section 10: Human dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

The South African Human Rights Commission in their 2014 report on the right to water and sanitation notes that if people do not enjoy the right to proper sanitation, they are in essence experiencing a violation of their right to dignity.²⁶ The Commission found that it was dehumanising for people to have to relieve themselves in an open field on the side of the road, or using a toilet with no door or enclosure.

South Africa's policy around water and sanitation has been shaped by the following:

- White Paper on Water Supply and Sanitation (1994)
- National Sanitation Policy (1996)
- Water Services Act (1997) as amended (2004)
- National Water Act (1998)
- Free Basic Services Policy (2000)
- White Paper on Basic Household Sanitation (2001); and
- Strategic Framework for Water Services (2003).

White Paper on Water Supply and Sanitation (1994)

Considering the past imbalances of apartheid, the White Paper on Water Supply and Sanitation sought to provide a “framework for ensuring equitable access to water supply and sanitation services”.²⁷ The explicit inclusion of sanitation in the policy signified the need to see the important link between water and sanitation which speaks to the ‘one right with two components’ formulation accepted internationally. The White Paper set out the roles of national, provincial and local government, with national government functioning through the Department of Water Affairs and Forestry (now called the Department of Water and Sanitation). The

²⁶ South African Human Rights Commission, 2014, Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa, [www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20\(2\).pdf](http://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20(2).pdf)

²⁷ Department of Water Affairs and Forestry, Water Supply and Sanitation Policy, White Paper: Water –an indivisible national asset, 1994, www.dwa.gov.za/Documents/Policies/WSSP.pdf accessed 07/01/2016

national government is the overall manager of the “nation’s water resources in the public interest” to ensure “that all citizens have access to adequate water and sanitation services.”²⁸

The principles of the policy are based on “universal human rights and the equality of all persons regardless of race, gender, creed or culture.”²⁹ The principles are set out as:

1. Looking at basic services as human rights to enable access to a healthy environment while respecting the rights of others.
2. There should be a priority to plan and allocate public expenditure to the most marginalised.
3. Taking into account the issue of limited resources, there should be equitable distribution in the country according to population requirements.
4. Recognising that the provision of water and sanitation services requires economic capacity to effect sustainability and economic growth.
5. A central principle to payment of usage or ‘user pays’, to facilitate development and sustainable maintenance of water and sanitation services.
6. The development of water and sanitation services cannot occur in isolation with other sectors and thus coordination and collaboration is imperative to find benefits for the development process.
7. Development of water and sanitation should not compromise environmental integrity.

The Water Services Act (No.108 of 1997)

The Water Services Act is “the primary legal instrument relating to the accessibility and provision of water services (which include drinking water and sanitation services).³⁰ According to the Act, it is the responsibility of water services authorities (through water services providers) to ensure access to both water supply services and sanitation services. The Act makes provision for:

- (a) *The right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or wellbeing.*
- (b) *The setting of national standards and norms and standards for tariffs in respect of water services.*³¹

The Act defines basic sanitation as the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste water and sewage from households, including informal households. Section 3 of the Act states that:³²

²⁸ Ibid, pg. 8

²⁹ Ibid, pg. 7

³⁰ Centre for Applied Legal Studies submission to the South African Human Rights Commission (SAHRC), 18

³¹ Water Services Act 108 of 1997 , pg. 8

³² Water Services Act 108 of 1997

- (1) Everyone has a right of access to basic water supply and basic sanitation.*
- (2) Every water services institution must take reasonable measures to realise these rights.*
- (3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.*
- (4) The rights mentioned in this section are subject to the limitations contained in this Act.*

National Water Act (No. 36 of 1998)

The National Water Act was enacted to set out the role of government in terms of managing water resources for public benefit. The State's role as the custodian of the national water resources is to ".....ensure that water is protected, used and developed, conserved, managed and controlled in a sustainable and equitable manner....."³³ The Act also mandates government to develop in consultation with relevant stakeholders a water resource strategy in line with the framework of the Act and its purpose. The National Water Act of 1998 must be read with the Water Services Act, which is primarily concerned with the issue of access to water services by individuals in line with constitutional obligations.³⁴

Section 3 of the National Water Act reaffirms the role of government as the public trustee of South Africa's water resources and provides a legal framework for the management of water resources, which includes the allocation of water for beneficial use and the redistribution of water.³⁵

The South African Human Rights Commission report on water and sanitation³⁶ reports the following as key challenges to sufficient universal access to water and sanitation:

1. Upgrading and expansion of bulk infrastructure capacity ensuring quality of sanitation facilities built
2. Maintenance of reticulation and onsite infrastructure
3. Revenue collection to fund ongoing provision of services
4. Effective oversight
5. Regulation and management of sanitation services at all levels of government
6. On-going growth of formal and informal settlements due to rural and urban migration, population growth and the influx of foreign nationals.
7. Lack of clarity and coordination between the key actors in the various sanitation service provision is a major factor affecting the right.

³³ National Water Act 36 of 1998, Section 3

³⁴ Ibid

³⁵ Water Supply and Sanitation in South Africa Environmental Rights and Municipal Accountability, Lawyers for Human Rights, LHR Publication Series, No. 1, 2009.

³⁶ SAHRC, Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa, (2014)

SUMMARY OF RECOMMENDATIONS

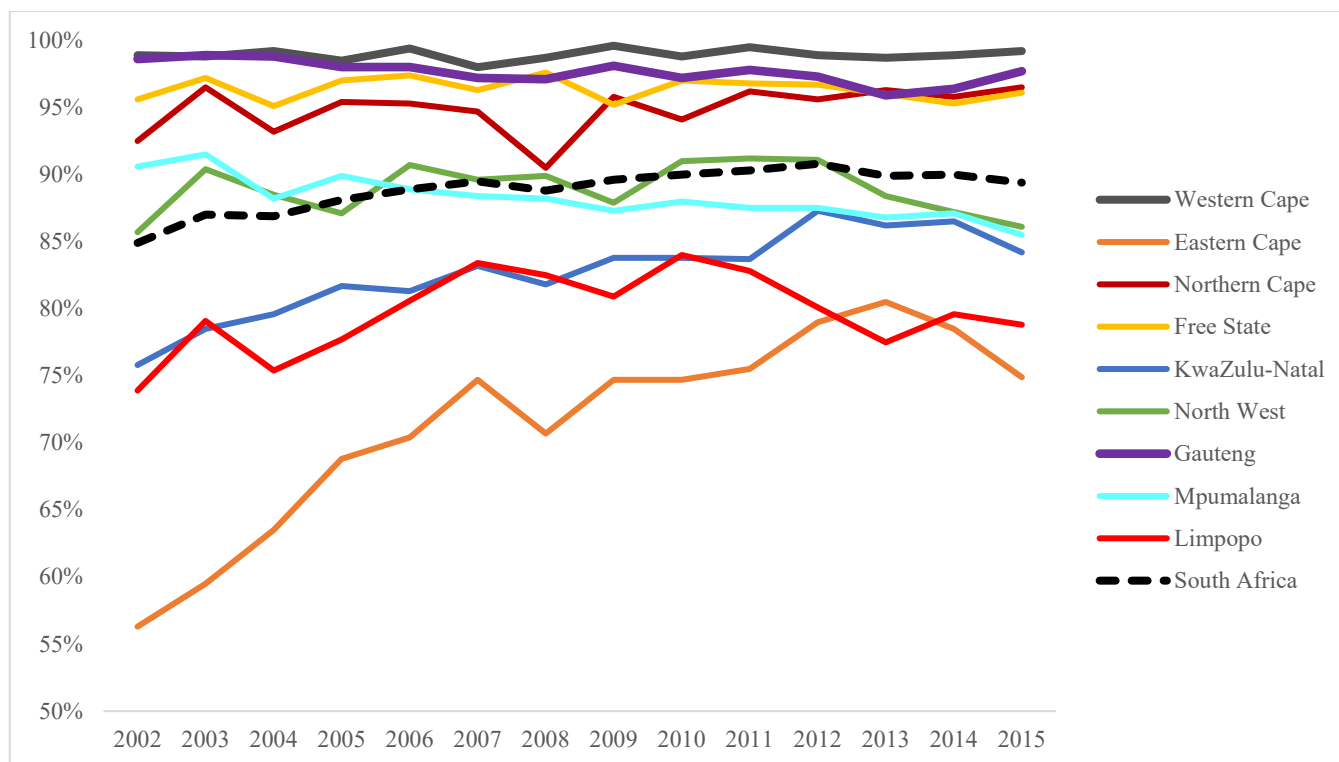
The state should take the primary responsibility to fulfil the right to water and sanitation in South Africa. As the provision of these is a primary function of local government, the state should capacitate municipalities to work effectively with communities to provide basic services. Local government needs to thoroughly consult with the community when dealing with the provision of sanitation facilities especially in informal settlements. Water Service authorities mandated with making these decisions have to actively seek the contribution of the public and not just provide any sanitation technology that they feel is appropriate. There is a need for integrated and inclusive solutions to the geo-physical, economic, legal and socio-political challenges of informal settlements. The process of choosing the provision of specific appropriate technologies must be open and inclusive of the local communities. This will ensure that the type of sanitation facility is culturally appropriate, and takes into account needs of vulnerable groups such as people with disabilities, children and women. In many cases, the type of technologies provided, especially in shared facilities, do not come with or have provision for the disposal of feminine hygiene products and are also not disability friendly.

(b) The percentage of households without access to sufficient and safe water in the dwelling or within its immediate vicinity, disaggregated by region³⁷

Indicator 1a: Percentage of households with access to RDP standard piped water

Data Source: General Household Survey (GHS) (StatsSA) 2002-2015

³⁷ General comment 15, paras. 12 (c) (i) and 37 (c).



This indicator shows how many households have access to piped water as per the prescribed RDP standard. The RDP standard or higher refers to piped water in one's dwelling or yard. Water from a neighbour's tap or public/communal tap is also included provided that the distance to the water source does not exceed 200 meters.

South Africa achieved the MDG target to halve by 2015 the proportion of people without sustainable access to safe drinking water and sanitation. However, the South African Human Rights Commission reported that in 2014, "approximately 1.4 million of households (formal and informal) still have to be provided with sanitation services."³⁸

*(c) The measures taken to ensure that water services, whether privately or publicly provided, are affordable for everyone;*³⁹ and

Until 2000, almost all users had to pay municipalities for their water consumption. In recognition that many people were struggling to afford to pay for water services, the South African government introduced the Free Basic Services policy in 2000 as a key part of its poverty alleviation strategy. The idea behind the Free Basic Services policy is to ensure that no one may be excluded from accessing water on the basis of

³⁸ Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014, South African Human Rights Commission, [www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20/\(2\).pdf](http://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20/(2).pdf)

³⁹ Ibid., paras. 24 and 27.

affordability and that everyone can access 6000 litres (or 6 kilolitres) per month free of charge per household.⁴⁰

The Water Services Act (WSA) further provides that the minimum essential levels for access to water in South Africa is between 25 litres per day within an acceptable standard distance that is within 200 metres of a household.⁴¹

*(d) The system in place to monitor the quality of water.*⁴²

The Blue Drop Certification Programme administered by the Department of Water and Sanitation monitors the quality of tap water in South Africa. The programme provides the general public with transparent reporting on the ability of the responsible authority to manage drinking water quality according to the risk management principles endorsed by the World Health Organisation. Through the blue drop process, the department reflects on both the actual quality of tap water and the ability of responsible institutions to develop and sustain quality, as well as their preparedness to deal with any incident that may pose a health risk to the public. Municipal and water board officials are provided with a target of excellence (95% adherence to the set Blue Drop Requirements) to which they should aspire. The aim is to motivate and ensure that the South African water sector aspires towards targets well beyond the usual minimum requirements.

South African water quality standards generally meet international standards and are in compliance with the World Health Organisation's (WHO) requirements, even though some rural and local municipalities are still struggling with compliance and this has been observed in many Department of Water and Sanitation (DWS) reports.

However, a 2015 report by Water Aid report that the Department of Water and Sanitation and municipalities were failing to adequately monitor the implementation of contracts with the private sector to provide water and sanitation services. Monitoring failures included not ensuring that contracted companies provide all the services stipulated in their agreement and that the services delivered are responsive to community needs and meet minimum quality standards.⁴³

*Provide information on education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.*⁴⁴

⁴⁰ Free Basic Water Implementation Strategy of 2007

⁴¹ Water Services Act

⁴² Ibid., para. 12 (b).

⁴³ Water Aid, 2015, p. 7

⁴⁴ Ibid., para. 25.

The sanitation function of DWS includes supporting municipalities to undertake health and hygiene advocacy for safe use of water. The National Sanitation Policy of 1996 stresses the importance of good hygiene practices and the building up of knowledge and awareness around the practice of good hygiene with communities. It also notes the importance of building up community behaviour that does not have a negative impact on the environment.⁴⁵

2.2.3. ARTICLE 11 – THE RIGHT TO ADEQUATE HOUSING

ICESCR Article 11	Constitution	NDP Outcome	Responsible Department
The Right to Adequate Housing	Section 26. Housing (1) Everyone has the right to have access to adequate housing. Section 28. Children (1) Every child has the right – (c) to ... shelter	Outcome 8: Sustainable Human Settlements and Improved Quality of Household Life	Human Settlements; Social Development

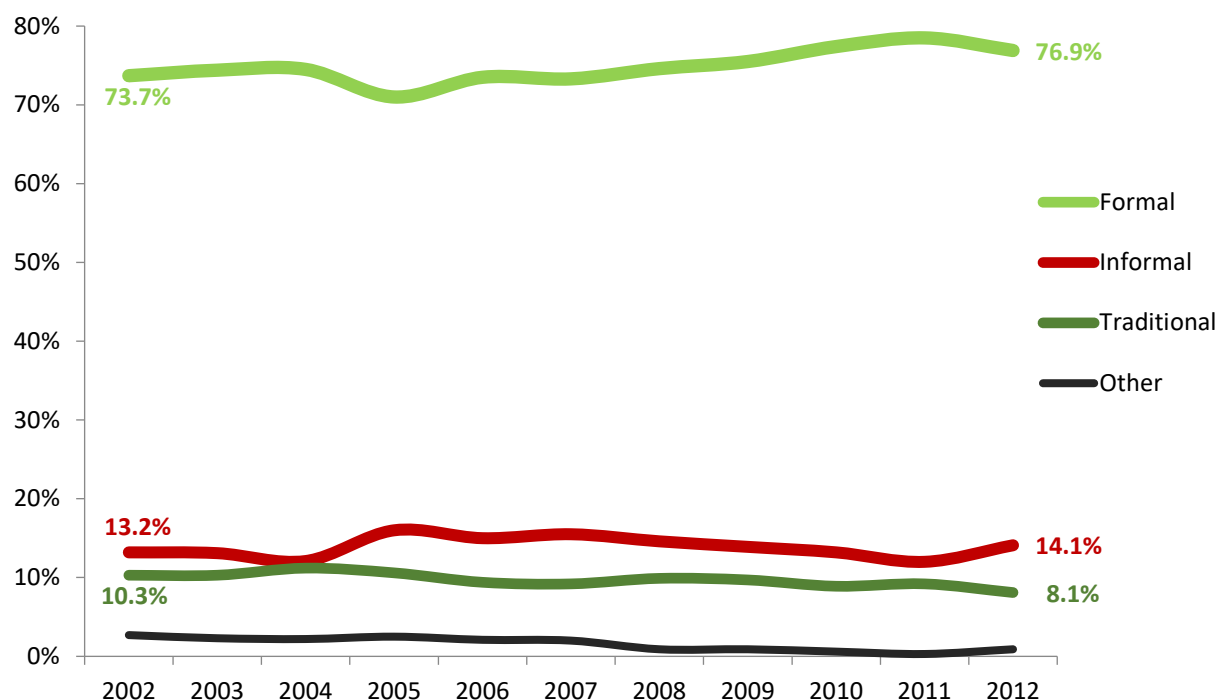
Indicate whether a national survey on homelessness and inadequate housing has been undertaken, as well as its findings, in particular the number of individuals and families who are homeless or inadequately housed and without access to basic infrastructures and services such as water, heating, waste disposal, sanitation, and electricity, as well as the number of persons living in over-crowded or structurally unsafe housing.

No national survey on homelessness has been conducted by the democratic government since 1994. Annual surveys are conducted however which provide subjective information on the adequacy of the housing that people live in. The General Household Survey (GHS) is conducted annually by Statistics South Africa, and with a sample size of 30 000, provides nationally representative data. The following indicators are taken from that survey.

Percentage of households living in different dwelling types, 2002 – 2012.⁴⁶

⁴⁵ National Sanitation Policy of 1996.

⁴⁶ According to the GHS, a formal dwelling includes any structure built according to approved plans (a house, flat or apartment, or a room within a formal dwelling). An informal dwelling is classified as any makeshift structure not erected according to approved architectural plans, such as shacks in informal settlements, serviced stands or proclaimed townships, as well as in the backyards of other dwelling types. Traditional structures include all dwellings made of clay, mud, reeds or other locally available materials, such as huts or rondavels. Constructions using blocks or stone walls are not considered traditional.

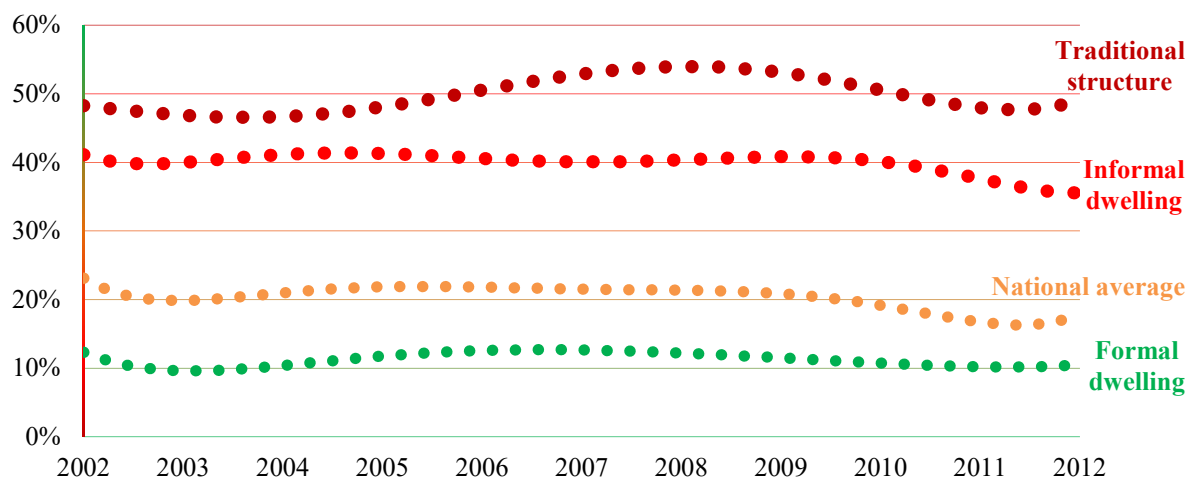


Though the proportion of households living in formal dwellings – a key government policy goal – has risen slightly by 3.2% since 2002, the percentage of households living in informal dwellings has also increased during this period. In 2012, 1 in 7 households still lived in informal housing, a similar number to a decade before. The provinces where the percentage of households living in informal dwellings has increased are North West, Mpumalanga, Northern Cape, Western Cape, Gauteng and Free State. The decline in the proportion of households living in traditional structures is likely a combination of improvements in building plans and materials causing a decline in the number of structures being classified as ‘traditional’, as well as a result of the continuation of the historical trend in South Africa that sees working age people from rural, traditional households moving to urban centres, often to take up occupancy in informal settlements.

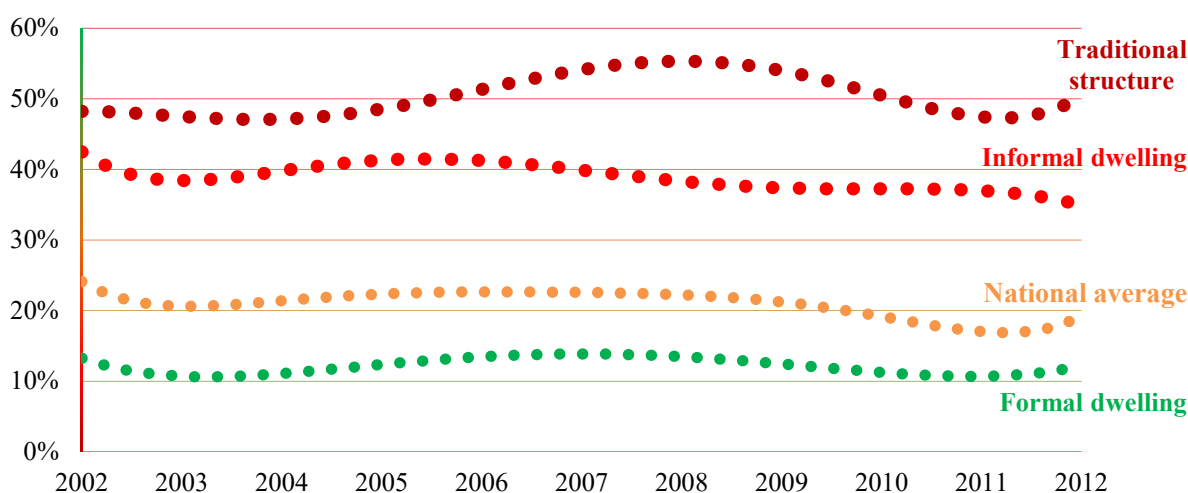
It is important to note that the Housing Development Agency (HDA) has found evidence that these figures may under-represent the real growth in informal settlements, due to issues arising from outdated survey sampling frames.⁴⁷ Niel Roux from StatsSA has also noted that many social surveys are prone to under-estimating or under-capturing informal dwellings situated in backyards or adjoined to other formal structures, for a variety of reasons.

Percentage of persons who describe the condition of the walls of their dwelling as weak or very weak for different dwelling types, 2002 – 2012.

⁴⁷ HDA ‘South Africa: Informal settlements status’, 2012, p9.



Percentage of persons who describe the condition of the roof of their dwelling as weak or very weak for different dwelling types, 2002 – 2012.



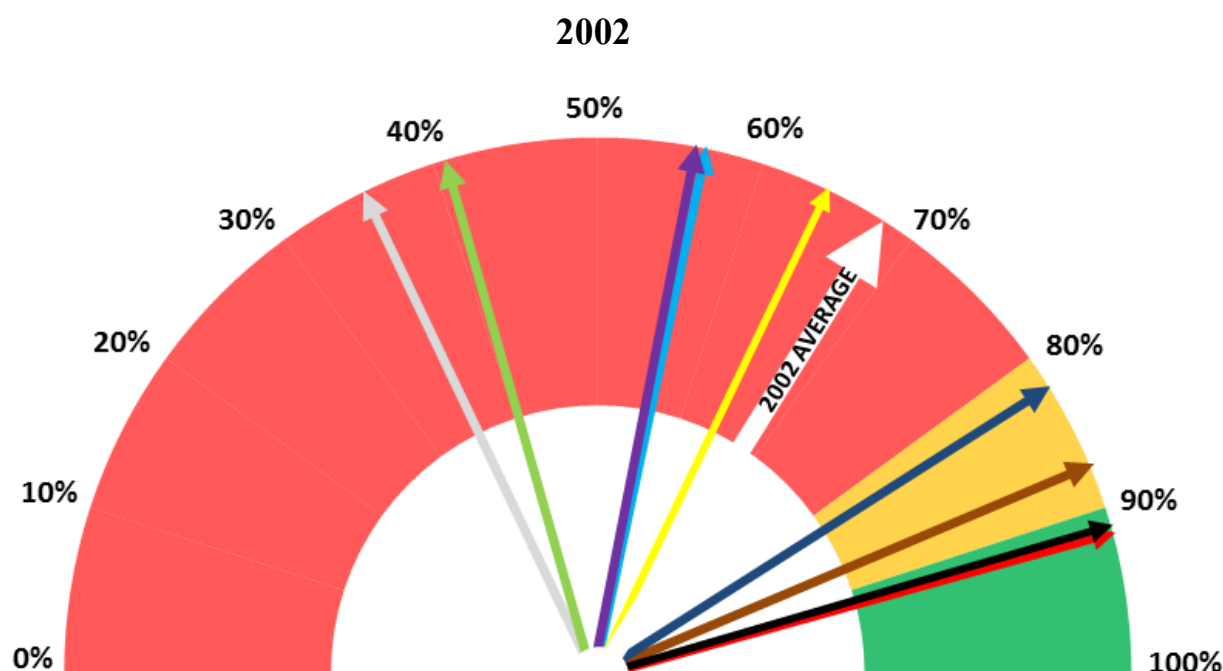
Weak or very weak walls and roofs are clear signs of a structure that is dangerous and not fit for human habitation. The indicators above show similar trends for different dwelling types. Over a third of households living in informal dwellings described the condition of their walls and roof as weak or very weak. This represents a slight decrease from 42% in 2002 to 35% in 2012. Around half of households living in traditional structures described their walls and roofs as weak or very weak in 2012, the same percentage as in 2002. These figures re-affirm the scale of the task to improve the adequacy of South Africa's current housing stock, particularly in informal settlements, and the urgency with which DHS must tackle the problems associated with the USDG so that informal settlement upgrading can be accelerated.

Unsurprisingly, households living in formal dwellings were four times less likely to describe their walls or roof as weak or very weak, compared with informal households.

Concerns have also been raised about the quality of RDP (subsidised houses) built by the government. Since 2009, millions of Rands have been spent fixing houses where walls had begun to crack and roofs fall apart through the national department's rectification programme.⁴⁸

The forced removals of black people from South Africa's towns and cities in the previous era has left a spatial legacy that sees many of these same families continuing to live in inadequate housing in townships and shack-lands on the periphery of mainstream economic activity. During apartheid these areas were not provided with basic services and so a major task of the democratic era has been to increase access to services such as clean drinking water, sanitation and energy.

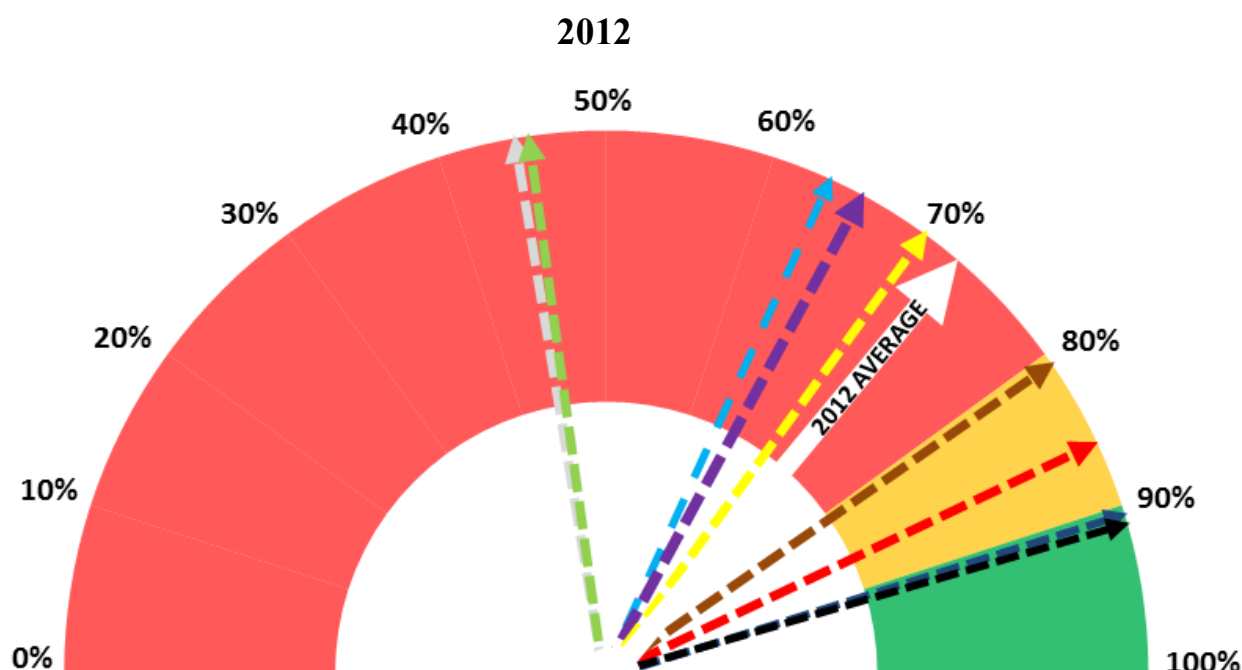
Percentage of households whose main source of drinking water is a piped tap, by province, 2002–2012



	2002	2012	% Change
Eastern Cape	36.4%	45.2%	+8.8%
Limpopo	40.6%	46.2%	+5.6%
KwaZulu-Natal	57.4%	63.2%	+5.8%
North West	57.1%	65.3%	+8.2%
Mpumalanga	63.3%	70.0%	+6.7%
Northern Cape	88.3%	80.5%	-7.8%
Gauteng	91.8%	87.9%	-3.9%

⁴⁸ K Tissington, N Munshi, G Mirugi-Mukundi and E Durojaye, 2013, "Jumping the Queue", Waiting Lists and Other Myths: Perceptions and Practice around Housing Demand and Allocation in South Africa, p22, p62.

Free State	82.2%	90.2%	+8.0%
Western Cape	91.1%	91.1%	0.0%
National average	68.6%	72.2%	+3.6%

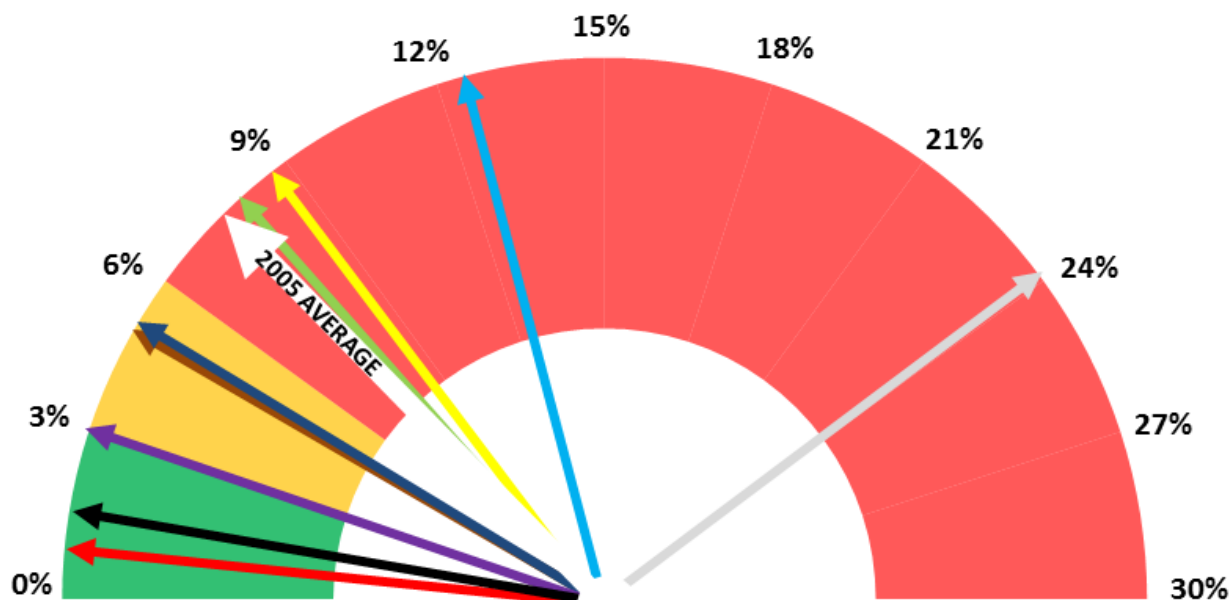


Across the country, 71.1% of household's main source of drinking water was from a piped tap in 2012, up from 67.6% in 2002. However, there have been marked differences in performance for this indicator at a provincial level. The Eastern Cape has seen the biggest increase in the availability of piped water for use as drinking water, from 36.4% in 2002 to 45.2% in 2012. North West and Free State have also seen increases of over 8% or over. Limpopo and KwaZulu-Natal have seen increases of between 5% and 7%, while there has been no change in the Western Cape. Worryingly, Gauteng (-3.9%) and Northern Cape (-7.8%) have seen substantial decreases in the percentage of households whose main source of drinking water is from a piped tap.

In 2012, two provinces (Eastern Cape and Limpopo) were lagging far behind the national average on this indicator, while Gauteng (despite experiencing a decrease), Western Cape and Free State were well above national average, highlighting the unevenness of service delivery in the country.

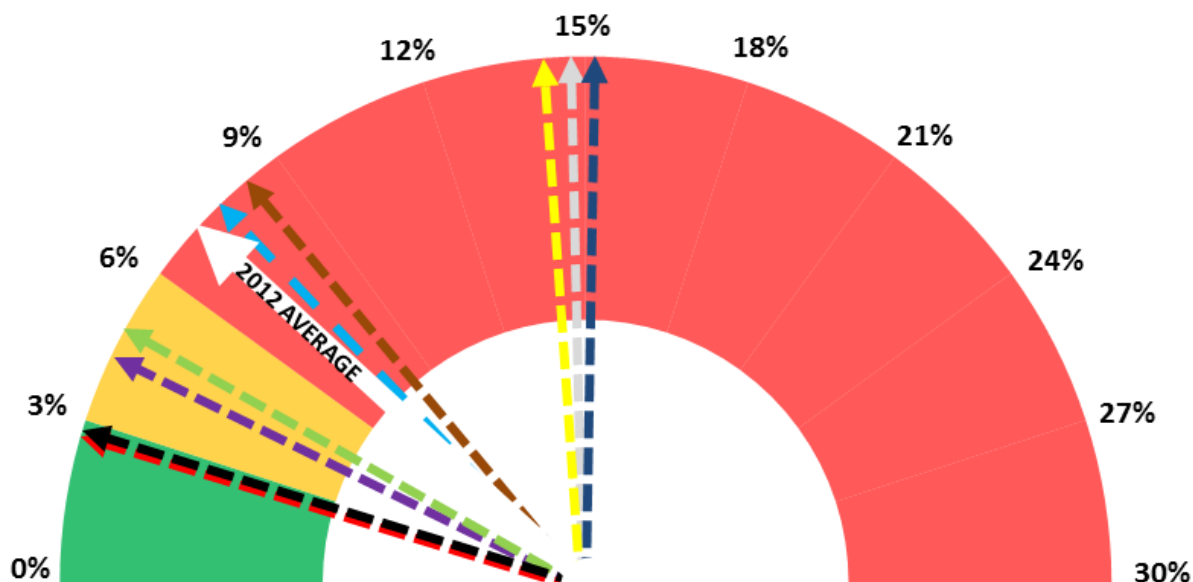
Percentage of households who describe their main source of drinking water as not safe to drink, by province, 2005 – 2012.

2005



	2005	2012	% Change
Free State	5.4%	15.1%	+9.7%
Eastern Cape	23.9%	14.7%	-9.2%
Mpumalanga	8.6%	14.4%	+5.8%
Northern Cape	5.3%	8.2%	+2.9%
KwaZulu-Natal	12.9%	7.7%	-5.2%
Limpopo	8.0%	5.2%	-2.8%
North West	3.0%	4.6%	+1.6%
Western Cape	1.8%	2.9%	+1.1%
Gauteng	0.9%	2.8%	+1.9%
<i>National average</i>	<i>7.7%</i>	<i>7.0%</i>	<i>-0.7%</i>

2012



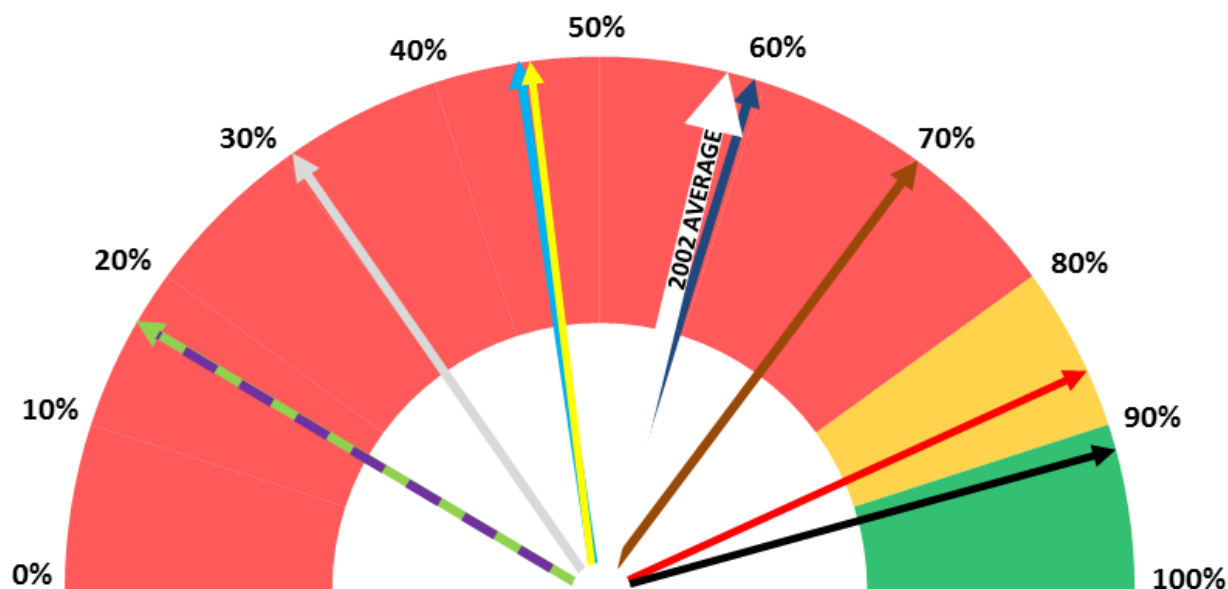
The NDP states that, ‘Before 2030, all South Africans will have affordable access to sufficient safe drinking water’.⁴⁹ This indicator suggest that the slow pace of change in access safe drinking water from 2005 – 2012 will have to be speeded up if this goal is to be achieved.

Nationally, there has been a small 0.7% decrease in households who describe their main source of drinking water as not safe to drink, from 7.7% in 2005 to 7.0% in 2012. There has also been great variance across provinces on this indicator, however. As with the previous indicator, the Eastern Cape has seen the most positive change in the percentage of households who describe their main source of drinking water as not safe to drink, which decreased from 23.9% in 2005 to 14.7% in 2012. KwaZulu-Natal and Limpopo are the only other provinces that have seen positive change on this indicator since 2005. All other provinces have seen the percentage of households who describe their main source of drinking water as not safe to drink increase between 2005 and 2012. In the Western Cape, twice as many households made this description, and in Gauteng and Free State, three times more households made this description in 2012 as in 2005. Despite improvements since 2005, in the Eastern Cape, as well as Mpumalanga and Free State (which have regressed on this indicator) around one in seven households described their main source of drinking water as unsafe to drink in 2012.

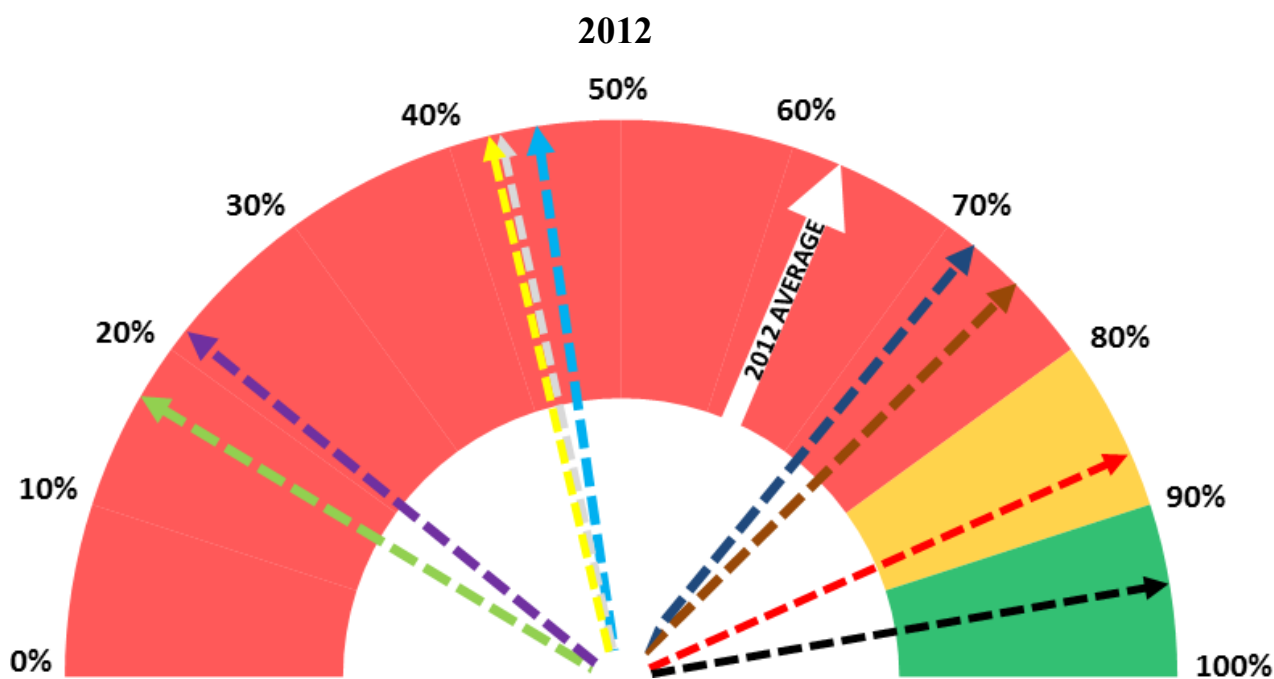
Percentage of households whose main sanitation facility is a flush toilet, by province, 2002–2012

2002

⁴⁹ NDP, p154.

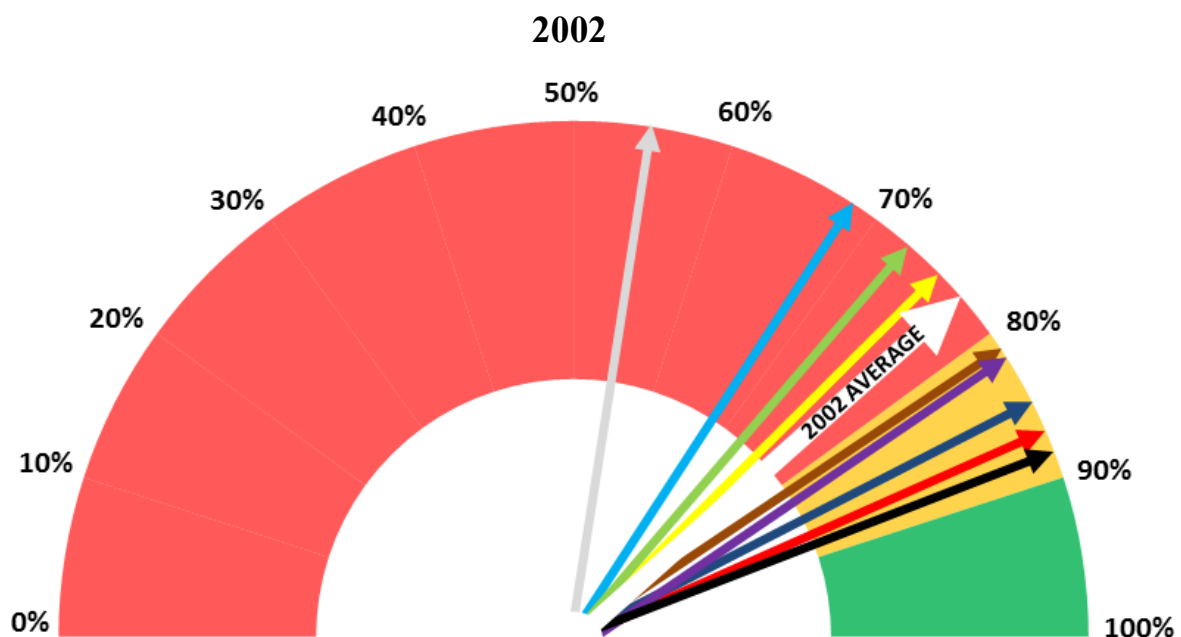


	2002	2012	% Change
Limpopo	16.4%	16.6%	+0.2%
North West	16.4%	21.6%	+5.2%
Mpumalanga	46.6%	42.7%	-3.9%
Eastern Cape	30.5%	43.4%	+12.9%
KwaZulu-Natal	46.3%	46.4%	+0.1%
Free State	59.5%	72.8%	+13.3%
Northern Cape	70.2%	75.8%	+5.6%
Gauteng	87.4%	87.8%	+0.4%
Western Cape	91.5%	94.4%	+2.9%
National average	58.0%	62.7%	+4.7%



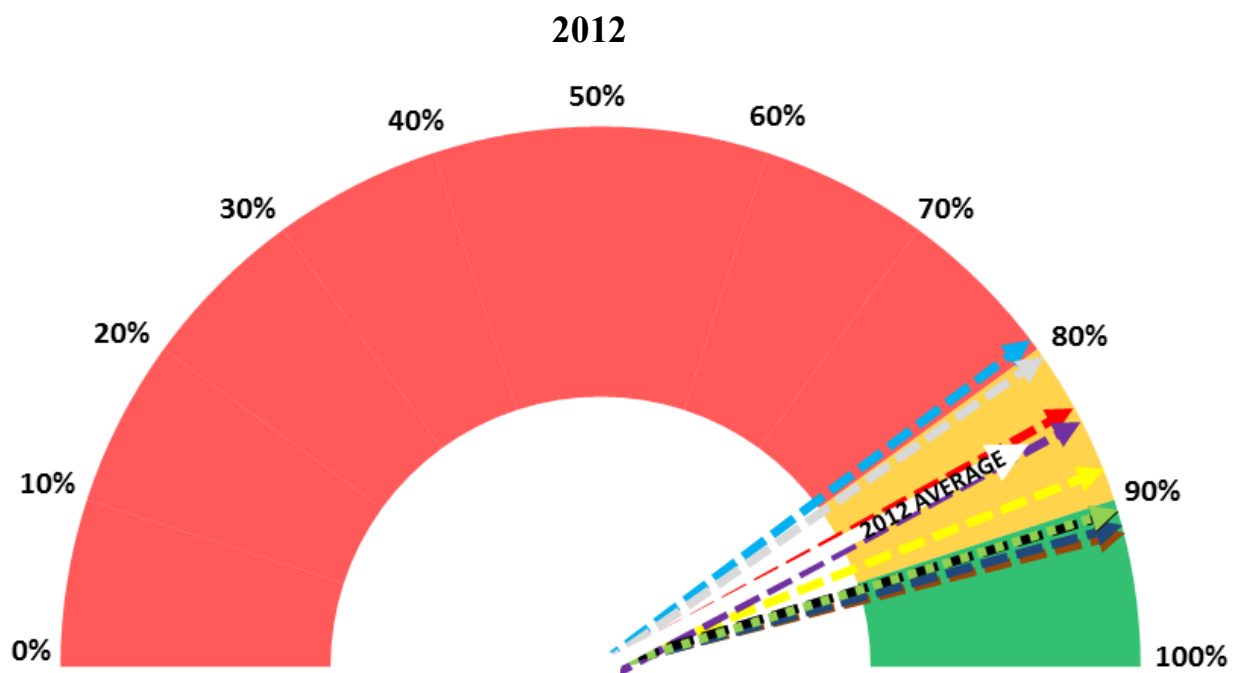
Indicator 21 dramatically illustrates the unevenness of the adequacy of basic household services in South Africa. Overall, the percentage of households who use a flush toilet as their main sanitation facility increased by 4.7% from 2002 to 2012. This rather slow pace of change means that more than one in three households still don't have access to the kind of basic sanitation that the remaining two thirds take for granted. Moreover, lack of adequate basic sanitation is much more prevalent in some provinces than others. In Limpopo, only 1 in 6 households used a flush toilet as their main sanitation facility, and in the North West the proportion is 1 in 5. In Gauteng and Western Cape, around 9 out every 10 households uses a flush toilet as their main sanitation facility. The only province to regress on this indicator since 2002 is Mpumalanga, while Limpopo, KwaZulu-Natal and Gauteng have made very little progress in the 10 year period under review.

Percentage of households connected to a mains electricity supply, 2002 – 2012.



	2002	2012	% Change
KwaZulu-Natal	68.9%	79.3%	+10.4%
Eastern Cape	55.3%	80.4%	+25.1%
Gauteng	87.1%	84.6%	-2.5%
North West	81.9%	85.3%	+3.4%
Mpumalanga	75.9%	88.4%	+12.5%
Limpopo	72.5%	90.5%	+18.0%
Western Cape	88.5%	90.5%	+2.0%
Free State	85.1%	91.5%	+6.4%

Northern Cape	81.8%	91.9%	+10.1%
<i>National average</i>	<i>77.1%</i>	<i>85.3%</i>	<i>+8.2%</i>



Having access to mains electricity is important for many reasons, including heating in winter; the charging of increasingly essential electronic devices such as mobile phones; to allow children to read at night; is a sign that street lighting is also available, which is vital for street safety; as well as a safe and clean cooking fuel that allows households to cease using flammable and odorous paraffin or wood. This indicator has seen the most significant and consistent progress of the four housing adequacy indicators reviewed here.

In 2012, 85.3% of households were connected to a mains electricity supply, up from 77.1% in 2002. Importantly, there has been convergence on this indicator across provinces thanks to impressive increases of between 10% - 25% in Eastern Cape, KwaZulu-Natal, Limpopo and Mpumalanga. Gauteng has regressed on this indicator, being overtaken by no less than 6 provinces.

All service delivery indicators are dependent upon numerous variables, from local government performance and accountability, to the quality of local infrastructure, to demographic trends. Population growth in Gauteng is the most likely cause for regression in these indicators. Keeping up with demographic shifts requires adequate planning and forward thinking to avoid the kind of regression seen here.

Indicate:

(a) The measures taken to ensure access to adequate and affordable housing with legal security of tenure for everyone, irrespective of income or access to economic resources;

(b) The impact of social housing measures, such as the provision of low-cost social housing units for disadvantaged and marginalized individuals and families, in particular in rural and deprived urban areas, whether there are waiting lists for obtaining such housing and the average length of waiting time;

The Constitution of South Africa guarantees the right to adequate housing and the right not to be forcibly evicted without an order of court in Section 26:

Section 26. Housing

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) 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.

The major policy and legislative developments related to housing since the democratic transition include:

National Legislation

- ✓ The Housing Act (1997)
- ✓ The Prevention of Illegal Eviction Act (1998)
- ✓ The Rental Housing Act (1999)
- ✓ The National Norms and Standards (2007, revised in 2013)
- ✓ The Social Housing Act (2008)

National Policy

- ✓ White Paper on Housing (1994)
- ✓ National Housing Code (2000, revised in 2009)
- ✓ Breaking New Ground (2004)

The state can be commended on the number of houses that it has built over the years given the mammoth challenge it faced in 1994 and for re-evaluating and re-formulating policies over time to correct poor assumptions, respond to failures and address new challenges. This is evident in the shift from subsidised houses to a broader range of housing programmes and subsidies including informal settlement upgrading and social housing.

The White Paper on Housing (1994) was influenced by the broad principles and targets of the ANC's Reconstruction and Development Programme (RDP) which committed the ANC government to the delivery of one million subsidised houses in five years. Given the scale of the backlog and the urgency of the need, the focus was on delivering housing options to as many previously dispossessed South Africans as quickly as possible. As a result, the policy explicitly adopted an approach of quantity over quality with subsidies kept small and leading to service standards relating to sanitation, water and roads often being dropped.⁵⁰ The original intention of the housing subsidy was to accommodate as many people as possible in the short-term and to stimulate the market so that over time it could respond to the housing needs of the so-called mass market. After some time, however, it became clear that the quality of housing delivered was not in line with expectations – neither those of the beneficiaries, politicians or policy makers. This resulted in the national minimum norms and standards, which were incorporated into the 1997 Housing Act, and designed to enhance the quality of houses.⁵¹ This increase in quality came with additional costs, however, which required municipalities to put in additional local funds. This in turn created a trade off with more adequate state housing being accessed by fewer people.

The delivery of RDP/BNG houses has been plagued by systemic problems which continue to hinder housing implementation including the politicisation of housing at all levels, poor coordination between different spheres of government, rampant evictions and shack demolitions, corruption and /or irregular tender processes in the awarding of housing development contracts.⁵² The housing programme has been criticised for being an inappropriate solution given poor people's needs because in many cases (not all) the location of these houses has been poor and in particular, far from work opportunities. Households are therefore unable to realise all the benefits of their asset. This has resulted in some households choosing to sub-let or sell their subsidized homes and move back to informal settlements to be close to economic opportunities. Another major criticism was that despite the state's focus on private title, many beneficiaries of the housing subsidy do not have title deeds or proof of ownership which has eroded the value of these assets transferred by the state.⁵³

Despite a shift in policy from subsidised houses to a broader range of housing programmes, the government has remained pre-occupied with the delivery of these houses almost entirely to the exclusion of more appropriate alternatives. For example, the Upgrading of Informal Settlements Programme (UISP) was designed as the first large-scale programmatic response to incremental upgrading of informal settlements. In recent years, UISP has been prioritised as a key mechanism evident in the Presidency Outcome 8 agreement which commits DHS to upgrade 400 000 households in informal settlements with access to secure tenure

⁵⁰ Rust, 2008, pp11-12; Tissington, 2011, p61.

⁵¹ Rust, 2008, pp11-12.

⁵² Ibid, p10.

⁵³ For a detailed discussion on this, see Rust, 2008, p28.

and basic services by 2014. The focus on informal upgrading is also evident in the substantial budget allocation for the Urban Settlement Development Grant (USDG) which came into effect in 2011. The USDG has seen major under-expenditure, however, and indicates that despite a number of UISP pilots it has not been pursued at scale. Despite informal upgrading being a key pillar of the BNG policy which came into effect in 2004, it remains a relatively new programme and has had various implementation challenges.

SUMMARY OF RECOMMENDATIONS

Despite significant achievements since 1994, with the official number of subsidised housing units built at 3.38 million (according to one estimate) and expanded access to water, sanitation and electricity, access to adequate housing remains a challenge for many South Africans with the housing backlog estimated to be greater now than it was in 1994.⁵⁴ The right to housing is the most adjudicated socio-economic right before the Constitutional Court, which has brought attention to instances when the state or other parties have infringed on the right to housing. The surge in service delivery protests across South Africa have also highlighted serious retrogressive measures related to housing, including evictions, shack demolitions, unaffordable housing units, broken promises, local government incompetence, corruption, and rental exploitation.

The problems with the housing subsidy system and housing waiting list system combined with a drastic reduction in the number of houses built by the state in a context of high levels of poverty and inequality is the creation of a ‘crisis of expectation on the ground’ evident in the levels of social protests across the country.⁵⁵ The Minister of Human Settlements has acknowledged that there is no ‘credible data list against which a municipality can verify the waiting list and make appropriate [housing] allocations’.⁵⁶ There is an urgent need for the state to be honest, upfront and transparent to the general public about how housing is currently being allocated in South Africa.⁵⁷ This may require the Department to abandon the discourse of the “waiting list” or “queue” if necessary.⁵⁸ The lack of transparency in housing allocation processes needs to be urgently investigated and steps taken to ensure greater accountability, monitoring and transparency.

Many beneficiaries of the housing subsidy do not have title deeds or proof of ownership which has eroded the value of these assets transferred by the state. A commitment has been made in the MTSF Outcome 8

⁵⁴ Department of Performance, Monitoring and Evaluation Development Indicators, 2012, p36, www.thepresidency.gov.za/MediaLib/Downloads/Home/Publications/DPMEIndicators2013/DPME%20Indicators%202013.pdf. These figures are challenged – see discussion in chapter 4 of this paper regarding statistics on housing delivery.

⁵⁵ M, Napier, 2014, ‘Understanding and addressing the dimensions of the housing ‘crisis’ in South Africa’.

⁵⁶ L, Sisulu, ‘Speech by L N Sisulu, Minister of Human Settlements on the occasion of the Budget Vote of the Ministry of Human Settlements, National Assembly Chamber, Parliament’, 15 July 2014.

⁵⁷ L, Roysten (2014) ‘Submission on the Budget Vote Speech of the Minister of Human Settlements’, p5, www.seri-sa.org/images/SERI_Submission_Budget_Vote_2014_FINAL.pdf.

⁵⁸ Ibid, p5.

agreement (2014-19) to transfer title deeds for all 563,000 new subsidy units as well the backlog of 900,000 units.

*Indicate whether there are any disadvantaged and marginalized individuals and groups, such as ethnic minorities, who are particularly affected by forced evictions and the measures taken to ensure that no form of discrimination is involved whenever evictions take place.*⁵⁹

*Indicate the number of persons and families evicted within the last five years and the legal provisions defining the circumstances in which evictions may take place and the rights of tenants to security of tenure and protection from eviction.*⁶⁰

There currently exists no credible national data on the number of evictions and re-locations carried out per year and the percentage of these that were forced.

Section 26(3) of the Constitution, along with the Prevention of Illegal Evictions (PIE) Act, provides a number of essential procedural protections to unlawful occupiers who face evictions. First, and most importantly, section 26(3) provides that no one may be evicted from their home or have their home demolished without a court order authorising such eviction after having due regard to “all the relevant circumstances”. The PIE Act expands on this requirement by stating that a court may not grant an eviction order unless the eviction sought would be “just and equitable” in the circumstances. This requires a court to have regard for various factors, including whether the occupiers include vulnerable categories of persons (the elderly, children and female-headed households), the duration of occupation and the availability of alternative accommodation or the state provision of alternative accommodation in instances where occupiers are unable to obtain alternatives on their own. The legal framework thus establishes that an eviction order may not be granted if an eviction would not be just and equitable. These procedural protections have been supplemented by case law. In a range of cases the South African courts held that a court cannot decide what is just and equitable without being provided all the necessary information to enable it to make such decision.⁶¹

2.3. ARTICLE 12 – THE RIGHT TO HEALTH

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

⁵⁹ General comment 7, para. 10.

⁶⁰ Ibid., paras. 9, 13-15, 16 and 19; see also Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex 1).

⁶¹ Clark (2013) Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government. Available at: www.seri-sa.org/images/Evictions_Jurisprudence_Nov13.pdf.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

ICESCR	Constitution	NDP Outcome	Responsible Department
Article 12. The right to the enjoyment of the highest attainable standard of physical and mental health.	Section 27 (1) Everyone has the right to - (a) health care services, including reproductive health care. Section 28 (1) Every child has the right to - (c) ... basic health care services.	Outcome 2: A long and healthy life for all South Africans	Health; Water and Sanitation Correctional Services; Social Development

Indicate whether South Africa has adopted a national health policy and whether a national health system with universal access to primary health care is in place.

Section 27 of the Constitution of South Africa provides for a right of universal access to health care services:

Section 27. Health care, food, water and social security

(1) Everyone has the right to have access to -

(a) health care services, including reproductive health care;

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

When the democratic government came into power in 1994, it inherited a two-tiered model of health care that was divided along racial lines. The challenge was to reduce the disparities in access to quality health care and create an inclusive system that would cater for all South Africans, irrespective of race and socio-economic background. This would be carried out through three thematic areas: strengthening the role of Primary Health Care (PHC), human resource development, and efficient financing of public health care. Key

legislation passed post-1994 includes: the Medical Aid Schemes Act, Act 131 of 1998, the National Health Laboratories Service Act, Act 37 of 2000, the Council of Medical Schemes Levy Act, Act 58 of 2000, the National Health Act, Act 61 of 2003, the Nursing Act, Act 33 of 2005, the 2005 Health Charter, and more recently the National Health Insurance policy paper released in 2011.

South Africa does not have a national health system which is free for all at the point of use. Instead, a private health care system, based on monthly contributions and cash payments, caters for the health care needs of approximately 20% of the population. The remainder use the public health system, which charges fees on a progressive basis based on the income of the patient and / or their family.

The 2011 National Health Insurance (NHI) policy paper put forth recommendations to finance and make available quality health care free at the point of use to all. NHI is currently being piloted in 10 districts across the country with results from these pilots expected in 2017/18. These results will inform the development of an updated NHI policy for the country.

Ensuring universal access to primary health care has been a key objective since the 1997 White Paper for the Transformation of the Health System.

Provide information on the measures taken to ensure:

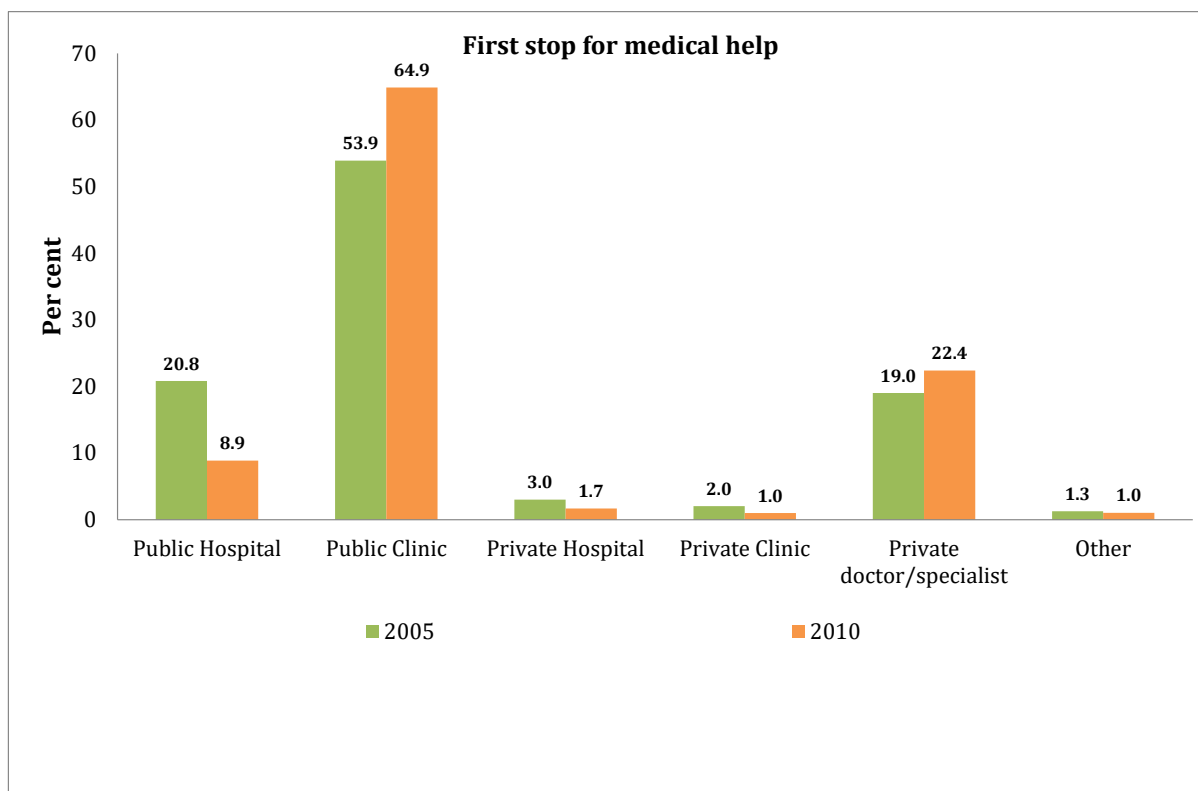
(a) That preventive, curative, and rehabilitative health facilities, goods and services are within safe reach and physically accessible for everyone, including older persons and persons with disabilities;⁶²

Data from the 2005 and 2010 GHS suggests that there has been an improvement in accessibility and affordability of public health care over time, including for previously marginalised groups. The indicator below shows that 53.9% of the population visited public clinics as their first point of access in 2005, while 20.8% used public hospitals. In 2010, public clinics (64.9%) were the most frequently used health facilities, followed by private doctors (22.4%) and public hospitals (8.9%).⁶³ In 2010, however, there were more people (22.4%) consulting private doctors/specialists than in 2005 (19%).

Percentage of people seeking medical assistance at different health facilities, 2005 - 2010

⁶² General comment 14, para. 12 (b).

⁶³ A clinic is a facility that provides a range of PHC services, and is normally open only 8 hours a day. In some instances staff may be required to live close or at the clinic in case of emergency situations. A hospital on the other hand is one that is primarily used by those who require in-patient care, although all hospitals have outpatients departments (OPD) and casualty/ emergency care (Cullinan, 2006: 7).



(b) That the costs of health-care services and health insurance, whether privately or publicly provided, are affordable for everyone, including for socially disadvantaged groups;⁶⁴

Health care provided by the private sector is exclusive, of high quality, and comes at a premium cost which is financed through medical aid schemes and out-of-pocket payments. The NHI proposed in 2011 would ensure that all patients are attended to free of charge in the public health care system, which currently charges based on an assessment of the patients ability to pay. However, NHI has yet to be implemented.

(d) Adequate training of health personnel, including on health and human rights.⁶⁵

Provincial Health Authority's (PHAs) provide support for the District Health Authority's (DHAs) in the respective provinces. The responsibilities of the PHAs include providing secondary and tertiary referral hospitals, regulate the practice of private hospitals, running training programmes, and provide any other support required by districts.⁶⁶

To an extent, the overall low number of trained doctors explains the current backlogs in the health care system and provides a basis for explaining the human resource shortages in the public sector.⁶⁷ Training of

⁶⁴Ibid., paras. 12 (b), 19 and 36.

⁶⁵Ibid., paras. 12 (d) and 44 (e).

⁶⁶ Health care in a democratic South Africa. Available at: www.yale.edu/macmillan/apartheid/yachkistnasamyp2.pdf.

⁶⁷ Health and Welfare Sector Education and Training Authority (HWSETA), *Re-engineering Primary Health Care for all South Africans: Human Resource implications* (2011). Available at: www.hwseta.org.za/upload/re.pdf.

black doctors was expanded in the 1980's but more than 30 years later, black doctors still remain a minority in the medical profession. According to the Health Professions Council of South Africa (HPCSA), there is almost triple the number of white doctors than African doctors. In 2010, there were 16 159 registered white medical practitioners, 6952 Africans, 726 Coloureds, and 4912 Indian medical practitioners in the country.⁶⁸

Primary Health Care facilities provide a comprehensive range of preventative services, including mother and child care, immunisation, family planning, treatment for STDs, minor trauma and care for those with chronic illnesses (e.g. diabetes, hypertension).⁶⁹

Treatment of Sexually Transmitted Diseases (STDs) and HIV related illnesses at all health facilities is ensured as well as access to 24-hour emergency health care services for communities, including access to ambulance services in most rural areas.⁷⁰

In a landmark right to health case heard by the Constitutional Court,⁷¹ the Minister of Health argued that provision of nevirapine (an anti-retroviral drug) to the general public would be irresponsible since the registration of nevirapine by the Medicine Control Council (MCC) as a drug used to prevent mother to child transmission was based only on one scientific study.⁷² The drug had been however proven to be efficient and safe. This assertion was made on the basis of recommendations made by the World Health Organisation (WHO) and by the MCC. The Treatment Action Campaign pointed out that the safety of nevirapine and its tendency to create resistant strains of HIV have only been questioned in relation to long course treatments, and that there is no evidence of similar problems with a single dose.⁷³ In actual fact medical practitioners in private hospitals were cleared to dispense this drug as and when they saw fit. It was only limited in the public health sector. As a result of this many mothers were indirectly denied access to realising their right to health care i.e. the supply of nevirapine which was proven to be safe and was dispensed in the private sector.

The Court found that the withholding of nevirapine treatment constituted a violation of the right to health care and South Africa has since rolled out one of the largest HIV/AIDS prevention and treatment programmes in the world. South Africa still has one of the highest rates of HIV/AIDS infection in the world however and even though there have been a number of interventions targeted at reducing the rate of infections, including an increased supply of anti-retrovirals (ARVs) to HIV positive people, approximately 300 000 lives are lost to the disease every year.⁷⁴ The Actuarial Society of South Africa 2008 model,

⁶⁸ HPCSA 2010 statistics. Accessible at <http://www.hpcsa.co.za/statistics.php>

⁶⁹ Cullinan (2006) Health services in South Africa: A basic introduction.

⁷⁰ Ibid.

⁷¹ Minister of Health vs Treatment Action Campaign and others - Constitutional Court Case (CCT 8/02) [5 July 2002].

⁷² This is based on the HIV NET 012, a randomized clinical trial that was conducted to evaluate the efficiency of nevirapine.

⁷³ One dose given to mother and child reduces the chances of mother to child transmission (through breastfeeding) significantly.

⁷⁴ UNAIDS, 2011. *HIV and AIDS estimates* (2009). Available at: www.unaids.org/en/regionscountries/countries/southafrica/.

however, shows that the number of AIDS deaths declined from 310 000 in 2009 to 194 000 in 2010.⁷⁵ This result can largely be attributed to the rapid expansion of ARVs. Despite the fact that less AIDS deaths were recorded, the number of newly infected people is high and therefore a lot still needs to be done to curb the spread of HIV and related illnesses.

2.4. ARTICLE 13 – THE RIGHT TO EDUCATION

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

⁷⁵ Cited in SAfAIDS, South Africa: ARV Programme Cuts AIDS Deaths 2011. Accessible on <http://safaid.net/content/south-africa-arv-programme-cuts-aids-deaths>.

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

ICESCR	Constitution	NDP Outcome	Responsible Department
Article 13. The right to education.	Section 29 (1) Everyone has the right - (a) to a basic education, including adult basic education; and (b) to further education.	Outcome 1: Quality Basic Education Outcome 5: A skilled and capable workforce to support an inclusive growth path	Basic Education; Higher Education and Training

Indicate to what extent the form and substance of education in South Africa are directed towards the aims and objectives identified in article 13, paragraph 1,⁷⁶ and whether school curricula include education on economic, social and cultural rights.

The right to a basic education is enshrined in Section 29(1) of the South African Constitution, which provides that:

“Everyone has the right -

- (a) to a basic education, including adult basic education; and
- (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.”

South African public schools have experienced significant curriculum reform since the end of apartheid. Central to the process of determining the initial curriculum developed in the post-1994 democratic era was how to best respond to grossly inadequate and unequal curriculum offered to black learners during apartheid, as well as the need to develop a curriculum that would advance notions of redressing past injustices and inequalities and ensuring the realisation of human rights guaranteed by the Constitution. Another primary

⁷⁶ General comment 13, paras. 4-5 and 49.

concern at the time of political transition was how to best develop a curriculum that would be capable of integrating education and training, responding to the economic and industrial demands of labour to be skill-based and the need to establish a system capable of integrating various levels of education and training achievement which had been subject to very different qualification standards under the apartheid regime.

The Department of Education revised the curriculum in 2009 in line with the *Curriculum Assessment Policy Statements (CAPS)*, implementing this new curriculum in 2012. CAPS, which consists of a single comprehensive curriculum and assessment policy for each subject in each grade, represents a significant shift in curriculum for South Africa's teachers, school administrators and learners. The DBE has stated that:

“CAPS embodies the vision for general education to move away from a racist, apartheid, rote model of learning and teaching to a liberating nation-building and learner-centred and outcomes-based initiative. At the centre of its vision are learners who will be inspired by the values of a society based on respect for democracy, equality, human dignity, life and social justice. The curriculum seeks to create a lifelong learner who is confident and independent, literate, numerate, multi-skilled and compassionate, with respect for the environment and the ability to participate in society as a critical and active citizen. Teachers are seen as key contributors to the transformation of education in South Africa”.⁷⁷

The DBE has focused particular attention on the need for learners, particularly black learners, to achieve greater success in mathematics and science subjects. The apartheid-era curriculum has left South Africa with a significant shortage of teachers qualified to teach mathematics and science subjects. Moreover, the vast majority of the limited black South Africans that have qualified for further studies in mathematics and sciences at the tertiary level have chosen to pursue careers in fields outside of teaching which has further contributed to the shortage of mathematics and science teachers available to teach in South Africa's public education system.⁷⁸

The Department of Basic Education implemented the Dinaledi Intervention Programme in 2001 to improve learning outcomes in mathematics and physical science for learners in grades 10 to 12 attending public secondary schools. The Dinaledi programme has provided support to teachers and learners, through training and supplementary materials, in almost 500 mostly historically disadvantaged schools. While the World Bank has revealed, that despite certain design flaws, Dinaledi has been successful in increasing the mathematics and physical sciences pass rate, the DBE has found that the overall improvements in the Grade 12 mathematics and science results were disappointingly low, particularly with regard to historically disadvantaged learners.⁷⁹ The DBE announced in 2014 that the Dinaledi and Technical Schools grants will

⁷⁷ DBE (2011) Action Plan to 2014 – Towards the Realisation of Schooling 2025.

⁷⁸ DBE (2014) Annual Performance Plan 2014 – 2015. Pretoria: Department of Basic Education. p 19.

⁷⁹ DBE (2011) Action Plan to 2014, p 65.

be consolidated into a new Maths, Science and Technology Schools Improvement Grant and will be expanded to support grades 8 and 9 mathematics and natural sciences courses in the same selected 500 schools.

Indicate how the obligation to provide primary education that is compulsory and available free for all is implemented in South Africa, in particular:

- (a) The level or grade until which education is compulsory and free for all;*
- (b) Any direct costs such as school fees, as well as the measures taken to eliminate them; and*
- (c) Any indirect costs (e.g. expenses for school books, uniforms, transport, special fees such as exam fees, contributions to district education boards, etc.) and the measures taken to alleviate the impact of such costs on children from poorer households.*

Under apartheid, public education was almost universally free for children from white families, while in the Bantustans, black families occasionally paid fees or education taxes. From 1992, fees were gradually introduced in public schools and by 2005, it was a norm for public schools to levy fees.

The South African Schools Act (SASA) was amended in 2005 to establish a *quintile system*. Under this system, schools are categorised into 5 groups (quintiles) based on the relative wealth of their surrounding communities. Schools in the poorest communities are classified as Quintile 1 and schools serving the wealthiest communities are classified as Quintile 5. Quintile 1, 2 and 3 schools are not allowed to charge fees and are often referred to as no-fee schools.

The development of no-fee school policies has resulted in a significant increase in learners who do not pay school fees, from just 3% in 2006 to 65% in 2014 (StatsSA, 2014). Provincially, 92% of learners in Limpopo and 82% of learners in the Eastern Cape attended no fee schools in 2014 while 41% of learners in the Western Cape and 45% of learners in Gauteng pay no school fees.

However, while these learners do attend no-fee schools, and education is compulsory up to Grade 12, there is no level or grade at which education is free for all.

Moreover, challenges with the ‘quintile system’ have been identified.

Many quintile 1 – 3 schools are not funded at the minimum required level

No fee schools are entitled to receive a minimum per learner amount of funding that is known as the “no fee threshold”. In 2016, the no fee threshold of minimum funding was set at R1 175 per learner per year. Quintiles 1, 2 and 3 schools must therefore receive funding from Provincial Education Departments (PEDs) at this minimum amount, while quintile 4 schools must receive at least R588 per learner and quintile 5 schools must receive at least R203 per learner. However, The DBE's School Monitoring Survey Report (last published in 2013) revealed troubling information showing that nationally, 53% of learners attended schools that were not funded at the minimum level of per learner funding or higher. This problem was most acute in Mpumalanga, Eastern Cape, KwaZulu-Natal and Limpopo. The DBE’s report concluded, “Considering that the Quintile 1, 2 and 3 schools are non-fee schools and completely dependent on government funding, these figures are a serious concern and require further investigation to ascertain the source of the problem and determine a viable solution.”

Can schools be classified accurately into quintiles?

Additional concerns have been raised around how schools have been classified into quintiles and whether the system adequately allocates no-fee status and commensurate funding to all schools serving poor learners. Because the quintile classification is based on the socio-economic conditions of the surrounding school communities rather than the circumstances of the learners who actually attend the schools, there is concern that schools which primarily serve poor learners in areas adjacent to wealthier neighbourhoods will be misclassified.

This problem can occur in urban areas where informal settlements or townships are situated near wealthier areas. It also affects learners who travel long distances from poor areas to better resourced schools in wealthier areas. The quintile system effectively ignores this reality.

Inaccurate classification of a school can have dire consequences for a school’s funding, yet the procedure for challenging a school’s quintile classification remains unclear.

Fee exemptions not being implemented

An important feature of school fee policy is the mechanism provided for in SASA which allows learners who have been accepted into a fee-charging public school but cannot afford the fees to apply for a fee exemption.

The *Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools*⁸⁰ sets out the procedures that must be followed by parents and school governing bodies (SGBs). Learner's parents are entitled to full exemption if school fees account for more than 10% of their combined annual gross income. The regulations further exempt certain children automatically from paying school fees, including orphans in orphanages and child-headed households, learners whose parents receive a social grant on their behalf such as the Child Support Grant, and learners in the care of foster parents.

However, questions remain over whether schools that have an interest in admitting fee-paying learners are acting appropriately when determining whether to admit poorer learners and approve fee exemptions. The Equal Education Law Centre deals with such cases on a regular basis and has undertaken litigation on behalf of single parents to challenge aspects of the process.

Also, while section 40(2) of SASA entitles parents who have been denied fee exemptions to appeal the SGB's decision to the head of department, the procedure for doing so is rarely clear or indeed communicated to affected parents.

In 2014, only 7% of learners benefitted from fee reductions, exemptions or partial bursaries (StatsSA, General Household Survey, 2015).

Fees continue to be the most cited reason for learner drop-outs

Despite the significant expansion of access to no-fee schools, school fees (in addition to other schooling costs) continue to act as a barrier to learner enrolment and have been found to contribute to South Africa's high drop-out rate prior to the completion of grade 12.

The General Household Survey found that 24% of persons aged 7 to 18 cited “no money for school fees” as the main reason for not attending an education institution in 2014. This figure indicates that fees and the cost of schooling, including quintile determinations, should be further explored and that no-fee and fee waiver policies and implementation efforts should be enhanced and monitored to ensure that learners are able to complete their schooling.

Further investigation is also required to understand which learners are unable to attend school due to fees or other financial costs, such as school uniforms, transportation and school stationary costs and how policies may be advanced to better address the needs of youth who are out of school due to financial reasons.

⁸⁰www.education.gov.za/Portals/0/Documents/Legislation/Regulations/GOVERNMENT%20GAZETTE,%2018%20OCTOBER%202006.pdf?ver=2008-03-05-111557-000.

Indicate the measures taken to make secondary education in its different forms, including technical and vocational education, generally available and accessible to all, including:

- (a) Concrete steps taken by South Africa towards progressively achieving free secondary education;⁸¹ and*
- (b) The availability of technical and vocational education, and whether it enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability.⁸²*

Indicate the measures taken to promote literacy, as well as adult and continuing education, in a life-long perspective.

Secondary education is also organised according to the quintile system, with no plans in place to achieve free secondary education for all.

The White Paper for Post-School Education and Training of 2014 introduced the implementation of community colleges established to cater for youth and adults who did not complete their schooling or who never attended school and thus do not qualify to study at a Technical and Vocational Education and Training colleges and universities. The White Paper describes a community college system characterised by multi-campus institutions that group together a number of existing public adult learning centres. Moreover, the policy commits to providing all community colleges with adequate infrastructure and a critical mass of full-time staff and proposes expanding the new campuses where demand necessitates. Community colleges under the policy will link directly with the work of public programmes, such as the Expanded Public Works Programme and the Community Works Programme, to provide appropriate skills and knowledge and work-integrated learning opportunities, while the colleges provide classroom and workshop-based learning. The White Paper envisages enrolment of one million people by 2030, a substantial increase over the 265 000 learners who attended the PALCs in 2011.

The Department of Higher Education and Training (DHET) further published its National Policy on Community Colleges on 3 July 2015, which lays out the policy framework for the Community Colleges envisioned in the Minister's 2014 White Paper. The National Policy highlights that it seeks to respond to finding that adults and young people who are outside of the formal economy and formal workplace and not in educational institutions are particularly disadvantaged and have few opportunities for access to first or second-chance learning and lifelong learning.

⁸¹ Ibid., para. 14.

⁸² Ibid., paras. 15-16.

While the new policy seeks to improve the quality, adaptability and flexibility of adult education services, including adult basic education, the policy lacks detail concerning a number of important considerations. These include how curricula for various subjects and fields of study will be developed, approved and assessed for quality; the qualifications and training that teachers and principals must attain to become employed at community colleges and how their posts will be allocated; how enrolment capacity will be determined and community outreach programmes will be developed and funded; the degree to which learning and teaching support materials will be made available to learners at community colleges; how subject offerings will be determined at community colleges; the quality of infrastructure that will be provided, such as classroom capacity, electricity and internet connectivity, physical accommodation for disabled learners, computer laboratories and libraries; and monitoring and accountability systems that will be put in place to ensure quality of programming and classroom instruction. Funding is also a concern and an issue that should be investigated further, as the policy does not make clear the extent to which the state will subsidise adult learners, particularly from poor and impoverished backgrounds, who enrol in community college programmes to address backlogs in education attainment. Other funding concerns involve the ability of the Community College system to gain sufficient capacity to quadruple enrolment to meet the Green Paper's goal of enrolling 1 million learners by 2030 while at the same time providing full-time staff and a more broad curriculum that is not only able to sufficiently prepare learners to pass the National Senior Certificate examination, but to also respond to community knowledge and job skill needs.

Indicate whether minority and indigenous children have adequate opportunities to receive instruction in or of their native language and the steps taken to prevent lower educational standards for these children,⁸³ their segregation in special classes, and their exclusion from mainstream education.

Section 29(2) of the South African Constitution provides that “everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable.” The Constitution further provides that “[i]n order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account (a) equity; (b) practicability and (c) the need to redress the results of past racially discriminatory laws and practices.” The DBE has interpreted this provision to mean that “although the constitution affords learners the right to learn in the language(s) of his or her choice, this right is tempered by the state's ability to provide for its implementation.”⁸⁴

Section 6 of the SASA authorises the Minister of Basic Education to determine norms and standards for language policy in public schools and empowers a school's SGB to determine its school's language policy

⁸³Ibid., para. 30.

⁸⁴ DBE (2010) The Status of the Language of Learning and Teaching (LOLT) in South African Public Schools: A Quantitative Overview p 20. Available at www.education.gov.za/Documents/Library/Reports/tabid/358/Default.aspx.

subject to the Constitution, SASA and provincial law. SASA further prohibits the practice of racial discrimination when implementing language policies and recognises sign language as a language of teaching and learning for deaf learners.

Section 6 of the SASA authorises the Minister of Basic Education to determine norms and standards for language policy in public schools and empowers a school's SGB to determine its school's language policy subject to the Constitution, SASA and provincial law. SASA further prohibits the practice of racial discrimination when implementing language policies and recognises sign language as a language of teaching and learning for deaf learners.

SUMMARY OF ISSUES

South Africa's National Education, Evaluation and Development Unit (NEEDU) has identified that a core problem with the DBE's language policy is that while the government advocates teaching children in their home languages, parents may, and increasingly do, opt for English or Afrikaans as the LOLT, rather than the home language that is used by the majority of learners attending the school.⁸⁵ The NEEDU study on the State of Literacy Teaching and Learning in the Foundation Phase found that a mismatch between LOLT and the learners' home language in many of the 133 primary schools visited during that study “renders visible the fact that a large number of learners are schooled in a language that is different to the one they speak at home.”⁸⁶

A school's choice of LOLT may also be further complicated by the school being attended by a learner population that is divergent in home background and home language, a problem that occurs in many schools in urban township areas. Not surprisingly, NEEDU found that “learners whose home language was different to the school LOLT found it difficult to understand their teachers” and that differences in LOLT and home language “made it difficult for [learners'] parents and guardians to assist them with homework.”⁸⁷ Other language-related challenges identified by NEEDU are differences in dialect between learners and teachers and difficulties that African home languages pose for mathematics vocabulary.

Other barriers to mother-tongue literacy are the lack of reading materials at many primary schools.

UNESCO has emphasised the need for improved access to materials, such as reading books, that support learners in the acquisition of reading skills in mother tongue language.⁸⁸

⁸⁵ NEEDU. 2013. National Report 2012: The State of Literacy Teaching and Learning in the Foundation Phase, p 32. Available At: www.education.gov.za/NEEDU/tabid/687/Default.aspx.

⁸⁶ Ibid, p 33. NEEDU found in its 2012 study that across the limited sample of 133 schools that the Foundation Phase LOLT matched the home language of most teachers and most learners in just over 70% of the schools visited.

⁸⁷ Ibid, p 34.

⁸⁸ UNESCO. 2013. General Education System Quality Assessment: Country Report South Africa. p 31. Available at www.education.gov.za/LinkClick.aspx?fileticket=jG5BCzd2IMk%3D&tabid=708&mid=2785.

Further concern has been raised around how the system should address language backlogs that negatively impact African home language learners, particularly at the secondary school level. Many secondary school learners who never properly learned to read, write and speak English at the primary school level are expected to learn and perform in English at the secondary level. The language policy, which focuses on transitioning learners to English at the primary school level, can therefore be extremely problematic and detrimental to learners who attended weak primary schools. Research into underperforming schools in the Western Cape identified inadequate language skills as a common challenge for many learners attending underperforming secondary schools who in some cases exhibited zero competence in comprehending English.⁸⁹ That study found that due to the absence of clear policies and guidelines on how to address these often times debilitating backlogs, schools dealt with these challenges in different ways, including switching back and forth between languages while teaching the curriculum. The Western Cape study found that the present LOLT policy was not working to address these backlogs, contributing to high repetition rates.⁹⁰

Another issue that poses a challenge for schools is the shortage of teachers qualified to teach Foundation Phase African home language. The DBE has emphasised the need to attract a greater number of prospective teachers to the profession that are qualified to teach foundation phase African home languages, stating that “the low levels of producing qualified educators at Higher Education Institutions has resulted in a dearth of African Language Foundation Phase teachers.”⁹¹ This shortfall in qualified teachers capable of teaching important foundation skills such as reading, writing and mathematics during the Foundation Phase in African home language is particularly concerning given that the vast majority of Foundation Phase learners speak African languages. While the DBE points to the Funza Lushaka bursary programme as improving the number of young teachers entering the profession, that programme fails to incentivise adequate numbers of teachers in needed subject areas, including languages.

SUMMARY OF RECOMMENDATIONS

The DBE should fund programmes that specifically incentivise prospective teachers to become trained in teaching African home languages to Foundation Phase learners

Foundation Phase learners should have improved access to sufficient quantities of reading materials in their home language to ensure that learners are able to achieve appropriate home language reading skills prior to transitioning to first additional language.

⁸⁹ Louw, W., Bayat, A., Eigelaar-Meets, I. 2011. A Report on Underperforming Secondary Schools in the Western Cape: Report 3: Exploring Repetition at Underperforming Schools. Cape Town: University of the Western Cape. p 14.

⁹⁰ Ibid.

⁹¹ DBE. 2013. Annual Report 2012/2013. Pretoria: Department of Basic Education. p 30. Available at: www.education.gov.za/DocumentsLibrary/Reports/tabid/358/Default.aspx.

The LOLT policy should be amended to accommodate learners who have graduated from primary schools without achieving sufficient levels of comprehension in English or Afrikaans to succeed at the secondary level. Programmes need to be developed and implemented to identify and address learner backlogs in English comprehension, particularly at the secondary school level.

Indicate the measures taken to ensure the same admission criteria for boys and girls at all levels of education,⁹² and to raise awareness among parents, teachers and decision-makers on the value of educating girls.⁹³

The South African Schools Act and the DBE's Admission Policy for Ordinary Public Schools govern the rights of learners and schools with respect to the development of school admissions policies and the implementation of admissions decisions.

Section 5 of SASA, which, among other things, empowers a school's SGB to determine its admissions policy, prohibits schools from unfairly discriminating against learners during the admissions process and prohibits public school SGBs, principals and other school administrators, from administering admissions tests related to the admission of any learners. Finally, no learners may be refused admission to a public school on the grounds that his or her parents are unable to pay, or have not paid, school fees, does not subscribe to the school's mission statement or has refused to enter into a contract waiving claims for damages arising out of the education of the learner.

The Department of Basic Education's admission's policy for ordinary public schools sets forth additional powers, responsibilities and limitations with respect to Provincial Education Departments (PEDs) and SGBs in terms of the administration, determination and implementation of admission policies and decisions. The policy also sets forth the admissions procedures that parents must follow when applying for admission to a school; extends the right of admission to non-citizens when certain conditions are met and addresses circumstances under which ordinary schools must accommodate learners with special education needs and the responsibilities of schools and HoDs to refer learners elsewhere when educational needs cannot be provided for.

HoDs are empowered under the admissions policy, after consultation with representatives from school governing bodies, to determine feeder zones for ordinary public schools in order to control the learner numbers of schools and to co-ordinate parental preferences. Once created, preference for school admission is

⁹² General comment 16, para. 30.

⁹³ Idem.

first given to learners whose parents live in the feeder zone, second to learners whose parents work in the feeder zone and third to other learners on a first come, first served basis.

A school's capacity determination is also relevant in admissions decisions since it enables schools to limit the size of their classrooms. This is particularly relevant for wealthier schools that, either through inheriting superior infrastructure or having constructed additional classrooms via school fee funds, are able to offer, among other things, smaller classrooms by limiting the number of learners admitted. Parliament amended SASA in 2007 to empower the minister to set norms and standards for school capacity in respect of the number of learners a school can admit. The Minister of Basic Education, however, has not exercised this power and as a result, conflicts have emerged amongst schools who have implemented their own capacity policies to limit the number of learners who may attend the school, provincial education departments who are tasked with the responsibility of ensuring that all learners are able to enrol in schools and parents and learners who seek to vindicate their rights to attend quality schools that are not overcrowded.⁹⁴

Indicate the measures taken to reduce the drop-out rates, at the primary and secondary levels, for children and young persons, in particular girls, children from ethnic minorities, indigenous communities and poorer households, as well as migrant, refugee and internally displaced children.

Despite the state's significant expansion of access to no-fee schools, school fees (in addition to other schooling costs) continue to act as barriers to learner enrolment and have been found to contribute to South Africa's high drop-out rate prior to the completion of grade 12.

District officials should be trained and qualified to work with data obtained from sources such as Annual National Assessments so trends may be identified and used to develop effective intervention strategies to improve learner performance and teacher skill and subject knowledge, and reduce drop-out rates.

The DBE has defined underperforming schools as secondary schools that have a pass rate of below 60% in the NSC examination and primary schools with more than 50% of learners performing at grade 3 or below on the literacy portion of the grade 3 and 6 ANA examinations.⁹⁵ Firstly, this interpretation fails to identify dysfunctional schools with high rates of learners who drop-out prior to taking the NSC examination, a common problem in a system where nationally, approximately 50% of learners who enter the system never sit for the NSC examination. Secondly, this criterion can lead to perverse incentives for schools to hold back learners or encourage them to drop-out in order to ensure a higher NSC pass rate. Secondly, the use of

⁹⁴ See eg *MEC for Education in Gauteng Province and Others v Governing Body of Rivonia Primary School and Others* [2013] CCT 135/12 described above where school provincial education department sought to force a school to enrol a learner in excess of the school's capacity policy.

⁹⁵ Equal Education & the Equal Education Law Centre. 2014. Basic Education Shadow Report: A Review of the Department of Basic Education's Performance in the 2013/14 Financial Year. Khayelitsha: Equal Education. p 25.

ANAs to determine underperformance can also be seen as a concern since ANA examinations are graded by the schools themselves rather than externally, leading to questions of whether such a system with such low levels of verification and oversight can be viewed as reliable and transparent given the incentives involved. Also concerning is the high rates of non-compliance by provinces with respect to their reporting obligations and the DBE's failure to take action against provinces who have failed to report on underperforming schools under their care. Following a request for information on provincial reporting on underperforming schools in 2012 by the Equal Education Law Centre, the DBE admitted that it had not received a single report from any provincial education department on the actions taken with respect to underperforming schools.⁹⁶ The national and provincial education departments' failure to comply with these reporting mandates is even more troubling considering that Section 58B had been in effect for five years when this oversight was first discovered and during that time over 1400 secondary suffered from pass rates below 60%.⁹⁷

⁹⁶ Ibid, at p 24.

⁹⁷ Ibid, at p 25.

3. Performance Monitoring Assessment Framework

Monitoring the progressive realisation of socio-economic rights requires the development of indicators which can be used to track the access, adequacy and quality of rights-enjoyment by people over time. The indicators need to be based on the core content of the right in question and then be aligned to data that is freely and easily available in annual surveys and data sets. This data must be capable of being decomposed (disaggregated) by region, race, gender and age – wherever possible and useful. This allows disparities between different population groups and geographical regions to be identified, and an assessment of the extent to which progress across demographics and regions has been made over time. The data should ideally also enable international comparative analysis.

The process of developing indicators was explained in the Inception Report submitted to the SAHRC in July 2016. This process has produced indicators for each of the rights contained in the Covenant, with the exception of the right to work (forthcoming in 2017). The indicators are a result of sustained and ongoing collaboration between SPII and the SAHRC over several years.

The indicators provide a performance monitoring assessment framework which will allow the SAHRC and other stakeholders to monitor and hold the state accountable for its progress in ensuring adequate access to the socio-economic rights provided for in the Covenant and the Constitution.

For each right in the Covenant, a table of indicators has been prepared based on research by SPII in collaboration with the SAHRC, as outlined in the Inception Report. A selection of the most relevant indicators for the core content of these rights have been populated where possible back to 2002 with the most recent available data. These indicators have also been analysed to establish successes, gaps and further opportunities for the expansion of adequate access to these rights.

3.1. ARTICLE 9 – THE RIGHT TO SOCIAL SECURITY

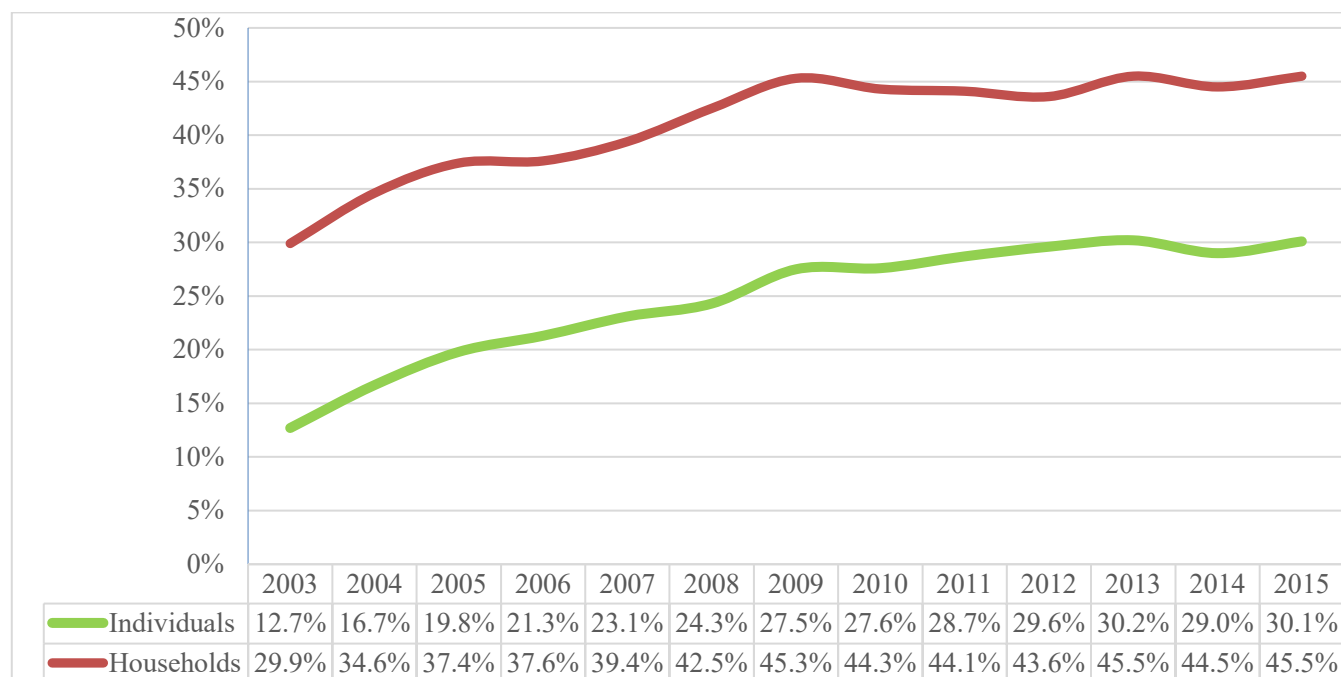
<u>ACCESS</u> INDICATORS	<u>ADEQUACY</u> INDICATORS	<u>QUALITY</u> INDICATORS
1. Percentage of households receiving grant (IES,GHS)	4. SASSA budget as percentage of GDP (Budget Review)	7. Percentage of grants processed in the target turnaround time set by SASSA (21 days) (SASSA)
2. Percentage of grant recipients by gender (SASSA)	5. Percentage increase of grant value relative to inflation (Budget Review)	

3. Percentage increase in no. of FCG (until the orphan crisis abides) (SASSA)	6. Percentage increase of income threshold relative to inflation (Budget Review, SASSA)	8. SASSA administrative costs as a percentage of budget for social assistance (Budget Review)
		9. Number of litigation cases against SASSA (SASSA)
		10. SASSA irregular expenditure (SASSA Financial Report)

SELECTION OF INDICATORS

Indicator 1: Percentage of individuals and households receiving social grants, 2003 – 2015

Data source: General Household Survey, StatsSA



The percentage of individuals and households receiving social grants is an important indicator to measure **access** to social assistance. Although the number of grant recipients has increased in absolute terms, the percentage of households receiving a grant as a percentage out of the total population has been slowing. The percentage of households receiving grant income increased steadily from 29.9% in 2003 to a 45.3% in 2009, after which the percentage dropped slightly before returning to 45.5% in 2015.

Indicator 5: Percentage increase of social grant values, 2012/13 – 2016/17

Data source: National Treasury Budget Reviews, 2012 – 2016

Percentage increase of grant value	2012/13	2013/14	2014/15	2015/16	2016/17
Old age grant	5.3%	5.0%	6.7%	4.4%	6.4%
Old age grant, over 75s	5.2%	4.9%	6.6%	4.4%	6.3%
War Veterans Grant	5.2%	4.9%	6.6%	4.4%	6.3%
Disability Grant	5.3%	5.0%	6.7%	4.4%	6.4%
Foster Care Grant	4.1%	3.9%	3.8%	3.6%	3.5%
Care Dependency Grant	5.3%	5.0%	6.7%	4.4%	6.4%
Child Support grant	5.7%	3.6%	6.8%	4.8%	6.1%
CPI inflation	5.6%	5.8%	5.6%	5.4%	6.6%

There appears to be very little reference to empirical evidence of actual need in the setting of grant values. Comparing annual increases in the value of grants to CPI inflation gives some indication of the extent to which the purchasing power of these grants has increased or decreased over time.

The increase of grant amounts is meant to keep pace with inflation, but as the table above shows, this has largely not been the case. This further dilutes the low value of the grants which typically support an entire household. It is also important to bear in mind that the inflation experienced by the poor is higher than that recorded by the national CPI. This is because the poor spend a disproportionate amount of their money on food and transport. Food price inflation hits the poor particularly hard, whilst the effect is less prominent in the national CPI basket due to the reduced weight attached to food prices.

Indicator 7: Percentage of grant applications processed within 21 working days

Data source: SASSA Annual Reports, 2013 – 2016

Percentage of grant applications processed within 21 working days					
2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
89%	90%	91%	91%	100%	100%

An indicator for accessing the quality of the service grant recipients receive is the percentage of grants processed in the target turnaround time of 21 days. SASSA has decided to classify all grants not processed within 21 days as ‘backlogged’. In 2010/11, 89% of new applications were processed within 21 days. This improved to 100% by 2014/15. As a result of hitting its target, SASSA reduced its target turnaround time to 15 working days in 2015/16, with a further target of progressively reducing the average turnaround time to 10 working days. This shows a commitment by the state to progressively realising this important component of the right to social security.

However, legislation needs to be updated to reflect these improved targets, as the Social Assistance Act of 2004 only requires SASSA to classify grants not processed within 90 days as backlogged. It is important to note that backlogs do continue to exist and some regions have bigger problems than others.⁹⁸

3.2. ARTICLE 11 – THE RIGHT TO THE CONTINUOUS IMPROVEMENT OF LIVING CONDITIONS

3.2.1. ARTICLE 11 – THE RIGHT TO ADEQUATE FOOD

<p><u>ACCESS INDICATORS</u></p> <p>Availability:</p> <ul style="list-style-type: none"> ▪ sufficiency of food supply to meet needs at national, provincial and household level <p>Access (physical and economic):</p> <ul style="list-style-type: none"> ▪ households' physical and economic ability to acquire or produce sufficient food <p>Stability (cross-cutting measure):</p> <ul style="list-style-type: none"> ▪ the stability of food availability and access over time, including in the face of national, local or household level shocks and stressors 	<p><u>ADEQUACY INDICATORS</u></p> <p>Utilisation:</p> <ul style="list-style-type: none"> ▪ Food safety and consumer protection ▪ Prevalence of food insecurity ▪ Nutritional adequacy 	<p><u>QUALITY INDICATORS</u></p> <p>Utilisation:</p> <ul style="list-style-type: none"> ▪ Health and nutritional outcomes
<p>NATIONAL MEASURES</p> <p>Availability</p> <ol style="list-style-type: none"> 1. Per capita food supply (FAO) 2. Per capita value of food production (FAO) <p>Stability</p> <ol style="list-style-type: none"> 3. Per capita food supply variability (FAO) 4. Per capita food production variability (FAO) 5. Food trade balance (value of food imports over exports for primary and processed agricultural products) (Trade Law Centre) <p>Economic access: affordability</p> <ol style="list-style-type: none"> 6. Annual food price inflation (Statistics South Africa) 	<p>NATIONAL MEASURES</p> <p>Utilisation: food safety</p> <ol style="list-style-type: none"> 13. a) number of imported food consignments and local food products inspected for food safety standards (National Regulator for Compulsory Specifications) 13. b) Number of vessels, factories and retail stores inspected for food safety standards (National 	<p>ANTHROPOCENTRIC MEASURES</p> <p>Utilisation: health and nutrition outcomes (adults)</p> <ol style="list-style-type: none"> 16. % of underweight male (BMI<20) and female (BMI<19) adults 17. % of overweight male and female adults (BMI>25)

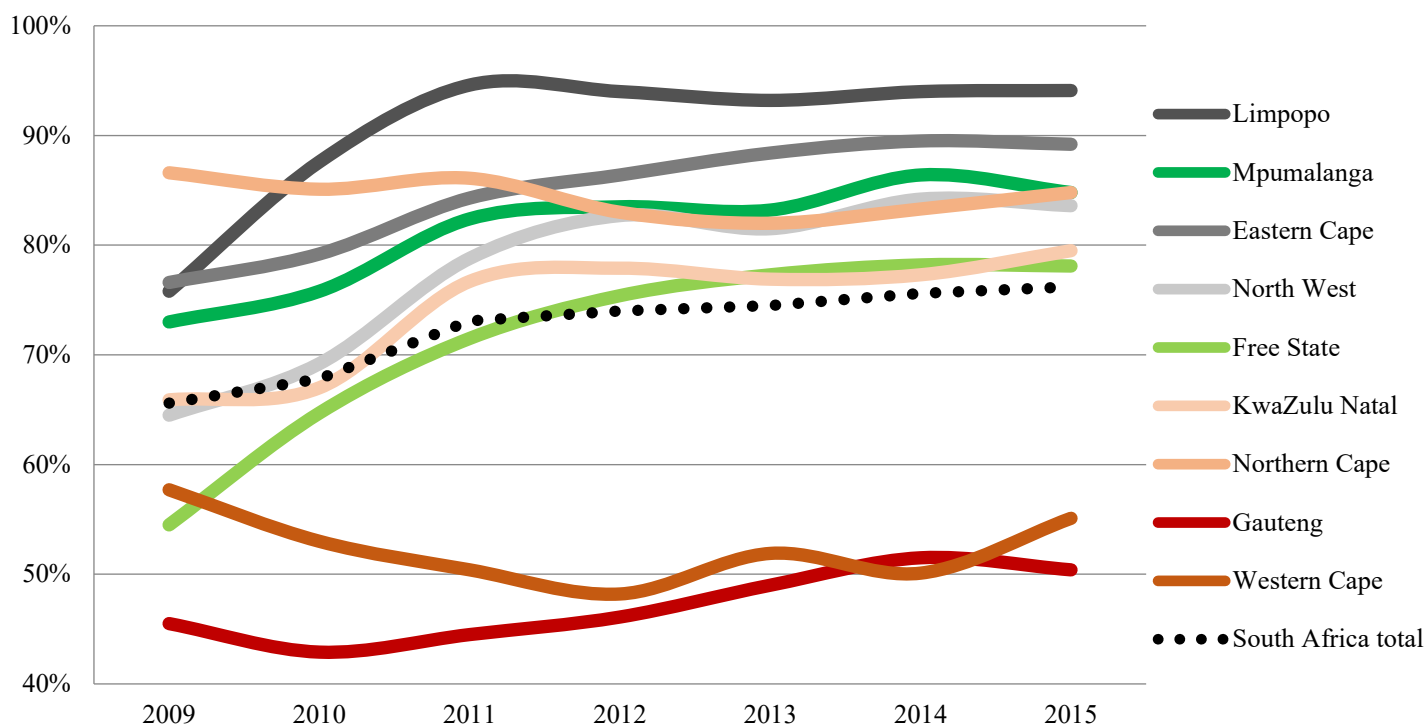
⁹⁸ Brockerhoff, 2013, p 38-39.

<p style="text-align: center;">HOUSEHOLD MEASURES</p> <p>Economic access: affordability and vulnerability</p> <p>7. Proportion of total household consumption expenditure spent on food, bottom 3 income deciles (Income and Expenditure Survey, Statistics South Africa)</p> <p>8. % of population below upper-bound poverty line (Income and Expenditure Survey and Living Conditions Survey, Statistics South Africa)</p> <p>Physical access: access to land for food production</p> <p>9. % of households who report land degradation in their communities or on their or neighbouring farms (General Household Survey, Statistics South Africa)</p> <p>10. % of households producing food crops (General Household Survey, Statistics South Africa)</p> <p style="text-align: center;">NATIONAL MEASURES</p> <p>Physical access: coverage of state nutrition programmes</p> <p>11. % of children accessing school nutrition programme (Department of Basic Education)</p> <p>12. % of children 6-11 months and 12-60 months receiving vitamin A supplements (Health Systems Trust and Department of Health)</p>	<p>Regulator for Compulsory Specifications)</p> <p style="text-align: center;">ANTHROPOCENTRIC MEASURES</p> <p>Utilisation: prevalence of food insecurity</p> <p>14. a) % of population who are experiencing hunger</p> <p>14. b) % of population who are at risk of experiencing hunger</p> <p>Utilisation: nutritional adequacy</p> <p>15. % of population with poor dietary diversity score (DDS<4)</p> <p>(National Food Consumption Survey, South African Social Attitudes Survey, South African National Health and Nutrition Examination Survey)</p>	<p>Utilisation: health and nutrition outcomes (women)</p> <p>18. % of females of reproductive age with vitamin A deficiency</p> <p>19. % of females of reproductive age with iron deficiency (anaemia)</p> <p>Utilisation: health and nutrition outcomes (children)</p> <p>20. % of stunted / severely stunted children (under 4)</p> <p>21. % of children wasting / extreme wasting (under 4)</p> <p>(National Food Consumption Survey, South African Social Attitudes Survey, South African National Health and Nutrition Examination Survey, National Income Dynamics Survey)</p>
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SELECTION OF INDICATORS

Indicator 11: Percentage of learners accessing national school nutrition programme, by province

Data source: Department of Basic Education, 2004-2013

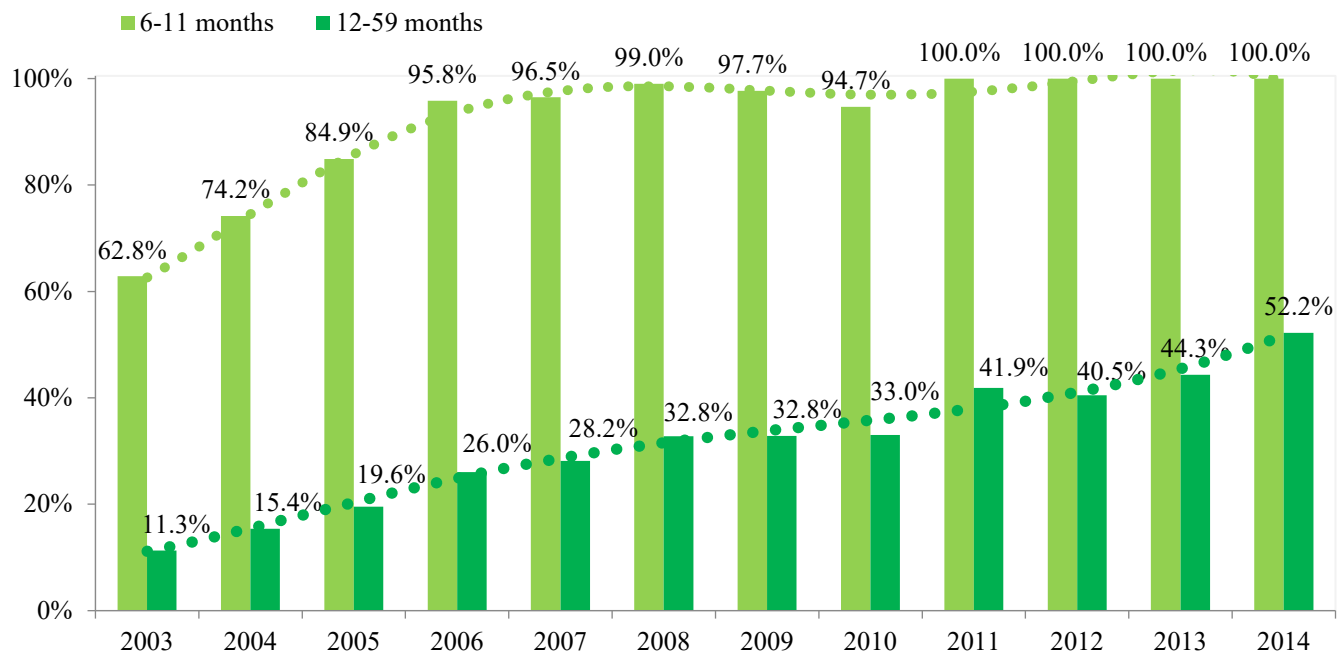


The National School Nutrition Programme (NSNP) is a nation-wide programme aimed at children in the most deprived primary and high schools in South Africa. It has a three-pronged approach to nutrition: school feeding schemes, food gardens and nutrition education.⁹⁹ This indicator shows the Northern Cape is the only province in which the percentage of learners reported to be receiving food from the NSNP was steadily decreasing between 2009 and 2012 (from 91% in 2009 to 70.2% in 2012). The Western Cape and Gauteng represent provinces with the lowest overall percentages of learners that are fed by the NSNP at schools. A positive for the NSNP has been its significant expansion beyond learners in quintile 1 to 3 schools, through its inclusion of all deserving learners throughout the basic education system. However a major challenge to the NSNP has been its potential to transform itself from a feeding programme to an anti-poverty strategy that would involve the broader community.

Indicator 12: Percentage of infants 6-11 months & 12-59 months receiving vitamin A supplements

Data source: Health Systems Trust / Department of Health, 2003-2012

⁹⁹ Langsford, C. 2012. Enough on our plate? The National School Nutrition Programme in two schools in Katlehong, South Africa. University of the Witwatersrand, 3. Available at: <http://wiredspace.wits.ac.za/jspui/bitstream/10539/11838/2/Catherine%20Langsford%20-%200001266A%20-%20MA%20research%20report.pdf>.



Two indicators are used in monitoring vitamin A supplementation to children aged 6-59 months. The first indicator, Vitamin A 6-11 months coverage (annualised), provides an indication of children aged 6-11 months who have received single doses of 100 000IU vitamin A supplement.¹⁰⁰ The second indicator, Vitamin A 12-59 months coverage (annualised), provides an indication of children aged 12-59 months who have received two doses of 200 000IU vitamin A supplement within a period of 12 months at 6 months interval.¹⁰¹ The denominator is multiplied by 2 because each child should receive supplementation twice a year. Facilities must ensure proper record keeping for the purpose of data verification processes.

In 2005, the NFCS showed that 9.3% of children aged 1 – 9 years were underweight, 18% were stunted and 4.5% were wasted.¹⁰² The NFCS showed that despite implementation of a national vitamin A supplementation programme and mandatory fortification of maize meal and wheat flour, 64% of children aged 1 – 6 years were vitamin A deficient.¹⁰³ Notably, the vitamin A supplementation programme coverage of children between 6 and 11 months is around 100% nationally as vitamin A has become part of a child's immunisation programme.¹⁰⁴ On the other hand, coverage of children between 12 and 59 months is less impressive. One explanation given by the North-West Annual Report blames mothers for not taking their children to facilities that administer vitamin A supplementation. Provinces, such as the Eastern Cape, have attempted to curb this by reaching out to crèches to have their children covered by the vitamin A supplementation programme.

¹⁰⁰ DoH. 2012. National Vitamin A Supplementation Policy Guidelines for South Africa, 5-7. Available at: www.adsa.org.za/Portals/14/Documents/DOH/Vit%20A%20policy%20guidelines%20OF%20S%20A%20-%20recent_1.pdf

¹⁰¹ Ibid, 6

¹⁰² Hendricks, M. 2009. *Op Cit*, p46.

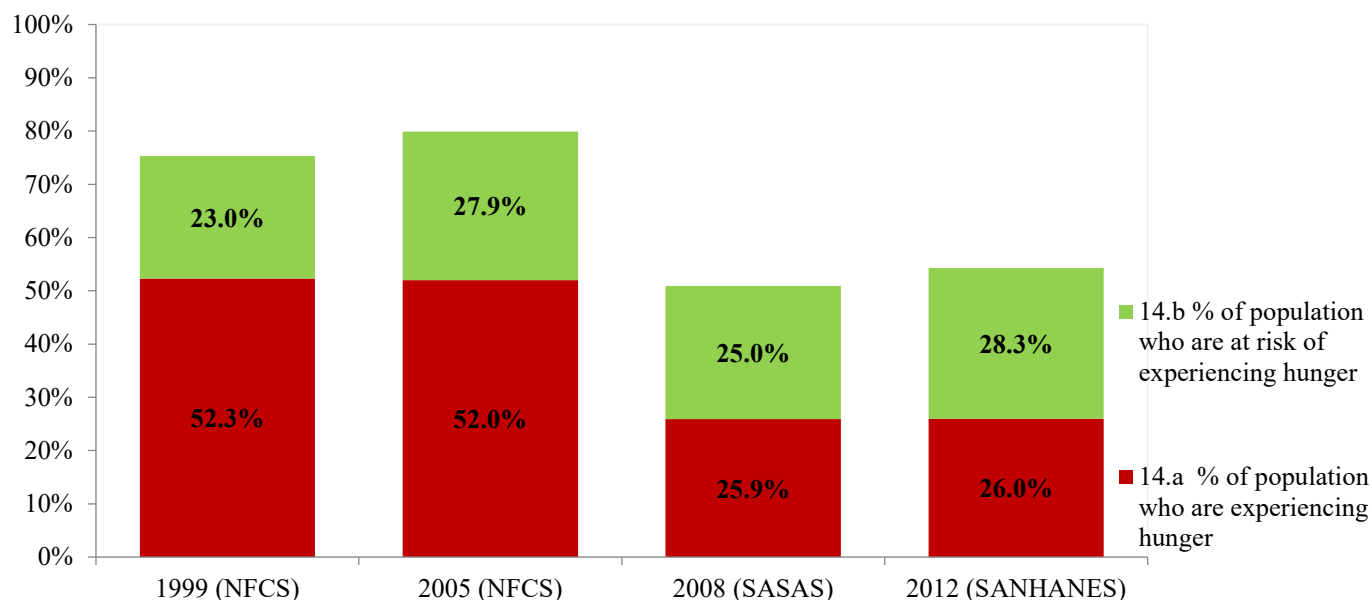
¹⁰³ Ibid, 46.

¹⁰⁴ Ibid.

Indicator 14a: Percentage of population who are experiencing hunger

Indicator 14b: Percentage of population who are at risk of experiencing hunger

Data source: National Food Consumption Survey (NFCS), 1999 & 2005, South African Social Attitudes Survey (SASAS) 2008, South African National Health and Nutrition Examination Survey (SANHANES-1), 2012



A decline in agrarian activities, including subsistence agriculture, and growing urbanization have meant that South Africans overwhelmingly rely on food purchases for their access to food rather than own production. This means that household cash income deficits are a major cause of inadequate access to food.¹⁰⁵ In 2012, the South African National Health and Nutrition Examination Survey (SANHANES) found that 45.6% of the population was food secure; whereas the 1999 NFCS found that 29.3% of the population was food secure. This illustrates that the country has made credible strides in the fight against food insecurity.

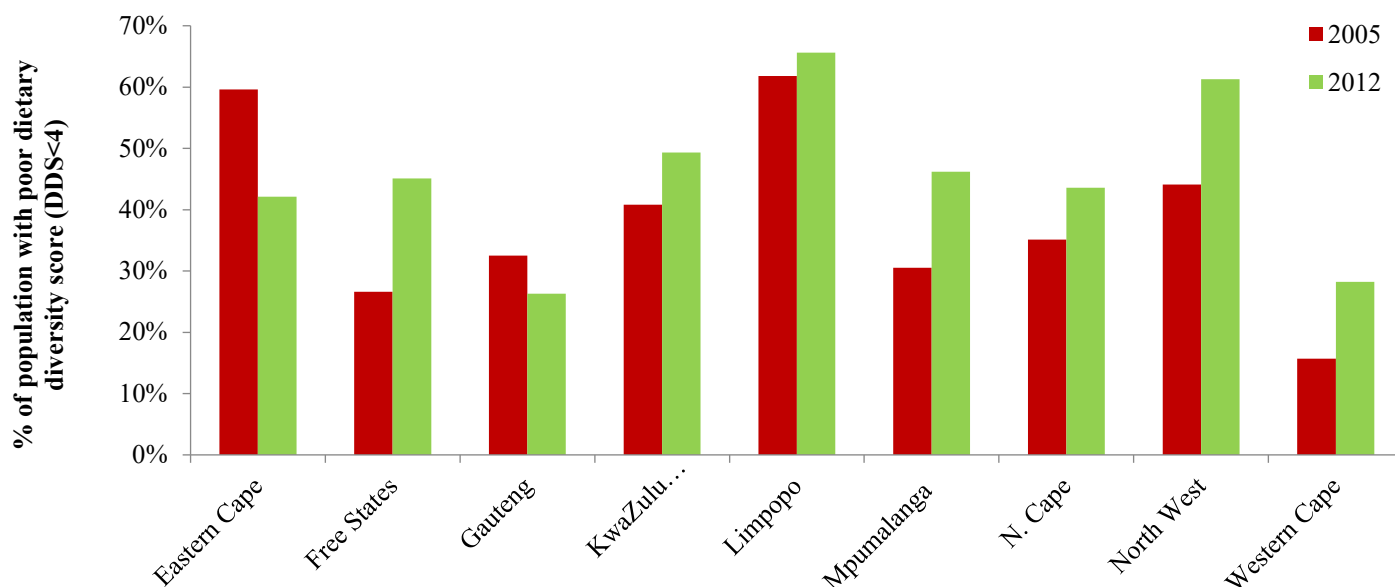
Despite this decline in the vulnerability to hunger of many South African households over the past two decades, the methodological challenges identified in assessing the country's food security with certainty must be noted. Recently, there has been a lack of clarity regarding food security and dietary diversity status of the South African population: This is due in part to large temporal differences in data collection on food security obtained by the different surveys. It is difficult to determine whether the higher levels of hunger in 2005 as determined by the NFCS (52%) compared with that of 2008 as determined by the SASAS (25.9%) reflect an improvement in food security or whether other factors, including differences in the sampling methodologies of the relevant surveys, may have influenced the outcomes. Moreover, when one compares the contrasting perspectives on the state of hunger in the country as generated by the General Household

¹⁰⁵ Baleta, H., & Pegram, G. 2014. Water as an input in the food value chain. Understanding the Food Energy Water Nexus. WWF-SA, South Africa, 10. Available at: www.environment.gov.za/sites/default/files/docs/waterasaninputintothefoodvaluechain.pdf.

Survey¹⁰⁶ (GHS) and the National Food Consumption Survey/s (NFCS), meanings of hunger, and likewise food (in)security, differ. Government should seek to address the questions that remain from the conflicting evidence and develop a comprehensive conceptual and methodological approach to measuring food security.

Indicator 15: Percentage of population with poor dietary diversity score (DDS<4)

Data source: NFCS 2005 & SANHANES 2012.



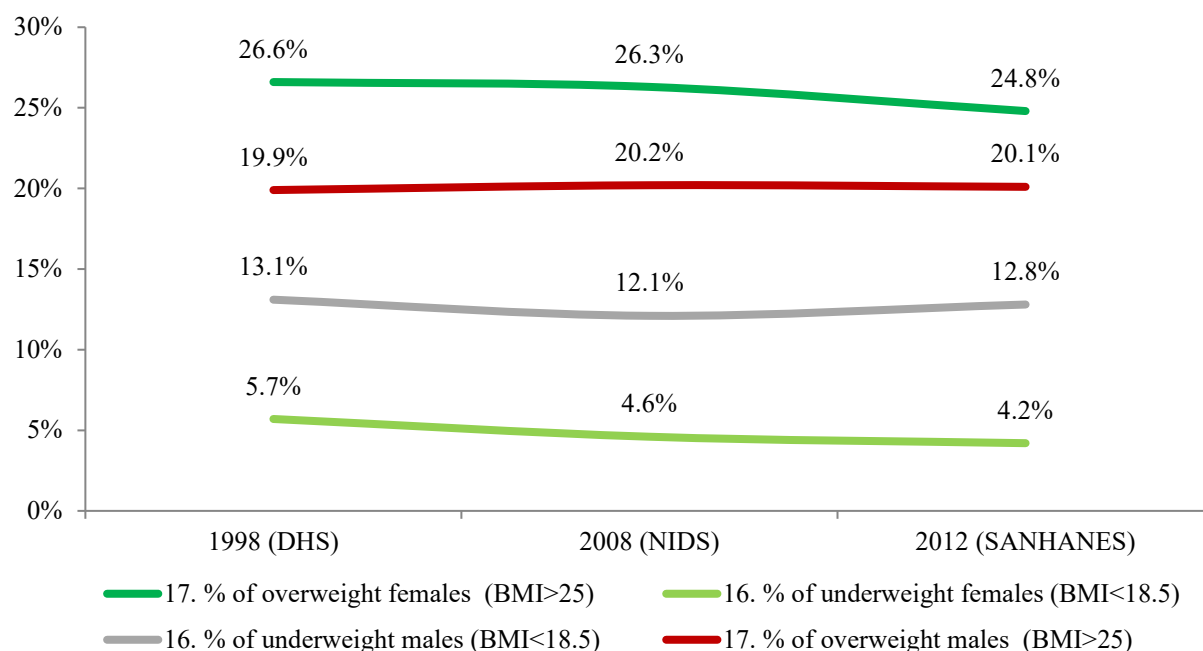
Generally speaking, South Africans do not have sufficient variety in their diet. This has been shown by the high prevalence of certain micronutrient deficiencies in the population. Confidently determining dietary diversity (DDS) in South African adults has not been possible to date since there are no national dietary data on adolescents or adults. Likewise, it needs to be realised that including more variety in the diet will in all likelihood increase the cost. Nationally, as shown by the NFCS and the SANHANES, there are significant provincial differences when it comes to DDS. The three provinces with the highest prevalence of poor dietary diversity (DDS <4) pegged above 50% were the Eastern Cape at 59.6% in 2005, although the province has since gained ground on its dismal showing by recording a 17.5% reduction by 2012. On the other hand, the Limpopo province has gone from bad to worse having regressed with the recorded DDS<4 in 2005 at 61.8% and 65.6% 2012. A further cause for concern is the major setback that took place in the North West province during the period under review – from 44.1% in 2005 to 61.3% in 2012.

Indicator 16: Percentage of underweight male and female adults (BMI<18.5)

Indicator 17: Percentage of overweight male and female adults (BMI>25)

Data source: NFCS 2005, National Income Dynamics Survey (NIDS) 2008, and SANHANES 2012.

¹⁰⁶ The GHS is an annual household survey specifically designed to measure the living circumstances of South African households. The GHS collects data on education, health and social development, housing, household access to services and facilities, food security, and agriculture.

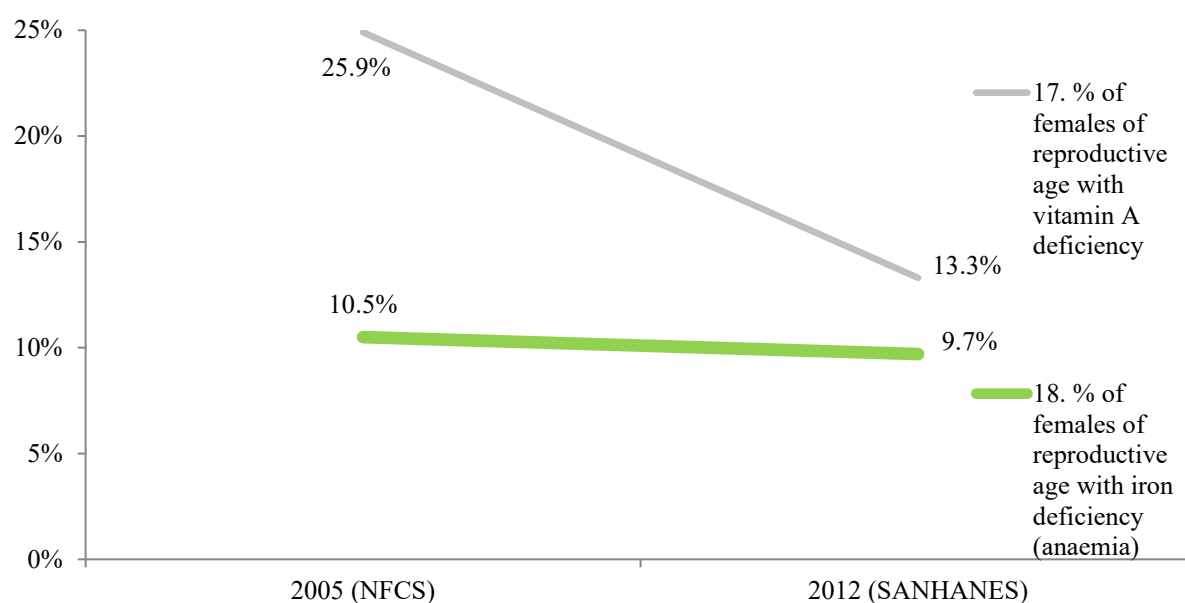


South Africa reflects the global trend of widespread overweight and obesity in adults. In South Africa, overweightness is increasing for men, while there has been a slight decrease for women since 1998, the figure remains high at almost a quarter of all women. The 2012 SANHANES found that levels of underweight are generally higher for males than females (12.8% versus 4.2%) and levels of overweight are higher amongst females (20.1% versus 24.8%). These sex differences in underweight and overweight hold almost all categories of age, education and location.

Indicator 18: Percentage of females of reproductive age with vitamin A deficiency

Indicator 19: Percentage of females of reproductive age with iron deficiency (anaemia)

Data source: NFCS 2005 and SANHANES 2012



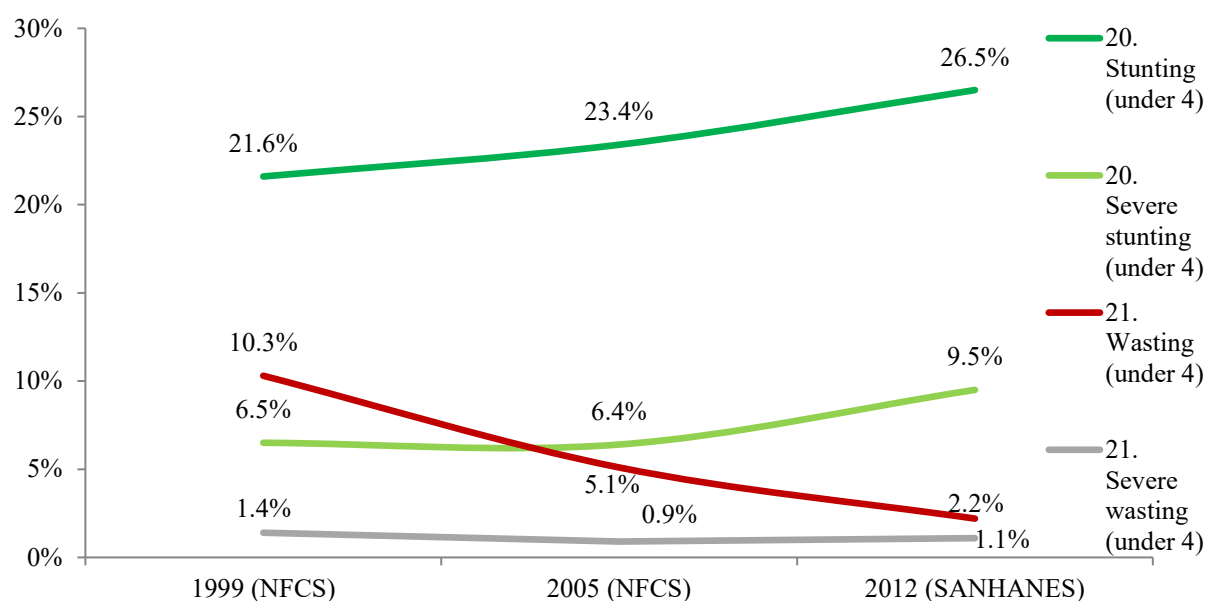
The most common nutrient deficiency in South Africa is vitamin A, a nutrient that is needed for maintaining vision and eye health, healthy embryonic development and the maintenance of the immune system, which is critical for resistance against disease.¹⁰⁷ South Africa has adopted multiple strategic approaches to prevent vitamin A deficiency, namely: food fortification, vitamin A supplementation and dietary diversification. Credible investigation into the consequences of vitamin A deficiency on maternal health and survival is yet to take place in South Africa. However, the country has gained success in reducing the prevalence of the number of females of reproductive age with vitamin A deficiency – a significant 12.6% decrease between 2005 and 2012.

Anaemia is considered to be an indicator of poor nutrition and poor health, and it is a marker of socio-economic disadvantage in many settings. Iron deficiency is thought to be responsible for at least 50% of all anaemia cases reported in South Africa.¹⁰⁸ In 2012, the SANHANES reported updated national anaemia and iron status data that paint a similar picture when compared to data from the 2005 NFCS. The SANHANES noted a slight reduction in iron deficiency anaemia in females of reproductive age at 9.7% - having improved by 0.8% from 2005 estimates - classifying it as of moderate public health importance.

Indicator 20: Percentage of children under 4 years with stunting and severe stunting

Indicator 21: Percentage of children under 4 years wasting or extreme wasting

Data source: NFCS 1999 & 2005 and SANHANES 2012



¹⁰⁷ Ottermann, B. 2013. South Africa's Hidden Hunger. Health24 Newspaper, p1. Available at: www.health24.com/Diet-and-nutrition/Nutrition-basics/South-Africas-hidden-hunger-20130411.

¹⁰⁸ Visser, J. 2013. 'Anaemia in South Africa: the past, the present and the future' Guest editorial, *SA Journal on Clinical Nutrition* 26(4), 166. Available at: <http://sajcn.co.za/index.php/SAJCN/article/viewFile/839/1094>.

Child malnutrition is a major contributor to child morbidity and mortality in South Africa and the country is yet to make credible strides in combating this issue. The SANHANES study of 2012 recorded 2.2% of children aged below four as underweight – a major improvement from the 10.3% that was documented in the 1999 NFCS. While there have been major improvements in the percentage of children with low weight for height, there has been a significant increase in the number of children who are stunted in South Africa. 9.5% of children under the age of four were classified as severely stunted and 26.5% were affected by stunting in the 2012 SANHANES. Juxtaposed with the 6.5% recorded for children affected by extreme stunting and the 21.6% for those affected by stunting in the 1999 NFCS – South Africa is losing the war on stunting. Coupled with the fact that a secondary analysis of the 1999 NFCS data found that 17% of 1 – 9-year-old children were overweight and obese¹⁰⁹, it becomes evident that South Africa's children are affected by a triple burden of under, over and mal-nutrition.

3.2.2. ARTICLE 11 – THE RIGHT TO WATER AND SANITATION

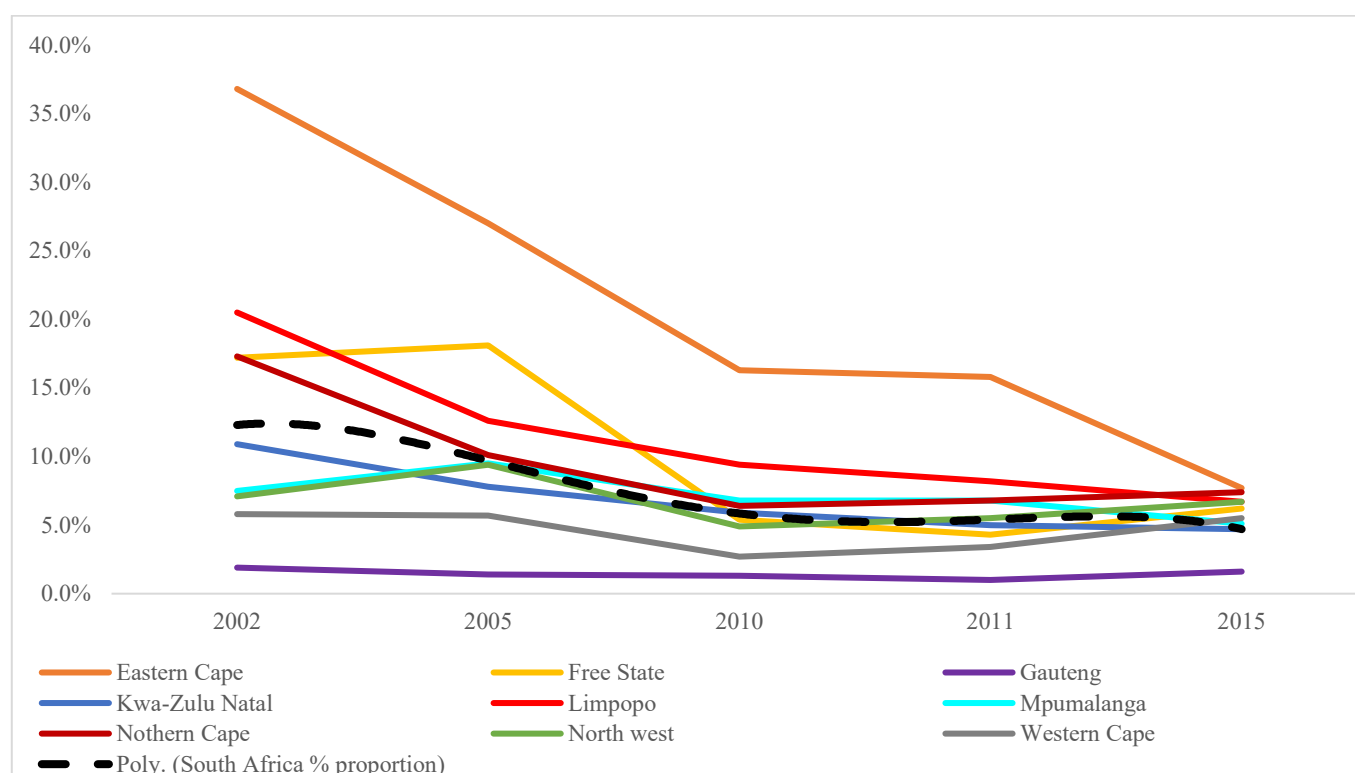
<u>ACCESS</u> INDICATORS	<u>ADEQUACY</u> INDICATORS	<u>QUALITY</u> INDICATORS
Economic Access (affordability) <ul style="list-style-type: none"> • Amount spent on water by lowest income decile vs highest income decile group • Number of households accessing free basic water and free basic sanitation Physical Access (water supply) <ul style="list-style-type: none"> • Number of households with water supply infrastructure of RDP standard • Access to free basic water • Access to free basic sanitation • Number of households with no sanitation • Type of toilet 	Availability: distribution <ul style="list-style-type: none"> • Alternative drinking water sources • Usability of sanitation facilities Availability: reliability <ul style="list-style-type: none"> • Number of water disconnections • Length of disconnections • Disruption in service • Removal of waste from shared bucket toilet 	Infrastructure <ul style="list-style-type: none"> • Service standard. • Frequency of disruption in sanitation facilities. Hygiene <ul style="list-style-type: none"> • Acceptability • Number of complaints about odour and taste • Type of sanitation facility

SELECTION OF INDICATORS

¹⁰⁹ Hendricks, M. 2009. Op Cit, p1

Indicator 5: Percentage of households with **no access** to improved sanitation or who use bucket toilets.

Data source: General Household Survey, 2002-2015



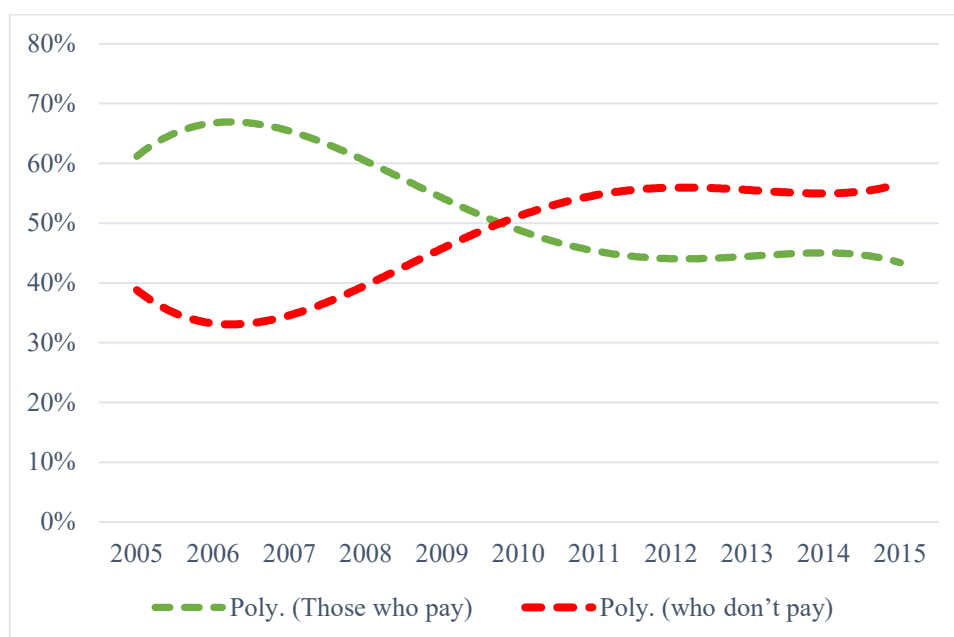
A bucket toilet is a basic form of a dry toilet which is portable. The bucket is located inside a dwelling, or in a nearby small structure or on a camping or other place that lacks waste disposal plumbing. The waste is usually collected through a municipal waste collection system or there is a private waste collector.

The ‘bucket system’ was implemented by the apartheid government prior to 1994. Since the transition to democracy, government has committed itself to providing access to improved sanitation for all people in all communities by 2014. However, by 2011, around 16% of households in the Eastern Cape Province had no access to sanitation or were using bucket toilets. This number has since gone down with 2015 figures with only around 7% of the residents still affected by no access to sanitation or the use of bucket toilets. This number is slightly higher than the national average figures which sit at 4.7% in 2015. Government still lags behind its 2005 targets that were made through the then Department of Water Affairs and Forestry (DWAF), now Department of Water and Sanitation (DWS) to eradicate all bucket toilets in formal areas by December 2007.¹¹⁰ As of 2015, a proportion of 5.4 percent of South African households still had no access to sanitation or were using bucket toilets as their form of sanitation.

Indicator 7a: Percentage of households that pay for water and those that do not pay water

¹¹⁰ Department of Water Affairs and Forestry (DWAF), “The National Sanitation Bucket Replacement Programme: Lessons learnt”, March 2008, in Tissington, K., 2011, Basic Sanitation in South Africa, SERI, p.5

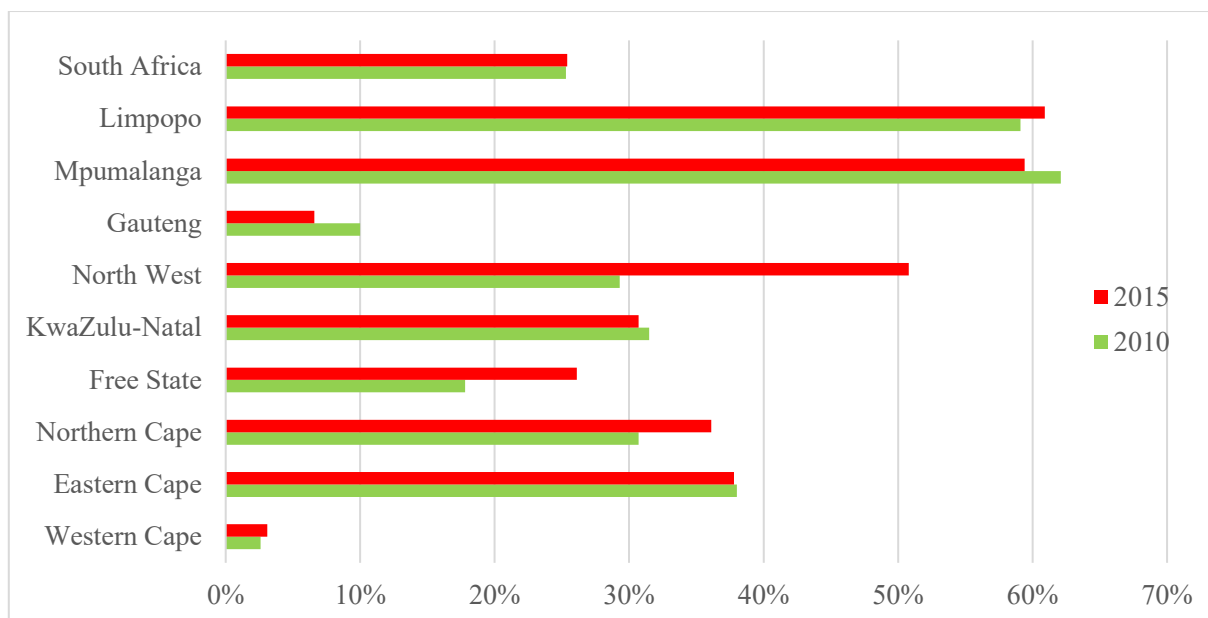
Data Source: General Household Survey, 2005-2015



This indicator shows the percentage of households who pay to get access to municipal water against those who do not pay for access. The Income and Expenditure Survey (IES) provides an account of total household income that is spent on water, and miscellaneous fees related to the dwelling. This classification does not show clearly how much is spent by household's exclusively on water alone, making it difficult to assess exactly how much of household incomes is spent on water and sanitation. This indicator shows a decrease in the percentage of households that pay for municipal water. Reasons for this vary, from bad municipal billing, to lack of proper follow-up and debt recovery by the municipality as well as the implementation of the Free Basic Services policy and the municipal indigent system which essentially recognises the inability of some households to pay for water and sanitation amongst other basic services.

Indicator 10: Number of water supply interruptions experienced by households by province, 2010-2015

Data Source: General Household Survey 2010-2015

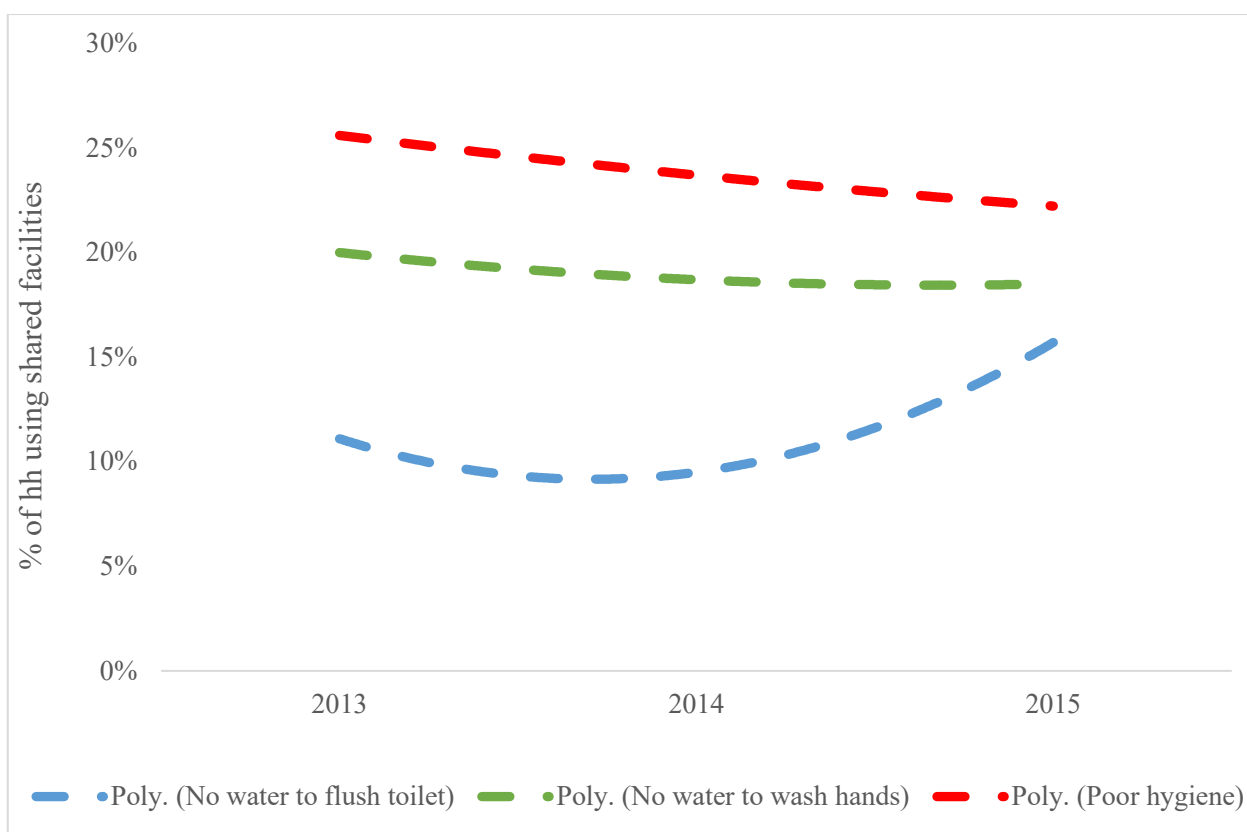


This indicator shows the percentage of households who reported water supply interruptions that lasted longer than 2 days in 2010 and 2015. The proportion of households that experienced water supply interruptions was highest in Mpumalanga and Limpopo during this period. Western Cape had the lowest proportion of households reporting water supply interruptions, followed by Gauteng. This indicator shows that more rural provinces are more likely to experience less reliable water and sanitation services. Nationally, over 25% of households reported to have experienced water supply interruptions that lasted longer than 2 days. This figure remained consistent between 2010 and 2015.

Municipalities do not record the number of water supply interruptions that occur, making it hard to understand the number of times these interruptions take place and what impact this has on the people's access to water. It is also not clear whether people are given enough time to find alternative water for consumption on the days that interruptions take place as municipalities also do not provide this information either. In order to monitor and evaluate and ultimately decrease the number and duration of interruptions, municipalities should immediately begin keeping records of the number of supply interruptions, their length and the reason behind them.

Indicator 11: Percentage of households using shared sanitation facilities who reported hygiene related issues, 2013-2015.

Data Source: General Household Survey, 2013-2015



The World Health Organization defines a shared sanitation facility as “sanitation of an otherwise acceptable type shared between two or more households. Water borne sanitation (flush toilet) is dependent on a reliable supply of clean water to ensure hygiene and good practices. It is vital that shared facilities are hygienic in order to minimise people’s chances of contracting disease and being exposed to unsafe and unhygienic facilities.

18.5% of households using shared facilities reported that they did not have water to wash their hands after using the sanitation facility in 2015, while 22.2% of users reported that their shared sanitation facilities were unhygienic. The percentage of households who reported no water to flush a shared toilet after using it increased from 11.1% in 2013 to 15.7% in 2015. This lack of water to wash hands after using toilet facilities poses a serious threat to good hygiene practices as well as the risk of contracting diseases.

3.2.3. ARTICLE 11 – THE RIGHT TO ADEQUATE HOUSING

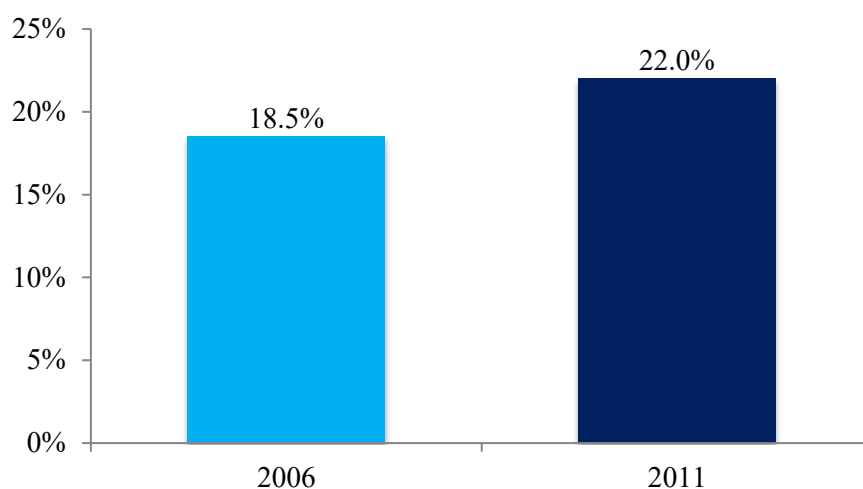
<u>ACCESS</u> INDCATORS	<u>ADEQUACY</u> INDICATORS	<u>QUALITY</u> INDICATORS
Housing general overview 1. Percentage of households living in different dwelling types (GHS) Government programmes and subsidies 2. Number of houses/units completed per year (DPME) 3. Number of houses upgraded in well-located informal settlements with access to secure tenure and basic services (DHS) 4. Number of affordable social and rental accommodation units provided (DHS) 5. Number of municipalities assessed for accreditation (DHS) 6. Number of accredited municipalities supported with implementation of post-accreditation process (DHS) Affordable housing market, 9 metros (City Mark) 7. Total residential property sales and registrations by affordability band 8. Percent change in total residential property sales by affordability band 9. Percent change in total number of residential properties by affordability band 10. Percentage of properties valued less than R500,000 11. South Africa Housing Price Gap	Tenure Status 16. Percentage of households who own or rent the dwelling they live in for different dwelling types (GHS) Adequacy of shelter 17. Percentage of households who describe the condition of the <u>walls</u> of their dwelling as weak or very weak for different dwelling types (GHS) 18. Percentage of households who describe the condition of the <u>roof</u> of their dwelling as weak or very weak for different dwelling types (GHS) Adequacy of service availability 19. Percentage of households whose main source of drinking water is from a piped tap, by province (GHS)	Transport 23. Percentage of annual household consumption expenditure spent on transport for bottom three income deciles (IES) Health outcomes 24. Average time it takes to get to nearest health facility (GHS) Education outcomes 25. Average time it takes child in household to get to school (GHS)

12. Total number and annual percentage change in the number of bonded transactions for the affordable market	20. Percentage of households who describe their main source of drinking water as not safe to drink, by province (GHS)	
Affordability, household costs		
13. Rent/mortgage cost per month for different dwelling types (GHS)		
14. Percentage of household consumption expenditure spent on housing, water, electricity, gas and other fuels for bottom three income deciles (IES)	21. Percentage of households whose main sanitation facility is a flush toilet (GHS)	
15. Percentage of household consumption expenditure spent on housing, water, electricity, gas and other fuels, across income deciles, by province (IES)	22. Percentage of households connected to a mains electricity supply (GHS)	

SELECTION OF INDICATORS

Indicator 14: Percentage of household consumption expenditure spent on housing, water, electricity, gas and other fuels for bottom three income deciles, 2006 –2011.

Data source: Income and Expenditure Survey (StatsSA), 2006 – 2011.

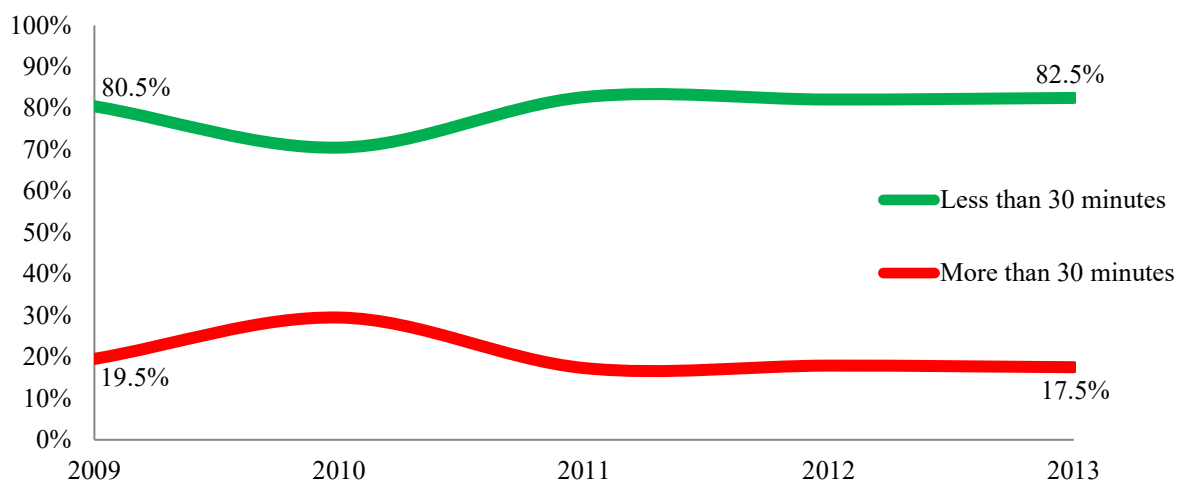


Households earning less than R22,007 per year were spending a higher proportion of that income on essential household goods and services in 2011 than in 2006. This in fact reflects a general trend across income deciles. In broad terms, this change reflects rising costs for housing, water, electricity, gas and other

fuels, but is also linked to the stagnant wage trends lower-income groups have seen during this period, while inflation has ranged from 4% - 11.5%.

Indicator 24: Average time it takes to get to nearest health facility, 2009 - 2013

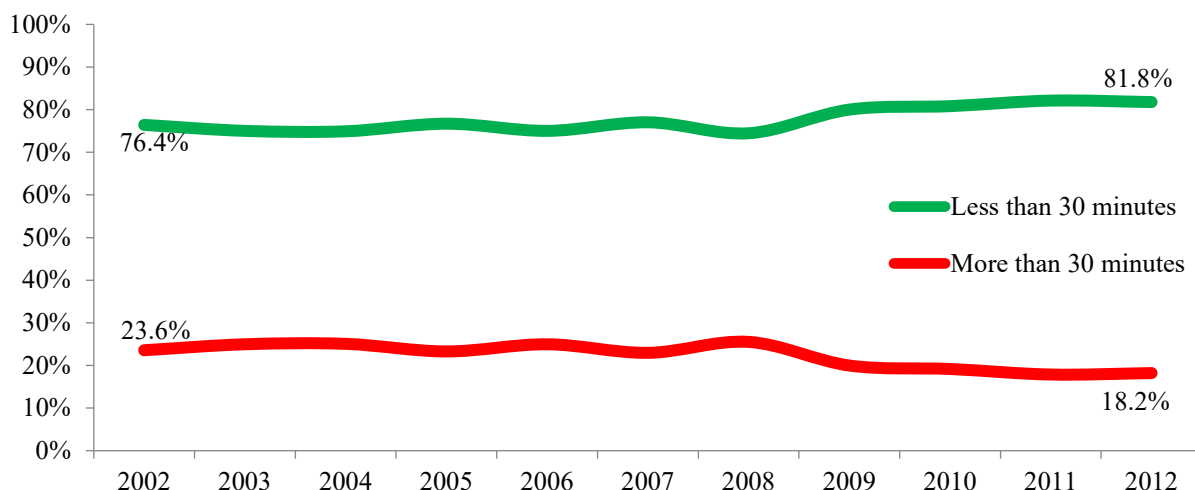
Data source: General Household Survey (StatsSA), 2009 – 2013.



Slightly more South African's lived within 30 minutes of a health facility in 2013 compared to 2009.

Indicator 25: Average time it takes a child in household to get to school, 2002 - 2012

Data source: General Household Survey (StatsSA), 2002 – 2012.



There has been a gradual increase in percentage of children who take less than 30 minutes to get to school, from 76.4% in 2002 to 81.8% in 2012.

3.3. ARTICLE 12 – THE RIGHT TO HEALTH

<u>ACCESS</u> INDICATORS	<u>ADEQUACY</u> INDICATORS	<u>QUALITY</u> INDICATORS
1. Average time it takes to get to the nearest public health care facility (GHS)	3. Number of health facilities (DHIS, NDoH - AHS)	12. % of stillbirths per 1000 of live births (DHIS – 2011)
2. % of population not on medical aid (GHS)	4. Useable beds per 1 000 population (DHIS)	13. % of neonatal mortality per 1000 births (DHIS)
	5. % of medical practitioners per 100 000 population (PERSAL)	14. % of perinatal mortality per 1000 births (DHIS)
	6. % of professional nurses per 100 000 population (PERSAL)	15. % of maternal mortality per 100 000 live births (maternal mortality ratio) (DHIS)
	7. % of dental practitioners per 100 000 population (PERSAL)	16. Crude death rate (deaths per 1000 population) (StatsSA)
	8. % of psychologists (as opposed to psychiatrists) per 100 000 population (PERSAL)	17. Infant mortality rate (deaths under 1 year per 1 000 live births)
	9. % of users that do not use the nearest health facility due to lack of adequate medication (GHS)	18. % of population (age 15-49) estimated to be HIV positive (StatsSA)
	10. % of Professional Nurse posts vacant (PERSAL)	19. % of total deaths attributed to AIDS related causes (StatsSA, ASSA)
	11. % of Medical Practitioner posts vacant (PERSAL)	20. % of users of public health services highly satisfied with the service received (GHS)
		21. Average number of visits per person per year to PHC facility (DHIS)
		22. Life expectancy (StatsSA)
		23. Under 5 mortality rate (deaths per 1000 population)

SELECTION OF INDICATORS

The following table provides information from the World Bank on changes in key health indicators from 2005 – 2010.

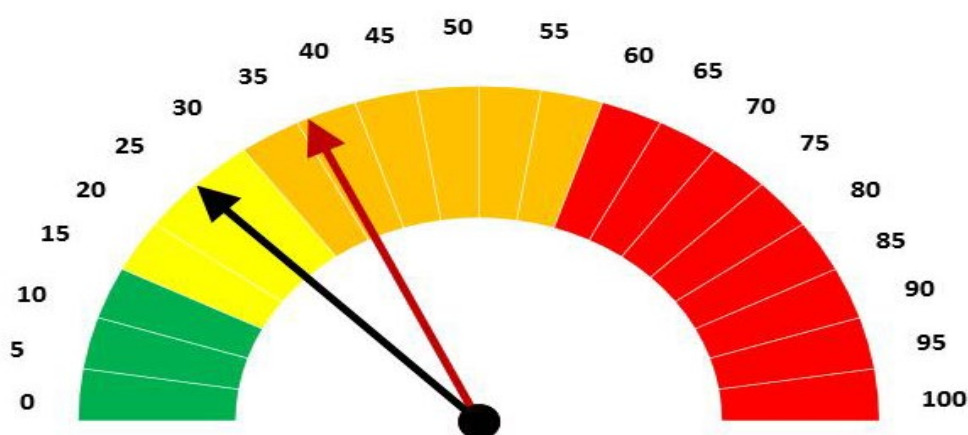
Population statistics		2005	2006	2007	2008	2009	2010
Population, total (millions)		47.2	47.7	48.2	48.8	49.3	50
Population growth (annual %)		1.1	1.1	1.1	1.1	1.1	1.4
Birth rate, crude (per 1000 people)		23	23	22	22	21	21
Death rate, crude (per 1000 people)		15	15	15	15	15	15
Fertility rate, total (births per woman)		2.7	2.6	2.6	2.5	2.5	2.5
Life expectancy at birth, total (years)		51	50	50	50	51	52
Mortality rate, infant (per 1,000 live births)		53	49	47	45	43	41
Mortality rate, under-5 (per 1,000)		80	76	70	66	61	57

The *time it takes to get to the nearest public health facility* is an important indicator to measure access to health care. Public clinics and hospitals should be built in close proximity to communities to allow for quick access to health care, especially in cases that require emergency treatment. According to the GHS data, in 2010 the average time it took for individuals to access the nearest public health facility was 36 minutes. There was a slight improvement in 2011 with the average time taken to get to the nearest public health facility reducing to 25 minutes.

Indicator 1: Average travel time to nearest public health facility, 2010-2011

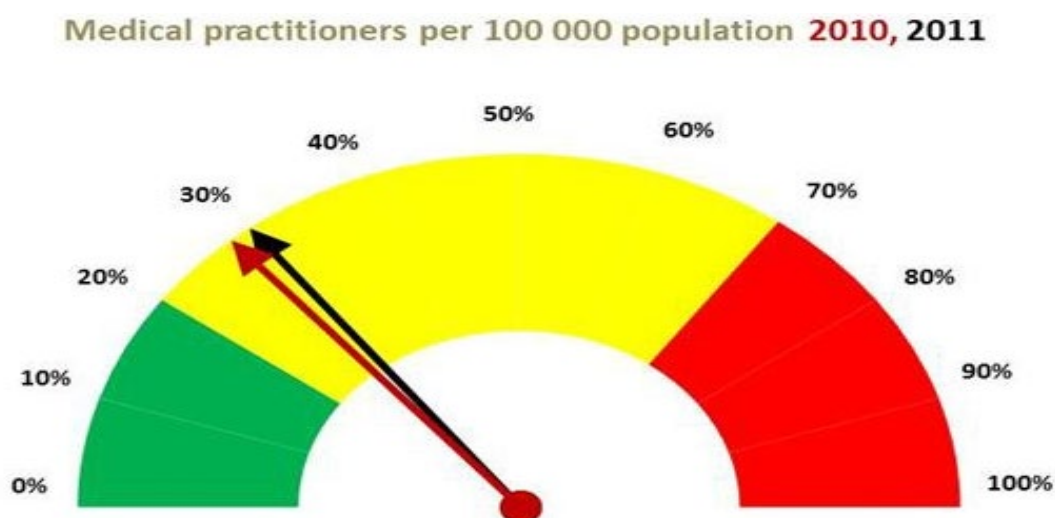
Data source: General Household Survey, 2010-2011

Average travel time to nearest public health facility 2010, 2011



Indicator 5: Percentage of medical practitioners per 100 000 population, 2010 – 2011

Data Source: PERSAL, 2010 – 2011

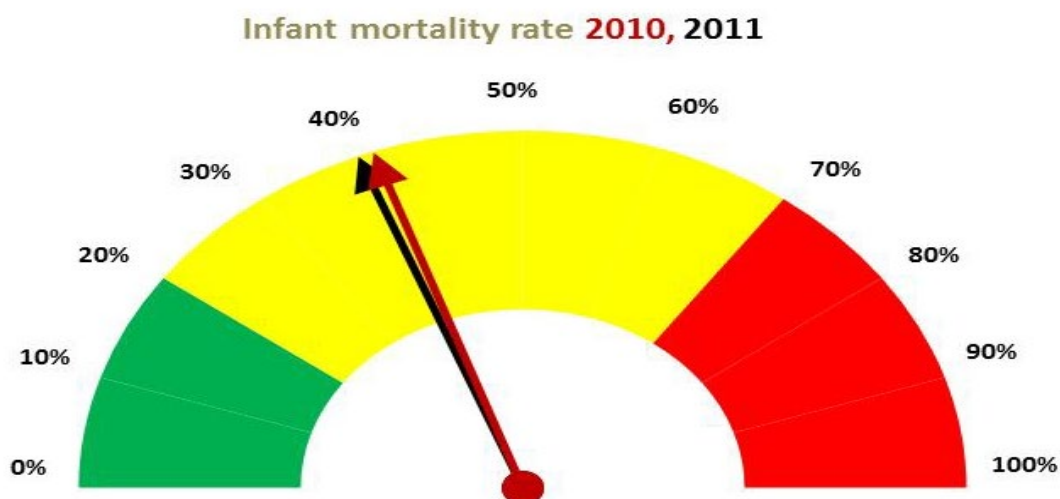


From this analysis it is evident that South Africa has an overall shortage of doctors. The data shows that in 2010 there were only 27 300 doctors per 100 000 population (27.3%), and 29 000 per 100 000 population (29%) in 2011, indicating a slight increase.

Socio-economic indicators for South Africa indicate that the mortality rate for infants has been on a downward spiral since 2005. However, the numbers are still very high. *Infant mortality rate (deaths under 1 year per 1 000 live births)* is an important measure of the quality of health outcomes over a period of time. In 2010 for example, there were 391 infant deaths per 1000 live births (39.1%). This ratio decreased marginally to 379 deaths per 1000 live births in 2011 (37.9%). This is presented in the indicator below.

Indicator 17: Infant mortality rate, 2010 – 2011

Data Source: Health Systems Trust, health indicators, 2010 – 2011



3.4. ARTICLE 13 – THE RIGHT TO EDUCATION

<u>ACCESS</u> INDICATORS	<u>ADEQUACY</u> INDICATORS	<u>QUALITY</u> INDICATORS
<p>SCHOOL ATTENDANCE RATES – Measures ability of learners to access schools.</p> <ul style="list-style-type: none"> • Percentage of 5 year-old children attending educational institutions by province (<i>GHS</i>). • Percentage of 5 year-old children enrolled in Grade R. • Enrolment in Grade R and Gross Enrolment in Grade R in ordinary schools. <ul style="list-style-type: none"> ◦ Percentage of Grade 1 learners who received formal grade R -(<i>DBE</i>) • Percentage of 7-to-15-year-olds attending educational institutions by province and gender (<i>GHS</i>). • Percentage of 7-to-15-year-olds not in school by gender, province and population group. 	<p>SPENDING INDICATORS – Measures extent to which investment in education has occurred.</p> <ul style="list-style-type: none"> • Household education spending (<i>DBE</i>) • General government education spending (<i>DBE</i>) <ul style="list-style-type: none"> ◦ Spending on education by national and provincial education departments in nominal terms and as Percentage of GDP • Percentage of learners in schools that are funded at the minimum level as defined by the Norms and Standards for School Funding (<i>NSMS</i>) 	<p>SCHOOL COMPLETION RATES – measures progress in educational attainment rates.</p> <ul style="list-style-type: none"> • Percentage of learners who obtain a Grade 12 Matric certificate (<i>DBE</i>). <ul style="list-style-type: none"> ◦ Can track learners through system to determine completion rate. • Percentage of youth no longer in school who have completed Grade 9 (<i>GHS</i>) • Percentage of youth no longer in school who have completed Grade 10 (<i>GHS</i>) • Percentage of youth no longer in school who have completed Grade 11 (<i>GHS</i>) • Percentage of matric graduates who qualify to attend higher education (<i>DBE</i>) • Percentage of higher education attendees who complete their degrees (Would be interesting to separate this out by quintile of secondary school)

<ul style="list-style-type: none"> Percentage of 16 to 18-year olds not attending school (<i>GHS</i>) <ul style="list-style-type: none"> Statistics reflecting reasons for not attending school taken from GHS Persons aged 20 and older who have completed grade 12 by race – GHS Grades 8 to 12 enrolment (<i>DBE</i>) 		<ul style="list-style-type: none"> NSC pass rate by gender (<i>DBE</i>) Percentage of girls who fall pregnant while in school and complete matric.
<p>TRANSPORTATION – Measures physical accessibility</p> <ul style="list-style-type: none"> Percentage of learners who commute more than 30 minutes to school (<i>GHS</i>) Percentage of learners who commute more than 5km to school (<i>GHS</i>) Percentage of learners who receive subsidised transportation to and from school Percentage of drop-outs who list transportation as a reason for drop-out (<i>GHS</i>) Percentage of learners who take mode of transportation to get to school (<i>GHS</i>) 	<p>TEACHER QUALITY – Measures effectiveness of education system in providing professional qualified teachers who are skilled in both curriculum content and pedagogical knowledge.</p> <ul style="list-style-type: none"> Percentage of qualified teachers by province (PERSAL) Learner-to-teacher ratio <ul style="list-style-type: none"> Percentage of learners in classes with no more than 40 learners (<i>NEIMS</i>) Teaching time and teacher absenteeism (<i>HSRC, SACMEQ III, NSMS</i>)– Percentage of teachers absent from school on an average day Percentage of schools that have qualified maths and science teachers. Teacher knowledge - Percentage of teachers meeting required content knowledge levels (<i>SACMEQ III and TIMSS</i>) Teacher Supply v. Demand <ul style="list-style-type: none"> Measurements of graduates going into the teaching programme – particularly in needed subjects such as maths and science – <i>this</i> 	<p>REPETITION AND DROP-OUT RATES – Measures the system's efficiency and ability to prepare and motivate learners to succeed at the next level of education.</p> <ul style="list-style-type: none"> Statistics measuring learner drop-out rates, age of dropout and last grade completed. Statistics measuring grade repetition rates. <ul style="list-style-type: none"> Percentage of grade 12 learners who are older than 18 (<i>DBE</i>). Percentage of learners who turned 12 in the previous year and are currently enrolled in grade 7 (or higher) - <i>DBE</i>

	<p><i>Could also be a quality indicator showing whether the system is graduating enough qualified graduates to supply needs.</i></p> <ul style="list-style-type: none"> • The average hours per year spent by teachers on professional development activities – (NSMS) • SUPPLY: <ul style="list-style-type: none"> ◦ Number of qualified teachers, teachers aged 30 and below, entering the public service as teachers for first time – (DBE) ◦ Percentage of schools where all teaching posts have been filled (Annual School Survey) • Percentage of learners who complete the entire curriculum – (DBE – measured in NSMS) • Percentage of Schools where allocated teaching posts are filled (NSMS) 	<ul style="list-style-type: none"> ◦ Enrolment patterns for youths showing how many youth enrolled in each grade over time (GHS 2009 to 2011 and DBE) ◦ Percentage of learners repeating current grade (GHS) • Percentage of learners who completed primary school and did not enrol in secondary school (DBE)
NUMBER OF INSTITUTIONS <ul style="list-style-type: none"> • Number of primary schools by province and quintiles (DBE – Annual Ordinary Schools Survey) • Number of secondary schools by province and quintile (DBE – Annual Ordinary Schools Survey) • Number of schools by province with Multi-Grade classrooms (DBE – Annual Ordinary Schools Survey) 	SCHOOL INFRASTRUCTURE – Measures effectiveness of provision of adequate school infrastructure to all public schools NEIMS <ul style="list-style-type: none"> • Percentage of schools with inadequate classroom space <ul style="list-style-type: none"> ◦ Percentage of schools with class sizes over 40 learners (NEIMS and DBE) • Percentage of schools built from mud structures. • Percentage of schools with a functioning library (NSMS) • Percentage of schools without a stocked science laboratory • Percentage of schools without access to a viable source of water supply • Percentage of schools without electricity • Percentage of schools without adequate sanitation facilities 	LITERACY RATES – Measures <ul style="list-style-type: none"> • Percentage of persons aged 15 to 24 who are literate (GHS defines literacy as having completed grade 7). • Percentage of persons aged 20 years and older who are literate (GHS)

	<ul style="list-style-type: none"> • Percentage of schools without a school hall • Percentage of schools without access to sports/recreational facilities • Percentage of schools without access to internet • Percentage of schools without access to a telephone • Percentage of mud schools • Percentage of schools in compliance with Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure 	
FEES – Measures economic accessibility <ul style="list-style-type: none"> • Percentage of Primary school learners attending no-fee schools (<i>DBE - AOSS</i>) • Percentage of secondary school learners attending no-fee schools (<i>DBE - AOSS</i>) • Percentage of 7 to 18-year olds who list no money for school fees as the reason for not being enrolled in school (<i>GHS</i>) • Percentage of learners unable to attend school due to inability to pay other educational costs (ie transport, stationary, uniforms (DBE Annual NSNP Report, GHS) • Number of learners who have school fees waived due to inability to pay per 	ACCESS TO LTSM (LEARNING AND TEACHING SUPPORT MATERIALS) – Measures effectiveness of national and provincial education departments to provide adequate textbooks and books to learners and teachers so effectiveness learning and teaching may take place <ul style="list-style-type: none"> • Percentage of Grade 6 learners with sole use of their own text books – from SACMEQ 2000 and 2007. Also investigated in TIMSS in 2002 and 2011 <ul style="list-style-type: none"> ◦ School Monitoring survey in 2011, though statistically incomparable, asked learners whether they have access to books and then counted books present. Shows access to textbooks by province. • Percentage of households that experience a lack of books at school as a problem by province – (<i>GHS</i>) 	PERFORMANCE / TEST OUTCOMES – measures the impact education inputs on education outcomes. <ul style="list-style-type: none"> • ANAs – administered since 2012 but contain issues in how the test was composed and executed that make the results unreliable and unable to be compared across years. <ul style="list-style-type: none"> ◦ Tests show how girls perform relative to boys ◦ Has the ability to provide monitoring and support in the form of identifying areas where intervention is needed and holding schools, and

<p>province (<i>Need to research potential data sources or prepare PAIA request</i>)</p>	<ul style="list-style-type: none"> • Compare to NEEDU report on Primary schooling that stressed need for at least one reading book for each week of the year so children learn to read through variety and not just repeating. • Percentage of learners with access to required textbooks in all grades and all subjects (<i>DBE - NSMS</i>) • Percentage of learners with access to required workbooks (<i>DBE - NSMS</i>) • Total no. of books allocated per learner by province. • Provincial textbook deliver (<i>DBE Annual Report</i>): <ul style="list-style-type: none"> ◦ No. of book shortage ◦ No. of Books with wrong language shortages ◦ Total No. of Books Shortage as ratio to learner by province. 	<p>primary schools in particular, accountable for learner performance.</p> <ul style="list-style-type: none"> • Matric – statistics regarding number who wrote the exam, passed the exam and pass rate by province, quintile, gender and race where possible (<i>DBE</i>). <ul style="list-style-type: none"> ◦ Proportion of passes that obtained higher certificate admission, diploma admission and bachelor's admission. ◦ Passes and quality of passes for selected subjects <ul style="list-style-type: none"> ▪ Number and percentage of Grade 12 achieving 50Percentage or higher in mathematics and physical sciences. • INTERNATIONAL TESTING <ul style="list-style-type: none"> ◦ SACMEQ test results measuring outcomes in 2000 and 2007 (2013 results should also come out soon) ◦ TIMSS (Trends in International Mathematics and Science Study) – administered to grades 8 and 9 in 2002 and grade 9 in 2011.
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		<ul style="list-style-type: none"> PIRLS (Progress in International Reading Study)
ECD <ul style="list-style-type: none"> Percentage of 0 – 4 year olds attending educational institutions by province (<i>GHS</i>) 	SCHOOL NUTRITION PROGRAMMES – Measures effectiveness of nutrition programmes reaching learners so school aged children may have access to nutrition and that basic nutrition needs do not interfere with teaching and learning from taking place. <ul style="list-style-type: none"> Number of learners in schools benefitting from National School Nutrition Programmes (<i>DBE – National School Nutrition Programme Annual Reports</i>) 	UNEMPLOYMENT RATES – Measures the ability of the education system to prepare learners for employment. <ul style="list-style-type: none"> Statistics regarding how various levels of education completion impact /correlate with employment rates. Employment by highest level of education (<i>GHS</i>). Percentage of unemployed who dropped-out after failing matric examination. Percentage of unemployed who attained matric certification. Employment by industry and level of education (<i>National and Provincial Labour Market Trends</i>)
DISABILITY – Measures extent to which learners with disabilities have access to basic education	SCHOOL MANAGEMENT, OVERSITE AND SUPPORT – Measures effectiveness of national and provincial oversight of schools <ul style="list-style-type: none"> Percentage of schools producing a minimum set of management documents at a required standard (<i>DBE - NSMS</i>) 	HIGHER EDUCATION – Measures effectiveness of education system in terms of qualifying graduates for post-matric education and preparing them to succeed.

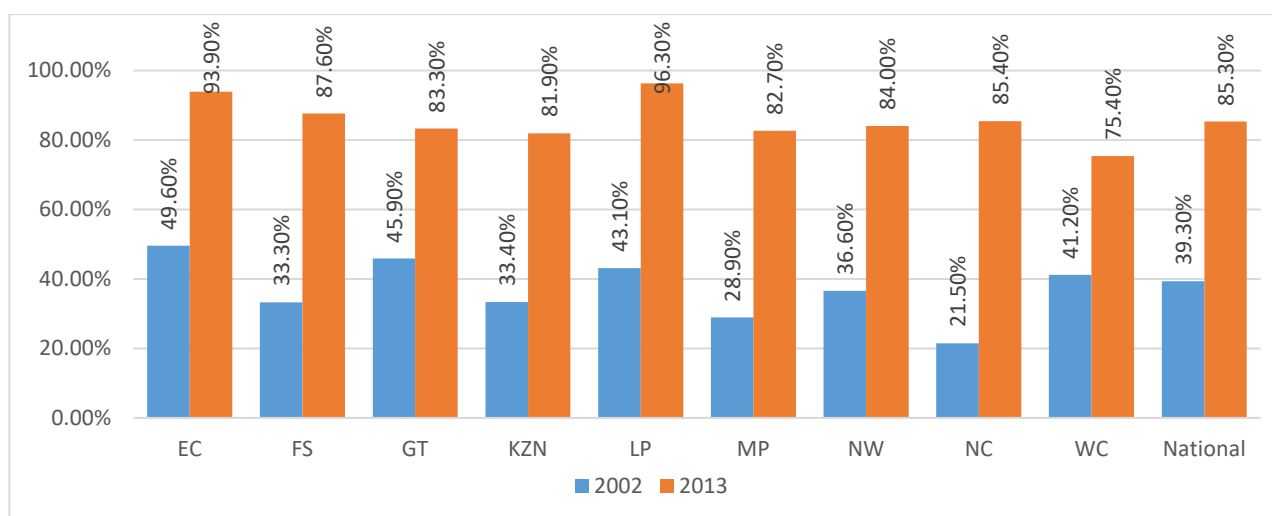
<ul style="list-style-type: none"> • Percentage of 7 to 15-year olds with a disability who attend educational institutions (<i>GHS</i>). • Percentage of 16 to 18-year olds with disabilities who attend educational institutions (<i>GHS</i>) 	<ul style="list-style-type: none"> • Percentage of schools where School Governing Body meets minimum criteria in terms of effectiveness – (<i>National School Monitoring Survey</i>) • Percentage of schools visited at least twice a year by district officials (including subject advisors) for monitoring and support purposes (<i>DBE, National School Monitoring Survey</i>) • Percentage of school principals rating the support services of districts as being satisfactory (<i>DBE – NSMS</i>) 	<ul style="list-style-type: none"> • Student participation rates for individuals aged 18 to 29 by population group (<i>DHET</i>). • Higher education participation rates by race (<i>DHET</i>) • Graduation rates by race and subject studied (<i>DHET</i>)
<p>School Safety – Measures government's effectiveness in terms of providing access to schools that are safe and where violence or threat of violence does not interfere with the learners' ability to access schools.</p> <ul style="list-style-type: none"> • Percentage of learners who experienced corporal punishment at school (<i>GHS</i>) • Percentage of learners who report having been assaulted or fear being assaulted while at school or while en route to school. 	<p>Motivation</p> <ul style="list-style-type: none"> • Ways to measure learner, teacher and administrator motivation – <i>may be wish list item</i>. Various reports, including the DBE's Schools that Work Report and the NEEDU report, highlight the need for teachers and principals to be motivated and confident that they can succeed – <i>motivated schools and staff as indicator for success</i>. <ul style="list-style-type: none"> ◦ Could possibly measure by looking at school day – motivated schools tend to have longer school days with extra teaching time. <p>LANGUAGE – Measures ability of education system to offer effective instruction to primary learners in learner' home languages</p> <ul style="list-style-type: none"> • Percentage of primary school learners who have access to educational instruction in home language in grades 1 – 3 (<i>DBE, Annual Ordinary Schools Survey</i>). 	

SELECTION OF INDICATORS

Indicator 1.1: The proportion of 5 year-old children attending an educational institution

Description: This indicator measures the proportion of 5 year-old children enrolled in educational institutions. This indicator is calculated by dividing the total number of 5 year-old children enrolled in educational institutions by the number of 5 year-olds in each province using General Household Survey data. 5 year-old enrolment figures are noteworthy because they demonstrate the extent to which children residing in various provinces are accessing Grade R prior to entering Grade 1.

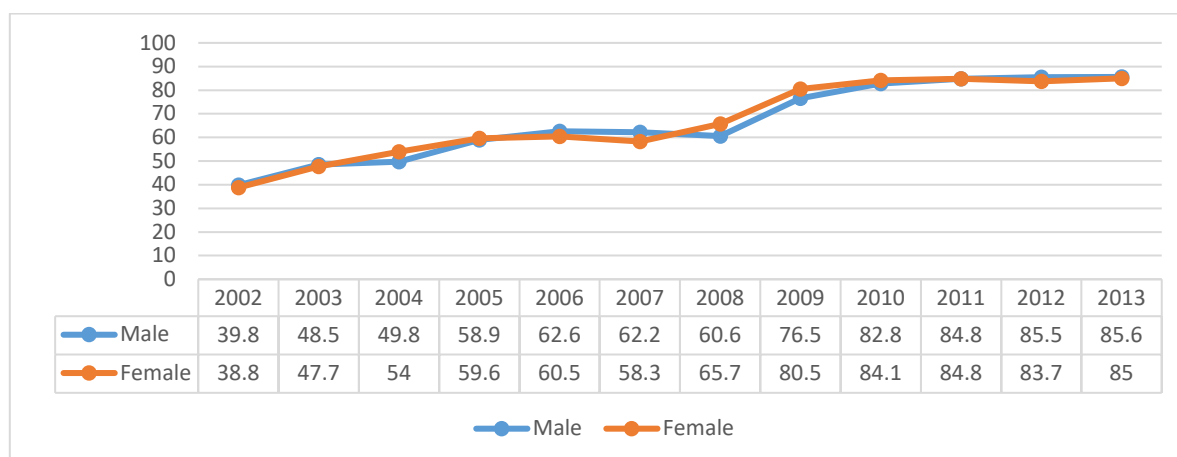
Data Source: GHS 2002, 2013



Indicator 1.2: The proportion of 5 year-old children attending educational institutions by gender

Description: This indicator measures the percentage of 5 year-old children attending an educational institution by dividing the number of 5 year-old learners cited as enrolled in an educational institution by the total number of 5 year-olds in the population using GHS data. This indicator is important because it shows the extent to which 5 year-olds are accessing educational institutions prior to attending grade 1.

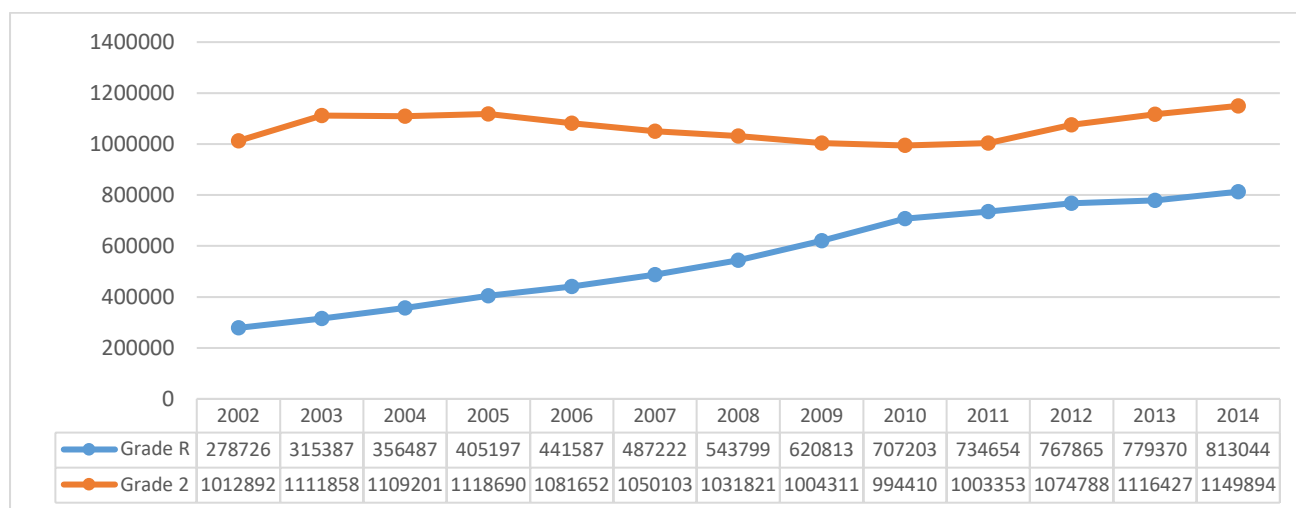
Data Source: General Household Survey, 2002 – 2013



Indicator 1.3: The number of learners enrolled in Grade R in Public and Independent Schools

Description: This indicator measures the enrolment numbers of Grade R learners in public and independent schools using DBE administrative enrolment data taken from SNAP Surveys. The graph below compares the enrolment of grade R against the number of learners enrolled in grade 2.

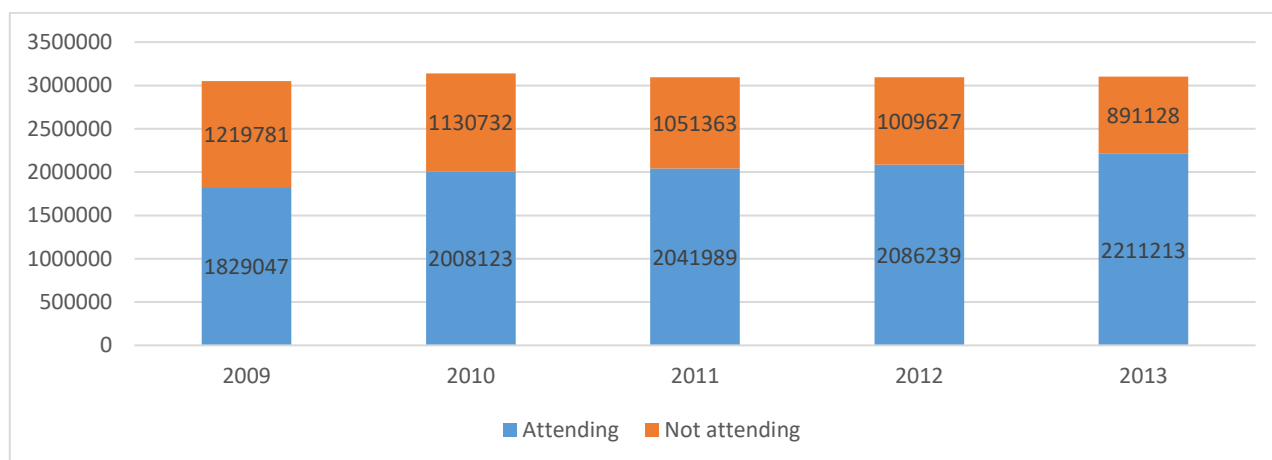
Data Source: DoE and DBE SNAP Survey Data published in Education Statistics in South Africa at a Glance, 2002 – 2009 and School Realities 2010 - 2014



Indicator 1.4: The number of 3 to 5 year-old children attending an ECD facility

Description: This indicator measures the number and proportion of children aged three to five years-old attending educational institutions using GHS data. This indicator is noteworthy given the emphasis that the National Planning Commission has placed on developing ECD programmes that enable all children to access at least two years of schooling prior to attending Grade 1.

Source: DBE Focus on Schooling 2013 using GHS data 2009 – 2013

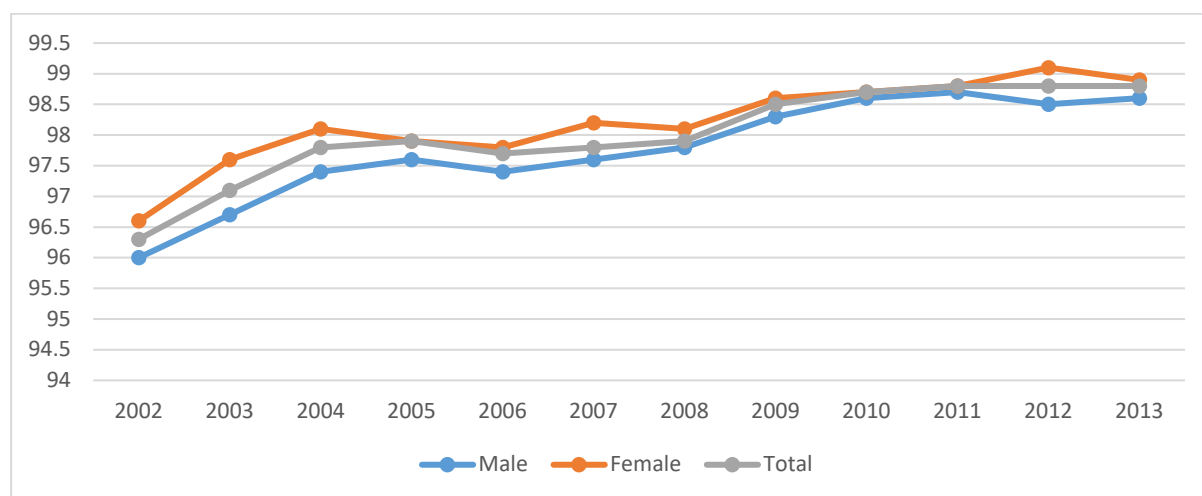


DBE administrative data in Indicator 1.4 show that enrolment in Grade R has increased dramatically between 2002 and 2014, from 278,726 to 813,044. GHS data similarly show an increase in 5 year-old attendance at educational institutions from 39.3% in 2002 to 85.3% in 2014. Moreover, enrolment rates are virtually identical for girls and boys. Interestingly, the data show that poorer provinces, such as the Eastern Cape and Limpopo have higher rates of 5 year-old children attending educational institutions than wealthier provinces such as the Western Cape and Gauteng. Rates of 3 to 5 year-olds who attend educational institutions have increased between 2009 and 2013 from an estimated 60% of 3 to 5 year-olds attending educational institutions in 2009 to approximately 71% attending educational institutions in 2013.

Indicator 2: The proportion of 7 to 15 year-old children attending educational institutions by gender

Description: This indicator measures the proportion of 7 to 15 year-old children enrolled in schools using GHS data. The indicator is calculated by dividing the number of children in that age cohort who indicated that they were enrolled in school by the total number of children of that age cohort. The significance of this indicator is that it tracks the extent to which learners are attending educational institutions during the compulsory schooling phase.

Source: GHS, 2002 – 2013; DBE calculations published in Focus on Schooling 2013, at p. 15.



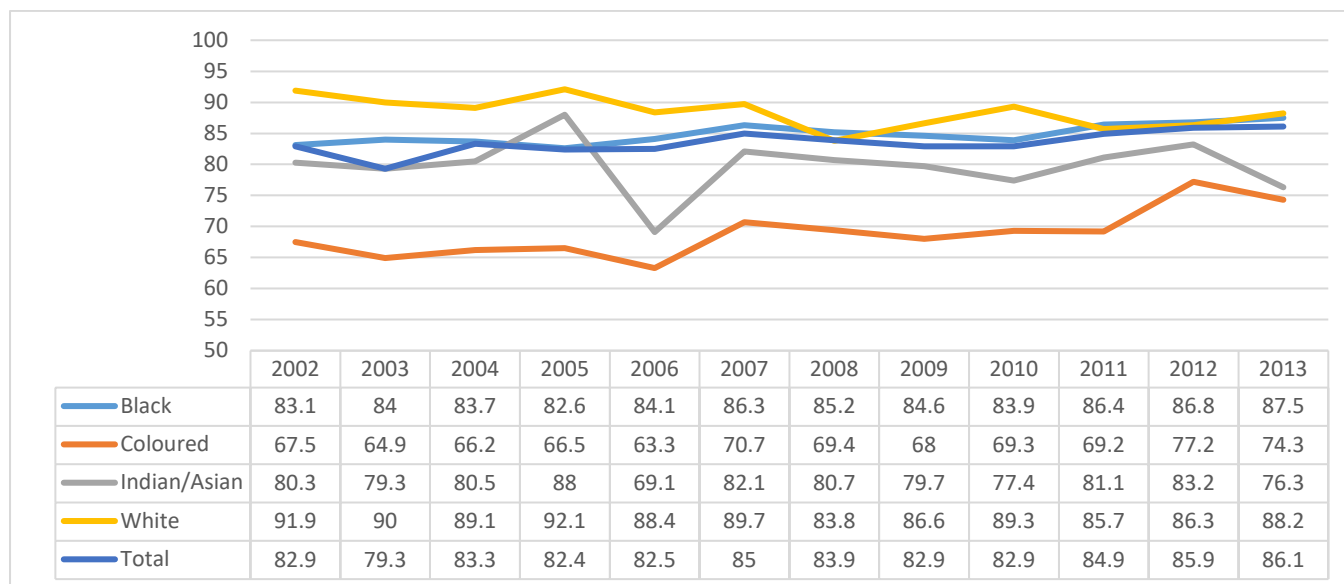
Indicator 2 shows that attendance at educational institutions for children of compulsory school-going age is nearly universal, with approximately 99% of 7 to 15 year-olds attending educational institutions. These high rates are also very similar for male and female learners, though enrolment is slightly higher for girls than for boys.

Indicator 3: The proportion of 16 to 18 year-olds attending educational institutions

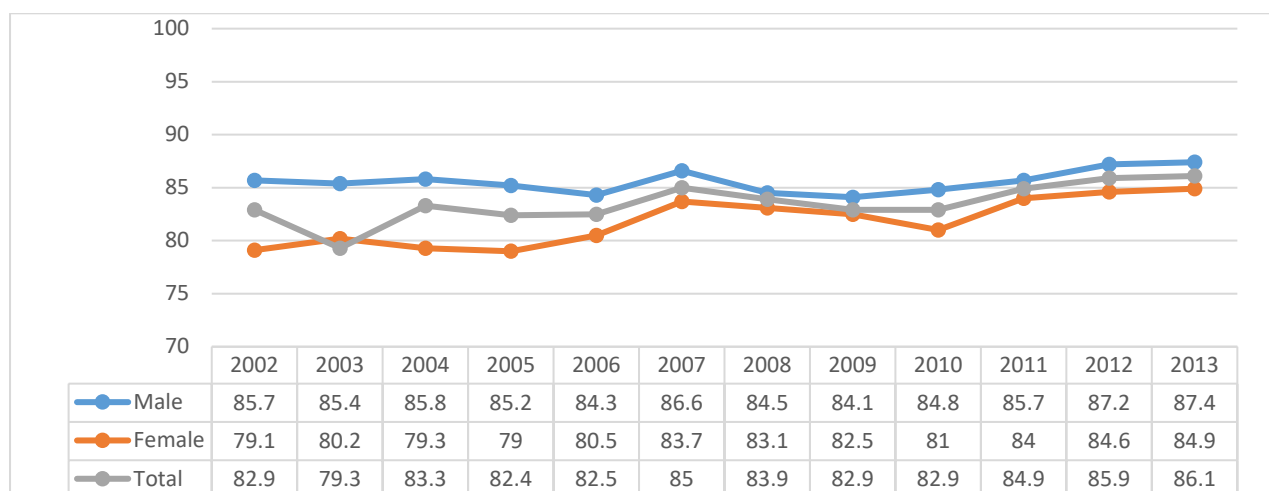
Description: This indicator measures the proportion of 16 to 18 year-olds attending educational institutions by dividing the number of persons of that age group enrolled in school by the total number of 16 to 18 year-

olds in the population using GHS data. This indicator measures the rate at which learners by gender and race continue to attend school after the compulsory school-going age.

Source: *General Household Survey, 2002 – 2013 published by the DBE 2014 Education for All Report*



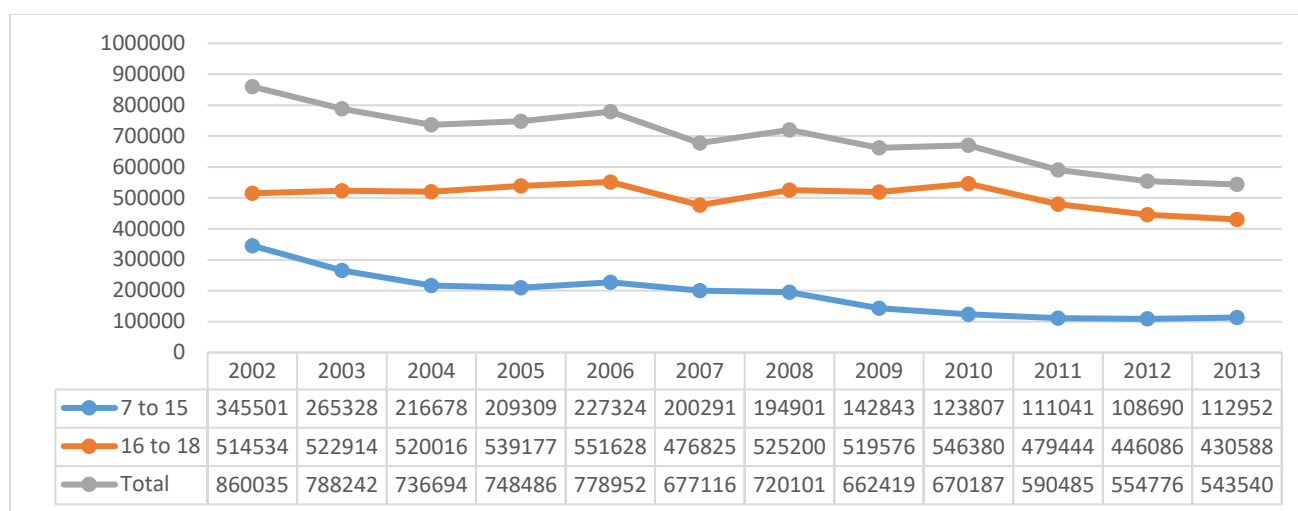
Percentage of 16 to 18 year-old youth enrolled in educational institutions, by gender



Indicator 4: The number of 7 to 18 year-olds NOT attending schools/educational institutions

Description: This indicator measures the number of 7 to 18 year-old youth who are NOT attending educational institutions using General Household Survey data.

Source: General Household Survey, 2002 - 2013

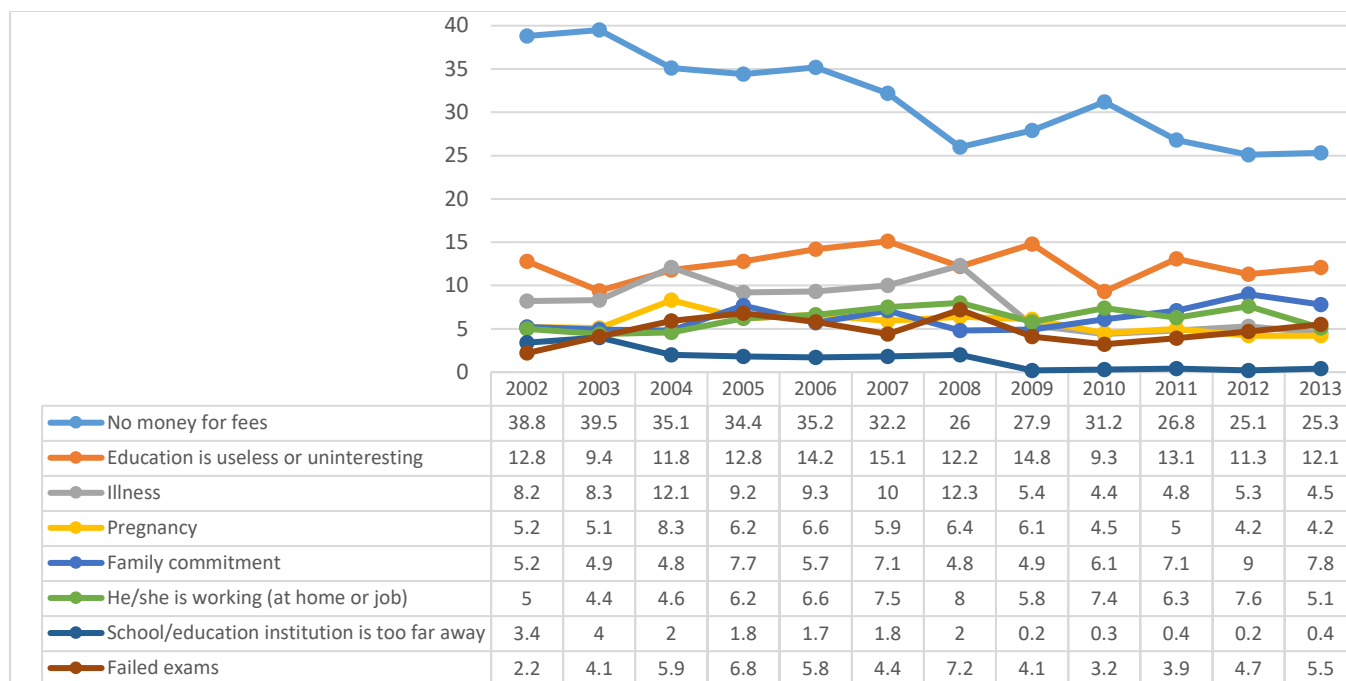


Indicator 4 shows that the numbers of learners aged 7 to 15 not attending school dropped by over 2/3 between 2002 and 2013 from 345,501 to 112,952. The decrease in the number of 16 to 18 year-old learners not attending educational institutions during that time period, however, was less impressive, with 430,588 16 to 18 year-olds not attending educational institutions in 2013, showing that incidences of learner drop-out continue to increase once learners reach non-compulsory school-going ages. The rates of school attendance for male and female learners aged 16 to 18 were similar by 2013, with 87.4% of males of that age attending educational institutions compared to 84.9% of female 16 to 18 year-olds. While enrolment levels of female learners between the ages of 16 and 18 increased by 5.8% between 2002 and 2013, male enrolment only increased by less than 2% during that same period. Despite the progress made to retention rates of female learners between the ages of 16 to 18, female learners of this age cohort remain less likely to be enrolled in school or other educational institutions than their male peers.

Indicator 4.1: Reasons for not attending educational institutions amongst 7 to 18 year-olds not attending educational institutions

Description: This indicator describes the reasons given by 7 to 18 year-olds not attending educational institutions for their non-attendance using General Household Survey data.

Source: General Household Survey, 2002 – 2014.



4. Conclusion

The ratification of the ICESCR by the South African government in 2015 provides new impetus to review existing policy and legislation in place to give effect to socio-economic rights. Ratification also provides new opportunities for policy-makers, civil society organisations and chapter nine institutions including the SAHRC to reflect on the socio-economic progress we have made as a country since the adoption of the Constitution in 1996, and to renew dialogue towards identifying gaps and removing barriers to the full enjoyment of these rights.

However, advocacy efforts to ensure effective implementation and enforcement of SERs will be undermined if there is no rights-based methodology, indicators or benchmarks to monitor and address critical issues relating to the progressive realisation of these rights.

A human rights approach to policy-making and budgeting – in essence, to development – is what the Constitution and ICESCR require. Firmly establishing this approach within government remains a challenge. Yet SPII and the SAHRC, through our longstanding partnership towards advancing socio-economic rights monitoring, are well placed to promote a shift to such a human rights culture.

A Performance Monitoring Assessment tool which integrates policy analysis with statistical indicators enables human rights advocates, activists and oversight bodies, including the SAHRC and the Constitutional Court, to build up evidence-based arguments about the government's compliance with its obligations to fulfil socio-economic rights. A monitoring tool also serves as a planning tool to assist policy-makers in the evaluation and the development of future programmes and policies to ensure alignment with their obligations under the Constitution and international human rights law. This evidence can also give demands for transformation renewed force.

The information provided in this Gap Analysis and Performance Monitoring Assessment Framework is an important first step in this regard. The task for SPII and the SAHRC now is to ensure that the public is made aware of such analysis so that new partnerships can be forged to see these recommendations are taken up by government. There remains much scope for increased participation and input from the public in this process of collaborative development - including from oversight bodies such as the SAHRC, civil society and community activists. Only through sustained dialogue and commitment to action will the information provided in this Analysis and Framework enable more effective implementation and enforcement of SERs for all.