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BUDGET ANALYSIS FOR ADVANCING SOCIO-ECONOMIC RIGHTS

Tools and methods used for formulating and analysing government budgeting for the progressive realisation of socio-economic rights

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November 2016

A Guide for State and non-State Human Rights Advocates and Researchers

Contents

ACKNOWLEDGMENTS

The Studies in Poverty and Inequality Institute and the South African Human Rights Commission would like to thank presenters and participants from government and civil society who took part in a Roundtable Discussion on budget analysis for the advancement of socio-economic rights on 17 November 2016. The contributions that were made and discussions that were had were extremely helpful towards the development of this Guide. In particular, thanks are due to Commissioner Mohamed Ameermia of the South African Human Rights Commission, Ms Yasmin Sooka of the Foundation of Human Rights, and Ms Isobel Frye of the Studies for Poverty and Inequality Institute for recognising the need to develop this Guide.

The production of this Guide is the result of ongoing partnerships between the Studies in Poverty and Inequality Institute, the South African Human Rights Commission and the Foundation for Human Rights, to develop effective tools and strategies to monitor and advance the progressive realisation of socio-economic rights in South Africa.

SPII has produced a similar guide focused on Gender-Responsive Budgeting, which can be accessed along with our other publications at www.spii.org.za.

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Funding is facilitated by the Foundation for Human Rights which is funded by the Department of Justice and Constitutional Devel opment and the European Union under the Sector Budget Support Programme – Access to Justice and the Promotion of Constitutional Rights

ACRONYMS

CESCR	Committee for Economic, Social and Cultural Rights
CSOs	Civil Society Organisations
EE	Equal Education
ICESCR	International Convention on Economic, Social and Cultural Rights
MAR	Maximum Available Resources
PAIA	Promotion of Access to Information Act, 2000
PFMA	Public Finance Management Act, 1999
PSAM	Public Service Accountability Monitor
SAHRC	South African Human Rights Commission
SER	Socio-Economic Rights
SERI	Socio-Economic Rights Institute of South Africa
SJC	Social Justice Coalition
SPII	Studies in Poverty and Inequality Institute
ODAC	Open Democracy Advice Centre
WAR	Within Available Resources
UN	United Nations

INTRODUCTION

Background and context

The South African Constitution (Constitution) guarantees the progressive realisation of socio-economic rights (SER) – including the rights to housing, education, health care, water and sanitation, social security, environment and food – within the State's available resources. Already in 1995, one year before the adoption of the final Constitution, the South African government signed the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR). This signalled a recognition by the first democratic government that all human rights are equal and inalienable, and that importantly *"the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy [his or her] economic, social and cultural rights, as well as [his or her] civil and political rights"*.[1] Twenty years later South Africa ratified the ICESCR, providing further impetus to the Constitutional obligation to progressively realise socio-economic rights to the maximum of its available resources.[2] The ICESCR imposes an obligation on governments to move as expeditiously and effectively as possible towards that goal.[3] However, despite these provisions, claims are frequently made by government that it does not have the resources to meet its domestic and international SER legal obligations. Understanding how State budgets operate and how the government prioritises the budget to meet its constitutional SER obligations has become necessary for human rights advocates to rebut these claims.

By placing the obligation on the State to fulfil SER, the Constitution also forms the foundation of development policy-making and is central to reducing poverty and inequality in the country. The preamble of the Constitution states as one of its objectives the improvement of the quality of life of all citizens and freeing the potential of each person.[4] Seminal judgments such as *Government of the Republic of South Africa v Grootboom*[5] in relation to housing, and *Minister of Health & Others v Treatment Action Campaign & Others*[6] in relation to health care, confirmed that these were justiciable rights that if violated, could be legally enforced. These cases reiterated that the democratic values enshrined in the Constitution of human dignity, freedom and equality are denied to those who do not have food, clothing or shelter. The State must demonstrate that legislative and other measures undertaken to progressively realise SER are reasonable, both in terms of their conception and implementation. SER initiatives must be comprehensive and co-ordinated; must facilitate the realisation of the right in question; must be balanced and flexible and not exclude a significant segment of society; and must respond to the urgent needs of those in desperate circumstances.[7] Notwithstanding the guidance provided by the *Grootboom* judgment as to what constitutes 'reasonable' progressive realisation of SER, unpacking whether the government has used all 'available resources' at its disposal to meet its obligations forms an integral part of such an analyses.

Research undertaken by both the Studies in Poverty and Inequality Institute (SPII) and the South African Human Rights Commission (SAHRC) demonstrate that while legislation and policies have been implemented to give effect to the realisation of SER, the generation, allocation and expenditure of budgets towards the fulfilment of SER remains problematic. This is in part due to a lack of available data that is accurate, representative and disaggregated to account for groups and individuals who continue to face discrimination on the basis of race, gender, disability, social income or geographical location.[8] Such data is essential both for formulating and evaluating government budgets. This is particularly necessary to meet the constitutional objective of achieving redress, social justice and substantive equality for marginalised groups who suffered the brunt of apartheid. Inadequate data further impacts on the ability of the government to prioritise SER-related services and achieve targets, and make an assessment of

1 International Covenant of Economic, Social and Cultural Rights, 1966.
2 Ibid, Article 2.
3 CESCR *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23. Available at: www.refworld.org/docid/4538838e10.html.
4 Preamble to the South African Constitution, 1966.
5 2001 (1) SA 46 (CC).
6 (No 2) (CCT8/02) [2002],
7 Ibid.
8 McLaren 2016 'Within its available resources: Socio-Economic Rights and the National Budget' *Studies in Poverty and Inequality Institute*, Policy Brief 2016/01. Available at: www.spii.org.za/wp-content/uploads/2016/02/SPII-Policy-Brief-2016-1.pdf.

whether expenditure on SER-related services has actually contributed toward the advancement and enjoyment of SER for groups most affected by poverty and inequality[9].

It has therefore become apparent that in addition to advocating for the implementation of laws and policies that advance SER, understanding how budgets are formulated, prioritised, allocated and ultimately spent is essential to ensuring that SER are in fact realised. As highlighted by SAHRC Commissioner Mohamed Ameermia:

"[u]nfortunately, as we approach twenty years since the Constitution was signed into law at Sharpeville by President Nelson Mandela, a huge disjuncture between human rights rhetoric and human rights reality, continues to exist in our society. It is a sad reality that our country is ranked as one of the most unequal societies in the world….the obligation of the government to respect, protect, promote and fulfil the rights contained in the Bill of Rights calls on the State to devise sound macroeconomic, fiscal and monetary policies so as to maximise the revenue pool earmarked for socio-economic rights, and to manage public finances in an efficient and accountable manner…"[10]

Purpose of the Guide

Budget analysis is a key component of SER monitoring. It allows human rights advocates to analyse budgetary decisions made by governments, beginning with enforceable obligations under international and national law.[11] Thus, an SER budget analyst must understand 1) the key components of a particular SER and how these components find expression in budgets; 2) the methods and logistics of obtaining and understanding budgets; and 3) how to connect a budget to the SER under review. Armed with these skills and numbers, budget analysts can assess governments' budgetary policies from a human rights basis, bringing to light successes and gaps, and providing viable alternatives to current spending where necessary.[12]

This Guide will provide an overview of each of these aspects of SER monitoring, and how they translate in the South African context, with reference to practical examples used by civil society to monitor the advancement of SER through budget analysis. It is envisioned that the Guide will provide a useful resource for human rights advocates to understand the process of monitoring the progressive realisation of SER using tools of budget analysis. It is also hoped that the Guide will inform renewed and coordinated activism amongst civil society groups and organisations interested in SER monitoring, through the production of evidence-based research required to assist the government to reprioritise the budget in a manner that advances, rather than hinders, the full realisation and enjoyment of SER.

Methodology used to develop the Guide

The development of this Guide was informed by a variety of actors and perspectives, including policy-makers involved in SER budget decision-making processes, and researchers and organisations that monitor the advancement of SER in South Africa. A Roundtable discussion, hosted by SPII and the SAHRC, brought together these various actors to discuss:

how the government budget is formulated and implemented in a manner that either advances, or inhibits, the progressive realisation of socio-economic rights, within – and to the maximum of – available resources.

Presentations were made by representatives of the National Treasury, Open Democracy Advice Centre, Socio-Economic Rights Institute, Black Sash, Social Justice Coalition, Equal Education and the Public Service Accountability Monitor.

The Roundtable unpacked the conceptual challenges and opportunities of engaging in SER budget work; how the South African Constitution informs budget prioritisation, formulation and implementation; the availability of data that is transparent and accessible; and the practical implications of monitoring the advancement of SER through budget analysis.

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9 South African Human Rights Commission (2015) "Access to Housing, Local Governance and Service Delivery – Investigative Hearing Report". Available at: www.sahrc.org.za/home/21/files/Access%20to%20Housing%202015.pdf.

10 Opening Address, *SAHRC / SPII Roundtable: Budget Analysis for Advancing Socio-Economic Rights, 17 November 2016.*

11 Aoife Nolan, "Putting ESR-Based Budget Analysis into Practice: Addressing the Conceptual Challenges," in *Human Rights and Public Finance* (Portland: Hart, 2013) 43. (as cited in Manion, M *et al* "Budget Analysis as a Tool to Monitor Economic and Social Rights: Where the Rubber of International Commitment Meets the Road of Government Policy", *International Journal of Human Rights Practice* (forthcoming)

12 Nolan, *Putting ESR-Based Budget Analysis into Practice: Addressing the Conceptual Challenges*, 43.

Structure of the Guide

The Guide is divided into three parts. Section 1 provides an overview of the legal framework to understand socio-economic rights, including the ICESCR; unpacking the concept of "maximum available resources"; converting legal terms into measurable components required to conduct budget analysis; and how the South African Constitution has informed the advancement of SER.

Section 2 provides a framework for understanding budget analysis. This section includes an overview of the types of budget analysis, namely, revenue-focused, allocation and expenditure analyses. It provides insight as to how to obtain budgets, and the importance of data transparency and accessibility when engaging in budget analysis work. It also provides a general overview of how the Constitution practically informs budget processes. Lastly, brief reference is made to using budget analysis in conjunction with other established research methods to monitor the advancement of SER.

Section 3 of the Guide looks at work conducted by civil society organisations (CSOs) that have monitored the advancement of SER through budget analysis. These include monitoring the rights to housing, inclusive education, basic education, water and sanitation, social security, and a healthy environment.

Source: Wikimedia Commons

SECTION 1: LEGAL FRAMEWORK FOR UNDERSTANDING SOCIO-ECONOMIC RIGHTS

The International Covenant on Economic, Social and Cultural Rights

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

1. Progressive realization, which requires the full realization of ESR *over time*.[13] This obligation is both context and resource dependent.[14] While there is room for discretion depending on a State's level of development, available resources, and presence of extenuating circumstances - such as armed conflict or economic crisis - States remain obligated to take steps that are "deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant."[15]

2. Non-retrogression: refers to any deliberate state measures to stall or diminish SER realisation. States may not do this unless there is a real emergency, which must be proven, rather than simply asserted.[16] The United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) has set out four requirements for retrogressive policies.[17] A retrogressive policy must: (1) be temporary, covering only the period of crisis; (2) be necessary and proportionate, meaning that any other policy or a failure to act would be more detrimental; (3) not be discriminatory and must comprise all possible measures; and (4) it should identify a social protection floor.[18]

3. Maximum available resources: requires states to demonstrate they have used all of their available resources to fund ESR, given current economic conditions, including international aid when needed;[19] and

Minimum core: sets a threshold for the "minimum essential levels of each of the rights."[20] When any "significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education," there is a prima facie violation of the ICESCR.[21]

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

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

15 CESCR, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23. Available at: www.refworld.org/docid/4538838e10.html.

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

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

18 Ibid.

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

20 International Commission of Jurists (ICJ), *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 26 January 1997, available at http://www.refworld.org/docid/48abd5730.html.

21 Ibid.

A closer look at "Maximum Available Resources"

While this Guide is concerned primarily with "maximum available resources" , it is important to note that an assessment of whether a State party to the ICESCR has met its SER obligations must also consider "progressive realization" (which includes non-retrogression) and principles of non-discrimination. [22] As noted in General Comment 20 issued by the CESCR, despite significant economic growth, discrimination continues to undermine the advancement of SER and the achievement of substantive equality for a significant portion of the world's population,[23] relegating millions to bear the brunt of socio-economic inequality and ensuing poverty.

The obligation to use the maximum available resources (MAR) requires a government to generate maximum resources to progressively realise SER. This includes generating revenue through efficient tax collection, but would also extend to international assistance, including investment and where necessary, aid. Allocation and expenditure of the revenue generated should be directed to SER-related areas as a matter of priority. This can include the development of infrastructure that is required for the advancement of SER, such as building roads to reach a hospital. Importantly, funds allocated to SER must not be diverted to other non-SER-related areas.[24]

In addition, in terms of the CESCR General Comment 3, priority should be given to "minimum core" SER obligations – such as the rights to education, shelter, food and healthcare – in order to comply with the requirements of MAR. A State party that fails to meet at least these "minimum core" obligations on the basis that it lacks available resources must demonstrate that every effort has been made to use *all* resources that are at its disposal in an effort to satisfy those minimum obligations as a matter of priority. [25]While cases regarding the content of "minimum core obligations" in the South African context have been brought before domestic courts, the courts have erred on the side of caution by not being too prescriptive to government on how to prioritise the advancement of SER. In *Mazibuko & Others v City of Johannesburg & Others*[26], the Court reaffirmed that it was uncomfortable specifying what the minimum core of SER ought to be, and that doing so would violate the separation of powers by overstepping into the roles of the executive and legislature.

Inefficient and wasteful expenditure may amount to a failure to utilise MAR. When a government pays more than it should for goods and services, or spends merely to meet fiscal targets even when such spending is on SER-related issues, or when the services provided are not of sufficient quality, for example, it cannot assert that it has met its SER obligations in terms of MAR.[27] Such expenditure must effectively demonstrate the advancement of the enjoyment of socio-economic rights to meet the requirements of MAR.

Conversely, under-spending on SER may not always result in a failure to comply with MAR obligations. Governments may be confronted with under-spending by departments due to poor planning, coordinated and / or a lack of capacity. Programme design and implementation may be inaccessible to intended beneficiaries, or a government department may receive additional funding toward the end of the fiscal cycle or donor funding may not have been anticipated.[28] While the UN CESCR has stated that funds allocated to SER must be fully spent, in order to avoid a failure to comply with its SER obligations, a government must provide reasons for such under-spending and take the necessary steps to address the causes of under spending.[29]

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22 Blyberg, A. & Hofbauer, H (2014) "The Use of Maximum Available Resources", *Article 2 & Governments Budgets*, available at www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.

23 UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20. Available at: www.refworld.org/docid/4a60961f2.html.

24 Blyberg, A. & Hofbauer, H (2014) "The Use of Maximum Available Resources", *Article 2 & Governments Budgets*. Available at: www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.

25 CESCR *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23. Available at: www.refworld.org/docid/4538838e10.html.

26 CCT 39/09 [2009]

27 Blyberg, A. & Hofbauer, H (2014) "The Use of Maximum Available Resources", *Article 2 & Governments Budgets*. Available at: www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.

28 Ibid.

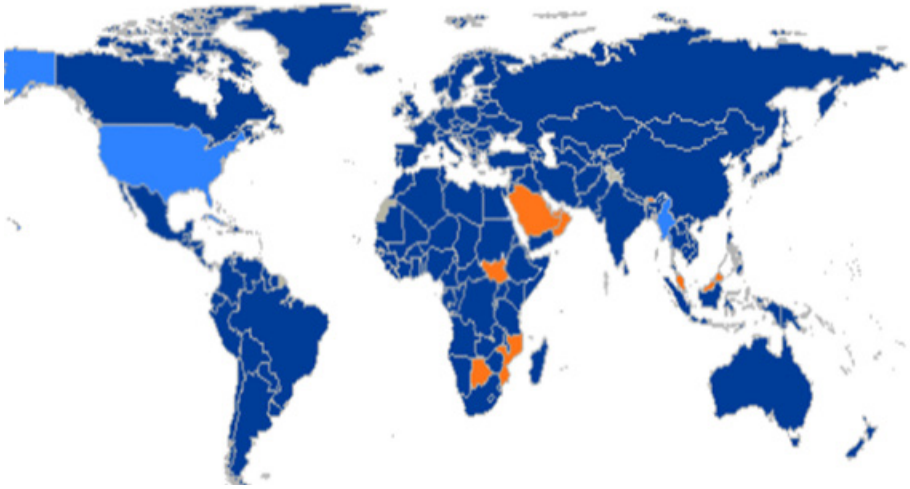
29 Ibid.

Essentially, States are required to both progressively and *effectively* achieve ESR, as expeditiously as possible.[30] Increased state allocation and expenditure is not necessarily the most *effective* or *efficient* way towards the realization of ESR.

Converting Legal Obligations into Measurement Tools

The goal of SER budget analysis is to measure State compliance and provide substantive evidence to prove that the government is, or is not meeting its obligations as defined in the ICESCR. Conducting SER budget analysis requires the conversion of legal obligations like progressive realization, non-retrogression, maximum available resources, minimum core, and non-discrimination into measurable components. For example, the table below provides a list of SER obligations in legal terms with the correlating measures of compliance (i.e. budget monitoring tools).

International Covenant on Economic, Social and Cultutal Rights



Source: http://indicators.ohchr.org

30 CESCR *General Comment No. 3 (Art. 2, Para. 1, of the Covenant).*

FIGURE 1 – Measures of Compliance & Budget Monitoring Tools[31]

PROGRESSIVE REALIZATION

Measures of Compliance	Budget Tool
1. Increase in expenditure on SER over time	Calculate the real (i.e. inflation adjusted) change in SER expenditure over a given period
2. Increase in number of beneficiaries of a policy/programme	Identify and compare the number of people who benefit from a government funded programme over time
3. Funding targeted towards disadvantaged groups	Disaggregate the beneficiaries of policies by race, gender, income group etc and compare over time
4. Increase in level of enjoyment of ESR over time	Examine indicators of enjoyment of SER

RETROGRESSION

Measures of Compliance	Budget Tool
1. Reduction/termination of expenditure for an ESR programme or overall despite stable and growing need	Compare level of spending on SER over time relative to need
2. Government funds a programme which directly or indirectly obstructs realization of SER or existing enjoyment of SER	Examine each expenditure line in order to identify any programs which obstruct SER

NON-DISCRIMINATION

Measures of Compliance	Budget Tool
1. Difference in per capita expenditure between social groups is perpetuating inequality outcomes	Identify which groups are likely to be the main beneficiaries of a programme or the primary victims of budget cuts
2. Per capita expenditure congruent with need/level of SER realization	Establish the region/group's share of expenditure using disaggregated expenditure incidence analysis. Compare this with the group's need/level of SER realisation.
3. Increase over time in expenditure on disadvantaged groups or on programmes likely to reduce inequality	Calculate allocation to programs likely to reduce inequality over time
4. Funding for equality programs spent on intended purpose	Expenditure tracking

MAXIMUM AVAILABLE RESOURCES

Measures of Compliance	Budget Tool
1. Surplus finance re-invested in SER	Examine whether surplus finance is allocated to SER or non-SER programmes
5. Allocation for SER fully spent	Compare expenditure plans with end-of-year audit reports
6. SER spending significantly higher than non-ESR spending	Comparative analysis of government expenditure on SER and non-SER items over time
7. Spending on SER as proportion of GDP/ total government spending increases over time	Calculate SER expenditure as a percentage of GDP/total government expenditure over time
8. Costs of service delivery stable or decrease over time	Calculate costs of administering services over time

31 Excerpt from: *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources.*

Socio-Economic Rights and the Constitution

Although the Constitution places the onus on the government to advance SER "within its available resources" (WAR), as opposed to the "maximum of its available resources" as provided for in Article 2 of the ICESCR, these terms are not conceptually different. The ICESCR rather adds content to existing constitutional obligations, while allowing government and the courts to benefit from the many decades of SER implementation overseen by the CESCR. The ICESCR provides for non-discrimination (on the basis of race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status), progressive realisation, MAR, and "minimum core" obligations. Article 2 further states that developing countries can determine the extent to which they will guarantee SER to non-nationals.[32] On the other hand, the Constitution provides for substantive equality, progressive realisation and WAR, while the Constitutional rights to basic education and a healthy environment are immediately realisable (i.e. not subject to progressive realisation within available resources).

The South African courts have interpreted State obligations as defined in the Constitution in a manner that mirrors those contained in the ICESCR in seminal judgments. For example, the equality provision in the Constitution provides that the State may not unfairly discriminate against anyone on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.33 In Khosa & Others v Minister of Social Development & Others34, the Constitutional Court applied principles of non-discrimination as provided for in the ICESCR, by holding that the Constitution vests the right to social security in "everyone", including permanent residents that are not citizens. The exclusion of permanent residents from the government programme of the day was therefore discriminatory.

Notably, the South African courts have made minimal distinctions between MAR and WAR. In fact, in *Grootboom*,[35] the Constitutional Court explicitly states that the ICESCR imposes an obligation on the State to move as expeditiously and effectively as possible toward the goal of the full realisation of SER. Any deliberate retrogressive measures would require careful consideration and must be fully justified in reference to the totality of the rights provided for in the Constitution and ICESCR and in the context of the full use of maximum available resources.

In *Minister of Health & Others v Treatment Action Campaign & Others*,[36] the Constitutional Court acknowledged that the South African government faces huge demands in relation to access to education, land, housing, health care, food, water and social security, which may be an extraordinarily difficult task to meet in light of the country's history. Nonetheless the Constitution does impose obligations on the State to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of these rights. This was further elaborated in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties39 (Pty) Ltd & Another*,[37] which concerned the provision of alternative accommodation to low-income households who had faced evictions. The same Court held that local State municipalities have an obligation to plan and procure resources to meet emergency housing needs within its area of jurisdiction. Importantly, a municipality cannot rely on a lack of resources to not meet these obligations; it must at the very least acknowledge it obligations and attempt to find resources to allocate to emergency housing needs.

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32 ICESCR, 1966, Article 2(3).
33 Section 9 of the Constitution of the Republic of South Africa, 1996.
34 CCT 13/03, CCT 12/03 [2004].
35 2001 (1) SA 46 (CC).
36 (No 2) (CCT8/02) [2002], par 94.
37 CCT 37/11 [2011].

SECTION 2: FRAMEWORK FOR UNDERSTANDING BUDGET ANALYSIS

Types of budget analysis

Budgets are "a central embodiment of a government's values as well as a key to where political power in the country

lies."[38] The challenge for researchers and human rights advocates is to interpret budget decisions in a way that can effectively pressure and show bureaucrats how to reframe or make alternative budget choices.[39]

There are three main types of budget analysis: revenue-focused, budget allocation, and budget expenditure analyses.

BUDGET ANALYSIS	
Revenue Focused	How the government generates reveneue
Budget Allocation	How money is allocated and distributed in a budget
Budget Expenditure	How much the government actually spends and the quality of expenditure

a) Revenue Focused Analysis

Revenue focused analysis examines how governments generate income, with an emphasis on taxation. Governments produce data on taxation and other forms of revenue. Analysing this information can help to demonstrate if government revenue collection methods are maximising the resources available for SER programmes, and whether changes are necessary, for example, by combatting tax evasion.[40] SER advocates can also use a revenue-focused analysis to examine how of the burden of revenue-generation affects different groups. Value added tax, for example, is considered regressive because lower-income groups spend a higher share of their expenditure on basic goods and services affected by VAT. . Income taxes, by contrast, can be made progressive if higher income earners are taxed at a higher rate.[41] Revenue for SER goods and services can also be raised through user-fees or levies, particularly at the local government level. A revenue focused analysis would therefore also consider whether these fees are affordable for the lowest income earners; if they proportionate to the cost and quality of the good or service provided; whether they are increased or decreased over time; and whether they are levied on a progressive basis (i.e. wealthier households pay a higher share).

b) Budget Allocation Analysis

Budget allocation analysis considers how resources raised are then allocated in the budget. Allocations to sectors, groups, or regions, for example, reflect a government's priorities.[42] Researchers can compare spending patterns to see if governments are fulfilling their obligations. For example, budget allocation analysis can look at trade-offs between national security and education spending; spending on government events, entertainment, and advertising; disparate allocations to different groups or regions; or per capita health allocations from one district to another.[43]

c) Budget Expenditure Analysis

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38 Hofbauer and Blyberg, *Article 2 and Governments' Budgets, Retrogression due to tax reforms reducing funds for the realization Article 2*. **Available at: www.internationalbudget.org/wp-content/uploads/Article-2-and-Governments-Budgets.pdf.**

39 Ibid.

40 Audrey Gaughran, *Cracking Down on Tax Abuse will Help Promote Economic and Social Rights*, openGlobalRights (Feb. 18, 2015). Available at: www.opendemocracy.net/openglobalrights/audrey-gaughran/cracking-down-on-tax-abuse-will-help-promote-economic-and-social-ri.

41 *See* Nolan et al., *Human Rights and Public Finance*.

42 Center for Economic and Social Rights and Asia Pacific Forum, *Defending Dignity: A Manual for National Human Rights Institutions on Monitoring Economic, Social, and Cultural Rights* (Jan. 2015) 93. Available at: www.cesr.org/downloads/Defending_Dignity_ESCR_Manual_for_NHRIs.pdf.

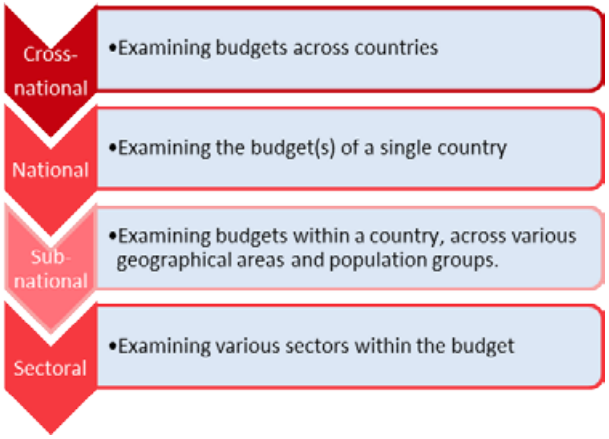
43 D Elson, "Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW," UNIFEM (2006) 24.

Budget expenditure analysis compares budget *allocations* to actual *spending*. Spending is often higher or lower than the allocation.[44] Reasons for this discrepancy include[45]:

- Poor planning, coordination and a lack of capacity to spend the funds allocated;
- Slow and complex disbursement (governments may take time to release funds);
- Shortfalls in revenue or unexpected spending in other areas (budgets are often projections based on plans which may not materialise as expected);
- Unanticipated costs, especially true for capital expenditures, such as roads and buildings;
- Lack of effective oversight where delivery of services have been outsourced to private entities; and
- Unexpected increases in debt repayment obligations due to exchange or interest rate fluctuations.

FOUR LEVELS OF BUDGET ANALYSIS

There are generally four levels at which budget analysts can dissect and compare budgets: cross-national, national, sub-national, and sectoral.



Cross-national budget analysis compares a country's spending on a given sector or population group with that of a peer country, usually similar in terms of region or Gross Domestic Product (GDP). Comparisons of this sort can highlight discrepancies in state spending on ESR obligations in roughly similar economic contexts.

National level budget analyses examine a government's national revenue generation and collection, budget allocation, and/or actual spending.[46]

Subnational budget analysis compares budgets within a single country, often between two regions. For example, researchers can examine a government's per capita spending on women in district A, and compare it to its spending in District B.[47] Analysts often use both national and sub-national analyses to assess states' (non)fulfilment of obligations towards disadvantaged groups.[48]

The fourth and final level of budget analysis compares allocations and expenditures across sectors. For example, researchers can investigate whether spending is increasing, decreasing, or stagnating in those sectors most relevant to women, such as on reproductive health care or access to water and sanitation, for example.[49] This kind of analysis can powerfully point to the areas in a budget that are underfunded or overfunded relative to other sectors or groups.

Obtaining Budgets

There are generally four stages in an annual budget cycle:

a) Budget Formulation: typically conducted by the executive behind closed doors.

b) Budget Enactment: the first time the budget is made public and debated by the legislature.

c) Budget Execution: includes implementation and monitoring of budgets and finances.

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44 Ibid.
45 Ibid.
46 Meena Archarya, *Gender Budget Audit in Nepal*, Institute for Integrated Development Studies (New Delhi: United Nations Development Fund for Women (UNIFEM), 2003).
47 Ibid.
48 Jim Shultz, "Promises to Keep: Using Public Budgets as a Tool to Advance Economic, Social, and Cultural Rights" (2002) 26-27 . Available at: www.internationalbudget.org/themes/ESC/FullReport.pdf.
49 Archarya, *Gender Budget Audit in Nepal*, Institute for Integrated Development Studies.

d) Auditing and Assessment: examines whether public resources are used effectively.

It is important to bear in mind that budgeting is a dynamic, ongoing, political process. Additionally, countries often use "supplementary budgets"[50] throughout their financial year.[51] In addition, economic factors, such as "spillover" between annual budgets or "fiscal dumping" (where the government spends much of its money at the end of the budget cycle), may impact on how a researcher reads and analyses a budget.

ACCESS TO INFORMATION AND DATA TRANSPARENCY

Section 32 of the Constitution states that everyone has the right of access to any information held by the State and any information held by another person required for the exercise or protection of any rights. The preamble of the Promotion of Access to Information Act, 2000 (PAIA), which gives effect to the constitutional provision, recognises that prior to South Africa's transition in 1994, a secretive and unresponsive culture in public and private bodies often led to an abuse of power and human rights violations. Access to budget data that is transparent and easy to interpret forms the foundation of conducting budget analysis that adequately assesses the advancement of SER. The Public Finance Management Act, 1999 (PFMA) promotes good governance with respect to financial management that maximises service delivery through the effective and efficient use of limited resources. In addition, the objective of the Municipal Budget and Reporting Regulations is to secure sound and sustainable management of the budgeting and reporting practices of municipalities – which are tasked with SER implementation – by establishing norms and standards that ensure transparency, accountability and appropriate lines of responsibility in the budgeting and reporting processes of those institutions.

Despite these legislative interventions, data availability and quality in South Africa remains poor. For effective SER budget analysis, transparent data is required that is updated, accessible and without user restrictions. It must be of good quality, relevant, and disaggregated (for example by race, gender and class). Crucially, access to data should be free, in order to guarantee access by disadvantaged groups. The Constitution proclaims that "people's needs must be responded to" and that "the public must be encouraged to participate in policy-making".[52] For budgeting (a crucial part of policy-making and implementation) to be participatory it must involve interaction between people with all spheres of government: national, provincial and local. Affected communities must be able to hold the government directly to account, particularly at a local or municipal level. For this to happen budgets need to be clear, transparent and easily understandable and information on budgets readily available.

According to the Open Democracy Advice Centre (ODAC), the lack of a cohesive open data policy between government departments impacts on budget data quality. Although budget data is available, it is not always relevant or effective in providing insight to understanding the incremental steps taken by the government to advance SER, nor is it user-friendly[53]. Reliance is thus placed on utilising access to information laws to acquire relevant data, which is a cumbersome process.

Guidelines for Open Data Policies developed by the Sunlight Foundation[54] recommend that, amongst others, proactive steps should be taken by a government to release information relevant to the public without such requests having to be made by an individual in need of it. In order to ensure that data policies are relevant to the public good and to ensure that access is truly open, there must be a right to reuse government information without barriers to access such as technical restrictions, access fees and usage limitations (such as copyright restrictions associated with data software). The aim of governments should be to provide broad, non-discriminatory, and free access to data so that any person can access information relevant to them without having to identify themselves or provide any justification for doing so.[55]

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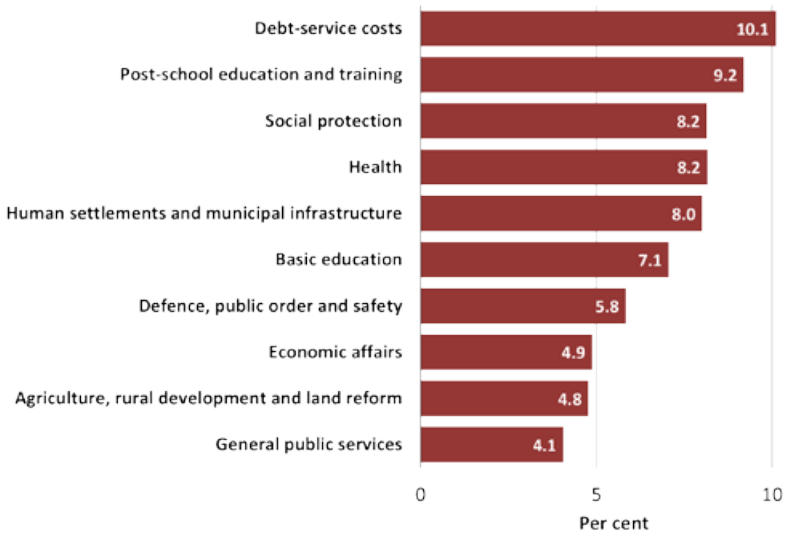
50 'Supplementary budgets' simply refers to any mid-year amendments given changes in priorities, receipt of additional funds, loss of funds, or other general governance choices that alter the budget outside of the formal legislative budget cycle.
51 Elson, *Budgeting for Women's Rights*.
52 Constitution, s 195.
53 Razzano, G (2016) "Open Information and Accessibility", *Presentation made at SAHRC / SPII Roundtable Discussion: Budget Analysis for Advancing Socio-Economic Rights, 17 November 2016.*
54 Sunlight Foundation (2014) "Guidelines for Open Data Policies"
55 Ibid.

How the Constitution practically informs SER budgeting

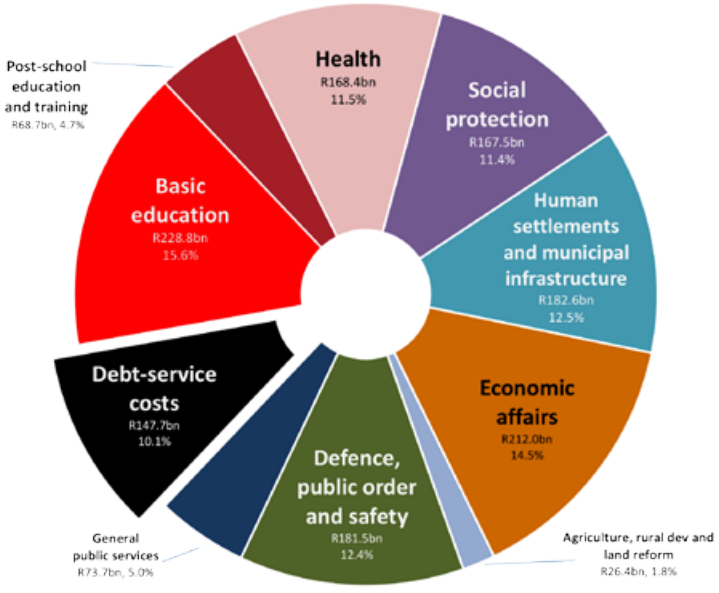
As mentioned earlier, budget prioritisation is a political process. In the South African context, budget allocations are classified along four dimensions: functional (which includes SER); economic (which considers economic factors such as salaries, capital spending, the cost of goods and services); inter-governmental (which considers spending between spheres of government); and institutional (spending on government departments). Resources are generated largely through tax revenue through economic growth and personal income.

While the Constitution places an obligation on the government to advance SER - including access to education, housing and associated municipal infrastructure, health care services, and social security – a portion of the budget is also allocated to non-SER related activities, such as foreign military deployments. Budget prioritisation is a balancing act of competing interests.

Consolidated government expenditure, annual percentage increase by function, 2016/17[56]



Division of the 2016 South African budget by functional classification[57]



56 National Treasury, 2016 Budget Review.

57 Sachs M. (2016) "Constitutional rights and the budget", *Presentation made at SAHRC / SPII Roundtable Discussion: Budget Analysis for Advancing Socio-Economic Rights, 17 November 2016.*

As demonstrated in the chart above, almost two-thirds of South Africa's annual budget is allocated toward the advancement of SER. While the remainder is allocated to non-related SER activities, the National Treasury views these allocations as essential for the advancement of SER. For example, spending on public employment programmes, land reform and support to small farmers is necessary for economic growth and transformation, and subsequent attainment of SER. Spending on institutions of governance that protect civil and political rights, such as the courts or government departments, is also viewed as necessary expenditure for the advancement of SER[58].

Using Budget Analysis alongside other Human Rights Monitoring Methods

Budget analysis on its own is not enough to make any conclusive findings as to whether a government has met its obligations for fulfilling ESR. Established human rights methods that measure incremental steps of progressive realization remain relevant, particularly when data inaccuracies exist. In addition to an analysis of the legal obligations, indicators are useful to highlight whether budget expenditure is having the necessary impact in relation to ESR and to update a government's methods of measurement.[59]

a) Analysing the Policy Effort

Whether SER have been recognized in national laws and policies is a fundamental step towards making an assessment of progressive realization to advance SER. By conducting an analysis of the policy efforts undertaken by a government, a researcher can identify a government's priorities and how it is likely to structure its budget to account for them. If other projects or interests are prioritized at the expense of SER, a researcher may consider using budget analysis to offer pragmatic alternatives or other methods to advocate for a reprioritization. This is particularly useful during times of austerity or political crisis where a government may claim that it does not possess the necessary resources to comply with its SER obligations. Importantly, while there is room for discretion depending on a state's level of development, available resources, and presence of extenuating circumstances, states must still take steps that are "deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant."[60]

b) Indicators

Indicators are used to aggregate the progressive realization of SER within and between countries. Indicators provide a measure of 'how much', 'how many', 'to what extent', or 'what size.'[61] The use of indicators has been criticized for reducing complex human experiences to statistics, or drawing conclusions based on unreliable or inconclusive data.[62] Despite these criticisms, indicators continue to be used by researchers in conjunction with other methods to provide a more holistic picture of the enjoyment of SER in a given country. Indicators that measure the progressive realization of SER over time are informed largely by household surveys conducted by national statistical agencies. Indicators present a big picture outlook for examining SER as opposed to the microanalyses and targeted nature that occur through budget analysis.

c) Understanding Context

Contextual constraints may limit the enjoyment of SER. Identifying historical social, economic, political or cultural conditions that prevent people from enjoying SER, or how acts or omissions of third parties or systemic dysfunctions that inhibit a government from fulfilling its duties may impact on a state's ability to comply with its SER obligations. A contextual analysis assists in drawing holistic conclusions, and establishing causal links that may not be identifiable when conducting a budget analysis in isolation.[63]

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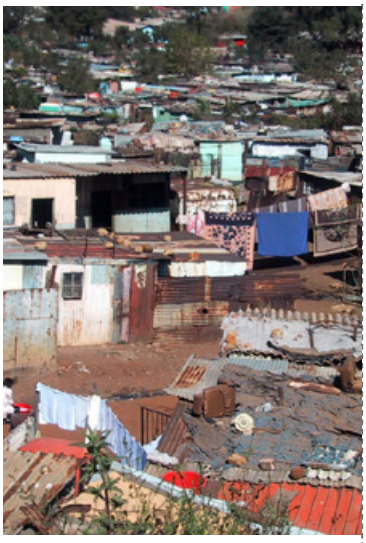
58 Ibid.
59 Center for Economic and Social Rights, *The OPERA Framework: Assessing Compliance with Obligations to Fulfil Economic, Social, and Cultural Rights* (2012) 13. Available at: www.cesr.org/downloads/the.opera.framework.pdf.
60 CESCR *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant).*
61 Center for Economic and Social Rights, *The OPERA Framework*, 13.
62 UN Office of the High Commissioner of Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012). Available at: www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.
63 *Supra* note 63 .

SECTION 3: HOW CIVIL SOCIETY ORGANISATIONS MONITOR SOCIO-ECONOMIC RIGHTS THROUGH BUDGET ANALYSIS[64]

Various civil society organisations (CSOs) that monitor the advancement of SER have experienced both challenges and opportunities when engaging with SER budget analysis. These include the ability to both access and interpret data, the political implications of the budget process, and the resistance to incorporate findings made by organisations that represent affected communities to reprioritise the budget. There also appears to be an emphasis on sustaining economic growth rather than advancing SER, creating the impression that these two State imperatives are mutually exclusive rather than complementary. However, despite these challenges, through conducting budget analysis, CSOs have also been invited to participate and assist the government in budgetary processes to further advance SER; and produce evidence-based research that demonstrates how despite the Constitution providing for the advancement of SER, the allocation and expenditure of the budget by various spheres of the government is disproportionate in poorer communities. Consequently, CSOs are able to demonstrate that the State has not fulfilled its obligation to progressively realise SER within its available resources.



Source: www.ctoinc.com/images/regions/africa/soweto.jpg

The right to housing

Through its research, the Socio-Economic Rights Institute of South Africa (SERI) has found that the complexity of policy arrangements for the funding of housing, combined with a lack of access to disaggregated budget data, makes meaningful participation of communities in the formulation and analysis of housing budgets at municipal level extremely difficult and ineffective. It is often the case that municipalities are held to account for failures to budget reactively, for example, when they seek to claim a lack of available resources to accommodate the relocation for unlawful occupiers that are being evicted.[65] Generally, the Constitution requires that "a municipality must – structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community".[66]

Holding municipalities to account for budgeting is particularly important in the context of housing provision. The Constitutional Court confirmed in *Blue Moonlight* that the relevant legislation read with the Constitution empowers and obliges municipalities to "self-fund, especially in the realm of emergency situations in which it is best situated to react to, engage with and prospectively plan around the needs of local communities".[67] Before falling back on approaching the province in the case of emergencies for funds, as it is entitled to, a municipality must therefore "first consider whether it is able to address an emergency housing situation out of its own means".[68]

The importance of monitoring municipalities' budgets is further highlighted by the renewed focus on upgrading of informal settlements in terms of the Upgrading Informal Settlement Programme (UISP). Once a UISP proposal is approved, the provincial department provides a grant for it to be funded. However, the UISP explicitly requires municipalities to fund a minimum of 10% of the project's cost.[69]

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64 Copies of the presentations made at the Roundtable Discussion can be accessed at: www.dropbox.com/sh/adt2yvtyujrmuzk/AADdNynx_DrVfAMOXfG_02VEa?dl=0

65 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd (CC)*[2011] ZACC 33 (*Blue Moonlight*); *Occupiers of Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg & Others (24/07) (Olivia Road)* [2008] ZACC 1

66 Constitution, s 153.

67 *Blue Moonlight* para 57

68 Ibid, para 67

69 UISP, p 19.

CASE STUDY: MANGAUNG MUNICIPALITY

In November 2016 SERI was asked to assist in the conceptualisation of an advocacy campaign to be run by Community Advice Offices (CAOs) in the Free State on access to adequate housing. The campaign involves over 20 CAOs all falling under the umbrella of the Free State branch of the Association of Community-based Advice Offices of South Africa (ACAOSA). For this purpose SERI was asked to brief a meeting of CAOs on the national, provincial and local housing contexts with a particular emphasis on the Mangaung Metro. Mangaung is situated in the Free State Province, with an unemployment rate of 27.7%. 37.2% of economically active youth aged between 15-34 years are unemployed. Female headed households constitute roughly 40.8%, while 83.7% of the community have access to formal dwellings. 60.7% of the community have access to a flush toilet connected to sewerage[70]. SERI sought out information that would be easily accessible to the average CAO in Mangaung, including information on budgeting for the realisation of the right to access to adequate housing.

Integrated Development Plan

At a municipal level, the key policy document which details the Mangaung Metro's planning for the improvement of human settlements, is the Integrated Development Plan (IDP). The IDP itself notes that in total, thirteen public community engagements were held in its most recent review and reformulation of its IDP, of which seven took place in December 2015 and six took place in April 2016. The IDP details further the significant specific housing challenges expressed by participants in the majority of Mangaung's 49 wards. Indeed the most common complaints raised relate to the provision of housing (33) and housing-related issues such as the building of amenities (34), the provision of water and sanitation (32), electricity provision (27) and improvement of roads and managing of storm water (45).

SERI's brief suggested some confusion about how to participate in the IDP process, the accessibility of the consultations and the overly-technical content of the IDP's. This makes IDP's generally difficult to read for CAOs.

Despite the 253 page IDP, "Part D" headed "Financial Plan" provides extremely limited budgetary information concerning which funds will be used to address these housing issues. Lump sum amounts for sources of funding are merely provided, hidden away on pages 246-7 of the IDP. So, for example, the reader can simply gauge that R717 503 000 will be provided to the municipality in the form of the Urban Settlements Development Grant for 2016/17.

The IDP itself describes a range of "key strategies" to address the housing backlog which include 1) improvement of access to services; 2) allocation of affordable rental/social housing units; 3) township establishment and; 4) the promotion of mixed land use development. The costing for the rollout of these "key strategies" and the budgets that will be used to ensure that they succeed are not detailed. This is despite the fact that these strategies will require funding from various sources and the IDP's acknowledgment that "inadequate funding for key service delivery projects and programmes" is a serious "development challenge".

Although the MEC for Human Settlements in Mangaung's Budget Vote indicates that the municipality is performing Level 1 and Level 2 accredited functions and that a "readiness assessment" for Level 3 Accreditation will be conducted in 2016/17, the line item for "Housing Subsidy Accreditation" is left blank in the budget for 2016/17 and the projected budgets for 2017/18 and 2018/19 in the IDP.

Built Environment Performance Plan

According to the Treasury's guidelines, "The Built Environment Performance Plan (BEPP) should provide a high-level description of the Operating Budget with specific reference to the sections of the BEPP where relevant."[71]

Mangaung Metro's BEPP for = 2015/16, which should be read with the IDP, is not available online. A brief review of previous BEPP's shows that they appear to be regularly presented to Parliamentary Portfolio Committees and do contain some detailed budgetary information. However, this is not made clear in the IDP and the BEPP's relationship with the IDP itself is not clarified sufficiently in either document.

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70 Statistics South Africa (2011) "Mangaung", available at: www.statssa.gov.za/?page_id=1021&id=mangaung-municipality.

71 National Treasury. "Guidance Note for the Built Environment Performance Plan (BEPP) 2016/17 – 2018/19". Available at: https://csp.treasury.gov.za/Projectdocuments/BEPP%20Guidelines%202016_17.pdf.

Two other potential key sources of information on budgeting for human settlements in Mangaung are the 2016 budget vote of the Provincial MEC for Human Settlements (16 March 2016) and the Free State Department of Human Settlements Annual Performance Plan 2016-2019 (25 February 2016). However, neither is adequate for the purpose of seeking information on budgeting for particular projects and line items in the Mangaung metro.

Budget Vote

Annexure B of the budget vote provides only general information with a line item labelled "housing development" of over 1 billion rand, which the reader is told comprises 90.76% of the provinces human settlements budget.

Despite the recognition that only 5313 housing units were built in the previous financial year across all programmes and a mere 893 title deeds (there is a backlog of 63501) were registered, the budget vote merely gives a smattering of examples of the previous financial years successes and the incoming financial year's plans.

Very little, if any, budgetary information is provided on how these plans will be achieved and the budget vote appears to largely be used as a political exercise rather than a planning and information-providing exercise.

Annual Performance Plan

Though the Free State Department of Human Settlements Annual Performance Plan provides more detailed performance targets and budgets, the most that can be gauged in connection with the Mangaung metro is the lump sums that are allocated to the Mangaung metro in terms of different instruments.

This reveals that nothing (zero) has been allocated to the metro for "emergency housing assistance" and details the amount allocated for accredited municipality functions, informal settlements, individual housing subsidies and social and rental housing.

Through the Mangaung case-study analysis, SERI found that even CAO's who have relatively better access to resources and information lack meaningful access to participation in the development of the IDP and other budgeting and planning processes. In addition, crucial housing planning and policy documents provide little if any budgetary information. Data that is provided is not disaggregated and is often hidden at the end of extremely lengthy and technical documents, most of which are not publicly available online.

The right to inclusive education

Budgeting for and expenditure on basic education is a politically charged activity given the legacy of apartheid, during which the amount spent per learner in a white school was two and a half times larger than on black children in urban areas and five times larger than black students in the rural "homelands".[72]

In addition to racial apartheid, children with disabilities experience a second, compounding, disability apartheid and were excluded from South Africa's mainstream education system and compelled to attend "special schools". Special schools were generally underfunded and special schools for black learners were most impacted. Budgeting for "inclusive education", or the inclusion of children with disabilities within the mainstream education system, is therefore particularly crucial in the South African context.

Funding strategy for inclusive education

The Department of Basic Education's Inclusive Education policy warns that "the funding strategy outlined in this White Paper needs to be adequately resourced to ensure successful implementation".[73] It also contemplated the formation of a new conditional grant for inclusive education. In addition the Department of Basic Education has, for many years, promised the completion of *National Norms and Standards for Resource Distribution for an Inclusive Education*

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72 Spaull, N (2012) "Education in SA: A tale of two systems", *Politicsweb.* Available at: www.politicsweb.co.za/news-and-analysis/education-in-sa-a-tale-of-two-systems

73 Department of Education. (2001) "Education White Paper 6: Special Needs Education – Building an inclusive education and training system". Available at: www.education.gov.za/Portals/0/Documents/Legislation/White%20paper/Education%20%20White%20Paper%206.pdf?ver=2008-03-05-104651-000

System, which is now required as part of its Screening, Identification, Assessment and Support Policy.[74]

Neither the conditional grant contemplated as early 2001, nor the norms have materialised. The inclusive education system remains under-resourced in terms of both financial and human resources. There is therefore no coherent funding strategy for inclusive education despite the White Paper's insistence on the necessity for one.

Misspending of funds allocated for inclusive education

It is no surprise that the Right to Education for Children with Disabilities Campaign concludes that "funding for inclusive education is dealt with inadequately and in a piecemeal fashion that has clearly not been working".[75] The most stark example that this is a systemic failure is the Department of Basic Education's own acknowledgment, that of approximately 250 million US dollars allocated by the National Treasury for Inclusive Education for 2008-2012 "[r]egrettably, more than 50% was in spent in other priority areas at a provincial level and only five of the nine provinces have used the funds available for the expansion of inclusive education".[76]

Lack of transparency in budgeting for inclusive education nationally and provincially

Debbie Budlender, in a report entitled *Budgeting for Realising the Right to Basic Education for Children with Disabilities in South Africa* concludes that "the level of disaggregation and categories used in the budget votes also make it difficult, if not impossible, to identify the amounts spent on important areas such as [learning and teaching support materials], transport and training." [77] Poor access to information thus makes budget analysis extremely complicated even for experts.

Penny Parenzee, in a focused report on budgeting for inclusive education in KwaZulu-Natal Province, confirms that the problem also exists on a provincial level. In KwaZulu-Natal, Parenzee finds that allocations for inclusive education are "constantly underspent" and "shifted away from special needs to address over expenditure" elsewhere.[78] Budlender also notes that the problem of budgeting for inclusive education manifests at both a provincial and national level. At the provincial level the Department of Basic Education itself notes that "[u]tilisation of funding is not optimal and does not ensure quality curriculum delivery and support" and that there are "disparities across provinces in resourcing inclusive education".[79]

The impact of inadequate budgeting and funding for inclusive education at a district and school level

All of this results in an uncertainty and inconsistency of funding at a school and district level, which seriously inhibits the capacity to provide quality education to children with disabilities at ordinary, full service, special schools throughout South Africa. Inexplicably, as Human Rights Watch's *Complicit in Exclusion* report revealed, it may be the case that most special schools remain expected to self-fund through taking in school, transport and hostel fees.[80] Both Human Rights Watch and the Right to Education for Children with Disabilities Campaign have called for the elimination of all school-related fees for children with disabilities.

Full service (inclusive) schools, which are the driver of inclusive education in terms of the Department of Basic Education policy, complain that they receive minimal, inadequate and inconsistent funding for the accommodation of children with disabilities. In one rural district in KwaZulu-Natal, some schools receive as little as R22 000 a year for this purpose while others

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74 Department of Basic Education (2014) "Policy on Screening, Identification, Assessment and Support". Available at: www.naptosa.org.za/index.php/doc-manager/00-general/367-sias-final-19-december-2014

75 Right to Education of Children with Disabilities Campaign (2016)"Position statement on the implementation of White Paper 6" http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160308R2ECWD.pdf.

76 Hodgson, T & Khumalo, S. (2015) "Left in the Dark – Failure to Provide Access to Quality Education to Blind and Partially Sighted Learners in South Africa" *Section27*. Available at: www.sancb.org.za/sites/default/files/S27-left-in-the-dark-2015-accessible.pdf citing Department of Women, Children and People with Disabilities Baseline Country Report.

77 Budlender, D (2015) "Budgeting for realising the right to basic education for children with disabilities". Available at: http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160308leftinthedarkannexureC.pdf.

78 Hodgson & Khumalo (2016) "Too many children left behind: exclusion in the South African inclusive education system", *Section27*. Available at: http://section27.org.za/wp-content/uploads/2016/08/Umkhanyakude-Report-Final-08082016-1.pdf.

79 Department of Basic Education (2015) "Report on the implementation of education: White Paper 6 on Inclusive Education, available at http://pmg-assets.s3-website-eu-west-1.amazonaws.com/160308overview.pdf.

80 HRW (2015) "Complicit in Exclusion" - South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities". Available at: www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children

receive R273 000, without any explanation for the difference. In some years, none of the eleven full service schools in the district received any allocation at all for inclusive education.[81]

Budgeting for inclusive education is deeply inadequate at both a national and provincial level, and results in direct funding problems. The failure to produce norms and standards for inclusive education and to initiate a conditional grant to fund inclusive education perpetuate these challenges. They also amount to governmental failure's to implement existing policy. Due to budgets that are not transparent and sufficiently disaggregated it is difficult, if not impossible, to monitor how much money is being spent on inclusive education and where it is going. This has, in some circumstances, resulted in the misspending of large amounts of funding provided by Treasury. The Department of Basic Education has reported that there are more than 231 vacant posts at district and provincial level of inclusive education directorates in the six provinces for which information about staffing is available.[82] This significantly constrains the ability of provincial departments of education to implement inclusive education policies. Failures to budget for these posts causes innumerable and incalculable other problems.

The right to basic education

Source: Equal Education.

In monitoring the right to basic education through budget analysis, Equal Education (EE) – a movement that comprises learners, parents, teachers and community members – notes that the primary challenge encountered is the lack of political will from decision-makers to implement its findings in budgetary processes. EE has had the opportunity of presenting its research and analysis to institutional bodies such as the Standing Committee on Appropriations (SCOPA) on numerous occasions, but has yet to witness the implementation of its recommendations.

EE has repeatedly produced analysis on how allocations to provide school infrastructure have decreased over the years, despite the promulgation of the Norms and Standards Regulations in 2013. There are two main sources of funding for school infrastructure – the School Infrastructure Backlogs Grant (SIBG) and the Education Infrastructure Grant (EIG). Provinces must also contribute funds towards school infrastructure from their Equitable Share transfers (their main budget). The SIBG – also known as the Accelerated Schools Infrastructure Delivery Initiative (ASIDI) – was first introduced in 2011 as a short-term grant to address backlogs in inappropriate school structures and access to basic services. The original aim of the grant was to fast-track the eradication of inappropriate school infrastructure and to provide water, sanitation and electricity to specific schools (which are mostly located in the Eastern Cape). This grant is managed by the national Department of Basic Education and spent by the provinces.

The EIG, on the other hand, is intended to supplement provincial equitable share funding specifically for the construction, maintenance, upgrading and restoration of new and existing infrastructure in education. This grant is managed and implemented by the provincial departments of education. Allocations to ASIDI have decreased due to the failure of provinces to spend their allocation effectively and timeously. The EIG fund has also experienced problems where provinces have returned funds to National Treasury or have not received payments due to slow spending. Consequently, under-spending and under-performing provinces are denied additional budgetary allocations, which disproportionately affects poorer provinces that lack capacity to manage and implement these funds.

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81 Hodgson, T. & Khumalo, S. (2016).
82 Department of Basic Education (2015) "Report on the implementation of education: White Paper 6 on Inclusive Education.

Notwithstanding these challenges, EE has developed a strong relationship with SCOPA and has been invited to present its views on the 2016 Medium Term Budget Policy Statement (MTBPS) and the Adjustments Appropriations Bill. Through advocacy, EE hopes that the more it reiterates its budget concerns and recommendations, the more National Treasury and Department of Basic Education will hear about them and perhaps some action will be taken.

Case Study: Gauteng Sanitation Campaign

The Gauteng Sanitation Campaign is an example of a Campaign which used budget tools that has received a positive response from the Gauteng Legislature and Education Department.

In August 2013, activists in Tembisa, a township outside of Johannesburg, launched the Gauteng Sanitation Campaign. They vowed not to stop the campaign until all students enjoyed dignified and safe sanitation in their schools. Since then, EE has conducted one of the largest social audits in South Africa. EE organised a march of 2,000 EE members, picketed and protested. EE met with government officials and members of the Gauteng Provincial Legislature to express its demands, which were formulated through research and budget analysis of the funds needed to address the issues.

In response to the campaign, the Gauteng Department of Education (GDE) spent an additional R150 million to upgrade the sanitation conditions at 578 schools serving about 500,000 students. Government contractors have fixed or replaced the toilets, taps, pipes and basins at these schools. Some schools have received new toilet blocks altogether. Politicians and government officials throughout the GDE have spoken out on the need for principals and School Governing Bodies to better maintain toilets, even issuing a new manual to guide schools on how to do this.

More recently, the GDE committed to spending R50 million to fix the toilets at the 50 worst schools in Gauteng. It promised to fix all the matric toilet blocks in the province. In addition, the GDE promised to undertake significant policy changes by 16 June 2015 that, if implemented, will improve access to toilets, maintenance, soap, sanitary pads and toilet paper in schools.

Not all of the commitments by the GDE have been met thus far, but the Province has shown a willingness to engage and adapt budget priorities to ensure positive change.

Source: GroundUp, picture by Masixole Feni.

The right to social security

The right to social security is regulated by the Social Assistance Act of 2004, which provides a legislative framework for social assistance programmes. It also sets out the various types of grants available to South African citizens and permanent residents, as well as the qualifying criteria and provides for the establishment of an inspectorate for social assistance to oversee these grants.

During 2012, the Black Sash identified that third parties were making deductions from social assistance grant beneficiaries' bank accounts. Microlenders were debiting bank accounts of beneficiaries in a manner that was often unauthorised, leaving families dependent on the grant with significantly reduced monthly incomes.[83] Women who are poor would withdraw their grants from their bank accounts as soon as they received them, often in the middle of the night, in order to avoid the deductions.

In 2013, the Black Sash launched its "Hands Off Our Grants" (HOOG) campaign. Through this campaign, the Black Sash raised awareness of various demands by affected individuals. These included that the South African Social Security Agency (SASSA), the Department of Social Development (DSD) and third party service providers tasked with administering social grants should held individually and institutionally accountable for illegal debit deductions, and the establishment of an Inspectorate to ensure the integrity of social assistance frameworks and systems, and investigate fraud and corruption. The HOOG Campaign also called for amendments to the Social Assistance Act, which would criminalise the use of social grants as collateral to pay loans, and to the National Credit Act of2005 for social assistance grants to not be considered as income.

83 GroundUp (2015) "Spotlight on social grants: How grants are used to pay back loans". Available at: www.groundup.org.za/article/spotlight-social-grants-how-grants-are-used-pay-back-loans_3370.

Strategic litigation was pursued and the matter heard in the Constitutional Court in 2014. The Court held that – amongst others – SASSA has a duty to protect the personal data of social grant beneficiaries. As a result of the Court ruling, civil society had the opportunity to work with the government to protect beneficiary bank accounts and prevent third parties from making deductions. Third parties were also prohibited from marketing financial and other products to grant beneficiaries. Due to ongoing advocacy campaigns, an Inspectorate was also established to ensure the integrity of social assistance frameworks and systems, and investigate fraud and corruption.

However, despite these successes, significant challenges with the administration of social assistance grants remain. There is a great need to monitor the manner in which money flows between the national, provincial and local spheres of government. Irregular expenditure within the DSD has been identified, in addition to the poor administration of funds it is responsible for providing to people who need them.

The right to water and sanitation

The Social Justice Coalition (SJC) has conducted extensive budget analysis on the right to water and sanitation in the City of Cape Town (the City). Arguably, more than any other SER, the relationship between the rights to dignity, equality and sanitation is profound.

Through budget analysis, SJC was able to identify how much of its budget the City had allocated to sanitation in informal settlements (R22 million), relative to that of a parking garage for the City's Finance Directorate (R106 million). SJC was also able to identify that while there was an increase in direct capital allocations to informal settlements for water and sanitation between 2007 and 2009, it had decreased significantly between 2009 and 2011, and then remained the same thereafter. Moreover, SJC was able to identify that capital allocations on water and sanitation in informal settlements were disproportionately small in terms of the total

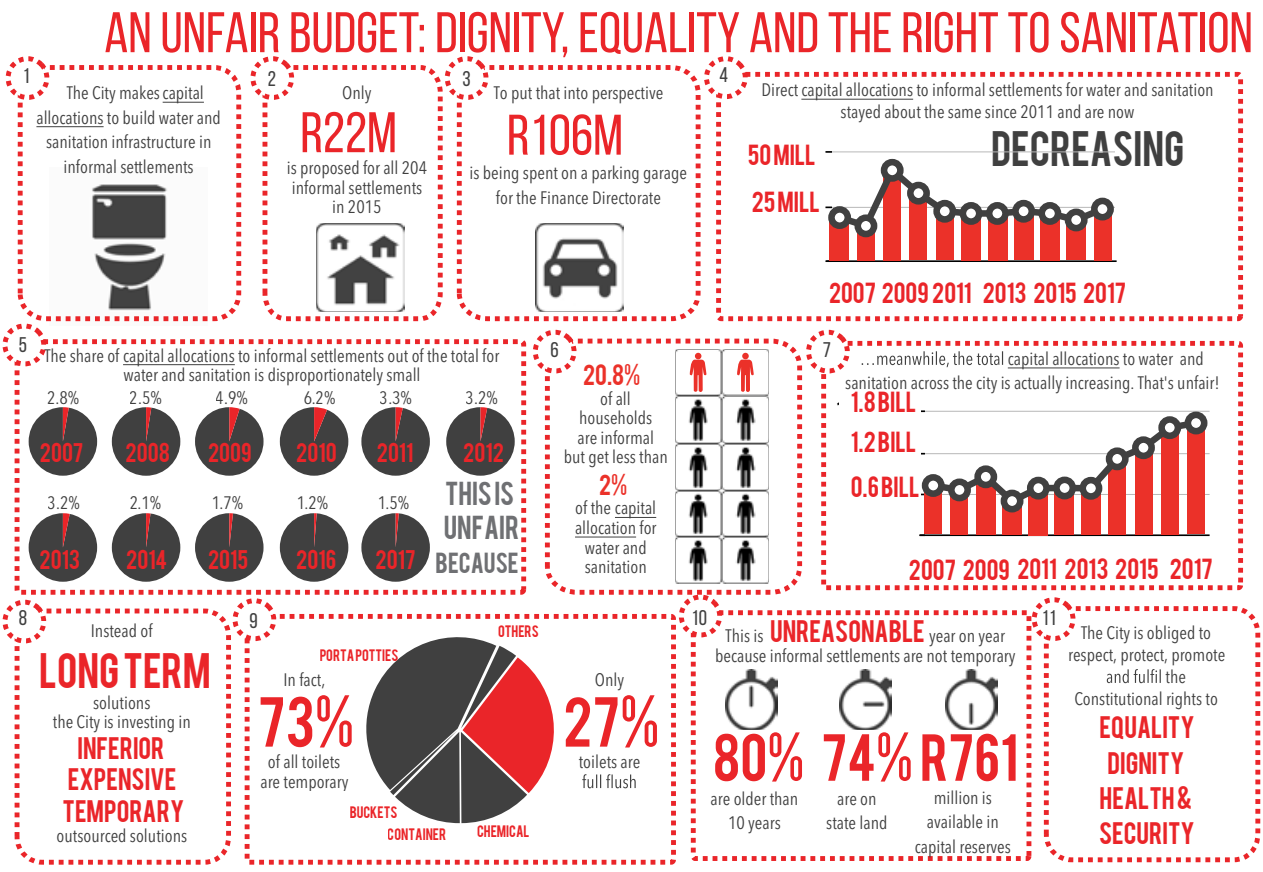

Figure: City of Cape Town budget expenditure on sanitation (2007-2017)[84]

84 Notywala, A. (2016) "The SJC is Obsessed with Budgets", *Presentation made at SAHRC / SPII Roundtable Discussion: Budget Analysis for Advancing Socio-Economic Rights, 17 November 2016.*

budget, as at least 20% of households in the City are informal, highlighting the discriminatory manner in which the City was spending its budget. However, when compared to the total budget allocation to water and sanitation, the SJC identified a significant increase, highlighting that allocation and expenditure to poorer communities is significantly less than what would be spent on communities with higher incomes that already have advanced water and sanitation infrastructure. Although the City had allocated funds to water and sanitation to informal settlements, they were completely inadequate to meet its obligations to progressively realise access to water and sanitation within available resources. This failure was exacerbated due to the City's preference for providing temporary sanitation facilities to informal settlements rather than permanent infrastructure. The SJC found that affected communities were provided with sanitation that was both expensive and of inferior quality, due to its temporary nature.

Despite the evidence provided by the SJC's research, the City has been dismissive of the SJC's claims that the budget allocated to poorer communities in Cape Town that are in desperate need of water and sanitation, is unfair. Budget analysis has, however, provided sufficient evidence to encourage communities to advocate for better access to water and sanitation. Their issues have therefore received more attention from City officials, and will be used in impending litigation processes designed to secure this right. The SJC has also assisted affected communities to conduct social audits, which capacitate communities to hold the City to account in terms of its SER obligations.

The right to a healthy environment

Section 24 of the Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being, and to have the environment protected for the benefit of present and future generations. To fulfil this right, the state must take reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Schedule 4 to the Constitution specifies that the *environment* is a functional area of concurrent national and provincial legislative competence. In the Eastern Cape Province (the Province) the lead agent for environmental governance is the Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), with the environmental function being vested in the Department's Chief Directorate: Environmental Affairs.

The Public Service Accountability Monitor (PSAM) analysed the budget of the Chief Directorate for the 2012/13 – 2015/16 financial years, by interrogating the *Eastern Cape Estimates of Provincial Revenue and Expenditure,* issued by the Provincial Planning and Treasury Department. In conducting these analyses PSAM was driven by an interest in the allocation provided to the Chief Directorate for the purpose of fulfilling its constitutional mandate.

Notably, Section 24 of the Constitution does not refer to "available resources". PSAM was therefore not driven in the first instance by an interest in the relationship between the right enshrined in section 24 and the Chief Directorate's budget allocations. However, since the latter's functions correlate with the right to have the environment protected through legislative and other measures, appraisal of this relationship was implicit in its analysis of the allocations.

Some of PSAM's key findings include: the Chief Directorate's budget essentially remained unchanged between 2012/2013 and 2015/2016; the budget assigned to the Chief Directorate comprise no more than 0.49% of the total budget allocated to the provincial government; despite the fact that provincial nature reserves comprise only 2% of the Province's land surface area and already enjoy enhanced levels of protection, annually between 65 and 70% of the Chief Directorate's budget has been channelled to the Eastern Cape Parks & Tourism Agency for nature reserve-related utilization; consequently, only between 30 and 35% of the Chief Directorate's budget has been available for it to fulfil its mandate outside of nature reserves, albeit that this domain constitutes the overwhelming bulk of the Province's geographical span.

Noting the impact of climate change, for example, through budget analysis it could be argued that although funds have consistently been allocated to climate change mitigation and adaptation, the manner in which the Chief Directorates budget has been spent indicates that the provincial government does not have appropriate regard for the scope and implications of

climate change and related environmental crises. There also appears to be a narrow emphasis on economic growth, without consideration for the environmental impacts that accompany a 'growth at all costs' approach.

CONCLUSION

South Africa's ratification of the ICESCR in 2015 compels the government to ensure that the provisions of the ICESCR are translated into its national legislation and budgetary processes. In addition, government must comply with the guidance provided by the UN CESCR in its General Comments and ensure that socio-economic rights obligations of progressive realisation, non-retrogression and non-discrimination are adequately accounted for and implemented in budgetary processes. This includes ensuring that revenue generation, allocation and expenditure prioritises and advances the enjoyment of SER.

SER budget analysis is ultimately a political process that presents many challenges. These include translating legal terminology into measurable components required to ensure that budget analysis can have an impact; ideological tensions presented by the "separation of powers" and the extent to which the courts should be playing an oversight role in policy-making ordinarily assigned to the executive and legislature; and the need to build collaborative working relationships with the government, which may be resistant to reprioritising the budget in a manner that adequately advances SER. But there are also numerous opportunities. As highlighted by CSOs engaging in SER monitoring work, budget analysis can contribute toward building transparent fiscal and policy institutions that prioritise the advancement of SER, assist in the development of evidence for legal cases aimed to advance SER and rebut claims by government of insufficient resources, without usurping role of legislature and executive; and assist the government with understanding how resources could be better prioritised to meet international and national legal obligations that advance, rather than inhibit, the realisation of SER beyond the drafting of policy.

Reducing inequality and poverty, and ultimately ensuring that everyone in South Africa is able to enjoy all of the rights enshrined in the Constitution – civil, political, social, economic and cultural – requires that institutional barriers that slow down the pace of transformation are broken down. Tools of budget analysis can assist in achieving these objectives. By ensuring that all South Africans are able to access and understand State budgets, and hold the government accountable, budget analysis can help to ensure that policies and budget do not only protect and advance the interests of those who already enjoy their socio-economic rights, but instead ensure that public funds are used to maximise the enjoyment of socio-economic rights by everyone.

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