

BUDGETING IN A TIME OF AUSTERITY AND STATE CAPTURE

A FIVE-YEAR REVIEW OF BUDGET POLICIES AND OUTCOMES

SUBMISSION BY THE BUDGET JUSTICE COALITION
TO THE SELECT AND STANDING COMMITTEES ON APPROPRIATION

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CONTENTS

- 1. BACKGROUND 3
- 2. INTRODUCTION 3
- 3. EDUCATION..... 9
- 4. HEALTH16
- 5. SOCIAL DEVELOPMENT18
- 6. LOCAL GOVERNMENT20
- 7. HUMAN SETTLEMENTS.....22
- 8. GENDER BUDGETING23
- 9. PARLIAMENT’S OVERSIGHT ROLE IN RELATION TO THE BUDGET23
- 10. KEY VACANCIES AT PARLIAMENT24
- 11. RECOMMENDATIONS25

1. BACKGROUND

This submission is informed by a range of civil society organisations (CSOs) who are part of the Budget Justice Coalition, including the Rural Health Advocacy Project (RHAP), the Children’s Institute at UCT, the Dullah Omar Institute (DOI), Equal Education (EE), Equal Education Law Centre (EELC), the Institute for Economic Justice (IEJ), Oxfam, Pietermaritzburg Economic Justice and Dignity (PMEJD), the Public Service Accountability Monitor (PSAM), Alternative Information and Development Centre (AIDC), SECTION27 and the Studies in Poverty and Inequality Institute (SPII).

The purpose of the Budget Justice Coalition is to collaboratively build people’s understanding of, and participation in South Africa’s planning and budget processes – placing power in the hands of the people to ensure that the state advances social, economic and environmental justice, to meet people’s needs and wellbeing in a developmental, equitable and redistributive way.

2. INTRODUCTION

The president, in his 2019 State of the Nation Address, outlined for key priorities to address the challenges we face as we continue our journey to freedom. In prioritising the capability of the state in responding to the needs of our people the president said there is tacit acknowledgement that deep introspection is required. ¹In recent times, public discourse has been dominated by revelations of institutionalized corruption across government and it begs the question as to the extent to which our current institutional frameworks and national governance goals respond to the challenges faced by our society.

Fiscal policy of austerity

Government’s fiscal policy since at least 2014/15 can be described as one of austerity.² In its finding of government’s performance of its human rights obligations in late 2018, the UN Committee stated that it was “concerned that [South Africa] has introduced austerity measures to relieve the debt level”.³ Table 1 below highlights the key trends in this regard.

¹ <https://www.gov.za/speeches/president-cyril-ramaphosa-2019-state-nation-address-7-feb-2019-0000>

² Austerity is defined in the Oxford English Dictionary as “difficult economic conditions created by government measures to reduce public expenditure.” Available at <https://en.oxforddictionaries.com/definition/austerity>. Typically, austerity is implemented to allow the government to prioritise debt repayments in order to reduce government borrowing and debt exposure, measured in terms of the debt to GDP ratio.

³ A video was made about the government’s appearance before the UN Committee, highlighting the subsequent findings of the Committee. To view, visit: https://twitter.com/IEJ_SA/status/1098522871582797829.

Table 1: Consolidated revenue, non-interest expenditure and population growth, 2014/15 - 2018/19⁴

	2014/15	2015/16	2016/17	2017/18	2018/19	Average growth
Revenue growth	2.7%	5.1%	0.6%	-1.0%	2.7%	2.0%
Non-interest expenditure growth	1.7%	4.6%	-0.2%	0.3%	2.6%	1.8%
Population growth	1,6%	1,6%	1,6%	1,6%	1.6%	1.6%

Non-interest expenditure (i.e. all expenditure except for debt service costs) was cut in real terms in 2016/17, in per capita terms in 2017/18 and has grown at a slower rate than revenue growth in four of the past five years. This is a clear demonstration of austerity, as a larger pool of available resources has not translated into larger allocations to government departments. The difference (between revenue and non-interest expenditure) has gone to debt service costs.

Average non-interest expenditure growth has barely kept up with population growth, this means that in real terms, non-interest expenditure has hardly grown at all in real terms during the 5th democratic administration. Austerity expenditure ceilings have affected local, provincial and national government departments across the country, and every service area from water to electricity to housing and social development.

Increasing poverty and inequality

A foundational value articulated in the preamble of the Constitution is to improve the quality of life of all our people. The government response to addressing the drivers of poverty of inequality is clustered in the social wage which includes investments in education, health care services, social development as well social assistance to vulnerable households and individuals which include contributory social security, public transport housing and social amenities. Total Expenditure on the social wage makes up close to 60% of all government expenditure. Despite significant investments in the social wage, rising poverty and inequality remain a significant challenge.⁵ Stats SA's 2017 Report "Poverty Trends in South Africa" revealed that rates of poverty increased between 2011 and 2015. In 2015, over half (55.5%) of the population—30.4 million people—lived below the official national upper bound poverty line (UBPL) of R992 per person per month (2015 prices). Notably, this increased from 53.2% in 2011, meaning approximately 2.9 million people were pushed into poverty over this period. A quarter—13.8 million people—lived in "extreme poverty" in 2015, unable to afford enough food to meet their basic physical needs. These trends have almost certainly continued since 2015 as

⁴ Consolidated budget revenue, National Treasury 2017-2019 Budget Review and own calculations. StatsSA Mid-Year Population Estimates.

⁵ <http://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>

the economy has dipped in and out of recession, unemployment has continued to rise and food prices spiked due to the drought.

The incapable and non-developmental state

Despite rhetoric about pursuing a 'developmental state', South Africa has failed to leverage economic development and promote industrialization to be able to provide sufficient and efficient resourcing on the delivery of the infrastructure, goods and services necessary for the realization of rights. There has been a lack of meaningful structural economic change. The energy crisis in South Africa can be used to demonstrate the absence of a developmental state. A developmental state would have ensured that new investment was directed into building energy capacity that can sustain the economy, particularly the energy intensive sectors such as mining and manufacturing.

South Africa lacks the governance capabilities for growth-enhancing institutions which have the ability to meaningfully change the structure of the economy and to generate inclusive growth through the creation of economic opportunities for broader groups in society. State-owned enterprises, public financing institutions, and (digital and physical) infrastructure could play a far more effective role in ensuring access to basic needs and public goods, transforming the economy and advancing the realization of most rights.

Chapter 13 of the National Development Plan identified the importance of an efficient and capable state in addressing the twin challenges of poverty and inequality. The plan also places significant emphasis on the need to address the political administrative interface, particularly in the relationship between the political and administrative heads of government.⁶ Testimonies at various commissions including the Life Esidimeni arbitration and more recently the Zondo commission into state capture, again emphasized how failure to address this issue leads to significant governance failures with resultant losses to the fiscus totaling billions of rands.

In his 2018 Audit report the Auditor general lamented the lack of accountability in the management of state resources. Continued management and governance failures are illustrated in wasteful and irregular expenditure growing to over 2,8 billion. Irregular expenditure arising from the abuse of procurement management policies rose to R58 billion. Provincial departments of health and education have growing deficits, amounting to R8 billion.⁷ While there have been some attempts to improve the capacity of provincial and municipal management, the continued failure by both political and administrative leadership to address these failures along with the revelations around state capture point to much a deeper crisis of capability within the state. Despite this, there is little evidence of investment to mitigate against the decline in state capacity.

⁶ <https://www.gov.za/issues/national-development-plan-2030>

⁷ Auditor General South Africa_ National and Provincial audit outcomes PFMA 2017/2018

Instead, National Treasury proposals to introduce voluntary retirement to state employees (55-60) in an attempt to address a growing wage bill without sufficient targeting could potentially reduce already constrained capacity. Overall, the modest 1.2 percentage point increase in the last 10 years of employee compensations as a share of total expenditure does not justify the undermining of state capacity currently taking place. We submit that the approach of implementing generous severance packages and early-retirement schemes without a plan for improving capacity will worsen the performance of government at the precise moment when we need all (and especially the most experienced) hands on deck. More than likely, the state will start re-hiring the lost experience as consultants, further undermining its capacity. This policy will further expose the State to corruption and looting by making it increasingly reliant on private service providers to deliver on its core mandates.

The transition to the sixth administration offers an opportunity for renewal.

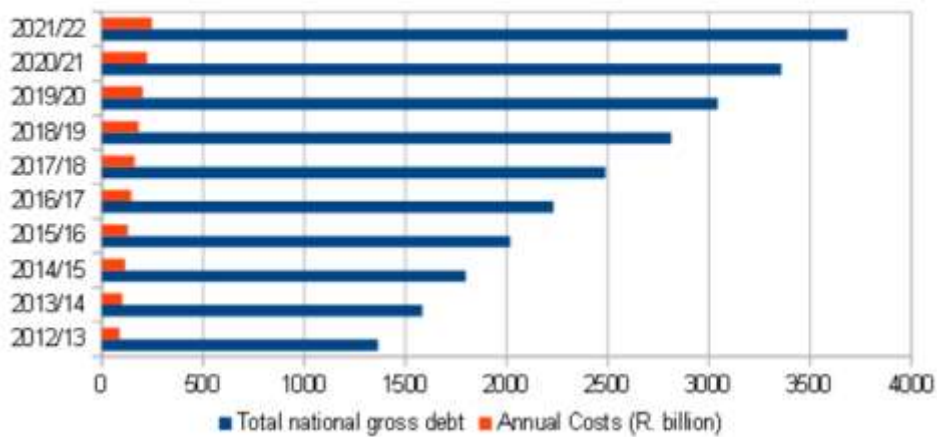
Consolidated Budget

The budget theme, 'risk, renewal and growth' aptly captures the challenges faced by our young democracy. While there are attempts to protect the social wage through the protection of budgets that advance socio economic rights, it is only once we reflect on the proposed division of revenue that the risk to advancement of these rights are fully articulated. The BJC provided detailed comment on the fiscal framework and the budget review in our submission to the Standing and Select Committees on Finance, aspects of which we also include in this submission, as some issues raised do impact on our comment on the division of revenue.

This year the consolidated expenditures across government will amount to just over R1,8 trillion and is expected to rise to just short of R2,1 trillion, presenting a growth of just over 2% in real terms. After adjusting for debt servicing costs and additions to the contingency reserve, budgeted expenditure over the next 3 years is set at R1.4 trillion, R1,54 trillion and R1,65 trillion. Noting the differences between consolidated expenditures after provision for the contingency reserve, the impact of debt servicing on available resources is significant. Since 2015, national debt has grown by more than 30% and is expected to breach R3 trillion this year.

National Debt Trends

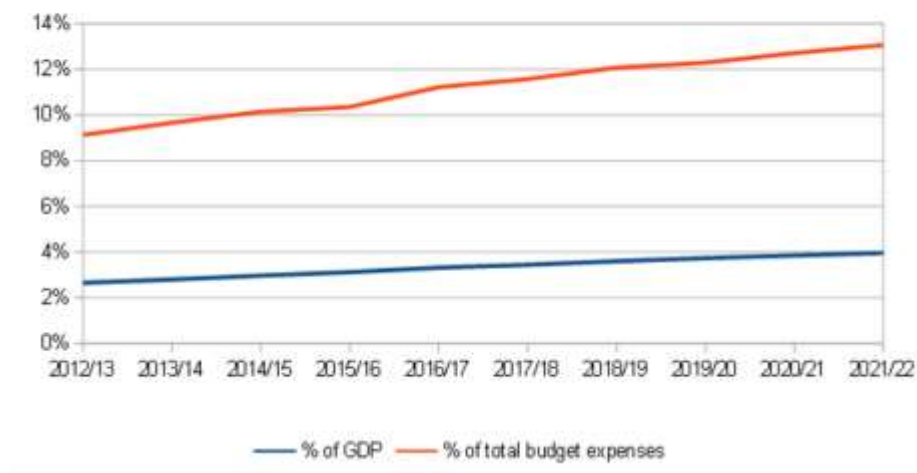
(in R. billion, 2012/13 to 2021/22 - Source: Budget Review 2019, Stat. annexure, table 1 and 10)



As debt grows, so does the costs of servicing said debt. Over the term of the current government, debt servicing costs as percentage of government spending has increased from just over 10% in 2012/13 to just over 13% by 2021/22. To put this into perspective, debt servicing costs this year will total just over R200 billion, around 10% less than projected spending on health, which is projected at R222 billion.

Debt-service costs

(2012/13 to 2021/22)



In our submission to the Standing and Select Committees on Finance we provide a detailed analysis of current debt management and provide a number of alternatives for the management of the national debt.

The effective utilisation of debt

While debt repayments do divert funds from other expenditure, it is critical to stress that debt, particularly at the moderate levels currently held, can have substantially positive benefits. It is widely accepted that if borrowing is effectively spent in a manner that stimulates the economy then it has both short- and long-run benefits. It is further able to reduce the debt-to-GDP ratio through both growth (the more GDP increases the more the debt levels fall even if the gross amount of debt increases) and the resulting increased taxation. By international norms, South Africa actually has the capacity to borrow more - if financed at sustainable rates - and to spend this on critical social and economic infrastructure in a manner that would be growth enhancing.

Equitable Share

Against the background of continued weak economic growth, growing debt and associated declines in available resources, the performance of the various spheres of government in executing the social wage is of paramount importance. Section 214 (1) of the Constitution provides the framework on which nationally collected revenue is distributed and sets out the factors that must be used in the determination of the split between the various spheres of government. Revenue is distributed according to function with national departments receiving the lion share of resource at 47%. Given the limited revenue raising opportunities afforded to provinces, 43% is distributed to provinces to support the delivery of the social wage particularly around health and education and lastly, 9% is allocated to support local government.

The provincial equitable share formula attempts to distribute resources in an equitable manner and is made up of a broad composite index. Components include Education 48%, Health 27%, Basic 16%, Poverty 3%, Economic 1% and an institutional component of 5%. While the formula guides the division of the provincial equitable share, transfers to provinces are unconditional, allowing provincial premiers significant discretion to inform provincial appropriation bills. Without addressing the general collapse of governance in provinces as seen in the collapse of the North West government, the failure to improve provincial resource allocation decisions could impact negatively on the economic prospects of the country going forward.

	Education	Health	Basic share	Poverty	Economic activity	Institutional	Weighted average
	48.0%	27.0%	16.0%	3.0%	1.0%	5.0%	100.0%
Eastern Cape	14.5%	12.3%	11.3%	14.7%	7.6%	11.1%	13.2%
Free State	5.3%	5.4%	5.1%	5.3%	5.0%	11.1%	5.6%
Gauteng	18.7%	23.6%	25.5%	18.4%	34.6%	11.1%	20.9%
KwaZulu-Natal	22.0%	21.0%	19.7%	22.4%	15.9%	11.1%	20.8%
Limpopo	12.9%	10.1%	10.0%	13.3%	7.2%	11.1%	11.5%

Mpumalanga	8.4%	7.4%	7.8%	9.3%	7.4%	11.1%	8.2%
Northern Cape	2.3%	2.1%	2.1%	2.2%	2.1%	11.1%	2.6%
North West	6.6%	6.7%	6.9%	8.3%	6.4%	11.1%	7.0%
Western Cape	9.2%	11.4%	11.5%	6.3%	13.7%	11.1%	10.2%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Distribution of the equitable share by province
Source: National Treasury

Four of the six components are population based and with the revision the population estimates, provinces with large rural populations see a reduction in the relative share of the overall allocation, placing strain in already constrained provincial budgets. The revision of the baseline population numbers informing the calculation of the equitable share of each province also negatively impacts on under developed provinces such as the Eastern Cape, Limpopo and KwaZulu Natal.

Impact of changes in the PESF

	2018 MTEF weighted average	2019 MTEF weighted average	Difference
Eastern Cape	13.7%	13.2%	-0.5%
Free State	5.6%	5.6%	0.0%
Gauteng	20.1%	20.9%	0.8%
KwaZulu-Natal	21.0%	20.8%	-0.2%
Limpopo	11.7%	11.5%	-0.2%
Mpumalanga	8.2%	8.2%	0.0%
Northern Cape	2.7%	2.6%	0.0%
North West	6.9%	7.0%	0.1%
Western Cape	10.1%	10.2%	0.1%
Total	100.0%	100.0%	0.0%

National Treasury

3. EDUCATION

Early Childhood Development

According to Statistics South Africa, in 2016 there were 7.2 million children aged between zero and six. 46.9% are not attending an educational institution. An estimated 83% of children aged from three to five who form part of the highest 20% of households are accessing preschool programmes, compared to only 58% of the children of the same age group who form part of the lowest 20% of households. The early childhood development (ECD) conditional grant was introduced in 2017, with the primary purpose being to address inequality and to increase the

number of children accessing subsidised ECD services by improving and maintaining infrastructure, and subsidising centres that offer ECD services to children from low income households. It is managed by the Department of Social Development.

Under this grant, R500 million is supposed to be allocated per year to subsidise these services for 60 000 children from low income households. This allocation is not enough to subsidise the number of poor children and ensure adequate infrastructure for ECD centres in South Africa. In 2017/18, only R317.6 million was allocated and R490.8 million was allocated in 2018/19. It is also critical to understand the conditions that children live in, in order to provide needs-based services. The ECD services are important for the educational development of children, to ensure that they have a good foundation. We welcome the continuation of the ECD grant beyond its inception year, however with 120 000 children anticipated to be provided with this service, the Department of Social Development and National Treasury must work together to address the continued underspending.

Table 1: Early Childhood Development Grant Allocations 2017/18 - 2019/20

Early Childhood Development Grant	2017/18 Adjusted budget	2018/19 Adjusted budget	2019/20
Eastern Cape	56 365	78 715	85 397
Free State	18 398	21 656	25 477
Gauteng	38 489	62 777	68 097
KwaZulu-Natal	71 879	107 543	116 035
Limpopo	41 085	68 561	68 992
Mpumalanga	25 799	41 998	44 351
Northern Cape	13 761	18 472	14 199
North West	32 686	52 185	55 201
Western Cape	19 150	38 893	40 479
Total	317 612	490 800	518 228

Source: National Treasury

During the State of the Nation address, President Cyril Ramaphosa stated that the ECD programme would be transferred from Social Development to DBE. This has not occurred as yet and it is unclear when it will. It is disheartening to note that while the ECD grant is still under the Department of Social Development, the early grade reading programme is under the Department of Basic Education. The two programmes are interlinked and ought to be managed under the same department.

Early Childhood Reading

The 2016 Progress in International Reading Literacy Study (PIRLS) has revealed that after four years of schooling, 78% of South African learners cannot read for meaning. This compares poorly with the international average of 4% and with other middle income countries such as Iran (35%) and Bulgaria (only 5%).

We acknowledge the continued use of the early grade reading assessment toolkit. In 2019, the programme is expected to be implemented in 4 700 schools, to be expanded incrementally to 20 000 schools over the medium term. An estimated 700 000 learners in grades 1 to 3 are expected to benefit from the programme over the same period. R44 million for the next three years towards this toolkit.

The ability to read is necessary for learners not only to progress to the next grade, but to progress through the basic education system. The government needs to pay particular attention to 'no-fee' schools, which are often under-capacitated and under-resourced. With regard to improving learning outcomes, targeted, funded interventions are required, such as teacher coaching, reduced class sizes and/or remedial classes.

School Infrastructure

Provinces make use of the Education Infrastructure Grant (EIG) to build, maintain and refurbish education infrastructure and schools. An indirect grant to provinces is the SIBG that was introduced in 2011 as a temporary, high-impact grant. This is called an indirect grant because the National Department of Education performs the function of addressing the inappropriate structures and access to basic services to schools on behalf of the ECDoE. This grant addresses the conditions of mud schools which have unsafe and inadequate school infrastructure. This kind of infrastructure endangers learners and teachers, including making effective learning and teaching impossible. Poor school infrastructure is found throughout the country, but the problem is particularly worse in the Eastern Cape where the majority of mud schools are located.

The School Infrastructure Backlogs Grant (SIBG) funds the nationally-administered Accelerated School Infrastructure Delivery Initiative (ASIDI). While there were budget cuts in the 2018 Budget, as explained below, and R800 million additional allocation for sanitation projects in the 2018/19 financial year, ASIDI continues to face performance challenges – as can be seen in Table 2 below.

The allocations to EIG have decreased over the years, for example – for the Eastern Cape – from R1.7 billion in 2015/16 to R1.5 billion in 2019/20, in nominal terms. While the [PSAM](#) has previously noted the 50.9% nominal increase in budget allocations to the Eastern Cape, from R1.05 billion in 2016/17 to R1.581 billion in 2017/18, in real terms, this decreased by 0.2% to R1.501 billion. We note the 10% reduction, in nominal terms, R1.7 billion in 2017/18 to R1.5 billion in 2018/19 in the allocation for Programme 6 (Infrastructure Development) of the Eastern Cape Department of Education (ECDoE). The reason for this decline is due to the reduction in the funding for 2 conditional grants, namely Education Infrastructure Grant and Maths Science and Technology Grant. In real terms, the allocation to the infrastructure development decreased by 13% to R1.4 billion. This reduction delayed the completion of infrastructure projects.

As shown in Table below, seven (7) of the nine (9) provinces had their budget allocations reduced between 2017 and 2018. The Northern Cape had the highest reduction by 7.10%, in nominal terms, from R612 million in 2016/17 to R568 million in 2017/18. In real terms, the province experienced a reduction of 10% from R612 million in 2016/17 to R551 million in 2017/18.

Table 2: Education Infrastructure Grant Allocations, 2014/15 – 2018/19

Education Infrastructure Grant Allocations <i>R thousand</i>	2015/16	2016/17	2017/18	2018/19	Nominal Allocations Medium Term Estimates			Real Allocations		
					2019/20	2020/21	2021/22	2019/20	2020/21	2021/22
					Provinces					
Eastern Cape	1,703,877	1,505,088	1,581,750	1,494,984	1,585,532	1,564,208	1,685,128	1,469,187	1,482,668	1,614,532
Free State	762,553	695,122	661,635	690,455	833,485	722,425	778,272	772,324	684,766	745,667
Gauteng	935,725	1,385,737	1,468,146	1,376,435	1,474,715	1,440,169	1,551,501	1,366,501	1,365,095	1,486,503
Kwazulu-Natal	1,978,683	1,958,321	1,993,146	1,924,302	2,187,162	2,013,404	2,169,050	2,026,670	1,908,448	2,078,180
Limpopo	805,128	830,532	810,523	845,828	1,050,160	1,175,467	1,266,336	973,100	1,114,192	1,213,284
Mpumalanga	857,247	788,153	750,184	782,861	731,792	819,111	882,432	678,094	776,412	845,464
Northern Cape	446,998	486,538	612,267	483,272	639,817	505,649	544,738	592,868	479,290	521,917
North West	995,107	971,989	1,074,331	965,464	902,484	1,010,169	1,088,260	836,260	957,511	1,042,669
Western Cape	1,032,237	992,212	1,093,580	985,552	1,109,331	1,031,186	1,110,902	1,027,929	977,432	1,064,362

It was explained in the 2018 MTBPS statement that R3.4 million is allocated to the education EIG. KwaZulu-Natal received an additional allocation of R150 million for the repair and rehabilitation of over 87 schools across the province. Western Cape is allocated R25.8 million for the repair and rehabilitation of 22 schools. It was concerning that the Eastern Cape did not receive additional funding for the EIG. PSAM calls on the National Treasury to explain reasons for not allocating additional funding to most deserving provinces such as Eastern Cape and North West. More funding is required in these provinces considering the budget cuts to the EIG in the 2018 Budget. The 2018 budget allocation to the EIG in the North West decreased by 7%, in nominal terms, from R1.074 billion in 2017 to R1.002 billion in 2018. Whilst the adjusted allocation to this province remained unchanged, it important to note that when the nominal figures are considered to account

for inflation, the allocation became R972.7 million in real terms. We therefore call on the Appropriations Committee to consider more budget allocations to the school infrastructure, especially in the 6th administration. [The PSAM has previously commented that the reduction](#) in the EIG, which has a history of underperformance, will result in projects that are currently underway being delayed.

While spending in the EIG improved in the 2017/18 financial year, provinces are still facing challenges with meeting targets. Poor performance has been reported between 2014 and 2018 – of the 5th administration. For example, Table 2 below shows that the Department of Basic Education (DBE) failed to meet a target of building 100 schools in 2014/15 and, instead built 24 schools. This poor performance continued until 2018/19 where 9 schools were built against a planned target 50 schools.

Underperformance can also be noted in the provision of sanitation to schools where only 9 schools were provided with sanitation from the target of 265 in the 2016/17 financial year. This underperformance is continued right until the first quarter of the 2018/19 financial year, where the department provided sanitation to 64 schools from the target of 285. Therefore, the 5th administration underperformed on the provision of all basic services to schools. This poor performance needs to be resolved to ensure the realisation of the quality of education. The realisation of the quality of education relates to quality education from the foundation phase onwards.

In the 2016/17 financial year, the poor performance was also experienced in the EIG allocated to the ECDoE. For example, Table 3 below shows that the ECDoE failed to meet its targets.

Table 3: EIG Expected Outputs vs Actual Outputs (2016/17)

Expected Outputs	Actual Outputs achieved
Provision of water supply for the targeted 165 public ordinary schools	77 public ordinary schools were supplied with water
Provision of electricity supply for the targeted 95 public ordinary schools	10 public ordinary schools were supplied with electricity
Provision of sanitation facilities for the targeted 246 public ordinary schools	88 public ordinary schools were supplied with adequate sanitation
Provision of classrooms for the targeted 509 public ordinary schools	88 classrooms were built at public ordinary schools
Provision of specialist rooms for the targeted 83 public ordinary schools	24 specialist rooms were built at public ordinary schools
Provision of Grade R classrooms for targeted 84 public ordinary schools	19 Grade R classrooms in public ordinary schools
Refurbishment to a targeted 21 public ordinary schools	23 public ordinary schools received scheduled maintenance

It can be seen that there was a huge variance between planned targets and actual performance. The common challenges presented by these variances had to do with the non-performance of project contractors and poor project management practices. This poor project management is explained as a result of the lack of capacity in the agents/contractors who are awarded tenders. We call on this committee to make sure that the poor performance challenges are addressed in the 6th administration. We are concerned about the failure of the department to meet its targets. For example, the 2018/19 Adjusted Estimates of Provincial Revenue and Expenditure reported the following poor mid-year performance by ECDoE in support of basic services to schools.

Table 4: Provision of Basic Services to Schools, Targets vs Performance 2018/19

	2018/19	
	Target	Performance
Provision of water supply to schools	169	17
Electricity supply	32	13
Sanitation facilities	169	14
Classrooms built	221	143

Table 4 above shows that ECDoE is not only underperforming on the provision of sanitation to school. Underperformance can also be noted in the provision of water where only 17 schools were provided with water from the target of 169 in the mid-year performance of 2018/19. This poor performance needs to be resolved to ensure the realisation of the quality of education. The realisation of the quality of education relates to quality education from the foundation phase onwards. It is important that this poor performance be addressed in order to realise quality education, as outlined in the National Development Plan (NDP) Vision 2030.

Equitable Share and Learner Transport

In previous [submissions](#) to this Committee, Equal Education (EE) has raised concerns with the equitable share formula, in relation to the education component. EE has argued that while the equitable share takes into account demographics such as the school going population (aged 5 to 17) and rates of enrolment in each province, there needs to be a revision of the formula to consider rurality. The cost of providing quality education in rural provinces is often much higher given their geographic location and historic underfunding.

EE has welcomed National Treasury’s intention to review the equitable share formula, yet we still await time frames for the review process to be made public. According to the Explanatory Memorandum to the 2018 Division of Revenue Bill, this review will take place over a number of years, and includes assessing the continued appropriateness of all aspects of the formula. We note that the 2019 Division of Revenue states that the “*the periodic review of the formula to assess its continued appropriateness and equity continues in 2019*”. We welcome the review’s continued work, noting the inclusion of a new data-collection methodology for the education component. According to the Explanatory Memorandum, the review process will continue to interrogate whether the education component is aligned to the government’s education policy vision. While

all of the above work towards reviewing the provincial equitable share formula takes place, there is no mention of the structure – including plans and timelines – of the review. The information provided in the Explanatory Memorandums has been so vague, it is impossible to ascertain when the public can expect to interact with the process to provide comment.

A. Learner Transport

EE has, since 2014, highlighted how the lack of transport in rural areas poses a serious barrier to education. We have made submissions and presented on the Division of Revenue Bill, in [2016](#), [2017](#) and [2018](#) calling for the creation of a learner transport conditional grant. Thousands of learners have to traverse dangerous terrain and threatening situations to get to school, yet funding for learner transport remains ad-hoc. Current provision of learner transport is funded through the provincial equitable share allocations, however Provincial Education Departments (PEDs) have often cited inadequate funding as one of the main reasons for not providing transport to all learners who qualify. It has been the observation of EE that budgets for scholar transport are often the first to be cut when provinces face budgetary pressure.

EE's campaign is driven by Nquthu based members in the north of KwaZulu-Natal (KZN) who have testified to the great difficulties they face when walking to school and back everyday - that includes walking very long distances in extreme heat and in thunderstorms, and crossing rivers and mountains, at great risk of violent crime including sexual assault. In 2018, the Human Sciences Research Council (HSRC) also [presented](#) to the Appropriations Committee on the state of learner transport provision in the South Africa and their [presentation](#) highlighted that KZN was the province with highest demand of learners in need of transport.

For nearly three years now, National Treasury and the Department of Planning, Monitoring and Evaluation (DPME) have stated that they would look into developing such a conditional grant. The 2019 Division of Revenue states that in 2018, the government conducted a study on the delivery of scholar transport services, however the resulting report showed that *“there were several data gaps and inconsistencies in the way services are delivered and reported on in different provinces, making it difficult to establish a common national approach to improving the services”*. That being said, EE wrote to the Department of Transport and the DPME in late 2018, citing our concerns about various aspects of this study. Amongst our concerns, we highlighted that the methodology of the study (small sample size) was flawed and that there was a lack of depth and accuracy in some of the analysis.

What is clear is that in the absence of a conditional grant, scholar transport funding will continue to be ad-hoc, it will continue to be pitted against other provincial priorities and the data gaps and inconsistencies across provinces mean learners are the most affected in the process.

It is thus, imperative that National Treasury release timeframes on when the investigation into a scholar transport conditional grant will be finalised. It is the right of learners, parents and teachers to have this information.

4. HEALTH

Unequal access to quality health care services in South Africa is a direct result of the unequal levels of investment in private and public health during apartheid, which continue to this day. Universal Health Care has been a goal of the governing party since taking power but has been continually undermined by the slow pace of reform and under-funding of public health, and the under-regulation of the private health market. In this context, and despite rising medical expenditure costs (including for equipment, medicine and personnel) the health budget in SA has been flat for six years in a row, when inflation and growth in the uninsured population are accounted for. The UN Committee warned that the policy of under-funding priorities like health was threatening to reverse the gains that had been made since 1994⁸. It therefore recommended that government increase the level of funding for health.

Human Resources for Health

Currently provincial departments of health spend approximately 65% of their expenditure on wages - this is despite the widespread unoccupied vacancies in the system. In May 2018, 37 000 posts were not filled.⁹ The new public-service wage agreement negotiated in 2018, dealt the provinces a low blow as it resulted in additional, unbudgeted compensation costs. Provincial governments were required to absorb the increases within their current compensation ceilings, which also meant money was reprioritized from service delivery projects.

In December 2018, Health Minister Aaron Motsoaledi's announced the creation of more than 5300 posts for health workers, both in clinical and in support staff throughout South Africa. The health stimulus makes some progress by opening posts to a broader spectrum of health professionals – which are much needed due to slow spending in the personal services component of the National Health Insurance (NHI) grant in 2018/19, R2.8 billion over the MTEF period has been reprioritised to the new human resource capacitation grant, which is supposed to enable Provincial Departments of Health to fill posts, particularly community service and interns. What are the conditions of this grant? How will post prioritisation take place? How will it ensure that primary healthcare is prioritised?

The performance of any healthcare system is directly dependent on the quality of care afforded by human resources for Health. In the South African context, the quality has been compromised by high rates of unauthorized absences leading to further understaffing, overwork, and health worker exhaustion.¹⁰ Shortages in healthcare workers are even more pronounced in the rural areas where only 12% of doctors and 19% of nurses work, despite the rural population making up almost half of the population. The capacity to provide high quality, primary care is eroded by the deficiencies in health resources for health.

⁸ Ibid at paragraph 18.

⁹ Treatment Action Campaign, State of Health Report May 2018

¹⁰ Health Systems Trust (HST), South African Health Review 2018

R12 billion is spent every year on health sciences education but that this economic investment with recurring benefits often falls short in retaining health workers in under-served and rural areas. Longer term interventions need to be implemented to reap the economic investments made into human health resources. How will the new resource capacitation grant incentivize labour retention in the sector?

Community health workers

Despite years of promises to improve the working conditions of community health workers, including paying a minimum wage, funds are only allocated in the outer year of the MTEF for this. This is a great disappointment to the tens of thousands of community health workers that serve our communities and demonstrates the lack of regard that our politicians and officials have for these workers, despite their huge contribution to advancing public health. We recommend that Parliament require Treasury to bring this allocation forward so that CHWs can be paid their dues from 01 April 2019.

Financing Universal Health Care through NHI

In addition to the impacts of the general under-funding of public health on NHI progress, the lack of a comprehensive financing plan to support the progressive implementation of NHI is also hampering the implementation of this “priority”. We recommend that such a plan is drafted immediately, in consultation with stakeholders, and is based on flexible economic scenario planning to ensure that sustainable funding for NHI is secured whether we experience low (0% - 3%) or high (3% - 6%) growth environments. It is also high time that the Business Plan for the NHI conditional grant was published. This will enable better public oversight of this grant.

We also recommend that the Department of Health, Treasury and the Presidency work more closely together to ensure a coherent programme of work for NHI. The current situation of different centres of power and an uncoordinated approach is not commensurate with the building of NHI.

Underspending by the National Department of Health

We are also concerned by underspending by the NDoH on its response to the Life Esidimeni disaster, to improve contracting and capacity in mental health care, as well as on public health programmes funded by the sugar tax. The ‘unallocated funds’ in the NHI grant are also a concern, and may point to planned under-expenditure on this grant, perhaps so that the funds can be reprioritized to cover further in-year needs of under-funded provincial health departments.

We call for the National Treasury to implement, where necessary, cost-containment measures that comply with the human rights standards of equity, non-retrogression and minimum core

obligations, while supporting provincial department of health's capacities to contain costs in a manner that enhances rather than undermines service delivery.

5. SOCIAL DEVELOPMENT

Section 27(1)c of the Constitution guarantees the right of access to social security for all, including access to social assistance (revenue funded assistance) to those unable to provide for themselves and their dependents. This right is subject to progressive realization, in other words, the state is obliged to progressively increase access to social security to reach universal enjoyment.

Social security of course refers to both contributory social insurance and social assistance. We welcome the announcement by the President in SONA 2019 of the planned establishment of a National Social Security Fund with the objective of ensuring universal coverage for all people in South Africa.

We are however aware of the very slow nature of these negotiations, and the continued failure of the state to meet its obligations as follows:

1. Despite the constitutional guarantee, there is no provision of access to social assistance to able bodied poor people between the ages of 18 and 59. In the face of such rampant income poverty as set out in the introduction of this submission, and unemployment figures of between 37% and 46% depending on the age cohort, this is a severe failing by the state.
2. The only temporary social assistance provided by the state for this age group is the 3-month Social Relief of Distress grant. We note with dismay the continued real and nominal decline of budget allocations for this relief, and submit that the Committee request of the Department its justification for this.
3. The values of social assistance continue to fall short of the value that would enable any person in South Africa to enjoy their absolute right to dignity contained in the Constitution. Recent research identified a Decent Standard of Living as democratically defined as R7 043 per person per month in 2018 prices. The 2018 Child Support Grant constituted just 6% of this standard, while the Old Age and Disability grants constitute 24% of this value.
4. The BJC is very concerned that the Child Support Grant (CSG) of R425 is well below the value of the food or EXTREME poverty line of R547/person/month, let alone the Lower or Upper Bound poverty lines which are still regarded as being survivalist measures, of R785 and R1 183 per person per month as at 1 April 2018. The low value of the grant means parents and caregivers cannot afford basic food for their children, never mind other costs such as nappies, school uniforms, and transport.
5. The government continues to fail its obligations to provide a detailed road map setting out how people will be covered in a comprehensive social security system through progressive realisation, which opens the state up to constitutional vulnerability.

6. The VAT increase of 2018 was a clear regressive step. We call on the Committee to meet their obligation to call on the Ministry of Finance once again to justify this regressive step.
7. The National Development Plan talks about reducing the cost of living on the poorest in society, and yet the 2019 budget announces another round of delays to the extension of the child support grant to orphans, more increases to the fuel price, and below inflation increases to social grants, including the old age pension.
8. With regards to Social Development, the Constitution, as well as the International Covenant on Economic Social and Cultural Rights (ICESCR), obliges the South African government to respect, protect and fulfil socio-economic rights. Progressive realisation requires the full realisation of socio-economic rights over time and entails the obligation of non-retrogression. Further, the Maximum Available Resources obligation of the ICESCR requires states to demonstrate that they have utilised all of their available resources to fulfil socio-economic rights.
9. In addition to the Constitutional obligations on the state in regard to social security, the BJC asserts an understanding/reframing of social grants as necessary economic stimulus and recommends more fully integrating the welfare system into South Africa's economic recovery plans. Increases to social grants will increase the spending power of over 17 million people. This money is most likely to be spent on food, basic services and transport. The money will therefore flow back into the economy and stimulate growth.
 - a. Increasing social grants should be at the centre of a pro-poor economic stimulus. This point remains pertinent when amelioratory measures in response to austerity are severely lacking; despite the weight of its constitutional guarantee, poor people between 18 and 59 still have no access to state financial support.
10. To address these wrongs, the United Nations Committee on Economic Social and Cultural Rights [recommended](#) on 12 October 2018,^[4] that South Africa investigate the feasibility of a Basic Income Grant for All, and increase the CSG amount to the level of the food poverty line.
11. The need to increase the CSG amount was also recommended by the Panel of Experts appointed by Treasury to investigate ways to mitigate the negative impact of the VAT increase. **We are disappointed that these recommendations have not been responded to in the Budget.**

In the February 2017 budget of the Department of Social Development, a commitment was made to providing a higher CSG to orphans who are in the care of extended family members and additional budget was included for implementation in 2019/20. However, the law required to put this into effect, the Social Assistance Amendment Bill, has been sitting on Parliament's table since April 2018 despite a court order requiring it to be prioritised and passed by 28 November 2019. Without this law being passed, the budget will be unspent- at a time when caregivers are most in need of additional income. The UN Committee on Social, Economic and Cultural Rights also recently recommended that the SA government should prioritise this reform.

Recommendations: the committee we submit, should as a matter of utmost gravity, call on the Ministry of Finance to:

- 1. Publicise a clear commitment plans to increase the Child Support Grant in line with the survivalist Food Poverty Line by February 2020.**
- 2. Publish a clear road map by the 2019 October MTBPS by which the state sets out its commitment to progressively realizing universal coverage of social security to all in terms of headcount and in terms of adequacy of values as required by the Constitution.**
- 3. In this roadmap, clearly commit to rapid extension of coverage to all people between the ages of 18 and 59, as would be achieved by the policy commitment to the roll out of a universal Basic Income Grant, paid to all but clawed back from those who do not need it through the tax system.**

6. LOCAL GOVERNMENT

The Budget Justice Coalition notes that of South Africa's 257 municipalities, 87 have been identified by the Department of Cooperative Governance and Traditional Affairs as dysfunctional municipalities¹¹. This is 34% of South Africa's municipalities. When the list of municipalities is examined, certain common features can be highlighted, some of the municipalities were involved in the VBS scandal, others are troubled with severe drought conditions, others have financial management issues to the extent that they are not able to fulfill their executive function and have had to have provincial intervention in terms of section 139 of the Constitution.

In the Budget Review, the section on municipal revenue and spending opens with a paragraph whose crux is that sustainable municipal finances depend partly on efficient revenue collection. A key issue highlighted in this section is the non-payment of bills by households. To underscore what Treasury outlines, it says "The partnership between municipalities and communities relies on the public recognizing the value of, and paying for, municipal services. While government subsidizes municipal services for low-income households, these services are only sustainable if people who can afford them – and use larger quantities – pay their bills."

Later Treasury outlines that "problems in revenue management are the largest contributor to financial distress in local government. Households, followed by commercial customers and government, owe the largest share of outstanding municipal revenues."

Unfunded budgets is also a major issue, with 113 municipal councils adopting unfunded budgets.

What this section of the budget review does not contemplate however is that in terms of the Division of Revenue, Local Government receives an 8.8% percentage share for 2018/19 versus the Provincial percentage share which is 43.1% and the National percentage share of 48.1%.

The following table indicates the sources of revenue for the different spheres of government:

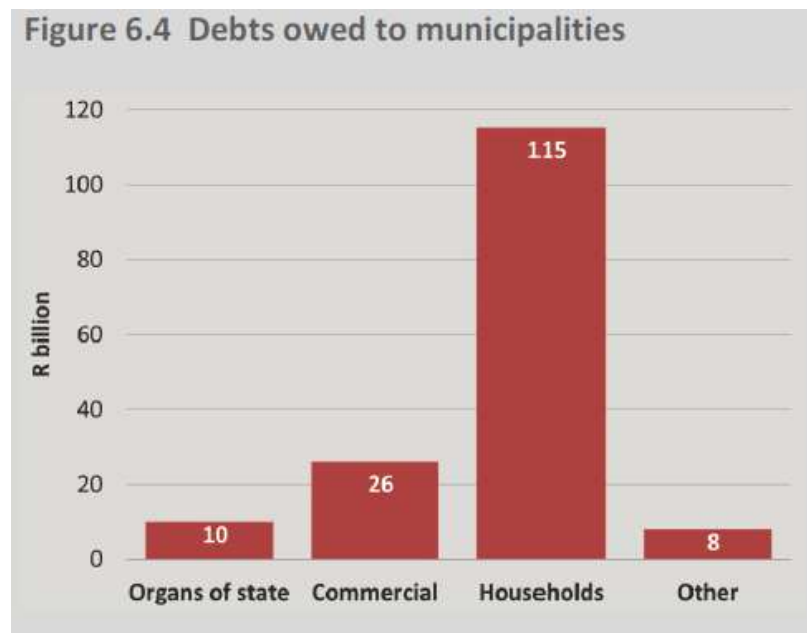
¹¹ <http://www.cogta.gov.za/?p=4088>

Table 4: Sources of revenue at different spheres of government

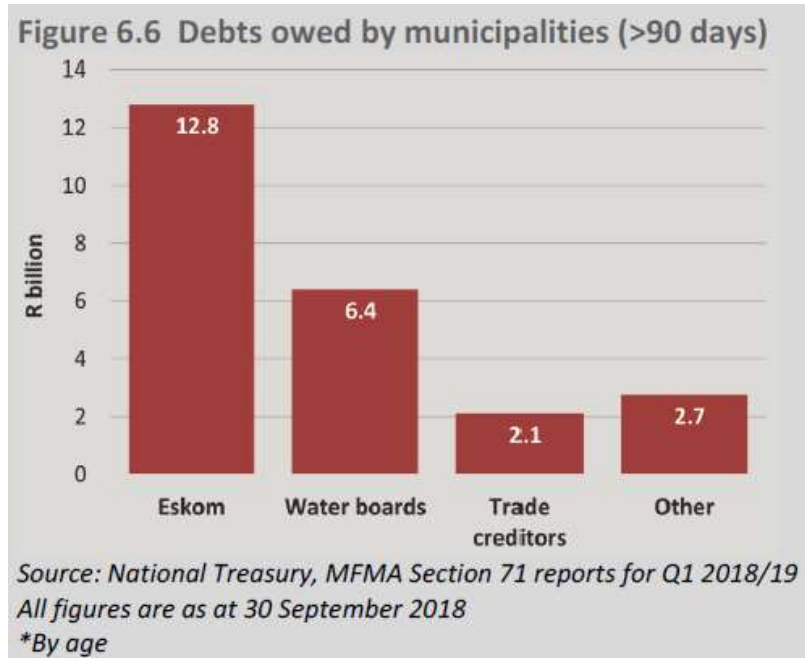
National Government	Provincial Government	Local Government
<ul style="list-style-type: none"> • Tax receipts (Taxes on income and profits). • Taxes on payroll and workforce. • Taxes on property. • Domestic taxes on goods and services. • Taxes on international trade and transactions. • Sales of goods and services other than capital assets. • Transfers received. • Fines, penalties and forfeits. • Interest and dividends. • Rent on land. • Sales of capital assets. • Transactions in assets and liabilities. 	<ul style="list-style-type: none"> • National funding. • Tax receipts. • Sales of goods and services other than capital assets. • Transfers received (including donor funding). • Fines, penalties and forfeits. • Interest and dividends. • Rent on land. • Sales of capital assets and financial transactions in assets and liabilities. • Less significant sources of revenue such as donor funding and funds generated through services rendered. 	<ul style="list-style-type: none"> • Property rates. • Service charges. • Rental of facilities and equipment. • Interest earned on external investments. • Interest earned from outstanding debtors. • Dividends received. • Fines, Licenses and permits. • Income for agency services. • Government grants and subsidies. • Public contributions and donations. • Disposal of property plant and equipment.

Source: National Treasury (2008a) and National Treasury (2007a)

It should be noted that a significant share of local government’s revenue (up to 40% for some municipalities) is derived from service charges, through onselling water and electricity. Not only does this add to the price of water and electricity, but it doesn’t appear to be working as a model. The following charts extracted from the Budget Review highlight why.



Source: Budget Review 2019, National Treasury



Municipalities owe Eskom R12.8 billion and water boards, R6.4 billion. In turn households owe municipalities R115 billion and commercial customers owe R26 billion to municipalities. Given the crisis at Eskom and how drought is impacting various parts of the country, the committees should consider whether it is not time that the revenue model for municipalities to be reconsidered. When customers use less electricity or water, this impacts on the revenues of municipalities, leading them to hike other charges such as property rates. Many households have become disgruntled. The reasons that households are not paying should be probed. One facet of the explanation is likely to entail that the cost of living has escalated for households and they are simply unable to keep absorbing more charges. Poor services delivered by the state may also be undermining the social contract that the state and citizen have. The revenue model should be given urgent reconsideration. The Budget Justice Coalition recommends that the Minister of Finance appoint an expert panel to undertake a study into the municipal revenue model and to provide recommendations.

The risks emanating from this scenario should also be attended to. It has occurred previously that Eskom has request that the equitable share of indebted municipalities be paid directly to settle outstanding debt. If this happens, there will undoubtedly be an impact on service delivery in the affected municipalities. What measures are being taken to mitigate against this?

7. HUMAN SETTLEMENTS

Human settlements have seen a great deal of budget reduction over the years in real terms. In the 2019 budget, there is a baseline (initial allocation derived from previous year's forward estimates) reduction on the Human Settlements Development Grant of R1 billion, R2 billion and R3 billion over the medium term.

While we acknowledge that the intention for the government to continue to place emphasis on “supporting people to own their own homes”.; efforts to increase home ownership should focus on the provision of housing subsidies for low-income earners, increased access to mortgages for middle-income earners and title deeds registration. During the 2018/19, Medium Term Budget Policy Statement, the Title Deeds Restoration Grant was phased out although there is still a backlog in the issuing of title deeds for beneficiaries of state houses. The targets for title deeds registration has as a result been reduced from 170 240 in 2018/19 to 159 687 in 2019/20.

We note that the number of subsidy units completed per year are being reduced over the medium term from 98 152, 83 292 to 80 473. R14.7 billion over the two outer years has been reprioritized to create two new conditional grants for informal settlements. The focus on informal settlement upgrades must not translate to neglect on the provision of state (RDP) houses. Although it is imperative that there be assistance provided to those who are able to access financial support to own houses, failure to provide RDP houses for those who cannot afford will shatter all the hope of ever owning a house for the extremely disadvantaged and runs counter to the Freedom Charter’s goal to provide decent housing for all. We note, however, that the announcement in the State of the Nation Address of the introduction of the Human Settlements Development Bank is a positive step towards supporting home ownership.

8. GENDER BUDGETING

The Budget Justice Coalition recognises that the budget is a major tool for transforming gender relations and is committed to the realisation of an intersectional feminist budget and budget process. We were encouraged by commitments made at the recent presidential Gender Summit in this regard. However, there is no mention of gender in the budget review and we can find no additional funds allocated to fulfil the President’s promise. We remind the government that the realisation of substantive equality is not an option but a duty placed upon the state by our Constitution, and do not take this step back lightly.

Gender-based violence continues to be a widespread problem in South Africa, however there was no mention of it the budget speech. The coalition was hoping that allocations of extra funds for sexual offences support services, including dedicated sexual offences courts, but it appears as if there is no real will to make this a reality.

9. PARLIAMENT’S OVERSIGHT ROLE IN RELATION TO THE BUDGET

The extent of the corruption and state capture that is being highlighted in various commissions points to an issue with the ability of Parliament and other oversight bodies to exercise the oversight function that would curtail this.

We are concerned about the extent to which Parliament has become the seat of spectacle, feeding into an angry news and social media cycle. Social media is gripped with a massive fight to control the narrative. At times this entails actors involved in state capture manufacturing the narrative. We are deeply concerned about the manner in which the role of the media as the fourth estate is being undermined. This is not a virtuous cycle, but a toxic one. In amongst all the noise and posturing, the net losers are the citizens.

The triple challenges of poverty, inequality and unemployment are extremely vexatious challenges which we have not been able to address adequately as a country. As civil society organisations, we are concerned that the situation of citizens of the country is worsening. Representative democracy entails elected representatives carrying the interests of their constituents and making them heard in Parliament. We are concerned about the extent to which, during the fifth Parliament, politics has become beset with self-interest, corruption and greed.

Austerity budgeting has led to expenditure cuts and allocations which pit the realisation of different rights against each other. Whereas the Constitution envisions progressive realisation of rights, we are concerned that in an austerity environment certain rights are being eroded and their realisation is regressing. Households are under increasing pressure as their cost of living is increasing driven by a combination of increases in fuel prices, which impacts on the cost of food, the VAT rate increase in 2018 and increases in the cost of electricity and water.

10. KEY VACANCIES AT PARLIAMENT

Former managers of the Administration of the Parliament have highlighted that the Annual Reports of Parliament [2015/2016,16/2017,17/18] suggest that 145 managers and specialists have left Parliament over the last 3 years in an Administration of 1300. They emphasize that this excludes the resignations, early retirements, sick and trauma leave, and deaths since April 2018. Their collective experience is that a toxic workplace environment came about in the Parliament Administration during the 5th Democratic Parliament.

With relevance to the finance, the Budget Justice Coalition notes that at the end of the fifth democratic Parliament, the following key vacancies exist at Parliament:

- Chief Researcher
- Finance Senior Researcher
- Content advisor Appropriations
- Researcher: Appropriations Committee
- Head of the Parliamentary Budget Office

Parliament's capacity has been eroded, just as capacity at SARS, key State Owned Entities such as Eskom and Transnet and National Treasury was hollowed out. Parliament cannot adequately interrogate the budget if these posts are not filled. The 6th Democratic Parliament

must address this culture that saw excellent talent vacating their positions by being pushed out or leaving due to an intolerable work culture of bullying.

11. RECOMMENDATIONS

The Budget Justice Coalition urges Parliament to hold the executive accountable to the recommendations of the UN Committee on Economic, Social and Cultural Rights. We therefore include its final report as an Annexure to this submission and repeat key recommendations for each area covered in this submission verbatim, since these recommendations carry legal force on the government.

Education

- Reductions to school infrastructure grants over the medium-term must be reversed. These reductions undoubtedly impact on government's ability to deliver desperately needed school infrastructure and address the dire circumstances under which thousands of learners, especially those in rural provinces, are expected to learn.
- There needs to be a concerted effort to provide both the national and provincial departments of education with the necessary support, to overcome governance and administration challenges, in relation to school infrastructure delivery.
- Migrate ECD services and funds from the Department of Social Development to the Department of Basic Education as promised by the President. National Treasury must ensure that funding towards the ECD conditional grant is increased in order to have an effective two years of compulsory ECD.
- Ensure that National Treasury provides funding towards the expansion of the EGRS. The DBE must expand the EGRS coaching intervention to other provinces.
- Ensure that National Treasury finalises its investigation into whether a conditional grant for scholar transport is feasible, and put this into effect.
- Ensure that the equitable share formula review process time-frames are released and made publicly available.
- National Treasury and the Department of Planning, Monitoring and Evaluation need to provide an update on the progress made during the review process.

Health

- We recommend increasing the level of funding for health.
- We recommend that Parliament require Treasury to bring forward the allocation of a minimum wage for community health workers so that CHWs can be paid their dues from 01 April 2019.
- We recommend that a comprehensive financing plan for the NHI is drafted immediately, in consultation with stakeholders, and is based on flexible economic scenario planning to ensure that sustainable funding for NHI is secured whether we experience low (0% - 3%) or high (3% - 6%) growth environments.
- Publish a Business Plan for the NHI conditional grant to enable better public oversight of this grant.

- We call for the National Treasury to implement, where necessary, cost-containment measures that comply with the human rights standards of equity, non-retrogression and minimum core obligations, while supporting provincial department of health's capacities to contain costs in a manner that enhances rather than undermines service delivery.

Social Development

- Publicise a clear commitment plans to increase the Child Support Grant in line with the survivalist Food Poverty Line by February 2020.
- Publish a clear road map by the 2019 October MTBPS by which the state sets out its commitment to progressively realizing universal coverage of social security to all in terms of headcount and in terms of adequacy of values as required by the Constitution.
- In this roadmap, clearly commit to rapid extension of coverage to all people between the ages of 18 and 59, as would be achieved by the policy commitment to the roll out of a universal Basic Income Grant, paid to all but clawed back from those who do not need it through the tax system.
- Parliament to prioritise the Social Assistance Amendment Bill in line with court order.

Local government

- Appoint an expert panel to undertake a study into the municipal revenue model and to provide recommendations.
- Mitigate against the risks to service delivery provision if Eskom requests that the equitable share of indebted municipalities be paid directly to settle outstanding debt.

Gender budgeting

The Budget Justice Coalition notes the recommendations contained in the submission of civil society organisations who made a submission relating to Gender Based Violence to the Standing and Select Committees on Finance and supports these recommendations:

- Emphasize to the Minister of Finance and National Treasury that it has a crucial role to play in the combatting of Gender-Based Violence when it comes to ensuring gender-responsive budgeting.
- Call on National Treasury to include a chapter on gender in the Budget Review with clear gender targets and indicators.
- Note that the Department of Performance Monitoring and Evaluation is currently conducting a Synthesis Evaluation of the relationship between government and the Not for Profit Sector and to flag this in order to engage with the implications of the DPME evaluation as they pertain to the funding of NGOs, particularly in light of the NAWONGO case.
- Engage Statistics South Africa in respect of the importance of official statistics when it comes to budgeting and the need for further work on crime statistics and statistics that pertain to the realities of LGBTQI persons.

Strengthening Parliament's Oversight capacity

- Parliament must improve its own capacity to scrutinise budget proposals by filling posts within its research units, especially the Parliamentary Budget Office.

The Budget Justice Coalition thanks the committees for the opportunity to submit our inputs and engage further in relation to the submission.

ABOUT THE BUDGET JUSTICE COALITION

The Budget Justice Coalition (BJC) is a coalition of about twenty progressive civil society organisations who acknowledge that work to ensure substantive equality in our society is not possible without active engagement with, and transformation of, the budget.

WHO WE ARE

The **Rural Health Advocacy Project (RHAP)** is a leading health advocacy organisation based in Johannesburg, advocating for equitable access to quality health care for rural communities in the whole of South Africa. Informed by the voices of rural healthcare workers and communities on the ground, partner organisations, stakeholders and research, RHAP conducts advocacy, generates debate, monitors implementation of health policies in rural areas, supports pro-equity government interventions, and rural-proofs policies to ensure that they are in tune with rural realities. RHAP's vision is a health system where rural communities access equitable, quality health care services.

The **Women and Democracy Initiative**, based at the **Dullah Omar Institute (DOI)** focusses on realising the rights of women and other marginalised people through strengthened democratic systems. The DOI started its work under the name 'Community Law Centre', an organisation borne out of the struggle against apartheid. The Community Law Centre opened its doors in 1990, Adv Dullah Omar, a human rights lawyer, was its first director. The Centre played a major role in the negotiations towards a democratic South Africa. The Institute works in five research areas, namely children's rights, socio-economic rights, multilevel government, criminal justice reform and women's rights.

Section 27 is a public interest law centre that seeks to achieve structural change and accountability in the health care and education sectors in particular to ensure the dignity and equality of everyone under the Constitution.

The **Studies in Poverty and Inequality Institute (SPII)** is an independent research and advocacy think-tank that focuses on generating new knowledge, information and analysis in the field of poverty and inequality studies. SPII's objective is the realisation of the transformative principles enshrined in the South African Constitution through advancement of the socio-economic rights (SERs) contained under the Bill of Rights. SPII acts to achieve this overarching objective through an applied use of research – policy and budget analysis, and the development of quantitative indicators to provide tools for rigorous time- specific analysis, building qualitative research through community participatory active research, and promoting participation in social dialogues to achieve the change we seek. SPII has conducted human rights budget analysis for

almost decade, through the Socio-Economic Rights Monitoring Tool project, and published two research reports on the right to adequate housing.

The **Alternative Information & Development Centre (AIDC)** is an activist think-tank that implements an integrated strategy that involves research, information dissemination, popular education, coalition building and advocacy. AIDC was formed in 1996 and has played a significant role in challenging corporate globalisation through supporting and coordinating campaigns for debt cancellation, against trade and financial liberalisation, for tax justice and against illicit capital flight. Over the years AIDC has had the capacity at a national, regional and international level to draw a broad range of movements into networks and coalitions around critical issues of development.

The **Children's Institute, University of Cape Town**, aims to contribute to policies, laws and interventions that promote equality and realise the rights and improve the conditions of all children in South Africa, through research, advocacy, education and technical support.

The **Institute for Economic Justice (IEJ)** is a new progressive economic policy think-tank located in South Africa, and launched in 2018. IEJ's core objective is to provide policy makers and progressive social forces in South Africa with access to rigorous economic analysis, and well thought through policy options, as a basis for concrete interventions. Interventions proposed by the IEJ seek to advance social justice, promote equitable economic development that realises socio-economic rights, and ensure a thriving, democratic, environmentally sustainable, and inclusive economy that places the needs of the majority at the centre.

The **Public Service Accountability Monitor (PSAM)** is a civil society organisation that aims to improve the provision of public services essential to the reduction of poverty by strengthening social accountability initiatives. The PSAM is specifically concerned with improving governance and public resource management in South Africa and sub-Saharan Africa. This is achieved through the activities of three interrelated programmes: the Monitoring and Advocacy Programme (MAP), the Regional Learning Programme (RLP) and the Advocacy Impact Programme (AIP). The PSAM was established in 1999 and is based at Rhodes University within the School of Journalism and Media Studies in the Eastern Cape. The Monitoring and Advocacy Programme of the PSAM seeks to contribute to the progressive realisation of the rights to housing, health and education. The programme also focusses on strengthening public accountability mechanisms in the areas of environmental governance and local government.

Equal Education (EE) is a movement of learners, parents, teachers and community members. EE works for quality and equality in South African education, through research, analysis and evidence based activism. EE's head office is in the Western Cape, with satellite offices in Gauteng and the Eastern Cape, and a strong presence in KwaZulu-Natal and Limpopo. Since being founded in 2008, Equal Education has led campaigns aimed at the development of learning facilities; improved practice, content and access to teaching; the building of commitment and passion among teachers and learners; and improving the overall efficacy of

South Africa's education system. Our focus and attention is directed by the interests of our members, drawn largely from working-class and poor communities.

The **Equal Education Law Centre** is a public interest law centre made up of activist lawyers and researchers working to advance the struggle for quality and equality in education through legal research, advocacy and strategic litigation.

The **Pietermaritzburg Economic Justice & Dignity Group (PMEJD)** envisions a society of solidarity rooted in new forms of relationships based on a politics of love and universality for a new economy which serves society and provides justice, equity, and dignity for all. PMEJD was founded in 2018 in Pietermaritzburg, South Africa, in response to the unjust and unequal political economy of South Africa which is characterized by high levels of economic inequality, low baseline wages, high levels of unemployment, a household affordability crisis and an apartheid neoliberal capitalism that destroys human solidarity. PMEJD locates itself in solidarity with those who suffer the consequences of this unjust political economy; and in support of imagining and working towards a more just political economy which is dignified, just and inclusive.



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ANNEXURE A:

Committee on Economic, Social and Cultural Rights

Concluding observations on the initial report of South Africa*

1. The Committee on Economic, Social and Cultural Rights considered the initial report of South Africa on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/ZAF/1) at its 42nd, 43rd and 44th meetings (E/C.12/2018/SR.42, 43 and 44) held on 2nd and 3rd October 2018. It adopted the following concluding observations at its 58th meeting, held on 12 October 2018.

A. Introduction

2. The Committee welcomes the timely initial report submitted by the State party and the supplementary information provided in the replies to the list of issues (E/C.12/ZAF/Q/1/Add.1). The Committee also appreciates the constructive dialogue held with the State party's high-level inter-ministerial delegation. It notes with appreciation the active role played by the South African Human Rights Commission and by civil society both in consultations for the preparation of the report and in the review process of the State party's report.

B. Positive aspects

3. The Committee notes with appreciation the efforts made by the State party to address the disparities inherited from the apartheid era. The Committee also appreciates the significant progress achieved since the ratification of the Covenant, many instances of which are referred to the observations below.

C. Principal subjects of concern and recommendations

The status of the Covenant in the domestic legal order

4. The Constitution in force since 4 February 1997 is particularly progressive in the area of economic, social and cultural rights, and its impact has been further strengthened by the interpretation of the Constitutional Court. The Committee notes, however, that the Constitution has not fully incorporated the rights enshrined in the Covenant, such as rights

* Adopted by the Committee at its sixty-fourth session (24 September–12 October 2018).

to work and to an adequate standard of living, and that, although the Constitution provides that its Bill of Rights should be interpreted taking into consideration international law (article 39(1)(c)), the provisions of the Covenant are not considered to be directly applicable by the courts, other tribunals or administrative authorities.

5. The Committee recommends that the State party ensure that the rights enshrined in the Covenant are fully recognized in its Constitution and domestic legislation and that the provisions of the Covenant can be directly invoked before domestic courts. It also recommends that the State party enhance training for judges, prosecutors, lawyers and public officials on the Covenant and strengthen the capacity of the South African Judicial Education Institute to this end. The Committee draws the State party's attention to its General Comment No. 9 (1998) on the domestic application of the Covenant.

Declaration

6. The Committee is concerned that the State party maintains its declaration in relation to articles 13(2) (a) and 14 of the Covenant. It notes in this regard the judgment delivered on 11 April 2011 by the Constitutional Court in the case of *Governing Body of the Juma Masjid Primary School and Another v Ahmed Asruff Essay No and Others* (CT 29/10) ([2011] ZACC 13), which states that the right to a basic education under section 29(1)(a) of the Constitution is 'immediately realisable' and that there is 'no internal limitation requiring that the right be progressively realised within available resources subject to reasonable legislative measures'.

7. The Committee recommends that the State party withdraw its declaration in relation to articles 13(2) (a) and 14 of the Covenant.

South African Human Rights Commission

8. While appreciating the efforts of the South African Human Rights Commission (SAHRC) to promote and protect the rights enshrined in the Covenant, as well as the contributions of the Gender Commission and of the Commission for Religious and Cultural Rights, the Committee is concerned at the insufficient budgetary resources allocated to the SAHRC to effectively carry out its mandate.

9. The Committee recommends that the State party allocate a sufficient level of financial resources to the South African Human Rights Commission to enable it to effectively carry out its mandate.

Data collection

10. The Committee is concerned at the lack of disaggregated statistical data relating to the fulfilment of economic, social and cultural rights, particularly of indigenous peoples, which makes it difficult to monitor the level of enjoyment of these rights in the State party.

11. The Committee recommends that the State party improve its data collection system with a view to collecting comprehensive and reliable data, disaggregated by race, gender, province and other relevant criteria, in order to enable the assessment of the level of enjoyment of Covenant rights, particularly by disadvantaged and marginalized individuals and groups including indigenous peoples. It also recommends that the State party enhance the capacity of Statistics South Africa to this end.

Human rights defenders

12. The Committee is concerned at reports of human rights defenders, particularly those working to promote and defend the Covenant rights in the mining and environmental sectors, being threatened and harassed. It is also concerned at the overly broad and vague definition of “public violence”, which may have a deterrent effect on participants in peaceful protests. It is further concerned at the high number of rejections of protest applications due to deliberate restrictions or inadequate understanding of legislation by public officials.

13. The Committee recommends that the State party provide a safe and favourable environment for the work of these defenders to promote and protect economic, social and cultural rights, including by:

(a) Ensuring that all reported cases of intimidation, harassment and violence against human rights defenders are promptly and thoroughly investigated and the perpetrators are brought to justice;

(b) Ensuring that law enforcement personnel are appropriately trained so as to prevent the excessive use of force against protesters; and

(c) Reviewing the Regulation of Gatherings Act No. 205, 1993, with a view to preventing it from being abused to suppress peaceful protests and also ensuring that the Act and its related regulations are adequately enforced by public officials. The Committee draws the attention of the State party to its statement on Human Rights Defenders and Economic, Social and Cultural Rights (E/C.12/2016/2).

Indigenous peoples

14. While welcoming the adoption of the Traditional and Khoi-San Leadership Bill that recognizes the Khoi and the San as indigenous peoples, the Committee is concerned that indigenous peoples continue to be marginalized and discriminated in their enjoyment of the Covenant rights. (art.1(2))

15. The Committee recommends that the State party intensify its efforts to ensure the equal enjoyment of the rights enshrined in the Covenant by indigenous peoples as well as their participation and consultation in the implementation of the Traditional and Khoi-San Leadership Bill and other matters concerning them. It also encourages the State party to ratify the International Labour Organization Convention No. 169 on the Indigenous and Tribal Peoples, 1989.

Maximum available resources

16. With a Gini coefficient of 0.63 and a Palma ratio of 7.1, the State party is among the most unequal countries in the world; and market inequalities, before tax and redistribution, are even more striking. While the Committee is well aware of the historical roots of such inequalities and welcomes the efforts pursued since the end of apartheid, the persistence of such inequalities signals that the model of economic development pursued by the State party remains insufficiently inclusive. The Committee is deeply concerned by such unacceptably high levels of economic and social inequalities. Although welcoming the introduction in 2017 by the National Treasury of rural-focused indicators, it also regrets the significant geographical disparities in the State party, both between provinces and between rural and urban municipalities. The State party's fiscal policy, particularly relating to personal and corporate income taxes, capital gains and transaction taxes, inheritance tax, and property tax, do not enable it to mobilize the resources required to reduce such inequalities; and it is not sufficiently progressive to this end. The recent increase in the value added tax (VAT) was not preceded by a human rights impact assessment. Although the Committee notes that certain items, including 19 basic food

items, farming inputs, educational services, and rents were exempted, the Committee remains concerned about the impacts of this increase on low-income households. It is further concerned at the large amount of illicit financial flows and tax avoidance, which has a serious impact on the ability of the State party to meet its obligation to mobilize the maximum available resources for the implementation of economic, social and cultural rights (art. 2 (1)).

17. The Committee recommends that the State party:

(a) Review its fiscal policy in order to improve its capacity to mobilize the domestic resources required to bridge existing gaps and to increase its redistributive effect;

(b) Consider revising the Provincial and Local Government Equitable Share Formulas to reduce regional disparities in the enjoyment of the Covenant rights

(c) Assess the impact of the VAT increase, particularly on low-income households, and take corrective actions as necessary;

(d) Intensify its efforts to combat illicit financial flows and tax avoidance with a view to raising national revenues and increasing reliance on domestic resources, including by combating trade mispricing within multinational corporations; and seek international cooperation with relevant international organizations as well as the countries of origin of multinational corporations to this end; and

(e) Re-examine its growth model in order to move towards a more inclusive development pathway.

Austerity measures

18. The Committee is concerned that the State party has introduced austerity measures to relieve the debt level without defining the timeframe within which such austerity measures should be re-examined or lifted. It is concerned that these measures have resulted in significant budget cuts in the health, education and other public service sectors, and that they may further worsen inequalities in the areas covered by the Covenant rights and even reverse the gains made, particularly in the health and education sectors. The Committee notes that such fiscal consolidation measures have been adopted while the Auditor General has identified instances of irregular expenditure (made in violation of procurement laws) and of fruitless and wasteful expenditure, and while instances of mismanagement of state-owned enterprises have been identified, reducing the capacity of the State party to adequately finance public services (art. 2 (1)).

19. The Committee reminds the State party that, where austerity measures are unavoidable, they should be temporary, covering only the period of the crisis; necessary and proportionate; not result in discrimination and increased inequalities; and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected. The Committee recommends that the State party:

(a) Increase the level of funding in social security, health and education;

(b) Task the Department of Planning, Monitoring and Evaluation, with ensuring that public policies are directed towards the realization of the rights of the Covenant;

(c) Ensure the Standing Committee on Public Accounts in the national parliament (and its equivalents in provincial parliaments) take such rights into

consideration in assessing the budgetary choices of the national and provincial governments respectively.

20. The Committee refers the State party to its open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis.

Non-discrimination

21. The Committee is concerned that Chapter 5 of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) of 2000, which imposes obligations on all members of society to promote equality, including the private sector, still awaits implementation (art. 2(2)).

22. The Committee recommends that the State party speed up the review of the PEPUDA to ensure that Chapter 5 of the Act be implemented without further delay.

Persons with albinism

23. The Committee is concerned that persons with albinism continue to be subject to attacks and face discrimination in enjoying the Covenant rights, including rights to work and to education. It is also concerned about the lack of a comprehensive legal and policy approach to the situation of persons with albinism. (art. 2(2)).

24. The Committee recommends that the State party intensify its efforts to eliminate discrimination and violence against persons with albinism, including by strengthening the legal framework, raising public awareness and engaging with traditional leaders and healers in a coordinated and coherent manner, and by facilitating their access to work and education by providing them with necessary support and assistance.

Asylum seekers

25. The Committee appreciates the State party's hosting of a large number of refugees and asylum seekers forced to flee their countries. However, it remains concerned that the right of asylum seekers to work has been denied through Section 22(8) of the Refugees Amendment Act, giving effect to Section 11(h) of the Refugee Act. While noting the significant progress made in processing applications for asylum, it is also concerned at the reportedly large backlog of asylum applications pending in the appeal process and at the proposal of establishment of asylum processing centres in border areas, which may restrict access of asylum seekers to legal assistance, healthcare, education and social assistance grants (arts. 2(2) and 6).

26. The Committee recommends that the State party:

(a) Expeditiously clear the backlog of asylum applications in the appeal process;

(b) Ensure that asylum seekers are guaranteed effective access to legal assistance, basic healthcare and education and other social services and supported in their applications for social assistance allowances;

(c) Ensure, to the fullest extent possible, that asylum seekers can support themselves and enjoy the right to work, including through amending Section 22(8) of the Refugees Amendment Act.

27. The Committee draws the attention of the State party to its statement on Duties of States towards refugees and migrants under the Covenant (E/C.12/2017/1)

Unemployment

28. Unemployment in the State party stands at 27.5 percent for the general population and at 39 percent for young people, and further grows to 37 percent and 67 percent, respectively, once those who are discouraged from seeking employment are included. While noting the range of programmes already in place to help job-seekers find employment, the Committee is concerned at such high unemployment rates. It is also concerned at the low level of employment of persons with disabilities and the inadequate implementation of the two percent employment quota for persons with disabilities in the private sector. (arts. 2(2) and 6)

29. The Committee recommends that the State party make every effort to reduce the high unemployment rates, including by improving the opportunities for vocational training and the educational curriculum and developing programmes, particularly for young people, to meet current labour market demands and providing employers with incentives to hire young people. It also recommends that the State party effectively implement the two per cent employment quota for persons with disabilities, particularly in the private sector and ensure that these workers are provided with reasonable accommodation in the workplace, which the provision of financial incentives to employers could facilitate. The Committee draws the attention of the State party to its general comments Nos. 18 (2006) on the right to work, and 23 (2016) on the right to just and favourable conditions of work.

Precarious employment in the formal and informal economies

30. The Committee is concerned that a large number of workers, including the self-employed, are working in the informal economy without labour rights and with insufficient social protection. It is also concerned that there is no legislative framework regulating the informal economy, exposing workers therein to the risk of abuse from employers and abuse from law enforcement authorities. It is also concerned at the increasing casualization of employment in the formal economy and at the fact that the measures taken to mitigate the situation, including the Amendments to the Labour Relations Act, remain insufficient. It regrets the lack of information on the scale of the informal economy and the situation of workers therein (arts. 6 and 7).

31. The Committee recommends that the State party

(a) Introduce a legislative framework to regulate the informal economy with a view to protecting workers therein from abuse and harassment, including by law enforcement officials;

(b) Expand the coverage of the labour and social security legislation to these workers;

(c) Facilitate the transition of workers in the informal economy to the formal economy, taking into account the International Labour Conference Recommendation No. 204 on the transition from the informal to the formal economy;

(d) Prevent and mitigate the casualization or externalization of work in the formal economy;

(e) Strengthen the enforcement of the Amendments to the Labour Relations Act to this effect; and

(f) Collect information on the informal economy, including its scale and working conditions of workers therein, on a regular basis.

Sex workers

32. While noting the on-going debate and the recommendations made by the South African Law Reform Commission on the issue, the Committee is concerned that sex workers, mostly women, do not enjoy their rights under the Covenant, particularly the rights to work and to health and trade union rights, as well as on their exposure to frequent harassment and arbitrary arrest and detention, and bribery and free sex coerced by the police due to criminalization of the sale of sex, which makes it difficult to report physical and sexual violence against them. (arts. 2(2), 6 and 8).

33. The Committee calls upon the State party to impose an immediate moratorium on arrests of sex workers until their future legal status is determined. It also recommends that the State party:

- (a) Consider decriminalizing the sale of sex;**
- (b) Protect sex workers from police harassment as well as from sexual and physical violence, and exploitation by traffickers, establishment owners and others;**
- (c) Provide support and assistance to those who are victims of harassment, violence and exploitation;**
- (d) Take measures to curb demand for prostitution and to provide alternatives to sex workers.**

Domestic and farm workers

34. While noting that The Basic Conditions of Employment Act (BCEA) and Sectoral Determination 7 provide some level of labour and social protections, the Committee is concerned that:

- (a) Domestic workers and farm workers often labour under exploitative conditions;
- (b) Domestic workers are not covered for occupational injuries and deaths under the Compensation for Occupational Injury and Death Act (COIDA);
- (c) While the accommodation provided is a core component of the wage received, the standard of accommodations is not regulated;
- (d) The law provides neither for unannounced labour inspections carried out in the domestic setting nor for effective mechanisms allowing domestic workers to complain about their working conditions. (arts. 6 and 7).

35. The Committee recommends that the State party intensify its efforts to protect domestic and farm workers from exploitation and to provide them with enhanced labour and social protection, including by

- (a) Further strengthening the legislative framework to extend to domestic workers the application of the COIDA for occupational injuries and deaths and to provide legal guidance on the standard of accommodations;**
- (b) Regularly carrying out unannounced labour inspections in domestic settings (without a notice or warrant);**
- (c) Ensuring domestic and farm workers have access to effective complaints mechanisms;**
- (d) Raising public awareness of rights of domestic workers.**

36. **The Committee draws the attention of the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work, para. 47 (f) and (h).**

The mining sector

37. The Committee is concerned at the working conditions of mineworkers and the lack of labour inspections in the sector, which have led to a high incidence of occupational injuries and diseases. It is also concerned that most mine workers live in informal settlements around mines without water, sanitation facilities or electricity; and that social and labour plans (SLP) are often not implemented by employers. It is further concerned at the vulnerable situation of women mineworkers, who are constantly subject to discrimination and exposed to sexual violence (arts. 3, 7 and 11).

38. **The Committee recommends that the State party intensify its efforts to improve working and living conditions of mineworkers, especially women mineworkers, in light of lessons drawn from the Marikana incident, in particular by:**

(a) **Ensuring the strict enforcement of the Mine Health and Safety Act and the Occupational Health and Safety Act in the mining sector;**

(b) **Strengthening labour inspections in the mining sector;**

(c) **Ensuring that injured mineworkers and mineworkers with occupational diseases, regardless of their status, have access to effective remedies, including through liability actions against their employers;**

(d) **Carrying out a regular assessment of hazardous risk of safety and health of mineworkers, particularly temporary or contract workers;**

(e) **Promoting the safety and dignity of women mineworkers, addressing gender inequalities and violence, and eradicating the male-dominant work culture in the sector;**

(f) **Improving living conditions in mineworker communities and ensuring their access to adequate housing, water, electricity, sanitation, healthcare, education and other social services; and**

(g) **Strictly enforcing SLP obligations and imposing penalties on employers in cases of non-compliance, including by the cancellation of their licences.**

Minimum wage

39. While welcoming the introduction of a national minimum wage, the Committee is concerned that the current level of the hourly minimum wage (20 Rand) does not ensure workers and their families an adequate standard of living; that the minimum wages for domestic workers and farm workers are set during the interim period even below that level; and that a large number of workers are not covered by the minimum wage bill (art. 7).

40. **The Committee recommends that the State party:**

(a) **Apply the same level of minimum wage across all sectors, including the domestic, farm and retail sectors;**

(b) **Raise the level of the national minimum wage and regularly adjust it to the cost of living so as to ensure an adequate standard of living for workers and their families;**

(c) **Ensure the full compliance with minimum wage (General comment No. 23 (2016) on the right to just and favourable conditions of work, paras. 18-24). This presupposes that the State party design a composite index to regularly assess the costs of living, in order to support its efforts to guarantee that wages provide workers with a decent living for themselves and their families (see para. 48, (a)).**

Gender pay gap and equal pay for work of equal value

41. The Committee is concerned at the gender pay gap, which stands at 27 percent, due to the persistent vertical and horizontal occupational segregation by gender; and at the predominance of women in precarious employment and its effect on their enjoyment of the Covenant rights throughout their life. It is also concerned that labour laws or collective agreements do not include the principle of equal pay for work of equal value. (arts. 3, 6 and 7).

42. **The Committee recommends that the State party intensify its efforts to close the gender pay gap and to address vertical and horizontal segregation; and ensure that the principle of equal pay for work of equal value is incorporated in labour laws and collective agreements and effectively implemented.**

Labour inspections

43. The Committee is concerned at the insufficient level of funding allocated to the Directorate of Inspection and Enforcement Services (IES) and at the chronic shortage of qualified labour inspectors, which restricts its effective functioning. It is also concerned at the lack of follow up to its findings. (art. 7).

44. **The Committee recommends that the State party:**

- (a) **Increase the level of funding allocated to the Labour Inspectorate;**
- (b) **Secure a sufficient number of qualified labour inspectors and ensure that wages and resources available to labour inspectors reduce the high rate of turnover;**
- (c) **Ensure that the compliance orders of labour inspectors are duly implemented.**

Trade union rights

45. The Committee is concerned that some categories of workers – domestic workers, farmworkers and workers in precarious employment – are more likely to be excluded from the collective bargaining process. It is also concerned at some proposals made in the process of amending the Labour Relations Act, which would weaken the right to strike in general (art. 8).

46. **The Committee recommends that the State party ensure that all workers, including those in precarious employment, effectively participate in the decision-making process relating to their working conditions and exercise their legitimate rights, as provided in the Constitution and labour laws. It also recommends that the State party ensure that the Amendments to the Labour Relations Act provide for a stronger protection of labour rights, including the right to strike.**

Social security

47. The Committee notes that social grants have been an important instrument in reducing poverty in the State party and that significant progress has been made in this regard in recent years. It remains concerned, however, that, while the poverty ratio in the State party stands at an unacceptably high level of 55.5 percent in 2018,:

(a) There is no composite index on the costs of living, providing the State party with a benchmark to adequately set the levels of social benefits consistent with the requirement to ensure an adequate standard of living to all;

(b) The levels of all non-contributory social assistance benefits are too low to ensure an adequate standard of living for recipients and their families;

(c) Those with no or little income between the ages of 18 and 59 and are capable of working are not covered by existing schemes;

(d) The coverage of the Unemployment Insurance remains low and excludes workers in the informal economy, seasonal workers and the self-employed; and

(e) Data and bank accounts belonging to social grant recipients have been misused and a large number of unauthorized deductions from social benefits has been recorded. (arts. 9, 10 and 11).

48. The Committee recommends that the State party:

(a) Design and regularly update a composite index on the costs of living;

(b) Raise the levels of non-contributory social assistance benefits to a level that ensures an adequate standard of living for recipients and their families;

(c) Ensure those with no or little income between the ages of 18 and 59 have access to social assistance;

(d) Establish a social protection floor in line with the rights-based definition provided under the ILO Social Protection Floors Recommendation, 2012 (No.202);

(e) Expand the coverage of the Unemployment Insurance to all workers, regardless of their status;

(f) Consider the possibility of introducing a universal basic income grant;

(g) Rectify the situation brought about by the outsourcing of the social grants payment system and ensure that all the payments are made in a timely manner during the transition period.

49. The Committee draws the attention of the State party to its general comment No. 19 (2008) on the right to social security and to its statement on social protection floors: an essential element of the right to social security and of the sustainable development goals (E/C.12/54/3).

Birth registration

50. While it welcomes the fact that registration of children may now be done directly in hospitals at birth, as well as the non-collection of the fees normally required for late registration, the Committee is concerned that 10 per cent of children in the State party remain unregistered and that the birth registration is hindered, particularly for those with one or more foreign parents and those of single fathers, due to extra requirements such as paternity testing, in order to avoid instances of fraudulent registration of children trafficked into the country. It is also concerned that Section 4(3) of the Citizenship Amendment Act is interpreted restrictively to benefit only children born after 1 January 2013, exposing many of those born before that date to the risk of statelessness (arts. 3 and 10).

51. The Committee recommends that the State party facilitate birth registration by streamlining the procedure and assisting parents to meet the requirements. This could include reimbursing the costs of proof of paternity tests where such tests have established paternity, and decentralizing the services of the National Health

Laboratory Service where paternity tests can be performed. It also recommends that the State party apply section 4(3) of the Citizenship Amendment Act, 2010 to all children of foreign nationals, including those born before the Act came into force in 2013.

Marriage

52. The Committee is concerned about the discrepancy between the Children's Act No. 38 of 2005 (as regards the age of consent) and the stipulations of the Marriage Act No. 25 of 1961 setting the minimum age for marriage at 18 years for boys and 16 years for girls and providing for the possibility of exceptions with the written permission of the Minister. It is also concerned at the lack of legal recognition of Muslim marriages and its negative consequences for women in Muslim marriages without official registration. (arts. 3 and 10)

53. The Committee recommends that the State party harmonize all its relevant legislation to ensure that the minimum age for marriage for boys and girls is brought into line with international standards. It also recommends that the State party facilitate the recognition of Muslim marriages, including appropriate safeguards for women's rights.

Harmful practices

54. While it is mindful that section 31 of the Constitution protects the rights of cultural, religious and linguistic communities, the Committee is concerned that section 12(5) of the Children's Act allows virginity testing of children above the age of 16 if the child has given consent in the prescribed manner and after proper counselling. The Committee is also concerned at the recent resurgence of the practice of *ukuthwala* in the Eastern Cape and KwaZulu-Natal provinces, while noting that in the absence of consent of the girl concerned this practice is considered as a form of trafficking, and may be prosecuted as such. (arts. 3 and 10)

55. The Committee recommends that the State party:

- (a) Revise the Children's Act with a view to prohibiting virginity testing;**
- (b) Combat harmful practices, such as ukuthwala and virginity test, including by raising awareness of their negative impacts on girls and women throughout their life, and ensure that these practices are completely prohibited.**

Malnutrition and the right to food

56. The Committee is concerned at the high incidence of food insecurity and malnutrition in the State party, particularly among children. Given the fact that 12 percent of children lived in hunger in 2017 and 27 percent of children were suffering from stunting in 2016, the Committee is particularly concerned that the child support grant (at 400 Rand/month) is set far below the food poverty line and that an estimated 18 percent of eligible children do not benefit from the grant due to a lack of documentation. It is further concerned at the lack of a framework law to ensure the right to food. (arts. 9 and 11)

57. The Committee recommends that the State party:

- (a) Increase the child support grant at least up to the level of the food poverty line;**
- (b) Ensure that all eligible children benefit from the grant;**

(c) Expedite the adoption of the Social Assistance Amendment Bill to increase the level of child support grant for orphaned and abandoned children living with relatives, for which it has already earmarked funds;

(d) Adopt a framework legislation protecting the right to adequate food and nutrition and develop a national food and nutrition security strategy, taking into account the 2004 Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security and the Committee's general comment No. 12 (1999) on the right to adequate food.

Right to housing

58. While noting the continuous efforts made by the State party to provide social housing to low-income families, the Committee is concerned at the large number of people living in inadequate housing, including those in informal settlements, without access to basic services; the growing number of informal settlements in urban areas due to rapid urbanization; and the decrease in the number of social housing units provided by the State party. The Committee is also concerned at reports of illegal evictions and excessive use of force during evictions, as well as of evictions taking place without municipalities offering suitable alternative accommodation. While noting the imminent adoption of the Extension of Security Tenure Amendment Act, it is further concerned at the dire housing and living conditions of farm dwellers and the potentially negative consequences of the Extension of Security Tenure Act No. 62 of 1997 in this regard. (art. 11)

59. **The Committee recommends that the State party:**

(a) Intensify its efforts to improve housing conditions and to meet the increasing demand, including by continuing to provide adequate social housing in urban areas and in-situ in informal settlement upgrading;

(b) Ensure that evictions are carried out only as a last resort, without use of force and in compliance with international standards;

(c) Encourage farmers to improve housing and living conditions of farm dwellers and ensure that the Extension of Security Tenure Amendment Act is implemented in full compliance with the Covenant and other international human rights standards, especially as regards the requirement that occupiers evicted can acquire "suitable alternative accommodation".

60. **The Committee draws the attention of the State party to its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on the right to adequate housing (forced evictions).**

Land rights

61. The Committee is concerned that, despite its efforts to ensure land redistribution (and restitutions for traditional communities expropriated since 1913), the State party remains significantly below the targets it has set for itself and that land concentration has in fact increased as white commercial farmers have ceded their farms. It is also concerned that, due to poor post-settlement support and lack of training in particular, many beneficiaries of land redistribution have failed to improve their livelihoods. It is further concerned that women own only 13% of agricultural land and that they still face discrimination in access to land due to traditional inheritance practices.

62. **The Committee recommends that the State party accelerate the implementation of the land redistribution and restitution policies and provide the beneficiaries with adequate support to productively use the land and improve their**

livelihoods. It also recommends that the State party ensure that women have equal access and ownership to land, consistent with para. 58 of the General Recommendation No. 34 on the rights of rural women (2016) of the Committee on the Elimination of Discrimination against women.

Right to health

63. While noting that the State party aims achieving universal healthcare coverage through the adoption of the National Health Insurance (NHI) Bill, the Committee is concerned at the large disparities between the public and private healthcare system, with the public system disadvantaged in relation to the number of medical professionals, medical equipment and medical expenditures, as well as between rural and urban areas in registering with the NHI Fund and accessing healthcare services. It is particularly concerned at the acute lack of medical professionals, and limited range and at times inadequate quality of services provided in the public health sector, on which more than 85 percent of the population rely. While noting the progress achieved in making antiretrovirals accessible to HIV patients, the Committee regrets that significant numbers of patients still do not have access to such treatment.

64. **The Committee recommends that the State party:**

- (a) Expedite the adoption of the National Health Insurance Bill;**
- (b) Address the large disparities between the public and private healthcare systems as well as between rural and urban areas, by securing a sufficient number of medical professionals, improving medical equipment, and expanding the range of, and improving quality of public healthcare services, particularly the primary health care and community health care sectors and in the rural areas;**
- (c) Ensure that all people in need of life-saving treatment have access to affordable medicines, particularly antiretrovirals for people infected with HIV.**

Sexual and reproductive health

65. While noting that the Choice on Termination of Pregnancy Act No. 92 of 1996 allows for abortion under certain conditions, the Committee is concerned that only 7 percent of healthcare centres provide abortion services, hampered in practice owing to the invocation by medical personnel of conscientious objection and the limited accessibility of facilities offering such services, particularly in rural areas. It is also concerned at the high incidence of teenage pregnancy, which leads to high drop-out rates among girls.

66. **The Committee recommends that the State party ensure that:**

- (a) Facilities and services for sexual and reproductive health, including for abortion, are available and accessible for all, in particular, in rural areas;**
- (b) Physicians' conscientious objection does not impede women's access to abortion services, by providing referrals within their own facility or to a nearby facility;**
- (c) Reduce the high teenage pregnancy rate and ensure access to and availability of sexual and reproductive health information and contraceptives for all, including teenage girls and boys, in particular in rural areas;**
- (d) Provide the necessary support services for pregnant adolescents, including measures to enable them to continue their education.**

67. **The Committee draws the attention of the State party to its general comment No. 22 (2016) on the right to sexual and reproductive health.**

Cultivation of illicit crops

68. The Committee is concerned of the aerial fumigation of cannabis crops to control illicit production of cannabis in the Pondoland district, with the use of glyphosate, which was declared probably carcinogenic by the International Agency for Research on Cancer's (IARC) of the World Health Organisation.

69. The Committee recommends that the State Party suspends this aerial spraying and instead offers development alternatives to the communities to encourage them to abandon the illicit production of cannabis, including the possibility to participate in the medical cannabis market through a program of small-scale community farmer licenses.

Right to education

70. The Committee welcomes in particular the significant progress the State party has made in enhancing access to education. This includes the near universal access to primary and secondary education; the improved early childhood education that 88 percent of children of aged five to six years benefit from, although access remains very low for children from the poorest families; free higher education and training currently made available to first-year students from low-income families. It also welcomes the announcement of fully subsidized higher education and training for students from low-income families over a five-year period. The Committee is concerned, however, that the public school infrastructure is poor in the State party. A number of schools have no or limited access to water, sanitation facilities and electricity, due both to budgetary cuts and, in some cases, to mismanagement of funds. It is also concerned at the high school drop-out rates mainly due to weak learning foundations. It is further concerned at the practice of charging fees in the form of voluntary contributions in no-fee schools, and at discriminatory effects of fee exemptions in fee-paying schools, particularly on children of single parents. Furthermore, it is concerned at the lack of guidance on the role and responsibility of private sector actors in education. It is also concerned that in spite of the efforts of the State party, the attendance of children from low income families in early education remains low (arts.13 and 14).

71. The Committee recommends that the State party intensify its efforts to:

(a) Improve school infrastructure and ensure that all schools have access to water, sanitation facilities and electricity, by allocating a sufficient level and effective management of funding;

(b) Reduce the school dropout rate by improving the acquisition of foundational numeracy and literacy;

(c) Ensure that no-fee schools stop charging parents fees and review the requirements for fee exemption in fee-paying schools, with a view to ensuring that disadvantaged and marginalized children are not discriminated and stigmatized;

(d) Improve the regulatory framework to define the responsibilities of private sector actors and monitor the education provided by such actors;

(e) Guarantee high quality early education for all children, especially to those of disadvantaged families.

72. While noting the indication of the Delegation that state-run schools for children with disabilities would become no-fee schools, the Committee is concerned that a large number of children with disabilities are out of school and that the children with disabilities, particularly those from low-income families, do not benefit from no-fee schools. It regrets the lack of data relating to the education of children with disabilities. It

is also concerned that about 30 percent of undocumented child migrants, refugee and asylum-seeking children are not in formal education.

73. The Committee recommends that the State party:

(a) Immediately roll out the no-fee schools programme to state-run schools for children with disabilities who cannot be accommodated in mainstream schools;

(b) Ensure that inclusive education is a guiding principle in all education plans and programmes, including by the provision of reasonable accommodation for children with disabilities;

(c) Ensure that all migrant, refugee and asylum-seeking children have access to education regardless of their immigration status. It refers in this regard to its statement on "The Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2017/1).

Cultural rights

74. The Committee is concerned at the lack of protection for endangered languages and the lack of teaching of indigenous languages and knowledge in the public school system. (arts. 1(2), and 13-15)

75. The Committee recommends that the State party:

(a) Enhance its efforts to protect endangered languages and ensure that indigenous languages and knowledge are taught in the school system;

(b) Strengthen the mandate of the Pan South African Language Board to this effect.

Access to the Internet

76. The Committee is concerned at the low rate of Internet access, particularly in rural areas and in schools, and at the lack of affordability of the Internet for the most disadvantaged groups (art.15).

77. The Committee recommends that the State party adopts relevant measures to ensure the accessibility and affordability of the Internet, particularly in schools, rural areas and for the most disadvantaged groups.

D. Other recommendations

78. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

79. The Committee recommends that the State party consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of All Migrant Workers and Members of Their Families.

80. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of

participation, accountability and non-discrimination would ensure that no one is left behind.

81. The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights, in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, *inter alia*, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).

82. The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national, provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the South African Human Rights Commission, non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.

83. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 48 (a) and (c) (concerning the preparation of a composite index on the costs of living and access to social assistance for adults between 18 and 59 years of age), 57 (c) (concerning the adoption of the Social Assistance Amendment Bill) and 73 (b) (access to education for children of undocumented migrants, refugees, asylum-seekers) above.

84. The Committee requests the State party to submit its second periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2023. In addition, it invites the State party to update its common core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN/2/Rev.6, chap. I).
