Joint Submission to the Committee on Economic, Social and Cultural Rights on the occasion of the review of South Africa's first period report at the 64th Session, October 2018

Submitted by

Center for Economic and Social Rights
Institute for Economic Justice
SECTION27

Endorsed by

Alternative Information and Development Centre
Equal Education
Equal Education Law Centre
Public Service Accountability Monitor
Rural Health Advocacy Project
Studies in Poverty and Inequality Institute

INTRODUCTION

1. This submission outlines the key concerns and recommendations of the organizations listed above on the occasion of South Africa's review before the United Nations Committee on Economic, Social and Cultural Rights at its 64th session in October 2018. It makes particular reference to issues insufficiently addressed or omitted from the State party's first Periodic Report of April 2017 and seeks to respond to the questions put forth in the List of Issues adopted by the Committee's Pre-sessional Working Group in November 2017.

2. Specifically, it **explores in detail the State party's obligation under Article 2(1)** of the International Covenant on Economic, Social and Cultural Rights to take steps making use of "maximum available resources." First, it argues that the austerity measures the South African government is undertaking present a threat to economic, social and cultural rights. Second, it demonstrates that to negate the need for austerity, South Africa must maximize the availability of resources; this can be done by developing a more equitable tax policy that contributes to the redistribution of income and wealth and by intensifying efforts to tackle corruption and state capture. Finally, it illustrates how avoidable resource shortfalls are leading to violations of Covenant rights, by analyzing the effects of inadequate and inefficient resourcing on the rights to health (Article 12) and education (Article 13).

3. 1994 marked the collapse of the apartheid regime and the dawn of democracy in South Africa. In its wake, a new Constitution was adopted that enshrined a rights-based transformative agenda that obligated the government to allocate resources towards the progressive realization of economic, social and cultural rights.[1] Amidst a myriad of challenges presented by the transition, the government managed to establish a robust set of democratic institutions and began to transform public services.

[1] Constitution of the Republic of South Africa, 1996. Chapter Two: Bill of Rights.

4. This has yielded important progress. Between 1996 and 2011, access to electricity rose from 45% to 75%, and access to clean water improved from 57% to 75%.[2] More students are attending university than ever before—with 807,000 students enrolled in 2015, versus 385,200 in 1994.[3] National household surveys estimated infant mortality ranged from 40 to 71 deaths per 1,000 births in the early 1990s, compared to 34 in 2015.[4]

5. Despite the more inclusive agenda initiated in 1994, economic and fiscal policies have not always been shaped by Constitutional obligations. **Systemic inequality continues to be ingrained** in the country's economic and social structures as a result. Poverty and unemployment are experienced by broad swathes of society and intersect with stark disparities in access to health, education, housing and even food. Corruption thrives under such conditions of inequality, diminishing available resources and eroding trust in public administration and private enterprise alike. For these reasons, apartheid's legacy continues to have an outsized impact on people's economic, social and cultural rights.

6. These **challenges are compounded by austerity policies** that have been introduced in the form of cuts in expenditures and regressive tax changes in recent years. These measures **do not meet the Committee's criteria for justifying retrogressive measures**, namely that they be: temporary, remaining in place only insofar as they are necessary; legitimate, with the ultimate aim of protecting the totality of human rights; reasonable, with the means chosen being the most capable of achieving the legitimate aim; necessary, with all alternative financing measures comprehensively exhausted; proportionate, in that their human rights benefits outweigh their costs; not directly nor indirectly discriminatory, according priority attention to disadvantaged groups; protective of the minimum core content of rights; based on transparency and genuine participation of affected groups and subject to meaningful review and accountability procedures.[5]

7. This submission is divided into three sections. The first examines the general framework for the protection of economic, social and cultural rights in South Africa, illustrating the context in which austerity is being introduced through an analysis of a broad set of economic, social and cultural indicators. The second addresses Article 2(1), focusing on specific issues related to the generation and expenditure of resources. The third focuses on the impacts of budgetary trends on service delivery and rights outcomes, which are illustrated by examining the rights to health (Article 12) and education (Article 13). The submission concludes with proposed recommendations for the State party.

I. GENERAL FRAMEWORK FOR THE PROTECTION AND PROMOTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

8. Focusing on economic and social conditions in South Africa, this section demonstrates that the State party is introducing austerity measures, for an indefinite period, due in large part to exaggerated concerns of a growing public debt crisis. Further, it shows these austerity measures are being introduced in a context of extreme inequality, deeply rooted poverty, and growing unemployment, which makes them an unreasonable method of tackling the country's fiscal issues. To address the underlying causes of these issues, a more inclusive model of economic development is needed: one that prioritizes rights realization.

1.1 South Africa is introducing retrogressive austerity measures

[2] Burger, R, van der Berg, S, van der Walt, S, and Yu, D, 2015. "The Long Walk: Considering the special and racial dimensions of deprivation two decades after the fall of apartheid," Stellenbosch working papers 17/15.
[3] South African Institute of Race Relations, 2016. "Life in South Africa: Reasons for Hope Report."
[4] U.S. National Library of Medicine National Institutes of Health, 1998. "What is the infant mortality rate in South Africa? The need for improved data," at https://www.ncbi.nlm.nih.gov/pubmed/9930256; See also, Statistics South Africa, 2015. "Mid-year population estimates," Statistical Release P0302.
[5] See Committee on Economic, Social and Cultural Rights, 2016. "Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights," Statement by the Committee.

9. In 2018, the National Treasury acknowledged that "since 2012, successive budgets have reduced the rate of expenditure growth and raised taxes," but nevertheless "debt continued to rise as a share of GDP as economic growth declined and new spending pressures emerged".[6] Treasury is committed to continuing this path, stating in its 2019 Medium-Term Expenditure Framework that:

> There are **NO** additional resources available for allocation over the 2019 Medium Term Expenditure Framework (MTEF) period within the expenditure ceiling set in the 2018 Budget. This means that additional allocations to a programme will need to be funded by reductions in funding for another programme, either within the department's budget, or from another department's budget. This may involve the scaling down of non-priority programmes and projects, changing service delivery models, using technology more effectively etc.[7]

The "expenditure ceilings" established by the Treasury cap payments by departments, often at arbitrary levels, despite the possibilities of increasing taxes and borrowing, as discussed below. The expenditure ceilings apply to all government departments, including health and education.

10. Table 1 highlights austerity in practice. Since 2016/17, the rate of growth of non-interest budget expenditure—essentially expenditure on social and economic programs—has been lower than population and GDP growth. Over the three-year period non-interest budget expenditure averaged 0.3% growth compared with population growth of 1.6%. **Government expenditure per person has declined for three years in a row.** Moreover, in the current year, 2018/19, government plans to raise more revenue than it will spend on programmes, illustrating the prioritization of deficit reduction over social spending.

Table 1: Consolidated revenue, expenditure, GDP and the budget deficit, 2016/17 – 2018/19[8]

R'000 (2018/19 Rands)	Audited Outcome	Revised Estimate	Estimate	Average growth
	2016/17	2017/18	2018/19	
Revenue	R1,435,005	R1,419,957	R1,490,716	1.5%
% of GDP	29.2%	28.8%	29.7%	
Non-interest expenditure	R1,441,874	R1,455,589	R1,475,396	0.3%
% of GDP	29.3%	29.5%	29.4%	
Consolidated budget deficit	-R178,039	-R214,342	-R180,484	-1.3%
% of GDP	-3.6%	-4.3%	-3.6%	
Non-interest expenditure growth	-1.4%	1.0%	1.4%	0.3%
GDP growth	0.7%	1.3%	1.5%	1.2%
Population growth	1.6%	1.6%	1.6%	1.6%

11. As well as being much lower than population growth, the small aggregate growth in non-interest expenditure of 0.3% over the past three years **masks significant cuts and re-prioritizations** that have taken place within the budget. What is less clear when reading the budget is on what basis cuts are justified, what has motivated key re-prioritizations within the budget, and what impact these are having on the realization of economic, social and cultural rights. These cuts and their impact on Covenant rights will be detailed in Part III.

[6] National Treasury of the Republic of South Africa, 2018. "Budget Review."
[7] National Treasury of the Republic of South Africa, 2018. "2019 MTEF Technical Guidelines" pg. 1.2 (original emphasis).
[8] National Treasury of the Republic of South Africa, 2018. "Budget Review," Tables 1.2, 3.2 and 4.2 and StatsSA, 2018. "2018 Mid-Year Population Estimates," and own calculations.

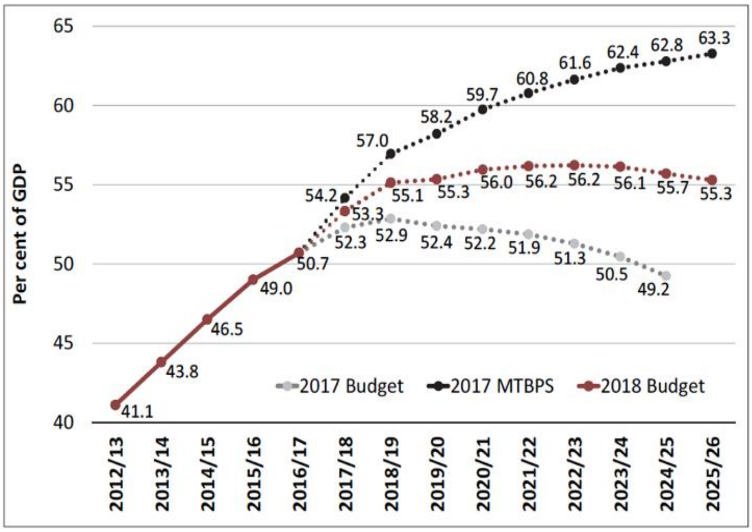
12. This fiscal consolidation represents unnecessary self-imposed austerity that is compounding stagnant median wages,[9] and falling disposable incomes. Since a large share of public expenditure is geared towards lower-income groups, this is having retrogressive and discriminatory impacts.

1.2 Exaggerated concerns about debt levels are being used to justify austerity

13. South Africa's austerity measures lack legitimacy. They are designed to appease international finance and its credit agencies by making steep debt reductions, rather than to protect human rights.[10] As the Committee on the Elimination of all forms of Discrimination Against Women has emphasized, **tackling debt is not, in and of itself, a sufficient justification for implementing austerity** measures having retrogressive rights impacts.[11]

14. In the words of the National Treasury, the 2018/19 budget "accelerates government's efforts to narrow the budget deficit and stabilize debt".[12] Table 1 above shows a planned deficit tightening from -4.3% in 2017/18 to -3.6% in 2018/19. Figure 1 shows that such measures are not intended to be temporary. The debt-to-GDP ratio is projected to peak at 56.2% during 2021/22 and 2022/23, with reduction targets continuing through to 2025/26. The idea that South Africa is facing a debt "crisis" has been fueled by statements by international credit ratings agencies justifying their downgrades of government debt.

Figure 1: Debt-to-GDP levels (2012/13 - 2025/26)



15. However, **South African debt is moderate by international standards**. According to the International Monetary Fund (IMF), emerging market and middle-income country debt levels are projected to reach, on average, 57.6% in 2023, while advanced country debt averaged at 105.4% of GDP in 2017. Further, a comparative study shows that South Africa's debt is below the levels at which comparator countries lost and regained their investment-grade rating.[13]

16. The debt risks that are present in South Africa do not stem from "excessive" social spending. Rather, debt guarantees held by state-owned enterprises (SOEs), in particular the electricity parastatal, Eskom, pose a threat to debt sustainability, not unrelated to alleged mismanagement and corruption. Accordingly, the solution is not widespread austerity and severe debt reduction targets, but a comprehensive plan agreed by all social partners to turn the financial health of Eskom (and other state-owned enterprises) around.

1.3 Austerity is unreasonable in a context of extreme inequality, persistent poverty, and high unemployment

17. 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

[9] McLaren, D, 2017. "Indicators to Monitor the Progressive Realization of the Right to Decent Work in South Africa," SPII Working Paper 15 pg. 109-110.
[10] South African Institute of International Affairs, 2015. "2015 Budget: Too Little Too Late for South Africa's Public Debt?"
[11] Committee on the Elimination of All forms of Discrimination Against Women (CEDAW), 2017. Concluding Observations: Barbados, CEDAW/C/ERB/CO/5-8.
[12] National Treasury of the Republic of South Africa, 2018. "Budget Review."
[13] CSID, 2017. "Mitigating the Impact of South Africa's Debt Downgrades: International Experiences."

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.[14]

18. The overwhelming majority of poor people continue to be black Africans, while women tend to be the most affected. The proportion of female-headed households living below the UBPL was 49.9% in 2015, compared to 33% for male-headed households. Disparities are particularly striking when looking at child poverty; **poverty among black African children was 73.6% in 2015, compared to 1.4% for white children**. South Africa's Multidimensional Poverty Index (SAMPI) also illustrates apartheid's legacy of spatial inequality. Multidimensional poverty is highest in the Eastern Cape, KwaZulu-Natal, and Limpopo— provinces that had high concentrations of "homelands" (areas set aside for black Africans under the apartheid regime) where public service delivery and infrastructure was poor.[15]

19. In South Africa, high levels of poverty go hand in hand with high levels of economic inequality. In 2015, South Africa's Gini Coefficient and Palma Ratio were at 0.63 and 7.1 respectively, among the highest in the world.[16] In 2014, two thirds of personal income was captured by the richest 10% of households. The income share of the top 1% of earners was 20%, an increase of 11 percentage points since 1994.[17]

20. There are also notable variations in income inequality among different racial groups.[18] The Living Conditions Survey showed that white-headed households, on average, earned the highest income at R444,446 per annum, while black African-headed households earned the least, at R92,983 (2015 prices). **White-headed households had an income roughly four and a half times larger than black African-headed households** and three times larger than the average income.[19]

21. Wealth inequality is also staggering. Academic studies estimate that the wealthiest 1% of the population own half of all wealth, while **the top decile owns at least 90–95%.[20]** Richer households have, on average, nearly 10 times more wealth than poor households, according to wealth surveys carried out by the University of South Africa (UNISA) between 2008 and 2015. A prominent factor influencing wealth inequality is ownership of financial assets, which represent 36% of total assets for the poor, compared to 75% for the rich.[21]

22. The functioning of the labor market is a key driver of inequality. **Large numbers of young people, black Africans, and women are unemployed or underemployed**; if employed, they earn low wages that are not keeping pace with living costs. The most recent data shows the limited unemployment rate sitting at 27% for the second quarter of 2018, with the youth unemployment rate at 39%, whereas for the expanded definition (which includes those discouraged from seeking employment and is thus more appropriate) the rates are 37% and 67% respectively.[22] High-skilled workers, which make up less than

[14] Statistics South Africa, 2018. "Men, Women and Children: Findings of the Living Conditions Survey, 2015." It should be noted that academics have proposed alternative, more accurate, methodologies for calculating the national poverty line which result in an UBPL headcount of 62.76%. See Budlender, J, Leibbrandt, M & Woolard, I, 2015. "South African poverty lines: a review and two new money-metric thresholds," Southern Africa Labor and Development Research Unit Working Paper Number 151.
[15] Sulla, V and Zikhali, P, 2018. "Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities," World Bank Group at https://bit.ly/2HMyBMO
[16] United Nations Development Programme, 2016. 2016 Human Development Reports - Table 3 Inequality Adjusted Human Development Index.
[17] Alvaredo, F et al, 2018. World Inequality Report, 2018 at https://bit.ly/2N5WNzG
[18] The apartheid state of South Africa in 1950 passed the Population Registration Act which declared that South Africans are to be classified into one of three races: 1) White, 2) "Native" (black African), or 3) Colored (neither white nor native).
[19] Statistics South Africa, 2017. "Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015."
[20] REDI3x3, 2016. "Wealth inequality on South Africa: Evidence from survey and tax data."
[21] Sulla, V and Zikhali, P, 2018. "Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities," World Bank Group.
[22] Statistics South Africa, 2018. Quarterly Labor Force Survey, 2nd Quarter 2018. July 2018, P0211.

20% of the working population, earn nearly five times the average wage for low-skill workers. Along with this, higher wages are growing at a faster rate than low and middle wages, increasing further wage inequality.[23] South Africa's dependency ratio (non-working age population to the working age population) is high, at 52% in 2015.[24] This means small amounts of money from employment must be shared among several household members.

23. In this context, austerity has the potential to further undermine livelihoods while also weakening the South African economy. Although South Africa's economy accounts for almost a quarter of all of Africa's GDP and is ranked as an upper-middle income economy by the World Bank, economic growth has slowed significantly since 2011 and in the first quarter of 2018, GDP fell by 2.2%.[25] In fact, as shown in Table 1, GDP has grown at a slower pace than the population for the last three years, and is forecast to do the same in the current year, resulting in a consistent drop in per capita GDP.[26]

1.4 Development policies pursued since 1994 have failed to address the underlying causes of socioeconomic inequality

24. Despite having some of the world's most robust constitutional obligations concerning economic, social and cultural rights, economic policy in South Africa has not been sufficiently and consistently rights-based and has entrenched structural inequalities. Although a detailed examination of economic policy is beyond the scope of this submission, it is worth commenting on how Treasury's overarching approach to economic development has influenced the fiscal policies that determine resource generation, allocation and expenditure.

25. Since the 1990s, economic policy has been market-centric. The government has made "macroeconomic stability" the "overriding objective of economic policy"[27] and narrowly prioritized GDP growth over other social goals such as redistribution. In pursuing this course, far too little attention has been paid to the nature of this growth or to who is benefiting from it. As the Committee has emphasized, economic growth does not necessarily translate into the progressive realization of rights. State parties must take steps to channel such economic dividends into poverty reduction programs, additional employment opportunities, and increased financing for public services.

26. Such market-centric approaches, in particular the conception of the State as a market enabler, has also permeated social policy. This can be seen strongly in housing policy, for example.[28] This is a critical reason why, despite significant increases in social spending in the 2000s, the state has been unable to progressively realize economic, social and cultural rights. It has also **led the government to avoid strongly interventionist policies that would ensure the restructuring of the economy to better serve the needs of the majority.**

27. These policy choices have meant that the capital-intensive, monopolistic and mining-centered development path, with a strong reliance on cheap, predominantly black African labor, that emerged before and under apartheid, has not been undone. The financialization of the economy has occurred on top of this, with large growth in service sectors of the economy. Active and interventionist industrial policy

[23] Sulla, V and Zikhali, P, 2018. "Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities," World Bank Group.
[24] World Data Atlas, 2018. South Africa - Ratio of population aged 0-14 and 65+ per 100 population 15-64 years at https://bit.ly/2C5Hx1r
[25] Statistics South Africa, 2018. Gross Domestic Product First Quarter 2018 at https://bit.ly/2l0Qm0X
[26] National Treasury of the Republic of South Africa, 2018. "Budget Review," Table 3.2 at www.treasury.gov.za; StatsSA, 2018. *2018 Mid-Year Population Estimates* at https://bit.ly/2N3MI6c2
[27] Macroeconomic stability is defined as stable prices, stable interest rates, predictable economic costs such as tax policies and regulatory regimes and predictability about future tax and interest rates. See Faulkner, D and Leowald, C, 2008. "Policy change and Economic Growth: A Case Study of South Africa," at https://bit.ly/2MFKKtl, pg. 12.
[28] This approach was most forcefully captured in the 1996 Growth, Employment and Redistribution (GEAR) programme, whose framework, despite some variations, has continued to dominate economic policy making. Isaacs, G, 2016. "The Commodification and Financialization of Low-Cost Housing in South Africa," Working Paper Series: Fessud.

to stimulate growth in labor absorbing industries that offer the opportunity for decent work, was absent until the mid- 2000s and inadequate thereafter. Policies to raise wages and increase domestic demand have been inert.

28. Such inadequacies appear in the 2011 National Development Plan (NDP). Although it pre-dates the adoption of the Sustainable Development Goals, the NDP is the primary vehicle for their implementation. The NDP provides a broad and ambitious framework that aims to eliminate poverty and reduce inequality and unemployment by 2030. Various substantive goals are also articulated for the provision of social services. From a human rights perspective, the inclusion of inequality as a priority development issue is welcome. However, the measures to ensure the realization of these priorities have come under significant criticism. **A key critique is that the NDP lacks coherence and that its conservative approach to macroeconomic policy fails to ensure effective economic intervention by the State**. Instead, it is vague when it comes to achieving employment-centered development,[29] and advances a problematic jobs plan based on low-quality precarious jobs that undermine worker rights.[30]

II. ISSUES RELATED TO GENERAL PROVISIONS OF THE COVENANT ARTICLE 2(1) – RESOURCE OBLIGATIONS

29. This section shows that the State party is not dedicating the maximum of available resources in line with its obligations under Article 2(1). It could generate additional resources by enacting more progressive tax policies, which, as the Committee has consistently emphasized, is essential in ensuring the availability of resources for rights realization. It could also intensify efforts to strengthen administrative capacity and meaningfully tackle corruption and state capture. This would help avoid resource diversion caused by tax evasion and avoidance, as well as by inefficient and wasteful expenditure. Not only would pursuing these alternatives negate the need for austerity, they would contribute to the redistribution of income and wealth necessary for tackling inequality and advancing the realization of economic, social and cultural rights.

2.1 South Africa has failed to mobilize sufficient resources for realizing Covenant rights

30. In recent years, South Africa has failed to raise sufficient tax revenue. South Africa has maintained a **tax-to-GDP ratio of around 25% over the last decade.** By international standards this is above average. But, given the scale of socioeconomic challenges and extreme levels of inequality, the tax mix must be evaluated holistically and on a more granular level. The R48.2 billion shortfall in the 2018/19 National Budget illustrates that current revenue raising approaches are unable to generate the necessary tax income.[31] In the 2017 Medium Term Budget Policy Statement (MTBPS) the Minister of Finance highlighted a forecasted R209 billion shortfall in the following three years.

31. This shortfall comes off the back of the South African Revenue Service (SARS) consistently missing its revenue targets. Between 2010/11 and 2015/16 South Africa's tax buoyancy—a measure of the relationship between tax revenue growth and economic growth—was greater than 1, indicating that tax revenue grew at a faster rate than economic growth. Despite tax rate increases in 2016/17 and 2017/18, tax buoyancy fell below 1. National Treasury lists "weak economic growth, administrative challenges at SARS, and increased tax avoidance and evasion" as reasons for these shortfalls.[32]

32. Administrative challenges at SARS are indeed concerning. Under President Jacob Zuma, SARS has been plagued by **mismanagement and allegations of corruption**.[33] It has been purged of high-

[29] Public Affairs Research Institute, 2017. "Plundering the state in the name of change will only perpetuate inequality," at https://bit.ly/2LLChiQ
[30] COSATU, 2013. "Summary of Critique of the National Development Plan", at: https://bit.ly/2wzXIOI
[31] National Treasury of the Republic of South Africa, 2018. "Budget Review."
[32] National Treasury of the Republic of South Africa, 2018. "Budget Review," pg. 39.
[33] See e.g. Corruption Watch, 2018. "All of our correspondence in the SARS matter," at https://bit.ly/2wuZjWr

level officials and investigators and has seen the closure of the Special Projects Unit tasked with tackling high-profile, potentially dangerous, cases of tax avoidance and evasion.[34]

33. Strengthening SARS is critical for combating tax avoidance and evasion, which remains a major concern. Global Financial Integrity (GFI) estimates **South Africa lost USD 107 billion to illicit financial flows between 2005 and 2014**.[35] Trade mispricing (misrepresenting the value of an international transaction), a tactic for avoiding or evading taxation, accounts for over 80% of illicit outflows from South Africa, according to GFI.[36] South Africa's large extractive industry is one factor that makes it vulnerable to illicit financial flows. The United Nations Conference on Trade and Development (UNCTAD) estimates that trade misinvoicing (misrepresenting the value or volume of an international transaction) of gold exports to South Africa's leading trading partners totaled USD 113.6 billion between 2000 and 2014,[37] although there is some debate about how to interpret this figure.[38]

34. South Africa's resource generation is further constrained by mediocre wage growth for the majority, as explained above. Detailed statistical modelling, as well as a wealth of international evidence, shows wage policy measures can increase taxable incomes, without negative economic impacts.[39] So measures to ensure meaningful wage growth for lower-income households can contribute to resource mobilization. The most important recent policy measure in this regard is the implementation of a national minimum wage (to take effect in late 2018 or early 2019).

2.2 Failure to generate sufficient resources results from long-term regressive changes to the tax mix

35. While South Africa's tax structure is progressive overall, meaning richer households generally contribute a higher percentage of their income in tax than poorer ones, regressive trends have contributed towards a failure to generate sufficient resources. These include:

- **Personal income tax (PIT) rates have fallen** since 1997. For example, someone earning R1 million annually (in 2018 prices), approximately $75,000 USD, paid an effective tax rate of 41% in that year. By 2018, this had fallen to 31%. The progressivity of personal income tax rates in South Africa is the lowest of comparable peer countries Brazil, Peru, Mexico, Ethiopia, Uruguay and Armenia.[40]
- **Corporate income tax (CIT) rates have also fallen dramatically**, from 50% in 1990 to 28% in 2018. According to the World Bank and Price Waterhouse Cooper *Paying Taxes* measure—which takes account of all taxes facing an average middle-sized firm as a percentage of profits—South Africa ranks 172 out of 213 countries, where 1 has the highest company tax and 213 the lowest. By this measure, South Africa also has the lowest corporate tax rate in Africa and is in the bottom quarter of emerging markets.
- **Wealth, and income derived therefrom, is under-taxed**. For example:
    - Capital gains tax is comparatively low. In 2016/17 it raised only R17 billion, a mere 1.5% of tax revenue. Because not all capital gains are taxed, in 2017, individuals only paid a rate of 16% on capital gains, and companies 22%.[41] This is below the OECD and BRICS norm.

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[34] Public Affairs Research Institute, 2017. "Plundering the state in the name of change will only perpetuate inequality."
[35] Global Financial Integrity, 2017. "Illicit Financial Flows to and from Developing Countries: 2005-2014," pg. 35.
[36] African Monitor, 2016. "State of Illicit Financial Flows in South Africa: a scoping exercise," pg. 5.
[37] UNCTAD, 2016. "Trade misinvoicing in Primary Commodities in Developing Countries" pg. 28.
[38] Forstater, M, 2017. "Illicit Financial Flow and Trade Misinvoicing: Time to Reassess," at https://bit.ly/2Nw1646
[39] Isaacs, G, 2016. "A National Minimum Wage for South Africa," Summary Report, National Minimum Wage Research Initiative.
[40] Inchauste, G et al., 2015. "The Distributional Impact of Fiscal Policy in South Africa," World Bank Group Policy Research working paper, pg.17.
[41] South African Revenue Service, 2018. "Capital Gains Tax (CGT)" at https://bit.ly/2NiodyK

- Tax on inheritance—estate duty—is levied at only 20% and raises revenue worth 0.05% of GDP compared with the OECD average of 0.2%.[42]
- The securities transaction tax (STT) (a tax on sale of shares) raises a small share of income; bonds are excluded and there is no transaction tax on derivatives and other forms of financial transactions. Despite South Africa's market capitalization to GDP ratio being almost triple the OECD average, revenue from STT lags behind the OECD average.
- Taxes on immovable property (such as houses and offices) is levied at the municipal level, allowing wealthier areas to generate greater income than poorer areas; there is no national land tax despite the very unequal distribution of land.
- South Africa has no annual "net wealth tax" that would tax the total value of wealth held in a given year.

36. South Africa also offers a number of PIT tax breaks that only benefit higher-income households. In 2015/16 government expenditure on tax breaks for pension and retirement funds and private medical insurance amounted to approximately R52 billion.[43] Accounting for inflation, this amount would sit well above the 2018/19 projected shortfall.[44] These tax breaks only benefit the top three deciles (virtually no one in deciles 1-7 pays PIT) and are concentrated amongst the highest-earning 10% of the population.

2.3 Recent changes to the tax mix place a disproportionate burden on poorer South Africans

37. **The increase in the VAT rate from 14 to 15% as of April 2018 represents a clearly retrogressive austerity measure.** This increase is projected to raise the share of VAT in the overall tax mix from 24.6% in 2017/2018 to 26.3% in 2020/2021.[45] As expected, this VAT change increases the taxes paid by poor and low-income households, reducing their ability to afford foodstuffs and other essential goods and services necessary for rights realization through lowering disposable incomes.

38. Exempting certain essential goods from VAT ("zero-rating") makes VAT less regressive. A recent report by the IEJ identifies 23 additional categories of goods and services that could be zero-rated, financially benefiting low-income households and advancing the realization of rights. For example, greater access to school uniforms would support the right to education, cheaper sanitary pads would enhance gender equality and girls' rights to dignity and education, and making various food stuffs and medicines more affordable would have significant health implications, including for children.[46] Nevertheless, an Expert Panel established by the National Treasury found only eight items potentially suitable for zero-rating and only managed to agree on six of them.[47] **While these exemptions will offer some relief to poor and low-income households, the measures are grossly insufficient.**

39. Annual i**ncreases in the fuel levy (a tax paid on petrol and diesel that are otherwise VAT exempt) places additional burdens on poor and low-income households**. Transport costs for these households are particularly onerous given South Africa's history of apartheid spatial planning, in which poor communities were located on the periphery of cities with inadequate public transportation.[48] In real terms, increases to the fuel levy have well outstripped increases to the most important social grants over the previous eight years.[49]

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[42] SACTWU and COSATU, 2017. "Submission to the Davis Tax Committee on Possible Wealth Taxation in South Africa."
[43] National Treasury of the Republic of South Africa, 2018. "Budget Review."
[44] National Treasury of the Republic of South Africa, 2018. "Budget Review."
[45] National Treasury of the Republic of South Africa, 2018. "Budget Review."
[46] Institute for Economic Justice, 2018. "Mitigating the impact of the VAT increase: can zero-rating help?"
[47] National Treasury of the Republic of South Africa, "Terms of Reference for the Independent Panel of Experts for the Review of List of VAT Zero Rated Food Items."
[48] Goderhart, S & Pernegger, L, 2017. "Townships in the South African Geographic Landscape – Physical and Social Legacies and Challenges."
[49] National Treasury of the Republic of South Africa, 2018. "Budget Review;" *See also* South African Reserve Bank, 2017. "Tax Chronology of South Africa 1979-2016."

2.4 Other more equitable financing alternatives have not been considered

40. The National Treasury claims to have considered other options and found raising VAT to be "less harmful to growth than raising other taxes." However, no evidence of serious consideration of other options has been made public. The claim indicates that the models used by the National Treasury, assume, *by design,* that all tax increases are harmful. This is incongruous with a wealth of international evidence that indicates that raising tax, if levied progressively and appropriately spent, can spur growth and reduce inequality, furthering rights enjoyment.[50] It shows National Treasury's position is ideological and premised on faulty economic theory.

41. Alternative financing mechanisms are available to the State Party that would maximize available resources, improve equity and negate the need for austerity measures. Additional revenue can be raised by modestly increasing PIT on top earners and CIT and raising or instituting new taxes on wealth, as projections show.[51] **A range of other proposals have been advanced on how a fiscal stimulus can be financed, which the Government has failed to address.** These include: drawing on excess from the over-capitalized Public Investment Fund, raising debt, ensuring domestic private savings flow into government bonds, monetizing debt via the South African Reserve Bank (SARB) or direct transfers undertaken by the SARB.[52]

2.5 Corruption and mismanagement are leading to extreme levels of unauthorized, irregular and fruitless and wasteful expenditure

42. Corruption continues to be a major problem affecting the government's ability to make use of the maximum of its available resources for rights realization. According to the Department of Economic Development, corruption costs South Africa no less than R27 billion per year, while 76,000 jobs which could have been created are being lost through corruption.[53] In 2017, **South Africa was ranked 71 out of 180 countries in the Corruption Perception Index** (CPI), with a score of 43 out of 100.[54] The 2013 CPI showed that South Africa dropped 34 places since 2001, with the decline of 17 places occurring in just five years of President Jacob Zuma's presidential administration.[55]

43. Qualified and adverse audits against government departments, as well as public entities such as state-owned enterprises (SOEs), are also rising. The most recent Auditor General's report found that nationally in 2016/17:[56]

- Unauthorized expenditure (not in accordance with the purpose for which funds were budgeted) amounted to R1.5 billion, more than double 2015/16. Ten national and provincial departments, mostly education and health, contributed to 93% of unauthorized expenditure.
- Irregular expenditure (not in accordance with procurement laws) reached R45.6 billion in 2016/17, a 55% increase from the previous year. The sectors with the highest irregular expenditure were health (R11.8 billion), transport (R6.4 billion) and education (R6.1 billion).
- Fruitless and wasteful expenditure (expenditure that could have been avoided) totaled more than R1 billion in 2016/17, a very slight decrease from the previous year.

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[50] SACTWU and COSATU, 2017. "'Submission to the Davis Tax Committee on Possible Wealth Taxation in South Africa."
[51] Budget Justice Coalition, 2018. "Submission to the Standing Committee and Select Committee on Finance with respect to the proposed 2018 National Budget."
[52] Institute for Economic Justice, 2018. "Policy Brief 2.4 Macroeconomy."
[53] BusinessTech, 2017. "Corruption costs SA GDP at least R27 billion annually, and 76 000 jobs," BusinessTech, September 1, 2017.
[54] Transparency International, 2018. "Corruption Perceptions Index 2017."
[55] Corruption Watch, 2014. "Why is corruption getting worse in South Africa" at https://bit.ly/2gbAI5A
[56] Auditor General of South Africa, 2017. "Consolidated General Report on National and Provincial Audit Outcomes 2016/17."

- A total of 28 public entities were identified as requiring intervention to avoid financial collapse, the highest number on record.

44. **Government bailouts for mismanaged and corrupt SOEs are also diverting funds from social spending.** In 2017/18, government authorized a R10 billion bailout of South African Airways and a R3.7 billion bailout of the South African Post Office.[57] That same year, capital (infrastructure) expenditure by government was cut by R16.8 billion and spending on housing and community services was cut by R3.3 billion, to give only two examples of cuts that were made. Corruption and mismanagement at Eskom, the national power utility, has been the subject of inquiries by both National Treasury and Parliament. Eskom's total irregular expenditure now stands at more than R20 billion and it is more than R600 billion in debt, with this debt burden (as noted above) being a primary justification for austerity measures.[58]

45. **Public sector corruption is impossible without corruption in the private sector, which is also widespread.** High profile law firms, public relations agencies, and auditors, have all been implicated in the country's biggest corruption scandals, the most notorious recent examples involving the Gupta family. The consolidation of political power among a network of economic elites, commonly referred to as "state capture," has allowed for the "repurposing" of state institutions at all levels—central, provincial and municipal—to become vehicles of enrichment rather than service delivery. [59]

46. **Public procurement has been grossly abused** with the government having been described as "a massive, tender-generating machine," with its core functions almost completely outsourced.[60] Procurement has become increasingly politicized, leading to illegal rent-seeking that undermines the ability of South Africa's public administration to deliver the services that are essential for the realization of Constitutional rights.

47. While there has been notable progress in increasing transparency in the form of "opening up" financial statements and annual reports, **significant challenges remain in monitoring and prosecuting corruption**. There is particular concern about how state capture has undermined the state institutions and economic agencies tasked with combating corruption, including the South African Revenue Service, Financial Intelligence Center, the National Prosecuting Authority and the Competition Commission of South Africa, as well as the South African Police Service and its investigative units. There are recent signs of progress, however.[61]

2.6 Increased public participation in budgetary processes is needed

48. South Africa and New Zealand were ranked by the Open Budget Survey 2017 as having the most transparent budgetary process in the world. However, actual use of information, and participation in the budget process by members of the public, South Africa ranks very poorly.[62] Budgets pass through

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[57] National Treasury of the Republic of South Africa, 2018. "Budget Review," pg. 90.

[58] De Villers, J., 2018. "Eskom's debt is now more than SA's total budget for health and education - here are 4 things you should know about its shocking numbers," Business Insider SA, July 23, 2018.

[59] Public Affairs Research Institute, 2017. "Betrayal of the Promise: how South Africa is being stolen;" See also, Office of the Public Protector, 2016. "The State of Capture: a report of the Public Protector."

[60] Over the past 20 years, the value of goods and services the government purchases, largely from the private sector, has reached between R400 billion and R500 billion per year. Public Affairs Research Institute, 2017. "Plundering the state in the name of change will only perpetuate inequality."

[61] In December 2017, for example, the National Prosecuting Authority's Asset Forfeiture Unit (AFU) obtained preservation orders worth R1.6 billion against global consultancy firm McKinsey and Gupta-linked Trillian, for illegally gained payments that the companies received from Eskom. According to the acting head of the AFU, the NPA is pursuing 17 such matters, to the estimated value of around R50 billion. Cowan, K, 2018. "R50-billion: The price state capture crooks will have to pay," Times Live, January 16, 2018. The Nugent Commission of Inquiry has been established to investigate the issues which led to the undermining of the revenue services (SARS), while a Commission of Inquiry into State Capture is underway, headed by Deputy-Chief Justice Raymond Zondo.

[62] Kruuse, J, 2017. "South Africa leads on budget transparency but disappoints in fostering public participation in the budget process," Public Service Accountability Monitor (PSAM) editorial at https://bit.ly/2C4Lqn1

Parliament at great speed with few members of the public able to attend hearings or grapple with the details. In addition, Parliament has proved reluctant to challenge the National Treasury, consistently failing to reject any measures proposed in the fiscal frameworks. Civil society organizations are partnering with National Treasury to develop an Open Budget Data Portal for South Africa, Vulekamali.gov.za, which a unique project that presents an opportunity to improve public access to and use of budget information.

49. **Transparency and participation are particularly weak in regards to decisions on revenue generation.** The decision to raise VAT was made without any public engagement and put forward in the 2018/19 National Budget as a *fait accompli* and none of the evidence National Treasury relied on has been made public. Civil society concerns presented during public hearings on the 2018/19 National Budget include: the failure to widely advertise the opportunity for public input; the lack of comprehensive information available to the public; and the short timeframes for public input. The cumulative effect of this is that the majority of people affected by the budget, as well as the organizations representing their interests, do not have time to comprehend, communicate, consult and develop positions on the proposals. This undermines their ability to meaningfully participate and reduces accountability.[63]

III. ISSUES RELATED TO SPECIFIC PROVISIONS OF THE COVENANT

50. This section details the impact that insufficient and inefficient resourcing is having on the delivery of the infrastructure, goods and services necessary for the realization of rights. It illustrates how retrogressive austerity measures have a disproportionate and discriminatory impact on the enjoyment of these rights, affecting the minimum core content of rights for disadvantaged and marginalized individuals and groups. It focuses on the rights to health and education, two areas where the effects of austerity are already being felt and are likely to worsen significantly.

51. It shows how, within the context of highly unequal health and educational outcomes, diminishing funding is severely affecting the quality of public healthcare and basic education, in a discriminatory manner. In particular, human resource shortages and infrastructure backlogs are worsening. In the health sector this is negatively impacting the transition to universal health care through National Health Insurance (NHI) and causing an exponential rise in medical negligence claims. Funding cuts are having a similar impact on basic education, causing violations of minimum core obligations that risk being further exacerbated by discriminatory shifts in spending from basic to tertiary education.

3.1 The gains of expanded social spending since 1994 are being eroded as a result of austerity induced budget cuts and re-prioritizations

52. Since 1994, large amounts of public money have been directed towards economic, social and cultural rights; building millions of houses, investing in public health care and education, and establishing a social security net that now covers more than 17 million people.

53. However, annual spending began to stagnate around 2012, and since at least 2016, government has undertaken austerity measures that prioritize reigning in public debt and narrowing the budget deficit. Part II above showed that for the past three years, non-interest expenditure has failed to keep up with population growth, resulting in declining per capita expenditure. The government is well aware that this will lead to rights deprivations, stating in the 2018 Budget Review that “The reductions discussed above [to housing, education and health budgets] will affect service delivery by delaying the rollout of some housing, school and health infrastructure projects. And reducing the provincial equitable share will make it difficult for provinces to continue to maintain education and health priorities”.[64]

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[63] Parliament Watch, 2018 “Submission presented to the 2018/19 Budget Public Hearings” at https://bit.ly/2MHroUQ
[64] National Treasury of the Republic of South Africa, February 2018. “Budget Review” pg. 75.

3.2 ARTICLE 12 | THE RIGHT TO HEALTH

54. Unequal access to health care in South Africa reflects the socioeconomic inequalities discussed above. For example, a third of the poorest 10% of South Africans live at least 20 kilometers away from a hospital, while this is only true of a tenth of the richest 10%.[65] Health outcomes also diverge along these lines. For example, life expectancy in the Western Cape (a wealthier province) is over 10 years longer than in Free State (a poorer province).[66] Inequities in health outcomes such as these are maintained by highly unequal expenditure per person on private and public health, and illustrate the need for increased investment to strengthen the public health system.

55. Consolidated (national and provincial) spending on health care was cut by -0.1% in real terms in 2018/19.[67] This reduced the percentage of GDP that the government spends on public health from 4.1% in 2017/18 to 4.0% in 2018/19.[68] This cut in overall funding, coupled with an estimated 740,000 additional uninsured people entering the public health system (through births and migration) meant that **health expenditure per uninsured person has decreased**.[69] Within the health budget, R820 million was cut from the Health Facility Revitalization Grant (which pays for upgrades and maintenance of health facilities such as clinics and hospitals),[70] while extreme pressure has been placed on departmental budgets for wages and goods and services.

56. These cuts are made in the context of an **already overburdened public health system** that is struggling to deal with a rising burden of disease and high medical price inflation. An exodus of skilled health professionals to the private sector due to poor working conditions and unpaid benefits is adding to woes and causing retrogression of services in many provincial health departments.[71] The Minister of Health has acknowledged that the health system suffers from widespread "overcrowding, long waiting lists for treatment, irregular buying of goods, poor financial management and a chronic shortage of human resources."[72]

Arbitrary ceilings for wage expenditure exacerbate existing staff shortages

57. Reducing the public sector wage bill is a central tenet of austerity. This policy is particularly targeted at provinces; the number of government employees has been reduced from 923,646 in 2013 to 888,204 in 2017.[73] Government argues that despite these headcount reductions, spending on government employees has continued to increase over the past three years. However, this increase has been minimal, at 1-2% above inflation,[74] illustrating that the government's claim that growth of wage-related expenditures requires it to introduce cuts is exaggerated at best.

58. Yet, in its 2019 Guidelines for Costing and Budgeting for Compensation of Employees, the Treasury states that despite "compensation baseline reductions of R10 billion in 2017/18 and R15 billion in 2018/19" … "No additional funding will be made available to directly fund the costs associated with the

[65] Sulla, V, and Zikhali, P, 2018. "Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities." World Bank Group. pg. 23.
[66] Weyss, B, Webster, D and Selebalo, H, Monitoring the right of access to healthcare in South Africa: An Analysis of Health Budgets and Indicators, (2017) Working Paper 17, Studies in Poverty and Inequality Institute, pg. 65.
[67] National Treasury of the Republic of South Africa, February 2018. "Budget Review," Table 8, and own calculations.
[68] National Treasury of the Republic of South Africa, February 2018. "Budget Review," Table 3.2 and Table 8, and own calculations.
[69] National Treasury of the Republic of South Africa, February 2018. "Budget Review." From R4 355 in 2017/18 to R4 284 in 2018/19 (in constant 2018/19 Rands).
[70] National Treasury of the Republic of South Africa, February 2018. "Budget Review," pg. 60.
[71] Chambers, D, 2017. "This is why doctors quit public healthcare - or leave SA altogether," Business Day, July 3, 2017 at https://bit.ly/2wvDKnY
[72] Mkize V, 2018. "Health minister outlines plan of action," News24, June 10, 2018 at https://bit.ly/2MHXYWk
[73] National Treasury of the Republic of South Africa, 2018. "Budget Review," pg. 75.
[74] National Treasury of the Republic of South Africa, 2018. "Budget Review," and own calculations.

[new 3-year public sector] wage agreement.[75] The Treasury *Guidelines* state further that "Departments are expected to thoroughly explore strategies available for headcount management."[76] Treasury even commits to assisting departments to get rid of staff by providing additional funding where necessary to help departments to pay for severance packages and early retirement packages.[77]

59. This policy is **resulting in critical staff shortages** and hampering the expansion of health professionals necessary to improve levels of care and prepare the country for the transition to NHI. The fact that the capacity of departments is being eroded in order to save immediate in-year costs to reduce the budget deficit, is having deleterious consequences in many government departments and resulting in retrogressive health outcomes and rights deprivations.

THE IMPACTS OF AUSTERITY ON THE RIGHT TO HEALTH: THE ILLUSTRATIVE CASE OF THE GAUTENG DEPARTMENT OF HEALTH

Evidence of "a system on the verge of collapse", as the nation's Health Ombud recently described South Africa's public health system, abounds.[78] The North West Department of Health was placed under national government administration in April 2018.[79] An Intervention Task Team was established in late 2017 to develop a strategy for turning around the cash-strapped and crisis-ridden Gauteng Department of Health (GDoH), in the country's richest province.[80]

In early 2018, senior clinicians from the GDoH approached SECTION27, determined to avert a large-scale crisis in the department. They provided first-hand evidence of how an unofficial and unplanned hiring freeze was being implemented in a desperate attempt to cut the wage bill, with disastrous consequences both for the overworked staff that remained and for the service being provided to patients.

The hiring freeze was negatively impacting accessibility of basic health services, including:

- An increase in the neonatal (newborn) mortality rate to 30% at a large district hospital, well above the national average of 3%.
- A scaling back of cardiology services at a number of health facilities
- Downscaling the availability of out-patient services by 10%.
- Increasing waiting times for women to see a gynecologist.
- Some hospitals, including Helen Joseph, a tertiary hospital with a catchment population of one million people, frequently closing their accident and emergency wards to walk-ins.

Further, the deteriorating quality of care was resulting in a significant rise in financially damaging medico-legal claims, the liabilities from which have now reached more than half of the department's annual budget.[81] Despite their commitment to improving public health, the doctors described how medical professionals of all kinds were defecting to the private sector in return for better working conditions. Strikes have become a regular occurrence in the province and in some cases have resulted in health facilities, including Johannesburg General Hospital, being effectively shut down, with patients denied access to treatment.[82]

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[75] National Treasury of the Republic of South Africa, 2018. "Guidelines for Costing and Budgeting for Compensation of Employees," at https://bit.ly/2ynxnY8, guidelines 1.1. and 3.1.
[76] National Treasury of the Republic of South Africa, 2018. "Guidelines for Costing and Budgeting for Compensation of Employees," guideline 3.2.
[77] National Treasury of the Republic of South Africa, 2018. "Guidelines for Costing and Budgeting for Compensation of Employees", guideline 3.2.
[78] ENCA, 2018. "SA healthcare system on verge of collapse: Health Ombudsman", at https://bit.ly/2MFqEPL
[79] Gerber, J, 2018. "Cabinet places North West health dept under administration", News24, April 26 2018.
[80] Nicolson, G, 2017. "Gauteng Health: Team to save provincial department announced", Daily Maverick, November 27, 2017.
[81] Gauteng Department of Health, 2017. "2016/17 Annual Report."
[82] Nicolson, G and Nthatep, A 2018. "Charlotte MAxeke hospital protests could have been avoided had government acted," Daily Maverick, June 01, 2018.

60. Departments of health in other provinces are also suffering under the burden of harsh and arbitrary expenditure ceilings that are causing similar, though less well documented, challenges.[83] The Minister of Health himself acknowledges the "chronic shortage of human resources".[84] The application of austerity to health budgets, including wages, is certain to make the situation worse and is directly contributing to widespread violations of the right of access to health care services.

<u>Cuts to goods and services budgets are forcing departments deeper into arrears, compounding already difficult conditions for businesses that contract with government</u>

61. Austerity measures have also contributed to a rapid growth of unfunded commitments or accruals (costs incurred, but in the absence of sufficient funding, rolled over to the following financial year). To meet those financial obligations which are hardest to avoid, such as wages, operational health budgets are cut or invoices simply unpaid. This affects everything from the procurement of medicine to the disbursement of bursaries to medical students. The more this happens the more it has a cumulative knock-on effect on budgets, as commitments from a previous year are then paid from the next year's budget.

- The Mpumalanga Department of Health accumulated accruals of R1.3 billion in 2017/18.[85]
- The Gauteng Department of Health owed 1,576 suppliers R3 billion at December 2017.[86]
- A joint sitting of the Portfolio Committees on Health and Finance found unfunded commitments in the Eastern Cape, KwaZulu-Natal and Limpopo health departments were in excess of R20 billion and growing.[87]

62. In addition to the millions of Rand in interest charged on these accruals, the **failure to pay service providers on time** is undoubtedly having severe knock-on effects for these businesses, especially where they are small. This in turn undermines government's efforts to stimulate economic growth and employment.[88]

63. Despite these challenges, government is putting severe pressure on goods and services budgets. **The overall budget goods and services was cut by 0.4% in 2018/19**.[89] Treasury also decided not to provide any additional funds to departments to cover increased goods and services costs resulting from the increase in VAT.[90]

64. In the Life Esidimeni tragedy, **143 mentally ill patients lost their lives** after being transferred out of a private facility the government had contracted with for decades, to a group of unprepared and under-resourced NGOs. The arbitration process that followed found the need to cut costs was a red-herring excuse used by departmental officials attempting to avoid accountability for their bad decision-making. However, there can be no doubt that such disasters are more likely to occur in an under-resourced health system where budgets are constantly strained, than in one where departments have sufficient resources to fulfil their mandates.

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[83] Dhai A and Mahomed S, 2018. "Healthcare in crisis: A shameful disrespect of our Constitution," South African Journal of Bioethics Law, 2018;11(1):8-10. DOI:10.7196/SAJBL.2018.v11i1.649, pg. 8.
[84] Mkize V, 2018, "Health minister outlines plan of action." News24, June 10, 2018.
[85] Parliament of the Republic of South Africa, 2-18. "Select Committee Raises Serious Concerns with Performance in Provincial Education and Health Departments."
[86] Mkize, V, 2017. "Gauteng health department is steeped in debt," City Press, December 17, 2017.
[87] National Treasury of the Republic of South Africa, 2017. "Presentation to the Joint Sitting of Portfolio Committees on Finance and Health" at https://bit.ly/2MFqKa5
[88] Independent Online, 2018. "Ramaphosa must ensure 100 000 small businesses finally get paid," Independent Online, February 25, 2018.
[89] National Treasury of the Republic of South Africa, 2018. "Budget Review"; and own calculations.
[90] National Treasury of the Republic of South Africa, 2018. "2019 Medium-Term Expenditure Framework (MTEF): Technical Guidelines," guideline 1.2.

Chronic underfunding and staff shortages contribute to rising medico-legal claims

65. Budget cuts and deteriorating health service delivery are causing an exponential rise in medico-legal claims diverting billions of Rands away from other expenditure.[91] In 2016/17 alone, provincial health departments spent a shocking R943 million on legal services and were faced with R51 billion in claims, almost 30% of their combined annual budget.[92] **In the Eastern Cape, the poorest province in the country, medico-legal claim liabilities reached 81% of the annual health budget in 2016/17**. R131 million was spent on legal services defending such claims in that year, enough to pay for one year of antiretroviral treatment for 130,000 patients.[93] Although the Minister of Health has pointed to badly defended cases and corruption between state and private lawyers and health department officials,[94] it is clear that rising medical negligence claims are a symptom of an under-resourced and under-performing health system.

The transition to National Health Insurance is undermined by funding shortfalls

66. South Africa does not have a national health system free for all at the point of use, as recommended by the World Health Organization and by the Committee. Instead, a private health care system, based on monthly contributions and cash payments, caters to the health care needs of approximately 16% of the population, while the remaining 84% use the public health system, which charges fees on a progressive basis based on the income of the patient and/or their family. Despite serving more than five times as many people, *less money* is spent annually on public than on private health care in South Africa.[95]

67. The Government's White Paper and Bill on National Health Insurance noted that quality health care was built in developed countries by consistently increasing health care expenditure at more than double the pace of income, with the public sector providing the bulk of this growth. The White Paper estimates that spending on public health will have to increase by at least 6.7% per year in real terms if NHI is to be achieved by 2025.[96] Yet, as shown above, health spending by government *declined* slightly in real terms in 2018/19.

3.3 ARTICLE 13 | THE RIGHT TO EDUCATION

68. Current levels of investment in basic education are insufficient for South Africa to meet its obligations under the Covenant to ensure both the minimum core content of and non-discrimination in the right to education. Data collected over the past decade paint a bleak picture, showing that the majority of learners are failing to meet basic curriculum standards, as well as literacy and numeracy milestones. The most recent cross-national survey revealed that:[97]

- Grade 4 children in South Africa scored the lowest of the 50 countries participating in this test.
- 78% of Grade 4 students cannot read for meaning.
- Rural provinces performed worst: 91% of Grade 4 children in Limpopo cannot read for meaning, with similarly high percentages in the Eastern Cape (85%) and Mpumalanga (83%). In Gauteng the result was 69% and in the Western Cape it was 55%.

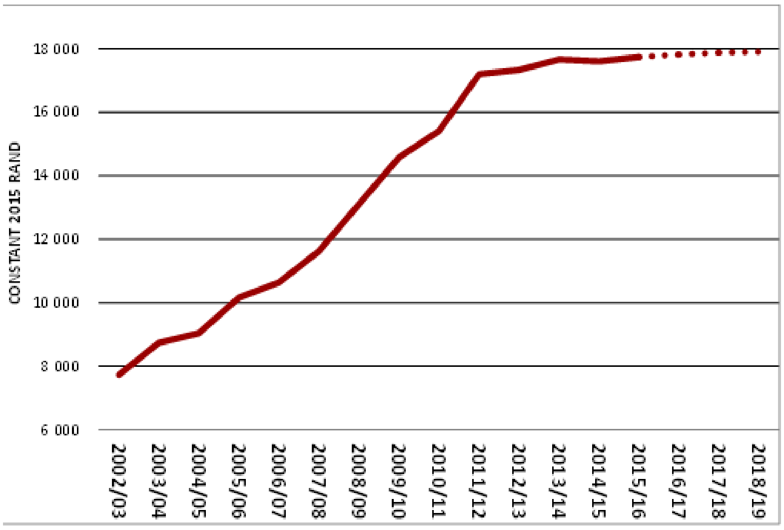
[91] South African Law Reform Commission, 2017. "Issue Paper 33: Medico-Legal Claim."
[92] Department of Health of South Africa, 2017. "Provincial Health Department 2016/17 Annual Reports"; and own calculations.
[93] Based on the R991 annual cost of ARV treatment estimated by the Minister of Health. TimesLive, 2017. "SA drops price of ARVs, saved R11bn in six years," TimeLive, September 22, 2017.
[94] Mitchley, A, 2018. "State attorneys involved in defrauding the state must be arrested - Motsoaledi", News24, August 14, 2018.
[95] 4.1% of GDP is spent on public healthcare, while 4.4% is spent on private healthcare. Department of Planning, Monitoring and Evaluation, 2017. "Final Impact Assessment (Phase 2): White Paper on National Health Insurance."
[96] Department of Health of South Africa, 2017. "National Health Insurance for South Africa: Towards Universal Coverage," athttps://bit.ly/2orxmKM
[97] National Center for Educational Statistic, 2017. The Progress in International Reading Literacy Study (PIRLS) 2017.

- Disparities relate to mother-tongue language: 93% of Grade 4 students tested in Sepedi could not read for meaning with similarly large percentages for Setswana (90%), Tshivenda (89%), isiXhosa (88%), Xitsonga (88%), isiZulu (87%) and isiNdebele (87%) Grade 4 learners.

Diminishing funding for basic education is resulting in deteriorating conditions in public schools

69. According to National Treasury, real basic education spending per learner has plateaued since 2011/12, as shown in Figure 2.[98] However, further analysis has found that **per learner spending has actually declined by 10% since 2010**, once factors such as a spike in birth rates, an increase in public school enrollments, and above inflation increases to teacher salaries are accounted for. As a result, real annual per learner spending fell from R17 822 in 2010 to R16 435 in 2017, and, on current budget estimates, will continue to drop to R15 963 by 2019 (in 2017 Rands).[99]

Figure 2: Real spending on basic education per learner



70. Evidence of the growing shortfall in funds is increasingly showing up in the funding provided to individual schools. For example, **in KwaZulu-Natal, one of the poorest provinces in the country, the department of education has failed to fund schools at the minimum per-learner threshold** for four years in a row.[100] Funding for schools in the lowest-income communities in the province has been cut by 15% since 2015/16.[101] The Department of Basic Education confirmed in a recent Parliamentary hearing that this story is repeated across the country:

> Provinces like Mpumalanga are collapsing because they do not have funds for running costs and KZN is not far behind … The decline [in spending] impacts the quality of education [and] has become much more profound … it was reversing all the gains made in education.[102]

71. This discriminatory and retrogressive reduction in spending per learner violates minimum core obligations of the Covenant as it deprives large numbers of children of essential aspects of the right to education. For example, millions of learners, particularly in rural provinces, continue to walk several kilometers to school every day.[103] In a case brought by education rights movement Equal Education (EE), the department of education argued that it had insufficient funds to transport these learners, and could not even make a plan for transporting them in the near future.

98 Sachs M, 2016. Presentation at civil society roundtable discussion on budget analysis for advancing socioeconomic rights at https://bit.ly/2MJaXrb
99 Spaull, N, 2018. "Basic education thrown under the bus – and it shows up in test results," Business Day, April 16, 2018.
100 Regulations called the Minimum Norms and Standards for School Funding set out the minimum per learner funding provinces must provide to each school. Schools are ranked from quintile 1 to quintile 5, with quintile 1 to 3 schools located in the poorest communities and not allowed to charge fees. These schools are therefore totally dependent upon the minimum per learner subsidy from government.
101 Province of KwaZulu-Natal, 2018. 2018 Estimates of Provincial Revenue and Expenditure (EPRE), KwaZulu-Natal, Vote 5 Education, pg. 199 The minimum school funding threshold for the poorest (no fee quintile 1-3) schools in 2018 is R1 316 per learner, yet the KZN education department is only funding these schools at R955 per learner.
102 Portfolio Committee on Basic Education, 2018. "Minutes of Meeting held on 17 April 2018 Department of Basic Education 2018/19 Budget and Annual Performance Plan at https://bit.ly/2wv0u8j
103 Joseph S and Carpenter J, 2017. "'Scholar Transport' in Basic Education Rights Handbook," SECTION27

72. Other examples include the average Grade 4 class size increasing from 40 in 2011 to 45 in 2016, with the largest increases occurring at the poorest schools.[104] Meanwhile, international assessments show that there has been no improvement in reading outcomes across the country during this period.[105]

Cuts to school infrastructure expenditure are discriminatory and prolong violations of minimum core obligations

73. In the 2018 National Budget, National Treasury announced that it was reducing the funding available for school infrastructure by a total of R7.2 billion over the next three years.[106] These cuts are discriminatory, disproportionately impacting poor schools with infrastructure backlogs. Under apartheid, ten times more money was allocated to white schools, compared to black schools.[107] This created **inequalities throughout the education system perhaps most visible in school infrastructure**. Infrastructure backlogs continue to remain a major obstacle to the realization of the right to basic education for millions of learners. According to the latest government statistics, of South Africa's 23,471 public ordinary schools: 20,071 have no laboratory, 18,019 have no library, 16,897 have no internet connectivity, 9,956 have no sports facilities, 4,358 have only illegal plain pit latrines for sanitation, 1,027 have no perimeter fencing, 269 have no electricity and 37 have no sanitation facilities.[108]

74. The government enacted the Minimum Norms and Standards for School Infrastructure in 2013, after a prolonged campaign by EE. These binding regulations required government to ensure, among other things, that all schools have access to water, sanitation and electricity; that all plain (unimproved and unventilated) pit latrines are replaced with safe and adequate sanitation; and that schools built from inappropriate materials (such as mud and asbestos) are replaced by November 2016.[109] To meet these regulations, the government had increased school infrastructure spending by providing two new grants: the indirect School Infrastructure Backlogs (SIB) Grant (implemented by non-governmental implementing agents, monitored by government)[110] and the direct Education Infrastructure Grant (EIG) (disbursed to and implemented by provincial education departments).

75. However, in a case of clear failure to utilize the maximum of its available resources, **billions of Rands in SIB funds have been returned unspent every year since the inception of the grant**.[111] While spending on the EIG has generally been better, implementation has been painfully slow. In 2016/17, government met only 50% of its targets for this grant.[112]

76. The government is currently appealing a court judgment compelling it to improve the Minimum Norms and Standards and President Cyril Ramaphosa has indicate the desire to harness private finance, via the Sanitation Appropriate for Education (SAFE) initiative, to meet core sanitation infrastructure requirements.[113] These moves call into question the extent to which government is committed to providing the resources necessary to ensure it meets minimum norms and standards.

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[104] Spaull, N, 2018. "Basic education thrown under the bus and it shows up in test results," Business Day, April 16, 2018.
[105] Ibid.
[106] National Treasury of the Republic of South Africa, 2018. "Budget Review," pg. 25. This includes a R3.57 billion reduction to the School Infrastructure Backlogs Grant (ASIDI) and a R3.58 billion reduction to the Education Infrastructure Grant. The total allocation to these grants in 2018/19 is R13.4 billion.
[107] Budlender G, 2016. "Whites should admit they gained from a monstrous system," GroundUp, May 19, 2016.
[108] Department of Basic Education of the Republic of South Africa, 2018. National Education Infrastructure Management System at https://bit.ly/2MJn5bq
[109] By 2020, all schools must have a laboratory, library, sports facilities and an internet connection. Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, Government Gazette No. R.920, 29 November 2013" at https://bit.ly/2wy6koT
[110] Also known as ASIDI: the Accelerated School Infrastructure Development Initiative.
[111] Portfolio Committee on Basic Education, 03 October 2017 meeting minutes at https://bit.ly/2Pn15Qm
[112] Standing Committee on Public Accounts (SCOPA), 2018. "Department of Basic Education irregular, fruitless & wasteful expenditure; infrastructure; scholar transport" Hearing with Minister, February 17 2018 at https://bit.ly/2wv64rd
[113] Equal Education, 2018. "Statement: Government rejects its obligation to provide water, electricity and decent toilets to schools by appealing #fixthenorms judgement" at https://bit.ly/2NF0t8E

77. The ongoing failure to comply with the Minimum Norms and Standards **reinforces poor learning conditions and has resulted in numerous rights violations beyond the right to education, including the rights to water and sanitation, to equality between girls and boys, and even the right to life**. The latter includes the deaths of Lumka Mthethwa and Michael Komape, children who drowned in broken school pit latrines.[114] In assessing liability for the death of Michael Komape, the High Court found that the department's argument that it lacked the resources necessary to provide safe sanitation to all schools was refuted by the fact that it "displayed a total lack of urgency or commitment to use the funds allocated for specific programs foreshadowed in the budget".[115]

<u>Shifting funds from basic education to tertiary education discriminates against poorer children and fails to meets its minimum core obligations</u>

78. There has been a re-prioritization of the budget away from basic education,[116] towards post-school education and training in recent years.[117] As Part II demonstrates, new spending on tertiary education could have been derived from additional taxation, making this trade-off unjustified. It is also retrogressive. It further erodes the quality of basic education, the assurance of which is a minimum core obligation of the right to education, with discriminatory impacts.

79. The post-school education and training budget will increase by more than a third between 2016/17 and 2019/20, as shown in Table 2.[118] In comparison, allocations to basic education only grow by 3.1%, which, as discussed above, translates to an actual decline per learner. As a percentage of government expenditure, allocations to basic education fall while the share going to tertiary education is climbing quickly.

Table 2: Share of non-interest expenditure allocated to post-school education and training and to basic education, and total real growth, 2016/17 - 2019/20

R billions (2018/19 Rands)		2016/17	2017/18	2018/19	2019/20	Total growth, 2016/17 - 2019/20
Post-school education and training	Amount	R77.0	R85.2	R93.7	R105.3	36.8%
	Share of government expenditure	5.3%	5.9%	6.4%	7.0%	
Basic education	Amount	R242.1	R243.0	R246.8	R249.6	3.1%
	Share of government expenditure	16.8%	16.7%	16.7%	16.6%	

80. To comply with its obligations under article 2 of the Covenant, government should have ensured that the additional spending on tertiary education was derived either from non-core cost savings, efficiency gains or from additional taxation.

CONCLUSIONS AND RECOMMENDATIONS

[114] Dyantyi, H, 2018. "The indignity of pit toilet deaths: Michael Komape in 2014, now Lumka Mthethwa" at https://bit.ly/2CgXL87. Section 27, 2018. "Judge GC Muller ruling on Section 27 application for leave to appeal" at https://bit.ly/2PpESRU
[115] Komape and others vs Limpopo Department of Education and others, Case No. 1416/2015 at para. 25.
[116] Basic education includes pre-school education at Grade R and Early Childhood Development.
[117] This includes higher education and technical and vocational education.
[118] National Treasury of the Republic of South Africa, 2018. Budget Review and own calculations.

81. South Africa provides a striking case study of the intersection between economic inequality, social exclusion, and human rights deprivation. Despite having some of the most robust constitutional protections for economic, social and cultural rights in the world, large segments of South Africa's population do not enjoy minimum essential levels of these rights. Patterns of poverty remain unacceptably high and unacceptably uneven, as evidenced by stark disparities in access to social protection, health, education, and other essential services.

82. It also illustrates the central role that fiscal policy plays as a driver of these challenges. Although South Africa has invested significant resources to build the basic foundations of a welfare state, the use of these resources has not always been efficient. Corruption and state capture have fractured central, provincial, and municipal administrations and undermined state-owned enterprises. This cripples the delivery of services that poor households depend on. Failures in health and education, for example, reproduce racialized patterns of discrimination. These inequalities, in turn, undermine opportunities for political participation and accountability.

83. Longstanding patterns of poverty and inequality risk being worsened by the introduction of austere debt reduction targets that constrain essential public spending. These measures do not comply with the State party's obligations under the Covenant. While the Covenant does not impose an obligation on State parties to achieve a perfectly equal distribution of income and wealth, it does require that they create the conditions in which rights can be fully exercised. A certain level of distribution of resources is expected, in order to guarantee individuals equal enjoyment of the realization of their basic rights, without discriminatory outcomes. Pursuing such redistribution would negate the need for so-called fiscal consolidation. It would also expand fiscal space, which could shift South Africa's development model towards one that advances the realization of economic, social and cultural rights enshrined in its Constitution.

84. Recommendations for the State party related to its **general framework** for the protection and promotion of economic, social and cultural rights:

Take action to end austerity, including by:

- Ensuring real per capita annual increases in non-interest government expenditure over the medium-term expenditure framework.
- Adopting a sustainable approach to debt financing that contributes to protecting economic, social and cultural rights, by allowing debt to peak at a level of 60% of GDP.
- Measuring the cumulative impact of previous and existing budget cuts on rights enjoyment by disadvantaged and marginalized individuals and groups, in particular women, children and persons with disabilities.
- Instituting, where necessary, cost-containment measures that comply with the human rights standards of equity, non-retrogression and minimum core obligations, while supporting departments to contain costs in a manner that enhances rather than undermines service delivery.
- Being transparent about whether reductions to the number of people employed in local, provincial and national spheres of government is official policy and detailing by how many, within what timeframes, and according to what policy directive this is being implemented.

Intensify its efforts to eradicate poverty and reduce disparities in living standards, including by:

- Giving priority to the needs of the most disadvantaged and marginalized individuals, families and groups when expanding social protection, public services, and public employment schemes.
- Ensuring the national minimum wage is strictly enforced and regularly increased and pursuing other measures to increase wages, reduce wage inequality, and provide all workers and their families with a decent living.

- Ensuring that poverty eradication policies are sufficiently resourced and are designed and implemented from a rights-based perspective, in collaboration with social partners and with the meaningful participation of people living in poverty.
- Including specific targets for the enjoyment of rights by the most disadvantaged and marginalized groups to be monitored as part of the National Development Plan.

85. Recommendations for the State party related to the Covenant's **general provisions**:

Adopt a human rights-based approach to fiscal policy, including by:

- Publicly recognizing that how revenue is generated is as important for the realization of human rights as how revenue is allocated and making the fair distribution of resources for rights realization an explicit goal of fiscal policy.
- Conducting training and capacity building programs with National Treasury and SARS officials on the connections between human rights and revenue generation.
- Establishing effective mechanisms for public input at the planning stages of the budget process, including the development of tax and fiscal policy.
- Rolling out budget literacy training to improve public understanding of the budget process, how to access information on the budget, and how to participate in budgetary processes.
- Incorporating human rights impact assessments into its budget-making process, including in the Budget Review, paying particular attention to State obligations regarding gender equality.
- Undertaking a costing exercise to calculate the resources necessary to implement measures to realize rights and ensure that revenue targets are based on meeting these costs as expeditiously as possible.
- Taking all necessary measures to provide adequate levels of public funding at the national, provincial and local levels to ensure the progressive realization of rights.

Review its tax regime, in a transparent and participatory manner, with a view to increasing its fiscal revenue and advancing a more equitable distribution of resources, including by:

- Increasing tax rates on personal income, corporate income, and wealth.
- Instituting a permanent annual net wealth tax, set at a rate within the international range of 0.5%-2.5%.
- Raising the capital gains tax inclusion rate to 100% (so all capital gains are taxed) and setting the tax rate to comparative rates to personal income tax.
- Investigating the best modalities of a universal financial transactions tax (FTT).
- Instituting a land property tax, particularly on vacant land, and a property rate or transfer duty surcharge for second and foreign owned homes.
- Significantly raising the estate duty tax and closing loopholes.
- Raising taxes on luxury consumption by: setting excise duties in a manner that achieves social objectives but does not unduly tax the poor; increasing ad valorem excise duties on luxury goods further than already proposed and expand the list of goods covered by these taxes; and/or instituting a higher VAT on luxury goods which could partial fund expanded zero-rating.
- Ensuring basic food and non-food items identified as essential for rights, dignity and gender equality are VAT exempt and returning VAT to 14% within the next three years.
- Reducing tax breaks for higher-income households (such as on pensions and medical aid).
- Reducing the rate of increase for the fuel levy.
- Increasing tax collection by putting an emphasis on fighting tax evasion and avoidance.

Intensify its efforts to combat corruption, in particular by:

- Strengthening regulatory and investigative mechanisms to protect against any adverse human rights impact arising from acts of corruption involving the private sector, with a view to holding perpetrators to account and recovering illicit assets.

- Ensuring adequate funding and staffing of anti-corruption institutions like the Public Protector, the SARS Special Investigating Unit, and the Directorate for Priority Crime Investigation (DPCI).
- Providing greater central oversight for large and long-term tenders.
- Making it illegal for public servants to operate certain types of businesses and making individuals liable for losses in proven cases of corruption.
- Ensuring board members of SOEs are credible, with relevant skills and experience.
- Deciding what operational and strategic changes are necessary to achieve optimum developmental impact from SOEs and building the political will to make those changes.

86. Recommendations for the State party related to **specific provisions** of the Covenant:

Take budgetary measures to improve the accessibility, availability and quality of public health services, including by:

- Increasing consolidated budget allocations for health in line with the funding requirements of the transition to universal health care, notably the target to double public health care expenditure by 2025.
- Taking all necessary measures, including budgetary, to ensure that all vacant medical posts are filled in provincial health departments without delay.
- Replacing arbitrary wage expenditure ceilings with a long-term human resources health strategy and ensuring that funds are made available to educate and train the additional health personnel that are necessary to meet it.
- Reversing cuts to the Health Facility Revitalization Grant so the grant increases in real terms to ensure that necessary upgrades to, and maintenance of, public health facilities take place.
- Supporting provincial departments of health to implement financial controls and ensure that all payments due for goods and services providers are paid on time (within 30 days).
- Implementing the recommendations of the Health Market Inquiry, which include taking steps to end collusion and excessive profiteering by private health providers and enhance cooperation between the private and public health systems so that resources are shared more effectively.[119]
- Establishing an inquiry into the exponential rise of medico-legal claims against provincial health departments.
- Implementing, in full, recommendations of the Health Ombud on the Life Esidimeni tragedy.

Take budgetary measures to address disparities in basic education, including by:

- Immediately ensuring that all schools are funded at minimum per learner thresholds established by the National Norms and Standards for School Funding.
- Reversing cuts to conditional grants for school infrastructure and ensuring that provincial education departments have sufficient funds to comply with the Minimum Norms and Standards for School Infrastructure within six months.
- Providing a conditional grant for scholar transport that is sufficient to ensure access to all learners who qualify for state-subsidized transport to school, in particular learners with disabilities.
- Ensuring sufficient funds for human resource budgets so that provincial education departments can fill all essential vacant posts before the start of the next school year.
- Conducting a participatory needs-assessment involving learners, parents, teachers and administrators, to build consensus on steps necessary for providing quality education for all.

[119] Competition Commission, 2018. Health Market Inquiry: Executive Summary, at https://bit.ly/2MG0dtq