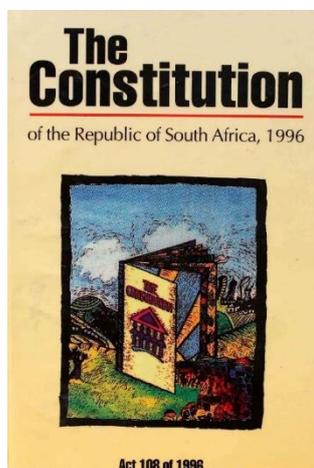
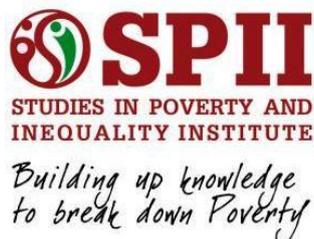


2018 Human Rights Budget



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Studies in Poverty and Inequality Institute
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SECTION27
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Introduction

The preamble of the Constitution of South Africa commits us amongst others to “Improve the quality of life of all citizens and free the potential of each person.” In including this, there is an implicit understanding that the central goal of government is to use the levers available to them to advance this cause. The national budget is an opportunity to articulate this goal into a programme of action that uses the redistributive power of government spending to enable that. Unfortunately, when we consider the lives of ordinary South Africans the evidence suggests that while we have made some progress the vast majority of our people continue to be trapped in a vicious cycle of underdevelopment driven by widening inequality.

South Africa currently faces massive economic and social pressures. One out of every two South Africans is currently living in poverty. The rate of unemployment in the country continues to grow - 64% more people are in long-term unemployment today than in 2008. The state is accruing debt faster than it is collecting revenue. And the bail-outs required by financially unsustainable state-owned enterprises are placing extreme pressure on the fiscus.

After much political uncertainty over the last few weeks, we find ourselves in a post-Zuma era, with Cyril Ramaphosa being sworn in as the President of the Republic. In his maiden State of the Nation Address, President Ramaphosa, highlighted that, ‘tough decisions have to be made to close our fiscal gap, stabilise our debt and restore our state-owned enterprise.’ Dealing with all these factors is necessary, but the trade-offs that we anticipate will be made should not include impeding upon people’s access to their constitutional rights.

Though economic conditions remain tough, the President and Minister of Finance should undertake to increase the resources available to the state for advancing these rights. Where cost-cutting is necessary, it should not be at the expense of people’s rights, such as to adequate health care, education and social security.

Should Minister Gigaba deliver the 2018 budget speech, his task will be to allocate funds in such a way as to ensure that South Africa's chronic poverty and inequality are alleviated, and that the socio-economic rights of the most vulnerable are enhanced.

The Right to Higher Education (Equal Education)

Access to higher education is an important socio-economic right. A tertiary qualification significantly improves an individual's employment prospects, and the sector is essential to economic growth. It therefore remains a critical responsibility of the State to ensure that higher education is accessible, and is not hijacked to serve the interests of the private sector or politicians.

Although the higher education budget is growing, it is insufficient to heed the call of students and activists who have tirelessly campaigned for the staggered introduction of free higher education that prioritises poor students. Transfers to higher education institutions are in fact decreasing in real terms, with below inflation growth of 4.3% projected over the medium-term. Instead of producing a sustainable plan to fund accessible tertiary studies, government officials have chosen to play politics. President Jacob Zuma opportunistically announced the introduction of fee-free higher education just one month before the ANC's elective conference, subverting established legislative processes for such decisions. South Africans are yet to know the details of this plan.

Private actors have been eager to benefit from the crisis. The much-anticipated Heher Commission report proposed replacing the State-run National Student Financial Aid Scheme (NSFAS), with the Income-Contingent Loan (ICL) system, a public private partnership (PPP). The commission's secondary recommendation, the Ikusasa Student Financial Aid Programme (ISFAP), is also a PPP. While details on these proposals are limited, both risk not adequately accounting for the financial challenges faced by students from poor backgrounds and risk locking vulnerable students into debt. The proposals are also not transparent about the benefits accrued by the private entities involved. The Department of Higher Education and Training (DHET) should not hand over the provision of public services such as student financing to the private sector. The ongoing social grants crisis illustrates the inherent dangers. Instead, the Department should work closely with NSFAS to address inefficiencies and to ensure that the framework determining categories of financial need and allocated funding is improved – no student should fall through the cracks and the lion's share of public funding must prioritise those most in need.

A welcome proposal from the Heher Commission is that all students studying in the Technical Vocational Education and Training (TVET) sector should benefit from fee-free education. DHET must engage the Finance Minister and National Treasury to explore alternative ways of funding free higher education – cutting the bloated Cabinet, reducing the employment of consultants, clamping down on fruitless and wasteful expenditure in the public sector and stamping out tax evasion by the very wealthy. The solutions must be unashamedly pro-poor. Otherwise, we are selling young people's futures to line the pockets of the rich.

Finally, while much of the public discourse around access to higher education has rightly highlighted fees as a barrier, failures in the basic education system – to provide quality education and to keep learners in school – mean many young people never meet the academic standard to attend university, or to succeed in higher education. This must be addressed with the same urgency as higher education funding.

The Right to Decent Work (Daniel McLaren)

The crisis of unemployment facing one in three South Africans urgently requires fresh thinking and new solutions. In 2015, South Africa ratified the International Covenant on Economic, Social and Cultural Rights. This introduced the right to decent work into South African law for the first time. While the Constitution recognises the right to fair labour practices, the right to decent work puts positive obligations on the state to ensure that everybody has the opportunity to gain his or her living through decent work.

This development has significant implications for the governments approach to the long-standing issue of widespread unemployment and poor working conditions in South Africa. For a start, the government must develop a comprehensive plan, based on input from all stakeholders, including unemployed and informal workers organisations, to ensure access to decent work for everyone within a reasonable timeframe. Second, investments in job creation must be prioritised in the budget.

Immediate steps that the state can take to boost access to work include upwards adjustments to the budget for the Expanded Public Works Programme (EPWP). The EPWP is increasingly being acknowledged as one of government's most successful interventions that deals directly with unemployment and poverty. By providing access to millions of paid work opportunities on a budget of only R2.4 billion, the EPWP provides excellent value for money at a time when the public purse is squeezed.

Despite this, EPWP was handed a 2% real terms budget cut in the 2017/18 financial year. This is despite the EPWP reducing its expenditure on personnel costs for management and operational staff by 3.7%. This kind of cut to a programme that directly targets job creation and poverty relief is unacceptable, especially at a time when private sector job creation is so low.

The EPWP should rather be invested in as a top priority so that the benefits of access to paid work can be extended and the aspects of the programme that need to be improved, such as training and skills development, can be attended to.

A further boost to job creation will come from a review of municipal by-laws as well as national and provincial policies which discriminate against and impede the entrepreneurial activities of informal traders and small business owners. The informal economy is growing all over the world as the mainstream capitalist economy stumbles from one crisis to the next, failing to offer stable employment to the majority of people. Improved infrastructure in townships and informal settlements will greatly enhance the economic viability of these areas and ensure that traders can work with dignity.

The right to decent work provides a clarion call to government to listen to those who lack access to decent work to come up solutions for the burden that unemployment and casualization place on our society. By investing in the EPWP and empowering informal traders and small businesses to create jobs, while coming up with a long-term plan that takes cognisance of the impact of the coming fourth industrial revolution on jobs and livelihoods, the government would go a long way to ensuring the right to decent work for all.

The Right to Social Security (Studies in Poverty and Inequality Institute)

Section 27 of the Constitution says that: *“Everyone has the right to have access to... (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.”* But this is not yet the case in South Africa. Not everyone who is unable to support themselves or their families is able to access social assistance. Social security includes both contributory social insurance such as the Unemployment Insurance Fund (UIF), and tax funded social assistance, most notably the social grants or cash transfers.

As a country, we face exceptionally high levels of unemployment, which were recently highlighted in a [StatsSA report](#). The official national figure stands at 27.7%, but a more accurate measure, which is the expanded definition, makes it 36.5%. The largest gap in social grants is the lack of assistance for unemployed adults aged between 18 and 59, or what is referred to as the ‘missing middle.’ What is essential to resolve this challenge, and at the same time address the pervasive poverty gripping the country, is an introduction of a sequenced and costed policy plan for the full realisation of the right to social assistance for the working age people within set time frames. Universal provision of social income is globally acknowledged as being crucial for grounded and sustained development: it is time for South Africa to become part of the boldly innovative countries in this regard.

That being said, social grants are the single biggest contributors to poverty alleviation in South Africa. The 2016 *General Household Survey* revealed that nearly half of South African households receive social grants as their main source of income. Grants have increasingly become a mainstream source of reliable and regular livelihood for millions of households.

While the number of social grants distributed has grown from roughly 12 million in 2006 to 17.2 million in 2017, as indicated above, still too many poor South Africans still do not have access to grants in their own right, as guaranteed by the Constitution, and instead many millions receive a diluted benefit as somebody's care giver or somebody's grandchild. The very low value of the grants is another concern. The Child Support Grant for example, of R380, falls below the 2017 Food Poverty Line of R531. The FPL is considered the minimum amount to afford enough food to survive, but does not address people's living needs in any way, completely failing the Adequacy threshold. Together with SASPRI and the LRS, SPII is currently developing a Decent Standard of Living Index for the Department of Social Development that in future years will be able to be used to measure the value of social grants and minimum wages against an effective, democratically derived, standard of living that will meet Constitutional muster.

The largest and most controversial shift in the provision of social assistance in the last five years has been the migration of grant holder payment systems to the banking sector. This has made grant payments more convenient for grant holders, but also subjected them to predatory behaviour. The protracted battle between SASSA, SAPO and the service provider, Cash Paymaster Services (CPS) has real and serious implications on people's lives. These political games and cooperate greed (in the form of the profits made by CPS) have not only eroded trust in SASSA, but could have a catastrophic impact on people's lives.

The Right to Basic Education (SECTION27)

In the 2017 Budget Speech, former Minister of Finance Pravin Gordhan noted the importance of a transformational budget based on sound constitutional and economic principles to "overcome the inequalities in society". Minister Gordhan explicitly acknowledged government's socio-economic obligations in terms of the Constitution by noting:

"This is also why our Constitution requires that all who live in our country should have access to housing, medical care, social security, water and education, there should be a progressive realisation of access to tertiary education and other elements in a comprehensive set of social entitlements."

The right to basic education is entrenched in section 29(1)(a) of the South African Constitution. Unlike other socio-economic rights in the Constitution, such as the rights to further education, housing, health care, food, water and social security, this right is not subject to internal limitations, such as, "progressive realisation" and "within the state's available resources".

This means that the right to basic education is an individual right that is directly enforceable. Thus, where a learner is deprived of entitlements that are necessary for the enjoyment of the right such as textbooks, qualified teachers, furniture, transport or adequate infrastructure, government is obliged to take steps to immediately provide these entitlements to the learner.

Minister Gordhan's 2017 budget speech further noted that providing quality public education is a central priority for government, including, improving the quality of basic literacy and numeracy achieved in the first phase of schooling. He therefore acknowledged the necessity for increased funding for proven interventions to improve the quality of basic literacy and numeracy.

Despite these acknowledgements, the baseline funding available for basic education funding has been revised downwards both by Minister Gordhan in the 2017 budget speech and by Minister Gigaba in the

2017 MTBPS. While this has not resulted in cuts to core basic education funding, it means that we are investing less in basic education today than we had planned to prior to 2017.

The need to return to increasing investments in basic education is apparent in the dreadful results of various tests that have been conducted over the last decade measuring educational outcomes in South African schools. These results paint a very bleak picture which indicates that the majority of South African learners are performing poorly, and often failing to meet basic curriculum standards and literacy and numeracy milestones. The most recent cross-national survey to be released by government was the Progress in International Reading Literacy Study (PIRLS) in 2017¹, which revealed that South African Grade 4 children scored the lowest of the 50 countries that participated in this test.

78% of these Grade 4 students cannot read for meaning. Rural provinces performed worst in the tests. 91% of Grade 4 children in Limpopo cannot read for meaning, with equally high percentages in the Eastern Cape (85%), Mpumalanga (83%). In Gauteng the result was 69% and in the Western Cape it was 55%. The tests also demonstrated disparities related 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.

In order to overcome these significant challenges, the 2018 budget framework for basic education must be informed:

- First, by government's constitutional obligations in respect of the right basic education;
- Second, through a comprehensive exercise to identify the interventions necessary to address the underlying causes of an ailing and failing education system, and;
- Third, adequately funding these interventions.

Despite Minister Gordhan's pronouncements, it is not clear that basic education allocations have occurred based on an actual costing of the interventions that are required at historically disadvantaged schools. The weighting given to poverty redress in the Post-Provisioning Norms should be doubled to 10% to ensure that historically disadvantaged schools have access to sufficient well trained teachers. We also demand that the equitable share formula is reformed to ensure that rural schools in particular have sufficient resources available to improve teaching and learning outcomes.

Additionally, cuts to conditional grants for infrastructure must be reversed so that provinces can ensure that all schools meet minimum norms and standards for school infrastructure as rapidly as possible. Rather than simple reductions to infrastructure grants, Treasury and the DBE need to work better with provinces to ensure that spending performance on infrastructure is drastically improved. This is necessary to avoid the possibility of any learner facing the awful death then befell Michael Komape in a school pit latrine in Limpopo in 2015.

The Right to Health (Rural Health Advocacy Project)

It is difficult to comprehend that despite significant resources allocated to health care in South Africa that we continue to experience such significant geographical variations in health outcomes. Nowhere is the more evident than in the overall health attainment of our most vulnerable communities who are predominantly young, black, poor and mostly rural. It is very telling that women giving birth in OR Tambo, a deep rural community in the Eastern Cape, are twice more likely to die due to complications around childbirth than women giving birth in the Western Cape. Similarly, children born in rural

¹ For more information on PIRLS, visit: www.up.ac.za/media/shared/164/ZP_Files/pirls-literacy-2016-hl-report-3.zp136320.pdf and for an analysis of the results visit: <https://nicspauil.com/2017/12/05/the-unfolding-reading-crisis-the-new-pirls-2016-results/>.

provinces such as the Eastern Cape, Northern Cape and North West are twice as likely as children in the rest of the country to die from diarrheal diseases that can be directly linked to poor socio economic circumstances.² The answer may well lie in the manner we allocate resources.

Health expenditure grow exponentially from a mere R16.8 billion in 1996 to over 180 billion in 2016³. Currently Health expenditure makes up over 13 % of the national budget. However, the relatively higher expenditure on health care does not necessarily imply that health is adequately funded. Instead, when analysing key drivers of expenditure it is clear that an expansion in funding has been driven by the rapid expansion of the South Africa's Anti-retroviral programme, with more than 3.5 million people on treatment. While the National Health Insurance (NHI) offers an opportunity to address the current inequities within the system, there are a number immediate challenges that we have to address.

Fix the HRH crisis

There should be a rational approach to the implementation of austerity measures, which seems to be the direction National Treasury has taken over the last few years. The freezing of critical health posts, with budget constraints cited as the cause, has certainly led to mounting pressures on the health service delivery platform. Although the final NHI policy document, if implemented, will shape the needed radical transformation of the health care system which would ensure that quality healthcare is available to all regardless of socio-economic status or geographical location; the success of the project will be reliant on an efficient public health system. Without healthcare workers, a health system cannot function. In a report commissioned by the Minister of Health investigating service delivery in public hospitals across the country, key findings included the on-going freezing of critical health posts, underinvestment in the maintenance of key infrastructure including medical equipment which has led to a deterioration in the quality of care delivered.

Address the solvency crisis in provincial departments of health

We call for the reform of the equitable share formula, specifically for rural provinces, which would mitigate against increased cost of service delivery in these provinces. Added rural costs are the result of the varied implementation contexts, influenced by lower population densities and large distances between facilities. Additionally, the failure of provinces to implement sound financial policies in addressing the impact of austerity measures, has resulted in the growth of unfunded commitments in a number of provinces. Unfunded commitments or accruals are costs that have been incurred but in the absence of sufficient funding and are rolled over to the following financial year. This practice has a significant impact on the delivery of healthcare. Meeting these financial obligations means that; operational health budgets are cut to cover commitments from the previous year, leading to a vicious cycle of underfunding often with disastrous consequences. The Life Esidimeni crisis may be a case in point.

In a joint sitting of the Portfolio Committees of Health and Finance investigating the coordination between the national and provincial departments, a number of provincial departments most notably the Eastern Cape, Kwazulu Natal and Limpopo provinces reported unfunded commitments in excess of R13 billion and growing. What this suggests, is that despite nominal increases in health budgets, when adjusted for medical inflation, wage increases and expanding HIV/AIDS coverage, current provincial allocations for health are insufficient.

Urgent reform is needed in how we allocate resources for health but more immediately we need to protect the health service delivery platform.

The right to Water and Sanitation (Social Justice Coalition)

² South Africa District Health Review 2016/17, Health Systems Trust, January 2018

³ South African Health Review 2017, Health Systems Trust, June 2017

A shift in thinking and planning for informal settlements is needed if we are to be able to deal with some of these challenges affecting our country, in an increasingly urbanising world. The 2011 census indicates that 63% of the country's population resides in urban centres as more and more people migrate to cities for better opportunities.

Many of the failures to reach targets and goals on water and sanitation in South Africa, such as the eradication of the bucket system, have to do with fact that informal settlements are viewed as temporary by many municipalities. This therefore means that infrastructure investment which can deal with many of the water and sanitation challenges is not prioritised and remain unfunded.

To provide sanitation for the unserved and address the many infrastructure challenges in the country it is estimated that approximately R50 billion would be required. This is according to a 2012 report by the Department of Human Settlements (DHS) and the Department of Planning, Monitoring and Evaluation (DPME). This figure does not cover funding needed for bulk infrastructure to provide for new services. More funding is needed.

Funding needed must be directed at large scale for the implementation of; the Upgrading of Informal Settlements Programme (UISP), which is one of the key policy documents introduced by the DHS in recent years to deal with many water and sanitation services in urban areas; and the purchase of land for decent human settlements across the country.

A funding mechanism or grant with clear objectives that will prioritise the issues of land and the UISP needs to be urgently developed.

The Urban Settlements Development Grant (USDG) is the main conditional grant meant to fund the UISP. The Division of Revenue Act (DoRA) mentions some of the outputs to be funded by the grant, such as increase in bulk infrastructure capacity and increase in land provision. However, the grant conditions are not specific enough when it comes to how much should be used to fund the UISP or land provision as compared to other outputs that are also funded by the grant.

The initial discussions and steps that are being taken by the DHS to review the funding of the UISP are welcome and must be fast-tracked so that money gets allocated and used for specific purposes of dealing with water and sanitation challenges in the country.

The Right to Adequate Housing (Socio-Economic Rights Institute of South Africa)

Adequate housing plays a critical role in improving the quality of life of our people. Our Constitution and the Freedom Charter enshrine a fundamental right to adequate housing. However, despite our commitment to progressively realising the right to housing through a range of state-subsidised housing programmes, millions of South Africans still live without adequate housing, often being forced to live in difficult conditions in informal settlements or inner-city "slum buildings", where they are often subject to the constant risk of eviction. While overcoming this legacy has been a long-term goal of our government, it is not happening fast enough and deserves more drastic attention.

We need to shift focus

Recent research has shown that we have delivered almost 1.88 million houses or housing units between 2002 and 2015.⁴ This is a laudable achievement. However, when we look at the full picture, it becomes clear that this figure hides a more worrying trend. The number of houses or housing units we are delivering is dwindling each year. In 2015, the number of completed houses reached an almost 20-year

⁴ Studies in Poverty and Inequality Institute (SPII), *Monitoring the Right of Access to Adequate Housing in South Africa*, SPII Working Paper No 16 (September 2017), p. 32.

low (the lowest number since 2000).⁵ This is of serious concern given South Africa's seemingly intractable and growing housing backlog.

The state has tried to scale up the provision of housing by focusing on catalytic projects or mega projects (large-scale housing projects on peripheral greenfields developments). However, the focus on large-scale provision of housing has had the unintended consequence of exacerbating the spatial apartheid that remains a pervasive feature of South African cities. Recent research has shown that there is a direct relationship between where people live in South African cities and the likelihood that they will find a job.⁶ Poorly located housing therefore contributes directly to the persistence of poverty, inequality and unemployment in South Africa.

We need to break down spatial apartheid with each human settlements project we embark on. For this reason, we need to shift focus – away from mega projects in poorly located areas and towards housing developments and informal settlement upgrading in well-located areas that are close to economic activity. The state should commit to finding undeveloped or under-utilised land in urban or peri-urban areas for the development of well-located, affordable and decent housing. Land or buildings should be expropriated to achieve this goal, if necessary.

Affordable social and rental housing

The vast majority of government programmes aimed at developing rental housing have failed to provide for poor and low-income communities. As a country we should therefore affirm our commitment to the development of genuinely *affordable* rental housing.

Recent statistics from StatsSA indicate that in 2015 almost 50% of the South African workforce earned less than R3 100 a month (this does not take into account the millions of people who remain unemployed). The vast majority of our current social housing programmes target households that earn between R3 500 and R15 000 a month.⁷ We need to reconfigure our rental housing provision to ensure that we meet the needs of those most urgently in need – those earning below R3 200 a month.

Need for responsive and supportive institutional structures that can plan better, develop more effective strategies and ensure more efficient implementation

Human settlements are about more than just “bricks and mortar”; more than just constructing houses. In 2017 the Minister of Human Settlements, Lindiwe Sisulu, said during her Budget Vote speech that “South Africa will be turned into a construction site”, but we need more than just to *build houses*. South Africa needs strong local and provincial government institutions, with the skills and capacity to plan effectively, to engage communities, and to develop coherent and responsive implementation strategies and monitoring systems that enable us to track our progress and make evidence based decisions in redressing spatial injustice.

In recent years, more than 97.5% of the annual housing budget has been spent on the construction of housing, while less than 2.5% has gone into the direct and indirect support costs required to develop programmatic responses to the housing crisis.⁸ This may indicate why we have been unable to develop lasting, sustainable solutions to the challenges posed in the human settlements paradigm. We have under-invested in our institutions with the legislative mandate to deliver housing that reduces rather than exacerbates poverty and inequality. It is critical that we take the opportunity to develop long-lasting institutional competence in order to address the challenges posed by human settlements in South Africa.

⁵ SPII, *Monitoring the Right of Access to Adequate Housing*, p. 32.

⁶ Socio-Economic Rights Institute of South Africa (SERI), *Edged Out: Spatial Mismatch and Spatial Justice in South Africa's Main Urban Areas*, SERI Research Report (2016).

⁷ Socio-Economic Rights Institute of South Africa (SERI), *Affordable Public Rental Housing*, SERI Policy Brief (2016).

⁸ SPII, *Monitoring the Right of Access to Adequate Housing*, p. 17.

In doing so, the country will come to grips with how to plan for the unpredictable trends of growth in informal settlements and urbanisation. There is a lot that can be learnt from how our people have sought to address their own housing needs. The state should actively seek to support informal settlements, and instead of seeing only red tape and legal constraints, we should focus on finding innovative solutions: Instead of approaching informal settlements from the lens of relocations and evictions, we should try to find ways to secure people's tenure and provide essential services.

The Right to Land (Institute for Poverty, Land and Agrarian Studies- PLAAS)

The Constitution mandates a land reform process to provide equitable access to land (S25(5)), security of tenure (S25(6)) and restitution (S25(7)). No provisions of the 'property clause' may impede the state from taking measures to achieve these commitments.

Overall, it is evident that apartheid patterns of land ownership remain largely intact, despite more than two decades of land reform. It is not entirely clear precisely how much land reform has contributed to changing this picture. As of 2017, the Department of Rural Development and Land Reform (DRDLR) reported that around 8% of commercial farmland has been transferred through all aspects of land reform together.⁹ At the same time, some private purchases of land have contributed modestly towards changing the racially-skewed character of landholdings in the country. Land restitution has been slow, and the reopening of the land claims process in 2014, for a further five years, has massively expanded the state's obligations in a context in which many thousands of 'old claims' lodged before the end of 1998 had not, and still have not, been resolved. Estimates indicate that resolving existing claims may well take more than 140 years into the future. Amidst slow progress, there is also growing evidence of elite capture of land reform, by state-connected elites and traditional authorities, often in partnership with corporate interests.

At the same time, nobody knows who owns what land in South Africa. While the historical divide between approximately 13% of the land being designated as Bantustans or 'homelands', and the remainder being white commercial farmland, state land and urban centres, it is clear that these figures no longer reflect reality. But what is the reality now? Despite promises since the 1990s of a comprehensive land audit – including all public and private land – this has not been forthcoming. An inaccurate and incomplete audit of state land, by province, was released by the Department of Rural Development and Land Reform (DRDLR) in 2013. Following this, two further incomplete and unconvincing 'national land audits' – first by commercial farmer association AgriSouthAfrica and then by the DRDLR – have failed to clarify the situation. The former used guesswork to assign race to the deeds registry and conflated 'black' ownership with 'state' ownership. The latter could only identify ownership of 31% of land, as most properties are owned by companies and trusts, the nationality, race and gender of which is invisible at this stage.

Budget allocations have posed a binding constraint on land reform for several reasons. First, the choice to pay market price means that available budget constrains how much land can be acquired. Second, the internal allocation of budget across competing priorities – eg. land acquisition, Recap, 50/50 policy and Agriparks – means that even given a certain budget envelope, redistribution is limited by the diversion of funds to other purposes. Third, the capacity of the Department to implement its programmes is constrained by operational budgets. In addition, the way in which land redistribution has been designed is unnecessarily cost-heavy, as it is both bureaucratic and market-dependent, requiring professional services – usually outsourced to private service providers – in relation to each project.

Staff vacancies in the DRDLR have long been a challenge in terms of the institutional capacity to embark on land reform. While the Department's overall vacancy rate is just over 10%, the empty posts in the Land Reform programme stand at 26.03% and in the Restitution programme at 21.16%.

⁹ Investigation of the national database for land reform shows, however, that there are major problems with official data, including over-counting and conflating land acquired by the state and/or transferred to black South Africans.

The national budgets for land reform and restitution have been in decline for more than a decade now, and have not recovered yet to the peak of budgetary provision which was in 2007/08. Not only have budgets declined in both real and even nominal terms, but also there has been growing diversion of available budget away from acquiring land. One option to improve delivery of land reform while limiting the burden on the fiscus would therefore be to end the diversion of land reform budget to non-land reform purposes: abandon the ill-informed Agriparks programme and remove it from the land reform budget, along with the National Rural Youth Service Corps (NARYSEC) programme and other non-land reform initiatives that are depleting the funds available for acquisition and development of land. This alone would more than double the available funds for land reform, even in the absence of an increase in the budget over the MTEF.

Alternative budget allocation

Total budget allocation for all aspects of land reform from 1995 to 2017/18 has been approximately R62 billion.¹⁰ This is what has been paid for both capital budgets (for land acquisition and associated post-settlement support) and current budgets (for staffing national, provincial and district offices) that have enabled the acquisition and/or transfer of 8% of commercial farmland. Arguably, to scale up to transfer of a cumulative total of 30% of commercial farmland by 2030¹¹ would require a fivefold increase in the pace of land reform, alongside plugging the holes of ‘beneficiaries’ subsequently losing access to land, and corrupt deals with ‘strategic partners’ and other elites in which ‘beneficiaries’ do not benefit at all. That would suggest that land reform could escalate from an average of 0.36% redistribution and restitution per year, to something more like transferring 1.8% of commercial farmland per year. This need not necessarily entail a fivefold increase in the budgetary provision, if the state is to drive down compensation to landowners.

Legislative and policy change

To realise constitutional rights relating to land, land reform, tenure security and restitution, budgetary changes will not be enough. There is urgent need to halt regressive legislative changes that are underway, and to promote new legal and policy frameworks. The High Level Panel, chaired by former President Kgalema Motlanthe, provides specific recommendations of the key steps that need to be taken to give effect to constitutional provisions.

Priority legislative and policy changes that need to be pursued are:

1. The development of a Land Reform Framework Bill to give effect to S25(5) and to provide framework legislation for the interpretation and operationalisation of all land-related laws and policies;
2. The development of a Land Records Bill to create a robust land administration system across tenure types, to provide the basis for realising S25(6) and its requirement for measures to be taken to provide tenure security;
3. The pursuit of further consultation on the Expropriation Bill, to pave the way for its adoption and signing into law, to bring legislation in line with constitutional provisions on expropriation of land for land reform purposes, subject to ‘just and equitable’ compensation;
4. The development of a new Restitution Amendment Bill to provide clarity as to the processing and status of ‘old’ versus ‘new’ claims, in accordance with the Constitutional Court’s ruling in July 2016 which provides two years for Parliament to adopt legislation to ensure that restitution is implemented in an equitable manner;
5. Amendment of the Interim Protection of Informal Land Rights Act to make it permanent as a basic level of protection of people holding informal land rights, including 30% of the population living in the communal areas of the former Bantustans;

¹⁰ Not adjusted for inflation.

¹¹ An argument for the 30% target is that it was set in the ANC’s election manifesto in 1994 and in the Reconstruction and Development Programme, and reiterated on multiple occasions since, and the argument for 2030 is to ensure that land reform contributes to the realization of the National Development Plan.

6. Clarification of the future of the Ngonyama Trust in order to recognise residents' *de facto* ownership of land and the repeal of the Ngonyama Trust Act and reorganisation of governance of land in the communal areas of KwaZulu-Natal to meet the requirements of tenure security in S25(6).

The Right to a Healthy, Protected Environment (Public Service Accountability Monitor)

Section 24 of the Constitution provides that everyone has the right to an environment which is not harmful to their health and well-being, as well as the right to have the environment protected by way of legislative measures which, along with other purposes, are intended to secure ecologically sustainable use of natural resources. Arguably the importance of such measures has nowhere been more vividly demonstrated in South Africa than in the dire water shortage currently being experienced in and around the City of Cape Town. In this situation one undeniable fact towers over the scrambling and finger-pointing which is playing out as Day Zero approaches. That is, notwithstanding persistent calls at the global level for humans to urgently take stock of their relationship with the environment, we have continued to labour under the misapprehension that we can proceed with business as usual. Implicit in this is that the earth will continue to provide us with the bounty, being water in this instance, which we require in order to do so.

Realism in relation to the environment must of necessity entail first and foremost a fundamental shift in human consciousness. As such, this is not a time for weak dispositions which pay lip service to the environment while favouring politically and economically expedient activities at its expense, since ultimately these will invariably compromise our environmental rights, notwithstanding any apparent short-term social benefits. A bold, visionary environmental administration is the order of the day.

We affirm the need for the state to bolster its environmental decision-making capacity. As was highlighted in the 2017 Human Rights Budget Speech¹², the state should earmark funds *for the appointment of new cohorts of professionals who are alive to the contested space in which they work, and have the skills and mettle to withstand its rigors*. This should remain the central focus of budget allocations to state environmental agencies, as we continue our quest to elevate the environment to its rightful place among our country's expenditure priorities.

We likewise affirm the need for overall up-scaling of the operational budgets of these organisations, with a view of bridging the divide between the noble aims of our legislation, and its seriously inadequate implementation. Included within this remains the provision of budgetary dispensations which are sufficient to ensure the availability of appropriate numbers of skilled personnel. This is to both enforce adherence to terms and conditions attached to the myriad of environmental authorisations which the state issues in accordance with its regulatory responsibilities, and maintain deterrence against the unlawful undertaking of activities which require prior authorisation, through the rendering of consistently swift and effective interventions when violations occur.

Within the context of enhanced budgets and associated professional excellence, we can be cautiously optimistic of our ability to avoid scenarios such as the one we are witnessing in Cape Town, and can progress towards contemplating higher-tier issues such as climate change from the perspective of improved base-level environmental governance.

The Right to Food (Philippi Horticultural Area)

The right to food security can only be realised via access to land and land reform. In South Africa 80% of farm output is produced by 20% of majority white commercial farmers.¹³ 80% of under-utilised land

¹² 2017 Human Rights Budget Speech , 21 February 2017

¹³https://www.nelsonmandela.org/uploads/files/Land_reform_in_South_Africa_is_in_trouble._Can_it_be_saved.pdf

can be redistributed without drastically affecting food security. The country's black small-scale farmers should be the major beneficiaries.

It is recognised that small scale farming produces 70% of food globally. However, state support to further this sector could significantly improve, food security, health and well-being, water security, employment security, while combatting soil degradation and climate change.

It is essential that urban and peri-urban land is protected for horticultural production as a matter of priority. This way a key constitutional requirement with regard to access to food is met.

With subsidies directed towards local food production, a target of fifty percent of locally produced horticultural produce can be reached in 5 to 7 years time -as per Namibia- which could reduce carbon miles of food, preserve road systems and reduce the dependence of fuel imports.

Conclusion

The Minister of Finance will be seeking to table a budget that provides for the seeds of a future fee-free tertiary education, as well as seeking to assure the world of anxious investors that the proposed 'New Deal' will not be a mask for populist state spending capture. The state is, however, constitutionally obliged to progressively realise the socio-economic rights that provide for the meeting of basic needs for the poor. This constitutional imperative has increasingly been ignored in the budgeting process. In this election budget, the government must remember its real priorities, and signal a renewed commitment to its electorate.