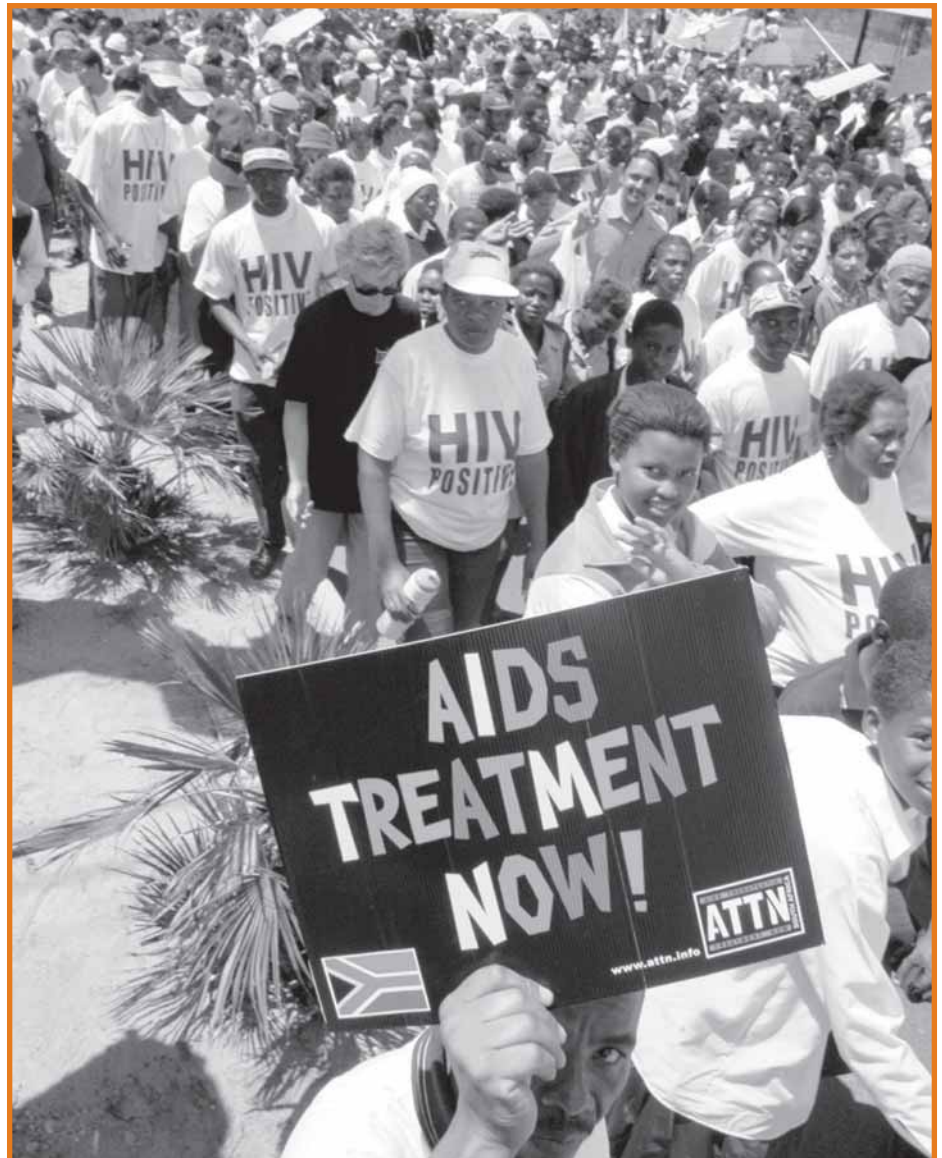

Claiming resources for socio-economic rights

CHAPTER 4



Contents

	Key words	128
4.1	Introduction	131
4.1.1	Resources to fulfil socio-economic rights	131
4.1.2	A positive approach	132
4.2	Poverty and policy context	133
4.2.1	Trends, level and nature of poverty	133
	a) The role of HIV/AIDS	133
	b) The role of unemployment	134
4.2.2	Government policy to address poverty	135
	a) The RDP	135
	b) GEAR	135
	c) Government's current strategy	137
4.3	Socio-economic rights as a guide for resource action by the State	137
4.3.1	Government and resources for socio-economic rights	138
	a) Service delivery areas of spheres of government	138
	b) Division of total revenue between spheres	139
	c) Fiscal policy	141
	d) Budget information	141
	e) Budget process for allocations to programmes	143
4.3.2	The courts and resources for socio-economic rights	144
	a) The role of the courts	144
	b) Assessing the Constitutional Court's approach	145
4.3.3	Parliament and resources for socio-economic rights	146
	a) Monitoring function and resource mobilisation	147
	b) Parliament's rubber-stamping of resource decisions	147
	c) Parliament, law-making and resources for rights	147
4.4	Strategies for contesting budget decisions	148
4.4.1	Strategies to change the budget process	148
	a) Adjusting the budget classification system	148
	b) Public participation	149
	c) Parliamentary amendment power	150

4.4.2	Strategies to increase size of revenue and allocations	150
	a) Making more revenue available through fiscal policy	150
	b) Stepping up allocations to specific programmes	151
4.4.3	Strategies to improve efficiency and effectiveness	155
	a) Highlighting shortfalls in spending	155
	b) Highlighting access and quality shortcomings	156
4.4.4	Using the courts	156
4.5	Conclusion	158
	Discussion ideas	159
	References and resource materials	160

KEY WORDS

Advocate	Mobilise and work for change, eg in budget allocations.
Budget allocation	This is money set aside for a particular purpose in the Budget. For example, the allocation to the Gauteng Social Development Department by the Gauteng Provincial Treasury in 2005–6 for developmental social welfare services has to be spent on delivering these services during 2005–6.
Consumer Price Index	The Consumer Price Index (CPIX) reflects the price of a representative basket of consumer goods and services less mortgage costs. The indexes are used to develop a number, called a 'deflator', used to adjust the value of budget allocations for the decrease in purchasing power caused by inflation.
Compliance	Whether or not you obey laws, policies or court judgments.
Conditional grants	These are allocations of money from one sphere of government to another, conditional on certain services being delivered or on compliance with specific requirements. An example is the conditional grant that was allocated by National Treasury through the National Department of Social Development to provincial social development departments to use for delivery of home- and community-based care in HIV/AIDS-affected communities.
Contingency Reserve	This is the amount in the Budget allocated to accommodate emergency expenditure needs, caused by changes in the economic environment.
Deflator	This is a number, calculated from an index measuring inflation, such as the CPIX that can be used to adjust forward estimates of budget allocations for expected sustained increases in prices (inflation).
Division of Revenue	The allocation of funds between the spheres of government under the Constitution.
Efficiency and effectiveness in use of resources	These two concepts measure how well resources allocated for spending by the State are used: <ul style="list-style-type: none">• There are <i>efficiency</i> gains when more services (outputs) are produced with the same amount of resources (inputs).• There are <i>effectiveness</i> gains when improvements in quality of services result in a more favourable impact on the beneficiary of services (in other words, the outcome of the budget allocation improves).

Equitable share	This is the share of revenue received by the spheres of government under the Constitution. The allocation, made annually through the Division of Revenue Act, comes from the National Revenue Fund – the fund for receiving all money raised by national government through taxes and other means.
Fiscal policy	Government’s decisions and plans on collecting revenue through taxes, spending on goods and services, and financing the budget deficit.
Fiscal year	The fiscal year is government’s 12-month accounting period that runs from 1 April to 31 March in South Africa.
Government budget deficit	A ‘balanced budget’ is when the Government’s total revenues equal its total expenditures for a given financial year. When the Budget is not in balance, it is either in deficit or surplus. A ‘budget deficit’ is a negative balance between budget expenditure and budget revenue in a particular financial year.
Government budget deficit reduction	This is a reduction in the negative balance between budget expenditure and budget revenue. Budget deficit reduction was one of the main targets of the Growth, Employment and Redistribution (GEAR) strategy, adopted by the Government in 1996.
Gross Domestic Product (GDP) and economic growth	<i>GDP</i> is a measure of the total national output, income or expenditure in the economy. <i>Economic growth</i> reflects the change in the value of GDP from calendar year to calendar year (1 January to 31 December). GDP growth is the most common measure of the performance of an economy. It has its limits because it does not tell us about how the benefits of growth are distributed across the population. Economic growth is essential for sustainable poverty reduction, but it is possible to have economic growth without reducing poverty.
Inflation	<p>Inflation is a sustained increase in the level of prices in an economy. There are three main measures of inflation:</p> <ul style="list-style-type: none"> • The <i>consumer price index</i>, measuring price increases for a representative basket of consumer goods. • The <i>producer price index</i>, measuring price increases for a representative basket of producer goods • <i>Gross domestic product inflation</i>, measuring price increases for a broad category of goods in an economy. <p>To adjust budget allocations for the impact of inflation, we usually use the CPIX measure of inflation.</p>
Justiciable rights	Rights that can be enforced in the courts.
Medium Term Expenditure Framework (MTEF)	The MTEF is the three-year spending plan of national and provincial governments, published at the time the Budget is tabled.

Real budget values

These are budget allocations that have been adjusted for inflation. They reflect the purchasing power of money at a particular time. For example, the real value of the budget allocation for the Child Support Grant programme in the Eastern Cape, expressed in 1998 prices, adjusts the *nominal* value of the budget allocation for the programme each year downwards to take into account the devaluing impact of inflation since 1998. The real value of a future budget allocation is usually smaller than the nominal amount (unless of course there is deflation).

Spheres of government

National, provincial and local levels of government.

Vulnerable groups

People that need special protection, eg prisoners, children, and people living with HIV.

4.1

Introduction

Motivating for inclusion of justiciable socio-economic rights in our *Constitution (Act 108 of 1996)*, Judge Albie Sachs said:

“The danger exists in our country, as in any other, that a new elite will emerge which will use its official position to accumulate wealth, power and status for itself. The poor will remain poor and oppressed. The only difference will be that the poor and the powerless will no longer be disenfranchised, that they will only be poor and powerless and that instead of racial oppression we will have non-racial oppression.”

In Ajam and Murray, 2004

The words of Judge Albie Sachs remind us why a comprehensive package of socio-economic rights for everyone, as well as a special set for children and detainees, were included in the Constitution. The rights are there to protect the most vulnerable in society and ensure that resources are generated and used in South Africa to fight poverty.

To facilitate this becoming a reality, the Constitution linked State obligations to socio-economic rights. These obligations include respecting, promoting and protecting the rights. In addition, there is the positive duty to fulfil the rights. This means having to plan, finance and implement programmes that provide basic social goods such as health care, education, housing and food, together with necessary income support (social assistance).

In exploring the link between socio-economic rights and resources in this chapter, our focus is on *the duty to fulfil*.

4.1.1 Resources to fulfil socio-economic rights

The resources needed to fulfil socio-economic rights are broad – they include financial and human resources, as well as institutional capacity. They are also large. Concern about the size of resources needed to fulfil socio-economic

rights is one reason why some people argued against including socio-economic rights as justiciable rights in the Constitution. It is also why, when they were included, everyone’s socio-economic rights were qualified by ‘reasonableness’, ‘available resources’ and ‘progressive realisation’.

For example, section 27(1) gives everyone the right to have access to health services, sufficient food and water and social security, including appropriate social assistance if people are unable to support themselves. But it is qualified by section 27(2):



For more information on these qualified and unqualified rights, see Chapter 1 from page 30 onwards.

“The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”

The special set of rights for children, namely the right to basic nutrition, shelter, basic health care services and social services (section 28), as well as the rights of people who have been arrested and detained, were not qualified. This reflects a special commitment in the Constitution to planning and managing budgets in a way that takes care of these vulnerable groups.

Some people are pessimistic about socio-economic rights and what they mean for people experiencing poverty. They argue that the promise of socio-economic rights is meaningless, as the State does not have the resource strength to provide services at the scale needed to fulfil the rights. They say that the State will use insufficient administrative and financial capacity as excuses for non-delivery.

Adopting this kind of ‘defeatist’ view could allow the State to be complacent about taking innovative budgetary and other actions to fulfil socio-economic rights. It could also make it easier for government to explain away non-delivery by using the resource constraint limitation, when really the problems are lack of creativity in planning and implementation, insufficient prioritisation and lack of political will.

4.1.2 A positive approach

A more positive and constructive view is that socio-economic rights can serve as powerful tools in the struggle to reduce and eliminate poverty. This is as long as people become active in designing and implementing strategies to ensure that the State works through law, policy, budgeting and service delivery to fulfil its obligations.

This chapter explores this positive perspective. Its main aim is to show that there are socio-economic rights-based strategies focusing on budgets that can be used by individuals and communities to advance the interests of those experiencing poverty. These strategies challenge the Government’s resource decisions on two levels:

- The quantity of resources made available for spending.
- How efficiently and effectively resources allocated for socio-economic rights programmes and other programmes are used.

The chapter starts off by providing contextual information to facilitate effective engagement with the State over mobilising resources to fulfil constitutional socio-economic rights. Part 2 is about the nature of the poverty crisis and the Government’s policy approach to addressing it. Part 3 covers how the Constitution directs the State to fulfil socio-economic rights, with the focus on resource obligations. Part 4 presents strategy options.

4.2

Poverty and policy context

4.2.1 Trends, level and nature of poverty

While there is general agreement that it is important to know what has happened to poverty levels since the end of apartheid, there is surprisingly little information currently available (*Leibbrandt and others, 2004, 12*).

The Census (1996 and 2000) can be used to measure how poverty has been changing over time in democratic South Africa. A group of poverty measurement experts have used it to show that:

- Poverty, measured by an income poverty line of R250 a month for each person, has increased from 50% to 55% of the population.
- Income inequality has increased.
- Poverty, measured by access to services indicators, has decreased.
- There have been different rates of progress across provinces – the rural/urban divide and poverty levels remain much higher in some provinces (Eastern Cape and Limpopo) than others (such as Gauteng and Western Cape).
- Income poverty remains higher in rural than urban areas. However, due to rural/urban migration, the share of the rural poor decreased between 1996 and 2001 – based on the poverty line of R250 a person each month, from 62% to 57% (*Leibbrandt and others, 2004*).

The figures in the next box are based on different indicators of poverty and the *General Household Survey of 2004* to illustrate the current level of poverty. From this, we can see how much still needs to be done to fulfil socio-economic rights.

Poverty indicators from 2004 General Household Survey

Education	2.8% of children aged 7–15 do not attend school. 3 815 000 people aged 7–24 do not attend an educational institution because they cannot afford to. 6 083 040 people older than 20 have no matric (grade 12).
Health	21% of those who said they were injured or ill in June 2004 did not consult a health worker, as it was too expensive.
Hunger	21% of children aged 0–18 experience hunger.
Housing	11.3% of households live in informal dwellings.
Assets	35.4% of households do not own books.

a) The role of HIV/AIDS

One reason for the lingering and deep poverty crisis is HIV/AIDS. South Africa is one of the countries in the world that has been most affected by the HIV/AIDS pandemic. According to the Department of Health in 2005, between 6.29 and 6.57 million people were living with HIV in 2004.

People already affected by poverty in South Africa are those that have also been the most affected by the HIV/AIDS crisis. HIV/AIDS has also had the effect of increasing the number of households affected by poverty. The gender imbalance in HIV infections is striking, with many more women living with HIV than men.

There is no sign as yet that the pandemic is lessening and HIV/AIDS will thus deepen the difficulties experienced by people living in poverty for some time to come (*Streak, 2005, 1*). It is mainly women and children who shoulder the burden of caring for people who are ill and traumatised by HIV/AIDS.

b) The role of unemployment

There is also a link between poverty and unemployment. Most people experience poverty due to unemployment at the household level (*Bhorat and others, 2001, 9*). Economic growth since 1994 has created jobs and some income gains for poor people. However, the pace of job creation (especially for semi-skilled and unskilled workers) has been insufficient to translate into the level of income creation needed. The rate of growth of jobs is too slow, relative to the growth in work seekers. The unemployment rate has thus risen over time.

There are two measures of unemployment:

- The official, conservative measure that does not count people that have become discouraged and given up actively seeking work as part of the unemployed.
- The unofficial measure that includes the discouraged part of the labour force.

The most recent estimate of the unemployment rate using the first definition is 26.5% (*Statistics South Africa, 2005a*). Early in 2005, the Government decided that Statistics South Africa would no longer calculate and release information on the official unemployment rate. According to Statistics South Africa's March 2003 *Labour Force Survey*, the expanded unemployment rate was 42.1%, which translates into about 8.4 million people (*Van der Westhuizen and Streak, 2004, 1*).

The unemployment crisis in South Africa is *structural*. This means that it is due to a mismatch between the type of skills that unemployed people have and those demanded by the growing economy. The structural nature of unemployment means that most of the people that are

CASE STUDY



SIZWE IS NOT ENJOYING HIS RIGHTS

Sizwe looks after his dying mother and two sisters in a mud-block house north of Durban. He left school last year when his mother was sent home from hospital to die from an AIDS-related illness because her bed was needed by someone who might recover. He can't go back to school because there is no money to buy food or to pay for school fees.

Sizwe sends his sisters off to beg for mealie meal from a neighbour who sometimes helps out. He leaves his mother sleeping while he makes his third trip of the day to fetch water from the standpipe. When he returns, his sisters are waiting with a packet containing a cupful of mealie meal. Sizwe makes a fire while the older girl rocks the toddler to stop her crying. The mother sleeps between bouts of coughing. It is nearly time.

Tomorrow Sizwe will visit the woman from the burial society to see if he can get help preparing for the funeral. Sizwe is a 10-year old boy living in one of the richest countries in Africa, under one of the finest constitutions in the world. Our Constitution guarantees children's rights, but Sizwe is not enjoying his rights.

Adapted from Ewing, 2000, in Streak, 2005

currently unemployed will never, in their lifetime, find stable formal employment.

Yet, South Africa is not a poor country. We are a relatively well off middle-income country, with tremendous wealth among poverty and high income inequality. The resources are available in South Africa to provide everyone with at least a basic level of the socio-economic rights we are entitled to. As Liebenberg has remarked:

“In a country such as South Africa, with its highly unequal distribution of income and resources, the State would be hard pressed to demonstrate that it is unable to afford ensuring that each person has essential survival levels of socio-economic rights.”

Liebenberg 2005, 3

4.2.2 Government policy to address poverty

a) The RDP

After 1994, the *Reconstruction and Development Programme* (RDP) was the democratic Government's first policy to fight poverty. It proposed extensive State spending on programmes to provide basic goods and services. Poor children and women featured as a particularly vulnerable group, deserving of special attention in the RDP vision. The RDP did not address the question of how to finance the socio-economic rights spending it proposed.

Over the past 12 years, the Government has managed to expand service delivery to give effect to socio-economic rights. It has done this by implementing and financing some new programmes, such as the Child Support Grant programme, Home- and Community-Based care programme, and Primary School Feeding Scheme. It has also expanded existing programmes, such as the Older Persons and Disability Grant programmes.

However, as Davis (2004) points out, the level of spending on service delivery proposed in the RDP never became a reality. This can partly be explained by the adoption, in June 1996, of a more conservative economic policy, namely the *Growth, Employment and Redistribution* (GEAR) Strategy.

b) GEAR

GEAR strongly advocated that private sector-driven economic growth is the most powerful vehicle for reducing poverty, and that this should be the foundation of the Government's strategy to attack poverty (*Michie and Padayachee 1998, 628*). It emphasised job creation led by private sector investment growth as a more powerful tool than public spending on social and basic services as a way to fight poverty. This was partly due to concern about the need to reduce the high level of government debt, reflected in a high government budget deficit, built up during the last years of apartheid (*Streak, 2004, 4*).

The *government budget deficit* that the Government has to borrow funds to finance is the difference between:

- The amount of revenue it gathers through tax collection, and
- The amount it plans to spend on service delivery.

One of the characteristics of developing countries like South Africa, where the tax base is small and basic needs (such as for spending on infrastructure, health, education and other social services) are great, is that revenue is less than planned spending and government runs a budget deficit. The problem about government budget deficits is that they need to be paid off, with interest in the future. There is a lot of debate about how large developing country governments, such as South Africa, should allow their budget deficits to climb to, and thus how much they should borrow now (and pay later) to support service delivery to people affected by poverty.

While GEAR emphasised job creation linked to private investment expansion as the main way of reducing poverty, it did recognise and advocate for expanding delivery of basic and social services, such as social assistance, health, welfare, public works and micro-economic finance. To provide the resources needed to expand these services, GEAR advocated for improving the *efficiency* of spending (producing more services with less resources) and improving the *effectiveness* of resource use (producing a better quality by having a greater impact on the beneficiary).

GEAR drew a lot of criticism from civil society organisations and activists concerned about lack of resource availability to bring immediate relief to people affected by poverty. This is because:

- GEAR put a lid on expanding basic and social spending, while the Constitution called for prioritising spending on basic and social services.
- The GEAR strategy to fight poverty is based on the false assumption that private sector investment would necessarily create a lot of job opportunities for poor people (*Streak, 2004, 281*).

However, there are some positive aspects in the GEAR legacy:

- GEAR did help produce a big reduction in the level of government debt. As a result, the Government was in a much better financial position to expand socio-economic rights programmes. The Finance Minister, Trevor Manuel, commented on this aspect of the GEAR legacy:

“In order to reverse the rising debt trend, we have been prudent about overall spending, putting the emphasis firmly on reprioritisation and better quality of expenditure. Now we can reinforce public service delivery without threatening fiscal sustainability, and our children and grandchildren can look forward to a future unencumbered by debt... so that the tree bears not the bitter but the sweet fruit of liberty.”

February 2001 Budget Speech

- GEAR helped create a favourable environment for private investment and economic growth necessary to finance socio-economic rights spending. This has led to lower interest rates, lower unit labour costs, and reduced and more predictable inflation rates.
- Budgetary and legal reform started under GEAR has improved the capacity of government to spend on socio-economic rights – although vast administrative challenges remain (*Streak, 2004, 279*).

c) **Government's current strategy**

To understand how the Government is approaching the task of fighting poverty and delivering socio-economic rights after 2000 (the end of the GEAR implementation period), we can consult the Budget Reviews and annual State of the Nation Addresses. We can also examine the *Accelerated and Shared Growth Initiative for South Africa* policy document, developed under the leadership of the Deputy President in 2005.

The Government's strategy after 2000 includes many of the GEAR elements, for example, the Government's approach still involves commitment to fiscal discipline and a low government budget deficit to Gross Domestic Product (GDP) ratio. However, there are also new, positive elements, including:

- Less faith in the potential for economic growth led by private sector investment to reduce poverty through job-creation in the short- to medium-term.
- A greater role being given to spending on government programmes to create jobs, for example, through the Expanded Public Works Programme. This programme, introduced in 2003, involves government spending on infrastructure and services (such as early child care and home-based care) to build skills, and create jobs and income-earning capacity.
- An increased emphasis on government capital spending – economic spending (eg roads and ports) and social spending (eg schools and hospitals).
- An increased emphasis on building locally, and obtaining from abroad, critical skills needed to stimulate economic growth.
- A greater emphasis on building public administration capacity.
- A higher level of priority being given to improving regulations governing small- and medium-business development.

4.3

Socio-economic rights as a guide for resource action by the State

“Constitutional socio-economic rights are blueprints for the State's manifold activities that proactively guide and shape legislative action, policy formulation and executive and administrative decision-making.”

Brand, 2005, 2

As Brand says, constitutional socio-economic rights need to guide the State in its law-making, policy, budgeting and service delivery. The responsibility for mobilising resources for socio-economic rights falls mainly on government. This involves spending more and better on widening access to basic goods, such as housing, health care, water, food and education and, if necessary, social assistance (as a minimum income). However, the other two main branches of the State – the judiciary and legislature – have vital support roles to play.

This part of the chapter gives information to help you successfully engage with the State over how resources are allocated and used to fulfil socio-economic rights.

4.3.1 Government and resources for socio-economic rights

a) Service delivery areas of spheres of government

The Constitution divides government into national, provincial and local spheres, which are distinctive, interdependent and interrelated (*section 40(1)*).

The allocation of tasks to the different levels of government in schedules 4 and 5 of the Constitution means that all three spheres have significant service delivery responsibilities in relation to socio-economic rights. For example:

- National and provincial governments are given concurrent (joint) responsibility for programme delivery in health services, housing and welfare services, and in education (except for higher education, the sole responsibility of the national sphere).
- Local government has responsibility for basic services (water, electricity, sanitation), as well as child care facilities and municipal health services.

Where the function is shared between national and provincial government, national government is mostly responsible for policy and monitoring. Provincial government is responsible for financing and implementing most programmes.

EXAMPLES



NATIONAL AND PROVINCIAL POWERS

- *With health, the national Government has responsibility for initiating laws, developing policy (including setting national norms and standards), as well as monitoring programme implementation. Provinces have most of the responsibility for financing and delivering programmes and services, such as the programme to provide pregnant mothers and children under the age of 6 with free health care services, delivered through clinics and public hospitals.*
- *With social welfare and social development (including social assistance and developmental social welfare services), the split of responsibilities mirrored health. However, with the creation of the South African Social Security Agency (SASSA), established in April 2005, the responsibilities of the national and provincial departments are changing:*
 - *The financing responsibility for social assistance programmes (such as the Child Support Grant) has been taken away from provinces.*
 - *National Treasury is now allocating money to the national Department of Social Development in a direct transfer known as a **conditional grant**, for provinces to use to implement social assistance programmes.*
 - *In the near future, SASSA will finance and implement social assistance programmes.*



b) Division of total revenue between spheres

Section 213(1) of the Constitution allows the Government to create a National Revenue Fund (NRF) into which all money received by national government must be paid, except money reasonably excluded by an Act of Parliament. The money in the NRF is collected through payment of taxes (such as personal Income Tax, Company Tax and Value Added Tax).

Section 214(1) of the Constitution says that an Act of Parliament must provide for:

- The equitable (fair) division of revenue raised nationally among the national, provincial and local spheres.
- Determining each province's equitable share of the provincial share of national revenue.
- Any other allocations to provinces, local government or municipalities from the national Government's share of that revenue, and any conditions on which those allocations may be made.

It is National Treasury's task, after consulting with all levels of government and the Financial and Fiscal Commission (FFC), to work out:

- The division of the NRF between the three spheres of government.
- How the provincial and local share should be split between provinces and municipalities.

Section 214(2) of the Constitution says that a proposed division of revenue law can only be enacted once the provincial governments, organised local government and the FFC have been consulted. The FFC is an independent institution set up by the Constitution to advise national and provincial parliaments on financial issues.

GUIDELINES



DIVISION OF REVENUE

Section 214(2) of the Constitution sets out these standards to guide the Government in dividing revenue:

- The national interest.
- The need to ensure that the provinces and municipalities are able to provide basic services and perform the functions allocated to them.
- The fiscal capacity and efficiency of the provinces and municipalities.
- Developmental and other needs of provinces, local government and municipalities.
- Obligations of provinces and municipalities under national legislation.
- The need for stable and predictable allocations of revenue and shares.

Annexure E of the Budget Review explains how the NRF is shared between the spheres of government, including the formula used to share the NRF between provinces and municipalities. Annexure E is released when the Finance Minister presents the annual budget speech.

Based on the 2005 Budget:

- Debt service costs are first taken off the NRF, together with the contingency reserve before it is split between the three spheres.
- Then about 62% of national revenue is allocated to the nine provinces and 284 municipalities.

National Treasury, 2005 Budget Review, 143

Revenue-raising capacity

While provinces have large expenditure obligations, including duties around socio-economic rights programmes, they have very small revenue-raising capacity. This is because national government has been given the power to levy the taxes that gather most revenue, such as personal Income Tax, Value Added Tax and Company Tax. Compared to equitable share revenue, the proportion of provincially earned revenue (gathered through provincial taxes) is less than 10% for each province, with an average of 4%.

Municipalities vary substantially in their revenue-raising capacity. The amount they raise relative to the equitable share varies from 97% in some metropolitan municipalities to 3% in the most rural municipalities. On average, 86% of local government revenue is own revenue, collected from property taxes, regional service council levies, user chargers and borrowing (*National Treasury, 2005 Budget Review*).

Indigent policy

In 2004, the Department of Provincial and Local Government developed a framework for a municipal indigent policy. This calls on all municipalities to manage their budgets in a way that provides, free of charge, a package of essential basic services to indigent households. The package includes water, sanitation, refuse removal, energy and access to housing. The precise level of service provision to be financed by the municipality is left up to each municipality to decide on (*Flusk, 2005*).

However, the *Department of Provincial and Local Government Framework for a Municipal Indigent Policy* gives benchmarks to help target subsidies and levels of service delivery. You can get a better understanding of what government must offer indigent households in a particular municipality by contacting the Department of Provincial and Local Government.

Real challenges confronting the implementation of the indigent policy are:

- Who to define as *indigent* (as there is no national poverty line).
- How to accurately target indigent people.
- How to finance the free services offered, for example using money raised from people who pay for services in the municipality.

At 31 July 2005, it was estimated that 176 municipalities have formal indigent policies in operation.

c) **Fiscal policy**

Fiscal policy refers to the Government's decisions and plans about:

- How much revenue to collect from taxpayers through various taxes.
- How much will be made available for spending on goods and services after allocating money for debt repayment and contingencies (unexpected events), and setting a target for the *government budget deficit* (difference between expected revenue and planned spending).
- How the budget deficit will be financed.

The National Treasury, under the leadership of the Minister of Finance, and informed by the President and his Cabinet, is responsible for developing the fiscal policy for the whole country. Fiscal policy for the national level is presented when the Finance Minister presents the annual budget speech to Parliament (usually in the third week of February).

Fiscal policy at the national level is critical because it determines the size of the NRF. The NRF is distributed between the three spheres of government and supplies most of the funds that are spent on socio-economic rights programmes.

In deciding on the government budget deficit, the Finance Minister considers:

- How fast the economy is expected to grow.
- The spending capacity of the Government.
- The expected trend in future debt repayment costs.

The provincial treasuries, led by provincial finance ministers, are responsible for deciding fiscal policy in their province. They present fiscal policy, with all their resource decisions and spending information, when they present the provincial Budget. This is about a week after the national Finance Minister presents the national fiscal policy and budget information in the third week of February. The financial year begins on 1 April and runs until 31 March of the next calendar year.

d) **Budget information**

As part of the budget reform process started in 1997, the Medium Term Expenditure Framework (MTEF) approach to budgeting was adopted. Under

this framework, the Government makes and presents its fiscal policy and budget information within a three-year (financial year) time period.

Sections 215 and 216 of the Constitution describe what information budgets should at minimum contain, and prescribes “uniform treasury norms and standards”. Government has to respect the principles of accountability and transparency in budget processes and reporting. The *Public Finance Management Act 1 of 1999* and the *Local Government: Municipal Finance Management Act 56 of 2003* were developed to help build a legal environment to promote accountability and transparency in resource use, thereby improving service delivery.

GUIDELINES



NATIONAL BUDGET DOCUMENTS

The key budget information documents of national government that are easily available from National Treasury are:

- The *Budget Review*, released in the third week of February, providing:
 - An overview of revenue gathered through taxes.
 - The target for the budget deficit.
 - Total spending planned across all three spheres of government.
 - How spending will be split across major areas, such as defence, health, trade and industry, social development and health.
- The *Budget Speech*, a summary of the Budget Review, and also released in the third week of February.
- The *Estimates of National Expenditure*, released in the third week of February, giving a detailed breakdown (by programme) of national spending plans and outcomes for the previous year for each department.
- The *Medium Term Budget Policy Statement*, released in the third week of October, providing a preview of what will be announced in the upcoming national Budget.

GUIDELINES



PROVINCIAL DOCUMENTS

The key documents for provinces, available from provincial treasuries (budget offices) are:

- The *Provincial Budget Speech*, released in the first week of March.
- The *Provincial Estimates of Expenditure*, also released in the first week of March.
- The *Intergovernmental Fiscal Review*, an overview of provincial revenue and expenditure trends released by the National Treasury in September of each financial year.

The local government resource allocation and spending patterns are recorded in local government budget documents. These should be accessible from each council.

Currently, the budgets classify:

- *Past expenditure* – estimated expenditure for the most recent financial year and actual expenditure for a couple of previous years.
- *Planned expenditure* for the upcoming MTEF period.

GUIDELINES



CLASSIFYING PAST AND PRESENT EXPENDITURE

1. By **function** – following the budget votes of government departments.
2. By **programmes** within each function.
3. By **economic classification** – linked to capital and current expenditure: in other words, defined as the difference between ‘once-off spending’ (on things like equipment, buildings and training) and repeated spending (salaries of officials and transfers to the not-for-profit sector).

The kind of information that the Government makes available through budget documents on resource allocation and use matches up well internationally and is a big improvement on what used to be available in South Africa.

However, for monitoring the extent to which the Government is meeting its obligation to fulfil socio-economic rights, there are inadequacies that weaken monitoring and effective planning of resource use for socio-economic rights.

EXAMPLES



SHORTCOMINGS IN MONITORING RESOURCES

- *The budget documents do not break down estimated expenditure for the previous financial year and the estimated allocations for the up-coming three-year budget cycle for vulnerable groups, such as women, children and people living with disabilities.*
- *The classification system is often too broad. We may want to identify allocations on some sub-programmes, but this is not possible, for example, for early childhood development for children aged 0–5 and the Expanded Public Works Programme in the social development part of the budget.*

e) Budget process for allocations to programmes

Once total revenue has been shared across the three spheres, each sphere divides its slice of the revenue across the programmes for which it has responsibility. Each sphere’s ‘slice’ is:

- The sum of its own revenue collection, and
- Its equitable share from the NRF.

At national and provincial levels, officials from each department advocate for funds for their programmes to treasury officials. In most cases, department representatives request increases over their baselines (what they had been allocated the year before), using arguments about the need for various expenditures to expand coverage and improve quality of services.

The decisions by national and provincial treasury representatives about how much extra to allocate for each programme are influenced by:

- Views on the ability of departments and programmes to spend additional funds.
- Priorities fed down from the national and provincial executives.

In the end, the President and Cabinet decide on the laws, policies and priorities that govern budgetary decisions. The President signs all policies before they

are implemented. In addition, at the start of every budget cycle, Cabinet, under the leadership of the President, sets the priorities that guide treasury officials, at the national, provincial and local levels, when they take decisions about how to allocate resources.

Allocations based on need?

At the moment, budget allocations to socio-economic rights programmes (except for social assistance) are not informed by costing service delivery requirements based on need.

Civil society budget organisations (eg IDASA's Budget Information Service and the FFC) have for a long time called for the budget process to change. They say that determining provincial equitable shares and allocations to key socio-economic rights programmes at provincial level, should be based on costing actual needs, guided by generally accepted minimum service levels and standards.

Public participation

Allocating funds across programmes and services at local government level is linked to and informed by a municipal council-led Integrated Development Planning (IDP) process. This process, engaged in annually, but within a three-year time frame, should involve all stakeholders in the community. It is aimed at identifying needs and setting out spending priorities. The Constitution calls on local government to involve communities and community organisations in planning (*IDASA, 2004, 14*).

In their IDP and budget processes, municipalities have to comply with the developmental duties of municipalities set out in section 153 of the Constitution, which says that a municipality must:

- a) structure and manage its administration and budgeting and planning process to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- b) participate in national and provincial development programmes."

4.3.2 The courts and resources for socio-economic rights

a) The role of the courts

The Constitution gives the courts their judicial authority. The courts are not directly responsible for directing resources to fulfil socio-economic rights. As Liebenberg notes, and the Constitutional Court has pointed out, their role is indirect, carried out through their law enforcement duty. For example, the Constitutional Court said in *Minister of Health and Others v Treatment Action Campaign and Others* (TAC case) that, although its orders enforcing socio-economic rights claims may have budgetary implications, they are "not in themselves directed at rearranging budgets" (*Paragraph 38 of judgment, in Liebenberg, 2004a, 9*).

The courts do not have direct influence over policy and budgeting for socio-economic rights fulfilment. However, they influence how resources are used for realising socio-economic rights because the Government has to take into account case law developments in policy and budgeting. In Creamer's words:

"Given the entrenchment of socio-economic rights in South Africa's Constitution, jurisprudential development and discussion on government's obligations with regard to the realisation of socio-economic rights should provide guidance to the development of social policy. In particular the budget process, as a key instrument of government planning and implementation, should involve the active application of evolving interpretations of government's socio-economic rights obligations." *Creamer, 2004, 231*

Through their decisions, the courts have to achieve a critical balance between effectively protecting the socio-economic rights of the poor, while also respecting the roles of the legislature and executive as the main branches of government responsible for realising socio-economic rights and managing the country's finances (*Liebenberg, 2004a, 7*).

b) **Assessing the Constitutional Court's approach**

The Constitutional Court's approach to reviewing the Government's policy and budgeting for socio-economic rights has been driven by *the reasonable measures test*. This test says:

- The Government must act to give effect to a socio-economic right by developing a plan and a related programme to realise it.
- The programme measure should meet specific standards.

There is still lack of clarity around how the Constitutional Court would judge State programmes and budgeting for the unqualified socio-economic rights for children in the Constitution. However, most experts suggest that the Court would probably use a stricter test to judge compliance with these rights. As Liebenberg asks, the really important question is: how should the unqualified socio-economic rights given to children guide government policy and budgeting? (*Liebenberg, 2004b*)

For more on the reasonable measures test, see Chapter 1 on page 32.

GUIDELINES



CHILDREN'S SOCIO-ECONOMIC RIGHTS, GOVERNMENT POLICY AND BUDGETING

The Constitutional Court's approach suggests a four-level response from government:

1. Fulfil the direct obligation to children living without adult parents (the most vulnerable of all children) through direct service provision.
2. Fulfil the obligation to all vulnerable children by prioritising and fast-tracking programmes offering services to meet needs.
3. Mainstream children's rights by integrating vulnerable children's needs into all poverty-related programmes (eg the Expanded Public Works Programme).
4. Engage (informed by those working directly on service delivery for children in the not-for-profit sector) with the challenge of defining standards in relation to all section 28 rights (*Liebenberg, 2004b*).

The general opinion is that the Constitutional Court has not been as bold as it could be in its review of government's policy and budgeting for socio-economic rights (*Ajam and others, 2002; Brand, 2005; Liebenberg 2004a, 2004b and 2005*). The cautious stance is shown by:

- The Court's decision to leave the choice of what programme measures to use to give effect to socio-economic rights up to the Government. And, related to this, the Court's refusal to examine whether the programme measure chosen by the Government to give effect to a right is the most cost-effective.
- The courts' failure to date to examine and assess the pre-existing budgetary allocations of the spheres of government. For example, in *Soooramoney v Minister of Health, KwaZulu-Natal*, the Constitutional Court simply accepted the State's argument that the total resources available in KwaZulu-Natal were insufficient to support kidney dialysis treatment being offered to the applicant and others in need of the treatment. They did not consider whether the fiscal policy and the size of the resources given to the province through the division of the NRF could be changed to make the treatment affordable.
- The rejection by the Constitutional Court of the idea that socio-economic rights provisions in the Constitution impose a direct, unqualified duty on the State to provide social goods and services on demand. This was in spite of arguments raised by organisations as 'friends of the court' in the *Grootboom (Government of the Republic of South Africa and Others v Grootboom and Others)* and TAC cases.

The cautious approach of the courts can be explained by these factors:

- Concern about taking policy and budgetary decisions because they are traditionally seen as the responsibility of other branches of the State.
- Concern about the complex and unpredictable impact of decisions in socio-economic rights cases on the State's finances, and on economic variables in the economy, such as interest rates and inflation.
- Information limits, especially the reality that there is no information available to weigh up the value of spending more money on one programme compared to another programme.
- A sense among judges that, with subjective resource-related decisions, it is more democratic to leave these kinds of decisions up to politicians who are elected, rather than judges, who are not.

Ajam and Murray, 2002; Brand, 2005; and Liebenberg, 2005

4.3.3 Parliament and resources for socio-economic rights

A number of experts argue that, out of the three main branches of the State, Parliament has so far been the weakest in carrying out responsibilities to fulfil socio-economic rights. Parliament affects how many and in which way resources are used for socio-economic rights through its responsibility to:

- Monitor resource decisions.
- Pass the annual budget.
- Pass laws.

a) **Monitoring function and resource mobilisation**

Portfolio committees in Parliament and provincial legislatures are responsible throughout the year for monitoring government's policy, programming and budgetary actions – this is also called their *oversight* function.

In addition, there are two particular occasions in the year when Parliament and provincial legislatures must focus on the Government's resource allocation and spending decisions. This is when:

- The FFC makes its recommendations on the division of revenue.
- The national Minister of Finance and the provincial ministers present national and provincial Budgets. After the presentations, special committees are set up to hear submissions on the budget plans. They encourage submissions by all individuals and organisations.

In examining resource decisions, parliamentarians should be informed by the standards set by the courts.

b) **Parliament's rubber-stamping of resource decisions**

The National Assembly has the responsibility to pass the national Budget and the nine provincial parliaments have the responsibility for passing the provincial Budgets.

A particular issue needing attention is the failure by the national and provincial parliaments so far to fulfil the requirement under sections 77(2) and 120(2) of the Constitution to enact a procedure to enable the national and provincial legislatures to amend money Bills (annual Budgets) tabled by the executive. Parliament is currently empowered to either accept or reject, but not change, money Bills. In Creamer's words:

"This limits the role of parliamentary oversight and weakens the institution's ability to apply jurisprudential standards to budgets for socio-economic rights related programmes. The drastic implications for effective governance of the rejection of a tabled budget means that legislators cannot credibly be expected to reject a tabled budget and, in the absence of amendment powers, are left with no effective options other than to accept money bills as tabled by executive organs."

Creamer, 2004, 223

c) **Parliament, law-making and resources for rights**

Parliament's greatest potential to affect resource mobilisation for socio-economic rights is through its law-making activities. Parliament directs resources to rights by developing laws that require programmes and services that advance rights. For example, the *Social Assistance Act 13 of 2004* says the State must pay social grants that give effect to the right to social assistance.

CASE STUDY



HOW THE CHILDREN'S ACT WILL RELEASE RESOURCES FOR CHILDREN'S RIGHTS

A great deal of work has been done recently by the Social Development Portfolio Committee in Parliament (with input from civil society) to finalise the first part of the Children's Act (the section 75 section of the Act). It was eventually passed in the National Assembly in December 2005 and is now an Act (*Children's Act 38 of 2005*), although it has not yet been put into operation.

A new Children's Act has been urgently needed. Without a rights-informed legal framework, there has been inadequate planning for, and financing of, the full package of services required for realising children's rights, including the unqualified right to social services in section 28 of the Constitution.

Parliament will have a positive impact on budgeting for fulfilling children's socio-economic rights if it speedily refines the second part of the Bill (the section 76 part) and passes it. Then a complete new legal framework, informed by the socio-economic rights set out in the Constitution, can begin to guide policy, programming and service delivery for vulnerable children. The section 76 Bill (*Bill 19 of 2006*) was due to be debated in Parliament in the second half of 2006.

4.4

Strategies for contesting budget decisions

"If the socio-economic rights in the Constitution are to amount to more than paper promises, they must serve as useful tools in enabling people to gain access to the basic social services and resources needed to live a life consistent with human dignity."

Liebenberg, 2002, 159

When we consider the factors undermining resource mobilisation for socio-economic rights, there is a range of strategies that communities, organisations and individuals can use to generate either more resources for socio-economic rights, or better use of resources already allocated.

We discuss some strategy options in these four categories:

- Budget process changing strategies.
- Strategies directed at increasing the total revenue made available for spending on all programmes and specifically on socio-economic rights programmes.
- Strategies directed at improving efficiency and effectiveness of socio-economic rights spending (especially key programmes for realising socio-economic rights).
- Using the courts.

4.4.1 Strategies to change the budget process

a) Adjusting the budget classification system

The first budget process strategy that can be used is to call on the Government to adjust the budget recording and reporting system to make it possible to easily track socio-economic rights spending for different vulnerable groups, such as children, people with disabilities, and people living with HIV.



Adopting this kind of budget classification will do a lot for resource mobilisation to give effect to rights. This is because it will:

- Force the Government to identify, list and group the different programmes it has developed and financed to give effect to the socio-economic rights of vulnerable groups.
- Increase transparency and accountability for spending on these programmes.
- Highlight where the Government has no programme in place or is spending very little or poorly on programmes.
- Promote intergovernmental and interdepartmental cooperation in allocating for and spending on socio-economic rights.
- Generate better information for watchdog organisations such as the South African Human Rights Commission and the United Nations Committee on the Rights of the Child to use in their interactions with the Government on its measures to fulfil socio-economic rights.

To advocate for a new classification system, concerned groups should lobby National Treasury officials and Members of Parliament. For example, you could use the hearings set up after the presentation of the national Budget. Or you could link up with other activists and use mass mobilising strategies.

b) Public participation

Affected individuals and communities can participate to claim their rights and promote their interests in the budget process by:

- Feeding though information to government officials and parliamentarians involved in planning and budgeting on their experiences and difficulties.
- Making suggestions to government officials and parliamentarians about how the Government should change revenue collection and spending.

For more on watchdog structures, see Chapter 2 on page 62 and Chapter 3 on page 107.

GUIDELINES



USING BUDGET HEARINGS

You can use the budget hearings held by provincial and national legislatures as a platform for participation and for sharing information. Remember:

- These two spheres of government are responsible for financing and implementing programmes in the social service part of the socio-economic rights package of services (health, housing, developmental social welfare services, education and nutrition).
- You should thus concentrate on the need for budget and service delivery action in these areas rather than those that are mainly the responsibility of local government.

How can participation in the budget process activate more and better use of resources for socio-economic rights? We have seen that one reason for insufficient linking of society's resources and socio-economic rights is lack of political will and insufficient prioritising of vulnerable groups. Information on the levels of difficulty being experienced by vulnerable groups due to poor planning and inadequate budgeting can result in vulnerable people getting more attention in policy priority-setting and budgeting.

GUIDELINES



LOCAL DEVELOPMENT PLANNING

You can also participate to generate more resources for socio-economic rights in the Integrated Development Planning process at local government level. Here you can be constructive by, for example:

- Giving information about challenges around access to basic services.
- Coming up with ideas about community development projects that should be financed to improve the quality of life in the community.

c) **Parliamentary amendment power**

The lack of parliamentary amendment power over budgets waters down the potential effect of parliamentary hearings, in which individuals, communities and NGOs have the opportunity to give input on resource allocation and use. As a result, advocacy, lobbying and mobilising is needed to get the Government to fulfil its constitutional duty by granting Parliament this power.

4.4.2 **Strategies to increase size of revenue and allocations**

a) **Making more revenue available through fiscal policy**

Another possible strategy is to advocate, mobilise and lobby around the total fiscal amount made available for spending through the national Government's setting of fiscal policy. The aim of this strategy is to release more total resources for dividing revenue between spheres and allocating to socio-economic rights programmes within spheres. This can be done by:

- Identifying room to increase the size of debt without undermining spending in the medium- to long-term.
- Identifying possibilities for more revenue to be collected through tax.

Currently, the climate is good for success in any call for more revenue to be released through increasing government borrowing. This is because the current fiscal policy approach is very conservative. There is thus room for expanding spending relative to revenue and increasing the budget deficit.

The room for increasing the total size of the amount available for spending was illustrated when the Minister of Finance presented the *Medium Term Budget Policy Statement* in Parliament on 25 October 2005. He announced that the Budget Deficit as a proportion of South Africa's Gross Domestic Product (the total output produced by the economy) is expected to be only 1% for 2005–6 (*Medium Term Budget Policy Statement, 2005, 9*). This is very low compared to other countries, including developed countries. The plan is for the deficit to rise as a percentage of GDP to 2.2% in 2006–7.

The call for increased revenue to become available through changing revenue collection (tax) policy can be made by calling on the Government to increase certain types of taxation. Options here include:

- 'Sin taxes' (taxes on cigarettes and alcohol).
- Higher income taxes paid by wealthier people.

Additional strategies will be needed to ensure that any extra money made available at national level is actually allocated to socio-economic rights programmes at national, provincial and local level.

b) **Stepping up allocations to specific programmes**

To increase the size of allocations to a particular socio-economic rights programme, you can use budget information supplied by government to highlight negative growth in budget allocations to a programme you are concerned about.

GUIDELINES



PUSHING FOR AN INCREASED PROGRAMME ALLOCATION

1. Gather budget information for the last year and the upcoming three years of the MTEF for the programme you are concerned about. For example, if the programme is financed at the provincial level, you will need to use the provincial budget statements.
2. Once you have the budget information for four years, adjust these for inflation. You can do this by dividing the total allocations by CPIX deflators – you phone the South African Reserve Bank or National Treasury to get the deflators (or get help from IDASA). The *CPIX deflator* is a measure used to adjust budget allocation data to allow for the impact of inflation on our purchasing power. It is based on the CPIX measure of inflation that measures the rate of increase in a range of consumer goods, excluding mortgage costs.
3. Then, use the *real values* (the budget values adjusted for inflation) for each year to calculate the real growth trend over time. To calculate the real budget growth for each year, use this formula:
 - Real budget growth (%) = real budget value for that year less the real budget value for the previous year divided by the real value for the previous year multiplied by 100.

In the next box, we give an example of how to calculate the real growth rate in a programme budget. It is based on allocations for the Child Support Grant programme over the Medium Term Expenditure Framework Period 2005–6 to 2007–8 in the Eastern Cape.

EXAMPLES



CALCULATING REAL GROWTH RATES IN BUDGET ALLOCATIONS FOR KEY SOCIO-ECONOMIC RIGHTS PROGRAMMES

Preliminary outcome for Child Support Grant (CSG) budget in 2004–5 and estimates for CSG programme budget over 2005–6 to 2007–8 in Eastern Cape:

	2004–5	2005–6	2006–7	2007–8
R million	2 053	2 546	3 079	3 335

CPIX deflators for years (from National Treasury using 2004–05 as base year):

	2004–5	2005–6	2006–7	2007–8
	1	1.042	1.097226	1.155379

Calculating real budget values / adjusting for inflation:

2004–5: R2 053 million / 1 = R2 053 million

2005–6: R2 546 million / 1.042 = R 2 443.37 million

2006–7: R3 079 million / 1.097226 = R2 806.16 million

2007–8 R3 335 million / 1.155379 = R2 886.49 million

Calculating real growth rates:

2005–6 = $(2\,443.37\text{ million} - 2\,053\text{ million}) / 2\,053\text{ million} \times 100 = 19\%$

2006–7 = $(2\,806.16\text{ million} - 2\,443.37\text{ million}) / 2\,443.37\text{ million} \times 100 = 14.9\%$

2007–8 = (you can now calculate this yourself)

Source of budget data: National Treasury: 2005 Provincial Budgets and Expenditure Review, Table 4.15, page 61

Once you have calculated the real growth rates, you need to look out for any negative real growth rates. A *negative growth rate* indicates that the size of the increase in the budget for that year is insufficient to keep up with inflation and that the purchasing power of the programme has decreased. Increases in efficiency and effectiveness will be needed for the programme to continue with its current level of service provision.

To get government to respond by raising budgets, the evidence you generate on negative growth in key socio-economic rights programme budgets needs to be sent to the right people. For example, give parliamentarians information on the desperate need for sufficient financing of the services.

In the box on the next page, we illustrate how evidence of a real decline in the budgets of social welfare service programmes in Gauteng for 2005–6 was used to activate much needed increases.

CASE STUDY



HOW EVIDENCE OF REAL DECLINES IN SOCIAL WELFARE SERVICE BUDGETS IN GAUTENG WAS USED TO INCREASE BUDGETS

When the Gauteng provincial budget statement was released early in March 2005, it showed a large reduction in the budget for all developmental social welfare service programmes in Gauteng for 2005–6. This caused much concern, as there was a financial crisis affecting service delivery in the province, particularly in the not-for-profit sector.

There was a shortage of social workers in the province in both the public and not-for-profit sector. As a result, the level of service delivery was far too little to meet needs. Examples of needs were:

- Child protection services.
- Early childhood development and care services for children aged 0–5.
- Counselling for families in need of psychological support.
- Services for children living on the street.
- Interventions to build income-earning capacity and livelihoods in families struggling due to poverty.
- Services to assist people affected by substance abuse.

In response to the proposed budget cuts, a group of service organisations involved in service delivery in the not-for-profit sector, most of which depend on funding from the Gauteng budget, joined together to challenge the size of the allocation to developmental social welfare service programmes:

- They employed an economist to develop a document to provide an overview of the budget proposal (that amounted to 25% for all programmes together).
- They used this budget analysis together with data on the shortage of services and by referring to constitutional rights to social services, to lobby the Gauteng legislature and government to adjust the budget allocation.

The budget advocacy and research strategy included:

- A presentation to the Gauteng Parliamentary Committee on Social Development.
- A visit to the Premier.
- Various articles in the press.

This strategy has been a success, as additional allocations have been made.

J Loffel (consultant to Johannesburg Child Welfare), and C Barberton (economist involved in children's budget issues) in personal conversation

Focusing on the size of the current allocation

Another way to raise allocations for a particular socio-economic rights programme is to use budget information to illustrate how small the allocation of the underfinanced programme is compared to either:

- The total available in the budget for spending, or
- How much would be required to finance delivery of the service to all those in need.

GUIDELINES



CURRENT ALLOCATION AS A SMALL PART OF THE TOTAL AVAILABLE

1. Look in the relevant budget documents (national, provincial or local) to access information on the total amount allocated to the programme for the year in question. Most of the relevant programmes are financed and delivered by provinces, so the data source you will most commonly use is the provincial budget statements or the National Treasury annual publication that provides an overview of provincial budgets.
2. Gather information on the total amount of revenue available in the NRF from the Budget Review or Budget Speech for that year.
3. Divide the amount allocated for the programme in that year, by the amount available in the NRF and multiply by 100.

EXAMPLES



CHILD SUPPORT GRANT

- *The 2005 National Treasury Provincial Budgets and Expenditure Review (the Treasury's overview of provincial budgets) shows a budget estimate to pay for the Child Support Grant programme in all nine provinces of R11 431 billion.*
- *According to the 2005 Budget Review, the NRF for 2005–6 is R369,9 billion.*
- *This means that the Child Support Grant allocation is R11 431 billion / R369,9 billion x100 = 3% of the NRF for 2005–6.*

GUIDELINES



CURRENT ALLOCATION AS A SMALL PART OF ALLOCATION BASED ON NEED

1. Form links with academics and others with the necessary technical skills to get this kind of information for use in advocacy and lobbying to advance socio-economic rights in budgets.
2. Get them to help you calculate the costs of expanding programmes to bring them more in line with need, as well as a commitment to assisting in the struggle to advance socio-economic rights.

CASE STUDY



ANTIRETROVIRAL TREATMENT

- The Treatment Action Campaign (TAC) used the powerful strategy of working out the cost of extending antiretroviral treatment to all pregnant mothers and their children, as well as the costs of not extending the programme.
- The cost benefit analysis was done by Professor Nicoli Nattrass from the School of Economics at the University of Cape Town.
- This was used in TAC's 2002 campaign and Constitutional Court case aimed at increasing budget allocations to this programme.

4.4.3 Strategies to improve efficiency and effectiveness

Advocacy, lobbying and mobilisation to improve the efficiency and effectiveness of resource use in socio-economic rights programmes is also very important.

- *Improving the efficiency of resource use* means changing resource use so that more services (outputs) are produced with the same resources (inputs).
- *Improving the effectiveness of resource use* refers to changing resource use so that the quality of services (outputs) is better and there is a more favourable impact on the beneficiary – in other words, the outcome improves.

a) Highlighting shortfalls in spending

One strategy to engage in as a way of improving efficiency and effectiveness of spending is to look for and highlight any shortfall of actual spending, compared to allocated funds (planned spending) in key socio-economic rights programmes. In the next box, we show how this can be done, using the case of the developmental social welfare service programme targeted at delivering services (such as social workers conducting counselling and providing early child support) to children, youth and families in the Free State.

The Free State example shows government wasting scarce resources allocated for the delivery of socio-economic rights. This information should be used to advocate for building the administrative and other capacity needed to deliver services to poor people more effectively.

EXAMPLES



CALCULATING % OF ALLOCATED BUDGETS SPENT IN A PROGRAMME CRITICAL TO SOCIO-ECONOMIC RIGHTS FULFILMENT

Budget data for the child and youth care and protection developmental social welfare service programme for Free State province in 2004–5:

<i>R'000 Initial allocation</i>	<i>Adjusted allocation</i>	<i>Estimated expenditure</i>
111 885	57 942	50 920

$$\% \text{ of initial allocation spent} = (R50\,920 / R111\,885) \times 100 = 45.5\%$$

Source of budget data: National Treasury, 2005 Provincial Budgets and Expenditure Review, Annexure A

GUIDELINES



TAKING ACTION

1. You can investigate underspending using the budget books yourself.
2. You can contact an NGO doing budget analysis, such as IDASA.
3. You can ask government itself (Treasury or department responsible for the programme) for the most recent government data on the difference between actual *and* planned spending for programmes that are most important for realising socio-economic rights. Government monitors the difference between budget allocations and spending in programmes quarterly (four times a year).

Again, for this strategy to have impact, the administration must be put under pressure to improve managerial and other capacity so that the rate of spending picks up. Therefore, the information on underspending needs to be distributed to the media or parliamentarians, who are committed to making a noise about non-delivery of socio-economic rights obligations.

b) **Highlighting access and quality shortcomings**

A second strategy that can be used to improve efficiency and effectiveness of spending in a socio-economic rights programme involves:

- Highlighting access and quality shortcomings.
- Suggesting reasons for these failures.
- Offering solutions to deal with the problems.

Programme areas where there is currently a lot of need for this strategy are:

- The developmental social welfare service programmes being financed and delivered (with assistance from the not-for-profit sector) to vulnerable children and their families. These include child protection services, early childhood development services to children aged 0–5, and the social development part of home- and community-based care.
- Poverty alleviation services and projects being financed and delivered by local government.

4.4.4 **Using the courts**

Community organisations and individuals can also turn to the courts to mobilise resources for fulfilling socio-economic rights. As a general rule:

- Focus on using the kinds of advocacy, mobilising and lobbying strategies we have suggested in this chapter to affect resources for socio-economic rights by directly influencing government policy, budgeting and service delivery.
- Turn to the courts only when the community or an individual needs a specific remedy to a problem.

We will summarise two particularly good court case examples of how litigation can work to bring relief to those in need, as well as to release more resources for realising socio-economic rights.

COURT CASE



EXTENDING SOCIAL ASSISTANCE TO NON-CITIZENS

In the 2004 case of *Khosa and Others v Minister of Social Development and Another; Mahlaule and Others v Minister of Social Development and Another* (Khosa case), the Constitutional Court was asked to question the legality of the State not offering social assistance to a community of indigent non-citizen residents.

The Constitutional Court decided in favour of the indigent non-citizen residents that brought the claim, and decided that the law should be read so that both South African citizens and residents have a right to social assistance, as long as they qualify, for example, through the means test. The decision brought real relief to the claimants because they then qualified for social assistance.

However, it had a wider impact in releasing resources for realising socio-economic rights. As a result, more resources were allocated by national government from the NRF to the equitable shares of provinces to finance the increased demand for social grants caused by all non-citizen residents qualifying for social assistance.

For more on the Khosa case, see page 33.

COURT CASE



EXTENDING ANTIRETROVIRAL TREATMENT TO PREGNANT MOTHERS AND THEIR CHILDREN

In the 2002 TAC case, the Constitutional Court considered the Government's decision to limit the programme to provide antiretroviral (ARV) treatment to pregnant mothers and their children to pilot sites.

The Constitutional Court decided in favour of the TAC and said that:

- This limitation could not be justified.
- Government had to roll out the programme to all public hospitals and clinics.

This order brought relief for many mothers and their babies in need of ARV treatment, and government resources had to be adjusted to provide ARV treatment nationally.

While litigation can be a powerful tool to use, it can be costly and take a long time. Also, the Constitutional Court's cautious approach in using the 'reasonable measures' test to review government action makes litigation a difficult tool to use because the burden of proving the case rests with litigants who are challenging government. It is difficult to prove in court that a programme is unreasonable (*Liebenberg, 2003 and 2004a, 10*).

The benefits of litigation can be limited because the courts may decide not to ask government to provide a service immediately to meet needs.

For more on the TAC case, see Chapter 1 on page 32.

GUIDELINES



ARGUMENTS TO USE IN THE COURTS TO RELEASE RESOURCES AND REALISE RIGHTS

1. The resources available for a socio-economic rights programme potentially include all the resources in the country, not just those already allocated to the programme. Sufficient resources may be available from other budget items.
2. South Africa is rich and has a conservative fiscal policy. When a country has the resources to provide for basic levels of socio-economic rights, it is a serious denial of human dignity to neglect to do this. It also undermines efforts to build a peaceful, caring and inclusive society.
3. Without a detailed costing of the programme, government is not in a position to make a rational decision on budget allocations.
4. Concern about inability to spend funds in socio-economic rights programmes signals the need to spend more on building managerial and other skills, rather than to hold back funds and socio-economic rights.

For more on the 'minimum core' argument, see Chapter 1 on page 39.

4.5

The limitations imposed by the 'reasonable measures' test to claimants using the courts as a vehicle to release socio-economic rights resources and to realise their rights, raises a final important strategy. This is advocating and lobbying for the courts to change their 'reasonable measures' test so that:

- The burden of proof is on the State to justify that the budget is not enough.
- Financing and delivering a 'minimum core' of each right given to everyone in the Constitution begins to be seen as part of the 'reasonable measures' test.

Conclusion

The task the Constitution sets for the State – of generating and using resources to fulfil socio-economic rights – is a difficult one. At the same time, it is not easy for communities and individuals to hold the State, and most importantly government, responsible for fulfilling this obligation.

However, this chapter has tried to show that it is very important to challenge the State to connect socio-economic rights and budgets more closely. This must happen for constitutional rights to serve their purpose of improving the quality of life of all vulnerable groups. In addition, we have seen how a wide range of strategies can be used to generate more and better use of resources for fulfilling socio-economic rights.

In rising to the challenge, and engaging with government budgets, it is encouraging to remember the words of John Samuels, from the National Centre for Advocacy Studies in India, that:

"Budgets are not financial documents, they are political documents, an expression of the power relations in the society" (in Shultz, 2002, 22).

While it is true that South Africa's resources are limited and we need to be careful to grow them to finance future needs, affordability is not the only – or most important – factor working against enough resources being allocated to fulfil socio-economic rights. The other, more important factors are:

- Lack of agreement about the types and levels of goods and services that the State should finance to give effect to socio-economic rights.
- Not enough political will to support the constitutional value and promise of organising resource allocation and use in the country in a way that prioritises the basic needs and rights of the most vulnerable groups.
- Insufficient planning, budgeting and implementation capacity – particularly at local government level – to manage larger socio-economic rights programme budgets.
- Underspensing of funds allocated for social services.
- Inadequate pressure on government by other role players with duties to promote resource use for socio-economic rights, including Parliament and civil society organisations.

Discussion ideas



TALKING POINTS

1. *What do the socio-economic rights in the Constitution promise everyone and specifically children affected by poverty?*
2. *Why do constitutional socio-economic rights require budget action by government? Is it only financial resources that government needs to provide?*
3. *Who represents the interests of people affected by poverty when policy, planning and budget decisions are taken in government?*
4. *Do you think it should be left to government to decide on what services should be financed to give effect to socio-economic rights? And at what level they should be financed? If not, who should decide this, and how should it be done?*
5. *What is the Integrated Development Planning process at local government level? How does it relate to government spending on socio-economic rights?*
6. *Think of a socio-economic rights service that is poorly delivered in your community. Do you think the problem is insufficient government funds or something else?*
7. *When would you turn to the courts to try to secure more resources to realise a right in your community? Try to use a local example.*

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