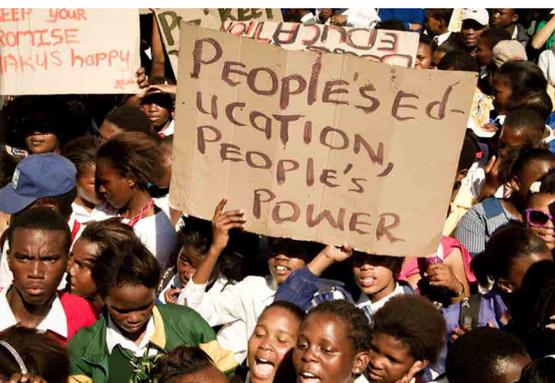


EXECUTIVE SUMMARY

Realising the Right to a Basic Education in South Africa

Full working paper available at www.spii.org.za

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The Socio-Economic Rights Monitoring Tool

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EXECUTIVE SUMMARY

Socio-Economic Rights in South Africa

South Africa's Constitution places great emphasis on the inclusion of socio-economic rights, which among other things, seek to ensure that the fundamental needs of the people are meaningfully protected and advanced following generations of colonial and apartheid-era injustices and inequality. The realisation of these rights are necessary for the establishment of a society based on democratic values, social justice and fundamental rights.

The rights to housing, food, water, education, environment, healthcare and social security – alongside other civil and political rights, signalled a crucial first step towards the realisation of the socio-economic transformation and reconstruction envisaged by South Africa's Constitution. While progress towards the realisation of socio-economic rights has been made since South Africa's transition to democracy, unacceptable and unsustainable levels of poverty and inequality, compounded by widespread unemployment and a lack of access to adequate basic services continue. The immense levels of inequality that have persisted since South Africa's transition to democracy continue to undermine the realisation of the core transformative principles of democracy, human dignity, equality and freedom for many people living in South Africa.

The right to a Basic Education

The Constitutional right to a basic education plays a central role in the transformation of South Africa from a country marred by a past of racially-engrained inequality to one that strives to fulfil the Constitutional principles outlined above. Basic education is a fundamental socio-economic right. It provides the essential foundation for a lifetime of learning and economic opportunity and is necessary for children to develop their personalities and talents. Widely viewed as an empowerment right, basic education is necessary for the realisation of other socio-economic rights, as well as for the functioning of the democratic system of governance as a whole.

Constitution of the Republic of South Africa, Section 29(1)

"Everyone has the right -

1. to a basic education, including adult basic education; and
2. to further education, which the state, through reasonable measures, must make progressively available and accessible."

The Constitutional Court in *Juma* has emphasised that unlike some of the other socio-economic rights, the right to a basic education is "immediately realisable." There is no internal limitation requiring that the right be "progressively realised" within "available resources" and subject to "reasonable legislative measures". Instead, the right to a basic education may only be limited by state action or inaction that is "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."

But what does it mean for the state to make basic education immediately realisable for all when the post-apartheid state inherited such massive education backlogs at the time of democratic transition in 1994? What must the state do to carry out its mandate to respect, protect, promote and fulfil the right to basic education? What level of quality and equality does the right require?

While the Constitution provides an overarching framework and the 'supreme law'¹ governing the rights and duties of citizens, private enterprises and the state, it does not set out the content of these rights: what measures the state should take, how it should finance access to socio-economic rights, and the timeframes within which they must be realised.

²One of the critical challenges for policy-makers and oversight bodies alike is how best to evaluate government programmes and budget allocations against these binding Constitutional

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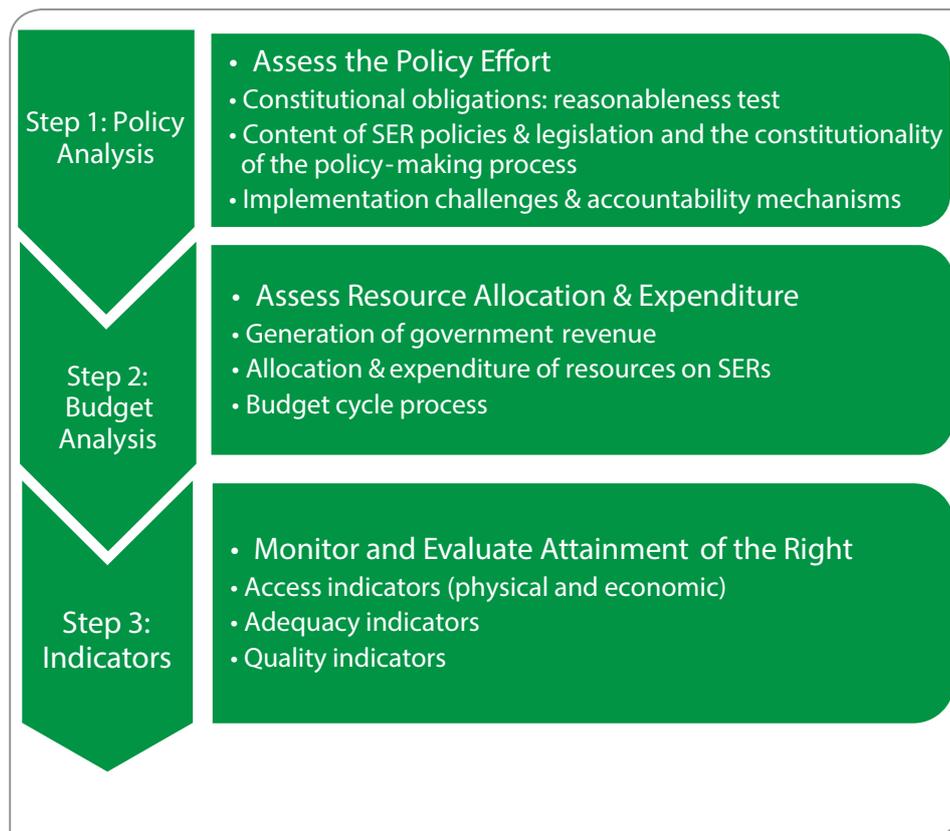
¹ Constitution of the Republic of South Africa, 1996, preamble. See: www.thepresidency.gov.za/docs/reports/annual/2008/preamble.pdf
² *Ibid*, sec1(c).



obligations when there is no clear methodology for monitoring and addressing critical issues relating to realisation of these rights.

It is for this reason that Studies in Poverty and Inequality Institute (SPII), in partnership with the South African Human Rights Commission, has developed a Socio-Economic Rights Monitoring Tool. The Tool uses a methodology for monitoring and evaluating the performance of government and the realisation of SERs that is based on a combination of policy (step 1) and budget (step 2) analysis, and the development of quantitative indicators for each of the rights (step 3). This involves unpacking the content of these rights and the obligations they impose on government, evaluating the extent to which government policies and budget allocations adequately address these obligations, and measuring the enjoyment of rights by people on the ground.

Figure 1: The Socio-Economic Rights Monitoring Tool: 3-step methodology



The legislative, regulatory and policy framework developed since 1994 to guide and govern South Africa's post-apartheid education system has in many ways provided much needed content to the right to a basic education



Constitutional principles, context and jurisprudence in addition to international instruments are used in **Chapter 2** of the report to guide our analysis of the content of the right to a basic education in South Africa and the obligations this right places on the state. This legal analysis lays the groundwork for the chapters that follow, with **Chapter 3** assessing the extent to which the legislative and other measures taken by the state are capable of ensuring the realisation of the right to a basic education. **Chapter 4** then evaluates the extent to which national and provincial government budget allocations and expenditures on basic education have been sufficient, equitable and effective given the massive historical educational backlogs and levels of inequality in South Africa. **Chapter 5** presents our indicators for the right to a basic education, which provide a snapshot of the educational outcomes and the state of educational service delivery two decades into democratic South Africa.

STEP 1: Policy Analysis

The legislative, regulatory and policy framework developed since 1994 to guide and govern South Africa's post-apartheid education system has in many ways provided much needed content to the right to a basic education. This policy framework, which from its inception has favoured decentralisation and awarded large amounts of autonomy to provincial education departments, school management, teachers and local school communities, speaks to many of the core components necessary for learning and teaching to take place. The wide range of legislation, regulations and policies provide for schools to be staffed with qualified teachers,



managed by school principals, and governed by school governing bodies comprised primarily of parents from the school's community and funded at minimum levels. Language policies provide for learners to access instruction in their home languages and then transition to a second language, usually English, at grade 4. Policies provide for the provisioning of textbooks, workbooks and other learning materials to learners. And the recently enacted Minimum Uniform Norms and Standards for School Infrastructure seek to ensure that all schools meet minimum standards by certain benchmarked years. The expansion of no-fee schools has enabled all learners in quintile 1 to 3 schools to attend schools for free and fee-waiver policies have been designed to enable learners from households without adequate means are able to attend schools that do charge school fees for free without being discriminated against due to their socio-economic circumstances. The expansion of Grade R has resulted in greatly improved enrolment for pre-primary school learners, a policy which seeks to address the need for improved early childhood development education amongst concerns that many learners are not prepared for primary school upon entering grade 1. Each school day the National School Nutrition Programme provides over 9 million learners with state-subsidised nutritious meals at school. The implementation of the new CAPS curriculum offers far greater direction to teachers in terms of curriculum content to be taught in classrooms, how to teach it and how to allocate teaching time to ensure adequate curriculum coverage throughout the year. Finally, the implementation of Annual National Assessments for learners in Grades 1 to 6 and Grade 9 mark an important development in terms of advancing the need for transparency, support and accountability in schools, as ANAs are able to help identify areas where intervention is needed in schools and classrooms and keep stakeholders, including national and provincial governments, district offices and school communities informed of both learner and school achievement.

While these policy developments have been largely successful in ensuring and expanding **access** to schools, South Africa's public education system continues to suffer from high degrees of inequality and dysfunctionality and low levels of **quality**. Systemic failures that enable the perpetuation of these impairments must be addressed if all learners are to fully realise their right to a basic education.

In many ways the decentralised education system has failed to address the complex landscape of differing roles, responsibilities, interests, needs and capacity constraints of national and provincial education departments and officials, education district offices, school governing bodies, teachers and school administrators, learner communities and organised labour. The lack of accountability in the system and appointments to key managerial and promotional posts based on patronage rather than merit have contributed to high levels of dysfunctionality within many schools and poor curriculum coverage in classrooms. Teacher training programmes have failed to resolve the teacher competency backlogs that have been carried over from apartheid, as exhibited by poor teacher subject knowledge, teaching skills and curriculum coverage. Furthermore, a lack of regular and adequate monitoring of teachers in classrooms has enabled poor teaching practices to dominate in many classrooms without deficiencies being properly identified and addressed. While district offices are intended to monitor and support school management and teachers, enhanced capacity is needed, both in the form of skilled officials capable of providing the requisite monitoring and support of schools, and physical capital necessary to ensure that regular communication and co-ordination, school visits and tracking and management of school and district-level data occur. Similarly, while textbook, workbook and library policies seek to ensure that learners have access to critical learning materials, systemic failures such as misallocation of financial resources, ineffective communications and co-ordination systems, poor planning and record-keeping practices, suspect tendering practices and lack of reliable monitoring systems impair the ability of learners to access these critical resources on time at the start of each school year. School infrastructure backlogs continue to be severe, particularly in rural and township schools where learners are often forced to attend schools in unsafe and overcrowded conditions that are not conducive to teaching and learning and lack critical infrastructural resources such as libraries, sufficient classroom space and science and computer laboratories, as well as adequate ablution facilities, which particularly prejudice menstruating girl learners. There are also concerns that even with the new school infrastructure standards in place, provinces lack the capacity to build new schools and improve existing schools that comply with the regulations, particularly in provinces where infrastructural backlogs are most severe.



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STEP 2: Budget Analysis

Since the transition to democracy, successive ANC-led governments have spent more on providing basic education than any other socio-economic right, including social security and health. This prioritisation of basic education reflects the immediately realisable nature of this right and is set to continue in the medium-term.³ However, our analysis of government spending on basic education since 2005/06 shows that **growth in basic education spending has slowed in recent years**. While basic education expenditure grew in nominal terms by more than 10% each year until 2011/12, since then (and reflecting the austerity imposed on much of the government budget) basic education spending has increased by between 6% and 8.2% each year. Moreover, since reaching a high proportion of total government expenditure of 17.1% in 2011/12, consolidated basic education spending has slightly decreased overall as a proportion of total government expenditure, from 16.6% in 2005/06 to a projected 16.2% in 2016/17.

At the provincial level, where around 90% of basic education spending takes place, provinces demonstrate a mixed record in terms of personnel v non-personnel expenditure as well as in their general spending performance and the amount of the provincial equitable share that is allocated to basic education. Limpopo and the Eastern Cape both spend over 90% of their basic education budget on staff compensation, leaving little for essential goods and services such as textbooks and improving school infrastructure. Gauteng and the Western Cape had the best personnel v non-personnel expenditure ratios at 81:19 and 83:17 respectively in 2012/13, but these too miss the governments target of an 80:20 ratio.

In terms of infrastructure, two major grants have been established since 2011/12 designed to rapidly construct and renew school infrastructure in the country. Spending on the indirect Accelerated School Infrastructure Development Initiative (ASIDI) – which received an allocation of R2.4 billion in 2015/16 – has been extremely poor, with less than half of its budget spent in 2011/12, 2012/13 and 2013/14 respectively. Spending on the Education Infrastructure Grant (EIG) has been better but remains uneven, with R520 million underspent and R350 million overspent on this grant in total by provinces since its introduction in 2011/12. The Eastern Cape, North West and Western Cape have had the poorest expenditure records on this grant. Notably, all provinces except Gauteng and Limpopo received large (10% - 50%) increases in their EIG budget in 2015/16. Limpopo's EIG budget was actually decreased this year by 31.2% in real terms. However, all provinces except Gauteng and Limpopo are due to receive a reduction in their EIG allocation in 2016/17.

All provinces without exception have reduced the proportion of their equitable share allocated to basic education since 2005/06. In total, provinces were spending 50.1% of their equitable share allocation on basic education in 2005/06, but by 2016/17 this is due to be reduced to 47%. This reduction has been most steep in the Western Cape, which is projected to spend only 42.2% of its equitable share on basic education in 2016/17. Limpopo has reduced the share of its equitable share budget going to basic education the least, by only 0.2%.

STEP 3: Indicators

The 21 rights-based indicators and 23 sub-indicators developed for the paper show that learner enrolment rates have improved, especially amongst learners attending Grade R programming and during the compulsory schooling phase where enrolment rates are nearly universal for 7 to 15 year-olds. Gender parity has also improved substantially from prior generations and female learners are now more likely than their male counterparts to progress through primary school and graduate from secondary school, though female learners are slightly less likely than male learners to be enrolled in school between the ages of 16 and 18 when learner dropout begins to occur. Learners with disabilities, however, continue to suffer from lower enrolment rates and most learners with special needs appear to be unaccounted for in provincial enrolment records. Moreover, the ability of learners with special needs to be enrolled in special schools varies substantially amongst provinces. While provincial enrolment statistics show that provinces with less access to special schools enrol more special needs learners in ordinary public schools, they are also the least likely provinces to have support measures in place to ensure that screening, identification and support of special needs learners occurs.

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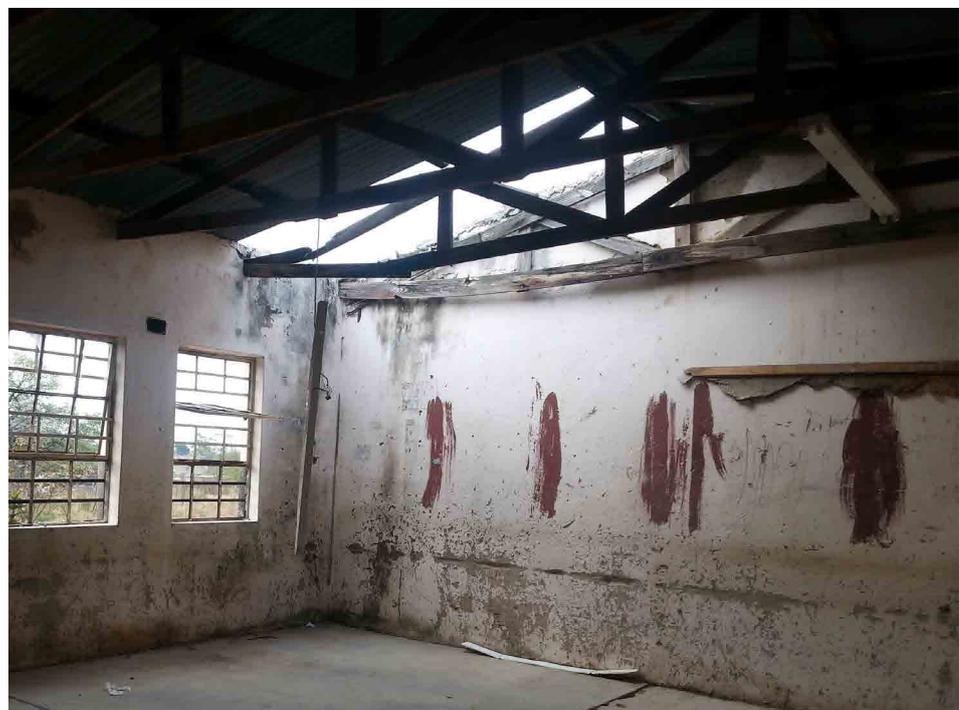
³ The 2015 budget allocates R647 billion to basic education, R502 billion to health and R498 billion to social protection. See: www.treasury.gov.za/documents/national%20budget/2015/guides/2015%20Budget%20Highlights%20Card.pdf

Outcomes, however, continue to be poor, particularly amongst the majority of learners from poor households and communities. In 2013, fewer than half of South Africans between the ages of 22 and 25 had completed Grade 12. In 2014, bachelor degree passes qualifying learners to study for a bachelor programme at a university accounted for less than 15% of the number of learners enrolled in Grade 10 two years earlier. While NSC pass rates have improved from 60% of candidates passing the examination in 2009 to 76% of candidates achieving a National Senior Certificate in 2014, the number of candidates taking the more difficult mathematics and physical sciences subjects decreased. Grade repetition during those years, on the other hand, increased substantially, especially for learners enrolled in Grades 10 and 11. Grade 12 enrolment continues to account for just over half of the number of learners enrolled in Grade 10 when large numbers of learners reach a stage where they are so far behind in terms of building the skills necessary to pass the NSC examination that they accordingly exit the education system without attaining any sort of degree.

South Africa's poor performance on international assessments that have focused on learners in Primary School and Grade 9 overwhelmingly show that the majority of learners are faced with large learning deficits from earlier grades that secondary schools are ill-equipped to address. While the 2011 TIMSS assessment showed substantial improvement since the test had last been administered in 2002, the results were still alarmingly low. Approximately three-quarters of Grade 9 South African learners tested in the 2011 TIMSS assessment failed to meet the minimum benchmarks for Grade 8 mathematics and science. The prePIRLS and PIRLS assessments administered to Grade 4 and 5 learners in 2011 also painted a picture of primary school learners who face substantial reading deficits in early grades. Those tests showed that 29% of Grade 4 learners failed to demonstrate basic reading skills and approximately 60% could not make straightforward inferences or interpret obvious reasons or causes from a text. Grade 4 learners who learned in African languages demonstrated particularly poor reading skills with illiteracy rates two to five times higher than the rates of English and Afrikaans speaking Grade 4 learners. However, by Grade 5, 43% of English and Afrikaans home language participants failed to meet international minimum benchmarks for reading competency. These results are consistent with SACMEQ III results from 2007 that showed that 27% of South African participants were non-readers, 40% were non-numerate, approximately half failed to meet acceptable reading levels and 70% failed to demonstrate acceptable numeracy skills.



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The indicators further identify that poor teacher subject knowledge and pedagogical skills, low levels of curriculum coverage, high rates of teacher absenteeism in many schools, poor school management, lack of libraries and limited access to reading and textbook materials, inadequate infrastructure and overcrowded classrooms are examples of some of the input shortcomings that impact South Africa's poorest and most vulnerable learners the most. While teachers show poor degrees of subject content knowledge, teachers in the provinces where teacher

knowledge and training backlogs are the most severe also had the highest rates of teachers who report having completed zero hours of in-service professional development training nine months into the school year.

SUMMARY OF RECOMMENDATIONS

The research provides a number of recommendations to address some of the identified key systemic shortcomings which negatively impact the ability of learners to fully realise their right to a basic education of an adequate quality. While these recommendations speak to a wide range of issues, they generally follow two themes. Firstly, that there is a strong need to improve capacity within the education sector. This includes the need to upgrade the capacity and practices of teachers; principals and other key school-level managers; district offices and their officials responsible for monitoring and supporting schools; and provincial education departments responsible for coordinating the delivery of critical school resources such as school infrastructure, and learning and teaching support materials. Secondly, there needs to be improved governance over the relationships between critical actors involved in the provision of public education services and resources. These actors include national and provincial departments of basic education, District Offices, School Governing Bodies, teachers, principals, organised labour and private parties involved in the delivery of educational resources and related services. Recommendations that fall within this category largely concern the need to implement improved monitoring and accountability systems that ensure that these critical role players are clearly aware of, able to comply with and are actually fulfilling their roles and responsibilities. The report continually emphasizes that improvements to the education system rely on a number of actors fulfilling their mandates. It is therefore critical that the Minister of Basic Education exercise her power to implement transformative norms and standards where possible that clearly define these mandates, set targets and delivery deadlines, implement monitoring systems, hold actors accountable for their performance and make provision for how to respond to delivery failures that if not quickly resolved, limit the ability of learners to realise their right to a quality basic education.

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*Building up knowledge
to break down Poverty*

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