

*Building up knowledge  
to break down Poverty*

# PEOPLES' GUIDE

## Realising the right to a healthy environment

An analysis of the policy efforts, budgeting and enjoyment of the right to a healthy environment in South Africa

September 2016

Zukiswa Kota



The Socio-Economic Rights  
Monitoring Tool



Plate 1: A pristine area in the Wild Coast area of the Eastern Cape Province where communities have no access to piped water and electricity. Community-based ecotourism and PES projects have the potential to meaningfully contribute to local livelihoods and conservation targets (Photographer: Zukiswa Kota)

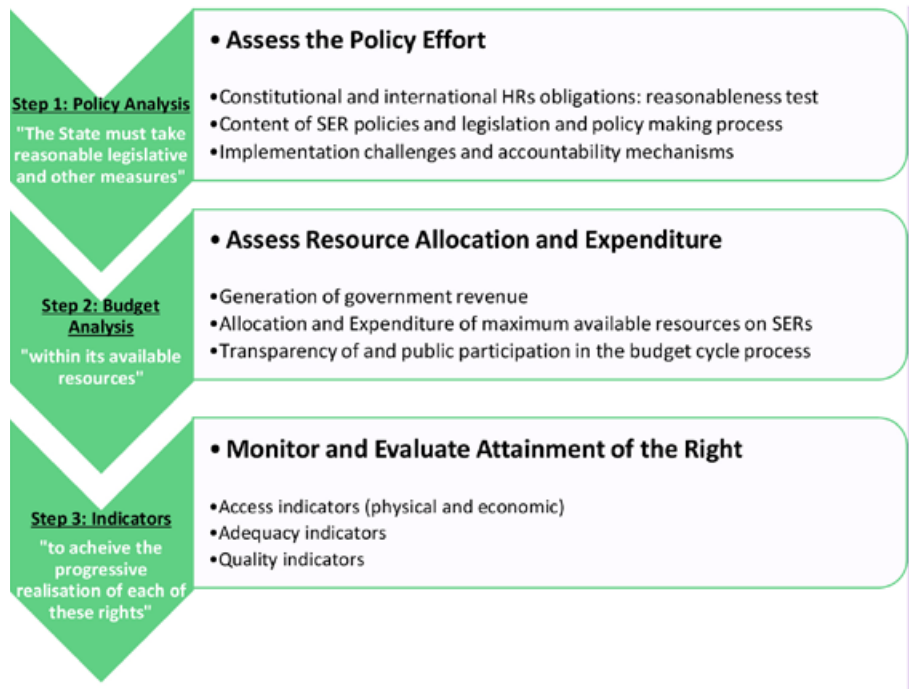
## Introduction

The Constitution of the Republic of South Africa guarantees socio-economic rights (SERs), including the right to a healthy environment for everyone in South Africa. Sections 24(a) and (b) of the Constitution provide for the right to an environment that is not harmful to the health and well-being of individuals while emphasising the forward-looking, intergenerational nature of the obligation. This has important implications for the management of the current and future natural resource base. In this regard the Constitution confers upon the state the duty to respect, protect, promote and fulfil environmental rights both by avoiding any activities that may result in a violation of the right as well as by engaging in activities that will result in the full realisation of the right. Sections 24(b)(i-iii) contain a range of positive obligations, which dictate that the state must be pro-active in realising environmental rights. Such obligations include the adoption of progressive policies, resource allocation, planning and expenditure.

The Studies in Poverty and Inequality Institute (SPII), with the support of the Ford Foundation and Foundation for Human Rights, and in partnership with the South African Human Rights Commission (SAHRC), has developed a methodology based on a combination of policy and budget analysis and statistical indicators to monitor and evaluate the progressive realisation of SERs in South Africa. This methodology developed by SPII builds on international best practice and combines various ways of monitoring SERs.

The methodology developed by SPII is based on three distinct but inter-related steps (see figure below). These steps include an analysis of the *policy effort* (Step 1) and the *allocation and expenditure of resources* for specific rights (Step 2). The third step involves monitoring and evaluating the *attainment of rights* (Step 3) on the ground through specific outcome indicators. A summary of the three steps is provided below.





The application of this 3-step methodology provides a comprehensive analysis of the status of the right to a healthy environment in South Africa. Chapter 2 of the full paper (available at [www.spii.org.za](http://www.spii.org.za)) explores the content of the right to healthy environment and then outlines key policy and legislative developments. Chapter 3 provides an assessment of the allocations and spending performance of the Department of Environmental Affairs as a means of interrogating the adequacy, efficiency and effectiveness of government's budgeting for the right to healthy, protected environment. Chapter 4 provides an explanation of the process of developing performance and impact indicators that can be tracked and monitored over time. Finally, Chapter 5 combines the policy and budget analysis with evidence from indicators and provides an overall analysis of the status of the right to a healthy environment.

### Constitution of the Republic of South Africa, Section 24 Environment

Everyone has the right -

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

## Step 1: Policy Analysis

South Africa is armed with a significant arsenal of environmental policy and legislation that has been developed pre and post-1994. Although a comprehensive definition of the right to environment is not available, the key aspects of the right include a healthy environment not detrimental to wellbeing and the concept of sustainable development, and inter-generational equity

Underpinned by the Constitution and international conventions that the country has not only ratified but in some instances played an influential role in, the right to a healthy environment is undoubtedly central to the state's human rights obligations. However, the poorly defined scope of Section 24 has limiting implications for the planning, implementation and development of policies aimed at protecting the environment. While Section 24 does state that the government must put "*reasonable legislative and other measures*" in place, the courts have not yet defined reasonable legislative measures or what these other measures may entail in terms of the right, nor what it explicitly means to "*promote conservation*" or "*secure ecologically sustainable development*", for instance. On the other hand, there is significant scope for the courts to interpret environmental rights, particularly in connection to promoting the rights of vulnerable groups.

Ultimately – while there is little doubt that South African environmental legislation is progressive and dynamic there is still a great need for deeper consideration of the interconnectedness of human wellbeing and environmental health. It is for this reason that the indicators discussed in Chapter 4 provide an important opportunity for policy makers in particular to consider the current chasm within the provisions of Section 24.

## Step 2: Budget Analysis

The state is obliged to allocate fiscal resources towards the realization of the right to a healthy environment. The state must then utilize these resources in such a way that they will have maximum impact on the enjoyment of the right to a healthy environment. If the State does not meet the objectives of its environmental policies it has the burden of explaining and justifying these shortcomings.

### Findings and recommendations;

- Finding: Budget allocations to the majority of Biodiversity and Conservation sub-programmes have decreased in real terms between 2012 and the 2016/17 Medium Term Expenditure Framework. This does not bode well for the protection of the country's resource base and has already had negative impacts on national programmes such as CapeNature. The national allocation for Biodiversity and Sustainable Development sub-programme decreased in real terms by a staggering 30.86% between 2015/16 and 2016/17
- Recommendation: National government must work to support conservation by at the very least avoiding further budget cuts to programmes that are already strained and reliant on donor funding to a substantial degree. Environmental issues can no longer be under-prioritised as they have been if South Africa is to meet its SDG obligations.
- Finding: funding allocations towards programmes aimed at the protection of South Africa's biodiversity decreased in real terms between 2015/16 and 2016/17 by 6.58%.
- Recommendation: the DEA is in a good position to motivate for additional funding though the enhancing of the PES component of programmes such as WfW in the first instance. Secondly, The DEA must harness existing research capacity within its own entities as well as other government departments to ensure that the PES innovations are enhanced and feed back into funding for environmental programmes and service delivery targets. Thirdly, the DEA must garner additional support both locally and internationally through PES financing schemes in addition to actively foster sustainable voluntary PES payments.
- Finding: Over several years, the DEA has managed to outstrip its own performance targets by significant margins in select programmes.
- Recommendation: Within the WfW and WoW programmes, for instance, the DEA must plan in a more robust and strategic manner in recognition of both the difficult funding space but also of the need to utilise all resources efficiently and effectively at all times and in all programmes.
- Finding: Since 2006/07, the DEA has obtained unqualified audit opinions from the Auditor-General of South Africa.

- Recommendation: there is no doubt that the DEA is working within a tight fiscal space given the overall constrained financing environment. The DEA must therefore use this admirable financial track record to motivate for additional funds and push for recognition of ecosystem services given their importance for human wellbeing and fostering of sustainable development overall.

## Step 3: Indicators: Measuring the Enjoyment of the Right

Sustainable Development obligations require states to progressively take steps to achieve targets related to goals as diverse as improving people's access to water and clean energy, environmental protection and climate change mitigation and adaptation. In this way, the right to a healthy environment entails a wide range of social and ecological indicators and additionally requires that steps are taken to measure progress against an array of indicators. SPII has developed a range of indicators to measure the state's delivery on the right to a healthy environment.

### Selection of Indicators

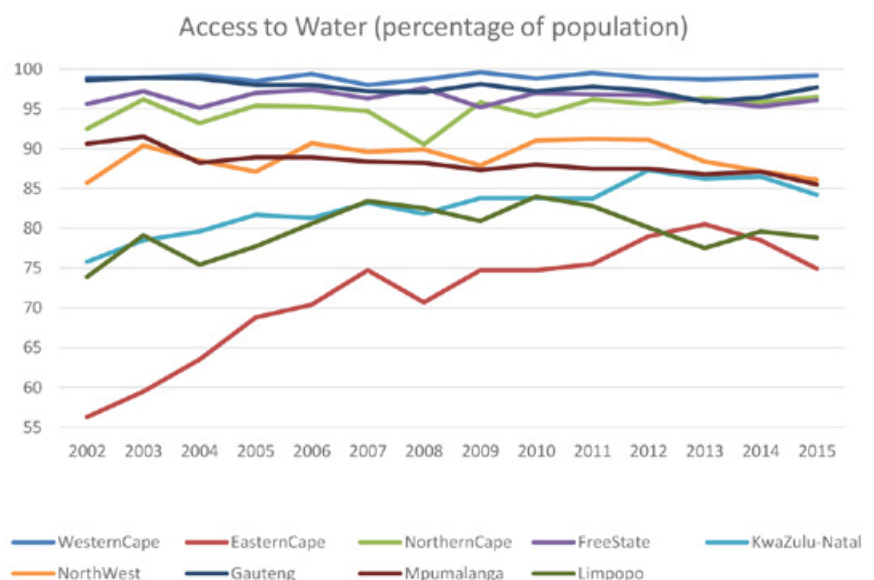
Indicator 3: Access to Water

Sources:

General Household Survey 2015 (StatsSA);

Data by sex available from GHS 2009-2015

Description: Access to water leads to a significant improvement in human health. Properly provisioned water from a sustainable source also decreases potential strain on river and other water systems. It is significant to note that there are some concerns with the quality of access provided. In some instances, infrastructure provided on paper is in reality "broken or dysfunctional" (SAHRC, 2014). Not only does non-functioning infrastructure negatively impact on human access, poorly constructed and badly maintained systems result in loss and waste of water, which impacts on sustainability and increases strain on already limited natural water resources.

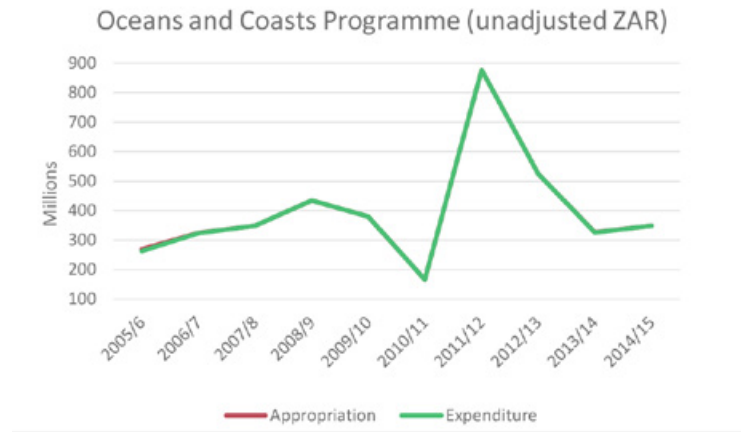


Indicator 22: Government Funding Allocated to the Department of Environmental Affairs

Source: Department of Environmental Affairs Annual Reports

Description: As the most significant department involved directly in the environment, the budget of the DEA gives an indication of government's commitment to the environment. A breakdown of DEA spending into different areas shows governmental priorities and potential

areas of environmental concern. Variables include the amount of funds spent on *DEA legal, authorisation and compliance, Oceans and Coasts, Climate Change and Air Quality, Biodiversity and Conservation, Environmental Programmes, and Chemicals and Waste Management.*

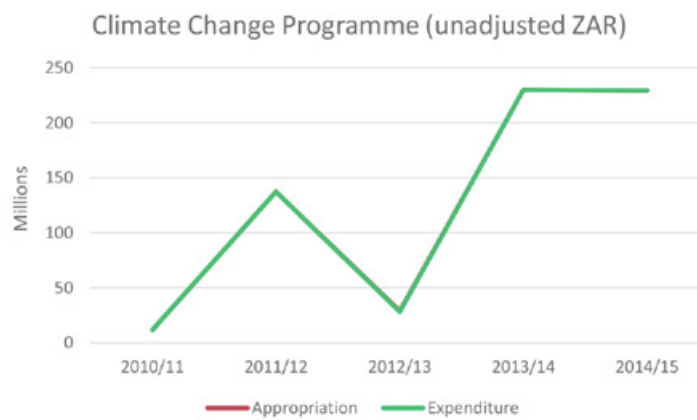


Indicator 22a: *Budget allocation Oceans and coasts, unadjusted ZAR*: Data available for 2005/6-2014/15.

Appropriation and expenditure were exactly matched throughout the period and showed a slight net increase of just under R100 million, with a very large spike in 2011/12 at R900 million and a dip in 2010/11 to just under R200 million from an initial value of about R280 million in 2005/6.

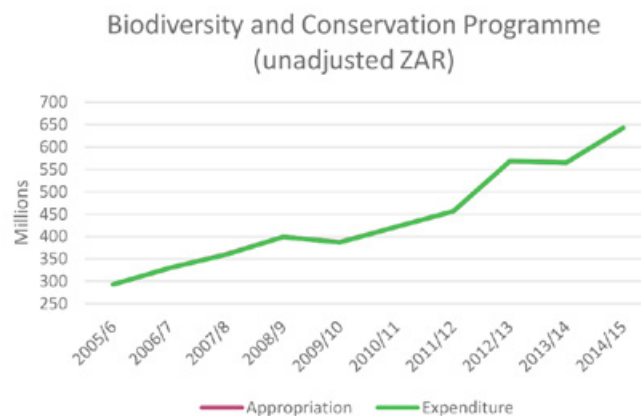
Indicator 22b (*Climate change, unadjusted ZAR*): Data available for 2010/11-2014/15.

Appropriation and expenditure were exactly matched for the entire period. The net increase in allocation over the whole period was on the order of R220 million, from just over R10 million in 2010/11 to nearly R230 million in 2014/15, with a dip to about R25 million in 2012/13.

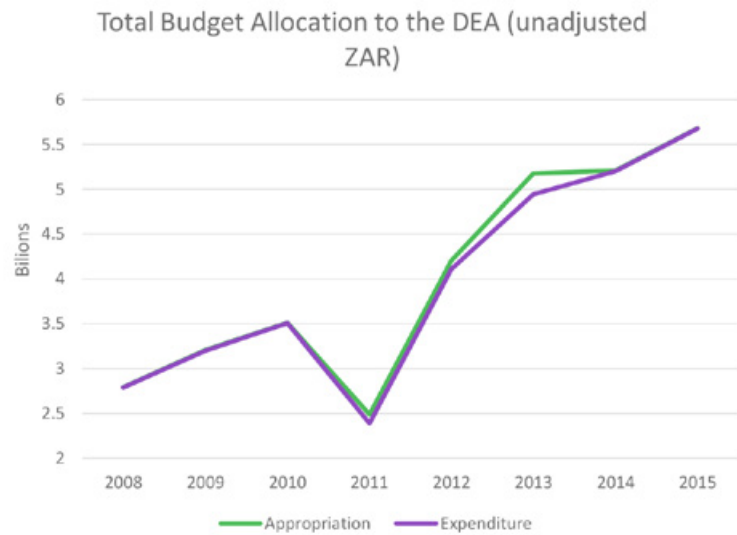


Indicator 22c (*Biodiversity and conservation, unadjusted ZAR*): Data available for 2005/6-2014/15.

Allocation and expenditure were exactly matched throughout the period and showed a steady increase from R300 million to R650 million in 2014/15.



Indicator 22f: Total budget allocation to the DEA, unadjusted ZAR): Data available for 2008-2015.



For the duration of the period between 2008/09 and 2014/15 financial years, the Department of environmental affairs has consistently spent within 90% of its allocated budget. Depicted in the figure is a net increase over the entire period of about R 2.5 billion from an initial allocation of R 3 billion in 2008. The overall pattern was a steady increase with the exception of 2011, which saw a sharp decline in the allocation to slightly under R 2.5 billion. Holistically, this pattern largely speaks well of the Department's financial management environment although the inevitable return of funds to the National Revenue Fund resulting from less than 100% expenditure requires further improvement.

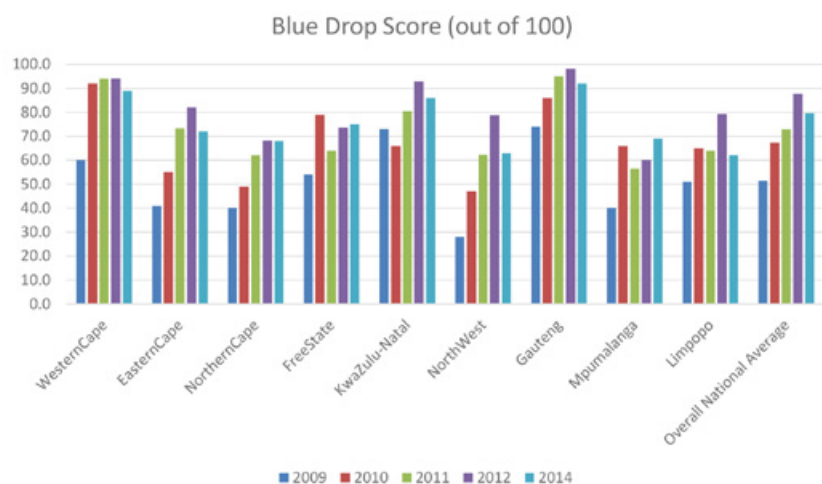
Indicator 13: Quality of Drinking Water

Sources:

Department of Water Affairs 2014 Briefing Summary notes

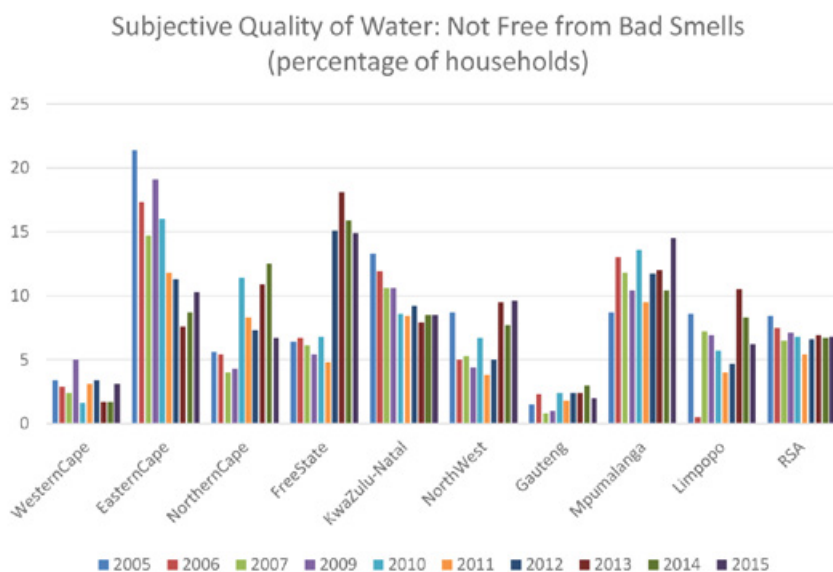
GHS 2015 (StatsSA)

Description: Measured by the variables *Blue Drop Score* and *Subjective Quality of Drinking Water*, this indicator is determined as a result of municipalities' attempts and commitment to providing a healthy, well organised and maintained source of drinking water. Some stakeholders have expressed concern that the *Blue Drop Score* may not provide a reliable assessment of the actual quality of drinking water, but instead provide a more overall view of the management of drinking water. The *Subjective Quality of Drinking Water* is a subjective outcome of the water distribution and filtration process. Total percentage subjective rating of water quality supply is rated: not safe to drink; not clear; not in good taste; not free from bad smells. Clean drinking water is essential for a healthy human and natural environment. As has been previously explained, this indicator should be considered with the Access indicator *Access to Water*, and the Adequacy indicators *Acid Mine Drainage* and *Water Supply*



Indicator 13a: *Blue drop score out of 100, by province*):

Every province showed a net increase over the whole period, although 2012 was the year when most provinces showed peak water quality of nearly 100, in the case of Gauteng. 2010 was the best year for the Free State, with a score of 80. The most consistent quality was shown by the Western Cape, with an increase to, and maintenance of a score of about 90.



## The Status of the Right to a Healthy Environment in South Africa

The South African government has reason to be proud of key achievements in environmental policy and legislation. While there have been positive trends in access to water as well as improvements in the quality of municipal drinking water as measured through the Blue Drop scoring system, there has also been some regression and stagnation. Access to clean water continues to reflect apartheid planning systems and patterns of under-servicing of provinces such as the Eastern Cape, Limpopo and Kwazulu-Natal. The current trajectory of coal-powered energy generation and industrial growth will impact negatively not only on environmental health indicators but will serve to further impinge on people's right to a clean, healthy environment.

The South African government must elevate funding levels for environmental affairs in order to match policy commitments and ever-increasing pressure from key drivers such as urbanization, increasing household demand for service and increasing, poorly regulated industrial growth. In addition to advocating for more funds via the Division of Revenue Act, the Department of Environmental Affairs must seek to find innovative ways to give greater effect to this right. Our recommendations include enhancing the PES (payment for ecosystem services) component of key programmes in order to increase revenue collection to invest back into conservation which promotes the realization of the right to a healthy environment.

