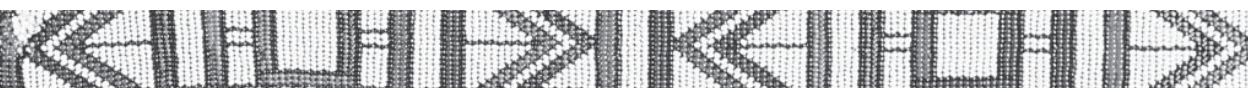
South Africa

Effective Service Delivery in the Education and Health Sectors

A DISCUSSION PAPER



A review by AfriMAP
and
Open Society Foundation for South Africa

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Preface

This discussion paper on service delivery in the South African health and education systems is the product of documentary research and solicited interviews with government and civil society at national level, and in the Western Cape and Limpopo Provinces (selected as representative of relatively well- and under-resourced provinces, respectively). It is one of a series of reports on South Africa and other African countries produced by AfriMAP, a project of the Open Society Institute's network of foundations in Africa—for this report, working with the Open Society Foundation for South Africa.

The aim of AfriMAP is to conduct an audit of African governments' compliance with African and international standards on human rights and good governance, including the commitments made in national constitutions. The reports are intended to be a resource for human rights activists in the countries concerned, and for those working in other African countries, to improve respect for human rights and democratic values on the continent.

This discussion paper draws together information and arguments in relation to service delivery in the health and education sectors under the following six headings:

- International and national legal framework
- Information collection, publication and management
- Strategic planning
- Budgeting and expenditure management
- Human resource management
- External oversight mechanisms

The purpose in highlighting them in this discussion paper is a hope that this will assist government in identifying the main issues that still need to be addressed in service delivery and in realising the goals set out in the relevant African and international standards, among them the African Charter on Human and Peoples' Rights and its related documents; the New Partnership for Africa's Development (NEPAD) and its Declaration on Democracy, Political, Economic and Corporate Governance; the African Union Convention on Preventing and Combating Corruption; and the Charter for the Public Service in Africa, adopted by African public service ministers.

Executive summary

Among the many urgent priorities on the agenda of the new African National Congress (ANC) government in 1994 was the extension of public services to the whole population that up to then only white South Africans had been able to take for granted.

This discussion document considers the challenges of achieving this ambition, with particular reference to the delivery of health and education services in South Africa in the post-apartheid state. It is based on research carried out in both sectors during 2006—in relation both to the national departments and also the provinces of the Western Cape and Limpopo. The research aims to assess the processes, procedures and outcomes of the South African government's attempts against a range of international, continental and national legislation and standards. The researchers' primary conclusion is that though South Africa is at the forefront of promoting good governance—that is, it has adopted the necessary legislative and institutional frameworks to facilitate access to services and to gain greater transparency and accountability—it is still challenged to translate these into effective implementation. Its greatest challenge is in the arena of human resource management.

The research considered six areas related to the delivery of education and health services in South Africa: the international and national legal framework; the collection, management and publication of information; strategic planning; the budget process and expenditure management; human resource management; and the effectiveness of the oversight institutions that are responsible for ensuring that the public service delivers on its responsibilities.

Information

Reliable and up-to-date national statistics are essential for the effective planning and delivery of public services. In relation to information collection and management, South Africa's national statistical agency, StatsSA, is a leader in many areas, and has to a great extent achieved its mission of providing 'a relevant and accurate body of statistics'. StatsSA's achievements are not matched, however, by the information-gathering efforts of the departments responsible for health and education. These departments are challenged by the weaknesses of information collection systems at the provincial level. On the positive side, StatsSA, and the education and health departments all regularly publish information,

even when it reflects poorly on the performance of government—a critical element in ensuring the accountability of departments to South African citizens. Moreover, South Africa has world-leading legislation in the Promotion of Access to Information Act (PAIA). Yet efforts to use the PAIA have often been unsuccessful; and the researchers seeking to complete this report found that getting access to officials was almost impossible in some cases, especially from national and provincial representatives of the Department of Health. When it comes to information that is politically sensitive, such as the infection rates for HIV/AIDS and the drop-out rate among school children, the critical role of independent statistics has been highlighted—and, despite challenges from the government—largely maintained.

Strategic planning, budgeting and expenditure management

All South Africa's national departments are required to produce detailed strategic plans, and both the health and education departments have plans that seek to address the major challenges facing the country in their areas. The Department of Education's planning process has been significantly more consultative than the Department of Health, which has not been successful in building consensus around national priorities. In this regard, while the media coverage has naturally focused on the major differences over policy on HIV/AIDS, a consideration of the issues from the point of view of process is also instructive: wider outreach and consultation are likely to result in better policy making and more effective implementation of a policy that has the backing of all major stakeholders. Attempts to redress this situation have been made though the revitalisation of the South African National AIDS Council, under the leadership of Deputy President Phumzile Mlambo-Ngcuka. The communication of strategic plans is more of a problem. There are signs of 'transformation fatigue' and policy overload in both the education and health departments.

The budget process, meanwhile, which is managed under the direction of the Minister of Finance and the Treasury, is in many respects exemplary. In particular, South Africa is a leader in the provision of information about its budgeting, allowing civil society organisations and parliamentarians to find out about and critique the allocation of funds. However, access to information and opportunities to comment are limited in advance of presentations to Parliament on the proposals.

South Africa's procurement systems are also based on laws that comply with international best standards, including in relation to the tendering process. Yet in practice there is a dearth of public information around procurement, and much work is needed to increase transparency and prevent corruption in advance.

Human resource management

Despite the general rule that there is a wide range of government information available about education and health challenges in South Africa, it is difficult to obtain detailed information about human resources needs: for example, in relation to the real situation of teacher supply, training and distribution, or on the effect of mortality from AIDS and

other causes on the supply of teachers. The strategic plan of the Department of Education does not address HIV among educators but only among learners. Non-governmental organisations such as the Health Systems Trust have been instrumental in filling the knowledge gap on health and health statistics. The Department of Health recognises as one of its key challenges the departure of skilled staff overseas, and there are measures proposed to address this problem. The quality of training needs serious attention to ensure quality as well as quantity in the supply of educators and nurses. These factors impact on the quality of education and health and ultimately on the economy as a whole, where skills shortages remain acute, reflecting a broader failure in the public education system.

Although the South African government's Batho Pele principles—the code of conduct for the public service and anti-corruption legislation—comply with international standards, their implementation is weak. In particular, information about public servants who have been disciplined within the Departments of Health and Education is not available; meaning that it is impossible to see if they are implemented at all. The problems in relation to remuneration and conditions of employment have been highlighted by public sector strike action in 2007: in relation to the right of workers to strike—an essential warning signal of serious problems in the sector—the government has been slow to sign the statutory 'minimum service agreements' that will allow these workers to strike as long as agreed minimum levels of service are maintained.

Oversight mechanisms

South Africa has a strong set of oversight institutions: for delivery of public services the role of the Public Service Commission and of the Auditor-General are particularly important. Both bodies note, however, real difficulties in getting government departments to pay serious attention to what they say and to actually implement their recommendations.

Conclusion

The legislative and institutional systems to implement South Africa's national and international obligations in the health and educational sectors are well established. South Africa has the necessary budgetary means and resources to put into practice these obligations. However, the research reveals that the gap between policy formulation at national level and implementation at local level can be traced to the interplay of a number of factors:

a) Insufficient harmonisation of strategic plans and general co-ordination between national, provincial and local levels;
b) Policy reform overload, leading to difficulties in prioritisation;
c) Insufficient quality and quantity of staff for implementation;
d) Insufficient popularisation and participation of communities and other stakeholders in the designing and implementation process of policies and plans; and
e) Insufficient monitoring and evaluation.

It is on these challenges that both the health and education sectors need to concentrate if they are to substantially improve on service delivery, thus living up to their mandates and meeting their commitments to reach the Millennium Development Goals (MDGs). In all areas, greater publication of and access to information for the media and civil society researchers would strengthen the chances of success: despite a strong commitment in the law to these principles South Africa has a long way to go yet before it lives up to these aspirations.

I: Background: The state of education and health in South Africa

South Africa is considered to be a middle income state with a population of 46 million and a GDP per capita of R29 422 (US$4 200 per capital/annum). Income distribution is highly uneven, however, with 32 per cent of the population living on less than US$2 per day. The unemployment rate in 2005 was estimated at 40 per cent of the economically active population. These inequalities have profound effects on the needs and challenges of public service delivery.

In addition, the health and education systems inherited by the new government in 1994 were fragmented on racial grounds. There were 19 education departments and as many health departments inherited from the old white provinces, 'own affairs' administrations by racial group, and 'self-governing' and 'independent' 'Bantu homelands' for those of African descent who were not supposed to be citizens of South Africa itself. The system was complex, inequitable and intrinsically racially discriminatory. The task then of the post-apartheid government was to create unified education and health sectors and to provide equitable access to all its citizens.

Education

The United Nations Development Programme (UNDP) Human Development Report on South Africa (2003) noted, amongst other conclusions, that South Africa's achievements in education were:

- Creating a single national Department of Education;
- The creation of non-discriminatory school environments;
- A formidable architecture of policies and laws to govern education, inclusive of the National Qualifications Framework (NQF);
- Small increases in matriculation pass rates;
- The creation of new institutional typologies, that is, the amalgamation of 150 Further Education and Training (FET) colleges into 50, the incorporation of colleges

of education into universities and the merging of technikons and universities in various combinations;
- Improvements in infrastructure;
- High enrolment rates with participation of girls being one of the highest on the continent.

Education accounts for the largest item on the national budget: 6 per cent of GDP. As of 2000, there were 27 760 ordinary government schools, with 363 343 educators and 11 903 455 learners. By 2004, the number of learners increased to 12 176 391 but the educators decreased to 362 042. The average learner–educator ratio is 1:33. This trend—i.e. the increase in number of learners and the decrease in number of educators—has continued.

The Department of Education contends that it is well on course to meet the targets of provision of basic education. The MDGs aim at providing universal primary education by 2015. South Africa has done well in improving access to education: The literacy rate for the age cohort 15–24 has increased from 88 per cent in 1990 to 94 per cent in 2004 and the primary school completion rate from 75.5 in 1990 to 95 per cent in 2004. Primary school education is compulsory from grades 1 to 9. While the enrolment rates increased from 88 per cent in 1996 to 94 per cent in 2001, they appeared to decline to 89 per cent in 2004.

The pass rate of the senior certificate (matriculation) examination has also been steadily improving from a national average pass rate of 32.5 per cent in 1995 to 70.7 per cent in 2004. There have been marked regional variations. In 2004 the pass rate was 53.4 per cent in the Eastern Cape, 85 per cent in the Western Cape and 70.6 per cent in Limpopo. Unfortunately the school drop-out rate is alarming: for instance, in the Western Cape 48 per cent of learners leave school before the completion of grade 12. The adult illiteracy rate in South Africa was estimated at 14 per cent in 2002 and 17.8 per cent in 2004.

Another alarming factor in education is the high prevalence of HIV/AIDS infections amongst school teachers. An estimated 12.7 per cent of educators were HIV-positive in 2005, a figure with serious implications for attrition and absentee rates in future. The current recruitment and training of new teachers is not keeping abreast with these developments.

The legal and policy framework in South Africa is geared towards equal access for all learners in South Africa, especially as regards race and gender. Girls are outnumbering boys in the secondary and tertiary levels of education. There are more women than men enrolled in higher education facilities. However women still form a minority in the postgraduate enrolments and in the professorial categories (17 per cent) at universities.

The Department of Education has adopted a pro-poor school funding system since 2000, in order to address the perennial and inherited problem of inequity in public school funding. It has also adopted a zero fees funding policy for the poorest schools from 2006. However, the return on the state's investment in education in South Africa has been unsatisfactory. The 2003 UNDP report noted that despite high rates of government investment, South Africa performs very badly in relation to literacy, numeracy and

mathematical and science performance of learners. A study conducted by the Centre for Development Enterprise on maths and science challenges noted that in 2004, of the 467 985 learners who wrote the Senior Certificate exams, only 8.5 per cent wrote Higher Grade maths and only 5.1 per cent of these passed the examination.[1]

Health

South Africa is plagued by extreme public health challenges directly linked to poverty: tuberculosis, sexually transmitted diseases, malaria, HIV/AIDS, diarrhoea and pneumonia. Millennium Development Goals in the health sector are: reduction for the under five-year-old mortality rate, reduction of maternal mortality rates and reversing the spread of HIV/AIDS and malaria. If current trends in these diseases persist, South Africa will not attain these goals.

South Africa's life expectancy rate has been declining in the last decade and a half: from 61.1 years in 1990 to 49.2 in 2003 to 47 in 2004. Life expectancy differs between the sexes and races in South Africa. The life expectancy for white women is 73.7 years, for African women 50.4 years. Similar discrepancies are found between white and African men. Infant mortality rates are racially skewed as well. In 2002, the infant mortality rate per 1 000 live births was: 67 for Africans, 24 for coloureds, 11 for Indians and seven for whites. As a country the rate was 59 per 1 000. This rate increased to 61.81 in 2005 and declined again to 59.44 in 2007.

The primary cause for the declining health status of the nation is the high prevalence of HIV/AIDS and its accompanying opportunistic infections like tuberculosis. Available studies show an absolute infection prevalence of 5,6 million people. The antenatal survey done in 2006 found that 30.2 per cent of pregnant women were HIV-positive as were almost 40 per cent of women between 25–29 years, but there were signs of declining rates of infection in women under 20 years.

Government expenditure on health is declining as a proportion of GDP. Meanwhile, there has been a sharp increase in expenditure in the private health sector expressed as a proportion of GDP. Between 1993 and 2003 this is estimated to have increased from 3.4 per cent of GDP to 5.2 per cent of GDP. In absolute figures the private sector accounted for 63 per cent of expenditure on health care.

Free health care is available to children up to the age of five and to pregnant women at primary health care level. There are 4 500 clinics and 53 health care districts for this purpose. Anecdotal evidence suggests that the service at these delivery sites is not always satisfactory. There have however been some improvements in state health provision. Antenatal coverage in 2004 was 95.5 per cent, immunisation of children 12–23 months was 82.1 per cent in 2004. Teenage pregnancy declined from 19 per cent in 2002 to 15 per cent in 2003. The number of public hospitals increased from 373 in 2002 to 382 in 2004. There has been, however, a decline in the number of available hospital beds, which has meant

1 Charles Simkins, Stephen Rule and Ann Bernstein, *Addressing the Maths and Science Challenge in South Africa's Schools*, Centre for Development and Enterprise, Johannesburg, 2007.

that hospitals often have to rely on makeshift arrangements and/or there are long waiting periods for care at tertiary institutions. There are also large regional and sub-regional differences in access to health care services with urban centres generally better serviced than rural areas.[2]

2 Statistics for health and education taken from: United Nations Development Programme, *South Africa: Human Development Report 2003: The Challenges of Sustainable Development: Unlocking People's Creativity*, Oxford University Press, New York, 2003; UNDP, *South Africa Millennium Development Goals Country Report*, 2005; Department of Education, *Education Statistics in South Africa at a Glance*; Health Systems Trust, *South African Health Review*, 2005.

II: International and national legal framework

Since 1994 South Africa has become party to most relevant international human rights and other treaties relevant to delivery of public services, including the African Charter on Human and Peoples' Rights and other international human rights instruments, with the notable exception of the International Covenant on Economic, Social and Cultural Rights.[3] South Africa has submitted reports to the treaty-monitoring bodies, though not always timeously. South Africa has ratified the African Union (AU) Convention on Preventing and Combating Corruption, and similar documents at United Nations (UN) and Southern African Development Community (SADC) level, as well as the SADC protocols on education and health. South Africa also spearheaded the development of other non-binding documents relating to the functioning of the public service, including the Charter for the Public Service in Africa, the New Partnership for Africa's Development (NEPAD), and the NEPAD Declaration on Political, Economic and Corporate Governance. South Africa has committed itself to the achievement of the Millennium Development Goals and the Dakar Framework for Action on Education for All.

The South African Constitution of 1996 is internationally known for its unusually extensive guarantees of economic and social rights and the delivery of public services. The Constitution determines that everyone has the right of access to health care and that the state must take reasonable measures to achieve these rights. It also states that no one may be refused emergency medical treatment. Section 28 states that children have an absolute right to medical treatment. Section 29 states that everyone has a right to basic education as well as further education and that the state must take reasonable and progressive measures to make education available to all South Africans. Everyone has the right to education in the official language of their choice. Private education institutions are permitted, provided that they conform to the Constitution and relevant law.

Only some aspects of these rights are immediately protected, such as children's basic health care, emergency medical treatment, basic education and the right to use private education. The state is only obliged to deliver other rights and services in the light of

3 See AfriMAP/OSF South Africa report, *South Africa: The Justice Sector and the Rule of Law*, 2005.

available resources. The Constitutional Court has formulated a number of principles with regard to the realisation of these rights. First the question of the reasonableness of a policy can be tested in court: the court can call on the state to explain and justify the measures that have been adopted and how they have been implemented. Second, a court can assess to what extent the state is complying with its obligation to progressively realise the rights in question.

The Constitution also provides a framework for the functioning of the public service and the responsibilities of the executive in relation to management of the public finances that is critical for public service delivery.

National laws and policies adopted since 1994 are exemplary. However it is a common complaint in South Africa that laws and policies notwithstanding, lack of implementation is the critical issue. The solutions to problems of state action are to be found in robust engagement between oversight bodies and the executive. The absence of a vibrant, independent legislature inhibits the discourse on policy direction and implementation. Under optimal circumstances the debate should go beyond Parliament and involve other stakeholders such as civil society organizations including academics and representatives of affected communities themselves.

The division of government responsibilities in relation to education and health

Constitutionally, education and health are concurrently national and provincial responsibilities, with more detailed provisions set out in legislation. Primarily central government is tasked with setting broad frameworks for policy, co-ordinating and monitoring their implementation and then decentralising decision-making and delivery to provincial and local levels. Each of the nine provinces has its own legislature and a premier who enjoys executive authority in the province. Central government has power to override disagreements between central and provincial legislation.

Education

South African legislation provides for provinces to pass laws regarding primary and secondary education, whilst the national government sets overall standards and has exclusive competence for tertiary education.[4] Since national standards are set at central level, most educational legislation emanates from the national government. Soon after 1994, a uniform education system was established for South Africa, formalised in the National Education Policy Act and the South African Schools Act, both adopted in 1996. The former determines human resources policy and allows the government to set a national policy for the languages to be used in education. The latter sets uniform norms and standards for the curricula to be used and the governance of schools.

Apart from these two laws, a number of other laws are pertinent: the National Qualifications Authority Act, 1995; the Higher Education Act, 1997; the Further Education

4 Part A, Schedule 4 of the Constitution.

and Training Act, 1998; the Employment of Educators Act, 1998; the Adult Basic Education and Training Act, 2000; the South African Council for Educators Act, 2000; and the Educational Laws Amendment Act, 2002, which lowers the minimum age of admission to schools.

In the first six years after 1994, considerable efforts were made to align education laws with the Constitution and to integrate the various education authorities into a coherent body of institutions. The emphasis has now shifted to policy implementation and quality control in education, including monitoring and evaluation.

Health

All health legislation is national, with provinces expected to implement policy and deliver services. For ten years after 1994 there was no overarching health legislation. There were therefore functional and regulatory overlaps between the various health departments. Instead of legislation, policy decisions in terms of existing legislation were used to administer the public health sector. A new National Health Act was enacted in 2003 and came into effect in 2005. In line with the Constitution, the National Health Act sets out the responsibilities of the national provincial and municipal health authorities. The act seeks to promote and improve the national health system of South Africa, setting out norms and standards to which each sphere of government should conform. The act reaffirms the principle that no one may be denied emergency medical care, the right to information and the requirement of informed consent of patients. The act also seeks to classify all health establishments and to introduce a 'certificate of need', a licensing process that seeks to ensure that, over time, health services are distributed evenly and equitably in South Africa. An Inspectorate of Health Establishments will monitor and enforce compliance with the act.

Other significant laws in the health sector include the Nursing Amendment Act, 1995; the Communicable Diseases Act, 1997; the Pharmacy Amendment Acts of 1995, 1997 and 2000; the Medical, Dental and Supplementary Health Service Professions Amendment Acts of 1995, 1997 and 1998; the Choice on Termination of Pregnancy Act, 1996; the Medicines and Related Substances Control Amendment Acts of 1997 and 2002; the Sterilisation Act, 1998; the Medical Schemes Act, 1998; the Tobacco Products Control Amendment Act, 1999; the National Health Laboratory Service Act, 2000; the Mental Health Care Act, 2002; and the Traditional Health Practitioners Act, 2004.

III: Information collection, publication and management

There is increasing recognition of the critical importance of well-functioning statistics and information systems for the effective delivery of public services: as noted by the Paris21 initiative, the Partnership in Statistics for Development in the 21st Century, 'sound and transparent statistics are essential for effective policy-making'. If you do not know how many school-age children you have, you cannot plan to recruit the right number of teachers; if you do not know the prevalence of diseases, you cannot plan hospitals and clinics. Among the key sources of best practices and standards in this regard are the Fundamental Principles of Official Statistics, adopted by the United Nations Statistical Commission in 1994.[5]

Under the apartheid government the South African Central Statistical Service collected data to serve the interests of the state at that time: thus mainly about the white population or race-based information of interest for apartheid planners. Since 1994, this situation has transformed, and the national statistical agency was re-established in 1999 as StatsSA. StatsSA is mandated by its enabling legislation—which was comprehensively rewritten to take on board the new priorities of the state and the values of the 1996 constitution—to uphold confidentiality, accuracy, reliability, objectivity, comprehensiveness and timeousness. StatsSA operates under the general supervision of the Minister of Finance, who appoints an independent advisory council to 'promote and safeguard' official statistics. The Statistics Act provides that 'no person or organ of state may interfere with the functioning of Statistics South Africa', in accordance with international best practice. StatsSA describes its own mission as 'to provide a relevant and accurate body of statistics to inform users on the dynamics in the economy and society through the application of internationally acclaimed practices'.[6] There is little doubt that the agency has enjoyed much success in fulfilling this mission since it was established, despite the inevitable difficulties of the transition process. It has transformed the range of information it collects, and publishes in hard copy and electronically a wealth of useful statistical data and analysis, including most notably

5 Available at http://unstats.un.org/unsd/methods/statorg/FP-English.htm.

6 Mission statement available at http://www.statssa.gov.za/about_statssa/mission.asp.

a five-yearly census[7] and detailed surveys of household income and expenditure.[8] StatsSA has also collaborated and in some cases played a leading role in initiatives to improve the collection of statistics on the African continent.

The effectiveness of StatsSA is weakened by a dearth of properly qualified staff, as recognized by the agency itself. According to the agency's 2004–05 annual report, 310 out of 1 267 staff positions were not filled, and it had an annual staff turnover rate of 37.6 per cent.

The main weaknesses in statistics collection in South Africa, however, relate to information collection and management within government departments themselves, and the way that these feed into national statistics. Although StatsSA has worked with both the Departments of Health and Education to develop a National Health Information System (NHIS) and an Education Management Information System (EMIS) in order to improve data gathering, significant quality problems remain. In addition, private sector providers of health and education are not fully included within the systems for statistics collection. These weaknesses in information management have an inevitable effect on the ability of the departments to carry out monitoring and evaluation of the impact of their policy interventions and design better interventions in future.

Education

The national Department of Education devised a National Education Information Policy in 2003 and set up an Education Management Information System. The aim of the system is to manage education information more efficiently and to make such information available to the general public. The EMIS project produces an annual publication titled 'Education Statistics in South Africa at a Glance', which is detailed and readily accessible and provides a provincial and gender breakdown of learners in ordinary and independent schools and in the various educational sectors.

The Auditor-General's report noted serious inadequacies in EMIS, notably insufficient security to protect data which could lead to fraud, data loss, and lack of availability of information. There was no disaster recovery plan. Inadequate data capturing was also noted.[9] Moreover, institutional statistics that are to inform parents of the performance of individual schools—critical from the point of view of parents or nongovernmental organisations monitoring the performance of the education sector—are not available. Among the challenges faced by EMIS is the fact that the supply of teachers is a national responsibility while the demand is provincial; it is the provinces that employ teachers. There is a lack of good quality information from the provinces; some provincial departments do not even have accurate information about the number of teachers presently employed in the system, their specialisation and their attrition from the system.[10] Thus the capacity to properly plan

7 Required by the Statistics Act, section 7(2)(a).

8 See http://www.statssa.gov.za/publications/publicationlist.asp#H for a list of all StatsSA publications.

9 Department of Education, *Annual Report 2004/05*, p.107.

10 Department of Education, *A National Framework for Teacher Education*, Report of the Ministerial Committee on Teacher Education, Pretoria, 2005, p.18.

the recruitment and training of new teachers for the country is compromised.

The Department of Education established an Information and Monitoring Unit in 2003. The Human Sciences Research Council (HSRC), a statutory research body, found that the unit is largely disorganised due to capacity constraints in the provincial departments of education who have to supply the information to the national department.[11] The Department of Education has tried to address this problem in its 2006–09 strategic plan. This calls for an integrated approach between the Department of Education and the provincial departments to improve the quality of data, data storage capacity and so on.[12] However, the implementation of the plan has yet to yield fruit.

Health

The 1997 white paper on health provided for the establishment of a National Health Information System committee to co-ordinate data-gathering from health institutions managed by the state at national and provincial level. The NHIS does not perform well, mainly due to weaknesses at provincial level. Much of the data is gathered manually by senior nursing staff, which takes up a great deal of professional time. The process is cumbersome and inaccurate due to lack of information technology resources. Only 40 per cent of public hospitals have some form of electronic patient information system, and data sent to the NHIS is generally of poor quality with many gaps. The national Department of Health has also proposed the establishment of a monitoring and evaluation unit to follow a range of different issues,[13] and the Strategic Plan for 2006–09 proposes the strengthening of health information systems.[14] Material already published by the Department of Health does allow for some evaluation of their programmes, even in areas that are very controversial, such as HIV/AIDS. For example, figures for the numbers of people on antiretroviral treatment are available from the department's planning documents, enabling civil society criticism of the department's performance.

The leading non-governmental organization in the sector, the Health Systems Trust, notes that there has been an improvement in data collection in recent years, despite 'persistent problems with data quality, data flows and utilization of data/information'. It recommends that there should be a significant shift of resources towards maintenance and support of health management information systems, that the private sector health services should be included and that the Department of Health and StatsSA should collaborate more closely.[15]

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11 Leickness C. Simbayi, op cit, 2005, p.xv.

12 Department of Education, *Strategic Plan 2006-2009*.

13 Department of Health, *Health Goals, Objectives and Indicators, 2001-2005*, p.iv.
Available at www.doe.gov.za/docs/index.html.

14 Department of Health, *Strategic Plan 2006-2009*, pp.42-44.

15 Health Systems Trust, *South African Health Review, 2003/04*, p.34.

Statistical controversies

The importance of reliable official statistics and research independent of executive control is highlighted by controversies over statistics that have entered the public domain.

Deaths from HIV/AIDS

The South African government's response to HIV/AIDS has been notoriously controversial during the administration of President Thabo Mbeki. One of the important elements of the debate has been argument over the true figures for deaths from AIDS. The studies estimating these figures and their methodological bases have repeatedly reached the headlines.

In 2001, a report by the Medical Research Council (MRC: a statutory agency established in 1969) indicating that perhaps 20 per cent of adult deaths the previous year were due to AIDS, was held back from publication for several weeks on the request of the government. The cabinet finally authorized its release after its results were leaked and following pressure from a wide range of civil society groups. The report's methodology was challenged by StatsSA, which alleged that it was not based on empirical evidence.[16] After an independent investigation appointed by the MRC board cleared MRC head Malegapuru Makgoba of leaking the report, Makgoba publicly accused the government of putting political pressure on scientists to produce the preferred results.[17] In November 2002, StatsSA released its own study estimating that only 7 per cent of adult deaths in 2001 were caused by AIDS, though still indicating a dramatic rise in the previous five years. The difference in the figures between the MRC and StatsSA's results appeared to be related to different attitudes to reliance on cause of death recorded in death certificates.[18]

This controversy re-emerged in 2003, when UNDP published its Human Development Report for South Africa and cited a rapidly declining life expectancy rate, from 61.1 years in 1990, to 55.5 in 2000, and 49.2 in 2003.[19] The UNDP figures were disputed by the South African government, asserting that 'We have interacted with the UNDP and demonstrated that some of the data they used to come to their conclusions are inaccurate'.[20] Again, in early 2005, the release of a new StatsSA report on AIDS deaths in the period 1997 to 2003, which confirmed a sharp rise in deaths but steered clear of direct comment on the cause of the rise, was delayed for several weeks, renewing speculation about government pressure.[21] There have been major controversies internationally about methodologies for estimating the rate of HIV infection and deaths from AIDS; it is all the more important that these issues be discussed on the basis of the evidence.

16 Pat Sidley, 'Statistics SA's AIDS row with MRC bubbles over', *Business Day*, 12 October 2001; Chris McGreal, 'Aids will kill 700,000 South Africans a year', *The Guardian*, 17 October 2001.

17 Chris McGreal, 'Aids expert says Mbeki tried to vilify him – South African leader questions loyalty of dissenting professor', *The Guardian*, 16 May 2002.

18 Pule Molebeledi, 'Report on causes of death backs MRC view', *Business Day*, 22 November 2002.

19 UNDP, South Africa HDR 2003, ibid, p.279; Alan Whiteside cited in *Daily HIV/AIDS Report*, 11 October 2005. Available at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=1&DR_ID=33014.

20 Joel Netshitenzhe, South African Government spokesperson, cited in C. W. Dugger, 'Devastated by AIDS, Africa Sees Life Expectancy Plunge', *New York Times*, 16 July 2004.

21 Tamar Kahn, 'Taking care with life and death matter', *Business Day*, 21 February 2005. For a discussion of these issues, see generally, *South Africa HIV & AIDS Statistics Summary*, available at http://www.avert.org/safricastats.htm.

There have been other less controversial differences in health statistics. For example, the government estimated the Maternal Mortality Ratio (MMR) as 150 per 100 000 in 1998. According to the Millennium Development Country Report for 2005 these high figures led to a confidential inquiry by the Health Department which concluded that many of the deaths were non-pregnancy related infections.[22] The World Health Organization estimated the MMR for the year 2000 as 230 per 100 000.[23]

Debating school drop-out rates

South Africa does not have a good system for tracking school drop-out rates: it thus lacks an essential tool in tracking successful schools and identifying those that are failing. As a result, there has been controversy about what the correct statistics are.

In a 2006 report on the right to education, the South African Human Rights Commission cited statistics provided by the National Professional Teachers Organisation of South Africa that the drop-out rate between grade 1 and grade 3 is 26.2 per cent, between grade 4 and 6 is 3.5 per cent and between grades 9 and 10 is 19.6 per cent.[24] Meanwhile, in a ten year review by the Centre for Education and Policy Development commissioned by the South African Democratic Teachers Union, it was stated that from 1995 to 2001, 40 per cent of primary school children dropped out of school.[25]

In a reply to a *Mail and Guardian* article where these findings were presented, Director-General of Education Duncan Hindle responded that they were using 'survival rates', which measure the progression from grade to grade and the completion of schooling. He indicated that this rate cannot be used to calculate the number of out-of-school youth, since it does not account for late entry into school or repetition of grades. However, he argued, 'repeater rates are, like rape statistics, under-reported. Repeating grades is not something to talk about, especially when moving from one school to another. School principals can never know whether a pupil who drops into one school has dropped out of another'. This is the most basic kind of data which schools should keep: each learner should have a card which tracks his/her progress from year to year, and when the child leaves the school the card would be transferred to the new school.

Hindle then noted that the department uses household surveys to determine what the net enrolment of learners should be and that this indicated that, in 2003, 97 per cent of children in the compulsory school-going age were at school.[26] Another article responding to the *Mail and Guardian* article and based on research on behalf of the Department of Education concluded that around 40 per cent of learners did not complete grade 12.[27]

Jonathan Jansen, Dean of Education Studies at the University of Pretoria, remarked that there were no 'fine-tuned studies of drop-out rates. Which there should be—it's a huge issue'.[28]

22 *South Africa Millennium Development Goals Country Report*, 2005, p.6.

23 World Health Organisation, *Country Health System Fact Sheet 2006: South Africa*, available at: http://www.afro.who.int/home/countries/fact_sheets/southafrica.pdf.

24 South African Human Rights Commission, *Report of the Public Hearing on the Right to Basic Education*, 2006, p.21.

25 David Macfarlane, 'The disappearing schoolchildren', *Mail and Guardian*, 25 November 2005.

26 Duncan Hindle, 'Who is out of school', *Mail and Guardian*, 20 January 2006.

27 Luis Crouch, '*Disappearing Schoolchildren or Data Misunderstandings? Drop out phenomena in South Africa*', Annexure 3 of Minister of Education Response to Parliament on question 691, 2006. Available at http://www.rti.org/pubs/disappearing_schoolchildren.pdf.

28 Cited in Macfarlane, 'The disappearing schoolchildren', *Mail and Guardian*, 25 November 2005.

Access to information

South Africa is among the countries in the world whose legal framework is closest to best practice in relation to ensuring access to both state- and privately-held information.[29] Access to information in SA is a constitutional right and is regulated by the Promotion of Access to Information Act (PAIA). Yet there are still serious limitations in accessing information in the country.

In a comparative study published in 2003 for the Open Society Justice Initiative and conducted in South Africa by the Open Democracy Advice Centre (ODAC), the difficulties of obtaining information from public authorities is clearly highlighted. The study found that only 23 per cent of requests for information to 96 institutions actually met with delivery of information while 52 per cent had no response.[30] In a follow-up comparative study of 14 countries on access to information, conducted in 2006, South Africa registered as being the fourth lowest in compliance with requests for information, with only a 19 per cent compliance rate.[31] Only 23 per cent of requests actually met with delivery of the required information while 52 per cent of requests had no response—they were simply ignored. Although requesters can ask relief from the courts to obtain information, the process is cumbersome and expensive: there is a long way to go in practice with respect to the constitutional and legal provisions.

29 DPSA, and UN Office on Drugs and Crime, *Country Corruption Assessment Report*, April 2003, Foreword. Available at http://www.info.gov.za/otherdocs/2003/corruption.pdf.

30 Open Society Justice Initiative, 'Access to Information in the Republic of South Africa', Results of the Open Society Justice Initiative Access to Information Monitoring Tool, 2003, November 2004, p.2.

31 Open Society Justice Initiative, 'Transparency and Silence: A Survey of Access to Information Laws and Practices in 14 Countries', Open Society Institute, 2006, available at http://www.justiceinitiative.org. See also, Dale McKinley, *The State of Access to Information in South Africa*, Centre for the Study of Violence and Reconciliation, 2003, and *South Africa: Political Participation and Democracy*, AfriMAP and Open Society Foundation for South Africa, 2006, pp.68-71.

Difficulties in accessing information for this research

The researchers who collected the information that forms the basis for this discussion document faced many obstacles in obtaining information. Although the information officer of the national Department of Health was helpful, he could not supply provincial information; these had to be obtained piecemeal by the researchers.

In the Limpopo Province, despite strenuous efforts little information could be gleaned from that province without permission from the national Department of Health. The attempt to gain such permission to interview public officials was refused by the Director-General of the national Department of Health. The confidentiality of third party information clause in PAIA was cited in this refusal.

As far as the education departments were concerned, the researchers received much better co-operation. The national department allowed them access to their documentation. Likewise the Limpopo Department of Education facilitated access to senior public officials. In some instances these officials however neglected to attend pre-arranged interviews. The information officer of the Western Cape Department of Education was helpful but slow, and did not respond to requests for information within the legally required 30 days.

IV: Strategic planning

There are no authoritative international standards relating to the way in which strategic planning should be carried out. Nevertheless, there are a developed set of best practices on which national governments can draw, which encourage consultation and participation, fairness in outcome, and the inclusion of indicators that allow measurement of progress.[32]

All South African state departments are required to engage in strategic planning, under legislative mandates providing for departments to set out priorities and indicate how these will be achieved. The strategic plans usually cover a four to six year period and are presented in standardised formats. Both the health and education departments have plans and visions that emphasise access and quality of service. There is, however, a lack of co-ordinated time frames between national departments of government or between similar provincial departments. In other words, there is a need for more alignment and harmonisation of plans at national and/or provincial levels.

Ideally, departmental planning should have the benefit of input from a wide range of external and internal stakeholders. In South Africa, there are various consultative forums that are mechanisms for input into the development of strategic plans. For example, *imbizos* (open meetings with communities) are held in the various provinces and there are regular meetings between the executive counterparts in the various provinces and their respective ministers. The research for this report could not determine whether the inputs made at public participation forums indeed find their way into final policy documents.

The Department of Education has a structured way of consulting its external stakeholders, including teachers' unions and parent bodies. Union representatives interviewed for this research reported constructive relationships with the department. The

32 In the case of education, Article 14 of the UN Covenant on Economic, Social and Cultural Rights requires states to draw up a plan of action for the 'progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all'. The UNESCO Education for All programme provides guidelines on planning, at http://portal.unesco.org/education/en/ev.php-URL_ID=9306&URL_DO=DO_TOPIC&URL_SECTION=201.html. See also UN Committee on Economic, Social and Cultural Rights *General Comment No.11: Plans of Action for Primary Education*, E/C.12/1999/4. For health, see Andrew Green, *Strategic Health Planning: Guidelines for developing countries*, Nuffield Institute for Health, 2002, available at http://www.nuffield.leeds.ac.uk/downloads/guidelines.pdf; as well as the material on 'benchmarks of fairness' in making health policy choices, available at http://www.hsph.harvard.edu/benchmark/pdf/WHO_Bulletin_Article.pdf.

Department of Health has not been successful in building a national consensus in its policy making and planning. The adversarial relationship between the Department of Health and the Treatment Action Campaign (TAC) has been widely reported. For instance, the Department of Health expressly excluded the TAC from the UN General Assembly Special Session on AIDS, a position condemned by the UN Special Envoy on HIV/AIDS in Africa.[33] Encouragingly, in March 2007, a new plan on HIV/AIDS was released that envisages a close co-operation with civil society and the re-establishment of the South African National AIDS Council, under the leadership of Deputy President Phumzile Mlambo-Ngcuka, as highest policy and oversight body on HIV/AIDS.

In general, the strategic plans for the Departments of Health and Education address the main national priorities in their sectors, in line with national and international commitments, and also identify challenges for the implementation of the plans. However, there are weaknesses. The South African Human Rights Commission, for example, highlighted issues of access to education that were not adequately addressed in the strategic plan.[34] Violence in schools, a widely reported problem that contributes to low teacher morale, is also not adequately addressed in the current strategic plan. The Department of Health's strategic plan for 2006–09 deals extensively with tuberculosis, HIV/AIDS and sexually transmitted diseases (STDs)—despite (or perhaps because of) the national and international controversy over the position of the South African government on HIV/AIDS. The plan seems to be well thought out and documented: it aims *inter alia* to reduce the number of new infections by 50 per cent; bring treatment, care and support to 80 per cent of all HIV-positive people and their families; design policies aimed at reducing HIV among young people; increase availability and uptake of voluntary HIV testing and counselling services; and support efforts to develop microbicides and AIDS vaccine research.[35] For this plan to have an impact, it needs strong political leadership and commitment to the priorities established by the plan.

Provincial and municipal capacity to implement national plans

Communicating strategic plans to staff as a genuine guide to behaviour and priority setting is more of a problem: planning for implementation has been weaker than planning for the ideal. A report produced by the Human Sciences Research Council and the Medical Research Council in 2005 noted that policy implementation remains a major challenge for the Department of Education:

> Problems in implementation seem to arise out of a disjuncture between the national office and the provincial and district offices of the Department of Education, a lack of resources, inadequate planning for implementation

33 TAC *Electronic Newsletter* 23 April 2006, available at http://www.tac.org.za/newsletter/2006/ns23_04_2006.html#UNGASS; 'Fury as SA bars Aids lobbies from UN discussion', *Sunday Independent*, 2 April 2006, available at http://www.sundayindependent.co.za/index.php?fArticleId=3186241.

34 South African Human Rights Commission, *Report of the Public Hearing on the Right to Basic Education*, 2006.

35 Reuters, 'Factbox: South Africa's new HIV/Aids plan', 14 March 2007, available at http://alertnet.org/thenews/newsdesk/L14263581.htm.

> and preparation on the ground for the introduction of policy, a lack of awareness of the technical problems in the context of the implementation of policy, and some resistance from educators and officials to the policy. Generally the relationship between policy and practice needs to be better understood. [36]

Provincial departments are tasked not only with meeting the same standards expected of national departments in respect of strategic planning, developing expenditure frameworks and annual reporting, but also are expected to implement national strategic plans at their level. They are accountable to both their provincial legislatures and the national department. Discrepancies exist in the thoroughness of strategic planning across the provinces and in the managerial capacities of the different provincial departments. In this regard the Western Cape fares far better than Limpopo.

Moreover, the vast changes that the government has attempted to achieve in service delivery since 1994 have brought their own costs. In education, the new policies developed in areas such as teacher management, school restructuring and curriculum change have given provinces a sense of overload, with inadequate guidance about how to prioritise implementation; meanwhile, policy regulations place onerous administrative demands on teachers.[37] There are similar sentiments of 'transformation fatigue' expressed in the health sector: 'Because of all the change I am tired of change. Since 1994 these consistent changes. First it was the health policy they changed, we had to get this primary health care, we are since then still in a changing phase, because then it is this programme then it is that programme that's changing.'[38]

36 Leickness C. Simbayi, Donald Skinner, Lebogang Letlape and Khangelani Zuma, *Workplace Policies in Public Education: A Review focusing on HIV/AIDS*, Cape Town, HSRC Press, 2005, p.xv, available at http://www.hsrcpress.ac.za/full_title_info.asp?id=2086.

37 Anne Mc Lennan, 'Decentralisation and its Impact on Service Delivery in Education in Post-apartheid South Africa', in Guy Mohone and Omano Edigheji (eds), *Governance in the new South Africa: The challenges of Globalisation*, University of Cape Town Press, 2003, p.205; L. Chisholm, U. Hoadley, M. wa Kivilu et al, *Educator Workload in SA*, 2005, HSRC.

38 A quote by a facility manager cited in *South African Health Review*, 2005, p.141.

V: Budgeting and expenditure management

South Africa's legal framework relating to budgeting processes largely conforms with international best practice, and is in some respects a model for others to follow.

Key documents and institutions put into place since 1994 in relation to the management of macro-economic and fiscal policy include: the 1996 Constitution, the 1997 system of Medium Term Expenditure Frameworks (MTEF), the 1999 Public Finance Management Act (PFMA) and 2003 Municipal Financial Management Act (MFMA), and the establishment of a National Treasury in 2000 (provided for by the PFMA). The MTEFs replaced annual incremental budgeting, thus forcing departments to think through the financial implications of delivery plans over longer periods. The PFMA regulates the financial management of national and provincial government, while the MFMA regulates the finances of municipalities. The National Treasury has several functions including the co-ordination of inter-governmental financial and fiscal relations and the overseeing of budget implementations. It is also the responsibility of the Treasury to prepare annual consolidated financial statements and submit a subsequent audit report to the Auditor-General which is then submitted to Parliament and made public.

Minimum requirements for annual budgets are set out in the PFMA and great emphasis is placed on integrated planning; that is, identification of priorities prior to the drawing up of the budget. Provincial treasuries have to develop and monitor a provincial budget as well as submit a statement of revenue and expenditure to the National Treasury on a quarterly basis. In addition, accounting officers at both national and provincial level are responsible for keeping full records of all financial affairs.

Availability of budget documentation

In a survey of budget openness in 59 countries published in 2006, South Africa was placed in the top set of six countries providing 'extensive' information to citizens, scoring 85 per cent on the quality of information provided.[39]

39 International Budget Project Open Budget Initiative 2006, available at http://www.openbudgetindex.org.

Wide-ranging documentation on the annual budget, including budget reviews with extensive breakdowns in expenditure on social services at both national and provincial level, are continuously released by the National Treasury.[40] Both the national Department of Health and national Department of Education present detailed annual multi-year budgets to parliament, all publicly accessible, and comply with the PFMA in this regard. This documentation enables civil society organisations such as the Institute for Democracy in South Africa (IDASA) to critique state budget allocations and analyse the figures in relation to their compliance with strategic planning priorities and the effects on different population groups, such as women and children.[41] However, the budget documentation is not simplified by the government for non-policy experts to read, and while several independent organisations such as IDASA and the Eastern Cape-based Public Service Accountability Monitor comment on the budget after the fact, there is insufficient opportunity for civil society input on draft budgets prior to their debate by Parliament.

The departments also publish annual reports on how expenditure measures up to budgeted amounts. Importantly, these reports often expose problems such as under-spending, enabling scrutiny and comment by civil society organisations following the issues.

There are marked differences between the availability of budget information provided by the provinces: in the case of two provinces studied for this research there was much more information accessible for the Western Cape than for Limpopo. In the Western Cape, budget information allows allocations to be tracked against stated priorities. For Limpopo, the website was not accessible, though budget speeches for the province were available, revealing some information. In the case of Limpopo, strategic plans for the health budget implementation were only being drawn up after provincial budget allocations were received. There does not appear to be sufficient transparency in resource allocation in the provincial budgets.

In general, the information available indicates that the legislation to provide effective control of finances in South Africa is in place. The development of strategic plans and aligned budgets, within a medium-term framework, is also in place. Departments are faring better at spending their allocated budgets. However, there are great differences between the performance of different provinces, with the poorer provinces requiring much stronger capacity to implement budget policies.

Procurement

Section 217(1) of the 2006 Constitution stipulates that when an institution contracts for goods and services it must do so fairly, equitably, transparently, competitively and cost effectively.

Tender boards for managing government procurement existed in South Africa since the 1968 State Tender Act. Amendments to the Act in 2003 disbanded provincial tender

40 See http://www.treasury.gov.za.

41 See IDASA 'Budget Briefs', at http://www.idasa.org.za/biz/.

boards in favour of a 'supply chain management framework' (SCMF), in an attempt to address significant problems in the functioning of the tender boards.[42] The SCMF places huge emphasis on the responsibility of accounting officers, their ethical behaviour and adoption of standard bidding documents given to them by the National Treasury and several other duties and considerations. As part of the black economic empowerment (BEE) initiative, government procurement officers are required to use black-owned enterprises where possible, in terms of the Preferential Procurement Policy Framework Act of 2000.

Procurement is one of the areas of government activity most vulnerable to corruption. Despite legislation that exists to curb corruption and fraud through the publication of blacklisted companies and persons by the National Treasury, there are still many occurrences of fraudulent activities taking place. The 2002 Public Service Commission report found that 'the areas of Government activity most vulnerable to corruption and fraud of various kinds, are procurement, revenue collection, appointments and nepotism, and 'kickbacks' on contracts and sub-contracting consultancies'.[43] *Umqol' uphandle*, a non-governmental newsletter monitoring corruption in South Africa, also noted that 'Despite the existing array of tools for promoting transparency in public procurement, the awarding of public tenders is still notoriously opaque... Public information that can be used *ex ante*, to prevent tender corruption from occurring in the first place, is virtually non-existent. This is the root of what appears to be an increasing gap between *de jure* tender regulations and policies, and de facto practice by government bureaucrats.'[44]

Fiscal decentralisation

A key dilemma facing government in its attempts to improve service delivery is the tension between the need for tight central control to redistribute revenues in the interest of equity and to redress past discrimination in revenue allocation, and the democratic imperative in favour of greater decentralisation of decision-making.[45] Central government also faces widely differing capacity levels among provinces as well as persistent differential access to resources.

Chapter 13 of the Constitution stipulates that an act of Parliament must provide for the equitable division of revenue among national, provincial and local spheres of government. The primary laws governing fiscal decentralisation in South Africa are the annual Division of Revenue Acts, which specify what national, provincial and local government structures will receive. Despite mounting pressure to equalise per capita provincial expenditure across all provinces (to address vast inequalities in services and service standards), the Western Cape continues to have the highest per capita health expenditure, while Limpopo has the

42 See Hennie Van Vuuren, *The National Integrity System, Transparency International Country Study Report, South Africa*, 2005, p.65.

43 Cited in DPSA, op cit, p.69.

44 ISS, June 2007, *Umqol' uphandle*: South Africa Corruption Briefing.

45 Anne Mc Lennan, 'Decentralisation and its Impact on Service Delivery in Education in Post-apartheid South Africa' in Guy Mohone and Omano Edigheji (eds), *Governance in the New South Africa: The challenges of Globalisation*, University of Cape Town Press, 2003, p.188.

lowest. Inter-provincial equity was highlighted in a document produced by the Health Financial Planning and Economic Directorate which recommended a complete review of the budgeting system.[46] Central government efforts to set standards for service delivery and instigate 'pro-poor policies' are meant to redress past inequities and ensure resources are allocated equally between provinces.

School funding

The Department of Education has sought to bring equity into what is known as 'post-provisioning' in the education sector through the National Norms and Standards for School Funding.[47] The Norms and Standards for School Funding stipulate that although provinces determine the amount spent on education, 'allocations for recurrent cost items must be targeted as far as possible on the basis of need, determined according to the condition of the school and the relative poverty of the school community using the 'resource targeting table'.[48] The resource targeting table uses two equally-weighted factors: the physical condition, facilities and crowding of the school; and the relative poverty of the community around the school.

Their emphasis is on ensuring that 80 per cent of the budget goes to the poorest 60 per cent of schools in an attempt to bridge the existing material differences and concomitant quality of education. Schools are to be divided by the provinces into five quintiles from the poorest to the wealthiest.[49] Varying funding formulae have been applied as a guideline to ensure redistribution of resources among the quintiles. Prescribing budgetary allocations according to quintiles does restrict better-endowed provinces from using public funds to substantially improve their education systems. Fundamentally this formula limits provincial financial autonomy over education by naming target areas for costs on the basis of need, school condition and relative poverty of the school community.

Challenges remain in that schools have been placed in the incorrect quintile; for example, because most of their pupils do not live in the surrounding affluent area. Differences in school income persist, which exacerbates differential access to quality education and large provincial differences continue regarding annual school fees. Departments in Gauteng and Western Cape are better resourced and are therefore able to provide better quality education than the Eastern Cape, KwaZulu-Natal and Northern Provinces, which suffer from deficits in basic resource provision. The Human Rights Commission's investigation of the right to education concluded that government policies had largely failed to achieve their objectives and that departmental reports were 'misleading' on personnel spending.[50]

46 Department of Health, 'Report on Inter-provincial Equity', no date (2005), available at www.doh.gov.za/docs/index.html.

47 The Norms and Standards for School Funding are issued under the authority of the South African Schools Act 84 of 1996.

48 Norms and Standards for School Funding, p.B-51.

49 There are exceptions to this formula that provinces can make, e.g. if there are homogenous conditions making it impossible to distinguish between two quintiles.

50 South African Human Rights Commission, *The Right to Education: 5th Economic and Social Rights Report Series, 2002/2003 Financial Year*, June 2004, p.56, available at www.sahrc.org.za/old_website/5th_esr_education.pdf.

VI: Human resource management

Improved service delivery depends on the improvement of human resource supply: this is perhaps the critical area needing action by the South African government in relation to service delivery. Both within the staff of the relevant national and provincial departments and among frontline service providers—teachers, nurses, doctors and others—widespread staff shortages, lack of capacity and low morale are reported.

The Charter for the Public Service in Africa, adopted in Windhoek, Namibia in 2001, provides guidance on public service management; and Part IV deals with relations between the public service and public service employees, requiring that they should be 'based on professional merit and respect for human rights'. Sound human resource management is also recognized by the UN as imperative to meeting the Millennium Development Goals, since the 'development performance of countries is heavily underpinned by the quality of public administration'.[51] In 1994 the government embarked on far-reaching reform and restructuring of the public service. At national level, racially divided administrations were merged. The old Bantustan public services were reintegrated and nine new provincial public services established. The more than 1 000 racially divided local government structures in existence in 1994 were also reduced, to 283 municipalities at the 2006 local government elections. The gender and racial imbalance of the total public service had to be addressed as well. This was and still is a massive undertaking, since the total complement of public servants at the three levels of government comprises around 1,2 million people. In 1994, the higher rungs of the public service at all three levels had been mainly populated by white men, the majority also being Afrikaans-speaking, reflecting the policies of the apartheid era. Within a decade, the goal of a representative racial- and gender-based public service was showing signs of being achieved: at the top echelon, 56 per cent of senior managers were

51 United Nations, Development of Economic and Social Affairs, *World Public Sector Report 2005: Unlocking the Human Potential for Public Sector Performance*, quoted in Public Service Commission, *State of the Public Service Report 2006: Assessing the capacity of the state to deliver*, Public Service Commission, Pretoria, 2006, p.52.

white and 44 per cent were black by 2003.[52]

There were two measures introduced by government to assist the transformation process, namely, the offering of voluntary severance packages to public service employees and affirmative action. Although these measures were far reaching in terms of effecting equitable representation in the public service, the unintended consequence was a haemorrhaging of skilled personnel into the private sector and a concomitant need to hire or train up black staff to fill those positions at a very rapid rate.

Information about human resource challenges

While the government publishes quite extensive general information about human resource challenges in the health and education sectors, detailed information is much more difficult to come by.

Education

In its annual publication 'Education Statistics in South Africa at a Glance' the Department of Education publishes figures on educator–learner ratios, the average of which is 1:33 but can vary from 1:17 to 1:60.[53] In general, rural educators and African educators have far more learners per class than those in urban areas, with some extreme cases reflecting one teacher to 65 learners. Despite offering a brief insight into the human resource component of education, it is nevertheless more difficult to discern the actual number of teacher shortages from their published information. In general, there appears to be a paucity of information on educators in South Africa, i.e., their profile, training needs, and their distribution. A National Teacher Education Audit was conducted in the 1990s, but there appears to be no follow-up audit. A breakdown of teachers, in terms of category (educational level), pay scale, number of teachers per district, absentee rates, race and gender divisions, etc, can be sourced from the department's PERSAL system, used to pay salaries, but this is not publicly accessible.

Generally, it is understood that teachers are facing many problems, ranging from extreme inequalities in the distribution of resources that are still the inheritance of apartheid, to a physically stressful teaching environment characterised by too much work, too few teachers and high incidence of violence in schools. In addition, there are problems for teachers in attempting to apply the new labour-intensive Outcomes Based Education (OBE) approach.[54]

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52 On 31 March 2003, 72.5 per cent of the public service was African, 3.6 per cent Asian, 89 per cent coloured and 14.7 per cent white. With regard to gender, 52.5 per cent was female and 47.5 per cent male. However, at senior management level 56 per cent was African, 8.2 per cent Asian, 10.1 per cent coloured and 25.6 per cent white. The gender breakdown for senior management was 22.1 per cent female and 77.9 per cent male. The composition of the boards of state-owned enterprises with regard to race was as follows: 63 per cent African, 2.5 per cent Asian, 9.9 per cent coloured and 24.7 per cent white. In terms of gender, 76.5 per cent was male and 23.5 per cent female. The breakdown at senior management levels was as follows: 56.5 per cent was white and 43.5 per cent black with a gender breakdown of 75 per cent male and 25 per cent female. See discussion in AfriMAP and Open Society Foundation for South Africa, *South Africa: Political Participation and Democracy*, 2006, and Public Services Commission, *Audit of Affirmative Action in the Public Service*, February 2006.

53 Department of Education, *Education Statistics at a Glance*, 2004.

54 Elsje Hall, Mariam Altman, Nkululeko Nkoma, Karl Peltzer and Khangelani Zuma, *Potential Attrition in Education: The impact of job satisfaction, morale, workload and HIV/AIDS*, report prepared for the Education Labour Relations Council by the HSRC and MRC, HSRC Press, 2005, p.18-21.

Studies on the impact of HIV imply a need to annually replace 20 000 teachers, a massive problem considering that department figures indicate only between 5 000 and 7 000 new teachers being produced per annum.[55] The Department of Education's Strategic Plan does not specifically address the issue of HIV/AIDS and its effect on the teaching profession. The focus of HIV/AIDS in its strategic plan is on learners, not teachers.

Health

The public health sector has experienced a huge increase in the demand for service, given a policy of free primary health care through the district health system and the rise in tuberculosis and HIV/AIDS patients, with a simultaneous decline in its human resource capacity as many doctors and nurses immigrate or move into the private sector and fewer learners opt for the nursing profession. There are also provincial inequities in the distribution of health practitioners, with rural areas being particularly under-resourced.

As with the education sector, one of the primary challenges facing the health sector is aligning human resource management with the implementation of policies which place heavy burdens on human resource capacity. Primary Health Care (PHC), similar to OBE, places a heavy responsibility for implementation on the primary service providers. An estimated 20 per cent of nurses are HIV-positive, which has serious implications for future staffing unless these nurses can access antiretroviral treatment.[56]

The National Human Resource Plan recognises a number of trends impacting on human resources for health including the re-emergence of diseases, increased recognition of patient's rights, shrinking budgets for financing health programmes and increased costs of health care. The Department of Health also recognises the challenges presented by the increasing flow of qualified staff to the private sector or overseas. The resource plan consequently highlights the need to increase the number of health practitioners in South Africa.[57]

The most comprehensive analysis of human resources needs in the health sector is provided by outside commentators such as the Health Systems Trust (HST). For example, the HST publishes an annual South African Health Review, which analyses information available from the department and other independent research. In relation to the supply of nurses to the South African health system, the 2005 review notes that (based on 2003 figures) the estimated gap between supply and demand of nurses, in 2007, will be 1 851, increasing to 3 044 in 2009, but then decreasing again to 2 006 in 2011.[58] The HST comments that 'poor salaries, unfriendly work environment, increased work load, lack of recognition and career insecurity are the key reasons why nurses leave SA'.[59]

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55 Hall et al, p.1; Department of Education, 'A National Framework for Teacher Education in South Africa', 2004, p.10.

56 Health Systems Trust, 2005, p.105.

57 Department of Health, 'A National Human Resources Plan for Health to provide skilled human resources for healthcare adequate to take care of all South Africans', 2005, p.32.

58 Health Systems Trust, *South African Health Review 2005*, p.107.

59 Health Systems Trust, *South African Health Review 2005*, p.105.

Code of conduct

Important steps have been taken to address problems of skills and attitude in law and policy. Chapter 10 of South Africa's Constitution stipulates nine principles committed to ensuring a high standard of professional ethics and responsible public administration in accordance with democratic values. In 1997 a Code of Conduct for the Public Service was promulgated, applicable to all employees of government departments. It has been widely disseminated and an explanatory manual was developed in 2002.[60] In accordance with the best practices established in the Charter for the Public Service in Africa, the Code of Conduct addresses the issues of neutrality, non-discrimination, nepotism, corruption and recognizes the public's right of access to information. Senior management are required to declare their assets at the start of employment. These principles are augmented by the Batho Pele (Sesotho for 'people first') declaration, adopted in 1997, to which all departments and employees are required to adhere. In addition to the general Public Service Code of Conduct and the Batho Pele principles, the Department of Health adopted a Patients' Charter in 2000, which all staff must follow in their dealings with the public, and which is required to be displayed in all health facilities. In practice, implementing these principles has proved a greater challenge than adopting them: there is a need for a major effort to instil the values of public service among public servants—the creation of a common sense of ownership of the system.

Batho Pele principles

1. **Consultation**: Citizens should be consulted about the level and quality of the public services they receive and, wherever possible, should be given a choice about the services they are offered.
2. **Service Standards**: Citizens should be told what level and quality of public services they will receive so that they are aware of what to expect.
3. **Access**: All citizens should have equal access to the services to which they are entitled.
4. **Courtesy**: Citizens should be treated with courtesy and consideration.
5. **Information**: Citizens should be given full, accurate information about the public services they are entitled to receive.
6. **Openness and transparency**: Citizens should be told how national and provincial departments are run, how much they cost, and who is in charge.
7. **Redress**: If the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy; and when complaints are made, citizens should receive a sympathetic positive response.
8. **Value for money**: Public services should be provided economically and efficiently in order to give citizens the best possible value for money.

60 Code of Conduct for the Public Service, Chapter 2 of Public Service Regulations 2001, adopted under the Public Service Act, 1994, available at http://www.info.gov.za/gazette/regulation/2001/21951.pdf.

Training

The South African government has established by statute 'sector education and training authorities' (SETAs) with a key role to facilitate skills development in the different sectors. In relation to health and education the two relevant SETAs are the Health and Welfare Sector Education and Training Authority (HWSETA) and the Education, Training and Development Practices SETA (ETDP SETA). There has been criticism of the failure of the SETAs to deliver effective training and to adequately account for the spending of their budgets. A study by the Centre for Development and Enterprise (CDE) on skills shortages noted that most of the companies surveyed found the SETAs cumbersome to deal with, their assessors poorly trained, and the training inappropriate, and that they preferred the old apprenticeship training system. The Minister of Labour has also expressed his dissatisfaction with the SETAs, noting that six of the SETAs, including the Health and Welfare SETA, had received qualified audits.[61] The CDE survey found that the skills shortage was 'primarily driven by the failure of the public education system at all levels to deliver quality consistently and in enough quantity'.[62]

Education

The National Education and Policy Act 27 of 1996 demands much from teachers: every teacher is expected to fulfil seven roles, including learning mediator, scholar, researcher, and interpreter and designer of programmes, as well as assessment of results. The National Framework for Teacher Education, adopted in 2005 as the result of the work of a ministerial committee on teacher education, emphasizes teachers as the primary agents of quality schooling, as opposed to conceiving of quality in terms of class size and hardware. The framework conceptualises teacher education as made up of three interrelating sub-systems: initial professional education of teachers (IPET); continuing professional teacher development (CPTD); and the support systems needed to enable IPET and CPTD. With reference to CPTD, the report of the committee noted that, while there is a great deal of activity in this field, 'such interventions tend to be *ad hoc* and driven by immediate needs, and, overall, the field is haphazard, not clearly focused, and directionless'.[63] This was confirmed in interviews for this report, in which respondents argued that training has not been sufficient and that it relies on a cascading model (where those trained in turn train others) which may not be the most effective.

The ministerial committee's report noted that recruitment to the education profession was made more difficult by a centralisation of training in the urban areas and a reduction in the availability of full cost loans to potential students. In a welcome development, the Department of Education reinstituted in 2007 the old practice of giving full loans to study any teaching-related course at university. Apparently this was very successful in increasing

61 'Labour to Manage Media Training Body', *BuaNews*, 10 October 2007.

62 Centre for Development and Enterprise, *Evidence from the Corporate Coal Face Confirms Skills Shortage*, 20 June 2007, available at http://cde.org.za/article.php?a_id=256.

63 Department of Education, *A National Framework for Teacher Education*, Report of the Ministerial Committee on Teacher Education, Pretoria, 2005, p.39.

the numbers of teacher trainees, and the scheme is to be increased for 2008. The structure and provision of teacher education needs to be revisited but the details of how this is to be done are not clearly established in government documents.

Most training provided to existing educators by the Department of Education has been centred on implementing Outcomes-Based Education, but these are generally short crash courses and it is generally agreed that much more training needs to be provided to educators as well as principals (who may be required to undertake a one-year diploma course). In addition, the quality of training received at university level also needs to be improved upon.

The 2004–06 Department of Education strategic plan addresses the criticism of the quality of teachers by making provision for upgrading qualifications of under-qualified teachers. The Department of Education has also put forward five key strategies for intervening in teaching education. Among these strategies are the need to expand the Department of Education's knowledge of the teaching services and conditions; to continue professional development; to supply the necessary skills teachers require in their work including languages, mathematics, science and technology; to initiate performance-related pay and other incentives and to develop a system of accountability to ensure attainment of learning outcomes. However, it is unclear when these strategies will actually be realised, and in the meantime, teacher morale continues to be a major area of concern.

Despite reports that there are too few teachers, there are limited prospects for employment for those who do complete their IPET qualification. This is mostly due to the resource constraints in the national and provincial departments, which can only afford to employ a certain number of teachers.

Health

The Department of Health has taken steps to improve training of mid-level health managers, for example, through the British Department for International Development (DFID)-funded management education scheme offered at educational institutions, the Oliver Tambo Fellowship Programme offered at the University of Cape Town, and the summer and winter schools programmes offered at the University of the Western Cape. However, this training and innovation occurs in pockets rather than in the mainstream.

PHC nurses have had to assume extra responsibilities for many new programmes concerned predominantly with HIV/AIDS-related issues such as preventing mother-to-child transmissions, and have had to undertake extra training in this regard. These training programmes have not only added to the nurses' workload but have also been poorly co-ordinated, causing additional frustrations.[64]

64 Health System Trust, *South African Health Review 2005*, p.138.

Remuneration and conditions of employment

In relation to conditions of employment for those working in the education and health sectors, the 1995 Labour Relations Act governs all employed people in South Africa, including government employees. Affirmative action is an overarching principle of the public service, and employers are bound to conform to the requirements of the Employment Equity Act, 1998. The Public Service Regulations, published under the Public Service Act, 1994, provide comprehensive guidance on labour rights and responsibilities within the public sector.

Education

The Employment of Educators Act, 1998, provides for the regulation of the conditions of service, discipline, retirement and discharge of educators, setting out different responsibilities with respect to the employment of educators between the different levels of government. It stipulates that the minister determines the salaries and other conditions of service of educators, whilst educators may be employed by various different institutions. Any appointment, promotion or transfer of an educator to any post at a school can only be made on the recommendation of the governing body of the public school.

Studies have indicated many teachers wanting to leave the profession, citing low job satisfaction and salaries, lack of recognition and experience, lack of training and resources, increased bureaucracy in the Department of Education and increased job stress brought about by a high level of violence at schools.[65]

The Department of Education is attempting to address the salary problem by increasing salaries—it made R4.2 billion available to boost teacher salaries in 2006.[66] A further injection is expected in 2007. However funding is still unlikely to match the money that can be earned in the private sector. The salary increase proposed by the government was the subject of widespread strikes by teachers in June 2007. There is a proposal that the solution to inequities in salaries lies not in trying to provide equivalent salaries to the private sector, but in improving environmental conditions for teachers as well as increasing market-related improvements in subsidies that they still enjoy (for example, a housing subsidy).

The Department of Education has established an integrated quality management system which seeks to ensure quality public education through performance management, i.e. pay incentives will be based on performance. The application of this has been problematic as educators claimed that they were not given the necessary development training they required before the evaluations took place and therefore should not be penalized.

A broader societal problem, and not unique to South Africa, exists, namely that the status and respect that teachers once enjoyed in society has waned considerably with many people only choosing the teaching profession because of a lack of other options.

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65 Olive Shisana, K. Peltzer, N. Zungu-Dirwayi and J.S. Louw, 'The Health of our Educators: A focus on HIV/AIDS in South African Public Schools, 2004/2005 Survey', report prepared for the Education Labour Relations Council, HSRC and MRC, Cape Town.

66 *Independent Online,* 'Teachers get R4.2bn salary boost', 4 May 2006.

Health

The Public Service Commission's *State of the Public Service* report for 2005 stated that 'Public Service professionals (such as doctors and nurses) are paid markedly less than in the private sector while environmental factors and working conditions are not conducive to the retention of such personnel in the public service.'[67] There is an increasing shortage of nurses as more nurses leave South Africa largely due to poor salaries, increased workload, unfriendly work environment, career insecurity and a lack of recognition.

The Department of Health has attempted to address low salaries and resulting human resource flight largely through 'scarce skills' and rural allowances. However, problems that have already been identified with respect to these are that, for example, only a third of the health professionals in KwaZulu-Natal working in rural hospitals thought that they would be persuaded by a retention allowance of at least R50 000 per annum, and that allowances were not uniformly available across provinces.[68] The Department of Health has also used foreign doctors, primarily from Cuba, to service rural areas. The introduction of compulsory community service for some categories of health staff has met with mixed reactions, with many workers resentful of lack of supervision and poor working conditions.[69]

The right to organise

The Constitution provides in Article 23 for the right to fair labour practices for all, including the right to collective bargaining and to join a trade union. The Constitutional Court has confirmed that 'collective bargaining is based on the recognition of the fact that employers enjoy greater social and economic power than individual workers. Workers therefore need to act in concert to provide them collectively with sufficient power to bargain effectively with employers. Workers exercise collective power primarily through the mechanism of strike action'.[70] Under the Labour Relations Act, however, public sector workers providing designated 'essential services' are barred from striking. The law does, however, allow essential services workers to sign 'minimum service agreements' that will allow these workers to strike as long as agreed minimum levels of service are maintained. Unions complain that the South African government has dragged its feet in signing such minimum service agreements. In practice, workers in these sectors have been fired for going on strike, in the absence of such agreements.[71]

The National Education, Health and Allied Workers Union (NEHAWU) is the largest union organizing in the health and education sectors; the South African Democratic Teachers Union (SADTU) works specifically in the education sector; other unions are also active.

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67 Public Service Commission, State of the Public Service Report, 2005, cited in *South African Health Review* 2005, p.141.

68 Cited in Health Systems Trust, *South African Health Review 2005*, p.139.

69 S. Reid and A. Ross, 'Strategies for Facilitating the Return of Health Graduates to Rural and Under-served Areas', 2005. Available at http://www.interaction.nu.ac.za/SAARDHE/full%papers/REID%20AND%20ROSS.DOC.

70 *Ex Parte Chairperson of the Constitutional Assembly: In Re Certification of the Constitution of the Republic of South Africa* 1996 (4) SA 744 (CC) at paragraph 66.

71 William Johnson, 'Public sector strikes sweep through South Africa', *Labor Notes*, July 2007, No.340; Terry Bell, 'Essential service label clashes with right to strike', *Business Report*, 11 May 2007.

Strikes in the health and education sectors have taken place on many occasions since 1994, most recently in the case of a country-wide public sector workers' strike, including teachers and nurses, in June 2007, over pay and conditions—the largest strike since the institution of a democratic regime in the country. Despite the effect on learners, the strike enjoyed public sympathy; and for one day the public sector workers were joined in solidarity by workers in the private sector. The government, however, took a hard line with the strikers, and force and dismissals became a common response. These strikes affected the morale of the workers who had been campaigning for a 12 per cent increase. They eventually had to settle on a 7.25 per cent increase after long, hard negotiations.

Action against corruption and misconduct

A National Anti-Corruption Programme was launched in 1997 and a Public Anti-Corruption Strategy produced in 2002. The Prevention and Combating of Corrupt Activities Act, adopted in 2004, provides for a set of well-defined offences and tools for investigation and prosecution. While the law is strong in codifying offences and sets stringent sanctions for corrupt behaviour in both the private and public sector, no data exists regarding its implementation. It is, however, widely believed that the legislation has not been effectively implemented, while some important elements of the law have not been used at all, including a register of tender defaulters for corrupt businesses.

Strengthening its anti-corruption framework, South Africa is one of only a handful of countries that has 'whistle-blowing' legislation, the Protected Disclosures Act of 2000. This Act seeks to 'protect an employee, whether in the private or public sector, from being subjected to an occupational detriment on account of having made a protected disclosure'. However, the mechanisms do not seem to be working effectively: the Public Service Commission has noted the lack of clear guidelines on the operations of the Protected Disclosure Act and the cultural stigma around informants.[72] Civil society groups have called for the law to be reviewed in order to better protect employees who make disclosures. The Law Reform Commission has been working on a report on amendments to the law for over five years, but its findings have not been prioritised for debate in Parliament despite a resolution that they should be by the 2005 National Anti-Corruption Summit (a conference that brought together representatives of a broad range of organisations and sectors in South Africa).

In September 2004, the government also established a National Anti-Corruption Hotline, managed by the Public Services Commission, to encourage both members of the public and public servants to report corruption and other failures to provide public services as required. A 2007 report on the effectiveness of the hotline by the Public Services Commission showed that while the hotline had been used by the public, government departments' reactions to the cases reported to them as a result had been weak. Of the 4 182 cases of alleged corruption logged by the hotline between September 2004 and November 2006, the commission had found 2 296 cases to be potentially valid on preliminary evaluation, and referred them to the relevant departments or provincial governments for

72 Public Services Commission, *State of the Public Service Report 2006*.

investigation and action. However, only 830 reports on the status of investigations had been received back by the PSC.[73]

In 2003, the Department of Public Service Administration together with the United Nations Office on Drugs and Crime published a Country Corruption Assessment Report.[74] The report points to the fact that although a comprehensive legislative framework is in place, there are problems with implementation; in particular, weaknesses and shortcomings in the capacity and will of public sector bodies to implement and comply with the laws and overlapping mandates which affect the law enforcement agencies and the constitutionally created bodies.[75] The report indicated that there is 'no central database on incidents of corruption, nor of disciplinary or criminal cases related to corruption in South Africa. Most agencies that deal with corruption have not collated their information. Thus they are unable to state the detected or suspected level of corruption that exists within their organizations. They are also unable to systematically learn from the incidents'.[76]

While all departments have a set of disciplinary procedures and press reports indicate that many officials have been charged for misconduct, usually either by a fine or dismissal, the research for this report was also unable to obtain specific figures for the health and education departments in this regard: without such information it is impossible to see if the codes are effective. Both the grievance and disciplinary procedures should be made widely known to personnel and the outcome of disciplinary hearings publicised in detail.

As the government itself recognises, while South Africa's highly comprehensive anti-corruption legislative framework is in line with international practices, it is weak in the capacity and will of public sector bodies to implement the standards. Even at the highest level, news reports note that many cabinet ministers and MPs did not declare their assets despite requirements to do so.[77] For a code of ethics to become a living document, the leadership must set an example, as well as ensuring more effective training and policing for it to be respected.

In some cases national government has become involved provincially, following allegations of corruption and mismanagement. In 2003, on the request of the Eastern Cape premier, central government sent an 'interim management team' to the province to assist in dealing with corruption, fraud and maladministration among provincial staff and develop plans for implementation by administrators to address service delivery backlogs. In addition, a Joint Anti-Corruption Task Team (JACTT) was developed with the National Prosecuting Agency (NPA) to lead the way in prosecuting fraud cases.[78] The JACTT initially had a limited time frame of six months to carry out its work, but its mandate was extended

73 Public Services Commission, *Measuring the Effectiveness of the National Anti-Corruption Hotline*, June 2007; see also Wyndham Hartley, 'Feedback on graft hotline disappoints', *Business Day*, 22 June 2007.

74 DPSA and UN Office on Drugs and Crime, *Country Corruption Assessment Report*, April 2003, Foreword. Available at http://www.info.gov.za/otherdocs/2003/corruption.pdf.

75 DPSA, *Country Corruption Assessment Report*, p.6.

76 DPSA, *Country Corruption Assessment Report*, p.59.

77 See for example, 'MPs who tried to cover their assets', *Mail & Guardian*, 11 April 2007. See also Institute for Security Studies at http://www.iss.co.za/index.php?link_id=23&link_type=12&tmpl_id=2

78 'Govt determined to cleanse the civil service of corrupt elements', *BuaNews*, 21 July 2003.

to three years, largely due to its success. It eventually disbanded in April 2006 and the Special Investigating Unit of the NPA took over its work.

Project Consolidate

In 2004, the government announced a new initiative, known as Project Consolidate, consisting of a 'high-calibre team' which will work with 'municipalities that are experiencing a short term need for an intense hands-on support'.[79] Project Consolidate was a response to increasing dissatisfaction at the rate of implementation of service delivery, and was based on a survey of provincial and municipal government capacity to implement national policies. Though municipalities are not responsible for implementation of health and education services, the initiative is an important one in the general area of service delivery.

79 Minister of Provincial and Local Government F.S. Mufamadi, Budget Vote, National Assembly, 21 June 2004, cited in *Project Consolidate: A hands-on Local Government Support and Engagement Programme*, Department of Provincial and Local Government, 2004.

VII: External oversight mechanisms

There is international consensus that external oversight of the executive is essential to improving government performance in service delivery. A number of African standards reflect this consensus, including the AU Convention on Preventing and Combating Corruption, to which South Africa is a party.

The South African Constitution makes provision for the separation of powers between the legislative, judicial and executive authorities, and establishes in its Chapter 9 the offices of the Public Protector, the South African Human Rights Commission and the Auditor-General, each with important oversight functions.

The legislative and institutional apparatus to effect external oversight is thus well established. These mechanisms, however, rely on the co-operation of government departments to carry out their work effectively. They all report that this co-operation is less than optimum. Departments need to accord these institutions the necessary authority and respect to fulfil their oversight role, implement the specific recommendations made, and use the information as assistance in the monitoring and evaluation processes that should inform their strategies for service delivery.

National Assembly

Parliament is the most important institution for oversight of the executive. Section 56 of the Constitution provides Parliament with the ability to hold officials accountable by summoning them to appear before the full National Assembly or one of its committees. In practice, the portfolio committees of the National Assembly and the National Council of Provinces (the lower and upper houses, respectively) play the critical role in oversight of individual ministries and departments. Departments are required to present their draft budgets, strategic plans and annual reports to Parliament on a yearly basis. Part of the functions of the portfolio committees are to 'consider bills, deal with departmental budget votes, oversee the work of the department they are responsible for, and enquire and make recommendations about any aspect of the department, including its structure, functioning and policy. The work of committees is not restricted to government—they may investigate

any matter of public interest that falls within their area of responsibility'.[80] They also facilitate public participation, as committee meetings are open to the broader public and they hold public hearings on issues pertaining to tabled legislation.

The Departments of Education and Health both submit their annual reports, budgets and plans to the National Assembly portfolio committees on education and health for their review, after which committee members have the opportunity to question any submitted information.

A review of the minutes of the committees maintained by the non-governmental Parliamentary Monitoring Group (PMG) indicates that the education committee members debated budget votes and raised serious concerns relating to the provision of staff, to budget allocations within the department (such as an increased allocation to 'administration'), and teacher training. In all aspects the departmental official, in this case the chief financial officer, was noted as duly having answered questions and provided explanation. There is, however, no indication as to follow-up action. Similarly, the portfolio committee on health raised concerns with the Director-General; but again there is no indication of serious follow-up by the committee to the issues raised.

There are concerns about the quality of oversight by parliamentarians. Gwen Mahlangu, Deputy Speaker for the National Assembly, for example, urged MPs to take their oversight role seriously and warned them of the danger of sounding like *imbongis* (praise singers). She has criticized MPs for using speeches written by the departments over which they exercise an oversight role. Douglas Gibson, Chief Whip for the Democratic Alliance, has also been critical of capacity of Parliamentary Committees to fulfil their oversight role and he has been quoted as saying: 'all portfolio committees are, virtually without exception, grossly under-resourced and I don't think that they can hold the government to account properly, because there is a lack of capacity'.[81] There is a real need for MPs making up the committees to have better training on the specific areas of expertise which they are supposed to be supervising.

In addition, the critical work of the Standing Committee on Public Accounts (SCOPA) in overseeing executive performance has been mired in controversy. While SCOPA has played an important role in investigating corruption in major arms deals and other state contracts, several chairs of the committee have resigned, and there are concerns that its future role may be less effective.[82]

The Auditor-General of South Africa

The role of the Auditor-General of South Africa (AGSA), provided for by section 188 of the Constitution, is to ensure good governance, sound financial management and procurement practices by auditing and reporting on the accounts, financial statements and management of all national and provincial departments. The AGSA must also audit and report on

80 Committee information is available on the parliamentary website at: http://www.parliament.gov.za/pls/portal/web_app.new_middle_column?p_page_name=PARLIAMENTARY_COMMITTEES.

81 Cited in Hennie van Vuuren, *The National Integrity Systems: Transparency International Country Study Report South Africa*, 2005, Transparency International, Germany, pp.36 and 41.

82 See AfriMAP and OSF South Africa, *South Africa: Democracy and Political Participation*, 2006, pp.134-137.

municipalities and any institution authorised in terms of any law to receive money for a public purpose. The AGSA reports are accessible to the public and are submitted to Parliament through the Standing Committee on Public Accounts. Approximately 1 500 staff members (full- and part-time) are in the employ of the AGSA. All AGSA reports are public and available on the agency's website, an important tool for parliamentarians and civil society.

The AGSA conducts various audits, the most prominent being regularity auditing; performance auditing; computer auditing; forensic auditing and transversal audit issues. The 2004-05 report of the Auditor-General on audit outcomes for that financial year points out that measuring performance of the public sector is difficult without an agreed measurement tool, that managerial capacity is inadequate and tardiness in report submission delays procedures. Moreover the information technology systems used by national and provincial departments for personnel and financial management are often unreliable and this implies that the data used by these departments may therefore also be unreliable.[83] The AGSA also reports poor internal audit work within government departments, provinces and municipalities, largely due to a shortage of qualified staff.

Much of the Auditor-General's work is devoted to the auditing of financial statements, with little done in terms of auditing performance. AGSA has recognised this weakness, but has sought to address this by requiring that departments submit information on performance along with their financial statements.[84] This is not an adequate check, but is a start to correlating money spent with deliverables. Auditing performance should become an integral part of the audit by AGSA.

Many government departments have received unqualified Auditor-General reports over the last 10 years. The Health Department's reports, however, have been qualified for the last three consecutive financial years. The Education Department's audits have not been qualified, though some problems are noted.

Audit reports on the national Department of Health

For three successive years (2004–06) the Department of Health received a qualified audit opinion, indicating that there were aspects of the financial statements on which the Auditor-General could not express an opinion because they were false or incorrect and did not accurately represent how the department spent its money. The Auditor-General raised a number of concerns on the Department of Health's expenditure, including ineffective monitoring of grant expenditure; differences between amounts disclosed in financial statements and those received by provincial departments; the location of assets inaccurately recorded on the asset register; and limited operational activities of the South African National AIDS Trust resulting in failure to reach objectives. The AIDS Trust in particular has been criticised for its lack of delivery, and should be restructured to meet performance requirements.[85]

83 Auditor-General, *General Report of the Auditor General on Audit Outcomes for the Financial Year 2004-05*, p.2-3. All Auditor-General reports available at: www.agsa.co.za.

84 AGSA, *Activity Report for the Financial Year 2002-2003*, Pretoria, 2004.

85 *General Report of the Auditor General on Audit Outcomes for the Financial Year 2004-05*, p.99.

Audit reports on the national Department of Education

The Department of Education fared better in its audit reviews, however, it received notes from AGSA in relation to 'emphasis of matter'; that is, concerns that do not relate directly to whether the financial statements of a department are accurate or not, but rather to policy and proposed programmes of action or non-compliance with statutory requirements. The audit opinion stated that the fixed asset register was not current and that although the department had a framework in place to ensure conditional grants were transferred to the provinces, this framework had limitations. These limitations included financial reports that were not received from some provincial departments or were not signed by the responsible official. Incomplete financial reports, low spending trends by the Eastern Cape and KwaZulu-Natal as well as the lack of a tested disaster recovery plan all reflect the limitations of this framework.[86]

The courts

The courts perform a critical oversight role in relation to the executive, including on matters relevant to service delivery in both health and education sectors.

The Constitutional Court has considered the right to education and health service on several occasions. Among others: *Soobramoney vs Minister of Health, KwaZulu-Natal; Minister of Health vs the Treatment Action Campaign*; the *Grootboom case* and the *Gauteng School Education Bill case*.[87] In the *Soobramoney case* the Constitutional Court did not intervene in the resource allocation policies of the Department of Health. In the *TAC case* the Constitutional Court ordered the Minister of Health to provide Nevirapine to prevent mother-to-child HIV infections. In the *Grootboom case* the Constitutional Court ordered that the state did not have an obligation to provide immediate shelter to children. In the *Gauteng Education Bill* case the Constitutional Court found that education in a particular language was only enforceable if it was reasonably practicable. The more people in a given region who speak a particular language, the greater their right to be educated in that official language.

In 2007, the High Court ruled against Minister of Health Manto Tshabalala-Msimang in relation to an action for privacy brought against the *Sunday Times* newspaper, which had published an article alleging misconduct by the minister. The court ruled that the newspaper had the right to use information from the minister's medical records. The department, however, took out advertisements criticising the court's decision as 'a serious threat to one of the founding values of our Constitution, the rule of law'. The courts have also played an important role in issuing civil judgements against provincial departments for failure to deliver public services, including payment of social grants to applicants entitled to receive them. The record of provincial departments in paying out on these orders has been poor.[88]

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86 *General Report of the Auditor General on Audit Outcomes for the Financial Year 2004-05*, p.109-110.

87 *Soobramoney v Minister of Health, KwaZulu-Natal* 1997 (12) BCLR 1696 (CC); *Minister of Health v Treatment Action Campaign* (2) 2002 (5) SA 721 (CC); *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC); *Ex parte Gauteng Provincial Legislature in re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995* 1996 (3) SA 165 ('*Gauteng School Education Bill Case*').

88 See AfriMAP/OSF South Africa report, *South Africa: The Justice Sector and the Rule of Law*, 2005, pp.28-32.

Both in the highly charged political cases and in the more routine actions against provincial departments for failure to deliver, the executive has in general respected the orders given. Nevertheless, the public statements challenging court decisions in some cases are of concern, while the repeated delays in respecting court judgments at lower level indicate a lack of seriousness given to court rulings that also impacts severely on service delivery at provincial level.

The Public Services Commission

The Public Services Commission (PSC) is an important independent body established under Article 196 of the Constitution and accountable to the National Assembly, whose responsibility it is to promote the values and principles governing public services prescribed in the Constitution; 'investigate, monitor and evaluate the organization and administration and the personnel practices of the public service', and 'propose measures to ensure effective and efficient performance'.[89] The Public Service Commission also produces reports on the 'state of the public service' identifying challenges to be addressed.

The PSC is empowered by the Public Service Commission Act of 1997 to inspect departments and has generated reports on financial misconduct and opinion surveys on the public sector amongst others. For the financial year 2003/04 the PSC calculated the cost of financial misconduct as amounting to R20 352 101.88 (based on 60 per cent reporting).[90] In the education sector, the PSC has reported that the provincial departments of education have not fulfilled all requirements laid out with the Batho Pele policy. Specific areas were highlighted including rural schools' unfamiliarity with the statutory role of school governing bodies; varying time frames for schools regarding learning plans; lack of control by area and circuit managers over the quality of education; and finally an approximate 25 per cent of available school days are lost a year due to registration, exam-related administration or other non-teaching issues, meaning that intense quality education was required in the remaining days.

With regard to the health sector, the PSC noted that North West Province is the only one which consults directly with communities; inadequate resources in the PHC sector cause bottlenecks; clinics lack security and since there are rarely doctors available, clinics operate as a referral system; some hospitals keep expired medicine; health officials are frequently absent; an inadequate system exists for keeping patient records and there is no culture for giving information. The PSC has also provided examples of good practices by the provincial departments of health, including the temporary redeployment of staff by the Western Cape to areas where needed in KwaZulu-Natal, as well as seeking donor assistance with problems of resource scarcity.

The PSC, like other oversight mechanisms, has experienced resource problems that have hindered its efficacy. Not only is it under-staffed but also the often late, shallow and deceptive reports submitted by departments to the PSC impedes the PSC's functionality.

89 Constitution, 1996, section 196(4).

90 Public Service Commission, *Report on Financial Misconduct for the 2002/2003 and 2003/04 financial years*. This sum is approximately US$3,1 million.

Office of the Public Protector (OPP)

The Office of the Public Protector is charged with the responsibility to protect the individual from unfair and unjust actions of organs of state and with assisting the state to improve its services. The Public Protector Act of 1994 provides the Public Protector with the power 'to investigate, on his or her own initiative, or on receipt of a compliant, any alleged abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function'.[91]

Although headquartered in Pretoria, each province has an office of the Public Protector. The OPP is hindered by delays in correspondence, backlogs and a lack of resources. The research for this report could not find specific evidence of the OPP's effectiveness in relation to the health and education departments.

Media and Civil Society Organisations (CSOs)

South Africa has a vigorous media and civil society which can operate freely and independently in a post-apartheid environment to promote transparency and accountable governance. The media in particular ensures that corruption cases remain highlighted continuously, notably the weekly magazine *Noseweek*. Civil society organisations like the TAC often challenge government policies and internationalise domestic injustices. Research organisations such as IDASA, the Institute for Security Studies, the Public Service Accountability Monitor and the like, do their part in externally overseeing government policy and service delivery and publishing their findings. This role is absolutely critical in efforts to ensure effective delivery of public services.

91 Cited in DPSA, *Country Corruption Assessment Report*, p.8.

Recommendations

- The Batho Pele principles should be fully and integrally made part of the institutional ethos in all spheres of the administrative departments as well as schools and health facilities, based on training, leading by example, and effective disciplinary and other action against those who transgress;
- Access to information is a right in South Africa—yet one that is insufficiently respected in practice. Though there are many examples of good practice, both voluntary publication of detailed data and compliance with the constitutional and legal principles establishing access to information must be improved;
- Information management and monitoring and evaluation systems must be improved, and this information should feed into strategic planning. The collection of statistical data in the education and health sectors should be streamlined and professionalised by a well-designed computerised information technology system—saving staff time and generating reliable management and planning data. This should include the development of systems to provide generally accepted figures for the school drop-out rate and the death rate due to AIDS-related illnesses;
- The national Departments of Education and Health should be encouraged to involve civil society much more in their planning and decision-making processes, and the Department of Health in particular should take the initiative to rebuild its relations with civil society, especially groups working on HIV/AIDS;
- Investment in the recruitment, training and retention of educators and health personnel is a necessity: problems in these sectors are not due to a lack of available funding, but rather a lack of trained personnel;
- Government departments at national and provincial levels should ensure co-operation with all relevant oversight mechanisms and promptly implement their recommendations, including both court orders and the reports of the Public Services Commission, Human Rights Commission, Auditor-General and Office of the Public Protector.