

# CHAPTER THIRTEEN

## FINANCE

### POLICY MEASURES

#### National Departments

Various government departments were asked to report on the policy measures that were instituted in order to respect, protect, promote and fulfil socio-economic rights during the reporting period.

#### Department of Finance

##### Summary of Responses

According to the report submitted by the National Department of Finance (hereinafter referred to as National DoF), the Department is not responsible for the delivery of social services. Therefore it reported that there was no policy that was instituted during the period under review, which was aimed at protecting, promoting, respecting and fulfilling social and economic rights. It was stated that the National DoF together with the Department of State Expenditure co-ordinate the budget allocation process for all government departments and provinces.

Provinces and the National Departments are allocated their own separate budgets on the basis of information submitted by these Departments. It was stated that the recipients of such funds would be in a better position to give an account of the programmes that were instituted with the aim of contributing towards the realisation of social and economic rights.

It was stated that the new democratic government developed the Medium Term Expenditure Framework (MTEF) in order to address problems that were inherent within the DoF. The MTEF serves as a tool for assisting National and Provincial Departments to assess and plan their expenditure adequately. The MTEF operates on a three-year planning, which is for the immediate financial year and projections for the next two financial years.

##### Commentary

It appears that the Department allocated funds to various government departments on the basis of the information received from these Departments. However, the DoF failed to indicate how expenditure by government departments to ensure the delivery of social and economic rights was monitored. Furthermore, the criteria for allocating budget to the different government departments were not stated. It was also not indicated whether

there were funds that were specifically earmarked for uplifting previously disadvantaged groups, such as people with disabilities, poor communities and/households, etc.

### **Recommendation**

- The Department of Finance should report on how the expenditure of funds towards delivery of socio economic rights by government departments was monitored.

### **Department of Labour**

#### **Summary of Response**

It was indicated that the Provincial Benefit Committees were appointed in ten regions, which were not mentioned. These committees were constituted of an equal number of representatives from labour movements and business. The committees were reportedly responsible for handling appeals against decisions not to award unemployment insurance benefits. The Unemployment Insurance Board was reportedly the highest decision making body, which has the powers to either uphold or dismiss the outcomes of the committees.

It was also reported that 140 000 booklets on Unemployment Insurance Act, which explained the rights, responsibilities and benefits from the Act, were produced and distributed throughout the country. These booklets were produced in English. The report also indicated that more offices were opened countrywide, including rural areas, in order to improve access to unemployment insurance benefits. In the same vein, it was stated that the Department of Labour (DoL) served people in the language of their preference in order to ensure access to unemployment benefits.

In order to address the needs of the previously disadvantaged groups, the DoL had negotiated with the First National Bank to pay cash grants, on behalf of the DoL, to all beneficiaries who were previously denied access to banking accounts.

#### **Commentary**

Although the DoL had demonstrated that the implemented policy measures were targeted at members of the previously disadvantaged groups, it was not stated whether these policy measures were instituted during the reporting period.

Similarly, even though the DoL had reportedly produced 140 000 booklets informing people about their rights and benefits, it is unlikely that the supply of such communication materials was sufficient to meet the needs of the entire country. Another limitation regarding communication materials relates to language that was used to produce materials. It appears that only people who were able to read and understand English were able to access information on Unemployment Insurance Act.

Nevertheless, the DoL should be commended for delivering services in the language preferred by beneficiaries. In addition, it appears that the DoL strives to increase accessibility to unemployment insurance benefits by establishing satellite offices.

### **Recommendations**

- It is important to indicate the period in which policy measures were instituted.
- Develop communication materials and messages in the language that would be intelligible to the target audience.

## **Department of Trade and Industry**

### **Summary of Responses**

Asked about policy measures that were instituted to ensure a progressive realisation of socio-economic rights, The Department of Trade and Industry (DTI) mentioned the White Paper on National Strategy for Development and Promotion of Small Business in South Africa. According to the report, the main objective of the White Paper was to create an enabling environment for small business enterprises by making finances and markets accessible, and by creating a favourable regulatory environment for small business to thrive.

There were other projects that were reportedly initiated by the DTI through Ntsika Enterprise Promotion Agency, which were meant to promote the well being and development of the disadvantaged groups. These projects included:

- School Leavers Opportunity Training Programme.
- Innovative Business for the Disabled.
- Agriculture Based Products Project.
- Product Improvement Projects.
- Project Grime Buster project.

The above-mentioned projects were reportedly aimed at promoting small businesses with the view of creating employment and thus contributing to economic development.

### **Commentary**

The main shortcoming of the report submitted by DTI relates to failure to demonstrate the manner in which the above-listed initiatives have contributed towards uplifting members of the previously disadvantaged group. For instance, it would have been useful to provide information regarding the success rate or effectiveness of the above-listed projects, in terms of creating employment and economic empowerment of the previously disadvantaged groups. Also, information should have been provided regarding the number of people who were reached through these projects. Furthermore, these projects were listed without explaining what they entailed.

Failure to provide detailed information on the instituted measures made it difficult to determine the role of the DTI in advancing delivery of socio-economic rights. At the time of analysis information from other sources could not be obtained.

### **Recommendations**

- The report should focus on policy measures that were instituted during the period under review.
- The Department should indicate the effectiveness of instituted measures in addressing the plight of the previously disadvantaged groups.

### **Provincial Departments**

#### **Summary of Responses**

The Eastern Cape Department of Economic Affairs, Environment and Tourism only stated that a policy document and a strategic economic plan were developed to progressively realise economic and social rights. The Free State Department of Finance, Expenditure and Economic Affairs reported that its core function does not include service delivery, but involved the overall management of Provincial funds and the promotion and facilitation of investment and economic development. The Department further stated that its mandate and competence falls only within the consumer and producer rights. The Free State Department has however established a Departmental Transformation Unit in order to guide the transformation process. Further, the Department has also established a Special Programmes Division, which is responsible for gender, affirmative action and disability issues. It also aims to empower the vulnerable and previously disadvantaged groups through Small, Medium and Micro Enterprises (SMME) programmes and projects. According to the report, there were no special programmes to address the needs of the following groups:

- People living in informal settlements
- Children
- Older persons
- Poor persons.

The Gauteng Department of Finance and Economic Affairs in response to questions on policy measures that were instituted to protect, promote, respect and to fulfil socio-economic rights indicated that it was not in a position of providing any policy measures. The reason for not responding to the protocol was that the Department does not deliver services directly to people. The Department however indicated that it does have policies that deal with the procurement of goods and services and policies on Small Medium and Macro Enterprises (SMMEs). These two policies are meant to give preference to those categories of society that are vulnerable and were previously disadvantaged. It is through these policies that past imbalances would be corrected.

The DoF in Mpumalanga reported that its function was to oversee financial management and to enhance effective and efficient financial control amongst government departments. It also indicated that for the financial year 1998/99 the Department had a budget allocation of R263 million.

The Department also indicated that although it does not have direct contact with communities, it linked up with them through the activities of the Provincial Tender Board, which administered government tenders. According to the report, the main objective of the Tender Board is to promote participation of the vulnerable and previously disadvantaged groups in the economic activities through SMME. This objective is realised either by the preference system that the Board uses when awarding tenders. A number of satellite offices were opened to facilitate this objective and to increase access in the rural areas. The report further indicated about 117 projects with a total value of R60 million were awarded to the vulnerable and previously disadvantaged groups.

The Northern Cape Department of Finance mentioned the Preference Point Tendering System as a measure that was introduced in order to ensure a progressive realisation of socio-economic rights. This System was reportedly adopted by the national government to be implemented by provincial governments. According to the report, people living in rural areas benefited from this System in that Tender Notices were advertised in newspapers and Notice Boards. Women and other groups from previously disadvantaged backgrounds were given preference. The report also indicated that the poor and the unemployed could also participate in the tendering. The report also indicated that when tendering, the Preference Point System as instituted by government promotes the interests of members of the previously disadvantaged groups in that it gives them preferences when tendering.

The DoF in the Northern Province in its response to the policy measures that were instituted to protect, promote, respect and to fulfil the social and economic rights provided the following list of programmes:

- Provincial Growth and Development Strategy
- Provincial Economic Strategy
- Provincial Flagship Projects Document
- Northern Province Spatial Rationale
- Northern Province Tender Board Policy on Procurement System
- Macro Tourism Development Framework
- Producers Co-operatives
- Targeted Assistance Programme

The report indicated that these policies were developed in consultation with all stakeholders. It was further indicated that these measures had contributed immensely in creating an enabling environment for the vulnerable and previously disadvantaged groups to participate in the growth of the economy. Thus, the vulnerable and previously disadvantaged groups are now able to compete with the previously advantaged groups.

The report stated that the above-mentioned measures were effective in that they helped to redress the economic inequalities and therefore ensure the redistribution of wealth.

The DoF in the North West reported that policy measures for the development and social upliftment of communities were designed by the National Government. The Department was reportedly only responsible for implementing those policies. The report stated that the main policy measure that was undertaken and implemented, was the policy on SMMEs. The Department developed a five-year strategy, which outlined the ways in which SMME's, will be supported.

The Innovative Disabled Entrepreneur Award Scheme was introduced to accommodate people with disabilities. In addition, the Millennium 2001 Fund was developed, which was aimed at assisting women, youth the disabled. With regard to the rural poor and the unemployed, a special Fund was reportedly set up to cater for this group of people. However, the name of the Fund and its objectives were not provided.

The DoF in KwaZulu-Natal did not respond to the protocol, whilst the Western Cape Department of Economic Affairs, Agriculture and Tourism provided information that was irrelevant for purposes of this report.

## **Commentary**

Most departments did not indicate the period within which the policy measures were instituted. The departments did not reflect on how the policy measures impacted on the vulnerable and previously disadvantaged groups. Given the fact that the departments indicated that they dealt with the allocation of the budget to various departments within their provinces, the criteria for allocation of funds into various programmes that relate to socio-economic rights should have been reported. In the same vein, most departments did not report on the effectiveness of instituted policy measures as requested in the protocols.

The Eastern Cape Department failed to state the name of the policy document and the strategic plan. Furthermore information was not provided on what the policy and strategic plan entailed. The Free State Department indicated that it dealt with consumer and producer rights. However, was also not clear how this mandate was utilised to contribute towards the realisation of socio-economic rights. It was also mentioned in the report that there were programmes and projects that were aimed at empowering the vulnerable and previously disadvantaged groups, however, an explanation was not provided of what these programmes entailed.

The Gauteng Department of Finance and Economic Affairs provided an insufficient and inadequate report. There was no indication of the period within which the two mentioned policies were instituted. Although the Gauteng Department concedes that it does not deal directly with issues relating to socio-economic rights, it does however have policies that give preference to the previously disadvantaged sectors of society, such as people with disabilities, through the provision of Small, Medium and Macro Enterprises

(SMMEs). The policies that were mentioned in the summary above, particularly on the SMMEs do have a direct bearing in contributing in the realisation of socio-economic rights for the vulnerable and previously disadvantaged groups. It was therefore imperative for the Department to provide details on these policies. Whilst the Department indicated that the policy measure on SMME was meant to give preference to the vulnerable groups, there was no elaborate information provided to that effect.

The Mpumalanga Department stated that 117 projects valued at R60 million were established, however, it was not stated what these projects entailed. It was also not indicated what criteria were employed to fund projects.

Although it is mentioned that the only means of contact that the Department had with communities was through the Provincial Tender Board, the exact role of the Department was not clearly spelt out in the report. Information regarding policy measures that were instituted to respect, protect, promote and fulfil socio-economic rights was also not provided in the report. With regards to budgetary allocation, the report did not indicate how funds were utilised to ensure a fulfilment of socio-economic rights.

According to the report submitted by the Northern Cape, there were no other policy measures that were instituted except for the Preference Point System. The Department failed to indicate whether the Preference Point System mentioned was instituted during the period under review. It could be said that the Preference Point System contributed towards a progressive realisation of socio-economic rights by giving people from disadvantaged backgrounds preference when awarding tenders.

The Northern Province reported that the policies were developed in consultation with all stakeholders. The report failed to elaborate on the “conducive environment” created for the vulnerable groups to participate in economic growth. It was also reported that previously marginalised groups were afforded an opportunity to compete with the previously advantaged groups. However, this issue was also not elaborated in the report.

The report also indicated that the province had developed a five-year strategy which outlined ways in which SMME's would be supported, however, there was no further elaboration on this strategy. The same applied with regards to the special Fund that was set up for people with disabilities and the unemployed. In addition, it was also not explained how people with disabilities benefited from the Innovative Disabled Entrepreneur Award Scheme.

The report submitted by the Western Cape Department was inadequate in that it did not bear any direct relevance to the requirements stipulated in the protocol.

## **Recommendations**

- The Departments should reflect on how the measures mentioned above contributed in the realisation of socio-economic rights.

- Only measures that were instituted during the period under review should be reported.
- The reports should concentrate mainly on measures that directly impact on the vulnerable and previously disadvantaged groups.

## **LEGISLATIVE MEASURES**

### **Summary of Responses**

The National DoF has instituted the Public Finance Management Act of 1999 (PFMA). This law is intended to make a significant, though indirect, contribution to government's support for social and economic rights.

The National DTI has instituted the Small Business Act in line with the legislative framework created by the National Strategy. The Act provides for an institutional framework for the promotion and development of small business.

This Act has brought about institutions such as Ntsika Enterprise Promotion Agency and Khula Enterprise Promotion Agency. It also provided functions for these institutions.

The National DoL has pleaded lack of capacity to respond to the protocol. At provincial level, only Eastern Cape and Gauteng have instituted legislative measures. KwaZulu-Natal Province did not submit a report, as well as Free State, which pleaded lack of mandate to address economic and social rights. Other provinces did submit the reports, but they mainly cited national legislation.

The Eastern Cape Legislature has passed Development Corporations Act, Gaming Betting Act, and Tourism Board Act. These laws are intended to establish parastatals in line with the economic policy document. The Gauteng DoF and Economic Affairs has tabled before the Provincial Legislature the Tourism Act, which is designed to direct tourism promotion and development in the province. The Act provides that certain percentages of the revenues raised shall be utilised towards the development of the previously disadvantaged groups. The coming into force of the Act awaits the completion of Regulations. The implementation of this law was expected at the beginning of 2000.

### **Commentary**

The information provided by DoF is not sufficient in terms of providing answers to the questions asked in the protocol. Some of the questions were not answered, such as the one on special considerations regarding vulnerable and previously disadvantaged groups. The Department did not indicate how it structured budget in consideration of the plight of the vulnerable and formerly disadvantaged groups. The report showed that the Department does not take the interest of the above-mentioned groups into consideration.

The objectives and purposes of the PFMA were not clearly explained. The impact that the PFMA had on the realisation of economic and social rights was not clarified. The Department asserted that PFMA is concerned with the promotion of modernised financial management in the public sector, but did not explain how this was achieved. The report has very good concepts such as transparency, public expenditure, revenue, assets and liabilities. However, it failed to give an account on how the PFMA will effect these concepts in a manner that advances the progressive realisation of socio-economic rights.

There are several Bills that were passed during 1997/8, that are aimed at reforming the government's financial management. Some of these were passed into law,<sup>1</sup> such as the Division of Revenue Acts of 1998 and 1999, which gave effect to section 214 of the Constitution. The purpose of these laws is to divide nationally raised revenue among all spheres of government. This is some information that the report was supposed to have provided because it is the main duty of the DoF to distribute national revenue to all levels of government.

The government has aimed at reprioritising its spending to meet the reconstruction and development objectives. This was clear from its commitment to finance, *inter alia*, low-income housing, water and sanitation projects, free primary health care and enhance small business support.<sup>2</sup> The National DoF is therefore obliged in terms of the law<sup>3</sup> to institute legislative measures that will ensure the realisation of these aims, and to provide information on those legislative measures to the Human Rights Commission.

The information provided in the report from DTI is not sufficient in terms of the questions in the protocols. The responses are to a larger extent irrelevant and not detailed. Some of the questions were not answered. The DTI has failed to provide information on how it has instituted legislative measures to respect, protect, promote and fulfil socio-economic rights. The Department should play an important role in terms of distributing resources, especially finance, with the objective of realising all socio-economic rights provided in the Bill of Rights.

The Small Business Act did not directly advance the realisation of economic and social rights. It mainly promoted the development of small bussiness, and not necessarily socio-economic rights of the public in general. It does not cover the advancement of socio-economic rights at grass root level in terms of considering the circumstances and special needs of the vulnerable and previously disadvantaged groups. Efforts should be directed at the realisation of all the socio-economic rights in the Bill of Rights, and not just to advance business opportunities. Therefore, the measures as stated in the report are not sufficient to meet the constitutional obligations.

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<sup>1</sup> Burger, D (ed). *South Africa Yearbook*. (1999) 310

<sup>2</sup> *Ibid.* 310

<sup>3</sup> Article 7(2) of the Constitution.

According to DTI report, the legislative measures only cater for small entrepreneurs. This shows that the contents of socio-economic rights are not appreciated and comprehended. All these rights belong to everyone, which makes it imperative for the government to develop and implement laws that will protect the rights of everyone.

The DoL has a significant role to play in the realisation of economic and social rights. The assertion that legislative measures for the respect, protection, promotion and fulfilment of socio-economic rights are not applicable to it is not true. Employment is also a socio-economic right that is implicit in the Constitution. There is a right to work in order to improve the quality of life of South African citizens. This right is also recognised under international law.<sup>4</sup> The Department therefore has a responsibility to respect, protect, promote and fulfil this right.

The Department failed to mention important measures instituted during the period under review, such as Basic conditions of Employment Act of 1998, the Employment Equity Act of 1998, and Skills Development Bill of 1998. These measures can, if implemented appropriately, address challenges<sup>5</sup> of dealing with high level of unemployment, job creation, discrimination issues, and difficulties faced by previously disadvantaged groups, especially rural women.

The right to work should be seen as a measure by which the people can improve the quality of their lives. Poverty is inherent in societies that have a high number of unemployed people.

The right to work is linked to other rights such as equality at workplace, adequate standard of living and social security. In many instances, people who are employed are enabled to access certain services such as adequate health, education and housing. Getting people employed, is a way of empowering them to make a good living for them. Though the Constitution does not specifically provide for the right to work, this right is implicit, especially in the preamble.<sup>6</sup> In addition to this, South Africa's membership to the International Labour Organisation and its ratification of the African Charter create an obligation for the state to respect, protect, promote and fulfil the right to employment.

The Provincial Departments that instituted legislative measures are Eastern Cape, Gauteng, Northern Province and Western Cape. However, the instituted measures are irrelevant in as far as the realisation of socio-economic rights is concerned. For instance, the Development Corporations Act, Gaming and Betting Act, and Tourism Board Act passed by the Eastern Cape Legislature are not relevant. The report did not explain the purpose of these laws with regards to the realisation of economic and social rights.

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<sup>4</sup> See Article 6 of International Covenant on Economic, Social and Cultural Rights, and Article 5 of the African Charter.

<sup>5</sup> The National Action Plan for the Promotion and Protection of Human Rights, 96

<sup>6</sup> *Ibid*, 94

Gauteng Department of Finance and Economic Affairs has introduced before the Provincial Legislature the Tourism Act. Though the Act provides that certain percentages of the revenues raised from tourism shall be utilised towards the development of the previously disadvantaged groups, it does not directly enforce the respect, protection, promotion and fulfilment of economic and social rights in terms of setting a legislative framework that will ensure the financing of socio-economic rights delivery. The Department of Finance, Economic Affairs and Tourism in the Northern Province has mainly cited national legislation, of which is irrelevant to its report. The report from Western Cape Department of Economic Affairs, Agriculture and Tourism could not show the relevance of the Traffic Act and the Western Cape Land Administration Act in as far as the realisation of socio-economic rights is concerned.

## Recommendations

- Both National and Provincial Departments should live up to the commitments of the government to a sound public finance system.<sup>7</sup>
- In providing responses to the protocol, there should be compliance with the format of the protocol. If there are no legislative measures instituted during a particular reporting period, this should be acknowledged in the report. The report should entail all legislative measures instituted during the reporting period.
- Looking at the central role the DoF is to play, most importantly to distribute financial resources to other Departments, there should be laws that will ensure that the distribution of funds are aimed at enabling other Departments to meet their constitutional obligations to progressively realise economic and social rights. Regard should also be taken of the challenges in the National Action Plan that face the government in addressing these rights.
- Legislative measures should be implemented for the benefit of everyone, not only a class of certain people in the society.
- Since it appears generally from both the national and provincial, that there are no adequate legislative measures instituted, the government should endeavour to formulate legislation that will ensure the realisation of socio-economic rights, especially to address the challenges as mentioned in the National Action Plan for the Promotion and protection of Human Rights.
- The National DoL should not disclaim responsibility to institute legislative measures for the realisation of socio-economic rights. All government departments have the responsibility to respect, protect, promote and fulfil economic and social rights.<sup>8</sup> Further, they are obligated in terms of Article 184(3) of the Constitution to provide information on those measures they have taken to fulfil this obligation.
- The right to work should be considered as a right belonging to socio-economic rights group because it also covers other rights such as social security and adequate standard of living.
- The Provincial Departments should draw a distinction between provincial legislation and national legislation. The former should form the significant part of their reports, while the latter could be referred to where it is of relevance.

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<sup>7</sup> Burger, D (ed). South African Yearbook. (1999) 307

<sup>8</sup> Article 7(2) of the Constitution.

## **LIST OF ABBREVIATIONS**

<b>DOF</b>	Department of Finance
<b>DOL</b>	Department of Labour
<b>DTI</b>	Department of Trade and Industry
<b>MTEF</b>	Medium Term Expenditure Framework
<b>PFMA</b>	Public Finance Management Act
<b>SMMEs</b>	Small Medium and Micro Enterprises

## **BIBLIOGRAPHY**

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4. African Charter on Human and Peoples' Rights, OAU Assembly of Heads of Government, 1981.
5. Convention on Economic, Social and Cultural Rights, United Nations General Assembly, 1966.