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The economic context of realizing socioeconomic rights in South Africa

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WIDER Working Paper 2023/129

**The economic context of realizing
socioeconomic rights in South Africa**

Philippe Burger*

October 2023

Abstract: The South African constitution is considered progressive and transformative in intention due to its inclusion of socioeconomic rights, such as the right to education, land, food, and healthcare. However, some of these rights are qualified by the availability of resources to the state, which places an imperative on the state to realize these rights progressively as resources become available. The deteriorating economy, low economic growth, and worsening public finances have led to increasing pressure on the government to cut its expenditure to regain fiscal sustainability and stem the growth of the government's debt burden. This threatens to roll back the progressive realization of socioeconomic rights, a phenomenon known as retrogression. A range of individuals and organizations oppose the cut-back of expenditure. The paper addresses how the government should reconcile the imperative placed on it by the constitution to realize socioeconomic rights with limited and shrinking resources available to do so.

Key words: socioeconomic rights, retrogression, economic growth

JEL classification: H5, K38, O23, O43

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1 Introduction

The South African constitution includes a number of socioeconomic rights, such as the right to education and access to land, food, and healthcare. The inclusion of these rights, over and above the standard set of civil and political rights, defines the South African constitution as progressive. Indeed Liebenberg and Goldblatt (2007: 338) and Ngang (2014) define the South African constitution as transformative in intention. Nevertheless, what is noticeable is that a number of the socioeconomic rights are qualified by the availability of resources to the state. This places the imperative on the state to realize these rights progressively, as resources become available.

With the deterioration of the South African economy and the finances of its government, there is increasing pressure on the government to cut its expenditure to regain fiscal sustainability and stem the growth of its debt burden. The situation has become much starker in the aftermath of the COVID-19 pandemic. The economic deterioration and the need to stabilise the government's debt burden threatens to be retrogressive and thus roll back the progressive realization of socioeconomic rights. This has led a range of individuals and non-governmental organizations to oppose the cut-back of expenditure and even to call for increased expenditure.

This raises the question, addressed in this paper, of how the government should approach reconciling the imperative placed on it by the constitution to realize socioeconomic rights with the limited and even shrinking resources available to do so. The need for such reconciliation lies in the constitution, as the constitution also places an imperative on government to manage its debt. Note that the paper does not focus on the latest budget but on the approach the government, and society at large, should take in reconciling the realization of socioeconomic rights with budgetary pressure.

Involving society at large implies that the process should be inherently democratic and consultative. It also needs to be a structured approach to ensure that government and society take an informed decision, accounting for all the information and trade-offs involved. It also needs to account for the fact that even in a fully democratic society not all stakeholders have a voice. Specifically, future generations have little or no voice in decisions taken today and depend on the current generation to act as stewards of their interests. In the interest of future generations, the approach taken to the reconciliation of budgetary pressure and the realization of socioeconomic rights should explicitly and transparently account for their interests. This paper sets out a framework for reconciling the realization of socioeconomic rights with budgetary pressure.

In response to the budgetary cutbacks announced in February 2021, Petherbridge et al. (2021), representing Section27, argued for greater public participation in the budgetary process and for human rights impact assessments to accompany the budgeting process. The latter is meant to ensure that the impact of the budget on the realization of socioeconomic rights is fully assessed and accounted for in public. The proposal by Petherbridge et al. (2021) concurs with the proposal by Dawson (2014), who proposed a set of indicators with which to track the progressive realization of socioeconomic rights. The criteria for indicators focused both on the effectiveness of service delivery (i.e. whether or not a service was delivered, and how much was delivered) and on the efficiency and adequacy of delivery.

This paper supports both increased public participation and the implementation of rights impact assessments to accompany the budgeting process. The latter should provide information that will ensure that public participation and debate take place on a fully informed basis. Such information should also be augmented with an analysis of the impacts of alternative budgetary options so that participants understand the trade-offs involved, both at a given moment in time and over the short

and long runs. Hence, I present and propose the use of four sets of indicators to assess the human rights impact both at a point in time and intertemporally.

In addition to a quite well-developed literature on socioeconomic rights in the South African context (see Bilchitz 2015; Brand 2011; Jagwanth and Soltau 2014; Klaasen 2020; Kornienko 2017; Liebenberg 2002, 2006, 2014, 2021; Liebenberg and Goldblatt 2007; Mubangizi 2006; Ngang 2014), there is some academic literature that examines economic aspects of the realization of socioeconomic rights (see Beukus and Fourie 1988; Bilchitz 2014; Chetty 2002; Dawson 2014; Pillay and Wesson 2014; Warwick 2016). Relevant to this paper is the work by Bilchitz (2014), Dawson (2014), and Warwick (2016).

Bilchitz (2014) considers different levels of economic and financial crises, and subsequently argues for additional support to the poor during a crisis—i.e. Bilchitz does not consider conditions under which retrogressive measures might be justified. Like this paper, Warwick (2016) considers the progressive realization of socioeconomic rights within the context of an economic crisis. However, contrary to this paper, Warwick (2016) disagrees with the UN Committee on Economic, Social and Cultural Rights (CESCR), which in 2012 issued a letter arguing that during an economic crisis there may be justification for the retrogression of socioeconomic rights (CESCR 2012). More on this below. But, first, what is the core problem in reconciling the realization of socioeconomic rights with budgetary pressure?

2 Limited resources and the realization of socioeconomic rights

Even before the COVID-19 pandemic caused the collapse of economic growth and a steep increase in unemployment, poverty, and hunger, the South African economy was in trouble. Since 2014 per capita gross domestic product (GDP) had been declining (see Figure 1) and by 2022 it was only slightly higher than it was in 1981. This resulted from the decline in the real GDP growth rate, which has been declining since the late 2000s (see Figure 2). The unemployment rate has been rising since 2015, with the official and expanded unemployment rates reaching 32.6% and 42.1% in the second quarter of 2023, after improving slightly following the passing of the COVID-19 pandemic (see Figure 3). Government finances were also on an unsustainable path, with the debt-to-GDP ratio increasing from a mere 23.6% of GDP in the first quarter of 2009 to 72.2% of GDP in the second quarter of 2023 (see Figure 4).

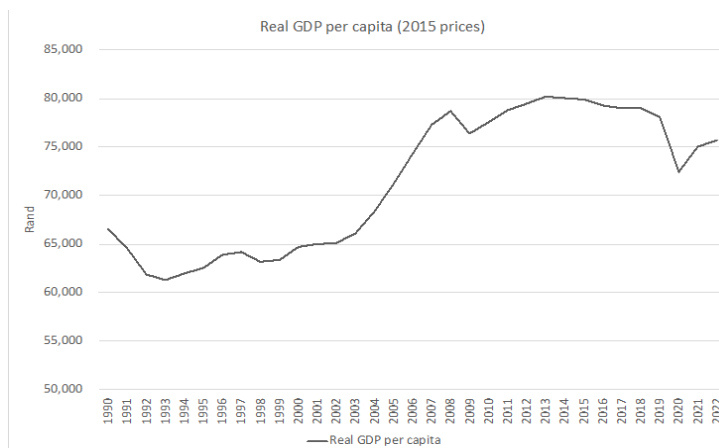
The deterioration of the fiscal position can also be seen in the larger total and primary deficits that the government has been running since 2009 (see Figure 5).¹ Initially, the larger deficits were part of the countercyclical fiscal policy that the government implemented following the 2008 Global Financial Crisis. From 2013 to 2019 the government implemented measures such as expenditure ceilings to arrest the increase in the debt-to-GDP ratio. Although the deficit-to-GDP ratio fell, it never fell enough to prevent the debt-to-GDP ratio from increasing. This can be seen in Figure 6, which shows the actual primary balance as a percentage of GDP together with the primary balance that would have stabilized the debt-to-GDP ratio. While the actual primary balance has been in a deficit consistently since 2009, a primary surplus was needed to stabilize the debt-to-GDP ratio.

¹ The primary balance is the difference between non-interest expenditure and revenue. It is thus calculated with discretionary expenditure items (interest is a non-discretionary expenditure item, meaning the government has to pay its interest bill) that can be cut to arrest the increase in debt.

The rise in the deficit-to-GDP and debt-to-GDP ratios resulted from government expenditure increasing much faster as a percentage of GDP than revenue collected from taxes (see Figure 7). The period since 2009 also saw the rise in the expenditure-to-GDP and revenue-to-GDP ratios, which resulted from the slow GDP growth (with GDP being the denominator in these ratios). The rise in the debt-to-GDP ratio also resulted in the government's interest bill as a percentage of GDP more than doubling, increasing from 1.94% in the third quarter of 2009 to 4.57% in the second quarter of 2023 (see Figure 8).

While the National Treasury has argued for the curtailment of expenditure for a number of years, the Budget Justice Coalition (BJC)² and the Social Policy Initiative have not only opposed curtailment but have argued in favour of substantially increasing expenditure on social grants and public sector salaries (Coleman 2020, 2022; Coleman et al. 2021; Dolley et al. 2023; ENCA 2020; Gqubule 2023; GroundUp 2020a, 2020b; Masson 2023). Resistance to the curtailment of expenditure also comes from the African National Congress, the South African Communist Party, and the Congress of South African Trade Unions, with even President Ramaphosa saying that expenditure cuts are not necessarily the solution (Bruce 2023; Daily Investor 2023; Tandwa 2023).

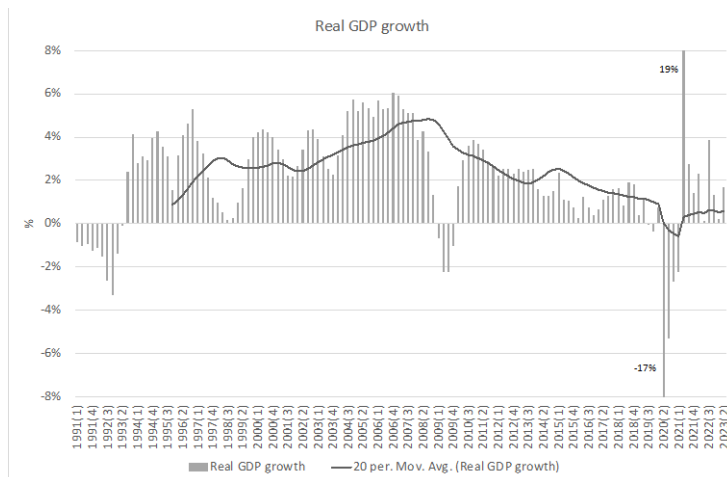
Figure 1: Real GDP per capita (2015 prices)



Source: author's calculations based on data from SARB (2023).

² According to its website the following organizations were founding members of the BJC: the Public Service Accountability Monitor, Section27, Alternative Information and Development Center, Equal Education, Equal Education Law Centre, Children's Institute, Studies in Poverty and Inequality Institute, Institute for Economic Justice, and the Dullah Omar Institute.

Figure 2: Real GDP growth



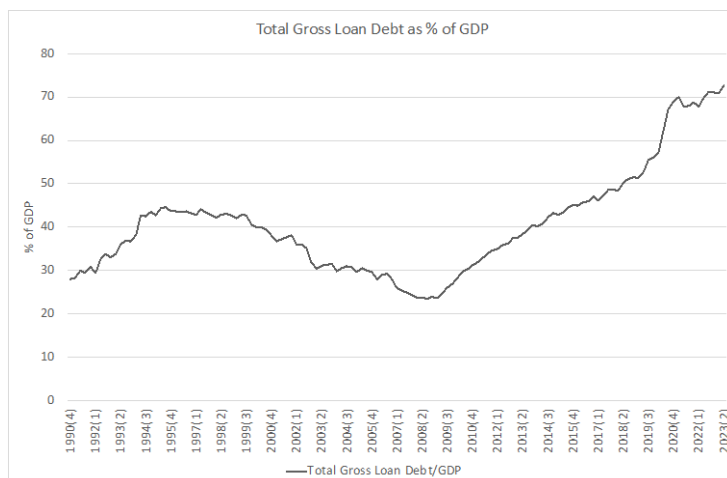
Source: author's calculations based on data from SARB (2023).

Figure 3: Unemployment rate



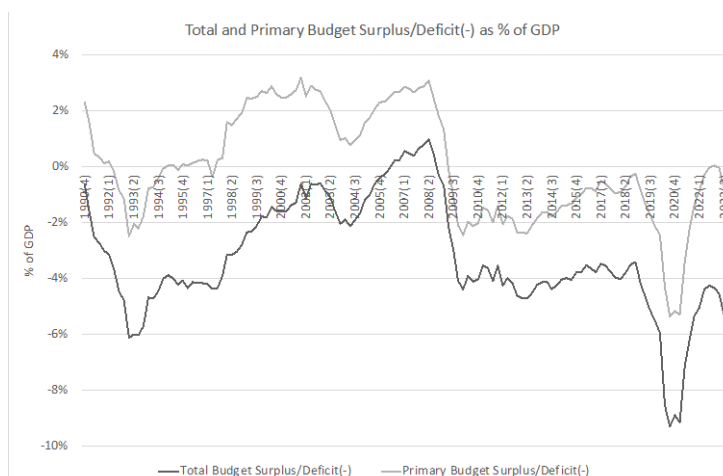
Source: author's compilation based on data from StatsSA (2023).

Figure 4: Total gross loan debt as % of GDP



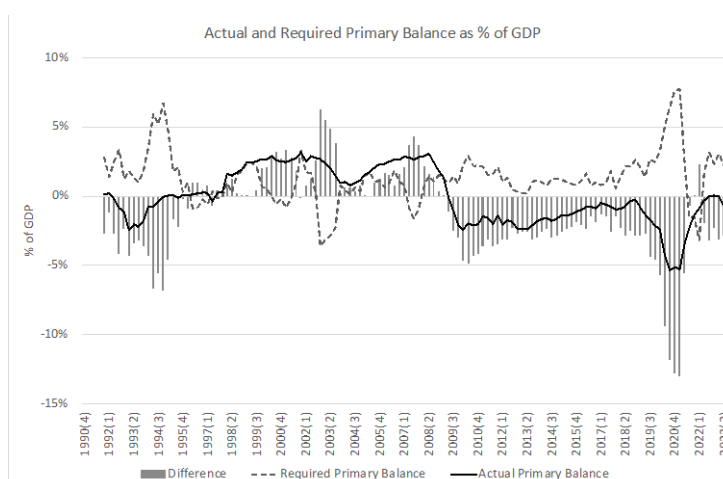
Source: author's compilation based on data from SARB (2023)

Figure 5: Total and primary budget surplus/deficit (-) as % of GDP



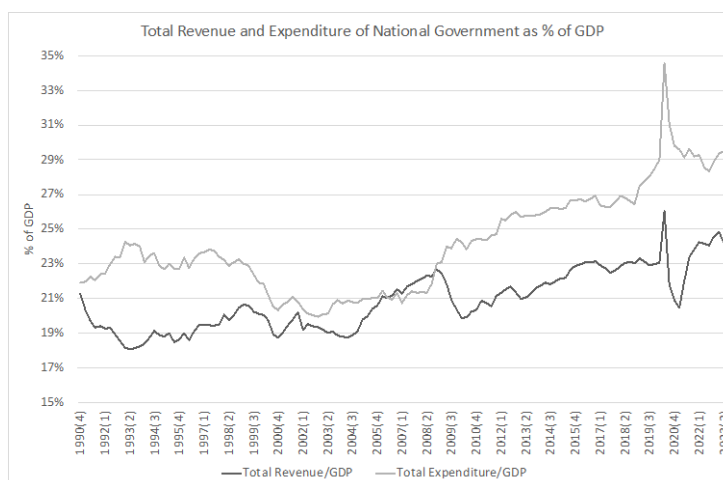
Source: author's calculations based on data from SARB (2023).

Figure 6: Actual and required primary balance as % of GDP



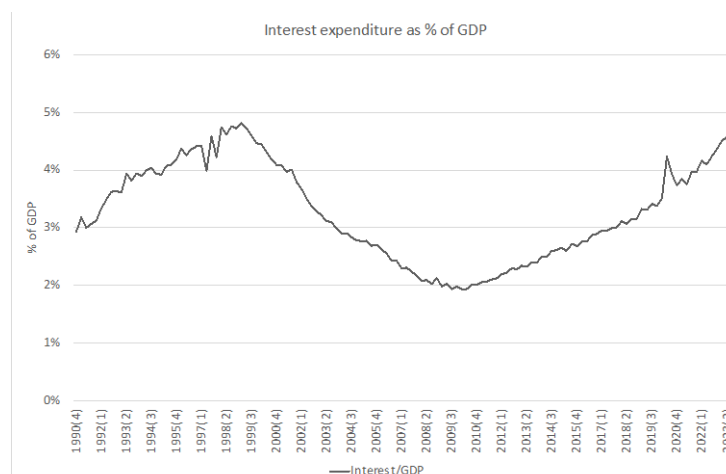
Source: author's calculations based on data from SARB (2023).

Figure 7: Total revenue and expenditure of national government as % of GDP



Source: author's calculations based on data from SARB (2023).

Figure 8: Interest expenditure as % of GDP



Source: author's calculations based on data from SARB (2023).

Social activists and public commentators have also argued that, unlike private budgets, there is no real limit to public debt in the longer run since spending the borrowed money will enhance economic growth, which will stabilize the debt-to-GDP ratio (Gqubule 2023). Some public commentators have also argued for the South African Reserve Bank (SARB) to finance the government's debt (Gqubule 2021a, 2021b, 2021c; Malikane 2020). In essence they argue that there is no limit on what the government can spend, as it can merely sell its bonds to the SARB (a proposed R20 billion a week), which will be creating money to buy the bonds. Chris Malikane (2020) even proposed that the SARB buy all government debt held by banks (R500 billion).

Demands for large increases in government expenditure to address poverty are not new, as there have been demands for much higher levels of social welfare going back all the way to the introduction of democracy in South Africa in the mid-1990s. Petherbridge et al. (2021) point to a report by the United Nations CESCR, which was compiled pre COVID by a number of institutions which also form part of the Economists Initiative and the BJC (ICESCR 2019).³ The report expressed concern with recommended budgetary cuts and recommended that the government increase its expenditure on social security, health, and education.

Many proponents also argue for the rollout of a universal basic income grant, and large-scale funding of much higher levels of social welfare (ICESCR 2019). These grants and welfare payments, they argue, can be financed by raising more taxes.

In essence many social activists and public commentators deny the medium- to longer-term existence of income constraints on government. Even though income may be limited in the short term, it can, they argue, always be augmented with loans created through money creation. The expenditure financed by these loans will, through the expenditure multiplier, then give rise to economic growth, which will allow for the servicing of the loans. In their view a country can always grow itself out of its debt burden.⁴ Because this view denies the role of the budget constraint, it

³ The report was prepared by Dullah Omar Institute, University of the Western Cape, Black Sash, the Socio-economic Rights Institute of South Africa, Studies in Poverty Inequality Institute, and Peoples' Health Movement. Most of these institutions are also listed in footnote 2 as members of the Economists Initiative and the BJC.

⁴ Janse van Rensburg et al. (2021) found that the multiplier in crisis times is less than one, meaning that the GDP increase resulting from the expenditure increase is less than the expenditure increase. This finding is borne out by Burger and Calitz (2021), who also demonstrate that the short-run multiplier effect is smaller than one, and that the government expenditure/GDP ratio in South Africa since 2015 exceeds the level (29%) at which an increase in

also denies the need to choose between alternatives on which to spend and to prioritize expenditure.

However, concern about the possible rollback of the progressive realization of socioeconomic rights is not limited to commentators who argue for much higher levels of government expenditure and who deny the role of budgetary constraints. In a submission by the Financial and Fiscal Commission (2021), Michael Sachs raised a concern that the cutbacks announced in the February 2021 budget speech risked being in violation of the constitution. Sachs et al. (2023) considered the implication that expenditure cuts hold for expenditure on education, healthcare, and social protection (grants). They argue that '[f]or now, South Africa faces a cul-de-sac of permanent austerity without consolidation' (Sachs et al. 2023: 2). In other words expenditure is cut back, but because of the lack of economic growth, the deficit-to-GDP and debt-to-GDP ratios keep on increasing, failing to stabilize.

Sachs (2021) and Sachs et al. (2023) recognize the pressure on the budget created by a rising debt-to-GDP ratio. However, they highlight that, if expenditure is cut, expenditure items related to the realization of socioeconomic rights should not decrease at a faster rate than the average with which total expenditure decreases and should, wherever possible, be prioritized and protected.

One aspect on which all proponents agree, whether they argue for or against expenditure cutbacks, is that the debt situation requires an improvement in economic growth to regain fiscal sustainability. Where they differ is about whether that growth requires higher or lower government expenditure.

3 The progressive realization of socioeconomic rights: what does the constitution say?

The South African constitution recognizes the existence of limited resources and the need to prioritize. This can be seen in Sections 25, 26, 27, and even 29, which deal with socioeconomic rights (underlined emphasis added)(Republic of South Africa 1996):

Section 25(5):

The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

Section 26:

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

government expenditure raises the economic growth rate (the evidence even shows that above 29% an increase in the government expenditure/GDP ratio results in lower economic growth).

Section 27:

(1) Everyone has the right to have access to—

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

Section 29(1):

(1) Everyone has the right—

(a) to a basic education, including adult basic education, and

(b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

The constitution's recognition of limited resources was confirmed in the Grootboom case of 2000, in which the Constitutional Court found, in a judgement written by Justice Yacoob, that ([] added):

Subsection (2) [of section 26] speaks to the positive obligation imposed upon the state. It requires the state to devise a comprehensive and workable plan to meet its obligations in terms of the subsection. However subsection (2) also makes it clear that the obligation imposed upon the state is not an absolute or unqualified one. The extent of the state's obligation is defined by three key elements that are considered separately: (a) the obligation to 'take reasonable legislative and other measures'; (b) 'to achieve the progressive realisation' of the right; and (c) 'within available resources.'

The term 'progressive realisation' shows that it was contemplated that the right could not be realised immediately. But the goal of the Constitution is that the basic needs of all in our society be effectively met and the requirement of progressive realisation means that the state must take steps to achieve this goal. It means that accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time.

...the obligation does not require the state to do more than its available resources permit. This means that both the content of the obligation in relation to the rate at which it is achieved as well as the reasonableness of the measures employed to achieve the result are governed by the availability of resources. (Constitutional Court of South Africa 2000: paragraphs 38, 45, and 46)

Yacoob cited Chaskalson in the Soobramoney case:

What is apparent from these provisions is that the obligations imposed on the State by ss 26 and 27 in regard to access to housing, health care, food, water, and social security are dependent upon the resources available for such purposes, and that the corresponding rights themselves are limited by reason of the lack of resources. (Constitutional Court of South Africa 2000: paragraph 46)

Yacoob then continued to argue that:

There is a balance between goal and means. The measures must be calculated to attain the goal expeditiously and effectively but the availability of resources is an important factor in determining what is reasonable. (Constitutional Court of South Africa 2000: paragraph 46)

So the key question is what do we mean by ‘within its available resources’?

4 An economist’s understanding of ‘available resources’

From an economics point of view, there is an ‘absolute’ and ‘relative’ sense of available resources:

- a) According to the absolute understanding there is x-amount available to spend. When it is spent, no more resources are available.
- b) According to the relative understanding every rand has multiple potential uses and, once used or allocated for use, it is not available for another use.

Accepting that budgetary constraints indeed exist, both in the short and the long run, implies that at an overarching macroeconomic level the absolute amount of resources available is limited. It is in essence limited by (i) what the economy produced in the current period and (ii) what was saved from what the economy produced in the past and subsequently invested (i.e. what was not consumed in the past, meaning that it still exists in some form or other).

The recognition of the existence of an absolute budget constraint means that the constitution also assumes, implicitly or otherwise, that creating money and credit without limit to finance the social wage is not viable. That also explains why the constitution implicitly limits the power of the SARB to monetize debt, by limiting the SARB’s mandate to price stability in the interest of balanced and sustainable economic growth (Republic of South Africa 1996):

Section 224:

Primary object. – (1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters,

From accepting the absolute understanding of the availability of resources in (a) above follows the relative understanding in (b). However, it is not only the relative availability of resources to the government that we are talking about but also the relative availability to society at large.

To see why, consider the point that some commentators make that the ‘resources available’ to the government can always be expanded by increasing taxes (hence, they argue, there are no grounds for retrogressive measures related to socioeconomic rights). For government this is generally true,⁵ i.e. the government, in general, can increase taxes to increase ‘available resources’. However, for society in the aggregate, this is not true. Society operates under an overarching absolute constraint. It must produce more if it wants more resources. From this it follows that, for society, every rand produced has multiple uses, some by private individuals or entities, others by the government. In private hands it can be consumed, saved, and invested; in government hands it can be used in service delivery, the creation of public infrastructure, or as transfers to private individuals or entities. To get it into government hands usually entails the taxation of private individuals or businesses. In this sense a tax is just the channelling of the fruits of production (i.e. income) to public use. Alternatively, government can issue bonds that private investors then purchase with their savings out of the income they produce.

The relative availability of resources to society at large requires society in general and government in particular to weigh up the benefits of all the alternative private or public uses of every rand produced. Thus, as a society, we should not only consider whether a rand of income produced should be used for healthcare, higher education, early childhood development, police services, roads and bridges, electricity generation, a child support grant, or a basic income grant, but also whether it should be left to individuals and business for private investment or household consumption (both basics and luxuries).

In deciding this allocation we should be guided by the constitution’s aim of recognizing human dignity, which includes the progressive realization of socioeconomic rights. However, human dignity also resides in the right to enjoy the fruits of your labour (where such fruits become your property), and in recognizing your right to earn those fruits in a way you see fit (Republic of South Africa 1996):

Section 25(1):

No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

Section 22:

Freedom of trade, occupation and profession. – Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

Human dignity also lies in the right to dispose of your income in a manner you see fit to improve the quality of your life. The constitution, in its preamble, expressly states the improvement of the quality of life as one of its objectives (Republic of South Africa 1996):

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to –

⁵ The exception is when Arthur Laffer’s argument becomes a reality, i.e., where an increase in tax rates creates such a disincentive for productivity that it leads to lower tax collections (Laffer 2004). Theoretically, the probability of such a disincentive emerging increases the higher the effective tax rate on income becomes. Given that nobody will presumably be productive if the effective tax rate is 100%, it is also safe to assume that the disincentive will emerge at an effective tax rate well below 100%. The effective tax rate at which the disincentive emerges is an empirical matter, with international literature presenting results upwards of 25% of GDP.

Improve the quality of life of all citizens and free the potential of each person

Therefore, improving the ‘quality of life of all citizens’ through the progressive realization of socioeconomic rights, paid for using taxes, needs to be weighed against improving the ‘quality of life of all citizens’ by allowing them the freedom to earn, use, and dispose of their income and property as they see fit.⁶

The balance of arguments for society in deciding the use of each rand should depend on democratic processes. Ideally, this should be a consensus-seeking process, possibly encapsulated in a social accord. In the absence of an accord, it depends on the outcome of democratic contestation and the response of democratically elected policy makers to demands from the electorate and various interest and pressure groups in society. This process will be strengthened by the Petherbridge et al. (2021) proposal cited in the introduction, which argues for greater public participation in the budgetary process and for human rights impact assessments to accompany the budgeting process.

5 Available resources now and in the future: the intergenerational dimension

In the decision that weighs taxation to fund the social wage (education, healthcare, various grants, including a universal basic income grant) versus taxation to fund public infrastructure versus leaving income in private hands, thereby making it available for private investment or private consumption, what should inform our choice between these options?

In a society such as South Africa, with its extreme levels of inequality and poverty, the choice policy makers face might at first appearance look quite simple, particularly if the private hands in which income will be left if not taxed away, are on the higher-income side of the inequality equation.

However, the choice becomes more complicated depending on the nature of economic growth. If higher private investment generates higher economic growth and if that economic growth is inclusive,⁷ the weighing-up of arguments and the trade-offs made have an intertemporal, intergenerational dimension. We are weighing the welfare of future generations against the welfare of the current generation.

This recalls the Brundtland Commission’s definition of sustainable development, a definition that laid the foundation for the Millennium Development Goals and Sustainable Development Goals.⁸

⁶ In addition, the right to decide how to use your income and property follows from a broad interpretation of the freedom of expression (Section 16 of the Constitution). Expressing a preference to buy ice cream rather than candy, is, though trivial, still an expression of opinion or an idea about taste. If you are not allowed to spend it on ice cream, you might be said to be constrained in your freedom of expression. Indeed, in modern society, consumers not only express their personal taste but often also their political and societal preferences through their spending decisions. Consider for instance the preference for free-range food products or goods powered by renewable energy. Some consumers insist on full transparency regarding the provenance of goods, for instance only buying non-conflict diamonds or food from fair-wage estates.

⁷ Inclusive growth will reduce the unemployment rate and ensure that incomes of individuals with low incomes will improve faster than the incomes of individuals with high incomes, thereby shrinking the income gap.

⁸ The Brundtland Commission, officially the World Commission on Environment and Development, was established by the United Nations in 1983 to address the growing concern over environmental degradation and its impact on economic and social development. The commission’s report, ‘Our Common Future’, published in 1987 (World Commission on Environment and Development 1987), introduced the concept of sustainable development. The

‘Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs’ (World Commission on Environment and Development 1987).⁹

The policy imperative in this definition is the improvement of the welfare of the present generation without negatively affecting the welfare of future generations. In other words we should heed Herbert Hoover’s sarcastic warning ‘Blessed are the young for they shall inherit the national debt’ (Wolla and Frerking 2019). We should not live at the expense of future generations, leaving them the cost of servicing the debt incurred by the current generation.

A variation on the Brundtland Commission’s definition is the choice between improving the welfare of the present generation versus improving the welfare of future generations. If we have a rand to spend, do we spend it on a higher social wage for the current generation (e.g., grants, housing) or do we invest it in capital goods, infrastructure, and education to improve the lives of future generations? Unlike the Brundtland Commission’s definition, which deals with the case where a rand spent today harms future generations, the variation on the Brundtland Commission’s definition is less harmful: spending the rand today to benefit the current generation does not harm the future generation, while investing it might benefit the future generation (but then, of course, the current generation does not benefit).¹⁰

United Nations also introduced the Sustainable Development Goals (SDGs), adopted by the United Nations General Assembly in 2015 (United Nations 2015). They call for action to end poverty, protect the planet, and ensure peace and prosperity globally by 2030. The SDGs integrate economic, social, and environmental dimensions of sustainable development. These dimensions are similar to those underlying the Brundtland Commission’s definition of sustainable development. The SDGs aim to integrate these dimensions into a comprehensive framework for sustainable development that can be applied globally. Both the Brundtland Commission’s definition of sustainable development and the concepts of sustainable development that underlie the SDGs share a common goal of promoting economic growth, social equity, and environmental protection in a way that ensures that future generations can meet their own needs. The SDGs do this by providing a comprehensive framework for achieving sustainable development through a set of specific targets and indicators.

⁹ Sustainable development as defined by Brundtland is related to the concept of dynamic efficiency introduced by Peter Diamond (1965), who defined dynamic efficiency as a situation where it is impossible to make one generation better off without making any other generation worse off. Initially seen in a narrow economic sense, the concept of sustainable development broadens the concept of dynamic efficiency by integrating the economic, social, and environmental dimensions. Diamond received the Nobel Prize in Economics for his work. The Brundtland definition can also be found in more recent definitions of sustainable development such as that by Kate Raworth, author of *Doughnut Economics* (2017), who, on her website, defines sustainable development as follows: ‘Humanity’s 21st century challenge is to meet the needs of all within the means of the planet. In other words, to ensure that no one falls short on life’s essentials (from food and housing to healthcare and political voice), while ensuring that collectively we do not overshoot our pressure on Earth’s life-supporting systems, on which we fundamentally depend – such as a stable climate, fertile soils, and a protective ozone layer’ (Raworth 2023).

¹⁰ The Brundtland Commission’s definition of sustainable development was largely formulated in an ecological sense. It also echoes in the South African constitution (Republic of South Africa 1996):

Section 24:

Environment. – Everyone has the right –

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

However, in the ensuing years the Brundtland Commission’s definition of sustainable development has been interpreted in a broader sense to encompass economic and social development. In this sense defining sustainable development as ‘...development that meets the needs of the present without compromising the ability of future

6 Weak economic growth, the budget, and the constitution's Whig problem

The negative per capita economic growth of the last decade, together with the impact of the COVID-19 crisis, has left the South African economy significantly poorer. In particular, the almost decade-long negative growth of per capita economic growth also brings to light a deeper question about the constitution. By saying that we 'progressively realize' socioeconomic rights, we implicitly assume a Whig interpretation of history, assuming that (on average) we will experience an ever-improving human condition and that the future is in general always better than the past. An ever-improving human condition allows for progressively improving socioeconomic conditions and therefore the progressive realization of socioeconomic rights. But what happens when years of negative per capita economic growth (exacerbated by the economic impact of the COVID-19 crisis) shrink the available pool of resources? Do we roll back socioeconomic rights? It is precisely this prospect that spurred several social activists and public commentators in 2020 to consider approaching the Constitutional Court as they saw planned budgetary cuts to reduce the public debt burden as rolling back, even reneging on, the progressive realization of socioeconomic rights (ENCA 2020).

However, not all agree. Former Constitutional Court Justice Albie Sachs (2021) argues that under exceptional circumstances it is justified to temporarily cut back on expenditure related to the realization of socioeconomic rights. However, following Liebenberg, he argues that such cutbacks need to be justified by a set of criteria and be temporary in nature.¹¹ Liebenberg (2021) highlights that these criteria have been broadly defined by the United Nations Committee on Economic, Social and Cultural Rights (UN CESCR).

South Africa is a recent (2015) signatory to the United Nations' International Covenant on Economic, Social and Cultural Rights (United Nations 1966), thereby committing the country to the progressive realization of socioeconomic rights as specified in international law. The UN CESCR at times issues general comments related to the covenant. Liebenberg (2021) notes that General Comment 19 of 2007 deals specifically with the justification governments will need to provide when implementing retrogressive measures that roll back socioeconomic rights. Article 42 of General Comment 19 states that:

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives

generations to meet their own needs' now also means not leaving future generations a mountain of debt to service and limited capital assets with which to generate income to service that debt—i.e. we should not borrow to consume unless we repay the debt ourselves in the short to medium term (this is the type of borrowing usually associated with countercyclical fiscal policy).

¹¹ In a webinar Albie Sachs (2021), in response to a question by Neil Coleman, argues that Liebenberg has '...written specifically on when can you cut the provisions of social and economic grants in conditions of austerity, which is a big issue all over the world now because its commonly accepted progressive realization means you can't cut, you can't reduce, but in states of emergency you have to, because you're not getting the revenue that you get from full employment and you need money for vaccines and some of the other things. But she said that doesn't mean you can do anything you like. First of all, you have to justify it, you have to justify the particular reduction in expenditure. You have to show that it's proportionate in the circumstances, it has to be on a temporary basis given the condition. There are a whole range of criteria, in other words technical responses to the reduction. It's not the saying we are in a state of emergency, anything goes. So, I think that could be an important template to use in examining the circumstances and that's been agreed upon internationally, and she is our voice in that particular area'.

and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level. (UN Committee on Economic, Social and Cultural Rights 2007: Article 42 of General Comment 19)

Would adverse budgetary conditions justify the implementation of retrogressive measures? And if so, what principles should the government apply when considering whether or not retrogressive measures were justified?

7 The principles to justify the reasonableness of retrogression

Clearly not every reduction in government's resources justifies retrogression of socioeconomic rights. The context and nature of the reduction matter in considering whether or not retrogression is justified. This section discusses when and how much retrogression is justified.

7.1 The budget, trend, cycle, and shock

A reduction in resources means revenue collection falls, either because of lower economic activity or because of lower tax rates. A reduction in economic activity may be temporary, for instance during an economic recession, or result from a lower trajectory of the long-run trend at which output grows. When faced by lower revenue collections, that also falls short of expenditure, the government will incur more debt in the absence of a reduction in government expenditure. It will have to manage this debt; indeed, the constitution requires the government to effectively manage 'the economy, debt and the public sector' (Republic of South Africa 1996):

Section 215(1):

National, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy, debt and the public sector.

This presumably includes ensuring that the government's debt burden does not become unsustainable, continually increasing and landing in a debt trap.¹² However, managing '...the economy, debt and the public sector' implies that the choice is more complex than just keeping the debt-to-GDP ratio low. And mentioning the economy, debt, and the public sector in one sentence also indicates that the constitutional framers understood the close link between the economy, debt, and the public sector. Note also that expenditure by the public sector is responsible

¹² A debt trap is defined as a situation where the government finds itself politically unable to 1) reduce expenditure, 2) increase revenue collection by raising tax rates or improved revenue collection, and 3) cannot find buyers for its bonds at all, or can only find buyers if it offers much higher interest rates that it will not be able to cover by future revenue collection increases or expenditure reductions.

for the progressive realization of socioeconomic rights, which means that Section 215(1) implicitly links it to the management of the economy and debt.

In considering the progression and retrogression in the rollout of socioeconomic rights, within the context of the close link between the economy, debt, and the public sector, requires a distinction between economic trends, cycles, and shocks. If the reduction in GDP is cyclical, the higher debt burden may itself be temporary. Governments typically plan countercyclical macroeconomic policies, meaning that they allow the budget deficit-to-GDP and public debt-to-GDP ratios to increase during recessions and reduce the ratios during economic upswings.¹³ The extent to which a government can run a countercyclical policy often depends on the size of the debt-to-GDP burden and the associated interest cost with which the government enters the recession—what economists know as ‘fiscal space’. A high debt and interest burden means that a country entering a recession may not have the fiscal space to run a strong countercyclical policy. The dimensions of fiscal space depend primarily on the existing debt-to-GDP ratio, the effective interest rate on existing and new debt, and the expected economic growth rate. They are also dependent on the depth and size of domestic financial markets and access to international financial markets. With reasonable fiscal space available, a typical recession would not justify the retrogression of socioeconomic rights. Indeed the countercyclical nature of the budget would be the mechanism protecting socioeconomic rights from retrogression.

Fiscal space also becomes an important consideration in the event of a shock, such as the effect of the COVID-19 pandemic on economic activity. Data globally shows that countries with sufficient fiscal space were able to implement unprecedented economic stimulus packages following the impact of the COVID-19 crisis. However, countries with limited or no fiscal space announced much smaller packages. Typically, advanced economies announced much larger fiscal stimulus packages than emerging economies, which in turn announced much larger packages than low-income economies. South Africa entered the crisis with limited, even shrinking fiscal space (see earlier discussion). Shocks, like recessions, are often temporary in nature and, depending on the extent of fiscal space available, a government may allow the debt burden to temporarily increase. Doing so will also protect expenditure levels, including expenditure associated with socioeconomic rights. Nevertheless, returning the debt-to-GDP ratio to pre-shock levels once the shock has passed may require expenditure to grow slower than revenue for several years (in either nominal or real terms).

In the absence of sufficient fiscal space, a government may not be able to run a large enough countercyclical or countershock policy without sharp increases in government debt at very high interest rates.¹⁴ It may even find it difficult or impossible to sell its bonds. In advanced and emerging economies a lack of fiscal space at the start of a recession or shock has usually been preceded by a rising debt-to-GDP ratio in the years prior to the crisis (see Burger (2023) on African debt crises). A lack of fiscal space may force the government to run a procyclical policy, which would aggravate the impact of the recession or shock and possibly be retrogressive with respect to socioeconomic rights. It should be noted, though, that in countries that ran up a debt burden

¹³ Historic data shows that it does not always work out according to plan. Often governments run up deficits during recessions, but do not reduce the deficits sufficiently during economic upswings—a phenomenon known as deficit bias.

¹⁴ If the government then also borrows to finance its interest payments (which is what it does when it runs a primary deficit at a time when the real interest rate exceeds the real economic growth rate), the debt-to-GDP ratio may increase exponentially (mathematically it will be ‘moving to infinity in finite time’).

prior to a recession or shock, the procyclicality, retrogression, and the lack of fiscal space causing it had their origins in the pre-crisis increase in the debt burden.

However, retrogression becomes much more of an issue in the face of slower GDP trend growth. When the per capita trend growth of the economy turns negative, as it has in South Africa since 2015, government revenue collection may be on a lower and flatter, even negative, real trajectory. In the absence of an adjustment in the level and trajectory of the growth of expenditure, the debt burden will then likely be on an unsustainable, upward trajectory. Increasing tax rates and decreasing expenditure, including on socioeconomic rights, are the two options open to the government to arrest the upward trend in the debt burden. In deciding the mix of higher tax rates and lower expenditure, the trade-offs and the weighing-up of rights discussed in Sections 4 and 5 become relevant.

Over time, of course, the aspiration is to return trend growth to positive territory, so that over the long haul the government can return to making progress in the realization of socioeconomic rights. In the meantime, though, we should take heed of Charles Simkins (2020), when he said that following the COVID-19 crisis ‘we should be behaving as if we were about 8% poorer than in 2014. That is not austerity as a policy. It is decline as a fact’. The same can be said for the South African economy post COVID-19, especially in per capita terms.

7.2 The pace of retrogression and long-term rebound

In an effort to protect realized socioeconomic rights as far as possible, while policy makers debate and implement policy to reverse the negative trend in long-term output, retrogression should, as far as is possible, be undertaken at a slower rate than the rate at which per capita output is shrinking. Care should also be taken to use the right metric when considering the extent to which socioeconomic rights are rolled back. For instance, it is possible to reduce health expenditure in real terms by granting lower-than-inflation salary increases to doctors, while not reducing the number of doctors. The doctors will earn less in real terms, but the patients will still have the doctors—their progressively realized right will not be reversed. Expenditure could also fall in real terms by cutting wastage, improving efficiency, renegotiating procurement contracts at better terms, and eliminating corruption, none of which affects rights that were progressively realized previously.

7.3 The intergenerational dimension

The choices that government faces become even more difficult in an intergenerational context. The Brundtland Commission’s definition of sustainability development, as well as the variation of the Brundtland Commission’s definition discussed earlier, become relevant. In the face of shrinking resources and a rising debt burden, the government’s choices may include a choice between a more limited reduction in the welfare of the present generation versus improving the welfare of the future generation. The latter requires accepting a relatively larger reduction in the welfare of the present generation (e.g. lower grants or a lower level of health care) and using the thereby freed-up resources to improve the welfare of future generations, possibly by growing the economy. Establishing whether such economic growth will be inclusive, or alternatively what steps should be undertaken to render it more inclusive, form part of an assessment of the trade-off.

Of course future generations do not get to vote on intertemporal choices, and only the present generation, those of voting age, therefore have a voice in the matter. The question then becomes: What is the level of intergenerational altruism possessed by the present generation? If that level is limited, the present generation may prioritize its own welfare interest to that of future generations. (This is not so far-fetched a notion if we consider the reluctance internationally of the current

generation to make the necessary adjustments to limit climate change, or the actions of current generations in many countries to secure better pension pay-outs at the expense of future generations.)

We therefore need a public debate on trading off the interests of the present and future generations, and therefore on the trade-off between an expanded social wage that benefits the current generation and investment that will benefit future generations. Here, again, we can draw on the Brundtland Commission's report, which argues that:

Meeting essential needs depends in part on achieving full growth potential, and sustainable development clearly requires economic growth in places where such needs are not being met. Elsewhere, it can be consistent with economic growth, provided the content of growth reflects the broad principles of sustainability and non-exploitation of others. But growth by itself is not enough. High levels of productive activity and widespread poverty can coexist, and can endanger the environment. Hence sustainable development requires that societies meet human needs both by increasing productive potential and by ensuring equitable opportunities for all. (World Commission on Environment and Development 1987: paragraph 6)

7.4 The role of the state

Whether it is the interest of the current or future generations under consideration, the trade-offs to be made do not only depend on delivery by the government. In the Grootboom case of 2000, Justice Yacoob argued that government should not be seen as the only party responsible for the progressive realization of socioeconomic rights:

A right of access to adequate housing also suggests that it is not only the state who is responsible for the provision of houses, but that other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing.

In this regard, there is a difference between the position of those who can afford to pay for housing, even if it is only basic though adequate housing, and those who cannot. For those who can afford to pay for adequate housing, the state's primary obligation lies in unlocking the system, providing access to housing stock and a legislative framework to facilitate self-built houses through planning laws and access to finance. Issues of development and social welfare are raised in respect of those who cannot afford to provide themselves with housing. (Constitutional Court of South Africa 2000: paragraphs 35 and 36)

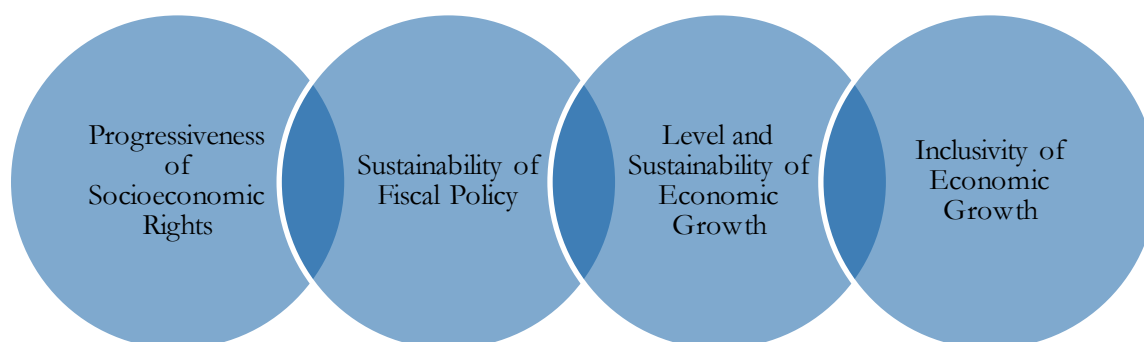
This clearly allows a role for the private sector in the realization of socioeconomic rights. In addition not all government actions need to involve government expenditure or regulations. Government action can also be facilitative, which, instead of the budget, involves facilitating access to finance and the use of enabling legislation.

8 Towards true sustainability: four pillars of indicators

Maximizing the intertemporal realization of socioeconomic rights involves four dimensions (Figure 9), each with its own set of indicators:

- i) the progressiveness with which socioeconomic rights are realized at any given point in time,
- ii) the sustainability of fiscal policy,
- iii) the level and sustainability of economic growth, and
- iv) the inclusivity of economic growth.

Figure 9: The four dimensions to maximize the intertemporal realization of socioeconomic rights



Source: author's compilation.

Judging whether or not the government maximizes the progressive realization of socioeconomic rights intertemporally and sustainably requires consideration of all four of these dimensions. In the event of a crisis or a downward secular trend in per capita GDP that threaten government's revenue collection, indicators for all four dimensions will also serve as a tool to use when the government minimizes the extent of retrogression.

8.1 The degree of progressiveness with which socioeconomic rights are realized at any point in time

Indicators in this category entail more than just monetary indicators. For instance, although education expenditure per learner is one of the indicators, a below-inflation increase in education expenditure per learner does not necessarily indicate less service delivered to each learner. The below-inflation increase in expenditure may be the result of a below-inflation salary increase for teachers. Such a below-inflation increase does not affect the learner–teacher ratio. The opposite also holds true. An above-inflation increase in education expenditure that results from an above-inflation salary increase for teachers does not improve the learner–teacher ratio.

Of course a reduction in the expenditure per learner may be the result of a reduction in the number of teachers or lower expenditure on goods and services and school infrastructure. Thus, in addition to monetary indicators such as expenditure per learner or expenditure as a percentage of total government expenditure or GDP, additional input, output, and outcome indicators are needed.

Input indicators in education would include the number and proportion of schools that still have pit toilets or mud-brick school buildings. It would also include the number and proportion of schools with reliable electricity and water and schools with computer and science labs, libraries, and internet access. The quality of inputs may also have to be measured—for instance, indicators of teacher absenteeism or the proportion of mathematics teachers with sufficient proficiency in mathematics. Output indicators would include dropout numbers, matric pass rates, the numbers

of matriculants who pass with bachelor passes or pass mathematics with a >60% mark. Other indicators might include South Africa's performance in the Trends in Mathematics and Science Study and Progress in International Reading Literacy Study. Outcome indicators, which presumably capture the ultimate policy objectives, would include for instance an indicator of skills shortages and indicators on the proportion of skilled and semi-skilled workers in the labour market. Indicators similar to these education indicators exist or can be developed for health, housing, land, and social welfare. Note that documents such as the annual Estimates of National Expenditure presented to parliament along with the Budget Review when the Minister of Finance delivers his budget speech contain quite a number of indicators. *What is needed though, is to explain budgetary choices in terms of these indicators in a fully-fledged human rights impact assessment of the budget.*

Considering all these indicators together will enable closer scrutiny of policy choices, especially if the government is required to provide justification both for allocating resources to one option and not allocating those resources to another (so that citizens understand the opportunity cost). For instance, why did the rate of increase in teacher salaries year after year exceed inflation while there were still thousands of schools with pit toilets, or when the majority of schools had no science or computer labs, no internet connection? These indicators can also be used when considering the choice between expenditure items affecting the progressive realization of different socioeconomic rights. For instance, should a billion rand be used for expanded free higher education, or expanded early childhood education, or more antenatal clinics? And why should education expenditure to the poor be reduced to bail out an insolvent parastatal airline that flies mostly middle- and high-income passengers, while a private sector alternative is ready to fill the gap in the aviation market?

8.2 The sustainability of fiscal policy

As mentioned earlier, according to section 215(1) of the constitution, the government has the responsibility for '...the effective financial management of the economy, debt and the public sector'. Economic literature contains several indicators to measure the sustainability of fiscal policy. Movements in the public debt-to-GDP ratio and budget deficit-to-GDP ratio over time, or the difference between the primary balance required to stabilize the debt-to-GDP ratio and the actual primary balance, also measured over time, are some of the more well-known indicators. Note that when assessing these indicators, analysts typically consider several years to establish whether or not there is a trend. Just as one swallow does not make a spring, so one, two, or three years of an increasing debt-to-GDP ratio do not necessarily imply an unsustainable fiscal policy. There are also no general optimal levels for the debt-to-GDP ratio or any of the other fiscal indicators. Thus policy makers and analysts need to consider the context within which these movements occur to form a judgement on how much fiscal space is available and whether or not fiscal policy is sustainable.

8.3 The extent to which government policy contributes to sustainable economic growth

As discussed earlier, implicit in the doctrine on the progressive realization of socioeconomic rights is the assumption that the economy will over time keep expanding—i.e. per capita GDP growth on average is positive over time. Some government policies are more growth enhancing than others. While a government may decide, for instance, to expand the social wage (expenditure on health, education, housing, and social grants), it needs to balance the extent to which it expands these benefits with the need to create capacity that will grow future resources needed to expand such benefits in the future. Such capacity includes public infrastructure investment (which includes both economic and social infrastructure—economic: e.g. roads and electricity infrastructure; social: e.g. hospital and school facilities), as well as private sector investment. Burger (2021) shows that for every one percentage point by which the private sector investment-to-GDP ratio in South Africa increases, per capita economic growth increases by 0.335%. Thus, if private sector

investment as a percentage of GDP increases from say 12% to 15%, the per capita economic growth rate can increase by one percentage point per year.

Indicators that measure the extent to which the government supports future economic growth would therefore include public and private investment-to-GDP ratios. They may also include indicators that measure ease of doing business, as well as others that measure aspects that may inhibit or encourage investment. These indicators should also be measured on a sectoral basis.

8.4 The degree to which economic growth is inclusive

Economic growth is a necessary, but not sufficient, condition for improving the current and future living conditions of a population. Specifically, economic growth also needs to be inclusive if the progressive realization of socioeconomic rights is to occur. Klasen (2010) shows that for economic growth to be inclusive requires more than just a larger number of people sharing in the outputs produced in the economy. Inclusiveness also includes increased participation in the production of output. In addition to labour, income is also generated by capital goods. Thus, a more inclusive distribution of income also requires a more inclusive distribution of the financial and physical assets that produce capital income.

Therefore, indicators that measure inclusiveness should measure the extent to which lower-income groups share in the benefits of growth and participate in its production through employment and own employment. In addition, while some indicators measure income distribution, others should measure wealth distribution. Indicators should also measure intergenerational mobility, i.e. the probability that the children of people in a low-income group will remain in that low-income group or escape it.

8.5 How to use the four sets of indicators together

Under ideal conditions, per capita income grows, shrinking the income and wealth gap and generating higher per capita tax revenue, which in turn allows for (i) the progressive realization of socioeconomic rights, (ii) maintaining a sustainable debt burden, and (iii) financing further growth-enhancing investment in physical and human capital. The above sets of indicators will flag when conditions are not ideal. For instance, if trend growth falters, growth cannot be inclusive (simply put, if there is no growth, there is nothing to be inclusive about). Faltering trend growth may also result in a continually rising debt-to-GDP ratio. This may require a temporary implementation of retrogressive measures with respect to socioeconomic rights until such time as positive per capita trend economic growth is restored and the debt-to-GDP ratio is at a level where its interest cost does not excessively crowd out other (social) expenditure items in the government's budget. Higher economic growth will restore the sustainability of both development and fiscal policy. Indeed, development cannot be sustainable unless fiscal policy is sustainable, and vice versa (Burger and Calitz 2015). The above categories of indicators can be used to plot a path back to ideal conditions where all four sets of indicators are in harmony.

Other non-ideal conditions can also be managed through the use of the four sets of indicators. For instance, in the mid-2000s the South African economy registered robust growth of between 3% and 5.5% per year. The government also expanded social grants to a significantly larger number of recipients. It furthermore reduced the public debt-to-GDP ratio from just below 50% in the late 1990s to 23.6% in 2007/08. However, As Burger and Calitz (2015) have shown, the government's low levels of investment meant that its total capital stock as a percentage of GDP fell. Thus, the reduction in the debt-to-GDP ratio did not translate into an improvement in the government's balance sheet, while the fall in its total capital-to-GDP ratio resulted in infrastructure

backlogs that undermined economic growth in later years. This placed pressure on the further realization of socioeconomic rights in later years.

A human rights impact assessment accompanying the annual budget and using the four sets of indicators above will go far to improve transparency, inform public debate, and highlight whether budgetary decisions are justified and reasonable with respect to the constitution's long-run aim to realize socioeconomic rights, and do so on an intergenerationally fair basis. Using the four sets of indicators will also assist in decisions and deliberations on the justification of the retrogression of socioeconomic rights and assist in plotting a path back from retrogression to progression.

9 Conclusion

Even though the inclusion of socioeconomic rights in the South African constitution renders it very progressive, its recognition that socioeconomic rights should be realized progressively depending on the availability of resources means it recognizes that resources are limited. In recognizing that resources are limited, the constitution clearly requires society to prioritize the use of resources. A rand spent on the further realization of one socioeconomic right is a rand not available for the further realization of another socioeconomic right. Therefore, by recognizing the limitation on the availability of resources to realize socioeconomic rights, the constitution does not subscribe to a view that those resources can be created in the medium to longer run by merely incurring debt or creating money to finance government expenditure.

In addition to the resource limitation on the realization of socioeconomic rights, such rights also have an intertemporal dimension in which we weigh up the interest of the present generation to that of future generations. If we follow the Brundtland Commission's definition of sustainable development as '...development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (World Commission on Environment and Development 1987), we will refrain from incurring unsustainable levels of public debt that will merely burden future generations with large debt servicing costs that will result in the future retrogression of socioeconomic rights.

Furthermore, in a variation on the Brundtland Commission's definition we should also have a public debate in a democratic spirit about our choice between improving the welfare of the current generation versus improving the welfare of future generations. This debate will speak directly to the choice between increasing the social wage of the present generation on the one hand and increasing physical and human capital investment to foster economic growth on the other. It will also involve a discussion on the nature and inclusiveness of economic growth.

Deciding whether the retrogression of socioeconomic rights is justified in a stagnant economy with shrinking per capita resources is a burning question that involves multiple trade-offs and budgetary choices. These trade-offs and choices are complicated further by an intergenerational dimension that involves people who do not yet have a vote or voice (and, indeed, may not even be born yet). However, using the four sets of indicators explicitly and in a transparent policy framework will highlight the trade-offs and choices involved and enable broader public participation in debating the trade-offs and choices. It will also make government more accountable, as it will have to explain and assess the human rights impact of its budgetary choices in terms of the trade-offs captured by the four sets of indicators discussed in this paper.

References

- Beukus, E.P., and F.C.v.N. Fourie (1988). 'Economics Rights in a Charter of Human Rights in South Africa?'. *South African Journal of Economics*, 56(4): 187–97. <https://doi.org/10.1111/j.1813-6982.1988.tb01073.x>
- Bilchitz, D. (2014). 'Socio-economic Rights, Economic Crisis, and Legal Doctrine'. *International Journal of Constitutional Law*, 12(3): 710–739. <https://doi.org/10.1093/icon/mou044>
- Bilchitz, D. (2015). 'Are Socio-Economic Rights a Form of Political Rights?'. *South African Journal on Human Rights*, 31(1): 86–111. <https://doi.org/10.1080/19962126.2015.11865236>
- Brand, D. (2011). 'Judicial Deference and Democracy in Socio-economic Rights Cases in South Africa'. *Stellenbosch Law Review*, 22(3): 614–38. Available at: https://repository.up.ac.za/bitstream/handle/2263/18456/Brand_Judicial%282011%29.pdf?sequence=1 (accessed 18 October 2023).
- Bruce, P. (2023). 'An Insane Cabinet, Deaf, Dumb and Blind to Treasury's Warnings'. *Business Day*, 21 September. Available at: <https://www.businesslive.co.za/bd/opinion/columnists/2023-09-21-peter-bruce-an-insane-cabinet-deaf-dumb-and-blind-to-treasurys-warnings/> (accessed 18 October 2023).
- Burger, P. (2021). 'The Macroeconomics of South African Economic Growth'. In A. Oqubay, F. Tregenna, and I. Valodia (eds), *The Oxford Handbook of the South African Economy*. Oxford: Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780192894199.013.40>
- Burger, P. (2023). 'Debt Dangers in Africa: How Defaults Hurt People, and Why Forgiveness Isn't the Answer'. *The Conversation*, 17 April. Available at: <https://theconversation.com/debt-dangers-in-africa-how-defaults-hurt-people-and-why-forgiveness-isnt-the-answer-203933> (accessed 18 October 2023).
- Burger, P., and E. Calitz (2015). 'Twenty-year Review of South African Fiscal Policy: A Tale of Two Sustainabilities'. *Development Southern Africa*, 32(6): 639–57. <https://doi.org/10.1080/0376835X.2015.1063989>
- Burger, P., and E. Calitz (2021). 'Covid-19, Economic Growth and South African Fiscal Policy'. *South African Journal of Economics*, 89(1): 3–24. <https://doi.org/10.1111/saje.12270>
- Chetty, K. (2002). 'The Public Finance Implications of Recent Socio-economic Rights Judgments'. *Law, Democracy & Development*, 6(2): 231–53.
- CESCR (Committee on Economic, Social and Cultural Rights) (2012). 'Letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States Parties to the International Covenant on Economic, Social and Cultural Rights'. Available at: <https://www.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf> (accessed 18 October 2023).
- Coleman, N. (2020). 'Tito Mboweni's Austerity Budget Betrays the President's R500bn Rescue Package—We Need to Pull Back from the Precipice'. *Daily Maverick*, 7 July. Available at: https://www.dailymaverick.co.za/opinionista/2020-07-07-supplementary-budget-puts-south-africa-on-the-edge/?utm_campaign=snd-autopilot#gsc.tab=0 (accessed 18 October 2023).
- Coleman, N. (2022). 'Basic Income Grant is Needed to Avert Social Upheaval'. *Business Day*, 29 September. Available at: <https://www.businesslive.co.za/bd/opinion/2022-09-29-neil-coleman-basic-income-grant-is-needed-to-avert-social-upheaval/> (accessed 18 October 2023).
- Coleman, C., P. Dhawan, and N. Roubini (2021). 'How to Put South Africa on a Bold, New, Successful Economic Trajectory'. *Daily Maverick*, 18 October. Available at: <https://www.dailymaverick.co.za/opinionista/2021-10-18-how-to-put-south-africa-on-a-bold-new-successful-economic-trajectory/> (accessed 18 October 2023).
- Constitutional Court of South Africa (2000). Case CCT 11/00. The Government of the Republic of South Africa (First Appellant), The Premier of the Province of the Western Cape (Second Appellant), Cape

- Metropolitan Council (Third Appellant), Oostenberg Municipality (Fourth Appellant) versus Irene Grootboom and Others.
- Daily Investor (2023). 'Ramaphosa Surprises with Comments About Government Spending'. *Daily Investor*, 3 September. Available at: <https://dailyinvestor.com/finance/29868/ramaphosa-surprises-with-comments-about-government-spending/> (accessed 18 October 2023).
- Dawson, H. (2014). *A Framework for Monitoring and Evaluating the Progressive Realisation of Socio-Economic Rights in South Africa. Monitoring the Progressive Realisation of Socio-Economic Rights Project*. Johannesburg: Studies in Poverty and Inequality Institute. Available at: <http://spii.org.za/wp-content/uploads/2014/08/SER-Monitoring-Tool-Framework.pdf> (accessed 18 October 2023).
- Diamond, P. (1965). 'National Debt in a Neoclassical Growth Model'. *American Economic Review*, 55(5): 1126–50.
- Dolley, C., M. Fengu, M. Heywood, and R. Mahlaka (2023). 'SA's Delivery of Crucial Services Under Threat After Treasury Desperately Calls for Public "Fiscal Consolidation"'. 19 August, *Daily Maverick*. Available at: <https://www.dailymaverick.co.za/article/2023-08-19-sas-delivery-of-crucial-services-under-threat-after-treasury-desperately-calls-for-public-fiscal-consolidation/> (accessed 18 October 2023).
- ENCA (2020). 'Growing Calls to Reject Tito Mboweni's Budget'. *ENCA*, 6 July. Available at: <https://www.enca.com/news/growing-calls-reject-tito-mbowenis-budget> (accessed 18 October 2023).
- Financial and Fiscal Commission (2021). 'Supplementary Comment on Budget 2021 and the Bill on Rights'. Available at: https://cisp.cachefly.net/assets/articles/attachments/84822_ffc_supplementary_comment_on_2021_budget.pdf (accessed 18 October 2023).
- Gqubule, D. (2021a). 'It's Not the Wage Bill That's the Problem, It's the Austerity Budget'. *Sunday Times*, 16 May. Available at: <https://www.timeslive.co.za/sunday-times/opinion-and-analysis/2021-05-16-its-not-the-wage-bill-thats-the-problem-its-the-austerity-budget/> (accessed 18 October 2023).
- Gqubule, D. (2021b). 'SA's Monetary Policy Framework is Outdated'. *Business Day*, 17 May. Available at: <https://www.businesslive.co.za/bd/opinion/columnists/2021-05-17-duma-gqubule-sas-monetary-policy-framework-is-outdated/> (accessed 18 October 2023).
- Gqubule, D. (2021c). 'Mboweni Resorts to Austerity Denialism in the Face of Overwhelming Evidence'. *Business Day*, 22 March. Available at: <https://www.businesslive.co.za/bd/opinion/columnists/2021-03-22-duma-gqubule-mboweni-resorts-to-austerity-denialism-in-the-face-of-overwhelming-evidence/> (accessed 18 October 2023).
- Gqubule, D. (2023). 'The Treasury's Dangerous Proposals Are a Threat to the Economy'. *Business Day*, 19 September. Available at: <https://www.businesslive.co.za/bd/opinion/columnists/2023-09-19-duma-gqubule-the-treasurys-dangerous-proposals-are-a-threat-to-the-economy/> (accessed 18 October 2023).
- GroundUp (2020a). 'Budget Breaks President Ramaphosa's Promise, Say Economists. Signatories of Open Letter to Parliament's Finance Committee'. *GroundUp*, 1 July. Available at: <https://www.groundup.org.za/article/budget-breaks-president-ramaphosas-promise-say-economists/> (accessed 18 October 2023).
- GroundUp (2020b). 'Covid-19: 76 Economists Say Government Can Do More to Protect the Economy. Open Letter to President Ramaphosa and the Cabinet from South African Economists, Economic and Business Analysts'. *GroundUp*, 30 March. Available at: <https://www.groundup.org.za/article/70-economists-say-government-can-do-more-mitigate-economic-harm-covid-19/> (accessed 18 October 2023).
- ICESCR (2019) 'Summary of Recommendations to South Africa from the United Nations Committee on Economic, Social and Cultural Rights'. Cape Town: ICESCR. Available at: http://seri-sa.org/images/ENG_OTB8429_UWC_Dullah_OmarICESCR_19_July_201917.pdf (accessed 18 October 2023).

- Jagwanth, S., and F. Soltau (2014). 'Socio-economic Rights and Implications for Intergovernmental Fiscal Relations in South Africa'. Paper prepared for the FFC Conference: A Review of South Africa's Intergovernmental Fiscal Relations System: An African Perspective on Fiscal Decentralization, 10-13 August 2014.
- Janse van Rensburg, T., S. De Jager, and K. Makrelov (2021). 'Fiscal Multipliers in South Africa After the Global Financial Crisis'. Working Paper WP/21/07. Pretoria: South African Reserve Bank. Available at: <https://www.resbank.co.za/en/home/publications/publication-detail-pages/working-papers/2021/fiscal-multipliers-in-south-africa-after-the-global-financial-cr> (accessed 18 October 2023).
- Klaasen, A. (2020). 'The Quest for Socio-economic Rights: The Rule of Law and Violent Protest in South Africa'. *Sustainable Development*, 28(3)(Special Issue: Law and Sustainability): 478–84. <https://doi.org/10.1002/sd.2038>
- Klasen, S. (2010). 'Measuring and Monitoring Inclusive Growth: Multiple Definitions, Open Questions, and Some Constructive Proposals'. ADB Sustainable Development Working Paper Series. Available at: <https://www.adb.org/sites/default/files/publication/28492/adb-wp12-measuring-inclusive-growth.pdf> (accessed 26 October 2023)
- Kornienko, K. (2017). 'Waiting, Hope, Democracy, and Space: How Expectations and Socio-economic Rights Shape Two South African Urban Informal Communities'. *Journal of Asian and African Studies*, 52(1): 34–49 <https://doi.org/10.1177/0021909614560243>
- Laffer, A.B. (2004). 'The Laffer Curve: Past, Present, and Future'. *Background*, 1765, June 1: 1–16. Available at: <https://www.heritage.org/taxes/report/the-laffer-curve-past-present-and-future>
- Liebenberg, S. (2002). 'South Africa's Evolving Jurisprudence on Socio-economic Rights: an Effective Tool in Challenging Poverty'. *Law, Democracy & Development*, 6(2): 159–91.
- Liebenberg, S. (2006). 'Needs, Rights and Transformation: Adjudicating Social Rights'. *Stellenbosch Law Review*, 17(1): 5-36. Available at: <https://scholar.sun.ac.za/handle/10019.1/103987> (accessed 18 October 2023).
- Liebenberg, S. (2014). 'Judicially Enforceable Socio-economic Rights in South Africa: Between Light and Shadow'. *Dublin University Law Journal*, 37: 137–72. Available at: <https://heinonline.org/HOL/PrintRequest?collection=journals&handle=hein.journals/dubulj37&div=9&print=section&format=PDFsearchable&submit=Print%2FDownload&id=143> (accessed 18 October 2023).
- Liebenberg, S. (2021). 'Austerity in the Midst of a Pandemic: Pursuing Accountability Through the Socio-economic Rights Doctrine of Non-retrogression'. *South African Journal on Human Rights*, 37(2): 181–204. <https://doi.org/10.1080/02587203.2021.1972331>
- Liebenberg, S., and B. Goldblatt (2007). 'The Interrelationship Between Equality and Socio-economic Rights Under South Africa's Transformative Constitution'. *South African Journal on Human Rights*, 23(2): 335–61 <https://doi.org/10.1080/19962126.2007.11864918>
- Maeko, T., and L. Mkentane (2023). 'Godongwana Faces Pushback Against Treasury Budget Cuts'. *Business Day*, 20 September. Available at: <https://www.businesslive.co.za/bd/politics/2023-09-20-godongwana-faces-pushback-against-treasury-budget-cuts/> (accessed 18 October 2023).
- Malikane, C. (2020). 'The SARB's Understanding of Costs of QE Critically Flawed'. *IO*, 23 June. Available at: <https://www.iol.co.za/business-report/opinion/opinion-the-sarbs-understanding-of-costs-of-qe-critically-flawed-49743286> (accessed 18 October 2023).
- Masson, E. (2023). 'Cut Spending or Risk a Financial Crisis – BLSA'. *Mail & Guardian*, 25 September. Available at: <https://mg.co.za/business/2023-09-25-cut-spending-or-risk-a-financial-crisis-bsla/> (accessed 18 October 2023).
- Mubangizi, J.C. (2006). 'The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation'. *African Journal of Legal Studies*, 2 (2006): 1–19. <https://doi.org/10.1163/221097312X13397499736345>

- Ngang, C.C. (2014). 'Judicial Enforcement of Socio-economic Rights in South Africa and the Separation of Powers Objection: the Obligation to Take "Other Measures"'. *African Human Rights Law Journal*, 14: 655–80. Available at: <http://www.scielo.org.za/pdf/ahrlj/v14n2/17.pdf> (accessed 18 October 2023).
- Petherbridge, D., M. Harding, and F. Veriava (2021). 'Call for Human Rights Budgeting in the Face of Retrogressive Cuts is a Breath of Fresh Air'. *Daily Maverick*, 10 March. Available at: <https://www.dailymaverick.co.za/article/2021-03-10-call-for-human-rights-budgeting-in-the-face-of-retrogressive-cuts-is-a-breath-of-fresh-air/> (accessed 18 October 2023).
- Pillay, A., and M. Wesson (2014). 'Recession, Recovery and Service Delivery: Political and Judicial Responses to the Financial and Economic Crisis in South Africa'. In A. Nolan (ed.), *Economic and Social Rights After the Global Financial Crisis*. Cambridge: Cambridge University Press.
- Raworth, K. (2017). *Doughnut Economics – Seven Ways to Think Like a 21st-Century Economist*. London: Random House
- Raworth, K. (2023). 'What on Earth is the Doughnut?'. Available at: <https://www.kateraworth.com/doughnut/> (accessed 18 October 2023).
- Republic of South Africa (1996). *Constitution of the Republic of South Africa No. 108 of 1996*. Available at: <https://www.gov.za/sites/default/files/images/a108-96.pdf> (accessed 18 October 2023).
- Sachs, A. (2021). 'The Constitution – Intention versus implementation. "Unfinished Business of Liberation"'. Webinar Series. Oliver & Adelaide Tambo Foundation. Available at: <https://www.youtube.com/watch?v=I9o-R-GAZdA> (accessed 18 October 2023).
- Sachs, M, R. Amra, T. Madonko, and O. Willcox (2023). 'Austerity Without Consolidation: Fiscal Policy and Spending Choices in Budget 2023'. SCIS Working Paper 60. Available at: <https://wiredspace.wits.ac.za/server/api/core/bitstreams/d7b51cba-da16-4deb-8190-f3732672cdf6/content> (accessed 18 October 2023).
- SARB (South African Reserve Bank). (2023). 'Online Download Facility for Data'. Available at: <https://www.resbank.co.za/en/home/publications/quarterly-bulletin1/download-information-from-xlsx-data-files> (accessed 27 September 2023)
- Simkins, C. (2020). 'Austerity and a Permanent Income Shock'. *PoliticsWeb*, 15 July. Available at: <https://www.politicsweb.co.za/opinion/austerity-and-a-permanent-income-shock> (accessed 18 October 2023).
- StatsSA (2023). 'Quarterly Labour Force Survey Quarter 2:2023'. Statistical Release P0211. Available at: https://www.statssa.gov.za/?page_id=1854&PPN=P0211&SCH=73572 (accessed 26 October 2023).
- Tandwa, L. (2023). 'ANC Accuses Treasury of Attempting to Usurp President's Powers'. *Mail & Guardian*, 19 September. Available at: <https://mg.co.za/politics/2023-09-19-anc-accuses-treasury-of-attempting-to-usurp-presidents-powers/> (accessed 18 October 2023).
- UN Committee on Economic, Social and Cultural Rights (2007). 'General Comment No. 19. The Right to Social Security (Art. 9)'. UN doc. E/C. 12/GC19. Geneva: United Nations. Available at : <https://digitallibrary.un.org/record/618890?ln=en#record-files-collapse-header> (accessed 18 October 2023).
- United Nations (1966). 'International Covenant on Economic, Social and Cultural Rights Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27'. Available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (accessed 18 October 2023).
- United Nations (2015). 'Sustainable Development Goals'. Available at: <https://sdgs.un.org/goals> (accessed 18 October 2023).
- Warwick, B.T.C. (2016). 'Socio-economic Rights During Economic Crises: Changes Approach to Non-retrogression'. *International and Comparative Law Quarterly*, 65(1): 249–66. <https://doi.org/10.1017/S0020589315000494>

- Wolla, S.A., and K. Frerking. (2019). 'Making Sense of the National Debt'. Federal Reserve Bank of St Louis. Available at: <https://research.stlouisfed.org/publications/page1-econ/2019/11/01/making-sense-of-the-national-debt> (accessed 26 October 2023)
- World Commission on Environment and Development (a.k.a. the Brundtland Commission) (1987). Our Common Future: Report of the World Commission on Environment and Development. Available at <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf> (accessed 18 October 2023).