

**A HUMAN RIGHTS PERSPECTIVE ON POLICY
IMPLEMENTATION PROCESSES:
OBSERVATIONS FROM THE SOUTH AFRICAN
PUBLIC SERVICE**

Vino Naidoo

September 2003

DEMOCRACY AND GOVERNANCE

Note of acknowledgement

The author wishes to acknowledge Rea Simigiannis, Tozi Maphanga, and Denise Momberg (NCFHR) for their invaluable assistance in facilitating meetings with national government departments. Dr. Kristina Bentley of the HSRC also provided the author with thorough and expert advice on dealing with the subject matter of human rights.

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Acronyms

M&E	Monitoring and Evaluation
NAP	National Action Plan for the Promotion and Protection of Human Rights
NCFHR	National Consultative Forum on Human Rights
NGO	Non governmental organisation
OHCHR	Office of the High Commissioner for Human Rights (United Nations)
PSC	Public Service Commission
SAHRC	South African Human Rights Commission
UN	United Nations
UNDP	United Nations Development Programme

1. Introduction to this Study

This study considers the implementation of public policy from a human rights perspective, and relates to the broad application of human rights defined in the Constitution of South Africa, including civil and political rights, social and economic rights, and a *right to development*.¹ Such a broad human rights agenda poses significant challenges for the South African state as a whole to respect, protect and fulfil rights, and specifically for government ministries/departments tasked with implementing public policy related to human rights.² This study investigates how government departments plan, implement and monitor public policy and whether the public policy agenda framed in human rights terms has implications for *how* these processes are carried out. Put differently, is there a human rights perspective on how departments implement public policy?

This study has chosen to refer only to social and economic rights in the Constitution of South Africa because of the extensive developmental challenges that these present for governments to alleviate conditions of poverty and facilitate availability and accessibility to the means of improvement, the absence or weakness of which could undermine these as human rights. With this said however, this study supports the position that all rights, including civil and political rights, place a positive duty on governments to create, improve and maintain the conditions necessary to guarantee statutory commitments to uphold and not to violate human rights, recognising that not to do so could undermine this guarantee.³ In South Africa, the *National Action Plan for the Promotion and Protection of Human Rights* has grafted an extensive policy agenda onto the human rights principles in the Constitution, and in so doing, challenges the public service to implement this agenda most effectively.

The connection between policy implementation processes and human rights raises the question of *why* government interventions have or have not been effective, supplementing and qualifying *what* actions have been taken, often disseminated as outputs. This study aims to make practical suggestions on ways that the public service (government departments) can improve planning, implementation and monitoring processes from a human rights perspective. The suggestions are based on detailed observations of nine national government departments in the South African government with correlative duties attached to social and economic rights. It is hoped that this initial work encourages further research to evaluate the strength of the elements of a human rights perspective and more in-depth case study-type research.

¹ All references are to the 1996 South African Constitution, Act 108 of 1996.

² Chapter 2 of the South African Constitution (1996): The Bill of Rights includes civil and political rights, social and economic rights, as well as a right to development.

³ For a more detailed discussion see reference to Human Development Report 2000: Human Rights and Human Development.

2. Why Human Rights Matter for How Policy is Implemented

Policy implementation processes, as a set of activities, operates in the realm of public administration and management. When states sign and ratify international conventions and draft national strategies on human rights, they automatically assume an operational responsibility to substantiate these in-principle commitments. These operational responsibilities fall largely to the executive branch of government within a state, and specifically to its operational arm: the public service. A state's substantive commitment to human rights is then highly influenced by how effective the public service is in honouring its in-principle commitments.

The United Nations' Governance and Public Administration Branch noted the position of public administration and management at the confluence of political and administrative activities where 'technical applications and methods combine with political mandates and social sensitivities in pursuit of the public interest and welfare'.⁴ The UN further suggests that the improvement of public administration and management is integral to governance and social transformation. That public administration and management does have a role in the pursuit of items like the public interest and welfare, governance, is relevant in that, as with human rights, these pursuits are generally thought of normatively as something 'good'. Moreover the issue suggested by the UN branch is not whether public administration and management has a responsibility in the pursuit of these goals, but *what* does this responsibility entail in practice?

J.D. Montgomery, writing about the 'Administration of Human Rights', notes the extensive administrative responsibility in responding to human rights:

*The administration of the policies required for carrying out these [human rights] purposes may be observed in all phases of public action, from identifying problems that require policy intervention to considering solutions to them, choosing the preferred one, mobilizing support for it, marshalling resources for action and appraising the public behaviour that responds to it.*⁵

Although the phases of public action mentioned by Montgomery are not special or peculiar because of human rights, his observation underscores the depth of policy challenges that stem from how states respond to human rights. These could be conveyed in constitutions, in the least, by a preamble-type statement declaring a respect for human rights in the conduct of state and government, and at the most could define each major public policy item in human rights terms. South Africa conforms to the latter, and therefore the question is posed of *how* human rights are being responded to.

⁴ United Nations, Governance and Public Administration Branch, Division of Public Administration and Development Management, Department for Economic and Social Affairs (1998: 7).

⁵ Montgomery (1999: 323).

An interesting perspective on *how* governments respond to human rights comes from Professor Arjun Sengupta of India's Jawaharlal Nehru University, who stated with reference to the notion of a *right to development*, that:

*When development is seen as a human right, it obligates the authorities, both nationally and internationally, to fulfil their duties in delivering (or, in human rights language, promoting, securing, and protecting) that right in a country. The adoption of appropriate policies follows from that obligation. Nationally, the government must do everything, or must be seen as doing everything to fulfil the claims of human rights.*⁶

Although this study does not address development as a human right, Sengupta's comment is otherwise noteworthy because of something else that it reveals about development, as an approach in responding to human rights. From this perspective, development is not a right but a descriptor of conditions or circumstances, revealing information on the extent that human rights are enjoyed amongst a population. A development approach may be incorporated into policy implementation where this seeks to identify and respond to those factors that prevent or constrain some, as compared to others, from enjoying rights that in principle everyone is entitled to. The merit in linking human rights and policy implementation via a development approach is that it queries *how* states assess their human rights record in practice, or their positive duty to create, maintain and improve the conditions that guarantee individual claims on human rights.

Stephen Marks identifies the 'capabilities' approach amongst others as a means of linking human rights with human development.⁷ The interesting aspect of this approach is in how it distinguishes between an individual's option to *participate* in some valued dimension of life, compared with the 'functioning' or exercising of that option. On the one hand, one's capability is tied to the *availability, accessibility, and affordability* of a public good or service, whereas one's functional option refers to the actual consumption of the public good or service. The problem that Marks recognises for linking human rights with human development is that public policy tends to focus on the functional option.⁸ The nature of the problem is that a person's ability to exercise a functional option should not overshadow the provision of the good or service in the first place, upon which the functional option could be considered a luxury in times of scarcity. Put another way, all individuals may be equally free to choose whether or not to exercise a functional option, but the weight of that choice hinges on whether that

⁶ Sengupta (2000: 6).

⁷ Marks (2000/2001: 4-5).

⁸ Reference made by Marks to the work of Amartya Sen and Martha Nussbaum. Martha Nussbaum for example observes the risk of focusing on the functioning or consumption of a good/service by suggesting that a deeply religious person may prefer not to be well nourished and instead choose strenuous fasting. Another example could be an individual choosing not to exercise their option to access a particular health service in lieu of prayer or other religious means to alleviate an ailment. In the same vein Künnean states: 'what does it mean to be without access to food...Someone who makes a conscious decision not to use available access is, of course, a person who does have access.' See Künnean (2002: 85).

public good or service is available, accessible, and affordable, among other factors. The capabilities approach corresponds with a development approach by singling out specific elements that create the conditions that may differentiate individual enjoyment of human rights. As with a development approach, a capabilities perspective shifts responsibility to states to ensure that the basis for an individual's functional choice is in place. The primary responsibility of states then is not to interfere with individual functional options - so long as these do not violate those of others - but to ensure that the means to exercise those options are present.

What could this mean for policy implementation?

- Ensuring that policy implementation is driven by the needs of the many, realising that not everybody has the real option of foregoing the use or consumption of specific goods and services.
- Conversely however the above also widens people's options on public goods, or their freedom to choose how and even whether to consume goods and services.
- Concentrating on standards such as availability, accessibility and affordability facilitates medium to longer-term planning.

Addressing factors such as availability, accessibility and affordability is particularly challenging for policy implementation at a technical level because it is not possible to 'deliver' these at a static point in time to satisfactorily respond to human rights. These factors relate to ensuring that the means are in place to ensure that individual human rights are protected, promoted and fulfilled. Making such a guarantee is exceedingly difficult in modern states that have to constantly assess, re-assess and respond to conditions that undermine the protection, promotion and fulfilment guarantee.

Because human rights are also legally enshrined in international law and in domestic law through constitutions and bills of rights, *how* governments respond through policy implementation requires more descriptive and process-driven accountability than simply a listing of outputs. The UN Committee on Economic, Social and Cultural Rights in General Comment 12, referring to the right to food, alludes to this by noting that:

Should a State party argue that resource constraints make it impossible to provide access to food for those who are unable by themselves to secure such access, the State has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations...a state claiming that it is unable to carry out its obligation for reasons beyond its control therefore has the burden of proving that this is the case.⁹

Although this example refers specifically to states citing resource constraints, it is nonetheless valuable for recognising that the legal foundation of human rights requires

⁹ Künnean (2002: 92-93)

a fuller accounting of state responses primarily at the technical level of implementation. This includes identifying those unable to secure access, demonstrating that various efforts have been taken to address problems, using all disposable resources.

Finally, the participation of non-governmental actors in policy implementation is especially important in promoting a human rights perspective. This is related to the normative value placed on individuals, at least in a democracy, to have the right to be involved in how they are governed.

At the policy level, the United Nations Development Programme (UNDP) discussed the importance of non-governmental involvement and human rights by observing that:

Governance institutions [which includes the public service] are responsible for respecting, protecting and promoting human rights. But they are not the only ones involved in human rights and sustainable human development. Of equal importance are the civil society organisations - human rights and other law-related NGOs, socio-economic NGOs, community organisations, schools, indigenous people's organisations, women's advocacy groups and the media - that play a crucial role in monitoring, protecting and promoting human rights...They also protect and promote human rights, often complementing government efforts. Their expertise, experience and resources (legal, educational or advocacy-related) are invaluable given current resource scarcity and deficit cutting.¹⁰

The main point of the UNDP description relates to the experience and expertise of non-governmental organisations in supporting policy implementation. Although this is not specific to a human rights perspective, when responding to policy as rights, the circumstances of finite government resources, if not more efficiently and effectively managed, could constrain the ability of governments to respect, protect and promote those rights. Sourcing the assistance of non-governmental actors therefore becomes more than just a normative recognition of the value of their participation but is also influenced by the active solicitation of non-governmental resources, based on their experience and expertise, in supplementing resources not held by government.

The challenge for government department programme officials in responding to a human rights-driven policy agenda is deciding how to source the expertise of non-governmental actors where this *most effectively* supports successful policy implementation. In practice this could entail a much closer implementation relationship between programming officials and NGOs than is sometimes the case, where government *monitoring* of NGO performance often does not effectively and readily troubleshoot implementation obstacles. This may be related to a number of factors including overstretched programming officials who, in managing multiple programmes

¹⁰ UNDP (1998)

or projects, are not easily able to provide greater and substantive *management* time as compared with a lesser amount of *monitoring* time. A second factor could be a programming official's level of programme and related policy expertise and experience. This has serious consequences for the quality of planning and implementation expectations. These are technical challenges that have a direct bearing on how successful and effective a programme or project is in responding to a policy activity.

The participation of individuals as recipients of policy implementation is essential in the right of individuals to be involved in governing themselves. The United Nations Office of the High Commissioner for Human Rights (OHCHR) comments on participation's link with good governance and the right to development by stating that national development policies should aim at the 'constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in the development and in the fair distribution of the resulting benefits.'¹¹ Although this also refers to the normative root of why participation is viewed as important in a democracy, *how* to involve individuals and communities more freely, actively and meaningfully is also a practical challenge for programme managers.

This section has tried to make a case for changes in implementation processes from a human rights perspective. In this regard it has noted that:

- Policy implementation processes such as planning, resource provision, execution, and monitoring directly contribute to upholding principles such as governance, human rights, and the public welfare.
- Human rights ought to be the context within which to assess a country's level of development. Government performance is about more than ameliorating conditions of underdevelopment, but protecting and fulfilling the conditions necessary to guarantee an individual's claim on a right.
- Implementation should try, amongst other things, to promote individual *capabilities* to policy goods and services.
- Non-governmental participation in the implementation of policy ought to be based on and geared towards achieving the most effective outcomes of policy interventions, rather than becoming a principled end in itself.

3. A Rights-based Approach

This section will illustrate in more detail the elements of a *rights-based approach*, associated largely with the work of OHCHR. This study has chosen to refer to the elements of a rights-based approach because these were found to be quite useful as a framework to support the assessment of policy implementation processes. The list that follows includes some of the elements of a rights-based approach encountered in this research including those in bold, which, in the researcher's estimation, most directly

¹¹ See reference to *Human Rights in Development: Good Governance*, Office of the High Commissioner for Human Rights, United Nations.

referred to the policy implementation stage: planning, execution, and monitoring and evaluation. Table 1 shows how the researcher unpacked these as guide questions for interviews with government departments.

- **Accountability:** Requires that laws, policies, institutions, administrative procedures and practices, and mechanisms of redress are in place.
- **Empowerment:** Providing people with capacities, capabilities and access with respect to changing, improving and influencing their livelihoods and that of their communities.
- **Participation:** Related to the objective of empowering people, but also includes access to development processes, institutions, information and redress or complaints mechanisms. This also means situating development project mechanisms in proximity to partners and beneficiaries.
- **Non-discrimination and attention to vulnerable groups:** Questioning who is vulnerable locally, through the use of disaggregated development data in particular.
- **Adequate progress:**¹² Committing resources and effort to the priority of rights.
- **Effective remedy:**¹³ Ensuring redress when rights are violated.
- **Transparency:** The World Bank observed that the challenge of transparency is ‘to design institutions and systems that cut down both the incentives for, and the capability of, public officials to engage in corrupt activity’.¹⁴

Table 1: Elements of a rights-based approach and interview guide questions

Elements of a rights-based approach	Elements of a rights-based approach informing	Guide questions for department interviews
Participation	<ul style="list-style-type: none"> • Various means of incorporating participation. 	<ul style="list-style-type: none"> • How and to what extent are non-governmental actors involved in policy implementation?
Adequate progress	<ul style="list-style-type: none"> • Mechanisms to measure and define ‘progression’ over the longer-term. This is key to the medium to long-term planning process. 	<ul style="list-style-type: none"> • How is progress measured in policy implementation via output, outcome, impact and resource inputs (financial, human, physical) – targets? • What is the process for determining progress in relation to the effects tied to other rights?

¹² UNDP (2000: 95) Reference is made here to the Committee on Economic, Social and Cultural Rights, General Comment 3, para. 2 ‘While full realization of the relevant rights may be achieved progressively...Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant’. Adequate progress can be tracked via changes in inputs and changes in outcomes. Outcome is a developmental variable, which is dependent on the efficacy and efficiency of the inputs that form the ‘process’. In addition to financial inputs, the researcher would like to look at institutional inputs such as physical resource allocation (human, physical); established *modus operandi*, institutional support structure.

¹³ Ibid: 95. Reference to the Universal Declaration of Human Rights, Article 8: ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’.

¹⁴ World Bank (1998: 12-13).

4. Monitoring of Human Rights in the South African Public Service

South Africa has a well-structured cluster of human rights monitoring bodies. This is composed principally of the South African Human Rights Commission (SAHRC) and the National Consultative Forum on Human Rights (NCFHR), which evaluate government performance against the Bill of Rights and the NAP, respectively. The Public Service Commission (PSC), which monitors government performance against principles of public administration contained in Chapter 10 of the Constitution of South Africa, also, it is argued, has a key to play supporting these specialist human rights monitoring bodies. This is based on the PSC's particular interest in policy implementation *processes* related to efficiency and effectiveness, which could supplement the largely input, output and related descriptive performance indicators of the SAHRC and NCFHR.

This section continues by describing the bodies introduced above in more detail.

The South African Human Rights Commission

The South African Human Rights Commission (SAHRC) is a Constitutional body tasked with monitoring human rights violations as well as the government's progress on social and economic rights. The latter is presented in the SAHRC's Economic and Social Rights Report, the latest (4th edition) of which was released in April 2003, covering the period 2000-2002.

The Commission's Economic and Social Rights Report provides a good overview assessment of how government agencies have applied legislation and introduced policy and administrative measures related to their human rights mandates. This includes to what extent policy and programmes address specific or vulnerable population groups. What the report does not capture is a qualitative assessment of implementation processes that have contributed to objectives achieved. A fuller account of the SAHRC is given in Table 3 in Appendix B to this report.

The National Action Plan and the National Consultative Forum on Human Rights

The Government of South Africa assumed responsibility for reporting on human rights to the United Nations by developing a strategic plan. The *National Action Plan for the Promotion and Protection of Human Rights* (NAP) emphasises social and economic rights focusing on the 'greatest needs of the most disadvantaged and vulnerable' including water, food, and social security.¹⁵ The NAP is essentially a strategic planning document aimed at the programmatic and bureaucratic challenges associated with implementing the Bill of Rights.

¹⁵ The NAP was South Africa's response to the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993.

The National Consultative Forum on Human Rights (NCFHR), whose secretariat reports via the Department of Justice, was established through the executive branch of government to monitor the implementation of the NAP challenges, and in this regard, receives, analyses and compiles information on the progress of national departments. The Forum also has a responsibility to report on South Africa's international and regional human rights obligations, as well as to provide a human rights training function. Although its reporting format is similar to that of the SAHRC, it is limited to commenting on *legislative, policy and administrative* measures.

The Public Service Commission

The Public Service Commission (PSC) has a Constitutional mandate to monitor and evaluate the performance of the public service ranging from human resource to policy practices and performance. A specific activity is assessing government performance according to public administration principles under Chapter 10 of the Constitution. These principles include:

- A high standard of professional ethics must be promoted and maintained
- **Efficient, economic and effective use of resources must be promoted**
- **Public administration must be development-oriented**
- **People's needs must be responded to, and the public must be encouraged to participate in policy-making**
- Public administration must be accountable
- Transparency must be fostered by providing the public with timely, accessible and accurate information
- Good human-resource management and career-development practices, to maximise human potential, must be cultivated
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation

Some of these principles (marked in bold) not only directly relate to policy implementation but also correspond to the elements of a rights-based approach. The strength of the PSC's method is in attempting to qualitatively *measure* these principles.¹⁶

Before proceeding to the empirical component of this study, Table 3 in Appendix B to this report should be consulted because it evaluates the strengths of the human rights monitoring agencies discussed here, and why it is recommended that this information be shared more analytically towards profiling department human rights performances.

¹⁶ The PSC is due to release a report on findings from particular national and provincial departments, attached to these principles. For more on the M&E framework used, see the PSC website: <http://www.psc.gov.za>

5. Research Methodology and Planning

Limitations of this research

Time and budget constraints prevented a more rigorous and in-depth look at elements of a rights-based approach. Therefore this research is not able to critically analyse these elements in practice save for making detailed observations. The research limitations of this study should also be considered against the breadth of South Africa's human rights agenda, composed of a complex mix of inter and intra-departmental programmes. This context influenced the decision taken to undertake a broad survey of departments with correlative duties attached to social and economic rights and to pursue a rights-based approach inquiry to stimulate debate and highlight areas for further research.

It was a challenging task to select those departmental activities on the basis of having *more* relevance to human rights. In practice however larger programmes were favoured over smaller ones as well as those that more clearly responded to specific provisions in the Bill of Rights. In other cases, such as with the Department of Education, it was regarded as more important to refer to the means for and extent of data collection and management given the extensive bureaucratic mandate of this Department, and because the bulk of implementation for basic education takes place at provincial level.

It was especially challenging to empirically investigate implementation processes when government activities that respond to human rights vary both across and within departments, and where it was not easy to access the best placed technical officials. These research challenges proved however that human rights are not a singular agenda item that can be managed as a line function by a specific individual or unit, or left to a single department (see Montgomery's point on page 14).

Planning

A total of nine departments responded to a request for interviews, including six with social and economic-linked mandates, and three co-ordinating departments, which have non sector-specific mandates providing human rights reporting, implementation and technical support to the public service (see Table 2). The reason for utilising the NCFHR for securing initial appointments was the potential difficulty and corresponding risk of trying to, from the outside, pick and choose officials whom the researcher thought might be the most appropriate to discuss the link between policy implementation and human rights, which is an underdeveloped area of research. The NCFHR provided assistance in securing initial interviews with departmental representatives serving on the Forum, and through this process it was found that subsequent interviews were needed with *programme planning, management and monitoring and evaluation*. Interviews were then conducted with these individuals.

Table 2: National departments Interviewed and corresponding functional areas

Department	Functional area
Agriculture	<ul style="list-style-type: none"> • Programme Planning, Monitoring and Evaluation • Food Security and Rural Development
Health	<ul style="list-style-type: none"> • Strategic Planning • Integrated Nutrition Programme
Social Development	<ul style="list-style-type: none"> • Social Security • Poverty Relief
Housing	<ul style="list-style-type: none"> • Human Settlement Policy and Integration • Housing Subsidy Programme • Information Management
Land Affairs	<ul style="list-style-type: none"> • Monitoring and Evaluation • Land Restitution Programme
Education	<ul style="list-style-type: none"> • Education management information system (EMIS)
DPSA	<ul style="list-style-type: none"> • Service Delivery Improvement
Public Service Commission	<ul style="list-style-type: none"> • Management and Service Delivery Improvement
Justice	<ul style="list-style-type: none"> • National Consultative Forum on Human Rights

Prepared questions were sent to government departments along with a covering letter explaining the objectives of the study. The initial set of questions covered all elements of a rights-based approach however the researcher decided only to focus on those elements that most directly related to policy implementation: *adequate progress, non-discrimination, and participation* (see Table 1 for guide questions). During the course of the interviews it became apparent that the guide format of the questions should remain rather than devising a more rigid interview schedule, due to the variety of officials met and the risk that they did not acquaint their functions with the concept of a rights-approach. As a result, a more flexible interviewing approach was employed which tried to document the extent of planning, implementation and monitoring activities. In retrospect this proved more valuable in that these processes could, during the course of interviewing and in post-interview analysis be evaluated against elements of a rights-based approach. Although a more rigid interview schedule was not helpful, it is felt that this was not due to the non-relevance of the questions but rather that the questions as framed presumed that department officials utilised a rights-based approach. This presumption ran the risk of getting bogged down in explaining the conceptual foundations of a rights-based approach, which was not the purpose or objective of this study. With this qualification, the findings of this study are based on detailed observations rather than critical in-depth analysis.

6. Observations and Commentary

The most common element of a rights-based approach observed in government departments was *non-discrimination*. Demographic and spatial segmentation is extensively used to identify population groups that are most in need. This is carried out

through the use of surveys targeting departmental operations as well as beneficiaries via household surveys. Departments are also improving their use of a range of instruments to monitor and evaluate the performance of their programmes. The practice of *impact assessments* is especially gaining in popularity. Impact assessments are perhaps the most difficult of monitoring and evaluation instruments to execute however they yield the richest information on whether government interventions have achieved their desired ends. One aspect of impact assessments that perhaps most directly resonates with a human rights approach is the ability of a programme to increase the autonomy of beneficiaries. This goes beyond the less clear goal of obtaining beneficiary ownership, to the ability of programmes to impart skills that enhance beneficiary independence.

Being able to target population needs and then respond to these needs are at opposite ends of the implementation process. It was observed in this study that the major difficulty departments have in bridging the two is *information collection, analysis and utilisation* in ongoing planning and implementation. This is key to the ability to know if adequate progress is being made and maintained, as well as what is reported on. This is even more challenging for national departments that rely on sub-national units (provincial government) for the bulk of implementation. National departments as a whole are improving the macro framework for information collection and analysis through for example the creation of *norms and standards*; improving the monitoring of conditional grant allocations to provincial governments through revising the *Division of Revenue Act*; and incorporating areas for inter-governmental support in their surveys. The inter-governmental fiscal framework has also recently required provinces to submit strategic and performance plans at the programme and sub-programme level, which is intended to aid national monitoring of policy implementation.¹⁷ Although the implementation of these measures is noteworthy, the value of their existence will also rest on whether officials at the programme level can ensure the effective acquisition, analysis and use of information to improve programme performance. In other words these measures alone can't guarantee this desired result at programme level. A number of suggestions are made on how to improve information management at programme level in section 6.

Another observation made by this study is that there is a general recognition that more effective participation by communities in policy implementation is required. The challenge is determining what constitutes *effectiveness*. Effective participation could be viewed as per the Department of Health and Agriculture's intended involvement of non-governmental actors in all phases of implementation, including planning, provision, management and evaluation. This is obviously a sweeping statement that does not

¹⁷ Department of National Treasury (2003: 72).
The IGFR 2003 stated in reference to the education sector that 'While attempting to assess service delivery trends, the *Review* also points to the unavailability of credible non-financial information. The 2003/2004 strategic plans represent the first attempt to formalise and standardise measurable objectives and performance targets for education.'

illustrate more than a commitment by departments to *involve* individuals. If we pick up on some of the preferred characteristics of participation encountered in this study, including *meaningfulness* and the *empowerment* of people, procedurally it is suggested that participation should be akin to the Department of Agriculture's suggestion of fostering beneficiary management of the initiative, or enhancing *local* (the term 'local' is used in this section to refer to both individuals and communities) autonomy as noted earlier. Procedurally this could mean that programmes are evaluated by the ability of locals to not simply take ownership but to actively drive and manage initiatives, which presumes a level of independence gained at the conclusion of an intervention.

The UNDP advises through its experience that participation must essentially be incorporated into the fabric of an initiative, which requires programme managers to spend time at the planning stage collecting and analysing information on *where* and *how* this is to be done. The UNDP makes specific suggestions, which the researcher has supplemented through this study, which could guide programme managers. These include:¹⁸

- **Reaction of national and local authorities to the promotion of participatory development.** It is also necessary for programme managers to evaluate how best to solicit the participation of government authorities, locals, and non-governmental actors where this would enhance the autonomy of individuals and communities. The Department of Agriculture's Food Security and Rural Development Directorate conveyed their concern with sourcing NGO participation where this either supplemented department capacity or specifically fostered local management of initiatives. The Department of Social Development's Poverty Relief Programme and the Land Restitution Programme of the Department of Land Affairs both recognised the need for a wider local support base involving a mix of people, local governments and non-governmental organisations. Although the argument was made for differing reasons, including the limitations of department responsibilities to specific programmes, in the case of Land Affairs, and enhancing programme resources to address the complexities of need, in the case of the Poverty Relief Programme, the common feature was that departments can rarely if ever address all aspects of a policy issue by themselves.
- Related to the above is determining **how best to utilise existing local practices or modes of organisation where this would benefit the planned initiative.** Although this is positively recognised in promoting local management and ultimately independence, it is more complex than it initially appears. This is because programme managers must at the outset determine whether existing local modes of organisation themselves promote the equal and active participation of all members who are intended to benefit from the planned initiative. This is a particularly important element of a rights-based approach.

¹⁸ The researcher has chosen to refer to just a few of the many useful principles and questions related to participation presented by the UNDP. For more see UNDP (1997) *UNDP Guidebook on Participation*.

- **Using local knowledge, methods and skills as much as possible where this would increase the effectiveness of the intervention and enhance individual local capabilities.** Programme managers should moreover show how local inputs have been incorporated into implementation and illustrate what actions have been taken and why?¹⁹ Closely related to this is encouraging active local participation in project implementation as different from passively receiving decisions and actions. Despite the positive effect that encouraging and devolving responsibility to locals could have on enhancing autonomy and ultimately independence, these goals should not be confused nor used as an explanation for insufficient government management and monitoring directed specifically at achieving the objectives of an initiative. In other words the level of management time committed to an initiative by programme managers does not decrease but probably increases in the sense that the above actions and processes are given adequate attention.

7. Suggestions for Improving Policy Implementation Processes

Institutional arrangements

Are institutional arrangements guided by a rights-based approach? This question must be viewed within the context of varying departmental structures aligned to the features of services being provided. One approach mooted by the United Kingdom's Department for International Development, was the establishment of 'policy units' in government departments. These units could carry out the following functions²⁰:

- Identification of priority areas for interventions (planning and programming).
- Assessment of the impact of policies on target areas and groups (monitoring and evaluation).
- Bringing budget and planning together, including the justification for requests for public funds in terms of planned outcomes and how these are to be achieved (strategic planning, M&E; programming).

In the first instance many departments have policy units conducting a range of activities including policy formulation, planning, and M&E, or a combination of these. In effect such units would collect data on programme progress, including impact assessments, targeting effectiveness, as well as input planning (budgets and other resource allocations), where data is analysed and used in ongoing planning. Such a policy unit could serve a generic strategic planning function for the department's activities as a whole and rapidly assess these according to a rights-based approach. Despite the positive contribution that a policy unit could make, it should ideally be small with a

¹⁹ Refers to the circumstances where individuals and communities may not be in possession of certain technical and experiential information related to programmes. Governments therefore bear the responsibility in, as much as possible, trying to leverage local practices and knowledge where relevant and useful and communicating what has been used versus what has not been used, and why.

²⁰ Department for International Development (2001: 19).

limited and precise mandate, where this is not covered elsewhere, given that many of its proposed functions are already taking place in government departments including monitoring and evaluation, policy planning, programme management, as well as policy support and strategic planning. Furthermore in most cases there are practical and arguably preferred reasons for maintaining this diffusive arrangement, especially if it promotes decentralised responsibility for adhering to a rights-based approach. Reference is again made to Montgomery who stated that:

*The rights of those affected by policies pervade almost the entire portfolio of public and private action. Yet responsibility for these actions is so pervasive that no single department can take responsibility for human rights as a whole.*²¹

Montgomery's point is all the more significant in view of the complexity of government, composed of disparate agencies responsible for wide-ranging public policy issues.

The establishment of human rights units in departments should also be scrutinised in terms of the value to be added by their creation, and related questions of size and mandate, given that their intended functions could already be taking place in departments. This includes managing legal matters (compliance with international conventions and agreements; handling litigation matters involving the Department); information management including the maintenance of department obligations to report to various bodies; and possibly a human rights training function which could be managed by a department's human resources section. Again the emphasis is on a diffusion of responsibility for human rights to existing departmental units, rather than bureaucratically *specialising* the responsibility for human rights.

In terms of policy implementation, what should also be emphasised is regular and intensive implementation planning meetings involving a selected group of diverse officials responsible for programme management, monitoring and evaluation, policy support, and executive management. The purpose of these meetings would be to continuously strengthen policy implementation *processes* in responding to a department's human rights obligations. Using elements of a rights-based approach as a framework to assess the quality of implementation processes would also provide coherence to this exercise and ensure that monitoring of department activities happens as much as possible in *real time* to deal with implementation obstacles. Finally it is suggested that bringing together various line functionaries to tackle ongoing implementation challenges is more beneficial to all programmes. This is because it prevents the discussion getting bogged down in the details of individual programmes by re-focusing attention on getting the mechanics of implementation right through the sharing of wider expertise and experiences.

²¹ Montgomery (1999: 323).

Policy implementation tools: A human rights checklist

Complementing the implementation planning meetings, but at a specific programme level, could be the mandatory use of a human rights checklist. The checklist could be used to vet programmes at the planning and implementation stage against criteria that would ensure that policy activities are responding to rights obligations. The checklist would form part of the implementation process and specifically the pre-design phase. The checklist is an attempt to fuse human rights obligations with policy implementation processes so that performance is assessed not just in terms of the production of outputs but by linking the quality of these sequentially to the quality of the *process*. The checklist is essentially a quality control instrument. The components of the checklist could include:

- Reference to national and international obligations pertaining to specific rights falling under the responsibility of sector departments. For example this would first identify whether a specific obligation in terms of the country's international obligations need to be met, and then work downwards through contextual challenges via the NAP.
- Impact projections: Intended and unintended, real and potential, including these on populations and regions identified as particularly sensitive or vulnerable to proposed interventions. This would require the acquisition and processing of data (both intra-governmental and extra-governmental), as well as decisions about the extent and quality of existing data. Moreover in view of the prioritisation of activities, which means varying levels of expenditure and support across spatial and population segments, compensatory action should be sought via provincial and local resources.
- Securing the participation of non-governmental actors in design, implementation and monitoring. This decision ought to be driven by supplementing government resources where these are insufficient.²²

The responsibility for applying and managing the checklist would fall to programme managers who would no doubt have to consult with a range of sources. Furthermore, Table 4 in Appendix B could be useful as a guideline for programme managers in deliberating on the policy implementation requirements as these refer back to the Constitution and the NAP.

Suggested components of human rights training for government officials

Stephen Marks cites Clarence Dias's useful account of how human rights 'education' contributes to development, including:

- Monitoring of development activities.
- Mobilising support for victims' struggles for rehabilitation, redress, and justice.

²² The HSRC learned from a study assessing donor co-ordination in 2002 that overseas development assistance better served department objectives if it responded more strategically to department priorities.

- Promoting understanding of the rationale for development.
- Securing more effective participation in the development process.
- Securing accountability for those responsible for misuse of public resources.²³

The significance of Dias's points is that they mostly respond to the elements of a rights-based approach, including accountability, participation, in addition to taking a development approach. The perspective on development taken by this study is again that of a descriptor used in monitoring progress on human rights. Because the concept of 'development' is multi-dimensional, Dias's reference to the importance of conveying an *understanding* of its rationale should be a key aspect of human rights training.

Another helpful reference in thinking about the content of human rights training in the public service is the document: *An Integrated Performance Management and Development System for Use in the Public Service*, produced by the Department of Public Service and Administration, of the Government of South Africa. It presents elaborate yet clearly defined recommendations on how departments can measure their performance. The document promotes the use of more flexible performance evaluation criteria where outputs, outcomes and targets are assessed on obstacles encountered, obtaining support where needed, the modification of outputs and standards.²⁴ Documenting these processes in the achievement of outputs assists in evaluating *why* and *how* programmes succeed or under-perform viz. outputs produced, and what decisions were taken and why.

With reference to the above, it is suggested that the following features be incorporated into departmental human rights training. These features are largely about programme performance where this is defined as enhancing the effectiveness of response to departmental human rights obligations:

- The focus should be on policy implementation: programme planning, implementation, monitoring and evaluation. Learning should include international and national human rights standards and obligations and the actions required by the Department. This could also refer to the guidelines mentioned in Table 4.
- Aligning departmental planning and implementation practices to meeting human rights obligations.
- Questioning how to improve the regularity of outcome and impact monitoring on targeted populations. What instrument or combination of instruments will ensure stronger and varied assessments of programme quality? To what extent do these measure progressive benefits for intended populations?
- How and why to secure the strategic participation of non-governmental agents to best support government service delivery, where this would supplement available departmental technical, financial and human capacity.

²³ Cited in Marks (2001-2002: 17).

²⁴ Department of Public Service and Administration (2003).

8. Conclusion

This study has been a first attempt in thinking deeper about what responding to human rights means for how the public service implements policy. At its most basic the position that has been taken is that the relationship between the stipulation and elaboration of human rights and its results, depends a lot on the implementation *processes* that link the two. This is particularly yet not exclusively emphasised in states that have linked policy goals extensively to human rights. The position taken relates to questioning whether human rights as a normative concept and feature of international law, poses unique or peculiar challenges for policy implementation. The finding, at least within the coverage of this study, is mixed in theory, but does support a human rights perspective to human rights.

On the one hand the elements that have been identified and discussed in this study related to human rights and a rights-based approach are not exclusive to a human rights discourse, compared to an agenda of public goods and services and public welfare not defined by human rights. In this case, in an ideal world, the good intentions of the governors to the governed, if not defined by human rights, ought to be carried out correspondingly. On the other hand however, the value of the human rights discourse, at a level of principle and as a matter of law, provides a clear and binding frame of reference to guide the governors and ensure recourse for the governed, in evaluating these good intentions.

The policy implementation suggestions made in this study should be further analysed, critiqued and related back to elements of a human rights perspective and a rights-based approach. It is also hoped that further research looks more in-depth at the issue via specific departmental case studies, as well as investigations at sub-national government level.

APPENDIX A: Department interviews

National Consultative Forum on Human Rights: Mandate stems from the decision of the Government of South Africa to develop a national plan of action on human rights in response to the Vienna Declaration and Programme of Action, World Conference on Human Rights, 1993.

In its draft interim report for the period 1999-2001, the National Consultative Forum on Human Rights displays information on how government departments have responded to the policy challenges attached to the rights stipulated in the Constitution. The information contains legislative, policy, and administrative measures taken, with the latter broken down by strategies, guidelines, agreements, training, and statistics. The primary limitation of the information as presented is the somewhat inventorial listing of measures in response to the challenges. This limitation is understandable however given that the Forum does not have the necessary human and financial capacity to undertake more detailed analysis.

Despite the limitations of the Forum carrying out more detailed analysis, it is necessary that this exercise be taken up if the NAP is to serve the 'strategic planning' function for which it was intended, rather than being just a 'reporting' instrument for the international community. Recommendations on *how* more detailed analysis should be conducted and *by whom* should ideally fall to departments themselves and the suggestions made in section 6 of this report could assist departments in thinking about this. Finally, it is taken as given that the mandate of monitoring agencies such as the NCFHR, the SAHRC and the PSC is vital for upholding transparency and accountability of government agencies. In addition to suggesting that government agencies themselves improve the implementation and monitoring of their own programmes in response to human rights, it is also necessary that the monitoring agencies above strengthen the profiling of agency performance by sharing their information and perhaps arranging for it to be co-analysed.

Department of Agriculture: Responding to section 27(1)(b) of the Constitution, right to have access to sufficient food and water.

Integrated Food Security Strategy (IFSS)

The Department of Agriculture is responsible for co-ordinating the *Integrated Food Security Strategy for South Africa*, this significance of which is that it broadens the response to and responsibility for food security. In practice the approach requires both intra-government planning (between state departments) and intra-societal planning and collaboration involving government and non-governmental actors (private sector, NGOs, beneficiaries).

The IFSS responds to section 27 of the Constitution of South Africa, which states that:

Everyone has the right to have access to sufficient food and water health care services social security appropriate social assistance the state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of each of these rights.

It is noteworthy that these rights are parcelled together not only as an aggregate measure of livelihood conditions, but also because it challenges public managers to think more laterally about ways and means to conceptualise and pragmatically address how to support and reinforce the production and acquisition of food in view of, for example, the impact of food insecurity on the need for health and social services as well as the ability to produce one's own food requirements or acquire it sustainably.²⁵

The IFSS approach therefore takes an obviously strategic approach including:

- Concentrating on poverty as the primary condition affecting household food insecurity, and the associated need to involve many agents including state and non-state actors.
- Goes beyond supply and emergency-driven food provision to include increasing the capability of individuals to access productive resources and income and job opportunities to facilitate the production and acquisition of food.
- Clearly recognising that food security information is vital for effective planning within and between agencies, and that because such information is multi-sourced, co-operation and co-ordination is key to 'establishing efficient and cost-effective systems'.²⁶

At present the Food Security and Rural Development Directorate, which is co-ordinating activities within the IFSS, working on an estimated 2.2 million food insecure households based on 1996 census figures, views its objective as enhancing response mechanisms to alleviate food insecurity by improving the pooling and analysis of pertinent programme information held by various departments.²⁷ In this regard the main challenge for the Directorate will be synthesising the volumes of information generated by various food security-related activities, where this could better inform the design and modification of instruments that target food vulnerable regions and or communities. The challenge at the inter-governmental level is to transfer much of the day-to-day management of food security activities in the agriculture portfolio to provincial departments. Towards this end, the national department along with its provincial counterparts are negotiating norms and standards. The Directorate is also discussing a more systematic way of engaging non-governmental organisations. In particular the Directorate conveyed the need to source non-governmental agents where this would

²⁵ NEPAD (2003). Related to the impact of degenerative conditions such as HIV and AIDS.

²⁶ Ibid.

²⁷ This includes the Integrated Nutrition Programme. Dept. of Health, Food Pricing Monitoring Committee - Agricultural Research Council, and the National Emergency Scheme - Dept. of Social Development.

both supplement government capacity and enhance the ability of local beneficiaries to sustainably manage activities.

In general the IFSS is a responsible approach to dealing with the many dimensions of food security. But recognising this feature of the problem also reveals the challenge of improving responses by bringing together the expertise of a wider mix of government and non-governmental parties?

The researcher also secured an interview with the Programme Management section in the Department of Agriculture, falling under the Directorate Programme Planning, Monitoring and Evaluation. The section is responsible for providing *support* to programmes managed by the Department with a particular concern being improving programme impact assessments. The chief concern of the section is devising a system to better track planning and reporting on programme performance. This is currently being pursued through development of an information flow and management system. Perhaps the most important component of this system is the appropriateness of the criteria for planning and monitoring, against which future impact will be evaluated. The Department provided the researcher with a list of criteria that it will refer to as a guide to its project planning and monitoring. The Department of Water Affairs and Forestry took the lead in developing the criteria, which, although aimed at forest management, is nonetheless more generically relevant to a rights-based approach. These include:

- Negative impacts of forestry activities on people relevant to all elements including *non-discrimination, participation, adequate progress*.
- Effective stakeholder participation in forestry management - relevant to *participation* in particular.
- Awareness and generation of forest management opportunities among disadvantaged persons relevant to *participation* and *non-discrimination*.
- Research institutions and education and training institutions to support sustainable forest management - relevant to *participation*.²⁸

The researcher was also provided with the details of proposed IMFS activity plans, which included minimum specifications for information, relevant categories of information, sources of information, information needs, and use of information available within the Department.²⁹ The detail of these criteria is an important first step in at least identifying the content of the information needs required to effectively implement a programme. Departments must however take the necessary next step of ensuring that these information needs are met in practice. The Department has formally acknowledged this in its *Strategic Plan for the Department of Agriculture (2003-2006)*, where it identifies the urgent need to improve performance through better strategic and operational planning, strengthening impact assessments and M&E processes.

²⁸ Department of Water Affairs and Forestry (2002: 5).

²⁹ Details obtained via an interview with the Programme Management Unit, Department of Agriculture.

Department of Health: Responding to section 27(1)(a) of the Constitution, right to have access to health care services.

The Department of Health's strategic planning arm indicated that the Department's senior managers were discussing the need for a human rights and ethics unit. From the information available at the time, possible functions of such a unit included working more closely with human rights-related organisations such as the SAHRC to facilitate requests for data.

The Draft *National Health Bill 2003 (SA)*, s. 20, in particular provides a solid platform from which to pursue a rights-based approach to health service provision, including:

- 'Issue[ing] guidelines for the implementation of national health policy' - important for strengthening implementation processes, i.e. upon what principles will the guidelines refer, and will procedural issues of implementation formulate out of these?
- 'Identify[ing] national health goals and priorities and monitor the progress of their implementation' - particularly important for measuring adequate progress.
- 'Promote[ing] community participation in the planning, provision and evaluation of health services' - significant for participation.

The mention of 'norms and standards' in the Bill refers to types of health services to be provided and the suggested institutional arrangements. Although norms and standards are important for setting the field of play, especially when trying to co-ordinate the efforts of multiple offices, the true test of their value will be in how departments incorporate more specific guidelines on policy implementation. Although it is conceded that it may not be possible, nor advisable, to elaborate these in the format of legislation, it is nonetheless imperative that these are generated elsewhere.

A particular challenge as cited by the Department of Health is growing an information culture to improve the collection, analysis, monitoring and provision of data between district, provincial and national health offices. For the national department this means how to improve its national jurisdictional responsibility for the quality of health policy when it has limited implementation leverage over sub-national units (provinces, districts, municipalities), who carry out the bulk of implementation.

Integrated Nutrition Programme (INP): Responding to section 28(1)(c), right to basic nutrition, shelter, basic health care services and social services for every child.

The Integrated Nutrition Programme presents a good example of how a range of instruments is deployed to implement the multi-faceted programme of this right. Some of the progressive features of this programme include:

- The promotion of 'nutrition security', incorporating food security, health security and care security,³⁰ which is a strategic response to broader determinants of nutritional health, which are also considered in section 28.1 c.
- Large scale medium-term national nutrition surveys.
- Monthly reports at facility level of activities including the weighing of children, weight loss or gain, incidents of malnourishment including stunting, immunisation. This data is then channelled to a national database via district and provincial authorities, and used in inter-governmental programme meetings for budget and strategic planning. The challenge for the national department is the nascence of this depth and regularity of reporting and the need to support district officials to improve their technical understanding of reporting requirements.
- Information collected via these monthly reports supplemented for planning and disbursement of funds to sub-national authorities via reference to, *inter alia*, the UN's Human Development Index; national statistics on poverty 'hot spots'.
- The poverty dimension to nutrition is catered for via a separate budget which the programme utilises to support community activities including the promotion of, i.e. food gardens, chicken farming, sewing, bakeries, being implemented in many cases by non-governmental organisations.

Similarly to other departments, the Department of Health relies on effective provincial and district implementation to support the INP. Some of the obstacles that have impacted on this include provincial restructuring and re-organisation, chronic staff shortages and capacity, as well as expenditure irregularities. Despite these obstacles at sub-national levels, the INP has put in place good monitoring procedures to try to monitor effectiveness, including detailed business plans prior to the release of funds, regular financial reports, and troubleshooting procedures via national-sub-national ministerial and operational meetings. On-site monitoring by the national department takes place about every two months, which includes visits at facility levels. Although it is more difficult for the INP to ensure 100% effectiveness of sub-national implementation, of particular concern is ensuring the full and correct collection and distribution of facility-level data. This in particular has a direct bearing on how progress is evaluated and what and how interventions are planned.

Department of Housing: Responding to section 26(1), right to have access to adequate housing.

Meetings were arranged with a number of programmes and information services operated by the Department of Housing, including Human Settlement Policy and Integration, Housing Subsidy programme, and Information Management.

The Department of Housing is increasing its attention to assessing and monitoring the *quality* of housing units provided. It has undertaken consultative workshops with provincial

³⁰ Department of Health (10 July 2003)

housing departments and is planning a housing summit to deal with issues of implementation quality. It has been suggested to the Department's Strategic Management Committee that something akin to a compliance audit be undertaken to assess how and to what extent the Department is responding to the right to adequate housing. The *Department's Annual Report 2002* noted that a monitoring plan covering monitoring and impact assessments has been approved to address 'quality of products delivered'.³¹

The Department appears to have made progress in planning for the needs of specific population groups. It was noted that some department officials have received training directed at issues of non-discrimination, including the rights of the child. The Department is also programming issues related to non-discrimination including housing needs for vulnerable groups including mainstreaming of gender, vulnerable children and people living with HIV/AIDS. There has also been a recommendation put to the Strategic Management Committee of human rights training for all officials, although the nature of this is still to be determined.

A more pressing problem for the Department of Housing however relates to assessing the quality of its outputs through improved planning between provincial housing department development plans and local government integrated development plans. Local housing delivery and implementation is also of concern and especially how local governments are pursuing and managing 'social compacts' entered into between communities and developers. The challenge at a national level is again ensuring that housing policy, which is the primary responsibility of the national department is implemented most effectively by provincial and local governments.

Department of Social Development: Responding to section 27(1)(c), right to social security, including appropriate social assistance.

The study looked at the Social Security and Poverty Relief programmes in the Department of Social Development.

Poverty Relief Programme (PRP)

The Poverty Relief Programme's *Business Plan 2001/2003 Poverty Relief Programme* exhibits progressive measures aimed at improving its programme performance, including:

- Ensuring more focused projects informed by improved demographic targeting including people living with HIV/AIDS, youth, women, and the elderly.
- Improved spatial poverty targeting.
- A realisation that improved community involvement requires more time.
- The need to improve local capacity to manage initiatives, via strategic partnerships at local level. This could be taken to mean securing the services of

³¹ Department of Housing (2002: 50).

community-based organisations and more broadly non-governmental organisations, municipalities, where these could support.

The length of time taken to derive sustainable community management of poverty-relief initiatives is a common feature in development work. It means asking hard questions about realistic project objectives, and filters through to *how* to plan, execute and measure impacts. This exercise also influences the type of service rendered to communities and in what sequence, i.e. addressing immediate or emergency social and economic basic needs; expanding the range of income generation activities; hard training related to a range of issues including the environment, health (HIV/AIDS), counselling, tutoring, etc. Posing these questions in the planning stage of an intervention corresponds with a rights-based approach because it forces administrators to judge their interventions against a criteria that aims to determine the most effective means of responding to people's human rights, and in this particular case the *appropriateness* of social assistance interventions.

The PRP has also identified the need for more flexible on-the-ground implementation arrangements including the sourcing of relevant and appropriate local training expertise where available, where this would also reduce lengthy procurement processes. Another challenge is defending the sometimes, slow pace of implementation, which sometimes accompanies working with poorer communities with minimal levels of education.

Social Security Programme

The Social Security Programme of the Department of Social Development is perhaps the most publicly scrutinised of all government activities. The programme responds to the Constitutional obligation of improving access to social security. The Department's *Annual Report April 2001-March 2002: Making South Africa Fit for Children* identified the problem of *accessing* social security and that in this regard awareness campaigns and improving the administration of social assistance are amongst the most urgent interventions. The challenge of improved administration for the national department, given provincial responsibility for this, will be the effectiveness of monitoring and troubleshooting procedures and processes.

The Department noted that it has been establishing and improving a range of monitoring instruments to better inform the administration of social assistance. This includes both current or real time monitoring and longer-term or impact monitoring.

Current or real time monitoring:

- A comprehensive annual study on provincial social security infrastructure, including pay points and national and provincial offices infrastructure. A copy of this survey showed that the following information was being tracked:
 - Quality of provincial strategic support provided.
 - Additional support needed from national government.

- Grant administration processes and procedures including processing times and beneficiary reviews.
- Target population marketing and awareness and client services.

The latter two points are particularly important in identifying those *most in need* to uphold the principle of non-discrimination.

- Quarterly surveys targeting specific areas and gathering data on waiting times, staff:beneficiary ratios – implementation.
- A 'Pay Point Service Delivery Monitoring Checklist' gathers information on type of pay point structure, i.e. permanent vs mobile, shelter for beneficiaries, communication material and amenities.

Longer-term impact monitoring:

- Longer-term tracking of specific beneficiaries to assess *impact*.
- Linking of administrative data on individuals from social security database to track issues such as mobility and HIV/AIDS. Essentially this is building a comprehensive profile of individuals, which will require data from other government departments and agencies.

The positive characteristics of these monitoring measures is that they do in the least address the inter-linked challenge for social security to ensure the widest possible means of making those eligible for the benefits aware, and reducing processing time when grants may be crucial for those with little if any other income sources.³²

Department of Land Affairs: Responding to section 25(5), enabling citizens to gain access to land on an equitable basis; and section 25(7), restitution of property or to equitable redress if property was earlier dispossessed.

Land Restitution Programme

The Land Restitution Programme responds in part to the Constitutional reference to access to land equitably, by focusing on issues related to claimants and the restoration of expropriated land. On this basis its work is directly applicable to addressing the provision of land to those previously disadvantaged, essentially as an act of redress, whilst also ensuring that in the course of this it is also catering to the interests of women and those residing in rural areas. The Department has, in addition to this, realised that it 'has to maintain a balance between the accelerated settlement of claims, and the establishment of sustainable settlements'.³³ This places additional pressure on it to play both an administrative and developmental function within one programme. In its eight years of operation the programme has finalised about 36 000

³² For more information on this see Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (2002).

³³ Department of Land Affairs (Apr. 2001 – 31 March 2002: 53).

claims out of a valid 79 000 claims, which on the one hand is not insignificant given the lengthy, sometimes protracted, and administratively complex procedure.³⁴ If we simply consider the claims that have been processed, a key question and challenge is the extent of the development gains from the use of such land.

The Department recognises that in order to succeed in its developmental role, it will have to rely on collaboration with other government agencies including provincial and local authorities. In this regard it has supplied a set of grants to municipalities to assist beneficiaries with land use planning and the cost of relocation and capital purchases. Moreover the Department is trying to manage how to balance land use sustainability, through a combination of consulting beneficiaries on how they would like to use the land coupled with a technical and feasibility assessment on what is possible. Part of this sustainability is the retention by the Department of legal guardianship of a settled claim via the Director-General, in the form of a communal property association. The involvement of women in discussions on future land use with land claims officers is also being encouraged.

The primary institutional challenge for the Land Restitution Programme and restitution in general, in fulfilling a developmental function, is where does it exit the restitution process once a claim has been approved, what level and type of after-claim support will be required, combined with support given by other government agents? What happens after 2005? The desired approach will require the programme to, as much as possible, secure the assistance of provincial and local authorities, under their existing services, for claimants, as it is currently doing, but also to ensure that in the absence of an extended deadline for administering claims, that those not covered by the restitution, as part of the larger and mostly rural poor, are catered for through existing and relevant national, provincial and local measures. These could include land redistribution, local economic development, poverty alleviation projects and programmes, municipal commonage, etc. Pursuing these activities could respond to the substantive objective of restitution, which could be argued is access to productive opportunity, through other ways.

Department of Education: Responding to section 29(1), right to a basic education, including adult basic education and the progressive availability and accessibility of further education.

An interview was limited to data collection in the Department of Education, as it was felt that more significant information could be sought with reference to this very large yet formative information system, which supports planning in all programmes run in the Department. Moreover the scope of the Department's mandate would in particular require a study on its own.

³⁴ Commission on Restitution of Land Rights (2003).

An interview was set up with the Education Management Information System (EMIS) officials. The EMIS is presently composed of separate databases containing a wide range of education provision-related information including that on 'learners, educators and resources throughout the education system'.³⁵ The extent of the information is increasingly wide-ranging and provides a rich source of planning data for the various programmes being managed by the Department.³⁶ Challenges for EMIS include more clearly defining the parameters for information collection and storage to avoid duplication, as well as reporting standardisation. It was reported that the upcoming Education Information Policy would respond to these more comprehensively.

EMIS' sources of information include a range of surveys including a *Report on the School Register of Needs*, which inventories resources supporting education and administration, physical and infrastructure resources, and learning and administrative areas. Supplementing this largely human and physical infrastructure-related survey is a comprehensive *Annual Survey for Ordinary Schools*, which includes data on:

- Experiences of learner barriers to learning according to race, gender and disability.
- Learners participating in the nutrition programme.
- Pregnancy amongst learners.
- Learners with deceased parents.
- Learners registered for a social grant.
- School-governing body activities.
- School management and administrative policies and functions.
- Areas where provincial support is needed.

Although the data fields are progressive and detailed in monitoring the quality of education, the level of detail required of schools as well as support received via provincial education departments in this respect is critical to ensuring the aims of the survey is substantiated by adequate means.

³⁵ Department of Education (2003: 6).

³⁶ General Education and Training, Further Education and Training, Adult Basic Education and Training, Early Childhood Development, Education for Learners with Special Education Needs, Higher Education.

Appendix B: Tables

Table 3: Strengthening how information is used by human rights monitoring agencies

Mechanism	Strong points	Comments
SAHRC reporting	<p>Refers indirectly to policy implementation:</p> <p>Quotes Report of the Committee of Inquiry into a Comprehensive System of Social Security in South Africa (Taylor Report) - March 2002, 'The Committee finds that government programmes to address deprivation in health, education, housing, land, basic services such as access to water and sanitation, electricity and access to credit are well conceived and potentially well targeted'. The barriers of access especially in regard to the poor remain administrative and institutional.³⁷</p> <p>Focus on allocation of sufficient financial and human resources; short to long-term needs planning; and importance of targeting those 'most deprived', quoting the Grootboom court judgement.</p>	<p>'Protocol'-reporting format,³⁸ is good and should be supplemented in co-operation with other Chapter 9 institutions, and government agencies, to strengthen the 'public admin' issues relating to:</p> <ul style="list-style-type: none"> • Assessing Constitutional principles of public administration (PSC). • Improved 'profiling' of government departments viz. bringing together HR data of other agencies (NCFHR). • This could also improve quality of information and level of analysis reported on, however this also requires improving information submitted by departments.
NCFHR reporting	<p>NCFHR receives and analyses information from government departments on how each has specifically addressed the 'challenges' attached to human rights, in the <i>National Action Plan for the Promotion and Protection of Human Rights</i> (1998).</p> <p>Specific format of reporting includes 'legislative, policy, and administrative' actions taken. The Forum is composed of departmental representatives, NGOs, statutory bodies.</p>	<ul style="list-style-type: none"> • Limitation of information as presented is challenge of tying together (for a more meaningful technical understanding) the details of various measures in response to specific rights and accompanying challenges. • Understandable given the Forum's lack of requisite human and financial capacity of to undertake such a detailed exercise. • Point is that the important information assembled by the NCFHR goes beyond 'reporting significance' with implications for how well government departments implement policy.
Public Service Commission	<p>Monitoring and evaluating principles of public administration as per Chapter 10 of the Constitution: 'development-orientation'; 'participation'; 'accountability'; 'transparency'.</p>	<ul style="list-style-type: none"> • Consolidated report due out in July 2003. • Assessment of principles can support efforts to better understand policy implementation processes feeding into progress as reported.

³⁷ Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, March 2002. Transforming the Present - Protecting the Future. Consolidated Report Chapter 5, p. 55 [WW' document]: <http://www.socdev.gov.za>

³⁸ Includes: Policy, legislative and other measures; budgetary measures; NAP indicators; critique; recommendations; conclusions.

Table 4: General human rights guidelines for policy implementation

Right	Constitution	National Action Plan	General human rights guidelines for policy implementation
Housing	Everyone...right...access to adequate housing...progressive realisation.	<ul style="list-style-type: none"> • Disparities between white and black people • Needs of people living in rural areas • Needs of homeless, esp. homeless children • Disparity in quality of related services • Housing backlog, esp. people living in informal settlements 	<ul style="list-style-type: none"> • Linking 'access' and 'adequacy' to specific segments of the population.³⁹
Health care	Everyone...right...access to health care services...progressive realisation.	<ul style="list-style-type: none"> • Unequal access to and distribution of basic health care • Disparities in service provision • Accessibility and affordability for rural people, elderly, disabled • Inadequate facilities • Quality and service delivery of health personnel 	<ul style="list-style-type: none"> • Linking 'access' to equalising such service amongst disparate populations; quality of facilities and service provision.
Food	Everyone...right...access to sufficient food and water...progressive realisation.	<ul style="list-style-type: none"> • Targeting poor people • Malnutrition: Children • Previously disadvantaged farmers • Food needs of the elderly • Urgent regional food needs • Food security 	<ul style="list-style-type: none"> • Linking 'access' and 'sufficiency' to those most in need (poor, children, elderly, as well as those in a position to produce.
Education	Everyone...right...basic education...state must consider all reasonable educational alternatives...taking into account equity,	<ul style="list-style-type: none"> • Illiteracy - especially disadvantaged • Access for learners with special needs • Upgrading physical infrastructure • Sufficient text books and other aids • Building new schools 	<ul style="list-style-type: none"> • Linking the need to provide 'basic education to all' with physical rehabilitation, educational resource provision and improved school governance and teaching, and focusing on those most in need and special needs.

³⁹ This is particularly important in view of the judgement in *Grootboom v Oostenberg Municipality and Others*, where the Constitutional Court of South Africa ruled that, in relation to the country's housing programme, measures must be taken 'to provide relief for people living in intolerable conditions or crisis situations'. It also stated that '[a]ll levels of government must ensure that the housing programme is reasonably and appropriately implemented...See 'Local Government Bulletin', April 2001. Vol. 3, No. 1 [WW document]: <http://www.communitylawcentre.org.za/localgov>

Right	Constitution	National Action Plan	General human rights guidelines for policy implementation
	practicability, need to redress results of past racially discriminatory laws and practices.	<ul style="list-style-type: none"> • Institutional capacity building 	
Land	State must take reasonable legislative and other measures, within its available resources...foster conditions...enable citizens to gain access to land...equitable basis.	<ul style="list-style-type: none"> • Provision of land and security of tenure to previously disadvantaged, women and people living in rural areas. • Tension between customary law and other land rights. • Land claims procedures and court adjudication of land issues. 	<ul style="list-style-type: none"> • Linking 'access' to land with equalising ability of citizens to so do. Includes issues of restitution, redistribution, focusing on previously disadvantaged and women and those living in rural areas, and improved administrative processes.
Social security	Everyone...right...access to...social security...social assistance...progressive realisation.	<ul style="list-style-type: none"> • Social security and social assistance needs of unemployed, disabled, children, elderly. • Addressing past imbalances in social security and assistance - pensions and grants. • Addressing inefficiency and corruption. • Delays in processing applications 	<ul style="list-style-type: none"> • Linking 'access' to those most in need; as well as improving accessibility via addressing inefficiencies and efficacy of related processing and administration.

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