

ESR

REVIEW

Economic and Social Rights in South Africa

Volume 14
No. 2 2013

Ensuring rights make real change

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Editorial

ISSN: 1684-260X

A publication of the Community Law Centre
(University of the Western Cape)

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ESR Review

The ESR Review is produced by the Socio-Economic Rights Project of the Community Law Centre, with the financial assistance of the Ford Foundation. The contents of the ESR Review are the sole responsibility of the Socio-Economic Rights Project and can under no circumstances be regarded as reflecting the position of the Ford Foundation.

Production: Page Arts

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This is the second issue of the *ESR Review* in 2013, which recognises and applauds the important role that the youth and women play in our country.

We salute South Africa's youth for their resolve to participate in governance and to have a share in the economy. Young people aged 14 to 35 constitute the majority of our population and, as a representative of the Eastern Cape's Youth Directorate put it in 2010, they are 'expected to contribute to the country's reconstruction and development efforts through active involvement and participation in economic, social and political issues'.

Youth is one of the most important stages of human development, as US President Robert F Kennedy made clear in a 1966 address to members of the National Union of South African Students at the University of Cape Town: 'This world demands the qualities of youth; not a time of life but a state of mind, a temper of the will, a quality of the imagination, a predominance of courage over timidity, of the appetite for adventure over the life of ease'.

South African youth face myriad challenges, including high rates of teenage pregnancy, high levels of unemployment, poverty, substance abuse and societal alienation, and low levels of education attainment and skills. To encourage youth empowerment, the government merged the Umsobomvu Youth Fund with the National Youth Commission in 2009 to form the National Youth Development Agency (NYDA). Its mandate is to initiate, facilitate, implement, coordinate and monitor youth development interventions aimed at reducing youth unemployment and promoting social cohesion. In an effort to put its house in order after criticisms that, despite its good intentions, the agency's work has been overshadowed by political influence, its core business has shifted towards education and skills development, and away from enterprise finance and skills development. We salute the NYDA for its efforts to promote awareness among the youth.

We also congratulate former Deputy President Ms Phumzile Mlambo-Ngcuka on her appointment as the new Executive Director of UN Women to lead the UN's work on advancing gender equality and women's empowerment. This is a well-deserved honour and we wish her the best in her new position.

This issue of the *ESR Review* features Hannah Dawson's examination of new methodologies and tools for measuring, monitoring and evaluating the progressive realisation of socio-economic rights, and Charles Lwanga-Ntale's analysis of the barriers to social protection uptake in East Africa.

Updates are provided on recent developments on socio-economic rights in Africa and at the United Nations.

The Editorial team is grateful to the contributors and calls on experts and researchers, as well as practitioners working in the area of socio-economic rights, to send contributions to the *ESR Review* for forthcoming issues.

Gladys Mirugi-Mukundi
Editor



Monitoring the progressive realisation of socio-economic rights in South Africa

The case for a comprehensive monitoring tool

Hannah Dawson

Introduction

The progressive realisation of social and economic rights is central to the transformation of our society. The persistence of systemic poverty and inequality in South Africa has shown that, unless the realisation of socio-economic rights (SERs) promised in the Constitution is monitored and tracked over time, their inclusion on paper might not be felt in reality by millions of poor people.

The implementation of SERs, however, is subject to the internal limitation of 'progressive realisation subject to available resources', contained in the South African Constitution and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the government has announced will be ratified this year. Section 27(2) of the Constitution states that 'The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights'. The limitation clause is silent on timeframes, the percentage or coverage of people over time, or even how the state should finance access to SERs. The challenge for policy makers and oversight bodies alike is how best to evaluate government programmes and budget allocations against this binding obligation on the state. Nineteen years into our democracy, it is important not only to evaluate the extent to which the transformation envisioned by our Constitution has been achieved, but also to ask how such transformation is to be measured – to what end, against what benchmarks, over what time span and by whom?

There is increasing interest both internationally and in South Africa in the development of new methodologies and tools for measuring, monitoring and evaluating the progressive realisation of SERs. This has included the development of quantitative tools, for example Felner's (2008) three-step methodological framework and econometric models (see Anderson, 2009). The need for a comprehensive monitoring tool goes beyond holding government accountable – it is an attempt to advance evidence-based empirical debate on the implementation of SERs in South Africa and to integrate a human rights perspective into the consideration and monitoring of state actions and policies.

This article first discusses the measurement challenge for SERs given their multi-dimensional nature in terms of

both the obligations they place on the state and the enjoyment of such rights, both of which are subject to progressive realisation. Second, it discusses the shortcomings of existing reporting mechanisms and monitoring approaches and in so doing makes the case for a comprehensive monitoring tool which combines various methodologies. This section also provides a synthesis of the methodology developed by the Studies in Poverty and Inequality Institute (SPII). Third, the article highlights some of the lessons learnt in this work of developing monitoring tools and raises important questions and considerations for moving this work forward. In summary, the article argues that advocacy around the implementation and enforcement of SERs will continue to be undermined if there is no methodology to monitor and address critical issues relating to the progressive realisation of these rights.

The measurement challenge for socio-economic rights

To monitor the progressive realisation of SERs, especially the performance of government, it is important first, to understand what government is required to do and, second, to understand the meaning and interpretation of progressive realisation.

The obligations of states

It is now widely accepted, as affirmed by the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights and the United Nations Committee on Economic, Social and Cultural Rights (CESCR), that SERs impose three types of obligations on states. These are the obligation to respect (to refrain from interfering with the enjoyment of SER); the obligation to protect (to prevent violations of such rights by third parties); and the obligation to fulfil (to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights) (Maastricht Guidelines, 1997). The CESCR has interpreted the obligation to fulfil to incorporate the obligation to facilitate, provide and promote. In South Africa, the obligation to promote is not stated as a subset of the obligation to fulfil, but as a distinct obligation. This includes advancing research on SERs, provision of information on SERs to individuals, and support to people in making informed choices about enjoyment of these rights (Chenwi, 2010:17).

In General Comment No. 3, the CESCR has set out principles to guide the steps that a state must take in accordance with measurable plan of action towards the realisation of SERs. For example, policies and programmes

● ● Various methodologies have been developed to assess states' compliance with their obligation to progressively realise SERs ● ●

should be designed to improve the availability, accessibility, acceptability, adaptability and quality of services necessary for the realisation of SERs (CESR, 2012:5).

Progressive realisation

Both the CESCR and the South African Constitutional Court (the Court) have emphasised that 'progressive realisation' implies a recognition that the full realisation of SERs will generally not be achieved over a short period of time (Chenwi, 2010). Thus, the CESCR has developed the idea of a 'minimum core obligation' to ensure that states take necessary measures with a view to realising SERs. However, the Court rejected the idea of a 'minimum core obligation' and instead developed standards for assessing whether a policy or programme met the reasonableness test or criteria (see Liebenberg, 2010:152–153). The obligation to progressively realise SERs, however, does not alter the government's legal obligation to take certain steps immediately and to continuously strive to provide the widest possible enjoyment of a right on a progressive basis even in the face of resource constraints (see General Comment No. 3).

Liebenberg (2010:188) argues that a reasonable government programme must be provided but the provision of a basic level of services need not meet the qualitative standards implied by the full realisation of the relevant right. However, a state is required to move as expeditiously and effectively as possible towards meeting this goal. Progressive realisation further implies that deliberate retrogressive measures are not allowed. This includes the dismantling of a range of legal, administrative, operational and financial obstacles that impede access to SERs (Liebenberg, 2010:187). In relation to vulnerable or disadvantaged groups, a state must do more than refrain from negative violation of rights; it must also take positive action with specially tailored measures and programmes for the most marginalised groups in society. Furthermore, progressive realisation requires states to take full advantage of their available resources, including external resources.

The case for a comprehensive monitoring tool

The clearer articulation of the obligations of government and the nature and scope of SERs is essential in ensuring progressive realisation and in carrying out effective monitoring. However, given the multi-dimensional and indivisible nature of these rights, monitoring is a complex and de-

manding task. Monitoring can be carried out by different bodies including the state itself, civil society and institutions of democracy. The challenge therefore is to develop a monitoring tool that can stand up to scrutiny and at the same time accessible to non-experts and relatively simple to populate with data (Chenwi, 2010).

Reporting mechanisms

The Court plays an important role in ensuring the state complies with its SERs obligations through its consideration of cases. However, the Court's role in the widespread transformation of socio-economic conditions and in ensuring that the state fulfils its constitutional mandate is limited. This is largely because the cases that have been brought before the Court to date are ad-hoc and re-active, and few have attempted to ask for an order requesting long-term programmes and policies that can be carefully and vigorously evaluated in terms of both what is happening on the ground and how money is spent.

The South African Human Rights Commission (SAHRC) is constitutionally obliged to report annually on the defence and advancement of the rights, particularly SERs, in the Constitution. To date the Commission's monitoring has largely involved questionnaires (commonly known as 'protocols') sent to various government departments, research fieldwork, and more recently, consultations with affected communities and civil society. This approach, as is the case internationally, has largely focused on documenting violations of rights rather than measuring positive realisation of rights. The Commission has emphasised that, in the absence of established norms and standards, much of government's constitutional obligations remain loosely specified (SAHRC, 2009). The Commission has also highlighted the need for a monitoring tool that is linked to indicators and data that is readily available to complement what has largely been a qualitative process (SAHRC, 2012).

Existing monitoring approaches

In recent years, various methodologies have been developed to assess states' compliance with their obligation to progressively realise SERs. These include indicators and benchmarks, analysis of budget/expenditure or resource allocation, identifying violations, econometric tools and methodologies that combine some of these approaches.

Monitoring SERs involves, first, assessing government policy against SER obligations; second, assessing adequate funds are spent on realising SERs; and third, evaluating whether money allocated and spent leads to good outcomes. As a result, the use of a combination of approaches is widely acknowledged as necessary when monitoring progressive realisation.

Comprehensive monitoring tool – the three-step methodology

The Studies in Poverty and Inequality Institute (SPII) is part of a small international community of experts who are developing diverse but harmonious tools for monitoring and measuring SERs. With endorsement from the SAHRC, SPII

has developed a methodology based on a combination of policy and budget analysis and statistical indicators to monitor and evaluate the progressive realisation of rights. The methodology developed by SPII builds on international best practice and combines various approaches to monitoring SERs. The methodology that informs this approach bears many similarities with the OPERA methodology developed by the Centre for Social and Economic Rights (CESR), which analyses outcomes, policy efforts, resources and assessment (CESR, 2012).

The methodology is based on three distinct steps:

Step 1: Analysing the policy effort

The first step of the analysis takes a closer look at the underlying policies and legislation guiding the realisation of SERs. First, it assesses whether the actual content of social and economic policies adequately reflects the Constitution and international treaty obligations. Second, it examines what policy gaps exist in the legislation (in both principle and practice) in terms of access, adequacy and quality, non-discrimination, progressive realisation and the 'reasonableness test'.

Step 2: Assess resource availability

The second step focuses on analysing budget and expenditure allocations at both national and provincial level to assess the reasonableness of amounts for specific SERs and relevant government departments and population groups. Things that ought to be borne in mind are: Is spending poor? Is the relevant government line department provided with adequate funds? Where does under-spending occur? Are resource allocations increasing or decreasing over time, and why? SPII conducted an analysis of national departmental budgets, including basic education, health, and social development and provincial budgets in order to investigate some of these problems.

Step 3: Evaluate and monitor attainment of SERs

The third step focuses on evaluating and monitoring the attainment of SERs with reference to the three dimensions of access (physical and economic), quality and adequacy over time. This provides a clearer and more specific illustration of the enjoyment of SERs on the ground. It requires quantifiable and replicable indicators (proxies for the different dimensions of SERs) to be developed along with agreed benchmarks and targets. The indicators need to be aligned to data available in annual surveys, and be capable of being decomposed by region, race, gender and age – wherever possible and useful. This allows disparities between different population groups to be identified and an assessment made of the extent to which progress has been made over time. This data also enables international comparative analysis. An example is the Social and Economic Rights Fulfilment Index (SERF Index) which provides a rigorous comparative measurement of governments' compliance with their obligations to fulfil SER (Fukuda-Parr & Greenstein, 2012).

SPII has developed a set of indicators for social security and health that have been populated with data from 2010

and 2011. This analysis begins to build up the information at a national level to evaluate and monitor the progressive realisation of social security and health care in South Africa. The full list of indicators can be found in the methodology paper available at www.sp11.org.za. Over the next two years, indicators will also be developed for housing, education, food, water and sanitation, and the environment. A more quantitative approach is well-suited to mapping trends and patterns over time but remains largely absent in the monitoring process of SERs in South Africa. However, a quantitative approach comes with its own challenges and limitations. It is therefore essential to verify the quantitative assessment with qualitative research.

The purpose of monitoring goes beyond constitutional compliance and aims to achieve specific objectives. These include:

- Ensuring that the government does not use progressive realisation as an excuse for failing to realise these rights. Instead, this monitoring tool aims to aid clarity on the content of the rights to ensure that access to and enjoyment of SERs is continuously broadened.
- Determining the extent to which organs of the state have respected, protected, promoted and fulfilled their obligations. This involves identifying achievements, detecting failures, gaps and regression and identifying discriminatory laws, policies, programmes and practices.
- Making recommendations that will ensure the protection, development and universal enjoyment of SERs. The tool is ultimately not about being a watchdog, but about guiding policy around SERs and moving all actors towards developing roadmaps and timeframes for how and by when to achieve universal access for all citizens, as envisioned in the Constitution.

Lesson learned and questions going forward

The development of a comprehensive monitoring tool remains a work in progress with much scope for increased participation and input from both government and civil society. It is envisioned that the tool will be used by a range of actors including the SAHRC, civil society and government departments. The question of who will ultimately have responsibility for doing this monitoring remains an open question, the answer to which, however, influences the kind of tool developed. Recent stakeholder consultations on the methodology and piloted indicators consolidated a number of important questions and considerations for moving this work forward.

An on-going challenge is to ensure that the monitoring tool is rigorous and at the same time accessible and user-friendly to enable different bodies, for example the SAHRC, community activists or social movements to use it effectively. Closely linked to this is the balance between developing a tool that, on one hand, is sufficiently comprehensive to account for the various factors discussed in this paper, and on the other, is selective, focused and respon-

sive to the limitations of data-availability and the ultimate users of such a tool. Another important consideration, especially with the development of indicators for housing, food, education and others, is to incorporate, where feasible, monitoring exercises that exist currently, especially at the right-specific level, to ensure broader ownership.

This work needs to address the complex question of how to include and accommodate monitoring information from ordinary people and communities who seek to enforce their rights and ensure that the methods and outcomes meaningfully reflect their concerns, priorities and needs.

Indicators say nothing without clear benchmarks against which to evaluate governments' performance and achievements over time. It is therefore essential to have roadmaps or long-term plans for each of the SERs to provide tangible benchmarks to evaluate whether there has been progress, stagnation or regression. In addition to specific targets, the tool needs to incorporate the reasonableness standard as well as other standards in the Constitution, legislation and jurisprudence.

The OPERA framework has a fourth step that includes a political economy analysis of the context the state is operating in to reflect on the broader factors, underlying interests and structures that enable or inhibit change. This is important in order to be able to distinguish deprivations that might be the result of factors genuinely beyond the control of the government from those for which the state should be held accountable (CESR, 2012). In the South Af-

rican context, this would include factors such as weak institutional and implementation capacity, especially at a local government level, and a lack of co-ordination between different spheres of government.

Conclusion

Adopting a Constitution that enshrines SERs as well as relevant legislation and policies is relatively simple in comparison to their subsequent implementation and government's compliance with the obligations contained therein (Chenwi, 2010). Advocacy efforts to ensure effective implementation and enforcement of SERs are undermined if there is no methodology to monitor and address critical issues relating to the progressive realisation of these rights.

A monitoring tool that integrates budget and policy analysis with statistical indicators enables human rights advocates and activists, and the courts, to build up well-evidenced arguments about the government's compliance with its obligation to fulfil SERs. A monitoring tool also serves as a planning tool to assist makers in evaluating and developing future programmes and policies to ensure alignment with their obligations under the Constitution and to give demands for transformation renewed force.

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Barriers to social protection uptake in East Africa

A set of hitherto forgotten factors

Charles Lwanga-Ntale

Introduction and background

The last decade has seen social protection gaining centrality in the development agenda of East African countries. Several factors explain this heightened interest. First, despite evidence of considerable economic growth in the sub-region, poverty and vulnerability persist, prompting a resurgence in awareness and debate about the effectiveness of growth alone in delivering the continent's ambitious development goals. It is also evident that the safety net programmes that were introduced in the 1990s have not adequately addressed issues of poverty, risk and vulnerability. This policy response failure is in part a reflection of the complexity of poverty and its dynamics. However, social protection uptake in the sub-region has been much slower than in other developing countries.

A well-rehearsed list of factors has been advanced to explain this. Affordability, institutional capacity to implement, sustainability, political will and acceptability, and the appropriateness of targeting mechanisms are among the most common. An examination of evidence from East Africa reveals that while these factors cannot be ignored for the role they have hitherto played, particularly in the early stages of roll-out of social protection programmes in the sub-region, they might not explain the slow uptake of social protection interventions. Using examples from Kenya, Uganda, Tanzania and Rwanda this paper argues that rather than those reasons to which poor performance of social protection has previously been attributed, perhaps the main factors that still stand in the way of effective social protection uptake are:

- structural factors of high 'sectorisation' and 'projectisation' of social protection;
- the unique and often disjointed demands placed on policy makers;
- the limited linkage of social protection to achievement of wider development outcomes; and
- the over-emphasis that is often placed on particular social protection instruments (particularly cash transfers).

The paper further argues that the failure to locate contemporary social protection approaches in culturally appropriate vulnerability-response frameworks has further tended to portray social protection as a 'new and foreign' approach

whose success would have to be dependent on 'buy-in' for it to fit well in African political economies and cultures. In the last few years, though, East Africa has seen a proliferation of social protection projects and programmes. Perhaps no other country better illustrates this growth in the region than Kenya, where, from a small UNICEF pilot for Orphans and Vulnerable Children (OVC) in 2004, the number of interventions has grown to include:

- a Hunger and Safety Nets Programme (HSNP) for Arid and Semi-Arid lands;
- a poverty-targeted pension for older people;
- a youth employment scheme (the Kazi Kwa Vijana scheme);
- a programme targeting the urban poor; and
- more recently, a disability grant.

While there is a plan to scale up the OVC programme to cover 300 000 households by 2011, the HSNP is also targeting a growth from the present 60 000 households reached to 300 000 households in 2018 (Kidd, 2010).

This trend is not peculiar to Kenya. Burundi is providing cash allowances to 12 000 beneficiaries under the National Children in Distressing Situations Scheme (ibid), and Ethiopia's Productive Safety Net Programme reaches out to approximately eight million beneficiaries and is by far the largest single social protection intervention on the continent (Lwanga-Ntale, et al, 2010).

These interventions may be illustrations of the growth in both scale and scope of social protection coverage across the East African sub-region. However, they are neither linked up nor appropriately located in the political economies of the respective countries. This is not wholly surprising given that the drivers of the debate are not those who are most affected, but mostly elites on the opposite sides of the discussion – advocates and opponents.

Yet, given the traditionally held interest that social protection previously enjoyed in old-time East Africa, one would have assumed that contemporary social protection would 'naturally' fit in the traditional character of past and existing non-formal initiatives. However, this is not the case and the reasons are not too difficult to fathom. First, while in the past society relied on the traditional family and kinship relationships to deal with issues of social protection, mainly through a system of clan elders and heads of households who were reinforced by a system of extended family support mechanisms, there was no distinction between *home* and *place of work*, a feature which in latter times has come not only to distinguish 'workers' and 'non-workers' but also to lead to the use of income as the basis for determining social security, a key ingredient for social protection.

● The use of laws that criminalise freedom of expression has continued unabated in most parts of Africa ●

Traditionally, social protection combined such efforts as care for the disabled, sick and elderly, provision of assistance to family and clan members during and following bereavement, care for orphans, mutual assistance in times of distress, and a host of other interventions, mostly through reciprocity and solidarity. But this differs in some ways from the way social protection is conceived in contemporary systems where the focus tends exclusively towards income security, addressing risk and vulnerability, and responding to particular life-cycle needs. In short, the newer approaches are a narrower agenda dominated by conditional and unconditional cash transfers, and probably originating from safety-net responses to the negative impacts of structural adjustment and other economic policy reforms that have affected the region since the 1980s.

'Sectorisation' and 'projectisation' of social protection are the other challenges. Here we use the term *sectorisation* to mean the tendency for social protection programmes in the sub-region to be conceptualised, designed and implemented from the perspective of 'vertically' conceptualised (and constructed) sectors, sub-sectors, or vulnerability categories, such as education, health and agriculture; or disability; children, and women. On the other hand *projectisation* refers to the practice of establishing numerous short-term or time-bound (often donor-funded) projects. A common cause and effect in both approaches is the proliferation of policies, strategies and interventions.

Uganda is a good example of both instances. The country has a large number of policies, strategies, programmes and legal frameworks that are underpinned by social protection objectives, including policies on orphans and vulnerable children, on the elimination of child labour, and on disability, equal opportunities and gender. In the wake of HIV and AIDS, also, instruments such as community targeting, food assistance and free access to anti-retroviral treatment target affected and infected people, plus orphans and vulnerable children. Others include the Universal Primary Education (UPE) programme (including school feeding in selected geographical localities); the National Minimum Health Care Package and the Northern Uganda Social Action Fund (NUSAF) – which in more recent times converted to the Post-Recovery Development Plan (PRDP). The projects are a complex mix between categorical and geographically focused interventions. They take on group and individual targeting approaches (Kirya, 2006).

Similarly, in 2003 Tanzania adopted a Social Security Policy which, while recognising formal and informal (or traditional) social security systems, is not embodied in ho-

listic social protection conceptualisation. Even the formal social security system itself (which covers only about 5.4% of the total working population) has a multiplicity of elements that are not linked to each other, comprising:

- the National Social Security Fund (NSSF) under the National Social Security Fund Act No. 28 of 1997 (for employees of the private sector and non-pensionable parastatal and government employees and for individuals who are self-employed and are also eligible to join the scheme by making monthly contributions);
- the Public Service Pension Fund (PSSP) under the Public Service Retirement Benefits Act No. 2 of 1999 (for central government pensionable employees);
- the Parastatal Pension Fund (PPF) under the Parastatal Pensions Act No. 14 of 1978 (covering employees in public enterprises/parastatals);
- the Local Authorities Provident Fund (LAPF) under the Local Authorities Provident Fund Act No. 9 of 2006 (covering employees of local governments);
- the National Health Insurance Fund (NHIF) under the National Health Insurance Fund Act No. 8 of 1999 (offering health insurance coverage to pensionable employees of the central government); and
- the Political Retirement Benefits Act No. 3/1999.

Yet the debates continue as to whether to have one programme or several, or to use categorical or poverty targeting. As observed by Shepherd (2011):

...tailor made social transfer or insurance schemes would protect against the major risks, but there are many risks, and the approach might not be cost effective where financial and administrative capacities are limited.

Shepherd points out further that, 'for the moment, one well run and wide coverage programme addressing many risks might be better than several patchy and less well run programmes addressing different sources of risk' (ibid).

Likewise, 2009 evidence from Kenya revealed that it had over 14 major in-kind, cash or workfare programmes, with a total spending of approximately Kenya Shillings 21 billion (equivalent to US\$27 million). These included Food Distribution Emergency Operations; Kazi Kwa Vijana (for youth); Regular and Expanded School Feeding; Supplementary Feeding and Mother and Child Health Programme; OVC Cash Transfer Programme; National Accelerated Agricultural Inputs Access Programme; HIV/AIDS Nutrition Feeding; Home Grown School Feeding; Njaa Marufuku Kenya; Hunger Safety Net Programme (HSNP); Older People's Programme; and Most Vulnerable People Programme.

Meanwhile in Rwanda, in addition to the country's constitution, the Economic Development and Poverty Reduction Strategy (EDPRS) and the Social Protection policy itself, there are also in place national policies for family promotion (MIJEPROF, 2004); risk and disaster management (MINALOC, 2002); orphans and other vulnerable

children (MINALOC, 2002); disabled (MINALOC, 2002); old people (MINALOC, 2002); and for development of mutual health insurance schemes (MINASANTE, 2004). In existence, also, are: a strategic plan for the promotion of youth employment (2008–2012); an action plan for education for all (MINEDUC, 2004); Law no. 02/98 of 22/01/1998 on the National Fund for Assistance to the most destitute victims of the genocide and 1994 massacre in Rwanda; Law no. 27/2001 of 28 April 2001 on the child rights and his/her protection against any form of violence; Law no. 34/2001 of 5 July 2001 on refugees; as well as the Ministerial directive on education funds in districts and cities; guide on the orientation of mutual health insurance schemes and the programme for the support to health mutual societies; national programme for street children; and the employment policy (Ndahirwa, 2007).

These are in addition to the more recently endorsed National Social Protection Strategy (2011), Vision Umurenge Programme (2008), and policies for the protection of survivors and cooperation promotion.

There are several reasons for social protection being 'sectorised' and 'projectised'. Perhaps the most common is that of donors and other external actors whose choice of either target groups to focus on or preferred instruments makes it possible for a multiplicity of projects to emerge. This results in disorder in design and implementation as well as duplication of efforts and resources, including public resources. Publicly funded projects with either narrow categorical or sector interests, on one hand, or single-issue development aims and discourses, on the other, have so permeated the public sector, including social protection, that many are beginning to be seen as the norm. In practice this has meant that donor or domestically funded social protection has evolved into a series of disconnected projects with individually focused activities and outputs.

The rapidly increasing amount of project-based work in social protection is thus the result of the failure to have a holistic conceptualisation or to ensure that social protection programmes are underpinned by a common strategic thread. The result is a wider problem of proliferation of projects and the potential mismatch between projects, programmes and national and sub-regional priorities. Not only do most of such projects and programmes have limited coverage, they also create serious inefficiencies in delivery and hence wastage of resources. In the eyes of some policy makers and bureaucrats these are 'unsuitable for resource prioritisation', which makes social protection uptake a hard sell. Given also that coverage is skewed towards crisis-prone geographic areas with limited attention to other vulnerable groups, particularly the urban poor, and that most of the policies, programmes and processes are neither coordinated nor harmonised, the obvious retreat for policy makers is again to the narrow sectors, or to cuts to social protection budgets.

Further, projects and sector-conceptualised (and implemented) social protection tends to lack systems for tracking the functionality of higher-level goals and objectives. Characteristics of the project approach include temporary

execution structures, definite timeframe linked to project cycle, system construction, and limited attention to post-construction support, alternative and/or parallel funding, different intervention approaches, or even coordination frameworks. On the other hand, a more holistic and harmonised approach is characterised by investment and provision of services, unlimited timeframe linked to institutionalised structures, coordinated framework for the delivery of social protection services, overarching policy and strategy including commonly agreed approach, model(s) and guidelines, as well as recognition of sector learning, and promotion of innovation.

Thus it may be concluded that the major challenges facing social protection in the East African sub-region include the pilot nature and limited scale of most of the programmes, inadequate coordination, and inadequate monitoring and evaluation frameworks, all characteristics of 'projectisation' and 'sectorisation'. When tackling the future of social protection in the region, therefore, the key issues that ought to be addressed are harmonised and holistic policy and an overarching development and policy goal to which these processes subscribe. East Africa is today facing a series of challenges that are bound to increase the levels of risk and vulnerability, and hence the need for social protection. Among these, climate change, rapid population growth, financial crises and changing livelihoods are at the forefront. Given these challenges, the discussion on the future of social protection policy and practice cannot only focus on individual sectors, categories or instruments. Tackling the challenges involves more wholesale policy processes that target structural factors of risk and vulnerability as well as economic, environmental and social sustainability. Regional and local development – combining economic growth, reduced geographical disparities, and harnessing of regional integration opportunities – will be increasingly important in facing these challenges. The discussion on the future of holistic social protection policy must be seen in this context.

Implications of 'sectorisation' and 'projectisation'

From the foregoing discussion three key observations can be made about the impact that history, context and socio-economic changes have had on social protection uptake in the East African region. These are that:

- the poor and vulnerable, having been alienated from their traditional social protection support mechanisms, were at the same time excluded from the more formal approaches instituted over time to serve the interests of those in formal employment;
- those who are most at risk from slipping into poverty or deeper poverty were simultaneously marginalised from the discussion and shaping of social protection policy and practice; and
- the structural adjustment programmes of the 1980s and the neo-liberal policy reforms that followed in the 1990s, besides creating new pressures on poor people's

incomes and livelihoods, simply aggravated an already bad situation, leading to deterioration in the effectiveness and utility of even the limited social security instruments that were already in place.

First, on marginalisation it is evident from these countries' experiences that vulnerable people faced a 'social protection vacuum' when both formal programmes and informal practices failed to provide the safety nets that they needed to mitigate or overcome the impact of shocks. Similarly, because they lacked 'voice', they were also unable to influence the way social protection policy was prioritised. By not being able to effectively participate in political processes, or to communicate information about their preferences and needs, or to generate pressure on public officials to respond, or to articulate their voice through the media and other institutions, a large body of the poor and vulnerable in the region became victims of disinterest in social protection by an elite that was already provided for.

Second, by marginalising the poor from the discussion and shaping of social protection policy and practice a line seems to have been drawn whereby moving the social protection agenda forward appears to be taking a 'needs-based' approach in preference to a 'rights-based' one. Choices such as these also determine whether to favour conditional or unconditional transfers, or to argue for social pensions vis-a-vis targeting of a percentage of the poorest. An important characteristic of rights-based approaches to social protection, in particular, is that the framework assigns rights and obligations to individuals, groups and states:

the idea that states are obliged to provide appropriate regulation of labour and financial markets and an acceptable basic standard of health care and education, all of which will improve the ability of households to manage risk within livelihood strategies that are focused on improving standards of living (Conway and Norton, 2002: 535).

The point of departure for these approaches is that most of the existing social protection instruments (e.g. insurance schemes, public works, food aid, targeted cash transfers or social funds) do not necessarily address issues of social justice and the equal rights and entitlements of those that need to be supported. However, the key issue for consideration here is that the voices of those who are affected and on whose behalf the decisions are made ought to be heard first.

The third observation is that it helps to know the limits which a local or even global political economy imposes on policy uptake. Across all East African countries, and to an extent across all of sub-Saharan Africa, the predominant development trajectory is a replication of the previous neo-liberal conditionalities of earlier structural adjustment policy. Social protection continues to be handled as a response to 'residual' failures to address those who are considered to be 'falling through the net' rather than as a fundamental factor in spearheading social and economic transformation. Regrettably, also, the respective govern-

ments' responsibility for promoting economic transformation is largely restricted to budgetary instruments for the management of public expenditure.

Conclusion

From the foregoing discussion we observe that progress in uptake of social protection in East Africa has so far been constrained by factors ranging from historical distortions that were created during and after colonial times to the 'projectisation' and 'sectorisation' of the approach. While some progress has been made in developing relevant policies and programmes in the different countries, the multiplicity of policies and strategies (which are not, in turn, underpinned by higher-level goals and strategies) simply aggravates an already difficult situation. These, coupled with the absence of a central authority for coordinating, harmonising and rationalising different interventions, make uptake of social protection extremely difficult for decision-makers. In addition the drive from donors, rather than from citizens, their governments, or a critical mass of the elite also raises questions about ownership and sustainability. The donor-led narrative for social protection may have contributed significantly to the prioritisation of poverty, risk, and vulnerability in the sub-region; however, in sidelining the people in whose name social protection interventions are being implemented, including perspectives on traditional approaches, the political and cultural acceptability of social protection may likewise have been compromised.

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This paper was originally presented at a conference organised by the University of Ghana, Centre for Policy Studies and the Chronic Poverty Advisory Network to Promote Discourse on Social Policy and Cash Transfers in West Africa, Accra, Ghana, 3–5 October 2012. The views expressed in this paper, however, are personal and are not a reflection of the official views of the Chronic Poverty Advisory Network, Development Initiatives, or their managements.

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UPDATE: Developments in the African region

10th Anniversary of the Maputo Protocol

On 11 July 2013, civil society groups across Africa celebrate the 10th anniversary of the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol.

The Protocol was adopted by the African Union (AU) in Maputo, Mozambique, on 11 July 2003. It came into force in November 2005 after it was ratified by 15 of the 53 African

Union (AU) member states. To date 36 of the 54 members states of the African Union are now parties to the Protocol. The Protocol has been applauded as a progressive legal instrument that gives a diverse range of rights to African women and girls.

As we mark this milestone, the question remains: how can African civil society make the most of this groundbreaking protocol? How can we harness its potential to address the elimination of discrimination against women and also address a wide range of rights, such as economic

and social welfare, health and reproductive rights, and protection against or elimination of harmful traditional practices?

The Protocol requires state parties to review their domestic laws and ensure that they are aligned with its provisions.

According to Commissioner Soyata Maiga, Special Rapporteur of the African Commission on Human and Peoples' Rights (ACHPR) on the Rights of Women in Africa, the Protocol is 'an exemplary and inexhaustible source of inspiration for African legislators'.

Various factors impede the implementation of the Maputo Protocol, including women's lack of awareness of their rights and persistent socio-cultural and religious burdens that legitimise certain forms of violence, discrimination and marginalisation of women. However, without putting in place national laws, structures and processes that popularise, domesticate and implement the Protocol, it remains a paper tiger. These factors are further com-

pounded by non-respect for national laws by government officials, widespread corruption that encourages impunity, and dysfunctions within the judiciary, which contribute to the slow pace of implementing the Protocol.

It is important, therefore, that African civil society should continue to make efforts to popularise it and advocate for its domestication and full implementation at the national level. Also, state and non-state actors must be held accountable for breach of their obligations to safeguard women's rights, as contained in the Protocol.

See: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. <http://www.achpr.org/instruments/women-protocol>

UPDATE: Developments at the United Nations

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) enters into force

The 5th of May 2013 marked the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR).

The Optional Protocol is important for several reasons. First, it is a critical mechanism for people who can't get access to justice in their own countries in situations of socio-economic violations. It is an additional avenue for redress in an international platform with the explicit goal of providing effective remedies.

Second, the Optional Protocol provides the Committee on Economic, Social and Cultural Rights the opportunity to conduct inquiries, as well as the right of individuals and groups to complain about violations of the rights contained in the substantive covenant, including the right to health, right to education, the right to work, right to social security.

So far only 10 countries have ratified the OP-ICESCR and none of them are African countries. Those who have done so are: Argentina, Spain, Ecuador, Mongolia, Bolivia, Bosnia and Herzegovina, Slovakia, El Salvador, Portugal and Uruguay.

See: The Office of the United Nations High Commissioner for Human Rights (OHCHR), The Committee on Economic, Social and Cultural Rights (CESCR). <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>

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Participation of persons living in poverty: Report of the UN Special Rapporteur on extreme poverty and human rights

On 11 March 2013, the UN Special Rapporteur on extreme poverty and human rights released a report (A/HRC/23/36) that focused on the right to participation of people living in poverty.

The report is divided into three main parts: participation, power and poverty, normative framework and human rights-based approach to participation. The report examines 'the key human rights principles and standards that determine the content of the right to participation with regard to the poorest and most marginalised members of society'.

The right to participation is enshrined in numerous international human rights instruments. A systematic and teleological interpretation of several human rights norms and standards and principles can provide guidance on how to ensure and support the participation of people living in poverty.

The report acknowledges that 'participation is a basic human right, and of fundamental importance in empowering people living in poverty to tackle inequalities and asymmetr[ies] of power in society'. Lack of participation in decision-making is recognised as a defining feature and cause of poverty.

Effective participation has been recognised to enable the building of capacity and rights awareness in poor and marginalised communities (para 22). The right to participation should be viewed broadly and cemented with political, legal, and institutional actions.

There are multi-faceted challenges to the right of people living in poverty to fully participate in society, including 'economic, social, structural, legal and systematic' barriers. The report lists five key human rights principles (para 35–79) that should be utilised in all participatory process. These are:

- respect for dignity, autonomy and agency;
- non-discrimination and equality;

- transparency and access to information;
- accountability; and
- empowerment.

To be compliant with their human right obligations, the report recommends (para 86) that states must ensure that meaningful participation of people living in poverty is undertaken within an operation framework that includes:

- access to information;
- accountability;
- empowerment;
- equality and non-discrimination;
- legal and institutional framework;
- resources; and
- supporting the role of civil society.

In conclusion, the Special Rapporteur recommends that national human rights institutions 'scrutinize existing laws, administrative acts, draft bills and other proposals to ensure consistency with obligations related to the right to participation under international and national human rights instruments'. They should also monitor compliance with the right to participation and provide reports thereon to public authorities, civil society and United Nations human rights mechanisms.

See: UN Special Rapporteur on extreme poverty and human rights (UN Doc A/HRC/23/36). <http://www.communitylawcentre.org.za/un-special-rapporteur/reports/2-Participation%20of%20persons%20living%20in%20poverty%20-2013.pdf>

Mission to Namibia: Report of the UN Special Rapporteur on extreme poverty and human rights

On 17 May 2013, the UN Special Rapporteur on extreme poverty and human rights released the report (A/HRC/23/36/Add.1) of her mission to the Republic of Namibia from 1–8 October 2012.

The report presents findings regarding the protection and promotion of the rights of people living in poverty and social exclusion in Namibia. It is divided into five main sections:

- general context;
- legal and institutional framework;
- groups particularly vulnerable to poverty;
- challenges in the realisation of specific rights by people living in poverty; and
- the obligation of international assistance and cooperation.

The report notes that poverty is particularly widespread in rural communities, where 62% of Namibians reside. It observes that the socio-economic inequality of women and girls and some negative cultural practices are at the root of widespread gender-based violence in Namibia, which constitutes a grave and persisting human rights concern. According to the report, poverty is both a contributing factor to, and a result of, gender-based violence.

Although there are currently 15 women and child protection units intended as specialised police units, which can provide sensitive responses to gender-based violence, they suffer regularly from staff shortage and lack of adequate facilities and equipment. The Special Rapporteur is also alarmed by incidents of forced sterilisation of HIV-positive women (para 25).

According to the Namibia Statistics Agency, about 34.4% of children in Namibia live in poverty and households with children are 77% more likely to be poor compared with households without children (UNICEF and UNAIDS, 'Children and HIV and AIDS in Namibia', October 2011). Child poverty undermines the capacity of children to survive, develop and thrive and impedes the realisation of their human rights, particularly the right to survival and development. The report acknowledges that poverty prevents children from enjoying equal opportunities and undermines family and community environments, leaving children vulnerable to exploitation, violence and discrimination. Poverty in childhood is also a root cause of poverty in adulthood.

The Special Rapporteur noted that approximately 5% of Namibians live with a disability and unemployment is rife among this group, who are more highly represented among unpaid family workers and the self-employed, are underrepresented in the private and public sectors and have lower incomes (para 41).

Namibia is not on track to achieve Millennium Development Goal 4 on infant and child mortality or Goal 5 on maternal mortality. These kinds of mortality are higher in rural areas and among the poor. The HIV/AIDS epidemic is the most pressing health issue in Namibia, which is one of the 10 most affected countries in the world (UNAIDS Report, 2011). The report acknowledges that women, and particularly poor women, are vulnerable to HIV infection. HIV prevalence in Namibia has contributed to the high maternal, infant and child mortality rates (para 46).

The Special Rapporteur received information on high levels of unemployment among people living with HIV, including those who had lost their jobs due to their HIV status. Although Namibia has put in place a strong legislative framework and policies to deal with stigma and discrimination against people living with HIV, their implementation falls short and people continue to face stigma and discrimination in their communities, workplaces and when accessing public services (para 49).

In terms of challenges in the realisation of specific rights by people living in poverty, the Special Rapporteur received information that, despite the fact that the Namibian government has identified the lack of infrastructure and qualified teachers as barriers to improving the quality of education, severe gaps in school infrastructure and availability of schooling materials persist. Furthermore, education outcomes are additionally hampered by an insufficient teacher-student ratio and poor teacher training. As such, it is acknowledged that the inequitable distribution of wealth and income mirrors inequalities in education (paras 56–57).

The Special Rapporteur was particularly concerned about the limited accessibility and affordability of health services due to the policy of imposing 'user fees' in the public health-care system (paras 60–63).

The Special Rapporteur recognises that the need to support the poor by improving access to land is articulated in several official documents. However, the allocation of land seems not to have been among the Government's priorities in poverty alleviation efforts. This was also alluded to in the report by the Special Rapporteur on the rights of indigenous peoples (UN doc A/HRC/24/41/Add.1), in another visit to Namibia, from 20–28 September 2012.

One of the key challenges in housing delivery in Namibia is the lack of available serviced land, which is both slowing down the process of housing delivery and pushing up prices of serviced land (para 70). This, together with limited access to land and the increased urbanisation process, has resulted in the expansion of informal settlements in urban areas. The majority of the urban poor in Namibia now live in 235 informal settlements, comprising over 120 000 households (para 71).

In terms of economic growth Namibia now enjoys the status of a middle-income country. Aid flows have thus continued to decline in recent years and several bilateral donors have stopped their activity in the country. However, the Special Rapporteur urged the international community to continue to support Namibia, particularly with regard to capacity-building and skills development. The report notes that the high level of inequality and the substantive institutional and capacity challenges necessitate continued support from the international community.

The Special Rapporteur further noted that, in addition to its obligations under the Constitution and international law, Namibia has put in place a strong legal framework for the protection of rights. However, there are huge gaps between laws and policies, and their implementation and monitoring. While acknowledging the compounded challenges Namibia faces – including limited institutional capacity and the fact that it has one of the world's lowest population densities – the report concludes that progress has not been fast enough. There are still unacceptable levels of inequality along the lines of gender, race, region, ethnicity and class. Much more can be done to comply with its obligations in respect of economic, social and cultural rights.

Report by the UN Special Rapporteur on extreme poverty and human rights (UN Doc A/HRC/23/36/Add.1): http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-36-Add1_en.pdf

For the full end-of-mission press statement by Ms. Sepúlveda, please visit: <http://www.ohchr.EN/NewsEvents/Pages/Displaynews.aspx?NewsID=12636&LangID+3>

Report by the UN Special Rapporteur on the rights of indigenous peoples (UN doc A/HRC/24/41/Add.1): <http://daccess-dds-ny.org/doc/UNDOC/GEN/G1315105.pdf?OpenElement>

Meaningful Engagement as a Political Process

Understanding the Roles of Government, Citizens and Civil Society

On 30 May 2013, the Socio-Economic Rights Project (SERP) at the Community Law Centre (CLC) and the Socio-Economic Rights and Administrative Justice Research Group (SERAJ) of the Faculty of Law at the University of Stellenbosch, hosted another roundtable with the theme Meaningful Engagement as a Political Process: Understanding the Roles of Government, Citizens and Civil Society.

The roundtable was aimed at getting participants to share their experiences and practices around meaningful engagement while highlighting challenges and progress made as well as making suggestions for improvements and changes in future engagement processes. Around 45 participants from government, community organisations, social movements and academia participated in the roundtable. The format of the discussion was largely informal in nature; the dialogue was informed by a set of questions designed to prompt active and free-flowing conversations around the various issues.

This roundtable was a follow-up to the previous discussions. In July 2009, the Centre for Applied Legal Studies (CALs) at the University of Witwatersrand organised a

workshop on the role of civil society in advancing meaningful engagement as part and parcel of the political process in realising socio-economic rights. This was followed up in March 2010 by a roundtable discussion on the same subject, this time organised by the Socio-Economic Rights Project (SERP) of the Community Law Centre (CLC) and the Socio-Economic Rights Institute of South Africa (SERI). The main focus of the two events was to gain and share knowledge and experience from different perspectives on an understanding of the full scope of meaningful engagement, the identification of key principles and emerging issues relevant to meaningful engagement with particular reference to the implementation of socio-economic rights based on judicial interpretations emerging from the jurisprudence of the Constitutional Court (the Court).

Over the last few years, the Court has increasingly developed the concept of meaningful engagement. At the international level also, the issue of participation as a core component of meaningful engagement is being promoted as an important element in all political processes. The United Nations human rights treaty-monitoring bodies, including the International Committee on Economic, Social and Cultural Rights, have emphasised the importance of participation, transparency and accountability as forming the core of a rights-based approach to sustainable

development. The recent report of the UN Special Rapporteur on Extreme Poverty (2013) also focuses on the need to promote the participation of the poor, marginalised and vulnerable groups in the decision-making processes that affect their lives.

The deliberations during the roundtable acknowledged that meaningful engagement as a concept and constitutional requirement recognises the importance of fostering the right to participation. In the South African context, the courts have interpreted meaningful engagement as a process that requires consultations and collaborations between the government and communities/people (including organisations representing their interests) affected by social welfare policies. Such engagement, to be effective, should be introduced during policy planning processes and

not afterwards in order to prevent conflicts from arising later in the implementation process.

In conclusion, the roundtable was a forum to discuss and highlight key roles that citizens, citizens' groups and civil society at large need to play in making meaningful engagement a core part of the political process.

A full report of the proceedings of the second roundtable discussion is available at http://www.seri-sa.org/images/rtd_on_me_report_08.04.2010.pdf