

Towards Transformation – Measuring, Monitoring & Evaluating Socio-Economic Rights in South Africa

Introduction

Few people would disagree that the realisation of socio-economic rights (SERs) is key for overcoming South Africa's persistent struggle with poverty and inequality. The Constitution guarantees justiciable socio-economic rights. Although people therefore can approach the courts if they feel that these rights are not being respected, the Constitution, however, subjects these rights to the internal limitation of "progressive realisation subject to available resources". The limitation clause is silent on timeframes, the percentage or coverage of people over time or even how the State should finance access to socio-economic rights. The challenge for policy makers and oversight bodies alike is how best we are able to evaluate government programmes and budget allocations against this binding obligation on the state. For example, how do we characterise a national budget that increases the age eligibility for child support grants, but fails to increase the grant value in line with inflation, thus effectively reducing the already meagre purchasing power of those who are already in receipt of the grants?

The conceptualisation of how to monitor the complexity of progressive realisation of socio-economic rights is still in its infancy. The Studies in Poverty & Inequality Institute (SPII) is part of a small international community of experts who are developing diverse but harmonious tools for such monitoring and measurement. With the endorsement by the South African Human Rights Commission (SAHRC), which is constitutionally obliged to report annually on the defence and

advancement of the rights in the Constitution, 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.

Given the internal limitation contained in the Constitution, SPII has advocated strongly for consensus over what progressive realisation of socio-economic rights means in South Africa, in particular– to what end and over what time span. This is crucial in order to be able to monitor, measure and evaluate progress. What is clear is that a dynamic cycle exists in which the goal posts for access to socio-economic rights should shift over time as a country gets richer (or poorer). Set minimum standards of rights enjoyment deemed adequate at a certain point in time and resource availability, should shift once the country gets richer and the targets for rights enjoyment get more ambitious.

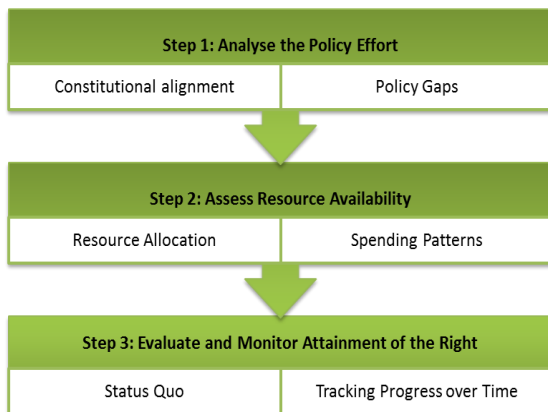
Methodology

The methodology developed by SPII builds on international best practice and combines various approaches to monitoring socio-economic rights. The methodology that informs this approach bears many similarities with the OPERA methodology developed by the Centre for Social and Economic Rights (CESR) in New York which analyses Outcomes, Policy Efforts, Resources and Assessment. The tool is ultimately not about being a watch-dog, but about guiding policy around socio-economic rights and moving all actors towards developing roadmaps and time frames for how and by when to achieve universal access for all

citizens, as envisioned in the Constitution.

The tool aims to be proactive in terms of aiding clarity on the advancement to full enjoyment of socio-economic rights, to identify achievements and what is working, and to detect failures, gaps and regression including discriminatory laws, policies, programmes and practices and ultimately re-orientating state action if required.

The methodology is based on three distinct steps (see figure below).



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 socio-economic rights. Two things ought to be taken into consideration: firstly, does legislation adequately reflect the Constitution and international treaty obligations, and secondly, what policy gaps exist in the existing legislation?

SPII conducted a review of social security, education, housing and health policies and legislation. The aim was to compare the development of policy for the unqualified right to basic education (which right is not subject to progressive realisation) with the development of policy for the qualified rights to housing, health care and social security, in order to determine how the Constitutional imperative to immediately or progressively realise these rights are reflected in the policy making process. The findings of these reviews are available at www.spil.org.za.

Step 2: Assess Resource Availability

The second step focuses on analysing budget and expenditure allocations at both national and provincial level to assess reasonableness of amounts for key sectors and population groups. Things that ought to be born in mind are: Is spending pro-poor? Is the relevant government Department tasked with the delivery provided with adequate funds? Where does under spending occur? Are resource allocations increasing or decreasing 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. The findings of this analysis are available at www.spil.org.za.

Step 3: Evaluate and Monitor Attainment of SERs

The third step focuses on evaluating and monitoring the attainment of socio-economic rights with reference to the three dimensions of access (physical and economic), quality and adequacy over time. This requires quantifiable and replicable indicators (proxies for the different dimensions of SER) 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.

SPII has to date developed a set of indicators for social security and health which 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.spil.org.za. Over the next two years, indicators will also be developed for housing, education, food, water and sanitation, and the environment. It is of crucial importance to check this quantitative assessment of the status of socio-economic rights with qualitative research on the ground. SPII is currently piloting some qualitative research at an informal settlement on the outskirts of Johannesburg. This will also feed into the on-going discussion on the need for a community monitoring tool at the local level.

Workshop on 23 May 2013

On the 23rd of May 2013, SPII in partnership with the SAHRC and the Ford Foundation hosted a workshop in Johannesburg to launch the preliminary methodology with a specific focus on social security and health care. Participants represented organisations including the Foundation for Human Rights, Black Sash, the Community Law Centre, Centre for Applied Legal Studies and the Socio-Economic Rights Institute. The objective of the workshop was three-fold: firstly, to deliberate on the manner in which progressive realisation of rights is understood both by policy makers and by human rights practitioners, to reflect on socio-economic rights and their measurement and thirdly, to allow the participants to critique and provide feedback on the monitoring tool SPII has developed and in particular, the indicators for social security and health care. The high standard of discussion at the workshop was set with an opening address by Justice Zak Yacoob who officially retired as a judge from the Constitutional Court at the end of January 2013 after 15 years of service. Justice Yacoob in his opening address emphasised the shortcomings of both juridical and legislative measures which have informed responses to socio-economic rights concerns to-date and instead stressed the need for a programmatic approach in which the government is a partner. The opening address was followed by a panel discussion with Pregs Govender, the Deputy-Chairperson of the SAHRC, Yasmin Sooka, the Executive Director of the Foundation for Human Rights, Selwyn Jehoma, previous DDG of Social Security and Janet Love, Commissioner for SAHRC and Executive Director of Legal Resources Centre.

Three major points of deliberation emerging from the workshop were the following. Firstly, the need for a **programmatic approach** in which road maps or long-term plans for each of the socio-economic rights are developed. This will provide tangible benchmarks for measuring and monitoring 'progressive realisation'. This of course raised important concerns regarding

institutional and implementation capacity and the lack of co-ordination between different spheres of government. The pressing question for civil society more broadly and for the development of the monitoring tool is - *how does civil society engage with government as a partner in this work and incentivise the state to tackle inter-governmental collaboration?* Secondly, the need to broaden **participation** and include people as agents of change and more importantly, include them in monitoring and evaluating their rights at a local level. Thirdly, the importance of **values** and assumptions which undergird policy and budget choices and reflect the values we have as a society. Therefore requiring us to ask the bigger questions and more specifically, *what kind of society do we want to become? And, what kind of education and health system do we want?*

These issues come together very closely in current deliberations regarding the contents and application of the National Development Plan. Clearly, if the NDP is to have critical traction, it too needs to pass muster on these criteria.

Conclusion

The workshop succeeded in bringing different civil society organisations who work on socio-economic rights in South Africa together. The first half of the day allowed for broad reflections and deliberations on the challenges and opportunities of monitoring and measuring the progressive realisation of socioeconomic rights. The consensus gained throughout the day regarding the limitations of the courts and legislative measures and the need for a programmatic approach highlighted why a comprehensive monitoring tool which considers policy, budgeting and the attainment of rights is necessary. The feedback received from participants on the monitoring tool itself in the second half of the day has underlined key areas which the project needs to incorporate and address – namely the broadening of participation and the combination of statistical tools with community monitoring on the ground. This tool is ultimately not about being a watch-dog but about guiding policy around socio-economic rights and moving all actors towards thinking about how to develop a roadmap and time frames for how and by when to achieve universal access for all citizens. as envisioned in the Constitution.



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