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Social Citizenship: A Precondition for Meaningful Democracy

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# Social citizenship – a precondition for meaningful democracy

*SANDRA LIEBENBERG argues that women's full citizenship depends on accessing socio-economic rights. A systematic process of monitoring the implementation of these rights is critical to their realisation*



In 1959 the scholar, TH Marshall, analysed the historical development of those features that were vital to effective 'citizenship'. He viewed democratisation as a progression, spanning three centuries. Civil rights were the great achievement of the 18th Century, establishing the principle of the equality of all members of society before the law. Political rights emerged in the 19th Century, paving the way for increasingly broader participation in the exercise of political power. The fulfilment of democracy is the recognition of the concept of 'social citizenship' in the 20th Century (Marshall, 1959; Eide, 1995:26-27).

## Social citizenship

Full and effective participation in democratic processes requires that every member of society has access to the basic necessities of life. This includes access to essential foodstuffs, water, shelter, basic education, and primary health care. Individuals and groups who cannot gain access to these basic human needs, are caught up in a daily struggle for survival. Although they may cast their vote once every five years, they are effectively marginalised from real political, economic and social power. This in turn perpetuates their disadvantaged socio-economic status as they are unable to exert the political influence necessary to improving their conditions of life. This is so even in relatively affluent societies.

According to the Canadian legal scholar, Martha Jackman (1994:97):

*The view that the Canadian political process is inaccessible and unresponsive to the poor is well supported.*

The idea of 'social citizenship' thus captures the full dimensions of an individual's sense of belonging within society. Social inclusion and participation in democratic institutions does not only depend on the guarantee of formal civil and political rights, but also on socio-economic rights.

## Socio-economic rights

International human rights law recognises the universality and interdependence of all human rights – civil, political, economic, social and cultural rights. Economic and social rights are protected in a range of human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979), the Convention on the Rights of the Child (1989), and the African Charter on Human and Peoples' Rights (1981). South Africa is a party to the latter three treaties, and will shortly ratify the International Covenant on Economic, Social and Cultural Rights.

Historically, civil and political rights have occupied centre stage with economic and social rights relegated to the margins of

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human rights discourse. As a result, they are less well-understood and accepted. In addition, they are subject to enforcement mechanisms that are less effective than those applicable to civil and political rights. However, particularly since the ending of the Cold War, increasing attention is being paid to economic and social rights at the international level. This includes efforts to clarify the core contents of various economic and social rights, and to strengthen the procedures for their monitoring and enforcement. Many United Nations (UN) agencies are highlighting the important role of this group of rights in meeting the global challenge of development and poverty eradication (eg UN Development Programme, 1998).

The increasing stature of socio-economic rights is also reflected at national levels. The constitutions of many countries recognise these rights in some form. The new South African Constitution (1996) is regarded by many as a 'state of the art' human rights instrument. It integrates a full range of civil, political, economic, social, and cultural rights in the Bill of Rights. The socio-economic rights protected in the 1996 Constitution include: environmental rights (S 24); land rights [S 25(5) – (9)]; rights relating to housing (S 26), health care services, including reproductive health care, food, water and social security (S 27); children's socio-economic rights [S 28(c) – (f)]; educational rights (S 29); and the socio-economic rights of detained persons [S 35(2)(e)]. In addition, the Constitution protects equal access to these rights. Thus equality is defined to include, 'the full and equal enjoyment of all rights and freedoms'[S 9(2)]. Unfair discrimination is prohibited on a number of grounds including race, gender, sex, pregnancy, marital status and sexual orientation [S 9(3) and (4)]. The Department of Justice in conjunction with the South African Human Rights Commission is in the process of drafting legislation aimed at prohibiting and providing remedies for unfair discrimination in a range of sectors.

All the rights in the Bill of Rights may be

enforced in the courts (S 38). The Constitution also establishes the Human Rights Commission with the mandate to promote, monitor and assess the observance of human rights in South Africa (SS 181 and 184). Its sister institution, the Commission on Gender Equality (CGE) has the mandate to promote and ensure respect for gender equality (SS 181 and 187).

### **Important tools for women's advancement**

Feminist human rights scholars and activists have also highlighted the strategic importance of socio-economic rights for the advancement of women (eg Schuler, 1995). Poverty and socio-economic disadvantage affect women disproportionately. Women are also most affected by a lack of basic social services. It is generally poor women who bear the primary responsibility for collecting water and fuel for household needs, ensuring that children are clothed, fed and receive a basic education, and attempting to meet the health needs of their family. The struggle of these women to meet the basic needs of their families is usually waged in the context of overcrowded, unsanitary living conditions, and low literacy and income levels. The sexual division of labour is still deeply entrenched, particularly in developing countries. Women are often left to care for young children with little or no assistance from male partners, the public or private sector.

Women also face multiple, systemic barriers in their efforts to gain access to decent employment, social security, credit and productive resources such as land. These barriers include the unequal burden of reproductive and caring work, labour market discrimination, discriminatory religious and cultural laws and practices, lack of representation in political and economic institutions, and the widespread violence perpetrated against women. Even when women do gain access to social and economic rights, they frequently experience

discrimination in the enjoyment of these rights. This is reflected, for example, in unequal pay for work of equal value, insecure forms of employment, inferior access to social security schemes, and insecure tenure to land and housing. The way that many of these gender disparities manifest themselves in the South African context are documented in South Africa's Beijing Conference Report (Govender *et al*, 1994) and in South Africa's first country report under CEDAW (Government of South Africa, 1997).

In South Africa, millions of black women are particularly disadvantaged by a complex interaction of factors related to their race, gender and socio-economic status. These gender and racial disparities in the social, economic and political spheres are reflected in the Central Statistical Services (CSS) report on *Women and Men in South Africa* (Budlender, 1998a). For example, over a third (35 percent) of all African women who were employed in October 1995, and almost a quarter of all employed coloured women, worked as domestic workers (Budlender, 1998a:18). As is well known, domestic work in South Africa is characterised by low social status, low wages, job insecurity and a lack of access to social security benefits such as unemployment insurance or compensation for occupational injuries and diseases.

The Beijing Platform for Action adopted by the Fourth World Conference on Women in September 1995 identifies women's equal access to social services and economic resources and opportunities as key strategic objectives for the advancement of women. In terms of the Platform, the South African government is committed to taking a number of concrete actions to ensure women's equal access to socio-economic rights (see for eg strategic objective B – education and training of women, strategic objective C – women and health and strategic objective I – human rights of women). The UN Commission on the Status of Women is responsible for reviewing and



appraising the implementation of the Beijing Platform for Action by states. As part of the follow-up action to the Fourth World Conference on Women, the UN Division for the Advancement of Women (UNDAW) convened an Expert Group Meeting in December 1997 on promoting women's enjoyment of economic and social rights. This meeting made a number of recommendations for action at the national, regional and international levels. These include recommendations to strengthen the protection of socio-economic rights in national legal systems, and through concrete policies, legislation, programmes and adequate resource allocation (UNDAW, 1997).

The recognition of socio-economic rights as human rights removes them from the realm of policy choices by government. Government is legally obliged to give human rights priority consideration in formulating its policies and laws. Civil society may also demand accountability from Government for fulfilling its human rights commitments. It may do so through a number of mechanisms such as court cases, complaints to the Human Rights Commission or the CGE, lobbying parliamentarians, exerting public pressure through campaigns, the media etc. In the absence of an adequate national remedy, it may also be possible to seek redress at an international level for human rights violations.

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### Engendering socio-economic rights

However, recognising the importance of socio-economic rights for women is not enough. Feminist human rights activists have waged a long struggle to make the discourse of civil and political rights responsive to women's needs and experiences (Charlesworth, 1994). For example, violence against women is now recognised as a violation of women's fundamental human right to freedom and security of the person [see, S 12(1)(c) of the 1996 Constitution]. Unless the gender dimensions of socio-economic rights are developed, they will tend to reflect the experiences of men only. This will diminish their value as a tool for the achievement of women's 'social citizenship' in South Africa.

Gender factors must be integrated in the following aspects of socio-economic rights (Liebenberg, 1997).

### The definition and interpretation of the rights

Rights are defined and interpreted not only by the courts, but also in policy and legislative processes. The challenge is to **define and interpret** the rights in a way that takes account of women's actual position in society. For example, in developing policy and legislation to give effect to the right of access to social security, the state must take cognisance of the fact that women's employment patterns tend to be more insecure and interrupted than men's. This results in the exclusion of many women from social insurance benefits that are usually tied to permanent, long-term employment. The unequal burden of caring and domestic work makes it impossible for many poor women to find and keep privileged jobs of this nature. Creative ways must also be found for disadvantaged women to participate in defining and interpreting socio-economic rights. Their participation is essential to ensuring that the rights are relevant to the realities of their lives.

Policies, programmes and legislation are the main vehicles for giving effect to socio-economic rights [see for eg SS 26(2) and 27(2) of the 1996 Constitution]. It is vital that a commitment to gender equality in giving effect to socio-economic rights not be equated with gender neutrality or 'blindness'. The jurisprudence on equality developed by the Constitutional Court recognises that we will not achieve our social goal of equality 'by insisting upon identical treatment in all circumstances...' [President of the Republic of South Africa and Another v Hugo 1997(6) BCLR 708 (CC), para 41].

### Access to resources

Unequal power relations mediate women's access to and control over socio-economic resources at every level – the household, the community, the market and all levels of government. Unless laws and programmes are designed to take account of these gender dynamics, women will not reap their benefit. A recent study on the use of 'the household' as the unit of subsidy allocation and the basis for beneficiary identification in the land reform policy has revealed how it perpetuates existing gender relations pertaining to landholding and management (Surplus Peoples Project and the Centre for Rural Legal Studies, 1998).

The design of the mainstream provisions of all legislation and programmes must be informed by a thorough analysis of gendered social relations. Tagging 'women's issues' onto a particular programme is unlikely to lead to equal outcomes for women. The South African Women's Budget Initiative is an example of a project that seeks to analyse and promote awareness of the gendered impact of all parts of the government's annual budget (Budlender, 1998b).

At the same time care must be taken to design policy and legislation in such a way that traditional gender roles are not reinforced. One way to do this is to incorporate 'gender-sensitive rights' in legislation. Rights of this nature are sex-neutral, but not

'gender-blind'. As explained by Julia Sohrab (1996:76-77), gender-sensitive rights:

*would involve policies that are aimed at men and women but which favour a redistribution of resources towards women in order to ensure a greater equality of outcomes.*

In other words, they should be designed to enable women to gain maximum advantage from the extension of socio-economic benefits without reinforcing gender stereotypes. A recent example of a 'gender-sensitive right' in South Africa is the introduction of the new child support grant in April 1998. This is a non-contributory grant of R100 per month payable for the support of poor children under seven years of age. This grant will be paid to the 'primary care-giver' (Social Assistance Act, 1992). The grant will primarily benefit women who are in most cases the primary care-givers of children in poor communities. It is estimated that in 1995, 42 percent of children under seven years of age were living only with their mother, compared to one percent who lived only with their father (Budlender, 1998a:9). However, the programme does not exclude those men who undertake the primary responsibilities of child care. Moreover, the concept of the 'primary care-giver' is not premised on the nuclear model of the family which fails to accommodate the large variety and fluidity of household structures and child care arrangements in South Africa. Finally, as a social assistance programme the child support grant represents a small, but significant contribution by society as a whole to the costs of child care.

The social relations that operate to deprive poor black women of effective access to economic resources, income and opportunities in South Africa are deeply ingrained. There is thus an urgent need to design and implement special programmes focusing specifically on the developmental needs of women living in poverty. The central aim of these programmes should be

to enhance women's skills and facilitate their access to land, housing, credit, employment etc. One example of a special programme of this nature is the Department of Welfare's Flagship Programme for unemployed women with children under five years.

The Beijing Platform for Action (1995) draws links between women's poverty, their lack of access to economic resources and opportunities, and their exclusion from decision-making processes. To promote the mainstreaming of gender concerns, policies must also foster women's participation and representation in the main institutions responsible for the delivery of socio-economic rights. These institutions include local government, water committees, housing boards, research councils, and a host of others.

### The monitoring of the rights

A systematic process of monitoring the implementation of socio-economic rights is critical to their effective realisation. Although monitoring can occur at a number of levels, the Constitution has given a special role to the Human Rights Commission in relation to socio-economic rights. Each year it must require relevant organs of state to provide it with information on the measures that they have taken towards the realisation of the socio-economic rights in the Bill of Rights [see S 184 (3) 1996 Constitution]. The Commission is in the process of finalising its report on the first monitoring cycle. It plans to table this report in Parliament during early 1999.

Collecting and analysing data on the impact of laws and policies on women should be an integral part of the methodology employed in this monitoring process. Generating and disseminating gender-disaggregated data and information is one of government's commitments in terms of the Beijing Platform for Action (1995: para 206). It is also necessary to develop appropriate indicators to measure women's full and equal access to socio-economic rights.

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'indirect' discrimination [S 9(3) and (4)]. It will be rare that legislation or policy directly excludes women from benefits or imposes explicit burdens on them. The challenge is to detect the 'hidden' impact of seemingly neutral laws and policies on women. As we have noted, this occurs when the law is blind to the realities of entrenched gender roles and unequal power relations at all levels. For example, a policy to 'disinstitutionalise' the care of persons with mental disabilities without putting in place viable alternatives is likely to have the effect of increasing the burden of care on women. This in turn will make their participation in the economy and public life even more difficult.

The participation of the CGE in monitoring the realisation of socio-economic rights will help ensure that gender factors are integrated in the process (Pillay, 1998).

### Enforcement mechanisms

Increasing access to legal services, particularly in rural areas and disadvantaged communities is a critical priority for South Africa. This requires the reform and extension of the formal legal aid system, and building a wide network of community-based legal clinics and advice offices. The thrust of the new health care policy in South Africa is towards the primary health care approach. A similar shift towards the provision of 'primary legal services' is necessary. Unless gender-sensitive legal services are accessible to women in poor communities, they will not be in a position to enforce the rights that are enshrined in the Constitution and legislation.

### Human rights awareness

A major theme emerging from the national Speak Out on Poverty Hearings in 1998 was the deep lack of awareness and understanding amongst poor communities of their rights. This lack of awareness renders many people vulnerable to misinformation and abuses of their social security, housing, reproductive and other rights. One of the key recommendations in the *Poverty and Human Rights* report is the need for government and NGOs to undertake

extensive information campaigns and training programmes that are accessible to illiterate people. These campaigns should pay particular attention to socio-economic rights, and include information on practical ways in which these rights can be enforced (Liebenberg and Pillay, 1998:41-45). It is vital that gender-sensitive training methodologies and information are integrated into these campaigns and programmes. The gender-specific barriers that impede poor women's access to socio-economic rights should be consistently highlighted.

### Enriching our concept of citizenship

In conclusion, by 'demarginalising' both socio-economic rights and gender from mainstream human rights concerns we will enrich our concept of citizenship. Social citizenship implies that everyone is able to participate in the political, economic and social institutions of the society. To the extent that poor, black women are excluded from effective access to social services, economic resources and opportunities we have failed to achieve full citizenship for all in South Africa.

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