

Celebrating ten years of translating socio-economic rights into reality

The Socio-Economic Rights Project of the Community Law Centre

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South Africa's democracy has all the building blocks in place to facilitate democratic development and the realisation of socio-economic rights. The 1996 Constitution provides a strong institutional framework within which socio-economic rights can be realised. However, although South Africa has a Constitution hailed as the most progressive in the world and a broad range of institutions, actors, legislation and promising jurisprudence designed to promote human rights, translating these rights into tangible realities for poor and marginalised groups still remains a major challenge.

The Socio-Economic Rights Project of the Community Law Centre at the University of the Western Cape was established to undertake this challenge.

The Project was founded in 1997 by Prof Sandra Liebenberg (currently the H F Oppenheimer Chair in Human Rights Law at Stellenbosch University). In her capacity as a member of the Technical Committee of the Constitutional Assembly on the Bill of Rights, she played an important role in the background research which informed the drafting of the relevant provisions protecting socio-economic rights in the Constitution.

Though the Project focuses on socio-economic rights, it recognises the mutual interdependency and interrelatedness of all human rights. For example, civil and political rights are important in protecting people's right to organise and mobilise around the realisation of socio-economic rights

This year, the Project celebrates ten years of contributing towards translating these rights into reality for all people living in South Africa, particularly groups marginalised by poverty.

Focus areas and strategies

Since its establishment, the Project has carved out an important niche for itself in the social transformation agenda of South Africa. It has established a national and international reputation for its work in advancing socio-economic rights as protected in domestic as well as international instruments.

It has focused on a broad range of themes pertaining to socio-economic rights, including the rights to housing, health, social security, food and nutrition, and water; the socio-economic rights obligations of local government; the socio-economic rights of children and older persons;

poverty and development; equality; the socio-economic rights obligations of non-state actors; and the privatisation of basic services.

In addition to building alliances with other organisations, the Project employs a combination of strategies to advance socio-economic rights, including research, informing public debates, litigation, education and training, monitoring and shadow reporting.

Research

The Project has generated in-depth research around the implementation, monitoring and enforcement of socio-economic rights at both the domestic and international levels. Its research has been on the broad themes described above.

These research outputs have been published in accredited and non-accredited journals and books as well as in lay publications. In addition, Project members have been commissioned by a range of institutions, including the South African Human Rights Commission, the Medical Research Council, Street Law South Africa and the UN Food and Agriculture Organisation, to conduct research on a variety of human rights issues.

Informing public debate

The Project informs public debate through producing accessible, informative materials on key issues

relating to socio-economic rights, making submissions on law reform and policy developments, participating in media debates, and hosting conferences and seminars on socio-economic rights issues. Its contributions are aimed at improving public awareness and knowledge of socio-economic rights, and the mechanisms for implementing, enforcing and monitoring their realisation.

Publications

One of the aims of the Project is to translate its research outputs into accessible and user-friendly materials with the aim of empowering communities and marginalised groups to know, claim and defend their rights. These materials are also aimed at government officials so as to increase awareness of their responsibilities.

One of the flagship publications of the Project is its quarterly journal, the *Economic and Social Rights Review (ESR Review)*. This journal seeks to highlight, in an accessible manner, relevant case law, policy and legislative developments, and international developments related to socio-economic rights. Thus far, 27 issues have been produced. These editions have been compiled into a book which can be purchased from the Project. Other publications of the Project include:

- *Water delivery: Public or private?* (2006)
- *Socio-economic rights in South Africa: A resource book*, (first and second editions, 2000 and 2007 respectively)
- *Realising the rights of children growing up in child-headed households: A guide to laws,*

policies and social advocacy (2003)

- *Knowing & claiming your right to food* (2004)
- *Realising socio-economic rights in the South African Constitution: The obligations of local government - a guide for municipalities* (2006)
- *Accessing housing in the Western Cape: A guide for women vulnerable to gender-based violence and HIV/AIDS, and for organisations providing services to them* (2006)

These publications have been well received. For instance, with regard to the *ESR Review*, Justice Edwin Cameron of the Supreme Court of Appeal said: "I always appreciate receiving it and read its articles with interest and admiration."

In response to receiving the guide on the socio-economic rights obligations of local government, Bongiwe Kunene of the Office of the Deputy President said: "It is indeed very pleasing to know that there are institutions that are keen on working hand in hand with government to improve service delivery to our communities by the local government."

Also with regard to this guide, Mark Heywood of the AIDS Law Project noted: "This looks to be a very practical and useful document ... I think it would be very useful for our branch leaders as a guide for how to campaign with regard to local government."

National and international advocacy

Since its establishment, the Project has focused on influencing law reform and policy developments in the

sphere of socio-economic rights. It has made numerous submissions to public institutions on law reforms, policy and programmatic developments. These include submissions to:

- the Truth and Reconciliation Commission, concerning the relevance of the socio-economic rights to the Commission's mandate (1997);
- the Portfolio Committee on Housing (National Assembly), on the Housing Bill (1997);
- the Portfolio Committee on Welfare (National Assembly), on the report of the Lund Committee on Child and Family Support (1997);
- the Equality Legislation Drafting Unit, on the equality legislation in relation to housing and health care services, and the inclusion of socio-economic status as a prohibited ground of discrimination in the equality legislation (1998);
- the Department of Health, on the draft regulations relating to AIDS notifiability (1999);
- the Ad Hoc Committee (National Assembly), on the Promotion of Equality and Prevention of Unfair Discrimination Bill (1999);
- the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (Taylor Committee), on the constitutional framework and implications for social security policy reform in South Africa (2001);
- the Portfolio Committee on Social Development (National Assembly), on the Social Security Agency Bill (2003);

- the Joint Ad Hoc Committee on Democracy and Good Political Governance - Africa Peer Review Mechanism Process, on South Africa's promotion and protection of socio-economic rights enshrined in the Bill of Rights and other African and international human rights instruments (2005);
- the national Department of Housing, on the Prevention of Illegal Eviction from and Unlawful Occupation of Land Bill and the Rental Housing Bill (2007); and
- the Parliamentary Ad Hoc Committee on the Review of the State Institutions Supporting Constitutional Democracy, on the South African Human Rights Commission and its monitoring of socio-economic rights (2007).

In addition to making submissions, the Project has issued press statements on the right to adequate housing in South Africa, in which it condemns arbitrary evictions that have rendered hundreds of people homeless and vulnerable to the violation of their human rights, and called upon the government to fulfil its obligations in this regard.

The Project has also endorsed press statements prepared by other international organisations such as the Centre on Housing Rights and Evictions (COHRE) that condemned the evictions in Zimbabwe which left thousands of people homeless.

The Project has been involved in research and advocacy in South Africa on the right to food. This includes participating in international lobbying and advocacy

initiatives for the adoption of the UN Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security.

In this regard, the Project advised the Department of Agriculture on its position and formed part of its delegation to the open-ended session of the intergovernmental working group considering the development of the Voluntary Guidelines on the Right to Food held in Rome (Italy) in October 2003.

The Project also participates in the basic income grant (BIG) campaign, which advocates the introduction of a universal basic income grant in South Africa as a mechanism to realise the right of access to social assistance.

In this regard, the Project made a submission to the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (the Taylor committee). Through the Project coordinator's chairpersonship of the BIG coalition since July 2005, the Project continues to play a significant role in the campaign.

The Project's advocacy activities extend beyond South African borders. The Project has participated in preparatory meetings organised by the Human Rights Institute of South Africa (HURISA) for the sessions of the African Commission on Human and Peoples' Rights. In the 35th session (2004) of the Commission, the Project made a statement on the role of the Commission in promoting and protecting socio-economic rights and appealed to the Commission to call

upon states to respect, protect, promote and fulfil their socio-economic rights obligations as enshrined under the African Charter on Human and Peoples' Rights (African Charter) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

For the 38th session (2005), the Project joined other organisations in writing a shadow report to South Africa's first periodic report on the African Charter.

In order to participate directly in the activities of the African Commission, the Project spearheaded the Community Law Centre's application for observer status with the Commission, which was granted in 2005.

In addition, the Project is participating in the campaign for the adoption of an Optional Protocol to the ICESCR providing for an individual complaints mechanism. A project member, Dr Lilian Chenwi, is a member of the steering committee of the NGO Coalition for an Optional Protocol.

As part of its involvement in the campaign, the Project participated in the UN open-ended working group session in 2004 and the 2006 civil society forum on an optional protocol.

Workshops and seminars

Hosting workshops and seminars has also been one of the Project's advocacy activities. Over the past ten years, a number of workshops and seminars have been held on social security and assistance, the privatisation of basic services, and strategies to promote the realisation

of socio-economic rights such as the right to food and nutrition, housing rights, health care services and social security rights.

In 2006, the Project initiated the holding of provincial seminars with the aim of stimulating awareness and debate on socio-economic rights in the provinces that are most affected by socio-economic deprivation.

These workshops are also aimed at building the capacity of local organisations and institutions to contribute meaningfully to the implementation of socio-economic rights in these provinces.

In organising provincial seminars, the Project works in partnership with key local organisations and institutions. The first provincial workshop was hosted in KwaZulu-Natal with local partners: the South African Human Rights Commission, the Commission on Gender Equality, Street Law South Africa, the Ombuds-person and Head of Investigations Office of the eThekweni Municipality and the Civil Society Advocacy Programme.

The key outcome of the seminar was the setting up of a task team composed of the seminar organising partners, which is mandated to devise a follow-up plan on the critical strategic issues identified at the seminar.

The Project has commenced the planning of a second provincial workshop to be held in the Eastern Cape.

In addition to hosting workshops and seminars, Project members have participated in key national and international conferences and seminars organised by government

departments and other organisations.

These events provide a forum for the Project to share and exchange ideas and resources with colleagues from other organisations, to obtain feedback on our work, to disseminate or distribute Project outputs, to foster collaboration with other organisations working in the same or related areas, and to maintain the Project's reputation in the international community as one of the important stakeholders on socio-economic rights issues.

Intervening in court cases as an *amicus curiae*

Intervening as an *amicus curiae* (friend of the court) in court cases has also been a key activity of the Project. This activity is aimed at contributing to the development of a jurisprudence on socio-economic rights that is responsive to the needs of poor and marginalised groups and communities.

The Project has intervened in the following four crucial cases thus far:

- *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) (*Grootboom* case);
- *Minister of Health v Treatment Action Campaign (No 2)* 2002 (5) SA 721 (*TAC* case);
- *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd and Others* 2005 (8) BCLR 786 (CC); and
- *City of Johannesburg v Rand Properties (Pty) Ltd and Others*, an appeal case No. 253/2006 (not reported yet).

Three of these cases concerned the right to adequate housing for persons facing eviction from their homes, while the *TAC* case concerned the government's obligations to provide antiretroviral therapy throughout the public health sector to reduce mother-to-child transmission of HIV.

Recently, the Project and the Centre for Applied Legal Studies (CALS) have been admitted as *amici curiae* in another case: *Christian Roberts and Others v The Minister of Social Development and Others* Case No. 32838/05 [High Court] Transvaal Provincial Division. This case concerns a challenge to the constitutionality of a number of laws and regulations on social assistance which provide that women are entitled to a grant for the aged at the age of 60 whereas men are eligible at the age of 65.

The Project and CALS will argue, primarily, that the state has an obligation to fulfil the right of access to social assistance to all people who are unable to support themselves and their dependants.

They will also make submissions on the constitutional implications of the intersectional grounds of discrimination which affect men in the excluded age group.

The Project not only intervenes in these cases by making submissions in court, but monitors the enforcement of court orders. For example, it conducted an extensive research project on the implementation of the *Grootboom* judgment and assisted the community in obtaining the services of the Legal Resources Centre to represent them in securing their housing rights.

In the *Modderklip* case, the

Project has written to the Ekurhuleni Municipality requesting information regarding the enforcement of the order. It has visited the community with the aim of establishing what role the Project can still play in ensuring the adequate enforcement of the court order.

Engaging in teaching and training

Education and training are another strategy used by the Project in promoting socio-economic rights. Project members have presented guest lectures on socio-economic rights issues at academic and civil society institutions in South Africa and abroad.

The Project has been involved in lectures on socio-economic rights as part of the LLM programme on Human Rights and Democratisation in Africa. The programme is offered by the Centre for Human Rights at the University of Pretoria in partnership with the University of the Western Cape, the American University in Cairo (Egypt), the Catholic University of Central Africa (Cameroon), the Universidade Eduardo Mondlane (Mozambique), the University of Ghana, Makerere University (Uganda) and, recently, Addis Ababa University (Ethiopia).

The Project has hosted two PhD candidates thus far: Dr Danwood Mzikenge Chirwa (now a senior lecturer in the Law Faculty at the University of Cape Town) and Christopher Mbazira. The former graduated in 2005 and the latter aims to graduate this year.

The Project has also hosted interns from within South Africa and abroad

who have not only benefited from the Project, but assisted in furthering the Project's goals.

Website

Finally, to ensure that our outputs are accessible to a wider audience, the Project has created a vibrant website through which its research, advocacy and other activities can be accessed: www.communitylawcentre.org.za/Projects/Socio-Economic-Rights/.

Challenges

The Project's achievements for the past ten years have not been without challenges. These include:

- the government's increasing intolerance of criticism by civil society;
- the continuing eviction of farm dwellers and residents of buildings considered to be unsafe;
- poor policy and programme implementation that result in the majority of the population continuing to be deprived of access to basic services – for instance, the failure of local governments to deliver social services adequately, which has sparked a wave of violent demonstrations by frustrated residents who believe that the government is not fulfilling either its constitutional obligations or its election promises;
- frustration with the lack of implementation of court orders in some important socio-economic rights cases;
- the difficulties of raising funds as donor funds become more restricted and are directed away

from South Africa, forcing the Project and other civil society organisations to compete for a depleted pool of donor funds; and

- the scarcity of skilled personnel in the area of socio-economic rights and poverty eradication.

It is evident that much work remains to be done in translating socio-economic rights into reality.

The new Project slogan: "Ensuring rights make real change"

The Project's vision for the coming years is apparent in its recently adopted slogan, "Ensuring rights make real change."

The Project intends to continue its work and intensify its strategies in advancing socio-economic rights. It plans to dedicate more effort to the role of local government in realising socio-economic rights, as local government is central in this process and is closest to the people.

It is important that this sphere of government be supported to enable it to overcome some of the challenges that it faces in discharging its constitutional obligations to deliver basic services.

For the past ten years, the Project's Africa regional focus has been incidental. However, the integration and expansion of the regional focus is now a major part of the Project's vision for the coming years.

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