ESR REVIEW

Economic and Social Rights in South Africa

Volume 14
No. 3 2013

Ensuring rights make real change

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COMMUNITY LAW CENTRE

A publication of the Community Law Centre
at the University of the Western Cape

ESR REVIEW

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

COMMUNITY LAW CENTRE

Editorial

This issue of the *ESR Review* coincides with the celebration of Human Rights Day in Africa on 21 October, which commemorates the coming into force of the African Charter on Human and Peoples' Rights (the African Charter).

The African Charter, which is almost universally ratified by member states of the African Union, was adopted in 1981 but came into force on 21 October 1986.

It was one of the earliest regional human rights instruments to guarantee, in one document, civil and political rights as well as economic, social and cultural rights. The African Charter has been celebrated for its comprehensive approach to human rights including the promotion and protection of individual, social and people's rights. In a continent where millions of people are deprived of access to basic social amenities such as water, electricity, sanitation and employment, the African Charter could not have come at a better time.

Sadly, however, more than three decades after the African Charter came into force, the living conditions of many people in Africa have not really improved. Many people still live in abject poverty, lack access to housing, employment and health care services.

There is a disconnect between what is guaranteed in the African Charter and the realities of many Africans. Thus, the articles in this issue of the *ESR Review* address some of the socio-economic rights issues that are important in improving the living conditions of many Africans.

Brian Ray's article assesses the decision of the court in *Hlophe v City of Johannesburg* on the importance of meaningful engagement in eviction cases in South Africa. It lauds the court's decision, which emphasised the need for provincial governments to adopt a proactive and reasonable plan of action in evictions.

Wouter van Ginneken's article addresses the importance of social protection in combating poverty. He argues that social protection is a human rights issue and urges states to adopt and implement comprehensive national social protection floors, which must address food security, health care, education, water sanitation, housing and social security.

This issue also includes a book review by Ebenezer Durojaye and updates on recent developments on human rights at the international and African regional levels.

We hope you will enjoy reading it.

Dr Ebenezer Durojaye (Editor)

Courts, capacity and engagement

Lessons from *Hlophe v City of Johannesburg*

Brian Ray

> I cannot and do not claim to have any knowledge of town planning, urban development, provision of housing or budgeting therefore or management of large corporations. But I do believe the questions to which I require answers will propel the City into (if not a whirl) at least a flow of directed and focused action (*Hlophe v City of Johannesburg*, [2013] ZAGPJHC 98, 3 May 2013, at para 27) (*Hlophe*).

This disclaimer was part of a remarkable judgment by Judge Kathy Satchwell of the South Gauteng High Court in a case addressing the City of Johannesburg's repeated failures over a period of 11 months to comply with an order to house a group of people facing eviction from a privately owned building in the city centre.

The case was one of the first applying the Constitutional Court's holding in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*, (2) BCLR 150 (CC) (1 December 2011) (*Blue Moonlight*) that municipalities have an independent obligation to plan and budget for the emergency accommodation needs of people evicted from private property. The City also was the defendant in that case, and so its repeated failures to accommodate the occupants in *Hlophe* demonstrated a broader failure to implement the planning, budget and policy requirements that flowed from *Blue Moonlight*. Judge Satchwell recognised this and issued a complex order that attempts to grapple, at a systemic level, with the root causes of the City's general inability to fulfil its obligations under section 26.

In this short comment I'll use the case and this innovative order to argue that the systemic approach it reflects is an appropriate expansion of a more intrusive procedural role for courts to enforce the social rights provisions. I'll argue further that the meaningful engagement requirement that was first applied in *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others*, 2008 (5) BCLR 475 (CC) (19 February 2008) (*Olivia Road*) provides both a doctrinal framework and an institutional mechanism for that expansion. Courts applying engagement have thus far failed to fully exploit this procedural authority. Judge Satchwell's order shows that courts can and should seek to identify the root causes of government's failure to fulfil its obligations under section 26 and other rights. But she, too, missed the opportunity to take the next step by invoking the procedural authority that engagement creates to craft and manage a process that directly addresses the bureaucratic and administrative failures her questions aim to identify.

I'll start in the middle of the case's complicated procedural history and skip over some details to simplify the story. Relying on *Blue Moonlight*, the occupants in June 2012 secured a High Court order requiring the City of Johannesburg to provide accommodation before they were evicted. The City failed to provide accommodation by the deadline and instead filed a report with the court stating it lacked the resources to satisfy the order. The occupants then brought the *Hlophe* action to enforce the accommodation order. The High Court confirmed the original order, and once again required the City to report back, this time by 20 March 2013, providing details on the accommodation it would provide. In this second report, the City stated it was still unable to provide accommodation and requested an indefinite delay.

Following this second report Judge Satchwell 'invit[ed]' the Executive Mayor, City Manager and Director of Housing to attend a hearing to address her concerns about the City's reports. Specifically, the judge was concerned that:

- officials from legal departments rather than officials with substantive expertise in 'planning, budgetary, town planning, urban development and housing' prepared both reports;
- the City detailed its overall mission and planning processes, accommodation provided to other people and budgetary constraints but provided no information on possible accommodation for the occupants;
- the reports were in essence '*pleas in misericordiam*' seeking to excuse the City's failure;
- the first report showed that the City had not attempted to take steps to comply with the original order and instead 'the past and present were simply described and the future hoped for'; and
- the second report showed that the City waited eight months after the original order (and 14 months after *Blue Moonlight*) to take even the most preliminary steps towards finding accommodation (*Hlophe* para 21).

Referring to *Blue Moonlight*, she concluded that the reports 'indicate an attitude on the part of the City which is only very reluctantly (if at all) compliant with the directions of the Constitutional Court' (*Hlophe* para 22). Rather than giving the City yet another opportunity to find accommodation in this case, she instead ordered the City to answer detailed questions about its overall emergency housing programme and policies, including identifying the:

> The case recognises the futility of repeatedly ordering the City to deliver a service it failed to adequately plan and budget to deliver

> structure or structures [that] implement the housing arrangements required to be implemented in the *Blue Moonlight* case, with reference to the personnel involved, skills available, liaison undertaken, time availed from other duties, management and direction of implementation (*Hlophe* Order para 2.a.iii).

She insisted the City could not simply identify alternative accommodation 'and then state it is unnecessary to answer' these programmatic questions (*Hlophe* para 32).

In other words, Judge Satchwell ordered the City to identify its overall capacity and describe its general planning process for meeting the ongoing obligations that *Blue Moonlight* imposed. In doing so, she recognised that the City's failure here was merely a symptom of this broader lack of capacity and of its refusal to take seriously its obligation to plan and budget in ways that sought to develop that capacity. As the judge explained it, her pointed questions were 'premised upon a view that management towards an outcome must be planned, focused and directed toward that outcome' and sought 'to address the many difficulties and problems upon which the City relies to explain its failure to take any concrete steps over the past eleven months towards compliance with the court order' (*Hlophe* para 33). The list of concerns about the City's reports that the judge cited made essentially the same point: its failure to recognise the need to develop the expertise and administrative infrastructure necessary to meet its constitutional obligations, not only in this case but across the board in similar situations, made it futile to continue to demand compliance with the specific order only in this case.

Judge Satchwell's detailed questions and focus on the City's general capacity to fulfil the obligations created by *Blue Moonlight* reflects the kind of procedurally active role that the Constitutional Court first described in *Port Elizabeth Municipality v Various Occupiers*, 2004 (12) BCLR 1268 (CC) (1 October 2004) (*Port Elizabeth*) and then developed into the meaningful engagement requirement in *Olivia Road*. Justice Albie Sachs in *Port Elizabeth* called for courts 'to go beyond [their] normal functions, and to engage in active judicial management' when addressing the kind of 'ongoing, stressful, law-governed social process[es]' that social rights claims frequently raise. *Olivia Road* grounded that role in the meaningful engagement requirement that gives courts the authority to examine not only the substance of social welfare programmes but also the process government used to develop them. There the Constitutional Court identified a free-standing constitutional obligation for government to consult with people affected by social policy and civil society groups representing their interests. In describing the core features of engagement, the Constitutional Court insisted that the government's obligation goes beyond simple ad-hoc consultation once litigation arises and requires an administrative infrastructure and trained personnel to provide opportunities for ongoing consultation throughout the policy-development process.

Judge Satchwell's insistence that the City answer questions about its overall structures, personnel and planning for housing delivery reflects a similar concern with moving beyond individual disputes to get at the root causes behind them. Both *Olivia Road* and *Hlophe* rest on the basic premise that municipalities have an obligation to independently consider and develop the capacity for implementing their obligations under section 26. Both decisions also recognise that fulfilling these obligations requires incorporating attention to them into broader planning processes. *Olivia Road* emphasised the democratic- and dignity-enhancing effects of consulting with people directly affected by state policies and programmes. *Hlophe* recognises that planning must include a range of technical expertise relevant to housing delivery.

But neither case developed the full potential of this stronger procedural role to address the root causes *Hlophe* identifies. *Olivia Road* focused on humanising and managing individual evictions, and meaningful engagement has largely remained a case-management device with only ancillary effects on broader planning. The Court's criteria for engagement, including detailed reporting on engagement efforts, the need for training in the engagement, and especially its insistence that engagement should begin early in any large-scale policy development, give courts the power to require changes not just to the substance of policies but to the way municipalities develop them. *Olivia Road*'s key insight is that courts can and should sometimes intervene in overall processes, not just in individual cases.

Judge Satchwell's order in *Hlophe* and especially her insistence on obtaining detailed general information even if the City finally complied with the housing order shifts the focus in precisely that direction. Rather than asking only why the City failed these plaintiffs, the order notes the clear link between this failure and others and the futility of repeatedly ordering the City to deliver a service it failed to adequately plan and budget to deliver. Throughout the judgment Satchwell repeated the need for the City to address 'planning, budgetary, town planning, urban development and housing' issues (*Hlophe* para 21.a). She also highlighted the City's extensive foot-dragging in the face of *Blue Moonlight's* clear holding that it is required to plan and budget for these situations:

> The City has had potential indication of its general responsibilities for a period of some 38 months and final indication of its specific responsibilities for a period of some 16 months (*Hlophe* para 5).

As she explained, the point of demanding information

about the City's technical capacity and planning process is to 'propel the City into (if not a whirl) at least a flow of directed and focused action' to deal comprehensively with the problem of emergency housing (*Hlophe* para 27).

But Judge Satchwell stopped short of actually intervening in these larger issues. In other parts of the judgment she took a constrained view of the scope of her authority as largely limited to resolving this case. Most telling in this respect, the judge insisted that the only purpose of her questions was the 'provision of temporary accommodation *for these* applicants sooner rather than later' (*Hlophe* para 33, emphasis added). This echoed her scathing critique of the City's presentation of its general efforts to house evictees as irrelevant to the original order that required only details of the 'solution achieved' to the applicants' own pending homelessness (*Hlophe* para 21.c). By limiting engagement to a set of case-specific issues and only asking questions about the City's overall capacity, Judge Satchwell was left merely hoping to 'propel' the City itself to solve these structural problems.

Connecting *Hlophe* and *Olivia Road* moves past the mistaken perception that courts' authority is or should be limited to resolving case-specific issues in social rights cases. Rather than stopping with what was, in effect, an attempt to embarrass the City by exposing its failure to take the necessary steps to satisfy *Blue Moonlight*, a court could use the procedural power engagement provides to initiate and manage a process designed to force the City to make those same changes directly. This wouldn't, as Judge Satchwell worries, require a court itself to take on the significant technical issues involved. Instead, the engagement order could incorporate consultation with experts in each of the fields she identified.

The Constitutional Court has already expanded the engagement requirement to some extent in ways that lay the groundwork for doing this. Most recently, in *Schubart Park Residents Association v City of Tshwane Metropolitan Municipality*, 2013 (1) BCLR 68 (CC) (9 October 2012) (*Schubart Park*) Justice Froneman recognised the expansive scope of engagement. He noted that '[n]ormally supervision and engagement orders accompany eviction orders where they relate to the provision of temporary accommodation pending final eviction' but found 'there is no reason why they cannot be made in other circumstances where it is appropriate and necessary' (*Schubart Park* para 42.) In both *Occupiers of Saratoga Avenue v City of Johannesburg Metropolitan Municipality and Another*, 2012 (9) BCLR 951 (CC) (24 May 2012) and its unreported order in *Mamba and Others v Minister of Social Development and Others*, 78 CCT65/08 (Court Order dated 21 August 2008), the Court ordered outside organisations to participate in and facilitate the engagement processes.

Like *Hlophe*, the engagement orders in these cases ultimately focused on resolving case-specific issues or implementing case-specific orders. They did not directly address the systemic problems at play and the outside parties had some stake in the outcome. Engagement's true potential lies in the authority it creates for courts to order the government and plaintiffs to consult with experts in the kinds of issues Judge Satchwell's incisive questions identify – housing delivery, urban planning and budgeting – and to structure solutions on a larger scale, with the aim of creating broader processes and building general capacity to address the root causes of the situations that lead to specific litigation. Judge Satchwell's innovative order recognises the need for courts to take this next step but missed the possibility of using engagement as the vehicle to insist on those changes. The City of Johannesburg is not unique in its failure to address its social rights obligations on a broader scale. *Hlophe* paves the way for other courts in other cases to craft processes that bring government, poor people, civil society and other experts together to begin working on the logistical and budget challenges of fulfilling the promise of social rights.

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A Social Protection Floor for all

Indispensable for eradicating extreme poverty by 2030

Wouter van Ginneken

Introduction

The Social Protection Floor (SPF) is an indispensable tool for achieving the eradication of extreme poverty by 2030, which appears likely to be retained as the key objective for the post-2015 development agenda. The 2012 report of the UN Secretary-General entitled Realizing the Future We Want for All *provides a broad conceptual framework within which the post-2015 development agenda can be shaped (UNDP 2012).*

This report proposes that the post-2015 agenda format remains based on concrete end goals and targets, but reorganised along four key dimensions of a more holistic approach:

1. inclusive social development;
2. inclusive economic development;
3. environmental sustainability; as well as
4. peace and security.

The eradication of extreme poverty will have to be achieved by all four dimensions together but, in our view, the SPF covering the dimension of inclusive social development will have to represent one of the cornerstones of the 2015–30 development agenda.

Social Protection Floors, human rights and the perspective of civil society

Social protection is a human right. It is a coherent, human rights-based approach to social policy, ensuring people's access to basic services and social guarantees (Sepulveda and Nyst 2012). Basic social protection is not or hardly available for the 1.6 billion people who live in extreme (or multidimensional) poverty, i.e. almost a quarter of the seven billion inhabitants of our planet. According to International Labour Organisation (ILO) estimates, about 20% – or 1.4 billion people – have access to comprehensive social protection, while the remaining 4 billion people have access to only limited social protection coverage (ILO 2011).

In 2009 the United Nations Chief Executives Board accepted the development of a global SPF as one of its nine core policy priorities. They appointed the ILO and the WHO as the leading UN agencies, which in 2011 jointly published a report titled *Social Protection Floor for a Fair and Inclusive Globalization* (ILO 2011, also known as the Bachelet report), which offers a wider policy perspective and a better understanding of the approach. In 2012 the ILO Conference adopted a recommendation (No. 202) on national floors of social protection, which outlines the strategy for progressive implementation of the SPFs at country level. The SPF concept has thus been endorsed by virtually all countries, as well as by employers' and workers' organisations.

SPFs are therefore nationally defined minimum levels of income security in the form of various social transfers, as well as universal, affordable access to essential social services. Social protection programmes are an essential part of strategies that contribute to social, economic and sustainable development. The recently adopted UN Guiding Principles on Extreme Poverty and Human Rights recommend the implementation of SPFs in all countries.

During that same conference a coalition of 59 national and international civil society organisations presented a common statement on the draft text of the ILO Recommendation No. 202 on national floors of social protection. The common statement included a variety of amendments that had been discussed in advance with some governments and with the representatives of employers' and workers' organisations, all of whom are statutory members of the ILO. The three main concerns were that the future recommendation would respect human rights principles, would allow full participation by civil society and would ensure universal coverage at national and international levels. In the wake of the ILO Conference of 2012, these civil society organisations decided to set up the 'Global Coalition for Social Protection Floors' (the Coalition), whose two main tasks are:

1. to monitor and contribute to the universal implementation of SPFs at local and national levels; and
2. to promote the SPF concept in global policy-making, such as in the discussions on the post-2015 development agenda.

At the time of writing more than 70 civil society organisations are members of the Coalition.

The Coalition considers that the lack of basic social protection is one of the main reasons why people living in extreme poverty have been left behind. The human rights-based approach is the most effective way for governments to design and implement empowering and sustainable SPFs, because it ensures compliance with human rights commitments both in the content and outcomes of their

policies, as well as in the process by which they implement them (Sepulveda and Nyst 2012). Equality and non-discrimination, participation, and transparency and accountability are the key human rights principles that should guide the design and implementation of social protection policies.

Equality, participation and accountability

Respecting the principle of equality and non-discrimination means, first of all, that every effort must be made to ensure that nobody is left behind. Targeted schemes can be accepted as a form of prioritisation of the most vulnerable and disadvantaged groups within a longer-term strategy of progressively ensuring universal protection. Implementing the principle of equality and non-discrimination means that all services and benefits are accessible and available to all people – geographically and financially. States should also facilitate access to certain types of administrative requirements, such as ID registration and registration at birth, and remove administrative barriers that prevent people from accessing social protection.

The participation of people living in poverty in legislation, policies and programmes that affect them is a key condition for the good governance of social protection programmes. People living in poverty should be recognised as new partners in building knowledge on development who can contribute to the design, implementation, monitoring and evaluation of these programmes (Report of UN Special Rapporteur on Extreme Poverty 2012). Participation is a right, in the context of freedom of expression, wherein people do not fear reprisals. A pre-condition for participation is an interactive informational campaign – in the language most familiar to people living in poverty – where the authorities explain their intention before any decision is taken (Report of UN Special Rapporteur on Extreme Poverty and Human Rights 2012). Relevant individuals and civil society organisations should be assigned the role of implementing this participation, building up trust with those most concerned and making their expectations known. The state must protect the right to participation through an appropriate legal framework. It must also provide capacity-building and human rights education for persons living in poverty and establish specific mechanisms and institutional arrangements, at various levels of decision making, to overcome the obstacles that such persons face for effective participation.

Transparency and access to information are essential elements of accountability. States must implement social protection programmes in a manner that allows individuals to easily recognise and understand:

1. the eligibility criteria;
2. the specific benefits they will receive; and
3. the existence and nature of complaints and redress mechanisms (ILO 2011).

When accountability and redress mechanisms are in place, social protection programmes are more likely to avoid stigma because they will be understood in terms of entitlements and human rights.

Financing social protection floors

New sources of funding are necessary to finance SPFs. At the national and international level a new tax system should be built that brings about social justice and ensures environmental protection. It is also necessary to better regulate global finance and apply new taxes, such as taxes on financial transactions and on financial activities in general.

Domestic funding for SPFs can be further increased through:

1. improved tax collection and broadening the tax base;
2. cutting expenditure in other budget areas, such as military spending; and
3. progressive tax systems to increase revenue.

Funding for setting up SPFs is needed through adequate development cooperation programmes as well as through the establishment of a Global Fund for Social Protection.

One goal and six targets for the dimension of inclusive social development

As noted earlier, all four dimensions of the 2015–30 development strategy will have to work together to achieve the central goal of eradicating extreme poverty by 2030. However, the SPF will have to be one of the cornerstones of this strategy because regular and reliable income transfers and access to basic social services will unlock entrepreneurial capacity, increase labour market participation and boost local development and job creation.

We therefore propose one goal (*end extreme poverty and establish national SPFs for everyone*) and six targets for the dimension of inclusive social development, as follows:

1. *Food security*: End hunger and malnutrition and protect the right of everyone to have access to sufficient, safe, affordable and nutritious food.
2. *Health care*: Ensure access to affordable health care, including essential drugs, on a sustainable basis.
3. *Education*: Ensure that every girl and boy, regardless of circumstances, completes secondary education and has access to technical and vocational training.
4. *Social (income) security*: Guarantee minimum income security for all.
5. *Housing*: Ensure decent housing for all with security of tenure.
6. *Water and sanitation*: Ensure universal access to safe drinking water at home, and in schools, health centres, and refugee camps. End open defecation. Ensure universal access to sanitation at school, in the workplace and in the home.

> History tells us that economic growth has been a powerful factor in reducing poverty, but it is not enough

Human rights indicators for the income security target

Increasingly, so-called human rights indicators are used to measure the achievement of human rights. They can be standard disaggregated indicators of socio-economic, cultural or politicial progress, but they become human rights indicators when (a) they are explicitly derived from a human rights norm; and (b) their purpose is human rights monitoring with a view to holding duty-bearers to account. The Office of the High Commissioner for Human Rights distinguishes three types of indicators. 'Structural' indicators measure the commitment of the state (the main duty bearer) towards realising human rights, for instance through ratification of international instruments and inclusion in national legislation and through the adoption of national policies and corresponding time frames. 'Process' indicators measure the efforts and resources that the duty bearer uses to achieve the enjoyment of human rights, which is measured by 'outcome' indicators.

ILO Recommendation No. 202 has given a clear definition of the right to income security, which is a key component of the right to social security. We shall therefore attempt here to define the indicators for the achievement of the right to income security. Inspired by the conceptual framework on human rights indicators, as developed by the Office of the High Commissioner of Human Rights, the outcome, participatory and structural indicators for this target would be as follows:

Outcome indicators

- Proportion of individuals below the national minimum income level before and after social transfers.
- Proportion of workers participating in social insurance schemes.
- Proportion of entitled families, children and dependent adults receiving public support.
- Proportion of population in specific situations of need receiving social assistance for food, health care, education, emergency or relief services.

Participatory indicators

- Proportion of targeted population appropriately informed of its entitlements and benefits (in cash and in kind) under the applicable social protection schemes.
- Implementation of mechanisms for participation of target groups in the design, implementation and evaluation of social protection programmes.
- The satisfaction level of beneficiaries and would-be beneficiaries, as measured through opinion polls and focus groups.

Structural indicators

- Design and implementation of a national social protection plan aimed at universal coverage.
- Ratification of international instruments on the right to social protection and implementation of ILO Recommendation No. 202 on national SPFs.
- Creation of international funding mechanisms to support SPFs in low-income countries.

Concluding remarks

The elimination of extreme poverty by the year 2030 will require radical changes in the way the social, economic and environmental dimensions of development are organised at the local, national and international levels, in order to ensure universal coverage by social protection programmes. History tells us that economic growth has been a powerful factor in reducing poverty, but that it is not enough. We also know that in order to cope with the environmental challenges facing our planet, people living in extreme poverty will be more vulnerable than most other groups in society. Strong and human rights-based national SPFs will therefore be needed to make sure that nobody is left behind.

This article has attempted to provide an outline of how human rights-based national SPFs, including six key social services, could achieve the elimination of extreme poverty by the year 2030. Equality and non-discrimination, participation, as well as transparency and accountability are the key human rights principles that should guide the design and implementation of SPF policies. Moreover, new sources of financing have to be found, both at the national and international levels. Finally, we developed the concept of human rights indicators and showed how they can be operationalised for the target of income security for all.

Wouter van Ginneken is a member of the international Geneva team of the International Movement ATD Fourth World (http://www.atd-fourthworld.org).

This contribution is based on the article on 'Civil society and the social protection floor' published in the 2013 issue No.3–4 of the *International Social Security Review*, as well as on a number of notes written for the Global Coalition on Social Protection Floors and for the International Movement ATD Fourth World. The author alone is responsible for its content. The views and opinions expressed here are the author's and do not necessarily reflect those of his organisation.

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Book review

Magdalena Sepulveda and Carly Nyst. 2012. *The human rights approach to social protection*. Finland: Ministry of Foreign Affairs Finland

This publication addresses a very important topic with implications for poverty reduction in many societies. It summarises and analyses arguments presented to the Human Rights Council and the General Assembly in the last three years by the UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepulveda, who was appointed to this post in 2008.

Essentially, the publication sets out to promote a rights-based framework for social protection, identifying best practices and sharing lessons learnt. It captures the approach of the Special Rapporteur to social protection and proposes the application of the 'central human rights principles of the human rights framework – equality and non-discrimination (including accessibility, acceptability, affordability and the incorporation of the gender perspective), participation, transparency and accountability – to the design, implementation, monitoring and evaluation of social protection systems' (Sepulveda and Nyst2012:11).

The central argument of the publication is that human rights obligations relate not only to the final outcome of social protection programmes, but also to the process through which such programmes are designed and implemented. Sepulveda and Nyst argue that there is strong evidence that social protection systems can assist states in fulfilling their obligations under international and regional human rights instruments to ensure the enjoyment of minimum levels of economic, social and cultural rights. In particular, they argue that social protection has the potential to help in realising the right to an adequate standard of living, including rights to adequate food and housing, social security, education and the highest attainable standard of health. In a world where millions of people still go to sleep on empty stomach and economic melt-down remains a threat to the living conditions of vulnerable and marginalised groups, social protection can serve as an important palliative for people living in poverty (ILO 2011).

The authors argue that while poverty per se may not constitute a human rights violation, it is no doubt the cause and consequence of other human rights violations. They further argue that there exist clear causal links between the violations of human rights, and the economic, social, cultural and political deprivations which tend to characterise poverty. Hence, the realisation of human rights and the elimination of poverty are mutually reinforcing. The authors identify various ways that human rights can help in addressing poverty. These include providing practical guidance in the monitoring of poverty reduction programme; providing legal interpretation to poverty reduction policies and ensuring that states allocate maximum resources towards the realisation of economic, social and cultural rights.

According to the authors, a human rights framework to social protection must include the establishment of appropriate legal and institutional framework and adopting long-term strategies; adopting comprehensive, coherent and coordinated policies that respect the principles of equality and non-discrimination and incorporate a gender perspective; ensuring that implementation of conditionalities does not undermine beneficiaries human rights; ensuring transparency and access to information; and ensuring meaningful and effective participation and access to accountability mechanisms and effective remedies. In this regard, the authors emphasise the need for a non-contrib-

utory social grant as a human rights imperative. This is very important as many countries often view social protection as a form of hand-out and not as a human rights issue.

Recent developments, including the adopting of the Guiding Principles on Poverty and Human Rights and the ILO Recommendation No. 202 on the social protection floor would seem to reinforce the need for a rights-based approach to social protection. The Bachelet report (ILO 2011) has shown how social protection has transformed lives and mitigated the impact of poverty in some countries. Thus, it becomes imperatives that legal and institutional framework must be in place to ensure the effective implementation of a social protection system. Moreover, to be consistent with a rights-based approach, states must provide resources to sustain social protection programmes and must focus on the needs of those most vulnerable and marginalised in society.

It is also important that states apply the gender lens in the design and implementation of laws and policies on social protection, giving priority to the needs and interests of women.

A World Bank report (2012) has shown that women remain the poorest of the poor in many societies and lack access to economic and political opportunities that may transform their lives. To deal with the issue of exclusion, the authors propose universal social protection coverage. The advantage of this is that it provides better coverage for lower costs, especially in countries where administrative capacities are limited. By implementing universal programmes:

> States are better able to satisfy their obligations under human rights law to ensure to the greatest extent possible the inclusion of all those in need, and to minimise any exclusion of those who must be reached and protected as a matter of priority (i.e. the poorest of the poor) (Sepulveda and Nyst 2012:39).

Other important human rights issues addressed in the publication relate to the right of participation in the design of social protection policies and programmes and the need for accountability mechanisms. Social protection programmes will be meaningful and address the needs of vulnerable and marginalised groups only if they are involved in the processes leading to their adoption. The right to participation is an important human right that enables the views of vulnerable and marginalised groups to be heard in decision-making that may affect their lives, which is empowering for them (UN Special Rapporteur, 2012). In addition, participation avoids the views of the rich and powerful being imposed on the weak and vulnerable.

The authors note that there is need to create an enabling environment where people can lodge complaints to address any shortcoming or inadequacies in the decision-making process. More importantly, they suggest that it will be necessary for countries to ensure that appropriate legal remedies are provided to victims of human rights violations in the context of social protection.

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Developments in the African region

During the 54th Ordinary Session of the African Commission on Human and Peoples' Rights, held in Banjul, the Gambia from 22 October to 5 November 2013, two notable resolutions were adopted concerning women in Africa.

Resolution 262 on Women's Rights to Land and Productive Resources

Resolution 262 recognises 'women's invaluable contribution to the effective use of land and their role in developing strategies to ensure food security, community development and sustainable agricultural practices' in Africa. The African Commission on Human and Peoples' Rights expresses its concerns that 'women are disproportionally affected by poverty, climate change, forced evictions, dispossession of land and forced resettlement'. Resolution 262 urges African States to embark on land reforms to 'ensure equal treatment for women in rural development, land distribution and social housing projects'. Given the perennial problem African women continue to encounter in relation to access to land, this resolution is a welcome development. It is hoped it that will go a long way in ensuring better access to land and property for women in Africa.

Resolution 260 on Involuntary Sterilisation and the Protection of Human Rights in Access to HIV Services

The African Commission on Human and Peoples' Rights expressed deep concerns about the disturbing reports of involuntary sterilisation of women living with HIV in certain African states. Although the General Comment on Article 14 (1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) is in place to clarify the nature of states' obligations regarding women's right to protection from HIV and to information about their own health status and that of their partners, Resolution 260 promotes and protects women's sexual and reproductive health rights by firmly declaring 'that all forms of involuntary sterilisation violate' the rights of women and girls. African states are therefore urged to ensure that mechanisms are in place to 'ensure that women living with HIV are not subjected to coercion, pressure or undue inducement' for sterilisation.

For further information, visit the African Commission website at: http://www.achpr.org/sessions/54th/

Developments at the United Nations

On 9 August 2013, the Special Rapporteur on Extreme Poverty and Human Rights (the Special Rapporteur) presented a report on unpaid care work, positioning it as a major human rights issue.

Report of the Special Rapporteur on Extreme Poverty and Human Rights on unpaid care work

The report focuses on women caregivers, particularly those living in poverty and analyses the relationship between unpaid care, poverty and inequality, and women's human rights.

The report notes that is always difficult to draw the line between unpaid care work and other types of unpaid work – for example, in subsistence agriculture or family businesses (para 4).

In 1995, the Beijing Declaration and Platform for Action highlighted the importance of tackling the unequal distribution of paid and unpaid work between men and women, as an essential step towards achieving gender equality. Unfortunately, very little progress has been made since that time. The neglect of unpaid care in policy persists, at great cost to caregivers themselves (para 6).

The report notes that across the world, women and girls commit substantially more time than men to unpaid care work. This heavy and unequal responsibility for unpaid care is a barrier to women's greater involvement in the labour market, affecting productivity, economic growth and poverty reduction (para 7).

The difficulties, intensity and gendered distribution of unpaid care work create and perpetuate unequal rights enjoyment and gender inequality, and cause human rights violations. The HIV/AIDS pandemic has further compounded and severely disrupted and/or increased unpaid care work in many countries.

The report notes that, when unpaid work is taken into account, women work longer hours than men in both developed and developing countries. States' neglecting or failing to address women's disproportionate unpaid care workload can be seen as a major failure to comply with the obligations regarding equality and non-discrimination, which are the pillars of international human rights law (para 19). It is hard to think of a human right that is not potentially affected in some way by the unequal distribution and difficulty of unpaid care work.

Excessive burdens of unpaid care work may threaten the enjoyment of other human rights by caregivers, such as freedoms of speech, association and assembly. Moreover, because unpaid care work is so time-consuming and arduous, especially for women living in poverty, women are often unable to enjoy their right to rest and leisure (para 27). The report highlights economic, social and cultural rights that are severely compromised due to care responsibilities (which are often unpaid) that women bear throughout their lifecycle. This includes but is not limited to the right to work/right at work (paras 34–38), the right to education (paras 39–42), the right to health (paras 43–47), as well as the right to participation (paras 58–61). The report emphasises that it is imperative to address care as a human rights issue. According to the Special Rapporteur, 'tackling the unequal distribution of unpaid work between men and women is an essential step toward achieving gender equality'. She recommends that states should embark on policy reforms that will ensure that, like any other work, care work is remunerated.

Reference

OHCHR. 2013. *Report of the Special Rapporteur on Extreme Poverty and Human Rights on unpaid care work and women's human rights*. UN doc. A/68/293.

For further information, visit the OHCHR website at: http://www.ohchr.org/EN/Issues/Poverty/Pages/