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Economic and Social Rights in South Africa

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Ensuring rights make real change

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Editorial

This is the second issue of the *ESR Review* for 2012. It comes at an historic moment and time in August when South Africa celebrates women for their struggle for freedom and a better life for all. It is the month when South Africans of all walks of life reflect on the strides and gains made by women since the fateful day on 9 August 1956 when they marched to the Union Buildings to protest against apartheid.

South Africa has made progress in helping to empower women to enable them break the cycle of poverty, and providing access to health care services has contributed to the slight decrease in maternal and child mortality and the negative impact of HIV/AIDS on women and girls. In light of the above, this issue of the *ESR Review* focusses on issues relating to poverty. It must be borne in mind that the first of the eight Millennium Development Goals aims at eradicating poverty by 2015.

In this issue, Sakiko Fukuda-Parr and Joshua Greenstein discuss the monitoring of state performance relating to the realisation of social and economic rights using an index they have developed – the Social and Economic Rights Fulfilment Index (SERF Index). They argue that South Africa's score on the index indicates that it can and should do much more to realise the socio-economic rights of its people.

Fukuda-Parr reports on a seminar held in May 2012 by the Social Development Department at the University of Cape Town, on the theme 'The Debate on the Right to Food in South Africa: Entitlements, Endowments and the Role of Economic and Social Policy'. Fukuda-Parr explores the seminar's rigorous debate on the role of economic and social policy in ensuring food security and the right to food. The seminar brought together scholars and practitioners from diverse fields relevant to food security, including law, economics, political science, agrarian studies and social development, and from a range of institutions including several universities and research centres, NGOs and state institutions.

In an effort to popularise the UN special mechanisms among civil society organisations, particularly with regard to poverty in Africa, Ebenezer Durojaye interviewed the UN Special Rapporteur on Extreme Poverty and Human Rights, Ms Magdalena Sepulveda Carmona. This interview sheds light on the role of her mandate in general and its relevance to Africa in particular.

Our regular section on updates and developments in the field of socio-economic rights focuses on the recent ILO Convention No. 189 Concerning Decent Work for Domestic Workers 2011, and the International Labour Organisation Social Protection Floors Recommendation 2012. The two instruments lay down important international standards, which are topical given that South Africa is currently debating both the youth basic income grant and social security protection for domestic workers.

Gladys Mirugi-Mukundi
Co-editor

Monitoring state performance

South Africa's scores on the Social and Economic Rights Fulfilment Index

Sakiko Fukuda-Parr and Joshua Greenstein

A conceptual model of state performance and a measurement tool based on survey data

Methodologies of qualitative data gathering and case-based analysis provide insights into the nature and sources of human rights violations – the deprivations in peoples' lives and the gaps in institutional guarantees.

However, they do not provide information on the magnitude of the problem, the trends in improvement or deterioration, or whether the level of the problem and trends are adequate in view of the level of financial and other resources available in the country. Only quantitative information can be aggregated and compared over time. Rigorous monitoring of state performance requires both qualitative, case-based analysis and quantitative, evidence-based information.

One of the most persistent challenges in this context is the ambiguity about the extent of governments' obligations. Both the South African Constitution (Republic of South Africa 1996, Section 27) and the International Covenant on Economic, Social and Cultural Rights (United Nations 1966, Art 2.1) describe these obligations as to achieve the rights 'progressively' and within 'the maximum of available resources'. Socio-economic data such as child mortality, school enrolment, access to clean water and improved sanitation provide essential evidence on the extent to which people are enjoying their socio-economic rights and are increasingly used in human rights monitoring and advocacy. However, they are not sufficient in measuring how well the state has performed in acting on its commitments to 'progressively' realise rights within the 'maximum of available resources'.

In countries where hunger is prevalent, where many women die in childbirth, much housing is inadequate, many children are out of school, or where incomes are often below the poverty level, across-the-board rights fulfilment cannot be achieved overnight. These situations are a result of historical legacies, driven by deep-rooted systemic causes, and progress requires building institutions and infrastructure as well as behaviour change. Moreover, addressing all these issues requires significant resources and no matter how much priority is given to socio-economic rights, governments face resource limitations that vary enormously from one country to another.

What, then, is the pace of improvement that should be expected? By when should South Africa have eradicated hunger, ensured all people have access to clean water and

sanitation, provided for equal and quality education? According to the United Nations Committee on Economic, Social and Cultural Rights, state performance is to be assessed according to benchmarks using quantitative and qualitative indicators but that begs the question – how should benchmarks be set?

The South African government has set its own targets. Are they adequately ambitious or unrealistic relative to what is feasible? Without an agreed methodology for setting benchmarks, states are left with wide discretion in setting their own benchmark standards, while advocates are compelled to demand performance that is arguably well beyond the capacity of the state to deliver.

To address these gaps, Sakiko Fukuda-Parr, Terra Law-son-Remer and Susan Randolph have developed a conceptual model and an evidence-based methodology for estimating state performance that sets benchmarks using an innovative 'achievement possibilities frontier' (APF). The benchmark frontier uses data on socio-economic achievements of countries over the past 25 years to identify the best performance standards in key aspects of economic and social rights – such as child mortality, access to clean water, child malnutrition – at each level of income.

Using this methodology, the three co-authors have created the Social and Economic Rights Fulfilment Index (SERF Index) that provides a rigorous comparative measure of governments' compliance with their obligations to fulfil economic and social rights. The Index is a composite measure that rates and ranks the performance of countries specifically with respect to the rights to food, education, health, housing, work and social security. The latest release covers 99 developing countries and high-income OECD countries.

While the SERF Index estimates overall state performance, it also sub-scores the estimated performance for each of the core rights listed above. Both the SERF Index and the sub-scores can be disaggregated to estimate performance for sub-national populations, such as for provinces or racial groups, and trends can be estimated showing the pace of improvement over time.

Important elements of this methodology, which address some issues that have been raised in human rights measurement, include the following:

- It uses survey-based data (such as child stunting) rather than qualitative assessments that are used in human rights indices such as the Freedom House indices and that are inherently subjective at source.

On the right to food, the SERF score for c.2000 is worse than that for c.1990

- It can be replicated by civil society and other organisations as it uses a relatively simple methodology that has been published and therefore is not a 'black box'.
- It focuses on outcomes and obligations of results. The SERF Index does not aim to capture all dimensions of state obligations with respect to the fulfilment of economic and social rights. The index thus complements other indicators that focus on structural and process dimensions, such as making strong constitutional provisions or adopting appropriate legislative measures.

SERF Index scores for South Africa

The SERF Index scores for South Africa are shown in table 1, along with a few other countries for comparative purposes as well as South Africa's rank among countries for the composite index and the food index. The overall score is 62.6 points out of 100, showing not only that many citizens do not enjoy socio-economic rights, but that state performance is well below what is potentially feasible with the level of overall development and per capita GDP that the country has achieved. South Africa is ranked 68 out of the 100 countries for which the composite SERF is calculable. On the right to food, South Africa fares slightly worse than on the overall index, with a score of 61.7 out of 100 and a rank of 74 out of 125 countries.

Table 1: SERF Index scores for South Africa

	Composite score rank (of 100 countries)	Composite SERF score	Food SERF score	Health SERF score	Education SERF score	Housing SERF score	Work SERF score	GDP p/capita (2005 PPP\$) in 2008
Brazil	14	87.4	91.1	90.1	96.5	75.8	83.6	9559
China	41	79.7	90.4	94.8	83.6	65.8	64.0	5712
Ghana	59	71.9	86.6	60.0	78.7	52.3	82.2	1351
South Africa	68	62.6	61.7	57.6	71.4	70.2	52.4	9604
Nigeria	97	42.5	47.7	33.4	66.7	43.3	21.5	1939
India	82	56.1	32.7	74.7	82.6	62.5	27.7	2796

Table 2: South Africa SERF over time

	Composite SERF score	Right to food	Right to work	Right to housing	Right to health	Right to education
Period 1 (early 1990s)	n/a	57.36	49.37	62.28	n/a	n/a
Period 2 (circa 2000)	60.88	53.75	46.60	67.99	60.76	75.30
Period 3 (circa 2008)	62.65	61.67	52.38	70.22	57.58	71.39

To give an example of what this SERF score means, on the indicator for percentage of children not stunted, the highest observed value for any country for this period was 98%. The lowest GDP per capita for which this peak score was estimated to be feasible was \$7 806 (all \$ figures are in PPP 2005 values). In South Africa, with a GDP per capita in 2008 of \$9 604, the percentage of children not stunted was only 76.1. Brazil, as a counter example, had a similar income to South Africa, but scored markedly higher on the indicator (92.9% children not stunted). The relatively low composite SERF score for South Africa suggests that this may have been a consistent pattern.

South Africa SERF over time

Using newly available data from the WDI, it is also possible to construct SERF scores for South Africa for previous periods. The APF was constructed using data from each country in the world in the 1990–2006 period. Thus, it is possible to calculate South Africa's level of rights fulfilment at various times included in this period.

Despite the newly updated data, there is still insufficient information to calculate a SERF score for every year. However, it was possible to calculate scores for three periods (the early 1990s, the mid 2000s and the most recent for circa 2008) for most indicators by using data points from a few years close together. Two unavailable variables prevented a complete early 1990s score from being calculated. The results of these calculations appear in table 2 below.

A first noticeable result is that there has not clearly been continuous progress in all areas. For example, on the right to food, the SERF score for c.2000 is worse than that for c.1990. The right to food score is based on the percentage of children not stunted. Further, South Africa seems to

Table 3: Component indicator scores

	Gross combined school enrolment adjusted performance indicator score	Primary school completion rate adjusted performance score	Child survival adjusted performance indicator score	Age 65 survival adjusted performance indicator score	Contraceptive use adjusted performance indicator score
Period 1 (early 1990s)	n/a	47.83	80.04	n/a	69.78
Period 2 (circa 2000)	82.91	67.69	74.30	39.01	68.98
Period 3 (circa 2008)	82.04	60.74	75.63	23.77	73.34

have regressed in its fulfilment of the rights to health and education from c.2000 to c.2008.

The SERF composite scores are themselves based on scores for individual indicators. While the education and health composite scores could not be fully calculated, it was possible to calculate scores for some of the individual education and health indicators for all three periods. These are listed in table 3.

There is a similar pattern of non-continuous improvement in rights fulfilment along these individual indicators. For example, the child survival rate score, one of the components for the right to health, dropped from the first period to the second, before beginning to recover only marginally in the third period. Contraceptive use rate, another right to health component indicator, also had a score which initially lowered before growing higher in the final period.

It is important to remember that these scores measure a country's performance relative to its GDP to capture its achievement progressively and to the maximum of available resources. One explanation, therefore, could be that GDP growth has simply preceded other goals. In other words, a growing GDP per capita, and a stagnant (or more slowly growing) level of achievement in the above indicators, could result in a poorer SERF score. However, a quick examination of South Africa's changing GDP per capita over this period suggests the story is likely more complicated than that.

Table 4: South Africa GDP per capita (WDI)

Year	GDP per capita, PPP (constant 2005 international \$)
1990	7 975
2000	7 641
2008	9 604

The point to note is that 2000 GDP per capita is actually lower than 1990 GDP per capita. Accordingly when we see, for example, a lower score in c. 2000 right to food or child mortality scores, the interpretation is that South Africa

had both a lower GDP per capita, and was doing worse on these indicators relative to what was achievable at that lower GDP per capita. Of course, in the ensuing years there has been GDP per capita growth. While overall rights fulfilment has increased, even relative to that higher income, as shown by the higher Core SERF score, there have been individual areas where fulfilment has not kept up with income improvement, such as education.

This discussion of relative improvement, or lack thereof, for South Africa over time should be considered in the context of South Africa's rights fulfilment relative to other countries with similar income using the most recent data, as initially discussed.

At this point, these results create as many questions as answers, and there are a multitude of possible explanations for these patterns. Some possible avenues for future research may be to calculate separate SERF scores by racial groups or provinces. Approaches such as these have been attempted in the Brazil and US-focused studies previously mentioned.

Concluding comments

Statistical data on unemployment, child malnutrition, lack of access to sanitation and clean water, inadequate educational opportunities and many other socio-economic conditions document widespread poverty in South Africa. However, these socio-economic indicators on their own are not enough to assess the performance of the state in fulfilling its socio-economic rights obligation, which is to take measures to achieve these rights progressively and within the maximum resources that are available. The SERF Index results capture, through international comparisons, the extent to which the state is realising its obligations in relation to available resources.

The SERF findings show an important paradox in South Africa. The country leads the world in constitutional commitments to economic and social rights, being one of only 20 countries with constitutional provisions in this regard and one of only two in which these rights are justiciable.

Yet the SERF results provide evidence of inadequate state performance in taking measures to achieve the substantive enjoyment of rights progressively, and with due consideration to the resources available. In the interna-

tional comparative perspective, we conclude that South Africa should be able to achieve better outcomes.

The SERF index provides a rigorous assessment of the adequacy of progress made in realising rights given the resources available. It does not explain the reasons but helps identify problems for further research. Given the strength of constitutional provisions and political will to address persistent and widespread poverty, the low SERF Index results point to weaknesses in the policy choices made to effectively translate economic growth into improvements in the real lives of people and into the full realisation of their socio-economic rights. This calls for further research on a range of economic and social policies and consideration of alternatives.

Action on human rights has been in the courts and in the streets. It is time to take rights to policy thinktanks and for economists and social policy specialists to get engaged in using human rights as a moral compass for public policy and a rigorous analytical framework for considering policy choices.

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The full details of the conceptual model and methodology, the findings and analyses of the SERF Index for America and Brazil have been published in a series of papers in the *Journal of Human Rights*, *Journal of Human Development and Capabilities*, and elsewhere. These are available at www.serfindex.org.

Debate on the right to food in South Africa

Entitlements, endowments and the role of economic and social policy

Sakiko Fukuda-Parr

Introduction

Paradox of the right to food in South Africa

South Africa has strong constitutional guarantees and legal frameworks for the right to food. It is one of just 20 countries in the world with constitutions that recognise the right to food and of these, it is one of only two with provisions that are justiciable.

Despite these formal legal guarantees, the right to food is far from being realised, and measures of state performance for fulfilling economic and social rights (the SERF Index www.serfindex.org) show a poor score of 61.5 out of 100, meaning South Africa ranks 67th out of 99 countries. The right to food score is 61.7. Similarly, South Africa scores 6.4 in the Global Hunger Index for 2011, a minimal improvement from 7.0 in 1990. These trends contrast with data for Brazil, which started with a higher index in 1990 but achieved a more rapid improvement. (See figures below.)

The extent of food insecurity and recent trends are difficult to discern with confidence since there is a multiplicity of surveys using different indicators and measurement methods. For example, the 2011 General Household Survey released in June shows 13% of the population

self-reporting hunger and inadequate access to food, but a significant improvement over the decade (Statistics South Africa 2012). These figures are based on subjective responses. Anthropomorphic surveys provide a more objective measure of food insecurity but there has not been a consistent series of surveys to provide reliable trend data. Surveys conducted show very high levels of stunting among children. For example, the 2008 National Income Dynamics Survey by the Southern Africa Labour and Development Research Unit, University of Cape Town, found 24% of children below five are under height for age.

This situation also serves as a stark reminder of Sen's (1999) insistence on the importance of democratic processes, debates and agitation for public action – politics for rights-based policies – for rights to be realised. Yet this in turn raises questions about whether the agitation is targeted at public policy measures that would be effective. In South Africa, democratic processes and commitment to the eradication of poverty and inequality have not produced effective results. Advancing human rights depends not only on law and democratic processes but also on effective policy choices. Rigorous analysis of public policy choices for their human rights consequences is required.

To address these issues in a systematic fashion, a two-day seminar was held by the Social Development

Department of the University of Cape Town in June 2012. It brought together scholars and practitioners from the diverse fields relevant to food security including law, economics, political science, agrarian studies and social development. In addition, the seminar attracted a wide range of institutions, including several universities and research centres, non-governmental organisations (NGOs) and state institutions. Participants included leading academics and civil society advocates, three researchers from US universities as well as members of the South African Human Rights Commission (SAHRC) and the National Planning Commission (NPC).

A dozen papers were presented and participants engaged in rich debates over the two days. The seminar programme included sessions on:

- the concept of food security in the right to food perspective and key challenges in South Africa;
- findings of recent research on urban and rural food insecurity and policy options;
- economic policy options for expanding employment and incomes of vulnerable households;
- social policy approaches and choices; and
- the role and potential of litigation and social movements.

The seminar aimed to promote a systematic and rigorous debate on the role of economic and social policy for food security and the right to food. This article serves as a summary of the discussions and deliberations.

The need for a paradigm shift

The proceedings started with a discussion emphasising that the problem of food insecurity is one of access, not supply, and the indivisibility of rights dependent on a range of economic and social factors as well as the voice of the people. It was observed that while the food industry is flourishing, food insecurity remains a challenge and is embedded in the structures of unequal power and economic resources. Discussants noted that the right to food goes beyond the individual problem of hunger to being a generic social challenge that is driven by global and national processes.

Several presentations identified the need for a paradigm shift in the way that food insecurity is addressed. Though the rights-based definition of food security as provided by the Committee on International Covenant on Economic, Social and Cultural Rights (CESR) in its General Comment 12 (UN Committee on ESCR 1999) is widely used in South Africa, it remains rhetorical. According to its CESR General Comment 12 (UN Committee on ESCR 1999), the normative content of the right to food is defined in the following way:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement.

The international consensus definition of food security overlaps with this definition and focuses on individuals and households, their access to food, and the multiple dimensions of constraints to food security.

Other paradigms prevail that focus on national rather than individual and household level security, on production and supply rather than access, as a rural rather than a rural/urban problem, or on narrowly defined issues of dietary intake. This has led to fragmentation of institutional responsibilities to agencies with narrow mandates and epistemic communities. Moreover, it has left many gaps including lack of comprehensive and rigorous analysis on the nature, location and underlying causes of hunger, policy responses that are not always designed for improving food security, and lack of consensus definition on the measurement of food insecurity and hunger.

Characteristics of hunger

Recent surveys of food insecurity provide important insights into the characteristics and the correlates of hunger. A review of national survey data in South Africa shows that the incidence of food insecurity is reported by females rather than males (Department of Health 2003). Another review has also shown that provinces with the highest incidence of reported food insecurity are North-West and the Northern Cape, while highest levels of stunting are found in the Free State and the Northern Cape (Statistics South Africa 2011).

Food security is a part of a livelihood strategy. There is evidence to show that among rural households, hunger is concentrated among smallholder and female-headed households (Statistics South Africa 2009). But the likelihood of experiencing hunger rose for farmworker households, and declined for households producing broader varieties of food. Land does not seem to be a factor.

A survey by the African Food Security Urban Network, Cape Town (2010) showed that hunger is increasingly becoming a challenge in urban areas. It further suggests higher incidence of hunger in low-income urban communities than in rural areas. Presenters noted that addressing urban food insecurity requires a better understanding of urban food markets, the informal market (which is an essential source of food), the inadequacy and inequalities of supermarket distribution systems, and rising prices. It was noted that hunger is seasonal in Cape Town, peaking in January and in June and is related to patterns of income opportunities and expenditure needs. The use of wage income for food depends on intra-household decision making and the priority given to food relative to many other demands.

Some of the discussants share the view that in South Africa, hunger is most often thought to be associated with lack of employment and inadequate incomes. But the dynamics of food security are more complex and closely related to diverse social and economic conditions. Supporting this view, a study has shown an important decline in child malnutrition since 1993 during which time there was negligible reduction in income poverty (May 2012). Thus, improving incomes is far from the only means to reducing malnutrition (a component of food security) and other social investments such as in education and healthcare as well as social grants play an important role.

● According to the Constitution and international human rights law, states have obligations to fulfil the right to food ●●

These analyses all point to a need for consensus on definitions and the measurement of hunger and food insecurity, and further studies on the dynamics of hunger at the household levels, including intra-household decision making, and on the relationship between hunger and other socio-economic variables.

Policy strategies

What are state obligations to fulfil the right to food in a market economy?

According to both the South African Constitution and international human rights law, states have obligations to fulfil the right to food. This implies that states must take 'all appropriate measures' encompassing a broad range of policy actions. This obligation to fulfil the right to food goes far beyond the provision of food in situations of emergency shortages to a broader range of interventions to secure a more permanent right to food. The Committee on Economic, Social and Cultural Rights (CESCR) has noted that 'every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement' (UN CESCR 1999). Thus, states may adopt different approaches to taking measures, from a minimalist response to a thick web of constitutional guarantees, incentive policies and investment programmes (Randolph and Hertel 2012; Fukuda-Parr 2012a).

The fulfilment of the right to food has important global dimensions. This is because in an open market economy, global food prices drive national and local trends (Randolph and Hertel 2012). Moreover, the structure of the global food chain is increasingly concentrated in the hands of a few corporations. The state-centric notion of obligations for human rights is highly problematic in this context.

In South Africa the problem of food insecurity is not one of supply but of access. Moreover, as in many developing countries with widespread poverty, it is a chronic and permanent state of crisis, not one of emergency need. It therefore requires a policy response that goes beyond meeting short term needs and that can address systemic causes. Sen's work on famines (1999, 2000) provides a useful analytical framework for assessing the drivers of hunger and the adoption of appropriate policy responses. He not only argued that hunger is a problem of access rather than supply, but he identified three categories of access

or 'entitlements': (i) exchange for wage income; (ii) social transfers; and (iii) own production.

There is little disagreement that low wage incomes are a major cause of hunger and that expanding employment and income-earning opportunities is policy priority. Growth has not created adequate jobs for a number of reasons, including the structure of the economy, which is dominated by mining and agriculture. These sectors have been shedding jobs. Moreover, the growth in finance and business services has not generated employment for the unskilled. Further, the overall global economic downturn since 2008 has led to millions of job losses and a tighter fiscal situation (Ogude 2012). Fostering employment creation and equity are key objectives of the New Growth Path adopted in 2010, and key initiatives such as the infrastructure programme. Will these initiatives create jobs for food-insecure households, which are likely to be the poorest of the poor and the least skilled? The distributional consequences of these policy initiatives require detailed scrutiny. Discussants at the seminar called for a more radical thinking about growth strategies, noting that the structure of the South African economy has not changed since 1994, and that jobless growth was part of deindustrialisation.

Social transfers have been the principal policy measure implemented by the state to address hunger. Studies have documented evidence of the important role that Child Support and other social grants have played in alleviating malnutrition and poverty as a whole. Discussants emphasised that while these grants are important, South Africa does not yet have a comprehensive set of social protection measures. Moreover, social grants provide targeted relief but food security requires developmental strategies.

In contrast to the widespread consensus on exchange and transfer entitlements and policy responses, the potential role of own production (subsistence) and small-scale agriculture is a neglected policy priority. Though negligible from the production perspective, small-scale and subsistence agriculture are a vital part of household food security and livelihood strategies: 23% of all households engage in production, mostly for their own consumption (Fukuda-Parr 2012b). Moreover, selling surplus food can improve household incomes. Recent findings from the National Income Dynamics Survey (Southern Africa Labour and Development Research Unit 2008) have shown that selling surplus food is an important pathway out of poverty.

Post-apartheid policy has pursued two contradictory approaches: the roll-back of the state in agricultural policy, and state intervention in land policies (Cousins 2012). The agrarian structure is characterised by dualism – with large-scale commercial farming (35 000 farms) dominating land and production (75%), and small-scale subsistence farming dominating the numbers of farmers (two million) – and a missing middle of commercially-oriented small-scale producers. The roll-back of the state has not stimulated a competitive agricultural sector and the emergence of a small-scale farm sector. Land reform programmes have been disconnected from agricultural development initiatives that ensure access to finance, extension, veterinary

services, markets and water. Moreover, there is inadequate understanding of the small-scale farming sector and its potential; thinking about efficient small-scale farming is dominated by the large-scale model.

Social movements and litigation

Tools for palliative, reformist or radical change?

Discussants identified the essential role of human rights and social activism in South Africa's democracy. It was noted that the Bill of Rights in the Constitution opens up democratic processes towards a thick form democracy that goes beyond elections. In this process, litigation plays an important role in bringing light and media attention to violations, and contributes to social mobilisation – this is arguably the main purpose of litigation (Brand 2012). The impacts of litigation on policy are often indirect. And sometimes the consequences of litigation on policy are ambiguous, as courts are not able to instruct the state to take specific action but rather to set in motion a process of review.

The possible potential of litigation in addressing human rights violations in the context of the right to food can be categorised into two. The first would be 'fairness' cases, which make claims of a 'reformist' change in policy. They concern existing access to government provisioning, based on the duties to respect. The second category would be 'distributional' cases that make claims for policy change of a more radical nature. They challenge the inadequacies in access even when there is adequate market supply.

As a component of socio-economic rights, numerous challenges arise in litigating the right to food. Perhaps the crucial issue at stake is to determine whether lack of access to food will constitute a human rights violation. The challenge, however, is that it is sometimes difficult to determine what constitutes sufficient food for the purpose of litigation. Moreover, there is no agreed quantified standard for identifying those in desperate and dire need of food. Unfortunately, however, the courts are not in the best position to clarify this situation.

It was observed that the gap in social transfers – notably for unemployed adults – that leave individuals in a desperate situation is an important way that a right to access food can be litigated. This raises further questions about the limitations of litigation. From the policy point of view, this is reductionist; state obligations to fulfil the right to food require addressing a long-term permanent crisis that requires radical solutions, not palliative or even reformist ones.

So far, there has been little social response to hunger or the right to food in South Africa. Thus, limited numbers of cases in the courts directly relate to the right to food and NGOs have not taken hunger up as a major advocacy issue, nor have there been street protests over it. A good example

of an attempt to litigate the right to food is an initiative undertaken by Black Sash to take companies to court for collusion on fixing the price of bread. This is a significant and radical measure, yet the impact of the ruling against the companies has been disappointing as it is unclear whether this would change business practices while amendments to the Competition Act are still awaiting proclamation.

Examples from other jurisdictions can be helpful in understanding the paradox of hunger in South Africa. The Indian experience of the politics of the right to food campaigns (including mapping variations in hunger and social responses to it 'in the courts' and 'in the streets' in about 27 states over the last two decades) has been well documented. India is a country that has many similarities with South Africa. These include high levels of hunger, hunger as a permanent crisis driven by systemic socio-economic and political factors, a constitutional commitment to economic and social rights, a vibrant democracy and a decentralised federation of states.

But there are also striking differences between the two countries. For instance in India, there has been much more social movement response in the form of street protests and NGOs engagement (though surprisingly limited media coverage of hunger as a major social issue), and multiple court orders to implement public food distribution systems more effectively.

An on-going study has shown that the extent of hunger does not map on well with the strength of social response. It also shows that the demands made during protests are reformist in nature, focusing on implementation of distribution systems and on the provisions of the draft National Food Security Act rather than on systemic change.

Conclusions

Human rights as a framework for public policy focuses sharply on priorities of human well being, equality and poverty, and on processes of participation and empowerment in contrast to policies that are designed according to conventional economic calculus, which are more concerned with aggregate national growth and integration into the global economy. It can therefore be useful in challenging prevailing policies and finding alternatives that pursue development that is more directly responsive to expanding human freedoms, specifically in reducing food insecurity of individuals and households.

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References

Crush, J, Hovorka, A and Tevera, D. 2011. Food security in Southern African cities: The place of urban agriculture. *Progress in Development Studies* 11(4): 285–305.

Department of Health. 2008. *South African demographic and health survey*. Pretoria: Department of Health.

Frayne, B et al. 2010. *The state of urban food insecurity in Southern Africa*. Urban Food Security Series No. 2. Queen's University and African Food Security Urban Network (AFSUN): Kingston and Cape Town.

Sen, A. 1999. *Development as freedom*. Oxford: Oxford University Press.

Southern Africa Labour and Development Research Unit. 2008. *National income dynamics survey*. Cape Town: Southern African Labour Development Research Unit.

Statistics South Africa. 2009. *General household survey report*. Pretoria: Statistics South Africa.

Statistics South Africa. 2011. *General household survey report*. Pretoria: Statistics South Africa.

Statistics South Africa. 2012. *General household survey report*. Pretoria: Statistics South Africa.

United Nations Committee On Economic, Social And Cultural Rights, 1999. *General Comment 12 on the right to adequate food*. UN doc E/C.12/1999/5.

Presentations made at the seminar on the Right to Food in South Africa, at the University of Cape Town, 30–31 May 2012. These presentations can be found at www.serfindex.org

Battersby, Jane. Urban food security

Brand, Danie. Litigating right to food: Potential and limitations

Budlender, Geoff. Advancing human rights through litigation and social movements

Fukuda-Parr, Sakiko (a) The right to food in South Africa: Entitlements, endowments and the role of economic and social policy

Fukuda-Parr, Sakiko. (b). The right to food: The role of economic and social policy

Hertel, Shareen. Social movements and the politics of right to food campaigns: The case of India

Jacobs, Peter. Who and where are the food insecure

rural households? Is household food security an objective of national policy frameworks?

Johannes, John-Langba. Food security in South Africa: A review of data and trends

May, Julian. Inequities in under-five child nutritional status in South Africa: What progress has been made?

Nyembezi, Nkosikhulule. Politics of the right to food: adding more tools in the box by promoting anti-corruption policy and legislative framework

Ogude, Refiloe and Borhat, Haroon. Policy alternatives: Macroeconomic policy and effects on employment and household incomes

Randolph, Susan and Hertel, Shareen. The right to food: A global overview

Taylor, Vivien. Social policies and food security in South Africa: Between relief and comprehensive social protection: Some challenges for social policy transformation

Figure 1: Food security situation: self reporting

General Household Survey 2011

Vulnerability to hunger and access to food, 2002–2009, 2010–2011

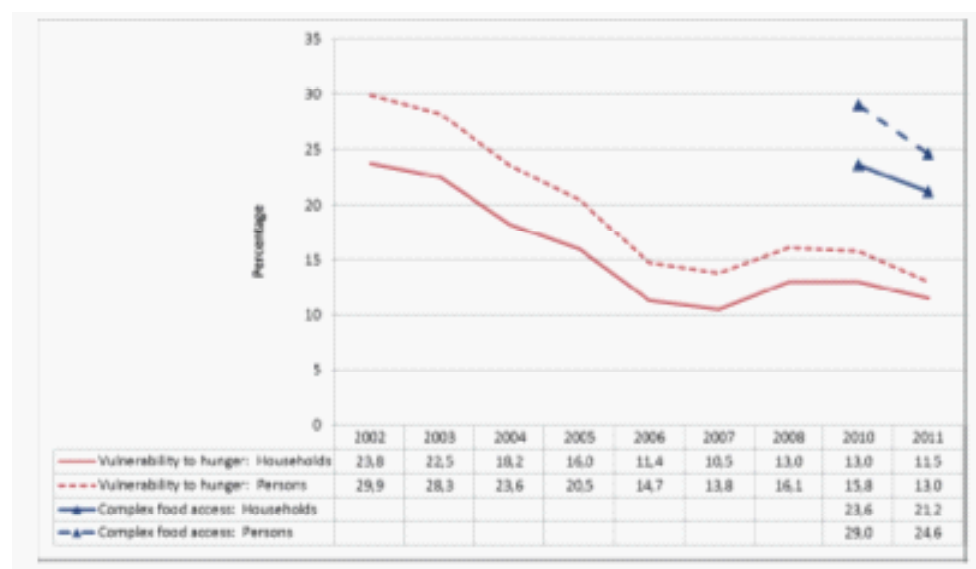
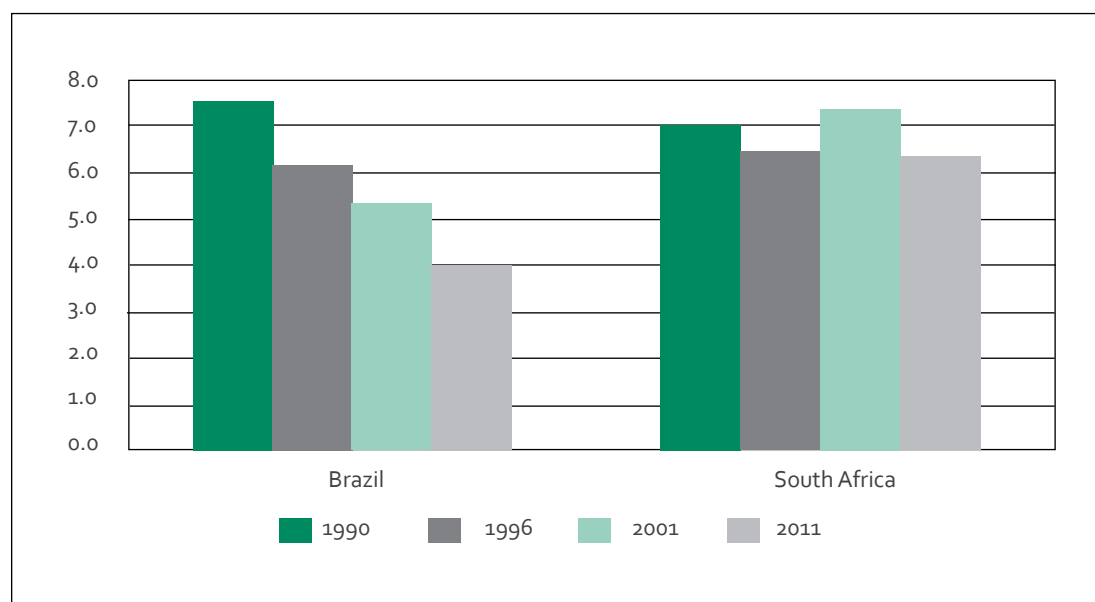


Table 1: State performance in fulfilling economic and social rights – SERF index (scores for 99 countries)

Rank	Country	Composite	Food	Health	Education	Housing	Work	Income (PPP 2008)
13	Brazil	87.4	91.1	90.1	94.8	75.8	83.6	9 559
40	China	79.7	90.4	94.8	83.6	65.8	64	5 712
38	Ghana	72	85.6	60.0	78.7	52.3	82.2	1 351
67	South Africa	61.5	61.7	57.6	71.4	70.2	46.6	9 604
87	India	56.1	32.7	74.7	82.8	62.6	27.9	2 796
96	Nigeria	42.5	47.7	33.4	66.7	43.3	21.5	1 939

Source: www.serfindex.org; South Africa added from own calculation

Figure 2: International comparison: IFPRI Global Hunger Index



Interview with the United Nations Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepulveda Carmona

Ebenezer Durojaye

Could you tell us more about the nature of your mandate?

My role is part of one of the so-called 'United Nations special procedures'. Special procedures is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Special procedures are human rights monitoring mechanisms endorsed to individual experts called 'Special Rapporteurs', 'Independent Experts' or 'Working Groups', whose common mandate is the investigation and reporting of human rights situations either in a specific territory (country mandates) or with regard to a phenomenon of violations (thematic mandates).

The scope of the action of special procedures is truly universal: all the states of the world are monitored by these bodies and they cover civil, political, economic, social and cultural rights. As mandate holders, we report on our activities and findings to the most important United Nations bodies dealing with human rights, the Human Rights Council and the General Assembly. We also carry out country visits to investigate the situation of human rights in specific domestic contexts. We are independent, we serve in our personal capacity, and we do not receive salaries or any other financial compensation for our work.

The mandate on extreme poverty and human rights was established in 1998 by the former Commission on Human Rights with the aim of strengthening international, regional and national efforts to reduce poverty and to alleviate the effects of poverty by protecting and promoting human rights. I was appointed as mandate holder in May 2008 and tasked with examining the relationship between the enjoyment of human rights and extreme poverty, with a particular emphasis on vulnerable groups.

Are there any special areas of focus in terms of issues or regions?

When I was appointed to the position of mandate holder in May 2008, the international community was in the midst of devastating global financial and economic crises, the ramifications of which continue to be felt across developing and developed countries. The effect of the crises, which pushed tens of millions of people into unemployment and poverty, will linger for generations, as will the consequences of the harsh recovery and austerity policies adopted in their aftermath. I therefore decided to address the human rights implications of responses to the crises and recovery in several reports (e.g. A/HRC/17/34). I have also addressed

the impact of the crises, examining the proliferation of laws, regulations and practices that penalise and stigmatise people living in poverty, even as poverty and homelessness rates continue to rise (see A/66/265).

The onset of the crises saw development institutions, United Nations agencies and States searching for poverty reduction strategies which would withstand and help to mitigate the impact of the crises. In this regard, there was considerable interest in, and support for, the implementation of social protection programmes, particularly cash transfer programmes. Although social security systems have played an integral role in many States for decades, the idea of a compulsory minimum level of non-contributory social protection had only really gained traction after it became a focal policy for the International Labour Organisation in 2001. With the advent of the crises, which put in jeopardy the significant gains in poverty alleviation that had been achieved over the preceding decade, support for social protection expanded considerably.

I therefore decided to orient one of the primary thematic priorities of my mandate around the human rights implications of, and approach to, social protection programmes. I set out to elaborate and promote a human rights framework for social protection, identifying best practices and disseminating lessons learned. One of the key messages of my analysis has been 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 implemented. 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 – must be applied to the design, implementation, monitoring and evaluation of social protection systems.

To this end, I have produced reports to the Human Rights Council and General Assembly on human rights and cash transfer programmes (A/HRC/11/9), the role of social protection in the face of the global financial crisis (A/64/279), a human rights framework for non-contributory pensions (A/HRC/13/31), the importance of social protection measures in achieving the MDGs, with a particular focus on gender-related concerns (A/65/259), and the human rights approach to recovery from the global economic and financial crises (A/HRC/17/34), which included an analysis of the important role played by social protection programmes during times of crisis and recovery.

With respect to my country missions, there is no regional focus in the mandate. My role is to examine the

situation of people living in poverty across every region, in both developed and developing countries. I have tried to strike a regional balance in my country missions, although the choice of countries is a complex one which involves careful negotiations with the governments involved. To date, I have visited Ecuador (A/HRC/11/9/Add.1), Zambia (A/HRC/14/31/Add.1), Bangladesh (A/HRC/15/55), Vietnam (A/HRC/17/34/Add.1), Ireland (A/HRC/17/34/Add.2), Timor-Leste (A/HRC/20/25/Add.1) and Paraguay (A/HRC/20/25/Add.2).

Given that Africa is one of the regions that is worst affected by poverty, do you intend to give the region greater attention?

I have endeavoured to ensure that all of my thematic reports cover issues and challenges that are relevant to the situation of people living in poverty in Africa. Given the increasing popularity of social protection as a tool for development and poverty reduction in Africa, the articulation of the human rights approach to social protection is of particular relevance to governments, donor agencies and other stakeholders implementing social protection initiatives in Africa, many of which are now being scaled up and institutionalised. By laying down a framework to improve the effectiveness, sustainability and efficiency of social protection interventions, I hope I can impact positively on the use of social protection as a tool to respond to the needs and challenges faced by people living in poverty in Africa.

I have continued to seek out opportunities to engage with African states, both through country missions (such as my visit to Zambia in 2009), and through broader consultations (such as my visit to South Africa in 2009 where I met with Government representatives, the South African Human Rights Commission and some NGOs). I have ensured that each of the expert meetings I have convened in the preparation of my thematic reports have included representatives from the African region, in order to incorporate the African perspective. Africa is indeed one of the poorest regions of the world, and using the mandate on extreme poverty and human rights to influence poverty reduction strategies in African countries is particularly important to me. I also expect that through my on-going close collaboration with the Community Law Centre – which has been facilitated by a grant of the Department of International Relations and Cooperation of the Government of South Africa – I can benefit from the inputs of a wider network of African experts.

How would you describe your working relationship with civil society groups and how can they make better use of your mechanism to advance the human rights of vulnerable groups?

Creating linkages with civil society and using the mandate on extreme poverty as a platform for civil society issues is a definite priority for me as Special Rapporteur. I see im-

mense value in collaborating with civil society organisations and grassroots movements and taking up issues being pursued by them. I have enjoyed incredibly productive working relationships with a number of civil society organisations to date, both with respect to my thematic reports and to my country missions, where collaboration with civil society is an essential element of a successful mission.

I would absolutely encourage greater civil society engagement with the special procedures in general, and with the poverty mandate in particular. There are several ways in which NGOs could strengthen their relationship with special procedures. The most important role that civil society organisations can play is probably with respect to the country missions which I and other mandate holders make twice a year. The list of countries that special procedures intend to visit in a given year is public, and thus NGOs can engage by lobbying for the inclusion of other countries on the list of missions, as well facilitating the mission by providing information in advance of missions, and meeting with mandate holders during their visits. In all my missions the first thing I do is undertake a broad consultation with civil society organisations based in the country. Generally, the day and the venue of the public consultation is disseminated well in advance, and as many NGOs as possible are contacted about and invited to the consultation. By attending these meetings, civil society organisations can have their opinions heard and can influence the shape of the mission.

I also try to encourage civil society organisations to involve themselves in my thematic work. My contact details (emails and mailing address) are public, and many civil society organisations send me their particular concerns as well as their publications that are essential to inform my thematic and country reports. As part of my methodology, I publicise the thematic issues on which I will be focussing in my upcoming reports, and often I prepare questionnaires for NGOs and request information from them that I disseminate not only through the mandate's website, but also through other global and regional channels. Civil society can also greatly contribute to the impact of the thematic reports by incorporating them in their advocacy activities and disseminating them among their membership, staff and peers.

Another crucial tool for civil society organisations is the submission of individual complaints and information on alleged violations of human rights. When special procedures mandate holders receive reliable information, we are empowered to write directly to the relevant Governments seeking clarification and reminding the Governments of their international human rights obligations. Civil society can play a vital role in bringing human rights abuses to the attention of the special procedures, and following up complaints and allegations sent to Governments to ensure that policy makers are pressured into making the changes suggested. Follow-up is one of the most valuable ways that civil society organisations can improve the effectiveness of the special procedures. In particular, given the fact that there is no institutionalised mechanism to follow-up the implementation of recommendations made in country

● The link between human rights and poverty reduction has often been overlooked in the past ●

mission reports, dynamic civil society engagement is critical in order to ensure that recommendations are adopted.

All these are important venues for strengthening collaboration with civil society, and I would encourage civil society groups to use them. Our capacities as special procedures mandate holders are somewhat limited by our lack of financial and human resources, and this means that civil society groups need to be proactive in seeking out our attention and assistance.

If you allow me, I would like to take advantage of this interview to disseminate my contacts details (see box).

Can you tell us more about the Guiding Principles on Human Rights and Poverty and what you intend to achieve with this?

In 2001, the former United Nations Commission on Human Rights – now the Human Rights Council – stressed the need to develop a set of principles on the implementation of existing human rights, norms and standards in the fight against extreme poverty. In response, the former UN Sub-Commission on the Promotion and Protection of Human Rights entrusted an ad-hoc group of experts with the task of preparing the Draft Guiding Principles on Extreme Poverty and Human Rights (the DGPs). The DGPs were submitted by the Sub-Commission to the Human Rights Council at its second session in 2006. From 2006 to 2009, the Office of the High Commissioner for Human Rights (OHCHR) led consultations on the DGPs. These consultations were open to states, national human rights institutions, international organisations and civil society organisations. Specific consultations were also undertaken with people living in poverty in several regions of the world, which greatly contributed to shaping the DGPs.

Following these consultations, the Human Rights Council invited me to facilitate the further progress of the DGPs by providing recommendations to assist States in improving and updating the current draft and incorporating the outcomes of the consultations. Accordingly, in September 2010 I presented a report to the Council, which detailed the rationale behind the proposals for improving the guiding principles and the basic conceptual definitions that should frame these proposals, addressed the main challenges experienced by persons living in extreme poverty that must be taken into account when preparing the principles, and presented an annotated outline of the proposal on how to improve the DGPs.

In response, the Council invited the OHCHR to hold a

broad consultation on the DGPs on the basis of the annotated outline that was included in my progress report. The objective of this consultation was to gain input from a broad range of actors, particularly states, development practitioners and civil society organisations, so that consensus and collective agreement could be reached about the principles. On the basis of these consultations, I will submit a final draft of the DGPs to the Human Rights Council in September 2012, with a view to their adoption by the Council.

The DGPs provide an opportunity to add visibility and political momentum to the fight against extreme poverty, and to address the difficulties states and the international community face in reaching those living in extreme poverty. They would provide practical guidance on how to operationalise the obligations of states to respect, protect and fulfil the rights of persons living in extreme poverty, an often neglected, and, to a certain extent, invisible segment of the general population.

They should empower those living in poverty through a human rights approach to alleviating poverty and provide an advocacy tool for all stakeholders working on poverty issues at the domestic and international level. At their core the guiding principles must prioritise the importance of reaching out and protecting persons living in extreme poverty as the most disadvantaged and marginalised individuals and groups in societies.

The DGPs would stress the importance of addressing poverty from a human rights approach. A human rights approach may assist in building social consensus and mobilising durable political commitments at the national, regional and international levels. A human rights approach assists us in identifying who is entitled to make claims and who has a duty to take action as it focuses on holding governments and other actors accountable for their actions. Accountability and empowerment give voices to those who are poor and powerless to claim their rights.

The link between human rights and poverty reduction has often been overlooked or dismissed in the past. However, it is clear that a human rights approach to addressing extreme poverty can assist us not only in understanding the causes of poverty, but also in ensuring that extreme poverty is viewed as what it really is – a series of grave and interconnected violations of human rights. A new approach to development and poverty – one based on respecting and enforcing human rights obligations and responsibilities in conformity with fundamental human rights principles – is the only way to address the increasing occurrence of extreme poverty around the world.

What will you consider as your major achievements so far?

I think that the most important part of my role as Special Rapporteur is that I can give a voice to those who so often are ignored by their governments and by the international community. By listening to and collaborating with people

living in poverty, those campaigning in grassroots organisations, and other members of civil society, I hope I have been able to provide a platform for their causes. There have been very specific results and impacts achieved during my country missions that make me proud.

In addition, I would like to think that my work on social protection has made a contribution to the increase in interest among states and development actors in rights-based social protection as a poverty reduction strategy. Since taking up the mandate on extreme poverty I have witnessed a progressively greater willingness on the part of states, development actors and other stakeholders to engage in discussions about the relationship between human rights obligations and social protection, and I think that my work in this area has been one factor of this gradual evolution.

For example, there has now been explicit recognition of the relationship between human rights and social protection, in the report of the Advisory Group convened by ILO and the WHO, chaired by Michelle Bachelet. The report, titled *Social Protection Floor for a Fair and Inclusive Globalisation* ('the Bachelet Report'), also contained an explicit reference to my work as Special Rapporteur. Furthermore, a landmark conference of preeminent practitioners, state representatives and academics, convened by the Centre for Social Protection at the Institute for Development Studies, entitled *Social Protection for Social Justice*, also reflected the traction gained by the human rights approach to social protection.

In my missions to and other communications with developing countries, I have witnessed an increased awareness of the important role played by a rights-based social protection in addressing poverty and social exclusion. My recommendations on the importance of a human rights approach to social protection have been well received by many developing countries, and in some cases have translated into improvements in the design and implementation of social protection programmes, such as those in Zambia and Vietnam since my visits there in August 2009 and August 2010 respectively.

What have been your challenges?

Because my mandate falls primarily within the realm of economic, social and cultural (ESC) rights, it has sometimes been a challenge speaking with states and other actors who question the enforceability or justiciability of these rights. However, I believe the longstanding dichotomy between ESC rights, on one hand, and civil and political rights, on the other, is dissolving, as the indivisibility and interdependence of human rights becomes increasingly apparent. I have endeavoured to highlight this in, for example, my most recent report to the General Assembly (A/66/265), in which I argued that extreme poverty is perpetuated and exacerbated not only by violations of economic, social and cultural rights, but by infringements upon civil and political rights. The report analysed laws, regulations and measures that criminalise and penalise people living in poverty, threatening their rights to, among

other things, life, privacy, freedom from arbitrary detention, and freedom from torture or other cruel, inhuman and degrading treatment. I argued that such laws not only risk violating civil and political rights, but ultimately contribute towards violations of economic, social and cultural rights, such as those to housing, education, social security, and non-discrimination.

The distinction between ESC rights and civil and political rights is also being broken down as more and more states, such as South Africa, constitutionally or legislatively enshrine ESC rights as justiciable. This is a trend that I hope will continue, and I expect the mandate on extreme poverty can contribute to the increasing acceptance by states of ESC rights as justiciable.

If you were to look back at the end of your mandate, what would you like to be remembered for?

There are so many limitations in the work that we do as Special Procedures that I would like to be remembered as a mandate holder who worked hard, was independent and put human rights values at the heart of her work. I passionately believe in the importance of participation by those living in poverty in the policies that affect them. I truly hope that my work will contribute to changing the existing paradigm, and that policy makers and those who are better off will finally understand that people living in poverty are part of the solution, not a problem, and that eliminating poverty is not a matter of charity but a right: a basic human right.

Ebenzer Durojaye is the coordinator of, and senior researcher in, the Socio-Economic Rights Project, at the Community Law Centre, UWC

The email address of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepulveda Carmona, is rextremepoverty@ohchr.org.

For more information on the mandate, work and country visits of the Special Rapporteur, see <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>.

Civil society can send individual complaints to the Special Rapporteur, or any other special procedures mandate holder, at the following addresses:

e-mail: urgent-action@ohchr.org

post: OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland

fax: +41 22 917 90 06

ILO Convention No. 189 Concerning Decent Work for Domestic Workers, 2011

Gladys Mirugi-Mukundi

In acknowledgement of the value of domestic workers in South Africa, 26 July 2012 was marked as the National Domestic Workers' Day. Domestic workers the world over are some of the most important members of society, who work tirelessly to ensure that families are able to optimally exploit their potential by providing vital support and assistance with their domestic chores. Unfortunately, they remain the most unacknowledged workers and often earn meagre wages that can hardly sustain their own livelihoods.

It was therefore a welcome and commendable gesture by South Africa to dedicate a day to celebrate and honour domestic workers. Beyond having a dedicated day to celebrate the contribution by domestic workers to society and the national economy it is also important to give real recognition and support to the equitable realisation of their own socio-economic and cultural rights.

The International Labour Organization (ILO), in recognition of the significant contribution of domestic workers to the global economy, adopted the 'International Labour Organization Convention Concerning Decent Work for Domestic Workers' (ILO Convention No 189) in Geneva in June 2011. The Convention is a reflection of the recurrent debates and discussions between various employers and workers' representatives on the regulation of fair labour practices to ensure the sector can offer decent work for domestic workers. It sets the international standards and norms for decent work and applies to all domestic workers globally.

According to the ILO, it is estimated that there at least about 53 million domestic workers worldwide. However, experts in the field differ and some project the number to be in the region of 100 million. In South Africa, according to the 2010 Labour Force Survey, it is estimated that there are about 880 000 domestic workers, the majority of whom are women. Like elsewhere in the world, for most of these workers, particularly migrants and those under 18 years old, the conditions and circumstances of their work are poor and exploitative. Some could even amount to forced labour and/or modern forms of slavery. The Convention requires that domestic workers enjoy minimum wage coverage without discrimination based on sex. It further stipulates that 'domestic workers shall be paid directly in cash at intervals but not less often than once a month'. With regard to decent work for domestic workers it proposed that member states should take measures to ensure that they

enjoy freedom of association and the effective recognition of the right to collective bargaining. This would in essence require member states to 'support measures to strengthen the capacity of organisations of domestic workers to protect the interests of their members.'

The Convention further acknowledges that domestic workers provide an indispensable contribution to society. All over the world, domestic workers do important but unglorified chores in private households, including cleaning, cooking, gardening, looking after children or elderly people and guarding homes, among many others tasks. Despite this, domestic workers remain undervalued and are regarded as unskilled and often lack the social recognition and legal protection that is enjoyed by other workers. The 2010 report of the Special Rapporteur on Contemporary Forms of Slavery recognises that, because the nature of their work, domestic workers are:

particularly vulnerable to economic exploitation, abuse and, in extreme cases, subjugation to domestic servitude and domestic slavery.

The Convention acknowledges that domestic work continues to be:

undervalued and invisible, and is mainly carried out by women and girls, many of whom are migrants or members of historically disadvantaged communities and therefore particularly vulnerable to discrimination in respect of conditions of employment and of work and other abuses of human rights'. Their vulnerability means domestic workers are often subject to unfair and exploitative labour practices.

South Africa has enacted specific legislation to protect workers:

- The Labour Relations Act 66 of 1996 enables employee's right to freedom of association and important aspects of the right to fair labour practices.
- The Basic Conditions of Employment Act (No. 75 of 1997), as amended by the Basic Conditions of Employment Amendment Act, 2002.) further implements the right to fair labour practices.
- The Employment Equity Act No. 55 of 1998 regulates the right to equality in the employment context.
- The Sectorial Determination 7: Domestic Workers Sector (SD7), promulgated in 2002, regulates the working conditions of domestic workers.

Despite these progressive legislative measures that formally recognise domestic workers, domestic work in South Africa remains unregulated as they occupy a subordinate status in the labour market. Furthermore, since they are isolated in private homes, the informal nature of domes-

tic employment make traditional trade union organisation difficult. Ten years after minimum wages were introduced, it is questionable to what extent these regulations have been implemented and what impact they have had on domestic workers in terms of employment and earnings. Thus to achieve the goal of decent work for all domestic workers nationally, a multi-faceted approach will be required other than legislation.

Despite these gaps and challenges, it is hoped that the ILO Convention No 189 will inspire and guide South Africa in securing decent work conditions for domestic workers. As a country that prides itself on its commitment to respect the fundamental human rights of all without discrimination, it is imperative that South Africa ratifies the Convention and ensures the rights of domestic workers are respected and upheld in practice. It is also encouraging to note that the South African Domestic Service and Allied Workers Union (SADSAWU) and the University of the Western Cape (UWC) Social Law Project have established the Domestic Workers Research Project to research and inform the dialogue on decent work for domestic workers in South Africa.

Gladys Mirugi-Mukundi is a researcher in the Socio-Economic Rights Project at the Community Law Centre, UWC.

For further details on the International Labour Organization Convention Concerning Decent Work for Domestic Workers, see http://www.ilo.org/ilc/ILCSessions/100thSession/reports/provisional-records/WCMS_157836/lang-nl/index.htm

Also see:

United Nations Human Rights Council Report of the Special Rapporteur on Contemporary Forms of Slavery, including its causes and consequences, Gulnara Shahinian. June 2010. UN Doc A/HRC/15/20

Domestic Workers Research Project (DWRP), launched in January 2009, by the Social Law Project at University of the Western Cape. <http://www.dwrp.org.za/>

The International Labour Organisation Social Protection Floors Recommendation 2012

In recognition of the critical role of social protection in social and economic development, the general conference of the International Labour Organisation at its 101st session in June 2012 discussed the proposed Social Protection Floors Recommendation 2012.

The proposed Recommendations emerged from broad consultation and adopt a rights-based approach. They recall that the right to social security is a human right and urge member states to 'maintain their social protection floors comprising basic social security guarantees'. In essence this implies that all persons in need should have access to essential health care and to basic income security, which would secure access to goods and service.

The proposed Recommendations seek to 'establish, complete and maintain, as applicable, social protection

floors as a fundamental element of national social security systems'.

The human rights-based approach to social protection also assists in building social consensus and mobilising durable commitments at the national and international levels, facilitating a more efficient use of resources by promoting access to information and fighting corruption, and empowering those living in abject poverty.

The proposed Recommendations are based on a set of principles that include non-discrimination, gender equality and responsiveness to special needs. To strengthen the proposed Recommendations and the set of principles and to ensure the protection of the dignity of beneficiaries when designing and implementing social security systems, United Nations Special Rapporteur on Extreme Poverty and Human Rights suggested the inclusion of an additional principle on 'promotion of, and respect for, the rights and dignity of beneficiaries'.

For further reading on the The International Labour Organisation Social Protection Floors Recommendation 2012 see <http://www.ilo.org/ilc/ILCSessions/101stSession/on-the-agenda/social-protection-floor/lang--en/index.htm>

Call for contributions to the ESR Review

The Socio-Economic Rights Project of the Community Law Centre (University of the Western Cape) welcomes contributions to the ESR Review. The ESR Review is a quarterly publication that aims to inform and educate politicians, policy-makers, NGOs, the academic community and legal practitioners about key developments relating to socio-economic rights at the national and international levels. It also seeks to stimulate creative thinking on how to advance these rights as a tool for poverty alleviation in South Africa and abroad.

Contributions on relevant experiences in countries other than South Africa, or on international developments, are therefore welcomed. Contributions should focus on any theme relating to socio-economic rights, on specific rights or on socio-economic rights in general. In addition, we are currently seeking contributions on:

- the role of Parliament in advancing socio-economic rights;
- the African Commission and socio-economic rights;
- pursuing economic, social and cultural rights and combating inequalities and poverty, including in the context of the economic, food and climate crises;
- using international law to advance socio-economic rights at the domestic level; and
- South Africa's reporting obligations at the UN or African level, or both, in relation to socio-economic rights.

Contributions should be sent in electronic format (MS Word) to serp@uwc.ac.za or gmirugi-mukundi@uwc.ac.za.

Previous editions of the ESR Review and the complete guide for contributors can be accessed online: www.communitylawcentre.org.za/clc-projects/socio-economic-rights