

ESR

REVIEW

Economic and Social Rights in South Africa

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Ensuring rights make real change

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Editor: Dr Ebenezer Durojaye

Co-editor: Gladys Mirugi-Mukundi

Contact the Socio-Economic Rights Project

Dullah Omar Institute for Constitutional Law, Governance and Human Rights
University of the Western Cape
New Social Sciences Building
Private Bag X17, Bellville, 7535

Tel: (021) 959 2950

Fax: (021) 959 2411

Email: serp@uwc.ac.za

Website: www.communitylawcentre.org.za

ESR Review online

<http://www.communitylawcentre.org.za/projects/socio-economic-rights/esr-review>

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Editorial

This second issue of the *ESR Review* for 2015 includes three feature articles and an update.

The first feature, by Matsiko Samuel, examines a hitherto unexplored but important issue: giving attention to socio-economic rights during the transitional justice process. Samuel argues that transitional justice processes should give as much attention to people's socio-economic needs as they do to civil and political challenges. This becomes inevitable given the indivisible and interrelated nature of human rights. Citing the South African transitional justice process as an example, he observes that attention was given to violations of civil and political rights at the expense of equally important socio-economic rights issues.

The second feature, by Simangele Mavundla, examines the importance of sexuality education by analysing the policy framework on sexuality education in Swaziland. She notes that comprehensive sexuality education is a tool for equipping young people with the knowledge that they need in order to make informed choices about their sexuality. She notes that Swaziland has an essentially young population that is susceptible to various challenges, including a high prevalence of HIV and high rates of teenage pregnancies and sexual abuse. Therefore, she urges the Swazi government to give more attention to sexuality education as it is an invaluable investment in young people.

The third feature, by Peacemore Mhodi, examines the role of third parties engaged by the government in realising the right to access to housing in South Africa. He examines the legal framework relating to public procurement and contracting. According to him, the five pillars of any procurement process include value for money, open and effective competition, ethics and fair dealing, accountability and reporting, and equity. He argues that in the context of housing – which is a constitutional right – the outsourcing of services to a third party does not excuse the state from monitoring the fulfilment of the contract. He proposes recommendations on how to regulate the activities of third parties contracted by the government to deliver housing. These include transparency in the selection process, making adequate funds available to the contractors and blacklisting those contractors who fail to live up to their mandate.

Finally, this issue offers a summary of the statement on Social Protection Floors adopted by the Committee on Economic, Social and Cultural Rights during its 54th Session in February this year.

We hope you will enjoy reading this issue of the *ESR Review*.

Ebenezer Durojaye
Head, Socio-Economic Rights Project

Dullah Omar Institute for
Constitutional Law, Governance and Human Rights,
University of the Western Cape

(formerly the Community Law Centre)

Economic inclusion in transitional societies

A necessary prescription for South Africa

Matsiko Samuel

Introduction

A conversation on the role of economic and social rights within the transitional justice paradigm is way overdue. Transitional justice, as defined by the United Nations, is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses of human rights (UN, 2010:2). Determining what makes a society transitional is still a subject of academic debate and inquiry (Roht-Arriaza, 2006:1). However the political, social and historical realities can determine whether a society is ripe for transition.

Transitional societies like South Africa, which experienced decades of gross human rights violations during apartheid, concentrated on addressing past civil and political rights violations in isolation from economic and social rights. However, the need to discuss economic and social inclusion for societies in transition has not gone unnoticed.

In October 2006, Louise Arbour, then UN Commissioner for Human Rights, argued that transitional societies must have the ambition of assisting the transformation of oppressed societies by taking economic and social rights into account (Arbour 2006:3–4).

Transitional justice mechanisms that address gross human rights violations are inherently political and are usually characterised by a mandate to deal with civil and political rights. Transitional justice mechanisms rarely make strides to address economic and social rights (Carranza 2008:315). The South African Truth and Reconciliation Commission failed to address issues of economic crimes, corruption and economic violation in its final report (Truth and Reconciliation Report South Africa, 1998:304). In Liberia, the Truth and Reconciliation Commission emphasised corruption, inequality and poverty as underlying causes of the conflict there but failed to provide any remedy for economic, social and cultural violations (Truth and Reconciliation Commission of Liberia, 2009).

2015 is an interesting year for South Africa's economic and social fabric. On the positive side, South Africa finally ratified the International Covenant on Economic, Social and Cultural Rights on 12th January 2015, after having signed it in 1994. On the negative side, xenophobic attacks in Johannesburg and Durban are an indicator of underlying social and economic challenges. There is no doubt that the

time has come for South Africa to carry out a comprehensive diagnosis and prescribe an effective remedy for addressing the legacy of economic and social exclusion. The need for a holistic synergy to address economic and social rights with civil and political rights is not only ambitious in scope: it is politically necessary. The Democratic Alliance (DA) party's leader, Mmusi Maimane, stated that South Africa must address this problem as a matter of urgency, as unemployment among young people drives socio-economic problems such as substance abuse, criminality and xenophobia (Maimane, 2015).

Arguments for economic and social rights in transitional societies

The first argument for economic and social rights in transitional societies centres on conflict prevention. Liberia's Truth and Reconciliation Commission was of the view that if economic inequality and deprivation of economic rights caused or contributed to the conflict there, these economic violations need to be addressed. Transitional justice processes that address civil and political rights are important and so are the basic economic and social needs that could have been denied to the victims either by law or conduct. Dealing with civil and political rights without addressing the economic and social issues has the effect of treating the symptoms while ignoring the underlying structural causes.

Transitional justice processes need to treat economic and social rights as important and make an effort to be an effective tool for conflict prevention. For example, reforms pursued by previous administrations in Egypt and Tunisia failed to sufficiently broaden economic inclusion and economic opportunity (Merchant, 2014:1). Initially this contributed to resistance to those reforms, which were viewed as mainly benefiting the elite, and ultimately led to the Arab Spring uprisings in 2011. Therefore, as in the case of Egypt, a lack of economic inclusion may help to explain why populations turn against market-oriented reforms (CESR, 2011:2).

The second argument concerns the indivisibility of rights. The notion that there is a division between civil and political rights, on one hand, and economic and social rights, on the other, is fundamentally flawed. Proponents of the indivisibility rights argument suggest that for these rights to function, there is a mutual reliance on each other (Laplante 2007:145). Transitional justice mechanisms that do not address economic violations implicitly suggest that certain violations are permissible and therefore create

Gross violations of civil and political rights are intrinsically linked to violations of economic, social and cultural rights

an impunity gap by dealing with one kind of abuse while ignoring accountability for large-scale corruption and economic crimes. The victims in South Africa's Truth and Reconciliation Commission might have been interested in redress for civil and political rights but consistently raised concerns about economic needs and inequalities (Mamdani, 1996:4).

The final argument for economic and social rights in transitional societies is the impunity linkages argument. Gross violations of civil and political rights are intrinsically linked to violations of economic, social and cultural rights. Therefore, impunity in one arena is likely to create impunity in another area. In South Africa, violations of civil and political rights were coupled with gross economic crimes. Despite the racial discrimination and denial of civil liberties, the issue of grand corruption under apartheid has been a source of comparatively little debate. For example, the Mafia links in Ciskei and the case of Vito Palozollo's business empire in South Africa and the failure to have him extradited to Italy still haunts South Africa (van Vuuren, 2006:83). One of the biggest failures of South Africa's Truth and Reconciliation Commission was its inability to address the gross economic plunder under apartheid and its mandate's restriction to civil and political rights.

A diagnosis of the economic and social rights dimensions of South Africa's transition

The neglect of economic and social aspects societies undergoing a transition from authoritarian rule is undisputed. Its consequences can be infringements of the most basic rights, such as the right to life and human dignity. It is even claimed that at times, unjust systems kill far more infants through malnutrition and the unavailability of water than they kill adults with bullets and bombs (Asmal, 2000: 16, referring to South Africa under apartheid).

In South Africa a series of apartheid laws progressively dispossessed millions of people. The Natives Land Act of 1913 prohibited black South Africans from owning or leasing land outside small designated areas, later known as 'homelands' or 'Bantustans'. The 1950 Group Areas Act segregated urban areas and led to the removal of non-whites to townships or suburbs. By 1990, millions of people had been dispossessed and only 13% of the land was reserved for occupation by blacks. Despite several attempts to address this injustice, the land question is still a

contentious subject in South Africa (Hall, 2011:19).

South Africa during the apartheid era was characterised by unemployment, social inequality and widespread poverty in the black community. After adoption of the new 1996 Constitution the South African Constitutional Court adopted a very proactive approach to the judicial enforcement of socio-economic rights. A number of key South African judicial decisions (such as the *Soobramoney*, *Grootboom* and *Treatment Action Campaign* cases) have been at the centre of the global movement for social and economic rights.

Unfortunately, reality has not fulfilled the expectations of those that fought for the radical recognition of socio-economic rights as authentic human rights. South Africans expected much more, however economics and the law evolved through different pathways. While socio-economic rights were recognized at the constitutional level and received the support of the highest judicial body, at the economic level South Africa surrendered to neo-liberalism, which imposed macroeconomic reforms that failed to address poverty and social inequality while enriching the owners of capital and the elite (Koebele, 2004: 58). The process of black economic empowerment, popularly known as BEE, which focuses primarily on the transfer of ownership in businesses, has done little to change the economic circumstances of the majority of people disadvantaged by apartheid; nor has it solved the socio-economic inadequacies. The tragedy of South Africa's current social and economic challenges is exemplified by Irene Grootboom who died in the same conditions of homelessness that had led the Constitutional Court to rule in her favour in October 2000, in the groundbreaking *Grootboom* case (*Mail and Guardian*, 2008).

South Africa adopted two transitional justice mechanisms, namely truth commissions and reparations. The South African Truth and Reconciliation Commission notably did not address corruption or economic violations in its report. Reparations, on the other hand, were transitional measures that were expected to deal with economic matters. However, in the South African context, the reparations programme was not designed to address the economic and social exclusion of the black population caused by the apartheid regime; rather, it was designed to address specific harm arising out of individual violations of civil and political rights.

The necessary prescriptions for transforming South Africa's socio-economic fabric

The time has come for South Africa to no longer bury its head in the sand. South Africa has to finally tackle these underlying economic and social challenges and adopt the recommendations below.

Adopt a commission/mechanism to redress economic violations (lessons from Tunisia)

The South African Truth and Reconciliation Commission failed to dismantle the pre-existing structures of patron-

age, cronyism and corruption among the economic elite and failed to address the issue of economic and social inclusion. South Africa needs to establish a mechanism or commission that is mandated to address gross economic violations. South Africa can take a few lessons from the Tunisian Truth and Dignity Commission established to address economic crimes after the Arab Spring.

The Tunisian revolution was sparked by the self-immolation of a rural fruit seller, Mohamed Bouazizi, due to economic marginalisation. This led to disenchantment and anger at the lack of political liberties, but equally at corruption, nepotism, economic marginalisation and lack of economic opportunities. The Tunisian choice to focus on dignity rather than reconciliation is an indication that Tunisia has taken a different path from to post-apartheid South Africa. The most significant difference is that, in addition to the traditional focus on the abuse of civil and political rights in the form of violence, torture and other repression, Tunisia explicitly aims to investigate corruption and economic crimes, including fraud and misuse of public funds (Merchant 2014:2). The Tunisian Truth and Dignity Commission has taken steps to establish a special judicial chamber to adjudicate cases of economic crimes involving the old regime. In addition, the Commission is specifically tasked with recommending the institutional reforms necessary to dismantle the system of corruption in the Tunisian state.

Apartheid injustice was as much economic as it was political. The lack of focus on economic violations after apartheid was a gross omission, the results of which South Africa continues to grapple with today. There is no doubt that the indignity faced by so many South Africans today is a key source of marginalisation and unrest. The time has come for South Africa to take the tough decision for the right reasons and deal with the unfinished business of the lack of economic and social inclusion. A mechanism or commission on economic crimes is a plausible starting point.

Adopt a comprehensive national economic inclusion plan

Economic inclusion in South Africa today remains as elusive as it was in 1994. The legacy of discrimination, economic exclusion and lack of opportunities is still a part of

the lives of many South Africans. South Africa needs to adopt a comprehensive economic inclusion plan based on a multi-stakeholder consultation.

Despite the fact that South Africa has a National Development Plan, an economic inclusion plan is politically necessary. It needs to be based on several pillars. First, empowering South Africans for participation in terms of access to education, access to capital, access to information and empowering informal economic activity. Second, expanding economic opportunity in terms of jobs for the youth, incentives for local production, limitations on bureaucracy and support for small businesses. This is important because without expanding economic opportunity, inclusion is relegated to a zero-sum game in which the empowerment of some individuals or groups comes at a cost to others.

In a nutshell, there is no black-letter approach to designing an economic inclusion plan. What is important is for South Africa to consider its social, historic and political realities and adopt a plan that meets the needs of the majority of South Africans.

Conclusion

Economic inclusion ought to be the dominant script of any transition. The notion of dealing with civil and political rights in transitional justice in isolation from economic and social rights is fundamentally flawed. The time has come for transitional societies like South Africa to finally address the economic inclusion question. Transitional justice is a dynamic field that could serve as springboard for the realisation of social and economic rights. South Africa could use this unique opportunity to reinvent itself and address the legacies of economic violations that are central for this rainbow nation.

Matsiko Samuel is a Ugandan human rights lawyer and currently a scholar of the German Academic Exchange Service at the South African-German Centre for Transnational Justice

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Comprehensive sexuality education in Swaziland schools

Simangele Mavundla

Introduction

Swaziland lies at the epicentre of the Southern African HIV and AIDS pandemic 'with a very high prevalence rate, which currently stands at 26%' (Government of Swaziland, 2011).

At the 2014 World AIDS Conference in Canada, HIV was viewed as an exploding epidemic among adolescents as it is the leading cause of death in this age group in Africa (Paiva et al., 2015). Some commentaries argued that focusing on sexuality education is an antidote to HIV/AIDS (IRIN News, 2015).

Teaching sexuality and HIV/AIDS education in schools has been the subject of debate and discussion for a while now in Southern Africa (Thaver, 2012). Comprehensive sexuality education is seen as an effective tool for assisting young people to make healthy decisions about sex and to adopt healthy sexual behaviours. Initiatives such as programmes promoting abstinence until marriage have been shown to help some teens delay the initiation of sex.

What is comprehensive sexuality education?

Comprehensive Sexuality Education (CSE) is an age-appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically ac-

curate, realistic, non-judgemental information (UNESCO, 2014). Sexuality education provides opportunities to explore one's own values and attitudes and to build decision-making, communication and risk reduction skills about many aspects of sexuality.

The term 'comprehensive' emphasizes an approach to sexuality education that encompasses the full range of information, skills and values to enable young people to exercise their sexual and reproductive rights and to make decisions about their health and sexuality. To contribute to their full social and economic potential, young people need the knowledge and skills to make the right choices about when to have sex and how to protect themselves from infection and unintended pregnancies.

In many parts of Africa, and the world over, schools play a key role in imparting important information on health and human relations. Effective sexuality education is important because of the impact of cultural values and religious beliefs on all individuals, and especially on young people, in their understanding of this issue and in managing relationships with their parents, teachers, other adults and their communities. School settings provide an important opportunity to reach large numbers of young people with sexuality education before they become sexually active, as well as offering an appropriate structure (i.e. the formal curriculum) within which to do so. School-based

sexuality and reproductive health education is one of the most important and common ways to help young people improve their reproductive health (UNESCO, 2009).

Contents of sexuality education programmes or modules

The United Nations Educational, Scientific and Cultural Organization (UNESCO) sought to assist education, health and other relevant authorities to develop and implement school-based sexuality education materials and programmes (UNESCO, 2009–2014). It did this in partnership with the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Population Fund (UNFPA), the United Nations Children's Fund (UNICEF) and the World Health Organisation (WHO), through the introduction of voluntary and non-mandatory International Technical Guidance on Sexuality Education (ITGOSE).

The goals of the topics and learning objectives of ITGOSE are:

1. to provide accurate information about topics that children and young people are curious about and about which they have a need to know;
2. to provide children and young people with opportunities to explore values, attitudes and norms concerning sexual and social relationships;
3. to promote the acquisition of skills; and
4. to encourage children and young people to assume responsibility for their own behaviour and to respect the rights of others (UNESCO, 2009).

The overarching topics covered in ITGOSE are relationships; values; attitudes and skills; culture, society and human rights; human development; sexual behaviour; and sexual and reproductive health (UNESCO, 2009).

However, the topics and learning objectives address four age groups and corresponding levels: ages 5 to 8 (Level I); ages 9 to 12 (Level II); ages 12 to 15 (Level III); and ages 15 to 18+ (Level IV). Furthermore, the topics and learning objectives cover four components of the learning process: information; values, attitudes and social norms; interpersonal and relationship skills; and responsibility (UNESCO, 2009).

The policy environment for sexuality education

Sexuality education is a human right. This is inferred from international conventions including treaty bodies, General Comments and/or Concluding Observations such as the United Nations (UN) treaties; the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW), and the African Union (AU) treaties such as the Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child. Commentators argue that even though sexuality education is not explicitly included in an international human rights treaty, there is sufficient guidance from UN treaty

bodies and international consensus documents which leave no question that it is a human right and an imperative element of HIV prevention (Stefiszyn, 2014: 162). The International Guidelines on HIV/AIDS and Human Rights (International Guidelines) provides as follows:

States should ensure the access of children and adolescents to adequate health information and education... which is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality (Inter-Agency, 2006: para 60).

Due to its legally-binding nature and the fact that it has been elaborated by its respective monitoring body, the Convention on the Rights of the Child (CRC) is believed to be more persuasive in holding that sexuality education is a human right (Stefiszyn, 2014). The CRC Committee in General Comment 3 para 16 concluded as follows:

Effective HIV prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, survival and development of the child (art 6).

There are treaty bodies which have recommended in their concluding observations that states should provide sexuality education (CEDAW Committee, 2001, Concluding Observations to Burundi, para 62; CEDAW Committee, 2000, Concluding Observations to DRC, para 228; CRC Committee, 2001, Concluding Observations to Comoros, para 36; CRC Committee, 2001, Concluding Observations to Egypt, para 44; and ESCR Committee, 2001, Concluding Observations to Senegal, para 47.)

A closer look at the African region reveals that the human rights system does not explicitly address the rights and obligations pertaining to sexuality education. The African Charter, though, does provide for the right to information and the right to the highest attainable standard of health. The African Charter on the Rights and Welfare of the Child provides for the right to health, while the African Protocol on the Rights of Women in Africa guarantees right to family planning education (Article 14(1)(f)). The state must not only provide sexuality education but must do so effectively (Stefiszyn, 2014).

Swaziland policy environment

At the national level, section 29 of the Swaziland Constitution of 2005 makes it mandatory for children to have free education in public schools at least up to the end of primary school. However, the Constitution provides for the right to health under social objectives, found in the directive principles of state in section 60.

In response to youth sexual reproductive health rights, the country has put in place the National Policy on Sexual Reproductive Health, 2013. One of the objectives of the policy is to inform and guide the actions of policy makers and programmers.

The National Youth Policy (NYP) of 2009 also speaks to youth health. The NYP is cognisant of the major health challenges faced by the youth in regards to HIV/AIDS pre-

● ● HIV prevalence in Swaziland is the highest in the region, with 5.9% of young men and 22.7% of women aged 15–24 infected ● ●

vention, treatment and impact mitigation, STIs, and sexual reproductive health.

The above-mentioned national policy documents are all in favour of sexual and reproductive health but none explicitly speak to the issue at hand, namely sexuality education in school.

Studies have shown that adolescents with accurate knowledge of sexuality and sexual reproductive health, who are empowered to make independent decisions, are less likely to entertain myths and misconceptions about their sexuality and well-being (Rosen, Murray & Moreland, 2004; Katz & Finger, 2002). Over the years Swaziland has considered the issue of introducing age-appropriate sexuality education in schools. However, due to common erroneous beliefs that sex education will encourage sexual activity among learners and that sexuality education belongs in the private sphere and should not be a part of public education, the government has approached the introduction of CSE in Swaziland's schools with baby steps. These erroneous beliefs seem to have worked against the introduction of CSE in schools. It is reported that secondary school students are still taught about 'reproduction' as part of their biology syllabus in the last two years of high school (IRIN News, 2015).

The challenges facing adolescents and the need for sexuality education in Swaziland

Swaziland population is 'youthful' in nature with 39.6% of the population under the age of 15 and 52% under 20 (Central Statistics Office (CSO), 2007; National Youth Policy, 2009). While Swaziland faces certain challenges and opportunities that are youth-specific, many of the problems affecting youth are a reflection of the challenges that confront the country as a whole. According to a 2011 report on Adolescent Sexual and Reproductive Health, adolescents experience risky social behaviours including early sex, pregnancy and parenthood; cross-generation and transactional sexual relationships; sexual, emotional and physical abuse; sexual transmission of infections; low access to sexual reproductive health information and services; increasing rates of orphanhood, famine, school dropout, unemployment and poverty; and substance abuse, with its associated crime and mental disorders (Muna & Kiirya, 2011).

The youth are affected by many diseases, chief of

which are sexually transmitted infections such as HIV/AIDS. HIV prevalence in Swaziland is the highest in the region, with 5.9% of young men and 22.7% of women aged 15 to 24 infected. The Swaziland HIV Measurement Survey (SHIMS, 2012) revealed that HIV incidence among those aged 20–24 was 4.17 % among women and 1.6% among men.

Young women are predominately affected by HIV as socio-cultural factors (such as the low status of women and intergenerational relationships) and myths play a role in the disease's spread. These include men's abuse of power; the acceptance of male dominance and women's subordinate positions; polygamy; the acceptance of male promiscuity; multiple concurrent partnerships; widow inheritance and widow cleansing; the desire for children at all costs, which leads women and men to engage in unprotected sex even when the partner is known to be HIV positive; a culture of silence, which makes it a taboo for men and women, parents and children to speak about sex; and lastly, the reluctance of men to use condoms, and women's failure to control condom use and other forms of birth control especially in marriage (Nxumalo *et al.*, 2014).

Swaziland has put in place several strategies in response to the rapid spread of HIV, through the National Response Council to HIV/AIDS (NERCHA). NERCHA introduced behavioural change programmes and campaigns focusing primarily on awareness raising activities through information, education and communication (IEC) campaigns centred on prevention, using the 'abstain, be faithful, condomise' (ABC) approach. Nxumalo *et al.* (2014) suggest that HIV/AIDS educational programmes and campaigns targeted at students and the youth must be presented in a way that is motivating and stimulating, or they will fail to yield the desired results.

The youth are also affected by sexual and reproductive health problems such as teenage pregnancies, and (unsafe) illegal abortions. The Multiplier Indicator Cluster Survey (MICS) (2010) found that about 3.8% of young girls started engaging in sex before their 15th birthday compared with 2.6% of boys. With regard to teenage pregnancy, about 22% of women of 20–24 years of age reported having had their first live birth before their 18th birthday. Although more than 98% of those aged 15–24 know of a modern contraception method, few actually use them (approximately 43%). In order to fully exercise the right to health, including sexual and reproductive health, all adolescents and young people require safe, effective, affordable and acceptable access to a range of services particularly those relating to pregnancy, HIV and sexually transmitted infection (STI) prevention, testing and treatment.

With the evidence showing that young people of varying ages are involved in sexual relationships, it goes without saying that few young people receive adequate preparation for their sexual lives. This leaves them potentially vulnerable to coercion, abuse and exploitation, unintended pregnancy and STIs, including HIV (UNESCO, 2009). Many young people approach adulthood with conflicting

and confusing messages about sexuality and gender. This is often exacerbated by embarrassment, silence and disapproval of open discussion of sexual matters by adults, including parents and teachers, at the very time when it is most needed. The above challenges are attributable to a lack of a CSE framework in schools, where adolescents and youth spend most of their time. Youth advocates are in agreement that CSE constitutes a good investment for countries.

The Swaziland framework on sexuality education analysis

In 2012 UNESCO and UNFPA reviewed school curricula on sexuality education in ten countries in East and Southern Africa. Their report provides a sexuality education curriculum scan and a synopsis of the gaps in content and approach of Swaziland's HIV framework/curriculum, which is envisaged to double up as a sexuality education curriculum. When the Swaziland's HIV curriculum (Module 1) was reviewed, it was realised that it links the curriculum to a detailed set of broader social and legal changes required to reach the same aims.

The Swaziland sexuality curriculum comprises:

HIV prevention (Module 1): Delayed sexual debut, preventing, identifying and reporting abuse

This module focuses on two topics: delayed sex, and sexual abuse. For each, it provides background information, targeted outcomes and key content for three age groups (ages 6–9, 10–14 and 15–19) and also identified content that is particularly relevant for girls or boys (UNESCO and UNFPA, 2012). It does not include teaching activities. The last section of the document addresses secondary audiences who can help create a more enabling environment for young people to grow up free of HIV (see UNESCO & UNFPA, 2012: 72). The module further addresses only one aspect of HIV prevention (behavioural change). A section on sexual reproductive health behavioural goals is also included.

The Module's strengths include the fact that it is seen as an excellent resource and has great potential. However, the module has one key limitation, which is pedagogic. The aims of this module are ambitious: it seeks not only to inform learners, but to change their underlying attitudes about gender, rights and sexuality; to foster their confidence; and to empower them as agents in their own lives (and communities). However, this kind of learning requires personal reflection, critical thinking and meaningful dialogue. To give life to this promising module, teachers will optimally have access to adequate training; as a minimum, they will require a full curriculum with guided activities and materials (as above).

Sexual and reproductive health behavioural goals

This module has two very explicit behaviour outcomes: delaying sexual debut; and preventing, identifying and reporting sexual abuse (UNESCO & UNFPA, 2012: 73). The document is organized around broad goals to enable learners to get along with others; develop family and family relationships; practice social skills and practice manners and etiquette; reduce unsafe sex practices (fairly unspecified); reduce substance use/abuse; and prevent suicide.

Effectiveness of teaching activities

The document includes a wide range of topics that are highly amenable to diverse, participatory teaching methods that foster creative thinking, critical thinking and learner engagement (UNESCO & UNFPA, 2012: 77). Since this is not a curriculum document, it is limited in that it does not include specific teaching activities.

Conclusion

Youth advocates are in agreement that comprehensive sexuality education is a good investment for countries.

Simangele Mavundla is a PhD candidate at the University of KwaZulu-Natal, Pietermaritzburg

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Legislative and policy reform

The role of third parties contracted by government in realising the right to access housing in South Africa

Peacemore Talent Mhodi

Introduction

The right of access to adequate housing is recognised as a basic human right under Section 26 of the South African Constitution (the Constitution). In the celebrated case of Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC), it was noted that the right to housing is about more than bricks and mortar: it includes people living in dignity, security and peace.

Indicators to measure housing

The South African Human Rights Commission (the Commission) has identified three indicators to measure the enjoyment of the right to housing, namely, access, adequacy, and quality. In terms of access, the test for this indicator is about physical access, economic opportunities, accessibility and affordability. In measuring adequacy, the factors to consider are security of tenure, access to basic services and habitability. The indicator on quality measures the impact of housing on one's quality of life and concern broader indicators of well-being. This means that the focus must be on building sustainable, decent and habitable housing.

A house is not an end itself

A house is not an end in itself but a social asset and a means to something greater, namely social and economic transformation, equality, human development and fulfilment. Government's policy and official statements appear to bolster this view. In her budget vote speech on 7 May 2015, Lindiwe Sisulu, Minister of Human Settlements, stated that:

houses are an asset, which can be leveraged to take even the poorest out of their poverty debt trap (Address by L N Sisulu, 2015).

This means that in order to ensure human dignity, attention must be given to the quality of houses that are built. The problem of poor quality housing was highlighted in the 2010 Stats SA survey which found that 16% of those surveyed indicated that the walls of their houses built under the Reconstruction and Development Programme (RDP) were weak. An additional 15% complained about roof weaknesses (IOL News, 2010).

The Commission, in its report on economic and social rights for 2012/13 found among other issues that the

quality of housing was poor. In a recent report, the Minister of Human Settlements lamented the fact that badly built houses were draining the state's coffers of billions of rands (*The Star*, 2015). According to the report, government spent over R2 billion a year to rectify construction problems in houses as a result of shoddy workmanship. The Minister is quoted as saying there is a need to track down third-party contractors and for them to rebuild these houses.

The decision to crack down on contractors who build poor quality houses is to be welcomed. As the Commission observed during its national hearings on water and sanitation in March 2012, the root problem is that there is a lack of transparency in hiring external contractors and in holding contractors accountable for the quality of services delivered.

The law in relation to public procurement and contracting

The basic constitutional principles underlying contracting for goods and services are found in section 217 of the Constitution. Public procurement must be fair, equitable, transparent, competitive and cost-effective. These principles are justiciable, and they find practical implementation and expression in core principles of behaviour, known as the 'five pillars of procurement,' as developed by the National Treasury and contained in the General Procurement Guidelines. They are: value for money, open and effective competition, ethics and fair dealing, accountability and reporting, and equity (National Treasury, n.d.).

A number of statutes regulate the activity of outsourcing or contracting to third parties. These include the Public Finance Management Act 1 of 1999, Municipal Systems Act 32 of 2000, Municipal Finance Management Act 56 of 2003, Broad-Based Black Economic Empowerment Act 53 of 2003, Promotion of Administrative Justice Act 3 of 2000, Preferential Procurement Policy Framework Act 5 of 2000 and the Promotion of Access to Information Act 3 of 2000. The Public Finance Management Act prescribes the general system for public procurement that must be followed by national and provincial departments, the public entities, constitutional institutions, parliament and provincial legislatures.

Judicial pronouncements have provided that when a contract has a constitutional dimension, both the public and the private parties are liable to fulfil that contract (*All pay v SASA and Others*). Thus, in the context of housing, which is a constitutional right, it means that outsourcing

services to a third party does not vitiate the state from monitoring the fulfilment of the contract.

Possible strategies to hold third-party contractors to account

In light of the fact that badly built houses by third-party contractors are draining billions of rands from the state's coffers, there is a need to think of strategies to hold contractors to account for their work.

This can be done, first, through the drafting of watertight contracts, with a social compact clause to enable contractors to pay a fair living wage to their employees in terms of fair labour practices. A social compact clause in the contract is important because it curbs employees from downing tools, thereby hampering the pace of delivery of houses.

Second, the contract must be time bound in line with deliverables.

Third, the contractor must put up a performance guarantee contract which is not transferable, not negotiable and irrevocable. The importance of a financial performance guarantee contract is that it mitigates the risk to the state in the event that the contractor is *in mora* and/or has abdicated his/her duties in terms of the contract.

Fourth, the contract must contain a penalty for non-performance, such as blacklisting. This can be done in terms of paragraph 15 of the Preferential Procurement Regulations of 2001 and Treasury Practice Note 6 of 2005. In terms of the latter, an Accounting Officer is empowered to restrict a supplier from doing business with the public sector if such supplier obtained preferences fraudulently or if such supplier failed to perform on a contract or does shoddy work.

Another important point is that contractors must be paid expeditiously to enable them to build houses more quickly. This means that the 30 day rule in terms of the

Public Finance Management Act must be upheld. This will enable contractors, especially those involved in emerging businesses, to ensure efficient cash flow to sustain their businesses.

Furthermore, emerging contractors must be trained in financial management to prevent them from abandoning projects before completion as a consequence of being bankrupt.

It is crucial for government to have regard to the principles of transparency, openness, public participation and accountability when contracting services to third parties. Also, in light of the fact that the Bill of Rights in our Constitution applies horizontally as well, third-party contractors involved in the housing sector must know that they have to respect the basic norms and principles of human rights.

Conclusion

In the light of the staggering backlog of housing in South Africa, it is inevitable that government will have to outsource services to third parties in the provision of housing. However, this should not come at the expense of service delivery of decent and habitable human settlements. Communities benefiting from the right to housing deserve to be treated with human dignity, which is central to every human being.

Further, government should encourage self-involvement in the provision of housing needs. This will ensure that communities are not passive recipients dependent on the state, but are active in meeting their own housing needs and mobilising their own resources.

Peacemore Talent Mhodi is a research associate at the South African Human Rights Commission

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International: CESCR Statement on Social Protection Floors

During its 54th Session, 23 February–6 March 2015, the Committee on Economic, Social and Cultural Rights (CESCR) adopted a Statement on Social Protection Floors, subtitled 'An essential element of the right to social security and of the sustainable development goals'.

The CESCR notes that the establishment of a nationally defined social protection floor (SPF) is crucial to promoting 'basic income security and access to health care, and in facilitating the enjoyment of several economic and social rights by the most marginalized groups of the population'. The CESCR emphasizes that SPF require a set of basic social security guarantees that ensure universal access to health coverage and basic income security. These guarantees can be materialized in different ways including transfers in cash and kind, such as child benefits, income-support benefits combined with employment guarantees for working-age poor, tax-financed universal pensions for older persons, and benefits for persons with disabilities and for those whose families have lost their main breadwinner.

The CESCR reasons that these guarantees, as already indicated in General Comment 19, constitute the core obligations of states to ensure access to social security. They do this by providing, together with access to essential services, a minimum level of benefits to all individuals and families to enable them to acquire 'at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education'.

Realising the vulnerable position of women in many societies and the fact that they are often unemployed, employed in informal sector or engaged in unpaid work, the CESCR notes that many of the guarantees included in national SPFs (such as maternal health, child care and maternity benefits and pensions), contribute towards establishing universal benefits. In the CESCR's view, these benefits tend to decrease gender inequalities by alleviating the burdens placed on women, who continue to bear a disproportionate burden of household responsibilities.

Noting the importance of social protection floors as a core obligation to realising socioeconomic rights in general and social security in particular, the Committee urges states to take steps to progressively realise the right to social security as indicated in General Comment 19. This is further reiterated in the ILO Recommendation 202 on Social Protection Floors, which outlines strategies for extending social security for as many as possible. The Committee adopts the guiding principles contained in the ILO Recommendation 202 and emphasizes the point that national social protection floors must be based on a national consensus, which must include the participation of all relevant stakeholders.

The statement is available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2015%2f1&Lang=en